

Scandal in Canon Law

Brendan Daly*

"Scandal" in the media involves prominent figures being involved in sensational activities, especially those involving inappropriate relationships. We are bombarded with stories about royalty, political figures, movie stars and the like.

Scandal in the Bible

"Scandal" in the Catholic Church understanding comes from the Greek word meaning a stumbling block. The term for "stumbling block" in Biblical Hebrew is *mlkšöl* (מלכשול) and in the Septuagint is translated into Koine Greek as *skandalon* (σκάνδαλον), in the sense of a "cause of moral stumbling". In *Catholicism* it is explained as:

Scandal...incites others to do evil, or provides others with an occasion for morally wrongful conduct. How we act or do not act may encourage or discourage the virtuous conduct of those who belong to the same families, institutions, and communities. Giving scandal amounts to doing wrong against our neighbours, because love for our neighbour dictates that we encourage one another to virtuous conduct.¹

Scandal may have to be dealt with on a case-by-case basis because an action in itself may not be sinful. Saint Paul, in 1 Corinthians 8:9, urges the Corinthians not to eat meat offered in pagan temples out of loving concern for those with weak consciences. Saint Paul "is concerned about the influence their thinking may have on fellow Christians."² Charity obliges one to refrain from conduct that could be foreseen to lead others to do wrong. St Paul in his letter to the Romans considers that as an offence against charity:

Let us therefore no longer pass judgment on one another, but resolve instead to never to put a stumbling block or hindrance in the way of a brother or sister. I know and am persuaded in the Lord Jesus that nothing is unclean in itself, but it

is unclean for anyone who considers it unclean. If your brother or sister is distressed by what you eat, you are no longer walking in love. Do not let what you eat cause the ruin of one for whom Christ died.³

St Paul reminds the strong to love and give Christlike love to their weaker brothers and sisters. The strong should not cause others to take offence and they "are asked to do nothing that will make the weak brother or sister stumble."⁴

1. Scandal as a Sin

Thomas Aquinas defined scandal as "the less right [minus rectum] word or action giving the occasion of fall."⁵ The *New Catholic Encyclopedia* explains

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.⁶

St. Thomas teaches that scandal must be an act in the external forum. It must be observable, listened to or reported by a witness. It must be a sin or have the appearance of being a sin. Raoul Naz explains that "scandal constitutes a disturbance of the social order, as it has the effect of provoking a violation of the law. Therefore, it is considered in the external forum."⁷

The Catechism of the Catholic Church defines sin:

Sin is an offense against reason, truth, and right conscience; it is failure in genuine love for God and neighbour caused by a perverse attachment to certain goods. It wounds the nature of man and injures human solidarity. It has been defined as "an utterance, a deed, or a desire contrary to the eternal law."⁸

³ Romans 14:13-15; cf. Rudolf SCHNACKENBURG, *The Moral Teaching of the New Testament* (London: Burns & Oates, 1975) 295.

⁴ Joseph FITZMYER, *Romans: A New Translation with Introduction and Commentary* (New York: Doubleday, 1992) 695.

⁵ St THOMAS AQUINAS, *Summa Theologiae*, II-II, q. 43, a. 1: "dictum vel factum minus rectum praebens occasionem ruinae."

⁶ "Notion of Scandal" New Catholic Encyclopedia. <https://www.newadvent.org/cathen/13506d.htm>

⁷ Raoul NAZ, *Dictionnaire de droit canonique* (Paris: Letouzey et Ane, 1935) 7:877.

⁸ CCC 1849; THOMAS AQUINAS, *STh I-II*, 71, 6.

* Monsignor Brendan Daly BTheol PG Dip Theol JCD PhD Lecturer in Canon Law Good Shepherd Theological College, Auckland and Judicial Vicar of the Tribunal of the Catholic Church for New Zealand.

¹ Daniel KROGER Richard MCBRYEN, *Encyclopedia of Catholicism*, (San Francisco: Harper Collins, 1995) 1165;

² Joseph FITZMYER, *First Corinthians: A New Translation with Introduction and Commentary* (New Haven: Yale University Press, 2008) 346

Scandal is the occasion for another person sinning by influencing their action(s). The Catechism of the Catholic Church explains:

Scandal is an attitude or behavior 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.⁹

Scandal cannot cause another's sin because when one sins one must have free will and choose to do what is wrong. However, scandal may have the potential or intend to lead another to sin and is scandal in itself "*per se*". Otherwise, scandal is *per accidens* because the person influenced is already inclined to commit the sin.

3. Scandal as a Crime

A crime is "an external and morally imputable violation of a law to which a canonical sanction is attached".¹⁰ To commit a crime, a person must have sinned. Not all grave sins are crimes, but grave sins that seriously affect the individual or the Church community are sometimes classified by the Church as crimes.

Scandal is a sin as well as a crime in canon law, and is different to sensational bad behaviour understood as scandal by the media. However, obviously the same grave sin can give rise to both understandings of scandal. "Scandal" has not been defined in the code of canon law. Consequently, there is a risk of arbitrary or inappropriate action by ecclesiastical authority.¹¹

Scandal may be "direct, i.e., foreseen and intended; or indirect, i.e., foreseen, but not intended."¹² In direct scandal the sinner violates charity to one's neighbour and commits a personal sin. Saint Alphonsus Liguori, the patron saint of moral theologians, followed the teaching of Thomas Aquinas on scandal and linked it to the command of love of neighbour.¹³ "St. Alphonsus Liguori explains that direct scandal is a sin both against charity and against the virtue that is

⁹ CCC 2284.

