



significant changes in penal law via other documents which cover the more grave crimes including the sexual abuse of minors. Most of these other changes which included the imposition of penalties have been incorporated into the new book 6. These include raising the age for sexual abuse from under age 14 to under age 18; a 1988 law imposing penalties for recording confessions; penalties for the attempted ordination of a woman; penalties for bishops failing to report or take sufficient measures against perpetrators of sexual abuse; and for clerics using child pornography.

The 1983 Code allowed bishops and religious superiors wide discretion in whether to impose penalties or not. Many people have complained about clericalism and “cheap mercy” being granted to offending clergy without sufficient account being taken of: justice for victims; protection of the community of the faithful; prevention of scandal; and compensation for the harm that has been caused. Offending clergy have a right to forgiveness, but this does not mean that they can simply be given new appointments with access to future potential victims. The Vatican has listened and the revised law prevents dismissed clergy being given other jobs or positions in the Church.

The 1983 Code recognised that sexual abuse of a minor under age 14 years by a religious brother or sister was a grave offence for which there was an administrative process for dismissal from the religious institute (c. 695). However, few religious brothers and sisters were ever dismissed from religious institutes. Canon 1398 §2 now makes the sexual abuse of minors by religious brothers and sisters a crime. In addition, lay employees of the Church who abuse someone

CHANGES in CHURCH PENAL LAW

BRENDAN DALY explains the recent changes Pope Francis has made to the Penal Sanctions in the Church in Canon Law.

Pope Francis has revised Book 6 of the Code of Canon Law, “Penal Sanctions in the Church”, consisting of canons 1311-1399. Of these 89 canons, 63 have been changed and others have been renumbered. Pope Francis said bishops had not been implementing penal law and this had led “to tolerating immoral conduct,

for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that over time such conduct may become entrenched, making correction more difficult and in many cases creating scandal and confusion among the faithful.”

Since the 1983 Code came into effect, there have been many

commit a canonical crime and can now receive canonical penalties. This major change in Canon Law reflects the significant sexual abuse by laity in Catholic institutions. The Australian Royal Commission, for example, found that 29 per cent of the offences in Catholic institutions were committed by lay people in roles such as school caretaker, youth leader, etc.

The canon concerning the sexual abuse of minors in the 1983 code was in the section under "Offences against Special Obligations" i.e. as an offence against the obligation to observe celibacy. Victims and the Australian Royal Commission recommended a canon specifically related to sexual abuse and Pope Francis has responded to this recommendation with a new canon 1398 in the section of the Code appropriately entitled "Offences against Human Life, Dignity and Liberty".

A significant addition to penal law is the legislation making grooming a crime (c. 1398 §1 no. 2). Grooming, however, is not defined and what exactly it encompasses will be shown by the jurisprudence of the Congregation for the Doctrine of the Faith or another canonical document. We currently have significant issues with the observance of the 2020 Privacy Act and other legislation concerning photographing minors and sharing the pictures on social media. It has been the experience that people recognise how an offender was grooming only in hindsight. Now bishops have the capacity to take preventative measures in particular law to penalise clergy and lay Church officials who carry out clearly recognised grooming practices such as: having people under age 18 stay alone with them; or spending time alone with them. Experience has demonstrated that guidelines on behaviour are insufficient. There is a need for safeguarding laws that have consequences if they are not observed.

Vos Estis Lux Mundi in 2019 made sexual abuse of a vulnerable person a crime. Significantly, there is criticism that there is no mention of "vulnerable" in the revised penal law. Bishop Arrieta, the secretary

for the revision process, said at the press conference after the promulgation of the changed penal law, that vulnerable people were encompassed by the phrase "one to whom the law recognises equal protection" in canon 1398. Arrieta also added that "vulnerable" is not accepted in many countries as a legal category of persons who should receive special protection. The revised penal law, however, does restate that abuse of authority as a cleric is a crime. It is recognised that equal consent is absent in many so-called "consenting adult" relationships and that vulnerable people have been manipulated.

"Charity thus demands that the Church's pastors resort to the penal system whenever it is required, keeping in mind the three aims that make it necessary in the ecclesial community: the restoration of the demands of justice, the correction of the guilty party and the repair of scandals."

Experience shows that victims take a long time to report sexual abuse. In Australia, victims took 33 years on average to report being abused. New Zealand victims seem to have taken a similar length of time. Many felt there should be no prescription, which is similar to a statute of limitations, for crimes of sexual abuse. The revised penal law retains prescription although the Doctrine of the Faith can decide prescription does not apply in a particular case.

Vos Estis Lux Mundi introduced mandatory reporting so that all clergy and religious brothers and sisters must report sexual abuse by clergy to the Ordinary. They must report even suspicions that abuse is happening. This includes a cleric or religious abusing their authority by having sexual contact with anyone. This requirement is now reinforced by canon 1371 §6 making provision for penalties for clergy and religious who fail to report an offence as required by canon law.

Although the revised penal law does not provide a penalty for not reporting to civil authorities, *Vos Estis Lux Mundi* still requires bishops, religious and clergy to obey

civil reporting laws except if the knowledge was under the seal of confession. Bishops and religious superiors can be removed from office or punished for covering up sexual abuse and not cooperating with civil investigations.

Changes have been made, too, to laws around property. There have been a number of financial scandals at the Vatican and a significant number of cases of financial mismanagement in dioceses around the world. Clergy have used parish money for gambling and drinking, and Church property has been sold or alienated contrary to Canon Law. A new canon 1376 includes the crimes of stealing and

misappropriation, selling Church property, including that of parishes, without the required consents and consultation. These crimes could result in the removal of office-holders.

Pope Francis said in promulgating the changes: "Charity thus demands that the Church's pastors resort to the penal system whenever it is required, keeping in mind the three aims that make it necessary in the ecclesial community: the restoration of the demands of justice, the correction of the guilty party and the repair of scandals." These criteria have been the key elements for the revision.

It will be interesting to see how, in an environment where the Church is routinely engaged with the civil legal system — such as via Royal Commissions — bishops choose how and when to apply the penal sanctions in Canon Law. ●

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