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# EXTENDING STATUTES OF LIMITATIONS FOR VICTIMS OF CHILD SEXUAL ABUSE BASED ON THE DEVELOPMENTAL MODEL AND INTERNATIONAL LAW

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I. Introduction .....	27
II. BACKGROUND .....	31
A. <i>Repressed Memories and Dissociation</i> .....	31
B. <i>Recidivism Rates for Child Sex Offenders</i> .....	33
C. <i>Long-Term Effects of Child Sex Abuse</i> .....	34
D. <i>Two Categories of Affected People: Adult Survivors and         Child Victims</i> .....	34
III. THE DEVELOPMENTAL MODEL .....	35
IV. INTERNATIONAL LAW .....	37
A. <i>International Treaty Law and Customary International Law         on Statutes of Limitations for Violations of International         Human Rights</i> .....	37
B. <i>General International Law and Jus Cogens for Statutes of         Limitations for Violations of International Human Rights</i> ..	38
C. <i>Convention on the Rights of the Child</i> .....	40
D. <i>Optional Protocol to the CRC on the Sale of Children,         Child Prostitution and Child Pornography</i> .....	41
E. <i>Council of Europe Convention on the Protection of         Children Against Sexual Exploitation and Sexual Abuse</i> ...	42
F. <i>Statutes of Limitations in the Vatican</i> .....	45
G. <i>Statutes of Limitations in the United States</i> .....	47
V. ANALYSIS .....	48
VI. CONCLUSION .....	50

## I. INTRODUCTION

In 1958, former Miss America Marilyn Van Derbur appeared perfectly poised and exceedingly happy when she accepted her crown.<sup>1</sup> She came from a

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<sup>1</sup> Marilyn Van Derbur, *Marilyn Van Derbur—You Have To Confront The Terror*, DARK-

family of wealth and social status.<sup>2</sup> So perfect was this illusion that Van Derbur, herself, repressed any memory of sexual violation by her father until age twenty-four when her former youth minister asked a question that sparked her memory: “Did your father ever come into your room at night?”<sup>3</sup> Van Derbur admits, “My father started coming into my room at night when I was five and it stopped when I left for college at age eighteen . . . And there was no one, no one to help me . . . Did [my] mother know? Yea, she knew.”<sup>4</sup>

As a coping mechanism, Van Derbur processed the trauma by dissociating herself from the abuse.<sup>5</sup> She did this by creating two personalities: a daytime child and a nighttime child, neither aware of the other’s existence.<sup>6</sup>

“Until I was 24, . . . I had no conscious knowledge of what he was doing to me. Anyone who knew me would say I was the happiest child. I believed I was happy. Still, incest colored every aspect of my life. I couldn’t stand to . . . be touched or hugged. I also had a need to excel, to have some control over my life.”<sup>7</sup>

Van Derbur explains that “feelings of abuse of this kind, or any kind, are too intense for a child to absorb; that’s why children split their minds.”<sup>8</sup>

After moving away and graduating from college, Van Derbur continued to experience effects of the trauma, including emotionally rooted bouts of lethargy and anxiety.<sup>9</sup> Matters worsened when her daughter turned five years old. Van Derbur suffered from physical paralysis and mental breakdowns and was forced to stop working.<sup>10</sup> She later realized that her daughter’s age instigated feelings about her abuse because it had begun when she was five herself.<sup>11</sup>

Van Derbur reasons that “[m]ost people have no understanding of how complex long-term effects of childhood sexual abuse can be—especially if the violator was a family member, priest, coach . . . trusted friend.”<sup>12</sup> In these situa-

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NESS TO LIGHT BLOG (Mar. 12, 2010, 2:00 PM), <http://www.d2lblog.com/2010/03/12/marilyn-van-derbur-you-have-to-confront-the-terror/>.

<sup>2</sup> Marilyn Van Derbur, *The Darkest Secret*, PEOPLE MAGAZINE, June 10, 1991 [hereinafter PEOPLE], available at <http://www.people.com/people/archive/article/0,,20115294,00.html>.

<sup>3</sup> Van Derbur, *supra* note 1.

<sup>4</sup> Interview by 9 News with Marilyn Van Derbur (May 4, 2011, 9:16 PM) [hereinafter Interview], <http://www.9news.com/rss/story.aspx?storyid=196908> (follow “Marilyn Van Derbur Interview—Part 1 of 3” link).

<sup>5</sup> Van Derbur, *supra* note 1.

<sup>6</sup> Van Derbur, *supra* note 1.

<sup>7</sup> PEOPLE, *supra* note 2.

<sup>8</sup> Van Derbur, *supra* note 1.

<sup>9</sup> PEOPLE, *supra* note 2.

<sup>10</sup> PEOPLE, *supra* note 2.

<sup>11</sup> MARILYN VAN DERBUR, MISS AMERICA BY DAY 176 [hereinafter MISS AMERICA] (2012).

<sup>12</sup> *Id.*

tions the victims do not hate their abusers and the victims “don’t want them in prison.”<sup>13</sup> When asked why she didn’t tell anyone about what was happening to her, she explains “[i]t was because I perceived no way out. A young child tells on her father and what happens? She’s taken away from her family. Her father goes to jail. The family is destroyed, and the message is, ‘It’s all your fault.’”<sup>14</sup> She continues, stating that “[t]o face the truth—that my father cared absolutely nothing about me, that he only used me—would have been too intolerable to bear. To accept the truth that I grew up without one person loving me . . . would have crushed my soul completely. I was far too vulnerable, hating, shaming, blaming myself to face the naked truth.”<sup>15</sup>

As an advocate, Van Derbur now hears from hundreds of adult survivors, and the questions she receives often begin: “I’m 45, why is this coming to me now? I was fine when I was 25 or 30.”<sup>16</sup> She explains that because there is a process of grief, it is “textbook” to have these issues reappear in your late thirties and forties, long after one believes they have recovered.<sup>17</sup>

Each year in the United States 237,868 people are victims of sexual assault; 44% of these victims are under age eighteen; 60% never report to the police.<sup>18</sup> Child sexual abuse is particularly severe in the foster care system with a stunning 78,188 reports of sexual abuse in 2003, and even more severe for African American girls who are being assaulted almost twice as often as white girls (12.3% to 7.3% in 2004).<sup>19</sup>

Studies show that internationally at least 20% of all girls and 10% of all boys are sexually abused by family members and persons close to families, with girls being more likely to be abused by family member and boys being more likely to be abused by persons outside of the family.<sup>20</sup> That means that with children being a third of the world’s population of 6.6 billion, more than 550 million children worldwide are survivors of child sexual abuse.<sup>21</sup>

Furthermore, these figures are likely underestimated because many children do not tell anyone about being sexually abused and families may not always report sexual abuse to authorities when children do disclose it to them.<sup>22</sup> Rea-

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<sup>13</sup> *Id.* at 181.

<sup>14</sup> PEOPLE, *supra* note 2.

<sup>15</sup> MISS AMERICA, *supra* note 11 at 180–81.

<sup>16</sup> Interview, *supra* note 4 (follow “Marilyn Van Derbur Interview—Part 3 of 3” link).

