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Secularization: A Response from Canon Law Based on the Concept of the “Church on the Move” and Cooperation with the Civil Order in Cases of Abuse of Minors by Priests

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Abstract: The influence of secularization and secularism in today’s society has led to a process of privatization of religion. Faced with this reality, Pope Francis, in his Apostolic Exhortation *Evangelii gaudium*, has promoted the need for a pastoral conversion, betting on a “Church going out” that, on the one hand, can cope with this process and, on the other hand, go out to meet all those people who suffer in the existential peripheries. The aim of this paper is to demonstrate, through a qualitative and quantitative methodology, how canon law is a reality that cannot stand aside from this call and how, in the specific area of child abuse within the Church, it must opt for a position that we call “expansion” or *extra ecclesiam*, capable of recognizing and dealing with the cases that have occurred, as well as operating a system of cooperation with the civil order, with the aim of promoting justice and the common good of society, in order to limit the growing process of secularization.

Keywords: secularization; departing church; canon law; sexual abuse of minors; cooperation



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1. Introduction

The influence of canon law in the configuration of the *ius commune*, the basis of the current law of many European countries, shows its importance in the legal world. However, this order, which governs the functioning of the Church, has been losing influence in today’s society as a result, among other aspects, of a secularization that has undermined the experience of religious beliefs and, therefore, those of canon law itself. While remaining aware of this reality, a situation that has been plaguing many countries for several decades, such as the abuse of minors by priests, has called into question the consideration of Church law as an autonomous and self-sufficient instrument. Nevertheless, under the auspices of the pontificates of Benedict XVI and Francis, the doors have been opened to the necessary collaboration with the civil order, with the aim of making the prosecution of such crimes increasingly safe and effective.

The work is structured in three main blocks: The first part tries to investigate the influence that the process of secularization that today’s society is undergoing has had on the juridical order of the Church; the second part tries to explain how the concept of the “Church going forth”, proposed by Pope Francis for various areas within the ecclesial reality, also has its repercussions in the canonical order, through a growing ecclesiastical legislation aimed at promoting justice in cases of abuse of minors by priests and to promote, to this end, a fuller and more effective collaboration with the civil order; Finally, a series of measures are proposed to help guarantee this cooperation and, at the same time, to create the right conditions to help curb the spread of secularization in the religious and canonical sphere.

Although this study is carried out from a generalist perspective so that it can serve as a model for possible applications to different legal systems, it will focus, in some of its lines of research, on the Spanish case in order to reflect on whether certain measures and protocols implemented in this country could be of help to other societies in the fight against the scourge of child abuse.

This article has two fundamental objectives: on the one hand, the influence of secularization on the canonical order and the Church's response to this situation. On the other hand, to study the possibilities of collaboration between the civil and canonical legal order, in order to propose a valid and effective model of action in the fight against the sexual abuse of minors.

In order to achieve these objectives, a quantitative method will be used, especially when measuring the influence of secularization in today's society, and a qualitative system, based on the study of the legal norms that have been developed over the years at the ecclesiastical level in the fight against pederasty in the Church, as well as the use of a wide doctrinal bibliography that allows to approach the proposed objectives from different points of view.

The conclusion we reach is that, beyond the undeniable influence that the process of secularization may have had on religious beliefs in society, the idea of a "Church on the move" promoted by Pope Francis in the canonical order entails an invitation to open ecclesiastical norms to intense collaboration with the civil order, with the aim of ensuring that the prevention and prosecution of those guilty of abuse, but also the necessary assistance to the victims of abuse, becomes a reality that allows us to leave the realm of utopia and take root in the practical order, through a series of concrete and effective measures.

2. Secularization and Canon Law

Secularization refers to the process by which religion loses its influence over various aspects of social and political life. This phenomenon has been especially notable in Western societies since the 18th century, with the Enlightenment as a turning point. Modernization, scientific progress, and human rights movements have contributed to this process, promoting a worldview in which religion is seen as a private rather than a public matter.

2.1. Concept of Secularization

Secularization can be defined as the process by which religion loses its influence over various aspects of social and political life. It has been a predominant phenomenon in Western societies since the Enlightenment, marked by the advance of rational and scientific thought and a progressive disengagement of religion from the public sphere. Modernization, scientific progress, and human rights movements have contributed to this trend, promoting a worldview in which religion is seen as a purely private matter. This process has led religiosity to change in quality and decrease in intensity (Acquaviva 1961, p. 318).

The process of secularization can be defined as the shift from a more or less socially encompassing religious culture to a religious belief where religion has been transformed into a cultural subsystem left to private and existential choice (Sommerville 1992).

Authors such as Berger and Luckmann (1966) linked this process of secularization to the idea of religious pluralism, in the sense that competition, when it comes to explaining the global meanings of ordinary life, gave rise to a process of de-monopolization of traditional worldviews, such as the Christian one, thus favoring a progressive autonomization of the social sectors that escape the domination of the meanings of religious institutions.

However, can it be accepted that this process of secularization, which is still evident in some countries, as we will see statistically later, can be generalized to all societies without further ado? Stolz and Voas (2023) defend the theory that there are counterexamples that contradict the theory of secularization, i.e., that in some cases, modernization has been accompanied by stability and even a resurgence of the religious phenomenon in countries such as the United States, India or Brazil, to cite just a few examples. To reach this conclusion, they start from the theory of authors such as Wallis and Bruce (1995, p. 702), who state that despite modernization, religion sometimes becomes the appropriate instrument that serves to confer identity to a group in the face of internal threats or, on occasions, as happens in cases of migration in certain countries, the religious phenomenon

also acts as a catalyst to promote cultural transition and confer identity in the context of a new society. To these elements are added other factors that may imply a resurgence of religion, such as situations of economic or social crisis, threats that a given group may experience from above or due to some cultural change, its use as an instrument to legitimize a given political order, or the lifting of burdens that weighed on it to give way to a situation of full religious freedom.

Other authors, such as [Ebron \(2024\)](#), attempt to confront the dynamics of secularization through imaginative proposals, such as applying St. Thomas Aquinas' concept of "grace" to the new reality that religion must face in today's society. To this end, he develops an evolutionary process that begins with empathy, continues with compassion, and culminates in selflessness, that is, the willingness to put aside one's own needs for the benefit of others. From a secular point of view, it is understood that it is possible to reach a development of the individual's full potential through this process, without the need to resort to the divine dimension of grace.

