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Repository Citation
Thomas O. Martin, Minors in Canon Law, 49 Marq. L. Rev. 87 (1965).
Available at: http://scholarship.law.marquette.edu/mulr/vol49/iss1/2

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MINORS IN CANON LAW

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Like other legal systems the Canon Law provides protection for certain classes of persons who have been found by experience to need it. One such class is composed of those who by reason of their youthful age have not as yet sufficient experience to guard against all of the pitfalls which they may encounter in business transactions. This same lack of experience may also warrant milder treatment of their delinquences. The degree of protection afforded varies in inverse ratio to their age and development. As they become more capable of making their own decisions the law withdraws its special protection more and more and treats them like any other subject.

Canon Law sets the age of majority, i.e. of presumed full capability and responsibility at the completion of twenty-one years, as does the law of most states. One who has attained majority has, then, full use of his rights. A minor, on the other hand, in the exercise of his rights, is subject to the dominative power of parents or guardians, except in those matters in which the law makes him exempt from paternal power.

The period of minority is itself divided into three sections. Those under seven years of age are called infants, and are presumed not to have the use of reason. Those who are over seven, but have not yet attained puberty, are presumed to have the use of reason, i.e., to have certain capabilities, though they still require considerable protection. Puberty is considered to have been attained by a male at the completion of his fourteenth year, by a female at the completion of her twelfth. By this time the child has greater capabilities and needs less protection, though he or she still needs some until majority is attained.

The child's "place of origin," which is of importance in connection with the administration of the sacrament of holy orders, is that in which, when the child was born, the father, or, if the child is illegitimate or posthumous, the mother, had a domicile, or, lacking that, a quasi-domicile. If the parents had no fixed domicile at the time, the place of origin is that in which the child was actually born. In the case of a foundling the place of origin is that in which it was found.

The domicile to which reference is made is acquired by dwelling

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1 Code X Juris Canonici, effective May 19, 1918, hereinafter cited by Canon, thus C. 88, §1.
2 C. 89.
3 C. 88, §3.
4 C. 88, §2.
5 C. 90, §1.
6 C. 90, §2.
in a parish, a portion of a diocese,\textsuperscript{7} or quasi-parish, a portion of a vicariate apostolic or prefecture apostolic, as missionary areas are called,\textsuperscript{8} or at least in a diocese. Such dwelling must be joined to an intent to remain there permanently, unless something should call one away, or be in fact continued for ten complete years.\textsuperscript{9} Quasi-domicile, on the other hand, is acquired by dwelling in a place either with the intention to remain there the greater part of the year, unless something calls one away, or by actually living there for the greater part of the year.\textsuperscript{10}

The importance of the "place of origin" in connection with ordination arises from the requirement that each candidate be ordained by his own bishop, or at least with proper dimissorial letters granted by him so that another bishop can ordain the candidate in question.\textsuperscript{11} The bishop considered the candidate's own is only the bishop of the diocese in which the candidate has not only a domicile but also "origin" or a simple domicile without "origin." In the latter case, however, the candidate must, by taking an oath to that effect, confirm his intent to remain perpetually in the diocese for which he is ordained. This oath is not required if it is a question of ordaining one who is already incardinated, as they say, in the diocese by having received first tonsure for said diocese, or if it is a question of ordaining one who is to serve in another diocese, or one who is already a professed member of a religious community.\textsuperscript{12}

Children are considered by Canon Law to be legitimate if they are conceived or born of a marriage which is either valid or putative, unless the parents, at the time of conception, were not permitted the use of a marriage previously contracted between themselves. Such a prohibition would arise because of either profession of solemn vows in a religious community or the reception of holy orders after the marriage.\textsuperscript{13}

Just as those persons who have pronounced solemn vows in a religious community, or simple vows to which by special provision of the Holy See there has been added the effect of nullifying marriage, cannot validly contract marriage,\textsuperscript{14} so if, after a marriage has been contracted, the parties thereto should pronounce such vows they could no longer make use of their marital rights, and a child conceived at such time would not be considered legitimate. Indeed, a marriage contracted between persons who are baptized or between one who is baptized and one who is not, provided it has never been consummated, is
dissolved *ipso jure* by profession of solemn vows in a religious community.\(^{15}\)

Similarly, clergymen who have received holy orders, i.e., subdeaconate, deaconate, priesthood,\(^ {16}\) cannot validly contract marriage, under Canon Law.\(^ {17}\) If it should happen that one previously married were to be ordained he, too, would be expected to abstain thenceforth from use of his marital rights, and any child conceived after such ordination would be considered illegitimate.

A putative marriage, to which reference has been made, is one which is actually invalid, but which was contracted by at least one of the parties in good faith. It continues to be putative until both parties are certain that it is void.\(^ {18}\)

The Canon Law adopts the old Roman Law rule\(^ {19}\) as to the presumption of legitimacy of children born in lawful wedlock, i.e. "the father is he whom lawful marriage indicates," unless the contrary is clearly proved.\(^ {20}\) Children who are born after at least six months from the day of the marriage or within ten months at the most from the day of dissolution of conjugal life are also presumed legitimate.\(^ {21}\)

Children are legitimized by a subsequent marriage of their parents, whether it be a true or a putative marriage, and whether it be newly contracted or convalidated, even though it is thereafter not consummated, provided the parents were capable of contracting marriage with each other at the time of conception, or of pregnancy, or of birth.\(^ {22}\)

A marriage which was null because of a diriment impediment, e.g. lack of age, is convalidated provided that the impediment ceases, as it would in this case with the passage of time, or a dispensation therefrom, e.g. from the impediment of blood-relationship between second cousins, is obtained and at least the party conscious of the impediment renews his or her consent.\(^ {23}\) This requirement of renewal of consent seems to call for more in convalidating a marriage under Canon Law than is required by the laws of the American states which consider cohabitation after the age of consent a sufficient affirmation of the marriage.

