10 June 2010

Mr. Des Hogan
Director of Enquiry and Legal Services

Mr. Gerry Finn
Enquiry and Legal Officer

Irish Human Rights Commission
Jervis House, Fourth Floor
Jervis Street
Dublin 1
Rep. of Ireland

Dear Messrs. Hogan & Finn,

Justice for Magdalenes (JFM), a survivor advocacy group, is writing to the Irish Human Rights Commission (IHRC) requesting an enquiry into the State's failure to protect the constitutional and human rights of women and young girls in the nation's Magdalene laundries.

On 3 July 2009, JFM circulated a proposal to all politicians in the Dáil and Seanad urging the State to (i) offer an official apology, and (ii) establish a distinct redress scheme for survivors of the laundries. JFM has since met with representatives from the Departments of Justice, Education and Health; we have presented our campaign before an Ad Hoc committee in Dáil Éireann; we have facilitated the tabling of almost two-dozen parliamentary questions related to our proposal. And yet, the government refuses to take action. To date, no one in Irish society—not church, not state, not families—has apologized for this historic abuse. Consequently, survivors are denied the "restorative justice" that such an apology would enable.

Our request for an enquiry involves Ireland present as much as it does Ireland past. The Magdalene laundries are excluded from the Residential Institutions Redress Act (2002). Survivors, therefore, are deemed ineligible to apply to the current Residential Institutions Redress Board. The State contends that the laundries were always "private and charitable" and that women entered these institutions "voluntarily." JFM can demonstrate that the State was complicit in referring women and young girls into these institutions. Moreover, by abdicating its responsibility to inspect and regulate private institutions, we assert that the State failed to protect all the women and girls in the laundries, including those placed their ‘privately’, from enforced and compulsory labour.
Our position then is that the State failed to protect the constitutional rights of Irish women and girls and failed to fulfill its obligations as a signatory nation to international conventions on slavery, enforced labour, and human rights. The evidence supporting both arguments is outlined in the two attached documents:

(i) “State Complicity and Constitutional Rights” and its attending "Appendices," by Dr. James M. Smith (Boston College)

(ii) "Ireland's Magdalen Laundries and the State's Duty to Protect," by Maeve O'Rourke (Harvard University).

After considering this evidence, we ask that the IHRC determine whether the government's stance with respect to survivors of the Magdalene laundries is consistent with current law and practice. We ask, moreover, that the IHRC make positive recommendations to the Government based on its findings. Doing so, we contend, will promote greater understanding and awareness of human rights in Ireland. JFM is not looking to the IHRC to determine a monetary award or compensation.

Finally, JFM is asking for your timely consideration of this issue. We are actively engaged with the State in pursuing our campaign for a population of women who, in the main, are elderly and are looking for justice in their final years of life. The issues involved, therefore, are time-sensitive and worthy of your immediate attention.

Yours Sincerely,

Mari Steed, Claire McGettrick, James Smith

Mari Steed, Director of Coordinating Committee, Justice for Magdalenes, 1-215-589-9329, mari_tee@yahoo.com

Claire McGettrick, PRO and Coordinating Committee Member, Justice for Magdalenes, 353-(0)86-1212674, clairemcgettrick@gmail.com

James M. Smith, Associate Professor, English Department and Irish Studies Program, Boston College and Member of Advisory Committee

ALL CORRESPONDENCE TO:

Dr. James M. Smith
Associate Professor
English Department and Irish Studies Program
Boston College
Connolly House
300 Hammond Street
Chestnut Hill, MA 02467
USA
1-617-552-1596
smithbt@bc.edu
Justice for Magdalenes

State Complicity and Constitutional Rights

Submitted by

James M. Smith
Associate Professor
Department of English & Irish Studies Program
Boston College
Chestnut Hill, MA 02467, USA
617-552-1596
smithbt@bc.edu
Establishing "Sufficient Interest"

Justice for Magdalenes (JFM) is a not-for-profit, totally volunteer-run organization, with members in Ireland, the UK, the US, EU and Australia. We are primarily an online community, with a website, a Facebook site with 721 members, and two listserv discussion groups with over 300 members. We also have non-Internet based members all around Ireland, many of whom are Magdalene survivors. All JFM activities are made available via our website at www.magdalenelaundries.com

JFM is a survivor advocacy group—this is how the organization refers to itself in all public announcements. In other words, JFM advocates on behalf of a population of women—living and dead, some still living in religious institutions, others living in anonymity, and many now speaking about their past—who are not recognized or acknowledged as survivors of institutional abuse by the State, by the Church, or by Irish society.

Justice for Magdalenes sprang from a group founded in 1993 (Magalen Memorial Committee) after the discovery of 155 buried bodies at High Park Convent, Dublin. We actively formed around 2000, with individuals from the Irish adoption community (some of whom also had mothers confined in Laundries) taking over the reins from the original MMC founders, Patricia McDonald, Bláthnaid Ní Chinnéide and Margo Kelly.

JFM is now comprised of a core coordinating committee directed by Mari Steed (an Irish-US adoptee/activist, natural mother and daughter of a Magdalene); Claire McGettrick, PRO, (Irish adoptee/adoption activist); Angela Muphy (Irish adoptee/activist and daughter of a Magdalene); Etta Thornton Varma (Irish adoptee/daughter of a Magdalene); Judy Campbell (activist and researcher); and Lorraine Owens (High Park Industrial School survivor).

JFM also has a very active advisory committee that includes James M. Smith (Boston College, and author of Ireland's Magdalen Laundries and the Nation's Architecture of Containment [2008]); Paddy Doyle (Cappoquin Industrial School survivor/activist and author of The God Squad); Derek Leinster (Bethany Home Orphanage/School survivor/activist and author of Hannah's Shame); Katherine O'Donnell (Senior Lecturer, University College Dublin); Sandra McAvoy (Course Coordinator, Women's Studies, University College of Cork); and Mary McAuliffe (Post-doctoral Fellow, Women's Studies, University College of Dublin). We also have a number of volunteers from the legal and women's studies fields who assist as the need arises on various projects.

In one shape or another, JFM's core committee has been working on this issue in an advocacy capacity for some 12 years.

JFM has not applied for nor has it received funding from the Irish State or from any of the various religious congregations that operated the laundries. Currently, the JFM bank account has less than €500, the vast majority of which was donated by committee members and volunteers.
JFM has a long-standing policy not to make public the names of survivors without their consent. To do so is a breach of their confidentiality and trust. There is a particular stigma still attached to the Magdalene laundries, and many survivors choose to protect the privacy of their established lives from the injustices done to them in the past. No one has apologized to Ireland's Magdalene women; no one has owned up to the fact that what happened to them was wrong. Simply put, many survivors will choose anonymity until this situation changes. JFM is committed to bringing about these changes, but we also realize that even if we are successful some women will always choose to maintain their identity in secrecy.
JFM's Objectives

JFM's primary goals are (i) to bring about an official apology from the Irish State and the Catholic Church, and (ii) the establishment of a distinct redress scheme for Magdalen survivors. Once JFM achieves these objectives, the door will be open to every survivor and/or her family and/or other groups representing Magdalen survivors to pursue their own claim for redress.

On 3 July 2009, JFM circulated "draft language" towards an apology and a distinct redress scheme to all members of the Oireachtas, both the Dáil and Seanad (see Appendix I, below).

(i) An Official Apology

JFM contends that an apology is the crucial first step in effecting restorative justice for victims and survivors of the Magdalene laundries. To date, no one in Ireland has issued an apology for this specific institutional abuse.

JFM asserts that the state should

- Apologize for its failure to protect the basic human and constitutional rights of all the women and children confined in the nation's Magdalene laundries
- Apologize to all young girls who lost their childhoods in these abusive institutions, whether they were abandoned to the laundry by a family member or transferred there from a residential institution
- Acknowledge that it was complicit in referring women to the Magdalene laundries, apologize to all women so-referred, and demonstrate conclusively what became of each of these women
- Acknowledge its awareness that the laundry institutions were punishing and abusive in nature, and apologize for its failure to act on this awareness

(ii) A Distinct Redress Scheme

JFM suggests that the following elements should comprise the scheme

- A trust fund to provide compensation in lieu of wages. The religious congregations and the Catholic Church should contribute equal monies to this Trust
- A pension for all survivors of the Magdalene laundries upon reaching the age of 65 years
- Aid in the form of housing assistance for survivors in need. In particular, survivors still in the care of the religious congregations should be offered assistance in seeking alternative independent living arrangements if they so wish
- Medical assistance for survivors in need. Independent counseling services should be provided for survivors of institutional abuse
• All surviving records should be made available in an appropriate manner, and immediate access should be provided to survivors and family members. Such access is crucial to the Adoption search process
• An oral history project should be established to record and archive the experiences of survivors, family members, female religious, and other interested parties
• An appropriate national memorial should be erected and thereby protect against the erasure of this chapter in the nation's history. Likewise, this chapter in the nation's history should be taught as part of the State's educational curriculum
• Magdalene burial plots must be properly maintained. The religious orders should erect suitable and accurate memorial stones, and all language referring to Magdalenes as “penitents,” “residents,” “sinners,” etc., should be amended
• A criminal investigation of the exhumation of human remains from the burial plot at High Park Magdalen Laundry in Drumcondra. Information from the religious congregations related to similar exhumations at other convents must be made available for investigation.
(i) Abuse Suffered in the Magdalene Laundries

The Ryan Report includes evidence of abuse suffered in four Magdalene Laundries, in Chapter 18 of Volume III. The chapter, entitled “Residential Laundries, Novitiates, Hostels and other Out-of-Home Settings,” provides accounts of abuse from witnesses who suffered as children. These accounts, gathered by the State, serve as an indication of the grave harm suffered by all women and girls in Magdalene Laundries throughout the country.

According to one excerpt from the Ryan Report chapter (at 18.25):

Seven (7) female witness reports related to continuous hard physical work in residential laundries, which was generally unpaid. Two (2) witnesses said that the regime was ‘like a prison’, that doors were locked all the time and exercise was taken in an enclosed yard. Working conditions were harsh and included standing for long hours, constantly washing laundry in cold water, and using heavy irons for many hours. One witness described working hard, standing in silence and being made to stand for meals and kneel to beg forgiveness if she spoke. Another witness stated that she was punched and hit as a threat not to disclose details of her everyday life working in the laundry to her family.

The chapter states further on (at 18.45):

Four (4) female witnesses reported that their education, social development and emotional well-being were neglected as they were constantly forced to work without pay for long hours, with limited time for education or recreation. The lack of safety, adequate food and a supportive educational environment was frequently commented by witnesses.

It continues further on (at 18.57):

Six (6) female witnesses who were placed in residential laundries reported that the loss of liberty, social isolation and the deprivation of identity had a traumatic impact on them. Friendships were discouraged or forbidden, communication was severely limited by the rule of silence and doors were constantly locked. Two (2) witnesses stated that restrictions on their liberty contributed to a feeling of being treated like a prisoner. They described their punishment for breaking the rule of silence as having their head shaved and being made to take meals separately from their peers.

---

1 The section “Rights Claims” was compiled in collaboration with Maeve O’Rourke (Harvard University)
(ii) Constitutional Rights Violations

Justice for Magdalenes (JFM) argues that the complicity of the State in referring women and girls to the Magdalene Laundries, absent any legislative basis on which to do so, violated the Constitutional rights of those women and girls not to be deprived of their personal liberty save in accordance with law. The State further violated their Constitutional right to equality before the law, because they would not have been referred to a Magdalene Laundry, but for their sex.

The treatment of women and girls inside the Magdalene Laundries violated their Constitutional rights, including, but not limited to:

- the right to bodily integrity
- the right to personal liberty
- the right to one’s good name
- the right to freedom from torture and inhuman or degrading treatment
- the right to earn a livelihood
- the right to individual privacy
- the right to communicate
- the right to be treated with dignity
- the right to travel
- the right (in the case of children) to an education

(iii) European Convention on Human Rights (ECHR) Violations

It is argued that the State violated the following ECHR rights of the women and girls whom it was complicit in referring to the laundries:

- the right to be free from torture and inhuman or degrading treatment or punishment
- the right to be free from slavery, servitude and forced or compulsory labour
- the right not to be deprived of one’s liberty in accordance with a procedure prescribed by law.

In addition, the State failed to protect all of the women and girls who entered the Magdalene Laundries, whether privately or by state referral, from torture and inhuman or degrading treatment at the hands of non-state actors. The State also failed to protect the women and girls from subjection to slavery and forced labour by non-state actors.

(iv) Exclusion from the Residential Institutions Redress Act, 2002 — Denial of a Remedy

The absence of a scheme of redress for Magdalene Laundry survivors and their exclusion from the 2002 Redress Act unjustifiably discriminates against this class of survivors of institutional abuse. The State has offered no compelling reason for such unequal
treatment. The fact that the laundries were private institutions did not absolve the State of responsibility to protect the women and girls within the laundries from the abuse they endured at the hands of religious orders.

