

Synodality and its consequences for canon law

Brendan Daly

Synodality means the active participation of all members of all the church in its processes of discernment, consultation and cooperation at all levels of decision-making and mission. The Second Vatican Council introduced synods of bishops to the life of the church, and they have been very effective for the universal church. Since Vatican II, synods of bishops have usually met every two years. But Pope Francis understands that synodality is much more than this and believes that the church must find new ways to live and work in the world using the prayer, advice and experience of all members, including the laity at the parish, diocesan, national and international levels.

In November 2013, Pope Francis expressed his dream of what a renewed church could be like:

I dream of a 'missionary option', that is, a missionary impulse capable of transforming everything, so that the Church's customs, ways of doing things, times and schedules, language and structures can be suitably channeled for the evangelization of today's world rather than for her self-preservation. The renewal of structures demanded by pastoral conversion can only be understood in this light: as part of an effort to make them more mission-oriented, to make ordinary pastoral activity on every level more inclusive and open, to inspire in pastoral workers a constant desire to go forth and in this way to elicit a positive response from all those whom Jesus summons to friendship with himself. As John Paul II once said to the Bishops of Oceania: 'All renewal in the Church must have mission as its goal if it is not to fall prey to a kind of ecclesial introversion' (Post-Synodal Apostolic Exhortation Ecclesia in Oceania, 22 November 2001).¹

Pope Francis believes that this renewal of the church cannot be deferred.² He has stated 'the path of synodality is the path that God expects from the Church of the third millennium.'³

International Theological Commission

This year, the International Theological Commission, appointed by the pope, published *Synodality in the Life and Mission of the Church* with the approval of the Congregation for the Doctrine of the Faith and the authorisation of Pope Francis.

Pope Francis considers synodality as a 'constitutive dimension of the Church'.⁴ The International Theological Commission stated that 'the ecclesiology of the People of God emphasizes in fact the common dignity and mission of all the baptised, in the exercise of the multiform and ordered wealth of their charisms, their vocations, their ministries ... concretely manifest and realise [the church] being a communion in walking together, in gathering together and actively participating in all its members in its mission evangelising.'⁵

Synodality applies at all levels of the church. Synodality applies at the universal level in the relationship of the pope to the bishops and the local churches. Synodality already exists in bishops' conferences, diocesan pastoral councils, priests' councils, colleges of consultors and parish councils. The participation of the laity is required in other structures and organisms, such as in the selection and training of seminarians and novices. More importantly than the structures, there needs to be a conversion of minds and hearts, because without this structures will be 'simple masks without heart or a face.'⁶ Many of the problems of sexual abuse have occurred because of a lack of synodality.

1. Pope Francis, apostolic exhortation *Evangelii Gaudium*, 24 November 2013, par 27 http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html

2. *ibid*, par 25.

3. Pope Francis. (2015, 17 October). Speech on the occasion of the Commemoration of the 50th anniversary of the Institution of the Synod of Bishops, *Acta Apostolicae Sedis (AAS)* 107, 1139.

4. International Theological Commission, *Synodality in the Life and Mission of the Church*, 2 March 2018, n 1, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_sinodalita_.html

5. *ibid*, n 6.

6. *ibid*, n 107.

Canon law

Although canon law requires some urgent changes, if canon law as it existed at the time had been implemented, the sexual abuse crisis would not be so bad. In country after country, bishops have not followed canon law.⁷

In 1911, the Congregation for the Council was concerned about bishops making financial decisions without consultation and advice. The Congregation wrote to the United States bishops:

Among the methods which are now in use in the United States for holding and administering church property, the one known as Parish Corporation is preferable to the others, but with the conditions and safeguards which are now in use in the State of New York. The bishops therefore should immediately take steps to introduce this method for the handling of property in their dioceses, if the civil law allows it. If the civil law does not allow it, they should exert their influence with the civil authorities that it may be made legal as soon as possible. Only in those places where the civil law does not recognise Parish Corporations, and until such recognition is obtained, the method commonly called Corporation Sole is allowed,⁸ but with the understanding that in the administration of ecclesiastical property the Bishop is to act with the advice, and in more important matters with the consent, of those who have an interest in the premises and of the diocesan consultors, this being a conscientious obligation for the Bishop in person.⁹

Clearly, the Holy See was opposed to the corporation sole model and arbitrary decisions by bishops.