A diriment impediment, to which reference was made, is one which not only seriously prohibits the marriage but also renders it invalid.\(^ {24}\)

Children who have been legitimized by subsequent marriage are,
for all canonical effects, made equal in all things to those born legitimate, unless there is express provision to the contrary.\(^\text{26}\)

Legitimacy is of importance with regard to the reception of holy orders, among other things, for those who are illegitimate, whether the illegitimacy is public, i.e. known generally, or occult, known to only a few,\(^\text{26}\) are considered "irregular by defect," i.e. under a perpetual impediment preventing ordination.\(^\text{27}\) The irregularity is removed, however, if they have been legitimized or have pronounced solemn vows in a religious community.\(^\text{28}\) So long as the impediment remains they cannot be ordained unless a dispensation, i.e. a relaxation of the law in the particular case\(^\text{29}\) is obtained from the irregularity. A general dispensation allows such a person to receive all orders, and to be appointed to various positions in the Church, but not to be a Cardinal, a bishop, or an abbot or prelate nullius, or a major superior, e.g. provincial, in an exempt clerical religious community.\(^\text{30}\)

A clerical religious community is one many of whose members are priests.\(^\text{31}\) An exempt religious community is one which is exempt from the jurisdiction of the local bishop, responsible to its own superior officers, and ultimately to the Holy See.\(^\text{32}\)

Children under the age of seven, being presumed not to have the use of reason, are not bound by merely ecclesiastical laws, unless the law expressly provides otherwise.\(^\text{33}\) Thus, for example, they are not bound by the law of abstinence,\(^\text{34}\) just as those who have not completed their twenty-first year are not bound by the law of fasting.\(^\text{35}\)

The state is not too concerned with the petty business transactions of children of this age, e.g. at the candy store, and looks rather to protect them from abuse and neglect and to see that they get a start toward an education. The Canon Law states positively that parents are under a most serious obligation to provide for the religious and moral education of their children and to assure their physical training as well as their training in citizenship, according to their ability. They are also bound to provide for the children's temporal welfare.\(^\text{36}\) For their religious development, the Canon Law is concerned that the children receive such of the sacraments of the Church as they are capable of receiving.

\(^{25}\) C. 1117. 
\(^{26}\) Cf. C. 2197, 1°, 4°. 
\(^{27}\) C. 983. 
\(^{28}\) C. 984, 1°. 
\(^{29}\) C. 80. 
\(^{30}\) C. 991, §3. 
\(^{31}\) C. 488, 4°. 
\(^{32}\) C. 500, §1. 
\(^{33}\) C. 12. 
\(^{34}\) C. 1254, §1. 
\(^{35}\) C. 1254, §2. 
\(^{36}\) C. 1113.
Baptism is one of these sacraments. In this connection the word "infant" means, in Canon Law, as was mentioned, one who has not yet attained the use of reason, including one who has not had the use of reason at any time, whatever his actual age.\textsuperscript{37} "Adults," in this frame of reference, are those who do have the use of reason. Having such use each, on his or her own motion, may ask for baptism and may be admitted thereto,\textsuperscript{38} provided that he or she knows what baptism is and entails, chooses it, and is properly instructed.\textsuperscript{39}

To be baptized, at least conditionally, are all abortive fetuses,\textsuperscript{40} misshapen babies,\textsuperscript{41} and foundlings.\textsuperscript{42} If it is certain that those in the first two groups named are alive they are to be baptized unconditionally. If a foundling has already been baptized, and this is certain, it is not to be baptized again.

Children of parents who profess no belief can be baptized when they are in such danger of death that it is prudently foreseen that they will die before they attain the use of reason.\textsuperscript{43} Otherwise, such a child can be baptized only if the parents or guardians, or at least one of them consents. It can also be baptized if there are no parents, grandparents, or guardians, or they no longer have a right of custody or are unable to exercise it.\textsuperscript{44}

Similarly, if an infant is in danger of death, or the minister of the sacrament considers it expedient for just and serious reasons, the sacrament of confirmation can be conferred upon one who is under seven years of age, although ordinarily to receive this sacrament one should have completed his seventh year, according to the practice of the Latin Rite.\textsuperscript{45}

The sacrament of the holy Eucharist is not to be administered to children who because of their tender age as yet have no knowledge of and taste for it. In case, however, they are in danger of death, the holy Eucharist can and should be administered to them if they know how to distinguish the body of Christ from ordinary food and can show proper reverence for it.\textsuperscript{46} Thus, provision is made for children who are sufficiently developed to come under the requirement that the faithful, when in danger of death, from whatever cause it proceed, are bound by the precept to receive Holy Communion.\textsuperscript{47}

The sacrament of the sick, too, can be conferred upon any member

\textsuperscript{37} C. 745, §2, 1°.
\textsuperscript{38} C. 745, §2, 2°.
\textsuperscript{39} C. 752, §1.
\textsuperscript{40} C. 747.
\textsuperscript{41} C. 748.
\textsuperscript{42} C. 749.
\textsuperscript{43} C. 750, §1.
\textsuperscript{44} C. 750, §2.
\textsuperscript{45} C. 783.
\textsuperscript{46} C. 854, §§1, 2.
\textsuperscript{47} C. 864, §1.
of the faithful who, after having attained the use of reason, is in danger of death because of illness or age.\footnote{48}{C. 940, §1.}