The State knew of the nature and function of the Magdalene Laundries. Just as the State held a duty to protect the children in state funded and regulated Industrial and Reformatory Schools, it held a duty to protect the women and girls in the Magdalene Laundries, for the following reasons:

- The State was complicit in referring certain women and girls to the Magdalene Laundries.
- The State had a Constitutional duty to educate the children in the Magdalene Laundries and to care for them in cases of parental failure.
- The abuse suffered by women and girls in the Magdalene Laundries, whether they entered privately or at the hands of the State, amounts to slavery and/or forced labour. The State was obligated at the time of the abuse to abolish slavery and forced labour under international law, international labour law, European human rights law and possibly Irish constitutional law.

Article 13 of the European Convention on Human Rights provides for the right to an effective remedy for violations of Convention rights and freedoms. The ongoing failure of the State to provide a remedy to victims of abuse in the Magdalene Laundries is a violation of this right.
The State's Response

The Minister for Education, Mr. Batt O'Keeffe, T.D., in a letter addressed to Mr. Tom Kitt, T.D., dated 4 September 2009 rejected JFM's proposed distinct redress scheme (see Appendix 2, below). In his letter, Mr. O’Keeffe did not refer to JFM’s call for an apology.

Minister O'Keeffe asserted that:

- The state is only liable for children transferred to the laundries from residential institutions
- There is a difference between children taken into the laundries privately or as adults and children transferred from a residential institution
- The laundries were privately owned and operated
- The state did not refer individuals nor was it complicit in referring individuals to the laundries

JFM subsequently wrote to An Taoiseach, Mr. Brian Cowen, on 22 September 2009 challenging each of Minister O'Keeffe's contentions (see Appendix 3, below). The following sections outline JFM's counter-argument and in the process form the basis of our evidence underscoring the State's complicity in the Magdalene laundries.
The State's Complicity

(i) State Complicity: Children in the Laundries

Minister O'Keeffe asserts that "the situation in relation to children who were taken into the laundries privately or who entered the laundries as adults is quite different to persons who were resident in State run institutions" (see Appendix 2, below)

JFM asserts that the State had an obligation to provide for and protect all children in Magdalene laundries from institutional child abuse, including but not limited to children transferred from State residential institutions who are currently provided access to redress under the Residential Institutions Redress Act, 2002, Section 1 (3).

The means by which a child ended up in a laundry—whether she was abandoned by a family member or transferred from an industrial school—is immaterial as this did not obviate the State's constitutional obligation to protect her. That surely is what is meant by the Oireachtas's recent joint motion to "cherish all of the children of the nation equally."

JFM therefore asserts that:

- The State was constitutionally obliged to ensure that children receive a "certain minimum education" (Art. 42, sec. 3, sub. 2)
- The State was constitutionally obliged to "supply the place of the parents" in cases where parents "fail in their duty towards their children" (Art. 42, sec. 5)
- These constitutional obligations are particularly relevant given that the abuse suffered by children in the laundries happened "outside the home"
- The European Convention on Human Rights (ECHR), article 13, asserts that people who were abused in institutions have a right to “an effective remedy” in the present day for abuse suffered in the past.
(ii) State Complicity: Workers in the Laundries

The Minister for Education initially characterised survivors as "the former employees of the laundries" (see Appendix 2, below). He later apologised, retracted that characterization, and substituted the word "workers" for "employees" (Appendix 4, below). Survivors characterize themselves as "slaves."

But, if the women were "workers," then the State had a responsibility to ensure that the laundries themselves complied with the Factories Acts and Companies Acts, in terms of safe work practices, fair pay, regular work days, the right of free association, inspection, social welfare withholdings, etc. The State was obliged to penalize forced and/or compulsory labour.

JFM therefore asserts, that:

- The State was constitutionally obliged to "ensure that the strength and health of workers and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter a vocation unsuited to their sex, age or strength" (Article 45, sec. 4, sub. 2)
- The State is obliged to take action against any employer if they broke the law, but to date has never penalized the religious congregations for their operation of these commercial laundries that relied on forced labor.

The State was aware of the distinction between “commercial” and “institutional” laundries (see Appendix 4.1, below). The State held Army laundry contracts with institutional laundries (as opposed to commercial laundries) during the year of 1941. It is possible, indeed probable, that these contracts were with Magdalene Laundries. The statement by the Minister for Defence suggests that: (a) it was State practice in 1941 to insert fair wages clauses into state laundry contracts with commercial firms, and (b) the Minister was aware that there existed some discrepancy between having fair wages clauses in State laundry contracts and holding those contracts with institutional laundries.
(iii) **State complicity: Referring Women and Girls to the Laundries**

The Minister for Education asserted that the State "did not refer individuals to Magdalen Laundries nor was it complicit in referring individuals to them" (see Appendix 2, below).

Evidence in the national archives contradicts this contention. Indeed, this evidence is plentiful, and as such it underscores that numerous government departments were complicit in referring women and young girls to the laundries.

1. **State complicity and the Department of Justice**

   a. **Women referred to the laundries via the courts as an alternative to a prison sentence**

   The State's judicial system routinely referred women to Magdalene laundries, at least, from the 1920s through to the mid-1960s. The State considers these women “voluntary” committals. JFM can document 54 instances whereby women found guilty of a crime were referred to a Catholic Magdalene Laundry (see Appendix 5, below), an additional 26 women referred to Our Lady's Home, Henrietta Street, Dublin (a residential institutional with a laundry, but not a Magdalene Home)(see Appendix 6, below), and a further 4 cases involving Protestant women referred to the Bethany Home (see Appendix 7, below).

   The State knew, as early as the “Commission of Inquiry into the Reformatory and Industrial School System, 1934-1936, Report” (i.e., the Cussen Report), that Judges were “reluctant” to send “first offenders” to prison but they overcame this difficulty by sending them to “a Home conducted by a Religious Order, provided the girl consents to go there” (see Appendix 8, below) The Report identifies the chief reason why such a procedure is undesirable as “the absence of specific powers enabling Judges and Justices to commit to these Homes,” and concludes that, “a girl who elects to go to a Home may leave at any time.” The State knew that there was no statutory basis for this arrangement (see Appendix 8, below).

   As a result, the Department of Justice drafted "Heads of Bill" for The Criminal Justice (Female Offenders) Bill, 1942 (see Appendix 9, below), a bill that did not become law, but that none-the-less signals the State's awareness of the need to establish a statutory basis for the courts' uses of these institutions as an alternative to prison:

   - The bill sought to provide legal sanction for what in practice was an informal, and therefore legally questionable, arrangement
   - A Department of Justice memorandum refers to the Judges' use of these institutions as "a makeshift practice and there are no positive means of compelling the offender to remain in the convent, if at any time she chooses to leave" (see Appendix 9, below)
The Department never informed the women in the laundries of this fact.
Drafts “Heads of Bill” proposed certifying the laundries as legal places of detention within the meaning of the Prison Acts, but modeled on the certification and management of Residential Institutions (see Appendix 9, below).

Despite the fact that the Bill was never enacted as law, the "makeshift practice" continued into the 1960s. The Department of Justice never informed women in the laundries that "there was no positive means of compelling" her "to remain in the convent, if at any time she chooses to leave" (see Appendix 8, below)

Evidence of this "makeshift practice" exists in the National Archives:

- The Central Criminal Court case files in the National Archives include numerous committal orders issued by the courts detailing these referrals to the laundries (see Appendix 10, below)
- Some CCC case files include correspondence between Judges and convent Mother Superiors outlining the terms of incarceration. Letters also indicate that the convents would keep the women after her sentence had elapsed (see Appendix 11, below)
- Committal orders stipulate that the State’s probation officers escorted the women from the courts to the laundries (see Appendix 10 & 11, below). There are no records of the Probation Officers checking to ensure the women were ever released.

The Department of Justice is unwilling or unable to produce records documenting what became of each of these "voluntary committals" referred to the laundries via the judicial system. It is possible, indeed probable, that some of these women lived and died behind convent walls.

The State abdicated responsibility for the women's welfare to the religious congregations, and in the process violated its constitutional obligation to protect their constitutional rights.

b. Women referred to the laundries by the Courts “On Probation”

In March 1944 there were 29 women “on probation” at various religious convents, including 6 Magdalene laundries (see Appendix 12, below). Some of these women were confined for up to 3 years.

JFM has asked the Department of Education the following questions:

- What was the statutory basis for this arrangement?
- Were these women released at the end of their period of probation?
- Was a capitation grant provided to these Magdalen institutions on accepting a woman "on probation"?
- Were these institutions inspected, regulated, or certified by the State?
The Department of Justice is unwilling or unable to produce records documenting what became of each of these women placed "on probation" at a Magdalene laundry via the judicial system. It is possible, indeed probable, that some of these women lived and died behind convent walls.

The State abdicated responsibility for the women's welfare to the religious congregations, and in the process violated its constitutional obligation to protect their constitutional rights.

c. Women referred to the laundries “On Remand” by the Department of Justice

*The Criminal Justice Act, 1960* provided for the use of the Sean McDermott Street Magdalene laundry as a Remand Home. Archbishop McQuaid facilitated this arrangement (see Appendix 13, below). The Department of Finance agreed to pay a capitation grant for every woman so-referred to that institution.

The Sean McDermott Street laundry was never licensed, inspected, or came under State regulation as an “approved” institution. And yet, the State placed innocent women (still awaiting trial) beyond direct State protection.

Former Magdalene women still live at this convent in the care of the nuns.

The Department of Justice is unwilling or unable to produce records documenting what became of each of these women placed "on remand" at the Sean McDermott Street Magdalene laundry (see Appendix 25, below). It is possible, indeed probable, that some of these women lived and died behind convent walls.

The State abdicated responsibility for the women's welfare to the religious congregations, and in the process violated its constitutional obligation to protect their constitutional rights.

d. JFM met with senior officials in the Department of Justice on 15 December 2009 (see Appendix 14, below)

- The Department stated unequivocally that it placed women "On Remand" at the Sean McDermott Street Magdalene Laundry and paid a capitation grant for every woman so-referred
- The Department acknowledged that the Courts entered into arrangements with religious congregations for the confinement of women
- The Department stated that there was no statutory basis supporting the courts' use of these institutions or for members of the Garda Síochána returning escapees to the laundries
- The Department acknowledged that a Garda investigation into the exhumation, cremation, and re-internment of 155 former Magdalene women at the High Park, Drumcondra laundry took place in 1992. The Department confirmed that it had written to the Garda Commissioner regarding the matter in November 2009
requesting that he review the 1992 investigation report. JFM is still waiting to be updated on this matter. The State must investigate all exhumations of former Magdalen women’s remains (e.g., at the Galway laundry)

• The Department of Justice has yet to produce records for a single woman referred to the Magdalene laundries via the judicial system?
2. State complicity and the Department of Education

The Reformatory and Industrial School Systems Report, 1970 (i. e., Kennedy Report) documents the State's awareness of two distinct populations of children, in addition to those children transferred from a State residential institution, confined in the laundries and other religious convents (see Appendix 15, below).

a. When it addresses the Reformatory Schools, the Kennedy Report states:

6.18: In some cases, these girls are placed on probation with a requirement that they reside for a time in one of several convents which accept them; in other cases they are placed on remand from the courts. A number of others considered by parents, relatives, social workers, Welfare Officers, Clergy, or Gardaí to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools' system (emphasis added).

b. When it addresses Industrial Schools, the Kennedy Report asserts that there were:

"617 children … resident in 'Voluntary Homes which have not applied for approval"

Not all of these Industrial School children were female, and thus not all of them refer to Magdalene laundries, but the State routinely referreded to the laundries as a "Voluntary" institutions. JFM contends therefore that it is probable that some of these children in "Voluntary Homes" were indeed in Magdalene laundries.

The Kennedy Report underscores the State’s awareness of children being confined in Magdalene Laundries, beyond those children transferred from State residential institutions. The Report’s two figures—70 and 617—offer a snapshot for the scale of the problem in 1969-1970.

c. Department of Education awareness and inaction:

The Department of Education was aware that children were confined in these commercial laundry institutions. It was aware that these "out of home" settings were exploitative and punitive. The Department had a constitutional obligation to protect children from such exploitative work conditions. It likewise had a constitutional obligation to ensure a basic minimum education. Did the Department of Education ever visit, inspect, or license these "religious homes"? Were they ever certified or approved?

