

The Instruction *Crimen Sollicitationis* on the Crime of Solicitation: Confusion or Cover-up of Paedophilia?

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The sexual abuse crisis is the biggest crisis for the Catholic Church since the Reformation. There have been cover-ups and scandals as the extent and seriousness of the problem was denied. Initially it was perceived to be a problem only in the United States of America.

To understand the juridical situation, John Beal and Roch Pagé remind us that we need to see canonical laws "in their text and context".¹ The changes from Vatican II caused a great deal of upheaval in the Catholic Church, especially amongst clergy. Over 100,000 priests left active ministry and many requested dispensations from the Pope.² As the 1917 Code of Canon Law was under revision, there was confusion about which laws were in force. Also there was a desire to reduce and simplify the penal law of the Church.³ There were reports of divisions amongst officials of Roman Curia. There was ignorance of canon law because it was not properly taught in seminaries after Vatican II.

Priests leaving Ministry

Prior to Vatican II, if a priest left active ministry the traditional approach had been to investigate if he had been validly ordained. The 1917 Code did not acknowledge the

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¹ Canon 17: Ecclesiastical laws are to be understood according to the proper meaning of the words considered in their text and context. If the meaning remains doubtful or obscure, there must be recourse to parallel places, if there be any, to the purpose and circumstances of the law, and to the mind of the legislator. See John Beal, "The 1962 Instruction *Crimen Sollicitationis*: Caught Red-Handed or Handed a Red Herring?" *Studia Canonica* 41(2007) 201.

² Popes granted dispensations from priestly celibacy after Pope Benedict XIV reserved to himself the right to grant these dispensations in 1749.

³ After Vatican II the Synod of Bishops in 1967 enunciated ten principles for the revision of the Code of Canon Law. Principle 2 stated that the Code would incorporate all such norms as are necessary for making clear the provisions of the internal forum in so far as the salvation of souls demands. Principle 9 stated that it is generally agreed that penal laws be *ferendae sententiae*, inflicted only *in foro externo*, and remitted likewise only *in foro externo*. As for penal laws *latae sententiae*, while the abolition of all of these has been proposed by not a few canonists, we suggest that they be reduced to the smallest possible number and concern only the gravest of crimes. See Pontificia Commissio Codicis Iuris Canonici Recognoscendo, "Principia quae Codicis Iuris Canonici recognitionem dirigant" *Communicationes* I (1969) 82.

possibility of dispensations from celibacy, and the norms for dispensations from celibacy, issued by the then Sacred Congregation of the Sacraments on 9 June 1931, presumed there had been an unsuccessful attempt to declare the ordination invalid.⁴

In preparation for Vatican II, the Preparatory Commission for the Discipline of the Sacraments had prepared a *Schema* for discussion at the Council⁵ on priests who had left ministry and declaring their ordinations null or granting dispensations from celibacy. After the first session of Vatican II, all the *schemata* were revised. As a consequence the *Schema De Sacerdotibus Lapsis* was not presented to the Council Fathers. The documents of Vatican II make no reference to dispensations from celibacy because Pope Paul VI (21 June 1963 - 6 August 1978) informed the Council that he would address the issue of celibacy.⁶

Paul VI issued new norms for the dispensation from celibacy on 2 February 1964.⁷ He reserved dispensations from clerical celibacy to himself,⁸ and then published his Encyclical Letter *On Priestly Celibacy* on 24 June 1967.⁹ Many priests had requested dispensations from celibacy, so simplified norms were promulgated on 13 January 1971.¹⁰ These norms combined the approaches of declaring orders invalid and granting dispensations from the obligations of priestly ordination. The process adopted was administrative in nature rather than judicial. For the first time in a single

⁴ See Norms *Regulae servandae*, in Edward Lohse, "The Origin and Nature of the Suspension *ad cautelam* of article 4 of the 1980 *Normae procedurales* for dispensations from Celibacy" *Periodica* 95(2006) 71; cf. *Canon Law Digest*, Vol.1 812-833.

⁵ See Lohse, *Schema on Priests who had Left Ministry De Sacerdotibus Lapsis*, 16 June 1962, 69.

⁶ During the debate on the life and ministry of priests, the General Secretary of the Council read a letter from Pope Paul VI recommending that the issue of priestly celibacy not be addressed by the Council. The Council Fathers applauded this move. Pope Paul VI stated on 11 October 1965: "It is not suitable to have a public debate on this subject which requires not only to preserve this ancient, holy and providential law of priestly celibacy as far as we can, but to reinforce the observance of it by reminding the priests of the Roman Church of the causes and reasons which, particularly today, make one consider this law of celibacy very suitable because through it priests can devote all their love solely to Christ and give themselves completely to the service of souls". cf. *Canon Law Digest*, Vol.6 231-232.

⁷ Sacred Congregation of the Holy Office, circular letter, *Litterae circulares et normae ad causas parandas de sacra ordinatione eiusdemque oneribus*, 2 February 1964, in X. Ochoa, *Leges ecclesiasticae post Codicem iuris canonici editae*, III, *Leges Annis 1959-1968 editae*, (Roma: Commentarium pro Religiosis, 1972) no. 3162, coll. 4463, quoted in Lohse, 76.

⁸ Pope Paul VI, *motu proprio, De episcoporum muneribus*, 15 June 1966, par. 9, *AAS* 58 (1966) 470.

⁹ Pope Paul VI, Encyclical Letter *Sacerdotalis Caelibatus*, 24 June 1967, *AAS* 59 (1967) 657-697.

¹⁰ Sacred Congregation for the Doctrine of the Faith, "Reduction to the Lay State: Procedural Norms," *AAS* 63 (1971) 303-308; cf. *Canon Law Digest*, Vol.7 110-117. The norms were accompanied by a "Circular Letter to Ordinaries," *AAS* 63 (1971) 309. An official interpretation of the norms was given by the Sacred Congregation for the Doctrine of the Faith, "Reduction to the Lay State: Procedural Norms Interpretation", see *Canon Law Digest*, Vol.7 121-124.

process a priest could be reduced to the lay state and dispensed from the obligations that arose from sacred orders including celibacy. There was no mention of declaring a priest's ordination invalid "without having to prove coercion by grave fear" since canon 214 §2 of the 1917 Code was effectively abrogated.¹¹ Bishops could have priests *ex officio* dismissed from the clerical state for scandalous behaviour such as sexual abuse.¹²

In June 1991 the Undersecretary of the Congregation for the Clergy estimated that since Vatican II about 60,000 priests had been granted dispensations from celibacy. Most of them would have been granted during the pontificate of Paul VI.¹³ Between 1964 and 2004, the number of priests who officially left the ministry was 69,063.¹⁴ The Vatican was very concerned how these numbers were undermining the permanence of priestly commitment.

Pope John Paul I (26 August 1978 - 28 September 1978) granted a few dispensations from celibacy using the 1970 norms during his 33 days as Pope. Pope John Paul II (16 October 1978 - 2 April 2005) placed a moratorium on dispensations from celibacy at the beginning of his pontificate. His first Holy Thursday letter addressed to priests, 8 April 1979, expressed concern for priests who were struggling with celibacy. However, he affirmed the need for celibacy as "a matter here of *keeping one's word to Christ and the Church*...through a conscious and free commitment to celibacy for the whole of one's life."¹⁵ He also pointed out that married people "*have*

¹¹ 1917 Code canon 214 §1: A cleric who, coerced by grave fear, receives sacred ordination, and does not later, once the fear has passed, ratify that ordination at least tacitly by the exercise of orders, [and] wanting by such an act to subject himself to clerical obligations, is returned to the lay state by sentence of a judge, upon legitimate proof of coercion and lack of ratification, [by which sentence] all obligations of celibacy and canonical hours cease.