¹⁰ Canon 2195§1. 1917 CIC. Trans. Edward Peters. *The 1917 Pio-Benedictine Code of Canon Law* (San Francisco: Ignatius Press) 2001. Hereinafter all translations of the 1917 Code from this source.

¹¹ Susan MURHERON, 2018. "Canonical Considerations in Response to Scandal in the Church." *CLSA Proceedings*. (Washington DC: Canon Law Society of America) 297-319. (=MURHERON, Canonical Considerations)

¹² William ADDIS and Thomas ARNOLD, revised by P. Hallett. *A Catholic Dictionary* (London: Routledge & Kegan Paul Ltd. 1951) 727.

¹³ ST ALPHONSUS LIGUORI, *Theologia moralis* 9th ed. (Bassano: Venetiis Apud Remondini, 1785) Lib II, Tract. III, Cap. II, Dub. V. Art. 1.

violated by the one who is scandalized [*Theologia Moralis*, lib. III, n. 45]."¹⁴ Active scandal intended to directly lead another into sin, while it was indirect scandal if the perpetrator only intended to commit the sin and did not intend to influence anyone else.

Thomas Aquinas distinguished between active scandal whereby the perpetrator of the scandal performs a wrong action or verbally supports the action thereby giving scandal and passive scandal which is received by a person who witnessed the sin and is impacted by it.

4. Scandal given by a Person in Authority

When the scandal is given by a person in authority, the *Catechism of the Catholic Church* explains this makes the scandal so much worse:

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." (Mt. 18: 6-7) 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.¹⁵

Elements of scandal in the negative sense are: 1) acts or omissions that harmfully affect the Christian community. 2) the passive failure to act by ecclesiastical authority. 3) the threat to and undermining of essential values of the community.¹⁶

Scandal can also be given when a religious institute or a diocesan bishop fails to act on a complaint(s) of sexual abuse and does not apply the canonical laws or observes the civil laws as they are obliged to.¹⁷ The *Catechism of the Catholic Church* notes "Scandal can be provoked by laws or institutions, by fashion or opinion."¹⁸ From an institutional perspective, Church leaders create scandal when they allow a culture of clericalism to develop and exist:

¹⁴ Juan-Carlos ISCARA. *Woe to the World: A Moral Primer on Scandal*. https://www.angelus.online/angelus_online_may/june_2019/woe_to_the_world_a_moral_primer_on_scandal CCC 2285.

¹⁶ MURHERON, *Canonical Considerations*, 302-303

¹⁷ MURHERON, *Canonical Considerations*, 297-319.

¹⁸ CCC 2286.

Therefore, they are guilty of scandal who establish laws or social structures leading to the decline of morals and the corruption of religious practice, or to social conditions that, intentionally or not, make Christian conduct and obedience to the Commandments difficult and practically impossible.¹⁹

As the Catechism of the Catholic Church teaches:

Anyone who uses the power at his disposal in such a way that it leads others to do wrong becomes guilty of scandal and responsible for the evil that he has directly or indirectly encouraged. Temptations to sin are sure to come, but woe to him by whom they come.²⁰

Failure to act by using the power attached to one's office can at times cause great scandal as illustrated by the sexual abuse crisis. This failure of Church leaders to act and take decisive action against perpetrators led to a permissive environment allowing scandalous actions to be more prevalent. Pope Francis acknowledged this reality when he promulgated the revised penal law for the Church in 2021:

In the past, much damage has been caused by a lack of perception of the intimate relationship which exists in the Church between the exercise of charity and recourse—when circumstances and justice require it—to penal sanctions. He says this trend represented a way of thinking which made correction more difficult, often giving rise to scandal and confusion among the faithful.²¹

5. Scandal in the 1917 Code

The legislator of the 1917 Code was conscious of the damage caused to the faithful by public scandal. Raoul Naz explains "scandal constitutes a disturbance of the social order, as it has the effect of provoking a violation of the law. Therefore, it is considered in the external forum."²² Perpetrators of scandal were barred from receiving the Eucharist until they reformed:

Canon 855 §1. All those publicly unworthy are to be barred from the Eucharist, such as excommunicates, those interdicted, and those manifestly infamous, unless their penitence and emendation are shown

¹⁹ CCC 2286.

²⁰ CCC 2287.

²¹ POPE FRANCIS, *Constitutio Apostolica qua Liber VI Codicis iuris canonici reformatur* 2021, *Paschte gregem Dei* 23 May

²² https://www.vatican.va/content/francesco/la/apost_constitutions/documents/papa-francesco_constituzione-ap_20210523_paschte-gregem-dei.html
RAOUL NAZ, *Dictionnaire de droit canonique* (Paris: Letouzey et Anc. 1935) 7:877

and they have satisfied beforehand the public scandal [they caused].

