

# RESERVATION AS A MEANS OF RECONCILIATION: A COMPARATIVE ANALYSIS OF THE CEDAW AND THE FUNDAMENTAL TENETS OF THE VATICAN AS CHURCH AND STATE

## I. INTRODUCTION

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The Convention on the Elimination of all forms of Discrimination Against Women was adopted in 1979 by the United Nations General Assembly.<sup>1</sup> The Convention or “CEDAW” was enforced as an international treaty after ratification by its twentieth party in 1981.<sup>2</sup> Broadly speaking, the CEDAW is a human rights treaty which aims at “realizing equality between women and men through ensuring women’s equal access to and equal opportunities in, political and public life.”<sup>3</sup> As of 2015, 189 parties had ratified or acceded to the CEDAW.<sup>4</sup> The Holy See, the sovereign body of the Roman Catholic Church, is not a party to the Convention.<sup>5</sup>

This Note analyzes the CEDAW’s intersection with the Vatican City State, Holy See, and Roman Catholic Church in order to ultimately illustrate that because of the Holy See’s unique relationship to the Church, it cannot comport with the entirety of the CEDAW and maintain its religiosity simultaneously. That is, as a party of the CEDAW, the Holy See cannot fully achieve CEDAW’s objectives because fundamental tenets of the Roman Catholic Church prohibit it. However, the incompatibility of the Holy See and the CEDAW is not absolute. Rather,

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<sup>1</sup> THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY 6-7 (Marsha A. Freeman, et al. eds., 1st ed. 2012).

<sup>2</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14.

<sup>3</sup> U.N. Entity for Gen. Equal. & the Empowerment of Women, *CEDAW: Overview of the Convention*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/> [<https://perma.cc/4BL7-JZ2X>] (last visited Mar. 23, 2015).

<sup>4</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en) [<http://perma.cc/KWK9-Z28R>] (last visited Mar. 23, 2015).

<sup>5</sup> Freeman, *supra* note 1, at 551.; *Holy See*, U.S. DEP’T OF STATE, <http://www.state.gov/outofdate/bgn/holysee/73816.htm> [<http://perma.cc/6A27-VZYJ>] (last visited Mar. 23, 2015); UNITED NATIONS TREATY COLLECTION, *supra* note 4.

incompatibility with the CEDAW may be reconciled if, upon ratification of the CEDAW, reservations are made such that the fundamental tenets of both the CEDAW and the Roman Catholic Church are not compromised.

Section II of this Note provides a short history of the CEDAW, focusing primarily on its underlying goals, initiatives, and criticisms. Section III discusses the historical, political, and religious tradition of the Vatican City State and Holy See in addition to illustrating their unique presence and participation in the international community. Section IV examines specific codes of canon law by which the Vatican City State, Holy See, and Roman Catholic community abide that are in direct conflict with the CEDAW's objectives regarding women's equal access to political and public life. Specifically, this section discusses priestly ordination, reproductive health, and the scope of papal authority to amend canon law. Section V proposes a recommendation by exploring the possibility of reservations to the CEDAW and compares such reservations to those of predominately Catholic countries already parties to the Convention. Section VI summarizes and concludes this Note.

Collectively, this Note provides a global discussion of the application of Roman Catholic dogma in an era of rapid social and political change regarding the advancement of women's rights as human rights. This Note does not seek to criticize the Roman Catholic Church for its adherence to traditional religious doctrines nor does it endorse infringement upon the free practice of religion. Rather, it merely proposes an international solution to the Holy See and the CEDAW's seemingly inherent incompatibility.

## II. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

### *a. The Emergence of CEDAW*

The inclusion of women's rights in the human rights global discourse was largely nonexistent until the post-World War I establishment of the League of Nations ("the League").<sup>6</sup> At least "in international institutional terms" the League began efforts to enhance the women's rights dialogue around the globe.<sup>7</sup> Conversation surrounding the drafting of the League's Covenant included argument by the International Council for Women for the inclusion of the protection of women's rights in the Covenant.<sup>8</sup> However, despite the efforts of a committee of experts appointed by the League "to carry out an inquiry into the legal status of the world's women[,] " World War II brought an end to the committee's work and led to the dissolution of the League.<sup>9</sup>

With the establishment of the United Nations ("UN") in 1945 following World War II and the creation of the UN Charter came the first international agreement to affirm principles of non-discrimination, including on the basis of sex.<sup>10</sup> Specifically, the UN Charter affirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . ."<sup>11</sup> As a result of the Charter, "[t]he status of human rights, including the goal of equality between women and men, [was] thereby elevated: a matter of ethics [became] a contractual obligation of all Governments and of the UN."<sup>12</sup> However, despite the commitment to

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<sup>6</sup> Freeman, *supra* note 1, at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 4.; U.N. Entity for Gend. Equal. & the Empowerment of Women, *CEDAW: A Short History of CEDAW*, U.N. WOMEN, <http://www.un.org/c/daw/cedaw/history.htm> [<http://perma.cc/U28S-H7ZV>] (last visited Mar. 23, 2015); see U.N. Charter Preamble.

<sup>11</sup> U.N. Charter Preamble.; See generally U.N. Charter.

<sup>12</sup> U.N. Entity for Gend. Equal. & the Empowerment of Women, *CEDAW: A Short History of CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/history.htm> [<http://perma.cc/BGM4-VN2X>] (last visited Mar. 23, 2015).

women in the UN Charter, by the 1960s it remained evident that discrimination against women continued to manifest because of an inability to escape traditional notions of the roles of men and women in society.<sup>13</sup> To accomplish this needed change, “demands began to be made for a more comprehensive and well-targeted international focus on women” within the “emerging human rights legal framework.”<sup>14</sup>

The U.N. establishment of the Declaration on the Elimination of Discrimination against Women in 1967 was a response to these demands.<sup>15</sup> On the twenty-fifth anniversary for the Commission on the Status of Women (“CSW”) in 1972, the United Nations General Assembly (“UNGA”) agreed to hold “a world summit on women in Mexico City in 1975, focusing on the themes of equality, development, and peace and [designated] 1975 International Women’s Year.”<sup>16</sup> The Mexico City Conference resulted in the UNGA’s proclamation of 1975-85 as the U.N. Decade for Women.<sup>17</sup>

Thereafter, “[t]he 1975 Mexico City World Plan of Action . . . recommended that ‘[h]igh priority should be given to the preparation and adoption of the convention on the elimination of discrimination against women, with effective procedures for its implementation.’”<sup>18</sup> In 1977, the CSW completed its work on a draft and forwarded it to the UNGA where it was adopted in December 1979 “with 130 votes in favour, none against and 10 abstentions.”<sup>19</sup> In 1981, the

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<sup>13</sup> Freeman, *supra* note 1, at 5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (citing UNGA Res. 2263 (XXII) (Nov. 7, 1976)).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 7. (quoting World Plan of Action for the Implementation of the Objectives of the International Women’s Year, the Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, U.N. Doc E/CONF.66/34 (76.IV.1)(1976) Part 1 para 198).

<sup>19</sup> *Id.*

Convention on the Elimination of all forms of Discrimination against Women or “CEDAW” was officially enforced as an international treaty.<sup>20</sup>

*b. The CEDAW's Objectives*

The CEDAW has been described by the UN as “an international bill of rights for women.”<sup>21</sup> Its final text includes a preamble and six parts comprised of thirty articles.<sup>22</sup> While each article recognizes the elimination of discrimination as fundamental to State parties’ obligations in narrowed fields, the “scope [of the Convention] is wide, requiring States parties to address how the enjoyment of recognized human rights is adversely affected by gender-based distinctions, exclusions, and stereotypes.”<sup>23</sup>

The CEDAW defines discrimination “in terms of its impact on women’s equal enjoyment of their human rights and fundamental freedoms.”<sup>24</sup> It provides broad safeguards against discrimination:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>25</sup>

It is upon these principles the CEDAW binds States parties both publically and privately. Namely, the CEDAW binds public actors “with respect to public actions, laws and policies” but also prevents and encourages the imposition of sanctions on “[private] actors, including within the

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 2. (quoting *The United Nations and The Advancement of Women, 1945-1995*, U.N. Blue Book Series, Vol. VI (rev. edn, 1996) 5); *see also* U.N. Entity for Gend. Equal. & the Empowerment of Women, *supra* note 3.

<sup>22</sup> Freeman, *supra* note 1, at 8.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.*

<sup>25</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 2, art. 1.

family, the community, and the commercial sector” that partake in the discriminatory treatment of women.<sup>26</sup> The CEDAW does so by obligating States parties upon ratification to undertake whatever measures necessary in order to achieve equality between men and women which includes, but is not limited to, the repeal of discriminatory laws, policies, and procedures.<sup>27</sup> The Committee on the Elimination of Discrimination against Women (“the Committee”) was established to monitor the realization of these measures.<sup>28</sup> The Committee is composed of “experts nominated by their Governments and elected by the State’s parties as individuals of high moral standing and competence in the field covered by the Convention.”<sup>29</sup>

Each State party is expected to submit a report (“Country Report”) to the Committee every four years indicating what measures, if any, have been adopted in order to implement the CEDAW.<sup>30</sup> In order to aid States parties in preparation of these reports, the Committee has established a set of guidelines.<sup>31</sup> Pursuant to these guidelines initial reports are “intended to be a detailed and comprehensive description of the position of women in that country at the time progress can be measured. Second and subsequent national reports are intended to update the previous report detailing significant developments that have occurred over the last four years, noting key trends, and identifying obstacles to the full achievement of the Convention.”<sup>32</sup> During

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<sup>26</sup> Freeman, *supra* note 1, at 2.

<sup>27</sup> U.N. Entity for Gend. Equal. & the Empowerment of Women, *Overview of the Convention*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/> [<https://perma.cc/4BL7-JZ2X>] (last visited Mar. 15, 2015) (stating the CEDAW aims “to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises”).

<sup>28</sup> Freeman, *supra* note 1, at 476.

<sup>29</sup> Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 2, art. 17.

<sup>30</sup> *Id.* art. 18.

