
ACKNOWLEDGEMENT: RESTORING HUMAN RIGHTS AND DIGNITY

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Reviewing REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE (Katherine O’Donnell, Maeve O’Rourke & James M. Smith eds., 2022).

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I. INTRODUCTION

What does justice demand of a democratic state that has engaged in systematic discrimination against and abuse of its women and children? *Redress: Ireland’s Institutions and Transitional Justice*, a collection of essays edited by Katherine O’Donnell, Maeve O’Rourke and James M. Smith, bravely and thoughtfully grapples with this difficult question.¹ Through most of the twentieth century, the Irish government placed its authority and resources behind a system of “institutional and gender violence justified in the name of Catholic morality turned into State ideology.”² The contributors to *Redress* find that the Irish government’s approach to

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¹ REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 135 (Katherine O’Donnell, Maeve O’Rourke & James M. Smith eds., 2022).

² Ruth Rubio Marín, *Reparations for Historic Institutional Gender Violence in Ireland: Learning from Transitional Justice*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 132, 135 (Katherine O’Donnell et al. eds., 2022).

investigating its past, providing redress, and protecting the human rights of victim-survivors of these actions has been wholly inadequate.³ They employ principles of transitional justice and human rights to evaluate efforts to date and illuminate a better path forward for a country striving to abide by democratic values.⁴

This essay briefly reviews the historic abuses of women and children in Ireland and the advocacy that led the Irish government to establish investigatory commissions and boards of redress in relation to the abuse of children in residential schools, the confinement and forced labor of “wayward” women and girls in the Magdalene Laundries, and the mistreatment and separation of “deviant” single mothers and their children in the Mother and Baby Homes. Those abusive actions happened in the past, but their consequences persist. Victim-survivors and their families grapple with their ongoing effects along with current government practices, including the investigative commission processes, that continue to diminish their experiences and prevent the full enjoyment of their rights.⁵

After establishing this context, the essay next turns to the analysis *Redress* offers of these investigations and efforts at repair. The authors use a transitional justice and human rights framework as the basis for this analysis. It then points to one of several aspects of the work that requires further development by scholars: a full exploration of the Irish government’s zealous adoption of religious doctrine regarding sexuality and reproduction as the basis for its mistreatment of women and children. This adoption of religious doctrine led to government actions that violated the basic human rights of those women and children.⁶ The Irish government must acknowledge fully the basis of its prior actions and take stronger steps to ensure that current and future government actions are taken in accordance with the human rights of its citizenry rather than religious morality or the desires of powerful religious officials.

Ireland is not the only country to have engaged in these abuses, and the final section of this review essay highlights practices in the United States that

³ Katherine O’Donnell, Maeve O’Rourke & James M. Smith, *Editors’ Introduction: REDRESS: Ireland’s Institutions and Transitional Justice*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE xi, xiv-xv (Katherine O’Donnell et al. eds., 2022).

⁴ See *id.* at xix.

⁵ *Id.* at xiv; Claire McGettrick, *‘Illegitimate’ Knowledge: Transitional Justice and Adopted People*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 211, 214 (Katherine O’Donnell et al. eds., 2022) (restrictions placed on access to birth information in proposed Birth Information and Tracing Bill 2022 (Act No. 3/2022) (Ir.)); see also *infra* note 80.

⁶ Paul Michael Garrett, *Creating ‘Common Sense’ Responses to the ‘Unmarried Mother’ in the Irish Free State*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 182, 185-86 (Katherine O’Donnell et al. eds., 2022).

led to the confinement and punishment of women and girls viewed as deviant in relation to their sexuality and reproduction and of widespread abuse of children placed in residential institutions. In the U.S., too, these actions were often justified by reference to religious views of sexuality and reproduction.⁷ Nor have these abuses, which have their own racial, ethnic and religious history in the U.S., completely ended. The U.S. federal and state governments should take heed of the lessons from Ireland and other democracies that have investigated and attempted to redress past abuses and the analysis of their failings outlined in *Redress*. They, too, should investigate these past violations, acknowledge wrongdoing, and assure that current residents are treated in accord with essential democratic values and human rights, free of religious views that conflict with those rights.

II. CENSURE AND SUBJUGATION: CONFRONTING IRELAND'S MISTREATMENT OF SINGLE WOMEN AND CHILDREN

During much of the twentieth century, nonmarital pregnancy in Ireland was made to be a terrifying, soul-crushing experience.⁸ This was one part of an overall policy of controlling the lives of girls and women, which included censorship of information related to sexuality and reproduction, prohibition on contraception and abortion, lack of access to divorce, and confinement in Magdalene Laundries.⁹ The children of single mothers, and other children who found themselves in care outside their homes, were demeaned as “illegitimate” and faced institutional neglect and abuse as well.¹⁰

Single motherhood was framed as inescapable evidence of grave sin.¹¹ Visibly pregnant single Irish girls and women were ostracized and excluded from their homes and communities, a consequence of state and Church rhetoric describing them as “deviant” “offenders.”¹² If their nonmarital

⁷ Michele Goodwin & Allison M. Whelan, *Constitutional Exceptionalism*, 4 U. ILL. L. REV. 1287, 1321 (2016).

⁸ The historical abuses that are the primary focus of *Redress* happened roughly in the period of time from the founding of the Irish Free State in 1922, through its full separation from the British Commonwealth in 1948 as the Republic of Ireland, and until the last decade of the twentieth century. See The Republic of Ireland Act 1948 (Act No. 22/1948) (Ir.). The first modern effort by the Irish government to respond to these abuses began with the Commission to Inquire into Child Abuses (the “Ryan Commission”) in 2000. See Commission to Inquire into Child Abuses Act 2000 (Act No. 7/2000) (Ir.).

⁹ See Garrett, *supra* note 6, at 184-85.

¹⁰ *Id.* at 189.

¹¹ *Id.* at 188.

¹² *Id.* at 186, 189-190. Protestant groups in Ireland ran similar programs, although the abuse in those institutions has gained far less attention than in Catholic institutions. See Mary Burke, ‘Disremembrance’: Joyce and Irish Protestant Institutions, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE (Katherine O’Donnell et al. eds., 2022) 196, 196.

pregnancies became public knowledge, the pregnant girls' or women's families, too, risked being called out publicly by their parish priests and faced potentially crippling social and financial exclusion.¹³ Those who were pregnant and new mothers endured confinement in county homes and Mother and Baby homes. Billed as places of refuge, they instead often imposed hardship in the name of religious judgment and repentance.¹⁴ Residents were shamed and silenced, subjected to harsh and excessive work and discipline, and deprived of the opportunity to raise their own children.¹⁵

Few single mothers could safely raise their children in a society that ignored their need for financial support or childcare and discriminated against them in housing and employment, making adoption or fostering their children their only options.¹⁶ Single mothers were often persuaded to believe they were unworthy to raise their own children and that their only hope of a "normal" life was to relinquish their children.¹⁷ Some mothers reported being defrauded or coerced into adoption or boarding out their children.¹⁸ Prior to the first Irish law to permit adoption passed in 1952, the government turned a blind eye to illegal adoptions, and there is evidence that children were illegally adopted in Ireland and abroad without their mother's knowledge.¹⁹ Even after that date, there is evidence of violations of key statutory

¹³ GOV'T OF IR., MOTHER AND BABY HOME COMMISSION OF INVESTIGATION FINAL REPORT ch. 8, at 53 (2020), <https://www.gov.ie/pdf/?file=https://assets.gov.ie/118565/107bab7e-45aa-4124-95fd-1460893dbb43.pdf#page=null> [hereinafter FINAL REPORT MBH COMMISSION] (reports in records demonstrating attitudes of those referring single pregnant women and girls for services and fears of those pregnant women and girls, including rejection by families, concealment from others of the individual's pregnancy, dismissal from employment and impossibility); GOV'T OF IR., REPORT OF THE CONFIDENTIAL COMMITTEE TO THE COMMISSION OF INVESTIGATION INTO MOTHER AND BABY HOMES 14, 17, 19 (2020), <https://www.gov.ie/en/publication/d693a-report-of-the-confidential-committee-to-the-commission-of-investigation-into-mother-and-baby-homes-october-2020/> [hereinafter CONFIDENTIAL COMMITTEE REPORT] (victim-survivor reports of events that led to their arrival at Mother and Baby Homes or county homes while pregnant include family rejection, which occasionally included violence, and frequent histories of rape and abuse that led to their pregnancies).

¹⁴ See Garrett, *supra* note 6, at 190-91.

¹⁵ See Maeve O'Rourke, *State Responses to Historical Abuses in Ireland: 'Vulnerability' and the Denial of Rights*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE (Katherine O'Donnell et al. eds., 2022) 68, 72-73; Garrett, *supra* note 6, at 189.

¹⁶ Garrett, *supra* note 6, at 184.

¹⁷ CONFIDENTIAL COMMITTEE REPORT, *supra* note 13, at 88-89.

