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**Ireland: Rape and Incest Not Grounds for Abortion**  
**by**  
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**Preface:** A thirty year struggle to achieve reproductive choice for women in Ireland has not attained its goals. Abortion is banned on all grounds except where there is a risk of suicide of the mother. Ireland, along with Poland and Malta, remain the exceptions in the European Union of 27 Member States which stretch from Portugal on the West to Bulgaria and Romania on the East. Notwithstanding efforts by the European Parliament's Women's Rights Committee to raise the profile of the absence of reproductive choices for some women in Europe, their pleas have fallen on stone. In Ireland, laws prohibiting reproductive choice are being gradually corroded by litigation. This is gradually bringing Ireland, Poland and Malta into a common judicial space in Europe, where the rights of women in the economic sphere are already well protected.

**Ireland and Abortion Migration in Europe:** The 27 countries of the European Union present clear evidence of abortion migration. With the free movement of persons and labour between countries, women living in countries whose laws will not permit them a pregnancy termination or whose laws are overly restrictive for their circumstances, migrate temporarily to other European countries in search of a safe abortion. This cross border movement of women and girls generally suppresses the market for illegal and underground abortions but the certainty of this would require further comparative research. There are movements of women seeking abortion from France to Spain, from Poland to the Czech Republic, from Germany and Luxembourg to the Netherlands and from Ireland to the United Kingdom.

Irish women and girls have been travelling to the UK for abortion since the passage of the UK contemporary abortion law in 1967. In 2010 some 4,402 women and girls from Ireland had abortions in the United Kingdom and gave Irish addresses. Others may have given the UK addresses of relatives or friends. Alongside them, 1,101 women from Northern Ireland (UK)<sup>1</sup> also had abortions in the UK mainland. Northern Ireland, although part of the United Kingdom, is not a jurisdiction where the 1967 Act applies. Both the Free Presbyterian Church and the Catholic Church have vigorously opposed any application of the 1967 law to Northern Ireland. In total 5,503 women from Ireland, North and South, had abortions in the UK making up 84 percent of all the non-resident abortions in the UK that year (Department of Health and National Statistics, 2011, 35-36). The remaining 16 percent of non-resident

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<sup>1</sup> The term *Ireland* is used to refer to the Republic of Ireland. *Northern Ireland* is the descriptor of the six north eastern counties of Ireland within the United Kingdom. *Island of Ireland* is the term now used to describe both parts of Ireland.

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women come from more than 22 countries -- ranging from Italy, a European Union country, to the United Arab Emirates, a Gulf State. An additional 300 Irish women go to the Netherlands each year for an abortion.

**Trends in Abortion Laws in Europe:** The legal termination of pregnancy in Europe has three broad historical frameworks. In the first group are those countries which legalised abortion in the 1960s and 1970s, mainly as a consequence of a strong women's movement supported by progressive lawyers and health professionals. Countries in north and western Europe, such as France, Sweden, the United Kingdom (UK), Austria, Luxembourg, Denmark, Greece, Germany and Italy fall into this category. In the case of France, Mme Simone Weil, a teenage survivor of the Auschwitz-Birkenau camps had, as a Minister, legalised abortion in France in 1975. She went on to become the first elected President of the European Parliament. These countries were joined in the 1980s by the Catholic countries of Portugal and Spain where the struggle for reproductive choice had encountered considerable opposition and, in the case of Spain, continues to do so. Abortion in these countries is generally permitted for a wide range of situations up to 12 weeks gestation.

The second group of countries are those from Central and Eastern Europe and the Baltic region which joined the European Union after the fall of the Berlin Wall in 1989. In many cases, abortion had not only been legalised in the 1950s (Lithuania in 1955, Bulgaria in 1956, Czech Republic in 1950, Hungary in 1953 and 1956, Estonia in 1955, Romania in 1957, Poland in 1956, and Finland in 1950) but was a substitute for the absence of modern contraception. As a consequence, many women were obliged to have three or four abortions to control their fertility. Latvia in the Balkan region had an abortion law as early as 1936 which it revised in 1955. The opening up of the countries to western European ideas, mass media, individualism, markets and medicine prompted extensive debate about reproductive rights. This debate was joined by the re-emergence of Catholic or Christian Orthodox institutions which were functioning openly for the first time in decades. Religious based ideologies sometimes overlapped with a nationalism that had opposed Soviet rule. This has created a protracted battle between women's organisations and liberal forces on the one hand and political and religious bodies determined to hold on to a newly acquired patriarchal power. Table 2 reveals the many changes in laws opening up a pro-choice practice and then subsequently reverting to restricted choice.

