

The Alfons Auer Ethics Award

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Address by Mary McAleese

Canon Law and Human Rights. We need a new debate starting with children.

The title of this talk is “Canon Law and Human Rights: We need a new debate starting with children”. It is a debate I am sure Alfons Auer would approve of. It was he who provoked me to look at how the Church’s canon law treats child members and their human rights. He did so in a question he posed in 1977 in an article entitled «Christianity’s Dilemma: Freedom to be autonomous or freedom to obey»¹. Like a lot of Auer’s work it cast far out into the deep where no-one had yet had the courage or wisdom to navigate. He was not specifically referencing children for at that time the contemporary understanding of children as holders of autonomous rights had yet to develop. However with the passage of time there came important changes. In 1989 the United Nations adopted the Convention on the Rights of the Child² which set out a radically new vision of children as holders of autonomous rights. It acknowledged the importance of

¹ Cf. Auer, A. “Christianity’s dilemma: Freedom to be autonomous or freedom to obey”, *Concilium* 110 (1977) 47–55.

² UNGA, *United Nations Convention on the Rights of the Child* was adopted by the United Nations General Assembly on 20th Nov. 1989 and entered into force on 2 Sept. 1990. The Holy See signed and ratified the UNCRC on 20 April 1990. The Holy See is also a State Party to the *Optional Protocol to the Convention on the Rights of the Child on children in armed conflict* and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. Both were signed and on 10 Oct. 2000 and ratified on 24 Oct. 2001

family and of parental rights but insisted these were instruments to be used for the realization of children's overarching rights. In particular in Article 14 it set out the child's inalienable right to freedom of religion, conscience, opinion and belief. It is that article and its implications that in the main requires urgent internal debate within the Catholic Church.

Why should the Church undertake a debate about the provisions of a secular treaty? The answer is deceptively simple? Because it gave a solemn undertaking to do so. The UNCRC is the most ratified convention in the history of the United Nations. All UN member states have become State Parties with the lone exception of the United States of America. The Holy See which has permanent representative status at the United Nations «participated actively in the *travaux préparatoires*»³ for the Convention and became the fourth State Party to ratify it.

Every State Party voluntarily undertakes the same treaty obligations to respect and ensure the Convention's rights «to each child within their jurisdiction»⁴ and to «undertake all appropriate legislative, administrative, and other measures for the implementation of the rights»⁵. Each State Party is obliged to make regular progress reports on implementation of the Convention within its jurisdiction, to a monitoring body of experts known as the Committee on the Rights of the Child. It was Pope John Paul II who in ratifying the UNCRC in 1990 freely brought the Holy See into the Convention's system of international accountability for children's rights saying at the time that: “ in the

³ HOLY SEE, *Initial Report to the CRC on the UNCRC*, 12. Cf. S. DETRICK – J. DOEK – N. CANTWELL ed., *The UNCRC. A guide to the travaux préparatoires*.

⁴ UNCRC, Art. 2.1.

⁵ UNCRC, Art. 4.

Christian view, our treatment of children becomes a measure of our fidelity to the Lord himself”⁶.

The Committee has asked the Holy See to «undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention»⁷. Instead of doing so the Holy See has become locked in a dispute with the CRC about the extent of the Holy See’s State Party obligations and the extent of the CRC’S jurisdiction⁸. That jurisdictional dispute which the Holy See first raised twenty years after ratification and only after the CRC had begun to raise questions about the clerical abuse scandals, remains unresolved. Meanwhile the logic of Auer’s argument forced me to look at if and how the Church’s 1983 Code of Canon Law deals with the human rights of the three hundred million children who are members of the Latin Catholic Church⁹ particularly when many in the West are

⁶ JOHN PAUL II, *Letter to the Secretary General of the United Nations Organization on the occasion of the World Summit for Children*, 22 Sept. 1990.

⁷ CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, IV A. 14.

⁸ Cf. CRC, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, IV A. 14. Cf. HOLY SEE, *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*. The Holy See argues that it has no State Party obligation to do so on the grounds of its freedom of religion as a sovereign non-territorial spiritual entity. The CRC says it has the same obligations as any other State Party to ensure its laws and administrative practices are in conformity with the principles set out in the UNCRC.