¹⁸ See, e.g., Conall Ó Fátharta, *State's Reaction is to Deny, Delay and to Buy Silence*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE (Katherine O'Donnell et al. eds., 2022) 118, 126 (citing information from one birth mother that she was instructed to sign a false name on an adoption consent form).

¹⁹ *Id.* at 120-25; Burke, *supra* note 12, at 200-205 (illegal adoptions preceded and even postdated the Adoption Act).

requirements, especially those requiring valid, voluntary consent of the mother.²⁰ Only towards the end of the twentieth century were the majority of single mothers able to raise their own children.²¹

Children who were held in county homes, Mother and Baby Homes, foster homes and industrial schools suffered from shockingly high rates of illness and death, and rampant, long-ignored emotional, physical and sexual neglect and abuse.²² Many were denigrated by the government-sanctioned use of the term “illegitimate.”²³ Facts unearthed by the Commission to Inquire into Child Abuse (“Ryan Commission”) demonstrated a pattern of extensive violations of the rights of children held in Ireland’s industrial schools.²⁴ Those sent for legal or illegal adoptions lost their first mothers, their birth families, and their identities.²⁵ Some single women and girls—including those raised in industrial schools, charged with petty crimes, pregnant, or viewed as “at risk” of licentiousness—faced forced labor and incarceration in the Magdalene Laundries.²⁶ Through these interlocking “confinement strategies,” a “high proportion of Ireland’s population was dispatched to various locations of coercive confinement,”²⁷ described as the “architecture of containment” by James Smith.²⁸ The disregard extended to failures to properly record the deaths of those who died while confined to these institutions or to provide them with a respectful burial.²⁹

²⁰ Ó Fátharta, *supra* note 18, at 121-23, 125-27; Burke, *supra* note 12, at 202-203.

²¹ FINAL REPORT MBH COMMISSION, *supra* note 13, at 47; ADOPTION AUTH. OF IR., ANNUAL REPORT 2020, at 60-61 (2020) (the largest number of adoptions took place in 1967, when there were 1540 nonmarital births and 1493 adoptions. By 1999, there were 16,461 nonmarital births and 317 adoptions.). While the specific number of adoptions due to the nonmarital status of the mother is not specified in this table, the dramatic drop in adoptions at the same time as the dramatic rise in the number of nonmarital adoptions makes it clear that the norm of giving up a child for adoption if the mother was single no longer held sway. See ADOPTION AUTH. OF IR., ANNUAL REPORT 2021 at 59 (2021) (in 2021, there were only two infant adoptions).

²² See Rubio Marín, *supra* note 2, at 133; James M. Smith, *Knowing and Unknowing Tuam: State Practice, the Archive and Transitional Justice*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 356, 359 (Katherine O’Donnell et al. eds., 2022).

²³ See FINAL REPORT MBH COMMISSION, *supra* note 13, at 3-6.

²⁴ See generally COMM’N TO INQUIRE INTO CHILD ABUSE & SEAN RYAN, REPORT: COMMISSION TO INQUIRE INTO CHILD ABUSE NO. 1 (2009), <http://hdl.handle.net/10147/87278>.

²⁵ O’Rourke, *supra* note 15, at 71; McGettrick, *supra* note 5, at 211-12.

²⁶ O’Rourke, *supra* note 15, at 70-71; Rubio Marín, *supra* note 2, at 133.

²⁷ Garrett, *supra* note 6, at 185.

²⁸ JAMES M. SMITH, IRELAND’S MAGDALENE LAUNDRIES AND THE NATION’S ARCHITECTURE OF CONTAINMENT 2 (2007).

²⁹ Anne Enright, *Antigone in Galway: Anne Enright on the Dishonoured Dead*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 17, 17, 19-22 (Katherine O’Donnell et al. eds., 2022); Dan Barry, *The Lost Children of Tuam*, in REDRESS: IRELAND’S

Leaders of both state and church justified these oppressive institutions of confinement by a shared religious ideology.³⁰ Operating as a fully “integrated totality,” together they crafted public opinion to demonize unmarried mothers and other “‘deviant’ women.”³¹ The institutions of confinement likewise were deeply connected to and supported by both church and state. The majority were run by religious orders. Mostly Catholic, they established and operated the institutions according to their own religious views of sin and repentance, and they aimed to keep children within the Catholic fold.³² The Irish government funded these residential institutions and was legally required to exercise regulatory oversight, including on-site inspections.³³ Despite its legal obligations, state officials largely failed to correct even readily apparent wrongs and dangerous situations.³⁴ The institutions, despite differing missions, were deeply intertwined with each other. Individuals were moved among them or were subjected to fear of relocation to an even harsher environment to compel their acquiescence.³⁵ Rubio Marín asserts that:

[W]hat they collectively represent is a repressive disciplinary regime that sustained a State-/Church-imposed social and moral gender order which saw women’s citizenship as confined to the private sphere; married women’s bodies viewed primarily as reproductive vessels to breed Catholic offspring, and women’s souls as repositories of an Irish national Catholic identity which was, aspirationally at least, to define itself in contraposition to that of its Protestant neighbour.³⁶

Those individuals who were mistreated, shamed and silenced in one or more of these institutions, and who often experienced profound familial rupture, have carried these injustices, deep loss, and trauma throughout their lives.³⁷

Across these institutions and fostering, systemic and individual abuses of children and so-called “deviant” women and girls, including single mothers, persisted for many years. The last of these institutions was closed in the 1990s.³⁸ The ordinary criminal and judicial systems that should have been

INSTITUTIONS AND TRANSITIONAL JUSTICE 29, 37, 43 (Katherine O’Donnell et al. eds., 2022); Burke, *supra* note 12, at 206; Smith, *supra* note 22, at 357.

³⁰ Rubio Marín, *supra* note 2, at 132.

³¹ Garrett, *supra* note 6, at 186.

³² Rubio Marín, *supra* note 2, at 133; Burke, *supra* note 12, at 204-206.

³³ O’Rourke, *supra* note 15, at 71; Rubio Marín, *supra* note 2, at 133.

³⁴ Smith, *supra* note 22, at 359-74.

³⁵ Barry, *supra* note 29, at 29, 33.

³⁶ Rubio Marín, *supra* note 2, at 134.

³⁷ See *infra* notes 63-74.

³⁸ O’Rourke, *supra* note 15, at 70 (last Magdalene Laundry closed in 1996); Rubio

effective avenues for justice in a country dedicated to democratic governance failed to meet the challenge of responding to this history and its ongoing harm. Public officials refused to impose accountability on government and religious institutions and officials and individuals responsible for these abuses through those systems. Public officials have refused to conduct criminal investigations and the courts rejected civil suits to compensate victim-survivors.³⁹ Valiant and persistent advocacy by victim-survivors and their allies within Ireland and at human rights venues led the Irish government to establish various commissions of investigation to examine *some* aspects of *some* of the institutions accused of confining and mistreating those in their care.⁴⁰ It also established some funds to be distributed to those willing to waive their right to appear in court.⁴¹ Victim-survivors and their allies sought to shape these commissions to meet essential features of democratic participation by providing substantial input. They hoped that these commissions would achieve some measure of justice. But in their experience, their input received little attention and these processes failed.⁴²

III. ADVANCING REDRESS OR DEEPENING RUPTURE?

Redress analyzes the promise and shortcomings of Ireland's approach to

Marín, *supra* note 2, at 133 (last of Mother and Baby Homes closed in the 1990s).

³⁹ Colin Smith & April Duff, *Access to Justice for Victims of Historic Institutional Abuse*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 104, 105-15 (Katherine O'Donnell et al. eds., 2022) (describing numerous procedural obstacles that prevented efforts to hold perpetrators accountable through the court system, many of which, if removed, would improve the system's ability to provide an effective remedy without undermining the rights of those accused); O'Rourke, *supra* note 15, at 73-79 (describing range of hurdles, including fear of being held responsible for attorneys' fees if one's suit was unsuccessful, fees well beyond the capacity of any potential plaintiffs); Fionnuala Ní Aoláin, *The Inner and Outer Limits of Gendered Transitional Justice*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE (Katherine O'Donnell et al. eds., 2022) 146, 154-55 (lack of remedies in legal system likely violates Ireland's human rights obligations).

⁴⁰ O'Donnell, O'Rourke & Smith, *supra* note 3, at xiii.

⁴¹ *Id.* at xv.