Accountability and transparency

Pope John Paul II issued *motu proprio* the apostolic letter *Sacramentorum sanctitatis tutela*, on 30 April 2001.¹⁰ This document specified that a sin against the sixth commandment with a minor is a grave canonical crime. Sexual abuse causes grave damage to the normal development of the victim and causes grave damage to the church and its credibility. Furthermore, it betrays the trust that people have in priests. Pope John Paul II was conscious that a priest who sexually abuses a child deserves the strictest punishment.

The Pope also appointed the Congregation for the Doctrine of the Faith to supervise investigations into credible complaints of sexual abuse of children and how they were handled. The Congregation was authorised to order penal trials for accused priests. Effectively, the Apostolic See established a system of accountability. Since 2001, when a diocesan bishop receives a complaint of sexual abuse of a minor he must notify the Congregation for the Doctrine of the Faith that he has received a complaint:

Article 16. Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.¹¹

The Congregation will then instruct the bishop about how the complaint is to be handled and will appoint a tribunal of its own or appoint a local tribunal to carry out a penal trial. This accountability to the Congregation for the Doctrine of the Faith is meant to ensure consistency in handling cases throughout the world and to ensure that appropriate penalties are applied for sexual abuse and other criminal cases.

There have been many bishops who have failed to take action against offending priests and who have not notified the Congregation for the Doctrine of the Faith of any complaints. Consequently, Pope Francis, on 4 June 2016, issued a *motu proprio*, 'As a Loving Mother,' legislating procedures for removal of bishops who fail to act in sexual abuse cases.¹² These provisions need to be implemented across the entire church.

7. I am saying that, since 1980, the bishops have been failing to implement canon law as it existed at the time. This includes some of the provisions of the 1983 Code and the two editions of *motu proprio Sacramentorum sanctitatis tutela* of 2001 and 2010.

8. As in Western Australia: *Roman Catholic Geraldton Property Act 1925*; *Roman Catholic New Norcia Property Act 1929*; *Roman Catholic Bunbury Church Property Act 1955*; *Roman Catholic Bishop of Broome Property Act 1957*; also *Roman Catholic Church (Incorporation of Church Entities) Act 1994* – which also provides for corporation sole (Queensland).

9. The Sacred Congregation for the Council, 29 July 1911, letter in *CLD*, 2, (1956), 444–445.

10. *AAS*, 93, (2001), 737–739.

11. Pope John Paul II, apostolic letter, *Sacramentorum sanctitatis tutela*, 30 April 2001, *AAS*, 93, (2001), 737–739; http://www.vatican.va/resources/resources_norme_en.html

12. Pope Francis. (2016, 4 June). *motu proprio*, 'As a Loving Mother', *Origins*, 46, 9.

Suitability for the granting of faculties

Often the present canon law has not been observed. The *1917 Code of Canon law*, which remained in force until 1983, required diocesan bishops and religious superiors to work together to ensure that only suitable priests were active in ministry. Consequently, a diocesan bishop could grant faculties to a religious priest to officiate at a particular wedding, for example, but if this religious priest wanted general faculties to function, then the Major Superior had to propose him to receive general faculties. Local ordinaries were obliged not to give faculties to religious priests unless they had been presented to receive them by their own religious superior:

Canon 874 §2. Local Ordinaries shall not grant jurisdiction for the hearing of confessions habitually to religious who are not presented by their own Superior; but for those who are presented by their own Superior, it shall not be denied except for grave cause, with due regard for the prescription of canon 877.

The Sacred Congregation for the Clergy, on 25 March 1980, promulgated ‘Directive Norms for Cooperation Among Local Churches and for a Better Distribution of the Clergy’.¹³ This document required a diocese receiving clergy from another diocese or religious institute to have an agreement with the originating diocese and religious institute. If these directive norms were implemented, then bishops and superiors where clergy originated would know where they were and would be able to warn a diocesan bishop about problems. Unfortunately, the directive norms were often ignored.