<sup>17</sup> Interview, *supra* note 4 (follow “Marilyn Van Derbur Interview—Part 3 of 3” link).

<sup>18</sup> Rape Abuse Incest Nat’l Network, *Statistics* (2009), <http://www.rainn.org/statistics> (last visited Feb. 22, 2015).

<sup>19</sup> BARBARA WOODHOUSE, *HIDDEN IN PLAIN SIGHT* 96–97 (2008).

<sup>20</sup> See generally Jane Gilgun, *Child Sexual Abuse: Understanding the Issues*, Title IV-E Curriculum Module: Prevalence of Child Sexual Abuse, UNIV. OF MINN. CTR. FOR ADVANCED STUDIES IN CHILD WELFARE, available at <http://cascw.umn.edu/portfolio-items/child-sexual-abuse-sub-sum/>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

sons for this lack of disclosure to official sources include shame, stigma, social ostracism, and other severe consequences for survivors, for families, and for perpetrators.<sup>23</sup>

There are wide variations in survey reports of the occurrence of child sexual abuse, which may reflect survivors' reluctance to disclose, and wide variations in how sexual abuse is defined.<sup>24</sup> For example, national, state and local level studies conducted in the United States over 25 years show a prevalence rate of between 2%–62% for females, and 1%–16% for males.<sup>25</sup>

Internationally, several studies demonstrate a prevalence rate of 20% for females and 5–10% for males.<sup>26</sup> Specifically, in China, the prevalence is 16.7% for females and 10.5% for males.<sup>27</sup> In Australia, the prevalence is 12% for females and 4.5% for males.<sup>28</sup> In Denmark, the prevalence is 16% for females and 7% for males.<sup>29</sup> In Canada, it is 12.8% for females and 4.3% for males; in Nicaragua, it is 26% for females and 20% for males; in South Africa and 53.2% for females and 60% for males; and in India, 39% for females and 48% for males.<sup>30</sup>

Child Sex Abuse	Prevalence in Girls	Prevalence in Boys
United States:	2–62%	1–16%
International:	20%	5–10%
China:	16.7%	10.5%
Australia:	12%	4.5%
Denmark:	16%	7%
Canada:	12.8%	4.3%
Nicaragua:	26%	20%
South Africa:	53.2%	60%
India:	39%	48%

Because of how prevalent child sexual abuse is, both in the United States and internationally, it is necessary to work on ways to both prevent child sexual abuse from occurring in the first place and to provide assistance to survivors.

The following Article argues that statutes of limitation for both civil and criminal offenses should be extended for two reasons. First, the United States should take into consideration lessons from the developmental model in ac-

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<sup>23</sup> *Id.*  
<sup>24</sup> *Id.*  
<sup>25</sup> *Id.*  
<sup>26</sup> *Id.*  
<sup>27</sup> *Id.*  
<sup>28</sup> *Id.*  
<sup>29</sup> *Id.*  
<sup>30</sup> *Id.*

knowledging that the traumatized child lacks the capacity to act independently in vindicating their rights. Second, child sexual abuse has become a crime under customary international law, as well as by treaty, and there is an international trend towards prohibiting prescription, the setting of a statute of limitations, of international crimes. Part II, provides a brief background of the crime of child sexual abuse which will include: (A) the psychology and politics behind the terms “repressed memories” and “dissociation;” (B) recidivism rates for child sex offenders; (C) the long-term effects of child sex abuse; and (D) the two categories of affected people: adult survivors and child victims. Part III, discusses the developmental model. Part IV discusses international law, including relevant sections on: (A) international treaty law and customary international law on statutes of limitations for violations of international human rights; (B) general international law and *jus cogens* for statutes of limitations for violations of international human rights; (C) the Convention on the Rights of the Child; (D) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography; and (E) the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse. In Part IV.F and IV.G, this Article looks at statutes of limitations in both the Vatican and the United States. Finally, in Part V, this Article argues that the United States should follow the trend in extending, if not entirely eliminating, statutes of limitations for child sexual abuse.

## II. BACKGROUND

Despite its long recognition as a particularly devastating form of tortious conduct, child sexual abuse has been difficult to prosecute.<sup>31</sup> Part of the reason is that the conduct itself induces psychological trauma in the victim, which makes it difficult for the victim to come forward to confront the perpetrator, often until many years have passed, tending to bar such actions through a statute of limitations.<sup>32</sup> The following background will discuss: (A) the psychology and politics behind the terms “repressed memories” and “dissociation;” (B) recidivism rates for child sex offenders; (C) the long-term effects of child sex abuse; and (D) the two categories of affected people: adult survivors and child victims.

### A. *Repressed Memories and Dissociation*

Repressed memories are a major obstacle to the prosecution of child sexual abuse. The phenomenon of repressed memories has been discussed throughout the last century by a variety of groups, including war veterans, Holocaust survi-

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<sup>31</sup> Russell G. Donaldson, *Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child*, 9 A.L.R. 5TH 321 (2013).

<sup>32</sup> *Id.*; see *infra* Part II.A.

vors, and survivors of natural disasters.<sup>33</sup> The terms “recovered” or “repressed” memories or “traumatic amnesia” refer to the recall of traumatic events, typically of sexual abuse in childhood, by adults who have exhibited little or no previous awareness of such experiences.<sup>34</sup> For example, a traumatic event may happen when a child is 5 years old, then as a coping mechanism, that child’s brain blocks that event from his or her memory completely, and then when that child becomes an adult something may happen that sparks his or her memory and generates recalled memories. By the mid-1980s, research also indicated that many adult survivors of childhood sexual abuse also suffer from repressed memories.<sup>35</sup>

Prior to the 1980s, when adults remembered childhood abuse, they were often unable to pursue civil charges because the crime had occurred so long ago that they were not permitted to sue by law.<sup>36</sup> At that time in the United States, most states had not yet begun to toll statutes of limitations for minors who had been sexually abused, meaning that children would have to report within two years of the abuse. In criminal cases, defendants often claimed that the fact that the adult survivor had not reported the abuse until years or decades later was evidence that they were unreliable witnesses.<sup>37</sup>

By the late 1980s, lawyers began arguing that the statute of limitations for child sex offenses should be extended in cases where a complainant has suffered from repressed memories.<sup>38</sup> To counter this argument, defense lawyers and psychological experts created a new concept, “False Memory Syndrome.”<sup>39</sup> Throughout the 1990s, proponents of “false memory” argued that there was no evidence for “repressed memories,” and that “recovered memories” of sexual abuse were unreliable, and often the product of overly zealous therapists, and hysterical, malicious or confabulating women.<sup>40</sup>

Over the last ten years, this debate has become less heated as science has increasingly affirmed the existence of traumatic amnesia and the reliability of “recovered memories.”<sup>41</sup> It has also been established that “false memories” can and do occur, although their existence does not negate that of “recovered memories.”<sup>42</sup>

One way courts have dealt with the “repressed” versus “false” memory de-

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<sup>33</sup> Adults Surviving Child Abuse, *Recovered Memories and Traumatic Amnesia* (Sept. 20, 2014, 2:52 PM), <http://www.asca.org.au/about/resources/recovered-memories-and-traumatic-amnesia.aspx>.

