

Clearly, there is little that a Tribunal can do to ensure compliance with the Privacy Principles. It must therefore rely on either the legal protection in the places where these bodies are or obtain consent. The most likely candidate to fulfil the 'similar law' exception is the Apostolic See. The various jurisdictions where material is sent in all the other cases would have an enormous variety of privacy legislation and although the canon law is equally binding, there must be grave doubt that this would be sufficient to satisfy the requirements of the *Privacy Act* in each and every situation. Certainly, for recipients in the UK, the EU and the USA one can safely assume that there will be legislative protection of privacy equal, if not superior to, the Australian Privacy Principles. However, this is by no means universal. The simplest and the easiest solution for the Tribunal to meet the requirements of sections 16A and 16C as well as APP 8 would be to obtain the written consent of all persons whose cases involve sending material to an overseas recipient.

PRACTICAL MEASURES

Other than the suggested changes to *praxis*, there are two practical measures suggested for a Tribunal, additional to the usual forms and procedures. The first of these is to draft a Privacy Policy, according to the requirements of APP1, addressing the matters sets out in that statutory provision. The second is to create a Consent Form for each person interviewed by the Tribunal, specifying how their personal and sensitive information will be treated, including who will be permitted to view it, and informing that person of the possibility of transmission of material to foreign jurisdictions.

CONCLUSION

This study has considered both how the main civil instrument of privacy law in Australia – the *Privacy Act 1988* – affects the work of an Ecclesiastical Tribunal and what could be changed to bring the implementation of canon law closer to the civil law requirements. It was shown that there are only a few areas where the requirements of the canons and that of the civil regime cannot be reconciled. In fact, what has emerged is that closer adherence to the canonical norms in two areas at least – the content of the *libellus* and the Publication of the Sentence – will produce a more harmonious situation. The most difficult areas to harmonise pertain to those things which the canonical process would hold as confidential, namely evidence withheld from Publication, and the judge's *votum*. The best solution as regards the former is one of risk minimisation by careful selection of the proofs that are utilised. As to the judge's *votum*, it is clear that it is only the dissenting *votum* that is truly susceptible to access under the *Privacy Act*, yet strict adherence to the canonical norms would make all the *vota* of the college susceptible to access.

There are no doubt challenges posed by all this. These challenges are far from insurmountable, but the growing awareness of information management and privacy, as well as a general loss of goodwill towards the internal procedures of the Catholic Church, mean these challenges must be met sooner rather than later.

Dismissal from the Clerical State

Brendan Daly*

The term "defrocked" is often used by the media to refer to a priest dismissed from the clerical state, but the term is no longer used in canon law. The *New York Times* in 2010 reported: "Top Vatican officials - including the future Pope Benedict XVI - did not defrock a priest who molested as many as 200 deaf boys."¹ The *Sunday Star Times* in New Zealand ran a story on 11 March 2018 advising "Catholic priest defrocked after affair in the US now in charge of Auckland parish".² In the 1917 Code of Canon Law a penalty that could be imposed upon a cleric was the prohibition to wear ecclesiastical dress. The penalty could be imposed either as a temporary or a perpetual privation. Perpetual privation was a very serious penalty but it did not include the cleric being dismissed from the clerical state. The penalty of degradation alone had that effect.³ Hence "defrocked" is not a term applicable to the Catholic Church for the dismissal from the clerical state.

Once a priest has been dismissed from the clerical state, he remains an ordained priest while losing all rights and privileges of being a cleric,⁴ but can function if someone in danger of death.⁵

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¹ "Vatican Declined to Defrock U.S. Priest Who Abused Boys," March 24, 2010: <http://www.nytimes.com/2010/03/25/world/europe/25vatican.html?pagewanted=1>; and *Defrocked Priest Is About to Be Freed Amid Renewed Fury*, By Katharine Q. Seelye, July 26,

2017: Top Vatican officials - including the future Pope Benedict XVI - did not defrock a priest who molested as many as 200 deaf boys, even though several American bishops repeatedly warned them that failure to act on the matter could embarrass the church, according to church files newly unearthed as part of a lawsuit. <https://www.nytimes.com/2017/07/26/us/boston-priest-paul-shanley-sex-abuse.html>.

² <https://www.stuff.co.nz/national/102066087/a-catholic-priest-defrocked-after-an-affair-in-the-us-is-in-charge-of-a-parish-in-auckland>.

³ Charles AUGUSTINE, O.S.B., *A Commentary on the Code of Canon Law: Clergy and Hierarchy*, St Louis: Missouri, B. Herder Book Co., 1918, vol. 8, 259-262. (=AUGUSTINE, *Commentary*]

⁴ John ALESANDRO, "A Study of Canon Law: Dismissal from the Clerical State in Cases of Sexual Misconduct," in *The Catholic Lawyer*, 36:3 (2017), 259; (=ALESANDRO, *A Study of Canon Law*); John BEAL, "Doing What One Can: Canon Law and Clerical Sexual Misconduct," in *The Jurist*, 52 (1992), 642, 647.

⁵ Canon 976. Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.

Historical precedents

The Church has always been aware of the sexual abuse of children and until recent times has severely punished perpetrators of the sexual abuse of minors. Priests who had abused children were dismissed from the clerical state immediately.

Sexual abuse of girls or boys was always seen by Christians as being contrary to the 6th 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.⁶

Sexual abuse by a priest was considered to be especially evil. Canon 71 of the Council of Elvira (305-306), in Spain, condemned those who rape little boys⁷: "People who sexually abuse boys shall not be given communion even at the end."⁸ Refusing communion to a dying perpetrator of sexual abuse demonstrates how evil the Council judged sexual abuse.

The Council of Nicea (325) was the first ecumenical council and began placing church norms into canons. Canon 9 ordered that unchaste priests before or after ordination could not exercise ministry.⁹

The Books of Penitentials which were common between the 6th and 11th century give us an important insight into how the Church of that time viewed sins, especially homosexual and paedophile sins. In England the Penitential of Bede defined effeminacy and sodomy as capital sins with resulting penalties of 7 years for deacons, 10 years for priests and 12 years for bishops.¹⁰

⁶ 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. (=SCICLUNA, *Sexual Abuse of Children*).

⁷ Nicholas CAFARDI, *Before Dallas*, New York, Paulist Press, 2008, 2. (= CAFARDI, *Before Dallas*).

⁸ Stephen ROSSETTI, *A Tragic Grace: The Catholic Church and Child Sexual Abuse*, Collegeville, The Liturgical Press, 1996, 104. (= ROSSETTI, *A Tragic Grace*).

⁹ COUNCIL OF NICEA, Canon 9, in Christian Cochini SJ, *The Apostolic Origins of Priestly Celibacy*, San Francisco, Ignatius Press, 1981, 336.

¹⁰ J. MCNEIL and Helena GAMER, *Medieval Handbooks of Penance: A Translation of the Principal 'Libri Poenitentiales' and Selections from Related Documents*, New York, Columbia University, 1990, 226; quoted in CAFARDI, *Before Dallas*, 3.

