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Changing Canon Law to include Sexual Abuse of a Minor as an Irregularity

Brendan Daly*

Introduction

The Catholic Church has been under unprecedented attack. Sexual abuse of minors by priests and religious is a major problem all over the world. In 2018, the *Pennsylvania Grand Jury Report into child sexual abuse in six Pennsylvania Roman Catholic dioceses* detailed sexual abuse by over 300 priests over 70 years that was often covered up.¹ In 2017, the *Australian Royal Commission into Institutional Responses to Child Sexual Abuse* demonstrated that within the Catholic Church perpetrators of sexual abuse were 37 per cent non-ordained religious (32 per cent were religious brothers and 5 per cent were religious sisters); 30 per cent were priests; 29 per cent were lay people. In Australia seven per cent of all Catholic priests who ministered between 1950 and 2010 were alleged perpetrators.² The John Jay Study revealed four percent of American priests serving over last 50 years have been accused of sexual abuse.³

An issue to be addressed is whether establishing child sexual abuse as an irregularity for the reception of orders or the exercise of orders already received would be a significant step forward for the Church - as Pope Francis wrote in his *Letter to the People of God* of 20 August 2018 - "to come up with the necessary means to ensure the safety and protection of the integrity of children and of vulnerable adults, as well as implementing zero tolerance".⁴

Fewer applicants are entering seminaries in many countries, resulting in lower standards for acceptance in some dioceses and some unsuitable people being ordained. Some seminarians have 'shopped around' dioceses to find a bishop who will ordain them, after they have been rejected for ordination by other bishops or have been asked

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¹ https://lancasteronline.com/news/local/excerpts-from-the-grand-jury-report-on-child-sex-abuse/article_372db51a-a253-11e8-87fb-1fefdd01c495.html.

² The weighted proportion of alleged perpetrators in specific Catholic Church authorities included: the St John of God Brothers (40.4 per cent); the Christian Brothers (22.0 per cent); the Benedictine Community of New Norcia (21.5 per cent); the Salesians of Don Bosco (20.9 per cent); the Marist Brothers (20.4 per cent); the Diocese of Sale in Victoria (15.1 per cent); the De La Salle Brothers (13.8 per cent) and the Archdiocese of Adelaide in South Australia (2.4 per cent). <https://www.childabuseroyalcommission.gov.au/religious-institutions>.

³ <http://www.americancatholic.org/news/clergysexabuse/johnjaycns.asp>.

⁴ http://w2.vatican.va/content/francesco/en/letters/2018/documents/papa-francesco_20180820_lettera-popolo-didio.html.

to leave seminaries. The Holy See has attempted to curb this phenomenon by asserting the canon law on this matter to prevent unsuitable people being ordained priests.⁵

One of the major issues is bishops accepting seminarians without suitable checks on their suitability. How do we ensure proper checks are carried out?

And the second is bishops accepting priests to minister in the diocese without sufficient check on their suitability and formation. How do we ensure that happens?

Pope John Paul II told the American Cardinals on 23 April 2002 that:

It must be absolutely clear to the Catholic faithful, and to the wider community, that Bishops and superiors are concerned, above all else, with the spiritual good of souls. People need to know that there is no place in the priesthood and religious life for those who would harm the young.⁶

On 17 March 2010 Pope Benedict XVI in his Pastoral Letter to the Catholics of Ireland said to his brother Bishops:

It cannot be denied that some of you and your predecessors failed, at times grievously, to apply the long-established norms of canon law to the crime of child abuse. Serious mistakes were made in responding to allegations. I recognize how difficult it was to grasp the extent and complexity of the problem, to obtain reliable information and to make the right decisions in the light of conflicting expert advice. Nevertheless, it must be admitted that grave errors of judgement were made and failures of leadership occurred. All this has seriously undermined your credibility and effectiveness. I appreciate the efforts you have made to remedy past mistakes and to guarantee that they do not happen again.⁷

