



# Church documents in relation to safeguarding

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# Glossary of Terms

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# Committed to Accountability

## ECCLESIAL TERMS



Here is a brief glossary of terms often used in the Catholic Church that may not be completely familiar to journalists who have not had a great deal of experience in covering church matters.

### A

**apostolic nuncio** – a papal ambassador represents the Roman Pontiff (Pope) before the Catholic Church of a nation, as well as before the civil authorities of a nation. Also called *papal nuncio*. See also *papal legate*.

**archbishop** – title given either to a diocesan bishop who is the chief shepherd of an archdiocese and who presides over an ecclesiastical province or to a bishop who is not a bishop of a diocese but holds another, high-ranking Church office, such as an *apostolic nuncios*.

**archdiocese** – the *ecclesial province*. The *archdiocese*, headed by an *archbishop*, is typically the largest or oldest diocese in an *ecclesial province* and takes on an additional administrative role for the whole *province*.

**archeparchy** – the equivalent of an archdiocese in the Eastern Catholic Churches that is entrusted to an *archeparch* (equivalent of an archbishop) of an Eastern Catholic *ecclesiastical province*. There are two Catholic archeparchies in the United States: the Byzantine Catholic Archdiocese of Pittsburgh and the Ukrainian Catholic Archdiocese of Philadelphia.

**ad experimentum** – literally, “as an experiment.” In the context of the *motu proprio*, the norms presented in the document have a three-year timeframe. Norms approved *ad experimentum* may be revised in the future.

**auxiliary bishop** – a bishop who is not the diocesan bishop, and who is appointed to assist with the pastoral needs of a diocese under the authority of the diocesan bishop.

### B

**bishop** – a cleric who through episcopal ordination is a successor to the apostles and who shares in the threefold ministry of Jesus Christ (sanctifying, teaching, and governing). A bishop exercises these in hierarchical communion with the Roman Pontiff (Pope) and the College of Bishops. Most *bishops* are *diocesan bishops*, the chief priests in their dioceses. The Eastern Catholic equivalent is an *eparch*. In addition to *diocesan bishops*, there are *auxiliary bishops*, *coadjutor bishops*, and *archbishops*.

**bishops’ conference** – see *episcopal conference*.

**brother** – a non-ordained man who is a member of an institute of consecrated life or a society of apostolic life, and who seeks to live a life consecrated through the profession of poverty, chastity, and obedience by vow or some other bond.

## C

**canon law** – code of ecclesiastical laws governing the Catholic Church. In the Latin Church, the governing code is the 1983 *Code of Canon Law (CIC)*. A separate but parallel *Code of Canons of the Eastern Churches (CCEO)* governs the Eastern Catholic Churches.

**cardinal** – the highest-ranking Catholic clergy below the pope. According to church law, *cardinals* are regarded as the pope’s closest advisors. Most cardinals are archbishops. Those *cardinals* (79 years of age or below) are tasked with the responsibility of electing a new pope by gathering at a conclave in Rome.

**CCEO** – abbreviation for the Latin title, *Codex Canonum Ecclesiarum Orientalium*, which is the *Code of Canons of the Eastern Churches*. It was promulgated by Pope St. John Paul II in 1990.

**celibacy** – the condition of living chastely in the unmarried state. At ordination, a diocesan priest or unmarried deacon in the Latin rite Catholic Church makes a *promise* of celibacy.

**chancellor** – the office of the chancellor is a mandatory office in a diocese. Although a chancellor may hold many different responsibilities in a diocese, the principal function of a chancellor is to maintain the records of the diocese under the authority of the diocesan bishop.

**chastity** – is the virtue of correctly ordering one’s own sexual conduct and desires.

**Church** – The *local or particular Church* normally refers to a diocese or an eparchy. The universal Church refers to the entire Catholic communion of the Latin Church and the Eastern Catholic Churches.

**clergy** – a collective term referring to ordained bishops, priests, and deacons.

**CIC** – abbreviation for the Latin title, *Codex Iuris Canonici*, which is the *Code of Canon Law*. The current version used by the Catholic Church (Latin rite) is the 1983 *Code of Canon Law*.

**coadjutor bishop** – A bishop appointed to a Catholic diocese or archdiocese to assist the diocesan bishop. Unlike an *auxiliary bishop*, the *coadjutor (arch)bishop* has the right of succession, meaning that he automatically becomes the new bishop when the diocesan bishop retires, resigns, or dies.

**chancellery** – the main office building of a diocese.

**College of Cardinals** – the body of all cardinals of the Catholic Church, including both Latin and Eastern Church cardinals. The cardinals are chosen by the pope as his chief advisers. Most are archbishops or prefects of major departments at the Vatican.

**conclave** – The gathering of the world’s Catholic cardinals after the death of the pope to elect a new pope. Only cardinals under the age of 80 are allowed into a conclave.

**congregation** – a term used for some Vatican departments responsible for important areas of church life, such as worship and sacraments, the clergy, and saints’ causes.

**curia** – the offices through which a bishop administers a diocese. The *bishop of Rome* (the pope) administers the universal Church (through the *Roman Curia*) while a bishop administers a diocese (through a *diocesan curia*).

## D

**deacon** – The first of three ranks in the ordained ministry. Deacons preparing for the priesthood are called *transitional deacons*. Those not planning to be ordained priests are called *permanent deacons*. Married



men may be ordained only as *permanent deacons*, while single men are ordained with a commitment to celibacy either as *transitional* or *permanent deacons*.

**defrocking** – When a cleric is dismissed from the clerical state without his consent for a crime under canon law. It is sometimes imprecisely described as *defrocking* or *unfrocking*; these terms, which refer to the removal of clerical vestments are a common colloquial term. Properly speaking, laicization without consent should be referred to as a *dismissal from the clerical state* or *forced laicization*. See also *laicization*.

**delict** – an act which is a crime under canon law, the governing law of the Catholic Church. Acts considered to be a crime are articulated in the *Code of Canon Law* (for Latin rite Churches) and in the *Code of Canons of the Eastern Churches* (for Eastern rite Churches).

**diocesan bishop** – A bishop who heads a diocese. He may be assisted by *auxiliary bishops* or a *coadjutor bishop*. See also *auxiliary bishop* and *coadjutor bishop*.

**diaconate** – the office of deacon or the collective body of deacons. Deacons preparing for the priesthood are ordained into the *transitional diaconate*. Those not called to be ordained priests are ordained into the *permanent diaconate*. See also *deacon*.

**dicastery** – a type of administrative body of the Holy See’s Roman Curia, which includes *secretariats*, *congregations*, *dicasteries*, *tribunals*, *pontifical councils*, and other offices.

In the context of the *motu proprio*, the *competent dicastery* refers to one of several Congregations of the Roman Curia. The *competent Dicastery* is the particular office with authority and responsibility to review and respond to the case at hand.

**diocese** – a geographic territory of the Church that is governed by a bishop. A list of the 178 Latin Church (arch)dioceses of the United States is available on the USCCB website ([www.usccb.org/about/bishops-and-dioceses/all-dioceses.cfm](http://www.usccb.org/about/bishops-and-dioceses/all-dioceses.cfm)).

**durante munere** – literally, “while in office.” In reference to the *motu proprio*, this refers to acts committed by clerics while in office.

## E

**Eastern Catholic Churches** – Catholic Churches with origins in Eastern Europe, Asia, and Africa that have their own distinctive liturgical, legal, and organizational systems and are identified by the national or ethnic character of their region of origin. Each is considered fully equal to the Latin tradition within the Church. In the United States there are 16 Eastern Catholic Church dioceses and two Eastern Catholic Church archdioceses. In addition, there is one non-territorial Eastern Catholic Church apostolate in the United States. See also *eparchy* and *archeparchy*.

**eparchy** – an Eastern Catholic Church equivalent of a *diocese* in the Latin Church. An *eparchy* is governed by an *eparch* (bishop) who is the *local hierarch* (ordinary) of the Church in that territory. There are 18 eparchies and archeparchies in the United States ([www.usccb.org/about/bishops-and-dioceses/all-eparchies.cfm](http://www.usccb.org/about/bishops-and-dioceses/all-eparchies.cfm)).

**episcopal** – referring to a bishop, a group of bishops, or to the form of church governance by which bishops have authority.

**episcopal conference (bishops’ conference)** – a national or regional body of bishops that meets periodically to collaborate on matters of common concern in their country or region. The United States Conference of Catholic

Bishops (USCCB) is the *bishops' conference* in the United States.

**ex officio** – a right by virtue of the office one holds. Literally, “from the office.” When a person has a right because of the office they hold.

**excommunication** – a Church penalty which forbids a Catholic from receiving the Eucharist or any other of the sacraments or to exercise any ecclesiastical ministries, offices or functions. An excommunicated person remains a member of the Church with the hope that he or she will amend their ways and return to full participation in the life of the Church.

## F

**finance council** - a diocesan body mandated by the *Code of Canon Law* that is charged with preparing the annual diocesan budget and annually reviewing diocesan expenses and revenues.

## H

**hierarchy** – the collective body of bishops throughout the world or within a particular region. It may also refer to all who are ordained: deacons, priests, and bishops.

**hierarch** – equivalent term for an *ordinary*, used in the Eastern Catholic Church for the cleric who has the primacy of authority in an eparchy. A *hierarch* holds the rank of eparch/major archbishop (equivalent of a Latin rite bishop). See also *local ordinary (local hierarch)* and *ordinary (hierarch)*.

**Holy See** – the diocese of Rome, which is the diocese of the bishop of Rome (the pope) and the chief diocese of all Catholic dioceses and eparchies of the universal Church. *Holy See* often refers to the pope and the offices of the

Roman Curia, the governing and administrative offices of the Holy See. In general use, the term *Vatican* is synonymous with *Holy See*.

## L

**laicization** – the process by which a priest is dismissed from the clerical state. Sometimes used as a penalty for a serious crime or scandal, but more often it comes at the request of the priest. A laicized priest is barred from all priestly ministry with one exception: he may give absolution to someone in immediate danger of death. The pope must approve all requests for laicization.

**laity/lay** – in canon law, anyone not ordained a deacon, priest, or bishop is a layperson. In this legal canonical sense, women religious (sisters) and nonordained men religious (brothers) are technically laity. In the documents of the Second Vatican Council, however, the laity are those who are neither ordained nor members of a religious order. The Vatican II sense of the term *laity*—whereby the faithful are composed of laity, religious brothers and sisters, and ordained clergy—is usually intended in most discussions of laypeople and their role in the Church.

**Latin rite** – may refer to persons, sacraments, laws, traditions, organizations, or other bodies or entities in the *Latin Catholic Church*. Such entities are commonly, but imprecisely, called the Roman Catholic. It is more precise, for example, to say “in the Latin rite diocese,” rather than “in the Roman Catholic diocese.”

**Latin Church (Latin Catholic Church)** – commonly, but imprecisely, called the Roman Catholic Church or the Western Church, the *Latin Church* is the largest of the 24 churches that have their own laws and liturgical rites recognized by the supreme authority of

the Church. These 24 churches are in full communion with the Holy Father and form the Catholic Church.

**legate (papal legate)** – representative of the pope (appointed by him) sent to foreign nations or to a national Church. Nuncios are the type of *papal legates* appointed to foreign nations with which the Holy See has diplomatic relations. The *papal legate* to the United States is the *papal nuncio* (or *apostolic nuncio*), currently Archbishop Christophe Pierre.

**liturgy** – a general term for all the Church’s official and approved acts of worship which are carried out in the name of the Church. It includes the Mass (also called the *eucharistic liturgy*), the celebration of the other sacraments, and the Liturgy of the Hours, which contains the official prayers recited by priests, deacons, and some others to sanctify parts of the day.

**local ordinary (local hierarch)** – the office holder with the authority and jurisdiction to execute laws of governance over a particular territory. For example, the Bishop of Rome is the *local ordinary* of the Catholic Church. The diocesan bishop is the *local ordinary* of a diocese.

## M

**Mass (eucharistic liturgy)** – the central act of worship in the Catholic Church. The Mass is divided into two main parts. The *Liturgy of the Word* includes scripture readings and a homily and ends with the general intercessions. The *Liturgy of the Eucharist* begins with the offering of the gifts, followed by consecration of the bread and wine and the reception of Communion. Catholics believe that in the consecration the bread and wine truly become the Body and Blood of Christ.

**metropolitan** – the archbishop of an archdiocesan/metropolitan see. The diocesan archbishop is, by virtue of his office, the *metropolitan*. The *metropolitan archbishop* has limited supervisory jurisdiction over the ecclesiastical province of the other (suffragan) dioceses in the ecclesiastical province. The archbishop is usually only referred to as the *metropolitan* in contexts that reference his capacity as head of the province.

**metropolitan see** – the governing territory (archdiocese or archeparchy) under the authority of the metropolitan archbishop. It is the chief diocese of an ecclesiastical province. *Metropolitan see* refers to the archdiocese itself and to the seat of authority that the metropolitan holds. The ordinary of the *metropolitan see* is the known as the *metropolitan archbishop*, who is the ordinary of the archdiocese.

**ministry** – a broad term for any activity conducive to the salvation of souls. It can include ordained ministry, such as liturgical leadership and administration of the sacraments, or lay ministry, such as instructing children in the faith, serving the poor, visiting the sick, or being an altar server, reader, or music leader at Mass.

**motu proprio** – literally, “on his own initiative.” A papal document that expounds upon existing—or creates new—church law or procedures.

## N

**nun** – strictly speaking, a member of a religious community. It generally refers to all women religious, even those in simple vows, who are more properly called *sisters*. Whether a woman religious is a *nun* or *sister* in a strict sense, it is appropriate to use the term *Sister* as the religious title before her name.

## O

**ordinary (hierarchy)** – a diocesan bishop, or others who are placed over a particular church or community that is equivalent to a diocese, as well as those persons who possess ordinary executive power.

## P

**papal nuncio** – see *apostolic nuncio*.

**parish** – a certain community of the Christian faithful in a diocese whose pastoral care is entrusted to a pastor under the authority of the diocesan bishop. Most parishes are formed on a geographic basis, but they may be formed along national or ethnic lines.

**pastor** – a priest in charge of a Catholic parish or congregation. He is responsible for administering the sacraments, instructing the congregation in the doctrine of the Church, and providing other services to the people of the parish.

**pastoral council** – a parish or (arch)diocesan body that the pastor or (arch)bishop consults concerning policies and major decisions in the governance of the Church. Such a council's role is consultative and always subject to the final authority of the pastor or bishop.

**priest (religious priest / diocesan priest)** – a baptized man who has been ordained by a bishop. Sometimes called a *presbyter*. *Religious priests* are professed members of a religious order or institute. *Religious priests* live according to the rule of their respective orders. In pastoral ministry, they are under the jurisdiction of their local bishop, as well as of the superiors of their order. *Diocesan priests* (also called *secular priests*) are under the direction

of their local bishop. Most serve in the parishes of the diocese, but they may also be assigned to other diocesan posts and ministries or be released for service outside the diocese.

**pontifical representative** – the representative (appointed by the pope) who is sent to foreign nations or to a national Church. In countries with diplomatic relations with the Holy See, this representation is held by the papal nuncio. In the United States, the *pontifical representative* is the papal nuncio (or apostolic nuncio). The term may also include the pope's representatives in other offices as well, such as offices within the Holy See or those appointed as superior general of a religious order.

**presbyteral council** – a council of priests from a diocese. This is the principal consultative body mandated by the *Code of Canon Law* to advise the diocesan bishop in matters of pastoral governance. It consists of bishops and priests serving the diocese.

**presbyterate** – either a synonym for the *priesthood* or a reference to the collective body of priests of a diocese or other ecclesiastical jurisdiction.

**province (ecclesiastical province)** – an *ecclesiastical province* is a territory consisting of several dioceses or eparchies (the *suffragan sees*), including at least one *archdiocese* or *archeparchy* (the *metropolitan see*), headed by a *metropolitan archbishop*. The *metropolitan* has certain ecclesiastical jurisdiction over the other bishops/dioceses in the *province*; the metropolitan's obligations and authority with respect to the dioceses in the province are in the *Code of Canon Law*.

**province (of a religious order)** – a grouping of communities of a religious order under the jurisdiction of a provincial superior.

# R

**region (or episcopal region)** – a territory of *ecclesiastical provinces* and their dioceses in the United States, covering one or more U.S. states. The USCCB has 14 defined *episcopal regions* (Region I through Region XV). The *episcopal regions* in the United States are as follows:

- Region I:** Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, and Connecticut
- Region II:** New York
- Region III:** New Jersey and Pennsylvania
- Region IV:** Delaware, District of Columbia, Maryland, Virginia, and West Virginia
- Region V:** Alabama, Kentucky, Louisiana, Mississippi, and Tennessee
- Region VI:** Michigan and Ohio
- Region VII:** Illinois, Indiana, Wisconsin
- Region VIII:** Minnesota, North Dakota, and South Dakota
- Region IX:** Kansas, Missouri, Iowa, and Nebraska
- Region X:** Arkansas, Oklahoma, and Texas
- Region XI:** California, Hawaii, and Nevada
- Region XII:** Alaska, Idaho, Montana, Oregon, and Washington
- Region XIII:** Utah, Arizona, New Mexico, Colorado, and Wyoming
- Region XIV:** Florida, Georgia, North Carolina, and South Carolina
- Region XIV:** Eastern Catholic Churches *sui juris*

**Roman Curia** – the administrative and governing body of the Holy See, composed of various dicasteries, which assists the pope in governing the Church.

# S

**sacraments** – efficacious signs of grace that were instituted by Christ in order to dispense

divine life through the power of the Holy Spirit. There are seven sacraments: *baptism, confirmation, Eucharist, penance, matrimony, holy orders* and the *anointing of the sick*.

**see** – another name for a diocese or archdiocese. It appears in such phrases as *Holy See, titular see, metropolitan see, suffragan see*, and *see city*. An archdiocese is the *metropolitan see* of a province, while the dioceses under it are *suffragan sees*. A *see city* is that city after which the diocese or archdiocese is named.

**seminary** – an educational institution for men preparing for the priesthood.

**sister** – in popular speech, any woman religious. Strictly, the title applies to women religious of those institutes, mostly formed during or since the 19th century, whose members do not profess solemn vows.

**Society of Apostolic Life** – a group of men or women who come together to live life in common, as brothers or sisters, according to the *constitution* of their *society*, while pursuing a particular apostolic purpose in society. *Societies of Apostolic Life* can be either lay or clerical. Some such societies follow the evangelical counsels of poverty, chastity, and obedience. They do not, however, make any formal vows.

**Institute of Consecrated Life** – an institute, either religious or secular, by which members assume the evangelical counsels of poverty, chastity, and obedience through a public vow or some other sacred bond.

**Secular Institute** – an institute of consecrated life in which members of the Christian faithful *live in the world* and seek to contribute to the sanctification of the world. Members assume the evangelical counsels of poverty, chastity, and obedience, and are bound by obligations set forth by the institute.

**Religious Institute** – members of *Religious Institutes* publicly profess the evangelical counsels of poverty, consecrated virginity, and obedience, and they live life in common with other members. These members may be cloistered, monastic, or living apostolic life.

**superior** – The head of an institute of consecrated life or a society of apostolic life who exercises internal authority over members.

**suspension** – a church penalty under which a cleric, while retaining his clerical status, is no longer permitted to perform either all or some acts of the power of orders, the power of governance, or rights or functions attached to an office.

**suffragan diocese** – one of the dioceses in an ecclesiastical province other than the archdiocese.

**suffragan bishop** – one of the diocesan bishops of an ecclesiastical province other than the metropolitan bishop.

## T

**tribunal** – a *tribunal* (court) is the name given to the person or persons who exercise the Church’s judicial powers.

## U

**United States Conference of Catholic Bishops (USCCB)** – the national membership organization of the Catholic bishops of the United States through which they act collegially on pastoral, liturgical, and public policy matters

affecting the Catholic Church in the United States. The USCCB traces its origins to the 1919 establishment of the National Catholic Welfare Conference. In 1966, the conference was reorganized as the canonical entity known as the National Conference of Catholic Bishops and its twin civil corporation known as the U.S. Catholic Conference. Another reorganization in 2001 resulted in the USCCB.