The Minister for Education has yet to account for each of these children—the 70 in "several convents which accept them," or the 617 children in "Voluntary Homes"—from 1970.
d. JFM met with senior officials in the Department of Education on 2 February 2010 (see Appendix 16, below)

- JFM asked whether the Minister could make public the number of children who "were transferred to a Magdalene laundry from a State regulated institution" as well as the number of survivors who have applied to the Redress Board on the basis of section 1(3) of the Residential Institutions Redress Act, 2002. Both requests were denied on the basis of confidentiality
- JFM asked whether the Minister could now account for every child confined to a Magdalene laundry since the founding of the State
- JFM asked whether the State can produce records for all the women and children it was complicit in referring to the laundries

The Minister for Education, Ms. Mary Coughlan, T.D., wrote to JFM on 27 April 2010. In an earlier letter addressed to Ms. Coughlan, JFM had asked for information regarding children placed in the laundries as a result of "voluntary placements, Health Authority referrals, etc." In her response, Minister Coughlan asserted, "any records which my Department holds could not be relied upon to accurately quantify the numbers" (see Appendix 17, below).

Ms. Coughlan reveals in her response that an internal departmental review recently "identified 261 references of referrals" of children between residential institutions and various laundries. However, the same review only positively identified 3 referrals to Magdalene laundries (one each to Galway, Limerick and Donnybrook). She continues: "A further 95 were to convent laundries, 102 to school laundries and 61 to other laundries. The number of laundries involved is unclear as some locations are listed as school, convent and other laundries" (see Appendix 17, below).

No one can say with any certainty how many of these children were indeed confined in Magdalene institutions. Minister Coughlan has yet to demonstrate what became of the 3 children transferred into the Magdalene Laundries? Can her department demonstrate conclusively the fate of each of the 261 children placed in these convent laundries?
3. State complicity and the Department of Health

\textit{a. Women transferred from State-funded Mother-and-Baby Homes}

The \textit{Department of Local Government and Public Health Annual Report, 1932-33} details the State's policy of relying on Magdalene laundries to confine women with multiple births outside marriage, women considered "hopeless cases" in the parlance of the day.

With regard to the more intractable problem presented by unmarried mothers of more than one child, the Sister-in-Charge of the Magdalen Asylums in Dublin and elsewhere throughout the country are willing to co-operate with the local authorities by admitting them to their institutions...The Magdalen Asylum offers the only special provision at present for this class (see Appendix 18, below)

This "special provision" was still in place as late as 1956, when The Children's Home, a mother and baby home in Tuam, Co. Galway, licensed and funded by the State, was sending "girls" that had "two confinements ... to the Magdalen Home Laundry in Galway." Seventy per cent of the women in the Sisters of Mercy Magdalen laundry in Galway at the time were "unmarried mothers" (see Appendix 19, below).

\textit{b. Capitation Grants for confining "Problem Girls"}

On 31 July 1972, the Sister-Charge of “An Grianan,” an institution attached to the Magdalene laundry at High Park, Drumcondra, reveals in a letter to the Department of Justice, that the Boards of Health as well as the Department of Justice were paying capitation grants for “problem girls” (£9.90 per week), in the former case, and for girls “on remand” and “on probation” referred via the courts (£7.75 per week), in the latter case (See Appendix 20 below).

The Department of Health has yet to clarify precisely the statutory basis for this arrangement. Likewise, the question remains as to whether this institution was ever licensed, inspected, or regulated as an approved institution?

Despite these capitation grants the State continues to assert that the laundries were “private and charitable” institutions?

\textit{c. JFM met with the Minister for Health on 25 March 2010} (see Appendix 21, below)

- JFM asked whether the Minister can reveal how long the "special provision" of transferring unmarried mothers from Mother-and-Baby homes to Magdalene laundries remained in place?
- JFM asked whether the Minister could detail how many women were transferred and confirm how long they remained confined?
- JFM asked whether the Minister could make public all records for payments made to Magdalene laundries used to confine “problem girls”?
- JFM asked whether the Minister could account for children born to these women?
The Department of Health has yet to produce a single record for all these women and children? It is possible, indeed probable, that some of these women and young girls transferred to a Magdalene laundry from a mother-and-baby home lived and died behind convent walls.
4) State Complicity and the Departments of Social and Family Affairs, Finance, and Enterprise, Trade and Employment

On 4 February 2010, Mr. Michael Kennedy, T.D. (FF), asked the Minister for Social and Family Affairs, Ms. Mary Hanafin, T.D., whether records exist "for payments of social welfare by Magdalene laundries in respect of deductions from wages paid to women working in these institutions; if she is satisfied that correct payments have been received by her Department for such workers" (see Appendix 22, below).

The Minister's response underscores that the religious congregations operating the laundries neither withheld such payments nor submitted payments on behalf of the women workers to the State, despite there being a Statutory obligation to do so since 1953.

This non-withholding and/or non-submitting of PRSI payments on behalf of the women workers in the laundries materially impacts their right to a pension upon reaching retirement age.

On the same day, Mr. Kennedy asked questions of the Minister for Finance, with respect to whether records exist documenting PAYE payments by the Magdalene laundries (see Appendix 23, below), and the Minister for Enterprise, Trade and Employment, with respect to whether statutory inspections under health and safety regulations were ever carried out at the Magdalene laundries (see Appendix 24, below). Neither departments were forthcoming in their responses.
Conclusions

As documented above, the Irish State:

- Was aware of the nature and function of the Magdalene laundries
- Was aware that there was no statutory basis for the use of the laundries by the courts as an alternative to a prison sentence
- Was aware that there was no statutory basis for the use of the laundries by the courts for placing women and young girls "On Probation"
- Enacted legislation to enable the use of the Sean McDermott Street Magdalene laundry as a remand home
- Was aware that children and adolescent girls were confined in the laundries as late as 1970, and that these "voluntary" placements were in addition to children transferred to the laundries from State residential institutions
- Maintained a "special provision" whereby women giving birth to a second child outside marriage at a Mother-and-Baby or County Home could be transferred directly to a Magdalen laundry
- Paid capitation grants to Magdalene Laundries and other religious convents for the confinement of "problem girls," girls "on probation," and girls "on remand" and yet it maintains that these were "private and charitable" institutions
- Never inspected, licensed or certified these home as "Approved" institutions, rather referred diverse groups of women and young girls into these institutions based on the assumption that the religious congregation would care and provide for them
- Seems incapable of producing a single record/file/documentation for any woman or young girl, or the children born to these women and young girls, referred to the laundries by State agencies
- Refuses to admit its complicity in referring women and young girls to the Magdalene laundries
- Refuses to acknowledges it failure to protect the constitutional rights of these women and young girls
- Refuses to apologize for its role in referring women and young girls to the laundries and therefore impedes "restorative justice" for this population of institutional survivors
- Refuses to enter into discussions with the Catholic hierarchy and/or the relevant religious congregations in an effort to produce records that would enable the establishment of a distinct redress scheme
- Refuses to contemplate the establishment of a distinct redress scheme as outlined by Justice-for-Magdalenes

Justice for Magdalenes has pursued it campaign for justice in good faith. It has made every effort to utilize the political system to present its case. It has submitted archival evidence and documentation and has met with relevant government departments as well as presented its case at an Ad Hoc Committee Meeting in the Dáil.
To date, the Irish Government has responded to JFM's campaign with gestures of assistance to individual women/survivors on a case-by-case basis but has yet to produce any records that might enumerate the State's complicity in the Magdalene laundries (see Appendix 25, below).

As made evident by An Taoiseach, Mr. Brian Cowen, in his recent response to a parliamentary question in Dáil Éireann, the government's position on this matter is that "the position of women in such laundries was not analogous with that of children in the residential institutions that were the subject of the Ryan Report" (see Appendix 26, below). JFM disputes the rationale of Mr. Cowen's comparison as the basis upon which to determine the State's culpability in this matter.

We are asking the Irish Human Rights Commission to judge whether the State failed to protect the constitutional rights of women and young girls in the Magdalene Laundries.
Justice for Magdalenes

Ireland’s Magdalen Laundries
and
The State’s Duty to Protect

Submitted by

Maeve O’Rourke
B.C.L. (NUI), LL.M. (Harvard)
Harvard Law School
Cambridge, MA 02138, USA
857-234-3589
morourke@llm10.law.harvard.edu

Please do not quote or cite without author permission
Ireland’s Magdalen Laundries and the State’s Duty to Protect

Maeve O’Rourke*

Introduction

Irish society has recently begun to come to terms with a legacy of systemic physical, sexual and emotional maltreatment of children from the 1930s to the 1970s in state-funded, Catholic Church-run residential institutions. Soon after the findings from the nine-year official inquiry into institutional child abuse were released in Ireland in May 2009,¹ questions began to surface as to why Ireland’s Magdalen Laundries had not been covered by the inquiry, nor their survivors compensated by the Residential Institutions Redress Board, set up by the government in 2002.²

As will be explained in further detail below, the Irish Magdalen Laundries were residential, commercial laundries housed in Catholic convents, where between 1922³ and the 1980s,⁴ an as yet unidentified number of Irish women and girls were forced to carry out unpaid labor for the benefit of religious congregations. They did so under conditions of extreme psychological and physical domination by the nuns in charge, including regimes of enforced silence and prayer, constant surveillance, physical and emotional abuse, deprivation of liberty and deprivation of self (through the cutting of hair, the imposition of “house names”, and the confiscation of personal clothing and its replacement with shapeless uniforms).

The women and girls who suffered in the Magdalen laundries included those who had given birth outside marriage, were seen to be sexually “promiscuous”, had been sexually abused, were a burden on the state or their families, or were already in the care of the state and the Catholic church as children. At least in the case of unmarried mothers and sexually “promiscuous” women, this institutional treatment appears to have been accepted by both the Church and the society of the time as the natural or deserved consequence of their status as “fallen” women.

According to survivor testimony, the laundries received their business from the Church, from the general public in the towns and cities in which they operated, and from schools, hospitals, prisons, hotels and other similar institutions. Magdalen laundry survivors also speak of making items for sale and export by the nuns, such as rosary beads, linen tablecloths, lace and wedding dresses.

Unlike the Church-run Industrial or Reformatory Schools, which were investigated by the state over the past decade, the Magdalen laundries did not receive funding from the state for the care of the women and girls within them. The position

---

* B.C.L. (NUI), LL.M. (Harvard)
1 See IRISH COMMISSION TO INQUIRE INTO CHILD ABUSE, REPORT OF THE COMMISSION TO INQUIRE INTO CHILD ABUSE (2009). The Commission was established on 23 May 2000 pursuant to the Commission to Inquire into Child Abuse Act, 2000 (as amended by the Commission to Inquire Into Child Abuse (Amendment) Act, 2005) as an independent statutory body.
3 The Irish Free State was founded on 7 January 1922.
4 JAMES M. SMITH, IRELAND’S MAGDALEN LAUNDRIES AND THE NATION’S ARCHITECTURE OF CONTAINMENT xv (2007): “According to survivor testimony, women were still entering the Magdalen laundries in the 1980s.”
of the state in relation to the laundries was, and remains, that “the Laundries were privately owned and operated institutions which were not regulated or inspected.”

This paper argues that under international law and international labor law, and arguably Irish Constitutional law and European human rights law as well, the Irish state had a positive obligation to regulate and inspect the Magdalen laundries. It is argued that what happened to women and girls within the laundries amounts to slavery and/or forced labor under international law, which the Irish state has had a legal duty to prevent and suppress since the 1930s. The state did not enact legislation to criminally punish slavery or forced labor until the Criminal Law (Human Trafficking) Act 2008, and it would appear that the Magdalen laundries were exempted by the state from all of the industrial labor standards that were imposed on everyone else from the 1920s to the 1980s. The state’s official position is that no regulation or inspection scheme applied to the Magdalen laundries. Far from absolving the state of responsibility towards the women and girls in the Magdalen laundries for the imposition of slavery and forced labor by non-state actors, it is precisely this lack of regulation and inspection, and total deference to the religious orders, that constitutes a gross violation of Ireland’s obligations under the law of slavery and forced or compulsory labor.

As will be outlined below, there is considerable evidence to prove that the Irish courts referred a certain number of women and girls to the laundries, that many girls were transferred directly to the laundries from industrial schools while in the care of the state, and that the state relied on Magdalen Laundries to confine women who had given birth outside marriage more than once. This paper does not take up the very strong argument that the state is responsible for the nuns’ abuse of women and girls in those particular circumstances. Rather, this paper seeks to establish state liability for the abuse suffered by the entire population of women and girls in the laundries, the majority of whom it would seem were privately placed. The state’s direct referrals show that the state knew of the existence of these laundries, where women and girls were institutionalized. The state also knew that the laundries were industries, given the fact that the nuns advertised the laundries’ services in local newspapers, and the suggestion from survivor testimony that the laundries received business from state institutions, such as prisons, hospitals and schools.

Accepting in September 2009 that the state was responsible for the transfer of some girls directly from industrial schools to the laundries, the Irish Minister for Education stated: “In terms of establishing a distinct scheme [of redress] for former employees of the Magdalen Laundries, the situation in relation to children who were taken into the laundries privately or who entered the laundries as adults is quite different to persons who were resident in State run institutions. The Magdalen laundries were privately owned and operated establishments and did not come within the responsibility of the State.”