<sup>34</sup> *Id.*

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

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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

<sup>41</sup> *Id.*

<sup>42</sup> See Moheb Costandi, *Evidence-Based Justice: Corrupted Memory*, 500 NATURE 268

bate is to allow the “recovered memories” into evidence, but also give instructions to the jury on the recall’s fallibility.<sup>43</sup> This allows the child to be heard while also informing jurors that these recalled memories might not be entirely accurate.

Similar to repression, another way that children may respond to trauma is through dissociation.<sup>44</sup> Dissociation means that a memory is not actually lost, but cannot for some period of time actually be recalled.<sup>45</sup> For example, a child may remember an event but may split their personality in way to deliberately avoid remembering the event or having to associate that event with him or herself. While this theory does not yet have significant empirical support, many clinicians who work with trauma victims believe that dissociation is a person’s way of sheltering him or herself from the pain of the memory.<sup>46</sup> Further, some clinicians believe that severe forms of child sexual abuse are particularly conducive to negative disturbances of memory such as dissociation or delayed memory.<sup>47</sup> If this is the case, then setting time limits on when victims can come forward with a claim prevents the victims who were subject to some of the most severe forms of child sexual abuse from coming forward.

#### B. *Recidivism Rates for Child Sex Offenders*

Another important issue is recidivism rates. Because the rate of recidivism for sex offenders is high, it is important that we encourage victims to come forward, thereby protecting others in the community. The recidivism rate for sex offenders is around 20% for a 5-year period, but varies depending on crime.<sup>48</sup> Studies that have tracked sex offenders over longer periods have found that pedophiles that molest boys had a recidivism rate of 52%, and rapists of adult women had a rate of 39% respectively.<sup>49</sup> It is also important to note that official recidivism statistics are always lower than actual re-offense rates because some sex crimes go unreported and undetected.<sup>50</sup> It is estimated that less than 10% of all sex crimes result in a criminal conviction. Therefore, many sex offenders remain unidentified.<sup>51</sup>

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(2013) (discussing a woman gaining traction in U.S. legal system after she exposed flaws in eyewitness testimony).

<sup>43</sup> *Id.*

<sup>44</sup> American Psychological Association, *Can a memory be forgotten and then remembered? Can a ‘memory’ be suggested and then remembered as true?*, <http://www.apa.org/topics/trauma/memories.aspx?item=1> (last visited Feb. 22, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Association for the Treatment of Sexual Abusers, *Facts About Adult Sex Offenders* (2001), <http://www.coso.org/library%20articles/ATSAfacts.htm>.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*



Furthermore, according to Jeffrey Dion, Deputy Director, National Center for Victims of Crime, “pedophiles don’t retire.”<sup>52</sup> When even 30 years later a perpetrator is exposed and they’re still alive, we find them 70 to 80 years old in walkers and wheelchairs continuing to molest kids.”<sup>53</sup> He argues that “allowing these old allegations to be brought in identifying perpetrators” will help us “keep kids safe today.”<sup>54</sup>

### C. *Long-Term Effects of Child Sex Abuse*

Another issue to consider when addressing the extension of statutes of limitations for child sex abuse is the long-term effects on the victims of child sexual abuse. These long-term effects can be quite devastating and are often overlooked by victims who have recently endured a trauma. Dr. Asher Lipner of the Jewish Board of Advocates for Children explains that she has “patients who are adults [and] who were living a difficult life[.] [These are] victims of terrible trauma, rape[d] as children, but they were getting by[.] and at the age when their child became the age that they were molested, that’s when they had break downs and became suicidal.”<sup>55</sup>

### D. *Two Categories of Affected People: Adult Survivors and Child Victims*

Additionally, in considering the extension of statutes of limitations for child sex abuse we should look to the effects of child sexual abuse on two distinct groups: (1) adult survivors who are still suffering and still want to come forward to report to either law enforcement or through a civil trial and whose perpetrators are often still committing crimes against children today; and (2) children who should be encouraged to come forward now as kids.<sup>56</sup> Dr. Asher explains that the two are actually connected because as a psychologist, she works with both adult survivors and child survivors and notices:

One of the things that stop children is that children internalize not only the values and the boundaries that are taught to them by their close caretakers, but they also internalize society’s values. When it becomes accepted and known that adults are coming forward and saying this is what happened to me when I was a child[,] and the system, government and the courts are taking them seriously, it trickles down and the children actually get affected. They now live in a society where this is considered wrong[,] and it’s so wrong that even if you grow up people are still going to care about it and then it will actually have an impact even for the children.<sup>57</sup>

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<sup>52</sup> Symposium, *Crimes Against Children, Helping Victims of Child Sex Abuse: Statutes of Limitations Reform*, 17 CARDOZO J.L. & GENDER 551, 558 (2011).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 572.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 569.

Therefore, by allowing adult survivors to bring claims of sexual abuse many years after the abuse occurred, both adult survivors and child victims will be encouraged to come forward with their claims and thus prevent further abuse.

### III. THE DEVELOPMENTAL MODEL

Over the years, there have been several different models depicting child development. These models are helpful in understanding how children cope with trauma and the long-term effects of trauma on the child, both of which should be taken into consideration when setting statutes of limitations for child sexual abuse.

One of the most influential thinkers on modern child development was Jean Piaget who established a developmental stage theory of cognitive development.<sup>58</sup> Piaget's model identifies four general stages of development.<sup>59</sup> During the first stage (birth to one year old), children develop *sensorimotor intelligence*, which includes activities such as sucking, grasping, and dealing with the immediate environment; during the second stage (two to seven years old), children develop *preoperational thought*, and learn to think and use symbols and images but in a less logical and less organized way than adults; during the third stage (seven to eleven years old), children develop *concrete operations*, including the capacity to think systematically but only in reference to concrete objects and activities; during the fourth stage (eleven to adulthood), children develop the capacity to think on an abstract level using hypothetical thinking.<sup>60</sup>

Another influential thinker on child development, Erik Erikson, focused on a series of crises<sup>61</sup> that people, beginning as children, go through and how this affects their ego.<sup>62</sup> *Erikson's Theory of Psychosocial Development* has eight distinct stages.<sup>63</sup> The stages are: (1) *Trust Versus Mistrust* (birth to one year), where children begin to learn the ability to trust others based upon the consistency of their caregivers; (2) *Autonomy vs. Shame and Doubt* (one to three years old), where children begin to assert their autonomy, by standing, walking, and controlling their own body movements but meet resistance from social rules and expectations;<sup>64</sup> (3) *Initiative vs. Guilt* (three to six), where children begin to plan activities and make goals but learn to internalize social prohibitions that limit these goals;<sup>65</sup> (4) *Industry vs. Inferiority* (six years to puberty), where children begin to develop a sense of pride in their accomplishments but

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<sup>58</sup> Woodhouse, *supra* note 19, at 18 (citing Crain, *Theories of Development*, 112–16).

<sup>59</sup> Woodhouse, *supra* note 19, at 19.

