

THE RIGHTS OF THE CHILD IN THE CATHOLIC CHURCH

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ABSTRACT

*The Roman Catholic Church has over 300 million child members distributed across five continents. It is the biggest non-governmental organisation in the world, with services to children including over 200,000 schools as well as many welfare, shelter and health institutions. It is the only faith system in the world to have Permanent representative status at the United Nations. It was a strong supporter and early ratifier of the United Nations Convention on the Rights of the Child (UNCRC, 1989) and yet there is today only one serious academic study of the rights (and obligations) of children in the Catholic Church's canon law (cf. *Children's Rights and Obligations in the Code of Canon Law*, McAleese, Brill 2019). There has never been an internal church analysis of the impact of the UNCRC on canon law and the Catholic Church has been a serious laggard in terms of honouring its obligations under the Convention.*

Children's rights in canon law cannot be hermetically sealed from the wider global context. Most Catholic children— and millions of non-Catholic children in Catholic schools¹ and other services, —live in jurisdictions which are members of the United Nations and which, with the exception of the United States, are all State Parties to the UNCRC. In those jurisdictions, the Church, through its schools and other services, is accountable under both national laws and the UNCRC as a service provider. It cannot ignore the rights of the child set out in the UNCRC, whether or not it is a State Party. A former Irish Attorney General observed that the Catholic Church's canon law does not confer a right on the Church to ignore state laws or international law: “They can't simply set them aside or apply a different standard to them from that which is generally needed to protect children.”²

Yet that is exactly what the Holy See is trying to do. Today, thirty-four years after ratifying the Convention, the Holy See has failed to subject canon law and Church teachings to scrutiny in light of the children's rights set out in the UNCRC, as requested by the CRC and as expected by the Holy See's State Party obligations. It has defaulted on its reporting obligations to the Committee on the Rights of the

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¹ See Holy See, Consideration of reports submitted by States parties under article 44 of the Convention, ¶¶ 33-35, U.N. Doc CRC/C/VAT/2 (Oct. 12, 2012), states that there are almost 200,000 Catholic schools worldwide with over seventy 70 million pupils, many of whom are not Catholic.

² Extract from radio interview on The Pat Kenny Show, RTE Radio 1, 23 Oct. 2002. Cf. F. BLACK, “Canon law has the same status as golf club rules.”

Child, making only two of seven promised reports. It has not reported to the Committee in over a decade. It has not ratified the third optional protocol to the Convention, which allows children to make a complaint to the United Nations when their rights have been violated. It has an embarrassing history of presenting seriously inaccurate information to the CRC³ and backtracking on its State Party obligations. Some of that story is told here.

I.	INTRODUCTION	24
II.	THE ROLE OF THE HOLY SEE	27
III.	THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1989).....	28
IV.	THE HOLY SEE AND THE COMMITTEE ON THE RIGHTS OF THE CHILD	30
V.	THE CONTEMPORARY CONTEXT OF CHILDREN’S RIGHTS IN CANON.....	33
VI.	CONCLUSION	38

I.

INTRODUCTION

When I left public office in 2011 after fourteen years as President of Ireland, public trust in the Irish Catholic Church—a centuries-old dominant influencer of Irish society—had been ruptured by revelations about the vast extent of clerical physical and sexual abuse of children⁴ and a Church governance culture which protected predators while disregarding victims. The same story was replicated in many other jurisdictions. Formal state scrutiny of the Church through civil and criminal processes became an increasing phenomenon in Ireland and elsewhere. Reporting in 2009, the Irish government commissioned the *Murphy Report*⁵ on clerical child sexual abuse in the Dublin Archdiocese. The report remarked that canon law had been of no help to a single victim among the hundreds of abuse cases it investigated.⁶ That stark statement led me, a civil lawyer and member of the Latin Catholic Church since my Baptism as an infant, to a broader examination of the place of children in the canon law⁷ and magisterial teachings of the Catholic Church, the teaching of

³ Cf. Mary McAleese, M., *Children’s Rights and Obligations in Canon Law*, Brill (2019), 441-445.

⁴ The term “child” as used in the Latin Catholic Church Code of Canon Law (1983) (hereinafter CIC) refers to a person under the canonical age for the attainment of adulthood which is eighteen (cf. can. 97 §1). Under art. 1 of the United Nations Convention on the Rights of the Child (1989) (hereinafter UNCRC) a child is “every human being under eighteen years of age unless under the law applicable to the child, majority is attained earlier.”

⁵ Department of Equality and Law Reform, Report of the *Commission of Investigation into the Catholic Archdiocese of Dublin*, Dublin (2009) (hereinafter *Murphy Report*).

⁶ *Murphy Report*, 76.

⁷ John Paul II, *Codex Iuris Canonici*, 25 Jan. 1983, in AAS 75/2 (1983) 1-324. The Code was promulgated by JOHN PAUL II, ap. const. *Sacrae disciplinae leges*, 25 Jan. 1983, in AAS 75/2 (1983) vii-xiv. (hereinafter CIC). The CIC came into effect on 27 Nov. 1983. It abrogated the 1917 Pio-Benedictine *Codex Iuris Canonici* (CIC/1917). The official language of the CIC is Latin. Two English translations are available but since they vary significantly in how they translate certain words and phrases, I have used the *Code of Canon Law. Latin-English Edition. New English Translation* (1999), produced by the Canon Law Society of America and approved by the United States Conference of

canon law, and the interplay between international human rights law and canon law. I wanted to know how child members of the Latin Catholic Church, who number well over 300 million world-wide,⁸ were generally treated in the new 1983 Code of Canon Law and, in particular, how canon law regarding children's rights had been impacted by the Holy See's ratification in 1990 of the United Nations Convention on the Rights of the Child (1989).⁹