A distinction was made between those who caused public scandal and those who were unknown perpetrators of sins/crimes:

Canon 855 §2. But occult sinners, if they ask secretly and the minister knows they are unrepentant, should be refused; but not, however, if they ask publicly and they cannot be passed over without scandal.

An obvious example of this would be someone who was in an invalid marriage going to receive communion at Sunday mass. The minister might know their marital situation, but many in the congregation would not, so the minister should not refuse to give communion to the person.

Scandal was considered so serious under the 1917 Code that the Superior was allowed to punish someone giving scandal even if there was no sanction specified in the law:²³

Canon 2222 §1. Even though a law has no sanction attached to it, the legitimate Superior may nevertheless punish its transgression by a just penalty, even without a previous mentioning of the penalty if scandal perhaps was given or the special gravity of the transgression makes it necessary; otherwise, a defendant cannot be punished unless he was first warned with mention of the penalty, [whether] automatic or formal, in case of transgression, and nevertheless violated the law.

Furthermore, in order to avoid scandal, a cleric was not to be promoted if a superior was uncertain of his suitability:

Canon 2222 §2. Likewise the legitimate Superior, even though it is only probable that a delict has been committed or a penal action for a certain committed delict has been prescribed, has not only the right but also the duty of not promoting a cleric of whose suitability he is not sure and, in order to avoid scandal, of prohibiting the cleric from the exercise of sacred ministry, and even of removing him from office according to the norm of law, and all these things in this case do not have the nature of a penalty.

When there has been the probable commission of a crime, or it is extinguished by prescription, the legitimate Superior is to avoid scandal by not promoting the cleric, prohibiting him from the exercise of sacred ministry and

²³ T. BOUSCAREN and A. ELLIS, *Canon Law a Text and Commentary*. (Milwaukee: Bruce Publishing co. 1958) 849.

removing him from office.²⁴ These prohibitions against scandal were in the context in which clerics were forbidden to go to dances,²⁵ gamble for high stakes, not to participate in fox hunts, not to enter taverns²⁶ according to the 1917 Code of Canon Law. Clerics were to avoid any activity that was unbecoming for their state of life.

6. Scandal in the 1983 Code

After Vatican II, the Synod of Bishops in 1967 approved ten principles for the revision of the Code of Canon Law. Three of the principles directly concerned penal law. The 2nd principle stated: "There is to be coordination between the external and internal forum, which is proper to the Church and has been operative for centuries, so as to preclude any conflict between the two."²⁷ In the 1983 Code the integrity of the internal forum has been respected even though the distinction between the internal and external forums has not been maintained completely. A priest who is under a penalty forbidding him to celebrate sacraments, may provide for Christ's faithful when they are in danger of death. If the censure has not declared, the cleric may provide sacraments and acts of governance if a member of Christ's faithful asks for them. However, in the case of a priest who has attempted marriage²⁸ and is therefore suspended, this priest may not celebrate the Eucharist or other sacraments at the request of Christ's faithful outside the circumstance of danger of death.²⁹ The Synod of Bishops wanted penalties minimised and the third principle concluded with the statement that "unduly rigid norms are to be set aside and rather recourse is to be taken to exhortations and

persuasions where there is no need of a strict observance of the law on account of the public good and general ecclesiastical discipline".³⁰ The 9th principle stated: "As an external, visible and independent society, the Church cannot renounce penal law. Penalties are generally to be *ferendae sententiae* (imposed) and are to be inflicted and remitted only in the external forum.

The 1983 Code avoided all the detailed prohibitions of the 1917 Code and simply required clerics to avoid all those things that were unbecoming to their state so that they should always conduct themselves in a way to respect the community at large.³¹ "Scandal" was addressed for uncompleted offences in canon 1328 §2; to make reparation for scandal in canon 1341; as a consequence of heresy, schism and apostasy in canon 1364 §2; for clerical crimes in canon 1394 and 1395; and clerics were to avoid it in canon 277. Scandal given by clergy and religious is particularly grave when they perpetrate sexual abuse especially of minors.

6.1 Automatic Penalties for Scandal

Latae sententiae (automatic) penalties are to be reduced to a few cases and are to be inflicted only for the most serious offences.³² This is reflected in canon 1318:

Canon 1318 *Latae sententiae* penalties are not to be established, except perhaps for some outstanding and malicious offences which may be either more grave by reason of scandal or such that they cannot be effectively punished by *ferendae sententiae* penalties; censures, however, especially excommunication, are not to be established, except with the greatest moderation, and only for offences of special gravity.

Compared to the 1917 Code, the 1983 Code dramatically reduced the number of automatic penalties but provided for them in cases of grave scandal.

