The 'Global' and the 'International' as Complementary Power Strategies within Corporate Roman Catholicism

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The putative resurgence of religious belief and its reinvigorated socio-political importance – or at least prominence – has prompted critical reflection on religion, broadly defined, as a new force in politics. This paper examines the 'global' and 'international' role of Roman Catholicism. Roman Catholicism has manifested itself as an actor on the international stage and as a trans-national and global 'community'. Frequently the conceptual dividing line between these is ambiguous. Vatican City and the Holy See have both been accorded international status, the former since the conclusion of the Lateran Treaty by Italy's fascist leader, Benito Mussolini, in 1929, the latter since the mid nineteenth century following the absorption of the Papal States into the newly unified Italian Republic. The Holy See also enjoys a special status position within the United Nations system as a non-member observer state. Following revelations of clerical child abuse the Holy See was put on the defensive in several national contexts in a public controversy that resonated much more widely. This trans-nationally organised religion has mobilised both nationally and internationally to defend its institutional interests. Through an examination of empirical instances the study sidesteps the question of whether religions are 'global' or 'international' phenomena, and draws attention to the distinct power modalities operative at the level of both international politics and in transnational or global organisation.

Introduction

In July 2004 the United Nations General Assembly adopted a resolution that concerned the participation of the Holy See, the legal personality of the Roman Catholic Church, in the work of the United Nations (UN A/RES/58/314). In addition to recognising the

extensive bilateral relations that the Holy See had with over 170 nations, the resolution affirmed the Holy See's status as an 'observer state' and expanded the rights and privileges of its permanent mission.[1] Spearheaded by the Catholics for Choice organisation (CFC), several NGOs have campaigned since the mid to late 1990s to have the Holy See's special status at the United Nations revoked. This is in light of its conservative stance vis-a-vis the International Conference on Population Development in Cairo (1994) and Beijing (1995) (see CFC, 2010). The Holy See campaigned vigorously at various levels of the international system, both before and following the conferences, to limit the expansion of reproductive healthcare for women, particularly with regard to contraception and the provision of abortion services.

Institutional or corporate Catholicism holds an ambiguous position within international relations. How should we conceptualise and categorise an institutionalised world faith like Roman Catholicism? Is Catholicism a singular global phenomenon or is it a (much looser) family of related perspectives spread across the international mosaic? Is it an amalgam of both and in what sense is this the case? The following is an attempt to escape these questions rather than answer them. It is an examination of how both the global or transnational and the national or international have been utilised by a particular religious interest, specifically Roman Catholicism in its organised and institutionalised form. Through particular empirical examples the analysis sidesteps essentialist determinations of Roman Catholicism as either global *or* international, and instead draws attention to the ways in which both discourses have served as strategically effective instruments in the realisation of specific corporate religious interests.

The analysis below does not seek to overturn or refute scholarship of religion as a tangible global or international political variable. Equally, it is not important to dispute the role of Christian or Roman Catholic inspired activism relative to significant milestones in international politics, such as the fall of communism or the role of religions in opposing autocratic regimes (such as the Philippines under Marcos). On the contrary, the tangibility – and potency – of political religion is a pivotal axiom underpinning analysis. However, our analysis considers it more fruitful to consider how conceptual schemes or interpretive grids such as 'global', 'international' or 'trans-national' have become *useful*, how 'global' or 'national/international' have been subject to judicious instrumentation relative to particular issues. The truth or tangibility of mobilised religion's transnational or international dimensions becomes less relevant than the success or failure of particular strategies toward specific organisational or institutional objectives. It is not that success is permanent or transient, but that it is successful now. In this sense, we follow the Foucauldian premise that all disputes are local.

An examination of Roman Catholicism must take account of the specific nature of that faith and its institutionalisation. Catholicism is universal in orientation. It sees the totality of humanity as a normative object. It is a missionary religion; that is, it

accepts the conversion of others into the faith, and actively seeks to promote its virtues to non-believers. It is also heavily imbued with a normative structure or system that is contingent on the intercession of the supreme deity in the final judgement of humanity. Catholicism views man's obedience to and worship of God – through the intermediary of the institutional Church – as the primary object of faith, morality and the means of ensuring personal salvation and a just society. Despite its long history, these are difficult times to be in the professional business of religion, notwithstanding ideas of a 'resurgence' of faith. The main contention here is that the teleology of organised Roman Catholicism leads it, as a *political* actor, in particular directions and to adopt specific stances, which serve its organisational interests. The study is, therefore, an analysis of religion as a 'mobilised' entity in the sense articulated by E. E. Schattschneider in his examination of American democracy (Schattschneider, 1960). Schattschneider made the observation that any organisation is ultimately the "mobilisation of bias" (Schattschneider, 1960, p. 28). Organisations have a mobilising principle or set of principles underpinning their existence. Such principles or axioms include normative ones which shape and structure their interpretation and evaluation of their external context; any presenting issues and the other actors operative within that milieu. Associations, institutions and organisations, even those not mobilised around a religious narrative and related normative principles, embody rationalities, thought collectives (Fleck, 1979) and interpretative grids which shape and structure their understanding and responses as collective bodies to circumstances. Our approach to the analysis is therefore a highly 'actor-centred' one.

It is necessary to elaborate on some terminology utilised throughout. We understand 'corporate' religion in the sense of being both 'mobilised' and organised, that is, as the *organisational, associational and institutional* form of religious beliefs, not merely the manifestation of beliefs among individuals. We might also include the term 'public' religion, as examined by Casanova (1994), which refers to the manifold ways in which religion has become more elevated above the private domain of personal belief and interacts in some form with the socio-political (or public) sphere. For our purposes, 'corporate' religion is a more useful term analytically, as it denotes a specific form of public religion: the professionalised institutions, associations and organisations mobilised around religious beliefs and narratives. Nevertheless, public religion directs us to the relatively recent (re)emergence, or 'resurgence', of faith in contemporary international politics (Thomas, 2005; Fox and Sandler, 2004). The latter period of the twentieth century witnessed a renewed interest in the role of religion, and its impact on politics and society in particular (Berger *et al*, 1999; Casanova 1994; Kepel, 1994; Juergensmeyer, 1993). This paralleled a critical debate within the sociology of religion where a polarity emerged between supporters and opponents of the secularisation thesis (see Norris and Inglehart, 2004; Davie, 2004, 2000, 1994; Bruce, 2002; Stark and Finke,

