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The Authority and Obligations of a Diocesan Bishop/Local Ordinary and a Religious Institute in his Diocese

Brendan Daly*

The *Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions* in New Zealand¹ and the *Royal Commission into Institutional Responses to Child Sexual Abuse* in Australia² have both had serious questions about the relationship of diocesan bishops and religious institutes. Commissioners in both these commissions sometimes have struggled to understand complex governance relationships in the Catholic Church. Religious institutes, societies of apostolic life, secular institutes and personal prelatures all seem much the same to most people. The following descriptions should help to distinguish between them.

1. Religious Institutes and other similar Church bodies

1.1 Societies of Apostolic Life resemble religious institutes in a number of ways, but the members do not make public vows as defined by canon 1192 §1.³ Like religious clerics, clerical members must obtain faculties from the local Ordinary. Members are not required to live in a community. Therefore, Societies of Apostolic Life such as the Columbans are distinct from religious institutes.

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¹ <https://www.abuseincare.org.nz/>.

² <https://www.childabuseroyalcommission.gov.au/>.

³ MICHAEL JOYCE CM, “Societies of Apostolic Life”, in D. MILLER and E. JARAMILLO, eds, *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, (Canon Law Society of America, 2021) 268. Canon 731 §1. Societies of apostolic life approximate to institutes of consecrated life. Their members, without taking religious vows, pursue the apostolic purpose proper to each society. Living a fraternal life in common in their own special manner, they strive for the perfection of charity through the observance of the constitutions. English translation from Gerard Sheehy et al., eds. *The Canon Law: Letter and Spirit*. (Collegeville, MN: The Liturgical Press, 1995). Canon 1192 §1: A vow is public if it is received in the name of the Church by a lawful Superior; otherwise, it is private.

1.2 Secular institutes are “institutes of consecrated life in which Christ’s faithful, living in the world, strive for the perfection of charity and endeavour to contribute to the sanctification of the world, especially from within.”⁴ Secular institutes are a form of consecrated life whose members do not usually live-in community as religious brothers and sisters do. Secular institutes were first recognised in 1947 and do not exist in New Zealand.⁵

1.3 Personal prelatures, such as Opus Dei in Auckland and Hamilton, may be established by the Apostolic See after consultation with the Bishops’ Conferences concerned. They are composed of deacons and priests of the secular clergy (often referred to as diocesan clergy). Their purpose is to promote an appropriate distribution of priests, or to carry out special pastoral or missionary enterprises in different regions or for different social groups.”⁶ Personal prelatures are relatively independent of local bishops once they have been invited into a diocese and are very different to religious institutes.

1.4 Associations of the faithful include clergy and laity working together to promote holiness of life or doctrine, or to foster worship or other apostolic works such as charitable works to animate the society with the Christian spirit.⁷ Associations are distinct from religious institutes and include the Foculare movement, the Catholic Women’s League, and the Saint Vincent de Paul Society.

1.5 Religious Institutes

1.5.1 Religious institutes are communities or societies, whose members live together in community. They make public vows⁸ as described in canon 573 §1:

⁴ Canon 710. Translation of canons of the 1983 Code by the Canon Law Society of America, http://www.vatican.va/archive/ENG1104/___P4H.HTM, hereafter the translation of the canons of the 1983 Code will be from this source.

⁵ An example would be the *Schoenstatt Sisters of Mary in Sydney*.

⁶ Canon 294.

⁷ Canon 298 §1. In the church there are associations which are distinct from institutes of consecrated life and societies of apostolic life. In these associations, Christ’s faithful, whether clerics or laity, or clerics and laity together, strive with a common effort to foster a more perfect life, or to promote public worship or Christian teaching. They may also devote themselves to other works of the apostolate, such as initiatives for evangelisation, works of piety or charity, and those which animate the temporal order with the Christian spirit. Cf. Sharon Holland IHM, “Secular Institutes”, in *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, 257-266.

⁸ Canon 1192 §1. A vow is public if it is received in the name of the Church by a lawful Superior; otherwise, it is private.

§2 It is solemn if it is recognised by the Church as such; otherwise, it is simple.

§3 It is personal if it promises an action by the person making the vow; real, if it promises something; mixed, if it has both a personal and a real aspect.

Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely under the action of the Holy Spirit, and are totally dedicated to God, who is supremely loved. By a new and special title they are dedicated to seek the perfection of charity in the service of God's Kingdom, for the honour of God, the building up of the Church and the salvation of the world. They are a splendid sign in the Church, as they foretell the heavenly glory.

Religious institutes are either diocesan or pontifical; lay or clerical; and some religious reside in monasteries.

1.5.2 Diocesan institutes (often referred to as “diocesan right”) are those which have been canonically established by a diocesan bishop and have not subsequently obtained juridic recognition from the Apostolic See.⁹ The only diocesan institute is the Sons of the Most Holy Redeemer in Christchurch.¹⁰

1.5.3 Pontifical institutes (often referred to as “pontifical right”) are those which have been canonically established by the Apostolic See or which have originated as a diocesan institute but subsequently obtained a formal decree of approbation from the Apostolic See.”¹¹ Most religious institutes in New Zealand and Australia are pontifical.

Both diocesan and pontifical institutes may be clerical or lay institutes. Some religious institutes such as the St John of God Institute include priests and brothers.

1.5.4 Lay institutes are those recognised as such by the Church whose purpose does not include the exercise of the sacrament of orders.”¹² Some have a membership of brothers and all sisters are members of lay institutes.¹³

1.5.5 Clerical religious institutes are those recognised as such by the Church whose purpose includes the exercise of orders and which are

⁹ Canons 579, 589, 594.

¹⁰ Diocesan right clerical institute erected in Aberdeen 15 August, 2012.

¹¹ Canons 589, 593. ELIZABETH MCDONOUGH, OP, “Relationship between Bishops and Religious: Mutual Rights and Duties”, *Bulletin on Issues of Religious Law*, vol. 5 no. 2, October 1989, A Joint Project of Canon Law Society of America, Conference of Major Superiors of Men, Leadership Conference of Women Religious, National Conference of Vicars of Religious.

¹² Ibid, 3. Canons 588 §3, 676.

¹³ The St John of God Brothers is a lay institute but have some members ordained.

governed by clerics.”¹⁴ The clergy need to receive faculties from the diocesan bishop or local ordinary to minister publicly, for example the Society of Mary.

- 1.5.6** Amongst the religious institutes there are relatively independent monasteries of contemplative sisters, brothers, and priests, such as the Carmelites or Cistercians. They profess solemn vows and observe papal enclosure¹⁵ and are overseen by the diocesan bishop.¹⁶

Some religious institutes which own hospitals and schools have created ministerial public juridic persons to manage these apostolates, but the religious institute itself retains ownership.

1.5.7 Exempt Religious Institutes

Before the 1917 Code came into effect, the Constitutions of religious institutes described the charism and the apostolic purposes for which the institute was founded. In general, religious were called to live a holy life by living a vowed life according to the spirit of the institute. Their apostolates were the ways members of the religious institute were to contribute to the mission of the Church. The constitutions are particular law for a religious institute and contain the procedures of governance and authority within it.

In 1881, Pope Leo XIII granted exempt religious institutes the privilege of exemption so that their religious houses were separated from the governance of the diocese.¹⁷ These regular religious were men and woman of religious orders who followed an approved rule of life and professed solemn vows.¹⁸ Other religious men and women were members of religious congregations who professed simple vows.¹⁹ Solemn vows as recognised by the Church are always permanent and are taken by all members of monastic and mendicant orders. These are strictly cloistered communities and most semi-cloistered communities. Active communities of religious orders take simple vows. Like solemn vows, simple vows are taken publicly, i.e., received by the superior in the name of the Church. They may be

¹⁴ MCDONOUGH, 3. Canon 588 §2.