"Scandal" is included in 24 canons of the present code of canon law,³³

- ²⁴ CHARLES AUGUSTINE, *A Commentary on the New Code of Canon Law* (St. Louis: B. Herder Book Co. 1922) vol. 8, 87.
- ²⁵ Canon 140. Where there is danger of scandal, especially in public theatres, clerics should avoid shows, dances and spectacles.
- ²⁶ Canon 138. Clerics shall entirely abstain from all those things that are indecent to their state; they shall not engage in indecorous arts; they shall abstain from gambling games with risks of money; they shall not carry arms, except when there is just cause for feasting; hunting should not be indulged, and [then] never with clamour; taverns and similar places should never be entered without necessity or another just cause approved by the local Ordinary.
- ²⁷ Synod of Bishops 1967. "Preface to the Latin Edition", *Code of Canon Law Latin-English Edition* (Washington DC: Canon Law Society of America) xx.
- ²⁸ Canon 1394§1. Without prejudice to the precept of canon 194, §1, n. 3, a cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension. If he does not repent after being warned and continues to give scandal, he can be punished gradually by privations or even by dismissal from the clerical state.
- ²⁹ PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS. Declaration. "The Exercise of Holy Order by Priests who Attempted Marriage" William Woestman OMI. *Ecclesiastical Sanctions and the Penal Process* (Ottawa: Saint Paul University: 2000) 277-278; *Communications* 29(1997) 17-18.

- ³⁰ SYNOD OF BISHOPS 1967. "Preface to the Latin Edition", *Code of Canon Law Latin-English Edition* (Washington DC: Canon Law Society of America) xxi.
- ³¹ JOHN LYNGH, J. CORIDEN, T. GREEN and D. HEINTSCHEL (eds) *The Code of Canon Law: A Text and Commentary* (New York: Paulist Press, 1985) 222.
- ³² SYNOD OF BISHOPS 1967. "Preface to the Latin Edition", *Code of Canon Law Latin-English Edition*, xxii.
- ³³ cc. 277 §1, 326 §1, 696 §1, 703, 1132, 1184, 1311, 1318, 1324, 1328, 1335, 1339, 1341, 1344, 1347, 1349, 1352, 1357, 1361, 1364, 1378, 1394, 1395, 1399.

13 of them in book 6 on "Penal Sanctions in the Church".³⁴ More detailed prescriptions for "scandal" were made in 9 canons in the 2021 revisions of penal law.³⁵

A key addition in the revision of Penal law in 2021 was the addition of a second paragraph to canon 1311:

Canon 1311 § 2. The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.

This paragraph noted one of the key purposes of imposing penalties is to repair scandal. The *Code of Canons of the Eastern Churches* had already explained the purpose of penal law in canon 1401 "sinners are to be recalled to right Christian living, the innocent faithful are to be protected from bad behaviour, ecclesiastical communion is to be promoted."³⁶ Fred Easton noted that apart from reforming offenders "the canon states the imposition of penalties is also appropriate because it can heal the wounds caused by the delict."³⁷ Imposing penalties can help those injured and upset by the commission of crimes.

6.2 Scandal given by Attempted Crimes

The legislator of the 1983 Code was conscious that scandal could be given even if the perpetrator attempted and did not actually complete the crime. Consequently, a lesser penalty was prescribed for attempted but not completed crimes if scandal resulted:

Canon 1328 §1. One who in furtherance of an offence did something or failed to do something but then, involuntarily, did not complete the offence, is not bound by the penalty prescribed for the completed offence, unless the law or a precept provides

³⁴ cc. 1318, 1328, 1339, 1341, 1344, 1347, 1352, 1357, 1361, 1364, 1394, 1395, 1399.

³⁵ Changed canons in book 6 mentioning scandal include cc. 1311, 1324, 1335, 1349. Canon 1378 is now the former canon 1389.

³⁶ POPE JOHN PAUL II, *Code of Canons of the Eastern Churches Latin-English* ed. Trans. Canon Law Society of America (Washington D.C.: Canon Law Society of America, 1990).

³⁷ FRED EASTON, J. FARIS, J. ABBASS eds. *A Practical Commentary to the Code of Canons of the Eastern Churches* (Montreal: Wilson and Lafleur, 2019) 2518.

otherwise.

§2. If the acts or the omissions of their nature lead to the carrying out of the offence, the person responsible may be subjected to a penance or to a penal remedy, unless he or she had spontaneously desisted from the offence which had been initiated. However, if scandal or other serious harm or danger has resulted, the perpetrator, even though spontaneously desisting, may be punished by a just penalty, but of a lesser kind than that determined for the completed crime.

This canon was unchanged in the 2021 revision of penal law. Although the offender did not manage to commit the crime, the scandal caused could be almost as bad as if the crime was committed. A. Brown, in a sentence, dated 5 January 2000, explained the impact of "scandal" on a penalty for an attempted crime:

The important change is that the present law prescribes a lesser penalty for such situation (penance or penal remedies) but only when the perpetrator has spontaneously desisted from the crime before it was completed. Unless there was scandal involved or grave harm or danger resulted from the attempted crime, then there is apparently no punishment to be given. On the other hand, if there was scandal, grave harm, or danger as a result of the attempted crime, the determination of the punishment is left to the Judge's discretion.³⁸

An example would be a cleric arranging to meet a minor at a park, but gets stopped by the police before he meets the minor.

7. Scandal and Private Associations and Religious Institutes

The law provides for the suppression of private associations if their activity causes scandal to the faithful:

Canon 326 §1 A private association of Christ's faithful is extinguished in accordance with the norms of the statutes. It can also be suppressed by the competent authority if its activity gives rise to grave harm to ecclesiastical teaching or discipline, or is a scandal to the faithful.

