

Church penal law protects the faithful

Bishops and religious superiors desire to exercise their ministry in a pastoral manner. Jesus is the Good Shepherd, and Church leaders want to follow his example. But wanting to be "pastoral" has been seen by some Church leaders as meaning they should not apply penal canon law in cases where serious crimes have been committed. This, sadly, has not been uncommon. We have heard victims tell their stories.

In his address to the plenary assembly of the Pontifical Council for Legislative Texts, on 21 February, 2020, Pope Francis reflected on the nec-

Msgr Brendan Daly

essary, but subordinate, role of canon law in the life of the Church. He stated: "To make known and to apply the laws of the Church isn't a hindrance to the presumed pastoral 'efficacy' of those that want to resolve problems without law; rather, it guarantees from research non-arbitrary but truly just and, therefore, truly pastoral solutions." Indeed, the corpus of canonical legislation is always geared to the salvation of souls (canon 1752), and, as a consequence of this, it is forever in need of reform and renewal, to confront new challenges and to respond to new pastoral needs."

Pope Francis promulgated the changed book 6 with the Apostolic Constitution *Pascite Gregem Dei*, "Tending the Flock of God". The Pope has eliminated conflict and confusion over bishops and religious superiors being pastoral. The implementation of penal law is pastoral. The sexual abuse crisis has been made significantly worse by religious superiors and bishops not implementing penal law.

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, cre-

ating scandal and confusion among the faithful."

Penal law is like a fence around the faithful to protect them, and it also maintains minimum standards of behaviour. As the title of the apostolic constitution suggests, a pastoral bishop pulls members of the faithful away from the fence and corrects them when necessary. He protects the faithful from offending clerics and lay officials. Applying penal law is part of the pastoral ministry of the bishop.

Justice must be just and be seen to be just. The primary goal is "justice". 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.

Space is limited in this forum, so let us take one example of an area which has been addressed.

A significant addition to penal law is the legislation making grooming a crime (Canon 1398).

Cardinal Oswald Gracias, a member of Pope Francis' Council of Cardinals advisors, who was involved in the drafting process for changing the code of canon law explained: "Grooming is preparation. Preparing people before. This is a part of the whole process of preparation. That is also seen as a preparation for abuse. We have

seen that it happens sometimes consciously or subconsciously. That is a red signal. . . In the legal point of view, it is already in the mind. How would you objectively assess grooming as 'grooming' or a genuine desire to be kind and pastoral? We do not know. Cultivating is another word. How do we analyse and identify cultivating and separate it from being genuinely friendly? That is something which has jurisprudence and that is why it will need continuous updating".

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.

In New Zealand, and in many other countries, one cannot photograph children or obtain children's phone numbers without parental consent. In our society, these actions are considered grooming because of how paedophiles operate, using pictures of children's faces. It will be significant how these actions are interpreted at the Congregation for the Doctrine of the Faith. People normally only recognise how an offender was grooming in hindsight, but bishops now 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 diocesan bishops to legislate safeguarding laws that have consequences if they are not observed.

Bishops and religious superiors must implement the penal law. As well, bishops need to make particular law for their dioceses to implement safeguarding law and define "grooming" in their cultural context. Law cannot solve every problem, and there needs to be a change in culture and mentality in the Church, so that clericalism and a sense of entitlement are removed from the life of the Church.

Msgr Brendan Daly is the Judicial Vicar of the Tribunal of the Catholic Church in New Zealand.