## V

**vespers** – also called *evening prayer*. *Vespers* is part of the Liturgy of the Hours, the series of psalms, prayers, and readings for different parts of the day that Catholic priests and deacons pray daily.

**vicar general** – a priest, auxiliary bishop, or coadjutor bishop who assists the diocesan bishop in the governance of the entire diocese. Each diocesan bishop must appoint a vicar general for the diocese.

**vow** – a deliberate and free promise that is made to God and its fulfillment involves a serious religious obligation. Men and women entering religious life take *vows*, typically of poverty, chastity, and obedience.

**votum** – an authoritative written opinion, which the metropolitan bishop submits to the competent dicastery in Rome.

**vulnerable person** – “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty that, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offense” (*Vos Estis Lux Mundi*).

# Hierarchy of Church documents

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# Hierarchy of Church documents

## PAPAL DOCUMENTS

**Decretal Letters** a statement involving Church law, precepts or judicial decisions on a specific matter. Canonizations and dogmatic definitions, for example, are often decreed in the form of a decretal letter. A decree announces that a given document or legislative text is in effect.

**Apostolic Constitutions** are the most solemn papal document and are typically addressed to the public. This form of legislation is important in dealing with doctrinal and disciplinary matters of a local church or the Church as a whole. Many influential documents, like *The Code of Canon Law*, have been promulgated as constitutions.

**Encyclicals** are letters of pastoral or theological content, exhorting the faithful on a doctrinal issue. While an encyclical does not hold the weight of a constitution, it nevertheless holds high papal authority for a given issue.

**Papal Bulls** are official declarations or announcements issued by the Pope. These documents are named after the round, lead seal, called a *bull* in Latin. Portraits of Saints Peter and Paul appear on one side of the *bull*, and the name of the Pope on the other.

**Motu Proprio**, which translates to “by one’s own initiative,” is a legislative document or decree dealing with specific issues relevant to the Church in a given time in history. A *motu proprio* is issued by the Pope himself and can be on any topic. A *motu proprio* can enact administrative decisions or alter Church law (but not doctrine).

**Apostolic Exhortations** are formal instructions issued by a Pope, urging the faithful to consider a particular spiritual matter or activity, of importance to the Pontiff. Despite the similarities, apostolic exhortations carry less authority than encyclicals and are not considered legislative.

**Apostolic Letters** are written by the Pope in response to a specific need or addressed to a specific group of people. These letters are pastoral in nature, but not legislative.

**Papal Rescripts** are usually written in response to a petition placed before the Roman Curia, the administrative institutions of the Holy See, or the Pope himself. These papal rescripts are meant to make new laws or modify existing ones.

**Breva**, or Apostolic Briefs, are lowest on the hierarchy of papal messages, and they deal with matters of relatively minor importance.

## CONCILIAR DOCUMENTS

Traditionally, Church councils have issued documents only in the form of decrees or constitutions. The Fathers of the Second Vatican Council (1962-1965), however, intended a

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pastoral rather than a strictly doctrinal council, and as a result issued a number of different kinds of documents, all promulgated under the Pope's name and therefore taking the same name and form as papal documents.

**Constitution:** the highest form of document was the constitution, of which there were four (e.g. *Sacrosanctum Concilium*, the Constitution on the Sacred Liturgy).

**Decrees:** ten other documents were issued as decrees, addressing specific issues within Church life (e.g. *Unitatis Redintegratio*, the Decree on Ecumenism).

**Declarations:** finally, three documents were issued as declarations, fairly brief documents (e.g. *Dignitatis Humanae*, the Declaration on Religious Liberty).

## CURIAL DOCUMENTS

**Instruction (*instructio*):** statements issued by a Dicastery, always with the approval of the Pope. Instructions are usually intended to explain or clarify documents issued by a Council or decrees by a Pope. Instructions have legislative force.

**Promulgation (*promulgatio*):** the process whereby the lawmaker communicates the law to those to whom the law has been given. (The official effective date on which a document is promulgated may or may not coincide with the date on which a document is actually published.)

**Recognitio:** a *recognitio* supplies the acceptance by the relevant office of the Holy See of a document submitted to it for review by a local Conference of Bishops. *Recognitio* is required before the provisions of documents that modify universal law may come into effect. *Recognitio* thus signals acceptance of a document that may have legislative force.

**Replies to Dubia:** Dubia are official responses to questions (dubia) of bishops addressed to the Holy See seeking clarification on statements of doctrine or discipline. Dubia are addressed to dicasteries having jurisdictions.

**Declaration (*declamatio*):** may be a simple statement of the law, which must be interpreted according to the existing law; or an authoritative declaration that is retroactive and does not require further promulgation; or an extensive declaration, which modifies the law, is not retroactive and must be promulgated according to the law.

## BISHOPS' DOCUMENTS

National bishops' conferences were formally established by the Second Vatican Council (*Christus Dominus* 38). Bishops' conferences issue pastoral letters, explaining how Church teaching is to be put into effect in the relevant country. To have authority, however, such letters must be consistent with the teaching of the universal Church; they must also receive official confirmation from the Holy See by means of a *recognitio* from the relevant curial office. Statements issued by an individual bishop only have authority within that bishop's diocese, and only provided such statements do not conflict with the Church's universal law and teaching.

## CHURCH LATIN

Ecclesiastical or ‘Church Latin’ is the official language of the Holy See. The Latin texts of documents are the normative texts, published in the *Acta Apostolicae Sedis*, in which the official acts of the Holy See are published. Translations are made from the normative Latin text.

Many documents are therefore known by the opening Latin words of the text, e.g. *Vox Estis Lux Mundi* (“You are the light of the world”), *Sacramentorum sanctitatis tutela* (“The Safeguarding of the Sanctity of the Sacraments”).

Inside the Vatican City, at the entrance to the Institute for Works of Religion (Istituto per le Opere di Religione, IOR) – otherwise known as the Vatican Bank – is a cash machine...with the instructions in Latin.





# Sacramentorum sanctitatis tutela (2001)

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## ***Sacramentorum sanctitatis tutela***

An Apostolic Letter written by Pope John Paul II and published on 30 April 2001 in the form of a *motu proprio* (a document issued by the Pope on his own initiative directed to the Roman Catholic Church).

The title are the first words of the Latin text of the document, the English translation of which is ‘The Safeguarding of the Sanctity of the Sacraments...’.

*Sacramentorum sanctitatis tutela* gave the Congregation (now Dicastery) of the Doctrine of the Faith responsibility to deal with and judge a series of particularly serious crimes (delicts) within the ambit of Canon Law. This responsibility had previously been attributed to other dicasteries or was not completely clear.

The *motu proprio* was accompanied by a series of practical and procedural Norms, *Normae de Gravioribus Delictis*, which were subsequently updated in 2010 and 2019.

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# The Holy See

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APOSTOLIC LETTER  
ISSUED 'MOTU PROPRIO'

## **SACRAMENTORUM SANCTITATIS TUTELA**

OF THE SUPREME PONTIFF  
**JOHN PAUL II**  
BY WHICH ARE PROMULGATED  
NORMS ON MORE GRAVE DELICTS  
RESERVED TO THE CONGREGATION  
FOR THE DOCTRINE OF THE FAITH\*

The Safeguarding of the Sanctity of the Sacraments, especially the Most Holy Eucharist and Penance, and the keeping of the faithful, called to communion with the Lord, in their observance of the sixth commandment of the Decalogue, demand that the Church itself, in her pastoral solicitude, intervene to avert dangers of violation, so as to provide for the salvation of souls “which must always be the supreme law in the Church” (*CIC*, can. 1752).

Indeed, Our Predecessors already provided for the sanctity of the sacraments, especially penance, through appropriate Apostolic Constitutions such as the Constitution *Sacramentum Poenitentiae*, of [Pope Benedict XIV](#), issued June 1, 1741[1]; the same goal was likewise pursued by a number of canons of the *Codex Iuris Canonici*, promulgated in 1917 with their *fontes* by which canonical sanctions had been established against delicts of this kind[2].

In more recent times, in order to avert these and connected delicts, the Supreme Sacred Congregation of the Holy Office, through the Instruction *Crimen sollicitationis*, addressed to all Patriarchs, Archbishops, Bishops, and other local Ordinaries “even of the Oriental Rite” on March 16, 1962, established a manner of proceeding in such cases, inasmuch as judicial competence had been attributed exclusively to it, which competence could be exercised either administratively or through a judicial process. It is to be kept in mind that an Instruction of this kind had the force of



law since the Supreme Pontiff, according to the norm of can. 247, §1 of the *Codex Iuris Canonici* promulgated in 1917, presided over the Congregation of the Holy Office, and the Instruction proceeded from his own authority, with the Cardinal at the time only performing the function of Secretary.

The Supreme Pontiff, Pope Paul VI, of happy memory, by the Apostolic Constitution on the Roman Curia, *Regimini Ecclesiae Universae*, issued on August 15, 1967[3], confirmed the Congregation's judicial and administrative competence in proceeding "according to its amended and approved norms."

Finally, by the authority with which we are invested, in the Apostolic Constitution, *Pastor bonus*, promulgated on June 28, 1988, we expressly established, "[The Congregation for the Doctrine of the Faith] examines delicts against the faith and more grave delicts whether against morals or committed in the celebration of the sacraments, which have been referred to it and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common or proper law"[4], thereby further confirming and determining the judicial competence of the same Congregation for the Doctrine of the Faith as an Apostolic Tribunal.

After we had approved the *Agendi ratio in doctrinarum examine*[5], it was necessary to define more precisely both "the more grave delicts whether against morals or committed in the celebration of the sacraments" for which the competence of the Congregation for the Doctrine of the Faith remains exclusive, and also the special procedural norms "for declaring or imposing canonical sanctions."

With this apostolic letter, issued *motu proprio*, we have completed this work and we hereby promulgate the *Norms concerning the more grave delicts reserved to the Congregation for the Doctrine of the Faith*, which Norms are divided in two distinct parts, of which the first contains *Substantive Norms*, and the second *Procedural Norms*. We therefore enjoin all those concerned to observe them diligently and faithfully. These Norms take effect on the very day when they are promulgated.

All things to the contrary, even those worthy of special mention, notwithstanding.

*Give in Rome at St. Peter's on April 30, 2001, the memorial of Pope St. Pius V, in the twenty-third year of Our Pontificate.*

POPE JOHN PAUL II

\* This unofficial translation is based on a translation of the *motu proprio* by the USCCB and revised by Joseph R. Punderson and Charles J. Scicluna. The translations of the canons of the *CIC* and the *CCEO* are from the translations published by the Canon Law Society of America in 1999 and 2001 respectively.

[1] Benedict XIV, Constitution *Sacramentum Pœnitentiæ*, June 1, 1741, in *Codex Iuris Canonici*, prepared at the order of Pius X, Supreme Pontiff, promulgated by the authority of Pope Benedict XV, *Documenta*, Document V in AAS 9 (1917), Part II, 505-508.

[2] Cf. *Codex Iuris Canonici anno 1917 promulgatus*, cann. 817; 2316; 2320; 2322; 2368, §1; 2369, §1.

[3] Cf. Pope Paul VI, Apostolic Constitution *Regimini Ecclesiae Universae*, On the Roman Curia, August 15, 1967, n. 36, AAS 59 (1967), p. 898.

[4] Pope John Paul II, Apostolic Constitution *Pastor bonus*, On the Roman Curia, June 28, 1988, art. 52, in AAS 89 (1988), p. 874.

[5] Congregation for the Doctrine of the Faith, *Agendi ratio in doctrinarum examine*, June 29, 1997, in AAS 89 (1997), pp. 830-835.

# Normae de gravioribus delictis (2010, updated 2019)

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## *Normae de gravioribus delictis*

This document originally published by the Dicastery for the Congregation of the Faith on 30 April 2001 streamlines the process for dealing with priests who sexually abuse minors, as well as clarifying and updating other procedures and crimes handled by the Dicastery. The document, much of the content of which had already been in force from its original 2001 publication, was approved by Pope Benedict XVI on 21 May 2010. A further update was approved by Pope Francis on 11 October 2021.

The revised norms codify a number of modifications, most significantly the increase of the statute of limitations to 20 years (Art. 7 § 1), the right to lift the statute on a case-by-case basis (Art. 7 § 1), and the faculty to request that the Pope dismiss offenders from the clerical state without an ecclesial trial (Art. 21 § 2). Another modification granted the Dicastery “the right, as mandated by the Roman Pontiff, to judge Cardinals, Patriarchs, Legates of the Apostolic See, [and] Bishops” (Art. 1 § 2).

The 2021 amendments changed the definition of child pornography as a “more grave delict” from age 14 and under to age 18 and under; the role of advocate or procurator, which before had to be carried out by a priest with a doctorate in Canon Law, may now be carried out by a lay Catholic with a doctorate in Canon Law; and Article 14 was amended to state that the other functions of the tribunal -- judge, promoter of justice, and notary -- have not changed and must be carried out by a priest.

# NORMAE DE GRAVIORIBUS DELICTIS

(2010, updated 2019)

## Part One

### SUBSTANTIVE NORMS

#### Art. 1

§ 1. The [Congregation for the Doctrine of the Faith](#), according to [art. 52 of the Apostolic Constitution \*Pastor Bonus\*](#)<sup>[1]</sup>, judges delicts against the faith, as well as the more grave delicts committed against morals and in the celebration of the sacraments and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law, with due regard for the competence of the [Apostolic Penitentiary](#)<sup>[2]</sup> and in keeping with [Agendi ratio in doctrinarum examine](#).<sup>[3]</sup>

§ 2. With regard to the delicts mentioned above in § 1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in [can. 1405 § 3](#) of the Code of Canon Law<sup>[4]</sup>, and in [can. 1061](#) of the Code of Canons of the Eastern Churches.<sup>[5]</sup>

§ 3. The Congregation for the Doctrine of the Faith judges the reserved delicts mentioned in § 1 according to the following norms.

#### Art. 2

§ 1. The delicts against the faith referred to in art. 1 are heresy, apostasy and schism according to the norm of [can. 751](#) <sup>[6]</sup> and [1364](#) <sup>[7]</sup> of the [Code of Canon Law](#), and can. 1436<sup>[8]</sup> and 1437<sup>[9]</sup> of the [Code of Canons of the Eastern Churches](#).

§ 2. In the abovementioned cases referred to in § 1, it pertains to the Ordinary or Hierarch to remit, by norm of law, if it be the case, the *latae sententiae* excommunication and likewise to undertake a judicial trial in the first instance or issue an extrajudicial decree, with due regard for the right of appeal or of recourse to the Congregation for the Doctrine of the Faith.

#### Art. 3

§ 1. The more grave delicts against the sanctity of the most Holy Sacrifice and Sacrament of the Eucharist reserved to the Congregation for the Doctrine of the Faith for judgment are:

1° the taking or retaining for a sacrilegious purpose or the throwing away of the consecrated species[10], as mentioned in [can. 1367](#) of the Code of Canon Law[11], and in can. 1442 of the Code of Canons of the Eastern Churches[12];

2° attempting the liturgical action of the Eucharistic Sacrifice spoken of in [can. 1378 § 2, n. 1](#), of the Code of Canon Law[13];

3° the simulation of the same, spoken of in [can. 1379](#) of the Code of Canon Law[14] and in can. 1443 of the Code of Canons of the Eastern Churches[15];

4° the concelebration of the Eucharistic Sacrifice prohibited in [can. 908](#) of the Code of Canon Law[16], and in can. 702 of the Code of Canons of the Eastern Churches[17], spoken of in [can. 1365](#) of the Code of Canon Law[18], and in can. 1440 of the Code of Canons of the Eastern Churches[19], with ministers of ecclesial communities which do not have apostolic succession and do not acknowledge the sacramental dignity of priestly ordination.

§ 2. Also reserved to the Congregation for the Doctrine of the Faith is the delict which consists in the consecration for a sacrilegious purpose of one matter without the other or even of both, either within or outside of the eucharistic celebration[20]. One who has perpetrated this delict is to be punished according to the gravity of the crime, not excluding dismissal or deposition.

#### Art. 4

§ 1. The more grave delicts against the sanctity of the Sacrament of Penance reserved to the Congregation for the Doctrine of the Faith are:

1° the absolution of an accomplice in a sin against the sixth commandment of the Decalogue, mentioned in [can. 1378 § 1](#) of the Code of Canon Law[21], and in can. 1457 of the Code of Canons of the Eastern Churches[22];

2° attempted sacramental absolution or the prohibited hearing of confession, mentioned in [can. 1378 § 2](#), 2° of the Code of Canon Law[23];

3° simulated sacramental absolution, mentioned in [can. 1379](#) of the Code of Canon Law[24], and in can. 1443 of the Code of Canons of the Eastern Churches[25];

4° the solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, as mentioned in [can. 1387](#) of the Code of Canon Law[26], and in can. 1458 of the Code of Canons of the Eastern Churches[27], if it is directed to sinning with the confessor himself;

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5° the direct and indirect violation of the sacramental seal, mentioned in [can. 1388 § 1](#) of the Code of Canon Law[28], and in can. 1456 §1 of the Code of Canons of the Eastern Churches[29];

§ 2. With due regard for § 1, n. 5, also reserved to the Congregation for the Doctrine of the Faith is the more grave delict which consists in the recording, by whatever technical means, or in the malicious diffusion through communications media, of what is said in sacramental confession, whether true or false, by the confessor or the penitent. Anyone who commits such a delict is to be punished according to the gravity of the crime, not excluding, if he be a cleric, dismissal or deposition[30].

### **Art. 5**

The more grave delict of the attempted sacred ordination of a woman is also reserved to the

Congregation for the Doctrine of the Faith:

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

2° If the one attempting to confer sacred ordination, or the woman who attempts to receive sacred ordination, is a member of the Christian faithful subject to the Code of Canons of the Eastern Churches, with due regard for can. 1443 of that Code, he or she is to be punished by major excommunication reserved to the Apostolic See.

3° If the guilty party is a cleric he may be punished by dismissal or deposition[31].

### **Art. 6**

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

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

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of eighteen, for purposes of sexual gratification, by whatever means or using whatever technology;

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



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## Art. 7

§ 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§ 2. Prescription runs according to the norm of [can. 1362 § 2](#) of the Code of Canon Law[\[32\]](#), and can. 1152 § 3 of the Code of Canons of the Eastern Churches[\[33\]](#). However, in the delict mentioned in art. 6 §1 n. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

## Part Two

### PROCEDURAL NORMS

#### Title I

#### The Constitution and Competence of the Tribunal

## Art. 8

§ 1. The Congregation for the Doctrine of the Faith is the Supreme Apostolic Tribunal for the Latin Church as well as the Eastern Catholic Churches, for the judgment of the delicts defined in the preceding articles.

§ 2. This Supreme Tribunal also judges other delicts of which a defendant is accused by the Promotor of Justice, by reason of connection of person and complicity.

§ 3. The sentences of this Supreme Tribunal, rendered within the limits of its proper competence, do not need to be submitted for the approval of the Supreme Pontiff.

## Art. 9

§ 1. The Members of the Congregation for the Doctrine of the Faith are *ipso iure* the judges of this Supreme Tribunal.

§ 2. The Prefect of the Congregation presides as first among equals over the college of the Members, and if the office of Prefect is vacant or if the Prefect himself is impeded, the Secretary of the Congregation carries out his duties.

§ 3. It is the responsibility of the Prefect of the Congregation to nominate additional stable or deputed judges.

### **Art. 10**

It is necessary that such appointed judges be priests, of mature age, possessing a doctorate in canon law, outstanding in good morals, prudence and expertise in the law. Such priests may at the same time exercise a judicial or consultative function before another Dicastery of the Roman Curia.

### **Art. 11**

To present and sustain an accusation a Promotor of Justice is to be appointed, who is to be a priest, possessing a doctorate in canon law, outstanding in good morals, prudence, and expertise in the law. He is to carry out his office in all grades of judgment.

### **Art. 12**

For the functions of Notary and Chancellor, priests are appointed, whether or not they are officials of this Congregation.

### **Art. 13**

The role of Advocate or Procurator is carried out by a member of the faithful possessing a doctorate in canon law, who is approved by the presiding judge of the college.

### **Art. 14**

In other tribunals dealing with cases under these norms, only priests can validly carry out the functions of Judge, Promotor of Justice and Notary.