From what has been studied in this section, we can conclude that although secularization, as a process that seeks the loss of religious influence in the social and political sphere, is a living reality in many Western countries, this does not prevent us from defending that progress and modernization have not always led religion to a private and secondary role.

2.2. Causes and Evolution of Secularization: Special Reference to Spain

What are the causes that have led this process of secularization to take hold in a large part of Western countries? If we follow [Benedict XVI \(2010\)](#), we can say that where relativism, under a false idea of tolerance, is considered an essential element of democracy, one ends up conceiving secularity in terms of the exclusion of religion from the public sphere. Thus, a concept related to the process of secularization is opening the way: secularism. This current seeks to put an end to the public visibility of religion, to disassociate culture from its Christian foundations, and to suppress its social influence by eliminating the teaching of religion ([López-Sidro 2008](#)).

The denial of religion by a secularist conception of power and society is based on the idea of the absolute autonomy of man with respect to any transcendent dimension and, therefore, defends the person's capacity for self-redeeming so that everything that has to do with faith will only imply moral burdens that the subject has to bear and that constitute an obstacle to his freedom and happiness ([Forment 2011](#)).

Aspects such as rationalization or existential security pose problems for religion and can reduce or extinguish its social meaning ([Moniz 2023](#)). This author defends the thesis that secularization is favored by multiculturalism because diversity tends to weaken homogeneity and, as a consequence, to weaken the structures of verisimilitude of religion.

Faced with this reality, [Benedict XVI \(2011\)](#) advocates a healthy laicism, which does not consider religion as a mere individual sentiment that can be relegated to the private sphere but as a reality that, being also organized in visible structures, its public community presence can be recognized.

Focusing on Spain, and only by way of example, several phases can be distinguished in the secularization process. The first of these, which covers the 19th century and the first part of the 20th century, is characterized by anticlericalism. From the 1960s onwards, a second stage began, in which a more passive and disinterested stance was adopted rather than a belligerent attitude against religion. In this way, "Spain ceased to be a country of Catholic religion and became a country of Catholic culture" ([Pérez-Agote 2007](#), p. 74). In the 1990s, the third wave of secularization took place, characterized not by a decatholization, as in the previous stage, but by an "exculturation", according to which the culture was losing its Catholic roots ([Hervieu-Léger 2003](#)).

All this has served as a leaven so that, in the 21st century, the process of secularization and the loss of ties with religion has been gradually taking hold, as the following Table 1 shows.

Table 1. Secularisation process in Spain 2000–2021 (Source: [Pluralism and Coexistence Foundation 2022](#)).

Year	Catholic	Non-Believer/Atheist	Other Religions	N.C.
2000	85%	13%	1%	2%
2005	79%	18%	2%	1%
2010	76%	21%	1%	2%
2015	69%	26%	2%	1%
2021	61%	34%	3%	2%

An intuitive analysis of the data shows that in the year 2000, the number of people who professed to be Catholics in Spain constituted 85% of the population, while in the last date for which data are available, the year 2021, the number of people who recognized themselves as Catholics was 61%. In contrast, in 2000, the number of people who admitted to being atheists or non-believers barely reached 13%, while in 2021, 34% of the population confessed to being non-believers or atheists. In addition, the number of people believing in other religions has increased from 1% in 2000 to 3% in 2021.

Two clear consequences can be derived from the analysis of these data: firstly, the influence that secularization has had on Spanish society, which has led to a gradual decrease in the number of people who confess to being Catholics and, consequently, an increase in the number of others who admit to being non-believers or atheists. Secondly, religious multiculturalism, the result of immigration processes, has meant that the number of people belonging to other religions has increased by two percentage points. It can, therefore, be said that secularization and religious pluralism are two essential components of Spanish society today.

As in Spain, in many other Western societies, there has been a notable decline in the number of people who confess to believing, attend religious services, and participate actively in church life. This change reflects a trend toward the individualization of spirituality and a growing distrust of religious institutions.

In addition, in countries such as Spain, the influence of religious institutions in politics and in the formulation of civil laws has been limited, as it was in the past, resulting in the approval of new regulations that promote individual rights that may conflict with traditional Catholic religious teachings, such as same-sex marriage, abortion, euthanasia, and transsexuality.

The process of secularization in Spain has been driven by a combination of political, socioeconomic, cultural, and social factors. Democratic transition and constitutional change, economic development and modernization, cultural and value changes, or globalization and religious pluralism have all contributed to the decline in the influence of religion in public and private life. Although religion continues to be an important part of many Spaniards' cultural and personal identity, its role has changed significantly in recent decades.

This process of secularization has been fueled, among others, by currents such as postmodernism, which questions the grand narratives and the authority of religious institutions, promoting pluralism, relativism, and the fragmentation of identity. By valuing personal experience and subjectivity and criticizing institutional power structures, this trend of thought has fostered a more individualized and less institutionalized spirituality. These changes have made possible an increasingly secular society, where traditional religion has lost its dominance, and people are seeking new ways of understanding and practicing spirituality.

2.3. Influence of Secularization on Canon Law and Deficits of This Juridical Science

After analyzing the process of secularization and its influence on religion in a common way, we advance, through a deductive methodology, from a general position to a more particular one, specifically the influence that secularization has had on one of the dimensions of the Catholic religion: canon law.

Before delving deeper into this issue, it is necessary to point out two essential aspects: the autonomy of religious denominations and the limits of canon law as a legal science. Regarding the first of these issues, when we speak of the autonomy of religious denominations, we refer to the right to religious freedom in its collective dimension (Gatti 2013). It implies, therefore, the freedom to formulate one's own doctrines, such as the manifestation of one's own beliefs *ad extra*. Outlining in a more precise way the contents covered by this autonomy, we can point out that, in addition to determining and interpreting their own religious doctrine, the confessions possess the capacity of organization and government structure, as well as the determination of the regulatory norms, within which canon law would be included (Palomino 2023). Canon law thus becomes one of the essential elements that configure the content of the right to religious freedom and, therefore, the autonomy that the Catholic Church enjoys based on it, providing the necessary mechanisms for the resolution of conflicts by providing it with a regulation that, in addition, confers confessional identity to the Church itself (Valero-Esterellas 2022).