¹⁵ Canon 667 §3.

¹⁶ Canon 615.

¹⁷ POPE LEO XIII in, constitution, *Romanos Pontifices*, May 8, 1881: *Leonis XIII Pontificis Maximi Acta* (Rome: Ex Typographia Vaticana, 1897) 2: 235.

¹⁸ A solemn vow is an absolute, public vow taken by a religious in the Roman Catholic Church under which ownership of property by the individual is prohibited and marriage is invalid under canon law.

¹⁹ JOHN HUELS, “The Demise of Religious Exemption”, *The Jurist* 54 (1994) 42.

temporary or perpetual.

The terms “nun” and “sister” are often used interchangeably by people. However, there is a difference between the two. A nun is a woman who lives as a contemplative life in a monastery which is usually enclosed (cloistered) or semi-enclosed. Her ministry and prayer life are centered within the monastery for the good of everyone in the world. She makes perpetual *solemn* vows living a life according to the evangelical counsels of poverty, celibacy, and obedience. Solemn vows are perpetual, and if she marries it is invalid. She cannot own property and if money is left to her in a will, it is not retained in a special fund by the order in case she ever leaves. The money goes to the religious institute. A religious society of solemn vows is called an order, and its members are called nuns (examples, Benedictines, Franciscans and Dominicans).

The 1917 Code stated in canon 615 that some religious were exempt from the governance (jurisdiction) of the local Ordinary²⁰ including the diocesan bishop and subject only to the Pope except where the law stated they were not exempt:

Religious, not excluding novices, whether men or women, with their houses and churches, excepting those nuns who are not subject to regular Superiors, are exempt from the jurisdiction of the local Ordinary except in those cases expressed by law.²¹

Canon 488 2° of the 1917 Code defined exemption as “withdrawn from the jurisdiction of the local ordinary.” This means that they are directly accountable to the Apostolic See. Exempt religious included the Dominicans, Jesuits, Redemptorists and the Saint John of God Brothers. Their major superiors were Ordinaries and could exercise the power of governance.²² The bishop continues to have authority over the care of souls and liturgical matters. According to the 1917 Code, the local Ordinary included residential bishops (now called diocesan bishops).²³ Exemption always included the internal life and governance of the religious. However, exemption was always partial

²⁰ Canons 198 *CIC* 1917; c. 134 1983 Code.

²¹ English trans. *The 1917 Pio-Benedictine Code of Canon Law*, EDWARD N. PETERS (trans.), (San Francisco: Ignatius Press, 2001); hereafter the translation of the canons of the 1917 Code will be from this source.

²² Canons 1917 *CIC* 196-210.

²³ Also included were abbots and prelates nullius, vicars general, vicars apostolic, and prefects apostolic.

and did not include erection of houses, celebrating public worship and the sacraments for lay people.²⁴

Many religious were not exempt such as the Society of Mary, the sisters of Saint Joseph and the Mercy sisters. If money is left to one of them, the money is kept in a special trust fund until her death. Then it would normally become part of the assets of the religious institute.

Vatican II taught in the dogmatic constitution on the Church that the Pope could exempt religious from the governance of local ordinaries so they were pontifical and subject only to the Pope.

To meet the needs of the whole of the Lord's flock more effectively, any institute of perfection and its individual members can, for the general good of the church, be exempted by the supreme pontiff from the jurisdiction of local ordinaries and subjected to him alone; this is possible by reason of his primacy over the universal church.²⁵

Although the exemption meant the religious institute had a lot of independence from the local diocesan bishop, there was still accountability to the bishop concerning the pastoral work of the religious institute:

The object is that everything in these institutes should be well-coordinated and in the interest of the growth and perfection of religious life... This exemption, however, does not stand in the way of the religious in their respective dioceses coming canonically under the jurisdiction of the bishops, in so far as is required for the fulfilment of their pastoral duties and the well-ordered care of souls.²⁶

Following on from this, the decree *Christus Dominus* pointed out:

all religious, exempt and non-exempt, are subject to the authority of the local ordinaries in the following matters: the public practice of divine worship (without prejudice however, to the diversity of rites), the care of souls, sermons preached to the people, ...and what concerns the good repute of the clerical state as well as the

²⁴ Canons 1917 *CIC* 612; 1261; 874; 603 §1; 533 §1, no. 1.

²⁵ English translation from NORMAN TANNER, *Decrees of the Ecumenical Councils*, (London: Sheed and Ward Ltd, 1990), (hereinafter TANNER, *Decrees of the Ecumenical Councils*) vol. 2, dogmatic constitution on the Church, *Lumen Gentium* 45, 886.

²⁶ *Ibid*, CD, 35 §3, 935.

various activities involving the exercise of their sacred apostolate.²⁷

Therefore, Matthew Kozlowski concluded that “Vatican II did not bring about the demise of exemption but brought to it a *novus habitus mentis*”.²⁸ This new way of thinking about exemption requires transparency, collaboration and a completely new way of thinking without covering up problems such as abuse.²⁹

1.5.8 Ministerial Public Juridic Persons (MPJP) “can be associations of persons, as in the case of a religious institute, or an association of things, such the assets of an educational or health care ministry. The latter has come to be referred as “a ministerial juridic person or MJP, or a ministerial public juridic person (MPJP), to indicate that it was founded primarily for a ministerial purpose rather than for the sanctification of its members as a religious institute”.³⁰ When such structures have been established by religious institutes and constituted juridic persons by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, they submit annual reports to the Holy See.³¹ Religious institutes establishing a MPJP have divested themselves of their assets, such as the St John of God Brothers.

2. *Mutuae Relationes*

The Congregation for Religious and Secular Institutes and the Congregation for Bishops issued, on 14 May 1978, ‘Directives for mutual relations between Bishops and Religious in the Church’, *Mutuae relationes*,³² seeking to establish better working relationships between bishops and religious:

²⁷ Ibid, CD, 35 §4, 935.

²⁸ MATTHEW KOZLOWSKI, *A Canonical Analysis of the Authority Exercised by the Diocesan Bishop and the Religious Superior Over the Religious Pastor qua Pastor*, (Washington DC: Catholic University of America. 2016) 54.

²⁹ This new approach to exemption (which considerably lessens its importance as a determinant in diocesan-religious relations) can be seen in c. 586 which calls on local ordinaries to both respect and safeguard the internal autonomy (including discipline and charism) of all religious institutes - whether diocesan or pontifical.

³⁰ CATHOLIC HEALTH ASSOCIATION, UNITED STATES, Ministerial Juridic Persons (chausa.org)

³¹ Mercy health care is being established in New Zealand.