2000; Yamane, 1997; Luckmann, 1967). Others questioned the extent to which even West European societies fully embodied the principle of church-state separation they espoused, or noted the absence of church state separation in many contexts including democracies (Fox, 2007; Madeley and Enyedi, 2003; Westerlund, 1996). The implosion of the eastern block and the fall of the Soviet Union paralleled a revitalisation of religious activism and mobilisation, often in response to critical political events (Johnston and Sampson, 1994), or provided an innovative normative framework for conflict resolution (Johnston, 2003; Carlson and Owens, 2003). Others noted the rise of violent religious activism (Almond *et al*, 2003; Juergensmeyer, 2000, 1993; Marty and Appleby, 1991). All of these analyses engage with how religion, often very broadly defined, has interacted with world politics and the international system, whether defined through the prisms of International Relations or globalisation. This analysis inverts the causal arrow and examines how that dual system is used selectively by a corporate religion.

The purpose of this analysis is to throw into relief a key distinction concerning the position of the Holy See in international affairs. On the one hand there is the international legal personality of the Holy See, an entity that, although it fails to meet the full definition of a state, nevertheless exceeds the definition of a non-governmental organisation. It does not have a monopoly on coercive force within a defined territorial unit. On the other hand there is the tangible reality of a non-state entity that embodies a sophisticated and effective modality of social and functional power within the totality of Holy See's institutional apparatus, which extends beyond the Vatican City State and encompasses all of the Church's ancillary bodies in national jurisdictions. We will examine the basis of that social power and the mechanisms and practices that evince its manifestation within the life of institutional Catholicism, particularly as they pertain to the emergence of controversy around the issue of clerical sexual abuse of minors. These other modalities of power are not necessarily captured by the international dimension of analysis. Through an examination of the child abuse controversy we will address the relationship between these distinct forms of power and consider the Holy See's *strategic* utility of an 'national/international' discourse and the instrumentation of rhetorical, diplomatic and legal channels to consciously construct or emphasise greater distance between the Holy See and nationally-based Catholic bodies and institutions.

This distinction in modalities of power highlighted in the example of the Holy See draws on the definitions of power elaborated on by Michel Foucault through his later works. On the one hand we have the idea of power as 'Law and Sovereign' (Foucault, 1978, 92ff), which is a recognisable form of (usually political) power attributed to the metaphorical equivalent of a King. Power extends outward from a centre to a periphery and coercively directs and controls the object of rule in very overt ways: through laws, regulations and punishment. But another manifestation of power is in the diffuse and less obvious ways in which behaviour and conduct is shaped and channelled in particular

ways towards specific ends through the movement of 'force relations' (Foucault, 1978, p.92ff; he considers this in considerable detail in Foucault, 2007 and cumulatively in Foucault, 2000a and 2000b). Here we might consider the institutionalisation and proliferation of norms through education or training, audits, peer evaluation, the authoritative definition of deviancy and 'normal', and the corresponding imperatives of monitoring and self regulation. In short, the *legitimising power* of an institution (see Scott, 2001, pp.58-61). The difficulty is extricating the subtle forms of the latter from the former in the day to day administration and practices of the Catholic Church. In the course of the analysis to follow it will become clear that the Holy See as a transnational – even global – institution has effectively appropriated the discourse of 'national/international' in order to emphasise the limitations on its sovereign power, while downplaying or de-emphasising its extensive functional power. Through an emphasis on its sovereign dimension and its geographic distribution the Holy See has effectively occluded equal consideration of its more subtle, but no less effective, means of intra-institutional governance and its corresponding level of accountability.

Distinctions in 'Catholic' Power

> The Holy See is the centre of a global community of over one billion people and as such is one of the world's biggest opinion formers (FCO, 2010)

In this section, we examine the basis of the Holy See's extensive social power and how these power relations are actualised beyond the confines of the Vatican. Subsequently, it will consider the mechanisms through which, in light of public controversy, it has sought to limit its exposure both to investigation and litigation by invoking its privileges as a sovereign entity under international law and diplomatic convention.

Linden (2009), when tracing the nascent movement towards reform within Roman Catholicism in the run up to the Second Vatican Council (1962-1965), provides a revealing insight into the extent of the Roman Catholic Church's social power. Linden informs us that, prior to the election of Pope John XXIII, there was little appetite among the Church's civil service, the Roman curia, or successive Pontiffs for any adjustment in how institutional Catholicism interacted with ancillary bodies or the wider world. There was, in particular, a studious aversion to any liberal interpretations of Roman Catholic theology. The seeds of the reform lobby within the Church were sown on the periphery of the Catholic world, by a Dominican and Jesuit vanguard that was in closer proximity to modern civilisation, and by an emerging indigenous clergy from within missionary regions. Linden's portrait of intra-Catholic reform is an optimistic one. In his view, a truly humane and compassionate Catholicism was latent within the teachings of Christianity, but impeded by the powerful Roman curia (see Linden, 2009, Ch 2). For our purposes,

setting aside doctrinal questions for the present, it is sufficient to comprehend that the institutional church had a sufficient monopoly over interpretation of Catholic teaching and practice that such reforming currents frequently found themselves 'under pressure' (Linden, 2009, 19), and in direct confrontation with the Holy See's central authority.

The basis of this authority lies in the institutional evolution of the Church's own systemic structure over the course of many centuries, which is now rationalised in its key constitutional documents. For example, in the *Catechism of the Roman Catholic Church*, most recently codified in 1993, it is clear where the Holy See views itself relative to its associated bodies beyond the Vatican:

> Particular Churches are fully catholic through their communion with one of them, the Church of Rome "which presides in charity". For with this church, by reason of its pre-eminence, the whole church that is the faithful everywhere, must necessarily be in accord (Vatican, 1993a, para. 834).

Similarly, with regard to the role of the pontiff and his relationship to the aggregate of the Holy See's institutional structures:

> [T]he Roman Pontiff, by reason of his office as Vicar of Christ, and as pastor of the entire Church has full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered (Vatican 1993b, para. 882).