In the case of Romania, abortion had been legalised in 1957 but was somewhat restricted in 1966. Under the tyrannical regime of Ceaucescu, abortion was severely restricted in the 1984-1985 period as his regime adopted a pro-natalist policy which obliged women to procreate without cease, monitored maternity hospitals, demanded explanations for lack of offspring, and filled up orphanages with children whom parents could not support. The restrictions on abortion were eased in 1989, but while abortion rates have fallen in many Eastern European countries, this is not the case for Romania (UN, 2011) where the practice of substituting abortion for contraception lingers on.

**Chart 1**  
**Status of Abortion in the 27 Member States of the European Union**

Country	Years of main legislation or Decrees	Time limits Weeks	Principal grounds for which extensions of time limits permitted
Austria	1974	12	medical reasons/child/foetal abnormality
Bulgaria	1956, 1968, 1973, 1990	12	medical reasons/foetal malformation
Belgium	1990	12	medical reasons/foetal disease
Cyprus	1974 and 1986	28	rape and for medical reasons/social status
Czech Republic	1950, 1957,1983, 1986, 1992	12	rape, for medical reasons/foetal abnormality/on request
Denmark	1973, 2003,2008	12	for medical reasons/rape/child pregnant
Estonia	1955,1992, 1993, 1998	11	for medical reasons/age of mother
Finland	1950, 1970, 1978, 1985	12	medical reasons, age of mother, family size, foetal abnormality
France	1975, 2001, 2011	14	medical reasons, risks to foetus/age of woman/girl.
Greece	1978, 1986	12	rape, medical reasons, foetal abnormality
Germany	1978, 1992, 1993, 1995	12	Social conditions, foetal malformation
Hungary	1953,1956, 1973, 1988, 1992, 1998, 2000, 2011	12	in cases of rape or ‘situation of crisis’ unclear since 2011 Constitutional change
Italy	1978	90 days	medical reasons/foetal malformation, rape.
Ireland	1861,1983,1992, 2003	illegal	except suicide risk of mother
Latvia	1936, 1955, 1982,1987, 2002, 2004	12	for medical reasons
Lithuania	1955, 1987, 1994	12	medical reasons/foetal malformation
Luxembourg	1978	12	for medical reasons of woman
Malta		illegal	except rape, foetal abnormality
Netherlands	1911,1981, 1984	13	state of distress of woman
Poland	1956,1993,1996, 1997, 2011	12	rape/incest/foetal abnormality
Portugal	1984, 2007	10	cases of impairment, rape, threats to woman’s life, physical, mental health
Romania	1957,1966,1984/5, 1989, 199	14	for medical reasons, risk to woman’s life
Slovenia	1977, 1991, 1992	10	for medical reasons
Sweden	1974, 1995, 2007	18	for strong reasons

Spain	1985, 1986, 1995	12	rape, foetal abnormality, woman's health
Slovak Republic	1986, 1991	12	Rape, foetal abnormality, genetic anomalies
UK	1967, 1990	24	for medical reasons, foetal abnormalities

Source:

CRR (2001) *Briefing Paper Trends in Reproductive Rights, - East and Central Europe*, New York.

International Planned Parenthood Federation (2006) *Death and Denial – Unsafe Abortion and Poverty*, London.

Young European Federalists (2011) *Abortion in Europe Today*, 10<sup>th</sup> March, 2011. [www.newfederalist.eu](http://www.newfederalist.eu)

Population Division of the Department for Economic and Social Affairs of the UN Secretariat, Boland, R. Katzive, L. (2008) *Developments in Laws on Induced Abortion 1998-2008*, International *Family Planning*

*Perspectives*, vol. 34 (3) Guttmacher Institute, pp 110-120.