⁴² See, e.g., Máiréad Enright & Sinéad Ring, *State Legal Responses to Historical Institutional Abuse: Shame, Sovereignty and Epistemic Injustice*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 86, 90-92 (Katherine O'Donnell et al. eds., 2022) (criticizing from victim-survivor perspectives the Commission to Inquire into Child Abuse and Residential Redress Board); *id.* at 93-97 (criticizing the failures of the Inter-Departmental Committee Report into State Involvement in the Magdalen Laundries (hereinafter "McAleese Report") and the Magdalene Restorative Justice Ex-Gratia Scheme); *id.* at 100-101 (citing some of the major deficiencies of the MBH Commission's process and report); Katherine O'Donnell, *Official Ireland's Response to the Magdalene Laundries: An Epistemology of Ignorance*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 282, 286-302 (Katherine O'Donnell et al. eds., 2022) (in-depth analysis of the McAleese Report).

its historic abuses and their ongoing harms, including the government's unwillingness to fully address its continuing violations of the human rights of victim-survivors. In other countries, commissions focused on addressing abusive government policies toward children in out-of-home settings have incorporated some features of transitional justice.⁴³ The *Redress* authors use their understanding of key tenets of transitional justice as the lens through which to evaluate the Irish approach.⁴⁴ They argue that the process and findings of even the last such commission demonstrate that the Irish government has failed to live up to the most basic principles of transitional justice in a democratic state or learn from the earlier, greatly criticized, processes regarding abuse of children in the industrial schools and incarceration of women in the Magdalene Laundries.⁴⁵

The latest effort of the Irish government, the Commission of Investigation into Mother and Baby Homes and Certain Related Matters ("MBH Commission") began its work in 2015 and made its final report public in 2021.⁴⁶ While the report is based on multiple sources of information and provides numerous details regarding certain aspects of the county and Mother and Baby homes, it fails to meet the tenets of transitional justice identified by the *Redress* contributors. The MBH Commission chose to make the report sterile and bureaucratic.⁴⁷ The report almost entirely focuses on minor details obtained from government or religious entity records even as it largely excludes and obscures the common experiences of those most deeply affected.⁴⁸ The MBH Commission failed to explain why church and state actions were wrongful, pervasive and systematic human rights violations of the persons, psyches, and parent-child relationships of those affected.⁴⁹ The MBH Commission excluded from the main body of its report—without prior notice to the participants—the more than 500 submissions by victim-survivors made through the "confidential" process it had provided, relegating them to a separate report that merely summarized selected excerpts of their

⁴³ Elena Patrizi, *Redressing Forced Removals of Yenish Children in Switzerland in the 20th Century: An Analysis Through Transitional Justice Lens*, 28 CHILDHOOD 540, 541 (2021) (citing a "willingness to reckon with the past and redress historical wrongs.").

⁴⁴ James Gallen, *Transitional Justice and Ireland's Legacy of Historical Abuse*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 158, 163 (Katherine O'Donnell et al. eds., 2022).

⁴⁵ O'Donnell, O'Rourke & Smith, *supra* note 3, at xv.

⁴⁶ *Id.* at xiii.

⁴⁷ *See, e.g.*, O'Rourke, *supra* note 15, at 71-73.

⁴⁸ *See id.*

⁴⁹ The report merely contains a section that lists and provides language from a range of human rights agreements to which Ireland is a party. FINAL REPORT MBH COMMISSION, *supra* note 13, at ch. 36.

statements by topic.⁵⁰ While the Irish government established a Collaborative Forum of victim-survivors of the Mother and Baby Homes, the Department of Children and Youth Affairs refused to publish the full report they wrote.⁵¹

As the MBH Commission process unfolded, victim-survivors, allies, journalists, and a multi-disciplinary group of academics gathered to evaluate the government's multiple inquiries.⁵² No one person could have written the extraordinary book that resulted from this gathering and following research. The collected essays in *Redress* provide moving, multi-faceted, interdisciplinary and thought-provoking analyses of these efforts and the government choices that sabotaged them.

The primary context for the contributors' analyses is the Irish government's response to the history of abuse of women and children in Ireland.⁵³ They delineate and examine the features of a transitional justice approach they identify as essential to evaluate those governmental responses to the systemic violations of human rights. While the rhetoric and conceptual vocabulary associated with transitional justice are more commonly invoked in relation to "a transition from armed conflict or authoritarian rule," the authors of *Redress* explore its use in the context of government-sanctioned abuses in "consolidated" democracies, unrelated to armed conflict.⁵⁴

Transitional justice is still relatively new. The United Nations has defined it as "the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliations."⁵⁵ Gallen adopts the view that the ethical orientation of transitional justice requires that these processes be holistic and recognize "victim-survivors as legal subjects, bearers of human rights and key participants in any decision affecting transitional justice."⁵⁶ He invokes widely accepted "pillars" of the practice: investigation and truth-seeking, accountability, reparation, guarantees of

⁵⁰ See CONFIDENTIAL COMMITTEE REPORT, *supra* note 13.

⁵¹ O'Rourke, *supra* note 15, at 78; McGettrick, *supra* note 5, at 217.

⁵² O'Donnell, O'Rourke & Smith, *supra* note 3, at xiii.

⁵³ Gallen, *supra* note 44, at 159.

⁵⁴ *Id.*

⁵⁵ O'Donnell, O'Rourke & Smith, *supra* note 3, at xvi (quoting U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, ¶ 8, U.N. Doc. S/2004/616 (Aug. 23, 2004)).

⁵⁶ Gallen, *supra* note 44, at 159. Compare *id.* at 159 n.7 (citing the United Nations in support of these "pillars"); with O'Donnell, O'Rourke & Smith, *supra* note 3, at xvi n.31 (citing to several scholars prominent in the field). Some scholars have referred to these pillars as the "standardized" version of transitional justice. See, e.g., *Introduction, in* TRANSITIONAL JUSTICE IN APARADIGMATIC CONTEXTS: ACCOUNTABILITY, RECOGNITION, AND DISRUPTION 7-8 (Tine Destrooper, Line Engbo Gissel & Kerstin Bree Carlson eds., 2023).

nonrecurrence, and reconciliation.⁵⁷ He describes each component of transitional justice work as complementary to the others; one cannot be eliminated without compromising the entire venture.⁵⁸ Further, transitional justice efforts should not be treated as optional or charitable by state officials, but as “embodying a state’s legal commitments to its citizens in national and international human-rights laws.”⁵⁹

The *Redress* contributors do not propose transitional justice as a panacea. They caution that transitional justice mechanisms have often failed to achieve their lofty goals, and in particular they have failed to respond to gender injustice.⁶⁰ Nor should transitional justice, even conducted in accord with these principles, be considered adequate by itself to achieve the structural changes required to fully address a state’s wrongs and their continuing effects, and to guarantee nonrecurrence.⁶¹ A country’s ordinary system of justice should be constructed to fulfill this mission.⁶² The book’s twenty-four chapters analyze the complex and interrelated nature of these pillars and their ethical requirements in the context of abuses in Ireland, as well as those in Australia, Canada and the United Kingdom, an expansive analysis too rich to fully address in this brief discussion.

Two key elements of the *Redress* authors’ critique stand out. First is their evaluation of Ireland’s failure to meet transitional justice’s key ethical orientation towards promoting individual human dignity. This requires centering victim-survivors as “legal subjects, bearers of human rights, and key participants in any decision affecting transitional justice.”⁶³ Second is the government’s failure to develop full knowledge in accord with the first pillar of transitional justice: investigation and truth-seeking. Both analyses are explored in depth throughout *Redress* to critique the Irish government’s response to the interlocking abuses and illuminate an improved path forward.

⁵⁷ See Gallen, *supra* note 44, at 159.

⁵⁸ *Id.* (noting that transitional justice elements comprise “both/and” to form a holistic process).

⁵⁹ *Id.* at 159-60. Gallen acknowledges that it was only at the initiation of the MBH Commission, in 2017, that an Irish government official introduced the phrase “transitional justice” into public discourse in Ireland. *See id.* at 161. Of course, views concerning the appropriate goals and mechanisms for transitional justice, including promotion of “transformational justice” rather than “transitional justice,” vary widely, and Gallen outlines some of these different approaches. *See id.* at 160-61.

⁶⁰ Aoláin, *supra* note 39, at 146.

⁶¹ Rosemary Nagy, *Transitional Justice, Trauma and Healing: Indigenous Residential Schools in Canada*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 240, 241 (Katherine O’Donnell et al. eds., 2022). Democratic societies should, of course, make their systems of justice and their bureaucratic practices adhere to the demands of justice for past (and current) harms.

⁶² Smith & Duff, *supra* note 39, at 115-17.

⁶³ Gallen, *supra* note 44, at 159.

The primary focus of *Redress* is the fundamental human dignity of each person, which requires employing the state's human rights obligations as a vantage point from which to evaluate the wrongfulness and deeply harmful impact of acts such as involuntary confinement, forced labor, emotional and physical neglect and abuse, sexual abuse and humiliation, medical neglect, deprivation of individual identity, and disruption of familial relationships, especially that relationship most essential to every human being, the parent-child relationship.⁶⁴ The Irish government's responsibility for these violations of human rights laws and norms has been analyzed by scholars and advocacy groups despite the government's unwillingness to directly address these violations itself in the inquiry commission processes.⁶⁵ The authors argue that the depth and extent of these harms can only begin to be appreciated by centering the experiences of the victim-survivors as the holders of fundamental human rights.⁶⁶ As many *Redress* authors point out, if the government had established processes that centered victim-survivor testimony, listened to that testimony through a human rights framework, and fully engaged with their recommendations for repair, it would have better expressed its democratic values and respected the dignity of each individual. Such a process would itself have served as a partial form of redress.⁶⁷

In contrast to the official inquiries, which at best, buried the statements of victim-survivors in separate chapters or appendixes,⁶⁸ *Redress* models

⁶⁴ O'Rourke, *supra* note 15, at 70-73, 82-84.