---

5 Letter from Batt O’Keeffe, TD, Minister for Education & Science, to Dr. James Smith (Jan. 27, 2010) (on file with the author).
7 See FRANCES FINNEGAN, DO PENANCE OR PERISH, 48 (2004).
8 The Minister for Education later retracted the use of the term “employees”, changing it to “workers”. See letter from Batt O’Keeffe, TD, Minister for Education & Science, to Tom Kitt, TD (Sept. 23, 2009) (on file with the author).
9 Letter from Batt O’Keeffe, TD, Minister for Education & Science to Tom Kitt, TD, (Sept. 4, 2009) (on file with the author).
It is argued that the state’s positive obligations to protect did not arise solely with regard to those women and girls placed by the state in a Magdalen Laundry, although these circumstances surely increased even further the duty to regulate the laundries. Ireland’s legal obligations in the area of slavery and forced labor extended during the period of the laundries’ operation to the actions of private individuals. Positive obligations on states in respect of private actors have existed in the law on slavery and forced labor, under which Ireland is bound, for the best part of a century. Indeed, the positive obligations upon states under UN and International Labour Organization treaties to prevent slavery and forced labor at the hands of private individuals have been used by the European Court of Human Rights to develop its own due diligence jurisprudence. In addition, the Irish Constitution has been found by the Irish courts to protect the rights of individuals from violation by private actors, and to impose duties on the state in this regard.

As there has been no state inquiry into the Irish Magdalen Laundries, and, according to James Smith, the religious congregations who operated the laundries have denied access to their post-1900 records, there exists no official history of the laundries for the period after the establishment of the Irish Free State in 1922. Although the number may be presumed to be in the thousands, it is impossible to know at present exactly how many women and girls entered the laundries. There is no way of knowing how long they stayed, how many ever left, or the extent of the abuse they suffered. It must be stated at the outset, therefore, that the evidence on which this paper’s arguments rest is not conclusive of the treatment of women and girls in Magdalen laundries throughout the country, throughout the twentieth century. The first-hand evidence that is used in this paper, however, points strongly enough to the existence of a general system of slavery and/or forced labor that state action is now warranted. In failing to regulate and inspect the Magdalen laundries in order to prevent and suppress slavery and forced labor, as required by law, the Irish state failed in its duty towards every woman and girl in the Magdalen laundries, regardless of how she got there.

Part I of this paper will outline the various ways in which women and girls entered the laundries, relying heavily on the work of James Smith, author of Ireland’s Magdalen Laundries and the Nation’s Architecture of Containment. Part II will describe the treatment of women and girls in the laundries, by reference to first-hand testimony from survivors on a British television documentary and a recent radio program on Irish radio. It will also draw on 19th century accounts of the Magdalen laundries for background to, and corroboration of, the more recent accounts. Part III will discuss the law on slavery and forced labor under which Ireland was bound.

---

10 SMITH, supra note 4, at 24.
11 See JUSTICE FOR MAGDALENES, NEWS BULLETIN, VOL. 1 ISSUE 4 (March 2010): “According to the 1911 Census, there were 1,094 women recorded at the ten Magdalene asylums that would continue to operate after Irish independence. In 1956, the Irish Catholic Directory and Almanac reported a capacity for 945 women at these same institutions. Between 1926 and 1963, we know that the courts referred at least 54 women to Catholic Magdalene laundries (a further 4 women were sent to the Protestant Bethany Home). We know that in March 1944 there were 19 women “On Probation” at laundries and other religious convents. We also know the numbers of Magdalenes buried in mass graves around this country: i.e., 178 at the High Park plot in Glasnevin, 101 at the Gloucester Street plot in Glasnevin, 72 Consecrated Magdalenes as the Sisters of Mercy Foster Street convent in Galway (Galway’s ordinary “penitent: class are buried at Bohermore cemetery), 241 at the Good Shepherd plot at Mount St Laurence Cemetery in Limerick, 72 at the Sisters of Charity plot at St. Finbarr’s Cemetery in Cork, etc”, http://www.magdalenelaundries.com/newsletters/newsletter_v1_4.pdf.
12 SMITH, supra note 4.
throughout the relevant period, including the positive obligations upon the state to prevent and suppress such practices by private individuals. International law, international labor law, European human rights law and Irish constitutional law will all be examined. The law will be applied to the evidence laid out in Part II, and the state’s duties and violations will be made clear. Part IV will discuss what the state should now do to remedy its past failings, and a Conclusion will follow.

Part I: Placement of women and girls in the Magdalen laundries

State referrals/acknowledgement of women and girls in the Magdalen laundries

The Department of Justice has recently acknowledged that following the enactment of the Criminal Justice Act, 1960 the then Minister for Justice approved one particular Magdalen laundry in Dublin for use as a remand institution for women and girls aged between 16 and 21. Payments were made by the Department of Justice for those remanded by the Courts in this institution.13

The 1970 Reformatory and Industrial Schools Systems Report acknowledges that in some cases where reformatory schools refused to take girls “known to be practicing prostitution or who, on conviction for an offence [were] found to be pregnant,” the girls were “placed on probation with a requirement that they reside for a time in one of several convents which accept them; in other cases they [were] placed on remand from the courts.” The Report continues: “A number of others considered by parents, relatives, social workers, Welfare Officers, Clergy or Gardai to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis. From enquiries made, the Committee is satisfied that there are at least 70 girls between the ages of 13 and 19 years confined in this way who should properly be dealt with under the Reformatory Schools’ system.”14

The Central Criminal Court Trial Record Books of 1926 to 1964 document fifty-four cases where women found guilty of infanticide, manslaughter (of an infant) or concealment of a birth agreed to enter a Magdalen laundry for periods between six months and five years, in return for a suspended prison sentence.15 According to Smith, a 1926 committal order shows that the state’s probation officer discharged the woman at the relevant institution and that the court stipulated that the state meet the expense incurred in travel to and from the institution.16 Smith further states that “[t]he case files reveal that the religious congregations actively sought these committals: the

13 DAIL EIREANN PARLIAMENTARY DEBATES, Written Answer from Dermot Ahern, TD, Minister for Justice, Equality & Law Reform to Ruairi Quinn, TD (Jan. 19, 2010): “Following the enactment of the Criminal Justice Act, 1960, the then Minister for Justice approved both St. Mary’s Magdalen Asylum, Sean McDermott Street, Dublin 1 and Our Lady’s Home, Henrietta Street, Dublin 1 (not a Magdalen Asylum) for use as a remand institution for female persons aged from 16 to 21 years. Prior to 1960 the only option to the courts was to remand such persons to Mountjoy female prison. Payments were made by the Department of Justice for those remanded by the Courts to the two institutions in question.” “It appears that these orders/arrangements were made by the courts without reference to any Department of State. The requirements of a probation order, including its duration, would be made known by the court to the offender. The records of such orders are court records. The Minister for Justice, Equality and Law Reform does not have any legal authority to instruct a religious organisation to provide full access to their records,” available at http://www.kildarestreet.com/wrans/?id=2010-01-19.2114.0.
15 NATIONAL ARCHIVES OF IRELAND, CENTRAL CRIMINAL COURT TRIAL RECORD BOOKS (1926-1964), cited by SMITH, supra note 4 at 63.
16 SMITH, supra note 4 at 65.
mother superior wrote directly to the court or to the relevant county registrar communicating the institution’s willingness to accept the woman in question.”

Also evident from official documents is the state’s awareness of the placement of unmarried mothers of more than one child in the laundries. The Report of the Commission on the Relief of the Sick and Destitute Poor, Including the Insane Poor, published in 1928, recommended the establishment of state-funded residential institutions dedicated exclusively to first-time unmarried mothers, or “first-offenders.”

“Mother and baby homes” were duly founded, and regulated and funded by the state. In 1933, the Department of Local Government and Public Health Annual Report stated that, “[w]ith regard to the more intractable problem presented by unmarried mothers of more than one child, the Sisters-in-Charge of the Magdalen Asylums in Dublin and elsewhere throughout the country are willing to co-operate with the local authorities by admitting them into their institutions. Many of these women appear to be feeble-minded and need supervision and guardianship. The Magdalen Asylum offers the only special provision at present for this class.”

Survivor testimony suggests that members of the religious orders transferred a number of girls directly from Industrial Schools to Magdalen laundries. The Residential Institutions Redress Act, 2002 provided for redress to be made where a person suffered abuse in a Magdalen laundry having been transferred there from a state regulated institution. On February 16, 2010, the Minister for Education stated: “In relation to the number of children that were transferred to a Laundry from a State regulated institution... My Department is currently reviewing these records in an attempt to identify the incidence of this practice within the records available to the Department.”

Private placement

The Reformatory and Industrial Schools Systems Report, 1970 outlines other ways in which girls might have been placed in a Magdalen laundry: “A number of [girls] considered by parents, relatives, social workers, Welfare Officers, Clergy or

17 Id.
18 SAORSTAT EIREANN, REPORT OF THE COMMISSION ON THE RELIEF OF THE SICK AND DESTITUTE POOR, INCLUDING THE INSANE POOR 68 (1925-26), cited by SMITH, supra note 4 at 52.
19 REPORT OF THE COMMISSION TO INQUIRE INTO CHILD ABUSE, supra note 1 at Volume IV, Chapter 3, para 3.46: “In the 1920s and 30s the policy was implemented of providing ‘mother and baby’ homes for unmarried women who were having children for the first time. These were reserved for young mothers who had ‘fallen’ once only and thus were likely to be ‘influenced towards a useful and respectable life’ (leaving those unmarried mothers pregnant for the second or later time to the county homes).”
20 SAORSTAT EIREANN, DEPARTMENT OF LOCAL GOVERNMENT AND PUBLIC HEALTH ANNUAL REPORT 129 (1932-33), cited by SMITH, supra note 4 at 54. Smith states: “The report offers no explanation as to the nature of the ‘special provision’ afforded to these penitents. Reflecting the culture of deference to Ireland’s Catholic Church at the time, it equates the women’s welfare and the asylum’s religious character as synonymous and simply assumed.”
22 Section 1(3), Residential Institutions Redress Act (2002) states: “an applicant who was resident in an institution and was transferred from that institution to another place of residence which carried on the business of a laundry, and who suffered abuse while resident in that laundry shall be deemed, at the time of the abuse, to have been resident in that institution.”
23 DAIL EIREANN PARLIAMENTARY DEBATES, Written Answer from Batt O’Keefe, TD, Minister for Education to Ruairi Quinn, TD (Feb. 16, 2010), available at http://www.kildarestreet.com/wrans/?id=2010-02-16.2371.0
Gardai to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis.” Survivor testimony supports the suggestion that many girls and women entered the laundries at the hands of family members or other non-state actors.

Part II: Treatment of women and girls in the Magdalen Laundries

“I was twelve...I was doing the calendar, feeding the sheets in...and I put pillow slips as well. You done the sheets in the morning and then around 3 o’clock or say sometime in the afternoon, you started doing all the pillowcases. From what I can gather, ‘cause we never seen a clock, I’d say from 9 in the morning – I was up very early in the morning because we used to have to go to mass first . . . and then we’d have our bread with dripping on it and a drink of watered down milk, then down to the laundry which I’d say was about half past 8, 9 o’clock. Then we’d stop for dinner. And then I went back to work up ‘till 5 o’clock in the evening, I would say. On a Saturday, I done the cleaning of the church and scrubbed the floors. On a Sunday, I knitted Aran sweaters and made rosary beads. I never got a break there. I was never paid.”

“It was slave labor. We were not employees...if you’re an employee you get paid, you get a stamp put on for your pension. We got nothing. We slaved in the laundry from 7 o’clock in the morning ‘till 6 at night. And the day that I left they didn’t even give me one brown shilling, you know, not one brown shilling. There was no newspaper to read; there was no radio; there was no nothing. No nothing whatsoever. I always compared it to – I would say they were the Irish Gulags for women... And when they say laundry – I can tell you, in that Good Shepherd Magdalen laundry in Cork, they were making beautiful wedding dresses, first holy communion dresses, Irish linen

---

25 Testimony Films for Channel 4, Sex in a Cold Climate (1998): One survivor recalls how she had gone to a state-supported Mother and Baby home, where her child was kept and subsequently put into foster care, the nuns having sent her home 10 months after giving birth. Upon returning home, her father refused to allow her in the house, saying that she had disgraced the family, that she was “not right in the head,” and that she “needed punishment.” Taken straight to a Magdalen asylum, she recounts that, “full of breast milk, [she] thought [she] had gone crazy.” She states that she thought she would be let out to see her baby after six months at the laundry, until being told by another girl in the laundry: “one you come here you won’t be going out.” Another survivor, recalls being sent to a Magdalen laundry at age 14, having told a cousin that she had been indecently assaulted by another cousin on the way home from a farm fair. She states that, “there was no talk, no scandal. If they weren’t sure, the safest bet was away to Dublin.”