### **Art 15**

With regard to the provisions of [can. 1421](#) of the Code of Canon Law[34],and [can. 1087](#) of the Code of Canons of the Eastern Churches[35], the Congregation for the Doctrine of the Faith may dispense from the requirements of the priesthood and of a doctorate in Canon Law.

### **Art. 16**

Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrents, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.

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### Art. 17

If a case is referred directly to the Congregation without a preliminary investigation having been undertaken, the steps preliminary to the process, which fall by common law to the Ordinary or Hierarch, may be carried out by the Congregation itself.

### Art. 18

With full respect for the right of defense, the Congregation for the Doctrine of the Faith may sanate acts in cases lawfully presented to it if merely procedural laws have been violated by lower Tribunals acting by mandate of the same Congregation or according to art. 16.

### Art. 19

With due regard for the right of the Ordinary to impose from the outset of the preliminary investigation those measures which are established in [can. 1722](#) of the Code of Canon Law[36], or in can. 1473 of the Code of Canons of the Eastern Churches[37], the respective presiding judge may, at the request of the Promotor of Justice, exercise the same power under the same conditions determined in the canons themselves.

### Art. 20

The Supreme Tribunal of the Congregation for the Doctrine of the Faith judges in second instance:

- 1° cases adjudicated in first instance by lower tribunals;
- 2° cases decided by this same Supreme Apostolic Tribunal in first instance.

## Title II

### The Procedure to be followed in the Judicial Trial

### Art. 21

§ 1. The more grave delicts reserved to the Congregation for the Doctrine of the Faith are to be tried in a judicial process.

§ 2. However, the Congregation for the Doctrine of the Faith may:

- 1° decide, in individual cases, *ex officio* or when requested by the Ordinary or Hierarch, to proceed by extrajudicial decree, as provided in [can. 1720](#) of the Code of Canon Law[38] and can. 1486 of the Code of Canons of the Eastern

Churches[39]. However, perpetual expiatory penalties may only be imposed by mandate of the Congregation for the Doctrine of the Faith.

2° present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state or deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the delict was committed and after having given the guilty party the possibility of defending himself.

#### **Art. 22**

The Prefect is to constitute a turnus of three or five judges to try the case.

#### **Art. 23**

If in the appellate stage the Promotor of Justice brings forward a specifically different accusation, this Supreme Tribunal can admit it and judge it as if at first instance.

#### **Art. 24**

§ 1. In cases concerning the delicts mentioned of in art. 4 §1, the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented.

§ 2. This same Tribunal must consider the particular importance of the question concerning the credibility of the accuser.

§ 3. Nevertheless, it must always be observed that any danger of violating the sacramental seal be altogether avoided.

#### **Art 25**

If an incidental question arises, the college is to decide the matter by decree most expeditiously [*expeditissime*, cf. [cann. 1629, n.5° CIC](#); 1310, n. 5° CCEO].

#### **Art. 26**

§ 1. With due regard for the right to appeal to this Supreme Tribunal, once an instance has been finished in any manner before another tribunal, all of the acts of the case are to be transmitted *ex officio* to the Congregation for the Doctrine of the Faith as soon as possible.

§ 2 The right of the Promotor of Justice of the Congregation to challenge a sentence runs from the day on which the sentence of first instance is made known to this same Promotor.

### Art. 27

Recourse may be had against singular administrative acts which have been decreed or approved by the Congregation for the Doctrine of the Faith in cases of reserved delicts. Such recourse must be presented within the preemptory period of sixty canonical days to the Ordinary Session of the Congregation (the *Feria IV*) which will judge on the merits of the case and the lawfulness of the Decree. Any further recourse as mentioned in [art. 123 of the Apostolic Constitution \*Pastor bonus\*](#) is excluded[\[40\]](#).

### Art. 28

A *res iudicata* occurs:

- 1° if a sentence has been rendered in second instance;
- 2° if an appeal against a sentence has not been proposed within a month;
- 3° if, in the appellate grade, the instance is abated or is renounced;
- 4° if the sentence has been rendered in accord with the norm of art.20.

### Art. 29

§ 1. Judicial expenses are to be paid as the sentence has determined.

§ 2. If the defendant is not able to pay the expenses, they are to be paid by the Ordinary or Hierarchy of the case.

### Art. 30

§ 1. Cases of this nature are subject to the pontifical secret.[\[41\]](#)

§ 2. Whoever has violated the secret, whether deliberately (*ex dolo*) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even *ex officio*.

### Art. 31

In these cases, together with the prescripts of these norms, by which all Tribunals of the Latin Church and Eastern Catholic Churches are bound, the canons concerning delicts and penalties as well as the canons concerning the penal process of each Code also must be applied.

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[1] Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus*, De Romana Curia, 28 iunii 1988, art. 52, in AAS 80 (1988) 874: «Delicta contra fidem necnon graviora delicta, tum contra mores tum in sacramentorum celebratione commissa, quae ipsi delata fuerint, cognoscit atque, ubi opus fuerit, ad canonicas sanctiones declarandas aut irrogandas ad normam iuris, sive communis sive proprii, procedit».

[2] Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus*, De Romana Curia, 28 iunii 1988, art. 118, in AAS 80 (1988) 890: «Pro foro interno, tum sacramentali tum non sacramentali, absolutiones, dispensationes, commutationes, sanationes, condonationes aliasque gratias eadem largitur».

[3] Congregatio pro Doctrina Fidei, *Agendi ratio in doctrinarum examine*, 29 iunii 1997, in AAS 89 (1997) 830-835.

[4] *Codex Iuris Canonici*, can. 1405 - § 3. Rotae Romanae reservatur iudicare:

1° Episcopos in contentiosis, firmo praescripto can. 1419 § 2;

2° Abbatem primatem, vel Abbatem superiorem congregationis monasticae, et supremum Moderatorem institutorum religiosorum iuris pontificii;

3° dioeceses aliasve personas ecclesiasticas, sive physicas sive iuridicas, quae Superiorem infra Romanum Pontificem non habent.

[5] *Codex Canonum Ecclesiarum Orientalium*, can. 1061 – Coram tribunalibus Sedis Apostolicae conveniri debent personae, quae auctoritatem superiorem infra Romanum pontificem non habent, sive sunt personae physicae in ordine episcopatus non constitutae sive sunt personae iuridicae salvo can. 1063 § 4 nn. 3 et 4.

[6] *Codex Iuris Canonici*, can. 751 - Dicitur haeresis, pertinax, post receptum baptismum, alicuius veritatis fide divina et catholica credendae denegatio, aut de eadem pertinax dubitatio; apostasia, fidei christianae ex toto repudiatio; schisma, subiectionis Summo Pontifici aut communionis cum Ecclesiae membris eidem subditis detrectatio.

[7] *Codex Iuris Canonici*, can. 1364 - § 1. Apostata a fide, haereticus vel schismaticus in excommunicationem latae sententiae incurrit, firmo praescripto can. 194, § 1, n. 2; clericus praeterea potest poenis, de quibus in can. 1336, § 1, nn. 1, 2 et 3, puniri. - § 2. Si diuturna contumacia vel scandali gravitas postulet, aliae poenae addi possunt, non excepta dimissione e statu clericali.

[8] *Codex Canonum Ecclesiarum Orientalium*, can. 1436 - § 1. Qui aliquam veritatem fide divina et catholica credendam denegat vel eam in dubium ponit aut fidem christianam ex toto repudiat et legitime monitus non resipiscit, ut haereticus aut apostata excommunicatione maiore puniatur, clericus praeterea aliis poenis puniri potest non exclusa depositione.

[9] *Codex Canonum Ecclesiarum Orientalium*, can. 1437 - Qui subiectionem supremae Ecclesiae auctoritati aut communionem cum christifidelibus eidem subiectis detrectat et legitime monitus oboedientiam non praestat, ut schismaticus excommunicatione maiore puniatur.

[10] Pontificium Consilium de Legum Textibus Interpretandis, Responsio ad propositum dubium, 4 iunii 1999 in AAS 91 (1999) 918.

D. Utrum in can. 1367 CIC et 1442 CCEO verbum «abicerem» intellegatur tantum ut actus proiciendi necne.

R. *Negative et ad mentem.*

Mens est quamlibet actionem Sacras Species voluntarie et graviter despicientem censendam esse inclusam in verbo «abicerem».

[11] *Codex Iuris Canonici*, can. 1367 - Qui species consecratas abicit aut in sacrilegum finem abducit vel retinet, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit; clericus praeterea alia poena, non exclusa dimissione e statu clericali, puniri potest.

[12] *Codex Canonum Ecclesiarum Orientalium*, can. 1442 - Qui Divinam Eucharistiam abiecit aut in sacrilegum finem abduxit vel retinuit, excommunicatione maiore puniatur et, si clericus est, etiam aliis poenis non exclusa depositione.

[13] *Codex Iuris Canonici*, can. 1378 - § 2. In poenam latae sententiae interdicti vel, si sit clericus, suspensionis incurrit:

1° qui ad ordinem sacerdotalem non promotus liturgicam eucharistici Sacrificii actionem attentat ...

[14] *Codex Iuris Canonici*, can. 1379 - Qui, praeter casus de quibus in can. 1378, sacramentum se administrare simulat, iusta poena puniatur.

[15] *Codex Canonum Ecclesiarum Orientalium*, can. 1443 - Qui Divinae Liturgiae vel aliorum sacramentorum celebrationem simulavit, congrua poena puniatur non exclusa excommunicatione maiore.

[16] *Codex Iuris Canonici*, can. 908 - Sacerdotibus catholicis vetitum est una cum sacerdotibus vel ministris Ecclesiarum communitatumve ecclesialium plenam communionem cum Ecclesia catholica non habentium, Eucharistiam concelebrare.

[17] *Codex Canonum Ecclesiarum Orientalium*, can. 702 - Sacerdotes catholici vetiti sunt una cum sacerdotibus vel ministris acatholicis Divinam Liturgiam concelebrare.

[18] *Codex Iuris Canonici*, can. 1365 - Reus vetitae communicationis in sacris iusta poena puniatur.

[19] *Codex Canonum Ecclesiarum Orientalium*, can. 1440 - Qui normas iuris de communicatione in sacris violat, congrua poena puniri potest.

[20] *Codex Iuris Canonici*, can. 927 - Nefas est, urgente etiam extrema necessitate, alteram materiam sine altera, aut etiam utramque extra eucharisticam celebrationem, consecrare.

[21] *Codex Iuris Canonici*, can. 1378 - § 1. Sacerdos qui contra praescriptum can. 977 agit, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit.

[22] *Codex Canonum Ecclesiarum Orientalium*, can. 1457 - Sacerdos, qui complicem in peccato contra castitatem absolvit, excommunicatione maiore puniatur firmo can. 728 § 1, n. 2.

[23] *Codex Iuris Canonici*, can. 1378 - § 2. In poenam latae sententiae interdicti vel, si sit clericus, suspensionis incurrit: ... 2° qui, praeter casum de quo in § 1, cum sacramentalem absolutionem dare valide nequeat, eam impertire attentat, vel sacramentalem confessionem audit.

[24] *Codex Iuris Canonici*, can. 1379 - Qui, praeter casus de quibus in can. 1378, sacramentum se administrare simulat, iusta poena puniatur.

[25] *Codex Canonum Ecclesiarum Orientalium*, can. 1443 - Qui Divinae Liturgiae vel aliorum sacramentorum celebrationem simulavit, congrua poena puniatur non exclusa excommunicatione maiore.

[26] *Codex Iuris Canonici*, can. 1387 - Sacerdos, qui in actu vel occasione vel praetextu confessionis paenitentem ad peccatum contra sextum Decalogi praeceptum sollicitat, pro delicti gravitate, suspensione, prohibitionibus, privationibus puniatur, et in casibus gravioribus dimittatur e statu clericali.

[27] *Codex Canonum Ecclesiarum Orientalium*, can. 1458 - Sacerdos, qui in actu vel occasione vel praetextu confessionis paenitentem ad peccatum contra castitatem sollicitavit, congrua poena puniatur non exclusa depositione.

[28] *Codex Iuris Canonici*, can. 1388 - § 1. Confessarius, qui sacramentale sigillum directe violat, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit; qui vero indirecte tantum, pro delicti gravitate puniatur.



[29] *Codex Canonum Ecclesiarum Orientalium*, can. 1456 - § 1. Confessarius, qui sacramentale sigillum directe violavit, excommunicatione maiore puniatur firmo can. 728, § 1, n. 1; si vero alio modo hoc sigillum fregit, congrua poena puniatur.

[30] Congregatio pro Doctrina Fidei, Decretum de sacramenti Paenitentiae dignitate tuenda, 23 septembris 1988, in *AAS* 80 (1988) 1367.

[31] Congregatio pro Doctrina Fidei, Decretum generale de delicto attentatae sacrae ordinationis mulieris, 19 decembris 2007, in *AAS* 100 (2008) 403.

[32] *Codex Iuris Canonici*, can. 1362 - § 2. Praescriptio decurrit ex die quo delictum patratum est, vel, si delictum sit permanens vel habituale, ex die quo cessavit.

[33] *Codex Canonum Ecclesiarum Orientalium*, can. 1152 - § 3. Praescriptio decurrit ex die, quo delictum patratum est, vel, si delictum est permanens vel habituale, ex die, quo cessavit.

[34] *Codex Iuris Canonici*, can. 1421 -

§ 1. In dioecesi constituentur ab Episcopo iudices dioecesani, qui sint clerici.

§ 2. Episcoporum conferentia permittere potest ut etiam laici iudices constituentur, e quibus, suadente necessitate, unus assumi potest ad collegium efformandum.

§ 3. Iudices sint integrae fama et in iure canonico doctores vel saltem licentiati.

[35] *Codex Canonum Ecclesiarum Orientalium*, can. 1087 -

§ 1. In eparchia nominentur ab Episcopo eparchiali iudices eparchiales, qui sint clerici.

§ 2. Patriarcha consulta Synodo permanenti vel Metropolita, qui Ecclesiae metropolitanae sui iuris praeest, consultis duobus Episcopis eparchialibus ordinatione episcopali senioribus permittere potest, ut etiam alii christifideles iudices nominentur, ex quibus suadente necessitate unus assumi potest ad collegium efformandum; in ceteris casibus hac in re adeatur Sedes Apostolica.

§ 3. Iudices sint integrae fama, in iure canonico doctores vel saltem licentiati, prudentia et iustitiae zelo probati.

[36] *Codex Iuris Canonici*, can. 1722 - Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tutandum, potest Ordinarius, audito promotore iustitiae et citato ipso accusato, in quolibet processus stadio accusatum a sacro ministerio vel ab aliquo officio et munere ecclesiastico arcere, ei imponere vel interdicere commorationem in aliquo loco vel territorio, vel etiam publicam

sanctissimae Eucharistiae participationem prohibere; quae omnia, causa cessante, sunt revocanda, eaque ipso iure finem habent, cessante processu poenali.

[37] *Codex Canonum Ecclesiarum Orientalium*, can. 1473 - Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tuendum potest Hierarcha audito promotore iustitiae et citato ipso accusato in quolibet statu et grado iudicii poenalis accusatum ab exercitio ordinis sacri, officii, ministerii vel alterius muneris arcere, ei imponere vel prohibere commorationem in aliquo loco vel territorio, vel etiam publicam Divinae Eucharistiae susceptione prohibere; quae omnia causa cessante sunt revocanda et ipso iure finem habent cessante iudicio poenali.

[38] *Codex Iuris Canonici*, can. 1720 - Si Ordinarius censuerit per decretum extra iudicium esse procedendum:

1° reo accusationem atque probationes, data facultate sese defendendi, significet, nisi reus, rite vocatus, comparere neglexerit;

2° probationes et argumenta omnia cum duobus assessoribus accurate perpendat;

3° si de delicto certo constet neque actio criminalis sit extincta, decretum ferat ad normam cann. 1342-1350, expositis, breviter saltem, rationibus in iure et in facto.

[39] *Codex Canonum Ecclesiarum Orientalium*, can. 1486 -

§ 1. Ad validitatem decreti, quo poena irrogatur, requiritur, ut:

1° accusatus de accusatione atque probationibus certior fiat data sibi opportunitate ius ad sui defensionem plene exercendi, nisi ad normam iuris citatus comparere neglexit;

2° discussio oralis inter Hierarcham vel eius delegatum et accusatum habeatur praesentibus promotore iustitiae et notario;

3° in ipso decreto exponatur, quibus rationibus in facto et in iure punitio innitatur.

§ 2. Poenae autem, de quibus in can. 1426, § 1, sine hac procedura imponi possunt, dummodo de earum acceptatione ex parte rei scripto constet.

[40] Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus*, De Romana Curia, 28 iunii 1988, art. 52, in AAS 80 (1988) 891: «§ 1. Praeterea [*Supremum Tribunal Signaturae Apostolicae*] cognoscit de recursibus, intra terminum peremptorium triginta dierum utilium interpositis, adversus actus administrativos singulares sive a Dicasteriis Curiae Romanae latos sive ab ipsis probatos, quoties contendatur num actus impugnatus legem aliquam in decernendo vel in procedendo violaverit. § 2. In his casibus, praeter iudicium de illegimitate, cognoscere etiam potest, si

recurrens id postulet, de reparatione damnorum actu illegitimo illatorum. § 3. Cognoscit etiam de aliis controversiis administrativis, quae a Romano Pontifice vel a Romanae Curiae Dicasteriis ipsi deferantur necnon de conflictibus competentiae inter eadem Dicasteria».

[41] Secretaria Status, Rescriptum ex Audientia SS.mi *Il 4 febbraio*, quo Ordinatio generalis Romanae Curiae foras datur, 30 aprilis 1999, *Regolamento generale della Curia Romana*, 30 aprile 1999, art. 36 § 2, in AAS 91 (1999) 646: «Con particolare cura sarà osservato il segreto pontificio, a norma dell'Istruzione *Secreta continere* del 4 febbraio 1974».

Secretaria Status seu Papalis, Rescriptum ex Audientia, instructio *Secreta continere*, De secreto pontificio, 4 februarii 1974, in AAS 66 (1974) 89-92: «Art. 1.- Segreto pontificio comprehenduntur: ...

4) Denuntiationes extra iudicium acceptae circa delicta contra fidem et contra mores, et circa delicta contra Paenitentiae sacramentum patrata, nec non processus et decisio, quae ad hasce denuntiationes pertinent, salvo semper iure eius, qui ad auctoritatem delatus est, cognoscendae denuntiationis, si id necessarium ad propriam defensionem fuerit. Denuntiantis autem nomen tunc tantum patefieri licebit, cum auctoritati opportunum videatur ut denuntiatus et is, qui eum denuntiaverit, simul compareant; ...» (p. 90).



# Letters to Bishops' Conferences about developing guidelines for dealing with cases of sexual abuse (2011)

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## ***Circular Letter from the Congregation for the Doctrine of the Faith***

The Congregation for the Doctrine of the Faith asked every Bishops' Conference in the world to prepare 'Guidelines' by May 2012 for dealing with cases of sexual abuse of minors by clergy, "in ways appropriate to specific situations in different regions".

In its "Circular Letter," the Congregation offers suggestions to "facilitate the formulation" of the guidelines and "ensure consistency at the level of the universal Church", while respecting "the competence of bishops and major religious superiors".

The Letter is divided into three parts:

- The first part develops a set of general considerations, including in particular priority attention to the victims of sexual abuse; the development of prevention programmes to create safe environments for children; the formation of future priests and religious; and cooperation with civil authorities within their responsibilities
- The second part addresses applicable canonical legislation in force today
- The third part list a number of useful observations in formulating concrete operational guidelines for bishops and major superiors

## **CIRCULAR LETTER**

### **To assist Episcopal Conferences in developing Guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics**

Among the important responsibilities of the Diocesan Bishop in his task of assuring the common good of the faithful and, especially, the protection of children and of the young, is the duty he has to give an appropriate response to the cases of sexual abuse of minors by clerics in his diocese. Such a response entails the development of procedures suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors. A response will also make provision for the implementation of the appropriate canon law, and, at the same time, allow for the requirements of civil law.