The second aspect that needs to be pointed out concerns the limitations that canon law, as a juridical science, can present in the secular sphere. The first thing to point out is that the separation between civil and canonical order is the fruit of a process where it has transited from the conception of church ordering as a spiritual law for the world to being conceived as a law of the Church for the Church (Miñambres 2019). This fact highlights a series of limitations present in contemporary canonistics, which have led to a kind of juridical eclipse in the Church (Del Pozzo 2020). This has been contributed to by a formation of canon jurists that has moved away from their integral education to focus more on their configuration as mere court operators. Another shortcoming suffered by modern canonistics is the lack of a systematic and specialized approach, which has a negative impact on the analysis and depth of the topics addressed (Del Pozzo 2020, pp. 513–14). Canon law cannot be launched into a dialogue with secular law without first recovering its rightful place within ecclesiastical knowledge and without fostering unity and cohesion between them. Only in this way will it be possible to achieve the goal of the search for truth and knowledge, and help the Church to fulfill its mission in today's society more efficiently (Ramis-Barceló 2022).

But what has been the influence of secularization on canon law? From our point of view, two different stages have developed in this area, both framed in the context of clerical sexual abuse of minors. In the first moment, secularization led to a closing of ranks, that is, an attempt to address this problem within the Church, with a canon law adapted to this reality. A second moment, which had its first green shoots in the pontificate of John Paul II, and that was fully developed in the pontificate of Benedict XVI, will reach its climax in the papacy of Francis, who, starting from the idea of implementing different areas the reality of a "Church going out", will promote a canonical regulation for the case of sexual abuse of minors open beyond the ecclesial walls, and with a clear nuance of collaboration and cooperation with the state system. In other words, from a period of what we could call "containment" with respect to the effects of secularization on the canonical order, we have passed to a stage of "expansion", where the right to religious freedom, in its particular dimension of canon law, is interpreted from a perspective of cooperation with the State in the search for the common good of society.

2.4. Secularisation and Sexual Abuse of Minors within the Church

One of the areas where secularisation has had a major impact on the Church has been in the area of sexual abuse of minors by priests. Pope Benedict XVI (2019) pointed out the repercussions of the May 1968 revolution in both sexual and moral matters. In the words of the pontiff, "one of the conquests that this revolution sought was total sexual freedom without any kind of norm. Part of the physiognomy of this revolutionary process was that pedophilia was also diagnosed as permissible and appropriate. The thesis was imposed that morality was to be determined solely on the basis of the purpose of human action. Consequently, there could no longer be anything that was simply good or always

bad, but only relative evaluations". This new way of understanding sexuality and morality permeated all areas of the Church, even reaching the seminaries, where a climate was being created that was not at all suitable for the formation of future priests.

While this reality is clear, it cannot be ignored that sexual abuse of minors by priests is marked by various causes that go beyond the mere secularisation of society and its effects on the Church. One of these causes is the marked clericalism that exists, which [Pope Francis \(2018\)](#) himself describes as "an attitude that not only nullifies the personality of Christians, but also has a tendency to diminish and devalue the baptismal grace that the Holy Spirit placed in the hearts of the faithful". Clericalism creates a division in the ecclesial body that has helped to perpetuate the abuse of power in various areas, including the sexual abuse of minors. This abuse of power is most evident when it is committed against minors, especially if we take into account that "the cleric is placed in a position of prevalence, in the face of a limited capacity for reaction on the part of the victim, who remains extremely perplexed and bewildered" ([Conway 2020](#)).

Another alleged cause has been compulsory priestly celibacy. Some authors argue that abstaining from any sexual activity may generate psychological and sexual tensions in those who practice it ([Plante 2004](#)), or that sexual repression, combined with a formation that idealizes chastity, may contribute to the development of deviant behavior in some individuals ([Sipe 1995](#)). However, it should be noted that most cases of pedophilia are the result of psychological perversions prior to a celibate choice. If there is a pedophile priest, it is because he has been perverted before he was ordained, and celibacy does not cure that perversion. What is absolutely necessary is thorough discernment in the selection of candidates for the priesthood ([Rubin and Ambrogetti 2010](#)). Moreover, sexual assaults among married ministers of other Christian denominations are overwhelmingly higher than among celibate priests ([Jenkins 1996](#)).

A related issue is the inadequate training in sex education that many priests receive during their preparation. The lack of a healthy understanding of sexuality may contribute to confusion and deviance in the sexual behavior of some priests ([Plante 2004](#)). Instead of addressing sexuality in an open and educational manner, many seminaries and clerical formation programs tend to treat the topic with secrecy and repression, which may predispose some priests to abusive behavior.

3. Cooperation between the Canonical and Civil Orders in the Context of Pope Francis' Concept of the "Church on the Move"

3.1. Pope Francis' Concept of "Church in Going Out"

The concept of "Church going forth" is presented in an integral way in the Apostolic Exhortation *Evangelii Gaudium*. [Pope Francis \(2013, no. 49\)](#) writes: "I prefer a Church that is rugged, wounded and stained by going out into the streets, rather than a Church sickened by confinement and the comfort of clinging to its own securities." The exhortation stresses that the Church must be in a state of permanent mission, moved by the joy of the Gospel and Christ's command to go and make disciples of all nations. This approach challenges the Church to step out of its comfort zone and to be an active and transforming presence in the world.

The idea promoted by the Argentine Pontiff implies a commitment to social justice as a concrete manifestation of his evangelical mission, which includes the defense of human rights, the promotion of the dignity of the person, and the care of creation. It is in this context that canon law is called to develop its full potential, especially in the field that concerns us, in collaboration with state law in the prosecution of crimes of sexual abuse of minors committed by priests, and always bearing in mind that to do justice is also to evangelize.

Through this expression, the pontiff encourages an outgoing evangelization, a mission characterized by closeness to others. The invitation to be present in the new agoras, in order to reject attempts to privatize religion, and the desire for a Church close to those who suffer in what he himself calls the peripheries ([García 2022](#)) allow us to connect with the

idea that we defend in this study, of how in the face of secularization canon law should follow the path marked by the Argentine pontiff, especially in its cooperation with the state order and in its closeness to the victims of sexual abuse.

It is in this context that the words of the Apostle Paul: “to have the same sentiments as Christ Jesus” (Phil 2:5), are a call that canon law must echo so that its norms are imbued with divine mercy, the path, and goal of all ecclesial pastoral care, including the juridical field.