In principle, therefore, the overriding authority of the Holy See over matters of doctrinal interpretation, liturgy, practice, institutional training and social teaching is absolute. In practice, of course, the totality of the Roman Catholic Church is distributed extensively across the international community. It is necessary to interrogate how ecclesiastical unity might be sustained across a culturally diverse belief community. How, in effect, might the Holy See allow for appropriate institutional elasticity to permit inevitable diversity to find room within the Church, and yet establish sufficient conformity in order to sustain institutional coherence? Such a conceptual resource was latent in a more recently formulated Catholic social teaching: the principle of subsidiarity.[2]

Subsidiarity determines that decisions must be deferred to the lowest competent authority. The principle emerged from the 1891 encyclical, *Rerum Novarum*, and was exclusively concerned with providing a theological justification for the Church's pragmatic accommodation with the state and the emergence of various forms of rule within it; specifically, communism/socialism, fascism and democracy (see Vatican, 1891, paras.51, 53). Subsidiarity served the function of providing an ideological or conceptual justification for limiting any intrusion into the internal apparatus of religious bodies by

the state, particularly the subsidiary institutions of the Roman Catholic Church. It is reasonable to determine, therefore, whether the principle of subsidiarity was incorporated into the constitution of institutional Catholicism and applied to the Church itself. From the period following World War Two, Pope Pius XII began to consider applying the principle to the Church, and not just the relations between the Church and the state (see Kőnig, 1999; see also Mannion, 2004, p.171). However, from this we can reasonably infer that it was not an integral part of the Church's regulatory norms or self governance until that point. The *Catechism of the Catholic Church* (Vatican, 1993) does make reference to the principle of subsidiarity, but purely from the perspective of the Church's relationship with the modern state. This draws on and reaffirms the 1931 encyclical *Quadragesimo Anno* (Vatican, 1931), which formally articulated the principle for the first time.

> The supreme authority of the State ought, therefore, to let subordinate groups handle matters and concerns of lesser importance, which would otherwise dissipate its efforts greatly ... Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of "subsidiary function," the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State (Vatican, 1931, para. 80)

In the *Compendium of the Social Doctrine of the Church* the principle of subsidiarity is given prominent expression in Chapter 4 (see Vatican, 2004 paras 185-188), but is again solely directed to limiting the power of the state in the life of 'intermediate' organisations (particularly the Church) and the family unit. It was not until the revised *Code of Canon Law* of 1983 (Vatican, 1983), specifically Article Five in the Introduction, that the importance of subsidiarity for the administration of the Church emerged. In principle, therefore, it is arguable that the Holy See and the Roman curia recognised that a principle designed to curb overbearing state power ought to be equally applicable to the internal governance of the Catholic Church. It is a point latterly taken up by those advocating changes in Church governance (see Cardman, 2004, p.48; Heft, 2004, p.129ff; Mannion, 2004, p171ff in Oakley and Russett, 2004). The question then becomes: to what extent did this principle infuse the praxis of intra-institutional administration and governance? It is also reasonable to ask who or what entity is permitted to decide where 'competent' authority lies when a particular church is faced with an ostensibly 'local' matter that requires decision? There is no reason to assume that the demarcation of competence is based on an objective and rational evaluation by the various levels of authority in open and extensive communication with one another. The empirical evidence suggests that the determination of competency with regard to the allegations of abuse rested exclusively

with the highest levels of the Holy See. The question of 'competence' remained largely an institutionally subjective one. For example, in the 1990s bishops in Wisconsin in the United States endeavoured to have Fr Murphy sanctioned for the various crimes he committed in a boy's school for the deaf. However, the then Prefect for the CDF, Cardinal Joseph Ratzinger, failed to undertake disciplinary proceedings (BBC, 2010; Goodstein, 2010).

We might note here the important and highly relevant relationship between the central authority of the Petrine office (the Papacy) and the Roman curia on the one hand and, on the other, the heads of Catholic diocese worldwide; that is, the bishops. In the landmark encyclical, *Lumen Gentium*, the Vatican elaborated on the nature of the relationship between the Pontiff and the episcopate (the bishopric).

> But the college or body of bishops has no authority unless it is understood together with the Roman Pontiff, the successor of Peter as its head. The pope's power of primacy over all, both pastors and faithful, remains whole and intact (Vatican, 1964, para. 22).

Lumen Gentium does acknowledge that the episcopate has a certain freedom of authority and initiative, but this is never understood to entail exceeding the authority of the Pope.

> Bishops, as vicars and ambassadors of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power ... This power, which they personally exercise in Christ's name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful (Vatican, 1964, para. 27; emphasis added).

When we consider the more precise relationship between the Vatican and the episcopate (or, indeed, other 'particular churches') from within the purview of the *Code of Canon Law* there is no reference to the principle of subsidiarity in the relevant sections (Vatican, 1983, Can. 368-430, Can. 573-606). None of the principal norms concerning diocesan or institutional communities makes any mention of subsidiarity and all reaffirm the supreme authority of the Petrine office. Among a few senior clergy this has become an urgent issue. In 2001 US Bishop Joseph Fiorenza asked the synod of bishops in Rome:

> Is it not timely and appropriate for this synod to discuss again the question of subsidiarity within the church? Is it a valid ecclesiological expression of

> communion and not just a sociological principle that cannot be properly adapted to the transcendent reality of the church? (quoted in Heft, 2004, pp.129-130).

Others have noted the disparity between principle and praxis. Cardinal Kőnig of Austria, for example, in his 1999 article for *The Tablet* concerning the future direction of the Church, made the point that:

> In fact, however, *de facto* and not *de jure*, intentionally or unintentionally, the curia authorities working in conjunction with the pope have appropriated the tasks of the Episcopal college. It is they who now carry out almost all of them ... Today ... we have an inflated centralism (Kőnig, 1999; emphasis original).

Another senior cleric, Bishop Kevin Dowling of South Africa, has recently gone further.

> Applied to the Church, the principle of subsidiarity requires of its leadership to actively promote and encourage participation, personal responsibility and effective engagement by everyone ... However, I think that today we have a leadership in the Church which actually undermines the very notion of subsidiarity; where the minutiae of Church life and praxis "at the lower level" are subject to examination and authentication being given by the "higher level", in fact the highest level ... Diversity in living and praxis, as an expression of the principle of subsidiarity, has been taken away from the local Churches everywhere by the centralisation of decision-making at the level of the Vatican (Dowling, 2010).

