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**Critiquing *The Christening Contract*: Towards a canon law critique of Mary McAleese's analysis of canonical and international children's rights**

**Reflection Essay**

*Research context*

An initial reading of the present version of this paper might give the impression that children are only secondarily the objects of the author's concern. Such a reading is admittedly possible. The substantive issues considered here fall within the realm of comparative legal scholarship, namely as it relates to regimes of canon law and international law. Yet, on another reading—the one intended and preferred by the author—this paper falls squarely within the realm of the To Look and To Play project, of the law as it relates and applies to children. In fact, despite the sustained discussion on canon law and its interface with international law, the paper may have more to offer to advocates and scholars of children's rights than to international law scholars and canonists.

The idea for this paper began with the idea of providing a general survey of the state of the civil law in Canada concerning children and religion, with a focus on its similarities and differences with the canon law of the Roman Catholic Church. Several authors have contributed to filling this gap in literature in Canada, but a comprehensive treatment of issues related to children, law and religion is still necessary. (Indeed, there is insufficient treatment of both religious law, and children and the law in Canada, let alone the intersection of both). However, it quickly became evident that even a cursory overview of the issues at play in this intersection would require more space than this project would allow.

Simultaneously, a new and little-commented ground of tension at the intersection of children and the law came to the fore and seemed worthy of immediate commentary: the conflict between the Holy See and the United Nations Committee on the Rights of the Child (the "CRC" or the "Committee") over the application of the *United Nations Convention on the Rights of the Child* (the "UNCRC" or the "Convention") within the jurisdiction of the Holy See. Seeing an opportunity to comment on a live issue related to children, law and religion, the focus on the Canadian context fell away. The result is a paper that contributes to the still very limited scholarly dialogue on the Holy See–United Nations conflict. It surveys and critiques the only substantive treatment of this issue, namely, Mary McAleese's book, *Children's Rights and Obligations in Canon Law: The Christening Contract* (Brill Nijhoff, 2019). The corrective offered by this paper may also contribute more broadly to methods in comparative law, namely concerning international and religious law.

*Reflection on contribution of paper to existing literature*

The facts of the aforementioned conflict are summarized in the paper and are detailed at much greater length in Mary McAleese's book. At its core, the conflict between the Holy See and the United Nations is one of the interpretation and application of laws, namely of the consequences of the Holy See's ratification of the UNCRC. Does the Holy See have an obligation under international law to ensure compliance within the walls of the Vatican city state, or across all of the Roman Catholic Church through its *Code of Canon Law*? Far from a merely theoretical exercise, as McAleese points out, the interests of 300 million child members of the Roman Catholic Church are at stake in this question. The conflict raises further questions about the Holy See's status as a subject of international law, the nature and resolution of conflicts between legal systems, the extent to which international law can influence religious law and vice versa, all in the context of the rights of children.

Much has been written about this issue from the perspective of international law and children's rights. McAleese's study is the first of its kind to address the issue (or any related issue for that matter) from the perspective of canon law. Yet, to put it mildly, McAleese's analysis is hardly consistent with dominant thought in canon law and social teaching of the Roman Catholic Church. She concludes that the Holy See's ratification of the UNCRC effectively establishes an irrevocable obligation to implement the Convention in both the Holy See's state law and the Roman Catholic Church's canon law.

This paper analyzes McAleese's general argument. It highlights several critical points of weakness in McAleese's arguments. It concludes that McAleese does not in fact argue from the ground of canon law, as she claims to do. Rather, McAleese subjects her apparent canon law analysis to the presuppositions of international law and human rights. This error causes her reasons for supporting the recommendations of the Committee on the Rights of the Child to fail from a canon law perspective. This renders her argument unacceptable to canonists and other church leaders.

This paper does not to pick sides between McAleese's prescriptions and those of the Holy See. Rather, in providing a critical commentary of McAleese's *The Christening Contract*, it creates space for more fruitful dialogue between scholars, advocates, international jurists, and Catholic canonists. It serves to caution scholars of children's law and international law from assuming that McAleese's work offers an authoritative canon law perspective on the Holy See's obligations under the UNCRC. Interdisciplinary law and human rights scholars would do well to draw on McAleese's expertise and thorough summary of the canonical sources relevant to the Holy See-CRC conflict. However, they should also recognize the limitations of her argument: above all, that McAleese ultimately fails to engage canon law on its own terms and thus will fail to engage with most canonists and church leaders in a meaningful way.

Ultimately, in its critique of McAleese's book, this paper builds on her pioneering study of a live intersections between international human rights and religious law. It provides a correction to McAleese's comparative method by introducing the Roman Catholic Church's theological understanding of sacrament, particularly as it relates to canon law, into scholarship on the Holy See-CRC dispute. This is relevant to the work of canonists as it brings the theological basis of canon law into dialogues about children's rights and other points of interest for comparative law. It is also relevant to the work of human rights scholars and advocates as it encourages a deeper understanding of religious belief, religious institutions, and religious law.