I became a student again, acquiring a Master's degree, Licentiate and Doctorate in canon law, but to my shock, there was nothing of substance about the rights of child members of the Church in any of the prescribed canon law courses, apart from mention of their rights to the sacraments. Moreover, there was no published scholarly writing on the UN Convention on the Rights of the Child (1989). This was surprising for a number of reasons, the first and most obvious being that the Holy See was one of the earliest State Parties to ratify the Convention (in 1990) and, as such, had undertaken to honor its treaty obligations by ensuring its own internal legal system was fully compatible with the rights of the child guaranteed by the Convention. It has never undertaken the comprehensive internal scrutiny of canon law necessary to do so. Secondly, the pervasiveness of child sexual and physical abuse scandals involving Church personnel was shining a less than benign spotlight on Church laws, practices, and procedures—among them its vast system of universally applicable canon law. The Church was slow to respond, and has largely been pushed to do so, though in piecemeal fashion, by external forces such as civil and criminal litigation and pressure from the faithful. Thirdly, and probably most worrying of all, the Latin Catholic Church is the world's largest Christian denomination¹⁰ and by far the largest non-governmental provider of education to children worldwide, as well as a major provider of humanitarian relief and development aid—much of it to children—in the developing world, precisely where children are arguably even more vulnerable than in the West.

Catholic Bishops (USCCB). For purposes of textual comparison, I have occasionally used the other English translation *The Code of Canon Law. In English translation (1983)* produced by the Canon Law Society of Great Britain and Ireland.

⁸ Holy See, Secretariat of State, Central Office for Statistics of the Church, 2023 *Annuario Pontificio* (Pontifical Yearbook). The number of baptized Catholics in the world was about 1.376 billion at the end of 2021. *Id.* These numbers are not broken down by age, so an estimated figure of over three hundred million child members of the Catholic Church is based on global patterns of population age distribution from the UN Dept. of Economic and Social Affairs, Population Division, *World Population Prospects. The 2017 revision*, 1; Population Reference Bureau, 2012 world population data sheet, 10. Children under fifteen make up twenty-six percent of the world's population. Cf. UN Dept. of Economic and Social Affairs, Population Division, *World Population Prospects. The 2017 revision*, 10.

⁹ The UNCRC was adopted by the United Nations General Assembly on 20 Nov. 1989 and came into effect on 2 Sept. 1990. The Holy See signed and ratified the Convention on the 20th of April 1990. It was the fourth State Party to do so.

¹⁰ According to the Pew Research Center, *The future of world religions. Population growth projections 2010-2050*, 1. The biggest Christian Church is the Catholic Church. Almost eighteen percent of the world's total population is Catholic. UN Dept. of Economic and Social Affairs/Population Division, *World Population Prospects. The 2017 revision*, 1. They are distributed unevenly across five continents: 63.7 percent of the populations of the Americas, 39.9 percent of Europe, 26.4 percent of Oceania and 3.2 percent of Asia are Catholic. Holy See, Secretariat of State, Central Office for Statistics of the Church, *Annuario Statisticum Ecclesiae 2015*, 17-18.

The Latin Catholic Church has therefore a notional Church membership¹¹ of one in six of the world's population with a presence in almost every country in the world and on five continents. Its extensive diplomatic relations and work at parish and diocesan level provide it with deep wells of resources, knowledge, and experience. Its front-line, on-the-ground experience is vast. Were it not by its own free choice a State Party to the UNCRC, the Convention against Torture (hereinafter CAT) (1985)¹² and the Convention on the Elimination of Racial Discrimination (hereinafter CERD) (1965)¹³, the Holy See's actions and practices would not be subjected to any form of regular, formal international monitoring such as has evolved within the UN human rights treaty system in recent years. Yet while often an advocate for human rights in the external forum, there is little evidence that the Holy See has subjected its internal sphere—that is to say its teaching and canon law—to examination in the light of the Universal Declaration of Human Rights¹⁴ (hereinafter UDHR) or the UNCRC. I undertook a doctorate on children's rights in canon law and wrote the first book on the subject. Rather ominously, by the time of completion, the title had changed to “Children's Rights and Obligations in Canon Law.”¹⁵ The truth is that in canon law children have few rights and many obligations. Their fundamental inalienable human rights as set out in the UDHR and in the UNCRC are routinely disregarded; in fact, the current structure on which Magisterial authority over Church members rests depends on disregarding the human rights of Church members. In the case of children, this disregard is particularly egregious, for it contradicts the express obligations which the Holy See undertook when it ratified the UNCRC and undertook to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction.”¹⁶

The rights that are of interest for this article include the right not to be discriminated against on grounds of gender (art. 2); the intellectual human rights to freedom of thought, conscience and religion (art. 14) including the right to change religion (which is not specified in the UNCRC but is presumed);¹⁷ freedom of

¹¹ I use the word “notional” here since arriving at a definitive number of sentient practising adherents is confounded by the Latin Catholic Church's methodology for counting members which is reliant on (mandatory) infant Baptism numbers which account for eighty-four percent of its membership while converts/catechumens account for the remainder. There is no official Church mechanism for recording the numbers who leave the Church.

¹² United Nations General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Resolution 39/46, adopted 10 December 1984, U.N. Treaty Series (1465) 85ff. The convention was ratified by the Holy See in 2002 in the name only of the Vatican City State.

¹³ United Nations General Assembly, *Convention on the Elimination of all Forms of Racial Discrimination*, adopted 21 December 1965, U.N. Treaty Series (660) 195-318. The Convention entered into force 4 Jan. 1969. It was ratified by the Holy See on behalf of the Holy See and the Vatican City State, 01 May 1969.

¹⁴ United Nations General Assembly, *Universal Declaration of Human Rights* (=UDHR), Resolution 217A (III), adopted 10 December 1948.

¹⁵ Mary McAleese, *Children's Rights and Obligations in Canon Law* (2019).

¹⁶ UNCRC Art. 2.1.