With regard to the sacrament of penance, the law provides that all the faithful, after attaining the use of reason, are bound to confess faithfully their sins at least once a year.\footnote{49}{C. 906.} It is a question of fact whether the use of reason has been attained, so the presumption regarding the seventh year may have to yield, as in the case in which a child has been admitted to his first Holy Communion before completion of his seventh year.\footnote{50}{COMMISSION FOR THE INTERPRETATION OF THE CODE OF CANON LAW, hereinafter cited CIC, Jan. 3, 1918, reprinted in Bouscaren, CANON LAW DIGEST, hereinafter cited, Bouscaren, Vol. 1, p. 53.}

The bodies of infants, insofar as it can conveniently be arranged, are to have special places in cemeteries, separate from the others, for their burial,\footnote{51}{C. 1209, §3.} just as their funerals are conducted differently, in recognition of their unsullied baptismal innocence.

The concern for minors is carried forward to embrace those who are between the ages of seven and fourteen, or twelve, as the case may be. It has already been pointed out that one who has attained the use of reason can ask to be baptized, provided he or she knows what baptism is and what it entails, and chooses it, after being properly instructed.\footnote{52}{Cf. supra, CC. 745, §2, 2°; 752, §1.}

With regard to the reception of the holy Eucharist, outside of the situation in which the child under seven received it because he was in danger of death,\footnote{53}{Cf. supra, C. 854, §§1, 2.} the child who has attained the use of reason must have a fuller knowledge of Christian doctrine and must be more carefully prepared. He must at least know the doctrines which have to be known as a means of salvation, in accordance with his comprehension, and must approach the table of the Lord devoutly, according to the capacity of his age.\footnote{54}{C. 854, §3.} The doctrines in question are: 1) that God exists; 2) that he is the rewarder of good and avenger of evil; 3) that there are three persons in one God; 4) that Jesus Christ, the Son of God, became man for our salvation.

Further, every member of the faithful, after he has reached the years of discretion, i.e. the use of reason, is bound to receive the sacrament of the Eucharist once a year, at least at Eastertime, unless perhaps, on the advice of his confessor or pastor, the person considers that he should for some reason abstain for a time from such reception.\footnote{55}{C. 899, §1.}

All who have sufficient use of reason, unless they are prohibited by
law, can make a vow,\textsuperscript{56} i.e. a promise to God, binding because of the virtue of religion. Such a promise must be carefully thought out and freely made. Further, it must involve something which is possible and good, indeed, better than its opposite or better than no promise at all.\textsuperscript{57} Children between seven and fourteen can, therefore, make vows.

Those, however, e.g. parents, who have dominative power over the will of the one making the vow can validly, and, for a just reason, licitly also, nullify it, so that the obligation ceases, never to revive.\textsuperscript{58} One who does not have such power over the will of the person making the vow, but does have power over the subject matter involved, e.g. money which the child wishes to give away, can suspend the obligation of the vow for so long as the fulfillment thereof is prejudicial to him.\textsuperscript{59}

For a just reason one can be dispensed from a vow he has made, provided rights which others may have acquired thereby are not prejudiced. Authorized to dispense are: the local bishop, the superior officer of the person's religious community, or one who has been delegated by the Holy See.\textsuperscript{60}

The only private vows which require the intervention of the Holy See for dispensation are a vow of perfect and perpetual chastity and a vow to enter a religious community of solemn vows, provided that these are made unconditionally and after the completion of the person's eighteenth year.\textsuperscript{61}

A simple vow of virginity, or of perfect chastity, or not to marry, or to receive Holy Orders or to enter the religious life would be an impediment, later on, to marriage,\textsuperscript{62} i.e. it would bring on a serious prohibition against contracting marriage. The marriage would, however, be valid if it were contracted despite such prohibition.\textsuperscript{63} This is to say that no simple vow nullifies marriage, unless by special provision of the Holy See such nullity has been established for certain persons,\textsuperscript{64} e.g. in certain religious communities.\textsuperscript{65}

Those under the age of fourteen are not permitted to choose the church for their funeral, nor the cemetery for their burial. It is their parents who are to make the choice for them, and this they can do even after the child's death.\textsuperscript{66} On the other hand, those who have reached the age of puberty are allowed to choose the church for their funeral

\textsuperscript{56} C. 1307, §2.
\textsuperscript{57} C. 1307, §1.
\textsuperscript{58} C. 1312, §1.
\textsuperscript{59} C. 1312, §2.
\textsuperscript{60} C. 1313, §1.
\textsuperscript{61} C. 1309.
\textsuperscript{62} C. 1058, §1.
\textsuperscript{63} C. 1036, §1.
\textsuperscript{64} C. 1058, §2.
\textsuperscript{65} Cf. \textit{supra}, C. 1073.
\textsuperscript{66} C. 1224, 1°.
or the cemetery for their burial without any interference by their parents.\(^7\)

Those under the age of puberty are likewise not permitted to vote in an election held under the Canon Law.\(^6\) They might belong, for instance, to a sodality or confraternity,\(^9\) which elects its own officers.

Those under the age of puberty are also not considered suitable as witnesses in Church tribunals,\(^7\) and are to be excluded \textit{ex officio}.\(^7\) They can, however, be heard, if the judge so decides, but their testimony is considered to be rather an indication and a help toward proof than solid proof in itself. Generally they are heard unsworn.\(^7\) Naturally, they cannot be used as expert witnesses, either.\(^7\) In the states, too, while a child, e.g. under ten, may testify without taking an oath, if the judge is satisfied as to his realization of the obligation to speak the truth, persons of such tender age are ordinarily not called as witnesses.