Bishop Burchard of Worms compiled a 20-book collection of canon law¹¹ which he completed in 1012. He wrote:

A cleric or monk who is a perverter of young boys or adolescents, who has been caught kissing or in another occasion of base behaviour with young boys or adolescents, shall be whipped in public, shall lose his crown (tonsure), and so basely shorn, shall have his face spit on, shall be bound in iron chains, shall waste in prison for six months, and for three days of each week, shall be fed only on barley bread at evening time. After this, for another six months, he is to be kept apart in an enclosure, under the watch of a spiritual elder, intent on manual labour and prayer, subject to vigils and prayers, and he is always to walk under the guard of two spiritual brothers, not being allowed to engage in private speech or counsel with any young men.¹²

Peter Damian, in *The Book of Gomorrah*, condemned sexual misconduct by clerics and said, "that those who are addicted to impure practices should be neither promoted to orders nor, if already ordained, should be allowed to continue".¹³

The Third Lateran Council of 1179 taught that:

All those who are caught to be labouring under that incontinence which is against nature and because of which the wrath of God visited the sons of infidelity and burnt down five cities: if they are clerics, they will be dismissed from the clerical state or else be confined to monasteries to do penance; if they are lay people they will be excommunicated and they will be considered as totally estranged from the assembly of the faithful.¹⁴

The Fourth Lateran Council of 1215 stated:

In order that the behaviour and actions of the clergy may be reformed the better, let all, especially those who are constituted in Holy Orders, strive to live in continence and chastity avoiding every lustful vice especially that vice for which the wrath of God descends from heaven upon the sons of infidelity. May they be able to minister before the almighty God with a pure heart and unblemished body.¹⁵

The Fifth Lateran Council in 1514 taught:

¹¹ GRATIAN in his *Concordantia Discordantium Canonum* classifies sexual acts contrary to nature, including paedophile activity, as crimes in canon law.

¹² CAFARDI, *Before Dallas*, 3.

¹³ PETER DAMIAN, 'Letter 13, chapter 10', quoted in CAFARDI, *Before Dallas*, 3.

¹⁴ SCICLUNA, *Sexual Abuse*, 14.

¹⁵ *Ibid.*, 15.

If anyone indeed, whether a lay person or cleric were to be convicted of the crime for which the wrath of God descends upon the sons of infidelity, let him be punished by the penalties respectively imposed by the sacred canons or the civil law.¹⁶

The Council of Trent in 1551 forbade priests to be sexually active and required bishops to deprive offenders of office and to punish them.¹⁷ In session 13 the Council decreed:

Canon 3 ...there are occasions when crimes of such gravity have been committed by ecclesiastical persons that, on account of their heinous nature, these persons have to be removed from sacred orders and handed over to the secular tribunal.¹⁸

Clerics who sexually abused minors were dismissed from the clerical state and lost the privilege of the forum and the right to be tried in a church court. Offending clerics were then tried and punished in a secular court. In the 16th century five bishops were normally required by canon law to dismiss a priest. If there was difficulty getting the required number of bishops to dismiss them, canon law allowed a bishop to enlist his vicar general and other senior clerics to do it:

Canon 4. It shall be lawful for a bishop in person, or through his vicar general in spirituals, to proceed against a cleric in recognised orders, including those of the priesthood, even to his condemnation and verbal deposition, and when acting in person even to the actual and solemn reduction from the orders themselves and from ecclesiastical status...if he has other persons of recognised ecclesiastical rank who are available, are of mature years and are commendable by their knowledge of the law.¹⁹

There was to be no delay in punishing grave crimes. The first recorded case after the Council of Trent was in 1570. A church court in Florence judged the case of Luigi Fontino, a canon of the Church of Our Lady of Loreto. He had sodomised a 15 or 16-year-old choir boy. After Luigi Fontino was threatened with torture, he pleaded guilty.

¹⁶ Ibid., 15.

¹⁷ COUNCIL OF TRENT 13th session, Decree on Reformation, chapter IV, H.J. SCHROEDER, O.P., *Canons and Decrees of the Council of Trent*, London, B. Herder Book Co, 1950, 83: "Since ecclesiastics are sometimes guilty of crimes so grave that on account of their shocking wickedness they have to be deposed from sacred orders and handed over to the secular court...it is ordained and decreed that it shall be lawful for a bishop by himself...even without the presence of other bishops, to proceed against a cleric".

¹⁸ COUNCIL OF TRENT, in Norman TANNER, *Decrees of the Ecumenical Councils*, Vol. 2, London, Sheed & Ward, 1990, 700.

¹⁹ Ibid.

The church court dismissed him and handed him over to secular authorities who had him beheaded. The choir boy was whipped and exiled from the Papal States.²⁰

In 1726 the Sacred Congregation for the Council was more specific about crimes and penalties as it sentenced a priest to the galleys²¹ and forbade him from celebrating mass again for sodomising boys.²²

The 1917 Code of Canon Law

Minor and Major Clerics

Not all clerics according to the 1917 Code were clerics by ordination.²³ A distinction was made between those who were installed as minor clerics by receiving the tonsure, and major clerics such as bishops, priests or deacons who had received the sacrament of holy orders.²⁴

A person became a cleric by receiving tonsure. A tonsured cleric was normally then in a seminary that tested his suitability for ordination.²⁵ A minor cleric would be returned to the lay state because of a canonical reason such as being unsuitable for ordination,²⁶ attempting marriage,²⁷ failing to wear clerical dress after receiving a precept,²⁸ enlisting in the army,²⁹ or by asking to leave the seminary and cease training to be a priest.

Clerics through ordination who were reduced to the lay state, lost all offices, benefices, clerical rights and privileges, and were prohibited from wearing clerical dress or tonsure.³⁰ Privileges included the privilege of the forum so that a cleric was tried in an ecclesiastical court rather than a secular court.³¹ The faithful no longer had to show him reverence.³² In many countries being a cleric freed him from compulsory military service, so a cleric reduced to the lay state could be conscripted.³³

²⁰ R. SHERR, "A Canon, a Choirboy, and Homosexuality in Late Sixteen Century Italy: A Case Study," *Journal of Homosexuality*, 21 (3) (1991), 1-22; ROSSETTI, *A Tragic Grace*, 104.

²¹ Being sentenced as a galley slave to row ships was the next most severe punishment after execution. He was shackled to his seat where he ate, slept and toileted until he died or was near death. <https://www.christianitytoday.com/history/issues/issue-46/life-as-galley-slave.html>.

²² SACRED CONGREGATION FOR THE COUNCIL, June 8 and July 6, 1726, GASPARRI, *Fontes*, V: 763-764. Cf. James PROVOST, "Offences against the Sixth Commandment; Toward a Canonical Analysis of Canon 1395" in *The Jurist* 55 (1995) 632-663.

²³ CIC 1917 Canon 107.

²⁴ CIC 1917 Canons 108, 212.

²⁵ AUGUSTINE, *Commentary* vol. 2, 197.

²⁶ CIC 1917 Canon 211 §2.

²⁷ CIC 1917 Canon 132 §2.

²⁸ CIC 1917 Canon 136 §3.

²⁹ CIC 1917 Canon 141 §2.

³⁰ CIC 1917 Canon 213.

³¹ CIC 1917 Canon 120 §1.

³² CIC 1917 Canon 119.

³³ CIC 1917 Canon 121.

However, after a major cleric was reduced to the lay state he was still bound by the obligations of celibacy unless it was judged he had been ordained under the pressure of grave fear and had not ratified the ordination through the exercise of Holy Orders. In such a case the Sacred Congregation for the Sacraments could investigate in a judicial or administrative manner and release him from the obligations of celibacy.³⁴

Loss of the Clerical state according to the 1917 Code

Canon 211 of the 1917 Code listed the three possible ways to lose the clerical state:

- §1. Although sacred ordination, once validly received, can never be invalidated, nevertheless, a major cleric can be returned to the lay state by a rescript of the Holy See, by a decree or sentence according to the norm of canon 214, or finally as a penalty of degradation.
- §2. A minor cleric can be returned to the lay state not only automatically as a result of the causes described in law but also upon his own will, having informed the local Ordinary, or by a decree of the same Ordinary given for a just cause, if namely the Ordinary, all things considered, prudently judges that the cleric is not [sufficiently] consistent with the decorum of the clerical state to be promoted to sacred orders.

Therefore, a cleric could lose the clerical state by 1) his ordination being declared null; 2) receiving a reduction to the lay state 3) dismissal from the clerical state.