<sup>31</sup> Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, U.N. Doc. HRI/GEN/Rev. 1/Add. 2 (2003).

<sup>32</sup> U.N. Entity for Gend. Equal. & the Empowerment of Women, *CEDAW: Reporting*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reporting.htm> [<http://perma.cc/LWN7-RAHC>] (last visited Mar. 23, 2015).

its annual session to the UNGA, “the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country.”<sup>33</sup>

Notably and apart from its growing number of signatories, the CEDAW has been subject to a fair amount of caution and criticism.<sup>34</sup> The United States, for example, has expressed a great deal of hesitancy towards the CEDAW.<sup>35</sup> In the US, the CEDAW has not been ratified despite being originally proposed and signed by the Carter Administration in 1980 and the current endorsement of “[o]ver 190 U.S. religious, civic and community organizations . . . such as the American Federation of Labor and Congress of Industrial Organizations, the United Methodist Church, and the League of Women Voters.”<sup>36</sup> One critic argues the CEDAW creates a binary between the sexes and “cannot succeed in creating gender equality if its scope remains limited to women.”<sup>37</sup> Contrastingly, others more broadly claim the CEDAW does not reflect “American values” and supports “radical feminist views[.]”<sup>38</sup>

Despite these criticisms and misconceptions, the CEDAW “is *intended* to be universal [and] to apply to all women across the globe regardless of the prevailing ideology or economic development of the State in which they live . . . or its dominant religious belief systems.”<sup>39</sup> Indeed, rather than ascribing to any particular political or legal theory the CEDAW “builds on overlapping

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<sup>33</sup> U.N. Entity for Gen. Equal. & the Empowerment of Women, *CEDAW: Introduction*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro> [<http://perma.cc/4HDZ-SQDV>] (last visited Mar. 23, 2015).

<sup>34</sup> See, e.g., Women’s Environment and Development Organization, *CEDAW in the United States: Why a Treaty for the Rights of Women?*, <http://www.wedo.org/wp-content/uploads/cedaw-factsheet.pdf> [<http://perma.cc/ZZ72-2VZD>] (last visited Mar. 23, 2015).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Darren Rosenblum, *Unsex CEDAW: What’s Wrong with Women’s Rights*, 20 COLUM. J. GEND. & L. 1 (2011).

<sup>38</sup> Lisa Baldez, *U.S. Drops the Ball on Women’s Rights*, CNN (Mar. 8, 2013), <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/> [<http://perma.cc/F2TA-ATZB>].

<sup>39</sup> Freeman, *supra* note 1, at 30 (emphasis added).

consensus of different moral, cultural, and legal approaches” in spite of being “at odds with the beliefs associated with certain religious communities and cultural traditions.”<sup>40</sup> Arguably, one such religious community at odds with the CEDAW’s commitment to women’s equality and empowerment is the Vatican, center of the Roman Catholic Church.

### III. THE VATICAN

Among other things the Vatican City State or “Vatican City” serves as the political and spiritual center of the Roman Catholic Church, Michelangelo’s Sistine Chapel, and destination for millions of pilgrims and tourists annually.<sup>41</sup> With a current population of only 842, Vatican City is approximately 0.7 times the size of the National Mall in Washington, D.C. and is considered the world’s smallest State.<sup>42</sup> An estimated 450 of those people actually enjoy Vatican citizenship and serve as “high-ranking dignitaries, priests, nuns, and guards” while the remaining numbers have merely permission to reside there.<sup>43</sup> Interestingly, because the majority of Vatican citizens are diplomatic personnel, about half of the Vatican City State’s citizens do not live within its walls but rather, in different countries around the world.<sup>44</sup>

The internal structure of the Vatican and its unique status as both Church and sovereign State has been subject to a substantial amount of scholarship. This Note briefly discusses such

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<sup>40</sup> *Id.*

<sup>41</sup> *Vatican Fast Facts*, CNN, <http://www.cnn.com/2013/10/30/world/vatican-fast-facts/> [<http://perma.cc/DYC9-2PDX>] (last visited Mar. 23, 2015); Cindy Wooden, *Number of Vatican Museums’ Visitors Tops 5 Million*, CATH. NEWS SERV. (Jan. 11, 2012), <http://www.catholicnews.com/data/stories/cns/1200122.htm> [<http://perma.cc/EDQ9-RPFV>].

<sup>42</sup> *Holy See (Vatican City)*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/vt.html> [<http://perma.cc/C7SM-DK6J>] (last visited Mar. 23, 2015).

<sup>43</sup> *Population*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-generalipopolazione.html> [<http://perma.cc/PLT3-84MA>] (last visited Mar. 23, 2015); *Holy See*, U.S. DEP’T OF STATE., <http://www.state.gov/outofdate/bgn/holysee/73816.htm> [<http://perma.cc/3AVR-7QZX>] (last visited Mar. 23, 2015).

<sup>44</sup> *Population*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-generalipopolazione.html> [<http://perma.cc/76AL-3ANR>] (last visited Mar. 23, 2015).

scholarship by beginning with a brief account of the Vatican City State's historical, political, and religious origin.

a. *A Brief History of the Vatican as Church and State*

Until the mid-nineteenth century, Roman Catholic popes ruled portions of the Italian Peninsula known as the Papal States.<sup>45</sup> However, Victor Emmanuel led the Kingdom of Italy to conquer the Papal States in 1870 and in doing so, acquired Rome as the Kingdom of Italy's capital.<sup>46</sup> Pope Pius IX and several of his successors believed Victor Emmanuel's conquest was illegitimate and declared themselves "prisoners" in the Vatican.<sup>47</sup> Thereafter, "disputes between a series of 'prisoner' popes and Italy were resolved in 1929 by three Lateran Treaties, which established the independent state of Vatican City and granted Roman Catholicism special status in Italy."<sup>48</sup> That is, among other things, the Lateran Treaties between the Vatican and the Kingdom of Italy established the autonomy and independence of the "Holy See," the sovereign body and universal government of the Roman Catholic Church.<sup>49</sup>

Today, the Vatican City State has all the characteristics expected of a sovereign nation including its own government, laws, industry, police force, and bank.<sup>50</sup> Yet, despite these features the Vatican City State remains distinct from any other country because of its unique relationship with the Holy See. That is, though the Lateran Treaty created the Vatican City State's sovereignty

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<sup>45</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42.

<sup>46</sup> *Id.*; *Holy See*, U.S. DEP'T OF STATE, <http://www.state.gov/outofdate/bgn/holysee/73816.htm> (last visited Mar. 23, 2015) [hereinafter *Holy See*, state.gov] [ <http://perma.cc/AU6J-2H7Z>].

<sup>47</sup> *Holy See*, state.gov, *supra* note 46.

<sup>48</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42; *Treaty Between the Holy See and Italy*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/LateranTreaty.pdf> [ <http://perma.cc/CQ4G-5QTH>] (last visited Mar. 23, 2015).

<sup>49</sup> *Holy See*, state.gov, *supra* note 46; *see also U.S. Relations with the Holy See*, U.S. DEP'T OF STATE, <http://www.state.gov/r/pa/ei/bgn/3819.htm> [ <http://perma.cc/5ADR-BDSS>] (last visited Mar. 23, 2015).

<sup>50</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42.

distinct from the Holy See, the differences between the two entities is not always entirely clear.<sup>51</sup> Arguably, the most poignant complication to the mystery of the Vatican City State and Holy See is the dual role played by the Pope who “exercises supreme legislative executive, and judicial power over [both] the Holy See and the State of Vatican City.”<sup>52</sup>

i. The Pope and the Vatican City State

The Vatican City State is technically governed as an absolute monarchy but is more commonly considered a papacy.<sup>53</sup> Elected by a College of Cardinals, the Pope becomes Sovereign of the Vatican City State at the moment he accepts his election.<sup>54</sup> He is nominated for life or until voluntary resignation.<sup>55</sup> As such, the Pope acts as Head of State and “holds full legislative, executive and judicial powers” over the Vatican City State.<sup>56</sup>

Notably, there is some delegation of the Pope’s authority as the Vatican City’s Head of State. Indeed, the Vatican City State also consists of a legislative body and judicial body, which exercise their authority in the name of the Pope and consist of members appointed by the pope himself.<sup>57</sup> There is also an executive body with authority delegated to the President of the

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<sup>51</sup> *Treaty Between the Holy See and Italy*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/LateranTreaty.pdf> [<http://perma.cc/5JN3-AL6A?type=live>] (last visited Mar. 23, 2015).

<sup>52</sup> *Holy See*, state.gov, *supra* note 46.

<sup>53</sup> *State Departments*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/organi-dello-stato.html> [<http://perma.cc/T6CC-822X>] (last visited Mar. 23, 2015); *Holy See*, state.gov, *supra* note 46.

<sup>54</sup> *State Departments*, *supra* note 53.

<sup>55</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42.

<sup>56</sup> *State Departments*, *supra* note 53.

<sup>57</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42.

Pontifical Commission of the Vatican City State, Secretary General, and Deputy Secretary General.<sup>58</sup>

Each of these members of the Vatican City State's government including the Pope, Cardinal President of the Pontifical Commission for the Vatican City State, Secretary of State, Deputy Secretary of State, and the Pope's College of Cardinals are ordained male members of the Roman Catholic priesthood.<sup>59</sup>

ii. The Pope and the Holy See

As mentioned, in addition to serving as the sovereign of Vatican City State, the Pope serves as sovereign of the Holy See. The Holy See is considered the "universal Church" and is the non-territorial sovereign body of the Roman Catholic Church.<sup>60</sup> As sovereign of the Holy See, the Pope is responsible for carrying out the Church's "mission of announcing the truth of the Gospel for the salvation of all humanity and in the service of peace and justice in favour of all peoples, both through the various specific and local Churches spread throughout the world, as well as through its central government."<sup>61</sup> A more sacred description of the Pope's role as sovereign of the Holy See, found in the Catechism of the Catholic Faith provides, "[t]he Pope, Bishop of Rome and [Saint] Peter's successor, is the perpetual and visible source and foundation of the unity both of the bishops and of the whole company of the faithful."<sup>62</sup> Another portion of the Catechism

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<sup>58</sup> *Legislative and Executive Bodies*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/organi-dello-stato/organi-del-potere-giudiziario.html> [<http://perma.cc/F5Y7-6DPB>] (last visited Mar. 23, 2015).