⁹ Precise statistics for the number of Catholics under age eighteen are difficult to obtain but since most are paedobaptized and the general cohort aged under fifteen accounts for 26% of the world population I have used a working estimate that there are over three hundred million child members of the Catholic Church based on at least 26 percent of the total Catholic population of 1.2 billion. Cf. 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. Demographic distribution of Catholic children differs by continent. For example, children under fifteen make up 41 percent of the population of Africa but only 26 percent of the total world population. Cf. UN DEPT. OF ECONOMIC AND SOCIAL AFFAIRS, POPULATION DIVISION, *World Population Prospects. The 2017 revision*, 10.

using their human right to express opinions within the Church and many more are using their human right to leave.

Even a cursory examination of canon law shows up a realm of contrasts and contradictions which I hope to shed some light on here for how they are reconciled is likely to be of critical importance to the future of the Church. This is a debate the Holy See has not wanted to face for reasons that will become obvious but which truth demands we now have. Instead it has debated at length the role of family, of parents, handing on the faith, catholic education, the right to practice one's religion, the rights of the unborn; it has championed child soldiers, child migrants, child labourers, poor children, the disabled child. It speaks of children with authority as one of the most significant global non-governmental contributors to the lives of children through the educational, health and welfare services it provides on five continents ¹⁰. Yet as recent scandals have revealed it has systematically disregarded the welfare of child victims of abuse in order to protect the elite caste of priesthood with its claim to divine calling and an ontological change also of divine origin. The much needed focus on devising convincing child protection protocols and the task of rebuilding damaged episcopal credibility create an illusion of a Church busy about children's issues. But all the time one of the basic building blocks of the Church, infant Baptism, conceals probably the most serious realm of juridic

¹⁰ Cf. HOLY SEE, SECRETARIAT OF STATE, CENTRAL OFFICE FOR STATISTICS OF THE CHURCH, *Annuario Statisticum Ecclesiae* 2015, 281-290; 355; CRC, *Summary record of the 1852nd meeting of 16 Jan 2014. Discussion of the Holy See's Second Periodic Report*, 27; Archbishop Silvano Maria Tomasi, then Permanent Observer of the Holy See Mission to the UN (Geneva), is reported in a non-verbatim summary to have told the CRC that sixty percent of pupils in Catholic Schools did not profess the Catholic faith; cf. CRC, *Summary record of the 1852nd meeting of 16 Jan 2014. Discussion of the Holy See's Second Periodic Report*, 28; cf. J. AGNEW, «Deus Vult», 39-61.

obfuscation. The Church claims the right to impose on non-sentient infants, lifelong denominational membership and considerable canonical obligations which intrude on all Article 14 freedoms, as a direct consequence of their Baptism.

To avoid all doubt let me be clear that I am talking here about the juridic and not the theological consequences of Baptism. They are very different for the juridic are man-made¹¹ while the theological are God-given and gratuitous. But they are perfectly capable of disaggregation and I will argue that they need to be. Let us take a closer look at what happens at Baptism in the Catholic Church. The Catholic Church obliges Catholic parents to baptize their child at the earliest opportunity after birth¹² hence paedobaptism is the norm and accounts for eighty-four percent of all baptisms worldwide. Baptism has many and complex effects, some spiritual/theological and others juridical/canonical. The theological 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 juridic or canon law consequences include becoming a life long member of the Latin Catholic Church, becoming subject to its laws and undertaking the obligations it imposes on members¹³. Members have rights but the rights acknowledged in the secular world to freedom of

¹¹ 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.

¹² Cf. can. 867 §1

¹³ Cf. cann. 1; 11; 96; 111 §1-§2

religion, conscience, opinion and belief are subordinated to the demands of compulsory obedience to the Church's magisterium and the obligation to maintain communion with the Church. There are canonical penalties for serious dissent, including for schism, heresy and apostasy.

The indelible and gratuitous spiritual effects of Baptism consequent on being configured to Christ through Baptism are not debated here. They 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. The rights of parents to baptize their children and raise them in the faith are not disputed here. They are recognized in canon law and human rights law. What concerns us here is the web of juridico/canonical rights and obligations which follow directly from being enrolled at Baptism as a member with a legal *persona* in the Latin Church, a very serious undertaking and commitment in circumstances where the nature of that undertaking is completely unknown and unknowable to the person perceived to be making it- the child. Yet ever after that child will be held to the promises he or she is perceived to have made at Baptism. The idea that the paedobaptised are capable of making binding baptismal promises and taking on lifelong obligations is a fiction, a figment whose illusory nature we can no longer escape.