Those under the age of fourteen are usually not issued permits to work, under American law. The Canon Law has no such specific provision, leaving the matter to the general command that parents are to look after the welfare of their children.\(^7\)

As for punishment of delinquents, those who have not yet attained puberty are excused from penalties \textit{latae sententiae}. They are to be corrected rather by educative punishments than by censures or other rather severe vindicative penalties.\(^7\) Similarly, state laws provide for educational and psychological treatment of youthful offenders under the Juvenile Court Acts.

With regard to penalties said to be \textit{latae sententiae}, it should be understood that as a general rule penalties are imposed only after trial and conviction, but in some cases the doing of the prohibited act automatically induces the penalty.\(^7\) Censures are penalties whereby a baptized person who is delinquent and contumacious is deprived of some spiritual goods, e.g. the Sacraments, or goods connected herewith, e.g. a right to vote in an ecclesiastical election. The privation continues until such time as, having yielded, he has been absolved from the censure.\(^7\) Such a punishment is used only in cases of external, serious, consummated delicts to which contumacy, too, is joined.\(^7\) It may be considered analogous to imprisonment for contempt, or to the older institute of
outlawry. Vindicative penalties are those which tend directly toward the expiation of the delict so that they are not remitted by the fact that the delinquent recedes from his contumacy.\textsuperscript{70} Analogous thereto would be fines or imprisonment.

Once the minor has attained the age of puberty and during his teens he is presumed much more capable of handling his own affairs, though he is still accorded some protection lest he be overreached in business transactions. Similarly, he is considered much more responsible for his actions, though his youthful age will be considered in mitigation of the penalties provided in the law.

Thus, one who has attained the age of fourteen can be a sponsor at baptism,\textsuperscript{80} assuming responsibility for the person sponsored. Thenceforth he will have to look after his godchild’s christian upbringing and see to it that such child throughout his or her life behaves in the manner in which, during the solemn ceremony, he promised that he would behave.\textsuperscript{81}

A minor who has completed his or her fifteenth year and wishes to join a religious community may validly enter the novitiate thereof.\textsuperscript{82} One who has completed his sixteenth year\textsuperscript{83} can validly pronounce temporary religious vows in such a community, though perpetual vows, whether solemn or simple, cannot be pronounced before one attains the age of twenty-one.\textsuperscript{84}

Though one has not yet completed his twenty-first year he can receive minors orders. Subdeaconate, however, the first of the major orders in the Latin Rite, is not to be conferred until the candidate has completed his twenty-first year.\textsuperscript{85} If one maliciously receives an order before the time set by law he is ipso facto suspended from the order received,\textsuperscript{86} i.e. cannot exercise it.\textsuperscript{87}

Protection in this area is extended to the minor by the provision that it is wrong to force anyone, in any way, for any reason, into the clerical state, or to dissuade therefrom one who is suited for it under the Canon Law.\textsuperscript{88} This provision is strengthened by the penal provision that all persons, whatever their dignity, who in any way whatsoever force a male to embrace the clerical state or either a male or a female to enter a religious community or to make a religious profession, whether solemn or simple, perpetual or temporary, are ipso facto under ex-
communication, though this is not reserved, i.e. any confessor can lift it when the person ceases to be contumacious, in other words shows himself truly penitent and makes, or at least seriously promises to make, suitable satisfaction for the damages caused and the scandal given.

A person forced into the clergy by serious fear is further protected. If he has thus received a holy, i.e. major, order and has not afterward, when the fear was gone, ratified the said ordination at least tacitly by exercising that order, wishing by such act to subject himself to clerical obligations, he is to be restored to the lay state. The coercion and lack of ratification must be proved according to law. In that case the judge will decree that he is no longer bound by any obligations either of celibacy or of recitation of the Breviary. A special procedure for proving such coercion and lack of ratification is provided.

Children who must help their parents, i.e. a father or mother, grandfather or grandmother, who are in serious need are admitted into a religious community validly, indeed, but illicitly. Superiors of a religious community who contrary to the canon just cited admit a candidate who is not qualified are to be punished according to the seriousness of the fault, even by privation of office.

The laws of the American states, too, make provision for support of a parent by a child, e.g. when it is a question of reimbursing the Superintendents of the Poor, or the County or State Welfare Departments for expenses in taking care of such needy parents. Where, however, assistance is furnished other than in accordance with such laws the child may not be required to support the needy parent.

As for the sacrament of marriage, the age of consent in Canon Law is, for males, sixteen years complete, and for females, fourteen. These relatively youthful ages are established in view of the fact that the Canon Law must consider the conditions of people of many parts of the globe. Though some American states still allow marriage at such a tender age, the majority require greater maturity, in view of conditions in this country.

Considering that different countries may establish different minimum ages for marriage, the Canon Law adds a caveat to the effect that even though a marriage at the early age which it allows is valid, pastors are to try to dissuade youngsters from marrying earlier than is customary according to the mores of the region. He is also required to

89 C. 2352.
90 C. 2242, §3.
91 C. 214, §1.
93 C. 542, 2°.
94 C. 2411.
95 C. 1067, §1.
96 C. 1067, §2.
urge youngsters seriously not to marry if their parents are unaware of their intentions or are reasonably opposed to the marriage. If they refuse to listen he is not to assist at their marriage, unless he has previously consulted with the local bishop.97

Something similar is found in the law of the American states requiring consent of at least one parent or of the legal guardian where the female is under age, and setting an absolute minimum age for the male. It is frequently declared that if the parties are under age at the time of marriage and separate permanently before reaching the required age, the marriage shall be considered void without any decree. An annulment or divorce may be advisable, however, to clear the record, e.g. as regards property. The Canon Law would require a statement of freedom to marry, based on an investigation of the facts, were a party to such a youthful marriage later to seek to marry another, even though nonage is a diriment impediment.