<sup>60</sup> Woodhouse, *supra* note 19, at 19.

<sup>61</sup> Here, the term “crises” is used to describe specific conflicts that a person has to deal with which will vary at each stages of their life.

<sup>62</sup> Woodhouse, *supra* note 19, at 19.

<sup>63</sup> Woodhouse, *supra* note 19, at 19–20.

<sup>64</sup> Woodhouse, *supra* note 19, at 19–20.

<sup>65</sup> Woodhouse, *supra* note 19, at 20.

if their initiative is not encouraged then the child begins to doubt his own abilities;<sup>66</sup> (5) *Identity vs. Role Confusion* (adolescence), where children develop the ability to “form and sustain freely pledge loyalties”;<sup>67</sup> (6) *Intimacy vs. Isolation* (Young adulthood), where people begin to develop intimacy; (7) *Generativity vs. Stagnation* (middle adulthood), where people establish a commitment to others rather than self-absorption; and (8) *Ego Integrity vs. Despair* (old age), where people contemplate their past accomplishments.<sup>68</sup>

More recently, Bruce Perry, M.D. offered that the brain develops sequentially.<sup>69</sup> He explains that because of this sequential development and because the brain develops rapidly in the first year of life, extremely young children are at a higher risk of suffering lasting effects of trauma.<sup>70</sup> Perry explains that the long-term effects of trauma on children can vary depending on the age during which they occur:

As a result different symptoms may result from trauma experienced at different times. For example, a toddler with no language to describe the painful and repetitive sexual abuse he experiences may develop a complete aversion to being touched, wide-ranging problems with intimacy and relationships and pervasive anxiety. But a ten-year-old who is subjected to virtually identical abuse is more likely to develop specific, event-related fears and to work deliberately to avoid particular cues associated with the place, person and manner of abuse. Her anxiety will wax and wane with exposure to reminders of the molestation. Further, an older child will probably have associated feelings of shame and guilt—complex emotions mediated by the cortex. That region is far less developed in a toddler, therefore related symptoms are less likely if abuse begins and ends earlier in life.<sup>71</sup>

Additionally, Perry acknowledges that in caring for victims of traumatic events, rushing to help or forcing them to speak about the traumatic events before they are ready may actually be harmful.<sup>72</sup> According to Perry’s research, rushing to “debrief” people after a traumatic event with a new therapist or counselor after a traumatic event is “often intrusive, unwanted and may actually be counterproductive” and some studies actually find a doubling of the odds of post-traumatic stress disorder following “such treatment.”<sup>73</sup>

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<sup>66</sup> Woodhouse, *supra* note 19, at 20.

<sup>67</sup> Woodhouse, *supra* note 19, at 20.

<sup>68</sup> Woodhouse, *supra* note 19, at 21.

<sup>69</sup> BRUCE PERRY & MAIA SZALAVITZ, *THE BOY WHO WAS RAISED AS A DOG* 65 (2006).

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

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 71.

<sup>73</sup> *Id.* (citing S. Rose, J. Bisson, R. Churchill & S. Wessely, *Psychological Debriefing for Preventing Post Traumatic Stress Disorder (PTSD)*, 2 COCHRANE DATABASE OF SYSTEMATIC REVIEWS CD000560 (2002)).

These theories of development help us to understand how children react to the trauma of sexual abuse and at what age they are willing or able to come forward with their claims.

#### IV. INTERNATIONAL LAW

As a result of widespread treaty law combating the crime of child sexual abuse (including three specific treaties discussed in turn below) and international academic opinion, the crime of child sexual abuse may now be considered part of general international law. Because child sexual abuse is a crime under general international law and there is a large-scale trend to remove obstacles to the prosecution of international crimes, domestic statutes of limitations should no longer be invoked when prosecuting these cases.

In the following section, this Article discusses: (A) international treaty law and customary international law regarding statutes of limitations for violations of international human rights and (B) general international law and *jus cogens* regarding statutes of limitations for violations of human rights. Discussion on three specific conventions that address the issue of child sexual abuse will follow. In section (C) this Article discusses the Convention on the Rights of the Child (“CRC”); in section (D), the Optional Protocol to the CRC on the sale of children, child prostitution, and child pornography, and in section (E), the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse. Lastly, this Article compares the statutes of limitations for child sex abuse in both the United States and the Vatican and discuss their relative progress towards eliminating statutes of limitations for child sexual abuse.

##### A. *International Treaty Law and Customary International Law on Statutes of Limitations for Violations of International Human Rights*

First, as a matter of international treaty law, two international conventions already provide for the imprescriptibility<sup>74</sup> of human rights crimes, specifically, crimes against humanity, genocide, and war crimes. The first of these treaties is the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity of 1968 (“the 1968 Convention”).<sup>75</sup> The second is the European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, adopted by the Council of

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<sup>74</sup> “Imprescriptibility” refers to the notion that no statute of limitations should apply to the said crime.

<sup>75</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Nov. 26, 1968, 754 U.N.T.S. 73. This treaty provides that no statutory limitations shall apply to the said crimes and also “eviction by armed attack or occupation and inhuman acts resulting from the policy of apartheid, and the crime of genocide.” *Id.* However, this Convention has only been ratified by 54 out of 192 United Nations member states (largely owing to disagreement about its retroactive effect).

Europe in 1974.<sup>76</sup> However, the low rate of ratification for these two treaties suggests the imprescriptibility of human rights crimes is not yet customary international law.<sup>77</sup>

B. *General International Law and Jus Cogens for Statutes of Limitations for Violations of International Human Rights*

Though it might not be customary international law, the weight of international academic opinion poses that core international crimes are imprescriptible under general international law and therefore must not be subject to any domestic statute of limitations.<sup>78</sup> This view is supported by the European Court of Human Rights, several national high courts, the United Nations High Commissioner for Human Rights and, in respect of war crimes, also the International Committee of the Red Cross.<sup>79</sup> The Inter-American Court of Human Rights has even asserted that this principle forms *jus cogens*, holding that: “the non-applicability of statutes of limitations to crimes against humanity is a norm of general international law (*[j]us cogens*), which is not created by Convention, but is acknowledged by it.”<sup>80</sup>

While the crime of child sex abuse is not internationally recognized as *jus cogens*, as are crimes against humanity, genocide, or war crimes, child sex abuse advocates may nonetheless benefit from the development in international human rights law by applying the same reasoning in seeking the extension of statutes of limitations. After all, the UN includes children’s rights as part of international human rights.<sup>81</sup> Furthermore, both laws against child sex abuse and violations of international human rights seek justice for crimes against an especially vulnerable group of people.

International human rights activists have been successful in prohibiting statute of limitations for human rights crimes, even if they do not amount to international core crimes.<sup>82</sup> For example, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious

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<sup>76</sup> European Convention on the Non-Applicability of Statutory Limitations to Crimes against Humanity and War Crimes, C.E.T.S. No. 082 This treaty has attracted no more than three ratifications.

<sup>77</sup> Jan Arno Hessbruegge, *Justice Delayed, Not Denied: Statutory Limitations And Human Rights Crimes*, 43 GEO. J. INT’L L. 335, 348 (2012).