§2: The coercion and lack of ratification must be proved according to the norm of canons 1993-1998.

English translation *The 1917 Pio-Benedictine Code of Canon Law*, Edward N. Peters (trans.), (San Francisco: Ignatius Press, 2001); hereafter the translation of the canons of the 1917 Code will be from this source. Holy Office, Declaration, *Declaratio quoad interpretationem quarundam dispositionum, quae Normis, die XIII ianuarii 1971 editis, statuatae sunt*, 26 June 1972, *AAS* 64 (1972) 641-643. The 1970 norms for dispensations were clarified by the Holy Office in 1971.

¹² See Sacred Congregation for the Doctrine of the Faith, response, 26 June 1978, *Canon Law Digest*, Vol.9 1001-1002.

¹³ Official of the Congregation for the Clergy, Press Conference, in Anthony Kowalski, *Married Catholic Priests, Their History, Their Journeys, Their Reflections*, New York, Crossroad Publishing Co, 2005, Preface, www.jknirp.com/kowal.htm.

¹⁴ Gian Paolo Salvini, S.J., *Priests who "desert," priests who "come back"*, 21 April 2007 <http://chiesa.espresso.repubblica.it/articolo/169450?eng=y>; Of these priests 11,213 returned to active ministry.

¹⁵ Pope John Paul II, "Letter to Priests," 8 April 1979, Holy Thursday, http://w2.vatican.va/content/john-paul-ii/en/letters/1979/documents/hf_jp-ii LET_19790409_sacerdoti-giovedi-santo.html.

the right to expect from us, Priests and Pastors, good example and the witness of fidelity to one's vocation until death".¹⁶

Pope John Paul II established a group to study the norms for dispensations from celibacy. After the group reported back to him, new norms were prepared and published by the Sacred Congregation for the Doctrine of the Faith on 14 October 1980.¹⁷ The norms were exclusively about a dispensation from celibacy and there was no mention of 'reduction to the lay state'. The norms addressed two groups of priests: those who had left active ministry a long time ago and wanted to regularise their situation; and those who should not have been ordained in the first place because they lacked the equivalent of due discretion as for marriage, or whose formators were unable to judge their suitability for ordination. Commentators consider the 1980 process quasi-judicial.¹⁸ Dispensed clergy were said to lose the clerical state rather than be reduced to the lay state.

By virtue of his 1988 Apostolic Constitution *Pastor Bonus* Pope John Paul II transferred the competency for processing dispensations from celibacy from the Congregation for the Doctrine of the Faith to the Congregation for Divine Worship and the Discipline of the Sacraments. In 1991 the Congregation for Divine Worship and the Discipline of the Sacraments issued a letter "Documents Necessary for the Instruction of a Case for the Dispensation from the Obligation of Priestly Ordination". This dicastery retained its competency until 2005.

Joseph Fessio, a former student of Cardinal Ratzinger's and founder of the publishing house Ignatius Press said of the Vatican perspective: "Look at it from the perspective of priestly commitment. 'You want to get married? You're still a priest. You're a sex offender? Well, you're still a priest. Rome is looking at it from the objective reality of the priesthood'".¹⁹ The Vatican focus was on getting priests to maintain their commitment to be priests forever. It was not until 1991 that Pope John Paul II for the first time *ex officio* dismissed from the clerical state notorious pedophile priests.²⁰

Pope Benedict XVI (13 July 2005 - 28 February 2013) changed the approach to dispensations from celibacy. He transferred the competency for processing cases from the Congregation for Divine Worship and the Discipline of the Sacraments to

¹⁶ Ibid.

¹⁷ Sacred Congregation for the Doctrine of the Faith, *Letter to all local Ordinaries and General Moderators of clerical religious communities regarding the dispensation of priests from celibacy*, 14 October 1980; Decree, *Normae procedurales*, *AAS* 72 (1980) 1132-1137; http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19801014_dispensatione-a-coelibatu_en.html; See *Canon Law Digest*, Vol. 9 92-99. Sacred Congregation for the Doctrine of the Faith, circular letter, *Per Litteras*, 1132-1135 in Lohse, 85.

¹⁸ Lohse, 87.

¹⁹ http://www.nytimes.com/2010/07/02/world/europe/02pope.html?_r=0.

²⁰ They were in fact five priests from the United States of America.

the Congregation for Clergy effective from 1 August 2005.²¹ Cardinal Hummes the then Prefect of the Congregation for Clergy on 18 April 2009 wrote to all bishops pointing out that priests should be celibate or else they should be dispensed from their obligations. Pope Benedict wanted the situation of priests who had left active ministry regularised. Special faculties were granted to the Congregation for Clergy to present to the Holy Father cases for the dismissal of priests and deacons who were living in a scandalous or irregular state or violating canons 1394 or 1395 which included the crime of paedophilia.

Ordinaries were granted the faculty to apply for dispensations for these clergy in accord with canon 1399. The Congregation for Clergy had a special faculty to handle cases of clerics who had abandoned ministry for at least five years. The procedure to be used was very simple and streamlined, and was included in the letter.²² Similar special faculties were granted to the Congregation for the Evangelisation of Peoples on 31 March 2009.²³

The 1917 Code and *Crimen Sollicitationis*

Sexual abuse by clergy has been severely punished for most of the history of the Catholic Church.²⁴ The Apostolic Constitution *Sacramentum Poenitentiae*, issued by Pope Benedict XIV in 1741, was an appendix to the 1917 Code of Canon Law.

The 1917 Code in respect of sexual abuse by clergy in canon 2359 §2 stated:

If they engage in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or engage in adultery, debauchery, bestiality, sodomy, pandering, incest with blood-relatives or affines in the first degree, they are suspended, declared infamous, and are deprived of any office, benefice, dignity, responsibility, if they have such, whatsoever, and in more serious cases they are to be deposed.

More specific norms were issued in "On the Method of Proceeding in Cases of Solicitation" (*Crimen Sollicitationis*) in 1922. This Instruction was approved *in forma specifica* by Pope Pius XI and signed by Cardinal Merry del Val, the Cardinal Secretary of the Holy Office. Although the document was printed by Vatican Press, it

²¹ Congregation for Divine Worship and the Discipline of the Sacraments, "Letter to the Presidents of the Conferences of Bishops and to the Superiors General," Protocol No. 1080/05, July 13, 2005; See William H. Woestman, *The Sacrament of Orders and the Clerical State*, Ottawa, St Paul University, 2006, 456.

²² Congregation for the Clergy, "To the Eminent and Most Excellent Ordinaries at their Sees," Prot. No. 2009/0556, 18 April 2009; Congregation for the Clergy, "Quicker Administrative Procedure for Laicising some Priests," *Origins* 39 (2009)81-86. <http://originsplus.catholicnews.com/databases/origins/39/06/3906.pdf>.

