

Sexual Abuse AND CANON LAW

BRENDAN DALY outlines the changes needed to canon law which have been highlighted by the contemporary sexual abuse crisis.

In country after country bishops and religious superiors have failed to prevent and deal adequately with crimes of sexual abuse by clergy, religious and lay employees. Church leaders have not learnt from the abuse scandals in other places. Those in authority have made the same mistakes repeatedly, and the shortcomings in canon law are plain to see. Changes in canon law are needed to restore justice and to make bishops and religious superiors more accountable and proactive.

Canon law is the name for the law of the Catholic Church. The core of canon law is in the *Code of Canon Law* which was most recently published in 1983 for the Latin Church. This *Code* contains law for its authority, sacraments, discipline, structures and procedures. There are seven books in the *Code*. Book VI from canons 1311-1399 concerns penal law. Pope Francis is expected to promulgate the revised penal law very soon.

Historical Precedents

Until recent times the Church has punished perpetrators of the sexual abuse of minors most severely. Priests have been immediately dismissed from the clerical state for sexual misconduct.

The Church has always been aware of the sexual abuse of children. Sexual abuse of girls or boys was always seen by Christians as being contrary to the sixth commandment. Polycarp (c 69-155), the second bishop of Smyrna, wrote to the Philippians: "The younger men must be blameless in all things, caring of purity before everything and curbing themselves from every evil ... whether whoremongers nor effeminate persons nor defilers of themselves with men and



boys shall inherit the Kingdom of God."

Sexual abuse by a priest was considered to be especially evil. Canon 71 of the Council of Elvira in Spain (305-306), condemned those who rape little boys: "People who sexually abuse boys shall not be given communion even at the end." Refusing communion to a dying perpetrator of sexual abuse demonstrates how evil the council judged sexual abuse.

The Council of Nicea (325), in canon 9, ordered that unchaste priests before or after ordination could not exercise ministry.

The Third Lateran Council of 1179 taught that if clerics were sexually active with men or boys they were to be dismissed from the clerical state.

The Council of Trent, in session 13, forbade priests to be sexually active and required bishops to deprive offenders of office and to punish them.

Changes Needed Now

The contemporary sexual abuse crisis has highlighted shortcomings in the current penal law and so a draft of changes to Book VI of the 1983 Code was published in 2012.

Several key canons — 1395 concerning crimes of sexual abuse; 1362 concerning prescription; 1311,

1389 and 1341 concerning the need to impose penalties for sexual abuse crimes; and 1041 and 1044 concerning irregularities — urgently need to be changed. New law is needed in the areas of secrecy and excommunication for sexual abuse of minors.

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.

Since a significant proportion of offenders are lay people, there needs to be a fifth paragraph added to canon 1395: "Canon 1395 §5. A person who sexually abuses a child or who uses child pornography incurs an automatic excommunication."

There needs to be another paragraph concerning the use of child pornography: "Canon 1395 §6. A person who abuses a person under age 18 or who acquires or holds or distributes pornographic images of minors below the age of 18 years is to be punished with automatic excommunication and the penalties mentioned in §2 in whatever way or by whatever instrument the shameful act



has been committed.”

Revisions to penal law in 2010 included the canonical delict of acquisition, possession or distribution of pedopornography. Clearly those who buy and distribute pornography are accomplices in the crime of the

Impediments are based on factual circumstances and prevent ordination temporarily, for as long as those circumstances exist. Irregularities, though, are permanent impediments which are the result of crimes or other non-criminal things that can be

demonstrated that, on average, victims abused as children wait 30 years to lay a complaint and report the crime.

I believe the Church needs to revert to the former law whereby there was no prescription for cases reserved to the Congregation for the Doctrine of



original sexual abuse with filming or photographs of the acts.

There have been many examples of clergy abuse of vulnerable adults around the world. I believe a sixth paragraph needs to be added to canon 1395: “Canon 1395 §7. A person who enjoys imperfect use of reason or is a vulnerable person is equated with a minor in this paragraph.” This is necessary to deal with perpetrators taking advantage of people with disabilities.

Irregularities

The Church has a long history of having irregularities or perpetual impediments 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”, while “a bishop must be...the husband of one wife”, and instituted the equivalent of an impediment because a bishop must “not be a recent convert (neophyte)”.

The word “irregularity” was first used by Saint Augustine (354-430). Pope Innocent III (1198-1216) outlined circumstances that barred a person from being ordained and irregularities that prevented a priest from functioning.

physical or psychological.

Even if the man 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. If, for instance, a candidate for ordination has previously agreed to his girlfriend having an abortion, then he is irregular for ordination and ministry. Therefore, if the sexual abuse of a minor including the use of child pornography was made an irregularity, this would help prevent paedophiles being ordained or continuing to exercise ministry.

There is confusion about laws requiring secrecy during canonical processes. We need explicit statements encouraging victims to report offences to civil authorities.

Religious brothers and sisters can be dismissed from their religious institutes by a simple administrative process. It is becoming more common for clergy to be dismissed by administrative process rather than via a canonical trial.

Prescription is similar to a statute of limitation. At present a person has until age 38 years to complain about sexual abuse by a cleric that occurred when they were under the age of 18. The Australian Royal Commission

the Faith. It also needs to be explicitly stated in canon 695 or canon 1362 that there is no prescription for the offences of canon 1395 committed by members of religious institutes. There are different processes for the dismissal of ordained clergy and religious brothers and sisters. Because there are different processes, there are anomalies concerning the length of time within which victims can report an offence.

Though imperfect and begging for refinement and revision, canon law can be an effective tool for dealing with sexual abuse. Importantly, it is pre-existing, needing to be invoked but not invented. As I have identified, there is historical precedent for dealing with the kind of abuse we are experiencing today. ☸

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