#### **I. General considerations:**

##### **a) The victims of sexual abuse:**

The Church, in the person of the Bishop or his delegate, should be prepared to listen to the victims and their families, and to be committed to their spiritual and psychological assistance. In the course of his Apostolic trips our Holy Father, Benedict XVI, has given an eminent model of this with his availability to meet with and listen to the victims of sexual abuse. In these encounters the Holy Father has focused his attention on the victims with words of compassion and support, as we read in his *Pastoral Letter to the Catholics of Ireland* (n.6): “You have suffered grievously and I am truly sorry. I know that nothing can undo the wrong you have endured. Your trust has been betrayed and your dignity has been violated.”

##### **b) The protection of minors:**

In some countries programs of education and prevention have been begun within the Church in order to ensure “safe environments” for minors. Such programs seek to help parents as well as those engaged in pastoral work and schools to recognize the signs of abuse and to take appropriate measures. These programs have often been seen as models in the commitment to eliminate cases of sexual abuse of minors in society today.

##### **c) The formation of future priests and religious:**

In 2002, Pope John Paul II stated, “there is no place in the priesthood and religious life for those who would harm the young” (n. 3, *Address to the American Cardinals*, 23 April 2002). These words call to mind the specific responsibility of Bishops and Major Superiors and all those responsible for the formation of future priests and religious. The directions given in the Apostolic Exhortation *Pastores Dabo Vobis* as well as the instructions of the competent Dicasteries of the Holy See take on an even greater importance in assuring a proper discernment of vocations as well as a healthy human and spiritual formation of candidates. In particular, candidates should be formed in an



appreciation of chastity and celibacy, and the responsibility of the cleric for spiritual fatherhood. Formation should also assure that the candidates have an appreciation of the Church's discipline in these matters. More specific directions can be integrated into the formation programs of seminaries and houses of formation through the respective *Ratio institutionis sacerdotalis* of each nation, Institute of Consecrated Life and Society of Apostolic Life.

Particular attention, moreover, is to be given to the necessary exchange of information in regard to those candidates to priesthood or religious life who transfer from one seminary to another, between different dioceses, or between religious Institutes and dioceses.

#### **d) Support of Priests**

1. The bishop has the duty to treat all his priests as father and brother. With special attention, moreover, the bishop should care for the continuing formation of the clergy, especially in the first years after Ordination, promoting the importance of prayer and the mutual support of priestly fraternity. Priests are to be well informed of the damage done to victims of clerical sexual abuse. They should also be aware of their own responsibilities in this regard in both canon and civil law. They should as well be helped to recognize the potential signs of abuse perpetrated by anyone in relation to minors;

2. In dealing with cases of abuse which have been denounced to them the bishops are to follow as thoroughly as possible the discipline of canon and civil law, with respect for the rights of all parties;

3. The accused cleric is presumed innocent until the contrary is proven. Nonetheless the bishop is always able to limit the exercise of the cleric's ministry until the accusations are clarified. If the case so warrants, whatever measures can be taken to rehabilitate the good name of a cleric wrongly accused should be done.

#### **e) Cooperation with Civil Authority**

Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.

### **II. A brief summary of the applicable canonical legislation concerning the delict of sexual abuse of minors perpetrated by a cleric:**

On 30 April 2001, Pope John Paul II promulgated the *motu proprio Sacramentorum sanctitatis tutela [SST]*, by which sexual abuse of a minor under 18 years of age

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committed by a cleric was included in the list of more grave crimes reserved to the Congregation for the Doctrine of the Faith (CDF). Prescription for this delict was fixed at 10 years beginning at the completion of the 18<sup>th</sup> year of the victim. The norm of the *motu proprio* applied both to Latin and Eastern clerics, as well as for diocesan and religious clergy.

In 2003, Cardinal Ratzinger, then Prefect of the CDF, obtained from Pope John Paul II the concession of some special faculties in order to provide greater flexibility in conducting penal processes for these more grave delicts. These measures included the use of the administrative penal process, and, in more serious cases, a request for dismissal from the clerical state *ex officio*. These faculties have now been incorporated in the revision of the *motu proprio* approved by the Holy Father, Benedict XVI, on 21 May 2010. In the new norms prescription, in the case of abuse of minors, is set for 20 years calculated from the completion of the 18<sup>th</sup> year of age of the victim. In individual cases, the CDF is able to derogate from prescription when indicated. The canonical delict of acquisition, possession or distribution of pedopornography is also specified in this revised *motu proprio*.

The responsibility for dealing with cases of sexual abuse of minors belongs, in the first place, to Bishops or Major Superiors. If an accusation seems true the Bishop or Major Superior, or a delegate, ought to carry out the preliminary investigation in accord with *CIC* can. 1717, *CCEO* can. 1468, and *SST* art. 16.

If the accusation is considered credible, it is required that the case be referred to the CDF. Once the case is studied the CDF will indicate the further steps to be taken. At the same time, the CDF will offer direction to assure that appropriate measures are taken which both guarantee a just process for the accused priest, respecting his fundamental right of defense, and care for the good of the Church, including the good of victims. In this regard, it should be noted that normally the imposition of a permanent penalty, such as dismissal from the clerical state, requires a penal judicial process. In accord with canon law (cf. *CIC* can. 1342) the Ordinary is not able to decree permanent penalties by extrajudicial decree. The matter must be referred to the CDF which will make the definitive judgement on the guilt of the cleric and his unsuitability for ministry, as well as the consequent imposition of a perpetual penalty (*SST* art. 21, §2).

The canonical measures applied in dealing with a cleric found guilty of sexual abuse of a minor are generally of two kinds:

- 1) measures which completely restrict public ministry or at least exclude the cleric from any contact with minors. These measures can be reinforced with a penal precept;
- 2) ecclesiastical penalties, among which the most grave is the dismissal from the clerical state.

In some cases, at the request of the cleric himself, a dispensation from the obligations of the clerical state, including celibacy, can be given *pro bono Ecclesiae*.

The preliminary investigation, as well as the entire process, ought to be carried out with due respect for the privacy of the persons involved and due attention to their reputations.

Unless there are serious contrary indications, before a case is referred to the CDF, the accused cleric should be informed of the accusation which has been made, and given the opportunity to respond to it. The prudence of the bishop will determine what information will be communicated to the accused in the course of the preliminary investigation.

It remains the duty of the Bishop or the Major Superior to provide for the common good by determining what precautionary measures of *CIC* can. 1722 and *CCEO* can. 1473 should be imposed. In accord with *SST* art. 19, this can be done once the preliminary investigation has been initiated.

Finally, it should be noted that, saving the approval of the Holy See, when a Conference of Bishops intends to give specific norms, such provisions must be understood as a complement to universal law and not replacing it. The particular provisions must therefore be in harmony with the *CIC / CCEO* as well as with the *motu proprio Sacramentorum sanctitatis tutela* (30 April 2001) as updated on 21 May 2010. In the event that a Conference would decide to establish binding norms it will be necessary to request the *recognitio* from the competent Dicasteries of the Roman Curia.

### III. Suggestions for Ordinaries on Procedures:

The Guidelines prepared by the Episcopal Conference ought to provide guidance to Diocesan Bishops and Major Superiors in case they are informed of allegations of sexual abuse of minors by clerics present in the territory of their jurisdiction. Such Guidelines, moreover, should take account of the following observations:

- a) the notion of “sexual abuse of minors” should concur with the definition of article 6 of the *motu proprio SST* (“the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years”), as well as with the interpretation and jurisprudence of the Congregation for the Doctrine of the Faith, while taking into account the civil law of the respective country;
- b) the person who reports the delict ought to be treated with respect. In the cases where sexual abuse is connected with another delict against the dignity of the sacrament of Penance (*SST* art. 4), the one reporting has the right to request that his or her name not be made known to the priest denounced (*SST* art. 24).;
- c) ecclesiastical authority should commit itself to offering spiritual and psychological assistance to the victims;
- d) investigation of accusations is to be done with due respect for the principle of privacy and the good name of the persons involved;

- e) unless there are serious contrary indications, even in the course of the preliminary investigation, the accused cleric should be informed of the accusation, and given the opportunity to respond to it.
- f) consultative bodies of review and discernment concerning individual cases, foreseen in some places, cannot substitute for the discernment and *potestas regiminis* of individual bishops;
- g) the Guidelines are to make allowance for the legislation of the country where the Conference is located, in particular regarding what pertains to the obligation of notifying civil authorities;
- h) during the course of the disciplinary or penal process the accused cleric should always be afforded a just and fit sustenance;
- i) the return of a cleric to public ministry is excluded if such ministry is a danger for minors or a cause of scandal for the community.

**Conclusion:**

The Guidelines developed by Episcopal Conferences seek to protect minors and to help victims in finding assistance and reconciliation. They will also indicate that the responsibility for dealing with the delicts of sexual abuse of minors by clerics belongs in the first place to the Diocesan Bishop. Finally, the Guidelines will lead to a common orientation within each Episcopal Conference helping to better harmonize the resources of single Bishops in safeguarding minors.

*Rome, from the Congregation for the Doctrine of the Faith, 3 May 2011*

**William Cardinal Levada**  
*Prefect*

**X Luis F. Ladaria, S.J.**  
*Tit. Archbishop of Thibica*  
*Secretary*

# As a Loving Mother (2016)

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## *As a Loving Mother*

An Apostolic Letter written by Pope Francis and published on 4 June 2016 in the form of a *motu proprio* (a document issued by the Pope on his own initiative directed to the Roman Catholic Church).

*As a Loving Mother* regulates the dismissal of bishops, eparchs and religious superiors who cover up sexual abuse in the Roman Catholic Church.

The Pope clarified the Code of Canon Law to establish removal from office for negligence that results in grave harm to the faithful. The document specifies that such harm might include “physical, moral, spiritual, or patrimonial” damage.

The *motu proprio* does not constitute a major change in Canon Law, which already provided for the removal of a bishop “for grave cause”. However, the papal document makes it clear that negligence in responding to complaints of sexual abuse always constitutes a “grave cause”, whereas in other cases the gravity of the damage must be demonstrated. The document also clearly establishes that a bishop can be ousted even when he is not personally guilty of serious moral misconduct.

*As a Loving Mother* applies not to sexual misconduct but to the failure of bishops to carry out their responsibilities in handling abuse charges or in other grave matters.



# The Holy See

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APOSTOLIC LETTER  
ISSUED «MOTU PROPRIO»

BY THE SUPREME PONTIFF  
FRANCIS

## AS A LOVING MOTHER

The Church loves all her children like a loving mother, but cares for all and protects with a special affection those who are smallest and defenseless. This is the duty that Christ himself entrusted to the entire Christian community as a whole. Aware of this, the Church is especially vigilant in protecting children and vulnerable adults.

This duty of care and protection devolves upon the whole Church, yet it is especially through her Pastors that it must be exercised. Therefore diocesan Bishops, Eparchs and those who have the responsibility for a Particular Church must pay vigilant attention to protecting the weakest of those entrusted to her care.

Canon Law already provides for the possibility of removal from ecclesiastical office “for grave reasons”. This pertains to diocesan Bishops and Eparchs as well, and those who are by law equal to them (cf. can. 193 § 1 CIC; can. 975 § 1 CCEO). With this Letter my intention is to underline that among the aforesaid “grave reasons” is the negligence of a Bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults, as stated in the Motu Proprio *Sacramentorum Sanctitatis Tutela* promulgated by St John Paul II and amended by my beloved Predecessor, Benedict XVI. In such cases the following procedure is to be observed:

### Article 1



§1. The diocesan Bishop or Eparch, or one who even holds a temporary title and is responsible for a Particular Church, or other community of faithful that is its legal equivalent, according to can. 368 CIC or can. 313 CCEO, can be legitimately removed from this office if he has through negligence committed or through omission facilitated acts that have caused grave harm to others, either to physical persons or to the community as a whole. The harm may be physical, moral, spiritual or through the use of patrimony.

§2. The diocesan Bishop or Eparch can only be removed if he is objectively lacking in a very grave manner the diligence that his pastoral office demands of him, even without serious moral fault on his part.

§3. In the case of the abuse of minors and vulnerable adults it is enough that the lack of diligence be grave.

§4. The Major Superiors of Religious Institutes and Societies of Apostolic Life of Pontifical Right are equivalent to diocesan Bishops and Eparchs.

## Article 2

§1. In all cases in which there is foundational proof of what is contained in the previous article, the competent Congregation of the Roman Curia can open an inquiry into the case, informing the subject involved and giving the accused the possibility of providing documentation and testimony.

§2. The Bishop will be given the possibility to defend himself, something he can do by the means provided for by law. All stages of the inquiry will be communicated and he will always be given the possibility of meeting with the Superiors of the Congregation. This meeting will be proposed by the appropriate dicastery even should the Bishop himself take no initiative.

§ 3. In view of the arguments presented by the Bishop, the Congregation may decide to open a supplementary investigation.

## Article 3

§1. Before making a decision, the Congregation may meet, when appropriate, with other Bishops or Eparchs belonging to the same Bishops' Conference or Synod of Bishops of the *sui iuris* Church as the Bishop or Eparch in question, with the purpose of discussing the said case.

§ 2. The Congregation will adopt its determination when gathered in an Ordinary Session.

## Article 4

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Whenever the removal of a Bishop is held to be opportune, the Congregation, depending on the circumstances of the case, will establish whether:

1°. to issue, and in the briefest possible amount of time, a decree of removal;

2°. to fraternally exhort the Bishop to present his letter of resignation within a period of fifteen days. If the Bishop does not give his response within this period of time the Congregation can proceed to issue the decree of removal.

## **Article 5**

The decision of the Congregation as stated in articles 3–4 must be submitted for the specific approval of the Roman Pontiff, who before making a definitive decision will take counsel with a special College of Jurists designated for this purpose.

Everything that I have deliberated in this Apostolic Letter given Motu Proprio must be observed in all its parts, notwithstanding anything to the contrary, even if it be worthy of particular mention, and I hereby set forth that it be published in the official records of *Acta Apostolicae Sedis* and promulgated in the daily edition of *L'Osservatore Romano*, and enter into force on 5 September 2016.

*Vatican, 4 June 2016*

**Francis P.P.**

# Vox Estis Lux Mundi (2019)

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## *Vox Estis Lux Mundi*

An Apostolic Letter written by Pope Francis and published on 7 May 2019 in the form of a *motu proprio* (a document issued by the Pope on his own initiative directed to the Roman Catholic Church).

The *motu proprio* established new procedural norms to combat sexual abuse and ensure that clergy and religious are held accountable for their actions. It is effective for a three-year experimental period (*ad experimentum*) beginning 1 June 2019.

The Letter mandated that all priests and members of religious orders worldwide are obliged to report any suspicions of abuse or its cover-up. The Pope also established a new global system for the evaluation of reports of abuse or cover-up by bishops, which foresees the empowering of archbishops to conduct investigations of prelates in their local regions with the help of Vatican authorities.

The first part of the Letter deals generally with reporting of abuse or cover-up, mandating that any priest or member of a religious order who “has notice of, or well-founded motives” to believe that either has occurred is obliged to report it to their bishop or superior. That part also mandates that every Catholic diocese in the world create procedures for such reporting by 1 June 2020

The second part of the document outlines the new process for accountability for bishops who abuse or cover-up abuse.

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APOSTOLIC LETTER  
ISSUED MOTU PROPRIO

BY THE SUPREME PONTIFF  
FRANCIS

***“VOS ESTIS LUX MUNDI”***

*“You are the light of the world. A city set on a hill cannot be hidden”* (Mt 5:14). Our Lord Jesus Christ calls every believer to be a shining example of virtue, integrity and holiness. All of us, in fact, are called to give concrete witness of faith in Christ in our lives and, in particular, in our relationship with others.

The crimes of sexual abuse offend Our Lord, cause physical, psychological and spiritual damage to the victims and harm the community of the faithful. In order that these phenomena, in all their forms, never happen again, a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church, so that personal sanctity and moral commitment can contribute to promoting the full credibility of the Gospel message and the effectiveness of the Church’s mission. This becomes possible only with the grace of the Holy Spirit poured into our hearts, as we must always keep in mind the words of Jesus: *“Apart from me you can do nothing”* (Jn 15:5). Even if so much has already been accomplished, we must continue to learn from the bitter lessons of the past, looking with hope towards the future.

This responsibility falls, above all, on the successors of the Apostles, chosen by God to be pastoral leaders of his People, and demands from them a commitment to follow closely the path of the Divine Master. Because of their ministry, in fact, Bishops, *“as vicars and legates of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness, remembering that he who is greater should become as the lesser and he who is the chief become as the servant”* (Second Vatican Council, Dogmatic Constitution

*Lumen Gentium*, 27). What more closely concerns the successors of the Apostles concerns all those who, in various ways, assume ministries in the Church, or profess the evangelical counsels, or are called to serve the Christian People. Therefore, it is good that procedures be universally adopted to prevent and combat these crimes that betray the trust of the faithful.

I desire that this commitment be implemented in a fully ecclesial manner, so that it may express the communion that keeps us united, in mutual listening and open to the contributions of those who care deeply about this process of conversion.

Therefore, I decree:

## TITLE I

### GENERAL PROVISIONS

#### 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.

§2. For the purposes of these norms,

a) “*minor*” means: any person under the age of eighteen, or who is considered by law to be the equivalent of a minor;

b) “*vulnerable person*” means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence;

c) “*child pornography*” means: any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes.

## **Art. 2 – Reception of reports and data protection**

§1. Taking into account the provisions that may be adopted by the respective Episcopal Conferences, by the Synods of the Bishops of the Patriarchal Churches and the Major Archiepiscopal Churches, or by the Councils of Hierarchs of the Metropolitan Churches *sui iuris*, the Dioceses or the Eparchies, individually or together, must establish within a year from the entry into force of these norms, one or more public, stable and easily accessible systems for submission of reports, even through the institution of a specific ecclesiastical office. The Dioceses and the Eparchies shall inform the Pontifical Representative of the establishment of the systems referred to in this paragraph.

§2. The information referred to in this article is protected and treated in such a way as to guarantee its safety, integrity and confidentiality pursuant to canons 471, 2° CIC and 244 §2, 2° CCEO.

§3. Except as provided for by article 3 §3, the Ordinary who received the report shall transmit it without delay to the Ordinary of the place where the events are said to have occurred, as well as to the Ordinary of the person reported, who proceed according to the law provided for the specific case.

§4. For the purposes of this title, Eparchies are equated with Dioceses and the Hierarch is equated with the Ordinary.

## **Art. 3 – Reporting**

§1. 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 where the events are said to have occurred or to another Ordinary among those referred to in canons 134 CIC and 984 CCEO, except for what is established by §3 of the present article.

§2. Any person can submit a report concerning the conduct referred to in article 1, using the



methods referred to in the preceding article, or by any other appropriate means.

§3. When the report concerns one of the persons indicated in article 6, it is to be addressed to the Authority identified based upon articles 8 and 9. The report can always be sent to the Holy See directly or through the Pontifical Representative.

§4. The report shall include as many particulars as possible, such as indications of time and place of the facts, of the persons involved or informed, as well as any other circumstance that may be useful in order to ensure an accurate assessment of the facts.

§5. Information can also be acquired *ex officio*.

#### **Art. 4 – Protection of the person submitting the report**

§1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality.

§2. Except as provided for by canons 1390 CIC and 1452 and 1454 CCEO, prejudice, retaliation or discrimination as a consequence of having submitted a report is prohibited and may constitute the conduct referred to in article 1 §1, letter b).

§3. An obligation to keep silent may not be imposed on any person with regard to the contents of his or her report.

#### **Art. 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.

§2. The good name and the privacy of the persons involved, as well as the confidentiality of their personal data, shall be protected.

## PROVISIONS CONCERNING BISHOPS

### AND THEIR EQUIVALENTS

#### Art. 6 – Subjective scope of application

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*;
- 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*.

#### Art. 7 – Competent Dicastery

§1. For the purposes of this title, “competent Dicastery” means the Congregation for the Doctrine of the Faith, regarding the delicts reserved to it by the norms in force, as well as, in all other cases and as far as their respective jurisdiction is concerned, based on the proper law of the Roman Curia:

- the Congregation for the Oriental Churches;
- the Congregation for Bishops;
- the Congregation for the Evangelization of Peoples;
- the Congregation for the Clergy;
- the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life.