See also RTE Radio 1 ‘Liveline’ (28, 29 September 2009): One survivor states that she was 11 when she was put into a Magdalen laundry, for a reason unknown to her. She says, “I don’t know why, I can only think they didn’t want me to get pregnant because I was the only girl in the house. I was wild when I was young.” She continues: “My grandmother put me in, and the parish priest at the time. I can remember the day I walked up those steps in Limerick, I was never told where I was going.” Another woman states that when she was 14, her mother put her into a Magdalen laundry, assuming she was going to continue her education. She states: “Within 10 to 15 minutes of her leaving, I was working in the calendar room.” She states that during the year her mother would receive school reports, with the one at the end of the year signed by the Reverend Mother. The school reports made it appear that she was attending class, and “getting very high marks.” But, she states, “it wasn’t a school.”

26 Caller to RTE Radio 1 ‘Liveline’ (29 September 2009): Joe Duffy radio program, 29 September 2009
tablecloths, that were being shipped over to Harrods in London...So they were industries.”27

“The girls would be coming over the wall and running for their life along Gerry’s Lane out on to Railway Street, with their smocks blowing up in their faces as they ran, and the kids would be cheering them on, shouting ‘Run, run, you’ll make it!”28

As mentioned at the outset, there is no twentieth century historical record of Ireland’s Magdalen laundries, as the religious congregations have not yet allowed access to their post-1900 records.29 Recent testimonies from Magdalen laundry survivors on television documentaries and radio programs (some of which are presented in italics above), however, warrant the conclusion that the treatment of women and girls in the twentieth century laundries amounted to slavery and/or forced labor. Nineteenth century historical accounts of the Magdalen laundry regimes are offered in the next paragraphs, as background and corroborating evidence for more recent, twentieth century survivor testimonies, which follow.

Nineteenth century accounts of Irish Magdalen Laundries

According to Smith, a depiction of life inside the High Park Magdalen Asylum in 1897, published in the Irish Rosary magazine, draws on High Park’s 1881 Annual Report:

They rise at 5 o’clock in summer, and a half-an-hour later during the winter months. When the signal for rising has been given they dress promptly; and, in order that their first thought may be directed to God, one of them, appointed for the week, immediately commences the prayers, which are continued while they are dressing. When dressed all proceed to the lavatory, from which they descent to the class-room, where the image of Mary, the model of spotless innocence, welcomes them to a new day of labour and prayer. When the morning prayers are ended a chapter from a pious book is read. After an interval of work they go to the church for Mass, at which they daily assist. Mass is followed by breakfast, after which they kneel to recite some prayers. Then comes recreation for a short time; work is resumed again, and is continued without interruption till 6 o’clock in the evening, with the exception of the interval for dinner and the hour’s recreation after. At stated times during the day short prayers are said, and in this manner the day is filled up between labour and prayer. They sup at 6.30, and have recreation again for an hour. Instructions are given at 8. Night prayers follow, and all are in bed at 9.30.30

Comparing the two groups of women in the convent – nuns and “penitents” – the author of the Irish Rosary article exclaims:

27 Caller to Joe Duffy radio program (28 September 2009).
29 SMITH, supra note 4 at 24.
30 The Magdalens of High Park, in Irish Rosary 181 (1897), cited by SMITH, supra note 4 at 37.
Innocence and guilt face to face! The bright cheerfulness of unsullied virtue so near to the most abject wretchedness of multiplied sinfulness! The spotless lily side by side with the rank, noxious, foul-smelling weed that grew up in the dark shadows of the crumbling tomb! The consecrated nun speaking to the polluted outcast!\[^{31}\]

Frances Finnegan’s work, *Do Penance or Perish*,\[^{32}\] gives an account of the Rules for the Good Shepherd laundries, published in 1898. The Practical Rules for the Use of the Religious of the Good Shepherd for the Direction of the Classes refer to the practice of calling the women in the laundry “children,” and the nuns “Mothers.”\[^{33}\]

The Rules discuss the Rule of Silence, or, as Clarke refers to it, the Great Silence, which “begins in the evening at the hour of Matins, and continues until after Prime next morning.”\[^{34}\] Finnegan contends that a continuous great silence was rigorously imposed in the dormitories,\[^{35}\] and that total silence was also maintained in the Good Shepherd refectories, with half an hour only being allowed for each of the two main meals.\[^{36}\]

According to the Good Shepherd Rules:

When the signal is given for another exercise, the Mistress should immediately leave off her present work, rise, and by a look, direct the march, so that all may be done in silence and good order. It is particularly difficult to maintain silence when the children are being conducted from one place to another, and for this reason, there should be a Mistress at each extremity of the ranks; if there be only one Religious she should place a child worthy of confidence, at one end. In these movements the Mistresses should be all eyes, and very serious, to make the children understand that they must not speak. They should not have to wait because a door is locked or a Mistress late; if such take place, it will be difficult to prevent dissipation.\[^{37}\]

Finnegan’s study of the Good Shepherd Magdalen Asylums in the nineteenth century reveals that, “To discourage vanity and improper thoughts, uniforms were drab and shapeless, and in most Refuges women had their hair cropped, in hideous contrast to the fashion at the time. Such disfigurement – part punishment and part penance – was particularly approved for that class of women, who, it was constantly alleged, had initially ‘fallen’ through pride in appearance and ‘love of dress.’” She continues: “In the Good Shepherd Asylums an individual’s identity was further suppressed by the Order’s universal practice of assigning new names (sometimes bizarre and masculine) to inmates as soon as they arrived.”\[^{38}\]

---

\[^{31}\] *Id.* at 179, cited by SMITH, *supra* note 4 at 35.

\[^{32}\] FINNEGAN, *supra* note 7.


\[^{35}\] FINNEGAN, *supra* note 7 at 29.

\[^{36}\] *Id.* at 30.


\[^{38}\] FINNEGAN, *supra* note 7 at 26.
Finnegan states that “Most Homes discouraged reference to inmates’ former lives, and nowhere was this policy more strictly enforced than in the Good Shepherds... By the twentieth century this uncompromising regulation was particularly cruel, since it was indiscriminate and unresponsive to the changing composition of the Homes. Grimly adhered to, it led to much suffering – especially among those increasing numbers who were not prostitutes but unmarried mothers – forced to give up their babies as well as their lives.”

Finnegan contends that “visits were discouraged or forbidden,” and that “correspondence too, was discouraged, and carefully scrutinised.” She states that there was constant surveillance in the dormitories, and that “Penitents with a tendency to ‘seek out each other’s company’ were to be separated, but discreetly, ‘to avoid exciting suspicions or murmurs.’”

The Good Shepherd Rules state, in this regard:

> We should not, at recreation nor elsewhere, allow two children to be alone . . . there should be no corners in which some could hide from the eyes of the Mistress. It is in such places the demon lies in wait for the children, to tempt them to do wrong . . . Then redouble your vigilance . . . Watch them in the chapel; watch them at work; watch them particularly during the hours of recreation. In the dormitories let a lamp, as the Book of Customs prescribes, burn constantly during the night. Let your surveillance extend to everything.

Finnegan notes that “[u]nlike the vast majority of Refuges (whose Rules strictly limited to two or at most three years, any penitent’s length of stay) the Good Shepherds’ goal was the reform of these women, but not necessarily their restoration to society.” The Good Shepherd Rules state:

> The greater number of our children we know desire to return to the world. The thought that they will be once more exposed to the danger of going astray . . . is a sorrow for a Religious. We should then, make every effort to induce them to remain in the asylum opened to them by Divine Providence, where they are assured of the grace of a happy death . . . The departure of a penitent is generally a misfortune; it causes as much grief as her arrival caused joy.

Twentieth century accounts of the Magdalen Laundries

Four television documentaries have to date relayed the story of the Irish Magdalen Laundries in the twentieth century, but none of them has aired on Irish television. The following account of conditions inside the laundries is based on the testimonies of former “Magdalenes” in the 1998 Channel 4 documentary “Sex in a

---

39 _Id._ at 29.
40 _PRACTICAL RULES_, supra note 33 at 138, cited by FINNEGAN, supra note 7 at 29-30.
41 _PRACTICAL RULES_, supra note 33 at 182-183, cited by FINNEGAN, supra note 7 at 35, 36.
42 SMITH, supra note 4 at 115.
Cold Climate” and on testimonies from a radio talk show on Irish national radio in September 2009. The women worked “all the time” — six days per week, 52 weeks per year, from early in the morning until late at night. They were not paid. One woman recalls that she asked to be paid the first week she worked in the laundry but that the nuns just laughed, making her feel “degraded.” Another woman states: “It was slave labor. We were not employees. If you’re an employee, you get paid; you get a stamp put on for your pension. We slaved in the laundry from seven o’clock in the morning until six at night. The day I left they didn’t give me one brown shilling.” Various women recall washing hospital laundry, prison laundry, Church laundry and private laundry, as well as making items for sale and export, such as “Limerick lace,” “Irish linen,” “Aran sweaters” and rosary beads. According to one woman, “You did get a little reward every now and again. Every Friday evening you got a packet of acid drops and a holy picture for doing your work.” Another recalls getting “a Christmas present of a face flannel and a bar of soap wrapped in Christmas paper.”

One woman states that she had varicose veins by age 15 from ironing. Another says that she had scabies while in the laundry, as the women and girls were only allowed one bath a week. Another woman remembers that the girls were “ruled by bells.” Every time a bell rang, they knew exactly where to go, and there was a roll call every night where each girl had a number. There was no recreation; “just prayer, silence, and atoning for the sins — how wicked you were.” Several women state that they were given no books or newspapers to read, and there was no radio.

The women were made to work in silence, and the nuns ordered that “special friendships” were not allowed in the laundries. As one woman recalls the nuns saying, “The only thing that made you happy was the love of god, and being detached from all things and people was a truly spiritual way.” The women were given new names, and referred to as “penitents.” On the communal graves in which the women who died within the laundries are buried, they are referred to as “penitents.” According to several women, if a girl had long hair, it was cut.

According to one survivor, when a small misdemeanor was committed by one of the women or girls, they would have to kneel down in front of the nun and say, “I am so sorry mother, please forgive me, I won’t do it again,” and she “graciously forgave you.” Another woman states: “You see the nuns, they were gods to you. You didn’t dare question them. What they done was right and you followed their instructions to the letter. You didn’t dare, simple as that, you just done what you were told.” She continues: “Some of the girls did get punished . . . they used to get pushed about quite a bit, punched, slapped. The nuns had a black leather belt they used to hit you hard with it. Some of the nuns were very vicious.”

Having defied the nuns by refusing to go to work, one of the survivors recalls having to seek absolution for her sins from a priest on his regular visit one day. As she recalls: “When I said I wanted to make a general confession, he said, ‘well, come

43 Testimony Films for Channel 4, Sex in a Cold Climate (1998).
44 RTE Radio 1, Liveline (28, 29 September 2009).
45 Sex in a Cold Climate, supra note 43.
46 Liveline, supra note 44.
47 Id.
48 Sex in a Cold Climate, supra note 43.
49 Liveline, supra note 44.
50 Sex in a Cold Climate, supra note 43.
51 Id.
52 Id.
around here and tell me about it.’ And he was exposed – I couldn’t believe it. I told Sr. Paul and I was told to be quiet and keep my mouth shut…I said I wouldn’t go to church or confession any more…next thing was they cut my hair off.”

One woman remembers being brought to the cinema once, when the Ten Commandments was released: “Walking down the street, everyone knew you were out of an institution…the way they lined you up.”

As another woman who grew up in an orphanage attached to a Magdalen laundry recalls: “We were not allowed to talk to the Magdalenes. We were not allowed to look at them. No contact with the Magdalen whatsoever. Because we were made to believe that they were very, very bad children – people who were devils, sinners.”

As for freedom to leave the laundries, one woman who was released after eight years’ incarceration says that some women “were eventually tracked down by sympathetic relatives.” She continues: “a few did escape, but the walls were that high you’d be cut to ribbons…it had to be planned, you couldn’t just on the spur of moment say I’m going and go. When the cattle were being driven in by the old lady, girls would slip out the side entrance…All hell would break loose when someone got away, and the bells would start ringing. And we’d all be delighted because we’d know someone had escaped. And the nuns would be scurrying around…”

As another woman recalls, “the nuns would say, ‘your life isn’t worth living now; your respectability and grace is gone – you might as well stay here.’”

Another woman who was placed in a laundry at age 11 says, “I never asked to be let out, until my mother and grandmother took me out.”

One woman recollects that, “everywhere you went you were locked in. If you were in the laundries, you were locked in.”

Haliday Sutherland’s interview in the Sisters of Mercy Magdalen Home in Galway in 1958 suggests that the women and girls were not free to leave that particular laundry. Asked whether a girl could leave whenever she chooses, the Mother Superior answers: “No, we’re not as lenient as all that. The girl must have a suitable place to go…”

The communal gravesites of former “Magdalenes” show that considerable numbers of women or girls died while resident in the laundries. According to the Justice for Magdalenes group, 178 Magdalenes are buried at the High Park plot in Glasnevin, 101 at the Gloucester Street plot in Glasnevin, 72 Consecrated Magdalenes at the Sisters of Mercy Foster Street convent in Galway, 241 at the Good Shepherd plot at Mount St Laurence Cemetery in Limerick, and 72 at the Sisters of Charity plot at St. Finbarr’s Cemetery in Cork.