Minors are not permitted to exercise *jus patronatus* directly, but must do so through their parents or guardians. If the latter are not Catholics, the *jus patronatus* is meanwhile suspended.98 This *jus patronatus* is the sum total of privileges, together with certain duties, which by concession of the Church are granted to Catholics who found a church, chapel, or benefice, or to their heirs.99 One of the elements thereof is advowson.

A similar limitation on the exercise of a minor's rights is the requirement that his parents or guardians bring and defend actions for him.100 If the judge deems that their rights are in conflict with the rights of such parents or guardians so that it is quite likely that they will be able to exercise them properly, or if they are so far away that they can help them only with difficulty, then the minors are to appear in court through a guardian-ad-litem assigned by the judge.101

American laws, too, provide that an infant can sue by his next friend or the guardian of his estate, and provide that an infant defendant is to be represented by the guardian of his estate, if any, otherwise by a guardian-ad-litem. These guardians are appointed by the court on motion.

Frequently, a minor over fourteen may nominate a person to be his guardian, who will have care and custody of his person and supervision of his education, as well as manage his estate until he is twenty-one. If the minor is a female the guardianship of the estate continues until she is twenty-one, though custody of her person ends if she marries. Since the guardianship terminates when the minor becomes

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97 C. 1034.
98 C. 1456.
99 C. 1448.
100 C. 1648, §1.
101 C. 1648, §2.
twenty-one the guardian cannot execute a lease thereof to last beyond the ward's attainment of majority.

In Canon Law, if the minor is involved in a case concerning his spiritual rights, e.g. to receive a sacrament, or in a case connected with spiritual things, and he has attained the use of reason he can sue and be sued without the consent of the parent or guardian. Indeed, if he has completed his fourteenth year he can sue or be sued personally. Otherwise he is to be represented by a guardian-ad-litem assigned by the bishop, or through an attorney-in-fact appointed by himself, with the bishop's approval.\textsuperscript{102}

The American law would allow an infant over fourteen years of age to make his own selection of a guardian-ad-litem. It would not require a next friend or guardian-ad-litem in a divorce suit by or against a minor, but the age which he or she must have attained by that time would seem to make such a representation largely unnecessary.

To minors, and to those who enjoy the rights of minors, e.g. ecclesiastical corporations,\textsuperscript{103} who have been injured and to their heirs and successors is granted the extraordinary remedy of \textit{restitutio in integrum}, in addition to other ordinary remedies, i.e. actions to rescind the transaction.\textsuperscript{104} This extraordinary remedy is granted to repair the injury from a transaction or an act which is valid but rescindable. It is an old one coming down from the Roman Law,\textsuperscript{105} which allowed it to restore the status quo\textsuperscript{106} when a minor had been overreached by trickery or by reason of his inexperience. It must be requested within four years from the time the minor attains his majority.\textsuperscript{107}

Under American law a plaintiff who was under twenty-one years of age when the cause of action accrued must, usually, or those claiming under him must, sue within one year after the disability is removed. The disability must, further, have existed at the time the claim accrued and successive disabilities, generally, cannot be tacked. The bar of the statute must, further, be pleaded in answer, as a rule, or be raised by a motion to dismiss.

Under the laws of the American states the contract of a minor is voidable, unless it could not possibly be for his benefit, in which case it is simply void. The minor is not allowed to disaffirm an executed contract during his minority. If he disaffirms on attaining his majority he must restore what remains in his possession of the consideration received. If he has received the benefit of the contract, he must disaffirm with reasonable promptness after attaining his majority. If he ratifies the contract by continuing to perform after attaining his majority, or

\textsuperscript{102} C. 1648, §3.
\textsuperscript{103} C. 100, §3.
\textsuperscript{104} CC. 1684-1686.
\textsuperscript{105} D 4.1; C 2.21.
\textsuperscript{106} C. 1699.
\textsuperscript{107} CC. 1687, §1; 1906-1907.
by any acknowledgment or act indicating an intention to be bound he is held to it, but he is not estopped merely by silence. He may not disaffirm a contract for goods or a loan, if it appears at the trial that he wilfully misrepresented his age and the seller had no actual knowledge of his actual age, and if such misrepresentation was made in a separate instrument signed by him and dated or is admitted in open court. A minor simply lacks capacity to convey or to contract except for necessaries, but he is liable for his torts.

Another type of protection granted to minors by the Canon Law is the provision that they shall have a right of recourse for indemnity against guardians, administrators, and attorneys-in-fact who cannot prove themselves free of fault in allowing “peremption” to occur. This occurs if no processual act, there being no impediment, is performed in a tribunal of first instance for a period of two years, or in appellate tribunal for a year, and in this latter case, the decision appealed becomes res judicata. Peremption occurs ipso iure and runs against all, even minors, and must be raised by way of exception even ex officio.

The law of the American states, being concerned with the minor’s property rights, provides for his capacity to inherit from his parents, or from his mother and her kin if he be illegitimate, as well as from any adoptive parents he may have. It also protects his property against those holding adversely to him, considering him to be under a disability during his minority. Should he be orphaned the probate court will appoint a guardian for his person and his property, or the surviving parent may nominate a guardian by last will and testament. Indeed, a minor over fourteen years of age may nominate his own guardian.