§2. In order to ensure the best coordination, the competent Dicastery informs the Secretariat of State, and the other Dicasteries directly concerned, of the report and the outcome of the investigation.

§3. The communications referred to in this title between the Metropolitan and the Holy See take place through the Pontifical Representative.

#### **Art. 8 – Procedure applicable in the event of a report concerning a Bishop of the Latin Church**

§1. The Authority that receives a report transmits it both to the Holy See and to the Metropolitan of the Ecclesiastical Province where the person reported is domiciled.

§2. If the report concerns the Metropolitan, or the Metropolitan See is vacant, it shall be forwarded to the Holy See, as well as to the senior suffragan Bishop by promotion, to whom, if such is the case, the following provisions regarding the Metropolitan apply.

§3. In the event that the report concerns a Papal Legate, it shall be transmitted directly to the Secretariat of State.

#### **Art. 9 – Procedure applicable to Bishops of Eastern Catholic Churches**

§1. Reports concerning a Bishop of a Patriarchal, Major Archiepiscopal or Metropolitan Church *sui iuris* shall be forwarded to the respective Patriarch, Major Archbishop or Metropolitan of the Church *sui iuris*.

§2. If the report concerns a Metropolitan of a Patriarchal or Major Archiepiscopal Church, who exercises his office within the territory of these Churches, it is forwarded to the respective Patriarch or Major Archbishop.

§3. In the preceding cases, the Authority who receives the report shall also forward it to the Holy See.

§4. If the person reported is a Bishop or a Metropolitan outside the territory of the Patriarchal, the Major Archiepiscopal or the Metropolitan Church *sui iuris*, the report shall be forwarded to the Holy See.

§5. In the event that the report concerns a Patriarch, a Major Archbishop, a Metropolitan of a Church *sui iuris* or a Bishop of the other Eastern Catholic Churches *sui iuris*, it shall be forwarded to the Holy See.

§6. The following provisions relating to the Metropolitan apply to the ecclesiastical Authority to which the report is to be forwarded based on this article.

#### **Art. 10 – Initial duties of the Metropolitan**

§1. Unless the report is manifestly unfounded, the Metropolitan immediately requests, from the competent Dicastery, that he be assigned to commence the investigation. If the Metropolitan considers the report manifestly unfounded, he shall so inform the Pontifical Representative.

§2. The Dicastery shall proceed without delay, and in any case within thirty days from the receipt of the first report by the Pontifical Representative or the request for the assignment by the Metropolitan, providing the appropriate instructions on how to proceed in the specific case.

#### **Art. 11 – Entrusting the investigation to a person other than the Metropolitan**

§1. If the competent Dicastery considers it appropriate to entrust the investigation to a person other than the Metropolitan, the Metropolitan is so informed. The Metropolitan delivers all relevant information and documents to the person appointed by the Dicastery.

§2. In the case referred to in the previous paragraph, the following provisions relating to the Metropolitan apply to the person charged with conducting the investigation.

#### **Art. 12 – Carrying out the investigation**

§1. Once he has been appointed by the competent Dicastery and acting in compliance with the instructions received, the Metropolitan, either personally or through one or more suitable persons:

- a) collects relevant information regarding the facts;
- b) accesses the information and documents necessary for the purpose of the investigation kept in the archives of ecclesiastical offices;
- c) obtains the cooperation of other Ordinaries or Hierarchs whenever necessary;
- d) requests information from individuals and institutions, including civil institutions, that are able to provide useful elements for the investigation.

§2. If it is necessary to hear from a minor or a vulnerable person, the Metropolitan shall adopt appropriate procedures, which take into account their status.

§3. In the event that there are well-founded motives to conclude that information or documents concerning the investigation are at risk of being removed or destroyed, the Metropolitan shall take the necessary measures for their preservation.

§4. Even when making use of other persons, the Metropolitan nevertheless remains responsible for the direction and conduct of the investigation, as well as for the timely execution of the

instructions referred to in article 10 §2.

§5. The Metropolitan shall be assisted by a notary freely appointed pursuant to canons 483 §2 CIC and 253 §2 CCEO.

§6. The Metropolitan is required to act impartially and free of conflicts of interest. If he considers himself to be in a conflict of interest or is unable to maintain the necessary impartiality to guarantee the integrity of the investigation, he is obliged to recuse himself and report the circumstance to the competent Dicastery.

§7. The person under investigation enjoys the presumption of innocence.

§8. The Metropolitan, if requested by the competent Dicastery, informs the person of the investigation concerning him/her, hears his/her account of the facts and invites him/her to present a brief in defence. In such cases, the investigated person may be assisted by legal counsel.

§9. Every thirty days, the Metropolitan sends a status report on the state of the investigation to the competent Dicastery.

### **Art. 13 – Involvement of qualified persons**

§1. In accordance with any eventual directives of the Episcopal Conference, of the Synod of Bishops or of the Council of Hierarchs regarding how to assist the Metropolitan in conducting the investigation, the Bishops of the respective Province, individually or together, may establish lists of qualified persons from which the Metropolitan may choose those most suitable to assist in the investigation, according to the needs of the individual case and, in particular, taking into account the cooperation that can be offered by the lay faithful pursuant to canons 228 CIC and 408 CCEO.

§2. The Metropolitan, however, is free to choose other equally qualified persons.

§3. Any person assisting the Metropolitan in the investigation is required to act impartially and must be free of conflicts of interest. If he considers himself to be in a conflict of interest or be unable to maintain the necessary impartiality required to guarantee the integrity of the investigation, he is obliged to recuse himself and report the circumstances to the Metropolitan.

§4. The persons assisting the Metropolitan shall take an oath to fulfil their charge properly.

### **Art. 14 – Duration of the investigation**

§1. The investigation is to be completed within the term of ninety days or within a term otherwise provided for by the instructions referred to in article 10 §2.

§2. Where there are just reasons, the Metropolitan may request that the competent Dicastery extend the term.

#### **Art. 15 - Precautionary measures**

Should the facts or circumstances require it, the Metropolitan shall propose to the competent Dicastery the adoption of provisions or appropriate precautionary measures with regard to the person under investigation.

#### **Art. 16 – Establishment of a fund**

§1. Ecclesiastical Provinces, Episcopal Conferences, Synods of Bishops and Councils of Hierarchs may create a fund, to be established according to the norms of canons 116 and 1303 §1, 1° CIC and 1047 CCEO and administered according to the norms of canon law, whose purpose is to sustain the costs of the investigations.

§2. At the request of the appointed Metropolitan, the funds necessary for the purpose of the investigation are made available to him by the administrator of the fund; the Metropolitan remain duty-bound to present an account to the administrator at the conclusion of the investigation.

#### **Art. 17 – Transmission of the documents and the *votum***

§1. Having completed the investigation, the Metropolitan shall transmit the acts to the competent Dicastery, together with his *votum* regarding the results of the investigation and in response to any queries contained in the instructions issued under article 10 §2.

§2. Unless there are further instructions from the competent Dicastery, the faculties of the Metropolitan cease once the investigation is completed.

§3. In compliance with the instructions of the competent Dicastery, the Metropolitan, upon request, shall inform the person who has alleged an offence, or his/her legal representatives, of the outcome of the investigation.

#### **Art. 18 – Subsequent measures**

Unless it decides to provide for a supplementary investigation, the competent Dicastery proceeds in accordance with the law provided for the specific case.

#### **Art. 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.

*The present norms are approved ad experimentum for three years.*

*I establish that the present Apostolic Letter in the form of Motu Proprio be promulgated by means of publication in the Osservatore Romano, entering into force on 1 June 2019, and then published in the Acta Apostolicae Sedis.*

*Given in Rome, at Saint Peter's, on 7 May 2019, the seventh year of my Pontificate.*

**FRANCIS**

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## FACT SHEET: *Motu Proprio* “*Vos Estis Lux Mundi*”

Apostolic Letter issued *Motu Proprio* by the Supreme Pontiff Francis “*Vos Estis Lux Mundi*”

### What is a *Motu Proprio*?

In canon law, *Motu Proprio* (of his own accord) refers to a document issued by a Pope on his own initiative and signed by him. The document generally has the form of a decree. It begins by stating the reason the Pope has decided to act and then states the law or regulation made or the favour granted. The Pope as supreme executive and legislator of the Church signs it. When the Pope issues a *Motu Proprio* in his capacity as legislator, he typically revises, modifies or clarifies the Church’s canon law.

Canon 9 states “laws concern matters of the future, not those of the past, unless provision is made in them for the latter by name.” Therefore, the *Motu Proprio* comes into force on the date specified and applies from that date, and not retrospectively, unless it is specifically stated in the *Motu Proprio* otherwise.

### *Vos Estis Lux Mundi* (VELM)

VELM was issued by Pope Francis on 7<sup>th</sup> May 2019 and became effective law for a three-year experimental period coming into force on 1 June 2019.

The purpose of this new legislation is to require allegations of sexual abuse occurring from 1 June 2019 against minors and vulnerable adults committed by: clerics, members of institutes of consecrated life (priests, sisters and brothers), members of societies of apostolic life (lay and ordained), as well as Bishops and other leaders, to be reported to the proper authorities and to be dealt with according to due process in order to ensure justice for the victims and safeguarding of the common good.

VELM is an indication of the seriousness with which Pope Francis is seeking to bring about change in the way allegations are managed, to provide care for complainants of abuse, and to ensure accountability on the part of Church leaders.

VELM is divided into two sections referred to as Titles:

**Title I (Articles 1-5)** provides the general provisions of the law, outlines the nature of the crimes involved and defines the terminology used.

It also sets out the delicts that VELM covers. Delicts are defined as ‘crimes in canon law, an external violation of a law or precept gravely imputable by reason of malice or negligence’. As outlined in canon 1311, ‘The Church has its own inherent right to constrain with penal sanctions Christ’s faithful who commit offences’. This is done through investigations and procedures outlined in Title I and Title II.

Title I indicates how reports are to be received and dealt with and states the obligation of ecclesiastical authorities to care, support and protect all the persons concerned.

**Title II (Articles 6-19)** provides details of the procedures to be followed and the actions to be taken when the person at the centre of a report is a Bishop or someone who in canon law is considered to have a responsibility equivalent to that of a Bishop.

### Whom does VELM apply to?

VELM applies to reports regarding all clerics, members of Institutes of Consecrated Life (priests, sisters and brothers) or Societies of Apostolic Life (clerics and lay members) and Bishops and other leaders.

### What crimes are covered in VELM?

Delicts against the sixth commandment of the Decalogue consisting of:

- Forcing someone by violence or threat or through abuse of authority to perform or submit to sexual acts;
- Performing sexual acts with a minor or a vulnerable person;
- 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

1. Glossary of
2. Hierarchy
3. Sacrament
4. Normae de
5. Letters to
6. As a
7. <b>Vox Estis</b>
8. The
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a vulnerable person to participate in pornographic exhibitions.

When committed by clerics (Bishops, priests or deacons) or by members of Institutes of Consecrated Life and Societies of Apostolic life as well as the cover-up of such crimes when committed by a Bishop or a Supreme Moderator of a religious congregation.

## Reporting process

VELM is designed to facilitate reports from clerics and members of Institutes of Consecrated Life and Societies of Apostolic Life regarding crimes of sexual abuse committed by clerics and members of Institutes of Consecrated Life and Societies of Apostolic Life, and the concealing of crimes of sexual abuse by Bishops and their equivalents. Other people can complete the attached reporting form, but are encouraged to first [review this page on the Australian Catholic Bishops' Conference website](#) about reporting allegations of abuse.

## Australian Catholic Bishops' Conference documents:

- [Vos Estis Lux Mundi full document](#)
- [Implementation of Vos Estis Lux Mundi in Australia](#)
- [Vos Estis Lux Mundi -- Summary and Reporting Process](#)
- [Diagram for Reporting -- Vos Estis Lux Mundi](#)
- [Report of Canonical Crime Form](#)
- [A Complaint Concerning Bishops and Supreme Moderators of Congregations](#)
- [Contact details for Bishops](#)

If you reside in NSW/ACT and are submitting a Report of Canonical Crime Form, you must:

1. Send a copy of the Form to the Arch/Bishop where you reside
2. Send a copy of the Form to the Arch/Bishop where the Respondent resides

**AND**

3. Send a copy of the Form to [the Bishop of the Diocese, Eparchy or Ordinariate](#) where the crimes are alleged to have occurred

A report may be sent directly to the Congregation for the Doctrine of the Faith at the Holy See, addressed to:

*Prefect: Card. Luis Francisco Ladaria Ferrer, S.I., Congregation for the Doctrine of the Faith,*

*Palazzo del Sant'Uffizio 00120, Vatican City, Italy*

OR to the Apostolic Nuncio in Australia addressed to:

*Apostolic Nunciature (Embassy for the Holy See), The Archdiocese of Canberra Goulburn, 2 Vancouver Street, Red Hill ACT 2603.*

If a person is unable to notify a complaint due to their age, a language barrier or a disability, another person may make the notification on their behalf.

## Who must report?

All clerics and religious must report when they have “notice of or well-founded motives to believe that” sexual abuse or a cover-up has been committed. In addition, VELM encourages all laypersons to report clerical sexual abuse and its cover-up to the Archdiocese.

**VELM does not remove lay or religious personnel's obligations to report under state legislation and the Archdiocesan Policy and Protocols.**

## Reports against Bishops

Allegations against Bishops, if not manifestly false, will be conducted by the Metropolitan Archbishop once approval from the competent dicastery has been given.

## Protection for the accused, victims and whistle-blowers

Whoever reports a case of sexual abuse or cover-up will not be subjected to “prejudice, retaliation or discrimination” because of what they report. All those involved must be treated fairly and with respect. The innocence of the accused must be presumed and the accused must be given the chance to defend himself and to receive legal counsel.

## Definitions

**Minor** means: any person under the age of 18, or who is considered by law to be the equivalent of a minor

**Adult at Risk<sup>1</sup>** means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence.

**Child Abuse Material<sup>2</sup>** means any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors (under the age of 18) for primarily sexual purposes

**Delict** means crimes in canon law, an external violation of a law or precept gravely imputable by reason of malice or negligence

**Competent Dicastery** means the Congregation for the Doctrine of the Faith, regarding the delicts reserved to it by the norms in force, as well as, in all other cases and as far as their respective jurisdiction is concerned, based on the proper law of the Roman Curia:

- The Congregation for the Oriental Churches;
- The Congregation for Bishops;
- The Congregation for the Evangelisation of Peoples;
- The Congregation for the Clergy;
- The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life

**VELM** means *Vos Estis Lux Mundi* (You are the light of the world)

### More Information

If you have any questions about the implementation and/or application of VELM in Australia, please [email the Bishops Conference's Secretariat for Canon Law](#).

### Further Resources

Visit the Archdiocese's Safeguarding website to access the Archdiocesan Policy and Protocols including:

- **Protocol:** Managing Safeguarding Complaints
- **Fact Sheet:** When is a Child at Risk of Significant Harm?
- **Guidance Document:** When is a Child at Risk of Significant Harm?
- **Protocol:** Reporting a Child who is at Risk of Significant Harm to the Department of Communities and Justice

<sup>1</sup> The term **Vulnerable Person** has been replaced with **Adult at Risk** to align with the Policy and ACBC.

<sup>2</sup> The term **Child Abuse Material** replaces **Child Pornography** given the non-consensual nature of the abuse



# The sacramental seal of confession (2019)

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***Note of the Apostolic Penitentiary  
on the Importance of the Internal Forum  
and The Inviolability of the Sacramental Seal  
{The Seal of Confession}***

The Note from the Apostolic Penitentiary was published in June 2019 following on from action by governments in Australia, California and other parts of the world to undermine the sacramental seal.

In May 2019 California’s state senate introduced a bill that would require priests to violate the seal if they had knowledge or suspicion of child abuse gained from hearing the sacramental confessions of other priests or co-workers.

A report by a Royal Commission set up to examine child sexual abuse in Australia recommended similar laws in that country in 2018.

The document also cautioned against a media culture which can produce a “negative prejudice against the Catholic Church” and lead to an unjust approach to reporting.

1. Glossary of
2. Hierarchy
3. Sacrament
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**Note of the Apostolic Penitentiary  
on the Importance of the Internal Forum  
and The Inviolability of the Sacramental Seal {The Seal of Confession}**

“By the Incarnation, the Son of God has in a certain way united with every man”<sup>1</sup>, with His gestures and His words he has illuminated the highest and inviolable dignity of man; in himself, dead and risen, he has restored fallen humanity, overcoming the darkness of sin and death; to all who believe in him, he has disclosed a relationship with His Father; with an outpouring of the Holy Spirit, he consecrated the Church, the community of believers, as His true body and who participates in his prophetic power, royal and priestly, because in the world it is the extension of His own presence and mission, announcing the Truth to men in every age, guiding them to the splendor of His light, permitting that their life be really touched and transformed.

In these troubled times of human history, the growing progress of Techno-Science does not seem to correspond to an adequate ethical and social development, but rather a real cultural and social “decline”, forgetful of God – if not even hostile – becomes incapable of recognizing and respecting, in every area and at every level, the essential order of human existence and, with them, the life of the Church herself.

“If technical progress is not matched by corresponding progress in man’s ethical formation, in man’s inner growth [ . . . ], then it is not progress at all, but a threat for man and for the world.”<sup>2</sup> Also in the field of communications private and mass-media enhance “technical possibilities” beyond measure, but they enhance the love for truth, the commitment to its research, the sense of responsibility before God and men; this results in an alarming disproportion between means and ethics.

This communication hypertrophy seems to turn against the truth, and therefore against God and mankind; against Jesus Christ, God made man, and the Church, His historical and real presence.

In these last decades a certain “hunger” for news, almost forgetting their reliability and convenience, to a point in which the “communication world” seems to take reality’s “place”, both conditioning its perception and counterfeiting it’s understanding. Unfortunately people of the Church, which live in the world and sometimes think as the world does, are not immune to such thoughts, that can become somehow morbid. Also within believers precious energies are wasted in the search of “news” – or downright “scandals” – that can find consent with public opinion, with purposes that are strangers to the Churches divine and human purposes. This jeopardizes the proclamation of the Gospel to every creature and the mission’s needs. We must humbly recognize that not even the clergy, even at the highest hierarchies, are immune from this trend.

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<sup>1</sup> VATICAN II ECUMENICAL COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes* (7 December 1965), n. 22.

<sup>2</sup> BENEDICT XVI, Encyclical Letter, *Spe salvi* (20 November 2007), n. 22.



Calling for the judgment of public opinion, as the final court, often all kinds of information, even private and personal, have been disclosed and thus have touched the ecclesiastical life – or at the very least – have led to rash judgments, affecting illegitimately and irreparably the good reputation of others, not only the right of every person to defend their own privacy (cf. can 220 CIC). The words of St. Paul to the Galatians are heard, in this scenario, particularly useful: For you were called for freedom, brothers. But do not use this freedom as an opportunity for the flesh; But if you go on biting and devouring one another, beware that you are not consumed by one another (Gal 5:13-15).

In this context a certain worry is asserted, a “negative bias” seems to be affirmed towards the Catholic Church, whose existence is culturally present and re-understood socially, on the one side, in light of the tension that can occur within the same hierarchy and, on the other, from the recent scandals of abuse, horribly perpetrated by some members of the clergy. This prejudice forgets the true nature of the Church, of her true history and of the real, beneficial effect that it has always had and still has in the lives of men, and it sometimes claims, unjustifiably, that the Church itself, in certain matters, reaches to conform its own legal system to the civil laws in the States which it resides, as the only possible “guarantee of correctness and rectitude.”

In the face of all this, the Apostolic Penitentiary has considered it appropriate to intervene, with this “Note” to reaffirm the importance and promote a better understanding of those concepts, typical of ecclesial and social communications, that today seem more alien to public opinion and sometimes to civil juridical systems: the sacramental seal, the confidentiality in the extra-sacramental internal forum, the professional secrecy, the criteria and real limits of all other communications.