The 1917 Code required diocesan bishops and religious superiors not to grant faculties to priests unless they were proven to be sufficiently knowledgeable and suitable to minister:

Canon 877 §1. Neither local Ordinaries or religious Superiors are to grant permission or jurisdiction for the hearing of confessions except to those who are shown to be suitable by examination, unless it concerns a priest whose theological learning is demonstrated in another way.

§2. If, after the granting of jurisdiction, they prudently doubt whether the one approved by them continues to be a suitable priest, [the latter] can be put through a new test of doctrine, even if it concerns a pastor or canon penitentiary.¹⁴

Canon 970. The faculty to hear confessions is not to be granted to presbyters unless they are found to be qualified by means of an examination or their qualifications are evident from another source.

Canon 971. The local ordinary is not to grant the faculty to hear confessions habitually to a presbyter, even one who has a domicile or quasi-domicile in his jurisdiction, without first consulting with his ordinary, if possible.¹⁵

According to canons 1050–1052 of the 1983 Code, before ordination, a priest is to have correct doctrine, piety, moral suitability and sufficient physical and mental health.¹⁶ These canons are a guide as to whether a religious priest or priest from another diocese should be granted faculties. The above canons concerning basic checks and references have not always been observed.

13. O’Connor, J., (ed.). (1982). *Canon Law Digest*, 9, Society of Jesus Chicago Province, Mundelein, Illinois, 760–788.

14. *Codex iuris Canonici*, Pii X Pontificis Maximi iussu digestus, Benedict Papae XV auctoritate promulgatus, praefatione Petri Card. Gasparri et indice analytico-alphabetico auctus, Romae, Typis polyglottis Vaticanis, 1917; Peters, E N., (English trans.) *The 1917 Pio-Benedictine Code of Canon Law*, Ignatius Press, San Francisco, 2001. Hereafter, the translation of the canons of the 1917 Code will be from this source.

15. John Paul II, *Codex Iuris Canonici*, AAS 75/2 (1983). English translation of the 1983 Code in *The Code of Canon Law*, Latin-English Edition, Canon Law Society of America, Washington, DC, 1983. Hereafter, the translation of the canons of the 1983 Code will be from this source.

16. Canon 1051. The following prescripts regarding the investigation about the qualities required in the one to be ordained are to be observed:

1. there is to be a testimonial of the rector of the seminary or house of formation about the qualities required to receive the order, that is, about the sound doctrine of the candidate, his genuine piety, good morals, and aptitude to exercise the ministry, as well as, after a properly executed inquiry, about his state of physical and psychic health;
2. in order to conduct the investigation properly, the diocesan bishop or major superior can employ other means which seem useful to him according to the circumstances of time and place, such as testimonial letters, public announcements, or other sources of information.

Canon 1052 §1. For a bishop conferring ordination by his own right to proceed to the ordination, he must be sure that the documents mentioned in canon 1050 are at hand and that, after the investigation has been conducted according to the norm of law, positive arguments have proven the suitability of the candidate.

Penalties concerning age and pornography

Canon 1395 of the 1983 Code currently states:

§1. A cleric living in concubinage, other than in the case mentioned in canon 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can be progressively added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

§2. A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed by force, or by threats, or in public, or with a minor under the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

The Australian Royal Commission into Institutional Responses to Child Sexual Abuse demonstrated that within the Catholic Church perpetrators of sexual abuse, 37 percent were non-ordained religious (32 percent were religious brothers and 5 percent were religious sisters), 30 percent were priests, and 29 percent were laypeople. In my view, since a significant proportion of offenders are laypeople, additional paragraphs need to be added to canon 1395:

§. A person who sexually abuses a person under age 18 or who acquires or holds or distributes pornographic images of minors below the age of eighteen years is to be punished with automatic excommunication and an offending cleric is to be dismissed from the clerical state.

§. A person who enjoys imperfect use of reason is equiparated with a minor in this paragraph.

Imposition of penalties

The present law allows wide discretion for a bishop or judge to decide not to impose a penalty. Book VI of the 1983 Code concerning penalties has been under review since 2011, but the review has not been completed.