<sup>59</sup> *Vatican City State*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/struttura-del-governatorato/organigramma/stato-citta-del-vaticano.html> [<http://perma.cc/PZU9-94U2>] (last visited Mar. 23, 2015).

<sup>60</sup> *Origins and Nature*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/note-general/origini-e-natura.html> [<http://perma.cc/VX5S-RNFT>] (last visited Mar. 23, 2015).

<sup>61</sup> *Id.*

<sup>62</sup> CATECHISM OF THE CATHOLIC CHURCH, ¶ 882, [http://www.vatican.va/archive/ENG0015/\\_P2A.HTM](http://www.vatican.va/archive/ENG0015/_P2A.HTM) [<http://perma.cc/44PH-ZMXA>] (last visited Mar. 23, 2015).

describes the Pope 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.”<sup>63</sup>

While the Pope’s authority in the Holy See is supreme and unhindered, he works in coordination with the Roman Curia and the Papal Civil Service in executing the mission of the Church and its affairs.<sup>64</sup> The Roman Curia essentially functions as the centralized government of the Holy See with the Cardinal Secretariat of State as its chief administrator and implements its mission through various departments comprised of members of the clergy.<sup>65</sup> For example, one of the most dynamic institutions of the Roman Curia is the Congregation for the Doctrine of Faith “which oversees church doctrine; the Congregation for Bishops, which coordinates the appointment of bishops worldwide; the Congregation for the Evangelization of Peoples, which oversees all missionary activities; and Pontifical Council for Justice and Peace, which deals with international peace and social issues.”<sup>66</sup>

Importantly, the Code of Canon Law acts as the principle legislative document of Holy See and is considered an “indispensable instrument to ensure order both in individual and social life and also, in the Church’s activity itself.”<sup>67</sup> As a result, Vatican City State citizens and Roman Catholics across the globe today abide by the 1983 Code of Canon Law promulgated by Pope John Paul II.<sup>68</sup> In Pope John Paul II’s promulgation he declared that canon law “is in no way intended

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<sup>63</sup> *Id.*

<sup>64</sup> *Holy See*, state.gov, *supra* note 46.

<sup>65</sup> *Id.*; *The Roman Curia*, THE HOLY SEE, [http://www.vatican.va/roman\\_curia/index.htm](http://www.vatican.va/roman_curia/index.htm) (last visited Mar. 23, 2015) (“In exercising supreme, full, and immediate power in the universal Church, the Roman pontiff makes use of the departments of the Roman Curia which, therefore, perform their duties in his name and with his authority for the good of the churches and in the service of the sacred pastors.”) [[http://www.vatican.va/roman\\_curia/index.htm](http://www.vatican.va/roman_curia/index.htm)].

<sup>66</sup> *Holy See*, state.gov, *supra* note 46.

<sup>67</sup> Pope John Paul II, *Sacrae Disiplinae Leges*, THE HOLY SEE (Jan. 25, 1983), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_25011983\\_sacrae-disciplinae-leges\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_25011983_sacrae-disciplinae-leges_en.html) [<http://perma.cc/K2R4-8VCN>].

<sup>68</sup> *Id.*

as a substitute for faith, grace and the charisms in the life of the Church and of the faithful.”<sup>69</sup> Instead, “its purpose is rather to create such an order in the ecclesial society that, while assigning the primacy to faith, grace and charisms, it at the same time renders easier their organic development in the life both of the ecclesial society and of the individual persons who belong to it.”<sup>70</sup>

Summarily, the Holy See is a non-territorial entity acting as the sovereign authority of the Roman Catholic Church whereas the Vatican City State is a territorial entity, acting as an independent nation—both with the Pope as their sovereign, individualized forms of governance, and directly influenced by teachings of Roman Catholicism. It is unsurprising that the complicated and unique nature of the Vatican as both Church and State has been a recurrent issue in international law.

b. *The Vatican City State and Holy See’s Status in International Law*

Along with being the sovereign of Church and State, the Pope is also primarily responsible for the representation of Vatican City State in its relations with foreign States though he works through another clergy member, the Secretariat of State.<sup>71</sup> Both the Vatican City State and the Holy See receive recognition under international law, each taking part in international conferences and international agreements.<sup>72</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Diplomatic Relations*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/rapporti-internazionali/rapporti-diplomatici.html> [<http://perma.cc/8YH6-G3GH>] (last visited Mar. 23, 2015).

<sup>72</sup> *Id.*; see *Participation in International Organizations*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/rapporti-internazionali/partecipazioni-ad-organizzazioni-internazionali.html> [<http://perma.cc/KB5C-QSLF>] (last visited Mar. 23, 2015), for a list of participation in international organizations [hereinafter *Participation*]; see *Adherence to International Conventions*, VATICAN CITY STATE, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo/rapporti-internazionali/adesione-a-convenzioni-internazionali.html> [<http://perma.cc/Z8TY-LKKR>] (last visited Mar. 23, 2015), for a list of international conventions.

Despite seeming to be of the same construct, the Holy See and the Vatican City State have different roles in the international community. “The Holy See, whose international legal personality is best as defined *sui generis*, is legally competent to ratify multilateral treaties.”<sup>73</sup> Significantly, the Holy See rather than the Vatican City State holds status as a permanent observer at the United Nations and its Conferences.<sup>74</sup> Currently, the Holy See maintains diplomatic relations with 174 nations and acts as a permanent observer not only with the U.N. but also with the World Health Organization, World Tourist Organization, World Trade Organization, among others.<sup>75</sup>

Controversially, after questioning whether the Vatican City State or the Holy See would maintain relations with the U.N., it was eventually decided “in an exchange of letters between the Secretary General of the United Nations and the Holy See that ‘the presence of papal representatives under the title of the State of the Vatican City would have unduly stressed the temporal aspects of the Pope’s sovereignty.’”<sup>76</sup> Casting the Holy See, rather than Vatican City State, as permanent observer “immediately broadened the scope of the papacy’s interest in U.N. activities from mere temporal affairs affecting the Vatican City [State] to the greater social and moral concerns of the Catholic Church.”<sup>77</sup> As a result of the expanded scope of the papacy’s interest, the Holy See’s participation in the U.N. is “fundamentally religious and spiritual in nature” as indicated by remarks such as those from Pope John Paul II who emphasized the “spiritual” mission of the Holy See in an address to the UNGA.<sup>78</sup>

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<sup>73</sup> THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: A COMMENTARY, *supra* note 1, at 551.

<sup>74</sup> *Participation*, *supra* note 72.

<sup>75</sup> *Holy See*, state.gov, *supra* note 46.

<sup>76</sup> Yasmin Abdullah, Note, *The Holy See at United Nations Conferences: State or Church?*, 96 COLUM. L. REV. 1835, 1843 (1996).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

The inherent religious implications that pervade the Holy See's participation at the U.N. has created debate as to whether the Holy See and Vatican City State, when considered together, even satisfy the requirements for statehood in international law.<sup>79</sup> A petition was presented at the Fourth World Conference on Women held in Beijing in September 1995 urging the U.N. "to evaluate the appropriateness of allowing the Holy See, a religious entity, to act on par with states."<sup>80</sup> Proponents of the petition argued, "[T]he use of the U.N. system by the Holy See to advance the theological positions of the Roman Catholic Church was inappropriate."<sup>81</sup> Additionally, they argued the Holy See's status enabled it to enjoy "greater privileges than other world religions or non-governmental organizations at the UN."<sup>82</sup>

Nonetheless, despite the controversy surrounding the Holy See's legal status and participation at UN Conferences like those exhibited at the Fourth World Conference, the Roman Catholic Church, via the Holy See, is the only religion which "is accorded statehood status" currently with the UN.<sup>83</sup> Thus, any participation by the Holy See in an international convention such as the CEDAW implicates the Roman Catholic Church and its fundamental tenets.

#### **IV. THE CODE OF CANON LAW'S CONFLICT WITH CEDAW AND THE SCOPE OF PAPAL AUTHORITY TO AMEND CONFLICTING CANONS**

Having established the Holy See's status in international law and the resultant implication of the Roman Catholic Church, any discussion of CEDAW's ratification by the Holy See must be considered in light of the fundamental tenets of the Roman Catholic Church. These tenets are principally manifested in the code of canon law, which while fascinating, is undeniably complex.<sup>84</sup>

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<sup>79</sup> *Id.* at 1858-1860.

<sup>80</sup> *Id.* at 1835.

<sup>81</sup> *Id.* at 1836.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1868.

<sup>84</sup> FRANCIS MORRISEY, *THE CANONICAL SIGNIFICANCE OF PAPAL AND CURIAL PRONOUNCEMENTS* 1 (1981).

Among other things, the code provides for the spiritual needs of millions of the Church's members.<sup>85</sup> It has been considered "the inner principle guiding the Church in its activity" and is "derived from the very essence of the Church."<sup>86</sup>

One commentator suggests "[c]anon law touches, to one degree or another, practically every aspect of Church life. [However,] [c]ontrary perhaps to popular impression; the operation of canon law is almost always limited to matters which concern the external conduct of Church members."<sup>87</sup> Canon law does not regulate or determine the Roman Catholic Church's "teaching or principles of morality" but rather, it "receives Church teaching from the magisterium and adduces rules, or canons, which protect that teaching in appropriate ways."<sup>88</sup> Thus, the canons themselves are manifestations of "the teachings of Christ and the principles of faith."<sup>89</sup> To some, the essences of the various codes of canon law "are at least as connected to a legal tradition as they are to a theological tradition."<sup>90</sup>

In an Apostolic Constitution the Second Vatican Council declared, "every type of discrimination, whether social or cultural, *whether based on sex*, race, color, social condition, language or religion, is to be overcome and eradicated as contrary to God's intent."<sup>91</sup> Apostolic Constitutions are "considered the most solemn form of document issued by the Pope in his own

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 16.