²³ Cardinal Dias, "Special Faculties to the Congregation for the Evangelization of Peoples" Prot. No. 0579/09 31 March 2009, *Studies in Church Law* 5 (2009) 69-78.

²⁴ See Brendan Daly, *Canon Law In Action*, Sydney, Saint Paul Publications, 2015, 202-216; "Sexual Abuse and Canon Law" *Compass*, vol. 43, no.3, Spring 2009, 33-40.

was not promulgated in the normal way in the *Acta Apostolicae Sedis*. Nicholas Cafardi pointed out:

In fact, the first page of the instruction says it is to be "diligently kept in the secret archives of the [diocesan] curia for internal use, and is not to be published or commented on in any canonical commentary". While the instruction is addressed to "All Patriarchs, Archbishops, Bishops, and Other Local Ordinaries, including of the Oriental Rites" it was evidently not circulated to them. Instead, the text was available by request to bishops who needed to know its contents to deal with such crimes.²⁵

The Holy Office was given competence to deal with cases administratively or in a judicial process.²⁶

The Holy Office reissued *Crimen Sollicitationis* in 1962 with minor changes to the 1922 text to include religious priests. Pope John XXIII approved the revised document, with Cardinal Ottaviani acting as Secretary of the Holy Office, and signing it. The first page of the document said it was to be diligently kept in the secret archives of the [diocesan] curia for internal use, and is not to be published or commented on in any canonical commentary. Again, the instruction is addressed to "All Patriarchs, Archbishops, Bishops, and Other Local Ordinaries, including of the Oriental Rites." And again, the only bishops who received it were those who contacted the Holy See about the crimes covered by the instruction. Although there had been a plan to distribute the document to the bishops attending the Second Vatican Council, that never happened.²⁷

The Holy See is careful about the naming of documents. The first few Latin words of an official document become its name and express what the document is all about.²⁸ As the title indicated, *Crimen Sollicitationis* dealt almost entirely with the crime of solicitation - that is, the solicitation of sex by a priest hearing confession.

The final section²⁹ of both the 1922 and the 1962 versions of *Crimen Sollicitationis*

²⁵ Nicholas P. Cafardi, "The Scandal of Secrecy," *Commonweal* 21 July 2010; <https://www.commonwealmagazine.org/scandal-secrecy>.

²⁶ Pope Benedict XVI, *Substantive Norms On Graviora Delicata*, 21 May 2010; http://www.vatican.va/resources/resources_norme_en.html. Pope Benedict XVI reaffirmed this in 2010 explaining that "the norms issued in 1922 were an update, in light of the Code of Canon Law of 1917, of the Apostolic Constitution *Sacramentum Poenitentiae* promulgated by Pope Benedict XIV in 1741.

²⁷ Cafardi, *The Scandal of Secrecy*.

²⁸ Pope John Paul II, Apostolic Exhortation *Pastores dabo vobis*, 25 March 1992, *AAS* 84 (1992) 658-804; English translation in *Origins*, 21(1992-1993) 717, 719-759. This apostolic exhortation on the formation of priests was entitled *Pastores dabo vobis* "I will give you Shepherds; the Dogmatic Constitution of the Church of Vatican II was named *Lumen gentium* "The Light of the Nations.

²⁹ Sacred Congregation of the Holy Office, Instruction, "On the Manner of Proceeding in Cases involving the Crime of Solicitation," *Crimen Sollicitationis*, http://www.vatican.va/resources/resources_crimen-Sollicitationis-1962_en.html. The term *crimen pessimum* ["the foulest

reads: "What is established herein on the crime of solicitation is also valid, *mutatis mutandis*, for the worst crime *crimen pessimum* [of paedophilia]". The worst crime is defined in section 73 as "obscene behaviour with pre-adolescent children of either sex or with brute animals."³⁰ There are 289 words in the English translation of the final section of *Crimen Sollicitationis*, which was .04% of the total document of 7112 words. It is simply not true as some have claimed that this document is aimed at covering up paedophilia.³¹

The contents of *Crimen Sollicitationis* are explained by Nicholas Cafardi:

What was established "herein" on the crime of solicitation? One thing the document established was that the Holy Office had jurisdiction over these crimes, and was, in this document, telling local bishops how to handle them. More than anything, the instruction is a dry statement of the rules of criminal procedure that apply when a priest has been accused of solicitation. And that what the Holy Office says about the crime of solicitation also applies to the crime of the sexual abuse of children by a priest.³²

crime"] is here understood to mean any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex.

n. 72: Everything laid down up to this point concerning the crime of solicitation is also valid, with the change only of those things which the nature of the matter necessarily requires, for the *crimen pessimum*, should some cleric (God forbid) happen to be accused of it before the local Ordinary, except that the obligation of denunciation [imposed] by the positive law of the Church [does not apply] unless perhaps it was joined with the crime of solicitation in sacramental confession. In determining penalties against delinquents of this type, in addition to what has been stated above, Canon 2359 §2 is also to be taken into consideration.

n. 73: Equated with the *crimen pessimum*, with regard to penal effects, is any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children (*impuberes*) of either sex or with brute animals (*bestialitas*).

n. 74: Against clerics guilty of these crimes, if they are exempt religious – and unless the crime of solicitation takes place at the same time – Religious Superiors also can proceed, according to the sacred Canons and their proper Constitutions, either administratively or judicially. However, they must always communicate a sentence rendered, or an administrative decision in those cases which are more grave, to the Supreme Congregation of the Holy Office. The Superiors of a non-exempt religious can proceed only administratively. In the case where the guilty party has been expelled from religious life, the expulsion has no effect until it has been approved by the Holy Office. http://www.vatican.va/resources/resources_crimen-Sollicitationis-1962_en.html

³⁰ Cafardi, *The Scandal of Secrecy*.

³¹ "The 1962 instruction has become known in the press as *Crimen Sollicitationis*, where it has had a life of its own. In 2003, plaintiffs' attorneys Daniel J. Shea and Carmen Durso sent a copy of this newly uncovered "secret" Vatican document to the U.S. Attorney in Boston, alleging that *Crimen* provided proof that the Vatican had orchestrated a worldwide cover-up of clergy sexual abuse of children. Shea said that *Crimen* was "not just a smoking gun but a nuclear bombshell." The story made headlines around the world"; in Cafardi, *The Scandal of Secrecy*.

³² Ibid.

The teaching of the Church in reference to such crimes is centuries old. The Didache in the second century commanded Christians 'Do not murder; do not commit adultery; do not practice pederasty, do not fornicate'.³³ 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'.³⁴ Athenagoras of Athens [c. 133-190] was a significant apologist and Christian thinker in the second century. He defended the Christian concept of purity and described pederasts as enemies of the Church.³⁵ Canon 71 of the Council of Elvira (305-306) in Spain condemned those who rape little boys.³⁶ The First Council of Neocaesarea (c. 315) enacted legislation which punished priests for violating the sixth commandment by adultery or fornication.³⁷

Although the Instruction *Crimen Sollicitationis* was not promulgated, it was not intended to provide a cover-up for the crimes it addressed, because it clearly established the procedures to be followed in dealing with such crimes including sexual abuse of children. Nevertheless, most bishops and priests and all laity were unaware of its existence. While secret laws do not make sense, there is no doubt that the secrecy surrounding this document has made dealing with the sexual abuse crisis more difficult. Notwithstanding, once the 1983 Code of Canon Law came into effect on 27 November 1983, Bishops and Ordinaries if they became aware of a possible crime could follow the norms of canons 1717-1719 to conduct a preliminary investigation.