<sup>78</sup> *Id.* at 349–350.

<sup>79</sup> *Id.* at 350.

<sup>80</sup> *Id.* at 350–51 The Argentinean Supreme Court adopted the same position in a series of cases dealing with the “Dirty War” of the military dictatorship. *Id.*

<sup>81</sup> See, e.g., Office of the High Comm’r for Human Rights, *Monitoring the Core International Human Rights Treaties*, <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx> (last visited Feb. 15, 2015) (including the CRC as a human rights treaty).

<sup>82</sup> Hessbruegge, *supra* note 77 at 360.

Violations of International Humanitarian Law (“Basic Principles”) in 2006.<sup>83</sup> These Basic Principles proclaim the imprescriptibility of human rights crimes: “Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.”<sup>84</sup>

Because there is an international obligation to prosecute and punish crimes that are core international crimes, it logically follows that this obligation overrides domestic statutes of limitations that stand in the way of prosecution.<sup>85</sup> Indeed, the Updated Set of Principles to Combat Impunity, noted by the UN Human Rights Council, allude to the imprescriptibility of human rights crimes amounting to *jus cogens* violations: “Prescription shall not apply to crimes under international law that are *by their nature* imprescriptible.”<sup>86</sup>

Although it may be premature to consider all human rights crimes imprescriptible,<sup>87</sup> since the adoption of the Rome Statute, international law has progressed to prohibit states from invoking statutory limitations to escape their duty to prosecute and punish perpetrators of genocide, crimes against humanity, and war crimes.<sup>88</sup> This progression is part of a larger trend to remove obstacles to the prosecution of international crimes at the national level.<sup>89</sup> For example, the vast majority of states are also obligated under the Convention Against Torture (“CAT”)<sup>90</sup> and the International Covenant on Civil and Political Rights (“ICCPR”)<sup>91</sup> to abolish statutes of limitations for other human rights crimes, in particular torture and extrajudicial killings committed by state agents.<sup>92</sup> This larger trend suggest that children’s rights, in addition to human rights, should undergo changes in prosecuting international crimes at the national level to prevent states from invoking statutory limitations to escape their duty to prosecute and punish perpetrators of child sexual abuse.

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<sup>83</sup> G.A. Res. 60/147, U.N. Doc. A/Res/60/147, (March 21, 2006), available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbolA/RES/60/147](http://www.un.org/en/ga/search/view_doc.asp?symbolA/RES/60/147).

<sup>84</sup> *Id.*; Hessbruegge, *supra* note 77 at 360.

<sup>85</sup> Hessbruegge, *supra* note 77 at 362.

<sup>86</sup> Hessbruegge, *supra* note 77 at 362.

<sup>87</sup> Hessbruegge, *supra* note 77 at 362.

<sup>88</sup> Hessbruegge, *supra* note 77 at 384.

<sup>89</sup> Hessbruegge, *supra* note 77 at 384–85. Courts around the world increasingly refuse to uphold amnesties or immunities shielding perpetrators of international crimes. *Id.*

<sup>90</sup> G.A. Res. 39/46, U.N. Doc. A/RES/39/46 (Dec. 10, 1984) (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), available at <http://www.un.org/documents/ga/res/39/a39r046.htm>.

<sup>91</sup> See International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 172, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

<sup>92</sup> Hessbruegge, *supra* note 77.

### C. *Convention on the Rights of the Child*

The United Nation's Convention on the Rights of the Child ("CRC") was entered into force on September 2, 1990, and currently has 193 parties, not including the United States.<sup>93</sup> This convention focuses on the unique needs and rights of the child. As such, this treaty is the "most widely acclaimed human rights treaty in history."<sup>94</sup> The countries that have adopted the CRC into their legal systems accept its "central notions: that children are to be recognized as individuals with their own voice; that they should be nourished through education and healthcare; that they must receive protection from those that would hurt, exploit, or discriminate against them; and that they must be treated with their best interests at the forefront."<sup>95</sup>

According to Article 27.1, parties "recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development."<sup>96</sup> Not only does the CRC provide that parties "shall take appropriate measures to assist parents and others responsible for the child to implement this right,"<sup>97</sup> but Article 4 states:

Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.<sup>98</sup>

Therefore, parties are required to be proactive in the protection of children from physical abuse, including child sexual abuse.

To ensure compliance, governments of signatories that have ratified the CRC are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the CRC and the status of child rights in their country.<sup>99</sup> This Committee is one of the ten UN human

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<sup>93</sup> See United Nations, *Status of the Convention on the Rights of the Child* (Sept. 23, 2014, 11:04 PM), [http://treaties.un.org/Pages/ViewDetails.aspx?mtldsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtldsg_no=IV-11&chapter=4&lang=en).

<sup>94</sup> Cris Revas, Introduction to JONATHAN TODRES, ET AL., *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION* 9 (Martinus Nijhoff ed., 2006).

<sup>95</sup> *Id.*

<sup>96</sup> Convention on the Rights of the Child, art. 27.1, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

<sup>97</sup> *Id.* at art. 27.3.

<sup>98</sup> *Id.* at art. 4.

<sup>99</sup> Office of the High Comm'r for Human Rights, *Committee on the Rights of the Child*, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx> (last visited Feb. 15, 2015).

rights treaty bodies that monitor implementation of the core international human rights treaties.<sup>100</sup>

Additionally, the recently ratified Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (“Communications Procedure”) took effect on April 14, 2014.<sup>101</sup> This Communications Procedure allows Children or their representatives from countries who have ratified this convention to be able to submit complaints to the Committee on the Rights of the Child (“CRC Committee”), which will then decide whether to review the case.<sup>102</sup> Where a violation is found, it will recommend that the State concerned take action to remedy the situation.<sup>103</sup>

According to CRC Committee Chair Kirsten Sandberg, the Communications Procedure “gives children who have exhausted all legal avenues in their own countries the possibility of applying to the Committee,” and “it means children are able to fully exercise their rights and are empowered to have access to international human rights bodies in the same way adults are under several other human rights treaties.”<sup>104</sup> She also insists that while it is “a major step forward in the implementation of children’s rights,” that States should “develop their own systems to ensure that children’s rights are respected and protected and that their voices can be heard.”<sup>105</sup>

Because the CRC is widely accepted and the Communications Procedure provides child victims broader access to enforcement mechanisms for violations of children’s rights, such as child sexual abuse, this shows that the crime of child sexual abuse is now accepted as general international law if not customary internal law.

#### D. *Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography*

Like the CRC, the United Nation’s Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (“Optional Protocol”), which entered in to force on January 18, 2002, also helps to define child sexual abuse as general international law. The Optional Protocol currently has 168 parties,<sup>106</sup> and provides that: “Parties shall prohibit the sale of children, child

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<sup>100</sup> Office of the High Comm’r for Human Rights, *Human Rights Bodies*, <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx> (last visited Feb. 22, 2015).