<sup>87</sup> Edward Peters, *What Canon Lawyers Are and Are'nt*, CANONLAW.INFO (Jan. 03, 2013), [http://www.canonlaw.info/a\\_canonlawyersarearent.htm](http://www.canonlaw.info/a_canonlawyersarearent.htm) [<http://perma.cc/2W4J-5W4H>].

<sup>88</sup> *Id.*; See also Morrisey, *supra* note 84, at 16; *Magisterium Definition*, MERRIAM-WEBSTER, (defining Magisterium as "teaching authority especially of the Roman Catholic Church"), <http://www.merriam-webster.com/dictionary/magisterium> [<http://perma.cc/5CX8-EF5T>].

<sup>89</sup> MORRISEY, *supra* note 84, at 16.

<sup>90</sup> Terrance Kelly, *Canaanites, Catholics and the Constitution: Developing Church Doctrine, Secular Law and Women Priest*, 7 RUTGERS J. LAW & RELIG. 3 (2005).

<sup>91</sup> *Pastoral Constitution on the Church in the Modern World Gaudium Et Spes*, THE HOLY SEE (Dec. 7. 1965) [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html) (emphasis added) [<http://perma.cc/6PDV-85WM>].

name” and are “issued only in relation to the most weighty questions.”<sup>92</sup> However, despite these weighty affirmations and as illustrated by the proceeding sections, canons informed by the Church’s teachings foster patriarchal ideologies which lead to discriminatory practices against women.<sup>93</sup>

Because of the unique extraterritorial relationship of the Vatican City State and Holy See with the Roman Catholic community, the effects of these discriminatory practices and ideologies are not limited to the few women who live within the Vatican City State. Rather, the discriminatory effects of these ideologies and practices extend to the estimated 1.2 billion Roman Catholic faithful scattered across the globe.<sup>94</sup>

a. *The Exclusion of Women from the Priesthood*

The CEDAW’s mission of eliminating discrimination against women in political and public life may be considered incapable of reconciliation with the Vatican City State and Holy See because of the Roman Catholic Church’s refusal to admit women into the ordained priesthood. That is, the practice of reserving ordination to men excludes women from the structures and practices of the Vatican and Holy See: a practice, which the CEDAW formally rejects in Articles 7 and 8. Article 7 of the CEDAW provides,

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To *vote in all elections and public referenda* and to be *eligible for election to all publicly elected bodies*; (b) To *participate in the formulation of government policy and the implementation thereof* and to *hold public office and perform all public functions at all levels of*

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<sup>92</sup> Morrisey, *supra* note 84, at 4.

<sup>93</sup> “Patriarchy” MERRIAM-WEBSTER ONLINE DICTIONARY (2015), <http://www.merriam-webster.com/dictionary/patriarchy> (defining Patriarchy as “(1) a family, group, or government controlled by a man or a group of men (2) a social system in which family members are related to each other through their fathers”).

<sup>94</sup> CENT. INTELLIGENCE AGENCY, *supra* note 42.

*government*; (c) To participate in non-governmental organizations and associations concerned with the *public and political life* of the country.<sup>95</sup>

Similarly, Article 8 of the CEDAW posits that States' parties shall ensure women "the opportunity to represent their Governments at the international level and to participate in the work of international organizations."<sup>96</sup> Commentators suggest, most obviously, that Article 7 proposes "the mere presence of women in decision-making bodies is not a goal in itself, but rather, in the sense of meaningful presence, requires that women be given the opportunity to have a real and viable input in all decision making processes."<sup>97</sup> Article 8 echoes and extends the same protection and enhancement of women's equalized and meaningful presence into the realm of international affairs.<sup>98</sup>

As a preliminary matter, the Vatican City State and Holy See's unique and non-secular political system would not inhibit the CEDAW's applicability to Article 7 or 8 in any formal sense because the "CEDAW does not expressly require any particular form of political system."<sup>99</sup> Nonetheless, impediment to the Holy See's adoption of these articles of the CEDAW lay, at least in part, with the Roman Catholic Church's practice of excluding of women from the ordained ministry.<sup>100</sup>

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<sup>95</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 7, Dec. 18, 1979, 1249 U.N.T.S. 17 (emphasis added).

<sup>96</sup> *Id.* at art. 8.

<sup>97</sup> Freeman, *supra* note 1, at 198-199.

<sup>98</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 8, Dec. 18, 1979, 1249 U.N.T.S. 17.

<sup>99</sup> Freeman, *supra* note 1, at 202.

<sup>100</sup> 1983 CODE C.1024.

The refusal of female ordination is not a modern concept but instead one that has been integral to the Roman Catholic Church over several centuries.<sup>101</sup> In fact, at various points during the Roman Catholic Church's history,

[w]omen were strictly forbidden to touch 'sacred objects', such as the chalice, the paten or altar linen. They certainly could not distribute [or receive] [H]oly [C]ommunion. In church, women needed to have their heads veiled at all times. Women were also barred from: entering the sanctuary except for cleaning purposes; reading Sacred Scripture from the pulpit; preaching; singing in a church choir; being Mass servers; [and] becoming full members of confraternities and organizations of the laity.<sup>102</sup>

While the majority of these exclusions have been eradicated, women remain barred from receiving the sacrament of Holy Orders.<sup>103</sup> Indeed, some suggest the Roman Catholic Church "has attempted to shelter its male-only priesthood doctrine, and halt development of an opposition, with declarations that its male-only doctrine is infallible, irreformable, definitive, and a [c]onstant [t]radition, along with instructions that the issue must not be discussed, and even denying ordination to men who believe that women may be fit for ordination."<sup>104</sup> These suggestions are not completely unfounded.

In 1976, Pope Paul VI acknowledged, "[w]omen who express a desire for the ministerial priesthood are doubtlessly motivated by the desire to serve Christ and the Church."<sup>105</sup> He continued and noted that in response to women's awareness of their exclusion, it is probable "they

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<sup>101</sup> Wijngaards Institute for Catholic Research, *Letting Go of Past Prejudices*, WOMEN PRIESTS, <http://www.womenpriests.org/story.asp> [<http://perma.cc/XRT8-WLLG>] (last visited Mar. 23, 2015).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* (noting that some Catholic sects are currently allowing women to be "readers, Mass servers, cantors, preachers, leaders of prayer services, ministers of baptism and of holy communion."); *See also* Catechism of the Catholic Faith, *The Sacrament of Holy Orders*, THE HOLY SEE, [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p2s2c3a6.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c3a6.htm) [<http://perma.cc/E5BR-KHJU>] (last visited Mar. 31, 2015).

<sup>104</sup> Kelly, *supra* note 90 (internal quotations omitted).

<sup>105</sup> Sacred Congregation for the Doctrine of Faith, *Declaration Inter Insigniores*, THE HOLY SEE (Oct. 15, 1976), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19761015\\_inter-insigniores\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19761015_inter-insigniores_en.html) [<http://perma.cc/DDN4-R8LU>].

should desire the ministerial priesthood itself.”<sup>106</sup> Yet, despite the acknowledgment of the inequality attributed to this practice, Pope Paul VI concluded in support of reserving priestly ordination to men citing the tradition of the Church to inform his conclusion.<sup>107</sup>

More recently in 1994, Pope John Paul II echoed these principals and elaborated upon the justifications of his predecessors when he similarly issued a statement to the bishops of the Church citing “fundamental reasons” for the exclusion of women in the priesthood.<sup>108</sup>

[T]he example recorded in the Sacred Scriptures of Christ choosing his Apostles only from among men; the constant practice of the Church, which has imitated Christ in choosing only men; and her living teaching authority which has consistently held that the exclusion of women from the priesthood is in accordance with God’s plan for his Church.<sup>109</sup>

Said differently, the Pope proclaims the Roman Catholic Church is bound to this practice because of long-established and Christ-instructed tradition. This, he interprets, is the way God set up the Church.

In light of these papal professions, the codification of the exclusion of women from the priesthood is hardly surprising. Canon 1024 provides, “a baptized male *alone* receive[s] sacred ordination validly.”<sup>110</sup> In light of Canon 1024, the governance and overall jurisdiction of the Vatican and Holy See is explicitly reserved to those who may receive ordination validly, baptized men.

Recall, the Pope alone exercises supreme legislative, executive, and judicial power over the Holy See and the Vatican City State.<sup>111</sup> Therefore, the Pope decides (or at least has the supreme

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> John Paul II, *Ordinatio Sacerdotalis*, THE HOLY SEE (May 22, 1994), [http://w2.vatican.va/content/john-paul-ii/en/apost\\_letters/1994/documents/hf\\_jp-ii\\_apl\\_19940522\\_ordinatio-sacerdotalis.html](http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1994/documents/hf_jp-ii_apl_19940522_ordinatio-sacerdotalis.html) [http://perma.cc/W9R2-LXQA].

<sup>109</sup> *Id.*

<sup>110</sup> 1983 CODE C.1024 (emphasis added).

<sup>111</sup> *Holy See*, state.gov, *supra* note 46.

authority to decide) all matters of both Church and State. Without the possibility of ordination, a woman can never become Pope, much less a priest, and is deprived of any significant executive, legislative, or judicial involvement in the Vatican and Holy See. Moreover, aside from the obvious authority of the Pope, subordinate members of Church authority, including each member of the Roman Curia and Vatican City State polity, are male members of the clergy. Without women in these positions of authority, women have no formal or tangible say in both the governance of the Vatican and Holy See's domestic and international relations because the "exercise of power is, by policy, in the hands of men alone."<sup>112</sup>

Having addressed the utter absence of women in positions of Church and State authority, it is also important to note women's inability to vote in the election process of the Vatican City State. Unlike Article 7 of the CEDAW, which protects women's rights to vote in political elections, in Vatican City the ability to vote in political elections is limited to cardinals less than 80 years old.<sup>113</sup> Therefore, not only are women formally excluded from holding these positions—they are also denied the ability to have any influence over who should be chosen to fill them through the voting process.

