Ireland’s Magdalene Laundries and the State’s Duty to Protect

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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 Industrial and Reformatory Schools. Soon after the findings from a nine-year official inquiry into institutional child abuse were released in Ireland in May 2009,¹ questions began to surface as to why the Magdalene 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

Ireland’s Magdalene Laundries were residential, industrial and for-profit laundries housed in Catholic convents where, between the foundation of the State in 1922 and 1996 (when the last institution closed)³ an as-yet unidentified number of women and girls were imprisoned and forced to carry out unpaid labour for the commercial benefit of four religious congregations.⁴ They did

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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 James M. Smith, Ireland’s Magdalene Laundries and the Nation’s Architecture of Containment (Manchester University Press, 2008), p.xviii

so under conditions of severe psychological and physical exploitation by the nuns in charge, including constant surveillance, physical and emotional abuse, enforced silence and prayer, invasion of privacy, deprivation of educational opportunity, denial of leisure and rest, and deprivation of identity (through the imposition of “house names”, the cutting of hair, and the confiscation of personal clothing and its replacement with shapeless uniforms).

According to survivor testimony, the laundries received their commercial 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, both private and State-run. Magdalene Laundry survivors also speak of making items for sale and export by the religious orders, such as rosary beads, lace, linen tablecloths and wedding dresses, without ever receiving payment for their work.

The women and girls who suffered in the Magdalene Laundries included those who had given birth outside marriage, who had been sexually abused, were considered to be “promiscuous” or “at risk” of becoming so, were a burden on the State or their families, or were already in the care of the State and the Catholic Church as children. As the religious orders responsible for the laundries have not afforded access to their post-1900 records and there has been no official inquiry into such abuse, it is impossible to know its extent. It is unclear how many girls and women entered the laundries; likewise, it is unclear how many ever managed to leave.

“After the foundation of the State (1922), laundries operated in Galway and Dun Laoghaire (Mercy), Waterford, New Ross, Limerick, and Cork (Good Shepherds), Donnybrook and Cork (Sisters of Charity), Drumcondra and Gloucester/Sean McDermott Streets (Sisters of Our Lady of Charity of Refuge)"

5 Smith, supra note 3, p.24

6 The number of women and girls who suffered in the Magdalene Laundries is estimated to be in the thousands, if not tens of thousands.

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: ... 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 ...”, http://www.magdalenelaundries.com/newsletters/newsletter_v1_4.pdf [Accessed 11 April 2011]

See also Joe Humphries, “Magdalen plot had remains of 155 women”, The Irish Times, 21 August 2003, referring to the exhumation (and cremation of all but one) of 155 bodies of Magdalene women from a gravesite at High Park Magdalene Laundry in Drumcondra in 1993.
The Irish Minister for Education stated in 2010 that Ireland's Magdalene Laundries were "privately owned and operated institutions which were not regulated or inspected."\(^7\) As a result, the Irish government has so far resisted calls for a Magdalene Laundries reparations scheme, distinguishing the State's admitted responsibility for child abuse in Industrial and Reformatory Schools by noting that those schools were funded, regulated and inspected by the State while the Magdalene Laundries were not. In September 2009, the then Minister for Education stated: "In terms of establishing a distinct scheme [of redress] for former employees\(^8\) of the Magdalene 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 Magdalene Laundries were privately owned and operated establishments and did not come within the responsibility of the State."\(^9\)

This paper disputes the Irish government's claim that the State is not legally responsible for the abuse suffered by women and girls in the Magdalene Laundries. It is argued here that the regime enforced by the religious orders in the Magdalene Laundries amounted to slavery, servitude and/or forced labour, which the Irish State has had legal obligations to prevent and suppress since the 1930s. Indeed, protection from slavery has the status of an obligation *erga omnes* under customary international law.\(^10\)

As will be explained below, Dr. James M. Smith, author of *Ireland's Magdalene Laundries and the Nation's Architecture of Containment*,\(^11\) has produced substantial evidence from state archives to show that the Irish judiciary and other state officials were directly involved in the placement of numerous women and girls in the laundries. There is further suggestion from Irish parliamentary debate records that the State held army laundry contracts with the Magdalene Laundries. In addition, several contemporaneous government departmental reports indicate a clear awareness of the confinement of children and unmarried mothers in the laundries.

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\(^7\) Letter from Batt O'Keeffe, TD, Minister for Education & Science, to Dr. James Smith (27 January 2010) (on file with the author)


\(^11\) Smith, *supra* note 3
All the while, it seems that the Magdalene Laundries were exempted by the State from all industrial labour standards and regulations in operation in Ireland from the 1920s to the 1990s. According to the Irish Minister for Education (as outlined above), no regulation or inspection scheme applied to the Magdalene Laundries. Furthermore, Ireland did not enact legislation to criminally punish slavery or forced labour until the Criminal Law (Human Trafficking) Act 2008.12

This paper examines the Irish State’s involvement in the operation of the Magdalene Laundries and its accompanying, knowing failure to regulate or inspect them in light of the State’s obligations under two international slavery conventions,13 international labour law,14 European human rights law and Irish constitutional law to prevent and suppress slavery, servitude and forced labour by non-state actors. The paper concludes that, far from absolving the State of responsibility for the Magdalene Laundries abuse, it is precisely the lack of official oversight of the Magdalene Laundries that constituted a grave violation of the State’s legal duty to protect all of the women and girls from the abuse that they endured.

Although relevant, the paper does not focus on Ireland’s additional obligations under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights or the Convention on the Rights of the Child. This is partly due to the fact that most of the Magdalene Laundries abuse took place before Ireland’s ratification of these conventions (Ireland ratified them in 1985, 1989, 1989 and 1992 respectively, while the last Magdalene Laundry closed its doors in 1996). The choice of law in this paper was made to highlight the longevity of the State’s legal duties to prevent the Magdalene Laundries abuse. Indeed, the slavery, servitude and forced labour prohibitions and components thereof in the above conventions, build upon their predecessors in the 1926 Slavery Convention and International Labour Organisation 1930 Forced Labour Convention.

Nor is it possible to deal with all of the additional human rights violations that occurred as a result of the State’s failure to prevent slavery, servitude and/or forced labour in the Magdalene Laundries, save to say that these are many and should be acknowledged in any national dialogue or restorative justice process. The denial of educational opportunity and emotional abuse and neglect that the girls and women suffered, for example, had profound effects on their lives and continues to do so.

13 Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention 1926; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1957
Finally, the paper does not deal separately with the human rights arguments concerning the group of women and girls who were incarcerated directly by the State, through the courts or at the hands of other state officials. Instead, this paper seeks to establish state responsibility for the suffering of all of the women and girls incarcerated in Magdalene Laundries, regardless of whether they were placed there privately or by the State.