As Doyle notes, in relation to allegations of clerical sexual misconduct, including abuse of minors, the competent authority – since the eighteenth century – has been the equivalent office to the modern Congregation for the Doctrine of the Faith (CDF) (see Doyle, 2006 para. 4; see also Doyle *et al*, 2005). The more recent instructions regarding the question of clerical sexual misconduct are explicit about where competent authority in such matters lies. In *Sacramentorum Sanctitatis Tutela* (Vatican, 2001, para. 4.1), for example, competency around the issue of clerical sexual abuse of minors is clearly reserved for the CDF.

The idea that the concept of subsidiarity is an operating principle within the Holy See and the institutional Church is difficult to sustain. The Holy See and wider institutional Catholicism is highly centralised and bureaucratic. Subsidiarity is sufficiently established as a prominent component of Catholic social doctrine to legitimise its invocation. However, the actual praxis of subsidiarity within the Catholic Church's

institutional apparatus is – at best – tenuous.

The Strategy of Statehood

The following analysis highlights empirical examples of how the Holy See consciously and judiciously emphasised its geographical and administrative distance from instances of abuse in two national jurisdictions: Ireland and the United States. Despite the above outline of the existence of significant social and disciplinary power connecting the Vatican to all 'particular' churches and ancillary bodies throughout the Catholic world, the presence of *realpolitik* becomes prevalent when controversy over the nature of that relationship emerges.

Ireland

The publication of two reports into the physical and sexual abuse of children by priests in Ireland in 2009, the Ryan and Murphy reports (Ryan Report, 2009; Murphy Report, 2009), precipitated a raft of revelations and allegations across Europe and the United States against both the serial sexual abusers of children and the inept handling of their criminal actions by the Catholic hierarchy, including the present pontiff, Benedict XVI (formerly Cardinal Ratzinger). Our concern here is less a consideration of the substance of these cases or their merit, but the reaction of the Holy See to them in the face of probing investigations by national judicial authorities.

In the Irish context, the Murphy Report into the Dublin Archdiocese made it clear that it had tried to secure the cooperation of the Holy See, the Roman curia (specifically, the CDF) and the Papal Nuncio to Ireland, Cardinal Leanza, for the purposes of disclosure of any and all documents pertaining to its investigative remit (Murphy Report, 2009, Section 2.23 – 2.34). Letters sent by the commission of investigation to both the CDF and the Papal Nuncio were not replied to. Answering questions from opposition politicians in the Irish Parliament, the Minister for Foreign Affairs, Michael Martin TD, clarified matters. On receiving the request from the commission of investigation, the Vatican Secretariat of State forwarded a diplomatic note to the Irish Embassy to the Holy See, dated 1 March, 2007. In it they acknowledged receipt of a request from the commission of investigation but asked that:

> [T]he [Irish] Embassy remind the appropriate authorities [i.e., the Murphy commission of investigation] that such requests should be addressed to the Holy See through *proper diplomatic channels, in accordance with international laws and customs* (Dáil Debates, 2009; emphasis added).

Vatican authorities followed up this exchange later in March of 2007 by again contacting Ireland's Ambassador to the Holy See. The Vatican authorities were anxious to ensure that the Murphy Commission had received its note (which was forwarded to it from the Department of Foreign Affairs via the Department of Justice, Equality and Law Reform) "to avoid any impression on the Commission's part that its correspondence had been ignored" (Dáil Debates, 2009). In addition to the failure of the Papal Nuncio to Ireland to respond to the Murphy Commission's request, an invitation extended to the Papal Nuncio to appear before the Joint Oireachtas (Parliamentary) Committee on Foreign Affairs was also refused by Cardinal Leanza. In a letter sent to the President of the Parliamentary Committee, Cardinal Leanza made it clear that:

> [I]t is not the practice of the Holy See that Apostolic Nuncios appear before Parliamentary Commissions. As the Papal Representative, I am always available to examine questions of mutual interest in the relations between the Holy See and Ireland *through contacts with the Ministry of Foreign Affairs, as has been the norm hitherto* (Papal Nuncio, 2009; emphasis added; see also Ó Caollaí 2010).

The function of the Apostolic legate, including the Papal Nuncio to nation states, is defined by the Holy See's *Code of Canon Law*, which specifically outlines its disciplinary and unifying function within the Church's structure:

> The principal function of a pontifical legate is daily to make stronger and more effective the bonds of unity which exist between the Apostolic See and particular churches ... Therefore it pertains to the pontifical legate for his own jurisdiction: [Section 364/7] in associated action with bishops, to protect those things which pertain to the mission of the Church and the Apostolic See before the leaders of the state (Vatican, 1983, Section 364).

The unwillingness of the Papal Nuncio or the Vatican Secretariat to cooperate with the Irish authorities charged with investigating clerical sexual abuse except through official diplomatic channels is in sharp contrast to the more direct modalities of communication between the Holy See and the Irish Church regarding clerical abuse. Drawing back from any critical or normative engagement with the substantive issue, there is a clear difference in strategy, which is evidenced in two ways. First, the *Communiqué on the Papal Meeting with Irish Bishops* recorded that the Pontiff and the Irish Bishops met to "examine the failure *of Irish Church authorities* for many years to act effectively" (Vatican Information Service, 2010; emphasis added). Similarly, the *Pastoral Letter of the Holy Father to Irish Catholics* (published in the aftermath of the Ryan and Murphy reports) emphasises the

"inadequate response to [these offences] of the ecclesiastical authorities *in your country*" (Vatican, 2010a; emphasis added). A distance is constructed between the Holy See and the national hierarchy, despite the unambiguous assertion of ecclesiastical authority by the Petrine office, and through it, the Roman curia. The two clearest statements from the Roman curia on the sexual abuse of minors leave little doubt about the extent of functional power over 'particular' churches, and also leave the question of an appropriate non-Canonical response (such as alerting the national authorities) highly ambiguous. Both *Crimen Sollicititationis* (Vatican, 1962) and *Sacramentorum Sanctitatis Tutela* (Vatican, 2001) are exclusively concerned with the procedures required for handling clerical abuse allegations *through Canon (or internal Roman Catholic) Law.* There is no explicit norm or instruction authorising engagement with the civil authorities.[3] There is, however, a prominent requirement in both documents for absolute confidentiality – on pain of excommunication – and an explicit instruction to expeditiously transmit allegations with 'a semblance of truth' to the Congregation of the Doctrine of the Faith (Vatican 2001, Articles 4.1 & 13; Vatican, 1962, Article 11).