The issues found at the intersection of law and religion are complex. The limitations of this paper only allowed commentary on one issue from one perspective. However, the author hopes that the correction offered here will lead to more nuanced and fruitful dialogue between scholars and practitioners of canon law and international children's rights, and more specifically to a willingness to meet each other "on their own turf." Ultimately, dialogue that respects rather than misrepresents differences in conceptions of life and law will be to the benefit of the 300 million children that McAleese shows are impacted by the Holy See-CRC conflict.

## **Annotated bibliography**

### **Sources related to children and the law**

#### Monographs

**Beal, John P, James A Coriden & Thomas J Green, eds. *New Commentary on the Code of Canon Law*, 1st ed (New York: Paulist Press, 2000).**

Beal et al. prepared one of the most commonly relied-upon commentaries on the 1983 Code of Canon Law (*Codex Juris Canonici*). It contains detailed commentary of each section of the Code. Although comprehensive in terms of coverage of the whole Code, the depth of its analysis is necessarily limited. Since the Code itself does not treat children as a stand-alone category of legal persons, neither do Beal et al. Furthermore, in keeping with the nature of the Code itself, the commentary barely address international law. Thus, this resource should be used primarily by scholars seeking to develop a general understanding of the internal logic of the Code. Researchers should not consult this commentary for detail on the relationship of canon law to international or domestic state law.

**McAleese, Mary. *Children's Rights and Obligations in Canon Law: The Christening Contract* (Boston: Brill Nijhoff, 2019).**

The first comprehensive treatment of the Holy See-CRC dispute over the legal consequences of the Holy See's ratification of the UNCRC. McAleese positions the book as a canon law perspective on the dispute. She provides with an extensive survey of children's rights under canon law, with particular attention paid to what she calls the "theological" and the "juridic" consequences of baptism. She also provides commentary on the UNCRC and the Holy See's long-standing support for international children's rights. She explores the intersection of rights for children baptized into the Roman Catholic Church: that is, their rights by virtue of international law, and their rights and obligations by virtue of canon law. McAleese contends that these two juridic realms which afford rights to baptized children are in tension. She ultimately argues that tensions should be resolved by the Holy See ensuring that canon law be modified to reflect the UNCRC in areas of conflict.

**Vandenhoe, Wouter, Gamze Erdem Türkelli & Sara Lembrechts. *Children's Rights: A Commentary on the Convention on the Rights of the Child and its Protocols* (Edward Elgar Publishing, 2019).**

This commentary provides an international law perspective on children's rights, and more specifically on the development of children's rights through the UNCRC and its protocols. The text of the UNCRC is explored in-depth. An interdisciplinary approach is taken throughout the

commentary, but given the relatively few points of intersection, theological and canonical perspectives are understandably not engaged.

### Articles

**Cismas, Ioana. “The Child’s Best Interests and Religion: A Case Study of the Holy See’s Best Interests Obligations and Clerical Child Sexual Abuse” in Elaine E Sutherland & Lesley-Anne Barnes Macfarlane, eds, *Implementing Article 3 of the United Nations Convention on the Rights of the Child: Best Interests, Welfare and Well-being* (Cambridge: Cambridge University Press, 2016) 310.**

Cismas is a scholar of public international law who specializes in international human rights and humanitarian law. In this chapter, she builds on her past writing on the status of religious organizations as potential actors under international law, commenting specifically on the implementation of Article 3 of the UNCRC (on the “best interests” of the child), and applies this obligation to the Holy Se. In light of clergy sexual abuse and the Church’s response, she criticizes the dissonance between the words and actions of leaders of the Holy See with respect to the implementation of Article 3. Cismas argues that the Holy See is bound to implement the UNCRC across its entire jurisdiction, namely in the canon law of the Roman Catholic Church. She concludes that despite the Holy See’s opposition, it remains bound by the obligations produced by its ratification of the UNCRC, and thus to continued implementation of Article 3, as recommended by the Committee.

**McManus, Kaleigh. “The Holy See’s Compliance with the United States Convention on the Rights of the Child” (2018–2019) 12:1 DePaul J for Soc Just 1–27.**

In light of recent clergy sexual abuse scandals within the Roman Catholic church, McManus comments on the status of the Holy See under international law and the ensuing consequences of the Holy See’s ratification of the UNCRC. She identifies an important complicating factor in the Holy See’s status under international law: that it is both a state (governing the Vatican City State) and a religious institution (governing the Roman Catholic Church). Contrary to scholars such as Cismas, McManus considers the Holy See to be a state with full international legal personality. McManus proceeds by applying the logic of international law, and concluding that the Holy See is in breach of its obligations under Articles 3 and 34 of the UNCRC. She provides recommendations that would move the Holy See towards compliance.