1. An ordination could be declared null. This means that the person was not validly ordained because the sacrament was not administered properly, or not received by the ordinand (perhaps not wanting to be ordained). If an ordination was declared null, the ordinand lost all rights and was released from all obligations of the clerical state.
2. A rescript could be obtained from the Holy See.³⁵ These rescripts from the Apostolic See used to say the cleric was "reduced to the lay state."

³⁴ SACRED CONGREGATION FOR THE SACRAMENTS, decree, *Regulae servandae in Processibus super nullitate sacrae ordinationis*, July 9, 1931: *AAS*, 23 (1931), 457; English translation in *Canon Law Digest*, vol. 1, 812-833.

³⁵ SACRED CONGREGATION FOR THE SACRAMENTS, instruction, *Ad Reverendissimos Locorum Ordinarios de Scrutinio Alumnorum Peragenda antequam ad Ordines Provoveantur*, December 27, 1930: *AAS*, 23 (1931), 126. English translation in *Canon Law Digest*, vol. 1, 470-471: "Others there are who have received minor and sacred orders in good faith, but before they reach the priesthood realise that they are unable to bear the burdens of sacred ordination, or else by that time have become entangled in vicious habits or worldly ways: in these the want of a holy vocation will be more easily and clearly discovered, and they themselves will ask to be relieved of their miserable condition".

The ordinand may not have been free to decide to be ordained. This situation is addressed by 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.

Therefore, a cleric could be reduced to the lay state by a church court and dispensed from the obligations of celibacy and praying the office if it was decided:

- a) he received ordination under external pressure
 - b) but with sufficient freedom to receive the sacrament of holy orders validly.
3. A person could be dismissed from the clerical state under the 1917 Code for the offences stated in canon 2359 §2:

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.³⁶

Canon law has traditionally distinguished between the loss of the clerical state and release from the obligations of the clerical state.³⁷ "Dismissal from the clerical state as a penalty in the Pio-Benedictine Code (1917) was called degradation".³⁸ When a cleric was dismissed he no longer had the rights and privileges of the clerical state. However, unless he was dispensed from the obligations of celibacy and praying the divine office, the dismissed cleric was still bound by these obligations. Abbo and Hannan explained, "in the juridical sense, the reduction of clerics to the lay state means the perpetual deprivation of the rights, the privileges, and the juridical status of clerics, especially of

³⁶ 1917 Code of Canon Law, Trans. Edward PETERS, *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

³⁷ Javier DE OTADUY, "The Loss of the Clerical State" in Á. MARZOA, J. MIRAS and R. RODRIGUEZ-OCAÑA, (eds.) E. CAPARROS (gen. ed. English language edition) *Exegetical Commentary on the Code of Canon Law*, 5 vols., Montreal: Wilson & Lafleur, 2004, vol. II/1, 399. (DE OTADUY, *The Loss of the Clerical State*).

³⁸ William WOESTMAN OMI, *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law*, 3rd ed. Revised and updated, Ottawa, Saint Paul University, 2006, 213. (=WOESTMAN, *The Sacrament of Orders*).

the right of lawfully exercising the power of orders possessed".³⁹

One of the privileges of clerics in the 1917 Code was the privilege of the forum. Canon 120 §1 stated:

Clerics shall in all cases, whether contentious or criminal, be brought before an ecclesiastical judge, unless it has been legitimately provided otherwise in certain places.⁴⁰

Canon 120 §2⁴¹ did provide that a priest could also be brought before the secular courts if the bishop granted permission. The law said that such permission was not to be refused without a just and serious reason.

The privilege of the forum never applied in Germany,⁴² Australia, New Zealand, Canada⁴³ and the United States of America because of contrary custom. In Australia any charge of sexual abuse of a minor committed by a priest, such as Michael Glennon in 1978, was dealt with in secular courts. The privilege of the forum was abolished everywhere when the revised Code of Canon Law came into effect on 27 November 1983.⁴⁴

Penalty of Degradation

A major cleric could be reduced to the lay state for committing a crime, defined in ecclesiastical law as "an external and morally imputable violation of a law to which a canonical sanction, at least an indeterminate one, is attached."⁴⁵

A deposed cleric lost his office and benefice, all titles and his pension. However, the degraded cleric could continue to receive financial support as a charitable grant from the bishop.

³⁹ J. A. ABBO and J. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, 2nd revised ed., 2 vols. St Louis Missouri, B. Herder Book Co., 1960, vol. 1, 268.

⁴⁰ All translations of the 1917 Code from Edward PETERS, *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

⁴¹ CIC 1917 Canon 120 §2 ... the Ordinary, however, especially when a lay person is the petitioner, will not deny this permission except for a just and grave causes, all the more so when he was unable to bring about a resolution of the controversy between the parties.

⁴² SECRETARIAT OF STATE, Concordat between the Holy See and German Reich, 20 July 1933: Art. 33.

⁴³ AUGUSTINE, *Commentary*, 64. cf. M. Conte a Coronata, *Institutiones Iuris Canonici* Volume I, Editio Tertia, Roma, Marietti, 1947, 209-211.

⁴⁴ Rodger J. AUSTIN, "Report on Canon Law submitted to the Royal Commission into Institutional Responses to Child Sexual Abuse" October 2016, in *The Canonist*, volume 8, number 2, (2017) 303.

⁴⁵ CIC 1917 Canon 2195 §1.

If the cleric still failed to reform, then a second penalty of deprivation of ecclesiastical dress was imposed.⁴⁶ At this stage then the deposed cleric had the status of a layman.

Finally, the third level of penalty of actual degradation could then be imposed.⁴⁷

Canon 2305 §1. Degradation contains within itself deposition, the perpetual deprivation of ecclesiastical habit, and the reduction of the cleric to the lay state.

§2. This penalty can only be carried out for a delict expressed in law, or if it is a cleric who is already deposed and deprived of ecclesiastical habit, and if he continues to give out grave scandal for a year.

§3. One form is *verbal*, that is, by *edict*, which can only be imposed by sentence so that all its juridic effects take place immediately without execution; the other form is *real*, if the solemn prescripts in the Roman Pontifical are observed.

The penalty of actual degradation occurred because the offender continued to offend or because he gave grave scandal.⁴⁸ This third level of degradation took place in a public ceremony using the *Roman Pontifical* where the superior gradually divested him of his sacred vestments, before he was handed over to a secular judge.⁴⁹ The sentence of degradation was given by five judges in a judicial process⁵⁰ for the crimes of apostasy, heresy, schism, (canon 2314 §1, no. 3); violence to the Pope (canon 2343 §1, no. 3); marriage and continuing in the married state (canon 2388 §1); solicitation (canon 2368 §1); and culpable homicide (canon 2354 §2).

Crimen Sollicitationis

Pope John XXIII issued the Instruction *Crimen sollicitationis* on 16 March 1962 that was a slightly amended version of the 1922 Instruction issued by Pope Pius XI. As the title indicated, *Crimen Sollicitationis* dealt almost entirely with the crime of solicitation

⁴⁶ CIC 1917 Canon 2305 §1 Degradation contains within itself deposition, the perpetual privation of ecclesiastical habit, and the reduction of the cleric to the lay state.

§2 This penalty can only be carried out for a delict expressed in law, or if it is a cleric who is already deposed and deprived of ecclesiastical habit, if he continues to give out grave scandal for a year.

§3 One form is verbal, that is, by edict, which can only be imposed by sentence so that all of its juridic effects take place immediately without execution; the other form is real, if the solemn prescripts in the Roman Pontifical are observed.

⁴⁷ CIC 1917 Canon 2305 §1.

⁴⁸ CIC 1917 Canon 2305 §2.