Qualities in a person to be ordained

Those to be ordained are supposed to have integral faith, the right intention, requisite knowledge, a good reputation, integral morals and proven virtues, as well as the other physical and psychological qualities to be ordained. As the 1983 Code states in canon 1029:

Only those are to be promoted to orders who, in the prudent judgment of their own bishop or of the competent major superior, all things considered, have integral faith, are moved by the right intention, have the requisite knowledge,

⁵ Congregation for Divine Worship and the Discipline of the Sacraments, "Scrutinies regarding the Suitability of Candidates for Orders," in *Canon Law Society of Australia and New Zealand, Newsletter*, no. 2, 2006, 7- 13.

⁶ Pope John Paul II, Address to the Cardinals of the United States, April 23, 2002, *Origins*, 31(2001- 2002), 759.

⁷ http://www.vatican.va/holy_father/benedict_xvi/letters/2010/documents/hf_ben-xvi_let_20100319_church-ireland_en.html.

possess a good reputation, and are endowed with integral morals and proven virtues and the other physical and psychic qualities in keeping with the order to be received.

The canon leaves the prudent judgment about a person's suitability for ordination to the discretion of the bishop or competent major superior. There is no mention of consultation with others as specified by the irregularity of insanity or *amentia* in canon 1041 1° that requires consultation with experts. But the Congregation for Catholic Education has reminded all bishops and major superiors that:

the Bishop or major superior, before admitting the candidate to ordination, must arrive at a morally certain judgment on his qualities. In the case of a serious doubt in this regard, he must not admit him to ordination.⁸

Similarly, Religious superiors, for seminarians and novitiates, are only to admit those who, besides the required age, have the health, suitable character, and sufficient qualities of maturity to embrace the proper life of the institute. This health, character, and maturity are to be verified by using experts if necessary, without prejudice to the prescript of canon 220 and a person's right to privacy and informed consent about the release of information.⁹

The Congregation for Divine Worship and the Discipline of the Sacraments has also stated that a doubtful candidate should not be ordained "for the good of the Church," and quoted 1 Tim 5:22 "Do not be hasty in the laying-on of hands".¹⁰ The Congregation restated the law and its policy:

Where a candidate comes from another diocese or from a Congregation or Institute of Consecrated Life or has received one of the stages of his formation in more than one house, the causes and motives for such an unusual occurrence should be studied. Of particular importance are those cases in which a candidate has been expelled from a formation house or has been invited to withdraw...It is not possible to admit a candidate to the Diaconate in the face of doubts concerning his suitability for the Priesthood.¹¹

In relation to canon 1029, the Congregation for the Doctrine of the Faith has specified some qualities which make a candidate unsuitable for ordination. It was stated in 1995

⁸ Congregation for Catholic Education, Instruction, "Concerning the Criteria for Discernment of Vocations with Persons of Homosexual Tendencies in view of their admission to the Seminary and Holy Orders," n.3, approved by Pope Benedict XVI on 31 August 2005 and published on 4 November 2005;

http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_c_20051104_istruzione_en.html.

⁹ Canon 642.

¹⁰ CWSDS, "Scrutinies regarding the Suitability of Candidates for Orders," n. 9.

¹¹ CDWDS, "Scrutinies regarding the Suitability of Candidates for Orders," n. 8.

that a person should not be ordained who suffers from a psychological infirmity such as alcoholism or a physical problem such as celiac disease:

Given the centrality of the celebration of the Eucharist in the life of the priest, candidates for the priesthood who are affected by celiac disease or suffer from alcoholism or similar conditions may not be admitted to holy orders.¹²

Then in 2005 the Congregation for Catholic Education stated:

the Church, while profoundly respecting the persons in question, cannot admit to the seminary or to holy orders those who practise homosexuality, present deep-seated homosexual tendencies or support the so-called gay culture.¹³