### **1. The Sacramental Seal**

Recently, speaking of the Sacrament of Reconciliation, the Holy Father, Pope Francis wanted to confirm the essential and inalienable seal in the sacrament: “Reconciliation itself is a good that the wisdom of the Church has always safeguarded with all her moral and legal force with the sacramental seal. Although not always understood by the modern mentality, it is indispensable for the sanctity of the sacrament and for the freedom of conscience of the penitent; who must be certain, at any time, that the sacramental conversation will remain in the secrecy of the confessional, between one’s conscience that opens to grace, and God, with the necessary mediation of the priest.”<sup>3</sup>

The inviolable secrecy of the Confession comes directly from Divine Law revealed and is rooted in the very nature of the sacrament, which admits no exceptions in the ecclesial context, nor, even less, in the civil context. Indeed, in the celebration of the Sacrament of Reconciliation it is enclosed, in fact, the very essence of Christianity and the Church: the Son of God became man to save us and has decided to engage, a “necessary tool” which in this work of salvation, the Church and, in it, those whom He chose, called, and commissioned as His ministers.

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<sup>3</sup> FRANCIS, Message to the participants in the 30th Course on the Internal Forum organized by the Apostolic Penitentiary (29 March 2019).

To express this truth, the Church has always taught that priests, in the celebration of the sacraments, act "*in persona Christi capitis*" [in the person of Christ as Head]: "Christ allows us to use his "I", we speak in the "I" of Christ. Christ is "drawing us into himself" and allows us to be united. He unites us with his "I". So, through this action, the fact that he "draws" us to himself so that our "I" becomes united to his, he realizes the permanence, the uniqueness of his Priesthood. Therefore, he is at all times the unique Priest. Yet, he is very present to the world because he "draws" us to himself and so renders present his priestly mission. This means that we are "drawn" to the God of Christ. It is this union with his "I" which is realized in the words of the consecration. Also in the "I absolve you" because none of us could absolve from sins it is the "I" of Christ, of God, who alone can absolve."<sup>4</sup>

Any penitent who humbly goes to the priest to confess his sins, thus bears witness to the great mystery of the Incarnation and the supernatural essence of the Church and of the ministerial priesthood, through which men encounter the Risen Christ, touched their lives sacramentally – thus really –and He saves them. For this reason, the defense of the sacramental seal by the confessor, and if necessary to the shedding of blood (*usque ad sanguinis effusionem*) represents not only an act of dutiful "loyalty" towards the penitent, but much more: a necessary testimony – a "martyrdom" – made directly to the uniqueness and salvific universality of Christ and of the Church.<sup>5</sup>

The matter of the seal is currently expressed and regulated by can. 983-984 and 1388, § 1 of the Code and in can. 1456 of the Eastern Code of Canon Law, as well as from n. 1467 in the *Catechism of the Catholic Church*, we read not that the Church "establishes", by virtue of her own authority, but rather that she "declares" – that is, recognizes as an irreducible fact, which is derived precisely from the sanctity of the sacrament instituted by Christ – every priest that hears confessions is obligated, under great and severe pain, to keep absolute secret with regards to the sins that his penitent has confessed.

The confessor is absolutely forbidden, ever for any reason, to betray the penitent in word or in any manner (Can. 983, § 1 CIC), as well, the confessor is prohibited completely from using any knowledge acquired from confession to the detriment of the penitent even when any danger of revelation is excluded (Can. 984, § 1 CIC). The doctrine also helped to further specify the content of the sacramental seal, which includes "all the sins of both the penitent and others known from the penitent's confession, both mortal and venial, both occult and public, as manifested in order to absolution and therefore known to the confessor by virtue of sacramental science".<sup>6</sup> The sacramental seal, therefore, regards everything the penitent has accused, even in the event that the confessor does not grant absolution: if the confession is invalid or for some reason the absolution is not given, however the seal must be maintained.

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<sup>4</sup> BENEDICT XVI, Meeting of priests (10 June 2010).

<sup>5</sup> Cf. CONGREGATION FOR THE DOCTRINE OF THE FAITH, Declaration *Dominus Iesus*, about the uniqueness and salvific universality of Jesus Christ and the Church (6 August 2000).

<sup>6</sup> V. DE PAOLIS –D. CITO, *Sanctions in the Church. Commentary on the Code of Canon Law, Book VI*, Vatican City, Urbaniana University Press, 2000, p. 345.

The priest, in fact, becomes aware of the sins of the penitent “*non ut homo, sed ut Deus*” - not as man, but as God knows it,<sup>7</sup> so much so that he simply “does not know” what he was told in confession, because he did not listen as a man, but, precisely, in the Name of God. The confessor could, therefore, also, “swear”, without any prejudice to one’s conscience, to “not know” what he knows only as a minister of God. Because of its peculiar nature, the sacramental seal comes to bind the confessor also “inwardly”, to the point that remembering a confession voluntarily is prohibited and he is obliged to suppress every involuntary memory of it. The secret deriving from the seal is also held by those who, in any way, came to know the sins of confession: “The interpreter, if there is one, and all others who in any way have knowledge of sins from confession are also obliged to observe secrecy.” (Can. 983, § 2 CIC).

The absolute prohibition imposed by the sacramental seal is as such to prevent the priest of speaking of the context of the confession with the same penitent, outside the sacrament, “unless explicit, and even better if not requested, consent from the penitent”.<sup>8</sup> The seal therefore goes beyond the ability of the penitent, which once the sacrament is celebrated, does not have the power to raise the confessor from the obligation of secrecy, because this duty comes directly from God.

The defense of the sacramental seal and the sanctity of confession will never be able to constitute some form of tacit consent with evil, on the contrary they represent the only true antidote to evil that threatens man and the entire world; there is a real possibility to indulge in the love of God, to let oneself be converted and transformed by this love, learning to correspond concretely in one’s own life. In the presence of sins that integrate offenses, one is never allowed to ask the penitent, as a condition for absolution, the obligation to go to civil justice, by virtue of the natural principle, implemented in every legal system, according to which “*Nemo tenetur se detegere*” (“No one is obliged to disclose”). At the same time, however, it belongs to the very “structure” of the Sacrament of Reconciliation, as a condition for its validity, the sincere repentance, along with a firm resolution to amend and not to commit the sin (evil) again. If a penitent comes along who has been the victim of the sin of others, it will be the confessor’s care to instruct him regarding his rights, as well as the concrete facts legally to be used to denounce the fact in the civil and/or the ecclesiastical system and invoke justice.

Any political action or legislative initiative aimed at “forcing” the inviolability of the sacramental seal would constitute an unacceptable offense against the “*libertas Ecclesiae*” (“freedom of the Church”), who does not receive its legitimacy from individual States, but from God; would also constitute a violation of religious freedom, legally founding every other freedom, including the freedom of conscience of individual citizens, both penitents and confessors. Violating the seal would be tantamount to the poor who is in the sinner.

<sup>7</sup> THOMAS AQUINAS, *Summa Theologiae*, Suppl., 11, 1, ad 2.

<sup>8</sup> John Paul II, *Message to the Apostolic Penitentiary*, 12 March 1994, n.4

## 2. Extra-sacramental Internal Forum and Spiritual Direction

The so-called judicial –moral of the internal forum also belongs to the “extra -sacramental internal forum”, always hidden, but external to the sacrament of Penance. Also, in it the Church exercises her mission and saving power: not forgiving sins, but granting graces, breaking legal constraints (such as censures) and dealing with everything concerning the sanctification of souls and, therefore, the proper, private and personal sphere of each faithful.

Spiritual direction belongs to the internal extra-sacramental forum, in which the faithful individual entrusts his own path of conversion and sanctification to a specific priest, consecrated, or lay person.

The priest exercises this ministry by virtue of the mission he has of representing Christ, conferred on him by the Sacrament of [Holy] Orders and to be exercised in the hierarchical communion of the Church, through the so-called “three functions”: the task to teach, to sanctify and to govern, and the laity in virtue of the baptismal priesthood and the gift of the Holy Spirit.

In spiritual direction, the believer freely opens the secret of his own conscience to the spiritual director/companion, to be oriented and supported in listening and in fulfilling the will of God. Also this particular area, therefore, asks for some certain secrecy “outside”, inherent to the content of spiritual discussions and deriving from the right of each person to respect his own privacy (cf. Can. 220 CIC). In an analogous way to what happens in the sacrament of confession, the spiritual director takes part of the conscience of the individual believer by virtue of his “special” relationship with Christ, which derives from holiness of life and – if a cleric – from the very Sacred Orders received.

To testimony of the special confidentiality accorded to spiritual direction, we must consider the prohibition, sanctioned by law, of not only asking for the opinion of the confessor, but also that of the spiritual director, on the occasion of the admission to Holy Orders or, vice versa, for dismissing candidates for the priesthood, from the seminary (cf. can. 240, § 2 CIC; can. 339, § 2 CCEO). Similarly, the teaching of *Sanctorum Mater* in 2007, relating to the conduct of the diocesan or eparchial investigations in the Causes of the Saints, “Regular confessors or spiritual directors of the Servant of God must not be admitted to testify concerning anything they have come to know about the Servant of God in the forum of conscience outside sacramental confession.”<sup>9</sup> The necessary confidentiality will be all the more “natural” for the spiritual director, he will learn much more and “be moved” before the mystery of freedom of the faithful who, through him, turn to Christ; the spiritual director will have to understand one’s own mission and life exclusively before God, the service of His glory, for the good of the person, the Church and for the salvation of the whole world.

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<sup>9</sup> Cf. CONGREGATION OF THE CAUSES OF SAINTS, *Sanctorum Mater*, Instructions for carrying out diocesan and eparchial investigations into the causes of saints (17 May 2007), art. 101, § 2.

### 3. Secrets and other limits proper to communication

Of a different nature compared to the internal forum, sacramental and extra-sacramental, are confidences made under the secrecy of the seal, as well as so-called “professional secrets”, of which particular categories of people are in possession, both in civil society and in the ecclesial structure, by virtue of a special office carried out by these individuals or the community. Such secrets, under natural law, must always be kept, “except” as stated in the *Catechism of the Catholic Church* n. 2491 “ in exceptional cases where keeping the secret is bound to cause very grave harm to the one who confided it, to the one who received it or to a third party, and where the very grave harm can be avoided only by divulging the truth.”

A special case of secrecy is that of the “pontifical secret”, which binds in strength of the oath connected with the exercise of certain offices at the service of the Apostolic See. If the oath of secrecy always binds “before God” who issues it, the oath connected to the “pontifical secret” has as its ultimate “reason” in the public good of the Church and the “salvation of souls”. It assumes that this good is itself needed for the “salvation of souls”, including therefore the use of information that does not fall under the seal, can and must be correctly interpreted by the Apostolic See, in the person of the Roman Pontiff, whom Christ the Lord constituted and put as a visible principle and foundation of the unity of the faith and communion with the whole Church.<sup>10</sup>

As regards the other areas of communication, both public and private, in all its forms and expressions, the wisdom of the Church has always indicated the fundamental criterion is the “Golden Rule” pronounced by the Lord and recorded in the Gospel of Luke: “Do to others as you would have them do to you” (Lc 6:31). In this way, in the communication of truth as in silence concerning it, when those who did not have the right to know it, they must always conform their lives to the precept of brotherly love, having before his eyes the good and safety of others, respect for private life and the common good.<sup>11</sup>

What a particular duty to communicate the truth, dictated by fraternal charity, one cannot fail to mention “fraternal correction”, in its various degrees, taught by the Lord. It remains the reference point, where necessary and according to what concrete circumstances allow and demand: “If your brother sins [against you], go and tell him his fault between you and him alone. If he listens to you, you have won over your brother. If he does not listen, take one or two others along with you, so that ‘every fact may be established on the testimony of two or three witnesses.’ If he refuses to listen to them, tell the church” (Mt 18:15-17).

In a time of mass communication, in which all information comes “burned” and with it, unfortunately, also a part of people’s lives, it is necessary to re-learn the power of the word, its constructive power, but also its own destructive potential; we must be vigilant so that the sacramental

<sup>10</sup> Cf. VATICAN II ECUMENICAL COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium* (21 November 1964), n. 18.

<sup>11</sup> Cf. *Catechism of the Catholic Church*, n. 2489.

seal never becomes violated by anyone and the necessary confidentiality connected to the exercise of the ecclesial ministry is always jealously guarded, having truth and only the integral good of people as its horizon [ultimate goal].

We invoke the Holy Spirit, for all the Church, for an ardent love of truth in every area and circumstance of life; the ability to keep proclaiming the Gospel in its entirety to every creature, to defend the inviolability of the sacramental seal with a willingness unto martyrdom, as well as the prudence and wisdom necessary to avoid any instrumental and erroneous use of the information proper to private life, social and ecclesial, which can be turned into an offense against the dignity of the person and of Truth itself, which is always Christ, Lord and Head of the Church.

In the jealous custody of the sacramental seal and the necessary discretion linked to the internal forum extra-sacramental and to the other ministerial acts shines a particular synthesis between the Petrine and Marian dimensions of the Church.

With Peter, the bride of Christ [the Church] guards the ministry of the institutional “power of the keys” until the end of history; like Mary Most Holy, the Church keeps “all these things in her heart” (Lk. 2:51b), knowing that the light reverberates in every man and that, in the sacred place between personal conscience and God, it must be preserved and defended.

*The Supreme Pontiff Francis, on 21 June 2019, approved the present Note and ordered its publication*

*Given in Rome, from the Seat of the Apostolic Penitentiary, June 29, in the year of Our Lord 2019, on the Solemnity of the Apostles Saints Peter and Paul.*

Mauro Card. Piacenza  
*Major Penitentiary*

Mons. Krzysztof Nykiel  
*Regent*

# Presentation of the Note of the Apostolic Penitentiary on the importance of the internal forum and the inviolability of the sacramental seal

On the occasion of the recent audience with the participants in the Course on the internal forum organized by the Apostolic Penitentiary (29 March 2019), Pope Francis repeatedly emphasized two themes so central to theology, law and the practice of the Church, extraneous to current public opinion: the sacredness of the internal forum and the inviolability of the sacramental seal.

At the beginning of his address, the Holy Father recalled, in the first place, the sacred nature of the internal forum, the intimate sphere of the relationship between God and the faithful, which is not always understood and correctly protected, even within the ecclesial community itself:

*"And I would like to add — beyond the text — a word on the term "internal forum". This is not a trivial expression: it is stated seriously. The internal forum is an internal forum, and it cannot go "outside". And I say this because I have noticed that some groups in the Church, representatives, superiors — let us put it this way — blend the two things and take from the internal forum to make decisions in the external one, and vice versa. Please, this is a sin! It is a sin against the dignity of the person who trusts the priest, and who expresses his or own situation to ask for forgiveness, and then this is used to organize matters for a group or a movement, perhaps — I don't know, I am improvising — perhaps even a new congregation, I don't know. But the internal forum is an internal forum. And it is a sacred thing. I wanted to say this because I am concerned about this."*

The Pope then went on to reiterate the absolute inviolability of the sacramental seal, an indispensable guarantee of the sacrament of reconciliation:

*"Reconciliation itself is a benefit that the wisdom of the Church has always safeguarded with all her moral and legal might, with the sacramental seal. Although it is not always understood by the modern mentality, it is indispensable for the sanctity of the sacrament and for the freedom of conscience of the penitent, who must be certain, at any time, that the sacramental conversation will remain within the secrecy of the confessional, between one's conscience that opens to grace, and God, with the necessary mediation of the priest. The sacramental seal is indispensable and no human power has jurisdiction over it, nor can lay any claim to it."*

The Apostolic Penitentiary, which for eight centuries has been the Apostolic Tribunal responsible for matters concerning the internal forum, knows well the inestimable value of the sacramental secret, of the reserve, and of the inviolability of the conscience. In writing the *Note* that is now presented, he wished to place himself at the service of Peter, the Church and all men of good will, reaffirming their importance and promoting a better understanding of such concepts that currently seem to be widely misunderstood or even, in some cases, opposed.

The document begins with the observation that in today's highly mediated society, technological development and the implementation of the media do not correspond, in general, to a similar commitment to the search for truth, but rather to the morbid desire of circulating news, true or false, amplified or diminished according to interests. Today everything is displayed, everything must be known. "By invoking, in fact, the judgment of public opinion as the final court, information of all kinds, belonging also to the most private and reserved spheres, which inevitably (...) induce, or at least favour reckless judgments, unlawfully and irreparably damage the good reputation of others". This generalized attitude is also reflected on the Church, whose legal order is expected, at times, to conform to that of the States in which it lives in the name of a supposed correctness and transparency.

In this context, the Apostolic Penitentiary considered it urgent to recall, in the first place, the absolute inviolability of the sacramental seal, which is based on divine law and does not admit any exception. The priest confessor, acting *in persona Christi capitis*, knows the sins of the penitent "not as a man, but as God", according to a well-known expression of Saint Thomas Aquinas. For this reason, he is called to defend the secret of the content of the Confession not only through "loyalty" to the penitent, but, moreover, out of respect for the sanctity of the sacrament.

In this sense, it is essential to insist on the incomparability of the seal of confession to the professional secrecy proper to certain professional groups (doctors, pharmacists, lawyers, etc.) in order to prevent secular laws from applying to the seal, which is inviolable, the exceptions legitimately applied to professional secrecy.

The secrecy of confession is not an obligation imposed from the outside, but rather an intrinsic requirement of the sacrament and, as such, can not be dissolved even by the penitent. The penitent does not speak to the confessor as a man, but to God, so to stake a claim to what rightfully belongs to God would be a sacrilege. It concerns the defence of the sacrament itself, instituted by Christ to be a safe harbour of salvation for sinners. If trust in the seal were to be defrauded, the faithful would be discouraged to access the sacrament of Reconciliation, which would obviously lead to serious damage to souls. On the other hand, it is precisely this concern for the *salus animarum* that moves the Church to establish the most severe penalties for those who violate the seal (see canon 1388 CIC 728, § 1, No. 1 and can. 1456 CCEO). Secondly, the *Note* considers the juridical-moral scope of those acts of the internal forum that take place outside the sacrament of Penance. The classic example is that of spiritual direction. Also in these cases, canon law guarantees a special reserve for spiritual conversation, which involves the most intimate and personal sphere of the faithful in order to listen and discern the will of God. Thus, for example, on the occasion of admission to the sacred Order, it is forbidden to ask the opinion not only of the confessor but also of the spiritual director of the candidate, to avoid any possible abuse of power.

Finally, the last point of the *Note* deals with the other "types" of secrecy that fall outside the scope of the internal forum. In this sense, the principle of the natural right to keep secrecy is reaffirmed, "save in exceptional cases where keeping the secret is bound to cause very grave harm to the one who confided it, to the one who received it or to a third party, and where the very grave harm can be avoided only by divulging the truth" (CCC, No. 2491). More generally, when communicating or concealing the truth, the Note



1. Glossary of
2. Hierarchy
3. Sacrament
4. Normae de
5. Letters to
6. As a
7. Vox Estis
<b>8. The</b>
9. On the
10. Pontifical

proposes as a general criterion that of “conforming one’s life to the precept of brotherly love, with an eye toward good and security, respect for private life and the common good”. It should be noted that the text of the *Note* cannot and does not seek to be any way a justification or a form of tolerance towards the execrable cases of abuse perpetrated by members of the clergy. No compromise is acceptable when it comes to promoting the protection of minors and vulnerable people, and of preventing and combating all forms of abuse, in the spirit of what Pope Francis has constantly reiterated and has recently regulated with the Motu Proprio *Vox estis lux mundi* (7 May 2019).

By publishing a *Note* on the importance of the internal forum and the inviolability of the sacramental seal, the Penitentiary has the absolute conviction that “the defence of the sacramental seal and the sanctity of confession can never constitute a form of connivance with evil; on the contrary, it represents the only true antidote against the evil that threatens man and the whole world, are the real possibility of surrendering to the love of God, of allowing himself to be transformed and transformed by this love, learning to correspond to it concretely with his own life”.

Mauro Cardinal Piacenza  
Major Penitentiary



# On the confidentiality of legal proceedings (2019)

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## ***Instruction on the Confidentiality of Legal Proceedings***

The Instruction published in December 2019 abolished the “pontifical secret” for child abuse committed by members of the clergy. The “pontifical secret” is a rule of confidentiality protecting sensitive information regarding the governance of the universal Church. It is similar to the “classified” or “confidential” status common in companies or civil governments.