Juridical Status of *Crimen Sollicitationis* as an Instruction

Distinguishing between different kinds of documents is very important, because the kind of document it is helps determine its binding force in canon law.

³³ "The Didache" 6, translation in Nicholas Cafardi, *Before Dallas*, New York, Paulist Press, 2008, 1.

³⁴ Polycarp 'Letter to the Philippians', quoted in Charles Scicluna, 'Sexual Abuse of Children and Young People by Catholic Priests and religious: Description of the Problem from a Church Perspective', in *Sexual Abuse in the Catholic Church: Scientific and Legal Perspectives*, ed. R. Hanson, F. Pfafflin, and M. Lutz, Vatican City, Libreria Editrice Vaticana, 2004, 14.

³⁵ Athenagoras of Athens, 'A Plea for Christians,' chapter XXXIV, 'The Vast Differences in Morals between Christians and their Accusers,' trans. B. Pratten, <http://www.earlychristianwritings.com/athenagoras.html>; "For those who have set up a market for fornication and established infamous resorts for the young for every kind of vile pleasure ... who do not abstain even from males, males with males committing shocking abominations, outraging all the noblest and comeliest bodies in all sorts of ways, so dishonouring the fair workmanship of God."

³⁶ Cafardi, *Before Dallas*, 2.

³⁷ See Council of Neocaesarea Canon I in *The Nicene and Post-Nicene Fathers Second Series* Vol. XIV The Seven Ecumenical Councils, Michigan, Eerdmans, 1983, 79.

Pope Benedict XV (3 September 1914 - 22 January 1922) explained the status of instructions:

The ordinary function [of the congregations as regards general decrees] will therefore be not only to see that the prescriptions of the Code are religiously observed, but also to issue *Instructions*, as need arises, whereby those prescriptions may be more fully explained and appropriately enforced. These documents are to be drawn up in such a manner that they shall not only be in reality explanations and complements to the canons, but also that they may be clearly seen to be such.³⁸

This statement is clear. In practice, however, other inferior legislators can make some contents of instructions equivalent to law because they complement *lacuna* in the canons of the Code. Francis Morrissey observes:

It is this form of document, along with the declaration, that has given rise to the greatest difficult in interpretation in the post-conciliar era. Since the texts are not strictly speaking legislative – at least according to their nature – their application certainly allows for more leeway than would a decree.³⁹

Canon 34 §1 of the 1983 Code makes instructions binding on those implementing the law:

Instructions clarify the prescripts of laws and elaborate on and determine methods to be observed in fulfilling them. They are given for the use of those whose duty it is to see that laws are executed and oblige them in the execution of the laws. Those who possess executive power legitimately issue such instructions within the limits of their competence.⁴⁰

The contents of instructions are subservient to the law, and depend on the existence of the law to retain their binding force.⁴¹

³⁸ Pope Benedict XV, *motu proprio*, *Cum iuris canonici*, AAS 9 (1917) 484 in Francis Morrissey OMI, "Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law" *The Jurist* 50 (1990) 115-116; cf. *Canon Law Digest* Vol.1 56.

³⁹ Morrissey, 116.
⁴⁰ All translations of canons of the 1983 Code of Canon Law are from Canon Law Society of America at http://www.vatican.va/archive/ENG1104/_PE.HTM.

⁴¹ Canon 34 §2: The ordinances of instructions do not derogate from laws. If these ordinances cannot be reconciled with the prescripts of laws, they lack all force.

§3: Instructions cease to have force not only by explicit or implicit revocation of the competent authority who issued them or of the superior of that but also by the cessation of the law for whose clarification or execution they were given.

Michael Moodie stated: "An instruction is a handbook or guideline for those whose responsibilities involve the application of the law in concrete circumstances... [they] are not merely suggestions; they oblige those who are responsible for the application of the law."

Michael Moodie in John Beal, James Coriden and Thomas Green eds., *New Commentary on the Code of Canon Law*, Washington DC, Canon Law Society of America, 2000, 100.

However, Pope John XXIII approved *Crimen Sollicitationis in forma specifica*. It states: His Holiness Pope John XXIII, in an audience granted to the Most Eminent Cardinal Secretary of the Holy Office on 16 March 1962, graciously approved and confirmed this instruction, ordering those responsible to observe it and to ensure that it is observed in every detail.⁴²

Pope John Paul II confirmed this in 2001 when he explained: "It is to be kept in mind that an Instruction of this kind had the force of law since the Supreme Pontiff, according to the norm of canon 247 §1 of the *Codex Iuris Canonici* promulgated in 1917, presided over the Congregation of the Holy Office, and the Instruction proceeded from his own authority, with the Cardinal at the time only performing the function of secretary".⁴³

When Congregations of the Roman Curia issue documents, most of them have general approval (*in forma communi*) from the Pope before they are promulgated. Significant documents are sometimes approved by the Pope *in forma specifica*. This approval gives the document legislative force.⁴⁴ Although *Crimen Sollicitationis* was approved *in forma specifica*, it retained the canonical status of an instruction.

1983 Code of Canon Law

Canon 277 of the 1983 Code legislated that clerics be celibate i.e. not marry, and that they be continent i.e. that they abstain from sexual activity. Canon 1395 §2 determined paedophilia as a crime along with some other sexual offences:

A cleric who in another way has committed an offence against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

There was a time limit of five years for laying a complaint about an offence until the law was changed in 2001.⁴⁵

⁴² *Crimen Sollicitationis*, http://www.vatican.va/resources/resources_crimen-Sollicitationis-1962_en.html.

⁴³ Pope John Paul II, *motu proprio*, *Sacramentorum Sanctitatis Tutela*, 2001; http://w2.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html.

⁴⁴ John Huels, in *New Commentary on the Code of Canon Law* 57 footnote 37.

⁴⁵ Canon 1362 §1: Prescription extinguishes a criminal action after three years unless it concerns:
1° delicts reserved to the Congregation for the Doctrine of the Faith;
2° an action arising from the delicts mentioned in canons 1394, 1395, 1397, and 1398, which have a prescription of five years;
3° delicts which are not punished in the common law if particular law has established another period for prescription.

§2. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

Which Law Applied?

The Congregation for the Doctrine of the Faith handled dispensations from celibacy during the 1980s. Cardinal Ratzinger, the Prefect of this Congregation, was shocked by the scandalous actions of some priests. He did not think that they should get dispensations from celibacy as a favour, but should instead be punished. Therefore, Cardinal Ratzinger wrote to Cardinal Castillo Lara, President of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, on 19 February 1988 asking for a simpler penal process to dismiss clergy:

Your Eminence, this Dicastery, in the course of examining petitions for dispensation from priestly obligations, has to deal with cases of priests who, in the exercise of their ministry, have been guilty of grave and scandalous conduct, for which the Code of Canon Law, after due process, provides for the imposition of specific penalties, not excluding reduction to the lay state.