⁴⁹ Joseph DIERMEIER, *Loss of the Clerical State: Specific Focus on Dismissal from the Clerical State*, JCL Thesis, Washington, The Catholic University of America, 2010, 11-12.

⁵⁰ CIC 1917 Canon 1576 §1, no. 2.

- that is, the solicitation of sex by a priest hearing confession. The final section⁵¹ of both the 1922 and the 1962 versions of *Crimen Sollicitationis* reads: "What is established herein on the crime of solicitation is also valid, *mutatis mutandis*, for the worst crime *crimen pessimum* [of paedophilia]."⁵² The instruction stated that the punishment for more serious cases is reduction to the lay state:

'One who has committed the crime of solicitation... is to be suspended from the celebration of Mass and from the hearing of sacramental confessions and even, in view of the gravity of the crime, declared incapable from hearing them. He is to be deprived of all benefices, dignities, active and passive voice, and is to be declared incapable for all these, and in more grievous cases he is even to be subjected to reduction to the lay state [*degradatio*]. Thus, states Canon 2368, §1 of the Code [of Canon Law].⁵³

The instruction guided the Judge in his evaluation of the seriousness of the crime as follows:

For a correct practical application of this canon, when determining, in the light of Canon 2218, §1, fair and proportionate penalties against priests convicted of the crime of solicitation, the following things should be taken into particular account in evaluating the gravity of the crime, namely: the number of persons solicited and their condition – for example, if they are minors or specially consecrated to God by religious vows; the form of solicitation, especially if it might be connected with false doctrine or false mysticism; not only the formal but also the material turpitude of the acts committed, and above all the connection of the solicitation with other crimes; the duration of the immoral conduct; the repetition of the crime; recidivism following an admonition, and the obdurate malice of the solicitor.⁵⁴

Reduction to the lay state was considered to be a penalty of last resort:

Resort is to be had to the extreme penalty of reduction to the lay state – which for accused religious can be commuted to reduction to the status of a lay brother [*conversus*] – only when, all things considered, it appears evident that the Defendant, in the depth of his malice, has, in his abuse of the sacred ministry, with grave scandal to the faithful and harm to souls, attained such

⁵¹ SACRED CONGREGATION OF THE HOLY OFFICE, Instruction, *Crimen Sollicitationis*, "On the Manner of Proceeding in Cases involving the Crime of Solicitation," 71: "The term *crimen pessimum* ["the foulest 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." (=CRIMEN SOLLICITATIONIS).
http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html.

⁵² CRIMEN SOLLICITATIONIS, 72.

⁵³ CRIMEN SOLLICITATIONIS, 61.

⁵⁴ CRIMEN SOLLICITATIONIS, 62.

a degree of temerity and habitude, that there seems to be no hope, humanly speaking, or almost no hope, of his amendment.⁵⁵

Dismissal from the clerical state resulted from the commission of a grave crime usually coupled with the perpetrator giving no indication of reforming his life.

Vatican II and the Post Vatican II Documents

The Sacred Congregation for the Holy Office announced in 1964 that a commission had been formed to deal with reductions to the lay state and dispensations from celibacy.⁵⁶

After Vatican II It was theologically incorrect and inappropriate to speak of clergy being reduced to the lay state. Vatican II taught the equality of all the people of God in the Dogmatic Constitution on the Church:

Therefore, the chosen People of God is one... There is the common dignity of the members from their regeneration in Christ; they share in common the grace of being heirs, the call to perfection, one salvation, one hope, and one undivided charity. There is, therefore, no inequality in Christ and in the Church... And if some members are appointed, by the will of Christ, as teachers, dispensers of the mysteries, and pastors for others, yet there is a true equality of all with regard to the dignity and action common to all the faithful concerning the building up of the body of Christ...⁵⁷ Everyone is called to holiness.⁵⁸

The fundamental equality of all the baptised was emphasised by this teaching. This led to new terminology of "dispensations from celibacy" or clerics being "dismissed from the clerical state".

Dispensations from Celibacy

The Congregation for the Doctrine of the Faith in 1971 issued New Norms for

⁵⁵ CRIMEN SOLLICITATIONIS, 63. Also the Instruction made provisions for the following in: 64. c) Those in danger of relapsing and, even more, recidivists, are to be subjected to special supervision (Canon 2311); and 64. d) As often as, in the prudent judgment of the Ordinary, it seems necessary either for the amendment of the delinquent, the removal of a near occasion [of sin], or the prevention or repair of scandal, there is to be added an order to live in a certain place or a prohibition from the same (Canon 2302).

⁵⁶ SACRED CONGREGATION OF THE HOLY OFFICE, *Reduction to the Lay state: Norms*, 2 February 1964, in *Canon Law Digest*, vol.7, 1002-1015.

⁵⁷ VATICAN II, Dogmatic Constitution on the Church *Lumen Gentium* 32, in Norman P. TANNER S.J., ed., *Decrees of the Ecumenical Councils*, vol. 2, Washington, Sheed and Ward, 1990, 875-876.

⁵⁸ *Ibid.*, *Lumen Gentium* 39, 880.

dispensation from celibacy as well as providing norms for dismissal from the clerical state:

by observing due proportions, in those cases in which, after the necessary investigation, it was seen that a certain priest, through his improper life or due to doctrinal errors or for some other grave cause, ought to be reduced to the lay state and given a dispensation at the same time, prompted by feelings of compassion, so that he would not be exposed to the danger of eternal damnation.⁵⁹

The cleric's return to the lay state was simplified:

In place of the 'juridical process' instructed in a tribunal, there now is a simple investigation whose purpose it is to discover whether the reasons alleged in the petition for a dispensation from the obligations of celibacy are valid and whether the assertions made by the petitioner are based on the truth. This kind of investigation, therefore, has less of juridical rigor and is governed more by pastoral considerations and proceeds in a simpler way.⁶⁰

In this administrative procedure, the reasons for granting a dispensation were to be very serious and not just a desire to get married or because the petitioner had contempt for the law of celibacy.

Ministries document

Pope Paul VI completely revised the minor orders in 1972. Previously a person became a cleric with tonsure. Now when a person received the ministries of lector or acolyte, the person remained a lay person until the reception of diaconate.⁶¹ Tomás Rincón explained that Vatican II restricted the notion of who is a cleric:

The reform carried out by Paul VI has been included in the new Code: nowadays, a person is a cleric or a sacred minister – both terms are equivalent (canon 207) from the diaconate onwards (canon 266).⁶²

⁵⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Declaration regarding the interpretation of certain provisions which were established by the norms of 13 January 1971*, in *Canon Law Digest*, vol. 7, 121-124.

⁶⁰ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, circular letter, *Litteris Encyclicis*, January 13, 1971: *AAS*, 63(1971), 310; English translation in *Canon Law Digest*, vol. 7, 119.

⁶¹ POPE PAUL VI, apostolic letter, *Ministeria quaedam*, August 15, 1972: *AAS*, 64(1972), 529-534; POPE PAUL VI, apostolic letter, *Ad pascendum*, August 15, 1972: *AAS*, 64(1972), 534-540; English translation in *Canon Law Digest*, vol. 7, 690-698.

⁶² TOMÁS RINCÓN, "Sacred Ministers or Clerics," in *Code of Canon Law Annotated*, ed. Ernest CAPARROS et al., Montreal, Wilson & Lafleur Ltee, 2004, 187.