The women’s experience of life once they left the laundry gives a further insight into their treatment inside: “I was afraid; would I be able to make it on my own? Everything was different – the spaces, the come-and-go as you please…it was wonderful.” “I felt very self-conscious; I thought people would know who I was, what I had done, that I was supposed to be a bad person. If someone looked at you in the
street, you thought they were looking at you because you were bad.” “All I wanted to
do was do a job and be independent. But I have never wanted to marry or make a
commitment to anybody because I never wanted anyone to have power over me or
chain me ever again.”

**International Law**

**Slavery**

Since 1930, Ireland has had positive obligations under international law to
prevent and suppress the enslavement of individuals within its jurisdiction by private
actors. As will become clear from the following discussion, the Magdalen laundries’
regime of uncompensated, forced labor meets the international legal definition of
slavery.

Ireland ratified the League of Nations 1926 Slavery Convention on 18 June
1930. This Convention obliges states parties to “bring about, progressively and as
soon as possible, the complete abolition of slavery in all its forms.” Article 6 states
that “Those of the High Contracting Parties whose laws do not at present make
adequate provision for the punishment of infractions of laws and regulations enacted
with a view to giving effect to the purposes of the present Convention undertake to
adopt the necessary measures in order that severe penalties may be imposed in respect
of such infractions.”

Slavery is defined in the Convention as “the status or condition of a person
over whom any or all of the powers attaching to the right of ownership are
exercised.” Further elaboration of the meaning of slavery might be gleaned from the
Convention’s provisions regarding the states parties’ agreement to “take all necessary
measures to prevent compulsory or forced labour from developing into conditions
analogous to slavery.” In this respect, states parties agree, inter alia, that “In territories
in which compulsory or forced labour for other than public purposes still survives, the
High Contracting Parties shall endeavour progressively and as soon as possible to put
an end to the practice. So long as such forced or compulsory labour exists, this labour
shall invariably be of an exceptional character, shall always receive adequate
remuneration, and shall not involve the removal of the labourers from their usual
place of residence.” The absence of remuneration, and the removal of laborers from
their place of residence, therefore, could be argued to constitute some indicia of
slavery or conditions analogous to slavery.

According to Jean Allain, the UN Secretary General explained in 1953 that the
“powers attached to the right of ownership” were: purchase; transfer; absolute control
over a person, their labour and the product of that labour; and that the end of the

---

63 *Sex in a Cold Climate, supra* note 43.
64 Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926
(Slavery Convention of 1926), 60 L.N.T.S. 253, *entered into force* March 9, 1927.
66 1926 Slavery Convention, *supra* note 64, Article 2(b).
67 *Id. Article 1(1).*
68 *Id. Article 5(2).*
status of conditions was indeterminate for the enslaved; while the status or condition could be hereditary. 69

According to the Secretary General’s explanation of the “powers attached to the right of ownership,” any or all of which must be exercised over a person in order for slavery to exist under the 1926 Convention, the treatment of women and girls in the Magdalen laundries qualifies as slavery. At least one of the “powers attaching to the right of ownership” was exercised by the nuns: absolute control over the women and girls, their labor and the product of that labor.

The evidence in Part II makes clear that the nuns exercised absolute psychological and physical control over the women and girls, through their constant surveillance, the imposition of silence, the use of physical and psychological punishment for infractions of the rules (cutting hair and hitting, often with belts) and, most importantly, the apparent inability of the women and girls to leave the laundry as they pleased, because of the high walls, the locks on the doors, the constant surveillance and the psychological control exercised by the nuns. In the same ways that the nuns controlled the women and girls, they controlled their labor. Finally, as is obvious, the nuns controlled the product of that labor, providing absolutely no wages to the women and girls for the work that they carried out.

The positive obligation upon the state to “bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms” 70 is articulated further in Article 6 of the 1926 Convention: “Those of the High Contracting Parties whose laws do not at present make adequate provision for the punishment of infractions of laws and regulations enacted with a view to giving effect to the purposes of the present Convention undertake to adopt the necessary measures in order that severe penalties may be imposed in respect of such infractions.” According to the state’s official position, the state did not impose any industrial standards on the Magdalen laundries in order to prevent slavery, let alone oversee their imposition and provide for severe penalties for infraction.

In 2002, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia interpreted the meaning of the crime against humanity of enslavement under the Tribunal’s Statute by reference to the definition of slavery in the 1926 Slavery Convention. 71 The Appeals Chamber observed that the 1926 Convention covers de facto slavery, stating that, “the law does not know of a ‘right of ownership over a person,’” and that the language of the Convention, referring to “a

69 See United Nations Economic and Social Council, Slavery, the Slave Trade, and other forms of Servitude (Report of the Secretary-General), UN Doc. E/2357, 27 January 1953, cited by Jean Allain, International Criminal Law and Anti-Slavery Today, Queen’s University of Belfast Symposium on Closing the Slave Trade (2008),
http://www.google.com/url?sa=t&source=web&ct=res&cd=1&ved=0CAkQFjAA&url=http%3A%2F%2Fwww.yale.edu%2Fgih%2Fqueens%2Fabstracts%2Fallain.pdf&rct=j&q=international+criminal+law+and+antislavery+today+allain&ei=dmXWS9COg68gaPnMGCBg&usg=AFQjCNFGH0ObiAAZ3YoAiAChGi5QNGWkZEA. Allain contends that the legislative history – the travaux preparatoires – of the 1926 Slavery Convention and the 1956 Supplementary Convention make clear that the definition of slavery covers not only de jure slavery, but also de facto slavery.

70 1926 Slavery Convention, supra note 64, Article 2(b).

71 Prosecutor v Kunarac (Appeals Chamber) Case No IT-96-23 and IT-96-23/1-A (12 June 2002) (Judgment) (‘Kunarac’).
person over whom any or all of the powers attaching to the right of ownership are exercised”72 was to be preferred.73

The Appeals Chamber acknowledged that, “In the case of [the] various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with ‘chattel slavery.’”74 According to the Chamber, whether or not a particular phenomenon was a form of enslavement would depend upon the operation of certain factors or indicia of enslavement. These factors included “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour”.75

The Appeals Chamber further noted that consent was not an element of the crime of slavery, since “enslavement flows from claimed rights of ownership.”76 It observed that duration was not an element of the crime either, but rather: “[t]he question turns on the quality of the relationship between the accused and the victim. A number of factors determine that quality. One of them is the duration of the relationship.”77

The European Court of Human Rights has also used the 1926 Slavery Convention definition of slavery – “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” – to interpret the European Convention on Human Rights Article 4 prohibition of slavery. In 2006, in Siliadin v France,78 the European Court diverged significantly from the holding of the ICTY Appeals Chamber in the Kunarac case, however, finding that “slavery in the proper sense” required the exercise of “a genuine right of ownership over [the applicant], thus reducing her to the status of an ‘object’.”79

The European Court’s insistence on evidence of de jure slavery was questioned, however, by a majority of the Australian High Court in R v Tang in 2008, Gleeson CJ stating that, “It may be assumed that there is, in France, no such thing as ‘a genuine right of legal ownership’ of a person.”80 According to Gleeson CJ, it was to “be noted that the Court did not refer to the definition’s reference to condition in the alternative to status, or to powers as well as rights, or to the words ‘any or all’”.81

The Australian High Court went on to state:

It is important not to debase the currency of language, or to banalise crimes against humanity, by giving slavery a meaning that extends beyond the limits set by the text, context, and purpose of the 1926 Slavery Convention. In particular it is important to recognise that harsh and exploitative conditions of labour do not of themselves amount to slavery. The term “slave” is sometimes used in a metaphorical sense to

---

72 1926 Slavery Convention, supra note 64, Article 1.
73 Kunarac case, supra note 71 at para 118.
74 Id. at para 117.
75 Id. at para 119.
76 Id. at para 120.
77 Id. at para 121.
79 Id. at para 122.
81 Id. at para 31.
describe victims of such conditions, but that sense is not of present relevance. Some of the factors identified as relevant in Kunarac, such as control of movement and control of physical environment, involve questions of degree. An employer normally has some degree of control over the movements, or work environment, of an employee. Furthermore, geographical and other circumstances may limit an employee's freedom of movement. Powers of control, in the context of an issue of slavery, are powers of the kind and degree that would attach to a right of ownership if such a right were legally possible, not powers of a kind that are no more than an incident of harsh employment, either generally or at a particular time or place.\textsuperscript{82}

The Australian High Court continued:

The factors accepted by both the Trial Chamber and the Appeals Chamber in Kunarac are relevant to the application of s 270.3(1)(a) of the Code. The Appeals Chamber was right to point out that consent is not inconsistent with slavery. In some societies where slavery was lawful, a person could sell himself into slavery. Peonage could be voluntary as well as involuntary, the difference affecting the origin, but not the character, of the servitude.\textsuperscript{83} Consent may be factually relevant in a given case, although it may be necessary to make a closer examination of the circumstances and extent of the consent relied upon, but absence of consent is not a necessary element of the offence.\textsuperscript{84}

Further slavery-like practices to be suppressed by states, and the specific positive obligations upon the state in this regard, are enumerated in the 1957 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.\textsuperscript{85} This Convention was ratified by Ireland on 18 September 1961.\textsuperscript{86} It retains the 1926 Slavery Convention definition of slavery, and Article 1 commits states parties to “take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of…Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”\textsuperscript{87}

The specific positive duties upon the state are articulated in Article 6(1), which states that “The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.” Article 6(2)

\textsuperscript{82} Id. at para 32.
\textsuperscript{83} Clyatt v United States 197 US 207 at 215 (1905), cited by High Court of Australia in Queen v Tang, supra note 81 at para 35.
\textsuperscript{84} Queen v Tang, supra note 81 at para 35.
\textsuperscript{85} Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force April 30, 1957.
\textsuperscript{86} IRISH HUMAN RIGHTS COMMISSION, supra note 65.
\textsuperscript{87} 1957 Convention, supra note 86, Article 1(d).
further provides that, “…the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.”

Ireland failed wholly in its duties under the 1957 Convention. This Convention committed the state again to bring about the complete abolition of slavery and the exact practice which often occurred in the case of the Magdalen laundries, “whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

The state failed to criminalize “the act of enslaving another person” and all of the related acts mentioned in the Convention. On the contrary, it referred women and girls to the laundries itself, leaving them wholly unregulated and uninspected.

**International labor law**

*Forced or compulsory labor*

Ireland ratified the International Labour Organization (ILO) Forced Labor Convention of 1930 on 2 March 1931. Under Article 1 of this Convention, each state party “undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”

“Forced or compulsory labour” is defined in Article 2 of the Convention as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Not included in the definition of forced or compulsory labor is “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations . . .”

As to the positive obligations of states in relation to the acts of private parties, Article 4(1) states that, “The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.”

According to Article 4(2), “Where such forced or compulsory labour for the benefit of private individuals, companies or associations exists at the date on which a Member's ratification of this Convention is registered by the Director-General of the International Labour Office, the Member shall completely suppress such forced or compulsory labour from the date on which this Convention comes into force for that Member.”

---

88 *Id.* Article 1(d).
90 INTERNATIONAL LABOUR ORGANIZATION, Ireland: Ratification status of up-to-date conventions, http://www.ilo.org/ilolex/cgi-lex/ratifgroupe.pl?class=g03&country=Ireland
91 1930 ILO Convention, *supra* note 90 Article 2(2)(c).
Article 5(1) states that, “No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilise or in which they trade.”

Article 25 requires that “The illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.”

The Irish State never subjected the religious orders running the Magdalen laundries to any laws to prevent the imposition of forced labor for their benefit, let alone ensure that penalties for such illegal behavior were really adequate and strictly enforced. In direct contravention of its obligations under this 1930 Convention, the State allowed the religious orders to benefit from the forced labor of thousands of women and girls. By failing, from the 1930s through the rest of the century, to regulate and inspect the Magdalen laundries in order to prevent and suppress forced labor, especially in circumstances where the state itself supplied some of the workforce and appears to have had contracts for the handling of state institution laundry, the Irish state grossly violated its obligations under this Convention.

The definition of forced or compulsory labor under Article 2 – all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily – was met in the case of the Magdalen laundries. As is clear from the survivors’ testimony, the women and girls in the laundries had no choice but to carry out the work demanded by the nuns. Refusal to do so was met by the nuns with physical and psychological punishment; indeed, it would appear that many of the women and girls were resigned to the regime, understanding that they had no control over it themselves. While some of the women and girls may have consented to entering the Magdalen laundry, the evidence is dubious; and even if there was initial consent to the overall regime in some cases, it will be seen as the discussion continues that authoritative interpretations of forced labor under international law do not hold initial consent to negate the existence of forced labor.