It is important to note that the Vatican's hierarchy is not the entire body of the Roman Catholic Church. As the hierarchy trickles down from the Pope, to his cardinals, bishops, priests, deacons, and finally to the laity, the presence of women only slightly increases.<sup>114</sup> As members of the laity or "lay people[.]" women play an important role in the Roman Catholic community.<sup>115</sup>

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<sup>112</sup> Mary Luke Tobin, *Women in the Church Since Vatican II*, NATIONAL CATHOLIC REPORTER (Nov. 1, 1986) <http://americamagazine.org/issue/100/women-church-vatican-ii> [<http://perma.cc/QMV4-WGQ8>].

<sup>113</sup> *Holy See*, state.gov, *supra* note 46.; Convention on the Elimination of All Forms of Discrimination Against Women, art. 7, Dec. 18, 1979, 1249 U.N.T.S. 17.

<sup>114</sup> See generally Catechism of the Catholic Church, *Part One the Profession of the Christian Faith*, THE HOLY SEE, [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p123a9p4.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p123a9p4.htm) [<http://perma.cc/TZB3-BXXM>] (last visited Mar. 23, 2015).

<sup>115</sup> See 1983 CODE C.207 (defining "lay persons" as "By divine institution, there are among the Christian faithful in

Other women take solemn religious vows committing themselves to lives of chastity, poverty, and piety: promising to “serve the Church in special ways; work for the salvation of the world; and strive for the perfection of charity in their own lives” as nuns and sisters.<sup>116</sup> Though they are not entirely similar, nuns and sisters are primarily responsible for carrying out the mission of the Vatican and Holy See across the globe in the areas of education, charity, and social work.<sup>117</sup>

Indeed, one of the most popular figures of the Roman Catholic Church is Mother Teresa of Calcutta. Described by the Vatican as “[s]mall of stature, rocklike in faith, Mother Teresa of Calcutta was entrusted with the mission of proclaiming God’s thirsting love for humanity, especially for the poorest of the poor.”<sup>118</sup> Her many accomplishments include the establishment of the Missionaries of Charity, candidacy for sainthood, and receipt of the Nobel Peace Prize in 1979.<sup>119</sup> The tremendous accomplishments of Mother Teresa and other sisters and nuns across the globe indicate that it is not a woman’s charity, piety, or ability preventing her from ordination. Rather, the refusal from the priesthood is not based upon deed. It is based upon her status as a

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the Church sacred ministers who in law are also called clerics; the other members of the Christian faithful are called lay persons. There are members of the Christian faithful from both these groups who, through the profession of the evangelical counsels by means of vows or other sacred bonds recognized and sanctioned by the Church, are consecrated to God in their own special way and contribute to the salvific mission of the Church; although their state does not belong to the hierarchical structure of the Church, it nevertheless belongs to its life and holiness.”);

*See also* Catechism of the Catholic Church, *Part One the Profession of the Christian Faith*, THE HOLY SEE, [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p123a9p4.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p123a9p4.htm) (last visited Mar. 23, 2015) [<http://perma.cc/TZB3-BXXM>](stating “The term ‘laity’ is here understood to mean all the faithful except those in Holy Orders and those who belong to a religious state approved by the Church. That is, the faithful, who by Baptism are incorporated into Christ and integrated into the People of God, are made sharers in their particular way in the priestly, prophetic, and kingly office of Christ, and have their own part to play in the mission of the whole Christian people in the Church and in the World.”).

<sup>116</sup> Fr. William Saunders, *The Meaning of the Terms Nun, Sister, Monk, Priest, and Brother*, CATH. EDUC. RES. CTR., <http://www.catholiceducation.org/en/culture/catholic-contributions/the-meaning-of-the-terms-nun-sister-monk-priest-and-brother.html> [<http://perma.cc/N9TY-BW7Z>] (last visited Mar. 23, 2015).

<sup>117</sup> Jacov Broadley, *The Role of Catholic Nuns*, <http://people.opposingviews.com/role-catholic-nuns-5701.html> (last visited Mar. 23, 2015) [<http://perma.cc/6ZR5-3S45>].

<sup>118</sup> *Mother Teresa of Calcutta (1910-1997)*, VATICAN CITY STATE, [http://www.vatican.va/news\\_services/liturgy/saints/ns\\_lit\\_doc\\_20031019\\_madre-teresa\\_en.html](http://www.vatican.va/news_services/liturgy/saints/ns_lit_doc_20031019_madre-teresa_en.html) [<http://perma.cc/6NR7-P9CL>] (last visited Mar. 23, 2015).

<sup>119</sup> *Id.*

woman which the Vatican has continually justified as being “founded on the principle of the written Word of God, and from the beginning constantly preserved and applied in the Tradition of the Church.”<sup>120</sup>

In affirming the refusal of the ordination of women the Roman Curia has stated, “[i]t is a position which will perhaps cause pain but whose positive value will become apparent in the long run, since it can be of help in deepening understanding of the respective roles of men and of women.”<sup>121</sup> For the CEDAW, understanding the respective roles of men and women denotes an understanding of absolute equality between men and women and ensuring its practice. Yet, for the Roman Catholic Church, it seems to mean something different: an understanding that equality between men and women is contrary to fundamental tenets of the faith. Arguably, these tenets negatively reinforce the differences between the sexes and perhaps even “breeds disdain for women and their gifts and reinforce their invisibility.”<sup>122</sup> Moreover, in addition to her earthly limitations, women are unable to fully participate in the Church’s teachings and validate their calling toward priestly ordination. Simply stated, the central and sole role of men in the Church implies male privilege and effectively subordinates and limits women’s role in the Roman Catholic Church.

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<sup>120</sup> Sacred Congregation on the Doctrine of Faith, *Responsum Ad Propositum Dubium Concerning the Teaching Contained in “Ordinatio Sacerdotalis”*, THE HOLY SEE (Oct. 25, 1995), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19951028\\_dubium-ordinatio-sac\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19951028_dubium-ordinatio-sac_en.html) [<http://perma.cc/D2WA-GL52>].

<sup>121</sup> Sacred Congregation for the Doctrine of the Faith, *Declaration Inter Insigniores*, THE HOLY SEE (Oct. 15, 1976), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19761015\\_inter-insigniores\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19761015_inter-insigniores_en.html) [<http://perma.cc/DDN4-R8LU>].

<sup>122</sup> Tobin, *supra* note 112.

In light of the refusal of women into the priesthood, the incompatibility of Articles 7 and 8 of the CEDAW regarding the equal inclusion of women in political and public life is apparent. Therefore, the possibility of the Holy See's adoption of these provisions is limited.

b. *The Opposition to the Affirmation of Women's Reproductive Rights*

Perhaps more controversial is the CEDAW's position as the first human rights treaty affirming a woman's right to reproductive choice.<sup>123</sup> Article 12 of the CEDAW aims to protect women from discrimination "in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services including, those related to family planning."<sup>124</sup> In the same respect, Article 16 protects a woman's right "to decide freely and responsibly on the number and spacing of her children and to have access to the information, education and means to exercise" that right.<sup>125</sup> The Committee has declared that "States parties' failure to remove barriers to women's effective access to reproductive and sexual health services constitutes discrimination against women" and is a violation of the CEDAW.<sup>126</sup>

"The Committee interprets the term 'health' consistently with the [World Health Organization's] description of health as a state of physical mental and social well-being not merely the absence of disease or infirmity."<sup>127</sup> However, above this the Committee also requires States parties to "interpret rights relating to health 'from the perspective of women's needs and interests'"

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<sup>123</sup> Freeman, *supra* note 1, at 320.

<sup>124</sup> Convention on the Elimination of All Forms of Discrimination Against Women, art. 12, Dec. 18, 1979, 1249 U.N.T.C. 19.

<sup>125</sup> *Id.* at 20.

<sup>126</sup> Freeman, *supra* note 1, at 320.

<sup>127</sup> *Id.* at 315. (citing Constitution of the WHO, Preamble).

and thus, requires consideration of both the biological and social constructions of women which take into account women's capacity to make their own decisions about health care.<sup>128</sup>

Unsurprisingly, the Holy See has unambiguously condemned Articles 12, 14, and 16 of the CEDAW because the possibility of freedom in family planning make it impossible for the Holy See to fully accept obligations under the CEDAW.<sup>129</sup> Specifically, the Holy See noted to the U.N., "family planning services have been defined to include reproductive health services which might include abortion ... a definition that the Holy See has never accepted and something to which the Holy See can never agree."<sup>130</sup> Interestingly, the CEDAW is silent on the issue of abortion and has even been deemed by the U.S. State Department to be "abortion neutral."<sup>131</sup> Nonetheless, as indicated, the mere *possibility* of abortion's inclusion in family planning and reproductive choice sufficed to warrant the Holy See's condemnation of the CEDAW.

Much like the refusal of female ordination, the Holy See's disapproval of these provisions is founded in the fundamental tenets of the Roman Catholic Church. Indeed, abortion has long been considered a sin within the eyes of the Church.<sup>132</sup> Under the code of canon law, it is considered a crime under most circumstances.<sup>133</sup> Specifically, abortion is considered "an act of murder."<sup>134</sup> Moreover, the code provides, "a person who procures a successful abortion incurs an automatic (*latae sententiae*) excommunication" from the Church.<sup>135</sup> Importantly,

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<sup>128</sup> *Id.* at 315-316. (citing GR 24 para 12).

<sup>129</sup> *Id.* at 551.

<sup>130</sup> *CEDAW Action Alert!*, WOMEN FOR FAITH & FAMILY, <http://www.wf-f.org/CEDAW-ActionAlert.html> (last visited Mar. 23, 2015) [<http://perma.cc/785D-UZZW>].

<sup>131</sup> *A Fact Sheet on CEDAW: Treaty for the Rights of Women*, AMNESTY USA (Aug. 25, 2005) [https://www.amnestyusa.org/sites/default/files/pdfs/cedaw\\_fact\\_sheet.pdf](https://www.amnestyusa.org/sites/default/files/pdfs/cedaw_fact_sheet.pdf) [<http://perma.cc/HPM5-6Q3Q>].