In the absence of an official inquiry, this paper can give only an outline of the reality and the gravity of the Magdalene Laundries abuse. The abuse has far more dimensions and there are far more layers of responsibility than the arguments here could possibly portray. The purpose of this paper, therefore, is to show that a larger examination is required. The aim is to demonstrate that the Magdalene Laundries abuse cannot continue to lie unacknowledged by the Irish State.

Part I of this paper will describe the treatment of women and girls in the Magdalene Laundries, by reference to the Irish government’s own 2009 Report of the Commission to Inquire into Child Abuse, first-hand testimony from survivors on a British television documentary and a recent programme on Irish radio. It will also draw on 19th century historical accounts of the Magdalene Laundries for background to, and corroboration of, the more recent accounts. Part II will discuss in turn the roles of private society and of the State in the placement and confinement of women and girls in the Magdalene Laundries, relying heavily on the work of James M. Smith, author of Ireland’s Magdalene Laundries and the Nation’s Architecture of Containment. Part III will discuss the law on slavery, servitude and forced labour under which Ireland was bound from 1930 onwards, drawing attention to the positive obligations upon the State to prevent and suppress such abuse by non-state actors and the State’s violations of these obligations. Finally, a conclusion will follow, discussing in part what the State might now do to remedy its past failings.

Part I: Treatment of women and girls in the Magdalene 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

14 Convention concerning Forced or Compulsory Labour (ILO No. 29) (Forced Labour Convention 1930); Abolition of Forced Labour Convention 1959
15 Smith, supra note 3
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.\(^\text{16}\)

It was slave labour. 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 ... And when they say laundry—I can tell you, in that Good Shepherd Magdalene laundry in Cork, they were making beautiful wedding dresses, first holy communion dresses, Irish linen tablecloths, that were being shipped over to Harrods in London ... So they were industries.\(^\text{17}\)

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!’\(^\text{18}\)

As stated above, there is no twentieth century historical record of Ireland’s Magdalene Laundries, as the religious congregations that operated the laundries have not allowed access to their post-1900 records and the State has not yet initiated an official inquiry. It is submitted, however, that recent testimonies from Magdalene Laundry survivors in the 2009 Report of the Commission to Inquire into Child Abuse and on television and radio warrant the conclusion (explained in detail in Section III below) that the treatment of women and girls in the twentieth century laundries amounted to slavery, servitude and/or forced labour. Nineteenth century historical accounts of the Magdalene Laundry regimes are offered in the next paragraphs, as background to the more recent, twentieth century accounts, which follow.

\(^\text{16}\) RTE Radio 1, “Liveline” (28, 29 September 2009), caller on 28 September 2009

\(^\text{17}\) \textit{Ibid}

Nineteenth century accounts of Irish Magdalene Laundries

According to James M. Smith, a depiction of life inside the High Park Magdalene 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 9.30.19

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

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!20

Frances Finnegan’s work, Do Penance or Perish,21 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”.22 The following excerpts from the

19 The Magdalens of High Park, Irish Rosary (1897), p.181, cited by Smith, supra note 3, p.37
20 ibid, p.179, cited by Smith, supra note 3, p.35
21 Frances Finnegan, Do Penance or Perish: Magdalen Asylums in Ireland (Oxford University Press, 2004)
22 Practical Rules for the Use of the Religious of the Good Shepherd for the Direction of the Classes (1898) pp.98–101 (hereinafter “Practical Rules”), cited by Finnegan, ibid, p.23
Rules give an insight into the enforced silence, constant surveillance and deprivation of liberty that accompanied the work regime in the Magdalene Laundries:

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.23

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.24

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.25

Twentieth century accounts of the Magdalene Laundries

The 2009 Report of the Commission to Inquire into Child Abuse includes evidence of abuse in “Residential Laundries” from several women who had been transferred there as children from Industrial or Reformatory Schools. The following excerpts are from the Chapter on “Residential Laundries, NovitiateS, Hostels and other Out-of-home Settings” at Volume III, Chapter 18 of the Report:

24 Practical Rules, supra note 22, p.138, cited by Finnegan, supra note 21, pp.29–30
25 Practical Rules, supra note 22 pp.182–183, cited by Finnegan, supra note 21, pp.35–36
Seven (7) female witness reports related to continuous hard physical work in residential laundries, which was generally unpaid. Two 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.

Three (3) witnesses gave the following accounts of physical abuse:

Every morning we were up at 5 o'clock in the summer and 6 o'clock in the winter. We slaved all day ... They starved and worked us to death while they lived in luxury. The nuns were all very hard and nasty, they used to shave our hair off ... distressed ... we had to suffer in silence. I hope no one has to suffer like us. We had nowhere to run or no one would believe you ... I often burned myself ... (while working, ironing) ... but got no sympathy ... distressed ... One time I had a terrible arm, it didn't heal up, I had burned it and the dye of the uniform ran into it, and that was the first time I saw a doctor.

You couldn't laugh or talk in there 'cos you were just battered. A nice nun in the convent talked to us, Sr ...X... got to hear about it and she just battered us, on the back of the hands, anywhere, and if she got the curtain rail that would go across you. It didn't matter what she had in her hand. She was like a Hitler ... crying ... My whole childhood was gone in that place.

We were beaten regular, I have got a mark still on my back. Mth ...X... was the evil cow, and then there was the helpers that would hold you down while she was battering you and they would cut lumps ... out of your hair ... I was 11 ... years old. I was battered with a big belt both by the nun and helpers.

Four (4) female witnesses reported that their education, social development and emotional wellbeing 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.

Emotional abuse refers to both actions and inactions by religious and lay staff who had responsibility for the care and safety of residents and was described as constant and pervasive. Witnesses believed this abuse contributed to difficulties in their social, emotional and physical functioning at the time and was identified by them as negatively affecting their psychological well-being at the time and in their later life.
A witness reported that she was ridiculed and shamed for three days as a punishment for breaking crockery. Others described public ridicule for breaking the rule of silence ... a female witness gave the following account of her humiliation:

Down in the laundry you slaved all day. Most of the day was strict silence ... Sr X... would sit on the throne and God help you if you broke your silence. She would report you to Mth ... Y ... and you would have to stand when you went in for your food, your chair was taken away and you ate off the floor ... After 3 days you would have to kneel in front of Mth ... Y ... and you would have to say these words, I will never forget them: ‘I beg almighty God’s pardon, Our Lady’s pardon. Pardon, my companions, pardon for the bad example I have shown’. I would then take a bow and ask her could I have my seat back.

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.

When I got there they [religious staff] took all your clothes off ... crying ... Cut all your hair off and bandaged you [breasts] up so that you wouldn’t look like a girl, because your body was sin and belonged to the devil.