¹⁷ Cf. UNGA, *Universal Declaration of human rights* (=UDHR), art. 18: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief; The UDHR is non-binding. Contra. UNITED NATIONS HUMAN RIGHTS COMMITTEE, *General*

expression including the right to be heard in all matters affecting the child (arts. 12 and 13), freedom from physical violence (art. 19), the right to know one's rights, and to the education that facilitates the exercise of one's rights (art. 17). In canon law and other areas of Church teaching, all of these children's rights are ignored, undermined, or contradicted.

II.

THE ROLE OF THE HOLY SEE

The Holy See is a centuries-old, non-territorial spiritual entity, which is the center of government of the world-wide Catholic Church. It describes itself as a "sovereign subject of international law having an original, non-derived legal personality independent of any territorial authority or jurisdiction."¹⁸ The term "Holy See" can refer to the Pope alone or to the Pope and the institutes of the Roman Curia (cf. can. 361). The Pope and the Curia are headquartered¹⁹ within the Vatican City State, founded in 1929 by the Lateran Treaty²⁰ agreed between the Kingdom of Italy and the Holy See. The Vatican City State is governed by the Holy See as a small part of its much larger remit. It was constructed as an independent territorial non-hereditary monarchy and is properly described as a country.²¹ The Pope is

Comment no.22. "The freedom to have or adopt a religion necessarily entails the right to replace one's current religion or belief with another or to adopt atheistic views." Some jurisdictions (for example Germany, Switzerland, and Austria) have laws that prohibit parents from changing the religion of their adolescent children without the child's consent or opportunity to be heard and that acknowledge the right of adolescent children to change or exit religion without parental consent. No such right to change or exit religion is acknowledged in canon law; in fact the opposite is the case, as canon law imposes penalties on those who leave the Catholic Church (can. 751).

¹⁸ Comm. on the Rights of the Child, Concluding Observations on the Second Periodic Report of the Holy See, U.N. Doc. CRC/C/VAT/CO/2 (2014), 4.

¹⁹ Cf. Created by the *Lateran Treaty of 1929* signed February 11, 1929, ratified June 7, 1929 between the Holy See and the Kingdom of Italy, its official title under the law of Vatican City State and in Holy See documentation is *Status Civitatis Vaticanae*. Under Italian law, it is known as *Stato della Città del Vaticano* and in its anglicised version the Holy See refers to it as *Vatican City State*.

²⁰ *The Lateran Treaty 1929* (sometimes referred to as the *Lateran Treaties*, or *Lateran Pact/s*, or *Lateran Accord/s*) included a *Treaty of Conciliation* which created the Vatican City State, a *Concordat* governing church/state relations between the Holy See and the Italian State and an annexed *Financial Convention* detailing the compensation payable to the Holy See for the loss of the Papal States. Under the terms of the Lateran Treaty (Treaty of Conciliation art. 1) the "Catholic Apostolic Roman" religion was reaffirmed as the State religion, a principle established in the *Italian Constitution of 1848* (art. 1). In 1947 the Lateran Treaty was incorporated into the Italian Constitution (art. 7). Art. 8 of the Constitution provided that all religious confessions were equally free before the law. The *Lateran Treaty of 1929* was amended and updated by an *Agreement between the Italian Republic and the Holy See* signed by the Italian Republic and the Holy See on 18 Feb. 1984 (ratified by the Italian Parliament on 25 March 1985). It came into force on 3 June 1985 and did not affect the sovereign status of the Vatican City State. A joint interpretative declaration attached to the agreement stated that the principle (set out in the Lateran Treaty) that the Catholic religion was the sole religion in the Italian State was no longer in force. (Cf. *Agreement between the Italian Republic and the Holy See of 18 Feb. 1984 (art. 1), Joint Interpretative Declaration*, 1.)

²¹ The Vatican City State (as distinct from the non-territorial Holy See) is not a member of the United Nations, but is a member of a number of international organizations by virtue of its territoriality, for example the Universal Postal Union, Interpol, International Telecommunications Union and the International Telecommunications and Satellite Union. Cf. United Nations Treaty Site.

absolute monarch of the Vatican City State,²² where he holds “full legislative, executive and judicial powers.”²³ The Holy See represents that state internationally²⁴ but “its nature as a sovereign State distinct from the Holy See is universally recognised under international law.”²⁵ The Vatican City State website describes the State as “an instrument of the independence of the Holy See and of the Catholic Church from any earthly power.”²⁶

Although the Holy See is a non-territorial spiritual entity, it has its own universally applicable body of canon law and body of doctrines and teachings authoritatively provided by the Magisterium of the Church (the Pope and the Bishops).

The Holy See “underlines that it acceded to the UNCRC, on its own behalf and that of Vatican City State,”²⁷ effectively setting up two sets of State Party obligations, one for the Holy See as a non-territorial spiritual entity and the other for the territorial Vatican City State. The Holy See is responsible to the UNCRC’s monitoring committee, the Committee on the Rights of the Child (CRC) for both State Party entities, and while they are related, they are “separate and distinct . . . and the international personality of the Holy See has never been confused with the territories over which it has exercised State sovereignty.”²⁸

III.

THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1989)

The UNCRC marked a watershed in children’s rights. It has been ratified by the Holy See and every member state of the United Nations except the United States. The normative paradigm until then had been paternalistic, welfare, and protectionist, with the child subject to parental control and parental decisions until adulthood.²⁹ The Convention shifted that paradigm perceptibly. It recognized an arc of time over which children move from the dependency of early years to growing and greater independence, acquiring autonomy along the way as agency shifts from parent to child, with the child’s capacities evolving as it grows through adolescence towards adulthood. The role of parents under the UNCRC is to provide “appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention” (art. 5).