<sup>132</sup> Edward Peters, *Pope Francis on Reconciliation for Abortion*, A CANON LAWYER'S BLOG (Sep. 1, 2015) <https://canonlawblog.wordpress.com/2015/09/01/pope-francis-on-reconciliation-for-abortion> [<http://perma.cc/5CX8-EF5T>].

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*; JUDIE BROWN, *SAVING THOSE DAMNED CATHOLICS* 83 (2007).

<sup>135</sup> 1983 CODE c.1398.

excommunication is not always deemed necessary when an abortion is procured but the complexity of these laws is outside the scope of this Note.<sup>136</sup>

These principles reflect a practice former Pope John Paul II declared in 1995 to be “based upon that unwritten law which man, in the light of reason . . . is reaffirmed by Sacred Scripture, transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium.”<sup>137</sup> Similarly, years prior in 1974,<sup>138</sup> Pope Paul VI issued a “Declaration on Procured Abortion” in which he cited authority including authors of the Sacred Scripture, Pope Pius XI, Pope Pius XII, St. Augustine, St. Thomas Aquinas and concluded that abortion violates the right to life that each individual possesses simply by being a human.<sup>139</sup>

Much like the refusal of women’s ordination, the Vatican City State and Holy See cannot comport with the CEDAW’s provisions regarding family planning because the fundamental tenets of the Roman Catholic Church prohibit it. The Vatican, Holy See, and Roman Catholic Church’s position with respect to family planning is largely incompatible with the CEDAW’s affirmation of women’s rights to their reproductive autonomy. Thus, the outright condemnation of abortion and other forms of family planning by the Roman Catholic Church makes reconciliation with the Articles 12, 14, and 16 of the CEDAW unlikely.

*c. The Scope of Papal Authority and the Possibility of Doctrinal Amendment*

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<sup>136</sup> Peters, *supra* note 132.

<sup>137</sup> John Paul II, *Evangelium Vitae*, THE HOLY SEE par. 57 (Mar. 25, 1995), [http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae.html](http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html) [<http://perma.cc/9DDR-AP9G>].

<sup>138</sup> Interestingly, this declaration came just following the landmark decision by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973) which had tremendous effect on the legalization of abortion procedures.

<sup>139</sup> Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion*, THE HOLY SEE (Nov. 18, 1974), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html) [<http://perma.cc/QD7D-HXQU>].

Having acknowledged the incompatibility of fundamental tenets of the Roman Catholic Church's teachings with specific provisions of the CEDAW, one possibility for reconciliation may be through amendment to the code of canon law. Throughout several centuries, "the Catholic Church has become accustomed to reform and renew the laws of canonical discipline so that in constant fidelity to its divine Founder, they may be better adapted to the saving mission entrusted to her."<sup>140</sup> However, determining whether the Pope has the authority and is willing to amend these canons in the face of these conflicts is both complex and controversial.

Pope Francis, the current Pope, is known as the "Pope of Firsts" and is responsible, some say, for reinvigorating the Roman Catholic Church.<sup>141</sup> Consistently, he has captivated the world's attention by re-evaluating the conservative boundaries of his predecessors.<sup>142</sup> In 2014 alone, Pope Francis discussed the importance of increasing women's role in the Catholic community and the acceptance of gays and lesbians into the Church.<sup>143</sup> He has called for the global abolition of the death penalty and professed the compatibility of evolution and creation.<sup>144</sup> While Pope Francis' charisma and interpretation of the Roman Catholic faith excites progressive Roman Catholics

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<sup>140</sup> Pope John Paul II, *Sacrae Disiplinae Leges*, THE HOLY SEE (Jan. 25, 1983), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_25011983\\_sacrae-disciplinae-leges\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_25011983_sacrae-disciplinae-leges_en.html). [<http://perma.cc/HM4Q-GGK8>].

<sup>141</sup> Chelsea J Carter, Hada Messia, and Richard Allen Greene, *Pope Francis, the Pontiff of Firsts, Breaks with Tradition*, CNN (last updated Mar. 14, 2013), <http://www.cnn.com/2013/03/13/world/europe/vatican-pope-selection/> [<http://perma.cc/ZFJ2-9LT4>].

<sup>142</sup> Robert Draper, *Will the Pope Change the Vatican? Or Will the Vatican Change the Pope?*, NAT'L GEOGRAPHIC, Aug. 2015, at 59.

<sup>143</sup> *Pope Francis says Women Should Play Expanded Role in Church*, FOX NEWS (Jan. 25, 2014), <http://www.foxnews.com/world/2014/01/25/pope-francis-says-women-should-play-expanded-role-in-church/> [<http://perma.cc/T4NM-H7YN>].; Willa Frej, *Vatican Document on Gays Draws Cautious, Mixed Response*, MSNBC (last updated Oct. 16, 2014), <http://www.msnbc.com/ronan-farrow-daily/vatican-document-gays-draws-cautious-mixed-response> [<http://perma.cc/364V-HTUL>].; *Pope Francis' Address at Inauguration of Bronze Bust of Benedict XVI*, ZENIT (Oct. 27, 2014), <http://www.zenit.org/en/articles/pope-francis-address-at-inauguration-of-bronze-bust-of-benedict-xvi> [<http://perma.cc/U9CZ-UFSE>].

<sup>144</sup> Ariane de Vogue, *Pope Francis and the Future of the Death Penalty*, CNN (Sept. 24, 2015) <http://www.cnn.com/2015/09/24/politics/pope-francis-death-penalty-future/index.html> [<http://perma.cc/5RXZ-QLC6>].; Pope Francis, *On Care for Our Common Home*, THE HOLY SEE (May 24, 2015), [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html) [<http://perma.cc/97X9-6MV3>].

across the globe willing to depart from the Church's traditions, his willingness and limited authority to change the doctrine promulgated by the code of canon law may impede such reform. Indeed, "[l]ike many institutions, the Vatican is unreceptive to change and suspicious of those who would bring it."<sup>145</sup>

The answer to whether the Pope has the authority to amend canonical law hinges upon the original authority of the existing canon.<sup>146</sup> If the law is "written and promulgated by human church authority" it may be changed.<sup>147</sup> "If, however, it has its origins in divine [or] natural law, there is no authority on earth that may alter it," including the Pope.<sup>148</sup> In other words, canons stemming from divine writ are immutable if not propagated by human church authority.

The possibility of amendment to canonical law governing the ordination of women is highly unlikely due to its "divine" origin.<sup>149</sup> As mentioned, the reservation of priestly ordination to men has been defended over several centuries, and has been justified according to the Sacred Scripture and the pronouncements of countless Popes.<sup>150</sup> In fact, the Vatican has explicitly stated it "does not consider herself authorized to admit women to priestly ordination" because of its divine writ.<sup>151</sup> Therefore, the likelihood of amendment of canonical law governing priestly ordination is extremely limited.<sup>152</sup>

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<sup>145</sup> Draper, *supra* note 142, at 51.

<sup>146</sup> Cathy Caridi, *Could the Pope Change the Law to Allow Women Priests?*, CANON LAW MADE EASY (Mar. 28, 2008), <http://canonlawmadeeasy.com/2008/03/28/could-the-pope-change-the-law-to-allow-women-priests/> [<http://perma.cc/J7MD-U3PZ>].

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> John Paul II, *Ordinatio Sacerdotalis*, THE HOLY SEE (May 22, 1994), [http://w2.vatican.va/content/john-paul-ii/en/apost\\_letters/1994/documents/hf\\_jp-ii\\_apl\\_19940522\\_ordinatio-sacerdotalis.html](http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1994/documents/hf_jp-ii_apl_19940522_ordinatio-sacerdotalis.html) [<http://perma.cc/3NYB-D59T>].

<sup>150</sup> *Id.*

<sup>151</sup> Sacred Congregation for the Doctrine of the Faith, *Declaration Inter Insigniores*, THE HOLY SEE (Oct. 15, 1976), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19761015\\_inter-insigniores\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19761015_inter-insigniores_en.html) [<http://perma.cc/SMW5-QY7K>].

<sup>152</sup> 1983 CODE c.1024.

Likewise, the Vatican has defended the condemnation of abortion over several centuries citing the Sacred Scripture, the tradition of the Church, and the teachings of the Pope and his clergy.<sup>153</sup> Therefore, it is also improbable that those provisions of canonical law governing abortion and birth control within the church are likely to be amended. Indeed, it is highly unlikely the Church will ever accept the practice of abortion, let alone amend those canons, which prohibit it.<sup>154</sup>

Even in light of the limited scope of papal authority to amend the code of canon law, the mere suggestion of amendment may be considered prejudicial to the Vatican City State and Holy See. Several proponents of the CEDAW and other human rights bodies present at the U.N. have encouraged the amendment of canonical law to reflect current social, moral, and political trends by reinterpreting the scripture and altering its teachings.<sup>155</sup> However, forcing the Roman Catholic Church to abandon its fundamental religious doctrine to satisfy the CEDAW, is a challenging demand.<sup>156</sup> The Vatican has stated that the U.N. Committee's proposal to "reinterpret Scripture and amend canonical laws to reflect current trends" infringes upon "matters protected by the right to freedom of religion."<sup>157</sup> The Vatican's argument is inarguably valid. By virtue of being, the Vatican City State and Holy See remain entitled to inalienable freedom of religion equal to any other nation.<sup>158</sup> Arguably, by politicizing statements about Catholic dogma, on issues such as

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<sup>153</sup> See generally Paul VI, *Humanae Vitae*, THE HOLY SEE (July 25, 1968), [http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf\\_p-vi\\_enc\\_25071968\\_humanaevitae.html](http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanaevitae.html) [<http://perma.cc/4G6W-N7Z5>].; John Paul II, *Faithfulness to the Divine Plan in the Transmission of Life*, ETWN (Aug. 8, 1984), <https://www.ewtn.com/library/PAPALDOC/JP840808.htm> [<http://perma.cc/YDL3-4QFL>].

<sup>154</sup> 1983 CODE c.1398.

<sup>155</sup> Carol Glatz, *Vatican Warns Against Misinterpreting International Human Rights*, NAT'L CATH. REP. (Sep. 26, 2014), <http://ncronline.org/news/accountability/vatican-warns-against-misinterpreting-international-law-human-rights> [<http://perma.cc/6S2T-5C6P>].