Adoption is of concern to the Canon Law insofar as the civil laws make illicit or, more particularly, invalid marriages between those who have acquired a legal relationship through such adoption.

Emancipation of the child, in American law, may take place at once by an express agreement, or gradually and by conduct implying mutual assent; and even in the latter case it may be brought about in a short time. No such formality is required as in the old time manumission, but the emancipation may be special or general, partial or complete, express or established by circumstances. Canon Law has no particular provisions on this point.

In case of divorce of the parents, usually if there are children under eighteen years of age copies of the proceedings are served on the friend of the court and the prosecuting attorney to be sure that the minor's

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108 C. 1737.
109 C. 1736.
110 C. 1080.
best interests are served. Frequently a wait of some months is required before the decree becomes final. If there are children, and the divorce is absolute, the court makes such provision for their care as seems advisable.

The welfare of the child is the test in determining custody and control. Thus, the state asserts a claim which takes precedence over a father's interest. It usually considers that the mother has a prima facie right to custody of a minor, if she is morally fit, and particularly if the children are under twelve.

The Canon Law analogously provides that if separation of the parents occurs, the children are to be brought up by the innocent party, and if either of the parties is not a Catholic, by the Catholic party, unless in either case the bishop, for the good of the children themselves, has decreed otherwise, always safeguarding their Catholic upbringing.111

This provision follows naturally from the other that the obligation to educate children112 arises from the primary purpose of marriage, which is the procreation and education of children, the secondary being mutual help and a remedy for concupiscence.113

The separation of the parents may come about because one of the parties has joined a non-Catholic sect, or is educating the children in a non-Catholic way, is leading a criminal or disgraceful life, or is creating a serious danger to soul or body for the other party, or is making life together too difficult by cruelty, or is guilty of other things of that sort. The innocent party may leave at once on his or her own authority, if the causes are certain and there is danger in delay. In other cases, one should not leave the other without permission of the local bishop.114

In all these cases, when the reason for the separation ceases, life together is to be restored; but if the separation was approved by the bishop for a definite or indefinite period, the innocent party is not obligated to return, unless by further decree of the bishop, or by the lapse of the stated time.115 In both systems, then, there is provision for a "cooling off" time in marital disputes, particularly where there are children involved.

The law of the American states also provides protection for minors in the matter of employment, lest they be forced to work too long hours in such wise as to interfere with their education, or at occupations too hazardous for their health. Thus, usually any one under eighteen must have a work permit from the superintendent of schools, or other official, except for employment in farm work, or in the business of a

111 C. 1132.
112 Cf. supra, C. 1113.
113 C. 1013, §1.
114 C. 1131, §1.
115 C. 1131, §2.
parent or guardian, and in certain street trades. Those under sixteen years of age cannot be employed during certain hours of the night, particularly in heavy or hazardous occupations, nor more than a certain number of days in a week, or a certain number of hours, nor more than a certain numbers of hours in a given day. Further, they usually cannot be kept at work more than a certain number of hours without a break for a meal. Those between sixteen and eighteen are usually allowed to work later in the evening if it will not interfere with their schooling. The Canon Law leaves all this to the parents.

A further concern of the states, which the Canon Law does not have, is the matter of operation of a motor vehicle. Thus, the American states have had to set a minimum age, under which an operator's license will not be issued unless a person has passed a driver education course. Exceptions may be made for restricted licenses and temporary instruction permits. Further exceptions may be made for non-residents who are of a specified minimum age and have licenses or at least the registration card for the vehicle, if they are not required to have licenses in their home states.

While American states are quite liberal in allowing persons to be witnesses, not excluding them for interest in the case, or marital or other relationship to a party, or conviction of crime, the Canon Law, because of differences in procedure, excludes more potential witnesses. Thus, a blood relative or one related by marriage is considered incapable of being a witness in a case involving his blood relative or one related by marriage, in any degree of the direct line and in the first degree collateral, unless it is a question of a case which relates to the civil or religious status of the person and knowledge of the facts cannot be otherwise obtained. The same exclusion is observed if the person is called as an expert witness. Persons so related are not as likely to be dispassionate observers of the facts as persons not so related. This dispassionate attitude is not so important, however, in the cases falling within the exception.

Blood relatives and those related by marriage are considered competent witnesses in marriage cases involving their relatives. They are more likely to have information of value than are outsiders.

Further, while witnesses are ordinarily required to answer a judge who lawfully interrogates them and tell the truth, excused from this rule are those who fear that from their testimony infamy, dangerous vexations, or other very serious evils will in the future come to themselves or their blood relatives or those related to them by marriage,

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116 C. 1757, §3, 3°.
117 C. 1795, §2.
118 C. 1974.
119 C. 1755, §1.
in any degree of the direct line and in the first degree collateral.\textsuperscript{120} Under such pressure they may be tempted to tint the picture a bit.