³² SACRED CONGREGATION FOR RELIGIOUS AND SOCIETIES OF APOSTOLIC LIFE AND CONGREGATION FOR BISHOPS (SCRIS & CB), ‘Directives for mutual relations between Bishops and Religious in the Church’, *Mutuae relationes*, 14 May 1978, https://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_doc_14051978_mutuae-relationes_en.html

Bishops, furthermore, as members of the Episcopal College, in harmony with the will of the Supreme Pontiff, are united in this: . . . in determining the exemption of some institutes ‘from the jurisdiction of local ordinaries for the sake of the common good’ (*LG*, 45) of the universal Church and to better ‘ensure that everything is suitably and harmoniously arranged within them, and the perfection of the religious life promoted’ (*CD*, 35, 3).³³

There was a reminder that “the difference between the proper works of an institute and works entrusted to an institute should be kept in mind by diocesan Bishops”.³⁴ Bishops were again reminded of this in the *Directory on the Pastoral Ministry of Bishops* no. 100:

following the norm of law, the bishop will respect the exemption given to certain institutes, through which the Pope as primate over the entire Church, can exempt any institute of Christian perfection and its individual members from the jurisdiction of local ordinaries and subject them to himself alone or to another ecclesiastical authority.³⁵

Pope Paul VI had legislated that apostolic works entrusted to a religious institute remained “under the authority and direction of the diocesan Bishop without prejudice to the right of religious Superiors to exercise vigilance (oversight) over the life of the members of the Institute”.³⁶ The current law is canon 678 §2:

In the exercise of an external apostolate towards persons outside the institute, religious are also subject to their own Superiors and must remain faithful to the discipline of the institute. If the need arises, Bishops themselves are not to fail to insist on this regulation.

From 1966, if abuse of a minor by a religious occurred within the context of the exercise of ministry in an entrusted work, the religious superior was obliged to inform the diocesan Bishop because the work was under the bishop’s authority and direction. Also, the religious institute and the bishop were obliged to collaborate. Even if the

³³ English translation from SS. CC. Rel. et S. I. et Episc., *Mutual Relations between Religious and Bishops*, May 14, 1978: *CLD* 9: 304-305.

³⁴ SCRIS & CB, *Mutuae relationes* 57 a; https://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_doc_14051978_mutuae-relationes_en.html

³⁵ CONGREGATION FOR BISHOPS, *Directory on the Pastoral Ministry of Bishops, Apostolorum Successores* (OTTAWA: CANADIAN CONFERENCE OF CATHOLIC BISHOPS 2004) 111.

³⁶ PAUL VI, *motu proprio, Ecclesiae sanctae*, I. 29 §1. http://www.vatican.va/content/paul-vi/en/motu_proprio/documents/hf_p-vi_motu-proprio_19660806_ecclesiae-sanctae.html; “Vigilance” come from the Latin “*vigilare*” meaning to watch over and to ensure that ecclesiastical discipline is observed. Cf. JOHN FARIS, *A Practical Commentary to the Code of Canons of the Eastern Churches*, (Montreal: Wilson & Lafleur, 2019) 275.

abuse occurred within a proper work of an institute, there was an obligation to inform the bishop, especially because a person was harmed and scandal³⁷ could be involved. The sin of scandal is described by the *Catechism of the Catholic Church* as:

2284 Scandal is an attitude or behaviour which leads another to do evil. The person who gives scandal becomes his neighbour's tempter. He damages virtue and integrity; he may even draw his brother into spiritual death. Scandal is a grave offense if by deed or omission another is deliberately led into a grave offense.³⁸

Scandal in canon law is different to sensational bad behaviour as understood in society, but obviously the same activity can give rise to both understandings of scandal.

3. Proper or Entrusted Works

A key distinction in the relationship between bishops and religious is whether the apostolate is proper or entrusted to the religious institute. The following description helps to clarify the authority of bishops: “proper works are administered³⁹ by a particular institute or society, with vigilance (oversight) by the diocesan bishop; entrusted works are administered by a diocesan bishop, with vigilance⁴⁰ (oversight) exercised by the major superior.”⁴¹ Benjamin Earl points out that the proper works depend on the religious superiors in accordance with their Constitutions, even though as regards pastoral action they are subject to the jurisdiction of the local Ordinary

³⁷ “Scandal” in the *New Catholic Encyclopedia* is “According to St. Thomas (II-II:43:1) scandal is a word or action evil in itself, which occasions another's spiritual ruin. It is a word or action, that is either an external act—for an internal act can have no influence on the conduct of another—or the omission of an external act, because to omit what one should do is equivalent to doing what is forbidden; it must be evil in itself, or in appearance.”
<https://www.newadvent.org/cathen/13506d.htm>

³⁸ *Catechism of the Catholic Church*, Vatican, Libreria Editrice Vaticana, 1993, https://www.vatican.va/archive/ENG0015/_INDEX.HTM; N.B. CCC, 2285 Scandal takes on a particular gravity by reason of the authority of those who cause it or the weakness of those who are scandalized. It prompted our Lord to utter this curse: “Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone fastened round his neck and to be drowned in the depth of the sea.”⁸⁶ Scandal is grave when given by those who by nature or office are obliged to teach and educate others. Jesus reproaches the scribes and Pharisees on this account: he likens them to wolves in sheep's clothing

³⁹ In canon law administrators have the primary role in an organisation. Cf. Canon 1284.

§3 It is earnestly recommended that administrators draw up each year a budget of income and expenditure. However, it is left to particular law to make this an obligation and to determine more precisely how it is to be presented.

⁴⁰ “Vigilance”, or oversight, is akin to the New Zealand Qualifications Authority (NZQA) exercising oversight of Tertiary institutions to ensure compliance with regulations and visiting and issuing an EER report every 3 or 4 years. NZQA does not own any institute and is not responsible for the actions of an institute or its officials.

⁴¹ ROBERT KASLYN SJ, The “Faculties of Priest Members of Religious Institutes and Societies of Apostolic Life.” *The Jurist* 69 (2009) 173.

according to the norm of law.⁴²

He explains the phrase “depending on the religious superiors in accordance with their Constitutions” refers:

to both the spiritual patrimony of the institute and to its basic norms of governance operating in harmony. Certainly, the spiritual patrimony of the institute should be expressed in any apostolate exercised by religious, for their apostolate “consists primarily in the witness of their consecrated life”.⁴³

The apostolic work could be subject to the norms of the Constitutions. The juridical person of the religious institute could be the owner of the apostolic work such as the hospital or orphanage.

Diocesan bishops frequently entrust parishes to the care of members of religious institutes. Benjamin Earl notes “in such cases the bishop will always retain a decisive role in the government of the work, even if the ordinary governance is entrusted to members of the religious institute.”⁴⁴ A clear example is when a parish is entrusted to a religious institute. The major superior proposes a priest to be the parish priest, and then it is the diocesan bishop who actually appoints him as the parish priest.⁴⁵

4. Autonomy of Religious

Members of religious institutes enjoy a real autonomy of life from diocesan bishops but are to obey the commands of their superiors in accordance with Canon 601.

The evangelical counsel of obedience, undertaken in the spirit of faith and love in the following of Christ, who was obedient even unto death, obliges submission of one’s will to lawful Superiors, who act in the place of God when they give commands that are in accordance with each institute’s own constitutions.

⁴² BENJAMIN EARL OP, “Opera Propria: property or patrimony? Consequences for mutual relations between Bishops and Religious,” *The Canon Law Society of Great Britain and Ireland Newsletter*, November 2021, no. 200, 33-53; SCRIS & CB, *Mutuae relationes*, 57 a.

⁴³ Canon 673

⁴⁴ BENJAMIN EARL OP, “Opera Propria: property or patrimony? Consequences for mutual relations between Bishops and Religious,” *The Canon Law Society of Great Britain and Ireland Newsletter*, November 2021, no. 200, 33-53.

⁴⁵ Canon 523. Without prejudice to canon 682 §1 appointment to the office of parish priest belongs to the diocesan Bishop, who is free to confer it on whomsoever he wishes, unless someone else has a right of presentation or election.