⁶⁵ CAROLE HOLOHAN, IN PLAIN SIGHT: RESPONDING TO THE FERNS, RYAN, MURPHY AND CLOYNE REPORTS 48-87 (2011) (outlining the Irish government's responsibilities under human rights law for the mistreatment and neglect of children in Ireland's Industrial Schools); Maeve O'Rourke, *Ireland's Magdalene Laundries and the State's Duty to Protect*, 10 HIBERNIAN L.J. 200, 203, 217-25 (2011) (citing violations of the Slavery Convention, the Forced Labour Convention and the European Convention on Human Rights); MAEVE O'ROURKE ET AL., CLANN: IRELAND'S UNMARRIED MOTHERS AND THEIR CHILDREN: GATHERING THE DATA: PRINCIPAL SUBMISSIONS TO THE COMMISSION OF INVESTIGATION INTO MOTHER AND BABY HOMES 106-128 (2018) (analyzing the constitutional law and human rights violations relevant to the treatment of unmarried mothers and their children, in the past and up to the time of publication, including both international and regional human rights agreements) [hereinafter CLANN Project Report]; *id.* at 108; *see also* AOIFE PRICE ET AL., MOTHER AND BABY HOMES COMMISSION OF INVESTIGATION REPORT: DRAFT ALTERNATIVE EXECUTIVE SUMMARY (Máiréad Enright & Aoife O'Donoghue eds., 2021) [hereinafter ALTERNATIVE EXECUTIVE SUMMARY]; Rubio Marín, *supra* note 2, at 136.

⁶⁶ O'Rourke, *supra* note 15, at 79-82 (discussing state strategies to de-center the testimony and claims of victim-survivors).

⁶⁷ *See, e.g., id.* at 71-72. As Rubio Marín and other authors acknowledge, human rights instruments and processes have failed to adequately address reproductive violence. *See, e.g.,* Rubio Marín, *supra* note 2, at 136.

⁶⁸ For example, the Final Report of the MBH Commission consigns the voices of those affected to a separate Confidential Committee report appended after the full Commission report. Even in that report, the witness statements are chopped up to fit the Committee's topical

respect for human dignity by centering the statements of those who were most deeply affected by Ireland's institutions as residents, placing their voices at the beginning of the volume.⁶⁹ Each victim-survivor's testimony highlights some of the specific experiences that capture the devastating nature of their treatment. Mary Harney describes being placed alone in "the dying room" when she was thought to be unable to survive at birth, suffering from harsh labor and malnutrition at the hands of foster parents, and being subjected to abuse and neglect in the industrial schools.⁷⁰ She explains also the difficulty of re-establishing a relationship with her birth mother after their deeply traumatic experiences.⁷¹ Rosemary Adasar, born to a mixed race couple, emphasized the government's intentional "exploitation of difference," exploitation that included indenturing children, denying them access to adoption, and overseeing a system in which "the welfare of the child was never a factor," whether you were a "person of colour" or a "bonny child."⁷² Clair Wills reminds readers of the harm experienced by the extended families of those who endured these violations, describing her own search for information about lost relatives who were ejected in response to a nonmarital pregnancy, and the painful, suppressed histories of the family that ejected them.⁷³ Terri Harrison urges victim-survivors to reject their experiences of shaming, advising, "I have to say to the women, please put your fingers down your throat and vomit up the part of you that feels that shame. It doesn't belong to you. It belongs to our country."⁷⁴ Despite this advice, Emer O'Toole reports that modern Irish women may continue to internalize the shame imposed on single pregnant girls and women.⁷⁵

Dan Barry recounts the story of Catherine Corless, who, as a child, witnessed the harsh, discriminatory treatment of children at the Mother and Baby Home in Tuam, County Galway, and at the local school.⁷⁶ As an adult,

structure and fail to capture the set of experiences of any single witness. See CONFIDENTIAL COMMITTEE REPORT, *supra* note 13.

⁶⁹ Mary Harney *et al.*, *Testimony*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 2, 2-17 (Katherine O'Donnell *et al.* eds., 2022).

⁷⁰ *Id.* at 3-5 (testimony of Mary Harney).

⁷¹ *Id.* at 4 (testimony of Mary Harney).

⁷² *Id.* at 10-11 (testimony of Rosemary Adaser); *id.* at 12 (testimony of Conrad Bryan, highlighting refusal of Catholic adoption agencies to allow Protestant adoption agencies, who were willing to place children of mixed race for adoption, to have access to children of mixed race).

⁷³ Clair Wills, *Family Secrets*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 47, 47 (Katherine O'Donnell *et al.* eds., 2022).

⁷⁴ Harney, *supra* note 69, at 9 (testimony of Terri Harrison).

⁷⁵ Emer O'Toole, *The Mother of Us All*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 57, 61-62 (Katherine O'Donnell *et al.* eds., 2022).

⁷⁶ Barry, *supra* note 29, at 29-30.

she has relentlessly investigated the lives—and deaths—of those children. She found that 796 deceased infants lacked burial certificates, and many of their bodies were dumped in chambers of an underground septic system at the Home.⁷⁷ Many other authors incorporate the statements and experiences of those personally affected throughout the volume.⁷⁸

The *Redress* contributors link the state's failure to center the human rights and dignity of the victim-survivors in its investigation processes to the state's continued imposition of harms in recent years, in part by framing them as “vulnerable” subjects,” objects of state charity, rather than rights-holders to whom justice is owed.⁷⁹ For example, the children of single mothers and the mothers themselves have long been denied access to basic information about their birth and early history, access that to this day remains greatly restricted for birth mothers and some others.⁸⁰ Birth mothers and adoptees who located their own birth mothers detail the ongoing nature of the shame and silencing imposed on “pariah mothers,” shame and silence many continue to feel throughout their lives.⁸¹ At least one government official reinforced this

⁷⁷ *Id.* at 30, 37-38, 43.

⁷⁸ *See, e.g.,* O'Toole, *supra* note 75, at 57-65 (multiple stories); O'Rourke, *supra* note 15, at 72 (evidence of abuses provided by several women to the MBH Commission); Burke, *supra* note 12, at 206-207 (recounting experiences of Derek Leinster, born of a “mixed” religion relationship, who was removed from the home of his Catholic father and placed with a poverty-stricken, neglectful Protestant fostering family to satisfy his mother's Protestant family); Patricia Lundy, ‘*I Just Want Justice*’: *The Impact of Historical Institutional Child-Abuse Inquiries from the Survivor's Perspective*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 257, 257 (Katherine O'Donnell et al., eds., 2022) (reporting on findings of survey of the “justice needs” of victim-survivors of institutional child abuse in Northern Ireland with regard to the historical inquiry established by the Northern Ireland Assembly).

⁷⁹ O'Rourke, *supra* note 15, at 68.

⁸⁰ Harney, *supra* note 69, at 2, 5-8 (testimony of Mari Steed); *id.* at 2, 10-12 (testimony of Rosemary Adaser regarding denial of access to records); *id.* at 2, 12-13 (testimony of Susan Lohan about adoption bill under consideration providing only excerpts of records, allowing “the state to write its own version of our story”). In 2022, the Irish government adopted the Birth Information and Tracking Act, No. 14 (2022) which provided some, but not all, affected persons with access to birth registration and other information. *See* Birth Information and Tracking Act, 2022 (Act No. 14/2022) (Ir.). Those excluded from access to records include most birth mothers. *Id.* The Australian government has been more willing to address obstacles to increase survivor access to their records relevant to various types of historical abuse. Shurlee Swain, ‘*Finding the Me Who I Truly Never Quite Knew*’: *Lessons from Australia's Find & Connect Project in Facilitating Records Access*, in REDRESS: IRELAND'S INSTITUTIONS AND TRANSITIONAL JUSTICE 326, 327 (Katherine O'Donnell et al., eds., 2022).