<sup>156</sup> Brett Schaefer, *U.S. Caution on Joining U.N. Human-Rights Treaties is Invalidated*, NAT'L REV. (Fed. 11, 2014) <http://www.nationalreview.com/article/370775/un-preaches-vatican-brett-schaefer-steven-groves> [<http://perma.cc/36YY-G3D9>].

<sup>157</sup> Glatz, *supra* note 155.

<sup>158</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, Pt. 1 (Dec. 10, 1948).

family planning and female ordination, principles of religious freedom as outlined by the Universal Declaration of Human Rights are diminished if not destroyed.<sup>159</sup>

However, at a fundamental level, the Vatican City State and Holy See have the ability to insulate themselves from human rights obligations through their own proclamations of immunity.<sup>160</sup> Critics suggest the Vatican City State and Holy See, via canon law, are able to evade basic human rights obligations on the basis of their diplomatic immunity.<sup>161</sup> For instance, in the aftermath of the sex abuse scandals that riddled the Roman Catholic Church during the early 2000s, the Vatican City State and Holy See came under fire for their simultaneous declarations of legal immunity and obligation to the Scripture, and were considered a “rogue state” in the realm of international human rights as a result.<sup>162</sup> While the Roman Catholic Church is committed to a number of human rights efforts, “the myth of the inequality of peoples . . . is still alive” within the Church, specifically with regard to women.<sup>163</sup>

In light of these revelations, even if the Pope were to have some authority to amend canonical law, his willingness to do so may be limited after considering the Vatican City State and Holy See’s insularly religious and political tradition. Nonetheless, amendment to canonical law may not be the Vatican City State and Holy See’s only resolve in terms of elevating their status in the international discourse of women’s rights as human rights.

## V. RECOMMENDATION

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<sup>159</sup> *Id.*

<sup>160</sup> *How the Vatican Evades Human Rights Obligations Through Canon Law, Diplomatic Immunity and Other Dodges*, CONCORD WATCH, <http://www.concordatwatch.eu/topic-47307.843> [<http://perma.cc/EG82-JAGL>] (last visited Mar. 23, 2015).

<sup>161</sup> *Id.*

<sup>162</sup> Paola Totaro, *Call to Treat Vatican as Rogue State*, THE SYDNEY MORNING HERALD (Sep. 9, 2010), <http://www.smh.com.au/world/call-to-treat-vatican-as-a-rogue-state-20100908-151cg.html> [<http://perma.cc/G5FU-KL3B>].

<sup>163</sup> *The Church and the Rights of Man*, EWTN, <http://www.ewtn.com/library/HUMANITY/RIGHTSMN.HTM> [<http://perma.cc/K7S3-EAMU>] (last visited Sept. 25, 2015).

The incompatibility of the Roman Catholic Church's treatment of women and the difficulty of amendment to canonical law does not necessarily preclude the Holy See from adopting the CEDAW altogether. The Holy See, as a U.N. permanent observer and like several current parties to the CEDAW, could make reservations to specific articles of the Convention with which its interests conflict. Doing so would allow the Holy See to elevate its standing in the international dialogue surrounding women's rights without compromising its religiosity. Moreover, ratifying the CEDAW with reservation will symbolize the Vatican City State, Holy See, and Roman Catholic Church's willingness to finally reconcile with growing social, moral, and political trends regarding equality between men and women.

In international law, a reservation is a unilateral statement made by a State whereby "it purports to exclude or to modify the legal effect of certain provisions of the treaty in application to that State."<sup>164</sup> With such reservations, it is plausible that the Vatican City State and Holy See could comport with the CEDAW and maintain their religiosity simultaneously, because the Holy See could freely choose with which provisions it would be formally obligated. The CEDAW's broadly written language allows for such flexibility. In fact, the CEDAW approves these reservations to the extent they are made "on the ground that national law, tradition, religion or culture are not congruent with Convention principles and purport to justify the reservation on that basis."<sup>165</sup>

a. *A Global Comparison*

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<sup>164</sup> Office of the United Nations High Commissioner for Human Rights, *Human Rights Treaty Bodies*, U.N., <http://www2.ohchr.org/english/bodies/treaty/glossary.htm> [<http://perma.cc/AKZ5-FSY6>] (last visited Mar. 23, 2015).

<sup>165</sup> United Nations Entity for Gender Equality & the Empowerment of Women, *CEDAW: Reservations to CEDAW*, U.N. WOMEN, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> [<http://perma.cc/BJE6-E6WZ>] (last visited Mar. 15, 2015).

The vast majority of the world's countries with the highest populations of Roman Catholic citizens have ratified the CEDAW, which should encourage the Holy See's ratification of the Convention and may suggest the centralized Roman Catholic Church's disconnect with people of the faith.<sup>166</sup> Such countries include Brazil, Mexico, Philippines, Italy, Colombia, France, Poland, Spain, and the Congo.<sup>167</sup> Several of these countries have made reservations to specific portions of the CEDAW with which their interests conflict.<sup>168</sup>

For example, Brazil adopted the CEDAW in 1984 but upon signature and ratification made several reservations.<sup>169</sup> Upon ratification, Brazil opposed the guarantee of equal personal rights between men and women, including those provisions which dictate the right to choose place of domicile, family name, and the equality of men and women entering, during the course of, and in the dissolution of marriage.<sup>170</sup> Four years later, Brazil amended its constitution to include provisions to ensure the equality of men and women.<sup>171</sup> In 1994, upon the realization by Brazil's National Congress that its reservations were in violation of their new Constitutional guarantees, the country notified the Secretary-General of its withdrawal of those reservations.<sup>172</sup> Thus, without

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<sup>166</sup> Compare Max Fisher, *This Map of Global Catholic Populations Shows the Church's Looming Dilemma*, THE WASH. POST (Feb. 12, 2013), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/02/12/this-map-of-global-catholic-populations-shows-the-churchs-looming-dilemma/> [<http://perma.cc/9Y5C-W3DZ>] with *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) [<http://perma.cc/3SCM-EYSB>] (last visited Mar. 23, 2015).

<sup>167</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) [<http://perma.cc/3SCM-EYSB>] (last visited Mar. 23, 2015).

<sup>168</sup> *Id.* (follow hyperlinks to respective countries).

<sup>169</sup> *Id.* (follow "Brazil<sup>8</sup>" hyperlink to End Note).

<sup>170</sup> Jodie G. Roure, *Domestic Violence in Brazil: Examining Obstacles and Approaches to Promote Legislative Reform*, COLUM. HUM. RTS. L. REV. 67, 71 (2009).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

reservation, Brazil has currently accepted the CEDAW in full and as a result, is internationally legally bound to ensure the implementation of its objectives.<sup>173</sup>

Interestingly, upon ratification, Brazil did not make reservations to the CEDAW's provisions pertaining to women's reproductive health rights despite 75% of its population describing itself as Roman Catholic.<sup>174</sup> Currently, while abortion is not prohibited altogether, Brazil maintains stringent laws limiting abortion to those pregnancies resulting from rape or those in cases where the mother's survival is at risk.<sup>175</sup> In its combined initial, second, third, fourth, and fifth report, Brazil noted with respect to Article 12 of the CEDAW and its affirmation of women's equal access to health services, "[t]he exclusion of abortion from the crime list still faces strong resistance, especially in social segments linked to the Catholic Church."<sup>176</sup>

The Committee has warned, "neither traditional, religious or cultural practice nor incompatible domestic laws and policies can justify violations of the Convention."<sup>177</sup> Therefore, if Brazil should continue to encounter resistance to the liberalization of family planning laws, including those with respect to abortion, it should make reservation to Article 12 in order to prevent further compromise to its obligations under the CEDAW. Such a reservation would likely be comparable to that of the Holy See, if it were to ratify the Convention.

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<sup>173</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) [<http://perma.cc/3SCM-EYSB>] (follow "Brazil<sup>8</sup>" hyperlink to End Note) (last visited Mar. 23, 2015).

<sup>174</sup> *Convention on the Elimination of Discrimination Against Women*, Brazil Rep. Combined Initial, Second, Third, Fourth, and Fifth, U.N. Doc. CEDAW/C/BRA/1-5, 6 (Nov. 7, 2002).

<sup>175</sup> Alessandra Casanova Guedes, *Abortion in Brazil: Legislation, Reality and Options*, 8 REPROD. HEALTH MATTERS 66 (Nov. 2000).

<sup>176</sup> *Convention on the Elimination of Discrimination Against Women*, Brazil Rep. Combined Initial, Second, Third, Fourth, and Fifth, U.N. Doc. CEDAW/C/BRA/1-5, 170 (Nov. 7, 2002).

<sup>177</sup> *CEDAW: Reservations to CEDAW*, *supra* note 155.

The Holy See could adopt a similar approach to the CEDAW as did Ireland, who ratified the treaty in December of 1985.<sup>178</sup> Their approach would likely be similar because the politics of Ireland have been historically influenced by the country's relationship to the Holy See and Vatican.<sup>179</sup> In fact, the Committee has criticized Ireland, a secular State, for "the influence of the [Roman Catholic] Church in attitudes and stereotypes, but also in official state policy."<sup>180</sup> Specifically, the Committee has noted that though Ireland did not make reservations to Article 12, "women's right to health, including reproductive health, is compromised by this influence."<sup>181</sup> Nonetheless, Ireland conveyed to the Committee in its fourth and fifth report the implementation of specific measures in response to ratification in areas related to pensions, maternity, adoptive leave, family law, and equal opportunity employment for women.<sup>182</sup> Moreover, in response to ratification and despite being eventually defeated, Ireland reported a proposed constitutional amendment that would lift the current prohibition on abortion unless in certain dire circumstance.<sup>183</sup>

As exhibited by the reports provided by both Brazil and Ireland, the CEDAW's ratification has enabled the eradication of several inequalities in areas both directly and indirectly tied to religion. Therefore, if the Holy See were to consider ratification of the CEDAW either in whole

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<sup>178</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, U. N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) (last visited Mar. 23, 2015).