Canon 682 §1. If an ecclesiastical office in a diocese is to be conferred upon a member of a religious institute, the religious is appointed by the bishop on presentation by, or at least with the consent of, the competent Superior.

§2. The religious can be removed from the office at the discretion of the authority who made the appointment, with prior notice given to the religious Superior; or by the religious Superior, with prior notice being given to the appointing authority. Neither requires the other’s consent.

Members of the religious institute are to be faithful to the discipline of the institute:

Canon 678 §2 In the exercise of an external apostolate towards persons outside the institute, religious are also subject to their own Superiors and must remain faithful to the discipline of the institute. If the need arises, Bishops themselves are not to fail to insist on this regulation.

The vow of obedience affects every area of the life of a religious, but especially in the internal governance and charism of the institute:

Canon 607 §2 A religious institute is a society in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common.

5. The Authority of the Diocesan Bishop

In the 1917 Code, the diocesan bishop was called a residential bishop. He governed his diocese with the power granted to him in canon law. “Canon 334 §1. Residential Bishops are ordinary and immediate pastors in the dioceses committed to them.”

The power and authority of the diocesan bishop changed dramatically when Vatican II taught that he was the vicar of Christ in his own diocese.⁴⁶ The Decree on the Pastoral Office of Bishops in the Church [CD 8 b] then taught that bishops could dispense from all disciplinary laws except those reserved by the Pope:

[From] the general law of the church all diocesan bishops are given the power of granting dispensations in particular cases to the faithful over whom they hold canonical authority, whenever they judge it to be for their spiritual good. This power does not extend to cases which have been specially reserved by the supreme authority of the church.⁴⁷

Prior to the Council, diocesan bishops could only dispense in those matters that the law allowed them to dispense. James Provost explained:

Note, canon 381 §1 states that the diocesan bishop possesses “*all* power which is required,” not “*full* power.” Only the Roman Pontiff and the college of bishops in union with the Roman Pontiff are subjects of “full power” within the Church (cc. 331 and 336, respectively). As such, there is a clear distinction between the power that is enjoyed by the supreme authority and that which is all power to exercise

⁴⁶ LG 27.

⁴⁷ CD 8b: AAS 58 (1966) 676; TANNER, *Decrees of the Ecumenical Councils*, 2: 923.

his office.⁴⁸

The diocesan bishop enjoys ordinary power of governance,⁴⁹ which is executive, legislative, and judicial.⁵⁰ He has to maintain and uphold church discipline and has authority over the external apostolate of religious which “consists primarily in the witness of their consecrated life”⁵¹ fully living their vowed life of poverty, chastity and obedience.

6. Diocesan Bishop’s Authority in relation to Religious

The authority of diocesan bishops to members of religious institutes is summarised by Kozlowski:

all members are subject to the diocesan bishop...The extent of the authority that a diocesan bishop exercises over a member of a religious institute, then, is largely dependent on the member’s engagement in the external apostolate in conjunction with the nature of the apostolic work (i.e., is the work proper to the institute or is it entrusted to the institute or one of its members by the diocesan bishop?). At the same time, the member must still obey the legitimate commands of his/her religious superiors (c. 601) and remain faithful to the discipline of the institute (c. 678 §2). Also, this same superior has authority over a religious’ exercise of an external apostolate. The extent of the religious superior’s authority is also affected by the nature of the work (i.e., proper or entrusted). In short, a religious who exercises an external apostolate is subject to a dual authority structure which consists of the diocesan bishop and religious superior.⁵²

The most common apostolate that religious institutes are involved with are schools. The power of the bishop in relation to schools is outlined by Richard Hill:

According to the 1983 Code, whether the school is a proper or entrusted work: “The bishop has the right to establish general policies for all Catholic schools (c. 806, §1), to supervise religious formation and education imparted in schools (c. 804, §1), to approve the appointment of those who are to teach religion and to require their removal if he judges this necessary for reasons of religion or morals (c. 805).” If the school is a proper work of the institute, “the right of the religious

⁴⁸ JAMES H. PROVOST, “Canonical Reflections on Selected Issues in Diocesan Governance,” in *The Ministry of Governance*, ed. JAMES K. MALLETT (Washington, DC: CLSA, 1986) 218.

⁴⁹ Canon 131.

⁵⁰ Canon 135 §1 The power of governance is divided into legislative, executive and judicial power.

⁵¹ Canon 673.

⁵² KOZŁOWSKI, *A Canonical Analysis of the Authority Exercised by the Diocesan Bishop and the Religious Superior Over the Religious Pastor qua Pastor*, 4-5.

to direct or manage these schools remains intact (c. 806, §1).”⁵³

The relationship between canons 683 §1⁵⁴ and 806 §1⁵⁵ means that the bishop’s vigilance in relation to the schools of religious institutes encompasses everything that could reasonably cause harm to the Catholic identity of these schools. The local Ordinary, including the diocesan bishop can remove the faculties of any cleric or if there is an investigation of an alleged crime,⁵⁶ the cleric can be prohibited from the exercise of sacred ministry.⁵⁷

When an individual religious is causing grave scandal, canon law provides for a diocesan bishop to expel him or her from the diocese:

Canon 679. For the gravest of reasons, a diocesan Bishop can forbid a member of a religious institute to remain in his diocese, provided the person’s major Superior has been informed and has failed to act; the matter must, however, immediately be reported to the Holy See.

The reason could be the religious is having an affair with someone or is behaving in another gravely inappropriate manner.

7. Terminating an Apostolate of Religious Institutes

There is no canonical process to terminate an apostolate of a religious institute.⁵⁸ However, if religious violate universal or particular law in an apostolate, they can be removed. According to canon 678 §1: “ In matters concerning the care of souls, the public exercise of divine worship, and other works of the apostolate, religious are subject to the authority of the bishops, whom they are bound to treat with sincere submission and reverence”. The bishop grants faculties for a religious to function

⁵³ RICHARD HILL, “The Apostolate of Institutes.” In *A Handbook on Canons 573-746*, ed. JORDAN HITE et al. (Collegeville, MN: Liturgical Press, 1985) 217.

⁵⁴ Canon 683 §1. Either personally, or through a delegate, the diocesan Bishop can visit churches or oratories to which Christ’s faithful have habitual access, schools other than those open only to the institute’s own members and other works of religion or charity entrusted to religious, whether these be spiritual or temporal. He can do this at the time of the pastoral visitation, or in a case of necessity.

⁵⁵ Canon 806 §1. The diocesan Bishop has the right to watch over and inspect the catholic schools situated in his territory, even those established or directed by members of religious institutes. He has also the right to issue directives concerning the general regulation of catholic schools; these directives apply also to schools conducted by members of a religious institute, although they retain their autonomy in the internal management of their schools.

⁵⁶ A crime is a grave or mortal sin classified as a crime in canon law.

⁵⁷ Canon 1722.

⁵⁸ JORDAN HITE TOR, “Mutual Rights and Obligations of Bishops and Major Superiors regarding Public Ministry,” *Bulletin on Issues of Religious Law*, vol. 14, Spring 1997, 4.

publicly in the Church.⁵⁹ He can remove those faculties or prohibit the exercise of public ministry.⁶⁰

Usually, religious institutes are the ones who terminate an apostolate because of shortage of members. In such cases, there should be negotiation about the timing and the process for withdrawal from the apostolate.