The authors of the Murphy Report observed that: "Catholic Church authorities, in dealing with complaints against its clerics, gave primacy to its own laws" (Murphy Report, 2009, Section 4.1). When allegations of clerical abuse began to surface in Ireland in the early and mid 1990s the Irish hierarchy did undertake a response, culminating in the publication of the *Child Sexual Abuse: Framework for a Church Response* (Veritas, 1996). This report emerged in the absence of clear direction from Rome, however, and Vatican support for the Framework document was not forthcoming As the Murphy Report noted, the Holy See refused to accord it (or its successor) status under Catholic Canon Law.

> The Framework Document was not a norm and therefore was not binding on individual bishops. The Holy See did not formally recognise it either. Victims have expressed disappointment that neither the Framework Document nor its successor, Our Children, Our Church, received recognition from Rome, thus leaving both documents without legal status under canon law (Murphy Report, 2009, Section 3.42; see also McGarry, 2010).

This evinces a clear example of the existence of functional power between the Holy See and the Irish church, and the Vatican's reluctance to accord the Irish Church initiative tangible support throws into relief the absence of meaningful subsidiarity within church governance. The Irish initiative of 1996 was not recognised by the Roman curia, thereby undermining the Irish hierarchy's efforts to deal with it at the lowest level. The convoluted communicative practices of the Vatican secretariat and the Holy See with respect to the requests by the Murphy Commission and the Joint Parliamentary

Committee contrast sharply with the ease of communication between various organs of the Irish state and the Irish Catholic hierarchy with regard to other matters of interest to the Church in Ireland.[4]

United States of America

In the United States, following revelations of a systematic failure to deal effectively with clerical sex abuse against minors by former Cardinal Law of the Boston Archdiocese in 2002 (Boston Globe, 2003), compensation claims and litigation were pursued against several dioceses and religious orders. Although cases of sexual abuse by clergy were not unknown prior to the Boston cases, a report commissioned by the United States Conference of Catholic Bishops (see USCCB Report, 2004) pointed out that one third of the total cases were reported between 2002 and 2003, and over two thirds since 1993 (USCCB Report, p.7).[5] Cases originating in Oregon and Kentucky in the US serve to illustrate the particular facets and points of contention.

In the case of Doe v. Holy See the plaintiff (Doe) endeavoured to pursue not only the ecclesiastical authorities in the United States (specifically, the Archdiocese of Portland, Oregon, the Catholic Bishop of Chicago and the Order of the Friar Servants), but also the Holy See. The plaintiff sought to extend liability for damages beyond the ecclesiastical authorities in the United States and to include the Holy See on the basis that the other parties were 'instrumentalities' of the Holy See, that the plaintiff's abuser was an employee, and that the Holy See was negligent in failing to warn the plaintiff of his abuser's proclivities. The Holy See sought to have Doe's case dismissed on the basis that, as a foreign sovereign under the terms of the US Foreign Sovereign Immunities Act 1976 (FSIA, 1976), it was immune from prosecution in US courts. The US Solicitor General's office, in its brief to the court, concurred with the Holy See's contention that it was a foreign sovereign:

> [The Holy See] is recognised as a foreign sovereign by the United States, and the two states have maintained formal diplomatic relations since 1984 ... Accordingly, petitioner is subject to civil suit in United States courts only if the suit comes within one of the exceptions to immunity specified in the F[oreign] S[overeignties] I[mmunities] A[ct]. (US Solicitor General, 2010, para. 2)

In short, the Holy See was invoking its sovereign status under international law to have the plaintiff's case against it dismissed. It is, in effect, an attempt to deny the relevance of the Church's social and functional power through emphasis of its international diplomatic status and the narrow legal status of the Holy See's relationship with Catholic bodies in national jurisdictions. The district court of Oregon disagreed in part with the

Holy See on the basis that the guarantee of immunity through the FSIA contained exceptions (known as 'tortious act exceptions') relating to damages inflicted on US citizens by employees of the sovereign entity concerned. It was on this basis that both Doe (and O'Bryan *et al* in their class action case in Kentucky) pursued litigation against the Holy See. The Holy See appealed to the Circuit Court of Appeals.

In the event, the Ninth Circuit Court of Appeals in the US concluded that the Oregon district court was – in part – correct in dismissing the Holy See's contention. The court denied Doe's claim that the religious order, the Chicago bishop and diocese in the United States were 'instrumentalities' of the Holy See. Doe had argued that the Holy See's administrative authority over church bodies (appointment of bishops, creation and realignment of dioceses, assignment and removal of clergy) made them 'instruments' of the Holy See (see Ninth Circuit Opinion, 2009, pp 2551ff). In the opinion of the court, however, the Holy See's connection to Catholic bodies directly responsible for the conduct of priests did not fall within the legal definition of an 'instrumentality'. Nevertheless, the court did conclude that:

> Doe has sufficiently alleged that Ronan [the alleged abuser] was an employee of the Holy See acting within the "scope of his employment" under Oregon law, Ronan's acts can be attributed to the Holy See for jurisdictional purposes (Ninth Circuit Opinion, 2009, p.2549).