I was locked up in the ... laundry, 6 years I was there. I was told I wasn’t capable of holding down a job. I was put in the middle of older and middle aged women, I cried for weeks and weeks on end, I was a nobody ... I was 16 ... I was locked away, working 6 days a week in the laundry and in the kitchen on Sunday ... I was never beaten there or name-called ... It was like a prison, the very same as a prison, I done nothing [wrong]

Two (2) female witnesses commented that when they were admitted to different institutions at 15 years of age they were “given” a name and that their own name was no longer used.

On the day of admission ... the nun said to me “from today on your name is ... X... [not own name] ... don’t tell anyone where you came from or who you are”.

One witness reported that, having been observed talking with boys, she was not allowed out of the institution for two years except under supervision to attend healthcare appointments.
The lack of affection and opportunity for attachment was reported by six witnesses who commented on living a suppressed life without adequate and safe care, closeness or demonstration of affection. Witnesses reported feeling disconnected from their family and in some instances were forbidden to establish friendships with co-residents. The lack of positive regard or words of approval was frequently commented on.

Three (3) female witnesses reported that many of their older co-residents who had given birth were constantly denigrated. The “constant warning against men” and the loss of opportunity for age-appropriate social development had a negative impact on their ability to establish relationships later.26

Four television documentaries have to date relayed the story of the Irish Magdalene Laundries in the twentieth century, but none of them have aired on Irish television.27 The following account of conditions inside the laundries is based on the testimonies of women who were formerly incarcerated in Magdalene Laundries in the 1998 Channel 4 documentary “Sex in a Cold Climate”28 and on a radio talk show on Irish national radio in September 2009.29

The girls and 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.”30 The 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.”31

One woman states that she had varicose veins by age 15 from ironing.32 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 little or no recreation; “just prayer, silence, and atoning

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26 Report of the Commission to Inquire into Child Abuse, supra note 1, Vol.III, Ch.18,
28 Smith, supra note 3, p.115
29 RTE Radio 1, “Liveline” supra note 16
30 Sex in a Cold Climate, supra note 28
31 Ibid
32 Ibid
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.33

The girls and 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.”34

As one woman recounts, 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. Some of the nuns were very vicious.”35

One woman remembers being brought to the cinema, when the Ten
Commandments was released: “Walking down the street, everyone knew
you were out of an institution ... the way they lined you up.”36 As another
woman who grew up in an orphanage attached to a Magdalene laundry
recalls: “We were not allowed to talk to the Magdalenes. We were not
allowed to look at them. No contact with the Magdalenes whatsoever.
Because we were made to believe that they were very, very bad children—
people who were devils, sinners.”37

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.”38

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.’”39 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.”40

33 “Liveline”, supra note 16
34 Sex in a Cold Climate, supra note 28
35 “Liveline”, supra note 16
36 Ibid
37 Sex in a Cold Climate, supra note 28
38 Ibid
39 Ibid
40 “Liveline”, supra note 16
One woman recollects that, “everywhere you went you were locked in. If you were in the laundries, you were locked in.”

Halliday Sutherland’s interview in the Sisters of Mercy Magdalene 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”. Asked how long they stay, she answers, “Some stay for life.”

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, 155 “Magdalenes” were 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.”

Part II: Societal and state involvement in the operation of the
Magdalene Laundries

Private involvement in the laundries’ operation

Survivor testimony suggests that most girls and women entered the Magdalene Laundries at the hands of family members or other private individuals, including members of the clergy. For example, one woman speaking on national radio in September 2009 recalls being placed in a

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41 Ibid
42 Halliday Sutherland, Irish Journey (1958), pp.81–83, cited in Smith, supra note 3, p.44
43 Although it is unclear how many of these women died during the twentieth century.
44 Justice for Magdalenes, supra note 6
45 Sex in a Cold Climate, supra note 28
46 Ibid. One woman recalls how she had entered a state-supported “Mother and Baby home”, where her child was kept and subsequently put into foster care, the nuns
Magdalene Laundry at age eleven, for a reason unknown to her: “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 ... 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.”

According to the Reformatory and Industrial Schools Systems Report, 1970: “A number of [girls] considered by parents, relatives, social workers, Welfare Officers, Clergy or Garda to be in moral danger or uncontrollable are ... accepted in these convents for a period on a voluntary basis.”

Regarding children in particular, the 2009 Report of the Commission to Inquire into Child Abuse states that “[f]our female witnesses stated that they were placed in residential laundries or other work settings with the knowledge or support of parents or relatives in the context of poverty, death of a parent and personal or family crisis including familial abuse.”

**State involvement in the laundries’ operation**

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

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, I thought I 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: “once you come here you won’t be going out.” Another woman 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 “Liveline”, *supra* note 14: One 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.”

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47 “Liveline”, *supra* note 16
49 Report of the Commission to Inquire into Child Abuse, Vol. III, Ch.18, *supra* note 1, para.18.14
50 Dáil Éireann Parliamentary Debates, Written Answer from Dermot Ahern, TD,
The Central Criminal Court Trial Record Books of 1926 to 1964 document at least fifty-four cases where women found guilty of infanticide, manslaughter (of an infant) or concealment of a birth agreed to enter a Magdalene Laundry for periods between six months and five years, in return for a suspended prison sentence.\textsuperscript{51} According to James M. Smith, a 1926 committal order shows that the State's probation officer discharged a woman at a relevant institution and that the court stipulated that the State meet the expense incurred in travel to and from the institution.\textsuperscript{52} Smith further states that, "[t]he case files reveal that the religious congregations actively sought these committals: the mother superior wrote directly to the court or to the relevant county registrar communicating the institution's willingness to accept the woman in question."\textsuperscript{53}

The 1970 Reformatory and Industrial Schools Systems Report (the "1970 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." As noted above, the Report also states that "[a] number of others considered by ... social workers, Welfare Officers ... or Gardaí to be in moral danger or uncontrollable are also accepted in these convents for a period on a voluntary basis."\textsuperscript{54}

The 1970 Report continues directly: "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. This method of voluntary arrangement for placement can be criticised on a number of grounds. It is a haphazard system, its legal validity is doubtful and the girls admitted in this irregular way and

Minister for Justice, Equality & Law Reform to Ruairi Quinn, TD (19 January 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." http://www.kildarestreet.com/wraps?id=2010-01-19.2114.0 [Accessed 11 April 2011]

\textsuperscript{51} National Archives of Ireland, Central Criminal Court Trial Record Books (1926–1964), cited by Smith, \textit{supra} note 3, p.63

\textsuperscript{52} Smith, \textit{supra} note 3, p.65

\textsuperscript{53} \textit{Ibid}

\textsuperscript{54} Reformatory and Industrial Schools Systems Report, \textit{supra} note 48, p.39
not being aware of their rights, may remain for long periods and become, in the process, unfit, for re-emergence into society. In the past, many girls have been taken into these convents and remained there all their lives.\textsuperscript{55}

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”.\textsuperscript{56} “Mother and baby homes” were duly founded, and regulated and funded by the State.\textsuperscript{57} 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 Magdalene Asylums in Dublin and elsewhere throughout the country are willing to cooperate 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 Magdalene Asylum offers the only special provision at present for this class.”\textsuperscript{58}

