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“The flaws in the Christening Contract. How the human rights of children now require the Church to separate the theological (divine) from the juridic (man-made) consequences of Baptism”.

Pope Francis in his Message to the Pontifical Mission Societies (Given on the Feast of the Ascension 21 May 2020) had something to say which bears heavily on this topic:

For each one of us, salvation can take place only through the lens of an encounter with the one who calls us... we follow Jesus and proclaim his Gospel: through the force of attraction wrought by Christ himself and by his Spirit... ..it is useless and above all improper to insist on presenting missionary activity and the proclamation of the Gospel as if they were a binding duty, a kind of “contractual obligation” on the part of the baptized.

Pope Francis’s words with their emphasis on faith solely as a personal encounter and commitment, taken to their logical conclusion radically contradict current and long-standing Church teaching.

The canon law of the Latin Catholic Church does precisely what Francis says it should not do. It insists that those of us who are baptized in the Church are enrolled into a lifelong contract which automatically confers membership of the Church and imposes a set of specific obligations and binding duties. That might be unremarkable if only adults were admitted to membership of the Church in the exercise of their own independent choice based on full knowledge and free consent. But in fact membership of the Catholic Church normatively begins in very early childhood. Eighty-five percent of all Catholics become Catholics, that is to say become members of the Church when they are baptized as canon law requires as soon as possible after birth, in other words when they are non-sentient and incapable of understanding the contractual obligations of baptism. From that moment on they will experience a faith formation and accompanying catechesis which is not of invitation and personal acceptance such as catechumenates experience but of obligation. From baptism on they will be told here is what you must do, must believe, must accept, must obey because you undertook to do so at Baptism and the Church's canon law insists you follow through on those obligations. There is disapproval at best and penalties at worst in canon law for failure to do so. Never, after Baptism will the Church offer its paedobaptised members a formal opportunity when sentient and capable of mature decision-making to accept or reject the extensive obligations of Baptism set out in canon law and church doctrine and teaching. . Viewed against the human rights of individuals , to freedom of religion, thought, belief and opinion including the right to freely change or abandon religion which are set out in the Universal Declaration of Human rights 1948 and in the 1989 United Nations Convention on the Rights of the Child to which the Holy See is a State Party,

the man-made juridic consequences of Baptism in the Catholic Church look flawed and internally lacking in a robust moral and legal foundation.

The ongoing failure of theology, canon law and secular human rights law to intellectually interact in a way which explores the structure of the christening contract in the light of our developing understanding of the human rights of the individual, leaves the Church open to accusations of double-standards when it preaches respect for human rights to the world at large but fails to engage with them in its own internal sphere.

To avoid all doubt I am not arguing here for an end to infant Baptism but rather for a clear disaggregating of its consequences, a separating out of the gratuitous spiritual gifts and graces of Baptism from the juridic obligations of Church membership. Nor am I arguing against the right of parents to baptize their child and raise the child in their faith. I make those things clear in my recent book on Children's Rights and Obligations in Canon Law (Brill 2019) which is sub-titled "The Christening Contract".

The juridic and the theological consequences of Baptism are very different for the juridic are man-made¹ while the theological are God-given and gratuitous gifts which require nothing of the recipient. The two sets of consequences are perfectly capable of disaggregation but the Church has traditionally bound them so tightly that it has never countenanced their

¹ People baptized in certain other Christian Churches and whose baptisms are deemed valid by the Latin Church can become Latin Church members through a process known as «reception» (which does not involve Baptism) in which case they become members with the same rights and duties as those baptized into the Latin Church (cf. cann. 854; 869). For a list of non-Catholic churches and ecclesial communities whose baptisms are presumed valid by the Catholic Church see J. HUELS, *The pastoral companion*, 51.

separation. Today they need to be separated and the juridic scrutinized and reformed if the Church is to have a future built on rock not sand.

