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Canon Law Response to Clerical Sexual Misconduct

by

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This material was prepared for a task force of the Catholic Medical Association impaneled over a period of two years to investigate clerical sexual misconduct.

From its origin, aided by scripture and tradition, it has been the task of the Church to synthesize the academic, social, and spiritual dimensions of all believers. We are confident in the sacramental message of Faith expressed through the Mystical Body of Christ. The Lord is fully alive in His Church and guides it with the help of the Holy Spirit. As such we must be ever mindful in dealing with all physical, emotional, and moral infirmities in the balance reflected in both the "Power" and "Providence" of God. Contemporary medical practices often rely heavily on the first and yet miss the value of the latter. The Church has something to offer in this very serious discussion on the sexual aberrations found in the contemporary culture of death. She speaks as teacher, sanctifier, and redeemer and has visited this troublesome topic for the last two thousand years. "*Sicut etat in principio.*" "As it was in the beginning."

Over thirty-five years ago, the second Vatican Council encouraged the role of the laity in both the teaching and mission activity of the Church. Professionals from the fields of science and technology were asked to contribute to the task of presenting the mysteries of our faith to the contemporary world. At that time little did they realize the nightmare of sexual libertarianism that was unfolding within and outside the Church. A storm, better described as a hurricane, that would catch the medical world completely by surprise with few substantial standards to deal with both problems of neurosis and psychosis on a cultural level rather than simple personal concern.

Questions abound on the origin and nature of the expanded pathos of our dying culture, more recently identified by Pope John Paul II as a "Culture of Death", a culture that pervades all levels of society, including the Church and Her ministers. With every question of origin and nature of current "issues" (formerly identified as "problems") there are ten times as many theories justifying what happened. And for every theory there are ten recommendations for possible solutions on the psychosocial problems that haunt us as a declining culture.

The problem with lust and incontinence is as old as man. No matter how you cut it, it is rooted in sin. . . Original sin, Mortal sin, Venial sin. Paradoxically, by its nature it is the most unnatural feature of what man was created to be. It is the result of man's removing himself from any notion of accountability to God and setting himself as the new standard of all that is good and socially acceptable.

I. Consideration of Canon Law's Dealing with Pedophiles

Law by its very definition is an "ordinance of right reason promulgated by a proper authority for the benefit of the whole." It is both a teaching tool that guides the mind and a disciplinary tool that helps form volitional capacities of man. As such it draws man to both a sense of accountability and advocacy in his relation to both God and man. The following document serves to initiate some understanding of the rights and duties of a cleric in the service of the Church in addition to the issue of accountability of the cleric to the Church and the Faithful.

Easily Accessed Resources

The Code of Canon Law, A Text and Commentary, (Commissioned by the Canon Law Society of America), Study Edition, Edited by Coriden, Green, Heintschel, Paulist Press.

Code of Canon Law, Latin-English Edition (Canon Society of America), Published by the Canon Law Society of America.

Code of Canon Law Annotated, Edited by Cuparos, Theriault, and Thorn, Published by Wilson and Lafleur Limited, Montreal 1993 (University of Navarra Faculty of Canon Law), Opus Dei

General Understanding of Canon Law

Canon law is distinct from the current civil law that is found in the United States. The former is based on Roman Law and is directed by standard principles. The latter is based on English Common Law and is based not only on principles as such, but the added facet of "precedent". Much of the confusion on disciplinary action of pedophiles is the result of

a common misunderstanding of the distinction between the two types of law that guide us all.

Since the earliest times of the Church, sacred canons have been collected to strengthen the internal structure of the Church and Her disciples; and safeguard the members of the Church from those outside (secular/pagan) influences contrary to the Gospel values. In the years following the Arian Heresy of the third century, one of the early canons stated, "Priests must know the Sacred Scriptures and Canons" because "ignorance, the mother of all errors, must be avoided by the priests of God." (C.25, in Mansi, vol.x, col. 627)

In the first ten centuries laws were collected from the statements of ecclesial councils, popes, and various renowned thinkers in the early Church. The weakness in the early medium of discipline was found in the variety of contradictory statements that were rising up in the various parts of Christendom.

In the twelfth century, a monk by the name of Gratian refined the many lists of canons that were found throughout Christendom. He patterned the new list after the legal structure formulated by the Roman emperor Justinian. Hence, the foundation of contemporary canon law finds its roots in Roman law. The order was simple in its codification.

Through the following centuries, the "Code" would become more complex. Again confusion abounded throughout the Church in regards to the penalties and penances imposed on those offenders of Church law. As late as the 19th century Church, during the Council of Vatican I, we find appeals raised by both laity and religious for an updated code that would assist them in the pastoral duties of the Church. Unfortunately the Council did not have the time to carry this out. It was left to the later leadership of Pope Pius X.

In 1917 the Code of Pius X was completed. The canons, like the earlier Roman law was divided into five books. They addressed three issues: persons, things, and actions. In 1959 Pope John XXIII announced a desire to renew the Code, a Code that was to express the spirit of Vatican II. It would not be promulgated until 1983, under Pope John Paul II.