The Instruction declares that the pontifical secret will no longer apply in cases of accusations and trials involving abuse of minors or vulnerable persons, and in cases of possession of child pornography by clerics. The pontifical secret will also no longer bind those working in offices of the Roman Curia to confidentiality on other offences if committed in conjunction with child abuse or child pornography.

1. Glossary of
2. Hierarchy
3. Sacrament
4. Normae de
5. Letters to
6. As a
7. Vox Estis
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<b>9. On the</b>
10. Pontifical

His Holiness Pope Francis, in the Audience granted to His Excellency Archbishop Edgar Peña Parra, Substitute for General Affairs of the Secretariat of State, on 4 December 2019, has decided to issue the Instruction *On the Confidentiality of Legal Proceedings*, attached to the present *Rescriptum*, of which it forms an integral part.

The Holy Father has determined that the *Rescriptum* shall have firm and stable application, notwithstanding anything to the contrary, even if worthy of special mention, that it shall be promulgated by publication in *L'Osservatore Romano*, with immediate force, and then be published in the official commentary *Acta Apostolicae Sedis*.

From the Vatican, 6 December 2019

CARDINAL PIETRO PAROLIN

*Secretary of State*

## **INSTRUCTION**

### *On the Confidentiality of Legal Proceedings*

1. The pontifical secret does not apply to accusations, trials and decisions involving the offences referred to in:
  - a) Article 1 of the *Motu proprio "Vos estis lux mundi"* (7 May 2019);
  - b) Article 6 of the *Normae de gravioribus delictis* reserved to the judgement of the Congregation for the Doctrine of the Faith, in accordance with the *Motu proprio "Sacramentorum Sanctitatis Tutela"* of Saint John Paul II (30 April 2001), and subsequent amendments.
2. Nor does the pontifical secret apply when such offenses were committed in conjunction with other offences.
3. In the cases referred to in No. 1, the information is to be treated in such a way as to ensure its security, integrity and confidentiality in accordance with the prescriptions of canons 471, 2° CIC and 244 §2, 2° CCEO, for the sake of protecting the good name, image and privacy of all persons involved.
4. Office confidentiality shall not prevent the fulfilment of the obligations laid down in all places by civil laws, including any reporting obligations, and the execution of enforceable requests of civil judicial authorities.
5. The person who files the report, the person who alleges to have been harmed and the witnesses shall not be bound by any obligation of silence with regard to matters involving the case.

# Pontifical Commission Seminar: Balancing confidentiality, transparency and accountability

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***Promoting and Protecting the Dignity of Persons  
in Allegations of Abuse of Minors and Vulnerable Adults:  
Balancing Confidentiality, Transparency and Accountability***

In December 2019 the Working group ‘Safeguarding Guidelines and Norms’ in cooperation with the Group ‘Education and Formation’ of the Pontifical Commission for the Protection of Minors organised a seminar entitled *Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability*. The original papers which are in Italian or English were published in the printed version of the journal *Periodica* of the Canon Law Faculty of Rome’s Pontifical Gregorian University.

The three-day discussion brought together 37 experts drawn from the academic world, local churches, and representatives from the different dicasteries of the Holy See.

As an advisory body, the Pontifical Commission conducts studies in many different areas, emphasizing the Church’s outreach to victims, education, and issues in civil and canon law. The ‘Safeguarding Guidelines and Norms Working Group’ organised the December seminar to examine existing frameworks for ensuring a balancing of confidentiality, transparency and accountability, particularly as stated in the apostolic letters *motu proprio Sacramentorum sanctitatis tutela* (2001, 2010) and *Vos estis lux mundi* (2019). Firmly established on these foundations, these experts explored new ways forward, agreeing that the ongoing process of renewal rests on *a radical choice to place the dignity of the person at the centre of all responses – whether they be pastoral, juridical or clinical — to allegations of sexual abuse and the process of on-going formation.*



## INTRODUCTION

MYRIAM WIJLENS - NEVILLE OWEN\*

With the 2001 publication of the Motu proprio *Sacramentorum sanctitatis tutela*<sup>1</sup> and the document *De delictis gravioribus*<sup>2</sup> the leadership of the Roman Catholic Church gave expression to an increased awareness that the delict of abuse of minors as well as the handling of the complaints of abuse by those in leadership positions needed a radically different approach. The time during which the Church had operated in particular from what might be called a hermeneutics of «protecting the reputation of the Church» was to be terminated. A new phase in the reaction to abuse of minors was inaugurated and it turned out to be one of continuous learning. Not only reports in the media, but also studies commissioned by either state or Church authorities revealed the extent of the tragedy especially due to severe failures by leadership.

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Neville Owen, a retired Supreme Court Judge from Western Australia and member of the Pontifical Commission for the Protection of Minors.

<sup>1</sup> JOHN PAUL II, motu proprio *Sacramentorum sanctitatis tutela*, 30/04/2001, *AAS* 93 (2001) 737-739.

<sup>2</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter *Ad exsequendam ecclesiasticam legem*, 18/05/2001, *AAS* 93 (2001) 785-788. The document was updated in 2010: *AAS* 102 (2010) 419-431.

As knowledge and understanding increased the Holy See, diocesan bishops, conferences of bishops, conferences of Major Superiors, Institutes of Consecrated Life as well as Societies of Apostolic Life around the world adapted the existing norms and guidelines or issued new ones. The intention behind all these norms and guidelines is not only to secure better responses and greater accountability, but also to bring about a new attitude among leaders and faithful of moving away from primarily protecting the reputation of the Church to first and foremost protecting the children, youth and vulnerable adults. At its best one could say that the Church is learning and indeed willing to learn as it increasingly becomes aware of the complexity of all that is involved in the abuse of minors and vulnerable adults as well as the handling of complaints about it. It must be acknowledged though, that for all concerned the ongoing process of learning has been extremely painful and difficult.

Among the knowledge gained is the awareness that the promotion and protection of children and more recently of vulnerable adults must be the paramount interest. The Church is to be a safe place for all to gather. The dignity of the human person does not allow for those interests to be compromised. The awareness is deepening that the credibility of the proclamation of the Gospel message requires that those in leadership must put the well being of children before anything else. This has consequences with regard to preventing abuse as well as responding conscientiously when allegations are brought forward. The leadership has a double task: it must adopt structures that provide for transparency, responsibility and accountability and see to it that these structures are implemented by all faithful.

## 1. The Pontifical Commission for the Protection of Minors

Over the past years Pope Francis has undertaken several and important steps in this process. One of the first ones was when on March 22, 2014 he established the Pontifical Commission for the Protection of Minors (PCPM)<sup>3</sup>. On that occasion he wrote:

The Commission's specific task is to propose to me [the Pope] the most opportune initiatives for protecting minors and vulnerable adults, in order that we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church. The Commission is to promote local responsibility in the particular Churches, uniting their efforts to those of the Congregation for the Doctrine of the Faith, for the protection of all children and vulnerable adults<sup>4</sup>.

The current members of the PCPM were appointed in 2018. Beside the president Cardinal Seán Patrick O'Malley OFM Cap. and the secretary Msgr. Robert W. Oliver the PCPM has fifteen other members. There are eight women, of whom four are members of religious institutes and the other four are lay women. Furthermore, one auxiliary bishop, one priest as well as five laymen serve on the Commission. These members come from all five continents and bring the expertise of very different professions,

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<sup>3</sup> For more information about the PCPM: <http://www.protection-ofminors.va/content/tuteladeiminori/en.html> [most recent consultation: 16/09/2020]. The PCPM is currently updating its website and online presence. From Spring 2021, the provided links will be redirected to [www.tutelaminorum.org](http://www.tutelaminorum.org)

<sup>4</sup> POPE FRANCIS, Chirograph, March 22, 2014, see [http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are\\_section/page\\_en-history/chirograph.html](http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are_section/page_en-history/chirograph.html). For the statutes of the Commission which are still in force see: [http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are\\_section/page\\_en-history/statutes.html](http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are_section/page_en-history/statutes.html) [most recent consultation: 16/09/2020].

but in one way or the other have all been involved or are experts in the area of child protection<sup>5</sup>.

Upon commencing its work in 2018 the Commission decided to allocate its tasks to three working groups. One group devotes its attention to «Healing and Care» and focuses on victims / survivors as well as their families and the communities to which they belong. A second group focusses on «Education and Formation» with regard to those who are called to minister in the Church or work for example in schools as well as to those who hold specific responsibilities arising from their leadership position. The third Working Group attends to «Safeguarding Guidelines and Norms», that is, to different legal and canonical aspects as well as the interaction of canon law and civil law.

## **2. A Seminar on Confidentiality, Transparency and Accountability**

The Working Group Safeguarding Guidelines and Norms commenced its work by listening to representatives of relevant dicasteries of the Roman Curia and of other entities within and outside the Holy See as well as by studying reports about the handling of abuse cases. As a result this Working Group, in collaboration with the Working Group Education and Formation, initiated a seminar entitled «Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability».

The seminar was held in Rome from December 4 to 6, 2019. The intention was to enable a constructive conversation between people from different disciplines and with specific expertise with regard to the aforementioned topic. They were from around the globe. Among the thirty-seven

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<sup>5</sup> The names and expertise of the members can be found at: [http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are\\_section/page\\_en-members.html](http://www.protectionofminors.va/content/tuteladeiminori/en/who-we-are_section/page_en-members.html) [most recent consultation: 16/09/2020].

participants in total there were leadership and staff members from relevant dicasteries and other entities within the Roman Curia, as well as professors from different universities from around the world specializing in psychiatry, international law, the rights of children and moral theology as well as in canon law both of the Latin and of the Eastern Churches. The organizers wanted to bring different voices of the local churches to the meeting. Hence, some participants were canon or civil lawyers with experience in penal matters in dioceses. Of the five diocesan bishops who participated, four are canon lawyers with a vast experience in penal matters as well as in exercising leadership. Among these diocesan bishops were the president of the Commission, Cardinal Sean O'Malley OFM Cap, Archbishop of Boston, and the canon lawyer Cardinal Oswald Gracias, Archbishop of Mumbai and president of the Catholic Bishops' Conference of India [= CBCI] and during the period 2012-2018 president of the Federation of Asian Bishops Conferences [= FABC]. Both Cardinals are members of the small Group of now six Cardinals advising Pope Francis. Cardinal Luis Francisco Ladaria Ferrer SJ, Prefect of the Congregation for the Doctrine of the Faith, graciously accepted the invitation to give the opening address, thus underscoring the relevance of the seminar and topic. The four women who participated in the conference have a wide experience with penal cases also within the Church; three of them are also professors in canon or civil law. The participants of the conference originated from different parts of the world so as to ensure that different cultural aspects could be heard and taken into consideration.

### 3. The Content of the Seminar

From the outset it was made clear that the purpose of the meeting was *not* to provide final answers. The preparation leading to the seminar had revealed that the topics are so

complex that it would be necessary to resist the temptation to provide quick answers to questions which are in need of careful clarifications with regard to the language and concepts used as well as with regard to the different aspects that would need to be taken into consideration. Hence one could say the purpose of the meeting was moderate: clarify and sharpen the questions, identify those areas and subjects that are in need of further research and propose possible ways and steps forward to respond to them.

During the consultations preparing the seminar and having studied several reports from different countries with findings and recommendations about both the sexual abuse itself as well as the responses and reactions to complaints and allegations by those in leadership positions, it was felt to be necessary to focus on an appropriate balancing of confidentiality, transparency and accountability. Indeed there is a need to balance these three aspects with regard to the victims / survivors and their relatives, the accused, the specific community in which the abuse occurred and the wider community both ecclesial and secular. A healthy balancing of the three aspects is a *conditio sine qua non* for the Church to be seen (again) as a safe place where the dignity of each and every human person is protected and promoted. Only when this is guaranteed and the world itself is assured of the integrity of the Church, will the Church and its individual members be able to fulfil its core task, namely to be a missionary Church. For this reason the organizers decided to attend to the topics of confidentiality, transparency and accountability with a hermeneutics of «promoting and protecting the dignity of persons».

The seminar addressed two major areas. The first deals with the sacrament of reconciliation and more specifically with the seal of confession. The second concerns aspects of transparency and accountability in procedural questions.



### 3.1 *Confidentiality and the Sacrament of Reconciliation*

The sacrament of reconciliation is of utmost relevance for the spiritual life of the faithful. Penitents must have the assurance that their sins confessed in the celebration of the sacrament of reconciliation will not be revealed to a third party. Yet, there is also a concern that children who are sexually abused do get the help they need and that further abuse is prevented. In response to the need to attend to the well-being of children, some countries have introduced mandatory reporting to state authorities while no longer respecting the seal of confession. In some parts of the world the seal of confession and the obligation (moral and/or legal, depending on the jurisdiction) to report knowledge or suspicion of abuse to civil authorities are therefore contentious issues. For the respective governments the well-being of children is of high relevance. The Church also acknowledges the high relevance of the safety of children, but also insists on respect for the seal of confession based on its theological notion of the sacrament and the necessity flowing from it to secure and guarantee absolute confidentiality for the penitents.

It should be noted that when governments move to mandatory reporting without exceptions they often seem to have in mind a scenario by which a child reports in the context of a confession that she or he is being abused. The focus of the governments is not so much on clerics who are sexual abusers, but rather on abusers per se and includes in particular abuse that occurs in a domestic context. For those governments, except in rare cases where there are constitutional imperatives, the seal of confession is not really a consideration. However, in the ecclesial and theological realm both the safeguarding of children and the protection of the sanctity of the seal are matters of deep and abiding significance and require careful consideration.

From the beginning the organizers of the seminar made it very clear, as did all participants during the seminar, that

the raising of these issues did not signal any attempt to question the inviolability of the seal of confession as such. This seal must be protected at all times. The note *The Importance of the Internal Forum and the Inviolability of the Sacramental Seal* issued by the Apostolic Penitentiary on July 1, 2019<sup>6</sup> affirms the doctrine and understanding of the necessity to preserve the seal of confession. Yet, while affirming the need to protect the seal, nevertheless questions arise such as: when is a conversation between a priest and a person a confession and not merely e.g. a matter of spiritual direction? How important is it that the language used refers to the seal of confession and not to the seal of the confessional, meaning the place where the confession occurs? What is actually covered by the seal of confession? Do sins committed by a third party, but reported by someone else fall under the seal of confession? A topic of relevance in particular with regard to the promotion of the well being of children concerns the question of the possibility to withhold absolution. Is it possible and if so under which conditions? Is it possible to grant absolution with attached conditions? In this context the question arises: what is the meaning of a true contrition and how can a confessor establish it? Furthermore, questions can be raised with regard to continuous education and formation of confessors in particular in the area of child abuse: Are there possibilities for confessors to assist victims and perpetrators to find help while respecting the seal of confession and if so, what training would confessors need in this regard?

The speakers of the seminar with regard to the seal of confession were invited to consider the topic from different perspectives. These are:

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<sup>6</sup><https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/07/01/0565/01171.html> [most recent consultation: 16/09/2020].

1. The *perpetrator*: What should and can a confessor do when a perpetrator confesses a sin that involves a minor or vulnerable adult? The sin could be either physical sexual abuse or involve producing, uploading, downloading pornography of minors under 18 years of age. Can the confessor force a penitent to report himself (herself) to the civil authorities? Can he withhold absolution? If so, under what conditions?

2. The *victim*: What can and should a confessor do when a victim (who is a minor or a vulnerable adult) reports in the confession that he (she) was or is being abused or indicates something that reasonably suggest the victim has been or is being abused e.g. by a family member or a third party?

3. A *third party*: What can and should a confessor do when a third party, such as a spouse reports that she knows that her husband abuses a relative who is a minor or vulnerable adult, but she does not want to report this to the police because of a fear that it might lead to the break-up of the marriage?

4. A person comes for *counselling or spiritual* guidance within confession: Are disclosures of a type mentioned in the preceding perspectives covered by the seal?

5. A *confessor*: What are the rights and responsibilities of various parties (including Church leaders) when a confessor is accused of violating the seal, e.g. because he cannot live with the knowledge that he could prevent further abuse if he would report it? Moreover, how is the Church forming confessors? What kind of continuous formation is necessary also after ordination and in light of the above questions?

The authors were thus invited to address their topic while considering these questions. It was clear that the objective of the seminar was *not* to propound a view that the inviolability of the seal should be removed. Nor was it to challenge the views expressed in the above mentioned

note by the Apostolic Penitentiary. Rather, it is to respect the integrity of the seal but to seek clarity in its meaning, extent and practical application with regard to the above mentioned points in the context of safeguarding and the interests of children and vulnerable adults.

### 3.2 *Accountability and Transparency*

The seminar devoted a whole day to the subject of accountability and transparency in particular with regard to the canonical procedures that are currently in place. The right to information for victim / survivors, accused and the community as such is of crucial relevance for assuring that justice is being administered. This in turn affects the integrity and effectiveness of the canonical penal system.

The first topic concerned the so-called «pontifical secret» (*sub secreto pontificio*). Experience had shown that the terminology in particular in those languages in which *secreto* is translated with for example «secret» or «*geheim*» tends towards misunderstanding of its true nature. Furthermore, it appeared that often times also bishops did not know what to do with information contained in documents issued in relation to sexual abuse cases classified as «*sub secreto pontificio*»: could they inform the accused, the survivor, their own canonical advisors, the state authorities? How would all of this impact the right of defense which also canon law guarantees (can. 221 CIC; can. 24 CCEO). The study presented in this volume includes the changes that Pope Francis brought about and was published shortly after the seminar<sup>7</sup>.

A second theme concerned the notions of confidentiality, transparency and accountability and their application

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<sup>7</sup> POPE FRANCIS, Rescritto con cui si promulga l'istruzione sulla riservatezza delle cause, traduzione in inglese, Dicembre 17, 2019, <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/12/17/1011/02062.html#en> [most recent consultation: 16/09/2020].

in canonical procedures. The seminar asked the question: what do these notions actually mean within themselves? And how do they relate to each other? What does transparency mean in light of making things «public» or «providing information»? And then: to whom should what information be made public? What does accountability mean, not only in relation to those who abused or responded to abuse, but also within the penal process itself? What is the relevance for the community to be informed and how does appropriate information contribute to a sense of justice and even to prevention of abuse?

The seminar was aware that different aspects are to be taken into consideration at the same time: all have a right to defend and vindicate their rights. In turn this implies that the Church has an obligation that these rights can be exercised by way of good procedures and solid argumentations which guarantees fair trials leading to the administration of justice. The latter is not only important for the victim and the accused but also for the entire community. It should know that people are held accountable for their actions, that the decision is well argued and that the outcome of a case constitutes indeed justice which reflects fairness as well. This, however, is easier said than done.

All have to know that for victims the right to privacy and confidentiality are respected, because if this is not so, there is a risk of being victimized for a second time and it might impede people to come forward with a complaint. All have to know that those concerned have access to relevant information. But who exactly are «those concerned»? This affects in particular victims who, under the current law, are given hardly any information about the process. Indeed the seminar addressed the question: which rights and duties do victims have and how can the exercise of their rights be envisioned in the penal process? What possible changes in the penal procedures seem to be necessary? What needs and indeed what can be improved?

These questions obtain particular relevance when abuse is not just understood as a violation of the sixth commandment or of chastity, but also and in particular as a violation of the dignity of a person.

All have to know that the principle of innocence till proven is respected, that there is a good and secure way to defend one's right and reputation, which requires not only that one has an advocate, but also that advocates have access to jurisprudence. All have to know that there is fairness in the administration of justice: similar cases are judged in similar ways and lead to similar penalties. This requires not only good and solid argumentations in penal cases but also that jurisprudence is made available. Currently the jurisprudence in these penal cases is not accessible, be it to the «lower» courts or the advocates for whom it is a vital resource. The seminar reflected on the need to provide for this and how this can be done in such a way that confidentiality and transparency are protected. How can sentences be written in such a way that the protection of privacy of those concerned is respected while allowing the courts and indeed the community to know and appreciate the reasoning for the decision and its outcome? How does one balance confidentiality and transparency here? What can the Church learn from judges who face similar challenges in the penal trials heard in state courts? How can a coherent system of jurisprudence be created?