Sometimes the diocesan bishop may initiate the termination of the apostolate of a religious institute. The most common situation would be a bishop deciding to “take back” a parish for it to be staffed by diocesan priests. The bishop can easily do this because a parish belongs to the structure of a diocese. There should also be an agreement or contract between the religious institute and the diocese when the parish was entrusted to the religious institute.⁶¹ There is meant to be a contract between the diocesan bishop and the religious institute for any religious carrying out an apostolate in the diocese.⁶² This contract may impact on how and when the apostolate is terminated.

When a diocesan bishop carries out a visitation of an apostolate of a religious institute such as a school and discovers abuses, he is directed how to proceed by canon 683 §2: “If the diocesan Bishop becomes aware of abuses, and a warning to the religious Superior having been in vain, he can by his own authority deal with the matter.” The bishop is to demand that the religious Superior correct the abuse. If the Superior fails to act, then the diocesan bishop is to deal with the matter himself.

If the abuse is systemic, the bishop will have to take recourse to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life and the Congregation for Evangelisation of Peoples. This could lead to a canonical investigation and potential suppression of the religious institute or a section of it. In Australia the Society of Saint Gerard Majella, a diocesan institute in New South Wales, was suppressed after sexual abuse was found to be systemic in the institute.⁶³ The Jesuits, a pontifical institute, was suppressed for largely political reasons by Pope Clement XIV in 1773. The decision of Pope Clement XIV was not promulgated in Prussia and Russia, so the Jesuit order

⁵⁹ Canon 970. The faculty to hear confessions is not to be given except to priests whose suitability has been established, either by examination or by some other means.

⁶⁰ BRENDAN DALY, “Canon 1336: What processes must the diocesan bishop follow to remove the faculties of a Priest?” in *Roman Replies and CLSA Advisory Opinions 2017*, (Washington DC: Canon Law Society of America, 2017), 87-95.

⁶¹ Canon 681 §2.

⁶² Since 1980, there is meant to be an agreement between diocesan bishops for a priest of one diocese carrying out a ministry or an apostolate in another diocese. Cf. SACRED CONGREGATION FOR CLERGY, “Directive Norms for Cooperation among Local Churches and for a Better Distribution of the Clergy,” 25 March 1980, *CLD* 9: 760-787.

⁶³ https://www.childabuseroyalcommission.gov.au/sites/default/files/CTJH.280.01003.0001_R.pdf

survived the suppression order in those territories. The Jesuit order was restored officially by Pope Pius VII in 1814.⁶⁴

8. Action concerning Religious Institutes Reserved to the Apostolic See

Kozlowski lists the actions concerning religious institutes that are reserved to the Apostolic See:

By law, the following actions are reserved to the authority of the Apostolic See: to merge and to unite institutes, confederations, and federations, whether of pontifical or diocesan right (c.582);⁸⁰ to suppress an institute and to decide what to do with the temporal goods of the suppressed institute, whether of pontifical or diocesan right (c. 584);⁶⁵ to approve new forms of consecrated life (c. 605); to grant an indult of exclaustation for nuns (c. 686 §2); to dispense a candidate from the age requirement for the presbyterate or the diaconate if he is more than one year younger than the required age (c. 1031 §4); to dispense from all irregularities for receiving or exercising orders received if the matter has been brought to the judicial forum (c. 1047 §1); to dispense from the irregularity for ordination for the public delicts of apostasy, heresy, or schism, or attempted marriage (c. 1047 §2, 1°); to dispense from the irregularity for ordination for public or occult delicts of voluntary homicide or procurement of a completed abortion or positively cooperating in either delict (c. 1047 §2, 2°); to dispense from the impediment to ordination for married men (c. 1047 §2, 3°); to dispense in public cases from the irregularity to exercise an order already received for attempted marriage and even in occult cases from the irregularity of voluntary homicide or procurement of a completed abortion or positively cooperating in either delict (c. 1047 §3); and to remit the *latae sententiae* excommunication for the delicts of desecrating the Eucharist (c. 1367), striking the Pope (c. 1370), absolving an accomplice in a sin against the sixth commandment (c. 1378 §1), consecrating a bishop without a pontifical mandate (c. 1382), and directly violating the sacramental seal (c. 1388 §1). The law also specifies that the judgment of a supreme moderator of a religious institute of pontifical right is reserved to the Roman Rota (c. 1405 §3, 2°). Any judge below the level of the Roman Rota is absolutely incompetent (c. 1406 §1) and so would render an irremediably null sentence (c. 1620, 1°).⁶⁶

In 2001, Pope John Paul II in his motu proprio *Sacramentorum Sanctitatis Tutela*⁶⁷ required all clerical religious institutes to report to the Congregation for the Doctrine of the Faith any reports or allegations of sexual abuse of a minor by a cleric received from 11 October 2001. The requirement to report included all historical

⁶⁴ <https://www.britannica.com/topic/Roman-Catholicism/Suppression-of-the-Jesuits>

⁶⁵ Canon 732 applies this norm to societies of apostolic life.

⁶⁶ KOZLOWSKI, *A Canonical Analysis of the Authority Exercised by the Diocesan Bishop and the Religious Superior Over the Religious Pastor qua Pastor*, 40-41.

⁶⁷ AAS, 93(2001), 737-739.

allegations that had a semblance of truth about them as well as all those the Major Superior decided were unfounded. If the accused cleric was deceased, the Major Superior still needed to report the allegation and what he had done as a result of the allegation.

9. Vos Estis Lux Mundi

In 2019 Pope Francis introduced new legislation in his motu proprio *Vos Estis Lux Mundi*.⁶⁸ This law came into effect on 1 June 2019. It had been unclear if religious brothers or sisters committed a canonical crime or delict when they sexually abused a minor, although the abusers were to be dismissed from the religious institute according to canon 695.⁶⁹ Now any religious sister or brother commits a canonical crime if they sexually abuse someone according to the expanded definition in *Vos Estis Lux Mundi*:

Art. 1 – Scope of application

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

- a) delicts against the sixth commandment of the Decalogue consisting of:
 - i. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts;
 - ii. performing sexual acts with a minor or a vulnerable person;
 - iii. the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions;
- b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.⁷⁰

This is the first time that religious brothers and sisters have been explicitly included in documents concerning sexual abuse. A lacuna in the law has been rectified. The norms also encompass members of Societies of Apostolic Life such as the Columbans. Priests and deacons of Societies of Apostolic Life have always been subject to the norms of *Sacramentorum Sanctitatis Tutela*,⁷¹ but their sisters or brothers

⁶⁸ SST, *Ibid.*

⁶⁹ Canon 695 §1. A member must be dismissed for the offences mentioned in Cann.1395, 1397, and 1398, unless, for the offences mentioned in Can.1395 §§2-3, the Superior judges that dismissal is not absolutely necessary, and that sufficient provision has been made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal.

⁷⁰ http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁷¹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Revised Norms on Dealing with Clerical Sex Abuse of Minors and Other Grave Offenses, Origins*, 40(2010-2011), 146-151

were not.

“Sexual Abuse” includes “forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts.”⁷² Now crimes of sexual abuse by religious brothers and sisters must be reported to the local Ordinary and the religious major superior.⁷³ This ensures that there is adequate transparency and accountability within the Church.