Private associations would include a group such as the Saint Vincent de Paul Society which does not act officially on behalf of the Church as public

³⁸ A. Brown (c), sentence, 5 January 2000. *Jurisprudence: A Collection of U.S. Tribunal Decisions* (Washington D.C.: Canon Law Society of America, 2002) 457.

associations do.

Religious institutes act officially on behalf of the Church. Members of religious institutes can be dismissed for causing "grave scandal arising from the culpable behaviour of the member":

Canon 696 §1 A member can be dismissed for other causes, provided they are grave, external, imputable and juridically proven. Among such causes are: habitual neglect of the obligations of consecrated life; repeated violation of the sacred bonds; obstinate disobedience to the lawful orders of Superiors in grave matters; grave scandal arising from the culpable behaviour of the member; obstinate attachment to, or diffusion of, teachings condemned by the magisterium of the Church; public adherence to materialistic or atheistic ideologies; the unlawful absence mentioned in Can. 665 §2, if it extends for a period of six months; other reasons of similar gravity which are perhaps defined in the institute's own law.

The process involves an administrative procedure protecting the rights of the accused member. However, if the scandal is grave, the local Superior can immediately expel a member from the religious house:

Canon 703 In a case of grave external scandal, or of extremely grave and imminent harm to the institute, a member can be expelled forthwith from the house by the major Superior. If there is danger in delay, this can be done by the local Superior with the consent of his or her council. The major Superior, if need be, is to introduce a process of dismissal in accordance with the norms of law, or refer the matter to the Apostolic See.

The taking of such action should be rare and only in exceptional circumstances.³⁹ The scandal must be grave and external. It could be related to publicity in the media or the laying of criminal charges.

8. Scandal impacting on Marriages and Funerals

Provision is made in the section of the Code on marriage so that an Ordinary is not bound to observe secrecy about a marriage if scandal may arise:

Canon 1132 The obligation of observing the secret mentioned in Canon 1131 no. 2 ceases for the local Ordinary if from its observance a threat arises of grave scandal or of grave harm to the sanctity of marriage. This

³⁹ SHARON HOLLAND, JOHN BEAL, JAMES CORDEN and THOMAS GREEN, *New Commentary on the Code of Canon Law* (Washington DC: Canon Law Society of America, 2000) 873.

fact is to be made known to the parties before the celebration of the marriage.

Examples justifying secret marriages are:

One can find an example of these reasons that has become a classic: the state of secret concubinage of two people who are publicly considered to be man and wife. Other cases may be added to this example: the disparity of the social conditions of the spouses, the unreasonable opposition from family members, certain prohibitions imposed by civil laws.⁴⁰

Apartheid laws forbidding mixed race marriages would fit into this category.

The 1983 Code makes provision for funerals to be denied to people when scandal would be given to the faithful:

Canon 1184 §1. Church funerals are to be denied to the following, unless they gave some signs of repentance before death:

- 1° notorious apostates, heretics and schismatics;
- 2° those who for anti-Christian motives chose that their bodies be cremated;
- 3° other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful.

§2 If any doubt occurs, the local Ordinary is to be consulted and his judgement followed.

The denial of a big public funeral and a requiem mass often happens when a mafia boss dies. A priest is permitted to celebrate a graveside service.⁴¹

9. Procedures before a Medicinal Penalty is Imposed

An offender must be warned before a medicinal penalty is imposed:

Canon 1347 §1. A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the

⁴⁰

J. ARLAS IN E. CAPARROS, M. THERIAULT, J. THORN, eds. *Code of Canon Law Annotated* (Montreal: Wilson & LaFleur, 2004) 1029, 884.

⁴¹

<https://www.cbsnews.com/news/church-denies-gotti-a-funeral-mass/>

contempt⁴² and has been allowed suitable time to do so.

A person can be corrected and warned if the person is in danger of committing an offence or if there is serious suspicion that an offence has been committed. As part of the 2021 revision of penal law, paragraphs 4 and 5 were added to canon 1339 detailing the procedure for the issuing of penal precepts and imposition of penalties:

Canon 1339 §1. When someone is in a proximate occasion of committing an offence or when, after an investigation, there is a serious suspicion that an offence has been committed, the Ordinary either personally or through another can give that person warning.

§2. In the case of behaviour which gives rise to scandal or serious disturbance of public order, the Ordinary can also correct the person, in a way appropriate to the particular conditions of the person and of what has been done.

§3. The fact that there has been a warning or a correction must always be proven, at least from some document to be kept in the secret archive of the curia.

§4. If on one or more occasions warnings or corrections have been made to someone to no effect, or if it is not possible to expect them to have any effect, the Ordinary is to issue a penal precept in which he sets out exactly what is to be done or avoided.

§5. If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into an offence, the Ordinary is also to subject the offender, over and above the penalties imposed according to the provision of the law or declared by sentence or decree, to a measure of vigilance determined by means of a singular decree.

The addition of paragraphs 4 and 5, to the existing canon of the 1983 code that included provision to deal with behaviour causing scandal, means that a more detailed procedure is implemented including “warnings and corrections” as well as the issuing of a penal precept that “sets out exactly what is to be done or avoided.”