<sup>101</sup> *Id.*

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

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> United Nations, *Status of Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography*, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en) (last visited Feb. 15, 2015). The United States signed but never ratified the convention. *Id.*



prostitution and child pornography as provided for by the present Protocol.”<sup>107</sup>

According to Article 8.1, Parties shall “recognize the *vulnerability* of child victims and adapt procedures to recognize their special needs;” “*inform* child victims of their rights;” “allow the *views*, needs and *concerns* of child victims to be presented and considered in proceedings where their personal interests are affected;” “protect the *privacy* and *identity* of child victims;” and “provide for the safety of child victims . . . from *intimidation* and *retaliation*.”<sup>108</sup>

Article 8.3 states that “Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.”<sup>109</sup> And Article 8.4 states that “Parties shall take measures to ensure appropriate training, in particular *legal* and *psychological* training, for the persons who work with” the victims.<sup>110</sup>

Despite its significant contribution to children’s rights, some argue that the Optional Protocol’s inclusion of language on enforcement was necessary because enforcement cannot be implied from the text of the CRC.<sup>111</sup> This view somewhat weakens the effect of the CRC.

#### E. *Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse*

A third convention that helps to solidify child sexual abuse as a crime under general international law is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (“CECPC”). The CECPC was signed on October 25, 2007 by all states of the Council of Europe, with the exception of the Czech Republic.<sup>112</sup> It became effective on July 1, 2010 after being ratified by five states.<sup>113</sup> There are several key provisions of the CECPC that are relevant to arguing that statutes of limitations should be extended or eliminated in light of international law.

The CECPC’s stated purposes are to: “(a) prevent and combat sexual exploitation and sexual abuse of children; (b) protect the rights of child victims of sexual exploitation and sexual abuse; [and] (c) promote national and international co-operation against sexual exploitation and sexual abuse of children.”<sup>114</sup>

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

<sup>108</sup> CRC, *supra* note 96, at art. 8.1.

<sup>109</sup> CRC, *supra* note 96, at art. 8.3.

<sup>110</sup> CRC, *supra* note 96, at art. 8.4.

<sup>111</sup> See generally Michael G. Schechter & Michael Bochenek, *Working to Eliminate Human Rights Abuses of Children: A Cross-National Comparative Study*, 30 HUM. RTS. Q. 579, 587 (2008).

<sup>112</sup> Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, C.E.T.S. No. 201 (Feb. 22, 2015) <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=1&DF=&CL=ENG> (Signatures and Ratifications).

<sup>113</sup> *Id.*

<sup>114</sup> Council of Europe, Convention on the Protection of Children against Sexual Exploita-

In addition, the CECPC sets up a specific monitoring mechanism to ensure effective implementation of its provisions by the Parties.<sup>115</sup>

In the Preamble, the CECPC observes that: “every child has the right to such measures of protection as are required by his or her status as a minor;” “the sexual exploitation of children, in particular . . . all forms of sexual abuse of children, including acts which are committed abroad, are destructive to children’s health and psycho-social development;” “the sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs), and that preventing and combating such sexual exploitation and sexual abuse of children require international co-operation;” “the well-being and best interests of children are fundamental values shared by all member States and must be promoted without any discrimination.”<sup>116</sup>

The CECPC calls for “the elaboration of measures to stop sexual exploitation of children,” the effective contribution “to the common goal of protecting children against sexual exploitation and sexual abuse, whoever the perpetrator may be, and of providing assistance to victims” and addresses “the need to prepare a comprehensive international instrument focusing on the preventive, protective and criminal law aspects of the fight against all forms of sexual exploitation and sexual abuse of children and setting up a specific monitoring mechanism.”<sup>117</sup>

The CECPC considers relevant international instruments, particularly the CRC, the “Stockholm Declaration and Agenda for Action, . . . the Yokohama Global Commitment, . . . the Budapest Commitment and Plan of Action, . . . the United Nations General Assembly Resolution S-27/2 ‘A world fit for children,’ and the three-year program ‘Building a Europe for and with children.’”<sup>118</sup>

In Article 10, the CECPC sets out national measures of co-ordination and collaboration. Specifically, Article 10.2 states:

Each Party shall take the necessary legislative or other measures to set up or designate:

- (a) independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;
- (b) mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation

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tion and Sexual Abuse, art. 1, Oct. 27 2007, C.E.T.S. No. 201, available at <http://conventions.coe.int/Treaty/en/Treaties/tml/201.htm>.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at pmbi.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

and sexual abuse of children, with due respect for the requirements of personal data protection.<sup>119</sup>

By providing national measures of coordination and collaboration, the CECPC is helping to promote the enforcement of child sexual abuse within each nation and is bolstering the argument that the crime of child sexual abuse is general international law.

The CECPC also provides assistance and protective measures for victims. First, the CECPC states that "[e]ach Party shall establish effective social programs and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care."<sup>120</sup> Second, "[e]ach Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age."<sup>121</sup> Third, "[e]ach Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns."<sup>122</sup> Fourth, "[e]ach Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organizations, other relevant organizations or other elements of civil society engaged in assistance to victims."<sup>123</sup> Further, the CECPC provides that "[e]ach Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care."<sup>124</sup>

The CECPC also states that "[e]ach Party shall ensure or promote, in accordance with its internal law, effective intervention programs . . . with a view to preventing and minimizing the risks of repeated offences of a sexual nature against children."<sup>125</sup>

Remarkably, the CECPC also ensures that parties will criminalize the following activity: "(a) engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; [and] (b) engaging in sexual activities with a child where: use is made of coercion, force or threats; or abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child, notably be-

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<sup>119</sup> *Id.* at art. 10.

<sup>120</sup> *Id.* at art. 11.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at art. 14.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at art. 15.

cause of a mental or physical disability or a situation of dependence.”<sup>126</sup>

In Article 30, the CECPC lays out the following principles that each party should follow in regards to investigation, prosecution and procedural law of child sexual abuse. Each party shall: (1) “take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child;” (2) “adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate;” (3) “ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay;” (4) “ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defense and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms;” and (5) “take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law to ensure an effective investigation and prosecution of offences.”<sup>127</sup>

The CECOC provides general measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings.<sup>128</sup>

Although the CECPC contemplates cases where a child is abused by their parents resulting in “a conflict of interest between them and the victim,” and requires parties to appoint a special representative for the victim,<sup>129</sup> the CECPC does not do enough to contemplate the incapacity of the traumatized child to act on their rights.

Most significantly, Article 33 considers the statute of limitations for the established offenses.<sup>130</sup> Article 33 states: “[e]ach Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established . . . shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.”<sup>131</sup>

#### F. *Statutes of Limitations in the Vatican*

The current policy changes in the Vatican regarding child sexual abuse show a good example of a nation reforming its laws to change the balance between children’s rights to fair and effective remedies, and protection of adult perpetra-

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<sup>126</sup> *Id.* at art. 18.

<sup>127</sup> *Id.* at art. 30.

<sup>128</sup> *Id.* at art. 31.

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

<sup>130</sup> *Id.* at art. 33.

<sup>131</sup> *Id.*

tors from stale claims. Lately, the Vatican has been receiving media attention because the UN has been concerned with its compliance to the CRC.