The Holy See was well aware of this paradigm shift and of all the fundamental intellectual freedoms of the child set out in the Convention, for it was involved in drafting the Convention’s lengthy *travaux préparatoires*. The Holy See at first

²² Cf. Pontifical Commission for Vatican City State (=PCVCS), Vatican City State website, State Departments.

²³ PCVCS, Vatican City State website, State Departments.

²⁴ Cf. John Paul II, Fundamental Law of the Vatican City State of 26 Nov. 2000, art. 2.

²⁵ PCVCS, Vatican City State website, Vatican City today.

²⁶ PCVCS, Vatican City State website, Vatican City today.

²⁷ Holy See, *Reply to List of Issues raised by the CRC on the Initial Report on the UNCRC*, 2.

²⁸ Holy See, *Reply to List of Issues raised by the CRC on the Initial Report on the UNCRC*, 7.

²⁹ Some jurisdictions including canon law allow for “emancipation” before adulthood upon marriage, joining the military, or a religious order. Emancipation has the effect of conferring the agency on the child which would be conferred by reaching the age of majority (adulthood).

welcomed and enthusiastically promoted the Convention and was the fourth State Party to ratify it in 1990. It did so subject only to the terms of a Declaration and three reservations designed to protect its position on abortion, family planning, the primacy of parental rights regarding children's education (arts. 13 and 28), religion (art. 14), association with others (art. 15), privacy (art. 16), and recognition of the particular nature of the Vatican City State.³⁰

The Convention says the best interests of the child shall be a primary consideration (art. 3). Every State Party agrees to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention (art. 4). State Parties also undertake to make regular reports on the progress they have made on implementation of the Convention to the treaty monitoring body, the CRC (art. 44).

While the Convention respects the rights and duties of parents and clearly acknowledges the right of parents to raise their children in their faith, crucially it recalibrates the role of parents so that they cannot force their faith on a child. Additionally, the child must have access to education, which helps explain that he or she has autonomous, personal choice, and fundamental intellectual freedoms (arts. 13 and 17). The Catholic Church has never produced a document setting out the rights of its child members under the Convention or under canon law.

³⁰ On ratifying the UNCRC in 1990, the Holy See entered three reservations and an interpretative declaration which it says "were necessary in light of the fact that the CRC is 'a minimal basis for reaching an agreement, and therefore contains areas with which the parties are not completely satisfied.'" The three reservations, the last of which is specific to Vatican City State, read as follows:

- a) [The Holy See] interprets the phrase "Family planning education and services" in art. 24.2, to mean only those methods of family planning which it considers morally acceptable, that is, the natural methods of family planning.
- b) [The Holy See] interprets the articles of the Convention in a way which safeguards the primary and inalienable rights of parents, in particular insofar as these rights concern education (arts. 13 and 28), religion (art. 14), association with others (art. 15) and privacy (art. 16).
- c) [The Holy See declares] that the application of the Convention be compatible in practice with the particular nature of the Vatican City State and of the sources of its objective law (art. 1, Law of 7 June 1929, n. 11) and, in consideration of its limited extent, with its legislation in the matters of citizenship, access and residence.

The declaration states

The Holy See regards the present Convention as a proper and laudable instrument aimed at protecting the rights and interests of children, who are "that precious treasure given to each generation as a challenge to its wisdom and humanity" (Pope John Paul II, 26 April 1984). The Holy See recognizes that the Convention represents an enactment of principles previously adopted by the United Nations, and once effective as a ratified instrument, will safeguard the rights of the child before as well as after birth, as expressly affirmed in the Declaration of the Rights of the Child [Res. 136 (XIV)] and restated in the ninth preambular paragraph of the Convention. The Holy See remains confident that the ninth preambular paragraph will serve as the perspective through which the rest of the Convention will be interpreted, in conformity with art. 31 of the Vienna Convention on the Law of Treaties of 23 May 1969. By acceding to the Convention on the Rights of the Child, the Holy See intends to give renewed expression to its constant concern for the well-being of children and families. In consideration of its singular nature and position, the Holy See, in acceding to this Convention, does not intend to prescind in any way from its specific mission which is of a religious and moral character.

As external scrutiny revealed Church scandal after scandal, and as questions grew about human rights implications of magisterial teaching on women and homosexuality, the Holy See's goodwill towards the UNCRC evaporated. The CRC began to receive representations critical of the Church from individuals, civil society bodies, advocacy bodies, victims, and children who are entitled to be heard under the UNCRC.

IV.

THE HOLY SEE AND THE COMMITTEE ON THE RIGHTS OF THE CHILD

Today the relationship between the Holy See and the Committee on the Rights of the Child is in crisis. The Church authorities have reverted to the traditional idea of the Church as a "perfect society" entitled to operate without outside scrutiny or internal accountability. This growing hostility to external scrutiny is not a tenable position for an institution with such a broad and deep global reach into the lives of children in multiple jurisdictions which have State Party obligations to child citizens under the UNCRC (not to mention the Holy See's own State Party obligations).

That position is being challenged both externally and increasingly internally. This groundbreaking conference is firm evidence of a growing scholarly momentum forging essential bridges of communication and mutual understanding between theology, canon law, civil laws, and international human rights law. The absence to date of such cross-disciplinary dialogue has meant that children's rights often fell between the cracks.

Children's rights in canon law cannot be hermetically sealed from the wider global context. Most Catholic children—and millions of non-Catholic children in Catholic schools³¹ and other services—live in jurisdictions which are members of the United Nations and which, with the exception of the United States, are all State Parties to the UNCRC. In those jurisdictions, the Church, through its schools and other services, is accountable under both national laws and the UNCRC as a service provider. It cannot ignore the rights of the child set out in the UNCRC, whether or not it is a State Party. A former Irish Attorney General observed that the Catholic Church's canon law does not confer a right on the Church to ignore state laws or international law: "They can't simply set them aside or apply a different standard to them from that which is generally needed to protect children."³²

Yet that is exactly what the Holy See is trying to do. Today, thirty-four years after ratifying the Convention, the Holy See has failed to subject canon law and Church teachings to scrutiny in light of the children's rights set out in the UNCRC, as requested by the CRC and as expected by the Holy See's State Party obligations. It has defaulted on its reporting obligations to the Committee on the Rights of the Child, making only two of seven promised reports. It has not reported to the Committee in over a decade. It has not ratified the third optional protocol to the

³¹ See Holy See, Consideration of reports submitted by States parties under art. 44 of the Convention, ¶¶ 33-35, U.N. Doc CRC/C/VAT/2 (Oct. 12, 2012), states that there are almost 200,000 Catholic schools worldwide with over seventy million pupils, many of whom are not Catholic.