IPPF (2009) *Abortion Legislation in Europe*, London.

Hungary is a controversial situation in terms of women's right to choose. Anti-abortion campaigners have unceasingly challenged abortion rights in the courts, including the constitutional court, succeeding in inserting a foetal rights clause into Article 2 of its constitution on 18 April 2011. The clause pledges to protect the life of the foetus from conception. In June 2011 the European Union had to intervene when Hungary used a European Union financial grant for an anti-abortion campaign. The grant of €390,000 (\$524,300) had been awarded for awareness raising on work-life balance under a European programme for gender equality called PROGRESS. The Hungarian government had used it for a national poster campaign with a large image of a foetus asking to be born. In response to questions from 14 European Parliament Members from different groups, European Commissioner Viviane Reding told Hungary to stop the campaign and remove all the posters, warning that European funds could only be used for their stated purpose (*Budapest Times*, 2011).

Poland's law legalised abortion in 1956. This policy was restricted by law in 1993 but liberalised in 1996 to allow abortion up to 12 weeks gestation, but this was reversed in 1997. A proposal to ban abortion completely in Poland was advanced in Parliament by the Polish government in 2011 (Martinet, M and Mauget, C. 2011). There was intensive lobbying inside and outside of Poland on the issue. The proposal failed by just five votes.

The third group of countries is made up of Ireland and Malta where abortion is illegal in fact or effect. It is to this group that political and social forces wish to add Hungary and Poland.

**Women's Response to the Abortion Ban in Ireland:** Thanks to UK government statistics we know a little about Irish women travelling to the UK. Very few are under the age of 20 years. The majority, 53 per cent, are women who are 20 to 29 years old and a handful are over 40 years old. More than eight out of ten women travelling from Ireland or Northern Ireland manage to obtain an abortion in England and Wales before 12 weeks gestation of their pregnancy. Among the latter, the largest group arrived before nine weeks gestation. This suggests that women, once they discover a crisis pregnancy, moved very fast to make appointments, obtain cash and book an airline ticket to get themselves off the island of Ireland and to the UK mainland. Most of the Irish women seeking an abortion in the UK are

unmarried (Clements and Ingham, 2007). However this fact tells us very little since the marriage rate in Ireland has been falling sharply over the last ten years and is frequently replaced by cohabitation.

The great majority of women from Ireland pay for an abortion using a private abortion provider such as the Marie Stopes Clinics. Not being resident in the UK, they are not eligible to use the National Health Service. The costs of a private abortion in the UK can be considerable; a telephone consultation and an abortion between 10 and 14 weeks gestation costs \$948 (€688).<sup>2</sup> To this sum must be added an airline ticket and airport taxes. A woman on this journey will need more than \$1,000. This places a woman who is a student or living on a low wage or without savings in a precarious situation of depleting her savings and/or borrowing.

Up to 2009, analysis of data on Irish women and abortion overseas was available from a state agency called the Crisis Pregnancy Agency. This agency was abolished and subsumed into the Department of Health in 2010 and is rebranded as The Crisis Pregnancy Programme. Its first Annual Report in 2011 provides two charts illustrating trends but with no accompanying source data on overseas abortions (HSE, 2011).

**Pregnancy Termination in Irish Public Policy:** It came as a great surprise to women activists on reproductive rights, and indeed to the general population, when a hitherto unknown ‘pro-life’ group appeared in 1981 arguing for a Referendum of the population on the subject of abortion. They sought to insert a foetal right to life clause in the Irish written Constitution. It was a surprise because no one was campaigning for abortion at the time. Indeed the main concern was the absence of a legal right to contraception for women and men and teenage girls and boys (Connolly and O’Toole, 2005, 68-77 ). This was not a situation where some gains had been made which were now being unwound -- as in the USA (Saletan, 2003).