Revision of the penal law of the 1917 Code

The 1967 Synod of Bishops discussed the revision of the Code of Canon Law. The Synod gave a guiding principle in no. 9 concerning penalties:

It is generally agreed that penal laws should be imposed (*ferendae sententiae*), only in the external forum, and remitted likewise only in the external forum. As for penal law automatic penalties (*latae sententiae*), while 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 crimes.⁶³

During the revision of the 1917 Code the schema on penalties⁶⁴ was completed in 1973 after 7 years of work. The *praenotanda* outlined the significant changes from the previous law.⁶⁵ Thomas Green explained that when clerics are dismissed from the clerical state, they have committed serious offences:

As 'delinquentes' such individuals may be justifiably liable to sanction of one type or another because of their destructive violations of profound community values, e.g. betrayal of trust and psychological trauma occasioned by paedophilic activity. However, as 'Christifideles' such individuals still maintain a fundamental dignity and relationship to Christ and his Church which is to be respected and which grounds continuing efforts to call such individuals to conversion and reintegration within the life of the community.⁶⁶

While the 1917 Code used the terms "reduction to the lay state" and "degradation," the drafts of the 1983 Code favoured the term "loss of the clerical state," or "dismissal from the clerical state."

⁶³ SYNOD OF BISHOPS 1967, "Principia quae Codicis iuris canonici recognitionem dirigant," in *Communicationes*, I (1969), 77-85, English translation by Roger SCHOENBECHLER in J. Hite et al. eds., *Readings, Cases, Materials in Canon Law: A Textbook for Ministerial Students*, Collegeville, The Liturgical Press, 1980, 70-78.

⁶⁴ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Documenti quo Disciplina Sanctionum seu Poenarum in Ecclesia Latina denuo Ordinatur*, Vatican City, Typis Polyglottis Vaticanis, 1973.

⁶⁵ JAMES PROVOST, "Revision of Book VI of the Code of Canon Law," in *Studia Canonica*, 9 (1975), 135.

⁶⁶ THOMAS GREEN, "Penal Law: A Review of Selected Themes," in *The Jurist*, 50 (1990), 228. (=GREEN, Penal Law A Review).

The 1983 Code of Canon Law

Pope John Paul II promulgated the 1983 Code on 25 January 1983. Clerics were required to observe perfect and perpetual continence and be celibate.⁶⁷

The 1983 Code in canons 290-292 deals with loss of the clerical state. Canon 290 states the three ways that a cleric can now lose the clerical state:

Canon 290. Once validly received, sacred ordination never becomes invalid. A cleric, nevertheless, loses the clerical state:

No. 1. by a judicial sentence or administrative decree, which declares the invalidity of sacred ordination;⁶⁸

No. 2. by the legitimate infliction of the penalty of dismissal;

No. 3. by rescript of the Apostolic See which grants it to deacons only for grave causes and to presbyters only for most grave causes.

A cleric who has been validly ordained always remains a priest but could be prohibited from exercising the power of orders by being excommunicated or suspended.⁶⁹

Dismissal from the Clerical State in the 1983 Code

The 1983 Code uses the term "dismissal from the clerical state" rather than "degradation". Dismissal from the clerical state cannot be established as a penalty by a diocesan bishop⁷⁰ and dismissal can only be imposed⁷¹ administratively by the Holy See or judicially by a college of three judges for the offences mentioned in the Code.⁷² Dismissal from the clerical state is an imposed *ferendae sententiae* penalty rather than an automatic *latae sententiae* penalty.

Dismissal from the clerical state can be a penalty for the following crimes:

⁶⁷ CIC 83 Canon 277 §1: Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy. Celibacy is a special gift of God by which sacred ministers can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbour.

⁶⁸ The Congregation for Divine Worship and the Discipline of the Sacraments revised the norms to be observed for the declaration of nullity of ordination on October 26, 2001.

⁶⁹ CIC 83 Canons 1331-1333.

⁷⁰ CIC 83 Canon 1317 Penalties are to be established only insofar as they are truly necessary to provide more suitably for ecclesiastical discipline. Particular law, however, cannot establish a penalty of dismissal from the clerical state.

⁷¹ CIC 83 Canon 1314 Generally, a penalty is *ferendae sententiae*, so that it does not bind the guilty party until after it has been imposed; if the law or precept expressly establishes it, however, a penalty is *latae sententiae*, so that it is incurred *ipso facto* when the delict is committed.

⁷² WOESTMAN, *The Sacrament of Orders*, 213.

1. Ongoing scandal given in apostasy, heresy or schism (canon 1364 §2);
2. Violation of the sacred species (canon 1367);
3. Physical force against the Roman Pontiff (1370 §1);
4. Solicitation in the sacrament of Penance (canon 1387);
5. Attempted marriage and continuing after a warning (canon 1394 §1);
6. Offences against the 6th commandment with a minor below 16 years (canon 1395 §2).⁷³

John Alesandro points out "notice that a sexual offence violative of paragraph 2 need not be a complete act of intercourse, nor should the term be equated with the definitions of sexual abuse or other sexual crimes in civil law ... [but] an external act which qualifies as an objectively grave violation of the Sixth Commandment".⁷⁴ If the Pope dismisses a priest from the clerical state for a canonical crime reserved to the Congregation for the Doctrine of the Faith, the Dicastery issues the decree of dismissal.⁷⁵

American Norms

A joint commission of the American Bishops Conference and the Apostolic See was established by the Apostolic See in 1993. The commission agreed to derogations in canon law concerning such matters as the age of 18 years in canon 1395 and the length of time for prescription in sexual abuse cases in canon 1362.

Pope John Paul II made these derogations or changes to the law for an experimental period of five years for the United States of America on 25 April 1994.⁷⁶ Canon 1395 §2, 2^o was modified so that the age limit for crimes of sexual abuse was raised from

⁷³ DE OTADUY, *Loss of Clerical State*, 401.

⁷⁴ ALESANDRO, *A Study of Canon Law*, 271-272.

⁷⁵ The decree of dismissal states: "a. A priest who has been dismissed automatically loses the rights proper to the clerical state, and also all dignities and ecclesiastical offices; he is no longer bound by other obligations connected with the clerical state; b. He remains excluded from the exercise of sacred ministry, except for those matters contained in canon 976 and canon 986 §2 of the Code of Canon Law, and therefore may not give the homily, nor hold an executive office (*officium directum*) in the pastoral field, nor exercise the role of parish administrator; c. Furthermore, he may not carry out any role in Seminaries or equivalent institutes. In other institutes of studies of a higher level, which in any way depend on ecclesiastical authority, he may not carry out an executive role or an office of teaching; d. In other institutes of studies of a higher level, which in any way depend on ecclesiastical authority, he may not carry out an executive role or an office of teaching; e. In institutes of studies of a lower level depending on ecclesiastical authority he may not teach any theological discipline; f. In institutes of studies of a lower level depending on ecclesiastical authority he may not carry out either an executive role or a teaching role. The same rule binds any priest dismissed and dispensed in teaching religion in institutes of the same kind not depending on ecclesiastical authority". Congregation for the Doctrine of the Faith, decree, John Nestor, 17 October 2008.

⁷⁶ <https://www.childabuseroyalcommission.gov.au/sites/default/files/CTJH.001.12001.0060.pdf>
ALESANDRO, *A Study of Canon Law*, 264-269.

age 16 to age 18 years. The statute of limitations in canon 1362 was changed so that a victim had until age 23 years to lay a complaint about being sexually abused while a child or a minor.⁷⁷

Sacramentorum Sanctitatis Tutela

Pope John Paul II promulgated as universal law *Sacramentorum Sanctitatis Tutela* (SST) on 30 April 2001 and this document was revised in 2010.⁷⁸

The document included the possible crimes in the 1983 Code that might result in dismissal from the clerical state:

1. heresy, apostasy and schism;⁷⁹
2. a priest or religious: sexually abusing a person under 18 years of age; raping a person of any age; engaging in public sexual activity; continuing to live in concubinage or persisting in a sexual relationship (canon 1395);
3. acquiring, possessing, or distributing child pornography of minors under age 14 (SST, 6);⁸⁰
4. violation of the seal of confession;⁸¹

⁷⁷ Pope JOHN PAUL II, Rescript, 25 April 1994, in *Roman Replies and CLSA Advisory Opinions 1994*, Washington, Canon Law Society of America, 1994, 20-21.