3.2. The Principle of Cooperation between Canon Law and State Law and the Difficulties in Its Implementation

The Constitution *Gaudium et Spes* refers to the need for cooperation between Church and State when it states that “... the Church and the political community, in their own spheres, are autonomous and independent of each other. Yet both, under different titles, are dedicated to the personal and social vocation of the same people. The more they foster among themselves a more solid cooperation, with due regard for the circumstances of time and place, the more effectively will their service be exercised for the good of all...” ([Second Vatican Council 1965](#), no. 76).

To the extent that a State is committed to the faithful observance of religious freedom, the joint action of the public authorities and religious groups must be strengthened so that the religious freedom of citizens may be real and effective. Not only that, but on the part of the Confessions, active collaboration with civil power must be offered in order to achieve the common good in the various spheres of society. The principle of cooperation between the State and the Catholic Church is based on the constitutional text’s claim that the different social groups can participate, together with the public authorities, in achieving the common good ([Palomino and Salinas 2020](#)).

The first difficulty in establishing cooperation between state law and canon law is the consideration of the latter in civil legislation since it is generally conceived as statutory law or as the internal and private law of the Catholic Church. On the other hand, while state law deals with the relations between men, canon law deals not only with these but also with the relations of man with God, defending that its fundamental purpose is the salvation of souls ([Pawlyta and Pawlyta 2023](#)).

In relation to the civil order, and referring to the Spanish case, one of the most notable aspects that hinder cooperation between state and ecclesiastical jurisdiction is that derived from the principles of jurisdictional unity and exclusivity, contained in Article 117 of the [Spanish Constitution \(1978\)](#). Point 3 of this article establishes that jurisdictional power corresponds exclusively to the judges and tribunals in such a way that the State exercises jurisdiction in a regime of monopoly. Obviously, this reality will make collaboration between the ecclesiastical and civil orders in jurisdictional matters difficult. It is true that the Spanish Constitution, while establishing the right to an ordinary judge predetermined by law, also recognizes special jurisdictions, such as the military; however, within these special jurisdictions, the ecclesiastical one is not integrated, nor does it acquire civil recognition ([Salinas 2022](#)).

For its part, the Organic Law of the Judiciary ([Head of State 1985](#), art. 2.1) establishes that “the exercise of jurisdictional power, judging and enforcing what has been judged, corresponds exclusively to the Courts and Tribunals determined in the laws and in international treaties”. The legal text invites us to reflect on whether the ecclesiastical jurisdiction can be understood as included in reference to the international treaties to which the norm refers, especially if we bear in mind the Agreement in force between the Spanish State and the Holy See. However, it is understood that the ecclesiastical courts are not part of the civil jurisdictional system but are non-state judicial bodies that enjoy a public nature, are outside the jurisdiction of the State, and act according to their own purpose, which is none other than the spiritual ([Requero 2009](#)).

3.3. Cooperation between the Canonical and Civil Orders in Practice in Cases of Abuse of Minors by Priests: A Utopia?

The *ius commune* is a clear example of how canon law and civil law have been in close contact for a long time. Moreover, the *ius canonicum* has served as a foundation for numerous legal categories proper to the secular order. Undoubtedly, the process of secularization has had much to do with the progressive detachment between the two orders, but other aspects, such as the self-replication of canonical jurisdiction *intra ecclesiam* or its methodological isolation, have also contributed to this distancing (Del Pozzo 2020).

Beyond this situation, we consider that when we affirm that something is juridical, we are already referring to a relationship (Hervada 1990). From this perspective, a methodological change is needed in canon law, as is being carried out in various areas such as criminal law, so that the cooperative relationship between canon law and civil law ceases to be a utopia and becomes a reality. In this sense, Pope Francis (2017, no. 4) postulates the integration and interdisciplinary dialogue between ecclesiastical knowledge, within which canon law is located, for a better understanding of secular ones.

Canon law itself highlights this possibility of interaction between the two normative orders when it states that “civil laws to which the law of the Church yields must be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise” (Code of Canon Law 1983, c. 22). This precept reflects what is known as “canonization of civil law” so that civil laws, to the extent that they are canonized, are configured as a constitutive element of positive canon law. From this perspective, it can be said that there are a number of matters in which canon law yields to civil law, as is the case of contracts, prescription, the civil effects of marriage, guardianship or labor relations, and social security (Igboechesi 2015). Not only that, but the church is also governed by international law in the entire field of diplomatic relations, specifically with regard to the appointment and termination of pontifical legates (Code of Canon Law 1983, c. 362).

Taking all these aspects into account, it can be said that although civil and canon law have different procedures, it is no less true that human dignity and the common good are fundamental aspects that they share, and that should serve as a basis to favor fluid cooperation between both legal orders.

If, as we have been observing, collaboration between state and canon law is a fundamental necessity, it is worth asking what kind of cooperation could be established. Authors such as Núñez (2014) are in favor of the idea that in those countries where there is stable state criminal legislation, it would be beneficial for the ecclesiastical sphere to await the resolution of the case in the criminal order of each state to subsequently proceed to the canonical prosecution of the victimizer. Why opt for this solution, which does not fail to defend cooperation? Among other aspects, because, on occasions, the investigation and clarification of the facts are beyond the means available to the Church, so that if the case is prosecuted at the State level first, the right of defense of the person under investigation is guaranteed, among other advantages. Another positive factor is that by opting for this path, a conflict between legal systems is avoided, preventing the accused from claiming defenselessness or having access to all the evidence. In contrast to this position, other authors such as Sáez (2023) are in favor of initiating the preliminary investigation in the canonical process, without the need to wait for the conclusion of the preliminary proceedings in the state procedural system since these proceedings can take approximately two and a half years, which would affect not only the sovereignty of the canonical system but would also violate the rights of both the complainant and the accused.

For effective cooperation, both systems must protect and respect the right to the presumption of innocence of the clergyman under investigation; from both legislations, all possible psychological and judicial help should be offered to both the victim and the victimizer; finally, in the communication of documentation between the two systems, due caution should be exercised, in order to avoid those persons outside the process, bearing in mind that the facts under investigation affect the privacy of persons, could have access

to them (Sáez 2023). This cooperation does not mean that the Church always yields to the State in cases of abuse of minors since guilt has certain aspects that can only be judged under canon law (Torfs 2004), nor does it mean that the State and the canonical sphere are confused in terms of their purposes and procedures (Astigueta 2012).