⁸¹ Harney, *supra* note 69, at 2, 8-9 (testimony of Caitriona Palmer); *id.* at 2, 9-10 (testimony of Terri Harrison). Palmer published a book entitled *An Affair with My Mother* in 2016 about her search for her birth mother and the resulting, frustratingly limited, relationship she developed with her due to her mother's continuing sense of shame and fear of revealing

shaming by describing victim-survivors as “damaged people” rather than focusing on the state’s own past and ongoing mistreatment of victim-survivors.⁸² Government officials have established demeaning obstacles to redress, required concessions to receive the funds, narrowed the nature and adequacy of the compensation offered, and employed redress administrators who treat those involved as “other” throughout the process.⁸³

Thus, in contrast to a key ethical principle of transitional justice, victim-survivors’ perspectives were largely excluded from the designing of the government’s processes and their implementation, and those who managed to endure involvement in the official inquiries or the redress processes established for the “historic abuse” often found their voices ignored, diminished in veracity and importance, or consigned to separate, buried portions of official reports.⁸⁴

Second, the authors assert that redress demands responsible knowing. In accordance with the first pillar of transitional justice, such knowing requires extensive investigation, revelation, truth telling, and listening.⁸⁵ Multiple authors in this volume address the strategies used by the Irish government and Church to hold tight to “belligerent ignorance,”⁸⁶ to engage in “epistemic

her past to her husband. In *Redress*, she tells us of the many emails and messages she received from other adoptees, birth mothers and their relatives from around the world whose lives had been significantly affected by the stigma associated with single motherhood and the resulting secrecy surrounding adoption. Cairtriona Palmer, “*It Steadies Me to Tell These Things*,” *Memoir and the Redemptive Power of Truth-Telling*, 55 ÉIRE-IR. 299, 300 (2020). See also CONFIDENTIAL COMMITTEE REPORT, *supra* note 13, at 24, 37, 111 (containing statements from former residents of the Mother and Baby Homes and County Homes); MARY LOU O’KENNEDY, REPORT OF THE FINDINGS OF THE CONSULTATION WITH SURVIVORS OF MOTHER AND BABY HOMES AND COUNTY HOMES 2-13 (2021).

⁸² Harney, *supra* note 69, at 2, 15.

⁸³ Smith & Duff, *supra* note 39, at 104, 105-11 (waivers required to receive redress payments for victim-survivors of industrial schools and Magdalene Laundries); O’Rourke, *supra* note 15, at 84 (human rights violations in processes of the commission designated to investigate the Magdalene Laundries and the so-called “restorative justice” scheme established by the government for certain victim-survivors of the Magdalene Laundries). The legislative proposal for a redress scheme for the mothers and children of the Mother and Baby Homes and the county homes are also quite limited in scope. IRISH HUM. RTS. & EQUAL. COMM’N, SUBMISSION ON THE GENERAL SCHEME OF A MOTHER AND BABY INSTITUTIONS PAYMENT SCHEME BILL 3-7 (2022).

⁸⁴ Smith & Duff, *supra* note 39, at 115-17.

⁸⁵ Gordon Lynch, *Transitional Justice, Non-Recent Child Abuse and Archival Research: Lessons from the Case of the UK Child Migration Programmes*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 336, 340-45 (Katherine O’Donnell et al., eds., 2022) (analyzing how survivor testimony and archival research are both essential to uncovering the truth of past practices, especially when organizational representatives deny or downplay their culpability).

⁸⁶ O’Donnell, *supra* note 42, at 286-87.

injustice”⁸⁷ by making their many egregious violations of human rights, including those continuing today, the “‘unknown knowns,’” “making ‘unreal’ what [they] knew to be ‘real.’”⁸⁸

The government remittances, investigative processes, and reports narrowed the inquiries and excluded key information, flooding the public information zone with details that create the appearance of full disclosure while actually obscuring key facts and their significance.⁸⁹ None of the commissions addressed the interlocking nature of these institutions, thereby ignoring important aspects of the systemic nature of the wrongs committed.⁹⁰ The inquiries into the Magdalene Laundries and the Mother and Baby Homes failed to “engag[e] meaningfully” with the many allegations of human rights abuses.⁹¹ Further, the government shut down access to all commission

⁸⁷ *Id.* at 289 (citing Miranda Fricker’s use of the term in MIRANDA FRICKER, EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING 2 (2007)).

⁸⁸ See generally, Smith, *supra* note 22, at 356 (alleging government willfully ignored information available to it about the wrongful burials at Tuam); Ó Fátharta, *supra* note 18, at 119 (citing facts demonstrating the government’s denial of “institutional” information it had gathered and delays in gathering further information about illegal adoptions).

⁸⁹ Ó Fátharta, *supra* note 18, at 118-19; Gallen, *supra* note 44, at 162-78.

⁹⁰ Ó Fátharta, *supra* note 18, at 118-19; Gallen, *supra* note 44, at 165; Emilie Pine, Susan Leavy & Mark T. Keane, *Visualizing the Transfers of Abusers in the 2009 Ryan Report*, in REDRESS: IRELAND’S INSTITUTIONS AND TRANSITIONAL JUSTICE 276, 277 (Katherine O’Donnell et al., eds., 2022) (report of the Commission to Inquire into Child Abuse, by providing information institution by institution, failed to track the systematic nature of the institutions’ and governing congregations’ responses to abuse which employed transferring abusers or ignoring their abuse, thereby encouraging abuse to occur).

⁹¹ Gallen, *supra* note 44, at 164. The introduction to the Executive Summary of the Final Report of the MBH Commission demonstrates the Commission’s unwillingness to squarely place responsibility on the state. It stated,

Ireland was a cold harsh environment for many, probably the majority, of its residents during the earlier half of the period under remit. It was especially cold and harsh for women. All women suffered serious discrimination. Women who gave birth outside marriage were subject to particularly harsh treatment. Responsibility for that harsh treatment rests mainly with the fathers of their children and their own immediate families. It was supported by, contributed to, and condoned by, the institutions of the State and the Churches. However, it must be acknowledged that the institutions under investigation provided a refuge - a harsh refuge in some cases - when the families provided no refuge at all.

FINAL REPORT MBH COMMISSION, *supra* note 13, ch. 8, at 1. This statement leaves the reader bewildered as to the cause of the harsh treatment of single mothers by fathers and their families and ignores the pervasive rhetoric of grave sin and criminality directed toward single mothers by both Church and state, which carried over into law and policy. The authors of the *Alternative Executive Summary* demonstrate how the MBH Commission could have taken a very different approach that centered human rights and the state’s responsibility. See ALTERNATIVE EXECUTIVE SUMMARY, *supra* note 65.

records by the public for many years.⁹² The more than 2000 page MBH Commission report contains less acknowledgment of the state wrongs committed against single mothers and their children than an official twenty-page Canadian report on its legacy of adoption and shameful treatment of single mothers and their children.⁹³

This willful ignorance has effectively withheld important information and analysis from the Irish public.⁹⁴ The commissioners of the formal inquiries chose to shine their light in only certain areas. They thereby obscured, rather than acknowledged, systemic harm caused by interlocking legal and social institutions.⁹⁵ The MBH Commission report merely acknowledged the social norms that drove these harms without analyzing the Irish state's extensive role in shaping and effectuating these norms.⁹⁶ The Commission failed to explain clearly why these "patriarchal social norms" were wrongful and to analyze the government's harmful violations of human rights. It ignored how those norms continue to affect state behavior today.⁹⁷ In so doing, it failed to respond to the extensive human rights analysis provided by the CLANN Project, a research and advocacy organization.⁹⁸ This repetitive strategy of exhaustively examining certain information yet excluding other, far more important information, not only undermines "knowing," but it denies the key aspect of transitional justice discussed above, the affirmation of the individual dignity of those affected. The Commission's approach largely dismissed the dignity that should have been accorded to those who testified to the grave human rights violations they experienced, and it served to minimize any evidence of wrongdoing by those individuals and institutions that held, or continue to hold, power.⁹⁹ The powerful analyses of *Redress* demonstrate that these two fundamental requirements—the centrality of individual human dignity and thorough development of knowledge—are deeply interwoven. Neither is possible without the other.

⁹² Apart from some affected individuals gaining access to their individual records, evidence from the various commissions remains inaccessible to researchers and journalists. See, e.g., Ó Fátharta, *supra* note 18, at 129. It appears that much of the evidence received by the Mother and Baby Homes Commission will be sealed for 30 years. Commissions of Investigation Act 2004 (No. 23/2004) (Ir.), § 41(1) (amended 2020).

⁹³ THE STANDING S. COMM. ON SOC. AFFAIRS, SCI. & TECH., *THE SHAME IS OURS: FORCED ADOPTIONS OF THE BABIES OF UNMARRIED MOTHERS IN POST-WAR CANADA* (2018).

⁹⁴ O'Donnell, *supra* note 42, at 286-90.

⁹⁵ *Acknowledge*, DICTIONARY.COM, <https://www.dictionary.com/browse/acknowledge> (last visited on Nov. 2, 2023).

⁹⁶ GOV'T OF IR., DEPARTMENT OF CHILDREN, EQUALITY, DISABILITY, INTEGRATION AND YOUTH, *MOTHER AND BABY HOMES COMMISSION OF INVESTIGATION* (2021).

⁹⁷ Gallen, *supra* note 44, at 164-65.

⁹⁸ CLANN Project Report, *supra* note 65, at 106-28.

⁹⁹ O'Rourke, *supra* note 15, at 71-73.