- ***Compulsory Reporting within the Church***

Pope Francis, in his 2019 motu proprio, *Vos estis lux mundi* had required that priests, deacons and religious must report sexual abuse when they know it has happened or they believe that it is happening. *Vos Estis Lux Mundi* Article 3 §1. states concerning the requirement to report:

Except as provided for by canons 1548 §2 CIC and 1229 §2 CCEO, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary.⁷⁴

- ***Religious Leaders Failing to Act***

Pope Francis in *Vos Estis Lux Mundi*⁷⁵ also reserved to the Congregation of the Doctrine of the Faith the crimes of a religious superior failing to act in a case of sexual abuse, or the crimes of failing to observe canon law or civil law on reporting and failing to cooperate with canonical or civil investigations. Article 6 states:

The procedural norms referred to in this title concern the conduct referred to in article 1, carried out by:

- a) Cardinals, Patriarchs, Bishops and Legates of the Roman Pontiff;
- b) clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, Latin or Oriental, including the Personal Ordinariates, for the acts committed durante munere;

⁷² http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁷³ E.g., In Melbourne this would be through the Professional Standards Unit, <https://melbournecatholic.org/safeguarding/reporting-abuse-and-safety-related-misconduct>

⁷⁴ http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁷⁵ POPE FRANCIS, motu proprio, *Vos Estis Lux Mundi*, 7 May 2019; http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

- c) clerics who are or who have been in the past leaders of a Personal Prelature, for the acts committed durante munere;
- d) those who are, or who have been, supreme moderators of Institutes of Consecrated Life or of Societies of Apostolic Life of Pontifical right, as well as of monasteries sui iuris, with respect to the acts committed durante munere.⁷⁶

The provisions of articles 1 b), c) and d) are a dramatic change in approach by the Church. It is now a crime for religious leaders to fail to observe canon law or civil laws on reporting and failing to cooperate with or obstructing civil investigations. Effectively the Church is canonising aspects of civil laws concerning what constitutes sexual abuse and grooming, as well as civil procedural laws concerning this reporting.⁷⁷ This has significance in many countries because of laws concerning grooming, obtaining phone numbers of children, photographing children etc.

Also, historic failures of not dealing with complaints are now encompassed by this legislation. The article in 1 b), c) and d) specifically says “who have been in the past leaders,” and refers to moderators of institutes of consecrated life societies of apostolic life and monasteries concerning acts or omissions while they were in office.

This law specifically applies canon 1378 which had already made acts or failures to act crimes when they constituted an abuse of an office or position:

§ 1. A person who, apart from the cases already foreseen by the law, abuses ecclesiastical power, office, or function, is to be punished according to the gravity of the act or the omission, not excluding by deprivation of the power or office, without prejudice to the obligation of repairing the harm.

§ 2. A person who, through culpable negligence, unlawfully and with harm to another or scandal, performs or omits an act of ecclesiastical power or office or function, is to be punished according to the provision of can. 1336 §§ 2-4, without prejudice to the obligation of repairing the harm.⁷⁸

⁷⁶ http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁷⁷ Canon 22: Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

⁷⁸ Formerly canon 1389. In the 1917 Code, canon 2404 “Abuse of ecclesiastical power, in the prudent judgment of the Legitimate Superior, shall be punished according to the gravity of the fault, with due regard for the prescriptions of those canons that establish certain penalties for various abuses.”

These provisions remove any doubts about the application of this canon concerning sexual abuse cases. The local Ordinary would mean the diocesan bishop, apostolic or diocesan administrator.⁷⁹ The revised Book 6 addressed reporting requirements in canon 1371 §6 making it a crime to fail to report an offence:

A person who neglects to report an offence, when required to do so by a canonical law, is to be punished according to the provision of canon 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.⁸⁰

- **Civil Law**

Vos Estis Lux Mundi states:

Article 19 – Compliance with state laws

These norms apply without prejudice to the rights and obligations established in each place by state laws, particularly those concerning any reporting obligations to the competent civil authorities.

Also, not observing civil law requirements is explicitly covered in the motu proprio:

Article 1 – Scope of application

§1. These norms apply to reports regarding clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life and concerning:

b) conduct carried out by the subjects referred to in article 6, consisting of actions or omissions intended to interfere with or avoid civil investigations or

⁷⁹ Canon 134 §1. In law the term Ordinary means, apart from the Roman Pontiff, diocesan Bishops and all who, even for a time only, are set over a particular Church or a community equivalent to it in accordance with Canon 368, and those who in these have general ordinary executive power, that is, Vicars general and episcopal Vicars; likewise, for their own members, it means the major Superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power.

§2 The term local Ordinary means all those enumerated in §1, except Superiors of religious institutes and of societies of apostolic life.

§3 Whatever in the canons, in the context of executive power, is attributed to the diocesan Bishop, is understood to belong only to the diocesan Bishop and to those others in canon 381 §2 who are equivalent to him, to the exclusion of the Vicar general and the episcopal Vicar except by special mandate.

⁸⁰ POPE FRANCIS, *Constitutio apostolica qua Liber VI Codicis iuris canonici reformatur Pascite gregem Dei*, 23 May 2021.

https://www.vatican.va/content/francesco/la/apost_constitutions/documents/papa-francesco_costituzione-ap_20210523_pascite-gregem-dei.html (=FRANCIS, *CIC*, 2021).

canonical investigations, whether administrative or penal, against a cleric or a religious regarding the delicts referred to in letter a) of this paragraph.

Although the Doctrine of the Faith's circular letter in 2011 made it clear the church must obey civil laws regarding abuse and reporting,⁸¹ Archbishop Scicluna claimed that "compliance with state laws" had become universal canon law for the first time in the motu proprio *Vos Estis Lux Mundi*. Archbishop Scicluna explained it was unacceptable for people to try to protect the Church now, because "the good of the church requires truth and transparency, which includes respecting civil law." He added "that he hoped people felt "empowered to go to the police" to denounce a crime,⁸² and he said people have an obligation⁸³ to report already existing crimes, negligence and inappropriate behaviour to church authorities.⁸⁴ Furthermore, "If people have the right and the duty to denounce something illicit" in the case of abuse, "they also have the right to denounce if, after one year, nothing has been done".⁸⁵

10. Responsibility and Liability for Repair of Harm to Abuse Victims

Some diocesan bishops believed canon 384 justified them giving priests leniency in dealing with complaints about their abuse or misconduct. Canon 384 states:

He is to have special concern for the priests, to whom he is to listen as his helpers and counsellors. He is to defend their rights and ensure that they fulfil the obligations proper to their state. He is to see that they have the means and the institutions needed for the development of their spiritual and intellectual life. He is to ensure that they are provided with adequate means of livelihood and social welfare, in accordance with the law.

While bishops have a responsibility to defend and care for their priests, it is vital that they do not take one canon alone without taking into account the whole Code of Canon Law and all other canonical documents.

Bishops also have a responsibility to care for all the faithful in their dioceses. Diocesan bishops are responsible for caring for victims. Canon 383 §1 states:

⁸¹ <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

⁸² <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

⁸³ <https://www.nytimes.com/2019/05/09/world/europe/pope-francis-abuse-catholic-church.html>

⁸⁴ ARCHBISHOP CHARLES SCICLUNA, 9, May 2019, <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

⁸⁵ <https://www.catholicnews.com/services/englishnews/2019/days-of-covering-up-abuse-allegations-are-over-says-vatican-adviser.cfm>

In exercising his pastoral office, the diocesan Bishop is to be solicitous for all Christ's faithful entrusted to his care, whatever their age, condition or nationality, whether they live in the territory or are visiting there. He is to show an apostolic spirit also to those who, because of their condition of life, are not sufficiently able to benefit from ordinary pastoral care, and to those who have lapsed from religious practice.