These provisions, in the judgement of this Dicastery, ought in some cases, for the good of the faithful, to take precedence over the request for dispensation from priestly obligations, which, by its nature, involves a "grace" in favour of the petitioner. Yet in view of the complexity of the penal process required by the Code in these circumstances, some Ordinaries are likely to experience considerable difficulty in implementing such a penal process.

I would be grateful to Your Eminence, therefore, if you were to communicate your valued opinion regarding the possibility of making provision, in specific cases, for a more rapid and simplified penal process.⁴⁶

Three weeks later, Cardinal Castillo Lara of the Pontifical Commission replied in a letter dated 10 March 1988:

I can well understand Your Eminence's concern at the fact that the Ordinaries involved did not first exercise their judicial power in order to punish such crimes sufficiently, even to protect the common good of the faithful. Nevertheless the problem seems to lie not with juridical procedure, but with the responsible exercise of the task of governance.

In the current Code, the offences that can lead to loss of the clerical state have been clearly indicated: they are listed in canons 1364 §1, 1367, 1370, 1387, 1394 and 1395. At the same time the procedure has been greatly simplified in comparison with the previous norms of the 1917 Code: it has been speeded up and streamlined, partly with a view to encouraging the Ordinaries to exercise their authority through the necessary judgement of

⁴⁶ See Juan Arrieta, "Cardinal Ratzinger and the Revision of the Canonical Penal Law System A crucial role"; http://www.vatican.va/resources/resources_arrieta-20101202_en.html.

the offenders "ad normam iuris" and the imposition of the sanctions provided.

To seek to simplify the judicial procedure further so as to impose or declare sanctions as grave as dismissal from the clerical state, or to change the current norm of can. 1342 §2 which prohibits proceeding with an extra-judicial administrative decree in these cases (cf. can. 1720), does not seem at all appropriate. Indeed, on the one hand it would endanger the fundamental right of defence – and in causes that affect the person's state – while on the other hand it would favour the deplorable tendency – owing perhaps to lack of due knowledge or esteem for the law – towards ambivalent so-called "pastoral" governance, which ultimately is not pastoral at all, because it tends to obscure the due exercise of authority, thereby damaging the common good of the faithful.

At other difficult times in the life of the Church, when there has been confusion of consciences and relaxation of ecclesiastical discipline, the sacred Pastors have not failed to exercise their judicial power in order to protect the supreme good of the "salus animarum".⁴⁷

Cardinal Castillo Lara then proceeded to report that cases for the so-called dismissal *ex officio* from the clerical state had already been considered and decided upon.⁴⁸ Instead bishops should implement the penal law. The Cardinal's reply was not very helpful. The response did not face the reality and enormity of the paedophilia problem.

The wording in Cardinal Ratzinger's letter would seem to indicate that he did not seem to think that the Congregation for the Doctrine of the Faith was competent to handle paedophilia cases. Perhaps this is because canon 6⁴⁹ of the 1983 Code had abrogated many penal laws.

⁴⁷ Ibid.

⁴⁸ cf. *Communicationes* XIV (1982) 85. Hence for precisely this reason, not even the new "Norms for Dispensation from Priestly Celibacy" of 14 October 1980 *AAS* 72 (1980) 1136-1137 made reference to this procedure, which the previous Norms of 1971 [*AAS* 63 (1971) 303-308]] by contrast had allowed.

⁴⁹ Canon 6 §1: When this Code takes force, the following are abrogated:

- 1° the Code of Canon Law promulgated in 1917;
 - 2° other universal or particular laws contrary to the prescripts of this Code unless other provision is expressly made for particular laws;
 - 3° any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code;
 - 4° other universal disciplinary laws regarding matter which this Code completely reorders.
- §2: Insofar as they repeat the former law, the canons of this Code must be assessed also in accord with canonical tradition.

Soon afterwards, Pope John Paul II restructured the Roman Curia in 1988 with the promulgation of the Apostolic Constitution *Pastor Bonus*,⁵⁰ which replaced *Regimini Ecclesiae Universae*.⁵¹ Article 52 of *Pastor Bonus* gave exclusive penal jurisdiction to the Congregation for the Doctrine of the Faith. This ensured that the Congregation for the Doctrine of the Faith was not only competent with regard to offences against the faith or in the celebration of the sacraments, but also with regard to "more serious offences against morals". However, there was no public statement or advice to bishops about dealing with paedophilia and there was no action from the Congregation.

The existence of the instruction *Crimen Sollicitationis* was not a complete secret. The officers of the Canon Law Society of America visited the Congregation for the Doctrine of the Faith in 1996. In its June 1996 Newsletter, the President reported:

The norms on solicitation cases issued in 1962 are currently under review by a commission within the CDF. New norms are required in light of the revision of canon law. In the interim, the 1962 norms should be followed with obvious adaptations.⁵²

On 28 January 1998 Archbishop Philip Wilson, the then Bishop of Wollongong, wrote to the Congregation for the Doctrine of the Faith asking if *Crimen Sollicitationis* was restricted to confession. On 28 February 1998, Archbishop Bertone, the Secretary of the Congregation for the Doctrine of the Faith replied to Bishop Wilson:

Your Excellency,

With your letter of January 28, 1998, regarding the case of a priest accused of sexually abusing a minor, you asked whether the procedure of the *Instructio de modo Procendi in causis sollicitationis* should be followed, or whether these procedures only concern actions which are alleged to have occurred in the context of the Sacrament of Confession.

This Congregation responds that in the above-mentioned case, the procedure of the *Instructio* should be followed as indicated in the fifth chapter of the document (*De crimine pessimo*).⁵³

⁵⁰ Pope John Paul II, apostolic constitution on the Roman Curia, *Pastor Bonus*, 28 June 1988, *AAS* 80 (1988) 841-924.

⁵¹ Pope Paul VI, apostolic constitution *Regimini Ecclesiae Universae*, 15 August 1967: http://w2.vatican.va/content/paul-vi/la/apost_constitutions/documents/hf_p-vi_apc_19670815_regimini-ecclesiae-universae.html.

⁵² Canon Law Society of America Newsletter, quoted in Tom Doyle, The 1922 Instruction and the 1962 Instruction *Crimen Sollicitationis*, promulgated by the Vatican, October 3, 2008, <http://www.awrsipe.com/doyle/2008/2008-10-03-commentary%20on%201922%20and%201962%20documents.pdf>.

⁵³ <http://www.childabuseroyalcommission.gov.au/exhibits/bb3eaadf-9283-41ef-9694-e560738d186a/case-study-14,-June-2014,-sydney>.

Archbishop Bertone stated clearly that *Crimen Sollicitationis* was not confined just to the confessional, and was still in force for dealing with child sexual abuse matters. However, there seems to be no evidence of action on this information.

Many bishops around the world thought that the penal process was too difficult to implement; one reason being the lack of qualified, competent and experienced priests. The procedural law of *Crimen Sollicitationis* remained unknown and confidential. Most bishops and religious superiors were ignorant of the law and many did not act appropriately.

Curia Divisions

During the Pontificate of Pope Benedict XVI, reports of infighting amongst officials of the Roman Curia became increasingly public. *The Guardian* newspaper speculated that the butler Paolo Gabriele⁵⁴ was one of up to twenty whistle-blowers trying to oust Benedict's powerful Secretary of State Cardinal Tarcisio Bertone. The Cardinal had previously been Cardinal Ratzinger's secretary at the Congregation for the Doctrine of the Faith.