Ireland ratified the ILO 1957 Convention on Abolition of Forced Labour on 11 June 1958. States parties to this Convention undertake “to suppress and not to make use of any form of forced or compulsory labour—(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; (b) as a method of mobilising and using labour for purposes of economic development; (c) as a means of labour discipline; (d) as a punishment for having participated in strikes; or (e) as a means of racial, social, national or religious discrimination.”

Article 2 states that “Each Member of the International Labour Organisation which ratifies this Convention undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1 of this Convention.”

93 INTERNATIONAL LABOUR ORGANIZATION, supra note 91.
The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) directed an Individual Observation concerning Convention No. 29 on Forced Labour to Ireland in 1996, regarding enlistment in the defence forces of persons under 18. Referring to its 1979 General Survey on the abolition of forced labour, the Committee recalled that, “even where employment is originally the result of a freely conducted agreement, the worker's right to free choice of employment remains inalienable.”

The Irish state violated its obligations under this 1957 ILO Convention. It failed to take any, let alone effective, measures to suppress forced labor in the Magdalen laundries, where forced labor was arguably being used as a means of social discrimination, one of the explicitly prohibited scenarios under Article 1. As is clear from the CEACR Observation, any argument that women and girls entered the Magdalen laundries freely would not necessarily prevent the existence of forced labor at some point in their time there, given the stated inalienability of the freedom to choose whether or not to work.

**European Convention on Human Rights**

*Forced or compulsory labor*

The European Convention on Human Rights,\(^{95}\) ratified by Ireland on 25 February 1953,\(^{96}\) contains an absolute prohibition on slavery and forced labor. Article 4 states:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
   a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
   b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
   c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
   d. any work or service which forms part of normal civic obligations.

As the following case law makes clear, the treatment of women and girls in the Magdalen laundries qualifies as forced or compulsory labor under Article 4 ECHR. Although the case law is more recent than the Magdalen laundry abuse, the Court has

---


used the 1930 ILO Convention definition of forced or compulsory labor to elaborate the Article 4 ECHR definition. Therefore, it may be argued that the 1930 ILO Convention definition of slavery has applied to Article 4 ECHR from the time of Ireland’s ratification of the European Convention in 1953.

Article 4 ECHR was held by the Court in 2006 to impose positive obligations upon states parties with regard to the actions of private individuals. The Court referred to the 1930 and 1957 ILO Conventions in establishing these positive obligations. Therefore, it may be argued that Ireland’s obligations under Article 4 ECHR have been in line with the ILO Convention obligations since the 1950s.

In the case of *Van der Mussele v Belgium* (1986), 97 the European Court of Human Rights relied on the 1930 ILO Convention No. 29 concerning Forced or Compulsory Labour to interpret the Article 4 ECHR prohibition of forced or compulsory labor. 98 According to the Court, ‘What there has to be is work “exacted ... under the menace of any penalty” and also performed against the will of the person concerned, that is work for which he “has not offered himself voluntarily.”’ 99 “Forced or compulsory labour” brought to the court’s mind the idea of “physical or mental constraint.” 100

In *Van der Mussele*, the applicant’s refusal to work was not punishable by any criminal sanction, as was the case in the Magdalen laundries. The Court was of the opinion, however, that the prospect of being denied entry to the register of avocats was “sufficiently daunting to be capable of constituting ‘the menace of [a] penalty,’ having regard both to the use of the adjective ‘any’ in the definition and to the standards adopted by the ILO on this point.” 101

In the more recent case of *Siliadin v France* (2006), 102 the Court, relying on the 1930 ILO Convention definition of “forced or compulsory labour,” noted that, “although the applicant was not threatened by a ‘penalty’, the fact remains that she was in an equivalent situation in terms of the perceived seriousness of the threat. She was an adolescent girl in a foreign land, unlawfully present in French territory and in fear of arrest by the police. Indeed, Mr and Mrs B. nurtured that fear and led her to believe that her status would be regularised. Accordingly, the Court considers that the first criterion was met, especially since the applicant was a minor at the relevant time, a point which the Court emphasises.” 103

Survivors of the Magdalen laundries have spoken of physical beatings by the nuns with a leather belt, and of psychological intimidation, including having their hair cut off, if they refused to follow the rules of the laundries. According to the European Court’s emphasis of the word “any” before “penalty” in the 1930 ILO Convention

---

97 *Van der Mussele v Belgium* (1983) 6 EHRR 163.
98 Under Article 2, ILO 1930 Convention, *supra* note 90, ‘forced or compulsory labour’ means ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.’
99 *Van der Mussele*, *supra* note 98 at para 34.
100 *Id.*
101 (“Abolition of Forced Labour”: General Survey by the Committee of Experts on Application of Conventions and Recommendations, 1979, paragraph 21), cited by the Court in *Van der Mussele*, *id.* at para 35.
102 *Siliadin v France* (2006) 43 EHRR 16, concerning a 15 year old girl who worked in a house without respite for about fifteen hours per day, with no day off, for several years, without ever receiving wages or being sent to school, without identity papers and without her immigration status being regularized.
103 *Id.* at para 118.
definition, this physical and psychological punishment surely meets the first requirement of the definition of forced or compulsory labor under Article 4 ECHR.

As to whether the applicant in Siliadin v France performed the work of her own free will, the Court found it “evident that she was not given any choice.”104 In these circumstances, according to the Court, the applicant was, at the least, subjected to forced labor within the meaning of Article 4 ECHR.

As to the question of voluntariness in Van der Mussele v Belgium, the Court found that the applicant’s prior consent, upon entering the advocat profession, to the general governing regime would not prevent a finding of compulsory labor because of consent. According to the Court, the applicant “had to accept this requirement [of pro-bono representation], whether he wanted to or not, in order to become an avocat and his consent was determined by the normal conditions of exercise of the profession at the relevant time.”105

The position of the women and girls in the Magdalen laundries is comparable to the applicants in the above two cases. They did not have a choice as to whether or not to perform the work; it was part of the general regime, over which they had no control. According to the European Court, this lack of choice meets the second requirement for forced labor according to the ILO definition, that is, that the individual has not offered herself voluntarily for the work.

In Iversen v Norway, a 1963 admissibility decision, the Court held that for there to be forced or compulsory labour for the purposes of Article 4 (2) of the European Convention, two cumulative conditions had to satisfied: “not only must the labour be performed by the person against his or her will, but either the obligation to carry it out must be ‘unjust’ or ‘oppressive’ or its performance must constitute ‘an avoidable hardship’, in other words be ‘needlessly distressing’ or ‘somewhat harassing.’”106

It is evident from the testimony in Part II that the obligation upon the women and girls in the Magdalen laundries to spend all of their days toiling in the laundry, for no pay, under the constant psychological and physical control of the nuns, was all of the above: unjust, oppressive, needlessly distressing, and harassing.

The issue of states parties’ positive obligations under Article 4 ECHR first came before the court in Siliadin v France in 2006. Despite the recent date of this case, the Court relied in large part upon the 1930 ILO Forced Labour Convention and the 1956 UN Supplementary Slavery Convention to establish positive obligations on the state to protect individuals from slavery, servitude and forced or compulsory labor at the hands of private actors.

The Court began by considering that, “together with Articles 2 and 3, Article 4 of the Convention enshrines one of the basic values of the democratic societies making up the Council of Europe,”107 and noted that the European Commission on Human Rights “had proposed in 1983 that it could be argued that a Government’s responsibility was engaged to the extent that it was their duty to ensure that the rules

104 Id. at para 119.
105 Van der Mussele, supra note 98 at para 36.
107 Siliadin v France, supra note 103 at para 82.
adopted by a private association did not run contrary to the provisions of the Convention, in particular where the domestic courts had jurisdiction to examine their application.”¹⁰⁸

The Court then referred to Article 4 of the 1930 ILO Forced Labour Convention¹⁰⁹ and Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery,¹¹⁰ and noted the Parliamentary Assembly’s findings that “today’s slaves are predominantly female and usually work in private households, starting out as migrant domestic workers…”¹¹¹

In these circumstances, the Court found that “limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective.”¹¹² The Court stated that “it necessarily follows from this provision that Governments have positive obligations, in the same way as under Article 3 for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice.”¹¹³

The Court went on to reiterate that “Article 4 enshrines one of the fundamental values of democratic societies. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation.”¹¹⁴ In these circumstances, the Court stated, “in accordance with contemporary norms and trends in this field, the member States’ positive obligations under Article 4 of the Convention must be seen as requiring the penalisation and effective prosecution of any act aimed at maintaining a person in such a situation.”¹¹⁵

Drawing from the Court’s reasoning in Siliadin, it is argued that the Irish state had a positive obligation from 1953 onwards under the ECHR to subject the Magdalen laundries to laws preventing and penalizing forced or compulsory labor. This argument rests on the fundamental and absolute nature of the protection from forced or compulsory labor under the European Convention on Human Rights, the fact that the ILO Forced Labour Conventions had already imposed positive

---

¹⁰⁸ Id. at para 83, the Court citing X. v. the Netherlands, no. 9327/81, Commission decision of 3 May 1983, Decisions and Reports (DR) 32, 180 (1981).
¹⁰⁹ Id. at para 85. Article 4(1) states: “The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.”
¹¹⁰ Id. at para 86. Article 1 states: “Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926: ..., [d]ebt bondage, ... [a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”
¹¹¹ Id. at para 88.
¹¹² Id. at para 89.
¹¹⁴ Id. at para 112.
¹¹⁵ Id.
obligations on states parties in respect of private actions, and the necessity of reaching to the actions of private individuals in order to effectively secure freedom from forced labor, given its reality as a private activity. If the argument is accepted, the state clearly violated its obligations under Article 4 the European Convention on Human Rights.

Irish Constitutional Law

Slavery and forced or compulsory labor

The Irish Constitution (1937) contains a broad range of rights protections concerning equality, titles of nobility, personal rights, rights to life, personal liberty, inviolability of the dwelling, freedom of expression, freedom of assembly, freedom of association, family, education, private property and religion. The Constitution does not contain an explicit right not to be subjected to slavery or forced or compulsory labor. It is submitted, however, that the personal rights provisions in Article 40.3 of the Constitution implicitly cover freedom from slavery and forced or compulsory labor.

Article 40.3.1° of the Constitution provides that “The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.” Article 40.3.2° provides that “The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.”

The express right of the citizen to her “person”, which Article 40.3.2° obliges the State to protect and vindicate, has hardly featured in Irish constitutional jurisprudence. Hogan and Whyte state that “the appearance of the word ‘person’ as one of the objects of the verbs ‘protect’ and ‘vindicate’ conveys no clear idea over and above the other obligations which Article 40 and the other ‘fundamental rights’ Articles impose upon the State.” It is submitted here, however, that the right to be free from slavery could reasonably be understood as a version or component of the right to one’s “person.”

As has been discussed above, the 1926 League of Nations Slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” It is submitted that, implicit in the right to one’s “person,” as protected by the Irish Constitution, is the right not to be “owned” by another, in either a de jure or de facto sense.

As regards protection from both slavery and forced labor, since 1963, the Irish judiciary has acknowledged that Article 40.3.1° protects unenumerated personal rights, as evidenced by the words “in particular” before the listing of individual rights.

116 CONSTITUTION OF IRELAND, BUNREACHT NA hEIREANN (enacted 1 July 1937), Articles 40 – 44.
117 See HOGAN & WHYTE, J.M. KELLY: THE IRISH CONSTITUTION (4th Ed.) 1402, 1403 (2003). One of the few references in the constitutional jurisprudence to the right to one’s “person” noted by Kelly is the dissenting judgment of Denham J in DG v Eastern Health Board [1998] 1 ILRM 241. She found that the detention in a penal institution of a person who had neither been charged with, nor convicted of, an offence infringed, inter alia, his right of person.
118 Id. at 1402.
119 1926 Slavery Convention, supra note
in Article 40.3.2° and the reference to “personal rights” in Article 40.3.1°. Such unenumerated personal rights have been discovered by the courts on a case-by-case basis, by reference primarily to natural law, but also to the “Christian and democratic nature of the State”, the Preamble of the Constitution and its concepts of “prudence, justice and charity”, “the dignity and freedom of the individual” and “the common good”, the Directive Principles in Article 45 of the Constitution, and international conventions to which Ireland is a party. Arguably, several of the unenumerated rights which have been discovered by the Courts are subsidiary components of a right not to be subjected to slavery, such as the right to bodily integrity, the right not to be tortured or ill-treated, the right to earn a livelihood, the right to communicate, the right to individual privacy, and the right to travel.