Specific Canons that Deal with the Sexual Aberrations of the Clergy

(Note: At this time most canons are directed at religious communities rather than diocesan chanceries. During the past nine years some initiatives have been taken through the Canon Law Committee of the NCCB [National Council of Catholic Bishops] to seek a rescript from Rome, allowing the

local ordinary the same power to deal with the priest sexual offender as does his counterpart, leading the religious community.)

I. Scandal

Canon 277, 2: Clerics are to conduct themselves with due prudence in associating with persons whose company could endanger their obligation to observe continence or could cause scandal for the faithful.

(Commentary on the Code) In paragraph two of canon 277 clerics are warned to be careful about those with whom they associate lest their obligation to continence be endangered and the faithful scandalized. The former Code of Canon Law was much more detailed. Clerics were not to live under the same roof with or to frequently visit women so as to give rise to suspicion on the part of others. Clerics were permitted to dwell only with those whose natural kinship (mother, sister, and aunt) or whose irreproachable character and maturity obviated any suspicion. Canonists generally understood the advanced aged as forty years or older. The revised Code does not single out women as the likely cause of scandal; that association with certain males could be just as harmful.

Canon 695, 1: A member must be dismissed for the offenses in Can. 1397, 1398 (procuring and abortion) and 1395, unless the delicts mentioned in Can. 1395, 2, the superior judges that dismissal is not entirely necessary and that the correction of the member and restitution of justice and reparation of scandal can be sufficiently assured in some other way.

(Commentary on 695, 1) A member must be dismissed for the delicts stated in these canons, since they are crimes against human life and liberty and bring infamy on the religious institute. In the case of a sexual offense committed by a religious (C 1395,2) the competent superior may decide against dismissal and deal with the issue in a more effective way. It is important that reparation for scandal be made and that there be restitution for any injustice.

Canon 1395, 2: If a cleric has otherwise committed an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state if the case warrants it.

(Commentary on 1395, 2) Paragraph two deals with certain non-habitual clerical sexual offenses, which are especially serious if they are perpetrated publicly, or with force or threats, or with a person of either sex under sixteen years of age. Initially such an offense is not viewed as seriously as the preceding ones since only "just penalties" are imposed.

Yet if the remedial measures are unsuccessful, even such a cleric may ultimately be dismissed from the clerical state.

The Church authorities in this delicate area should exercise great care. Frequently the most beneficial approach is a therapeutic rather than a penal one, especially if there is diminished imputability on the part of the cleric. However, while the well-being and future ministry of the offending cleric are key considerations, due cognizance also has to be taken of the damage done to the community and individuals within it.

Canon 1397: One who commits homicide or who fraudulently or forcibly kidnaps, detains, mutilates, or seriously wounds a person is to be punished with the deprivations and prohibitions mentioned in Can. 1336 in accord with the seriousness of the offense; however, homicide against the persons mentioned in Can. 1370 is punished by the penalties specified there.

(Commentary on 1397) The old Code of Law (1917) spoke of the abduction of a woman for various reasons whereas the 1983 law speaks generically of the abduction or detention of anyone ... In the new Code the issue is apparently viewed as an exclusively ecclesiastical matter which involves various expiatory penalties, including dismissal from the clerical state, according to the gravity of the offense... There should be as much collaboration as possible between ecclesiastical and civil authorities, given their mutual concerns in the matter.

Canon 695, 2: In these cases the major superior, having collected proofs about the facts and imputability, is to make known the accusation and the proofs to the member who is about to be dismissed, giving the member the opportunity of self defense. All the acts, signed by the major superior and notary along with the written and signed responses of the member, are to be transmitted to the supreme moderator.

(Commentary on 695, 2) *The major superior collects proof of both the fact of the delict and the imputability of the member. The member about to be dismissed is informed of the accusation and proofs and advised of the right of defense. Legal counsel should be offered to assist in this defense. All of these acts signed by the major superior and notary are sent to the supreme moderator. The defense of the member should be written and signed by him or her. The religious has the right to send the defense directly to the supreme moderator.*

Canon 703: In the case of a serious exterior scandal or very grave imminent harm to the institute a member can be immediately expelled from the religious house by the major superior, or, if there is a danger in delay, by the local superior with the consent of the council. If it is necessary the major superior should see that the process of the dismissal is begun according to the norm of law or refer the matter to the Apostolic See.

(Commentary on 703) This canon provides protection for members of a religious institute in drastic situations requiring immediate decision because the action(s) of a member incurs grave external scandal or very grave and imminent harm to the institute. The major superior and even a local superior if there is danger in delay, with the consent of council can expel the member from the house. An expulsion does not have the effects of an ipso facto dismissal, and the major superior should initiate the dismissal process according to the law or refer the matter to the Apostolic See.