The International Theological Commission which advises the Pope acknowledges that there is a «lack of free-will and responsible choice on the part of infants» and that «being endowed with reason, conscience and freedom adults are responsible for their own destiny in so far as they accept or reject God's grace. Infants, however, who do not yet have the use of reason,

conscience and freedom, cannot decide for themselves»¹⁴. These words which should have given pause for thought within the Church did not. The inexorable logic they pointed to was ignored. That logic takes a different road if we turn to civil law.

The civil law of contract in many jurisdictions, including those whose historic jurisprudence shows evidence of the influence canon law, is generally sceptical of contracts entered into by adults for or on behalf of children which impose onerous obligations or require specific performance on the part of the children. Even certain contracts entered into by the child him or herself will attract such scepticism. The more serious and onerous the contractual undertakings are, the more likely it is that civil law may insist on independent scrutiny of the terms of the contract and the more likely is the possibility of rendering such a contract void or voidable at the initiative of the child when he or she later becomes capable of making a *sui compos* choice, that is with full knowledge and consent¹⁵ which usually means on reaching adulthood or at least late adolescence.

Canon law takes a different view of the juridic rights and obligations which a *non sui compos* child takes on at Baptism. It regards them as binding and lifelong. It makes no provision for subsequent validation or repudiation by the child when he or she is *sui compos* though in the sacrament of Confirmation, confirmands are asked to «renew» their baptismal promise, a phraseology which, it could be argued, presumes an earlier making of baptismal promises by

¹⁴ INTERNATIONAL THEOLOGICAL COMMISSION, *The hope of salvation for infants*, 93.

¹⁵ 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*.

the person renewing and which is clearly a fiction in the case of the paedobaptised¹⁶.

The Second Vatican Council's Declaration on Religious Liberty, *Dignitatis humanae* declares that the human person has a right to religious freedom¹⁷. Art. 2 avers that «no one is to be forced to act in a manner contrary to his own beliefs» but so far this principle has not been applied internally within the Church to those already baptized. The wording of *Dignitatis Humanae* was carefully chosen to apply only to those outside the Church. They cannot be forced to embrace the Catholic faith. It does not apply to those who are deemed to have already embraced it and as such are obliged to profess the Catholic faith among whom according the Church are the paedobaptised members of the Church. There is a disconnect here between what the Church says to the outside world and what it says internally, and a disconnect between what it says as a UNCRC State Party about freedom of religion , conscience, belief and opinion and what canon law provides in its restrictions on those freedoms¹⁸.

¹⁶ 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).

¹⁷ DH, art. 2 «This Vatican Council declares that the human person has a right to religious freedom. [...] all men are to be immune from coercion on the part of individuals or of social groups and of any human power, [...] no one is to be forced to act in a manner contrary to his own beliefs, whether privately or publicly, whether alone or in association with others, within due limits».

¹⁸ 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).

The outworking of this single issue, long overlooked precisely because it could shake the very foundations of the edifice has profound implications for all Church members, not just children. While there has been considerable debate about the ambit of these freedoms within the Church¹⁹ surprisingly that debate has not in recent times addressed the issue from 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 denominational membership and the obligations of membership on those incapable of giving valid personal consent. Successive Church teachings assert that the Church's authority over its members derives from divine law²⁰ but how do they reconcile that with modern understanding of individual human rights as deriving from the natural that is to say divine law and as being inalienable as a consequence?

Is it reasonable 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

¹⁹ 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*.

²⁰ 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).

possible to open a debate around the possibility of offering the older paedobaptized whose capacity to comprehend has sufficiently evolved, a formal 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 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.

The Holy See's State Party support for the child's right to freedom of religion, conscience 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 question in canon law is, 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, opinion and belief. In the recent past we have two Synods of Bishops devoted to the Family and an entire Synod of Bishops²¹ devoted to youth and remarkably they all fail abysmally to deal with the human rights of child members of the Church.

²¹ 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.

There was a time when a debate such as I am suggesting was simply shrugged off as irrelevant. The Church taught that the reconciliation of canon law with secular 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»²². In other words the sphere of the secular could never hope to encroach on the sovereign sphere of the Church. But inalienable human rights as promoted in the secular sphere are after all natural or divine rights. These cannot be ignored internally in the Church while promoted by it externally.