³² Extract from radio interview on The Pat Kenny Show, RTE Radio 1, 23 Oct. 2002. Cf. F. BLACK, "Canon law has the same status as golf club rules."

Convention, which allows children to make a complaint to the United Nations when their rights have been violated. It has an embarrassing history of presenting seriously inaccurate information to the CRC³³ and backtracking on its State Party obligations.

Almost a quarter of a century after ratifying the Convention on behalf of both the Vatican City State and Catholic Church, the Holy See suddenly informed the CRC that its obligation to implement the Convention was restricted to the Vatican City State and that discussion of reforms to canon law or Church teaching was outside the remit of the CRC.³⁴ The CRC was incredulous and insisted that the Holy See's obligations to implement the Convention extended to both the Vatican City State and the universal Catholic Church.³⁵ The sources of the CRC's incredulity are easy to find and reflect no credit on the Holy See, for the history of its engagement with the CRC clearly contradicts its current position.

For the previous two decades, the Holy See had summarily dismissed the idea that it was obliged to implement the Convention in the Vatican City State at all on the basis that no children resided there. The CRC took the Holy See's statements at face value. In fact, that information was incorrect and the Holy See eventually admitted that over thirty children resided there. We know from the case of the disappeared schoolgirl Emanuela Orlandi³⁶ in 1983 that the children of Vatican employees were living in Vatican City State from before the Holy See's ratification of the UNCRC.

In the two reporting cycles made by the Holy See to the CRC, which included written and in-person presentations, and in which treaty implementation in the Vatican City State was dismissed as irrelevant in a couple of sentences, the Holy See presented extensive commentary on how it claimed it was implementing the Convention within its universal canon law and Magisterial teachings. Not once in those documents did the Holy See deny that it had a State Party duty to implement the CRC as the center of governance of the Catholic Church worldwide and to implement it in its canon law and teachings. Quite the reverse, it freely raised, discussed, and defended controversial teachings and reported extensively on implementation measures, including in canon law which it claims to have taken. That was its position for almost twenty-five years until it peremptorily announced that implementation of the UNCRC needed a territory and the only territory it had was the Vatican City State. As a spiritual non-territorial entity, it asserts that its obligation under the UNCRC (outside of the Vatican City State) is limited to disseminating "principles recognized in the UNCRC to all people of goodwill and to various local Catholic churches and institutions, which operate in different States

³³ Cf. MARY MCALEESE, M., *Children's Rights and Obligations in Canon Law*, Brill (2019), 441-445.

³⁴ Cf. Holy See Reply to List of Issues raised by the CRC on the Second Periodic Report on the UNCRC, ¶ 8, 10 a-b, 20, CRC/C/VAT/Q/2/Add.1 (Jan. 9, 2014).

³⁵ See CRC, Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC, ¶ 8, CRC/C/VAT/CO/2 (Feb. 25, 2014).

³⁶ Emanuela Orlandi, aged fifteen, disappeared while returning from music school to her home in Vatican City State on June 22, 1983. In October 2022, Netflix released a four-part documentary entitled *Vatican Girl: The Disappearance of Emanuela Orlandi*. It explored different theories surrounding Orlandi's disappearance, with a focus on those involving the Vatican and organized crime. *Vatican Girl: The Disappearance of Emanuela Orlandi* (Netflix Oct. 20, 2022).

in compliance with national laws.”³⁷ In other words, it has no obligation to implement the UNCRC in its canon law or teachings.

The CRC for its part says that, as a State Party to the UNCRC, the Holy See—like every other State Party—has undertaken to implement the Convention in the interests of the children within the territory of the Vatican City State, over which it is the Government, in the interests of the many millions of children “worldwide” who come under its jurisdiction as the “supreme power of the Catholic Church.”³⁸ That internal jurisdiction involves the Church teaching and canon law which apply to members, including children throughout the world. According to the CRC, the Holy See’s State Party obligations extend to making the necessary changes within canon law and Church teaching to make them compatible with the principles set out in the Convention. In the view of the CRC this would not involve the Holy See in interference in the internal affairs of other States as it has claimed but rather in the updating of its own internal affairs.³⁹

There is now a stand-off between the CRC and the Holy See and a stand-still regarding Catholic Church recognition of children’s inalienable human rights as set out in the Convention. These rights were not created by the Convention. Like those in the UDHR, they are declared as an immutable part of the natural law. Believers call that the law of God and a gift of God to all God’s children. All human beings are entitled to these rights, though many governments and institutions, including the Catholic Church, may and do try to limit or deny them.

I want to look briefly at some of the rights violations in canon law and Church teaching which impact all Catholic children. Some violations are already well known. For example, the limits placed on females in the Church, both before and after the Second Vatican Council, have drawn a lot of contemporary attention (cf. cans. 129; 247§1; 207; 1031; and 1083). Females are excluded from governance, the diaconate, and priesthood, and thus all decision making in the Church.⁴⁰ The Holy See has never signed or ratified the 1979 UN Convention on the elimination of all forms of discrimination against women. Why?