An important step in this collaborative process was the abolition of pontifical secrecy by Pope Francis (2019d). In this way, the denunciations, testimonies, and trial documents relating to cases of abuse kept in the archives of the Vatican dicasteries, as well as those in the archives of the dioceses, have been made available to the investigating magistrates of the respective countries who have requested them. This initiative represents a clear sign of openness, willingness, transparency, and collaboration of the Church with the civil authorities, to the point that the documents will have to be made available to these authorities, even for the investigation of cases already covered by canonical procedures (Tornielli 2019).

In the face of the process of secularization, and from the basic idea that we have raised above, in reference to the model of “containment” and “expansion” that canon law has experienced in recent decades, we must recognize that, since the Pontificate of John Paul II, but especially with Benedict XVI and Pope Francis, this *extra ecclesiam* tendency of canon law, manifested in new regulations tending, in the case of sexual abuse of minors within the Church, to collaboration with state law, has been a reality that has been growing and strengthening. To highlight this reality, three tables (Tables 2–4) are attached that analyze the normative documents approved during the pontificate of the three aforementioned popes for the specific case of the abuse of minors in the Church, pointing out, above all, two variables: on the one hand, the novelties that the norm introduces in the field of ecclesiastical legislation and, on the other hand, the references that are developed with respect to collaboration with civil authorities in the fight against these crimes.

Other important milestones on the subject during the pontificate of Pope Francis were the creation, in 2014, of the Pontifical Commission for the Protection of Minors or the celebration in Rome, between 20–24 February 2019, of a meeting of all the Episcopal Conferences to address the issue of abuse of minors, where the points and content for the subsequent drafting of the Motu Proprio “*Vos Estis Lux Mundi*” were outlined. In addition to all this, an Apostolic Letter in the form of a Motu Proprio of the Supreme Pontiff Francis on the protection of minors and vulnerable persons (Pope Francis 2019a), Law N. CCXCVII on the protection of minors and vulnerable persons of Vatican City State (Pope Francis 2019b), and Guidelines for the protection of minors and vulnerable persons for the Vicariate of Vatican City (Pope Francis 2019c), with the aim of regulating the reporting of cases of abuse to the Vatican justice system, have been added to the above.

An analysis of the data provided allows us to conclude, first of all, that Pope Francis’ idea of a “Church on the move” that needs to be implemented in all ecclesial spheres, including those related to canon law and ecclesiastical legislation, was already alive and well during the pontificate of Benedict XVI. The increase in the number of regulations aimed at offering a more efficient response to the victims, without disregarding the right of defense of the alleged perpetrators, and the more fervent and widespread collaboration with the civil authorities, with important ecclesial renunciations such as the suppression of the pontifical secret in these processes, in order to foster this collaboration, is also a fact that allows us to deduce that secularization as a process that tends to separate religion from the political and social sphere, on occasions such as this, loses its virtuality in benefit of the search for the common good of society.

Table 2. Pope John Paul II’s documents on sexual abuse of minors.

Date	Document	News	Collaboration with Civil Authorities
30 April 2001	Apostolic Letter in the form of Motu Proprio “ <i>Sacramentorum Sanctitatis Tutela</i> ”.	Raises the age of the minor in matters of abuse from 16 to 18 years of age	It is not about.

Table 3. Pope Benedict XVI's documents on sexual abuse of minors.

Date	Document	News	Collaboration with Civil Authorities
19 March 2010	Letter to the Catholics of Ireland		For the first time, the need to cooperate with civilian authorities is mentioned.
21 May 2010	Apostolic Letter in the form of Motu Proprio " <i>Sacramentorum Sanctitatis Tutela</i> ".	<ul style="list-style-type: none"> - A person with imperfect use of reason is assimilated to a person under 18 years of age. - The acquisition, possession, and dissemination by a cleric of pornographic images of minors under 14 years of age is added as an offense. 	It is not about.
3 May 2011	Congregation for the Doctrine of the Faith, "Circular Letter, Assistance to Episcopal Conferences in the Preparation of <i>Guidelines</i> for Dealing with Cases of Sexual Abuse of Minors by the Clergy".		Although relations with civil authorities differ in various countries, it is important to cooperate within the scope of the respective competencies. In particular, without prejudice to the internal or sacramental forum, the prescriptions of the civil laws are always followed with regard to referring offenses to the legitimate authorities.

Table 4. Pope Francis documents on sexual abuse of minors.

Date	Document	News	Collaboration with Civil Authorities
4 June 2016	Lettera Apostolica in forma di Motu Proprio " <i>Come una madre amorevole</i> ".	<ul style="list-style-type: none"> - It seeks to ensure that bishops fulfill their roles in the protection of the weakest and accountability for the sexual abuse of minors that has occurred. 	
23 May 2021	Apostolic Constitution " <i>Pascite Gregem Dei</i> ".	<ul style="list-style-type: none"> - Approves the new Book VI of the Penalties of the CIC - The new canon 1398 on the subject goes from being part of the Crimes against special obligations to being integrated into the Crimes against life, dignity, and freedom of man. - This crime extends to DVI and SVA members and lay people who play a role in the Church as perpetrators. 	It is not about.
7 December 2021	Apostolic Letter in the form of Motu Proprio " <i>Sacramentorum Sanctitatis Tutela</i> ".	<ul style="list-style-type: none"> - It adds that the clergyman's ignorance or error about the minor's age does not constitute an extenuating or excluding circumstance. - The age for underage pornography is raised from 14 to 18 years old. - It adds to this crime of pornography of minors the lustful purpose or the lucrative purpose. 	It is not about.

Table 4. Cont.