With great humanity, theological insight and pastoral care Alfons Auer built bridges of thought between the world of faith and the secular world, two worlds that cannot be treated as entirely separate spheres or hermetically sealed from one another for they coexist in the warp and weft of everyday life. Views from one ebb and flow through the other, the Church often warns or chides or advises the secular world on matters of morality and at the same time the secular world of international human rights law often adopts positions or practices which impact faith systems. When the Holy See voluntarily became a State Party to a number of UN human rights conventions including the UN Convention on the Rights of the Child²³ it freely brought the secular and spiritual worlds into each others' orbit in a new and powerful way with set rules of engagement.

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

²³ UNGA, *United Nations Convention on the Rights of the Child* was adopted by the United Nations General Assembly on 20th Nov. 1989 and entered into force on 2 Sept. 1990. The Holy See signed and ratified the UNCRC on 20 April 1990. The Holy See is also a State Party to the *Optional Protocol to the Convention on the Rights of the Child on children in armed conflict* and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. Both were signed and on 10 Oct. 2000 and ratified on 24 Oct. 2001; The Holy See is a State Party to the *UN Convention on the elimination of all forms of racial discrimination*, adopted by the United Nations General

Here is how the Children and Young Persons' Commissioner for Scotland's website²⁴ explains to children, the meaning of their rights under UNCRC's Article 14.

“Children and young people are free to be of any or no religion. Their parents can help them make decisions around religion, but:

- a parent can't force a child or young person to adopt a religion
- a parent can't force a child or young person to stop following a religion”.²⁵

It could not be clearer what Article 14 means.

Every five years State parties make a written and oral report to the UN Committee on the Rights of the Child on the progress they have made towards implementation of the convention's rights. During one such oral report in Geneva in 1995 the Holy See delegation was asked about its response to these Article 14 rights. A member of the Holy See delegation, Mr. Buonomo is quoted as stating that recently there had been a certain evolution in the Church's thinking about the right to freedom of religion especially where the child was concerned²⁶ and that as far as the Church was concerned a parent could give his

Assembly 21 Dec.1965 and entered into force 4 Jan. 1969. It was ratified by the Holy See, 01 May 1969; The Holy See, acting in the name of the Vatican City State is a State Party to the *UN Convention against torture and other cruel inhuman or degrading treatment and punishment*, adopted by the UN General Assembly on 10 Dec. 1983 and entered into force on 26 June 1987. It was signed and ratified by the Holy See on behalf of the Vatican City State on 26 June 2002.

²⁴ Cf. <https://www.cypcs.org.uk/rights/uncrcarticles/article-14>.

²⁵ While Article 14 of the UNCRC does not mention a child's right to change religion as the other human rights instruments do the United Nations Human Rights Committee in its, *General Comment no.22* has said that: «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».

²⁶ CRC, *Summary Record of 256th meeting held on 14 November 1995. Discussion of Holy See's Initial Report*, 7.

or her religion to a child but could not impose it²⁷. Fr. Roch, for the Holy See said that the Holy See's view of the interdependence between parental and children's rights was that parents ought to guide and advise children in a way that corresponded with the child's developmental capacity and conformed to the child's rights²⁸. This line of debate was pursued no further by the Committee for it relies on the accuracy and trustworthiness of the information given to it by State Parties. It would be fair to say that the impression was created by the Holy See delegation that the Article 14 rights of the child were honoured in Church law and practice. Such an impression is of course inaccurate for in canon law we find a contradictory narrative.

Unfortunately there is an embarrassing history of inaccurate information being given to the CRC by the Holy See, some of it misleading in the extreme. Take the issue of Church teaching on the corporal punishment of children by parents, guardians and those in loco parentis like teachers. For centuries right up to today that teaching has been taken from the Old Testament and not the New since the latter is silent on the matter. You will not find it in canon law but in the Catechism of the Catholic Church (CCC 2223). In response to a question from the CRC about the Holy See's teaching on corporal punishment, the Holy See responded that «On the international level, the Holy See does not promote corporal punishment». With regard to corporal punishment by parents the Holy See responded «the 1987 Catechism of the Catholic Church (CCC 2221-2223) recognizes that parents are obliged in the first instance to educate, guide,

²⁷ Cf. CRC, *Summary Record of 255th meeting held on 14 November 1995. Discussion of Holy See's Initial Report*, 44.

²⁸ CRC, *Summary Record of 255th meeting held on 14 November 1995. Discussion of Holy See's Initial Report*, 24.

correct, instruct and discipline their child; the terms “corporal punishment” or “punishment” are not used»²⁹.