At a UN hearing the representative for the Holy See, Archbishop Silvano Tomasi stated:

[T]here is no excuse for any form of violence or exploitation of children. Such crimes can never be justified . . . This is the long-standing policy of the Holy See. For example, Pope John II stated that abuse of young people is “by every standard wrong and rightly considered a crime by society; it is also an appalling sin in the eyes of God.” For this reason, the Holy See . . . [is] committed to holding inviolable the dignity and entire person of every child—body, mind, and spirit.<sup>132</sup>

According to Tomasi, Pope Benedict XVI’s May 21, 2010 signing of new rules marked the point of no return for the Church in combating abuse.<sup>133</sup> Since then, Pope Benedict XVI has defrocked hundreds of priests.<sup>134</sup> The UN Committee on the Rights of the Child discussed the Pope’s crackdown in Geneva during the hearing of the Holy See. According to the Vatican’s report on Child Sex Abuse, there were 182 requests for disposal of priests and 202 “dispense” or handouts between 2010 and 2012.<sup>135</sup> The report emphasized that not all of these cases occurred in this period, but they rather reflected the new rules in 2010.<sup>136</sup> The Holy See, at the behest of Pope Benedict XVI introduced the crime of child pornography, the ability to proceed extrajudicially in the most striking cases, the power of the Pope to defrock when the evidence is overwhelming, and made abuse of mentally handicapped individuals comparable to that of minors.<sup>137</sup> Above all, Pope Benedict stretched out the Holy See’s statute of limitations from 10 to 20 years, starting from the eighteenth birthday of the victim.<sup>138</sup> That allowed him to punish even the oldest cases.<sup>139</sup>

Prompted by the spread of clergy misconduct around the world, the Vatican doubled the statute of limitations on prosecuting priests for sexual abuse from 10 to 20 years in a revision of its canon-law rules.<sup>140</sup> The changes were released in a statement on the Vatican’s website on July 15, 2010. Additionally, the

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<sup>132</sup> Silvano M. Tomasi, Monsignor, Presentation of the Periodic Reports of the Holy See to the Committee on the Convention of the Rights of the Child and the Optional Protocols (Jan. 16 2014), [http://www.vatican.va/roman\\_curia/secretariat\\_state/2014/documents/rc-seg-st-20140116\\_tomasi-child-rights\\_en.html](http://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140116_tomasi-child-rights_en.html).

<sup>133</sup> Gian G. Vecchi, *Pedophilia, defrocked priests, 400 in two years*, CORRIERE DELLA SERA (Jan. 18, 2014), available at [http://www.corriere.it/cronache/14\\_gennaio\\_18/pedofilia-spretati-400-sacerdoti-due-anni-272e4c1a-8007-11e3-be9a-e1e430257234.shtml](http://www.corriere.it/cronache/14_gennaio_18/pedofilia-spretati-400-sacerdoti-due-anni-272e4c1a-8007-11e3-be9a-e1e430257234.shtml).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Flavia Krause-Jackson, *Vatican Doubles Statute of Limitations on Sex Abuse*, BLOOM-

Pope signed a new rule to consider a minor to be any “developmentally disabled” individual, including those over the age of 18.

G. *Statutes of Limitations in the United States*

According to the National Center for Victims of Crime, nearly every state has a basic suspension of the statute of limitation (“tolling”) for civil actions while a person is a minor. Many states have also adopted additional extensions specifically for cases involving sexual abuse of children. Extensions for filing civil actions for child sexual abuse are most often based upon the discovery rule—by the time the victim discovers the sexual abuse or the relationship of the conduct to the injuries, the ordinary time limitation may have expired. This “delayed discovery” may be due to emotional and psychological trauma and is often accompanied by repression of the memory of abuse. Child victims frequently do not discover the relationship of their psychological injuries to the abuse until well into adulthood—usually during the course of psychological counseling or therapy. They may not even discover the fact of such abuse until they undergo such therapy.<sup>141</sup>

The vast majority of U.S. states allow minority tolling so that the statutes of limitations will begin to run on a victim’s eighteenth birthday. However, several U.S. states do not toll all of their criminal statutes of limitations for sexual offenses against minors. Those states include Arizona,<sup>142</sup> Rhode Island,<sup>143</sup> and West Virginia.<sup>144</sup>

Further, at least one state has not tolled its civil statute of limitations for minors: Alabama. Alabama has no statute of limitations for victims under 16, but for older victims, most sexual offenses are classified as felonies, which generally have a 3-year statutes of limitations period.<sup>145</sup> Additionally, a small number of sexual offenses are labeled as misdemeanors, which have a 1-year statute of limitations period.<sup>146</sup> This means that a child on their sixteenth birthday could be assaulted with a sexual misdemeanor but would have to report on or before their seventeenth birthday. Furthermore, if a child is assaulted with a sexual felony the day before their sixteenth birthday, they would have an un-

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BERG NEWS (July 15, 2010, 12:00 AM), <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/15/AR2010071502510.html>.

<sup>141</sup> Nat’l Conference of State Legislatures, *State Civil Statutes of Limitations in Child Sexual Abuse Cases*, <http://www.ncsl.org/research/human-services/state-civil-statutes-of-limitations-in-child-sexua.aspx> (last visited Feb. 22, 2015).

<sup>142</sup> ARIZ. REV. STAT ANN. § 13-107 (2015).

<sup>143</sup> R.I. GEN. LAWS ANN. § 12-12-17 (2014).

<sup>144</sup> *State v. Carrico*, 427 S.E.2d 474 (W. Va. 1993) (noting there are no statutes of limitations for felonies in West Virginia).

<sup>145</sup> See ALA. CODE ANN. §§ 15-3-5(4), 15-3-1 and 13A-6-60 to -70 (1975).

<sup>146</sup> See ALA. CODE ANN. § 15-3-2 (1975).

limited amount of time to report while a child who is assaulted with the same felony on their sixteenth birthday must report on or before their nineteenth birthday.

Additionally, several U.S. states do not accept the discovery rule to allow a statute of limitations to begin when suppressed memories resurface after the statute of limitations has run out. In *Doe v. Roman Catholic Diocese*, the court held the discovery rule did not apply in Mississippi to toll limitations period in alleged sexual abuse victim's case because there was no latent injury; acts of abuse alleged were physical acts of which person would be generally aware when events occurs.<sup>147</sup> Additionally, in Connecticut in *Rosado v. Bridgeport Roman Catholic Diocese Corp.*, the court held that "the seventeen-year period does not relate back to the time of discovery of an injury or to the accrual of a cause of action. Rather, it relates back to the time the plaintiff attained the age of majority."<sup>148</sup>

## V. ANALYSIS

Recently in the United States, the troubles of adult sexual abuse has led to a number of attempts to delay or toll the running of the various statutes of limitation on civil actions against the perpetrators of such crimes for damages.<sup>149</sup> These attempts have been justified under three basic theories: (1) delayed "discovery" of the cause of action or a vital element thereof as delaying the accrual of the cause of action; (2) tolling of the statute during disability (i.e., minority tolling); and (3) equitable estoppel of the defendant to plead the statute because of some unconscionable conduct on the defendant's part, other than the alleged abuse itself, preventing the timely filing of the cause of action (e.g., when the accused leaves the state).<sup>150</sup>

The "discovery" rule dictates that a tort statute of limitations is deemed not to run against a victim of certain torts until the time when the victim has or should have knowledge of all elements necessary to the cause of action.<sup>151</sup> In one noteworthy case, *E. W. v D. C. H.*,<sup>152</sup> while recognizing that the "discovery" rule would apply to the tort of child sexual abuse where the trauma of the abuse has caused the victim to psychologically repress the relevant facts of the abuse to the extent of a complete inability to remember them consciously, the Montana Supreme Court refused to apply the rule in the case of a victim who admitted remembering the wrongful act itself, but claimed justifiable ignorance, until adulthood, of the extent and depth of the resultant psychological

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<sup>147</sup> *Doe v. Roman Catholic Diocese*, 947 So. 2d 983 (Miss. Ct. App. 2006).