It is evident that “there does not exist a right to receive sacred ordination”.¹⁴ Since there is a bias in the law for protecting the Church from unsuitable clergy, canon 1052 §1 reminds bishops that “positive arguments must prove the suitability of the candidate”. This is much more demanding than saying that there is a lack of proof of the unsuitability of the person to be ordained. Canon 1052 §3 therefore, concludes: “If, all these notwithstanding, the bishop doubts for specific reasons whether a candidate is suitable to receive orders, he is not to promote him”. With other sacraments where a person’s disposition is doubtful, they enjoy the benefit of the doubt and may receive the Eucharist, Penance and Baptism.¹⁵

History of Irregularities

The Church has a long history of having irregularities to ordination to prevent unsuitable people being ordained. Saint Paul forbade the ordination of anyone who had been married twice. He told Timothy that “deacons be the husband of one wife”¹⁶, while “a bishop must be ... the husband of one wife”¹⁷ and instituted the equivalent of an impediment because a bishop must “not be a recent convert (Neophyte)”.¹⁸

¹² Congregation for the Doctrine of the Faith, Circular Letter to Presidents of Episcopal Conferences, June 19, 1995, III d), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19_950619_pane-senza-glutine_en.html.

¹³ Congregation for Catholic Education, Instruction, n. 2.

¹⁴ Congregation for Catholic Education, Instruction, n. 3.

¹⁵ Canons 213, 843.

¹⁶ 1 Tim 3:12.

¹⁷ 1 Tim 3:2.

¹⁸ 1 Tim 3:6.

The word ‘irregularity’ was first used by Saint Augustine [354-430].¹⁹ Pope Innocent III [1198-1216] outlined circumstances that barred a person from being ordained and irregularities that prevented a priest from functioning.²⁰

The moral theologian and canonist Felix Cappello SJ defines an irregularity as

a perpetual impediment, established by ecclesiastical law out of reverence of the divine ministry, prohibiting primarily the reception of order, and secondarily the exercise of orders received.²¹

All irregularities are ecclesiastical laws. They might as with abortion relate to divine law and the fifth commandment, but they are still ecclesiastical laws.²² Sexual abuse of minors contravenes natural law and the sixth commandment, so if it was established as an irregularity it would be comparable to abortion.

The 1917 Code used ‘irregularity’ to mean a perpetual obstacle to someone being ordained or exercising the power of orders. Irregularities may be the result of a defect that disqualifies the person from ordination or a crime. The irregularity was not understood as a penalty or a punishment, but existed to uphold the dignity and reverence for ordained clerics. It helped ensure that ordained ministers had the necessary qualities to be ordained.

An irregularity must be interpreted in the light of canons 14 and 18. Laws restricting people’s rights are subject to a strict interpretation.²³ When there is doubt whether a fact is present, canon 14 states that the Ordinary can dispense from it provided that it is something the dispensing authority usually grants it.²⁴ The Holy See regularly refuses to grant dispensations from irregularities.

¹⁹ Ronny Jenkins, “Clerical Sexual Abuse as an Irregularity” *Periodica*, 94(2005), 281.

²⁰ W. H. Woestman, *The Sacrament of Orders and the Clerical State*, (Ottawa: Saint Paul University, 1999), 62.

²¹ F.M. Cappello S.J., *Tractatus Canonico-Moralis de Sacramentis*, vol. 2, Rome: 1935, 416: Irregularitas est impedimentum perpetuum, iure ecclesiastico propter reverentiam divini ministerii constitutum, prohibens primario suceptionem ordinis et secundario exercitium ordinum susceptorum. Translation, Ronny Jenkins, “Clerical Sexual Abuse as an Irregularity, *Periodica*, 94(2005), 286.

²² J.M. Gonzalez Del Valle, in A. Marzoa, J. Miras and R. Rodrigues-Ocana, *Exegetical Commentary on the Code of Canon Law*, vol. IV/1, (Montreal, Wilson & Lafleur: 2004), (Pamplona, 1996), 987.

²³ Canon 18. “Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation.” *The Code of Canon Law*, English translation in *The Canon Law Letter and Spirit*, prepared by The Canon Law Society of Great Britain and Ireland, Australia, E. J. Dwyer, 1995; all 1983 Code translations from this source.