The CRC was not informed that the paragraphs cited from the Catholic Catechism, while they do not use the term «corporal punishment», do tell parents in the words of the Old Testament (Sir 30:1-2) «He who loves his son will not spare the rod» (CCC 2223). The larger context of this quotation from the Old Testament makes it clear that physical punishment of children is regarded as an appropriate and even desirable 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).

The Catholic Church has never explicitly outlawed the corporal punishment of children and its current teaching as set out in the Catechism of the Catholic Church gives credence to the continuing influence of Old Testament views which support the use of physical chastisement. That is not what the CRC was told by the Holy See. In fairness many civil jurisdictions permitted corporal punishment in the home and in schools. The CRC believes that corporal punishment including by parents/ teachers and those in loco parentis is a violation of a child’s inalienable right to bodily integrity. Many jurisdictions have moved to either outlaw corporal punishment or at least remove the defence of reasonable chastisement from the criminal law of assault. Given the long-standing episcopal and institutional minimising of physical and sexual violence visited upon children in Catholic institutions one has to ask the question whether and to what extent this embedded and overlooked teaching carried with it a formation of casual disregard for the bodily integrity of the child? And an

²⁹ HOLY SEE, *Repy to List of Issues raised by the CRC on the Second Periodic Report on the UNCRC*, 38.

expectation on the part of child that his or her bodily integrity could be violated at will by adults and without accountability. In the search for causation for institutional abuse including physical and sexual abuse shockingly little attention ironically has been paid, including in Government sponsored investigations, to this aspect of the child and Church teaching. Institutions run by religious like orphanages and industrial schools were often subject to state legislation which set the rules for imposition of punishments. Orders like the Christian brothers had extensive rules including about the thickness of the leather straps to be used. Yet in parallel with those rules and overarching them was the clear authority of the Church for the use of physical punishment in order not just to discipline the child once but over time to help the child's formation as a person obedient to his father or guardian. Given that the State also often supported such corporal punishment to what extent did that long rooted context set the scene for the perfect storm that made children particularly vulnerable to abuse? In 1995 a Holy See delegate to the CRC, Fr. Roch refused to condemn corporal punishment outright arguing that the matter was complex and depended on how the punishment was administered; if done lovingly, in an age sensitive way with moderation and discretion it was acceptable, he claimed³⁰. In 2014 again at a meeting in Geneva with the CRC the Holy See delegation promised the CRC it would ask the Church authorities to review its teaching on corporal punishment³¹. No such review has taken place.

³⁰ CRC, CRC, *Summary Record of 256th meeting held on 14 November 1995. Discussion of Holy See's Initial Report*, 23.

³¹ CRC, *Summary record of the 1852nd meeting of 16 Jan 2014. Discussion of the Holy See's Second Periodic Report*.

There is a sad irony here and it is that historically canon law was the child's friend. It argued for mitigation of Roman law's cruel law of *patria potestas* which left children at the mercy of patriarchal bullies. Canon law established the child's right to autonomy in choice of marriage partner or the choice of religious life. Even more ironic is the fact the new children's rights movement which developed in the 1970's and which radically shifted the debate from "welfare-oriented paternalism..... to the child's autonomy"³² was heavily influenced by Belgian Catholic priest, Canon Joseph Moerman, Secretary General of a private Roman Catholic charity, the International Catholic Child Bureau. It was he who got the United Nations to agree to the designation of 1979 as the International Year of the Child. It was he who resisted plans for a convention on children's rights based on a simplistic, paternalistic document from the 1950's. It was he who headed up the committee of ngo's which promoted and advised on what became the UN Convention on the Rights of the Child with its radical emphasis on the child as a holder of autonomous rights which parents, Church and State are obliged to honour and respect .

In Abu Dhabi on the 4th of February of this year Pope Francis and the Grand Immam of Al-Azhar, Ahmed el-Tayeb co-signed a document entitled "Document on Human Fraternity for World Peace and Living Together".

The Declaration attests that "freedom is a right of every person: each individual enjoys the freedom of belief, thought, expression and action". The document marked a new and welcome level of debate between Catholicism and Islam. Is it too much to hope that before developing that debate internationally

³² D. FOTRELL, ed., *Revisiting Children's rights*, 2.

the Catholic Church might first open up its own internal debate on the meaning of those words for its own members and in particular for its child members.