In 2012, a new paragraph was proposed for canon 1344, so that the law specified that an Ordinary could not defer imposing a penalty in cases causing public scandal or when a cleric has been denounced by the person the cleric injured:

Canon 1344 §2. It is not permitted, however, to defer the imposition of the penalty, if it concerns an offence from which public scandal has arisen or when it has been denounced by the injured party.¹⁷

The pontifical secret

As stated by the Royal Commission, it is clear that there is confusion about who is bound by the pontifical secret. The pontifical secret does not prohibit victims going to the police. Pope Benedict XVI said victims should go to the police. I believe there needs to be a paragraph in a canon such as canon 1362 eliminating any confusion or misunderstanding about this:

§3. Without prejudice to the seal of the sacrament of penance, the prescriptions of civil law regarding the reporting of crimes of sexual abuse to the designated civil authority must always be followed. The pontifical secret does not apply to victims of sexual abuse.

Canon law must be clear that, apart from the seal of confession, civil laws concerning reporting of sexual abuse must always be followed. Everyone also needs to be clear about what is and is not covered by the seal of confession, and there is too much misunderstanding about this.

Prescription

Prescription extinguishes a canonical criminal action to impose or declare a penalty after the prescription time expires. This means the cause of a criminal action is deemed no longer to exist. Canon 1362 of the 1983 Code provides that prescription generally extinguishes a canonical criminal action after three years, but actions arising from the delicts mentioned in canons 1394, 1395 (offences against the sixth commandment), 1397 and 1398, have a prescription of five years.

Charles Scicluna, when Promotor of Justice at the Congregation for the Doctrine of the Faith, stated that with the promulgation of *Sacramentorum sanctitatis tutela* in 2001, 'for the first time in history, a time limit has been imposed, after which the *action criminalis* is extinguished for those delicts

17. Gordon Read translation of 2012 draft of proposed changes to Book VI, Sanctions of the 1983 Code.

(i.e. those reserved to the Congregation for the Doctrine of the Faith).¹⁸ Kozlowski is also of the opinion that prescription of canon 1362 did not apply to clerical offences against the sixth commandment with a minor when the 1983 code went into effect.¹⁹ (It is apparent that both Scicluna and Kozlowski support the opinion that, when the 1983 Code was promulgated, the instruction *Crimen sollicitationis* of 1922, revised 1962, which reserved child sexual abuse cases to the Holy Office, later the Congregation for the Doctrine of the Faith, remained in force.)

The Australian Royal Commission has demonstrated that minors take on average over 30 years to complain about being sexually abused.²⁰ Sexual abuse is a heinous crime that does enormous damage to the victims. Therefore, the Catholic Church needs to revert to previous law so that there is no prescription for cases of sexual abuse involving clerics, religious brothers and sisters. It needs to be explicitly stated in canon 1362 that there is no prescription for crimes of sexual abuse of minors.

Sexual abuse of a minor needs to be an irregularity for ministry

One way that the church has tried to ensure that the dignity of sacred orders is protected is by having law and regulations concerning irregularities. Irregularities help to protect the faithful from scandal when the history of a cleric is brought to light. They help protect the faithful from hurt that occurs when an abuser is ordained. The church has always had law concerning irregularities. Saint Paul forbade the ordination of anyone who had been married more than once. He told Timothy that *'deacons be the husband of one wife'* (1 Tim 3, 12); while *'a bishop must be ... the husband of one wife'* (1 Tim 3, 2). Cappello 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.' All irregularities are ecclesiastical laws.

The causes of irregularities are crimes or physical and psychological issues. There are no excusing circumstances for irregularities. Even if the ordinand is unaware that he has an irregularity, he is still bound by the irregularity when he learns that he has incurred it. Irregularities are in that sense very different to crimes. Ignorance of a crime results in one not receiving the penalty. Irregularities forbid the celebration of sacraments.

Canon 1041 of the 1983 Code states:

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 ordinand (e.g. insanity or amentia). The other irregularities, however, are the result of a crime and are governed by penal law, including canon 1321. A crime is 'an external and morally imputable violation of a law to which a canonical sanction is attached.'