The government's decision to shy away from making findings of human rights violations by either the Church or state undermined the dignity of those who endured these violations and fed the "belligerent ignorance" of the commission reports.¹⁰⁰ Máiréad Enright and Sinéad Ring theorize that the state restricted and refused to credit the testimony of victim-survivors to retain control of the resulting narrative.¹⁰¹ Government control of the investigative process, the resulting narrative and the purported reparation process protected the power and privilege of both Church and state.¹⁰² As one victim-survivor of residential institution abuse described her experience, "They did not say they were sorry; they denied they were responsible, and I had to accept the money on that basis."¹⁰³

Transitional justice is complex and difficult. There are no easy solutions; repair can never be complete. But the contributing authors of *Redress* make it clear that throughout the years of investigatory commissions and redress boards, the state made deliberate choices to diminish the participation, testimony and perspectives of the victim-survivors and prioritize those of the Church and state.¹⁰⁴ Rather than a shared, more democratic narrative, the commissions elevated government officials and those accused of abuse and submerged the perspectives of victim-survivors.¹⁰⁵ These deliberate choices avoided analysis of both historical and current human rights violations and their continuing harms and reduced the possibility of proper redress and prevention of future harm. This profoundly important book has much to teach us about transitional justice.

IV. REIMAGINING IRELAND: GOVERNMENT BY RIGHTS, NOT RELIGION

Redress begins an important conversation. It enlightens us about how much exploration of the roots of the historic abuses and the reasons for the limitations on the investigative and redress processes, as well as work needed to ensure nonrecurrence, remains to be done. One area that requires such further exploration is the government's reluctance to assume responsibility for its zealous adoption of religious theology as public policy even though it deprived vast numbers of its people their most basic human rights.

Catholic Church doctrine considers sexual intercourse outside of marriage to be a grave sin.¹⁰⁶ Many of the egregious actions taken against women and

¹⁰⁰ O'Donnell, *supra* note 42, at 287.

¹⁰¹ Enright & Ring, *supra* note 42, at 97.

¹⁰² *Id.* at 92-93, 95-97.

¹⁰³ *Id.* at 98.

¹⁰⁴ *Id.* at 92-93, 95-97.

¹⁰⁵ *Id.* at 97 (discussing the MacAleese commission process and report).

¹⁰⁶ See, e.g., Monsignor Charles Pope, *Premarital Sex is a Mortal Sin*, CMTY. IN MISSION (Sept. 15, 2020), as reprinted in CATH. EDUC. RES. CTR., <https://www.catholiceducation.org/>

girls, including against those pregnant and single, were based on this religious belief.¹⁰⁷ Modern government officials, including those directly involved in the commissions of investigation and redress boards, have avoided specifically condemning the government's support for Church practices based on this religious view of sexual morality.¹⁰⁸ This avoidance may be due to their fear of and affinity for the Church's continued political and societal power.¹⁰⁹ It may also be designed to avoid condemnation of a fundamental tenet of Catholic religious belief. And indeed, secular democratic governments should be mindful of their obligations to respect religious beliefs. But the Irish government must clearly reject its prior adoption of a religious ideology that runs counter to its human rights obligations and ensure that this religious ideology no longer controls its actions, including in the areas of women's sexuality and reproduction.¹¹⁰

The Republic of Ireland has long committed to guiding its actions toward its citizens based on its international and regional human rights obligations, as well as its constitution.¹¹¹ From the outset, however, its government ceded democratic control of education, medical services, and social services, including care for single pregnant mothers and their children, to the Church and its religious beliefs, using public resources to support these services.¹¹²

en/education/chastity-education/premarital-sex-is-a-mortal-sin.html.

¹⁰⁷ See Rubio Marín, *supra* note 2, at 135.

¹⁰⁸ See e.g., *Executive Summary*, in FINAL REPORT MBH Commission, *supra* note 13, at 1 (acknowledging that unmarried mothers received harsh treatment by their families and their baby's fathers that was "was supported by, contributed to, and condoned by, the institutions of the State and the Churches," but not mentioning it is based on the Church doctrine that regarded premarital sexual intercourse as a sin).

¹⁰⁹ See Enright & Ring, *supra* note 42, at 90.

¹¹⁰ See Susan D. Rose, *Christian Fundamentalism: Patriarchy, Sexuality and Human Rights*, in RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 9, 16-17 (Courtney W. Howland ed., 2001) (conflict between proposals for religiously-influenced sex education and obligations of the U.S. under the International Covenant on Civil and Political Rights which prohibits discrimination against women and girls); Frances Kissling, *Roman Catholic Fundamentalism: What's Sex (and Power) Got to Do with It?*, in RELIGIOUS FUNDAMENTALISMS AND THE HUMAN RIGHTS OF WOMEN 193, 193-201 (Courtney W. Howland ed., 2001).

¹¹¹ See generally G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); CONSTITUTION OF IRELAND 1937 (containing many of the same protections for human rights); *International Human Rights Law: Operation and Impact*, SPOTLIGHT (Oireachtas Libr. & Rsch. Serv., Ir.), June 9, 2016 (providing an overview of Ireland's human rights commitments as of 2016). See O'Rourke, *supra* note 15, at 70-73, 82-84 (analyzing human rights violations related to the residential schools).

¹¹² Garrett, *supra* note 6, at 185-86. See also Karen Andersen, *Irish Secularization and Religious Identities: Evidence of an Emerging New Catholic Habitus*, 57(1) SOC. COMPASS 15, 17 (2010) (claiming one of the reasons the Catholic Church became so powerful was that while the government has largely funded the Catholic schools, they are, especially at the

The religious beliefs and the practices of Church entities in support of those religious beliefs stand in sharp contrast to the state's human rights obligations.¹¹³ A democratic state may not escape its own human rights obligations by funding services through religious entities that do not act in accord with the human rights of its people.

The Irish government's human rights obligations, since at least 1964, include providing social and economic assistance to mothers and children, protection from employment discrimination and paid leave for those bearing children, and providing this assistance and these protections free from discrimination, including on the basis of marital status.¹¹⁴ Yet, as evidenced by the Final Report of the MBH Commission, the Irish government has refused to clearly acknowledge that its practices constituted governmental discrimination in violation of the human rights of the women and girls and their children.¹¹⁵ It is not enough to merely ascribe government actions to the social ethos of an earlier time. The government must acknowledge fully its

primary level, almost exclusively run by religious bodies); LOUISE FULLER, *IRISH CATHOLICISM SINCE 1950: THE UNDOING OF A CULTURE* 67-78, 149-62, 258-61 (2002) (Catholic Church had significant influence and control in areas of education, health and social welfare through much of the twentieth century, and although that control diminished in later years of the century, it remains involved in both shaping of policy and provision of services); TOM INGLIS, *MORAL MONOPOLY: THE CATHOLIC CHURCH IN MODERN IRISH SOCIETY* 121-29 (1987) (Church gained significant control and influence in education, health, and social welfare services during the nineteenth century).

¹¹³ See Smith & Duff, *supra* note 39, at 115-17; Gallen, *supra* note 44, at 159.

¹¹⁴ For example, Ireland ratified the European Social Charter on July 10, 1964, which stated that "[m]others and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection." European Social Charter pt. I, ¶ 17, Oct. 18, 1961, 529 U.N.T.S. 89. It included the right to paid leave and protection from dismissal for women due to maternity, a right to social and medical help in a manner that does not diminish their political or social rights, the right of the family to social, legal and economic protections and the right of mothers and children to social and economic protection. *Id.* at arts. 8(1)-(2), 13(1)-(2), 16, 17. Ireland was criticized by the European Committee of Social Rights for "serious gaps and inadequacies" towards "illegitimate" children, protection of unmarried mothers, protection of mothers before and after confinement, and arrangements for the protection of homeless children. It recommended that Ireland take steps to guarantee "adequate social and economic protection for all mothers and children." Eur. Comm. of Soc. Rts., Conclusion II – Ir. – Art. 17, II/def/IRL/17//EN (1971). For a discussion of the range of human rights related to the mother-child relationship, see Theresa Glennon et al., *Shelter from the Storm: Human Rights Protections for Single-Mother Families in the Time of COVID-19*, 27 WM. & MARY J. RACE, GENDER & SOC. JUSTICE 635, 690-702 (discussing some of the human rights instruments that require governments to ensure the rights of mothers and their children and to provide support and protection for the mother-child relationship, regardless of marital status).

¹¹⁵ See FINAL REPORT, MBH COMMISSION, *supra* note 13, at ch. 36, at 33-35; O'Donnell, *supra* note 42, at 286-87; Ó Fátharta, *supra* note 18, at 118-19; Gallen, *supra* note 44, at 165; Pine, Leavy & Keane, *supra* note 90 at 277.

wrongful conduct.