The Magisterium insists on its unaccountable right to control Church members through canon law and Magisterial teachings, from their Baptism—and as a result of their Baptism—until their death. That right of control rests on premises and

³⁷ Holy See, Comments on the Concluding Observations of the CRC on the Second Periodic Report of the Holy See on the UNCRC, ¶ 3, (Sept. 26, 2014).

³⁸ CRC, *Concluding Observations on the Second Periodic Report of the Holy See**, ¶ 8, CRC/C/VAT/CO/2 (Feb. 24).

³⁹ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, 8.

⁴⁰ John Paul II, ap. lett, *Mulieris dignitatem*, 15 Aug. 1988, n. 24, in AAS 80 (1988) 1653-1729; ap. lett. *Ordinatio sacerdotalis*, 22 May 1994, in AAS 86 (1994) 545-548;CDF, decl. *Inter insigniores* Congregation for the Doctrine of the Faith, *RESPONSUM AD PROPOSITUM DUBIUM CONCERNING THE TEACHING CONTAINED IN “ORDINATIO SACERDOTALIS”* https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19951028_dubium-ordinatio-sac_en.html [<https://perma.cc/D5WC-HVSP>] (last visited Nov. 16, 2024). . Pope Francis has set up two study commissions to report on whether women could be admitted to the permanent diaconate. Neither report has been published but see Pope Francis rejection of female ordination to either diaconate or priesthood in a television interview on 60 Minutes available on <https://www.youtube.com/watch?v=OuELBU91EFA>.

presumptions which are fundamentally flawed and which in fact are another kind of abuse, especially of children. It is a form of abuse hidden in plain sight.

V.

THE CONTEMPORARY CONTEXT OF CHILDREN'S RIGHTS IN CANON

During the major revision of canon law which followed the Second Vatican Council and led to the promulgation of the new 1983 Code of Canon Law (CIC), there was no particular focus on children's rights as a subject of special interest or discussion. There was some limited updating, which was very modest and largely superficial, but the CIC 1983 Code showed scant regard for the inalienable God-given human rights, especially the intellectual rights set out in the UDHR and in the UNCRC which apply to all human beings including children. But during the 1980s, particularly after the 1979 International Year of the Child, the human rights debate in the secular international sphere widened, making children's rights a distinctive and more detailed subset of human and civil rights. What is surprising is that given that debate and the Holy See's deep involvement in it, despite having access to a veritable army of experts from all cognate fields both secular and spiritual at its disposal, the Holy See has never conducted a comprehensive internal review of the fundamental rights of its own child members post the UNCRC. Had it done so, problems would have quickly emerged within canon law and Magisterial teaching, problems so profound they go to the very basis of Magisterial authority and the notion of Church membership.

The problems begin with Baptism and they reveal a story the Magisterium does not want to face, for it has many of the elements of the children's story about the emperor who had no clothes. No one is or can be born Catholic. Church membership begins not at birth but at Baptism and by Baptism (cf. can. 96; 111 §1; 849). Canon law obliges Catholic parents to have their infants baptized within the first few weeks of their birth (cf. can. 867 §1).⁴¹ That is how some eighty-four percent of Catholics come to be members of the Catholic Church. Infant Baptism is the single most important mechanism for recruitment of Church members. It marks the start of a comprehensive pre-existing reception process which awaits the child and which has to be seen as part of the child's spiritual and cultural context when it comes to his or her rights and obligations as a Church member.

The newly baptized child enters an all-embracing Catholic milieu with two millennia of history, tradition, and teaching. It includes a clerical based exclusively male, compulsorily celibate hierarchical structure, completely absent female involvement in decision-making or magisterial rank, a deposit of faith and teachings controlled exclusively by an unaccountable Magisterium. It also involves a community of faith, a sacramental and liturgical life, a contemporary code of canon law, and a prescribed roadmap for individual and collective Christian life in the Catholic Church—a roadmap to salvation. There is a detailed infrastructure set out in canon law of things Catholic that form a cocoon held tightly together by its

⁴¹ Can. 867 §1. Can. 686 §1 of the CCEO is more nuanced. It provides that "the infant be baptized as soon as possible according to legitimate custom." Infants are to be baptized as soon as possible "according to legitimate custom."

hierarchical governance structure: the mandate of *communio*, which includes submission to the teaching of the Magisterium, reception of the sacraments, participation in the Church's life generally, family, schools, parish, diocese, avoidance of dissent, and the incurring of a canonical penalty on those who try to leave who are regarded as heretics, schismatics or apostates.⁴² That infrastructure is held together by a body which has a detailed plan for his or her future as a life member of the Catholic Church and for his or her salvation. The child's canonical rights and obligations were designed for that context. Magisterial intrusion into the child's inalienable human rights starts with Baptism and with the deliberate blurring of the line between the divine consequences of Baptism and the man-made consequences of Baptism. The former, all gratuitous, include the removal of original sin and the grace of inclusion in the body of Christ. The latter impose onerous obligations which include compulsory infant membership of the Church for life. It is quite simply a form of mandatory life-long conscription.

Canon law insists lifelong Church membership is an automatic consequence of Baptism. This is man-made law imposed involuntarily every day on tens of thousands of non-sentient children. They are offered no possibility of freely changing or abandoning the Church when they grow to maturity and are capable of autonomous, sentient decision-making. This also is man-made law. These Church laws offend the UNCRC's principle that the child has both the right to religious freedom and the right to change religions. The Church's Congregation for the Doctrine of the Faith has described those rights as "an illusion," insisting the infant has obligations derived from its Baptism.⁴³ And while the Congregation acknowledges the fact that the child might reject those obligations when he or she grows up, it does not concede the child's right to do so even in adulthood.

The Magisterium claims the child's baptismal obligations as a Church member arise from promises made by the child at Baptism. These promises are pure fiction; a non-sentient child cannot make such promises. In fact, those so-called baptismal promises are made, if at all, by adults on the child's behalf. No adult has the right to make such binding promises on the non-sentient child's behalf—promises so powerful they bind the child for life to a Church, its laws, and teachings. This foundational narrative that links the child both to the Church and to Magisterial authority rests therefore on a great untruth increasingly obvious to those haemorrhaging from the Church.