Survivor testimony suggests that members of religious orders often transferred girls directly from State-regulated Industrial Schools to Magdalene Laundries.\textsuperscript{59} Indeed, the Residential Institutions Redress Act 2002 provided for redress where a person suffered abuse in a Magdalene Laundry having been transferred there from a state regulated institution.\textsuperscript{60} Volume III Chapter 18 of the 2009 Report of the Commission to Inquire into Child Abuse states: “Three female witnesses said they were transferred to residential laundries from Industrial Schools following confrontations with

\textsuperscript{55} \textit{Ibid}
\textsuperscript{56} Saorstát Éireann, Report of the Commission on the Relief of the Sick and Destitute Poor, Including the Insane Poor (1925-26), p.68, cited by Smith, \textit{supra} note 3, p.52
\textsuperscript{57} Report of the Commission to Inquire into Child Abuse, \textit{supra} note 1, Vol.IV, Ch.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).”
\textsuperscript{58} Saorstát Éireann, Department of Local Government and Public Health Annual Report (1932-33), p.129, cited by Smith, \textit{supra} note 3, p.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.”
\textsuperscript{59} “Liveline”, \textit{supra} note 16
\textsuperscript{60} Section 1(3), Residential Institutions Redress Act (2002) states that: “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.”
religious staff whom they challenged about abuse of themselves or of their co-residents. Another female witness stated that she was transferred to a laundry at 13 years to work. She stated that she was told by the Sister in charge that she was being sent to work in order to compensate the Order as her mother had been unable to meet the required payments for her keep in the Industrial School.\textsuperscript{61}

On 5 May 2010, the Minister for Education stated: “My Department has reviewed the records available in an attempt to identify the incidence of residents being referred to laundries from industrial and reformatory schools. This review identified 261 references of referrals. Of these, 3 referrals were to Magdalen laundries (one each to Galway, Limerick and Donnybrook); 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.”\textsuperscript{62}

Finally, parliamentary debate in May 1941 suggests that the Irish Department of Defence held laundry contracts with the Magdalene Laundries and, furthermore, that it considered a fair wages clause to be an anomaly in this regard. According to the parliamentary record from 7 May 1941:

Mr. Hickey asked the Minister for Defence if he will state whether any and, if so, which Army laundry contracts hitherto held by commercial laundries have been placed with institutional laundries during each of the last three years and the number of such contracts now subsisting; whether a fair labour or a fair wages clause has been inserted in all contracts made with institutional laundries and whether he will state what steps are taken to ensure that the work contracted for is performed under trade union conditions and that trade union rates of wages are paid to the workers employed on such contracts.

The Minister for Defence, Oscar Traynor responded:

No Army laundry contracts previously held by commercial laundries were placed with institutional laundries during any of the last three years. For the current year, that is for the 12 months which commenced on the 1st ultimo, contracts for Dublin district barracks and posts, including Baldonnel Aerodrome, and for Collins Barracks, Cork, which were previously held by commercial firms, have been placed with institutional laundries. As, however, these contracts contain a fair

\textsuperscript{61} Report of the Commission to Inquire into Child Abuse, Vol. III, Ch.18, supra note 1, para.18.13

\textsuperscript{62} Dáil Éireann Parliamentary Debates, Written Answer from Mary Coughlan, TD, Minister for Education to Tom Kitt, TD (5 May 2010), \url{http://www.kildarestreet.com/wrans/?id=2010-05-05.1681.0&s=coughlan+magdalene+laundries#g1683.0.r} [Accessed 11 April 2011]
wages clause, I am having the matter reconsidered and will communicate further with the Deputy as soon as practicable.\(^\text{63}\)

In a parliamentary statement on 27 October 2010, the Minister for Defence noted that “there is a reference on file to a meeting that took place in July 1982 regarding laundry contracts and it is clear that the fair wages clause, as it applied to ‘Convent Laundries’, was discussed.”\(^\text{64}\)

**Part III: Ireland’s Legal Obligations**

**The Slavery Convention 1926 and Supplementary Convention 1957**

**Slavery Convention 1926**

Ireland ratified the League of Nations Slavery Convention 1926\(^\text{65}\) on 18 June 1930.\(^\text{66}\) Article 2 of the Slavery Convention 1926 obliges states parties “to bring about, progressively and as soon as possible, the complete abandonment of slavery in all its forms”, and art.6 provides that “[t]hose 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 art.1 of the Slavery Convention 1926 as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”\(^\text{67}\) It has been commented that the term “slavery” has been overused by groups campaigning against various forms of modern-day exploitation,\(^\text{68}\) and that greater attention needs to be paid to

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\(^\text{67}\) Slavery Convention 1926, *supra* note 65, art. 1(1)

the term's strict legal definition because of increasing awareness about the existence of slavery today and the inclusion of protection from slavery in increasing numbers of international, regional and domestic legal instruments with legal remedy provisions.69

To this end, in a significant contribution to the somewhat sparse literature on the legal definition of slavery in international law,70 Jean Allain explores the drafting history of the Slavery Convention 1926 along with other materials from the United Nations archives in order to arrive at a "definition that can be relied upon in a court of law, used to hold states responsible, and find persons guilty of enslavement." It is such a concrete legal definition of slavery that this paper seeks to apply in examining the Magdalene Laundries abuse.

According to Allain, the travaux préparatoires of the Slavery Convention 1926 make clear that "powers attaching to the right of ownership" are absolutely required for slavery to exist. Of course, the nuns operating Ireland's Magdalene Laundries did not possess a legal right of ownership over the girls and women incarcerated there. However, Allain points to the wording of art.1, the travaux préparatoires and a Report from the United Nations Secretary General in 1953 to show that this "ownership" requirement does not confine the definition of slavery to de jure enslavement, whereby an individual possesses a legally enforceable right of ownership of another person, but rather that de facto enslavement is also covered by the art.1 definition.71

In order to demonstrate that slavery de facto is included in the art.1 definition ("the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised"), Allain first draws attention to the juxtaposition of the words "status" and "condition". He contends that "the ordinary meaning of the phrase 'status or condition' distinguishes between slavery de jure and slavery de facto, whereby slavery as 'status' is a recognition of slavery in law, and slavery as 'condition' is slavery in fact."72 This interpretation is based on the Slavery Convention 1926 rapporteur's explanation that art.2 was supposed to bring about the disappearance from both "written legislation" and "the customs of the country" those items which admit "the maintenance by a private individual