Also rejected as a witness is a guardian in the case involving his ward.\textsuperscript{121} He cannot be an expert witness in such a case, either.\textsuperscript{122} Further to avoid prejudice he must disqualify himself from hearing as judge a case involving his ward,\textsuperscript{123} nor can he in such a case act as promotor of justice or defender of the bond.\textsuperscript{124}

In criminal cases the accused must always have an attorney-at-law, either chosen by himself or appointed by the judge.\textsuperscript{125} Even in a civil trial, if it is a question of minors, or if the public good is involved, the judge must \textit{ex officio} assign an attorney to the party lacking a defender, or, if the case warrants, add another to the one a party already has.\textsuperscript{126}

In criminal matters minors are given consideration in that, unless there is proof to the contrary, their age diminishes their responsibility for the delict, and this the more the closer their age approaches that of infants.\textsuperscript{127}

Those who have attained the age of puberty and who have induced younger persons to violate the law or have cooperated with them in the delict incur the penalty established in the law.\textsuperscript{128}

In general, those who have conspired or cooperated with another in a delict physically as a result of a common plan are all equally guilty, unless the circumstances of one or more of them increase or diminish the culpability, as in the case of those under the age of puberty.\textsuperscript{129} In a delict which by its very nature requires an accomplice, each party is equally culpable, unless, again, from the circumstances it appears otherwise.\textsuperscript{130} Not only the one who gives the orders and who is the principal author of the delict, but likewise those who induce others to perform the action, or in any wise cooperate in it, all things being equal, incur no less responsibility than the one who actually carries out the delict, if the action would not have been performed without their efforts.\textsuperscript{131}

All those who cooperate in the delict are bound \textit{in solidum} to pay the expenses and damages which have come to any persons whatsoever as a result of the delict, even though the court has ordered them to

\textsuperscript{120} C. 1755, § 2, 2°.
\textsuperscript{121} C. 1757, § 3, 1°.
\textsuperscript{122} C. 1795, § 2.
\textsuperscript{123} C. 1613, § 1.
\textsuperscript{124} C. 1613, § 2.
\textsuperscript{125} C. 1655, § 1.
\textsuperscript{126} C. 1655, § 2.
\textsuperscript{127} C. 2204.
\textsuperscript{128} C. 2230.
\textsuperscript{129} C. 2209, § 1.
\textsuperscript{130} C. 2209, § 2.
\textsuperscript{131} C. 2209, § 3.
pay pro rata. Further, even though but one is named all are subject to the same penalty, unless there is express provision to the contrary.

Since guilt is diminished the younger the minor is, it is to be noted that not only things which excuse from all guilt, but also those which excuse from serious guilt, likewise excuse from any penalty whether *latae sententiae* or *ferendae*, i.e. to be imposed after a hearing and conviction, even in the external forum, if the excusing cause is proved for the external forum. The external forum spoken of here is that of the court, as distinguished from the internal forum of the confessional.

The laws on specific crimes afford further protection to a female minor. Thus, one who for the purpose of marriage, or for lustful purposes abducts an unwilling woman by force or by trickery, or who abducts a woman who is a minor even if she consents, but her parents or guardians are unaware of it or are opposed, is to be considered *ipso iure* excluded from lawful ecclesiastical activities, e.g. being sponsor, and, further, is to be punished with other penalties in accordance with the seriousness of the delict.

Persons lawfully convicted of sex crimes with minors under the age of sixteen, are *ipso facto* infamous, besides other penalties which the bishop will have decided should be inflicted. Infamy is either of law or of fact. Infamy of law is that which is set forth in cases expressed in the common law, as here. Infamy of fact is contracted when a person because of a crime committed or because of bad morals has lost his good reputation among upright and serious members of the faithful. As to this the judgment is left to the bishop. Neither infamy affects relatives by blood or marriage of the delinquent. Infamy of law, however, which makes a person irregular as regards receiving holy orders, and further, incapable of obtaining benefices, pensions, or official positions and dignities in the Church, as well as incapable of performing lawful ecclesiastical activities, or exercising any ecclesiastical right or function, can be taken away only by dispensation obtained from the Apostolic, i.e. Holy, See.

Further to assure protection for the minor the Canon Law requires certain things to be done by parents, guardians, and others in official positions in the Church.

Thus, with regard to the sufficiency of the disposition of children for first Holy Communion it provides that the judgment is reserved

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132 CC. 2211; 2231.
133 C. 2231.
134 C. 2218, §2.
135 C. 2353.
136 C. 2357, §1.
137 C. 2293.
138 C. 2294, §1.
139 C. 2295.
to the priest who hears the child’s confession and to its parents or those who are in loco parentis. The pastor is given the duty of seeing to it, by examination if he prudently judges this opportune, that the child shall not approach Holy Communion before attaining the use of reason or without sufficient disposition. He is also required to see to it that those who have attained the use of reason and are sufficiently disposed receive this sacrament as soon as possible.140

The pastor is also required to prepare the children each year, at stated times, and by continuous instruction lasting for several days, to receive properly the sacraments of penance and confirmation. This he is required to do particularly during Lent, if possible.141 In addition, he is told not to neglect to train more fully and more perfectly in the catechism the children who have recently received their first Communion.142

Priests, and especially pastors, are commanded to make a special effort to protect from the contagion of the world the children who show indications of an ecclesiastical vocation, that they may train them to piety, imbue them with the first lessons in letters, and foster in them the germ of a divine vocation.143 This direction regarding the first lessons in letters recalls the first canon of the Second Council of Vaison (A.D. 529) which required that all the priests who were in parishes should, in keeping with the custom which existed throughout the whole of Italy, open their houses to the younger students and train them so that they might provide for themselves worthy successors and thus receive from the Lord eternal rewards.144

Parents, as has been seen, are bound in Canon Law by a most serious obligation to provide for the education of their children, both religious and moral, as well as for their physical development and their training in citizenship.145

Catholics who marry with an agreement, explicit or implicit, that all or some of the children will be educated outside the Catholic faith incur an excommunication latae sententiae, reserved to the bishop for absolution.146 Likewise, parents or those in loco parentis who knowingly deliver the children to be educated or brought up in a non-Catholic religious belief are subject to the same sort of excommunication.147 Further, such persons are suspect of heresy.148