18. Scicluna, C. (2004, 25–26 March). 'The Procedure and Praxis of the Congregation for the Doctrine of the Faith Regarding *Graviora Delicta*,' in Dugan, P., (ed.) (2005). *The Penal Process and the Protection of Rights in Canon Law – Proceedings of a conference held at the Pontifical University of the Holy Cross Rome, March 25–26, 2004*, Wilson & Lafleur, Montreal, 239; quoted in Kozlowski, J C, Op. (2015). Understanding the *Ius Vigen*s of the Mandatory Dismissal Process, *The Jurist*, 75(2), 422.

19. Kozlowski, J C, Op. (2015). Understanding the *Ius Vigen*s of the Mandatory Dismissal Process, *The Jurist*, 75(2), 422.

20. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Volume 16, Book 2*, Commonwealth of Australia, 518, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_16_religious_institutions_book_1.pdf

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 classified by the church also to be crimes. Crimes are considered to be opposed to everything the church stands for. The Ten Commandments guide the faithful about the content of grave matter.

Canon 1044 of the 1983 Code 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 n.2, if the offence is public;*
- 3° one who committed any of the offences mentioned in canon 1041 nn. 3, 4, 5, 6.*

§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 No. 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 and a cleric who incurs an irregularity are irregular for the exercise of orders. This means that an insane cleric; a married priest; a cleric holding an office forbidden to a cleric; a cleric guilty publicly of apostasy, heresy or schism; a cleric attempting an invalid marriage; a cleric guilty of voluntary homicide, abortion or cooperation in an abortion; a cleric guilty of mutilation or attempted suicide; and a cleric attempting an act of orders when incapable or prohibited from doing so, cannot exercise ministry.

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

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, no. 4. However, if he encouraged or pressured the woman to have the abortion, he incurs 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 had occurred would mean that the man could not be ordained and could not function as a priest. Anyone who abuses someone under age 18 is not fit to be 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. Rather, 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.

Selection of bishops

The Royal Commission recommended changes in the process for the criteria and the selection of bishops:

Recommendation 16.8: In the interests of child safety and improved institutional responses to child sexual abuse, the Australian Catholic Bishops Conference should request the Holy See to:

- a. Publish criteria for the selection of bishops, including relating to the promotion of child safety*
- b. Establish a transparent process for appointing bishops which includes the direct participation of laypeople.²¹*

21. Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report, Recommendations*, https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf. See also Appendix 3, Royal Commission Recommendations Directed to Religious Institutions.

Recent scandals in Chile, Australia, the United States with Cardinal McCarrick, and elsewhere have demonstrated problems in relation to the selection of bishops. The bishops in one country seem to learn little from elsewhere. Because bishops have failed to act all over the world, it is apparent that there are issues with the selection of bishops. Rik Torfs makes some excellent suggestions in his paper for the Health and Integrity conference about the personal qualities required in episcopal candidates.

American canonist James Coriden suggests for the process for selection:

- A greater initial involvement of the diocesan church in assessing its needs and the qualities desired in a new bishop; the diocesan pastoral council could be the focus of this prayerful effort.
- Continued engagement of the metropolitan and other bishops of the province in the suggestion of candidates
- Greater involvement of the conference of bishops in evaluating candidates and selecting the three names to be forwarded to the Congregation for Bishops in Rome.
- A reduced role for the papal nuncio; he should continue as an adviser to the conference in the selection process and a conduit for transmitting the candidates' names to Rome, but not have the ability to make changes to the choices made by the conference. The participation of the Conference of Bishops (or a committee thereof) and the nuncio should help to overcome local prejudices, like those of ethnic or lingual groups or a majority neglect of minorities.²²

Synodality at the level of the universal church

The Royal Commission made some recommendations that apply at the level of the universal Church:

- Changes in canon law including that all canonical crimes relating to child sexual abuse should apply to all church personnel (16.9, a, b – see Appendix 1), child pornography (16.9, c), secrecy (16.10), the 'pastoral approach' (16.11), and prescription (16.12).
- The Royal Commission recommended that a diagnosis of paedophilia should not affect prosecution or imposition of a penalty (16.13).
- The Royal Commission stated that canon law should be amended to give effect to dismissal of clergy (16.14).
- The Royal Commission recommended that the Holy See should be requested to publish decisions on disciplinary matters relating to child abuse in a timely manner and to amend canon law concerning destruction of documents relating to canonical criminal cases (16.16).