<sup>179</sup> See generally DERMOT KEOGH, *IRELAND AND THE VATICAN: THE POLITICS AND DIPLOMACY OF CHURCH-STATE RELATIONS 1922-1960* (1997).

<sup>180</sup> *Concluding comments of the Committee on the Elimination of Discrimination against Women: Ireland*, Comm. on the Elimination of All Forms of Discrimination Against Women, June 7-25, 1999, U.N. Doc. A/54/38/Rev.1, Supp. No. 38, ¶ 180 (1999).

<sup>181</sup> *Id.*

<sup>182</sup> Ireland, Combined fourth and fifth periodic report to the Comm. on the Elimination of All Forms of Discrimination Against Women, U.N. Doc. CEDAW/C/IRL/4-5, 10-21 (Jun. 10, 2003).

<sup>183</sup> *Id.*

or in part, the Committee should encourage the Holy See to re-examine its reservations in light of the evolving influence of religion within predominately Roman Catholic countries.

It is crucial to note the Holy See has informed the U.N. Committee, “[t]he Holy See does not ratify a treaty on behalf of every Catholic in the world, and therefore, does not have obligations to ‘implement’ the convention within the territories of other states parties on behalf of Catholics,” who should be subject to the national laws of the countries they find themselves.<sup>184</sup> The Holy See continued noting the “Holy See’s religious and moral mission which transcends geographical boundaries cannot be transformed into a universal legal jurisdiction, which somehow becomes a matter under the mandate of a treaty body.”<sup>185</sup> Contrary to the proclamations of the Holy See, it is evident the Roman Catholic Church influences States parties’ implementation of the CEDAW in some respects. Undoubtedly, the Church’s influence is extra-territorial despite the Holy See’s contradictions. That is, while formally the Holy See’s obligations under the CEDAW would not be different than other States parties, the effects of the Holy See’s ratification are even greater because of the Holy See’s relationship and direct influence over the global Roman Catholic community.

b. *The Possibility of Reservation*

Despite having to make some initial reservations, there are several provisions of the CEDAW with which the Vatican City State and Holy See could oblige without compromising their religiosity. Generally, such provisions may include those protecting and affirming women’s equal rights with men in the ability to change or retain their nationalities, promoting equal opportunity

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<sup>184</sup> *Comments of the Holy See on the Concluding Observations of the Committee on the Rights of a Child*, THE HOLY SEE (Jan. 31, 2014), [http://www.vatican.va/roman\\_curia/secretariat\\_state/2014/documents/rc-seg-st-20140205\\_concluding-observations-rights-child\\_en.html](http://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_concluding-observations-rights-child_en.html) [<http://perma.cc/CNB2-3NQS>] (last visited Mar. 23, 2015).

<sup>185</sup> *Id.*

in the fields of education, solidifying equal economic and social benefits upon men and women, maintaining equality before the law, and recognizing equality at all stages in marriage.<sup>186</sup>

Notably, some reservations are impermissible under the CEDAW.<sup>187</sup> Impermissible reservations include those which would “challenge the central principles of the Convention[.]”<sup>188</sup> Specifically, the Committee cautions States parties’ reservations to Articles 2 and 16, which it considers “core provisions of the Convention.”<sup>189</sup> The Committee maintains that with respect to Article 16 reservations “whether lodged for national, traditional, religious or cultural reasons, are incompatible with the Convention and therefore impermissible and should be reviewed and modified or withdrawn.”<sup>190</sup> On the other hand, Article 2 sets out the general obligations of States parties, focusing “on law and the role of legislation and legal institutions in ensuring that women are not subject to discrimination, whether formal (*de jure*) or in practice (*de facto*).”<sup>191</sup> Essentially, via Article 2 and 16’s catchall, the Committee requires States parties to abandon their religious or cultural reasons for formal and informal discrimination against women by adopting laws and other policies to eradicate such traditions.

The prospect of the Roman Catholic Church abandoning all tradition is extremely unlikely. Therefore, if the Holy See were to make reservations to provisions with which its interest conflicts, the effectiveness of the treaty could be potentially undermined. In fact, the CEDAW has been subject to criticism regarding the frequency of States parties’ reservations, which undermine the overall effectiveness of the treaty.<sup>192</sup> In response, the Committee “[i]n more recent years [ ] has

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<sup>186</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 14.

<sup>187</sup> *CEDAW: Reservations to CEDAW*, *supra* note 155.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Freeman*, *supra* note 1, at 72.

<sup>192</sup> See generally, Jennifer Riddle, *Making CEDAW Universal: A Critique of CEDAW's Reservation Regime Under Article 28 and the Effectiveness of the Reporting Process*, 34 GEO. WASH. INT'L L. REV. 605 (2002).

encouraged States parties to address cultural issues by viewing culture as dynamic rather than as monolithic or immutable.”<sup>193</sup>

Thus, if the Holy See were to consider ratifying the CEDAW it must view its divine texts and canonical law as dynamic: considering current social, political, moral, and ideological trends. This challenge, as the Committee notes, involves “the actual understanding and the social and regulatory incorporation of women’s rights as human rights, and therefore implies, necessarily, changes in cultural values as practices.”<sup>194</sup> Certainly, this would present a challenge for the Holy See, Vatican City State, and Roman Catholic Church. While its inner doctrine will not change, its outer principles and practices may evolve. Such a challenge should be met in order to put an end to the stagnation of the Roman Catholic Church’s progress in supporting women’s equality.

In order to encourage inherently religious nations to become parties to the CEDAW, the Committee should relax its somewhat inflexible approach to the reservations of fundamentally religious bodies like the Holy See. Currently, the CEDAW suggests that “the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields[.]”<sup>195</sup> Certainly this position is optimal and “States which remove reservations would be making a major contribution to achieving the objectives of both formal and de facto or substantive compliance with the Convention.”<sup>196</sup> However, the Committee should not be absolute if it wants religious states to become active participants in the international effort of ensuring the equal rights of women through CEDAW. Without the relaxation of the Committee’s approach to these fundamentally religious states, the

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<sup>193</sup> Freeman, *supra* note 1, at 31.

<sup>194</sup> Brazil, Combined initial, second, third, fourth, and fifth periodic report to the Comm. on the Elimination of Discrimination against Women, U.N. Doc. CEDAW/C/BRA/1-5, 202 (Nov. 7, 2002).

<sup>195</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 15.

<sup>196</sup> Comm. on the Elimination of Discrimination against Women, on its Eighteenth and Nineteenth Session, U.N. Doc A/53/38/Rev.1 (1998).

CEDAW runs a great risk of jeopardizing the free practice of religion and by extension, likely discourages accession, signature, or ratification of the Convention. Arguably, some involvement by these countries, though inherently limited because of religious obligation, is better than no involvement at all.

## VI. CONCLUSION

As a party to the CEDAW, the Holy See cannot fully achieve the CEDAW's objectives because fundamental tenets of the Roman Catholic Church prohibit it. However, their incompatibility is not absolute. Ratifying the CEDAW, but with specific reservations may reconcile their incompatibility and result in the implementation of efforts by the Vatican City State, Holy See, and Roman Catholic Church to achieve equality between women and men.

More broadly speaking, it would elevate the Vatican City State, Holy See, and Roman Catholic Church's status in the international dialogue concerning women's rights as human rights. It would also provide at least partial relief to the socially, politically, and religiously progressive Roman Catholics who find the application of traditional Church dogmas in the modern day fundamentally troubling. While arguably these significant reservations could lead to the overall ineffectiveness of the treaty, several provisions of the CEDAW do not conflict with traditional Roman Catholic principle and discipline. Therefore, the effectiveness of the CEDAW would not be substantially jeopardized by the proposed reservations. Moreover, it is a misnomer that approving the CEDAW as a solid piece of public policy would somehow compromise the Roman Catholic faith. The CEDAW will provide an important framework through which the Vatican and Holy See can work with other countries to advance the rights of women throughout the world.

On a more localized scale, what are progressive Roman Catholics that simultaneously believe in certain aspects of Roman Catholic doctrine and the affirmation of women's rights as codified in the CEDAW to do? Pope Benedict XVI, the immediate predecessor to Pope Francis, may have addressed this issue, albeit indirectly, when he stated, "[o]ver the Pope as the expression of the binding claim of ecclesiastical authority[,] there still stands one's own conscience, which must be obeyed before all else, if necessary even against the requirement of ecclesiastical authority."<sup>197</sup> While the CEDAW's affirmation of women's rights is incapable of reconciliation with the Roman Catholic Church without reservation, progressive Roman Catholics resolve may simply be religious self-determination, "beyond the claim of external social groups, even of the official [C]hurch."<sup>198</sup>

As for the official Church, some commentators suggest Pope Francis will continue "to ignite a revolution inside the Vatican and beyond its walls, without overturning a host of long-held precepts."<sup>199</sup> That is, "[h]e won't change doctrine" but what he will do "is return the church to its true doctrine—the one it has forgotten, the one that puts man back in the center . . . ."<sup>200</sup> Maybe, when man is returned to the center, woman will be placed alongside him as his equal. Indeed, "[t]he Church has always been in the vanguard in affirming, defending and promoting the rights of man."<sup>201</sup> With the help of the CEDAW, maybe now is the time for affirming, defending, and promoting the rights of woman.

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<sup>197</sup> Wijngaards Institute for Catholic Research, *Quotes from Josef Ratzinger, Now Pope Benedict XVI*, WOMEN PRIESTS, <http://www.womenpriests.org/ratz1.asp> (citing COMMENTARY ON THE DOCUMENTS OF VATICAN II (ed. Vorgrimler) 1968.) [<http://perma.cc/GU3Q-YWQK>] (last visited Mar. 23, 2015).

<sup>198</sup> *Id.*

<sup>199</sup> See generally Draper, *supra* note 142, at 59.

<sup>200</sup> *Id.*

<sup>201</sup> *The Church and the Rights of Man*, <http://www.ewtn.com/library/HUMANITY/RIGHTSMN.HTM> [<http://perma.cc/R49Z-QCPW>] (last visited Sept. 25, 2015).