Pope Francis who began his pontificate on 13 March 2013 addressed these issues in his Christmas message to the Roman Curia officials on 23 December 2014 stating one of their problems was:

The disease of poor coordination. Once its members lose communion among themselves, the body loses its harmonious functioning and its equilibrium; it then becomes an orchestra that produces noise: its members do not work together and lose the spirit of fellowship and teamwork. When the foot says to the arm, "I don't need you," or the hand says to the head, "I'm in charge," they create discomfort and scandal.⁵⁵

These issues were not new, and there is no doubt that poor coordination by Vatican officials impacted very badly on the handling of sexual abuse cases.

Modification of Penal Law for the United States of America

After another abuse scandal in 1992 in Fall River, Bishops in the United States requested a quicker process than a penal trial to dismiss sexually abusive clergy. In 1993 Pope John Paul II convened a joint commission of American and Vatican canon lawyers to suggest improvements to the law.

The Pope rejected a proposal from the joint commission to allow the Bishops themselves to administratively dismiss priests without canonical trials. But the age

⁵⁴ <http://www.theguardian.com/world/2012/jun/03/vatican-leaks-pope-benedict-documents>.

⁵⁵ Pope Francis, "Christmas Greeting to Curia Officials," *Origins* 44(2015), 8 January 2015, 507. <http://originsplus.catholicnews.com/databases/origins/44/31/4431.pdf>

for sexual abuse cases in the United States was raised to 18 years from 16 years, and the statute of limitations was extended to 10 years after the victim's 18th birthday.⁵⁶

Sacramentorum Sanctitatis Tutela

As the extent of the problem of sexual abuse became more obvious, Pope John Paul II issued the Apostolic Letter *motu proprio Sacramentorum sanctitatis tutela* for the universal Church on 30 April 2001.⁵⁷ The *delicta graviora* norms reiterated the jurisdiction of the Congregation for the Doctrine of the Faith for sexual abuse cases. Sexual abuse is specified as a very serious crime that causes grave damage to the normal development of the victim, as well as causing tremendous damage to the Church and its credibility, and betraying the trust that people have in priests. This crime deserves the strictest punishments. As universal law, *Sacramentorum sanctitatis tutela* raised the age a person was considered a minor to age 18 years, and changed the time limit for laying a complaint until 10 years after the minor had reached the age of 18 years. The Congregation for the Doctrine of the Faith was to supervise penal trials, investigations into credible offences and how they were dealt with.

Rev. Charles Scicluna, former Promotor of Justice at the Congregation for the Doctrine of the Faith, reported that:

Between 1975 and 1985 I do not believe that any cases of paedophilia committed by priests were brought to the attention of our Congregation. Moreover, following the promulgation of the 1983 Code of Canon Law, there was a period of uncertainty as to which of the *delicta graviora* were reserved to the competency of this dicastery. Only with the 2001 *motu proprio* did the crime of paedophilia again become our exclusive remit.⁵⁸

Secrecy

The document *Crimen Sollicitationis* of 1922 was reissued in 1962 to ensure that religious priests were included in its procedures. Kieran Tapsell claims that *Crimen Sollicitationis* was a reflection of the culture of secrecy that the Church adopted around the time of the 1917 Code of Canon Law, rather than its cause.⁵⁹ Tom Doyle

⁵⁶ http://www.nytimes.com/2010/07/02/world/europe/02pope.html?_r=0
⁵⁷ AAS, 93(2001), 737-739.

⁵⁸ Interview of Msgr. Charles Scicluna conducted by Gianni Cardinale on the Strictness of the Church in Cases of Paedophilia 13 March 2012; http://www.vatican.va/resources/resources_mons-scicluna-2010_en.html.

⁵⁹ Kieran Tapsell, "Address of Rev. Professor Ian Waters, The Pumphouse Hotel, Melbourne, 29 October 2014, on Kieran Tapsell's Book: Potiphar's Wife: The Vatican's Secret and Child Sexual Abuse with a Response from the Author," 6, <http://www.awrsipe.com/Misc/Ian-Waters-Speech-with-Commentary5.pdf>.

acknowledges that the documents did not create the obsession with secrecy but are a result of it.⁶⁰

The Church has not always had a culture of secrecy concerning the sexual misconduct of clergy. It appears that the obligation of secrecy for such cases was first imposed by Pope Pius IX in 1866. The official document that imposes the secrecy was published on 20 February 1866 by the Sacred Congregation of the Holy Office in the form of an instruction. This Instruction provided clarification on certain aspects of the previous papal constitution, *Sacramentum Poenitentiae* (1741) of Pope Benedict XIV, which dealt with solicitation in the confessional.

Crimen Sollicitationis seems to have been sent to all the Superior Generals of Religious Orders because religious priests were now encompassed by these procedures. This explains why Cardinal Francis George OMI⁶¹ and religious in Australia at seminaries in 1962 heard of the existence of the document. The Sacred Congregation for the Propagation of the Faith did not appear to have sent it out to countries under its jurisdiction. The Congregation for the Doctrine of the Faith says:

Copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council (1962-1965). A few copies of this re-print were handed out to bishops who, in the meantime, needed to process cases reserved to the Holy Office but, most of the copies were never distributed.⁶² There was no copy at the Apostolic Nunciature in Wellington when I asked for a copy in 1994. There were no copies in diocesan archives in Australia, which in 1962 was still a missionary territory.⁶³

⁶⁰ Quoted by Tom Doyle, The 1922 Instruction and the 1962 Instruction *Crimen Sollicitationis*, promulgated by the Vatican, 3 October 2008; <http://www.awrsipe.com/doyle/2008/2008-10-03-commentary%20on%201922%20and%201962%20documents.pdf>.

⁶¹ "Francis Cardinal George, Archbishop of Chicago, testified in 2008 that the document was known to him as a seminarian and that it was studied as part of a course on moral theology:

Q. Did you know that the Office of the Holy See through the Congregation of the Doctrine of the Faith had implemented a protocol and an instruction to all the superiors across the world regarding solicitation in the confessional?

A. What was the year of that protocol please?

Q. The year the protocol was issued was 1962.

A. Oh. Okay. Then yes.

Q. My question goes to 2002 and did you know that such a protocol had been issued and disseminated by the Office of the Holy See to the superiors?

A. Yes. I was a seminarian in 1962 and in moral theology class that was the document that was given us when we discussed the sacrament of penance.

(Deposition in Doe et al vs. Archdiocese of Chicago, Jan. 30, 2008, p. 24-25)"; quoted by Tom Doyle http://www.bishop-accountability.org/news/2010/03_04/2010_03_12_Doyle_Very_Important.htm.

⁶² Congregation for the Doctrine of the Faith, *Historical Introduction*, http://www.vatican.va/resources/resources_introd-storica_en.html.

⁶³ Professor Ian Waters, The Role of church law in child abuse Issue: help or hindrance? 29 October 2014 https://www.youtube.com/watch?v=7_jaQKTte4VY.