Synodality at the national level of the bishops' conference

The Royal Commission made many recommendations that apply at the level of the bishops' conference, including that:

- The Australian Catholic Bishops Conference should conduct a national review of governance and management structures of dioceses and parishes (16.7).
- The establishment of a national tribunal for canonical disciplinary cases against clergy (16.15).
- A national register of clergy and candidates for seminaries and religious institutes who are considered unsuitable by a diocese or religious institute (16.58).
- The Australian Catholic Bishops Conference and all Catholic religious institutes in Australia should review and continually improve processes for screening, supervision and ongoing formation of candidates (16.20).
- The Australian Catholic Bishops Conference and Catholic Religious Australia should have a national protocol for screening candidates (16.21).
- The Australian Catholic Bishops Conference and Catholic Religious Australia should establish a mechanism for a broad range of expertise to be involved in decisions in relation to admission of individual seminarians and religious (16.22).
- The Australian Catholic Bishops Conference should review and revise the Programme for Priestly Formation, and religious institutes should revise their documents (16.23).
- The Australian Catholic Bishops Conference and Catholic Religious Australia should develop and maintain national standards for professional development, supervision and performance appraisals (16.25).

22. Coriden, J. (2017). *The Holy Spirit and an Evolving Church*, Orbis Books, New York, 175–176.

There are obvious advantages with these suggestions so there is a pooling of knowledge and expertise, as well as standardisation of procedures across the country.

Synodality between diocesan bishops and local churches

The Royal Commission made many recommendations that apply within dioceses and which have implications for relationships between diocesan bishops and religious institutes, including:

- Recommendations for psychological testing of all candidates to determine their suitability for ministry and working with children (16.42).
- Recommendations for targeted screening, training and supervision of religious ministers and workers from overseas (16.26).
- Recommendations for all religious institution to have regular in-service training and professional development for best practices and approaches to child safety (16.47).
- Each major institution and religious institute is to make an annual report to the National Office for Child Safety through five consecutive annual reports (17.3).

Reference checks for priests

Immigration departments in countries all around the world require a police-check on immigrants. However, for church ministry purposes, much more than a check on convictions should be required. A bishop, or a religious superior, needs to always check carefully the suitability of a priest or a religious coming into their diocese or province. There should be a standard testimonial/reference required in each case. A standard testimonial could be like this:

I, [diocesan bishop/Provincial/Major Superior], have carefully reviewed our personnel files, records of complaints concerning clergy and all other records that we maintain. I have consulted with the Professional Standards Office, members of [my College of Consultors/our Council] concerning this reference and its contents. Based on these inquiries and on my own personal knowledge of him, I attest and declare that:

1. *He is a priest in good standing in the Catholic Church and has faculties now.*
2. *He is a priest of good moral character and reputation.*
3. *He is qualified and suitable to serve as a priest.*
4. *He has never lost faculties, been suspended or otherwise canonically disciplined.*
5. *He has never been investigated by a professional standards body, and no criminal charges have ever been brought against him.*
6. *He has never been accused of misbehaviour and nothing in his background that would indicate he might engage in sexual behaviour inconsistent with clerical celibacy.*
7. *He has nothing in his background that would indicate that he has or might deal with children or teenagers in an inappropriate manner.*
8. *He has nothing in his background that would raise the suspicion of financial impropriety nor has any accusation of such ever been brought against him.*
9. *He does not and never has had any alcohol, gambling or substance abuse problem.*
10. *He does not and never has had any emotional or mental health problems and is not on any related medication.*
11. *He has never been involved in any incident, which would adversely affect the exercise of his priestly ministry. Therefore, I recommend Rev. [Name] to Ordinaries so that he may have faculties to exercise sacred ministry.*

Given at [Place], [Date], [Bishop/Major Superior]

This type of reference requires a bishop or major superior to involve key consultative groups in the process and allows for more 'institutional' knowledge and wisdom about individuals.

Removal of faculties of priests to minister

A bishop can remove the faculties²³ of a priest who has faculties in a diocese. Correct procedures must be followed in either an administrative or penal process. Bishops have often failed to remove faculties from priests when serious questions about their suitability have arisen.