²⁴ Canon 14. “Laws, even invalidating and disqualifying ones, do not oblige when there is a doubt about the law. When there is a doubt about a fact, however, ordinaries can dispense from laws provided that, if it concerns a reserved dispensation, the authority to whom it is reserved usually grants it.”

Impediments are qualities that prevent ordination temporarily for they are based on factual circumstances that are of a temporary nature. Irregularities on the other hand are permanent impediments whose sources are crimes or other non-criminal actions or conditions that can be physical or psychological. Even if the one to be ordained is unaware that he has an irregularity, he is still bound by the irregularity when he learns he has become subject to it. An example is a non-Catholic man being involved in an abortion.

Canon 1041 4° states that “one who has committed wilful homicide, or one who has actually procured an abortion, and all who have positively cooperated” is irregular for receiving orders. Amy Strickland points out even if a candidate for ordination was not a Catholic

when the abortion took place does not exempt him from the irregularity, since abortion is a grave offence against divine law. Therefore, it has juridical effects for a non-Catholic who later become Catholic, in much the same way that a valid natural marriage constitutes an impediment to a future union.²⁵

The involvement of the person to be ordained in the abortion must have been a deliberate, sinful action to become subject to the irregularity. The irregularity could have arisen from being an accomplice in an abortion as a doctor or nurse or boyfriend of the woman. Canon 1329 §2 points out that:

Accomplices who are not named in a law or precept incur a *latae sententiae* penalty attached to a delict if without their assistance the delict would not have been committed, and the penalty is of such a nature that it can affect them; otherwise, they can be punished by *ferendae sententiae* penalties.

To become subject to the irregularity the person to be ordained must have supported or encouraged the abortion. Therefore, if a priest had an affair with a woman who became pregnant and he encouraged her to have the abortion, he would become subject to the irregularity for the exercise of orders.²⁶

²⁵ Amy Strickland, “Canons 1041, no. 4; 1047 §2 2°; 1049, 1329§2; and 1398: Candidate for Permanent Diaconate and Abortion,” in *Roman Replies and CLSA Advisory Opinions 2012*, (Washington DC. Canon Law Society of America. 2012), 93.

²⁶ Canon 1044 §1 “The following are irregular for the exercise of orders received: ...No. 3° a person who has committed a delict mentioned in canon 1041, nos. 3°, 4°, 5°, 6°.”

Irregularities in the 1983 Code

The 1983 Code contains a list of irregularities in Canon 1041.

The following persons are irregular for the reception of orders:

- 1° one who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged incapable of properly fulfilling the ministry;
- 2° one who has committed the offence of apostasy, heresy or schism;
- 3° one who has attempted marriage, even a civil marriage, either while himself prevented from entering marriage whether by an existing marriage bond or by a sacred order or by a public and perpetual vow of chastity, or with a woman who is validly married or is obliged by the same vow;
- 4° one who has committed wilful homicide, or one who has actually procured an abortion, and all who have positively cooperated;
- 5° one who has gravely and maliciously mutilated himself or another, or who has attempted suicide;
- 6° one who has carried out an act of order which is reserved to those in the order of the episcopate or priesthood, while himself either not possessing that order or being barred from its exercise by some canonical penalty, declared or imposed.

An irregularity can occur without any fault of the person to be ordained for example insanity or *amentia*. The other irregularities, however, are the result of a crime or a wrongful action and are governed by penal law. For a person to incur an irregularity, they must be responsible for their action.²⁷

Canon 1321 states:

- §1 No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability.
- §2 A person who deliberately violated a law or precept is bound by the penalty prescribed in the law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.
- §3 When there has been an external violation, imputability is presumed, unless it appears otherwise.

²⁷ Canon 18.

A crime is “an external and morally imputable violation of a law to which a canonical sanction is attached”.²⁸ In other words, to receive a penalty a person must have gravely sinned. Not all grave sins are crimes, but grave sins that seriously affect the individual or the Church community are sometimes determined by the Church to be crimes. Crimes are opposed to everything the Church stands for. The Ten Commandments guide the faithful about the content of grave matter.