Crimen Sollicitationis determined that the Church's legal process is covered by pontifical secrecy in paragraph 11:

Since, however, in dealing with these causes, more than usual care and concern must be shown that they be treated with the utmost confidentiality, and that, once decided and the decision executed, they are covered by permanent silence (Instruction of the Holy Office, 20 February 1867, No. 14), all those persons in any way associated with the tribunal, or knowledgeable of these matters by reason of their office, are bound to observe inviolably the strictest confidentiality, commonly known as the *secret of the Holy Office*, in all things and with all persons, under pain of incurring automatic excommunication, *ipso facto* and undeclared, reserved to the sole person of the Supreme Pontiff, excluding even the Sacred Penitentiary. Ordinaries are bound by *this same law*, that is, in virtue of their own office; other personnel are bound in virtue of the *oath* which they are always to swear before assuming their duties; and, finally, those delegated, questioned or informed [outside the tribunal], are bound in virtue of the *precept* to be imposed on them in the letters of delegation, inquiry or information, with express mention of the *secret of the Holy Office* and of the aforementioned censure.⁶⁴

Professor Gerardo Nunez from the University of Navarre explains:

The secrecy requirement ended up being called the "secret of the Holy Office." A secret that did not end with the finalisation of the cases in the Congregation, as was the practice with the rest of the Roman Congregations. In effect the obligation to keep the secret over matters that it covered lasted forever. The persons who were bound by the secret were those that had anything to do with the Holy Office tribunal, and it applied equally to proceedings in the diocesan tribunal as the Roman one.⁶⁵

According to the 1983 Code, each diocese is to have secret archives for confidential material such as penal trials and complaints of sexual abuse. Canon 489 states:

- §1 In the diocesan curia there is also to be a secret [*secretum*] archive, or at least in the common archive there is to be a safe or cabinet, completely closed and locked, which cannot be removed; in it documents to be kept secret are to be protected most securely.
- §2 Each year documents of criminal cases in matters of moral matters, in which the accused parties have died or ten years have elapsed from the condemnatory sentence, are to be destroyed. A brief summary of what

⁶⁴ http://www.vatican.va/resources/resources_crimen-Sollicitationis-962_en.html

⁶⁵ Professor Gerardo Nunez, *La Competencia penal de la Congregación para la Doctrina de La Fe*, Comentario al, *motu proprio, Sacramentorum Sanctitatis Tutela*, *Ius Canonicum*, XLIII, no. 85, 2003, 387; in Kieran Tapsell, <http://www.awrsipe.com/Misc/Ian-Waters-Speech-with-Commentary5.pdf> Cooperation with Civil Authorities.

occurred along with the text of the definitive sentence is to be retained.

"*Secretum*" can mean "separate" or "private." In this context "*secretum*" means "very confidential." Most organisations have archives to which the ordinary staff do not have access. The word "secretary" comes from *secretum*, because the person originally had access to the confidential information of a powerful person. Pontifical secrecy could be described as a greater than normal secrecy, like cabinet confidentiality or lawyer client privilege. On the other hand, the secrecy of the confessional is absolute.⁶⁶

The Instruction *Secreta Continere*⁶⁷ addressed the secret of the Holy Office, and applied to sexual abuse of children and all cases involving faith and morals. The document is headed "Concerning Pontifical Confidentiality". The pontifical secret bound members of the staff of the Holy Office and someone acting on their behalf. Since the crimes of sexual abuse of minors and solicitation were reserved to the Congregation, those investigating at a local level were obliged by the pontifical secrecy too. Article 1 §4 of "*Secreta Continere*" did provide for the accused to be told about the allegation "for his own defence".

Victims and witnesses were supposed to take the oath of secrecy about the questions they were asked and their answers. Since very few people in the Church or the world knew of *Crimen Sollicitationis*, it would have been very rare for people to know of pontifical secrecy. They were not prohibited from talking to police, but most would not realise they could talk to others according to John Beal.⁶⁸ The secrecy was to protect the privacy of the accuser, the good reputation of the accused and to enable a fair trial. In fact *Secreta Continere* abrogated the automatic excommunication reserved to the Roman Pontiff incurred for violating the pontifical secret, and a distinction was made between those who violated the secret in the service of the Roman curia and other people.⁶⁹

Both Pope John Paul II⁷⁰ in 2001 and Pope Benedict XVI⁷¹ in 2010 provided that "cases of this kind [paedophilia] are subject to the pontifical secret", and their

⁶⁶ Waters, https://www.youtube.com/watch?v=7_jaQKTe4VY

⁶⁷ Secretariat of State, Instruction, *Secreta Continere*, 4 February 1974, *AAS*, 66(1974): 89-92; *Canon Law Digest* Vol. 8, 207-210.

⁶⁸ Beal, 231.

⁶⁹ Secretariat of State, 89-92; *Canon Law Digest* Vol. 8, 209.

⁷⁰ Pope John Paul II, *motu proprio, Sacramentorum Sanctitatis Tutela*, *AAS* 93(2001) 737-739.

⁷¹ Pope Benedict XVI revised the 2001 *Motu proprio* in 2010 giving a victim 20 years after reaching age 18 years to complain and Article 30 of the revised norms provides that:

- § 1. Cases of this nature are subject to the pontifical secret.
- § 2. Whoever has violated the secret, whether deliberately (*ex dolo*) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher *turnus* at the insistence of the injured party or even *ex officio*.⁷¹

footnotes refer to Art. 1§4 of *Secreta Continere*. The 2010 revision extended the pontifical secret to cover cases involving clergy sexual abuse of intellectually disabled adults and the possession of child pornography. Those who are bound by the pontifical secret are obliged to keep it "forever".

Aurelio Yanguas argues that the real reason for the secrecy imposed by *Crimen Sollicitationis* was to enable "swift, decisive and secret action" before the crimes reached civil court and spare the Church the humiliation of priests in court as sex offenders.⁷² Clearly, *Crimen Sollicitationis* and its predecessor from 1922 are not part of a Vatican conspiracy to cover-up sexual abuse crimes, but their relatively secret existence contributed a great deal to the crisis.

Mandatory Reporting

Associated with the secrecy of paedophilia cases is the subject of mandatory reporting in civil law to police. The Congregation for the Clergy deals with the interests of well over 400,000 priests in the Catholic Church.

In 1997 Cardinal Castrillon Hoyos, the then Prefect of that Dicastery, wrote to the Irish bishops through the papal nuncio, claiming that mandatory reporting of child sexual abuse conflicted with canon law and could invalidate any canonical process.⁷³ Following that letter, on 8 September 2001, the Cardinal congratulated French Bishop Pierre Pican for not reporting a sexually abusive priest to the police:

I congratulate you for not denouncing a priest to the civil administration. You have acted well and I am pleased to have a colleague in the episcopate who, in the eyes of history and of all other bishops in the world, preferred prison to denouncing his son-priest.⁷⁴

In the 1917 Code, canon 120 §1 stated the *privilegium fori* which provided that all judicial proceedings, including criminal matters, against clerics must be brought before an ecclesiastical court, unless other provisions had been legitimately made for some countries, for example by concordat or custom. This privilege was abrogated when the revised Code came into effect on 27 November 1983. Thus it is evident that

Footnote 41 then refers to Art. 1§4 of *Secreta Continere*. The 2010 revision extended the pontifical secret to cover cases involving clergy sexual abuse of intellectually disabled adults and the possession of child pornography. Those who are bound by the pontifical secret are obliged to keep it "forever".