69 Allain, Ibid
70 Ibid
71 This interpretation of art.1 as including de facto enslavement contrasts with the European Court of Human Rights' interpretation of art.1 in the 2005 case, Siliadin v France (2006) 43 E.H.R.R. 16 (discussed later on). However, as will be seen below, Allain's interpretation is supported by a detailed investigation into the drafting history of the Slavery Convention 1926 which was absent from the European Court's reasoning in Siliadin v France, and his interpretation has also been applied by the International Criminal Tribunal for the Former Yugoslavia in Prosecutor v Kunarac (Appeals Chamber) Case No IT-96-23 and IT-96-23/1-A (12 June 2002) and by the Australian Supreme Court in The Queen v Tang [2008] HCA 39
72 Allain, supra note 68, p.261
of rights over another person of the same nature as the rights which an individual can have over things."\(^{73}\)

Next, Allain focuses on the words "powers attaching to" the right of ownership. He notes that had members of the League of Nations wished to outlaw the legal status only of slavery, the definition would have read "[a] slave is a person over whom any or all of the rights of ownership are exercised."\(^{74}\) Instead, Allain concludes, "exercising the 'powers attaching to the right of ownership' should be understood as meaning that the enslavement of a person does not mean the possession of a legal right of ownership over the individual (as such a claim could find no remedy in modern day law); instead it is the powers attached to such rights, but for the fact that ownership is illegal."\(^{75}\)

As to the characteristics or indicia of slavery \textit{de facto} under art.1, Allain refers to the 1953 Report of the UN Secretary General on Slavery, the Slave Trade, and Other Forms of Servitude,\(^{76}\) in which the Secretary General gave meaning to the phrase "any or all of the powers attaching to the right of ownership", since no explanation had been provided in the \textit{travaux préparatoires} of the Slavery Convention. The Secretary General spelled out six characteristics of the exercise of the powers attached to the right of ownership, any or all of which would point to the existence of slavery under the Convention.\(^{77}\) It is submitted that the second and third of the Secretary General's characteristics apply to the Magdalene Laundries abuse:

2. the master may use the individual of servile status, and in particular his capacity to work, in an absolute manner, without any restriction other than that which might be expressly provided by law;

3. the products of labour of the individual of servile status become the property of the master without any compensation commensurate to the value of the labour.


\(^{74}\) \textit{Ibid}, p.258

\(^{75}\) \textit{Ibid}, p.261

\(^{76}\) The Secretary-General, Report of the Secretary-General on Slavery, the Slave Trade, and Other Forms of Servitude, delivered to the Economic and Social Council, U.N. Doc. E/2357 (27 January 1953)

\(^{77}\) \textit{Ibid}, p.36, cited in Allain, \textit{supra} note 68, p.263. The Secretary-General's six "characteristics of the various powers attaching to the 'right of ownership'" are:

1. the individual of servile status may be made the object of a purchase;

2. the master may use the individual of servile status, and in particular his capacity to work, in an absolute manner, without any restriction other than that which might be expressly provided by law;

3. the products of labour of the individual of servile status become the property of the master without any compensation commensurate to the value of the labour;
Regarding the first of these two characteristics: it appears that the nuns were free to use the women and girls in the Magdalene Laundries (in particular their capacity to work) in whatever way and for as long as they pleased, whether it was to wash laundry, clean floors, knit Aran sweaters, embroider vestments or for any other task. The testimonies in Part II above show the exercise by the nuns of absolute physical and psychological control over the women and girls, through imprisonment, constant surveillance, the imposition of a rule of silence, the use of physical and psychological punishment for infractions of the rules, the denial of educational opportunity and adequate rest and leisure opportunity, interference with correspondence, prohibition of friendships, and general neglect of the women's and girls' emotional and physical needs.

As well as controlling the women's and girls' labour, the nuns had absolute control over the product of that labour, providing absolutely no wages for the work that the women carried out. This corresponds with the Secretary General's third characteristic—that the products of labour of the individual become the property of the master without any compensation commensurate to the value of the labour.

Turning to additional definitions of slavery under the 1926 Convention, in the 2002 case of Prosecutor v Kunarac, the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia observed that the 1926 Convention covers slavery de facto. The Court stated that “the law does not know of a ‘right of ownership over a person’”, and that the language of the Convention, referring to “a person over whom any or all of the powers attaching to the right of ownership are exercised” was to be preferred.

According to the Appeals 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.” It is submitted that all of the above factors can be seen in the available evidence of the Magdalene Laundries abuse.

4. the ownership of the individual of servile status can be transferred to another person;
5. the servile status is permanent, that is to say, it cannot be terminated by the will of the individual subject to it;
6. the servile status is transmitted ipso facto to descendants of the individual having such status.

Prosecutor v Kunarac (Appeals Chamber) Case No IT-96-23 and IT-96-23/1-A (12 June 2002) (Judgment) [hereinafter “Kunarac”]
Slavery Convention 1926, supra note 65, art.1
Kunarac, supra note 78, para.118
Ibid, para.119
With relevance to the Magdalene Laundries abuse (in anticipation of any claims that some women’s incarceration in the laundries was voluntary or short-lived), it should be noted that the Appeals Chamber held that consent was not an element of the crime of slavery, since “enslavement flows from claimed rights of ownership.”\textsuperscript{82} Furthermore, duration was held not to be an element of the crime; 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.”\textsuperscript{83}

Regarding the State’s obligations to counteract the Magdalene Laundries’ system of abuse, it is clear that art.2 of the Slavery Convention 1926 required the Irish State to take positive steps to prevent and suppress the practice of slavery by non-state actors. Slavery is by its very nature an abuse that is perpetrated by private individuals. Indeed, the Rapporteur for the Slavery Convention stated in 1926 that art.2 was to be interpreted “as tending to bring about the disappearance from written legislation or from the customs of the country of everything which admits the maintenance by a private individual of rights over another person of the same nature as the rights which an individual can have over things.”\textsuperscript{84}

Article 2 of the Slavery Convention obliges states parties “to bring about, progressively and as soon as possible, the complete abandonment of slavery in all its forms.”\textsuperscript{85} As explained earlier on in this paper, the Irish State failed to take any steps to bring about the abandonment of the Magdalene Laundries’ system of slavery. On the contrary, it referred women and girls to the laundries through the courts and through other state actors such as social welfare officers and Gardaí, it maintained laundry contracts with the institutions, and it was aware of the incarceration of children and unmarried mothers in the laundries, all the while refraining from imposing any basic standards of operation upon the Magdalene Laundries.

Under art.6 of the Slavery Convention, it was envisaged that the State would enact laws and regulations to achieve the objectives of art.2 and that it would also “adopt the necessary measures in order that severe penalties may be imposed in respect of ... infractions”. Given the Irish government’s recent and repeated argument that the Magdalene Laundries were never regulated or inspected, it may be assumed that the State did not impose any industrial standards on the Magdalene Laundries in order to prevent slavery, let alone oversee their imposition and provide for severe penalties for infraction.