Let us take a closer look at what happens at Baptism in the Catholic Church. The Church obliges Catholic parents to baptize their child at the earliest opportunity after birth² hence paedobaptism is the norm and accounts for eighty-four percent of all baptisms worldwide. The spiritual/theological (gratuitous, divine and ontological) effects of Baptism include that a child is freed from all sins including original sin and so has the prospect of salvation, he or she is born again as a child of God, made like to Christ by an indelible character and incorporated into the *Cristifideles* (cf. can. 849). The man-made juridic or canon law consequences include enrolment as a life long member of the Catholic Church, becoming subject to its laws and being irrebuttably presumed to have undertaken the many obligations it imposes on members³. Members do have rights but their human rights which are acknowledged in the secular world as innate to the human person and derived from the natural law such as freedom of religion, conscience, thought and belief are almost completely subordinated to the demands of compulsory obedience to the Church's magisterium and the obligation to maintain communion with the Church.

The indelible and gratuitous spiritual/theological effects of Baptism are of prime importance in the salvific mission of the Church, in freeing the child from sin, opening the door to the other sacraments and to eternal salvation. They are grace at work and they are a freely given gift and I do not raise any issue here regarding them. The rights of parents to baptize their children and raise them in

² Cf. can. 867 §1

³ Cf. cann. 1; 11; 96; 111 §1-§2

the faith are also not disputed here. They are recognized both in canon law and human rights law. What concerns me here is the tight web of juridico/canonical rights and obligations which are said to follow from Baptismal undertakings made in circumstances where the nature of those undertakings is completely unknown and unknowable to the person perceived to be making it- the child. The idea that the infant being baptized is capable of making binding baptismal promises and taking on lifelong obligations is a fiction; the idea that he or she can be forever held to such undertakings is a figment whose illusory nature we can no longer escape for a number of reasons not least of which is that people today are educated about their God-given human rights to freedom of religion, conscience, belief and thought and know that regardless of what canon law says they can freely exercise them. And increasingly they do, some by walking away from the Church, others by reserving the right to inform their consciences, form their opinions and if necessary challenge from within the Church teachings and doctrines with which they profoundly disagree. There are other reasons for taking a critical look at the foundational flaws in the christening contract.

Back in 2007 The International Theological Commission which advises the Pope acknowledged that there is a «lack of free-will and responsible choice on the part of infants» and they therefore “cannot decide for themselves»⁴. Yet it failed to follow its own logic and did not raise any doubt about the legitimacy of imposing serious baptismal duties and obligations on children who cannot decide for themselves. The Commission made no reference to the fact that the civil law in many jurisdictions including a number historically strongly

⁴ INTERNATIONAL THEOLOGICAL COMMISSION, *The hope of salvation for infants*, 93.

influenced by canon law, raises doubts about the validity of onerous contractual obligations imposed on non-sentient children by adults⁵.

The Second Vatican Council's Declaration on Religious Liberty, *Dignitatis humanae* in a remarkable and deliberate avoidance of its own logic insisted that while no-one can be forced to embrace the Catholic faith those who are already baptized even as infants are deemed to have already embraced the faith and as such are obliged to profess it.

There is a considerable disconnect and double-think here between what the Church says to the outside world and what it says internally. It can no longer sustain an argument which allows it to have things both ways. There was a time when an internal critique in the light of secular developments such as I am suggesting was simply shrugged off as irrelevant. The Church taught that the reconciliation of canon law with secular human rights law was unnecessary since the Church was «a perfect society, because it has in itself all the means required for its own end, which is the eternal salvation of mankind; hence it is supreme in its own domain»⁶. In other words the sphere of the secular could never hope to encroach on the sovereign sphere of the Church. But the Holy See itself interrupted that self-protective view when in 1990 the Holy See it voluntarily ratified the United Nations Convention on the Rights of the Child. In doing so it became a State Party to the Convention and bound itself under article 4 “*to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the ... Convention*”.

⁵ Cf. UNITED KINGDOM, *Infant Relief Act 1874*. For a discussion of the civil law of contracts by minors see LAW REFORM COMMISSION (Ireland), *Report on minors' contracts*.

⁶ PIUS XI, encyc. *Divini illius magistri*, 31 Dec. 1929, n. 13, in AAS 22 (1930) 49-86.

Among the rights recognized as innate human rights in the convention are those set out in Article 14. It says State Parties shall respect the right of the child to freedom of thought, conscience and religion (art 14.1) and they shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. A child here means anyone under the age of eighteen, the equivalent of what is called a “minor” in Church canon law.