Date	Document	News	Collaboration with Civil Authorities
5 June 2021	Dicastery for the Doctrine of the Faith, “ <i>Vademecum on Some Procedural Questions in Cases of Sexual Abuse of Minors by Clerics</i> ”.	It makes public the procedural iter of a sexual abuse complaint.	<ul style="list-style-type: none"> - Even in the absence of an explicit legal obligation, the ecclesiastical authority must inform the competent civil authorities whenever it considers this indispensable to protect the offended person, or other minors, from the danger of possible criminal acts. - The prior canonical investigation must be carried out independently of the existence of an investigation that corresponds to the civil authorities. - There is an obligation on the part of the Ordinary to communicate to the civil authorities the <i>notitia de delicto</i> received and the preliminary investigation initiated. The laws of the State and the will of the presumed victim must be respected, as long as this is not in contradiction with the civil legislation, and in no way should he be dissuaded from exercising his duties and rights before the State authorities, encouraging him to do so and preserving documentary evidence of this suggestion. - Whenever the civil judicial authority issues a legitimate executive order requesting the delivery of documents related to the cases, or orders the judicial seizure of such documents, the Ordinary or the Hierarch shall cooperate with the civil authorities, always respecting any agreements in force where they exist.
25 March 2023	Apostolic Letter in the form of Motu Proprio “ <i>Vos Estis Lux Mundi</i> ”.	<ul style="list-style-type: none"> - Victims are considered to be not only minors under 18 years of age or any person legally equivalent to them, but also vulnerable adults. - It establishes the obligation to create offices in the Dioceses where victims can denounce and feel welcome. - For the first time, a legal text establishes the legal obligation to inform the local ordinary of a case of abuse. 	<ul style="list-style-type: none"> - The rules apply without prejudice to the rights and obligations established in each place by state laws, in particular those relating to possible reporting obligations to the competent civil authorities.

Despite this, it cannot be denied that Pope Francis’ initiative to abolish the pontifical secret in order to favor both the clarification of cases of abuse of minors in the Church and collaboration with the civil authorities in the matter is more theoretical than practical. For example, in countries such as France and Chile, the suppression of pontifical secrecy has allowed access to church archives by independent commissions or judicial authorities. For example, in the Sauvé Report in France ([Commission indépendante sur les abus sexuels dans l’Église 2021](#)), which documented decades of sexual abuse, the Church provided access to its internal archives, which was crucial for the enquiry to get a clear picture of the extent of the abuse. In Chile, the church also handed over documents and evidence previously protected by pontifical secrecy, facilitating the investigation of cases such as those

of priest Fernando Karadima. However, globally, the Church operates with a decentralized hierarchy, which has led to some dioceses or bishops' conferences not uniformly applying the mandate to share information with civil authorities, especially in countries where religious authorities still enjoy broad legal autonomy from state regulations.

3.4. Special Reference to the Case of Spain

Unlike other countries, in the case of Spain, until 2014, the reports of sexual abuse cases were very few; therefore, the Church did not take special measures on these serious crimes. Between the years 2000 and 2014, the application of canonical criminal law by the Spanish bishops was very scarce, which affected, among others, the crimes included in the *Delicta Graviora*. During these 15 years, of the 70 existing dioceses in Spain, only two of them offered an impartial service for victims of abuse, and the Spanish bishops were reluctant to apply criminal law to prosecute these cases, opting, on most occasions, to implement the extrajudicial administrative process (Sáez 2023).

Sexual abuse of minors by priests has been studied in several countries around the world. The data offered in the table (Tables 5 and 6), and revealed by different reports that came to light when the pederasty scandal in the Church was exposed, allude to the fact that in most of the dioceses where child abuse took place, the Catholic Church tried to prioritize the prestige of the institution over the suffering of the victims. For many years, it followed a policy of secrecy and cover-up, where the only measure to be taken in the face of such serious acts consisted of transferring the priest to a different parish, without any other ecclesiastical or criminal sanction, which allowed many of them to continue with the practice of child abuse.

Table 5. Child sexual abuse in France, Australia, and the United States.

Country	Years	Source	No. of Complaints
United States	1950–2002	John Jay College	10,667
France	1950–2021	Commission Sauvé	216,000
Australia	1950–2015	Royal Commission into Institutional Responses to Child Sexual Abuse	4418
Germany	1946–2014	MHG Studie	3677
Ireland	1940–2004	Murphy Report	320

Table 6. Victims in Spain, according to data from the Spanish Episcopal Conference.

Year	Number of Complaints
Before 1950	2
1950–1960	40
1960–1970	137
1970–1980	172
1980–1990	127
1990–2000	45
2000–2010	20
2010–2020	60
2020–2022	34
The exact year is not known	91
TOTAL COMPLAINTS	728

These data are the result of a report prepared by the Spanish Episcopal Conference after arduous work, which shows that the number of victims of sexual abuse, of which the Church is aware, has been a total of 927, the result of criminal acts of 728 perpetrators. In this report, the Church in Spain includes all the protocols currently in force in order to prevent the abuse of minors from happening again ([Spanish Episcopal Conference 2023](#)). These data differ greatly from those collected in the external audit that the Spanish Episcopal Conference itself had the law firm Cremades & Calvo-Sotelo prepare ([Spanish Episcopal Conference 2023](#)), according to which there are 1383 complaints and 2056 victims of abuse by priests.

In Spain, the Episcopal Conference approved, on 22 July 2010, two protocols of action to address the issue of abuse, the first relating to the *action of the Church in Spain to deal with cases of the most serious crimes committed against morals by clerics*, and the second referring to the *action according to the legislation of the State*. Both instruments actually entered into force, in terms of their application, on 26 February 2015. Among other aspects, they include the possibility of commission by omission, on the part of the hierarchical superior when the act could have been avoided if he had acted diligently. Recently, on 9 May 2023, the Spanish Episcopal Conference elaborated an Instruction to address the issue of abuse of minors where it is stated that “taking into account that the conducts that are prosecuted do not constitute only a canonical crime, the bishops reaffirm the principle of collaboration with secular justice” (Preamble n° V).

Based on these documents, the Spanish dioceses have been drafting their own protocols. As an example, and as the most recent, the [Bishopric of Cartagena \(2024\)](#) has published such a protocol. With regard to the subject of the epigraph, collaboration with civil authorities, it points out two cases in this regard:

- (a) In the event that a minor and/or his parents file a complaint of sexual abuse with the Delegation, the Delegation will activate its action protocol, and if the complaint is credible, it will communicate it to the Superior Prosecutor’s Office of Murcia, in accordance with the provisions of art. 13.4 of the Law for the Legal Protection of Minors, and will begin the canonical process explained in this Protocol (p. 75).
- (b) In the event that an adult reports abuse committed during childhood or abuse that occurred when he/she was of legal age, the Delegation will remind him/her that, since he/she is of legal age, only he/she is the one who can report the abuse at the police station or in a court of law. He will also be informed that the Delegation will activate its protocol, and if the complaint is credible, the corresponding canonical process will be initiated without detriment of responding to the executive resolutions of the competent Court of the state system (p. 75).