⁴² Canon 1347 § 2. The offender is said to have purged the contempt if he or she has truly repented of the offence and has made suitable reparation for the scandal and harm, or at least seriously promised to make it.

The offender must be given at least one warning, and then a detailed precept must be given in writing to the offender setting out exactly what is to be done or avoided. Canon 1339 §3 states “The fact that there has been a warning or a correction must always be proven, at least from some document to be kept in the secret archive of the curia.”

The Ordinary has a duty of vigilance, and the canon makes it clear that the Ordinary has an obligation to investigate allegations as well as an obligation to impose penalties on offenders. Paragraph 5 also speaks of “Vigilance”. This means Ordinaries have a grave obligation to have a detailed safety plan for offenders and to do everything reasonably possible to prevent the offender reoffending and creating more victims. Lack of supervision of offenders has been a source of grave scandal around the world.

10. **Obligatory Penal Process and Penalty to Repair Scandal**

The Ordinary must begin a judicial process, either judicial or extra-judicial if there is no other way to repair the scandal caused by a crime:

Canon 1341 The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.

This provision acknowledges that scandal may require a penal process to be initiated.

The changes to penal law in 2021 include some optional penalties that are now obligatory. An example is canon 1344 requiring the imposition of a penalty when there is “an urgent need to repair scandal”:

Canon 1344. Even though the law may use obligatory words, the judge may, to his own conscience and prudence:

1° defer the imposition of the penalty to a more opportune time, if it is foreseen that greater evils may arise from a too hasty punishment of the offender, unless there is an urgent need to repair scandal;

The scandal could be publicity about the gravity and number of crimes committed by the offender.

11. **Penalty for Scandal Reduced, Suspended or Removed**

The Code of canon law makes a number of special provisions when a person is in danger of death. This includes the application of penalties:

Canon 1352 §1. If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended for as long as the offender is in danger of death.

Consequently, the personal and spiritual needs of an offender are provided for when the person is in danger of death. Therefore, an excommunicated or interdicted person can receive the sacraments when they are seriously ill and in danger of death.

When a member of the faithful requests a sacrament from a priest who is excommunicated, interdicted or suspended, but the penalty has not been declared and is not notorious or well-known, the priest can celebrate the sacrament such as the sacrament of penance:

Canon 1352 §2. The obligation of observing a *latae sententiae* penalty which has not been declared and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name.

This is considered to be more important than causing grave scandal or loss of his reputation. The requirement to observe the penalty is suspended by the circumstances.

Sometimes the perpetrator of an offence is exempted from a penalty, but even so, because the perpetrator has caused scandal, lesser penalties or penances may be imposed:

Canon 1324 §1. The perpetrator of a violation is not exempted from penalty, but the penalty prescribed in the law or precept must be diminished, or a penance substituted in its place, if the offence was committed by ...

§3. In the circumstances mentioned in §1, the offender is not bound by a *latae sententiae* penalty, but may have lesser penalties or penances imposed for the purposes of repentance or repair of scandal.

These lesser penalties could include fines or penances such as a curfew imposed on the perpetrator each evening.

12. Remission of Reserved Penalties involving Scandal

The remission of several penalties is reserved to the Apostolic See. These include excommunications for the absolution of an accomplice (cc. 977, 1385) and the violation of the seal of confession (c. 1386).

Canon 1357 §1. Without prejudice to the provisions of canons 508 and 976, a confessor can in the internal sacramental forum remit a *latae sententiae* censure of excommunication or interdict which has not been declared if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.

§2. In granting the remission, the confessor is to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse within one month to the competent Superior or to a priest having the requisite faculty, and to abide by his instructions. In the meantime, the confessor is to impose an appropriate penance and, to the extent demanded, to require reparation of scandal and harm. The recourse, however, may be made even through the confessor, without mention of a name.

§3. The same duty of recourse, when the danger has ceased, binds those who in accordance with can. 976 have had remitted an imposed or declared censure or one reserved to the Holy See.

It may be difficult for the offender to have recourse about their crime because of the time delay in getting a response. A priest may grant absolution for the sin(s) of the offender and have recourse to the Penitentiary as well. The dicastery will impose an appropriate penance and require any action that is necessary to repair the scandal the offender has caused.

13. Upholding Clerical Continence and Celibacy and avoiding Scandal

The 1983 code legislated that clerics were to behave prudently to observe continence so that they did not give scandal:

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.

§2 Clerics are to behave with due prudence in relation to persons whose company can be a danger to their obligation of preserving continence or can lead to scandal of the faithful.

§3 The diocesan Bishop has authority to establish more detailed rules concerning this matter, and to pass judgment on the observance of the obligation in particular cases.

Clerics have an obligation to be prudent so that do not endanger their obligation to abstain from sexual activity or scandalise the faithful.

14. Scandal arising from Particular Crimes

The Code includes a number of particular crimes that only clergy can commit, but which give rise to grave scandal:

14.1 Apostasy Heresy Schism

Apostasy, heresy and schism are defined in canon 751. Canon 1364 addresses the penalties for these crimes:

Canon 1364 §1. An apostate from the faith, a heretic or a schismatic incurs a *latae sententiae* excommunication, without prejudice to the provision of can. 194 §1 no 2; he or she may also be punished with the penalties mentioned in canon 1336 §§ 2-4.