When a person does something gravely wrong it is a mortal sin. Some of the worst sins are also determined to be canonical crimes. However, factors such as ignorance of a sin being a crime results in the offender not receiving the penalty for the crime.²⁹ When a grave sinner receives forgiveness for the crime he is also usually released from the penalty that is a consequence of the crime.

Crimes can also be classified as irregularities. However, irregularities are very different to crimes. An irregularity can be incurred by a person who is not a Catholic. An offender becomes subject to the irregularity even if at the time of the commission of the offence he was ignorant of the existence of the irregularity. Even though the sin has been forgiven and the penalty has been removed in the Sacrament of Penance, the irregularity remains to prevent ordination or the exercise of ministry such as celebrating the sacraments.

Irregular for the Exercise of Ministry

Besides preventing a person from being ordained, an irregularity also prevents an ordained person from exercising ministry. Canon 1044 outlines the effects of an irregularity that a priest becomes subject to after ordination. Some of the irregularities such as abortion prevent the priest from celebrating sacraments or any ministry.

Canon 1044 states:

§1 The following are irregular for the exercise of orders already received:

- 1° one who, while bound by an irregularity for the reception of orders, unlawfully received orders;
- 2° one who committed the offence mentioned in Canon 1041 2°, if the offence is public;
- 3° one who committed any of the offences mentioned in Canon 1041 3°, 4°, 5°, 6°.

²⁸ Canon 2195 §1, Edward Peters trans. *The 1917 Pio-Benedictine Code of Canon Law*, (San Francisco: Ignatius Press, 2001).

²⁹ Canon 1323.

§2 The following are impeded from the exercise of orders:

- 1° one who, while bound by an impediment to the reception of orders, unlawfully received orders;
- 2° one who suffers from insanity or from some other psychological infirmity mentioned in Canon 1041 1°, until such time as the Ordinary, having consulted an expert, has allowed the exercise of the order in question.

A cleric who is ordained with an irregularity, as well as a cleric who becomes subject to an irregularity, is irregular for the exercise of orders. This means that if sexual abuse of a minor is an irregularity the priest who abused a minor could not exercise ministry.

Effects of an Irregularity

When a man is ordained with an irregularity, the ordination is valid but illegitimate. When such a cleric attempts to exercise the order received, his celebrations of the sacraments are valid but illegitimate. This means that the effect of the irregularity is like that of a priest being suspended as far as the celebration of the Eucharist and the other sacraments is concerned.

Advantages of Irregularities

Some bishops have played down the seriousness of sexual abuse cases. If sexual abuse of minors was classified as an irregularity, it would be more difficult to overlook it. For example, there are priests that have had affairs and the woman has had an abortion. If the priest opposed her having the abortion he does not incur the irregularity in canon 1041 4°. However, if he encouraged or pressured the woman to have the abortion, he became subject to the irregularity. Therefore, even if the bishop is prepared to let him continue in ministry, the fact of the irregularity remains, and a dispensation is required from the Holy See.

The same would apply to an abusive cleric if abuse of minors was an irregularity. It would not matter if the cause of the sexual abuse was a severe psychological problem. The fact that sexual abuse occurred would mean that the man could not be ordained and could not function as a priest.

Law has an educational role. It also sets minimum standards for a whole variety of matters. These include capacity to act. It is important that the Church delivers the message that it is doing everything it can to prevent and stop sexual abuse of minors. Irregularities are not silver bullets solving all the problems and issues in relation to unsuitable people being ordained or exercising ministry. Irregularities represent minimum standards concerning the qualities of those to be ordained or exercising ministry. Since an irregularity prevents someone being ordained and prevents someone already ordained from functioning as a priest, making sexual abuse of a minor an

irregularity would be a significant step forward. It would state very clearly that anyone who sexually abuses someone under age 18 years is not fit to be a priest.