II. Disciplinary Solutions for the Errant Cleric

1. Censures (Canons 1331-1335)

This section will deal with various censures, penalties depriving contumacious (Contumacy: Obstinancy in disobeying the lawful orders of an ecclesiastical court or in refusing to follow a legitimate superior's admonitions or precepts.) offenders of various ecclesiastical goods, such as the sacraments or church offices, until they cease being contumacious and are restored to full ecclesial communion. Such censures include excommunication, interdict, and suspension

(Canon 1331: Effects of Excommunication: Commentary)

Excommunication is a censure excluding one from communion of the faithful and barring one from various aspects of the Church's public life.

A key feature of the canon is its distinction between the incurring of a *latae sententiae* penalty and a *ferendae sententiae* penalty. In the first case, the perpetrator incurs a penalty automatically by his action. In the latter case the sentence does not bind the guilty party until after it has been imposed by the proper authority in the external forum.

(Canon 1332: Effects of Interdiction) The interdiction is similar to the excommunication where the person is not allowed to participate in the liturgical life of the Church. It is different in that the person is still recognized in communion with the Church.

(Canon 1333: Effects of Suspension) As excommunication and interdict may be applied to all believers, suspension only applies to clerics and restricts their liturgical and governmental functioning. A special note in this canon is formulated upon the fact that the suspended cleric still has a right to his residence connected with his office (e.g. the suspended pastor living in the rectory).

2. Penal Remedies and Penalties (Canons 1339-40)

(Canon 1339, 2: Penal Remedies) An ordinary can likewise rebuke a person from whose behavior there arises scandal or serious disturbance of order in a manner accommodated to the special conditions of the person and the deed.

(Canon 1339, 2 Commentary) A rebuke may be called for if an individual's behavior causes scandal or gravely disturbs the ecclesial order even though there is technically no offense.... This is a rather delicate issue. Hence, every effort should be made to ensure that a careful investigation is made of an alleged breach of ecclesial order and that the rights of the alleged offender are duly protected, especially the right to a good name in the community. This is true even given the right of the community to protect itself against serious violations of its integrity.

(Canon 1340: Penances) A penance which can be imposed in the external forum is some work of religious piety or charity to be performed.

(Canon 1340 Commentary) Such external forum penances are presumably imposed to preclude a penalty's being inflicted or to complete the steps necessary for its remission.

(Commentary 1347: Conditions for a Censure) A censure cannot be imposed validly unless the accused has been warned at least once in advance that he or she should withdraw from contumacy and be given a suitable time for repentance.

The guilty party is to be said to have withdrawn from contumacy when he or she has truly repented the offense and furthermore has made suitable reparation for damages and scandal or at least has seriously promised to do so.

3. Distinction between Administrative Process and Tribunal Process

This distinction marks a very critical problem for the current Ordinaries in their leadership role as diocesan administrators. The crux of the problem is this: There is no point of final demarcation where the diocese is not responsible for the priest who is, or was, active in a habit of pedophilia. The man can be long gone from both diocese and priesthood but the diocese is still accountable for his actions after his departure from active duty. The initiative by the National Council of Bishops was directed toward the pastoral protection of the faithful as well as insulating the financial stability of the local dioceses.

In the past, the "tribunal process" of laicization (Canon 1395) was reserved to the Holy See and was not a guaranteed approval as the Vatican was trying to stem the massive tide of laicizations that occurred in the '60s and '70s.

In the late '80s, with the New Code of Canon Law in place, the Ordinaries realized the need for a pastoral and legal solution to the diocesan priests who were guilty of pedophilia. Most especially, those obstinate clerics who were reticent to the idea of petitioning Rome for laicization. A blatant discrepancy was most apparent in dealing with clerics from religious orders, or institutes, and their diocesan counterparts. The diocesan bishop, in accord with Canon 699, 2 had the jurisdiction to issue a decree of dismissal of a religious from his institute but could not dismiss one of his own diocesan clerics guilty of the same offense. Hence the initiative seeking an indult for an "administrative process."

At the present time (March 1999) no indult or rescript from Rome has been granted to the American Bishops in dealing with the liability threats due to the obstinate cleric. Note well, this is a serious problem. Many of the current medical facilities for priests suffering from Pedophilia are being utilized as holding tanks, keeping this notorious problem off the streets and out of trouble. This is being done at quite a monetary expense to the diocese and, in some cases, religious orders. An expense that is far eclipsed by the sum of over four hundred million dollars paid out in litigation procedures during the last twenty years.

Should the indult or rescript from Rome, allowing the administration process, be approved then we may find many dioceses dismissing the problem clerics, obstinate or otherwise, from all diocesan assistance. Thus we may see the viability of present medical facilities dealing with pedophile clerics compromised by a reduced patient population.

Addendum

This task force of the Catholic Medical Association has produced two previous publications:

1. Homosexuality and Hope, *Linacre Quarterly* 68:131, 2001.
2. Position Statement Concerning Psychiatric Care of the Clergy, *Linacre Quarterly* 67:56, 2000.