**Peters, Edward. “Some correctives to Mary McAleese’s Trinity College remarks”, (21 November 2019), online: *In the Light of the Law: A canon lawyer’s blog* <https://canonlawblog.wordpress.com/2019/11/21/some-correctives-to-mary-mcaleeses-trinity-college-remarks/>.**

This blog by Edwards Peters, a canon lawyer, provides an alternative canon law perspective on McAleese’s criticisms on canon law’s treatment of children as expressed at her 2019 Edmund Burke Lecture at Trinity College Dublin. Peters argues that McAleese makes a fundamental mistake in a central part of her argument: that is, she distinguishes and separates the “theological consequences” of baptism from the “juridical consequences” of baptism. This distinction serves to create the space for McAleese’s proposal that the Holy See should effectively subordinate its law with respect to children to the provisions of the UNCRC. Peter rejects both her premise and conclusion, arguing that Catholic teaching does not allow for the bifurcation of consequences of a

sacrament. Consequently, in Peters' view, McAleese strays from theological and canonical orthodoxy, making her case untenable from the perspective of the Holy See.

#### Other print sources

**Committee on the Rights of the Child. *Concluding Observations on the Second Periodic Report of the Holy See on the UNCRC*, by Committee on the Rights of the Child, CRC/C/VAT/CO/2 (Geneva, Switzerland, 2014).**

This document is the response of the UN Committee on the Rights of the Child to the Holy See's second periodic report with respect to UNCRC compliance. The most significant response is the Committee's opposition to the Holy See's rejection to amend canon law, and its recommendation to "that the Holy See undertake a comprehensive review of its normative framework, in particular Canon Law, with a view to ensuring its full compliance with the Convention." The Committee raises other issues with respect to the implementation of the UNCRC by the Holy See. These are related to the eventual elimination of the Holy See's reservations, to the monitoring of the Holy See's compliance with the convention, and the promotion of children's dignity by protecting their right to express themselves. These recommendations highlight fundamental differences in how the Committee and the Holy See understand the nature of rights, children and education.

#### ***Gravissimum educationis (1965).***

A publication of the Second Vatican Council, *Gravissimum educationis* is a declaration on Christian education. It establishes education as a universal right, and describes the nature of education from a Christian perspective. It outlines the roots and purposes of Christian education from infancy, through school years to higher education. Furthermore, it affirms the rights and duties of parents and teachers in the context of the upbringing and education of children, importantly establishing parents as the "primary educators" of their children. It describes the desired content and form of education for Catholic homes, parishes, schools, colleges, and universities.

**McAleese, Mary. *The 2019 Annual Edmund Burke Lecture—Human Rights and Children's Rights* (Trinity College Dublin, 2019).**

In the 2019 Burke Lecture at Trinity College Dublin, Mary McAleese provided an extended commentary on her book, *Children's Rights and Obligations in Canon Law: The Christening Contract*. The lecture is essentially a summary of the argument in *The Christening Contract*. However, McAleese's lecture pays particular attention to children's rights in canon law, international and domestic law as they exist in her home country of Ireland. In light of clergy sex abuse and other scandals that have hit the Roman Catholic Church in Ireland, McAleese's provides an especially scathing critique of the Church's (that is, both the Holy See in general, and the Roman Catholic leadership in Ireland in particular) refusal to enshrine UNCRC norms within canon law.

#### **Other works cited**

##### Statutes

*The United Nations Convention on the Rights of the Child*, 1989.

### Monographs

Coriden, James A. *The Rights of Catholics in the Church* (New York: Paulist Press, 2007).

Coughlin, John J. *Canon law: a comparative study with Anglo-American legal theory* (New York: Oxford University Press, 2011).

Fisichella, Rino, ed. *Catechism of the Catholic Church With Theological Commentary* (Huntington, IN: Our Sunday Visitor, 2020).

Saunders, Phillip M, Robert J Currie & Payam Akhavan. *Kindred's International Law: Chiefly as Interpreted and Applied in Canada*, 9th ed (Toronto: Emond, 2019).

### Articles

Morss, John R. "The International Legal Status of the Vatican/Holy See Complex" (2015) 26:4 Eur J Int Law 927–946.

Ombres, Robert. "Canon Law and Theology" (2012) 14:2 Ecc LJ 164–194.

### Vatican documents

*Codex Iuris Canonici* (Libreria Editrice Vaticana, 1983).

John Paul II. *Sacrae Disciplinaes Leges* (1983).

Paul VI. *Lumen gentium* (1964).

### Other

"Children's Rights and Obligations in Canon Law", online: Brill <https://brill.com/view/title/55914>

"Mary McAleese President of Ireland 1997-2011", online: <https://www.marymcaleese.com/>.