Even if the person to be ordained was unaware at the time of the offence that he has incurred an irregularity, the person to be ordained would still be bound by the irregularity when he learns he has incurred it. Irregularities and impediments are in that sense very different to crimes. Ignorance of a crime results in one not receiving the penalty.³⁰ Irregularities and impediments forbid the exercise of orders in celebrating sacraments, but they do not stop a cleric engaging in other pastoral work such as visiting the sick.³¹

Dispensation from Irregularity

The Holy See does grant a dispensation from the irregularity for the reception of orders if the circumstances of the case warrant it.

Canon 1047 outlines who can dispense from impediments and irregularities:

- §1 If the fact on which they are based has been brought to the judicial forum, dispensation from all irregularities is reserved to the Apostolic See alone.
- §2 Dispensation from the following irregularities and impediments to the reception of orders is also reserved to the Apostolic See:
 - 1° irregularities arising from the offences mentioned in Canon 1041 2° and 3°, if they are public;
 - 2° an irregularity arising from the offence, whether public or occult, mentioned in canon 1041 4°;
 - 3° the impediment mentioned in canon 1042 1°.
- §3 To the Apostolic See is also reserved the dispensation from the irregularities for the exercise of an order received mentioned in canon 1041 3° but only in public cases, and in 4° of the same canon even in occult cases.
- §4 The Ordinary can dispense from irregularities and impediments not reserved to the Holy See.

Whenever the fact of the irregularity has been established in the judicial forum, canonical or secular,³² either in a marriage nullity or criminal case, then the dispensation is reserved to the Holy See.

³⁰ Canon 1323

³¹ William Woestman, OMI, *The Sacrament of Orders and the Clerical State*, (Ottawa: Saint Paul University, 1999), 62.

³² Woestman, 81.

Once a dispensation is granted for an ordination to diaconate, then there is no need for another dispensation for ordination to priesthood.³³ The Apostolic Penitentiary is competent for all occult cases of abortion for example, if a priest was involved in supporting an abortion, and it is not known by the bishop or many people.

An actual example is a case where a non-Catholic man assisted in the procurement of an abortion of his child. Then 14 years later he became a Catholic and entered a seminary. The diocesan bishop requested a dispensation from the irregularity. The Apostolic Penitentiary granted the faculty "to dispense the Petitioner from the irregularity incurred. This is to be done in the internal forum, sacramental or non-sacramental, whichever you deem more appropriate".³⁴

If the woman complained about what happened or the matter came to the attention of the bishop, then the case would come to the Congregation for Divine Worship and the Discipline of the Sacraments:

Specifically and in accordance with the "Pastor Bonus" art. 62; 63; 68:

Handles the dispensations from irregularities and impediments for the lawfulness and validity of admission to the Orders (cf. Article 63).

It grants indulgences for the lawfulness of the exercise of the Order in some ministries (PB, Article 63).³⁵

The Congregation for Divine Worship and the Discipline of the Sacraments is competent for all other non-occult cases.

Canon 1048 does allow for a cleric to exercise orders when it is an urgent occult case and the Ordinary is inaccessible; or if it is a case of attempted marriage, voluntary homicide or abortion and access to the Sacred Penitentiary cannot be had. Canon 1048 provides:

In the more urgent occult cases, if the Ordinary or, in the case of the irregularities mentioned in Canon 1041 3° and 4°, the Penitentiary cannot be approached, and if there is imminent danger of serious harm or loss of reputation, the person who is irregular for the exercise of an order may exercise it. There remains, however,

³³ Canon 1049 §3. A general dispensation from irregularities and impediments to receive orders is valid for all the orders.

³⁴ Apostolic Penitentiary, Canon 1041, 4° Dispensation from Irregularity for Reception of Orders for Assistance in Procurement of an Abortion," in *Roman Replies and CLSA Advisory Opinions 2012*, (Washington DC. Canon Law Society of America. 2012), 35-36. The dispensation notes that "the policy of the Penitentiary is not to grant the dispensation until the person has been approved for Orders, namely 6 months before ordination".