Pope Francis explained what it meant for diocesan bishops "to be solicitous for all Christ's faithful committed to his care" in *Vos Estis Lux Mundi*:

Article 5 – Care for persons

§1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;
- b) offered spiritual assistance;
- c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.⁸⁶

It must be acknowledged that in dealing with sexual abuse victims, so many aspects are case specific. General statements do not always serve a just outcome. Religious institutes have a parallel responsibility for those to whom their members have ministered.⁸⁷

11. Rights and Obligations of Clerical and Religious Abusers.

What is just for abusers is not simple in practice. Abusers have the right to sufficient income for their support if they have not been dismissed from the clerical state or a religious institute.⁸⁸ However, if they have been dismissed from the clerical state or their religious institute, any support they receive is given out of charity.

Justice for victims is related to justice for abusers. Morally, abusers should not be getting more income/housing/etc than their victims and this is quite possible for example if clergy are receiving a stipend and superannuation. If the abuser has assets, the abuser must be forced to compensate their victim by the Ordinary or tribunal. According to canon 128:

⁸⁶ POPE FRANCIS, *Vos Estis Lux Mundi*, 5, https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁸⁷ Canon 19.

⁸⁸ Canon 1350

Whoever unlawfully causes harm to another by a juridical act, or indeed by any other act which is malicious or culpable, is obliged to repair the damage done.

Natural law and canon law recognise this obligation enshrined in canon 128. The Church, because of its mission, must place particular emphasis on the obligation to repair moral and spiritual harm.⁸⁹ This harm to victims must be repaired. Cases vary enormously and the impact of the abuse also varies greatly. This needs to be recognised in each case.

Sometimes abusers receive a punishment of a life of prayer and penance from the Congregation for the Doctrine of the Faith. What this means must be defined in detail by the Conference of Bishops for their territory, so that justice is real and the punishment does not become a farce.

Lawyers can argue dioceses and religious institutes are not legally liable for crimes of their clergy, religious and lay employees. There is no doubt however that there is a moral responsibility and liability.

12. Obligations of Dioceses to Victims

The Congregation for the Clergy reminded bishops, in 2009, that ecclesiastical discipline included the obligations of continence⁹⁰:

The bishop has, among other things, the duty to remind priests of their obligation to perfect and perpetual continence for the sake of the kingdom of heaven, an obligation freely and willingly assumed by them at the moment of their ordination. Moreover, the bishop must always be attentive that the priest is faithful in carrying out his proper ministerial duties (cf. Canons 384, 392).⁹¹

However, the priest is not considered an employee or agent of the bishop and is appointed to a parish to do pastoral work such as that outlined in canons 528-529.

The Congregation for the Clergy declared:

The diocesan priest, who is not merely the passive executor of commands received from the bishop, enjoys autonomy in making decisions both in his ministry and in his personal and private life. Thus, he is personally responsible for his personal actions and for those carried out in the scope of his ministry. Consequently, a bishop cannot be held juridically responsible for the acts which a diocesan priest carries out in transgression of the canonical norms, universal or particular. This

⁸⁹ G. MICHIELS OFM, *De delictis et poenis: commentarius libri V Codicis Iuris Canonici*, Editio altera, vol. I (Romae: Desclée, 1961) 68-71.

⁹⁰ Continence means the non-use of the sexual faculties.

⁹¹ CONGREGATION FOR THE CLERGY, Letter, *Origins*, 39(2008- 2009), 82.

principle is not new and has always been part of the patrimony of the church, means, among other things, that the criminal action of a priest, and its penal consequences as well as any eventual payment of damages, is imputable to the priest who has committed the offense and not to the bishop or to the diocese of which the bishop is the legal representative (cf. Canon 393).⁹²

However, *Vos Estis Lux Mundi* has modified this stance by the Congregation for the Clergy in article 5.⁹³ Dioceses have a responsibility to care for victims of diocesan priests from their diocese.⁹⁴ Incardination in a diocese connects the cleric to the diocese which must provide for him in return for his commitment to serve there.⁹⁵ If a priest abuser belonged to two dioceses, the dioceses should compensate/help in a proportional manner according to the number of years the priest worked in each diocese. When a diocesan priest offends, he holds the primary responsibility to pay his legal expenses. If he is judged innocent, his diocese has a responsibility to recompense him.

Bishops have more power and responsibility over an entrusted work of a religious institute rather than a proper work. This is because they hold the power to appoint to positions or offices. Consequently, a diocesan bishop appoints a religious priest as a parish priest.⁹⁶

Issues do arise about the bishop's liability as a consequence of his supervisory role over associations of the faithful in accordance with canon 305:

§1. All associations of Christ's faithful are subject to the supervision of the competent ecclesiastical authority. This authority is to ensure that integrity of faith and morals is maintained in them and that abuses in ecclesiastical discipline do not creep in. The competent authority has therefore the duty and the right to visit these associations, in accordance with the law and the statutes. Associations are also subject to the governance of the same authority in accordance with the provisions of the canons which follow.

⁹² Ibid, 83.

⁹³ Cf. footnote 85; POPE FRANCIS, *Vos Estis Lux Mundi*, 5, https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

⁹⁴ CCC 1548 In the ecclesial service of the ordained minister, it is Christ himself who is present to his Church as Head of his Body, Shepherd of his flock, high priest of the redemptive sacrifice, Teacher of Truth. This is what the Church means by saying that the priest, by virtue of the sacrament of Holy Orders, acts *in persona Christi Capitis*.

CCC 1552 The ministerial priesthood has the task not only of representing Christ - Head of the Church - before the assembly of the faithful, but also of acting in the name of the whole Church when presenting to God the prayer of the Church, and above all when offering the Eucharistic sacrifice. Cf. *LD* 10; *SC* 33; *PO* 2, 6.

⁹⁵ Canons 265; 281.

⁹⁶ Canon 523 Without prejudice to Canon 682 §1 appointment to the office of parish priest belongs to the diocesan Bishop, who is free to confer it on whomsoever he wishes, unless someone else has a right of presentation or election.

§2 Associations of every kind are subject to the supervision of the Holy See. Diocesan associations are subject to the supervision of the local Ordinary, as are other associations to the extent that they work in the diocese.

In canon 305 the word "supervision" [*vigilantia*] is not "governance" or "administration". The diocesan bishop's right of visitation or vigilance over ecclesiastical entities is limited according to the statutes of the entity and that right certainly does not envision day-to-day decision-making. Rather, the role of the diocesan bishop's supervision as provided for in canon 305 consists in the right of review and approval of statutes, and the right to intervene in case of malfeasance or commission of a delict or abuse of office.

If abuse is committed during work time by **lay employees** employed by a diocesan bishop, the abuser has the responsibility to repair the damage done to victims. If the abuser cannot or will not repair the damage, the diocese has a moral responsibility to repair the damage done to victims.

13. Obligations of Religious Institutes to Victims

If members of religious institutes (brothers, sisters or clerics) abuse others, their religious institutes have the responsibility to repair the damage done to victims whether it takes place in an entrusted or proper work.⁹⁷

Bishops do not have the power to appoint office holders in a proper work of a religious institute, but merely approve appointees of a religious institute.⁹⁸ However, a bishop is usually only informed who the religious institute has appointed. Because the religious institute appoints the office holders, the religious institute holds the liability for any subsequent abuse.

Similarly, if perpetrators are members of societies of apostolic life, their society bears the responsibility to repair the damage done to victims.⁹⁹

⁹⁷ CCC 914 The state of life which is constituted by the profession of the evangelical counsels, while not entering into the hierarchical structure of the Church, belongs undeniably to her life and holiness.