Church documents which rest on this myth are predictably riddled with contradictions and non-sequiturs as they try to defend, or rather mask, the indefensible. The International Theological Commission acknowledges that there is a "lack of free-will and responsible choice on the part of infants,"⁴⁴ yet fails inexplicably to draw the obvious conclusion that such children cannot be deemed to have consented to Church membership when they were non-sentient at Baptism.

Can. 97 §2 says that all those under age seven and who do not have the use of reason are regarded as *non sui compos*—that is, they are not responsible for their

⁴² See, Can. 751; Can. 1364.

⁴³ Congregation for the Doctrine of the Faith, *Instruction on Infant Baptism, Pastoralis actio*, 22. 20 October 1980, AAS 72 (1980) 1137-1156. English tr. *Origins* 10 (1981) 474-480.

⁴⁴ International Theological Commission, *The Hope of Salvation for Infants*, 93.

actions. Why then is the baptised infant held fully responsible for promises he or she did not make at Baptism? Carrying the contradiction further, at Confirmation, children are not only asked to renew their fictitious baptismal promises but they cannot be admitted to Confirmation (can. 889 §2) unless “suitably instructed, properly disposed, and able to renew the baptismal promises.”

A further contradiction in canon law allows an unbaptised child, upon reaching age seven and having the use of reason, the right to freely choose Baptism in the Catholic Church “independent of parental control”⁴⁵ (cf. can 851; 852).⁴⁶ No matching freedom is conceded to Catholics over age seven and having the use of reason to freely leave the Church. Why?

The Vatican II declaration on religious freedom *Dignitatis humanae*⁴⁷ offers no assistance to the baptised child. It too is a place of irreconcilable contradictions. It is one of the most misinterpreted and misunderstood Conciliar documents. It makes a distinction between embracing the faith and professing the faith. *Dignitatis humanae* says that no one outside the Catholic faith can be forced to embrace the Catholic faith. However, once a baby has been baptised in the Catholic Church, it is presumed to have embraced the faith and is therefore obliged to profess the faith (can. 748).

From age seven, with the use of reason, the baptised child is obliged by its membership imposed at Baptism to obey Church law (cf. can.11). There are many laws that impose obligations, such as to evangelise, to lead a holy life, or to help fund the Church, but below are examples of those which trammel on the child’s God-given freedom of conscience, opinion, and expression:

- At the age of discretion, usually also the age of reason, they **must** confess their grave sins at least once a year (cf. cans. 916; 989);
- They are always “**obliged** to maintain communion with the Church even in their external actions” (can. 209);
- They are “**bound** to follow with Christian **obedience** those things which the sacred pastors ... declare as teachers or establish as rulers of the Church” (can. 212 §1);
- While they have a right to manifest their opinion to each other and to their sacred pastors on matters pertaining to the good of the Church, they **must** do so “without prejudice to the integrity of faith and morals and with reverence toward their sacred pastors” (can. 212 §3);
- Those engaged in the sacred disciplines, like theologians or religious scholars, have “just freedom of enquiry” and of expressing their opinion prudently “while **observing submission due to the magisterium** of the Church (can. 218) and thus the child’s Catholic teachers and catechists are censored in ways which impact the development of the child’s right to freedom of expression and access to appropriate education; Ecclesiastical authority can “**direct the exercise of rights**” of Church members (can. 223 §1); in exercise of the child’s fundamental freedoms in civil law

⁴⁵ T.L. Bouscaren & Adam C. Ellis, ed., Canon Law, 78 (1953).

⁴⁶ «raggiunto l'uso della ragione può ricevere il battesimo senza bisogno del consenso dei genitori (cann. 851; 852). R. CASTILLO LARA, «Condizione e lo statuto giuridico del minore», 271.

⁴⁷ Vatican Council II, *Dignitatis Humanae*, adopted 7 December 1965.

they are “**to heed the doctrine set forth by the magisterium of the Church**” (can. 227).

The language of these canons is designed to exercise institutional control over members’ conscience, opinion, and freedom of speech—the language of top down tight institutional control. The baptised child is thus exposed from the beginning to a catechesis of obligation in contrast to the catechesis of invitation and personal choice offered to the sentient catechumens as they prepare for Baptism into the Church.

There is an intimate link between Church teaching on original sin and the insistence on infant baptism. Church teaching says that all unbaptised persons, including children and those in the womb, are in a state of original sin. To die in a state of original sin is, according to Church teaching, to be consigned “to everlasting damnation.”⁴⁸ That teaching traditionally instilled fear in parents and promoted the urgency of infant Baptism. Aquinas said such souls went to hell.⁴⁹ Embarrassed theologians dreamt up a hypothesis called Limbo for unbaptised dead babies, which was a nicer place than Hell, but it was also not Heaven (from which they were excluded for eternity). Limbo was never Church teaching and it was dismissed as theologically unsound in 2007 by the International Theological Commission in its study entitled “The hope of salvation for Infants who die without being baptised.”⁵⁰ The Commission also dismissed the possibility that such babies could benefit from the Church teaching on Baptism by desire (can. 1183 §1), a teaching which allows catechumens who are preparing to be received into the Church but die before Baptism to be regarded as baptised, free from original sin, and thus saved to enter heaven.⁵¹ The absence of a right to salvation of unbaptised babies is absurd in a Church whose mission is salvation, which believes in an all-loving God, and is noted across the world for its defence of the right to earthly life of the child in the womb. The best the Church can offer the tens of millions of unbaptised babies annually who die on account of miscarriage, abortion, or still-births is the mere hope—not the certainty—that God will save them.⁵²

There are some other interesting areas of ambiguity ripe for exploration within canon law by the tiny but growing cohort of theologians and canonists who are human rights literate. Canon law rather ambiguously says that full membership of the Church requires reception of all three sacraments of initiation: Baptism, Eucharist and Confirmation (cf. can. 842 §2). The notion of “full Church membership” is not developed in the Code of Canon Law, but the mention of it raises the future possibility, in deference to their human rights, of categorising the infant

⁴⁸ Catechism of the Catholic Church, *English translation for Ireland*, Dublin 1994 (=CCC), 1022.

