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The Vatican and the Protection of U.S. Clergy Rights

In October of 2002, Cardinal Giovanni Battista Re, Prefect for the Congregation of Bishops in Rome, issued in the name of the Vatican a response to the American bishops concerning the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests, Deacons and or Other Church Personnel* (USCCB, 2002). These norms had been hastily assembled by the U.S. bishops in their June Plenary meeting in Dallas, Texas, to respond to the tragic developments concerning the sexual abuse of minors by clerics in the U.S.

Although an urgent response was needed, some canon lawyers raised concerns about the lack of due process for accused clergy in the norms. Questions emerged, including issues about the removal of clergy after an allegation before any substantive investigation had been made; the lack of a clear definition of sexual abuse; the right of the accused and accuser to their good reputation while investigations were underway; and disregard for any prescription (in some ways similar to civil law “statute of limitations”).

Cardinal Re’s letter pointed to some of these same issues, observing that the application of the policies adopted at Dallas could be the “source of confusion and ambiguity.” He noted the difficulty in reconciling the provisions of the Dallas norms with the universal law of the church, especially when the terminology used was “vague or imprecise.”

Contributions of the Mixed Commission

As a result of the later intervention by a mixed commission of American bishops and curial officials, some safeguards for due process were provided. The revised norms clarified the status of the important work of the review board, the group that the bishop is to consult regarding allegations of sexual misconduct. Qualifications for service are enumerated, a term is established, and they are defined as a “consultative body” to the bishop (nos. 4, 5). The norms underscored the need for each diocese (“eparchy” for Eastern Catholics) to have a written policy on the sexual abuse of minors by
priests, deacons, and other church personnel and to be in conformity with the requirements of the universal law of the church (no. 2). The observance of the “statute of limitations” is included, although the bishop can petition the Congregation for the Doctrine of the Faith for a dispensation, “while indicating appropriate pastoral reasons (8).” The norms clarified psychological testing, sometimes utilized by bishops to establish the guilt of an accused. As norm 7 states, the alleged offender “may be requested to seek, and may be urged voluntarily to comply with an appropriate medical and psychological evaluation at a facility mutually acceptable to the diocese/eparchy and to the accused.” The definition of sexual abuse has been somewhat clarified, but there is no provision for a gradation of penalties according to possible offenses. Although the bishop/eparch is reminded of his possible use of executive power to remove clerics from office, remove or restrict faculties, and limit the exercise of ministry, he is likewise reminded that in exercising this broad administrative power, such decisions can be appealed by the cleric (norm 9, footnote 6). It is also mentioned that care will always be taken to protect the rights of all parties involved when an accusation has been made (no. 13). If an accusation has proven to be unfounded, “every possible step will be taken to restore the good name of the person falsely accused.”

Although some serious concerns were voiced concerning the revised norms (see L. Örsy, 2003; A. Dulles, 2004) the intervention of the Holy See in calling for the mixed commission was most helpful. A Judicial Commission to Assist the Bishop

This was not the first time that the Vatican thought it necessary to defend clergy interests in the U.S. For example, in the eighteenth century, priests in the United States were complaining to Rome about how they were frequently removed from their missions (The United States was then considered “missionary territory” under the ultimate supervision of the Sacred Congregation for the Propagation of the Faith) or transferred as punishment for a variety of offenses, including perceived insubordination, with no due process. On July 20, 1878, the Sacred Congregation for the Propagation of the Faith issued an instruction, the Method to be observed by the Bishops of the United States, in taking cognizance of, and adjusting the criminal and disciplinary causes of clergyman. It had happened that many priests had been removed from their pastoral offices as missionary rectors and had frequently made recourse to the Holy See. Upon review by Rome, many procedural defects had been discovered. “It is moreover to be deplored that it not rarely happens, that many, and indeed necessary things are wanting in the statements sent, and when all things are considered that grave doubts often arise as to the trust to be placed in or refused to the documents brought forward to these cases” (Catholic Universe, December 5, 1878).

Prior Roman Intervention: The Instruction of 1878

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A Judicial Commission to Assist the Bishop

The Instruction established a “Judicial Commission” in each diocese, consisting of five priests chosen at a diocesan synod, “most worthy and, as far as possible, well versed in canon law.” Their principal duty was to examine disciplinary cases of priests against whom the bishop sought to bring charges. If the bishop contemplated removal of the priest from office, the cleric could not be deprived of his position unless at least three of the commissioners had been employed by the bishop to examine the case and their counsel had been heard. The commission would receive from the bishop’s vicar general (or other appropriate delegate)
a summary of the case in writing, with a transcript of the evidence. The accused would be cited by the bishop to appear before the commissioners, with prepared answers to the proofs that had been gathered. The accused would be invited to speak and could bring with him any appropriate exculpatory materials. After this appearance, the commission would deliberate, each councilor providing a separate written opinion with the reasons for his decision. However, if doubts still remained, witnesses could be called on the same day or later. Witnesses for the prosecution, after having been examined by the commission, could be interrogated by the accused. The commission would again deliberate and send their findings to the bishop for his decision. Should the bishop or the accused decide to appeal, it would be sent to the metropolitan archbishop, who would proceed in the same manner, with his own commission.

Many priests in the U.S. welcomed this intervention from the Vatican. In some ways, they were now judged by a jury of their own peers (the commission), who had a decisive, and possibly determinative role to play in reviewing testimony and evidence. They were grateful that another court (metropolitan) could review their appeal, with the possibility left open for an appeal to Rome. They also were grateful that they had an opportunity to present a defense, and canonists argued successfully for the presence of an advocate for the accused at these proceedings on the basis of natural equity.

Reform Derailed

In meetings in Rome between some of the U.S. archbishops and officials of Propaganda preparing for the Third Plenary Council of Baltimore, this latest Instruction was seen to be in need of revision. One archbishop (Michael Corrigan of New York) expressed concerns about the presence of “laymen” who were now serving as defense counsel for priests instead of clerics. He worried that “artful, cunning, crafty, and evil advocates would be chosen who would strive by every stratagem to upset the judgment of the bishop” (Jurist, 1953, 546). Some relief, however, was to be given to clergy by the Third Plenary Council of Baltimore (1884) including the possible appointment of “irremovable rectors” with certain restrictions and norms concerning dismissals and transfers.

Rome and the Essential Norms

The Vatican has sometimes acted as “another set of eyes” for solutions to problems in local churches, as was seen in the church in the U.S. in the 1870s. Recently, after a two-year trial use of the Essential Norms in the United States, they were slightly revised, including the addition of a statement that “during the investigation, the accused enjoys the presumption of innocence and all appropriate steps will be taken to protect his reputation (no. 6).”

The terrible scourge of sexual misconduct against the young has left a certain blight upon the clergy. Inexcusable behavior regarding supervision has eroded the confidence of many members of the Christian community in the institutional church. It can be reasonably hoped that a just application of approved disciplinary procedures, and the observance of the rights of all people involved in any allegation of inappropriate clerical behavior or sexual misconduct will be scrupulously observed. Perhaps, as the disciplinary procedures are utilized, as in 1878, some creative solutions may be offered for balancing the protection of the common good and defense of the rights of the innocent. Hopefully, whatever emerges in terms of procedures in this matter will assure that clergy guilty of sexual misconduct are properly prosecuted and punished if guilty—and also respect due process, by providing protection for the rights of all—
including the accused who might even possibly be proven innocent.

References


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