⁷⁸ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Substantive Norms*, 2010, http://www.vatican.va/resources/resources_norme_en.html.

⁷⁹ Ibid., Art. 2 § 1°, The delicts against the faith referred to in art. 1 are heresy, apostasy and schism according to the norm of canon 751 and 1364 of the Code of Canon Law, and canon 1436 and 1437 of the Code of Canons of the Eastern Churches.

⁸⁰ Ibid., Art. 6 § 1, The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology. See Rescript, "Some amendments to the Normae de gravioribus delictis", 3 December 2019; Art. 6 § 1 was amended to: "The acquisition, possession or distribution by a cleric of pornographic images of minors under the age of eighteen, for purposes of sexual gratification, by whatever means or using whatever technology". The new norm came into effect on 1 January 2020.

http://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191203_rescriptum_en.html.

§ 2. A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

⁸¹ Ibid., Art. 4 § 1 5°, The direct and indirect violation of the sacramental seal, mentioned in canon 1388 § 1 of the Code of Canon Law, and in canon 1456 § 1 of the Code of Canons of the Eastern Churches.

5. recording what is said in confession;⁸²
6. engaging in solicitation in the sacrament of penance (canon 1387);⁸³
7. absolving an accomplice in a sin against the sixth commandment (cc. 977, 1378);⁸⁴
8. the consecration of the Eucharist for a sacrilegious purpose.⁸⁵
9. the taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species;⁸⁶
10. attempting the liturgical action of the Eucharistic Sacrifice when not a priest;⁸⁷
11. the simulation of the Eucharistic celebration;⁸⁸
12. concelebration of the Eucharist with those not validly ordained;⁸⁹
13. attempting to absolve when one is not a priest;⁹⁰

⁸² Ibid., Art. 4 § 2, With due regard for § 1, n. 5, also reserved to the Congregation for the Doctrine of the Faith is the more grave delict which consists in the recording, by whatever technical means, or in the malicious diffusion through communications media, of what is said in sacramental confession, whether true or false, by the confessor or the penitent. Anyone who commits such a delict is to be punished according to the gravity of the crime, not excluding, if he be a cleric, dismissal or deposition.

⁸³ Ibid., Art. 4 § 1 4°, The solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, as mentioned in canon 1387 of the Code of Canon Law, and in canon 1458 of the Code of Canons of the Eastern Churches, if it is directed to sinning with the confessor himself;

⁸⁴ Ibid., Art. 4 § 1 1°, The absolution of an accomplice in a sin against the sixth commandment of the Decalogue, mentioned in canon 1378 § 1 of the Code of Canon Law, and in canon 1457 of the Code of Canons of the Eastern Churches;

⁸⁵ Ibid., Art. 3 § 2. Also reserved to the Congregation for the Doctrine of the Faith is the delict which consists in the consecration for a sacrilegious purpose of one matter without the other or even of both, either within or outside of the Eucharistic celebration. One who has perpetrated this delict is to be punished according to the gravity of the crime, not excluding dismissal or deposition.

⁸⁶ Ibid., Art. 3 § 1 1°, The taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species, as mentioned in canon 1367 of the Code of Canon Law, and in canon 1442 of the Code of Canons of the Eastern Churches.

⁸⁷ Ibid., Art. 3 § 1 2°, Attempting the liturgical action of the Eucharistic Sacrifice spoken of in canon 1378 § 2, no. 1, of the Code of Canon Law.

⁸⁸ Ibid., Art. 3 § 1 3°, The simulation of the same, spoken of in canon 1379 of the Code of Canon Law and in canon 1443 of the Code of Canons of the Eastern Churches

⁸⁹ Ibid., Art. 3 § 1 4°, The concelebration of the Eucharistic Sacrifice prohibited in canon 908 of the Code of Canon Law, and in canon 702 of the Code of Canons of the Eastern Churches, spoken of in canon 1365 of the Code of Canon Law, and in canon 1440 of the Code of Canons of the Eastern Churches, with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination.

⁹⁰ Ibid., Art. 4 § 1 3°, Simulated sacramental absolution, mentioned in canon 1379 of the Code of Canon Law, and in canon 1443 of the Code of Canons of the Eastern Churches; 2 attempted sacramental absolution or the prohibited hearing of confession, mentioned in canon 1378 § 2, 2 of the Code of Canon Law;

14. attempting to ordain a woman.⁹¹

In the procedural norms revised by Pope Benedict XVI on 21 May 2010 the faculty for the Congregation of the Doctrine of the Faith to dispense from a trial in the most serious of cases, so that the offending cleric could be dismissed from the clerical state without a penal trial. In his brief introduction to the modifications made, Cardinal Levada, Prefect of the Congregation for the Doctrine of the Faith, noted the following faculties:

The faculty to dispense from a judicial trial and therefore to proceed *per decretum extra iudicium*. In these cases, the Congregation for the Doctrine of the Faith, after a careful examination of the facts, decides on a case-by-case basis when to authorize an extrajudicial (administrative) process at the request of the ordinary or local hierarch or *ex officio* (in any of these cases the imposition of a perpetual, expiatory penalty requires the mandate of the Congregation for the Doctrine of the Faith) (Art. 21 §2 n. 1); and

The faculty to present cases directly to the Holy Father *for dimissio e statu clericali or depositio, una cum dispensatione a lege caelibatus*; to proceed in this manner, in addition to the extreme gravity of the particular case, the commission of the delict in question must be manifest and the right to a proper defence of the accused must be guaranteed (Art. 21 §2 n. 2).⁹²

To qualify for an extrajudicial or administrative process, the case must be an extremely grave one, and the accused priest must still be heard to provide for his right of defence.

On 6 December 2019 Pope Francis an Instruction *On the Confidentiality of Legal Proceedings*.⁹³ As a consequence the pontifical secret no longer applies to accusations, trials and decisions concerning the more grave delicts against morals reserved to the Congregation of the Doctrine of the Faith. Moreover, it does not apply to the delicts mentioned in Article 1 of *Vos Estis Lux Mundi*, the Apostolic Letter issued *Motu Proprio* by Pope Francis on 7 May 2019.

⁹¹ *Ibid.*, Art. 5, The more grave delict of the attempted sacred ordination of a woman is also reserved to the Congregation for the Doctrine of the Faith:

1° With due regard for canon 1378 of the Code of Canon Law, both the one who attempts to confer sacred ordination on a woman, and she who attempts to receive sacred ordination, incurs a *latae sententiae* excommunication reserved to the Apostolic See.

3° If the guilty party is a cleric he may be punished by dismissal or deposition.

⁹² CONGREGATION FOR THE DOCTRINE OF THE FAITH, A brief introduction to the modifications made in the *Normae de gravioribus delictis*, reserved to the Congregation for the Doctrine of the Faith, William Cardinal Levada, Prefect, 21 May 2010, http://www.vatican.va/resources/resources_rel-modifiche_en.html.

⁹³ Pope FRANCIS, Instruction *On the Confidentiality of Legal Proceedings*, cf. http://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191206_rescriptum_en.html.

Special Faculties for the Congregation for the Evangelising of the Peoples

Many mission territories do not have functioning tribunals. Pope John Paul II granted the Congregation for the Evangelising of the Peoples⁹⁴ a special faculty to deal with priests living in concubinage and causing scandal.⁹⁵ The special faculties allowed dismissal from the clerical state through an abbreviated process that also granted a dispensation from celibacy.