There are three possibilities that can occur in this matter: in the first place, there is the case of sexual aggression or abuse reported to the ecclesiastical authority without prior knowledge of the civil authorities, in which case two possibilities arise, on the one hand, if there are clear indications of a criminal act, the complainants will be invited to file a complaint with the civil authority, on the other hand, if there are reasonable doubts about the facts, the proceedings will be archived, indicating to the complainant the possibility of going to civil proceedings. The second case to analyze is that of sexual aggression or abuse reported directly to the police or the judicial authority, in which case, the religious authority will provide the collaboration required by the civil authorities. Finally, the case could arise in which the ecclesiastical authority has knowledge of a fact that may be a crime against sexual freedom or indemnity through a confidentiality of the priest or religious allegedly responsible (ministerial secret), with respect to which there is no cover-up or criminal offense if a crime is not reported when it has been known within the framework of said secret ([López-Sidro 2019](#)).

At this point, and always within the singular case of Spain, there is a whole state regulation on the issue of the obligation of a priest to testify as a witness in a process where he has knowledge of the facts based on the aforementioned ministerial secrecy. Article II.3 of the Agreement between the Spanish State and the [Holy See \(1976\)](#) states that “in

no case may ecclesiastical authorities, clerics or religious be required by judges or other authorities to give information on persons or matters of which they have had knowledge by reason of their ministry". Art. 263 of the Law of Criminal Procedure ([Ministry of the Presidency, Justice and Relations with the Courts 2023](#)) provides that the obligation to report a crime "shall not extend to dissenting ecclesiastics and ministers of worship with respect to news that may have been revealed to them in the exercise of the functions of their ministry". Article 417 of the same Law of Criminal Procedure establishes that "ecclesiastics and ministers of dissenting cults may not be compelled to testify as witnesses regarding facts revealed to them in the exercise of the functions of their ministry". In addition, Article 371 of the Civil Procedure Law postulates that witnesses must keep secret "when, due to their status or profession, they have the duty to keep secret with respect to facts about which they are interrogated, they will state it reasonably and the court, considering the basis for the refusal to testify, will resolve, by means of an order, what is appropriate in Law. If the witness is released from answering, this shall be recorded in the record".

On the part of the canonical order, it is also necessary to know the state legislation on the subject that has been enacted in Spain in recent years. The law on the protection of children and adolescents ([Head of State 2021](#)) establishes that any person who has knowledge of sexual crimes committed against minors is obliged to bring it to the attention of the Public Prosecutor's Office. This regulation represents a radical change in the matter since, until then, only the parents or legal representatives of the minor could carry out the denunciation. The law on comprehensive protection of the family and adolescents ([Head of State 2021](#)) further extends the obligation to report to the authorities any sexual abuse of a minor by repealing the so-called family secret so that, from now on, spouses, descendants, and relatives up to the second degree of collateral line of the offender who is sexually abusing a minor will have the obligation to report. Article 8 establishes that "the public administrations will promote public-private collaboration in order to facilitate prevention, early detection and intervention in situations of violence against children and adolescents, encouraging the signing of agreements with [among others] religious denominations... that carry out their activity in regular contact with children and adolescents or in their material sphere of relationship". This regulation represents an important step forward in this area since it recognizes the need for collaboration, based on the constitutionally recognized principle of cooperation, with religious denominations in the fight against and clarification of sexual abuse of minors. Finally, the law of integral guarantee of sexual freedom ([Head of State 2022](#)) will consolidate the previous legislation on this matter.

Finally, it should be noted that Article 450 of the Penal Code ([Head of State 1995](#)) establishes that: "1. Whoever, being able to do so with his immediate intervention and without risk to himself or others, does not prevent the commission of a crime that affects people's life, integrity or health, freedom or sexual freedom, shall be punished with a prison sentence of six months to two years if the crime is against life, and a fine of six to twenty-four months in other cases, unless the crime not prevented corresponds to the same or lesser penalty, in which case the lower penalty shall be imposed in degree to that of the former. 2. The same penalties shall be incurred by anyone who, being able to do so, does not go to the authorities or their agents to prevent a crime provided for in the preceding paragraph and whose next or current commission is known to them".

In the Spanish Parliament, three different proposals have recently been presented by some parliamentary groups to address the issue of child abuse in the Church. The parliamentary group of Unidas Podemos advocated the creation of a Commission of Inquiry in the Lower House in which victims, ecclesiastical leaders, and experts could participate and which could issue a series of conclusions that would be binding on the parties. For its part, the PNV Parliamentary Group defended the creation of a Commission of experts in charge of investigating the sexual abuse of minors within the Church, so that within a year, it could draw up a report containing the conclusions and measures to be adopted in the face of these cases. Finally, the Socialist Parliamentary Group proposed that the Ombudsman should be in charge of drafting a report, with the help of an Advisory

Commission, in which the victims and the Church would be represented, with the purpose of having the report debated in Parliament (Bastante 2022).

This last alternative was the one that was implemented and has already concluded its investigations with the preparation of the relevant report (Ombudsman 2023). What was the role of the Church in this initiative? At first glance, one might think that the aims of this Commission were laudable, since it was presented as an instrument at the service of justice and truth, but were these really its motivations? Several questions arise from this project: was it not a clearly partisan and ideologized initiative that seeks not so much the good of the minor but the persecution of the Church as an institution? Was the parliamentary seat really the place where these questions should be elucidated? Why were only child abuse cases investigated in the Church where, percentage-wise, the number of such cases is minimal, and not in other areas? All these doubts are what led the Spanish Church not to take part in the Commission. The Spanish ecclesiastical authorities have expressed themselves in favor of collaboration with state representatives, but only if truth, justice, and the good of minors are sought, and not confrontation, public scorn, and the discrediting of the Church, limitations that must be corrected to promote adequate cooperation between the two orders.

4. Proposals to Promote Cooperation between the Canonical and State Order

In order to facilitate the prosecution of crimes of child abuse, it would be necessary that a series of criteria for international cooperation between the two orders could be established, such as the existence of common rules on jurisdictional custody, that canonical rules do not differ excessively from those set by the State for its own judicial bodies, that the specificity of canonical jurisdiction be recognized, and that there be an absolute guarantee, on the part of the State, of respect for fundamental rights by the ecclesiastical jurisdiction (Rodríguez 2017).