³⁵ http://www.vatican.va/roman_curia/congregations/ccdds/documents/rc_con_ccdds_pro_2000_0628_profilo_it.html.

the obligation of his having recourse as soon as possible to the Ordinary or the Penitentiary, without revealing his name, and through a confessor.

However, the impeded or irregular cleric is obliged to make recourse to the Ordinary or Sacred Penitentiary anonymously through a confessor as soon as possible.³⁶

There is a requirement that when a dispensation from irregularities is sought, the number of irregularities as well as the number of delicts for abortion or attempted suicide must be stated for the validity of the dispensation. Any omitted in good faith are covered by the dispensation, but those omitted in bad faith are not covered.³⁷

Paedophilia as a form of insanity or psychological infirmity

During the 1990's there was discussion amongst North American canon lawyers about the possibility of declaring a paedophile priest irregular based on canon 1041 1°. This discussion is reflected in articles in *Monitor Ecclesiasticus* by William Woestman and John Beal.³⁸

The following persons are irregular for the reception of orders in accordance with canon 1041 1°:

one who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged incapable of properly fulfilling the ministry.

³⁶ Canon 1048 In more urgent occult cases, if the ordinary or, when it concerns the irregularities mentioned in Canon 1041, numbers 3° and 4°, the Penitentiary cannot be approached and if there is imminent danger of grave harm or infamy, a person impeded by an irregularity from exercising an order can exercise it, but without prejudice to the obligation which remains of making recourse as soon as possible to the ordinary or the Penitentiary, omitting the name and through a confessor. The confessor could write to the Cardinal in Charge of the Sacred Penitentiary and explain the circumstances of Father "X". The Cardinal would then reply addressing the case.

³⁷ Canon 1049 §1. Petitions to obtain a dispensation from irregularities or impediments must indicate all the irregularities and impediments. Nevertheless, a general dispensation is valid even for those omitted in good faith, except for the irregularities mentioned in Canon 1041, n. 4, and for others brought to the judicial forum, but not for those omitted in bad faith.
§2. If it is a question of the irregularity from voluntary homicide or a procured abortion, the number of the delicts also must be mentioned for the validity of the dispensation.
§3. A general dispensation from irregularities and impediments to receive orders is valid for all the orders.

³⁸ W. Woestman, "Too Good to be True: A Current Interpretation of canons 1041, 1° and 1044 §2, 2°," *Monitor Ecclesiasticus*, 120(1995), 619-629. John Beal, "A Response to Professor Woestman on the Interpretation of canons 1041, 1° and 1044 §2, 2°," *Monitor Ecclesiasticus*, 121(1996), 431-463.

William Woestman argued that a priest who was irregular because of canon 1041 1° could not celebrate the Eucharist or any of the other sacraments because of his sexual inclination to sexually abuse children. Ronny Jenkins believes that Woestman is interpreting "moral fitness" to exercise ministry as "could not" or "incapable" of ministry.³⁹

John Beal believes that the Church's understanding of ministry has been broadened from Vatican II, so more emphasis is placed on non-sacramental activities such as preaching and leading the Christian community.

Regardless of this argument, there is a fundamental problem proving insanity or psychological infirmity to establish the irregularity. Experts, such as psychiatrists or psychologists, must be involved. In most countries there must be personal interviews by the psychologist or psychiatrist with the person concerned before any diagnosis is asserted, and offending priests are not likely to agree to this.

Consequently, adequate proof cannot be obtained and there would be insufficient proof to have moral certainty of the psychological or psychiatric condition without the involvement of experts.

Sexual Abuse made an Irregularity

Discussion has taken place about whether paedophilia can be used as an irregularity under current legislation.⁴⁰ More recently Ronny Jenkins has considered the advisability of having an additional irregularity of paedophilia.⁴¹ He makes a strong case for changing the Code of Canon Law and adding another number 7° to canon 1041:

a person who has sexually abused a person under age 18 years in any way, including acquisition, possession or distribution of pornographic images of minors under the age of 18 for purposes of sexual gratification, by whatever means or using whatever technology.