In fact, abortion has been illegal since 1861 when Ireland had been part of the United Kingdom. Nothing much changed for the better for women when Ireland became independent in 1922 (Conroy, 2011, 109-118). Up to 1967, pregnant women with unwanted pregnancies in Ireland either had their baby in England and gave the child up for adoption, used the limited abortion provisions in England (Infant Life Preservation Act, 1929) or, if young and unmarried, were placed in a convent laundry in Ireland where they gave birth in secret and their child was taken away for adoption in Ireland or the USA (Milotte, 1997). Information or publication on abortion of any type was banned under censorship laws. English magazines with advertisements for abortion clinics in the UK were threatened with being banned from circulation in Ireland. In 1977, feminist Marie McMahon was prosecuted for having copies of the banned UK feminist magazine *Spare Rib* (Connolly, 2005, 44).

In 1967, all of this changed with The Abortion Act of 1967 that permitted the termination of pregnancies on a wide range of grounds in England, Scotland and Wales, but not in Northern Ireland. Under the border-free travel provisions between Ireland and England, there was nothing to stop Irish women from travelling to England for an abortion. And so they did -- in the thousands. The numbers of women giving Irish addresses when seeking an abortion in England is within the range of 4000-5000 a year.

The 1967 Abortion Act in England appeared to end backstreet abortion in Ireland (Jackson [Conroy] 1987). Illegal clinics had sprung up during the war years when travel to England was impossible and pregnant women got trapped on the island of Ireland and had to resort to whoever would assist them for a fee. Prosecutions took place and were regularly reported in the *Irish Times* newspaper of the period. The 1970s saw the rise of a women’s movement and feminist thinking with emphasis on the legalisation of contraception rather than abortion. With the proposal to have a referendum on the

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<sup>2</sup> Calculated from Marie Stops Clinic fees at 21 September 2011 and ringer cheap flights to Birmingham, UK.

right to life of the foetus in 1981, women's groups had to rapidly and clumsily adjust to the imposition of a debate which they were ill-equipped to address, lacking the concepts, language and the theological tone which was adopted by protagonists. The Referendum took the form of a ballot to agree or disagree with the eighth amendment to the Constitution, which '*acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right.*' It was never made clear who or what is the 'unborn' or at what moment an 'unborn' manifests itself or acquires personhood, viability or a right to exist.

Anti-amendment groups formed across the country -- campaigning, lobbying, leafleting. The Pro Amendment campaign of mainly lay Catholics was better planned, organised, had singular messages (abortion is murder), were ready to resort to unpleasant tactics such as bombarding Parliament members with hate mail, and employed visual images of a purported foetus in the womb. It would appear that their campaign had considerable US support and that their legal advisor, William Binchy, had studied abortion law in the USA (O'Reilly, 1988, 71). The debate on abortion was highly charged and divisive in the society. The Amendment was passed by a two thirds majority in 1983 and the eighth Amendment was duly inserted into the Constitution, but was never transposed into a law. There began a long series of legal challenges to the ban on abortion.

In 1988, a pregnancy counselling service was prosecuted for providing information on abortion in England. Following a conviction, the service appealed to the European Court of Human Rights in Strasbourg, France on the grounds of the right of individuals to information. In 1988 this case was won in Strasbourg, and women and teenagers could now legally seek information about abortion facilities in other countries.

The abortion issue reignited in 1992, when the chief legal officer of the State issued an injunction in the High Court against a child aged 14 years (Ms X) and her parents from leaving Ireland to seek an abortion in England (McDonagh, 1992). Ms X had been raped by a middle aged man known to her family. Ms X was placed in a hospital in Dublin and prevented from leaving the building. She was interned. There was political turmoil that there could be such a lack of compassion for the child who had been raped and her parents. There were street demonstrations, questions in the European Parliament and lobbying of TDs<sup>3</sup> in favour of Ms X. Finally the Supreme Court ruled that since she might take her own life, the injunction on her and her parents should be lifted, on the grounds of a risk of suicide if she did not obtain an abortion.

This was far from ending the Case of Ms X. While the Case of Ms X was before the Irish Courts, the Government was preparing to sign a European Treaty, the Treaty of Maastricht. Unbeknownst to the Parliament and the media, the Government had secretly persuaded fellow member states of the European Union to add a protocol or appendix to the Treaty of Maastricht which provided that no acts of the European Union could interfere with Ireland's eighth amendment to the Constitution, Article 40.3.3°. The other member states agreed and in February 1992, Ireland's abortion regime became part of a European Treaty. To this day, it is difficult to determine whether this unique Treaty clause was a desperate act of the pro-life campaign observing that the Ms X case was likely to undermine the absolutism of their earlier victory or whether it was their intention from the outset to use Ireland as a springboard to get an anti-abortion provision in an international treaty.