⁷² Aurelius Yanguas, "De crimine pessimo et de compentia S. Officii relate ad illud" in *Revista española de derecho canónico* 1 (1946) 433-437 quoted in Beal, 207.

⁷³ Cardinal Castrillon Hoyos, Letter to Irish Bishops 31 January 1997, quoted in Tapsell, <http://www.awrsipe.com/Misc/Ian-Waters-Speech-with-Commentary5.pdf> Cooperation with Civil Authorities.

⁷⁴ Cardinal Castrillon Hoyos, Letter to Bishop Pierre Pican: *Vous avez bien agi et je me réjouis d'avoir un confrère dans l'épiscopat qui aux yeux de l'histoire et de tous les autres évêques du monde aura préféré la prison plutôt que de dénoncer son fils-prêtre*. <http://goliass-news.fr/article3904.html>. The priest was later sentenced to eighteen years in jail for the rape of the boy and the sexual assault of 10 other boys.

the supreme legislator, Pope John Paul II, intended that any cleric whose behaviour constitutes a crime in accordance with the norms of the civil law cannot be shielded from the consequences of his actions. What punishment such actions deserves in canon law is another matter. Moreover, it is an obligation of Bishops, and other relevant Church personnel, to report crimes by committed clerics to the competent civil authority as required in accordance with the norms of the civil law.

Accordingly, the content of the two letters of Cardinal Hoyos appears to reflect an attitude at odds with the law of the Church and of covering-up crimes of paedophilia by clergy so that they are not held accountable for their actions before the civil law which they have also violated. Such attitudes have made the problem so much worse.

The Congregation for the Doctrine of the Faith has stated in its letter to bishops' conferences in 2011:

The Guidelines prepared by the Episcopal Conference ought to provide guidance to Diocesan Bishops and Major Superiors in case they are informed of allegations of sexual abuse of minors by clerics present in the territory of their jurisdiction. Such Guidelines, moreover, should take account of the following observations:

g.) the Guidelines are to make allowance for the legislation of the country where the Conference is located, in particular regarding what pertains to the obligation of notifying civil authorities.⁷⁵

Negligence or Cover-up by Bishops

The Pontifical Commission for the Protection of Minors was established on 22 March 2014. Pope Francis promulgated the statutes of the Commission and authorised the establishment of a judicial section of the Congregation for the Doctrine of the Faith to punish and remove bishops who are negligent or cover up the sexual abuse of minors⁷⁶ in violation of canon 1389:

§1 A person who abuses ecclesiastical power or an office, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the office, unless a penalty for that abuse is already established by law or precept.

§2 A person who, through culpable negligence, unlawfully and with harm to another, performs or omits an act of ecclesiastical power or ministry or office, is to be punished with a just penalty.

The judicial section of the Congregation of the Doctrine of the Faith judges cases of

⁷⁵ CDF, *Letter to assist Bishops Conferences*, 3 May 2011; http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html.

⁷⁶ Gordon Read, "Further Developments Concerning *Graviora Delicta* Cases," in *The Canon Law Society of Great Britain and Ireland Newsletter*, No. 183 September 2015, 42-46.

bishops in the name of the Pope.⁷⁷ Bishops can now be punished and removed by a judicial process rather than be asked to resign according to canon 401 §2.⁷⁸

Conclusion

The sin of sexual abuse of boys and girls has always been and always is in accordance with the moral teaching of the Church a grave or mortal sin. It has been regarded also as a crime in canon law from earliest times, and until recently offenders were severely punished. This underlies the realisation that it has always been seen to have had serious effects on the victim and the Church in general. Cover-ups and the extent of the problem has been a huge scandal for the Catholic Church in recent years.

The secrecy surrounding *Crimen Sollicitationis* is a scandal in itself. It has led to the inept handling of abuse cases in the upper levels of Church administration. The secret procedures in *Crimen Sollicitationis* have caused confusion, inaction, and facilitated "geographical cures" of moving clergy from place to place.

Consequently many bishops and religious superiors have not dealt with abusive clergy properly. Therefore, as Pope John Paul II stated 23 April 2002, "People need to know that there is no place in the priesthood and religious life for those who would harm the young".⁷⁹ There is no doubt that the Pope considered that one conviction of sexual abuse was sufficient to have a priest dismissed from the clerical state. Cardinal Levada, Prefect of the Congregation for the Doctrine of the Faith, has reminded bishops' conferences there is no place in the priesthood for those who would hurt the young.⁸⁰ Like many secular institutions, Church leaders have failed to act and enabled abusers to continue to function and have access to more victims. Bishops around the world seemingly did not learn from the lessons of North America.

⁷⁷ "Proposals accepted by Pope Francis Regarding Allegations of Abuse of Office by a Bishop When Connected to the Abuse of Minors," in Sharon Euart RSM, ed., *Roman Replies and CLSA Advisory Opinions 2015*, Washington DC, Canon Law Society of America, 2015, 66.

⁷⁸ Canon 401 §2: A diocesan bishop who has become less able to fulfil his office because of ill health or some other grave cause is earnestly requested to present his resignation from office.

⁷⁹ Pope John Paul II, "Address to the Cardinals of the United States," *Origins*, 31(2002), 759.

⁸⁰ Cardinal Levada, *Letter to Bishops' Conferences*, 3 May 2011, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_201105_03_abuso-minori_en.html.

The Baptized Unbelievers and Matrimony¹

Anthony Malone*

Introduction

Not infrequently, Tribunal officials are requested by a baptized non-Catholic to examine her/his marriage to another baptized non-Catholic in order to ascertain whether, when they married (and particularly when theirs was not a 'church' wedding), their marriage vows obliged them until the death of their spouse even though now their marriage has been dissolved by a civil court order. Usually this request comes because one of the baptized non-Catholics now wishes to enter marriage with an unmarried baptized Catholic and in accordance with Catholic Church law. Moreover, increasingly in these times, the same Tribunal Officials are also requested by a baptized Catholic, married according to Catholic Church law to another baptized Catholic (and now divorced) to establish whether their marriage was a valid marital union obliging until the death of one spouse.

Such requests are all too often accompanied by claims that they or their now divorced partner never really understood the significance of the sacrament of matrimony, or never both before and during the marriage showed any interest in the Church, or were ever involved in religious practices. Given the proven baptism of the parties, and in the case of a Catholic couple, that their wedding was in accordance with the prescribed Catholic form, and given the absence of any proven simulation, were these marriages sacramental, valid and therefore indissoluble?

The 1917 Code of Canon Law

In the 1917 Code of Canon Law canon 1012 §1 and §2 stated:

- §1. The Lord Christ himself has raised the marriage contract between baptized persons to the dignity of a sacrament.
- §2. Hence there can be no valid marriage contract between baptized persons which is not at the same time a sacrament.²

The footnotes attached to this canon reveal the underlying doctrinal teachings that this canon upheld.³ However, in the sixteenth century some theologians using

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¹ The term 'unbelievers' describes those who have been validly baptized but have either never come to any act of faith or have subsequent to their baptism rejected all Christian beliefs.

² Canon 1012 §1 Christus Dominus ad sacramenti dignitatem evexit ipsum contractum matrimonialem inter baptizatos.

§2 Quare inter baptizatos nequit matrimonialis contractus validus consistere, quia sit eo ipso sacramentum.