The Sixth Circuit Court of Appeal, considering the O'Bryan case in Louisville, Kentucky, concluded that the plaintiffs (O'Bryan *et al*, 2009) had satisfied the court of the failure of ecclesiastical personnel in the United States to act appropriately while in full knowledge of the abusers activities.[6] The court allowed that the plaintiff's pleas had merit on the basis that the ecclesiastical authorities in the United States (as distinct from the abuser) were *employees* of the Holy See, which was considered a foreign sovereign. The court also accepted that bishops, archbishops and other Holy See personnel were subject to a significant 'degree of control' exercised by the employer, which met the requirements under Kentucky law and were sufficient to support a claim against the Holy See under a tortuous activity exception of the FSIA (Sixth Circuit Opinion, 2008, p.27ff). The court, therefore, did recognise that some form of authority, some modality of power, existed between the Vatican and Catholic bodies and (senior) functionaries in the US.[7] The court operated from the premise that the Holy See 'is both a foreign state and an unincorporated association and the central government of an international religious organisation' (Sixth Circuit Opinion, 2009, p.2).[8]

Ranan has noted that the Roman Catholic Church has distinct advantages in its 'dual structure'. It is worth quoting Ranan at length:

> International representation is, in fact, the realm of the Holy See and not that of the State of Vatican City. Between 1870 and 1929, when the State of Vatican City did not exist, the Holy See, which considers itself to be the juridical equivalent of a state, maintained diplomatic relations with many states. The State of Vatican City, which does not receive or send diplomatic representatives, does, however, enter into international agreements. It also issues passports[9], which the Holy See does not (Ranan, 2006, p. 25).

The ambiguity in the precise *formal* relationship that the Holy See/Vatican has with ancillary Roman Catholic bodies in other national jurisdictions is a vexed question, which the US litigations and the controversy surrounding the lack of cooperation with Irish commissions of inquiry are sensitive to. Nevertheless, despite this strictly *legal* ambiguity, a very real functional power exists, which is evinced by a range of documents and practices. The following examples serve to illustrate the nature of this functional power.

Following Pope Benedict XVI's Apostolic letter to Catholics in Ireland an 'Apostolic Visitation' was announced by the Holy See (Vatican, 2010b). Apostolic Visitations were revived by the Council of Trent (1545 -1563 CE) as a disciplinary mechanism in light of the Protestant 'heresy'. The Catholic Encyclopaedia defines its overall function thus:

> In all cases of Apostolic visitation, the pope, through delegates, is putting into effect the *supreme and immediate jurisdiction* which is his for any and every part of the Church (New Advent, [1912] 2010; emphasis added).

For all intents and purposes an Apostolic Visitation embodies both the language and practice of an audit, a monitoring exercise, through which the Holy See elicits conformity to its norms. The Apostolic Visitation to Ireland, in the aftermath of the Ryan and Murphy reports, were established in order to:

> [M]onitor the effectiveness of and seek possible improvements to the current procedures for preventing abuse, taking as their points of reference the Pontifical Motu Proporio "Sacramentorum sanctitatis tutela" and the norms contained in Safeguarding Children: Standards and Guidance Document for the Catholic Church in Ireland[10] (Vatican, 2010b).

Similar guidance documents compiled by the US Conference of Catholic Bishops clearly exemplify the oversight role that the Holy See can bring to bear on Catholic ancillary bodies beyond the immediate authority of the Vatican. It is important to note that, in the face of public anger following the revelations of cases in the Boston archdiocese, the US

bishops set out the new norms concerning non-canonical procedures largely on their own initiative in the absence of direction from Rome. However, unlike the Irish example (discussed above) the Vatican did endorse the US Bishop's Conference response. In its *Charter for the Protection of Children and Young People* (USCCB, 2005 charter: 34), specifically, its 'Statement of Episcopal Commitment', the US Bishops affirm that they are 'directly accountable to the Holy See', and that, within Article 11, they are committed to informing the Holy See of the Charter, the manner of its implementation and forwarding to the Holy See subsequent annual reports.

In both word and practice the Roman Catholic Church embodies tangible functional power over affiliated entities and ancillary bodies beyond the legal territory of Vatican City State. This modality of power is given implicit recognition by both the Irish and US investigative and judicial authorities. The Irish investigations requested explicit cooperation from the Holy See/Vatican, in particular seeking clarification regarding the 1962 instruction. The US Appeals courts have not entirely supported the position of the Holy See regarding its legal exemptions under the FSIA. More recently, the US Supreme Court has declined to admit the Holy See's arguments to dismiss the Oregon case (Zenit, 2010). Arguably, the extent of the disciplinary and governance mechanisms available to the Holy See over Catholic institutions worldwide has been underestimated, largely because it escapes the narrow definition of organisational accountability.[11] When confronted by efforts at accountability for criminal activities perpetrated by its clergy in national jurisdictions, the available norms of International Relations and diplomatic convention are used to occlude lines of authority, construct distance between Rome and national Catholic institutions, and thereby obfuscate investigative and legal procedures seeking accountability for the failure to protect children under its care.

The issue of secrecy itself is demonstrative of the extensive social power manifest through the Church, which impacted both clergy and lay faithful alike, and it is a relevant consideration for this analysis. The contention that that the secrecy demanded by the 1962 Vatican Instruction, *Crimen Sollicitationis*, did not preclude national hierarchies from alerting the civil authorities (see, for example, Allen, 2003) is difficult to sustain. While the extent of the 1962, *Crimen Sollicitationis*, instruction's distribution is difficult to determine empirically[12], it is remarkable that no significant deviation from a culture of secrecy occurred among the vast array of Catholic bodies worldwide regarding the interpretation of norms governing the handling of child abuse allegations (see Doyle, 2008, para. 9ff). Whether as a direct result of the 1922/1962 instruction, or whether as a result of an embedded culture of adherence to the primacy of the Petrine office, the Roman curia and Church law over civil processes, or whether as a result of institutional loyalty, a deeply embedded 'thought collective' succeeded in entrenching conformity to the ecclesiastical authority of the Roman curia and to a general policy of secrecy regarding clerical misconduct (Doyle, 2008, para. 30). As Doyle notes, the 'privilege of

the forum' (*privilegium fori*), which is rooted in medieval Canon Law, permits the Church to undertake trials of its clergy accused of crimes *without* involving the secular courts, and he observes that:

> Although this privilege is anachronistic in today's society, the attitude or mentality which holds clerics accountable only to the institutional church authorities is still active [...] [T]he obsession with secrecy throughout the years has been instrumental in preventing both justice and compassionate care for victims (Doyle, 2006, para. 17-18; also Doyle, 2008, para. 22ff).