A secular democratic government cannot tell the Catholic Church or its adherents what to believe; neither may it adopt views and support practices that violate its citizens' human rights. It should not sidle away from openly acknowledging that it violated the human rights of women and girls by forcing them to hide their single pregnancies, give up their children, and to risk incarceration in the Magdalene Laundries if they were viewed as potential or repeat "offenders."¹¹⁶ The state, which adopted Church theology as its own, and funded and supported these institutions, must bear responsibility for the climate of shame it created and has failed to undo.¹¹⁷ Any process that elides this basic responsibility fails to serve the pillars and ethical obligations of transitional justice.

This is not simply an historical issue for Ireland, or solely an issue of redress. The project of separating the Irish government from the Church is incomplete and presents current challenges in areas such as education and medical care.¹¹⁸ The government has established the Irish Human Rights and Equality Commission to educate its public and government officials about its human rights obligations to provide its services through means that adhere to those principles and this work is essential to continuing its transformation.¹¹⁹ It must also conduct any government investigations, commissions, or redress schemes in accord with its current human rights obligations.¹²⁰ Thus, the government must openly acknowledge its past failings with regard to the human rights of women and children and take concrete actions to prevent recurrence of such abuses. Ireland is not alone, however, in needing to take these steps to protect its current and future residents.

¹¹⁶ See, e.g., International Covenant on Civil and Political Rights art. 18(1), Dec. 16, 1966, 999 U.N.T.S. 171.

¹¹⁷ Enright & Ring, *supra* note 42, at 88-89, 93. Ironically, it has failed to fully separate itself from this process of shaming and hides behind legalisms while professing to be ashamed of its past. *Id.* at 100.

¹¹⁸ For example, 90% of primary schools and 50.5% of post-primary schools are "Catholic ethos" schools. DEP'T OF EDUC., GOV'T OF IR., EDUCATION INDICATORS FOR IRELAND 14 (2020), <https://www.gov.ie/en/collection/key-statistics/>. See also David Young, *Protesters Call for State Ownership of New Maternity Hospital*, IRISH EXAMINER (May 14, 2022), <https://www.irishexaminer.com/news/arid-40872698.html> (protesters concerned that unless hospital site is owned by the government, religious connections of site of maternity hospital would lead to Catholic influence in the provision of medical services).

¹¹⁹ Irish Human Rights and Equality Commission Act 2014 pt. II, ¶ 10 (Act No. 25/2014) (Ir.), <https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print#sec10>.

¹²⁰ IRISH HUM. RTS. & EQUAL. COMM'N, IRELAND AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS SUBMISSION TO THE HUMAN RIGHTS COMMITTEE ON IRELAND'S 5TH PERIODIC REPORT 14, 16 (June 2022), <https://www.ihrec.ie/documents/ireland-and-the-international-covenant-on-civil-and-political-rights/>.

V. TURNING INWARD: MISTREATMENT OF SINGLE WOMEN AND CHILDREN IN THE U.S.

Why should an audience in the United States learn about the “historic abuses” in Ireland and critiques of the mechanisms established to address them? Only a few established democracies have attempted to formally respond to historical abuses in residential schooling, adoption, and treatment of single mothers and their children.¹²¹ Apart from a recently-initiated investigation into the egregious removal of Native American children from their homes to residential schools to destroy their cultural identity, there have been few official efforts in the U.S. to investigate its own history of institutional abuse.¹²² In the U.S., there is a critical need for investigations, analyses, public exposure, and governmental efforts to redress a range of institutional abuses of women and children.

In the twentieth century, U.S. states incarcerated sexually transgressive women in Magdalene Laundries, prisons and institutions for “Feebleminded

¹²¹ See TRUTH & RECONCILIATION COMM’N OF CAN., *HONOURING THE TRUTH, RECONCILING FOR THE FUTURE: SUMMARY OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF CANADA v (Indigenous Rsch. Support Initiative ed., 2015)*.

¹²² See BRYAN NEWLAND, *FEDERAL INDIAN BOARDING SCHOOL INITIATIVE INVESTIGATIVE REPORT 3-4* (2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf. This initial report is described as a first step in the investigative process, which is planned to continue, along with a planned tour to meet with victim-survivors to enable them “to share their stories, help connect communities with trauma-informed support, and facilitate collection of a permanent oral history.” Press Release, U.S. Dep’t of the Interior, Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative (May 11, 2022), <https://www.doi.gov/pressreleases/departement-interior-releases-investigative-report-outlines-next-steps-federal-indian>. The Press Release also states that the investigation will continue, and that the government will work to repair the bonds that were broken by its practices, support survivors and ensure the federal government keeps its commitments to affected communities. *Id.* See also Mary Annette Pember, *Canada, US Differ on Boarding Schools*, INDIAN CNTY. TODAY (July 18, 2021), <https://indiancountrytoday.com/news/canada-u-s-differ-on-boarding-school-policies>. Brianne McGonigle Leyh, *Unable to See the Forest for the Trees: Transitional Justice and the United States of America*, in TRANSITIONAL JUSTICE IN APARADIGMATIC CONTEXTS 86-87 (Tine Destrooper et al. eds., 2023) (advocating for the federal government to take the lead in developing a “coherent and comprehensive plan for action” for the use of transitional justice processes to address systemic wrongs and achieve social justice). Pennsylvania’s use of an investigating grand jury to examine the sexual abuse of children by members of the Catholic Church and the Church’s cover up of this abuse is another example, although one with very significant limitations as a tool of transitional justice as the grand jury’s remit extended only to bringing a few charges and writing a report concerning its finding and its process was not designed in conjunction with victim-survivors. PA. DIOCESE VICTIMS REP., 40TH STATEWIDE INVESTIGATION GRAND JURY REPORT 1, 2 (Redacted) (Aug. 14, 2018), <https://www.attorneygeneral.gov/report/>.

Women of Childbearing Age.”¹²³ States also involuntarily sterilized women and men they found unworthy of childbearing.¹²⁴ Unmarried pregnant girls and women were shamed and sent to secluded homes to await delivery of their children.¹²⁵ They were pressured to give up their children for adoption and treated in a discriminatory manner that prevented them from raising their own children.¹²⁶ Many children sent to state and private institutions were subjected to abuse and neglect.¹²⁷ While women and children of all races and ethnicities experienced human rights violations, the nature and severity of these violations varied by race, ethnicity and religion. The U.S. government and individual states have much work to do to investigate and assume accountability for these widespread human rights violations.¹²⁸ This process

¹²³ Michelle Jones & Lori Record, *Magdalene Laundries: The First Prison for Women in the United States*, 17 J. IND. ACAD. SOC. SCI. 166, 166 (2014); Ann Leary, *THE FOUNDLING*, at vii-viii (2022) (describing Laurelton State Village for Feeble-Minded Women of Childbearing Age as a “eugenics asylum,” whose “primary mission was to segregate girls and women who were “mentally or morally defective” so that they would not produce future “defectives.”); ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* 25-26 (2017) (move starting in the 1920s to institutionalize “feeble-minded” women was focused on preventing them from reproducing).

¹²⁴ See, e.g., Robyn Schickler et al., *The History of Female Surgical Sterilization: A Social and Ethics Perspective*, 37 J. GYNECOLOGIC SURGERY 465, 466-67 (2021).

¹²⁵ Diane Bernard & Maria Bogen-Oskwarek, *The Maternity Homes Where “Mind Control” Was Used on Teen Moms to Give Up Their Babies*, WASH. POST (Nov. 19, 2018, 7:00 AM), <https://www.washingtonpost.com/history/2018/11/19/maternity-homes-where-mind-control-was-used-teen-moms-give-up-their-babies/>.

¹²⁶ COHEN, *supra* note 123, at 69-71, 142-43, 318-20; GABRIELLE GLASER, *AMERICAN BABY: A MOTHER, A CHILD, AND THE SHADOW HISTORY OF ADOPTION* (2021); ANN FESSLER, *THE GIRLS WHO WENT AWAY: THE HIDDEN HISTORY OF WOMEN WHO SURRENDERED CHILDREN FOR ADOPTION IN THE DECADES BEFORE ROE V. WADE* (2007).

¹²⁷ See, e.g., Lois A. Weithorn, *Mental Hospitalization of Troublesome Youth: An Analysis of Skyrocketing Admission Rates*, 40 STAN. L. REV. 773, 796-97 (1988). The Institute on Disabilities at Temple University, in Philadelphia, Pennsylvania, recently opened an exhibit that, for the first time, honored the lives of those confined at Pennhurst State School and Hospital prior to its forced closure in 1987. Mike Newall, *Uncovering the Forgotten Lives Lost at Pennhurst State School and Hospital*, PHILA. INQUIRER (Apr. 16, 2023, 5:00 AM), <https://www.inquirer.com/news/pennhurst-state-school-hospital-patient-stories-temple-university-exhibit-20230414.html>. See Laura McAttackney, *Materials and Memory: Archaeology and Heritage as Tools of Transitional Justice at a Former Magdalene Laundry*, 55 ÉIRE-IR. 223, 237 (Irish-American Cultural Inst. ed., 2020) (cultural heritage as a tool of transitional justice). More such research and exposure is needed.