Firstly, the bishop had to have suspended the priest. Then the bishop had to require the priest to reside in another place from where he had ministered. If the priest showed no signs of reforming his life, the bishop could then request the Pope to dismiss the priest from the clerical state. The petition for the dismissal was addressed to the Pope and had to be signed by the diocesan bishop and two of his consultors.⁹⁶ In the bishop's votum at the conclusion of the case there needed to be a statement advising he had no functioning tribunal. The dismissal was granted by the Pope *in forma specifica*, so it was not possible to appeal the decision.

When a priest was dismissed from the clerical state, he was not automatically allowed to marry by receiving the favour of a dispensation from celibacy. A dispensation was not granted because the Church intended to facilitate the dismissed priest's eternal salvation. The dismissed priest was not rewarded for causing scandal and committing a serious ecclesiastical crime. However, a priest who was dismissed from the clerical state could still absolve someone in danger of death.⁹⁷

⁹⁴ CONGREGATION FOR THE EVANGELISING OF THE PEOPLES, Letter to Pontifical Representatives, June 3, 1997, Prot. No. 2154/97, in WOESTMAN *The Sacrament of Orders*, 214; *Canon Law Digest* vol. 14, 235-237.

⁹⁵ Later, a very similar faculty was granted to the Congregation for Clergy. Cf. CONGREGATION FOR CLERGY, circular letter, 18 April 2009, Prot. No. 2009/0556, in JOHN RENKEN, *The Penal Law of the Roman Catholic Church: Commentary on canons 1311-1399 and 1717-1731 and Other Sources of Penal Law*, Ottawa: Saint Paul University, 2015, 491-499. (=RENKEN, *The Penal Law*).

⁹⁶ CONGREGATION FOR THE EVANGELISING OF THE PEOPLES, letter to Pontifical Representatives, June 3, 1997, Prot. 2154/97, in WOESTMAN, *The Sacrament of Orders*, 214. The bishop had to have already suspended the priest, imposed the penalty of residing in another place, and the priest had to have shown no signs of reforming.

⁹⁷ CIC 83 Canon 292: A cleric who loses the clerical state according to the norm of law loses with it the rights proper to the clerical state and is no longer bound by any obligations of the clerical state, without prejudice to the prescript of canon 291. He is prohibited from exercising the power of orders, without prejudice to the prescript of canon 976. By the loss of the clerical state, he is deprived of all offices, functions, and any delegated power. Canon 976: Even though a priest lacks the faculty to hear confessions, he absolves validly and licitly any penitents whatsoever in danger of death from any censures and sins, even if an approved priest is present.

More Special Faculties to the Congregation for the Evangelising of the Peoples

Pope Benedict XVI, on 19 December 2008, granted the Congregation for the Evangelising of the Peoples special faculties concerning clergy violating canons 1394 and 1395.⁹⁸ The special faculties encompassed the cases of priests:

1. Who had attempted a civil marriage;⁹⁹
2. Who were living in concubinage or had committed sexual crimes;¹⁰⁰
3. Who had abandoned ministry for more than five consecutive years.¹⁰¹

The faculties enabled the Congregations to proceed administratively and bring the cases to the Holy Father to decide.¹⁰²

The special faculties also enabled cases of deacons to be dealt with:

The same penalty could also be applied to a deacon who has caused scandal in the moral field and is therefore judged by the competent superior not fit to be promoted to the order of priesthood, but does not intend to ask for the pontifical dispensation from the obligations arising from the diaconate ordination.¹⁰³

These faculties apply in mission countries such as New Zealand.

Special Faculties for the Congregation for the Clergy

Pope Benedict XVI granted almost identical faculties to the Congregation for the Clergy on 30 January 2009 as had been granted to the Congregation for the Evangelising of the Peoples. They enabled the Congregation to treat and present to the

⁹⁸ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, *Circular Letter*, Prot. No. 0579/09, in RENKEN, *The Penal Law*, 485. Similar faculties were granted to the Congregation for the Clergy on 30 January 2009.

⁹⁹ The same faculty is also applied to a cleric who is guilty of attempted marriage and, though duly admonished by the competent ordinary, refuses to mend his ways and continues his irregular and scandalous life (cf. *CIC 83* canon 1394§1).

CIC 83 Canon 1395.

¹⁰¹ CONGREGATION FOR THE CLERGY, circular letter, Prot. No. 2009 0556, in RENKEN, *The Penal Law*, 496: The special faculty to handle cases of clerics, who having freely abandoned the ministry for a period of more than five consecutive years and who, after careful verification of the facts insofar as this is possible, persist in such freely chosen and illicit absence from the ministry; taking this situation into account, to declare then their dismissal from the clerical state, with dispensation from the obligations consequent to ordination, including that of celibacy.

¹⁰² To proceed administratively and bring to the approval *in forma specifica* and decision of the Holy Father cases regarding the dismissal *in poenam* from the clerical status of those clerics who are found guilty of the offences in canon 1395 §§ 1-2 (concubinage and other serious scandals), without prejudice to the exclusive competence of the Congregation for the Doctrine of the Faith regarding cases of paedophilia.

¹⁰³ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, *Circular Letter*, Prot. No. 0579/09, in RENKEN, *The Penal Law*, 485.

Holy Father cases for dismissal from the clerical state:

1. The special faculty to treat and present to the Holy Father, for his approval *in forma specifica* and his decision, cases of dismissal from the clerical state *in poenam* with dispensation from the obligations consequent to ordination, including that of celibacy, of clerics who have attempted marriage, even if only civilly, and who, having been admonished, have not withdrawn from this state, therefore persisting in an irregular and scandalous life (cf. canon 1394 § 1); and of clerics guilty of grave sins against the Sixth Commandment (cf. canon 1393 §§ 1-2).

The special faculty to intervene in accord with canon 1399, either by taking direct action in a case or by confirming the decisions of ordinaries, were the competent authority so to request, due to the especial gravity of the violation of law and the need or urgency to avoid an objective scandal.

2. This is granted along with the derogation from the prescriptions of canons 1317, 1319, 1342 §2 and 1349, with respect to the application of perpetual penalties, to be applied to deacons only for grave reasons and to priests for the gravest reasons, always requiring that such cases are presented to the Holy Father for his approval *in forma specifica*.
3. The special faculty to handle cases of clerics, who having freely abandoned the ministry for a period of more than five consecutive years and who, after careful verification of the facts insofar as this is possible, persist in such freely chosen and illicit absence from the ministry; taking this situation into account, to declare then their dismissal from the clerical date, with dispensation from the obligations consequent to ordination, including that of celibacy.¹⁰⁴

These faculties apply in countries such as Australia. Faculty 1 has clear terms of reference regarding marriage or long term concubinage. Faculty 2 would apply to a variety of cases including disobeying laws and precepts concerning safeguarding or not returning to an appointment in the diocese of incardination (canon 1371 no. 2); conduct unbecoming to the clerical state giving scandal (canon 285 §1) or repeated sexual misconduct (canon 1399). The 1983 Code did not provide for dismissal of clerics from the clerical state for clerics abandoning ministry. This faculty was now granted to the Congregation and as an act of the Congregation was therefore open to recourse against the decision.¹⁰⁵ Faculty 3 gives the initiative to Ordinaries to regularise the state of clergy who have left active ministry without seeking a dispensation from celibacy.

¹⁰⁴ CONGREGATION FOR THE CLERGY, in RENKEN, *The Penal Law*, 495-496:

¹⁰⁵ Ronny JENKINS, *Memorandum to Cardinal George OMI*, May 26, 2009; <https://cls.org/wp-content/uploads/CongregationforClergy013009.pdf>.