Therefore, in the absence of explicit instruction from the Vatican, the default position of the heads of diocese and religious orders, as functionaries of a long established institution, was to elevate the imperatives of secrecy and internal institutional procedural norms over and above other considerations – including secular due process. These actions were consistent with the imperatives of confidentiality set down in the 1962 instruction from the Holy Office, which arguably reflects a deeper culture of secrecy rather than establishes official policy. This was given dramatic illustration in the Irish context in the example of Cardinal Sean Brady. Controversy emerged in March 2010 around Cardinal Brady's role as a priest and diocesan official involved in conducting investigations into the abuse of two minors perpetrated by convicted paedophile priest, Fr Brendan Smyth, in 1975. The Cardinal is currently the subject of legal action by the victims, on the basis that he swore them to secrecy during these proceedings. Fr Smith, while removed from active ministry on foot of Brady's investigation, was not laicised and was later moved from the diocese to other locations where he went on to abuse a large number of children (see Irish Times, 2010).

Notwithstanding questions around the extent of its dissemination throughout the Catholic Church, the stipulation in the 1962 *Crimen Sollicitationis* instruction (Vatican, 1962, paras. 11, 13, 21) that absolute secrecy should be maintained throughout and following any procedures was largely followed. A consistent pattern of failure to report to civil authorities and removal of alleged abusive clergy to other diocese or jurisdictions characterised a uniform Church response to allegations of child abuse by priests. From the perspective of this analysis, it is the distinction between this manifestation of diffuse – but tangible – social power on the one hand and the invocation of institutional or organisational fragmentation by dint of the international system on the other that warrants critical scrutiny. The Church has simultaneously shaped the attitudes, actions and practices of its disparate subsidiary bodies and their functionaries, and then invoked organisational distance and local culpability when faced with any imperative towards accountability.

At this point, we should note the relevance of a pertinent analytical distinction.

On the one hand there is the claim of ultimate doctrinal authority on the part of the Vatican and its extension beyond the Holy See. On the other there is the administrative initiative ceded to the heads of diocese or religious orders to administer their 'particular churches' in light of their own perceived local or immediate needs under the auspices of the principle of subsidiarity. However, an analytical distinction made by those outside the sphere of the institutional Church might not be recognisable to a bishop or ordinary appointed by the Pontiff. It must be questioned whether the distinction between doctrinal orthodoxy and practice on the one hand and administrative freedom regarding responses to clerical abuse is a realistic one for members of the hierarchy. Can the insistence upon doctrinal orthodoxy be sufficiently extricated from the day to day administration of more localised churches to permit diocesan or ordinaries to act on their own initiative? Is the distinction between doctrinal and non-doctrinal matters ultimately possible for functionaries of such a deeply institutionalised entity? The evidence for initiative by the hierarchy of particular churches regarding clerical sexual abuse has been dismally scant.

Conclusion

What has become manifest in the instance of the Holy See's response to the clerical sexual abuse crisis is the occlusion of transnational social or functional power where it is clearly manifest and a corresponding emphasis on the (limited) legal and organisational connections between the Vatican and national Catholic bodies. Corporate Roman Catholicism has utilised facets of the international system in order to underplay its role in that crisis. Putnam's early recognition that both the domestic and international political dimensions were 'entangled', and that national executive actors were constrained by a complex interplay of demands emanating from both spheres, offers an important analytical gateway. The objective here has been to draw back from determining whether Roman Catholicism is a reflection of 'global' or 'international' reality, or even the inevitable entanglement of both. Our analysis is not tasked with an objective classification of organised religion into the categories of contemporary IR or comparative political lexicon. The objective instead has been to demonstrate that the corporate Roman Catholicism has embodied a certain degree of *conscious* – if not always internally consistent – *choice* in their self-understanding and practice, which has been heavily contingent on the specificity of relations with other political entities of consequence.

A critically relevant component in this strategic oscillation, and hence the central distinction emanating from this analysis of corporate Catholicism, are the two modalities of power identified by Foucault. The modality of legal-sovereign power falls within the formal status of the Holy See as an internationally recognised entity with incomplete status as a state, but which has been afforded bilateral recognition by states

and is accorded many of the privileges of that status. This is particularly evinced by the 2004 upward revision of the Holy See's UN General Assembly role. It is the language of legalism, diplomatic convention and precisely defined relationships. Despite this elevated status it is also the case that through this prism the Holy See's connections to Catholic bodies in jurisdictions beyond the Vatican City are at best ambiguous and even legally tenuous.[13] Bishops and priests are citizens of states rather than the Vatican, and states have a legal claim over their conduct as citizens. Judicial opinion in the United States has granted plaintiffs in abuse cases sufficient space to argue for a legally sustainable connection between an abuser priest and his institutional superior, including the Holy See, but the tortuous efforts in attempting to classify the Holy See legally throw doubt on their likelihood of success.[14]

The foregoing analysis has endeavoured to foreground an alternative modality of power relations between Rome and nationally-based Catholic bodies – the power to shape and conduct agency beyond the coercive methods of legalism and sovereignty. This modality of power falls beneath the scope of precise legal definition, although its tangibility is evinced by the latitude granted to plaintiffs in US courts. This social or functional power draws on the language of faith and religion, of orthodoxy and doctrine, and their combined capacity to shape, order and channel the conduct of the Holy See's institutional functionaries, whether individual or collective. It allows the bishop and priest to be transformed from citizen of the state into a functionary of an externally directed institution. The largely uniform replication of Catholic faith and practice across national boundaries and in conformity with established Church orthodoxy is facilitated through 'institutional isomorphism' (DiMaggio and Powell, 1983, 1991; Scott, 2001, pp.152-158). This is embodied in such practices as conferral of the Holy See's formal recognition upon ancillary bodies (including new entities such as newly established religious orders or sites of worship), standardisation and approval of seminary training programmes, and dissemination of 'authentic' religious doctrine and liturgy. All of which serves to legitimise the 'Roman Catholic' authenticity of such bodies and thereby entrench and extend the Holy See's legitimising power, ultimately solidifying ideas or evaluations of 'normal' and 'deviant' within Catholicism. Sanction through this modality of power is not supported by legal coercion as the Vatican no longer has a monopoly on the use of legitimate force. It is administered instead at the level of attitudes, beliefs and the concept of the soul. It is achieved through the withdrawal – or the threat of withdrawal – of institutional recognition, through such practices as excommunication, de-frocking or other circumscriptions on priestly practice (such as stripping Hans Küng of his teaching authority). Intra-institutional deviancy is corrected through apostolic constitutions, papal encyclicals, apostolic exhortations, and ecclesiastical letters, the office of the papal legate or nuncio, and apostolic visitations. It was through this second modality of power that imperatives such as secrecy, the avoidance of scandal and conformity were sustained –

not merely through instructions from the curia, but through an unspoken culture of deferral to the Petrine office and the proximate ensemble of the Vatican bureaucracy, which checked any inclination towards initiative in the face of critical decisions. Institutional primacy and the pre-eminence of canon law trumped citizenship responsibility in the face of clerical abuse.