Then "7°" could be added to canon 1044 §1 3°: "one who committed any of the offences mentioned in Canon 1041 3°, 4°, 5°, 6°, 7°".

The Congregation for the Doctrine of the Faith released "Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses"⁴² on 15 July 2010. The

³⁹ Ronny Jenkins, "On the Suitability of Establishing Clerical Sexual Abuse of Minors (canon 1395 §2) as irregularity ex delicto to the Reception and Exercise of Orders" *Periodica*, 94(2005), 316.

⁴⁰ Cf. fn. 37.

⁴¹ Jenkins, 275-340.

⁴² Congregation for the Doctrine of the Faith, "Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses," *Origins*, 40(2010-2011), 146-151

new norms were approved *in forma specifica* by Pope Benedict XVI on 21 May 2010. The 2001 norms had added sexual abuse of a minor by a priest to the list of grave crimes.

The Revised Norms broaden the actions encompassed as grave crimes to include abuse of mentally retarded adults and child pornography in article 6:

- §1 The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:
- 1° The delict against the Sixth Commandment of the Decalogue committed by a cleric with a minor below the age of 18 years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.
 - 2° The acquisition, possession or distribution by a cleric of pornographic images of minors under the age of 14 for purposes of sexual gratification, by whatever means or using whatever technology.⁴³

The Norms were published to address the sexual abuse crisis in the United States and other countries. About a year after the original version of the norms was published, Pope John Paul II told the American Cardinals on 23 April 2002:

It must be absolutely clear to the Catholic faithful, and to the wider community, that Bishops and superiors are concerned, above all else, with the spiritual good of souls. People need to know that there is no place in the priesthood and religious life for those who would harm the young.⁴⁴

That being the case, there is good reason to make an amendment to the Code of Canon Law so that paedophilia as it is broadly interpreted is added to the list of irregularities. It is important that the Church delivers the message that it is doing everything possible to prevent and stop sexual abuse of minors by clergy and religious.

Conclusion

As we have seen, irregularities are not silver bullets solving all the problems and issues in relation to unsuitable people being ordained or exercising sacramental ministry. Occasionally, there are complications with interpretations of what 'public' and 'proven' means. Some irregularities require the use of experts, and their expertise and interpretations of symptoms can vary. However, given the long history of irregularities

⁴³ Congregation for the Doctrine of the Faith, "Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses," *Origins*, 40(2010-2011), 148.

⁴⁴ Pope John Paul II, Address to the Cardinals of the United States, April 23, 2002, *Origins*, 31(2001-2002), 759.

in relation to Holy Orders, they represent necessary and significant minimum standards concerning the qualities of those to be ordained or exercising ministry.

Making the sexual abuse of a person under age 18 years an irregularity would not require the use of an expert such as a psychologist or a psychiatrist. It would be like the application of the law concerning abortion as an irregularity.

The Church has a long history going back to New Testament times of legislating for irregularities. Making the sexual abuse of a person under age 18 years an irregularity would be a most effective way to deal with offenders. It would stop offenders continuing to function as priests. It would stop the rare cases of a paedophile priest granting absolution to another paedophile priest.

The Church cannot unordain someone in the way a person can be struck off the register of accredited professionals - doctors, psychologists, psychiatrists. Proving the nullity of an ordination can be very difficult especially if the offending priest does not cooperate with Church authorities.

The irregularity occurs automatically upon the commission of one act of a sexual abuse of a minor under age 18 years. This also includes acquisition, possession or distribution of pornographic images of minors under the age of 18 for purposes of sexual gratification. The diocesan Bishop or major Superior does not have to do anything. The priest is unable to function. Even if the diocesan Bishop or the major Superior wanted to allow the priest to function, the irregularity can only be removed by an authority such as the Congregation for Divine Worship and the Discipline of the Sacraments.

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