§2. If a long-standing contempt or the gravity of scandal calls for it, other penalties may be added, not excluding dismissal from the clerical state.

Perpetration of these crimes by clerics and religious would usually cause grave scandal. Consequently, other penalties may be imposed including dismissal from the clerical state.

14.2 Clerical Marriage and Cohabitation

If a cleric or religious attempts marriage or maintains a long-term affair or cohabitation with one person or a series of persons, grave scandal is caused:

Canon 1394 §1. A cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension, without prejudice to the provisions of canon 194 §1 no. 3, and 694 §1 no. 2. If, after warning, he has not reformed or continues to give scandal, he must be progressively punished by deprivations, or even by dismissal from the clerical state.

§2. Without prejudice to the provisions of canon 694 §1 no 2, a religious in perpetual vows who is not a cleric but who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict.

When the cleric or religious does not stop causing scandal, canon 1394 makes provision for other penalties to be imposed including dismissal from the clerical state or dismissal from the religious institute.

Canon 1395 §1. A cleric living in concubinage, other than in the case mentioned in canon 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

§ 2. A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed in public, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

§ 3. A cleric who by force, threats or abuse of his authority commits an offence against the sixth commandment of the Decalogue or forces someone to perform or submit to sexual acts is to be punished with the same penalty as in §2.

This canon makes provision for progressively more severe penalties to be imposed on an offender. Ultimately, if the offender continues to disobey precepts and commits crimes, he is to be dismissed from the clerical state.

14.3 Violation of Divine or Canon Law and the Prevention and Repair of Scandal

It is very difficult for a legislator to legislate for every possible crime. Consequently, the final canon of Book 6 on Penal Sanctions in the Church provides for a penalty in extraordinary circumstances including "the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired".

Canon 1399. Besides the cases prescribed in this or in other laws, the external violation of divine or canon law can be punished, and with a just penalty, only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired.

This all-encompassing canon includes all offences against divine and ecclesiastical law. The most common application of this canon is for offences against the sixth commandment. No warning is required for the imposition of an expiatory penalty to restore justice and repair scandal.

14.4 Obligatory and Proportionate Penalties for Scandal

Even when there has been a judicial process, it may be necessary to impose expiatory penalties (c. 1336) such as removal from office to repair the scandal that has been caused.

Canon 1335 §1. If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal.

Penalties must be proportionate to the scandal caused and the gravity of the crime:

Canon 1349 If a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not however to impose graver penalties, unless the seriousness of the case really demands it. He may not impose penalties which are perpetual.

Therefore, graver penalties are not to be imposed unless the seriousness of the crime really warrants them.

15. Scandal from the Failure of Church Leaders to Act

The revised penal law reiterates that abuse of authority as a cleric is a crime. It is recognised that many so-called “consenting adult” relationships are not ones with equal consent and often vulnerable people are manipulated by people with positions of power and authority. In the revised Book 6, canon 1389 has been moved to become canon 1378

Canon 1378 §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.

Abuse of authority includes culpable negligence and failing to act which has

caused enormous scandal in recent years. The canon indicates which penalties may be imposed on an offender and makes explicit mention of the offender's obligation to repair the harm he/she caused.⁴³ In the 2021 revision of penal law, a new paragraph was added to canon 1371. This provision includes cases such as clerics or religious not reporting abuse to the local Ordinary and Ordinaries not reporting cases of clerical sexual abuse of minors to the Dicastery for the Doctrine of the Faith:

1371 §6. 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 can. 1336 §§ 2-4, with the addition of other penalties according to the gravity of the offence.

The failures of Church leaders have caused almost as much scandal as the original abuse crimes. The chief motivation of Church leaders to keep crimes secret and do nothing is to conceal the failures of clerics from the faithful thereby causing lack of trust and scandal amongst the faithful.

16. The Jurisprudence of the Signatura

Cardinal Pompedda of the Apostolic Signatura explained “scandal” in a decision in a penal case in 2002 as follows:

It is required that the majority of the people who are familiar with the person, his function, and his activity suffer a negative impression, that is, they are led in a certain measure to something wrong.⁴⁴

Cardinal Raymond Burke also of the Apostolic Signatura developed this explanation as he points out “the first and properly theological meaning of scandal is to do or omit something which leads another into error or sin. The second meaning is to do or omit something which causes wonderment (*admiration*) in others.”⁴⁵ Burke explained giving communion to the obstinate, serious sinner is scandal in the first meaning of scandal; while denying communion to the occult

⁴³ Canon 128. 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.

⁴⁴ MARIO FRANCESCO CARD. POMPEDDA. *Apostolic Signatura*, 22 June 2002. WILLIAM DANIEL, *Ministerium Iustitiae*. (Montreal: Gratianus, 2011) 312; “cum scandalo”: requiritur ut plerique, qui personam eiusque munus activitatemque noscunt, impressionem negativam patiantur; id est ad male quodammodo inducantur.