<sup>148</sup> *Rosado v. Bridgeport Roman Catholic Diocese Corp.*, 1997 LEXIS 2496, at \*3 (Conn. Super. Ct. Sept. 15, 1997).

<sup>149</sup> Donaldson, *supra* note 31.

<sup>150</sup> Donaldson, *supra* note 31.

<sup>151</sup> Donaldson, *supra* note 31.

<sup>152</sup> *E. W. v D. C. H.*, 754 P.2d 817 (Mont. 1988).

trauma The court held that “awareness of the full extent of injury” is not an element of an action for intentional torts.<sup>153</sup>

In evaluating Marilyn Van Derbur’s comment that many of the effects of child sexual abuse do not resurface until victims are in their late thirties and forties, we should look to the phenomenon discussed by Erickson’s Theory of Psychosocial Development, where we see that adulthood is the stage when adults are less concerned with themselves and more concerned with the community. For victims, this means that they are finally over their concern for their own image (i.e., being labeled as “a victim of incest”) and the self-absorption from young adulthood as they enter a stage of generosity and giving back to the community. At this stage, they are concerned that their perpetrators are still free to violate others and they want to help the community by finally speaking out.

Although most U.S. states have minority tolling on the statutes of limitations for child sexual abuse, in the vast majority of U.S. states a statute will run prior to the victim’s twenty-fourth birthday. This is unjust for several reasons. First, victims will not yet have reached a stage of psychosocial development where they are concerned with protecting the community and thus prosecuting violators. Second, victims may not have discovered the relationship of their injury and its effects because of coping mechanisms such as repressed memories or dissociation but these effects are nonetheless present and may worsen as they grow older, leaving victims without a means of redress. Third, victims should be protected by the CRC, the Optional Protocol, and the United States judicial system. Such protective measures will consider the “best interests of the child,” not the best interest of the abuser or the efficiency of the court.

Borrowing lessons from international law, the United States should not invoke domestic statutes of limitations for child sex abuse. International treaty law, including the CRC, the Optional Protocol and the CECPC, supports the notion that child sexual abuse is a crime that has become customary international law. Thus, the United States should be especially mindful of the growing trends in prosecuting international crimes and human rights offenses, and should also carefully consider whether these statutes of limitations are helping or hurting the administration of justice.

Although only one of the above mentioned treaties specifically provides a section on statutes of limitations, they all look to protect the child from physical harm and recognize a child’s unique needs and rights. In protecting these rights, it is therefore necessary to address statutes of limitations, which may work against the victim in allowing them adequate time to come forward. This is especially true when considering children’s developmental stages and incapacity to act independently to vindicate their own rights. These treaties provide for the “best interest of the child” and therefore, statutes of limitations should be extended where additional time may allow a child to mature, act independently, or realize the long-term effects associated with child sexual abuse.

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<sup>153</sup> Donaldson, *supra* note 31.



We have learned that international law is progressing from prohibiting prescription only in cases of *jus cogens* to extending this prohibition to human rights crimes. The next logical step, based on the similar aims of children's rights and human rights to protect vulnerable persons, is to further extend this prohibition to children rights.

The Supreme Court has held that "international law is a part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."<sup>154</sup> Therefore, the near universal adoption of the CRC "opens the door to enforcement of many provisions of the treaty in U.S. courts as customary international law and, in some instances, as *jus cogens*—preemptory norms of international law from which there can be no derogation."<sup>155</sup> The United States' failure to ratify the CRC "will not preclude litigation in the federal courts by a human rights litigant seeking to enforce the Convention as customary international law or federal policy preempting conflicting state or local legislation."<sup>156</sup> Furthermore, the United States Supreme Court has found it to be proper that the Court acknowledge: (1) "the overwhelming weight of international opinion"; and (2) the "express affirmations of fundamental rights by other nations."<sup>157</sup>

## VI. CONCLUSION

As a victim of incest, Marilyn Van Derbur had no one to help her. Thankfully, because of the efforts of adult survivors in the 1980's, many U.S. states have added a discovery rule allowing a victim who has a resurfaced memory to bring suit and in response to the Jerry Sandusky Scandal in 2012, several more U.S. states have changed their laws to completely eliminate statutes of limitations for sexual offenses against minors.

However, the United States should acknowledge the weight of international law which seeks to prosecute the sexual abuse of children, including the signatories to the CRC who have demonstrated their commitment to protecting the rights of children and the Vatican who has, largely in response to the recent child sex abuse scandals within the Catholic Church, made great efforts to extend their statutes of limitations to allow for survivors to come forward with their claims and promote fairness, justice, and the child's best interest.

From a developmental perspective, tolling statutes of limitations until victims are aware of their full effects would provide a more sound policy. Van Derbur preaches that we still "need to educate the community about the long-

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<sup>154</sup> *The Paquete Habana*, 175 U.S. 677, 700 (1900).

<sup>155</sup> JONATHAN TODRES ET AL., *THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION* 35 (MARTINUS NIJHOFF ED.) (2006).

<sup>156</sup> *Id.* at 36.

<sup>157</sup> *Roper v. Simmons*, 543 U.S. 551, 554 (2005).

term effects of incest. Until some of the long-term effects become general knowledge, we're not going to turn the corner."<sup>158</sup> In her case, the long-term effects included lethargy, physical paralysis, anxiety, loss of sleep, tens of thousands of dollars in therapy, and a strained relationship with her own daughter.<sup>159</sup> Because these effects often do not resurface until later in life, in the interest of fairness and justice and in the best interest of the child, statutes of limitations should be extended to late adulthood, if not eliminated, for victims of child sexual abuse.

Furthermore, allowing adult victims to come forward with their claims, encourages younger victims to come forward with their claims. And as more survivors, at any age come forward, evidence surrounding these cases strengthens, not weakens, and thus the two main reason for statutes of limitations: (1) to try a case before the evidence is lost or substantially weakened, and (2) to promote victims to come forward, are both better served in cases of child sexual abuse by extending these prescription periods or eliminating them all together.

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<sup>158</sup> Interview, *supra* note 4 (follow "Marilyn Van Derbur Interview—Part 3 of 3" link).

<sup>159</sup> Interview, *supra* note 4 (follow "Marilyn Van Derbur Interview—Part 3 of 3" link).