In Ireland’s 1984-85 Country Report concerning the 1957 Forced Labour Convention, the Irish Government indicated to the ILO Committee of Experts that, “In view of the widespread recognition of the right not to be required to perform forced or compulsory labour as a fundamental human right, it may be regarded as virtually certain that the courts would regard it as a personal right guaranteed under the Constitution.”

There are significant dicta in Irish constitutional jurisprudence to the effect that the constitutional rights of the individual exist in relation to the acts of private individuals, as well as in relation to the state. In 1961, in *Educational Co of Ireland v Fitzpatrick (No 1)*, Budd J said: “Obedience to the law is required of every citizen, and it follows that if one citizen has a right under the Constitution there exists a correlative duty on the part of other citizens to respect that right and not to interfere with it.” In *Meskell v CIE*, Walsh J stated that “if a person has suffered damage by virtue of a breach of a constitutional right or the infringement of a constitutional right, 

---

120 See *EIRE, REPORT OF THE CONSTITUTION REVIEW GROUP* 245 (1999). See also *HOGAN & WHITE*, supra note 118 at 1391.
123 In *Re Article 26 and the Regulation of Information (Services outside the State for Termination of Pregnancies) Bill, 1995* [1995] 1 IR 1.
127 REPORT OF THE CONSTITUTION REVIEW GROUP, supra note 121 at 250; see *Desmond v Glackin* [1992] ILRM 49.
128 Ryan v Attorney General, supra note 123.
129 *The State (C) v Frawley* [1976] IR 365.
131 *The State (Murray) v Governor of Limerick Prison* [D’Arcy J unreported High Court, 23 August 1978]; *Attorney General v Paperlink Ltd* [1984] ILRM 343.
133 *Ryan v Attorney General*, supra note 123.
135 See *HOGAN & WHYTE*, supra note 118 at 1291.
that person is entitled to seek redress against the person or persons who have infringed that right.”

As to the positive obligation upon the state to secure the constitutional rights of individuals through legislation, it was noted by the Supreme Court in *ESB v Gormley* that the possible existence of a common law remedy where a personal right has been infringed does not absolve the State from its duty, imposed by Article 40.3.1°, to prevent an infringement of personal rights occurring in the first place. According to the Supreme Court, “The duty of the State under Article 40.3.2° by its laws to protect the defendant from that attack must be considered antecedent to its duty after the happening of such an attack to vindicate her rights.”

As outlined above, Article 40.3.1° of the Constitution provides that “The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.” Article 40.3.2° provides that “The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.” Hogan and Whyte note that “some judicial authority suggests that ‘laws’ is not to be interpreted to mean only such legislation as already exists and that the State may have a constitutional duty under Article 40.3 to remedy legislative omissions where such omissions threaten personal rights.”

In *Norris v Attorney General*, McCarthy J stated: “[T]he legislature is not free to encroach unjustifiably upon the fundamental rights of individuals or of the family in the name of the common good, or by act or omission to abandon or neglect the common good or the protection or enforcement of the rights of individual citizens.” This view was endorsed by the Supreme Court in *Haughey v Moriarty*.

In *The State (Healy) v Donoghue*, the Supreme Court held that the State had an obligation to provide legal aid for needy defendants in criminal cases, even if no statutory scheme existed. By implication, according to the Constitution Review Group, “the State had a positive duty to legislate to provide legal aid so as to vindicate such a defendant’s right to fair procedures.” The Constitution Review Group states that the case of *AD v Ireland* showed an explicit willingness on the part of the courts to hold the State liable for failure to legislate. Here, Carroll J accepted that, “if the Courts find there is a constitutional right which is being ignored by the State, the Court will also find a remedy in the absence of the State undertaking to observe that right.”

The Constitution Review Group recommended in 1999 that, in light of existing judicial authority, “[t]he state ought to be accountable for omissions to legislate resulting in failure to vindicate an individual’s personal rights.”

---

138 *Meskell v CIE* [1973] IR 121 at 133.
139 *ESB v Gormley* [1985] IR 129 at 151.
140 HOGAN & WHYTE, supra note 118 at 1491.
141 *Norris v Attorney General*, supra note 118.
142 *Haughey v Moriarty* [1999] 3 IR 1 at 52, cited by HOGAN & WHYTE, supra note 118 at 1492.
143 *The State (Healy) v Donoghue* [1976] IR 325.
144 REPORT OF THE CONSTITUTION REVIEW GROUP, supra note 121 at 268.
145 Id.
146 *AD v Ireland* [1994] 1 IR 369.
147 REPORT OF THE CONSTITUTION REVIEW GROUP, supra note 121 at 271.
Part IV: Making amends

Survivors of the Magdalen laundries have called for an official apology from the state for its part in the suffering of all of the women and girls in the laundries. As this paper has shown, that apology is clearly warranted. The state failed, in violation of its positive obligations under international law and international labor law, and arguably European human rights law and Irish Constitutional law, to protect its citizens from slavery and forced labor. The European Court of Human Rights has acknowledged this protection to be “one of the basic values of the democratic societies making up the Council of Europe,” and the Irish Government itself has noted the “widespread recognition of the right not to be required to perform forced or compulsory labour as a fundamental human right.”

Survivors of the laundries have also called upon the state to establish a distinct redress scheme to compensate the women and girls who are still alive. It is submitted here that it would be inadequate to extend the original 2002 Residential Institutions Redress Scheme to Magdalen laundry survivors. The abuse suffered in the Magdalen laundries is of a different nature to that suffered by children in Industrial and Reformatory Schools, although many of the women and children surely too suffered abuse or neglect, as it is defined in the Residential Institutions Redress Act. The harms of slavery and forced labor do not fit into the current definition of “abuse” in the Redress Act, however.

A further obstacle to redress that the following arguments will hopefully overcome is the distinction that has been made by the Government between the suffering of children in the Industrial and Reformatory Schools and that of adults in the Magdalen laundries. In a letter to Dr. James Smith on 27 January 2010, the Irish Minister for Education referred to the following Parliamentary statements in 2002 by the then Minister for Education during the drafting of the Residential Institutions Redress Bill:

The laundries differ substantially from the institutions now covered by the Bill in that the residents concerned were for the most part adults and the laundries were entirely private institutions, in respect of which public bodies had no functions... I am not proposing that victims of abuse who were adults when that abuse took place should be covered by this scheme. This Bill cannot hope to address all the wrongs which occurred. It is, in essence, a measure to right the wrongs done to children where the State was in loco parentis and failed in is duty to protect them. In saying this, I must emphasise that I in no way wish to dismiss the fact that abuse

---

149 Siliadin v France, supra note 103 at para 82.
150 CEACR: INDIVIDUAL OBSERVATION, supra note 95.
151 Residential Institutions Redress Act, 2002, Section 1(1): “In this Act, unless the context otherwise requires—“abuse”, in relation to a child, means—(a) the wilful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child; (b) the use of the child by a person for sexual arousal or sexual gratification of that person or another person; (c) failure to care for the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare; or (d) any other act or omission towards the child which results in serious impairment of the physical or mental health or development of the child or serious adverse effects on his or her behaviour or welfare.”
of adults could and did occur in Magdalen Laundries or that the abuse was an appalling breach of trust or, indeed, that the victims of that abuse suffered and continue to suffer greatly. 152

In response to the claimed distinction: It is clear that the state’s motivation for establishing the 2002 redress scheme lay primarily in the existence of a legal duty to protect the children in its care, which it grossly violated through its deference to the Church. 153 As this paper has established, the state also held a legal duty, international and possibly Constitutional in nature, towards the women and girls in the Magdalen laundries, to protect them, through legislation, regulation and inspection of the laundries, from being subjected to slavery or forced or compulsory labor. Likewise, it failed in this duty through its deference to the religious Congregations.

In moral or practical terms, one of the reasons behind the state’s duty to protect children in its care must be the children’s defenselessness, or incapacity to change their situation while in the guardianship or under the control of the state. Adults or children in situations of slavery or forced labor are similar to children in the care of the state in this sense, which is exactly why the extension of the state’s obligations to the actions of private individuals is of such fundamental importance. It would further appear that many of the Magdalen laundry victims were in fact children, placed privately by their families or in some instances by the state, which makes the Government’s distinction difficult to defend. However, the idea that the state would refrain from acknowledging the suffering of adults in the laundries is also indefensible because of slavery’s fundamental attack on the particularly adult right to participate as a free member of society in the democratic process.

Conclusion

The women and girls who suffered in their thousands in the Irish Magdalen laundries were casualties, along with the children in industrial and reformatory schools, of the overly deferential attitude of the Irish state towards the Catholic Church during the twentieth century. The fact that Irish society was closely bound to the Catholic Church, and so may have approved of the institutionalization of daughters, granddaughters, sisters, and other women and girls who transgressed the social mores of the time, is no excuse for the state to have turned a blind eye. The fact that individuals privately chose to deliver women and girls to the Magdalen laundries for any number of reasons, including sexual abuse and financial hardship, was clearly no excuse either. The Irish state was legally bound to take all necessary steps to completely abolish slavery and forced or compulsory labor at the hands of private actors, and it failed wholly to do so in the case of the Magdalen laundries, while it was aware of their industrial nature and was itself supplying part of the “workforce.”

152 Letter from Batt O’Keeffe, TD, Minister for Education and Science, to Dr. James M. Smith (Jan. 27, 2010) (on file with the author).
153 THE REPORT OF THE COMMISSION TO INQUIRE INTO CHILD ABUSE, supra note 1, stated in the Conclusions section, at paragraph 6.03: “The deferential and submissive attitude of the Department of Education towards the Congregations compromised its ability to carry out its statutory duty of inspection and monitoring of the schools. The Reformatory and Industrial Schools Section of the Department was accorded a low status within the Department and generally saw itself as facilitating the Congregations and the Resident Managers.”
Just as it took publicity by the state at the start of the decade for many of the victims of abuse in Irish industrial and reformatory schools to come forward and make their suffering public, it will take serious attention by the state before the full story of the Magdalen laundries will be made known. The state now has enough evidence of the abuse that occurred, and its part in it, to apologize for the suffering of women and girls in the laundries, and to acknowledge that what occurred was indeed a serious violation of the basic values of democratic society. The state now has enough evidence to search for the laundries’ full history. It further occupies the best position to call on the religious orders to open up the twentieth century records. Only when it is acknowledged that grave injustice was done can we expect many of the victims who have not yet made themselves heard to add their voice to the history. The history of the state, as Irish society is reckoning with at present, is one of extremely close interrelation of church, state and society. The grave suffering of women and girls in the Magdalen laundries, and the reasons behind it, are integral parts of that history, which deserve to be acknowledged, redressed and come to terms with.

James Smith argues that the story of the Magdalen laundries is important for at least three distinct groups of former Magdalen “penitents,” who are still part of Ireland’s present, not just its past. He states:

As recently as 1996, when the nation’s last Magdalen laundry closed its doors, there were at least four … communities [of former Magdalen “penitents”] living in the care of and dependent on Catholic religious congregations – two in Dublin, one in Waterford, and one in Galway. Most of these women are elderly and after years of incarceration too institutionalized to return to society. The second group comprises the larger community of Magdalen survivors, those who escaped or left and are imperiled by the natural passage of time. The majority of these women, as is their right, remain silent about this aspect of their past. Unlike survivors of the industrial and reformatory schools, comparatively few Magdalen women choose to come forward to provide testimony. This suggests that the stigma traditionally associated with these institutions, a stigma rooted in the perception of the Magdalen asylums as a corrective to prostitution, still operates in Irish society today. This misapprehension feeds off secrecy, silence, and shame; telling the story of these institutions promotes understanding and awareness. The third community of former Magdalen women lie buried in anonymous and, until recently, unmarked communal graves. These women died behind convent walls, some as a result of medical maltreatment, others naturally after a life spent toiling in the laundry. In some cases, the women’s final resting places have been disturbed. As former convents fall victim to dwindling vocations and are purchased for redevelopment, some graves have been exhumed and the human remains cremated and reinterred, again anonymously. Other former Magdalen buildings have been purchased, refurbished, and reborn by universities and colleges in Limerick, Waterford, and Cork. The historical traces of this chapter in Irish history – convent archives, survivor testimony, human remains, and concrete remnants – are slipping away on the tide of post-Celtic Tiger economic development and newfound cultural confidence.154

154 SMITH, supra note 4 at xviii.
Smith contends that, “Telling the story of the Magdalen laundries defies the elision of this history.” It is added here that telling the story of the Magdalen laundries further defies ignorance by the state of its responsibility towards the people in Ireland, to protect their basic human rights. That responsibility existed from the 1930s with regard to slavery and forced labor, as has been established in this paper. It is a responsibility that will continue to exist and expand as Irish Constitutional jurisprudence and European and international human rights jurisprudence develops. The state must be aware of its duty to protect where it exists, and not abandon it again. The state must seek out the oppressed and pay attention to the vulnerable, and the sort of discrimination that led to the suffering of thousands of women and girls in the Magdalen laundries must never again be left unchecked.

155 Id. at xix.