There have been four further Referendums on abortion in Ireland -- on the right to information (1992), on abortion and the right to travel outside of Ireland for abortion services (1992). In each instance, doubts about an absolute ban on abortion have been articulated in an ever widening vote to

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<sup>3</sup> TD is a Member of the Irish Parliament.

agree to an opening up of the law to permit abortion or information in even a restricted context. One could argue that in the absence of a law, the population has been ‘referended’ into passivity.

In the case of Miss C, a very young girl who had been raped by a relative, was pregnant and in the care of the State with foster parents, difficulties arose in bringing her abroad in the company of a social worker. Her parents were suddenly provided with legal advice by third parties and subsequently opposed her removal to the UK. She was eventually allowed to go abroad following further legal developments.

**Ireland and the European Court of Human Rights:** Three women known as A, B and C challenged the absence of an abortion law to protect them at the European Court of Human Rights in Strasbourg, France under the European Convention on Human Rights. A judgment was delivered in December 2010 (ECHR, 2010). The absence of abortion opportunities had presented each woman with a different dilemma. The Court ruled that the pregnant woman, Ms C who was suffering from a rare cancer and had been unable to obtain an abortion in Ireland, had incurred damage to her health which was a breach of her human rights.

All three women complained to the Court that *the impossibility for them to have an abortion in Ireland made the procedure unnecessarily expensive, complicated and traumatic. In particular, they claimed that the restriction on abortion stigmatised and humiliated them and risked damaging their health and, in the third applicant’s case, even her life* (ECHR, 2010a).

While observing that each Member State had the right to determine its own policies on matters such as abortion, in Ireland the Constitution allowed for situations where the right to life of the mother could be at risk. This was such a case. The Court noted that there was a ‘*lack of clear information from the Government to the Court as regards lawful abortions currently carried out in Ireland...there was no explanation why the existing constitutional right had not been implemented to date*’ (ECHR, 2010a). The Court considered that while the European Convention on Human Rights did not confer a right to abortion on anyone, it did provide for a person’s physical and psychological integrity, including within their private lives, and so Ms C’s rights had been breached.

With the rise in migration from outside the European Union into Ireland since the 1990s, a new dilemma presented itself for migrant and asylum seeking women and girls in Ireland. Some young unaccompanied and underage girls arrived in Ireland having experienced rape (Conroy, 2003, 18) or were raped following their arrival in Ireland (Conroy and Fitzgerald, 2004). In some instances, the State had apparently issued temporary travel Visas and pay social care staff to accompany the girls to have a termination abroad.<sup>4</sup> State support has also been provided to women asylum seekers in the form of Visas to enter the UK and to return to Ireland following a pregnancy termination (Choice Ireland, 2009). This is legally peculiar since the law in Ireland applies to all women in Ireland and not just Irish women.

Emergency contraception or the morning-after pill was regarded as an abortifacient under Section 58 of the Offences Against the Person Act, 1861 and its dispensing was a criminal offence until 2001. It remained a prescription-only product until 2011 which required a girl or woman to quickly make contact with a GP to obtain a prescription and then find a pharmacy to dispense the prescription. The state still retains the right to ban the circulation of publications which advocate the procurement of abortion. Several pamphlets from UK abortion campaigns remain banned in Ireland since 1983.

**Ireland before the United Nations:** The Government of Ireland was questioned about its human rights record at the United Nations Human Rights Council in September 2011. In 2008 the Human Rights Committee of the UN had: *‘reiterated its concern regarding the highly restrictive circumstances*

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<sup>4</sup> Information supplied to author by social workers

*under which women can lawfully have an abortion in Ireland...It recommended that Ireland bring its abortion laws into line with the Covenant and take measures to help women avoid unwanted pregnancies so that they do not have to resort to illegal or unsafe abortions... or to abortions abroad. CEDAW had expressed similar concerns in 2005' (UN, 2011a, 9).*