\textsuperscript{82} \textit{Ibid}, para.120
\textsuperscript{83} \textit{Ibid}, para.121
\textsuperscript{85} Slavery Convention 1926, \textit{supra} note 65, art.2
\textit{Supplementary Convention 1957}

The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1957\textsuperscript{86} was ratified by Ireland on 18 September 1961. This Supplementary Convention extends the Slavery Convention’s prohibitions and state obligations to slavery-like practices where the powers attached to the rights of ownership are not exercised over the person in servile status—in other words, servitude.\textsuperscript{87}

With direct relevance to the Magdalene Laundries abuse, art.1 of the 1957 Convention 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{88}

The specific positive duties upon the state are articulated in art.6(1), which provides that “[t]he 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) 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 art.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 obligations under the 1957 Convention. This Supplementary 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 Magdalene 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.”\textsuperscript{89} The State failed to criminalise “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, appears to have engaged in

\textsuperscript{86} 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 30 April 1957 [hereinafter the “1957 Convention”]

\textsuperscript{87} See Allain, supra note 68, p.273

\textsuperscript{88} 1957 Convention, supra note 86, art.1(d)

\textsuperscript{89} Ibid, art.1(d)
Ireland's Magdalene Laundries and the State's Duty to Protect

commercial dealings with the laundries, and was aware of the incarceration of children in laundries and of the conditions in the laundries, all the while leaving the laundries wholly unregulated and uninspected.

International Labour Organisation (ILO) Conventions

1930 Convention Concerning Forced or Compulsory Labour

Ireland ratified the 1930 International Labour Organisation (ILO) Forced Labour Convention on 2 March 1931. "Forced or compulsory labour" is defined in art.2 of the Forced Labour 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." Excluded from the prohibition of forced labour is "any work or service exacted from any person as a consequence of a conviction in a court of law," but upon the following condition: "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".

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) directed an Individual Observation concerning the Forced Labour Convention to Ireland in 1996, regarding enlistment in the defence forces of persons under 18 years of age. 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."

It is submitted that the definition of forced or compulsory labour under art.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 Magdalene Laundries. According to the available evidence, 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 with physical and psychological punishment; indeed, it would appear that

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91 International Labour Organisation, Ireland: Ratification status of up-to-date conventions, http://www.ilo.org/iollex/cgi-lex/ratifgroupe.pl?class=g03&country=Ireland [Accessed 11 April 2011]
92 Forced Labour Convention, supra note 90, Art.2(2)(c)
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 Magdalene laundry, the above CEACR recommendation makes clear that initial consent does not serve to negate the later existence of forced labour.

Under art.1 of the Forced Labour Convention, each state party “undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.” As to the specific positive obligations upon states, art.4(1) provides 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 art.4(2), “[w]here 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.”

Article 5(1) states that, “[n]o 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 “[t]he 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 Magdalene Laundries to any laws to prevent the imposition of forced labour 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 the Forced Labour Convention, it is submitted, that the State allowed Irish religious orders to benefit from the forced labour of thousands of women and girls in circumstances where the State was aware of the existence of the laundries and their industrial nature. Irish courts and State-regulated Industrial Schools and other state officials provided some of the workforce and it appears that the State even held laundry contracts with several Magdalene Laundries, all the while leaving the laundries wholly unregulated and uninspected.

1957 Abolition of Forced Labour Convention

Ireland ratified the ILO Convention on Abolition of Forced Labour of 1957\(^4\) on 11 June 1958.\(^5\) Article 1 obliges states parties “to suppress and


\(^5\) International Labour Organisation, \textit{supra} note 91
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."

It is submitted that the Irish State again violated its obligations under this 1957 ILO Convention. It failed to take any, let alone effective, measures to suppress forced labour in the Magdalene Laundries, where forced labour was arguably being used as a means of social discrimination, one of the explicitly prohibited scenarios under art.1.

**Article 4 European Convention on Human Rights**

The European Convention on Human Rights (ECHR),\(^96\) which was ratified by Ireland on 25 February 1953,\(^97\) contains an absolute prohibition of slavery, servitude and forced or compulsory labour.\(^98\)

Article 4 ECHR 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.

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\(^97\) University of Minnesota Human Rights Library, *supra* note 66

\(^98\) The ECHR contains many other human rights protections that were violated by the State's involvement in and failure to suppress the Magdalene Laundries' regime, including in particular the Article 3 protection from torture and cruel, inhuman or degrading treatment and the Article 5 protection of liberty and security of person.
Slavery or servitude.

In the 2005 case of Siliadin v France, the European Court of Human Rights drew on the Slavery Convention 1926 definition of slavery (“the status or condition of a person over whom any or all of the powers attaching to ownership are exercised”) to interpret the art.4 ECHR prohibition of slavery. The Court however diverged from Jean Allain’s interpretation of art.1 of the Slavery Convention 1926 as encompassing both slavery de facto and slavery de jure, an interpretation that was also adopted by the ICTY Appeals Chamber in the Kunarac case. The European Court instead interpreted Article 1 as referring to de jure enslavement only, holding 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”’.

This interpretation of the definition of slavery in international law has been criticised, including by a majority of the Australian High Court in the 2008 case of R v Tang, Gleeson CJ stating that “[i]t may be assumed that there is, in France, no such thing as ‘a genuine right of legal ownership’ of a person.” Gleeson CJ added that 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’”. The European Court did hold in Siliadin v France, however, that the applicant’s treatment amounted to servitude under art.4 ECHR. Under art.4, the practice of servitude is subject to the same absolute prohibition as slavery and, as will be discussed below, invokes similar positive obligations on states to protect from and prevent and suppress the practice. The facts of Siliadin bear a strong resemblance to the Magdalene Laundries abuse, and it is thus submitted that even if the Magdalene Laundries abuse cannot be said to amount to slavery under art.4 ECHR, it amounts to servitude under art.4.

In Siliadin v France, a 15 year-old girl from Togo had come to France under an agreement with the girl’s father that she would work until her

100 Slavery Convention 1926, supra note 65, art.1
101 Kunarac, supra note 78
102 Ibid, para.122
105 The Queen v Tang, Ibid, para.31
106 Ibid
107 Siliadin v France, supra note 99, para.129
108 Ibid, para.112
flight had been reimbursed and that her immigration status would be regularised and she would be sent to school. After a few months, she was "lent" to another family for whom she worked for almost four years, for fifteen hours a day with no day off, without ever being paid. She slept on a mattress in the children's bedroom, and she was not sent to school. Her passport was confiscated and her immigration status was never regularised.