The seriousness of the crime in question requires reparation for the victims and punishment of the guilty party while maintaining the presumption of innocence. As Domianello (2015) points out, in cases of child abuse, one would expect the parallel development of both procedures, as well as the adoption of coordinated solutions based on an equal configuration of responsibility before the Church and before the State, in order to achieve a unified and satisfactory outcome for both systems. However, there is a notable difference between how liability is understood and reprovved in canon law and state law. While the civil procedure has as its primary goal the prevention of the crime and reparation for the victim, the canonical process, on the contrary, has as its goal the medicinal dimension of punishment and the salvation of souls, although, since the reforms sponsored by Benedict XVI and consolidated and expanded by Francis, this goal has been replaced by that of the actual punishment of those who commit crimes of abuse of minors.

New crimes such as child pornography, concealment, or abuse of vulnerable adults have been progressively introduced. The offense against the sixth commandment of the Decalogue has also been modified with regard to the age of the victims, and specialized offices have been created so that these victims can file a complaint and be attended to in all the personal dimensions in which they are injured. It would be desirable if the various offenses scattered throughout the Codex and ecclesiastical legislation could be codified in a single place, which would facilitate the legislator's task of harmonizing the different legal types. This initiative would avoid uncertainty and provide greater legal certainty. The canonical criminal process should be considered the usual instrument for prosecuting crimes of abuse since it is the one that offers the most guarantees to the parties, so the extrajudicial administrative process would be only an exception. Canon law allows that, in addition to the retributive justice guaranteed by civil law, restorative justice can be added, which offers the possibility of recognizing the damage caused by the aggressor, listening to the needs of the victims, that the victimizer is aware of the damage caused to the victim, etc.

An effort is necessary on the part of both jurisdictions so that civil judges have a knowledge of the nature of the canonical criminal process and vice versa so that channels

of communication and mutual understanding can be established. Among other measures, and in order to promote this much-desired cooperation in favor of justice and the common good, we emphasize the need for a fluid exchange of information, respect for the secrecy of confession, and the privacy of both the victim and the priest. The creation of links between both jurisdictions, as well as courts specialized in sexual violence against minors, could have technical teams of psychologists, educators, and social workers to assist magistrates and prosecutors in their task of promoting justice. It would also be necessary to train legal operators in the various aspects that affect the area of sexual abuse of minors (Sáez 2023).

5. Conclusions

Secularization, through rationalization, relativism, scientific progress, or existential security, is a reality that has relegated religion to the private sphere. This process has not only had this practical consequence but has also relegated to oblivion the influence of the *ius canonicum* on the configuration of current law. Throughout this study, we have analyzed not only the causes of this process but also the response that Pope Francis has outlined from the Catholic Church, promoting a pastoral conversion and a new perspective in the evangelical mission based on the idea of a “Church going out”, capable of leaving its comfort zone to approach all those who suffer in the existential peripheries.

Canon law, which is one of the fundamental aspects of the autonomy of religious confessions and, therefore, of the collective dimension of the right to religious freedom, is a reality that, although it has sometimes been relegated to the background in the very heart of the Church by other fields of knowledge such as theology, nevertheless constitutes an indispensable instrument for achieving justice and truth. We must not forget that seeking justice is also evangelizing and that the juridical aspect carries the dimension of relationality with it. It is in this context of justice and relationality where we have tried to base one of the arguments defended in this work, and that is that in order to face the reality of secularization, canon law must promote an action that we have called “expansion” or *extra ecclesiam*, in the area of abuse of minors by priests, as opposed to a policy of “containment” or *intra ecclesiam*, which in the twentieth century sought to hide this abominable crime, condemning it to ostracism and obscurity.

Being “Church on the move” means adopting a whole series of measures in cases of sexual abuse by priests aimed at updating ecclesiastical and canonical norms in order to favor more effective protection of victims and a more functional prosecution of the crimes through strategies such as the creation of specialized offices in this area in all dioceses; encouraging cooperation with civil authorities, through the adoption of measures such as the suppression of pontifical secrecy, while maintaining the insurmountable limits of sacramental secrecy; or promoting, as in the case of Spain, external and impartial audits that allow the disclosure of all cases and lay the groundwork for healing the emotional, psychological and existential wounds of the victims.

Church law, influenced by the recent papacies of Benedict XVI and Francis, has undergone a shift towards greater openness and cooperation with civil legal systems, seeking not only punishment for the guilty but also justice for the victims. In many countries, including Spain, measures have been implemented that oblige church authorities to inform judicial authorities of sexual crimes committed by members of the clergy. This change is essential to ensure that perpetrators are punished according to state law and any ecclesiastical sanctions they may face.

One of the aspects that have helped this collaboration has been the suppression of pontifical secrecy in cases of sexual abuse, which has made it easier for the information contained in ecclesiastical archives to be shared with the civil authorities for the investigation and prosecution of those responsible. However, as we have explained, this is a reality which, beyond good intentions, has not yet, with some exceptions, been firmly applied in the practice of the dioceses. Although canon law remains an autonomous legal system within the Church, it has shown flexibility in aligning itself with civil norms to avoid the cover-up of these crimes. In fact, the ecclesial legislative scope has expanded to include

offenses such as possession of child pornography, the equating of adults but vulnerable persons to minors, or the promotion of restorative justice, through which, in addition to punishment, it seeks to heal emotionally and spiritually both the victims themselves and the perpetrators.

However, despite progress, collaboration between ecclesiastical and civil jurisdictions is not without its challenges. Canon law still faces limitations when it comes to reconciling its internal principles with those of civil law, especially on issues of exclusive jurisdiction and confessional secrecy. However, important steps have been taken towards a balance in cooperation, respecting both civil rights and religious principles, in line with the reforms pushed by Pope Francis, and in order to ensure a more just and effective prosecution of child sexual abuse cases.

Only in this way will a vision of the Church, of faith and of canon law itself be fostered that lives by justice, charity, mercy, and the common good, and will it be possible to ensure that the process of secularization, which is having such a strong influence on religion in many Western societies, can see its objective of reducing the spiritual and religious sphere to the private sphere of the individual limited.

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