The situated strategies of particular biases and actors are an important element in the consideration of the global-international interplay. In the case of Roman Catholicism we saw that while the Vatican saw itself as – and vociferously proclaimed itself to be – the apex of a significant transnational (even 'global') community of religious adherents, and while it assumed the role of an absolute authority in matters pertaining to doctrinal orthodoxy and religious practice, the 'international' position of the Holy See provided it with a strategically useful discourse. Its refusal to engage with Irish commissions of inquiry into abuse or the committee of the Irish legislature on the basis of diplomatic protocol, and its invocation of sovereignty in the face of impending litigation in the United States, were all premised on the ambiguity of its international legal status.

Notes

[1] Specifically, in an annex to the Resolution, it granted the Holy See several distinct improvements to its status up to that point, which include *inter alia*:

- The right to participate in the general debate of the General Assembly
- The right to make interventions
- The right of reply
- The right to have its communications relating to the sessions and work of the General Assembly and international conferences issued and circulated directly, and without intermediary, as official documents of the Assembly
- The right to raise points of order relating to any proceedings involving the Holy See
- The right to co-sponsor draft resolutions and decisions that make reference to the Holy See
- Seating for the Holy See shall be arranged immediately after Member States and before the other observers when it participates as a non-member State observer
- The Holy See shall not have the right to vote or put forward candidates in the General Assembly (UN A/RES/58/314 Annex)

[2] My thanks to an anonymous reviewer for comments relating to this subject.

[3] This anomaly was rectified only as recently as May 2010, when the Vatican issued clarifications following the release of modifications made to the 2001 Sacramentorum Sanctitatis Tutela in the face of the abuse crisis emanating from Ireland and elsewhere. The revised norms, Normae de gravioribus delictis, affirmed the application of the

'pontifical secret' to cases falling under its remit (Vatican, 2010c, Art. 30.1). This instruction is concerned exclusively with the Church's procedures under Canon Law, and makes no reference to any procedure concerning contact with civil authorities. This is reserved for an introductory guidance note (Vatican, 2010e), which lists contact with civil authorities among its 'Preliminary Procedures'.

[4] The Irish Government, in October 2007, established a 'structured' dialogue provision with the enthusiastic support of the Irish Catholic hierarchy, which was modelled on the provision included in the Lisbon Treaty (see Houston, 2009a). This provision establishes a formal dialogue forum between religious institutions and associations and the office of the Irish Prime Minister (see Houston 2010).

[5] This correlates with increased media coverage following the revelations concerning the Boston Archdiocese and the role of Cardinal Bernard Law in particular.

[6] In four areas the plaintiffs had satisfied the court of the merits of their case:

The ecclesiastical authorities in the US – as employees of the Holy See – had violated customary international law of human rights through their discharge of instructions contained in a 1962 policy document emanating from the Roman Curia (this refers to the document known as Crimen Sollicitationis 1962)

The claim of negligence had merit in that the ecclesiastical authorities in the US – as employees of the Holy See – failed to either warn of or report on the activities of priests who were known to be abusing children in the Church's care

The actions of the US ecclesiastical authorities breached the 'special legal relationship' (fiduciary duty) established de facto between the plaintiffs and the Holy See

The acts and omissions of the US clergy caused extensive outrage and the infliction of emotional distress (Sixth Circuit Opinion, 2009).

[7] The difficulty in isolating what kind of political entity the Holy See is can be gleaned from the opinion filed by the Sixth Circuit Court of Appeal. In the amended opinion the court questioned whether the plaintiff was asking the court to consider the Holy See as a separate entity from the Vatican State or *not* to conceive of the Holy See as sovereign entity at all.

[8] With regard to the first instance, the court noted the failure of the plaintiff to cite any authority for the proposition that 'the Holy See may be sued in a separate, non-sovereign function as an unincorporated association' (Sixth Circuit Opinion, 2009, p.9).

[9] As of 2005 there were a total of 557 passport holders of Vatican City (see Vatican 2005) http://www.vatican.va/news_services/press/documentazione/documents/sp_ss_scv/informazione_generale/cittadini-vaticani_en.html

[10] This document is a recent publication (2008) sponsored by the three main components of the Catholic Church in Ireland: the Bishop's Conference, the

Conference of Religious of Ireland and the Irish Missionary Union. The document is available at http://www.ossory.ie/Standards%20and%20Guidance%20Feb%2020.pdf

[11] For example, priests are citizens of nation states, not the Holy See or Vatican City.

[12] The 2001 instruction, *Sacramentorum Sanctitatis Tutela*, is not available on the Vatican's website. However, it does reproduce the 'norms' promulgated through it and an account of the document itself and its relationship to the older *Crimen Sollicitationis*, which was first published in 1922 and again in 1962. This account notes that:

The 1922 Instruction was given as needed to bishops who had to deal with particular cases concerning solicitation, clerical homosexuality, sexual abuse of children and bestiality. In 1962, Blessed Pope John XXIII authorised a reprint of the 1922 Instruction, with a small section added regarding the administrative procedures to be used in those cases in which religious clerics were involved. Copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council (1962-1965). *A few copies of this re-print were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed* (Vatican, 2010b emphasis added).

[13] This point was made after the collapse of the Kentucky case against the Holy See in August 2010. A Catholic Canon Lawyer, Nick Cafardi, pointed to the difficulty that plaintiffs would have trying to prove that American priests are employees of Rome. He commented: "Show me a paycheck (sic) from the pope to the bishop or one of his priests. Show me that the pope has them on his insurance policies as an employee [...] You can't show any of the things that we normally think of that make somebody an employee of somebody." (Lovan, 2010b)

[14] As of August 2010, in fact, the case taken by O'Bryan et al in Kentucky was abandoned (Lovan, 2010a).

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