In concluding that the applicant had suffered servitude within the meaning of art.4, the Court looked to its previous caselaw, which defined servitude as "a particularly serious form of denial of freedom" including "in addition to the obligation to perform certain services for others ... the obligation for the 'serf' to live on another person's property and the impossibility of altering his condition."\textsuperscript{109} The Court held in Siliadin that "for Convention purposes 'servitude' means an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of 'slavery'".\textsuperscript{110} In defining servitude, the Court also noted art.1(d) of the Supplementary Convention 1957, under which states parties agree to "bring about 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{111}

The relevant facts for the Court's determination of servitude in Siliadin included that the hours of labour were extensive, that the applicant had not chosen to work for the family but had been brought to France by a relative, that as a minor she had no resources and was vulnerable and isolated with no means of living elsewhere, that she was afraid of being arrested by the police, that she had no freedom of movement and no free time, and that she had been denied educational opportunity.\textsuperscript{112}

The Magdalene Laundries abuse bears resemblance to the facts in Siliadin, and where young girls were concerned it also corresponds to the practice prohibited by art.1(d) of the Supplementary Convention 1957, to which the Court in Siliadin also pointed. According to the available evidence, the coercion experienced by the girls and women in the Magdalene Laundries included the fact that they were incarcerated; that being incarcerated they were completely dependent upon the nuns for their subsistence; that they were never paid for their work and therefore had no resources; that they had (for the most part) been delivered to the laundries by another person, whether that was a State official, family member or other community member; that they were denied adequate rest and leisure and that they were denied an education (particularly relevant for the young girls incarcerated in the laundries).

\textsuperscript{109} Ibid, para.123
\textsuperscript{110} Ibid, para.124
\textsuperscript{111} Ibid, para.125
\textsuperscript{112} Ibid, paras 126–129
Regarding state parties' positive obligations under art.4 ECHR to prevent the practice of slavery, servitude and forced labour by non-state actors, this issue first came before the court in *Siliadin* in 2006. Despite the recent date of this case, however, the Court relied in large part upon the Forced Labour Convention 1930 and the Supplementary Convention 1956 to establish positive obligations upon the State to protect individuals from slavery, servitude and forced or compulsory labour at the hands of non-state actors.

The Court in *Siliadin* 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”, 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 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.”

The Court then referred to art.4 of the 1930 ILO Forced Labour Convention and art.1 of the Supplementary Convention 1957 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”.

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.” The Court stated that, “it necessarily follows from this provision that Governments have positive obligations, in the same way as under Article 3

113 *Ibid*, para.82
114 *Ibid*, 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)
115 *Ibid*, para.85, art.4(1) of the 1930 Forced Labour Convention 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.”
116 *Ibid*, para.86, art.1 of the Supplementary Convention 1957 states: “[e]ach 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 1926 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.”
117 *Siliadin v France*, supra note 99, para.88
118 *Ibid*, para.89
for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice.”¹¹⁹

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, art.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.”¹²⁰ 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.”¹²¹

As has already been argued, the Irish State directly participated in and failed to prevent or penalise the system of servitude to which the women and girls in Ireland’s Magdalene Laundries were subjected. The State was complicit in the placement of women and girls in the laundries, it appears to have dealt commercially with the laundries, and it knew of the incarceration of unmarried mothers and of children, whose constitutional right to have their education provided for by the State was clearly being violated. All the while, the State failed in its positive obligations under art.4 ECHR to monitor the operation of the Magdalene Laundries in order to prevent and effectively penalise the practice of servitude which occurred.

**Forced or compulsory labour**

According to the judgment of the European Court in *Siliadin v France*, a finding of servitude under art.4 ECHR presupposed a finding of forced labour.¹²² Therefore, it is argued that the women and girls in the Magdalene Laundries suffered forced labour as a component of their servitude. Additionally, however, even if the Magdalene Laundries could not be accepted as servitude under art.4 ECHR, it is submitted that the Magdalene Laundries abuse amounted to forced labour, which art.4 also unconditionally prohibits and imposes positive obligations upon the State to prevent and suppress (see discussion above).

In the case of *Van der Mussele v Belgium* (1986),¹²³ the European Court of Human Rights interpreted the art.4 ECHR prohibition of forced or compulsory labour by relying on the Forced Labor Convention 1930.¹²⁴

¹²⁰ *Siliadin v France*, supra note 99, para.112
¹²¹ *Ibid*
¹²² *Ibid*, paras 120–121
¹²³ *Van der Mussele v Belgium* (1983) 6 EHRR 163 [hereinafter *Van der Mussele*]
¹²⁴ Under art.2 of the Forced Labour Convention, supra note 90, “forced or compulsory
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.’”125 “Forced or compulsory labour” brought to the court’s mind the idea of “physical or mental constraint.”126

The applicant in Van der Mussele unsuccessfully challenged the requirement for pupil lawyers in Belgium to undertake pro bono work, which he claimed was a breach of their right not to be subjected to forced or compulsory labour. In this case, the applicant’s refusal to work was not punishable by any criminal sanction. However, the Court was still of the opinion 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.”127 As to voluntariness, the Court found that the applicant’s prior consent (to the general governing regime upon entering the advocate profession) would not prevent a finding of compulsory labour. 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.”128

In the more recent case of Siliadin v France,129 the Court, relying on the Forced Labour Convention 1930 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, that fear had been nurtured and she had been led 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.”130

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.”131 In these circumstances, according to the Court, the applicant was subjected to forced labour within the meaning of art.4 ECHR.

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”

125 Van der Mussele, supra note 123, para.34
126 Ibid
127 International Labour Conference, “Abolition of Forced Labour”: General Survey by the Committee of Experts on Application of Conventions and Recommendations, 1979, para.21, cited by the Court in Van der Mussele, Ibid, para.35
128 Van der Mussele, supra note 123, para.36
129 Siliadin v France, supra note 99
130 Ibid, para.118
131 Ibid, para.119
The available evidence suggests that conditions in the Magdalene Laundries met the requirements for art.4 forced or compulsory labour, as interpreted by the European Court of Human Rights in the above judgments. Survivors of the Magdalene laundries have spoken of physical beatings and psychological intimidation 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 Forced Labour Convention 1930 definition, this physical and psychological punishment would seem to meet the first requirement of the definition of forced or compulsory labour under art.4 ECHR. As to voluntariness, the women and girls in the Magdalene Laundries 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 because of their deprivation of liberty. According to the European Court, this lack of choice meets the second requirement for forced labour according to the ILO definition, that is, that the individual has not offered herself voluntarily for the work.

Drawing from the Court’s reasoning in Siliadin that the ECHR prohibition on forced or compulsory labour would be ineffective and incompatible with other international legal instruments if it did not imply positive obligations on the part of the State to prohibit and penalize such practices, it is argued that the Irish State had a positive obligation from 1953 onwards under the ECHR to prohibit and penalise the Magdalene Laundries’ regime of forced or compulsory labour. As has been outlined above, the State failed to do so; in fact, it was instrumental in supplying women and girls to the laundries and also appears to have supplied the laundries with commercial business.

Irish Constitutional Law

(slavery and forced or compulsory labour

The Irish Constitution (1937) does not contain an explicit right not to be subjected to slavery or forced or compulsory labour. It is submitted, however, that the personal rights provisions in Art.40.3 of the Constitution implicitly cover freedom from slavery and forced or compulsory labour.