⁴⁵ R. L. BURKE, “Canon 915: The discipline regarding the denial of Holy Communion to those obstinately persevering in manifest grave sin”, <https://www.evtn.com/catholicism/library/discipline-regarding-the-denial-of-holy-communication-to-those-obstinately-persevering-in-manifest-grave-sin-1230>. The article is also in *Periodica de re canonica* 96(2007) 3-58.

sinner gives scandal in the second sense.⁴⁶

Conclusion

Perpetrators of crimes cause enormous harm to victims. The resulting scandals from the crimes also cause great harm to the whole Church. With modern media, each report of abuse crimes around the world impacts on the faithful in every country. People cannot understand why the Church leadership has failed to deal with perpetrators appropriately with catastrophic results for individual victims and the whole Church. The failures of bishops and superiors of religious institutes to act appropriately has undermined the credibility of the Church and resulted in many people ceasing to practice the faith.

Both clergy and laity feel shame and isolation from the coverups by Church leaders that have resulted in a lack of confidence in the institutional Church. The Church leaders have not been transparent and have lost credibility. As Jesus taught only the truth will set us free⁴⁷ to be of service to the Church. Any attitude that covers up the truth is our enemy.⁴⁸ Because of the incalculable harm of sexual abuse and other crimes, there must be appropriate penalties to restore justice and repair the scandal that has resulted.

Restructuration of Parishes: Considerations

Godi Anticadalu Lawrence*

Introduction

In more recent years the Church has experienced a shortage of priests. The “shortage” can be defined in three ways. The first is statistical, based on the number of Catholics per priest in different regions. A comparison of world population data and the statistical yearbook of the Church shows a real shortage of priests in Europe, North America and Australia. The second definition depends on the feeling of lay Catholics in one nation or another that a priest shortage exists. For anyone to feel that there is a shortage, he or she would have had to experience a situation in which more priests were available, either in one’s own nation at an earlier time or in another nation. The third definition of “shortage” derives from opportunities lost. It defines “shortage” as not having enough priests to do what is needed.¹

The spontaneous response to the shortage of priests has often been more lay participation in the ministry. Dean R. Hoge, while addressing the issue of the shortage of priests, mentions a few options, such as, recruiting more seminarians, making celibacy optional for diocesan priests, instituting an honourable discharge for priests, ordaining women, bringing priests from other nations, increasing the number of lay ministers, expanding the permanent diaconate, accepting more married Episcopalian priests, and expanding the special pastoral provision to include married Catholic priests.²

The abovementioned attempts are to increase the number of priests, but there are other ways of addressing the shortage of priests by merging and amalgamating parishes. In the past, some dioceses tried that option and time and again Rome has had to intervene and give guidelines for these procedures.³ At present in many

* Fr George Anticadalu MPA, MTh (MPM), JCL, is the Parish Priest of the Parishes of Maitland, East Maitland, Morpeth, Beresfield, Rutherford and Lochnivar that belong to the Christolm Pastoral Region of the Diocese of Maitland-Newcastle, Australia.

¹ See Donald J. DIETRICH (ed.), *Priests for the 21st Century*, New York, The Crossroad Publishing Company, 2006, 133-138.

² See *ibid.*, 138-143.

³ See CONGREGATION FOR THE CLERGY, Circular letter to Bishops, Procedural Guidelines for the Modification of Parishes, the Closure or Relegation of Churches to Profane but not Sordid Use, and the Alienation of the Same, 30 April 2013, in *The Jurist*, 73 (2013), 211-219.

⁴⁶ PETER LAH, “The Scandal of Secrecy”, *Gregorianum* 2(2020) 418.

⁴⁷ John 8:32.

⁴⁸ MULHERON, *Canonical Considerations in Response to Scandal in the Church*, 305.

The Canonist

Journal of the Canon Law Society of Australia and New Zealand

Volume 14 Number 1 2023

Contents

The Address of Pope Francis to the Officials of the Roman Rota for the Inauguration of the Judicial Year 27 January 2023	3
Commentary on Pope Francis' Address to the Roman Rota Peter Blayney	7
Apostolic Letter issued <i>motu proprio</i> of the Supreme Pontiff Francis modifying the terms of recourse of a member dismissed from an institute of consecrated life	14
Annotation on the <i>Motu Proprio</i> modifying Canon 700 <i>CIC</i> and Canon 508 §2 <i>CCEO</i> Rodger J Austin	16
Apostolic Letter <i>Vos Estis Lux Mundi (Aggiornata)</i> issued <i>Motu Proprio</i> by the Supreme Pontiff Francis	20
Notes on the revised <i>Motu Proprio Vos Estis Lux Mundi</i> Rodger J. Austin	30
“Where there is no accuser, there is no accused” A comparative study of <i>VELM</i> art. 3 §2 and canon 1935 of the 1917 Code George S. Mukuka	35
Synodal Structures within the Oriental Churches <i>sui iuris</i> : Stimulus for renewed approaches to Synodality in the Latin Church Marie Kelbe Zamara OSF	57
<i>Delicta Graviora</i> : Legislative Evolution from 2001 to the present day. Giorgio Giovanelli	94
Scandal in the 1983 Code of Canon Law Brendan Daly	118
Restructuration of Parishes: Canonical Considerations Godi Anthicadu Lawrence	139
Complementary Legislation for Australia Pertaining to Acts of Extraordinary Administration and Alienation	165