Preparing for Ireland's first periodic review before the UN, the Irish Human Rights Commission (2011) issued a submission to the review process which covered several topics such as the rights of minorities and prison conditions; it did not address the issue of reproductive rights. A wide coalition of NGOs prepared a stakeholder report which was coordinated by the Irish Council for Civil Liberties (ICCL, 2011, 9, Minihan, 2011, 10) and which called for the repeal of the 1861 Act which criminalises service provision in relation to abortion. The Government's own Report under the Periodic Review process pledged, yet again, to do nothing in effect, by establishing another '*expert group, drawing on appropriate medical and legal expertise, with a view to making recommendations to Government on how this matter can be properly addressed* (Department of Justice and Equality, 2011, 12).

A UN Working Group issued a Draft Report in relation to Ireland's human rights in October 2011 (UNb, 2011, 20). Among the 100 recommendations, there were six concerning Ireland's position on pregnancy termination. Norway, United Kingdom, Slovenia, Spain, Netherlands and Denmark each recommended changes to the law and to the provision of services to women seeking a pregnancy termination in Ireland. Netherlands proposed to Ireland its hope that '*the establishment of an expert group on abortion matters will lead to a coherent legal framework including the provision of adequate services.*' (UNb, 2011, 21). Within hours, the Government rejected the six proposals from fellow Member States in relation to abortion (Irish Times, 2011).

Between the 2005 concerns of the Committee for the Elimination of all Forms of Discrimination Against Women (CEDAW) and the 2011 Report on Human Rights, the Irish governments of various political complexions failed to act on suggestions made under the International Treaties to which they are a party.

**What A Law Might Contain:** The right to an abortion in Ireland on the grounds of a threat to the life of the mother does not extend to the threat to the health of the mother, even if such an eventuality in continuing the pregnancy were to wreck the mental or physical health of the woman/mother. The Irish Labour Part has intimated that they would be ready to advance a law expanding the grounds for an abortion to not only the life but also the health of a woman. Such a proposal is unlikely to meet the agreement of a majority currently in the Irish Parliament.

The most significant step forward in Ireland would be the enactment of a law permitting pregnancy termination within a fixed number of weeks of gestation, authorising such terminations to take place in Ireland and stipulating the grounds on which such a termination could take place and the procedures to access the relevant health facilities. At present, since the only ground permitted is threats to the life but not the health of the mother, such a law should extend the grounds permitted. Among such extensions would be on the grounds of the rape of a woman or child or a pregnancy consequent to incest. This would still place Ireland in the category of countries with highly restricted laws in relation to abortion, but would nevertheless be an incremental advance in the rights of women and girls as compared to the status quo.

The Rape Crisis Network Ireland studied the profile of victims of rape in 2009 and the consequences of the rape. They observed that 4.7 percent of 1,200 rape survivors became pregnant as a result of the violence perpetrated against them. Of the 56 women and girls who became pregnant, some eight disclosed that they had had a pregnancy termination (RCNI, 2010, 16). Given the fear of disclosure of what is a criminal act in Ireland, it is reasonable to suppose that 4.7 percent is a minimum rather than

a maximum number. With regard to incest, a very small number of cases are recorded or detected in police records. A total of 36 cases were recorded in police statistics between 2003 and 2009 (CSO, 2011,17).

**Conclusions:** Ireland is an outlier in terms of the ban on pregnancy termination in the European Union. Despite considerable litigation in the highest domestic courts and in the international arena, governments have refused to follow the general findings of Court hearings or the proposals of its fellow States parties with whom they are bound in international treaties. This poses questions as to whether the legal reform route will ever achieve a loosening of the constraints on women's and girls' control over the integrity of their bodies in Ireland.

While much is made of forced marriage and forced labour in the developing world, Ireland is a case of forced pregnancy in Western Europe. The concept of abortion migration illustrated in this paper needs further research and clarification. It would seem that a gain for women's rights in some countries opens up opportunities for women in neighbouring jurisdictions. However, these opportunities are not always shared by poor women, asylum seekers or migrant women who are trapped inside a country without a visa to exit. Reproductive rights for women in Ireland in the 21<sup>st</sup> century are still based on 19<sup>th</sup> century laws and opinions.

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