Checks on seminarians and priests coming into a diocese

After Vatican II, the number of seminarians and religious decreased. Consequently, the standards for acceptance dropped to maintain the numbers. This has led to many unsuitable people being ordained or professed.

Selection of seminarians and religious novices is critical. About 35 years ago, a new bishop in New Zealand criticised a recently ordained graduate of the seminary when speaking to the rector, Monsignor Tom Liddy. Monsignor Liddy replied: 'The seminary sends back to you what you sent to the seminary.' Seminaries and houses of formation cannot work miracles.

Bishops and religious superiors need to be more careful about accepting seminarians and religious who have been dismissed or asked to leave other seminaries or religious institutes. Only in exceptional cases should someone be accepted who has previously been in another seminary or religious institute. Canon law on this matter needs to be carefully followed or it is an 'omission' on the part of the superior or superior or the bishop. Canon law requires the bishop or major superior to consult and get a report from the previous seminary rector or religious superior. Unfortunately, this law has not always been observed.

Making the process for acceptance of seminarians and overseas priests part of a government audit/check on compliance for child safety would force bishops to be accountable, and to follow correct procedures carefully.

I believe the policy requiring checks on foreign seminarians and the granting of faculties to priests from overseas must have the approval of the Bishops' Conference. It is also my view that, before accepting each foreign seminarian or priest, a diocesan bishop should have the consent of his college of consultors. Canon law should be changed so that these approvals and consents would be needed for the validity of the actions, in accordance with canon 127:

§1. When the law prescribes that, in order to perform a juridical act, a Superior requires the consent or the advice of some college or group of persons, the college or group must be convened in accordance with canon 166, unless, if there is question of seeking advice only, particular or proper law provides otherwise. For the validity of the act, it is required that the consent be obtained of an absolute majority of those present, or that the advice of all be sought.

§2 When the law prescribes that, in order to perform a juridical act, a Superior requires the consent or advice of certain persons as individuals:

1° if consent is required, the Superior's act is invalid if the Superior does not seek the consent of those persons, or acts against the vote of all or any of them;

2° if advice is required, the Superior's act is invalid if the Superior does not hear those persons. The Superior is not in any way bound to accept their vote, even if it is unanimous; nevertheless, without what is, in his or her judgement, an overriding reason, the Superior is not to act against their vote, especially if it is a unanimous one.

§3 All whose consent or advice is required are obliged to give their opinions sincerely. If the seriousness of the matter requires it, they are obliged carefully to maintain secrecy, and the Superior can insist on this obligation.

The personnel of the seminary are responsible for the formation of seminarians. There have been many instances of bishops ordaining priests against the recommendations of the rector and seminary staff. I would recommend that canon law be changed so that a bishop cannot ordain a priest against the recommendation of the seminary staff and rector.

23. Daly, B. (2017). Canon 1336: What processes must the diocesan bishop follow to remove the faculties of a Priest?, *Roman Replies and CLSA Advisory Opinions 2017*, Canon Law Society of America, Washington, DC, 87–95.

Conclusion

The Catholic Church needs the active involvement of all its members to be truly Catholic, apostolic and able to evangelise. Openness to their inclusion in decision making would significantly improve the quality of decisions. Each baptised Catholic, whether a layperson, a religious, or ordained, has an obligation and responsibility to use their gifts and talents in a positive and constructive way in the mission and work of the Church. This active involvement and participation will go a long way towards the renewal of structures demanded by pastoral conversion, and to eliminating abuses and bad ministerial behaviour. Everything possible needs to be done to prevent paedophiles being ordained or exercising ministry.

Very Rev Monsignor Brendan Daly has been a priest of the diocese of Christchurch in New Zealand since 1977. He has been a lecturer in canon law at Good Shepherd College, Te Heparā Pai, in Auckland since 2001, and was principal from 2002–2016. Brendan studied canon law in Ottawa in the 1980s, completing a doctorate in canon law in 1986 with a thesis on infant baptism. He has taught seminarians in New Zealand since 1987, and was rector of Holy Cross Seminary from 1995–2000. He is Judicial Vicar of the Tribunal of the Catholic Church for New Zealand. He is the author of *Canon Law in Action* (2015), and he has also written over 50 refereed articles and chapters in books.