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 Art.40.3.2° obliges the State to protect and vindicate, has hardly featured in Irish constitutional jurisprudence.132 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.”\textsuperscript{133} 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 Slavery Convention 1926 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."\textsuperscript{134} 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 labour, since 1963, the Irish judiciary has acknowledged that Art.40.3.1\textdegree{} protects unenumerated personal rights, as evidenced by the words "in particular" before the listing of individual rights in Art.40.3.2\textdegree{} and the reference to "personal rights" in Art.40.3.1\textdegree{}.\textsuperscript{135} Such unenumerated personal rights have been discovered by the courts on a case-by-case basis, by reference primarily to natural law,\textsuperscript{136} but also to the "Christian and democratic nature of the State;"\textsuperscript{137} the Preamble of the Constitution and its concepts of "prudence, justice and charity,"\textsuperscript{138} "the dignity and freedom of the individual"\textsuperscript{139} and "the common good;"\textsuperscript{140} the Directive Principles in Art.45 of the Constitution;\textsuperscript{141} and international conventions to which Ireland is a party.\textsuperscript{142} 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,\textsuperscript{143} the right not to be tortured or ill-treated,\textsuperscript{144} the right to earn a livelihood,\textsuperscript{145}

1403. 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

\textsuperscript{133} \textit{Ibid}, p.1402

\textsuperscript{134} Slavery Convention 1926, \textit{supra} note 65

\textsuperscript{135} See Eire, Report of the Constitution Review Group 245 (1999); Hogan & White, \textit{supra} note 132, p.1391


\textsuperscript{137} \textit{Ryan v Attorney General} [1965] I.R. 294

\textsuperscript{138} \textit{In Re Article 26 and the Regulation of Information (Services outside the State for Termination of Pregnancies) Bill, 1995} [1995] 1 I.R. 1

\textsuperscript{139} Judgment of Henchy J in \textit{Mc Gee v Attorney General}, \textit{supra} note 136

\textsuperscript{140} Judgment of Walsh J in \textit{McGee v Attorney General}, \textit{supra} note 136

\textsuperscript{141} \textit{Murtagh Properties Ltd. v Cleary} [1972] I.R. 330


\textsuperscript{143} \textit{Ryan v Attorney General}, \textit{supra} note 136

\textsuperscript{144} \textit{The State (C) v Frawley} [1976] I.R. 365

\textsuperscript{145} \textit{Murphy v Stewart} [1973] I.R. 97
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 “[i]n 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.”

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 Art.40.3.1°, to prevent an infringement of personal rights occurring in the first place. According to the Supreme Court, “[t]he 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, Art.40.3.1° of the Constitution provides that “[t]he 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*.

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146 The State (Murray) v Governor of Limerick Prison unreported 23 August 1978 High Court (D'Arcy J); Attorney General v Paperlink Ltd [1984] ILRM 343
148 Ryan v Attorney General, supra note 143
149 CEACR Individual Observation, supra note 93
150 ESB v Gormley [1985] I.R. 129
151 Ibid, p.151
152 Hogan & Whyte, supra note 132, p.1491
153 Norris v Attorney General, supra note 136
154 Haughey v Moriarty [1999] 3 I.R. 1 at 52, cited by Hogan & Whyte, supra note 132, p.1492
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.”

On foot of the above jurisprudence, it is submitted that the Irish State violated the constitutional rights of all of the women and girls who suffered in the Magdalene Laundries. At the same time as the State was directly involved in the Magdalene Laundries’ system of incarceration and their commercial enterprise, the State violated the rights of all of the women and girls in the laundries by its failure to legislate to protect them from slavery, servitude and forced labour; ie by exempting the Magdalene Laundries from any system of official regulation and inspection.

**Conclusion**

Survivors of Ireland’s Magdalene Laundries have called for an official apology from the government for the State’s part in the suffering of all of the women and girls in the laundries. They have also called upon the government to establish a distinct reparations scheme to compensate the women and girls who are still alive. As this paper has argued, an apology and some form of redress are clearly warranted. The State failed, in violation of its positive obligations under international law, international labour law, European human rights law and arguably Irish constitutional law, to protect its citizens from slavery, servitude and/or forced labour. The European Court

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155 *The State (Healy) v Donoghue* [1976] I.R. 325
157 *Ibid*
158 *AD v Ireland* [1994] 1 I.R. 369
161 See Justice for Magdalenes, Proposed Restorative Justice and Reparations Scheme, *supra* note 4
of Human Rights has acknowledged this protection to be “one of the basic values of the democratic societies making up the Council of Europe”,\textsuperscript{162} 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.”\textsuperscript{163}

The women and girls who suffered in their thousands in the Irish Magdalene 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 institutionalisation 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 and even involved itself in the system. The fact that many individuals privately chose to deliver women and girls to the Magdalene 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, servitude and forced or compulsory labour at the hands of non-state actors, and it failed wholly to do so in the case of the Magdalene Laundries, while it was aware of their nature and was itself supplying part of the “workforce”.

Just as it took a public apology by the State at the start of the last decade for many of the victims of child abuse in Irish Industrial and Reformatory Schools to come forward and make their suffering known, it will take serious and honest attention by the State before many of those who were incarcerated in Ireland’s Magdalene Laundries will choose to reveal the extent of their abuse. But the State now has enough evidence of the abuse that occurred, and its part in it, to apologise 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 upon the religious orders to open up their 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 this 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 Magdalene Laundries, and the reasons behind it, are integral parts of that history, which deserve to be acknowledged, redressed and come to terms with.

James M. Smith argues that the story of the Magdalene Laundries is important for at least three distinct groups of women who were formerly

\textsuperscript{162} Siliadin \textit{v} France, supra note 99, para.82

\textsuperscript{163} CEACR: Individual Observation, supra note 93
incarcerated in Magdalene Laundries and who are still part of Ireland's present, not just its past. He states:

As recently as 1996, when the nation's last Magdalene laundry closed its doors, there were at least four ... communities [of former Magdalene women] 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 Magdalene 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 Magdalene 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 Magdalene 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 Magdalene 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 Magdalene 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.  

Smith contends that, "[t]elling the story of the Magdalene laundries defies the elision of this history." It is submitted here, that telling the story of the Magdalene Laundries further defies ignorance by the Irish State of its responsibility towards every individual in Ireland, to protect their basic human rights. That responsibility existed from the 1930s with regard to slavery, servitude and forced labour, as has been argued in this paper. It is a

164 Smith, supra note 3, p.xviii
165 Ibid, p.xix
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 so exists, and not abandon it again. The State must seek out the oppressed and pay attention to the vulnerable, and the kind of discrimination that led to the suffering of thousands of women and girls in Ireland's Magdalene Laundries must never again be left unchecked.