PROCESS FOR HANDLING CASES THAT MAY LEAD TO DISMISSAL

When a complaint is received alleging a cleric¹⁰⁶ committed a grave crime in canon law, the Ordinary must decree the opening of the preliminary investigation and appoint a delegate to investigate the complaint. Alesandro states the delegate has the same powers as an auditor and “the investigation should include a search of the archives (including the secret archives) of the dioceses (and religious institutes, if applicable) where the accused cleric has served in order to determine if previous accusations were made against the cleric”.¹⁰⁷

The Ordinary may withdraw the faculties of the accused immediately using canon 1722 and consulting the promotor of justice. The delegate, according to canon 1718, is to provide a report concerning the complaint and a recommendation to the Ordinary.

If the complaint has a “semblance of truth about it,” the Ordinary must send the acts of the case to the Congregation of the Doctrine of the Faith. The Ordinary will attach his votum to the acts. The votum shall request the Congregation to authorise one of the following processes.

1. An administrative process for dismissal from the clerical state.¹⁰⁸ Both in law and in practice the Congregation for the Doctrine of the Faith has moved in this direction.
2. A penal trial of the accused.¹⁰⁹
3. An ex officio dismissal from the clerical state because of the gravity of the case and the scandal surrounding it.
4. The imposition of a non-penal remedy.
5. The dismissal of the case because it is not proven.

CONCLUSION

Dismissal from the clerical state is the most serious penalty that may be inflicted upon a cleric. It is a penalty to punish the most serious crimes, or as a penalty of last resort for an offending cleric who refuses to reform. If a cleric commits several crimes of

¹⁰⁶ If a complaint proven with moral certainty concerns a religious brother or sister, the provincial/major superior shall follow the Constitutions to dismiss the religious brother or sister in an administrative process following canon 695.

¹⁰⁷ ALESANDRO, *A Study of Canon Law*, 275.

¹⁰⁸ Thomas GREEN says “with this penalty the primary emphasis is repairing scandal and restoring community order. It cannot be incurred automatically. The legislator also does not allow the penalty to be imposed administratively, but in recent times the Congregation for the Doctrine of the Faith does allow this penalty to be imposed in an extra-judicial process. Also, the law prefers the judicial process be used. (canons 221 and 1718 §1, no. 3.)” (GREEN, “Penal Law: A Review” 229).

¹⁰⁹ Following *CIC* 83 Canons 1400-1500 on trials in general and canons 1501-1670 ordinary contentious trials.

which one is reserved to the competency of the Congregation for the Doctrine of the Faith, this Congregation deals with all crimes of the cleric. After the Congregation for the Doctrine of the Faith has studied the acts of the case and the votum of the Ordinary, there are five ways that guilty clerics may be dismissed from the clerical state.

1. The Congregation of the Doctrine of the Faith refers the case to a local tribunal to hold a judicial trial.
2. The Congregation of the Doctrine of the Faith tries the case in its own tribunal.¹¹⁰
3. The Congregation of the Doctrine of the Faith instructs the bishop to proceed with an extrajudicial process that may involve dismissal from the clerical state, and then the case will be returned to the Congregation of the Doctrine of the Faith for confirmation of the penalty.
4. The Congregation of the Doctrine of the Faith may recommend an ex officio dismissal to the Holy Father.¹¹¹
5. The Congregation of the Doctrine of the Faith may “pre-authorize” the diocesan bishop “to impose a perpetual expiatory penalty, not excluding dismissal from the clerical state” if the accused cleric has multiple civil convictions for child sexual abuse.
6. The Congregation for Clergy and the Congregation for the Evangelising of the Peoples have special faculties to dismiss clerics who have abandoned ministry for more than five consecutive years, or who persist in concubinage or attempted marriage after a warning, or who are causing grave scandal.

The Special Faculties have granted a number of derogations from the 1983 Code. The 1983 Code did not allow for dismissal from the clerical state through an administrative process.¹¹² When it is morally certain that the cleric is guilty of a more grave crime and

¹¹⁰ A bishop can be removed from office: POPE FRANCIS, motu proprio, *As a Loving Mother*, 4 June, 2016; https://w2.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_lettera-ap_20160604_come-una-madre-amorevole.html; The Vatican’s Apostolic Tribunal of the Congregation for the Doctrine of the Faith, which was composed of five judges, found Apuron guilty of charges and imposed penalties on him including “privation of office and prohibition of residence in the Archdiocese of Agana.” <https://www.guampdn.com/story/news/2018/03/19/guam-archbishop-byrnes-speaks-vaticans-guilty-verdict-apuron/437020002/>

¹¹¹ Archbishop Milingowas was excommunicated by Pope Benedict XIV for ordaining four bishops without a pontifical mandate. When he ordained more bishops, Pope Benedict dismissed Archbishop Milingowas from the clerical state on 17 December 2009.

¹¹² Ronny JENKINS, Memorandum to Cardinal George OMI, May 26, 2009; <https://cls.org/wp-content/uploads/CongregationforClergy013009.pdf>.

the penalty of dismissal from the clerical state is appropriate, dismissal from the clerical state protects the rights of victims and the Church itself. Bishops and superiors have a duty to apply the penal law of the Church to such situations.¹¹³

¹¹³ Pope BENEDICT XVI, *Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland*, 19 March 2010: "11. To my brother bishops It cannot be denied that some of you and your predecessors failed, at times grievously, to apply the long-established norms of canon law to the crime of child abuse. Serious mistakes were made in responding to allegations. I recognize how difficult it was to grasp the extent and complexity of the problem, to obtain reliable information and to make the right decisions in the light of conflicting expert advice. Nevertheless, it must be admitted that grave errors of judgement were made and failures of leadership occurred".
http://w2.vatican.va/content/benedict-xvi/en/letters/2010/documents/hf_ben-xvi_let_20100319_church-ireland.html; cf. ALESANDRO, *A Study of Canon Law*, 299-300.

Infant Baptism and Children's Rights

Anthony Malone OFM*

Recently opposition to Infant Baptism has been expressed by none other than Professor Mary McAleese in her 2019 Edmund Burke lecture at Trinity College Dublin entitled: "The Future of Ireland: Human Rights and Children's Rights."¹ The former President said children's human rights, including the rights of freedom of religion, thought and conscience as set out in Article 14 of the 1989 United Nations Convention on the Rights of Children ought to be on the agenda of any future discussions on Church-State relations in Ireland.

Canon 867, §1 of the 1983 Code of Canon Law for the Latin Rite of the Catholic Church states:

Parents are obliged to see that their infants are baptized within a few weeks. As soon as possible after the birth, even before it, they are to approach the parish priest to ask for the sacrament for their child, and to be themselves duly prepared for it.²

Professor McAleese referring to the above canon noted that in Ireland this results in most children being baptized as infants. Since therefore, the Republic of Ireland is a signatory to the United Nations Convention on the Rights of Children, the Republic of Ireland ought to question the Catholic Church's practice of Infant Baptism. The implication is that the Catholic Church is not compliant with the human rights of children as articulated by the United Nations Convention on the Rights of Children. Professor McAleese's address was focused only on the issue that the practice of Infant Baptism meant in relation to Church-State relations within the Republic of Ireland. However, the Professor's critique of the Catholic Church's legislation has implications for all Catholics whose countries are signatories to the United Nations Convention on the Rights of Children.

The Catholic Church does recognize the existence of human rights. In 1963 Pope John XXIII in his encyclical *Pacem in terris* wrote:

Any human society, if it is to be well-ordered and productive, must lay down as foundation this principle, namely, that every human being is a person, that

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¹ M. MCALEESE, "The Future of Ireland: Human Rights and Children's Rights", in *The Tablet*, 16 November 2019, p.30. McAleese is a baptized married Catholic, a past President of the Republic of Ireland, the holder of both civil and canon law degrees, and is currently Chancellor of Trinity College, Dublin, Ireland. (=MCALEESE)

² Code of Canon Law, Latin-English edit., Canon Law Society of America, Washington, D.C. 1983, p.327.

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