⁴⁹ Thomas Aquinas, *Summa theologica* 3a, q. 68, a. 9 (1911)3a, q. 68, a. 9.

⁵⁰ INTERNATIONAL THEOLOGICAL COMMISSION, “The hope of salvation for Infants who die without being baptised,” available at https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/reconcfathdoc20070419un-baptised-infantsen.html

⁵¹ Catechism of the Catholic Church para. 1259

⁵² As a very limited concession and comfort to Catholic parents of a small percentage of such children, can. 1183 §2 provides that “Children whose parents had intended to have them baptized but who died before Baptism, may be allowed Church funeral rites by the local Ordinary”. The local “ordinary” means here the local bishop (or his equivalent). The term ordinary is more fully defined in can. 134.

baptised as provisional members—quasi catechumens—whose accession to full membership is in their own hands when fully *compos mentis*. Could the sacrament of Confirmation become (what it currently is not) an opportunity for real, rather than fictitious promises, for voluntary, sentient completion of the initiation process?

The practice of First Penance and First Confession is a child protection issue which is currently inexplicably ignored by the Magisterium, the Curia, and Pope Francis' disappointingly ineffective Pontifical Commission for the Protection of Minors. Church practice since the decree *Quam singulari* in 1910 is for children to receive the sacrament of Penance, from around the age of seven upwards, with preparation starting as early as age five.⁵³ In more recent times, investigations into clerical child sex abuse have revealed instances of the use of confession for victim grooming, soliciting, and actual abuse.⁵⁴ Yet the questions of the low age of confession, the even lower age for preparation for First Penance, and protocols around old style confession boxes, did not receive attention as a child protection issue neither in the accompanying letter⁵⁵ nor general guidelines issued to episcopal conferences drafting child protection protocols,⁵⁶ nor has it been raised as an issue by the Pontifical Commission for the Protection of Minors. This is simply baffling.

The UNCRC outlaws all forms of corporal punishment regardless of severity or circumstances, including disciplinary use by a parent. Here there is no doubt that Church teaching infringes children's rights and is in defiance of the express instructions of the Committee on the Rights of the Child. The Catechism of the Catholic Church (cf. CCC 2223) refers approvingly to the Old Testament Book of Sirach 30. 1-2: "He who loves his son will not spare the rod."⁵⁷ The Holy See first denied to the CRC that its teaching condoned corporal punishment but later agreed to reconsider its teaching.⁵⁸ The Holy See then banned corporal punishment in the Vatican City State but left untouched the universal church teaching as set out in the Catechism.

⁵³ See Maria de la Cruz Aymes, *Jesus Forgives* (1975).

⁵⁴ See John Cornwall, *The Dark Box: A Secret History of Confession*, , xxii, 169-96 (2015); Marie Keenan, *Child sexual abuse and the Catholic Church*, 162-69 (2011); USCCB, *Nature and scope of sexual abuse of minors*, 78-83; see also Ryan report; Murphy Report; Ferns report; Cloyne report; Government of the Netherlands, Deetman report; Government of Victoria, Cummins report; Law Commission of Canada, *Restoring dignity report*; Government of Australia, *Royal Commission report*.

⁵⁵ Cardinal William Levada, *Letter of Cardinal William Levada on The Occasion Of The Presentation Of The Circular Letter To Episcopal Conferences Regarding Guidelines For Dealing With Cases Of Sexual Abuses Of Minors Perpetrated By Clerics*, THE HOLY SEE (May 3, 2011), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_levada-abuso-minori_en.html

⁵⁶ Cardinal William Levada, *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, The Holy See (May 3, 2011), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html

⁵⁷ The full quotation from this section of the Old Testament makes it clear that physical punishment of children is regarded as an appropriate form of discipline: "bow down his neck while he is young, and beat his sides while he is a child, lest he grow stubborn, and regard thee not, and so be a sorrow of heart to thee." (Sir: 12-13)

⁵⁸ *Supra*, note 35, at ¶ 39.

VI.
CONCLUSION

Catholic children are growing up in a human rights literate world. They see the contradiction in two versions of God's law. One version says that God gave every human being freedom of conscience, opinion, belief, and religion, freedom to change religion, the right to the fullest information and fullest education necessary to use those freedoms well, and freedom from physical violence. The other says that God gave the magisterium the authority to impose Church membership and serious obligations on non-sentient children and to control Church members' rights from Baptism to death. Yet the Church asserts that its authority also derives from divine law.⁵⁹ That same divine law is the very source of modern understanding of individual inalienable fundamental human rights. We are witnessing a clear clash between canon law and human rights law, a clash increasingly between the Church membership and the Magisterium. It is a clash the Magisterium has already lost.

⁵⁹ Cf. Leo XIII, *Diuturnum illud* (June 29, 1881), at ¶¶ 4, 6, 7, 8, 12, 15, ; *Immortale Dei* (Nov. 11, 1885), at ¶¶ 10, 13; ; *Libertas præstantissimum* (Jun. 20, 1888), at ¶¶ 1, 11, 30, 33, 43; *Dignitatis humanae*; John Paul II, *Redemptor hominis* (Mar. 4, 1979), at ¶¶ 12, 17, 21; John Paul II, *Veritatis splendor* (Aug. 6, 1993), at ¶ 34; Francis, *Amoris lætitia* (Mar. 19, 2016), at ¶¶ 37, 222, 295, 300, 302-03.