"Knowingly" means that the person did the act with full knowledge

140 C. 854.
141 C. 1330.
142 C. 1331.
143 C. 1353.
144 Cf. J. D. Mansi, Sacrorum Conciliorum Nova et Amplissima Collectio, 8:726.
145 C. 1113.
146 C. 2319, §1, 2°.
147 C. 2319, §1, 4°.
148 C. 2319, §2.
of the consequences and with due deliberation. Consequently, any diminution of guilt, either on the part of the mind or on the part of the will frees the person from the penalty which is *latae sententiae*.\(^{140}\) Suspicion of heresy involves the need for the person, after he or she has been warned, to remove the cause for the suspicion. Otherwise the person is forbidden to engage in any lawful activities, e.g. to be a sponsor, and if a cleric, a second warning having proved futile, he is to be suspended from divine services. If within six complete months from the contracting of this penalty, the person suspect has not corrected his fault, he is to be considered as a heretic, subject to the penalties for heretics.\(^{150}\)

The penalties last mentioned are: excommunication *ipso facto*, and after a warning has proved futile, privation of any benefice, dignity, pension, office or other function which the person may have in the Church, together with a declaration that infamy has been incurred. Clerics, after a second warning has proved futile, are to be deposed from their status.\(^{151}\) If the person joins a non-Catholic group or publicly adheres thereto, he is *ipso facto* infamous. A cleric who does so, after a warning which has proved futile, is to be degraded from the clergy.\(^{152}\)

Canon Law further provides that all the faithful are to be so instructed from childhood that not only is nothing taught them which is hostile to the Catholic religion and uprightness of morals, but especially is religious and moral instruction to have a primary place in their education.\(^{153}\)

Those who are engaged in the religious instruction of the faithful are told to omit nothing which will arouse the piety of their souls toward the most holy Eucharist. They are also to exhort them especially that, not only on Sundays and holy days of obligation, but also on weekdays, frequently, as far as possible, they assist at the sacrifice of the Mass and visit the most blessed Sacrament.\(^{154}\)

The faithful are also told that they are bound to profess openly their belief whenever their silence, weaseling, or other manner of acting carry with them an implicit denial of the faith, contempt for religion, insult to God or scandal to their neighbor.\(^{155}\)

In order to preserve the home, so that the required protection may be available to the children the Canon Law provides that married persons cannot validly enter a religious community while the marriage still

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\(^{140}\) C. 2229, §2.
\(^{150}\) C. 2315.
\(^{151}\) C. 2314, §1, 1°, 2°.
\(^{152}\) C. 2314, §1, 3°.
\(^{153}\) C. 1372, §1.
\(^{154}\) C. 1273.
\(^{155}\) C. 1325, §1.
Religious superiors who allow them to enter are to be punished, even to the extent of privation of their office. In fact, a married man who without a dispensation from the Holy See, although in good faith, has received major orders is forbidden to exercise them.

Since, however, the mere fact of the parents being in the home is not an adequate guarantee of their active supervision of their children some states attempt to impress upon parents their responsibilities with regard to their children not only by requiring them to send the children to school but also by making them liable for the torts of their children which were maliciously or wilfully done with resulting destruction of property or injury to the person. Usually a limit is set upon the amount for which the parents are liable, but it does serve as a warning that they should supervise their minor children who are under a certain age, e.g. eighteen.

There are, therefore, similarities and differences in the ways in which the laws of the Church and the laws of the American states treat minors. These are explained by the different ends which each system of laws has in view.

The Church is concerned with the spiritual welfare of the children, their preparation here through instruction in the Christian faith and through the helps offered by the sacraments, for the life to come. Insofar as it punishes transgressions of its laws it does so with a view to correcting the person, through warnings, threats of penalties, and finally penalties themselves, frequently not actually imposed because of the lack of understanding or lack of full freedom of choice on the part of the delinquent.

The states, on the other hand, are concerned with the temporal welfare of their citizens and consequently seek to protect those who are under age from possible harm to their persons, whether physical, through abuse, or mental, through failure to provide them with a satisfactory education, or to their property. Particularly with regard to their property the states seek to protect them from improvident use of it by requiring that it be administered by a parent or guardian until the minor is of an age to handle it properly himself or by preventing the enforcement of contracts for anything more than actual necessaries, should the minor upon coming of age realize that he has been over reached and therefore desire to disaffirm.

The states also seek to protect the minor against a too rigid enforcement of their criminal laws through the institute of the Juvenile

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156 C. 542, 1°.
157 C. 2411.
158 C. 987, 2°.
159 C. 132, §3.
Canon Law

Court. This special system of courts ensures that the juvenile is given a treatment when he is delinquent which will take into account his lack of experience, especially in his younger years, and will tailor the remedy to fit the situation, especially so as to provide the training in citizenship which he has not received in the home or in school, where he was very likely rebellious prior to the time of dropping out.

The Canon Law has no need to set up a special system of courts to deal with juveniles for its usual procedural rules provide for protection of the child’s name. Further, the principle that guilt is diminished the closer the child is to infancy assures a tailoring of the punishment to fit the crime. While the Canon Law considers one who has attained the age of puberty subject to the penal laws of the Church, is still requires such adaptation of the punishment to the guilt of the delinquent, even in the case of adults, according to the person’s understanding of the situation and his freedom to choose his course of action.

The differences in procedure are adequately explained, it would seem, by the differences in the threats posed to each system of laws by delinquencies of their subjects and by the corresponding differences in the penalties which they find necessary to dissuade such subjects from so acting or to avenge the wrong done.