¹²⁸ See, e.g., Katie Wright & Alasdair Henry, *Historical Institutional Child Abuse: Activist Mobilisation and Public Inquiries*, 13 SOCIO. COMPASS 1, 4 (2019), <https://compass-onlinelibrary-wiley-com.libproxy.temple.edu/doi/pdfdirect/10.1111/soc4.12754> (in contrast to twenty other countries in the global north, little attention to historical abuse of children in residential “care” settings in the United States); Douglas E. Abrams, *Lessons From Juvenile Justice History in the United States*, 2004 J. INST. JUST. & INT’L STUD. 7, 24 (2004).

would provide a chance to reassess and learn about the human rights violations and their long-lasting effects. It would provide some opening for those most affected to be acknowledged. And it could motivate those in power to grapple with past abuses and what steps are needed to repair the harm and prevent recurrence in the future.

As proponents of transitional justice emphasize, a key aspect of transitional justice is the guarantee of non-repetition.¹²⁹ The purposeful separation of children and parents at the U.S. border that came to light in 2018¹³⁰ as well as new proposals to once again detain entire families,¹³¹ recent reports of involuntary sterilizations of immigrant women in detention¹³² abuse in juvenile justice facilities,¹³³ and in a privatized and under regulated “troubled teen” residential program industry,¹³⁴ among other recent practices, make it clear that our societal ignorance of the harmful historic and current practices that violate individuals’ human rights and rupture their family relationships has led the U.S. to denigrate these important human rights. This project is especially urgent as the overruling of *Roe v. Wade* in *Dobbs v. Jackson Women’s Health* leaves millions of U.S. women

¹²⁹ Rubio Marín, *supra* note 2, at 139.

¹³⁰ MAJORITY STAFF OF H.R. COMM. ON THE JUDICIARY, 116TH CONG., THE TRUMP ADMINISTRATION’S FAMILY SEPARATION POLICY: TRAUMA, DESTRUCTION, AND CHAOS 8 (2020) (hereinafter Report, Family Separation). The report found that even after a pilot program of family separation revealed that separated children would be lost to their families forever, the government implemented the program anyway. *Id.* This report has been removed from the Judiciary Committee’s website, an apparent effort to hide our history of family separation. The House Judiciary Committee webpage now states, “Page not found,” as you can see here: https://judiciary.house.gov/uploadedfiles/the_trump_administration_family_separation_policy_trauma_destruction_and_chaos.pdf?utm_campaign=4526-519.

¹³¹ Eileen Sullivan & Zolan Kanno-Youngs, *U.S. Is Said to Consider Reinstating Detention of Migrant Families*, N.Y. TIMES (March 6, 2023), <https://www.nytimes.com/2023/03/06/us/politics/biden-immigration-family-detention.html>.

¹³² Sabrina Davis, *Unrepeatable Harms: Forced Sterilization at ICE Detention Centers*, 25 HUM. RTS. BRIEF 153, 153-54 (2022).

¹³³ See, e.g., Lisa Armstrong, *A Mother Watches Helplessly as Her Teenage Boy Deteriorates in a Texas Youth Prison*, TEX. TRIB. (Aug. 3, 2022), <https://www.texastribune.org/2022/08/03/texas-juvenile-prison-mother-son/>; PA. ATT’Y GEN., GRAND JURY REPORT ON THE DELAWARE COUNTY JUVENILE DETENTION CENTER AT LIMA (“DCJDC”) (2022), <https://www.attorneygeneral.gov/wp-content/uploads/2022/12/2022-12-13-DCJDC-Final-Report.pdf>; Maddie Hanna, *Former Glen Mills Students Reach \$3 Million Settlement with Center County Intermediate Unit in Abuse Lawsuit*, PHIL. INQUIRER (Jan. 19, 2023), <https://www.attorneygeneral.gov/wp-content/uploads/2022/12/2022-12-13-DCJDC-Final-Report.pdf> (settlement reached “following decades of violence against boys sent to the school.”).

¹³⁴ Heather Mooney & Paul Leighton, *Troubled Affluent Youth’s Experiences in a Therapeutic Boarding School: The Elite Arm of the Youth Control Complex and Its Implications for Youth Justice*, 27 CRITICAL CRIMINOLOGY 611 (2019).

deprived of an important tool for controlling their reproductive lives and heightens their risk of facing shaming for their pregnancies and perhaps even the recurrence of the deprivations and abuses of the twentieth century.¹³⁵

So, too, the U.S. must examine whether the flurry of states laws that undermine individual liberty and equality, especially for those who are pregnant or transgender, violate constitutional protections regarding freedom of religion.¹³⁶ Advocates have filed lawsuits against bans or extreme limitations on abortion, arguing that the religious motivation of anti-abortion laws violates the Free Establishment clause of the First Amendment and that these laws restrict the Free Exercise rights of those burdened by these laws.¹³⁷ Scholars, too, have found these arguments to be valid.¹³⁸ Anti-trans legislators have been shown to be coordinating with conservative Christian organizations in developing and passing anti-trans legislation, such as restrictions on the participation of trans girls in “girls” sports,¹³⁹ lending credence to arguments that anti-trans legislation is intended to enshrine an evangelical Christian belief in the gender binary.¹⁴⁰ Ironically, these anti-trans efforts are sometimes bizarrely described as necessary to prevent trans people from imposing their “religious dogma” regarding transition on others

¹³⁵ *Dobbs v. Jackson Women’s Health*, No. 19-1392, slip op. at 6 (U.S. June 24, 2022); Marge Berer, *Challenging the US Supreme Court’s Majority Ruling on Roe v. Wade at the International Human Rights Level*, 25 HEALTH & HUM. RTS. J. 195, 195 (2023). Whitney Smith et al., *Social Norms and Stigma Regarding Unintended Pregnancy and Pregnancy Decisions: A Qualitative Study of Young Women in Alabama*, 48 PERSPECT. SEX REPROD. HEALTH 73, 78 (2016).

¹³⁶ Richard Schragger & Micah Schwartzman, *Religious Freedom and Abortion*, 108 IOWA L. REV. 2299, 2304 (2023).

¹³⁷ *Id.* at 2303.

¹³⁸ *Id.* at 2302. See also Olivia Roat, *Free-Exercise Arguments for the Right to Abortion: Reimagining the Relationship Between Religion and Reproductive Rights*, 29 UCLA WOMEN’S L.J. 1, 4 (2022).

¹³⁹ See, e.g., Zurie Pope, *Ohio Lawmakers and Religious Lobbyists Coordinate on Anti-Trans Legislation*, OHIO CAP. J. (June 20, 2023, 4:55 a.m.), <https://ohiocapitaljournal.com/2023/06/20/ohio-lawmakers-and-religious-lobbyists-coordinate-on-anti-trans-legislation/>; Anya Zoledziowski, “Under His Wings”: Leaked Emails Reveal an Anti-Trans “Holy War,” VICE (Mar. 21, 2023), <https://www.vice.com/en/article/7kxpsy/leaked-emails-reveal-an-anti-trans-holy-war>.

¹⁴⁰ Jules Gill-Peterson, *The Anti-Trans Lobby’s Real Agenda*, JEWISH CURRENTS (Apr. 27, 2021), <https://jewishcurrents.org/the-anti-trans-lobbys-real-agenda>. See generally, Kathleen Ritter, *We are Not Struck with Blindness: the Establishment Clause and Religiously Motivated State Preemption of Municipal Non-Discrimination Law*, 39 COL. J. GENDER & L. 205 (2020). Religion “appears to play an important role in predicting negative attitudes towards transgender individuals.” Marianne Campbell et al., *A Systematic Review of the Relationship Between Religion and Attitudes toward Transgender and Gender-Variant People*, 20 INT’L J. TRANSGENDERISM 21, 21 (2019). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6830999/>.

in violation of the Establishment Clause.¹⁴¹

Balancing freedom *of* religion and freedom *from* religion is an ongoing issue all democratic countries committed to human rights must continually address. Transitional justice processes must include acknowledgment of historic and current concerns with the undue role of religion in government practices. The U.S. federal and state governments must ensure that all residents have access to government-funded services that do not violate their human rights because of the religious belief of some.

VI. CONCLUSION

Transitional justice principles and mechanisms, at their best, incorporate a central focus on human dignity, human rights, full exposure of the truth of past violations of those rights, and needed concrete actions to prevent recurrence. This volume demonstrates the role that civil society can play in transitional justice as well. It does so not only by providing accountability through its critiques of the government's official processes, but also by creating a venue for victim-survivors' perspectives and others using multi-disciplinary ways of knowing and communicating to make public what was officially submerged. *Redress* and its contributors provide many lessons for Ireland and other countries, including the U.S., to look anew at their past and current practices and to learn from prior efforts at transitional justice.

¹⁴¹ Gill-Peterson, *supra* note 140.