The impact of Article 14 is to recognize the right of parents to baptize their child and raise the child in their faith but it does not confer a right to bind a child to that faith for life or fetter forever its discretion to change its faith, think for itself, form its own opinions or change its beliefs. Rather it interprets parental rights in a way which says they must always be used as instruments for helping the child as its capacities evolve, to exercise its right to freedom of religion, conscience, thought and belief. Since 1990 the Holy See has never reviewed how the restrictions imposed by canon law on Church members’ opinions, beliefs and their right to change or abandon religion can be reconciled with their Article 14 freedoms and the Holy See’s obligation to vindicate those rights in its internal systems⁷.

In its dialogue with the Committee on the Rights of the Child which monitors implementation of the UNCRC the Holy See has flipped and floundered, finally arriving at the ludicrous position where after twenty years as a State Party it announced for the first time that while it accepted that it had ratified on behalf of two distinct entities, one the Holy See which governs the Catholic Church

⁷ For example the requirement of obedience to the *magisterium* (cf. can. 212 §1) and the imperative of maintaining communion with the Church (can. 209 §1).

worldwide and the other the tiny Vatican City State in which it is headquartered, it is not obliged to implement the Convention in its universal canon law but only in the Laws of the Vatican City State. The Committee on the Rights of the Child has strongly contested that view.

There are some who argue that the sacrament of Confirmation is when the Church offers the opportunity for affirmation of the child's assumption of the obligations of membership of the Church. This too is fallacious. It is not part of the theology of Confirmation though in future it could be for Confirmation has rightly been described as a sacrament in search of a theology. One of main the reasons for that can be seen in the language of the Confirmation rite where confirmands are asked to «renew» their baptismal promise, a phraseology which presumes or in the case of the paedobaptised more accurately pretends an earlier making of baptismal promises by the person to be confirmed. Another sacramental fiction built upon the fiction at the heart of the christening contract⁸.

The outworking of this single issue has long been overlooked precisely because it has profound implications for all Church members, not just children, as well as for Catholic schools, catechesis and canon law. There has been debate

⁸ Canon law does attach importance to personal assent or comprehension in certain circumstances as is evident for example in its provisions that those aged under seven are considered incapable of personal responsibility (cf. can. 97 §2), its exemption from mere ecclesiastical law of those aged under seven and those who have not reached the use of reason (cf. can. 11), its rules on marriage nullity (cf. cann. 1057; 1083; 1095-1096; 1103) and the rules on changing rite for those over fourteen years of age (cf. cann. 111-112).

about the demands of the magisterium, of communion, of obedience and conscience but⁹ surprisingly there has been no debate whatever directed to the much more fundamental and preliminary «legal» question which is specific to the Church's paedobaptized members. That question is, from where derives the right of the Church to impose on those incapable of giving valid personal consent, lifelong denominational membership and the almost complete fettering of their right to form opinions which contradict Church teaching and their freedom to choose another or no religion. Successive Church teachings assert that the Church's authority over its members derives from divine law¹⁰ but how is that to be reconciled with its understanding that individual human rights also derive from divine law and are inalienable as a consequence?

Is it morally tenable to follow paedobaptism with a catechesis of obligation which presumes the existence of a binding personal commitment and which presumes the child has freely embraced and is now under an obligation to profess the Catholic faith? Allowing that Baptism cannot be undone, is it nonetheless possible to open a debate around offering quasi-catechumen status to the paedobaptized and an opportunity when their capacity to comprehend

⁹ J.C. MURRAY, *We hold these truths*; A. AUER, «Christianity's Dilemma»; CCC 1776; BENEDICT XVI, *On Conscience*; J.T. BRETZKE, «Conscience and *Veritatis Splendor*»; C.E. CURRAN, *Conscience: Readings in moral theology*; «*Amoris Laetitia* and Conscience»; P. DELHAYE, «Conscience and Church Authority»; A.R. DULLES, «Authority and Conscience»; V. GENOVESI, «*Magisterium* and Conscience»; J. HOOSE, «Conscience in *Veritatis Splendor* and the *Catechism*»; G.A. KALSCHUEER, «Conscience and Citizenship»; R. SORABJI, *Moral conscience through the ages*.