CCC 915 Christ proposes the evangelical counsels, in their great variety, to every disciple. the perfection of charity, to which all the faithful are called, entails for those who freely follow the call to consecrated life the obligation of practicing chastity in celibacy for the sake of the Kingdom, poverty and obedience. It is the profession of these counsels, within a permanent state of life recognized by the Church that characterizes the life consecrated to God.

⁹⁸ Canon 805. In his own diocese, the local Ordinary has the right to appoint or to approve teachers of religion and, if religious or moral considerations require it, the right to remove them or to demand that they be removed.

⁹⁹ Canon 19. If on a particular matter there is not an express provision of either universal or particular law, nor a custom, then, provided it is not a penal matter, the question is to be decided by taking into account laws enacted in similar matters, the general principles of law observed

If the religious institute does not help the victim or repair the harm done, the diocesan bishop must strongly exhort the religious institute or the Ministerial Public Juridic Person (MPJP) to meet their obligations to repair the damage done to victims. The Apostolic See can force any religious institute to meet their obligations. If a religious institute no longer exists, the diocese must help the victims.

If abuse is committed by lay employees of a religious institute in their proper work, the abuser has the responsibility to repair the damage done to victims. If the abuser cannot or will not repair the damage, the religious institute has responsibility to repair the damage done to victims.

14. Integrated Schools and the Obligations to Victims

Catholic schools in New Zealand have all been integrated into the state education system. This system was changed in 1989 by what is referred to as “Tomorrow’s Schools”. The government review as part of the Tomorrow’s Schools reforms states:

Until the Tomorrow’s Schools reforms of 1989, the governance and administration of New Zealand’s compulsory education system was highly centralised...Since the 1989 reforms, each school has been operating as a largely self-managing statutory Crown entity with responsibility for a wide range of functions that were previously centralised, such as employing staff and developing school policies.¹⁰⁰

For integrated schools in New Zealand proprietors, including bishops and religious institutes have four representatives on school boards. The four representatives are not the majority on the board. The board of trustees in an integrated school appoints the teachers and other staff. If abusers are lay people (teachers, caretakers etc) appointed by the board, the board is responsible for placing them in that position. Neither a religious institute nor a diocese makes the appointment and so they are not legally responsible for compensating victims of those appointed by the boards of trustees.

Conclusion

Chart¹⁰¹ of mutual Rights and Duties between Diocesan Bishops/Local Ordinaries, Societies of Apostolic Life and Religious Institutes as required by law:

with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned authors.

¹⁰⁰ New Zealand Government, *Supporting all schools to succeed Reform of the Tomorrow’s Schools system*, <https://conversation-live-storage-assets.s3.amazonaws.com/public/TSR/November-2019/TSR-Government-Response-WEB.pdf>

¹⁰¹ Based on chart of ELIZABETH MCDONOUGH, OP, in “Relationship between Bishops and Religious: Mutual Rights and Duties”, pp. 4-5.

Diocesan Bishop / Local Ordinary	Pontifical Institute	Diocesan Institute	Monastery	Society of Apostolic Life
Establish an institute (cc. 579, 589, 605)		√	√	
Respect autonomy (c. 586)	√	√	√	√
Approve Constitutions (cc. 587,1; 595)		√		
Vigilance (cc. 594; 615)		√	√	
Establish houses (c. 609,1; 611)	√	√	√	√
Altering apostolate (c. 612)	√	√		√
Suppressing houses (c. 616,1)	√	√	√	√
Presiding at elections (c. 625, 2)		√	√	
Visitation of Institutes (cc. 628,2; 397,2)		√	√	
Confessors for Lay Institutes (c. 630,3)	√	√	√	
Finances for Institutes (cc 637; 638,4; 1266; 1291; 1292,1; 1295)		√	√	
Admission of Clerics (cc. 644; 645)	√	√		
Entering leaving cloister of nuns (c. 667,4)			√	
Exercise of Apostolate (cc. 672; 678,1&2)	√	√	√	√
Coordination of Apostolates (cc. 678,3; 680)	√	√	√	√
Works Contracts (cc. 681, 682)	√	√	√	√
Visitation of Apostolates (cc. 683,2; 397,2)	√	√	√	√
Penalties applied to Religious (cc. 679; 683,2; 1320)	√	√	√	
Indult of Exclaustration (cc. 686, 687)		√		
Indult of Departure (cc. 688,2; 691,2; 693)		√	√	
Dismissal of Religious (cc. 699,2; 700; 701)		√	√	

Diocesan Bishop / Local Ordinary	Pontifical Institute	Diocesan Institute	Monastery	Society of Apostolic Life
Grant Faculties to Clerics (cc. 103; 967, 970)	√	√	√	√
Remove Faculties of Clerics (c. 1722; 1336; 764)	√	√	√	√
Appoint remove teachers 805	√	√		√
Approve teachers or ask for removal 805	√	√	√ (if teaching in seminary/theological college)	√
Vigilance supervision schools respecting autonomy of Religious (c. 806; 794,2)	√	√		√
Local Ordinary to receive complaints of abuse VELM	√	√	√	√
Metropolitan report failure to act in abuse cases or not cooperate with canonical or civil investigations VELM 2019	√	√	√	√
Bishop/Bishops Conference particular law for procedures for abuse complaints binds Religious	√	√	√	√

The 1983 Code and *Mutuae relationes* emphasise the importance of bishops and religious superiors implementing canon law, consulting, (Canon 678) collaborating and acting in a transparent manner.¹⁰² As Benjamin Earl elucidates:

the canon insists on mutual consultation between bishops and religious superiors. Clearly this mutual consultation is particularly important when it comes to determining the appropriate form an apostolic work should take, whether that be at the moment of establishing a presence of the institute in the diocese,¹⁰³ at a moment of notable changes in the apostolate,¹⁰⁴ or at the moment when an institute must withdraw from a particular place.¹⁰⁵

¹⁰² Canon 678 §3. In directing the apostolic works of religious, diocesan Bishops must proceed by way of mutual consultation.

¹⁰³ Canons 609 §1 and 611 no 2.

¹⁰⁴ Canon 612.

¹⁰⁵ Canon 616 §1 BENJAMIN EARL, “Opera Propria: property or patrimony? Consequences for mutual relations between Bishops and Religious,” 51-52.

It is a grave scandal that in the past religious institutes have not been sufficiently transparent and accountable. It is now a crime if members of institutes and religious superiors fail to report sexual abuse complaints to the local Ordinary and to the Congregation for the Doctrine of the Faith when the complaints concern clerics. Complaints about lay religious have to be reported to the local Ordinary, but mandatory dismissals are to be dealt with by their major superiors according to canon 695. Failures to act by Ordinaries or religious superiors must also be reported to the Congregation for the Doctrine of the Faith.

Abuse of authority was a crime according to the 1917 Code. Abuse of vulnerable people has been a crime since *Vos Estis Lux Mundi* became law in 2019. Tribunals established by diocesan bishops now are to judge allegations of crimes of religious against vulnerable people or by abuse of authority. Too often in the past, many of these cases have been rationalised as consenting adult situations which do not involve a crime.

Bishops and religious superiors have failed to implement canon law in the past and caused the sexual abuse scandal to become a grave crisis in the Church. If canon law had been implemented, the situation would not be as notorious as it is. It is incumbent on Church leaders now to change and fully implement the revised legislation. This requires trust between bishops and religious, as well as the creation of a culture that is committed to a safe Church committed to repairing the harm done to victims in a victim-centred approach that provides justice for all and the reform of the offender.