¹⁰ Cf. LEO XIII, encyc. lett. *Diuturnum illud*, 29 June 1881, nn. 4, 6, 7, 8, 12, 15, in ASS 14 (1881-1882) 4-14; encyc. *Immortale Dei*, 11 Nov. 1885, nn. 10, 13, in ASS 18 (1885-86) 161-180; encyc. lett. *Libertas præstantissimum*, 20 June 1888, nn. 1, 11, 30, 33, 43, in ASS 20 (1887-1888) 593-613; *Dignitatis humanae*; JOHN PAUL II, encyc. *Redemptor hominis*, 4 March 1979, nn. 12, 17, 21, in AAS 71 (1979) 309-316; JOHN PAUL II, encyc. *Veritatis splendor*, 6 Aug. 1993, n. 34, in AAS 85 (1993) 1134-1228; FRANCIS, ap. exhort. *Amoris laetitia*, 19 March 2016, nn.37, 222, 295, 300, 302-303, in AAS 108 (2016).

has sufficiently evolved, of a formal opportunity to validate or repudiate Church membership or the obligations of Church membership? A number of State Parties to the UNCRC have already made provisions to do that, in that they allow a child from age fourteen or fifteen to leave the religion in which they were raised or change to another or to no faith. Those State Party provisions are made in order to vindicate the adolescent child's Article 14 rights while at the same time balancing the rights of family and parents and Church during the years of infancy and early adolescence when the guidance and direction of parents is important. The Church itself provides that from age fourteen in certain circumstances there can be voluntary transfers between the Latin and Eastern Catholic churches *sui juris*. It has also taught that unbaptized children over seven who have the use of reason can freely choose Baptism in the Catholic Church and consequently be validly baptized regardless of parental views. Another case of having it both ways.

The Holy See's State Party obligation to vindicate the child's right to freedom of religion, conscience, thought and belief as set out in the UNCRC (cf. art. 14) has introduced considerations which the Church has yet to explore, clarify and reconcile. The role and rights of the Catholic Church are meshed and melded here with parental rights and obligations in ways that historically did not conduce to disaggregation but are today interrupted and challenged by the changing understanding of individual human rights and children's rights in particular.

The unanswered questions in canon law are; has developing understanding of individual human rights which derive from the natural law and the logic of *Dignitatis humanae* shifted the juridic reality from *semel catholicus semper catholicus* (once a Catholic always a Catholic) to *semel baptizatus semper*

baptizatus (once baptized always baptized)? Can the indelible spiritual /theological consequences of Baptism be disaggregated from the juridic consequence of Church membership? Is a catechesis of obligation at odds with the child's rights? Would an invitational catechesis like that offered to the catechumens be more appropriate? Might it even be more effective?

These questions have profound implications for the interaction between the growing child and parents, teachers, pastors, godparents, parish, diocese and the universal Church. What does it mean for the tight-knit Catholic web that greets the paedobaptized child at Baptism if those who populate and sustain the web are working to a model and principles which as the child matures are increasingly at odds with his or her fundamental freedoms as expressed in international human rights law, rights which the Holy See itself purports to support?

There has not been in recent times a detailed internal Church reflection on the children's rights implications of a paedobaptized child's lack of personal consent to Baptism and Church membership over and against their Article 14 human rights to freedom of religion, conscience, thought and belief. In the recent past we have two Synods of Bishops devoted to the Family and an entire Synod of Bishops¹¹ devoted to youth and they all failed abysmally to raise never mind to deal with the human rights of child members of the Church. The internal Church issues, questions, inconsistencies and avoidances are not going away. Rather they are feeding the Western exodus and failing to address it except by

¹¹ The XV Ordinary Assembly of the Synod of Bishops was held in Rome from 3-28 Oct. 2018. Its theme was Young People, faith and vocational discernment. Pre-synodal preparations included a questionnaire accessible throughout the universal Church and consultations with youth delegates from around the world held in Rome in March 2018.

imposing blame on external forces such as aggressive secularism and internal under evangelization. Neither analysis is adequate or honest.