## **Conclusion**

The seminar was sponsored by the PCPM and organized in particular by the Working Group Safeguarding Guidelines and Norms. The organizers express gratitude to the authors of the studies for their willingness to have their presentation published. The studies reflect only the personal view of the respective authors and not necessarily those of the organisations to which they are attached. Similarly, although the

members of the PCPM gave considerable support and assistance to the Working Group Safeguarding Guidelines and Norms, the views and opinions expressed are not necessarily those of the PCPM or its members. However, they are an important contribution in the learning process in which the Church is engaged when dealing with the subject of abuse of minors and vulnerable adults.

As mentioned above the purpose of the seminar was not to provide answers, but rather to determine the questions with more precision, identify those areas and subjects that are in need of further research and propose possible ways and steps forward to respond to them. At the end of the studies published in this volume, the Chair and Co-Chair of the Working Group Safeguarding Guidelines and Norms offer with the consent of the other members of the Working Group a few reflections and observations about some of the significant questions that were raised<sup>8</sup>.

A special word of gratitude is to be expressed to the editor of *Periodica*, Prof. Damián Astigueta SJ as he accepted to publish these studies, thus enabling a wider discussion of the topics in the academic arena. Indeed, the studies are an initial step in finding answers in difficult topics.

MYRIAM WIJLENS – NEVILLE OWEN

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<sup>8</sup> M. WIJLENS – N. OWEN, «Outlook after the Seminar by the Pontifical Commission for the Protection of Minors», *Periodica* 109 (2020) 659-666.





## FOUNDATIONS AND THEOLOGICAL IMPLICATIONS OF THE SACRAMENT OF RECONCILIATION

LUIS F. CARD. LADARIA FERRER, S.J.\*

Therefore, since we are surrounded by so great a cloud of witnesses, let us also lay aside every weight and the sin that clings so closely, and let us run with perseverance the race that is set before us, looking to Jesus the pioneer and perfecter of our faith (Heb 12,1-2a).

Like St. Paul (see 1Cor 9,24-27; Gal 5,7; Phil 3,12.14; 2Tm 4,7), the author of the Letter to the Hebrews employs the image of a race in reference to Christian life, a race with a clear finish line, throughout which our eyes are fixed on Jesus. This image of the race is more effective than that of the path, as a race does not allow for laziness; it must be run with enthusiasm, with constant focus on which direction to take. Above all, it requires lightness; we must leave behind all that is heavy, all that slows us down or hinders our enthusiasm and momentum. The author of the Letter to the Hebrews associates this slowing weight with the sin that «clings so closely». Sin, as resistance to God, not only brings our race to a halt, but impedes us from the very start. It is a cage that imprisons us, surrounding us like an assailant awaiting our surrender, nourishing the illusion that, by remaining enclosed in the castle of our selfishness and presumed self-sufficiency, we will be safe. Quite to the contrary, victory lies in destroying this siege, breaking our chains, opening the cage, and coming out of ourselves in order to move towards God who, as a Father rich in mercy, searches for us on the horizon and comes out to meet us with his loving embrace.

### 1. The Medicine of Mercy

The momentum of the race, constrained by sin, is set free by the mercy of God which the Church celebrates in the sacrament of Reconciliation.

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The popes of the second half of the 20th century exhorted us to place the question of mercy at the center of the preaching and praxis of the Church.

It is enough to recall John XXIII who, in his *Journal of a Soul*, considers mercy as the most beautiful name that we can attribute to God<sup>1</sup>. The pope, however, did not limit himself to these personal, spiritual considerations, but rather translated this truth into a methodology for the impending Council. In the noted opening address of Vatican Council II, recalling how the Church has always opposed errors with severity, he indicated a new approach: «Now the Bride of Christ wishes to use the medicine of mercy rather than taking up arms of severity»<sup>2</sup>. We must keep in mind that the term «medicine» is associated here with mercy; the objective is always to heal from error. Mercy is not the tolerance of that which separates us from God, but rather the medicine that leads us back to Him.

John Paul II dedicated his second encyclical to the topic of mercy<sup>3</sup>. Recognizing that our contemporary mentality seems to be in opposition to the God of mercy, tending to marginalize even the idea of mercy from our lives and hearts, he reminds us that, through the revelation of Christ,

We know God above all in His relationship of love for man [...] In this way, in Christ and through Christ, God also becomes especially visible in His mercy; that is to say, there is emphasized that attribute of the divinity which the Old Testament, using various concepts and terms, already defined as «mercy». Christ confers on the whole of the Old Testament tradition about God's mercy a definitive meaning. Not only does He speak of it and explain it by the use of comparisons and parables, but above all He Himself makes it incarnate and personifies it. He Himself, in a certain sense, is mercy. To the person who sees it in Him — and finds it in Him — God becomes «visible» in a particular way as the Father who is «rich in mercy»<sup>4</sup>.

Cardinal Ratzinger, in his homily at the beginning of the Conclave on 18 April 2005, took up this theme once again:

We hear with joy the news of a year of favor: divine mercy puts a limit on evil, as the Holy Father told us. Jesus Christ is divine mercy in person: encountering Christ means encountering God's mercy. Christ's mandate has

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<sup>1</sup> Cf. JOHN XXIII, *Il giornale dell'anima e altri scritti di pietà*, ed. L.F. Capovilla, Cinisello Balsamo 2000, 452.

<sup>2</sup> JOHN XXIII, Address at the Solemn Opening of the Vatican Council II *Gaudet Mater Ecclesia*, AAS 54 (1962) 786-796.

<sup>3</sup> JOHN PAUL II, Encyclical letter *Dives in Misericordia*, 30 November 1980, AAS 72 (1980) 1177-1232.

<sup>4</sup> JOHN PAUL II, Encyclical letter *Dives in Misericordia*, 2, 30 November 1980, AAS 72 (1980) 1180.

become our mandate through the priestly anointing. We are called to proclaim, not only with our words but also with our lives and with the valuable signs of the sacraments, «the year of favor from the Lord»<sup>5</sup>.

As Pope, with the name of Benedict XVI, he delved into this topic in his first encyclical, *Deus caritas est*<sup>6</sup>, and then, in *Caritas in veritate*<sup>7</sup>, addressed its relationship to new challenges, placing love, even before justice, as the fundamental principle of Christian social doctrine<sup>8</sup>.

With Pope Francis, the term has become familiar throughout all the Church. From his very first words, the announcement of the mercy of God has been characteristic of his pontificate, his magisterium, and his gestures. In a particular way, the extraordinary Jubilee Year of Mercy, with its Bull of Indiction<sup>9</sup> and the apostolic Letter issued upon its conclusion<sup>10</sup>, summarizing the constant teaching of the Church, rendered explicit the meaning of the mercy of God and our experience of it in the gestures of the Church, particularly in the sacrament of Reconciliation.

## 2. An «Uneasy» Sacrament

This constant announcement of mercy, however, seems not to have led the people of God to run out to meet it with joy in the sacrament that Christ the Lord gave to the Church in order to communicate the grace of his forgiveness. In reality, from the beginning, the sacrament of Reconciliation has shown itself to be an «uneasy» sacrament. Just think of the variation of its historical forms or the uncertainty of what to call it, over the course of centuries. The name of a sacrament specifies its nature, sometimes orienting pastoral praxis and sometimes being oriented by it. For example, in the case of the fourth sacrament, when this is referred to as the «sacrament of confession», we see a pastoral praxis centered around the accusation of sins. Although the *novus ordo*, recovering a traditional term,

<sup>5</sup> J. RATZINGER, *Homily at the «Missa pro eligendo papa»*, AAS 97 (2005) 686 (our translation).

<sup>6</sup> BENEDICT XVI, Encyclical letter *Deus caritas est*, 25 December 2005, AAS 98 (2006) 217-252.

<sup>7</sup> BENEDICT XVI, Encyclical letter *Caritas in veritate*, 29 June 2009, AAS 101 (2009) 641-709.

<sup>8</sup> Cf. W. KASPER, *Misericordia. Concetto fondamentale del vangelo – chiave della vita cristiana*, Brescia 2012, 19.

<sup>9</sup> FRANCIS, Bull of Indiction of the Extraordinary Jubilee of Mercy, *Misericordiae vultus*, 11 April 2015, AAS 107 (2015) 399-420.

<sup>10</sup> FRANCIS, Apostolic letter *Misericordia et misera*, 20 November 2016, AAS 108 (2016) 1311-1327.

calls it the «sacrament of Penance», it also employs the term «Reconciliation» — although we speak of the *Ordo Paenitentiae* and refer to the sacrament by the name of Penance, the term «reconciliation» is introduced (*Ordo ad reconciliandos...*) among the titles of the three different forms proposed for the rite<sup>11</sup>. Not even the *Catechism of the Catholic Church* offers a univocal response to the question, «What is this sacrament called?». In fact, it says that it is called the sacrament of Conversion, of Confession, of Forgiveness, of Reconciliation, and the title of art. 4 in the chapter dedicated to the sacraments of healing refers to it as «The Sacrament of Penance and Reconciliation»<sup>12</sup>. We could say that the uneasiness through which this sacrament passes is a reflection of our human uneasiness when faced with the mystery of iniquity, the inclination to sin, and the doubts of faith that sometimes cloud our trust in the mercy of God.

### 3. Recognizing the Presence of Christ

The task at hand is not to re-found the sacrament or to resolve all of the issues connected to it. Nonetheless, it is important to emphasize a truth that outlines the horizon of each sacrament, thus also that of the sacrament of Reconciliation. As expressed by the liturgical Constitution of the Council, *Sacrosanctum Concilium*: «By His power [Christ] is present in the sacraments, so that when a man baptizes it is really Christ Himself who baptizes» (SC 7). The Council Fathers wanted to express in this way the bond between Christ and the sacraments, enlightening the classical scholastic category of «institution» with the more dynamic concept of «presence». Even if theological reflections on the real presence of Christ in the sacraments have not yet seen wide-reaching development, certain attempts have been made (beginning with the singularity of the presence of Christ in the Eucharistic species) to identify a dynamic presence that is

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<sup>11</sup> Cf. E. RUFFINI, «Linee evolutive del magistero recente intorno alla penitenza», in *Il quarto sacramento. Identità e forme storiche del sacramento della Penitenza*, Leumann (Torino) 1983, 51-82.

<sup>12</sup> Cf. *Catechism of the Catholic Church*, nn. 1423-1424. A similar unease characterizes the placement of this sacrament among the seven. Though tradition places it fourth, after the sacraments of Christian initiation and thereby after the Eucharist, now, due to the disrupted unity of Christian initiation in the West, praxis places it before the Eucharist, since the fourth (or «third») sacrament allows the baptized to recover both his or her truth and his or her authentic relationship with Christ.

realized in the action of their celebration<sup>13</sup>. Jesus Christ is the principal celebrant, through the human minister. The origin of the sacraments must, then, be sought out in the docility of the Christian community to the action of Christ. This is why, throughout the history of salvation, Christ is not succeeded by the Church, as though by a successive phase subsequent to him. Rather, the Church acts in Christ, in his Body; and Christ acts in her, as her Head. The sacraments, as Pope Francis affirms, should be considered

the *locus* of God's closeness to and tenderness for mankind; they are the concrete way that God wanted to come and meet us, to embrace us, without being ashamed of us and of our limitations. Among the Sacraments, certainly that of Reconciliation *renders present with particular efficacy the merciful face of God*: it is constantly and ceaselessly made real and manifest<sup>14</sup>.

Recognizing the presence of Christ (the face of the mercy of God) in the sacrament of Reconciliation leads to our awareness that the words «I absolve you...» are not pronounced by the minister only «in the name of» the Most Holy Trinity, as though he were acting as delegate; rather, they are the very words of Christ. These words reach the depths of the heart of the repentant sinner, just as the words of the penitent reached the heart of the mercy of God when, by confessing his own faults, he manifested his contrition and raised up a sorrowful cry for his sins, invoking the Father's infinite love. In the sacrament of Reconciliation, the ministers of the Church enter, at one and the same time, into the abyss of the iniquity of the man who turns away from God (from which they themselves are not immune), and into the depth of the mercy of God who, from the Cross of his Son, heals and grants renewed hope. In the sacrament of Reconciliation, then, more than in any other sacrament, the ministry of the Church consists of guarding this singular relationship between God and man as a relationship realized in the intimate conscience of each person, which gains both voice and word in the confession of faults, just as healing grace has both voice and word in the action of the rite.

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<sup>13</sup> Cf. P. CASPANI, «La presenza di Cristo nei sacramenti», *La Scuola Cattolica* 144 (2016) 243-269. Cf. also J.M. DE MIGUEL GONZALEZ, «Presencia de Cristo en los sacramentos», in ASOCIACIÓN ESPAÑOLA DE PROFESORES DE LITURGIA, *La presencia de Cristo en la liturgia*, Bilbao 2004, 164-202.

<sup>14</sup> FRANCIS, Address to participants at the course organized by the Apostolic Penitentiary, 12 March 2015 [the most recent consultation: 11/01/2021], [http://www.vatican.va/content/francesco/en/speeches/2015/march/documents/papa-francesco\\_2015\\_0312\\_tribunale-penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2015/march/documents/papa-francesco_2015_0312_tribunale-penitenzieria-apostolica.html).

#### 4. The «Sacramental Seal»

Precisely because the gift of grace, like the Word of God, cannot in any way be manipulated, the Church is called to safeguard the sacraments in their essential constitution (substance). She also has the task of just as scrupulously safeguarding the conscience of the sinner who manifests his sin in order to entrust it to the mercy of God through the hands of the priest. For this reason, the tradition of the Church has always considered the secret proper to the content of confession to be inviolable, calling it the «sacramental seal».

Today, the question of the theological foundations of the secret linked to the confession of sins is not always understood. Indeed, it is often equated to the «professional secret» or to the «right to privacy», which are frequently spoken of but just as frequently violated by individuals, entities or states. The professional secret, as, too, the right to privacy, are juridical protections aimed at protecting individuals, or the relationship of trust between two or more persons, founded on issues of a professional nature. It is, then, a secret that is regulated by law, and which the law can modify in light of a greater need of the common good. In this regard, we might think of laws regarding wiretapping and eavesdropping in the fight against terrorism or organized crime.

The sacramental seal of confession is of a completely different nature. In order to get a basic idea of the force of this obligation, we may cite the words of an author at the end of the XVI century who, in a manual on the sacraments written for priests, wrote:

If the salvation or liberation of the entire world were to depend on the revelation of just one sin, it must not be revealed, even if the entire world should perish or be destroyed; even if its revelation would result in the liberation of all of the souls in hell from the beginning of time, it must not be revealed<sup>15</sup>.

Some centuries prior, the Fourth Lateran Council established the obligation for each member of the faithful to confess sins at least once a year, also declaring the obligations of the confessor:

The priest shall be discerning and prudent, so that like a skilled doctor he may pour wine and oil over the wounds of the injured one. Let him carefully inquire about the circumstances of both the sinner and the sin, so that he may prudently discern what sort of advice he ought to give and what remedy to

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<sup>15</sup> MARTINO ALFONSO VIVALDO, *Candelabrum aureum ecclesiae Dei*, Apud Thomam Bozzolam, Brescia 1593, 167 (our translation).

apply, using various means to heal the sick person. Let him take the utmost care, however, not to betray the sinner at all by word or sign or in any other way. If the priest needs wise advice, let him seek it cautiously without any mention of the person concerned. For if anyone presumes to reveal a sin disclosed to him in confession, we decree that he is not only to be deposed from his priestly office but also to be confined to a strict monastery to do perpetual penance (english version: N. TANNER, *Decrees of the Ecumenical Councils*, I London 1990, 425).

The first (pastoral) text and the second (magisterial) text both converge on the absoluteness of the sacramental seal.

All that which is learned through sacramental confession, whether it be the sins of the penitent or any possible complementary explanations provided by him (circumstances of time or place, end, accomplices...), falls under the sacramental seal. The confessor may not, then, ever or for any reason, «betray in any way a penitent in words or in any manner» (can. 983), nor is it licit for him to use «knowledge acquired from confession to the detriment of the penitent» (can. 984).

Recently, in a meeting with his collaborators, Pope Francis referred to the incorrect use that is sometimes made of the internal and external *fora*, citing the concrete example of someone who confesses his sins and, at the end, after receiving absolution, once again takes up the conversation regarding those matters of conscience revealed a few moments prior, now considering them to pertain to the external forum. These are inadmissible situations that obscure a fundamental realm of the sacred ministry. Given this, he reiterated that the internal forum covers the entire conversation, from the beginning to the end, with respect for the sacramental seal and, in general, the conscience of the other person.

To this end, the Catechism of the Catholic Church is very clear, affirming:

Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives. This secret, which admits of no exceptions, is called the «sacramental seal», because what the penitent has made known to the priest remains «sealed» by the sacrament<sup>16</sup>.

The Holy Father Francis, speaking on the sacrament of Reconciliation, forcefully reaffirmed that the sacramental seal is neither dispensable nor

<sup>16</sup> *Catechism of the Catholic Church*, n. 1467.

subject to any human dispositions: «Reconciliation itself is a benefit that the wisdom of the Church has always safeguarded with all her moral and legal might, with the sacramental seal»<sup>17</sup>.

The specific quality that pertains to the sacramental seal on account of which it is not at our disposal, derives *ex motivo iustitiae* and, above all, *ex motivo religionis*, given that the celebration of the sacrament of Penance is an act of worship.

A confessor who fails to uphold the obligation of the inviolability of the sacramental seal sins against justice with respect to the penitent who entrusts to him his conscience and commits sacrilege with respect to the sacrament itself, failing in his commitment of fidelity to Christ, in whose name he acts in the exercise of his ministry<sup>18</sup>.

The Church guards the holiness of the sacramental seal with absolute firmness, strongly protecting both the *bonum penitentis* and the *bonum sacramenti*, so much so that she ascribes to her priests the «incapacity» of rendering testimony in court with relation to anything that they learn in any given sacramental confession, even in the case that the penitent is the one requesting his deposition (cf. can. 1550 §2, 2°).

## 5. The Confession of Faults: Encounter with Christ, Face of the Mercy of God

How might we interpret this obligation of the secret, by which the confessor cannot *ever, for any reason whatsoever or in any way* reveal, even partially, the content of a confession? It is not our intention to delve into the juridical aspect of the question at this moment (regarding which we may refer to specific contributions<sup>19</sup>), but rather to propose a few theological considerations. To use the terms of J. Searle's philosophy of language<sup>20</sup>, our question has not to do with rules and regulations of a

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<sup>17</sup> FRANCIS, Address to Participants at the XXX Course on the Internal Forum Organized by the Apostolic Penitentiary, 29 March 2019 [the most recent consultation: 11/01/2020]. [http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco\\_20190329\\_penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco_20190329_penitenzieria-apostolica.html).

<sup>18</sup> Listening to the accusation of sins and imparting divine pardon, the priest-confessor acts *in persona Christi*, «he has been entrusted with the ministry of Christ»: *Rituale Romano, Rito della Penitenza*, Città del Vaticano 1974 [= RP], n. 10.

<sup>19</sup> Cf. E. MIRAGOLI, «Il sigillo sacramentale», in E. MIRAGOLI, ed., *Il sacramento della Penitenza. Il ministero del confessore: indicazioni canoniche e pastorali*, Milano 2015<sup>2</sup>, 151-168.

<sup>20</sup> Cf. J. SEARLE, *Speech Acts. An Essay in the Philosophy of Language*, Cambridge 1969.



behavioral nature, but rather revolves around the constitutive perspective, which establishes the un-renounceable load-bearing structure of the act that is realized. Doubtless, the sacramental seal is found at this second level. Even before seeking to protect the «good name» of the faithful who confesses his sins, the seal protects the alterity of the sacramental gesture, which is always an act of Christ realized in the ritual action of the Church. It is precisely these ritual elements wherein the manifestation of faults occurs that characterize such manifestation as the act of confiding, not in a friend or person of trust, but in Christ himself.

The confession of faults occurs subsequent to listening to the word of God; indeed, it is «through the word of God [that] the Christian receives light to recognize his sins and is called to conversion and to confidence in God's mercy»<sup>21</sup>. The priority given to the announcement of mercy and the call to conversion attests to the fact that the confession of sins is not the initiative of the faithful desiring to «free his conscience», but a response to the call of Christ, present in his word (cf. *SC* 7): «be reconciled to God» (2Cor 5,20). The formulas of reception that the priest addresses to the penitent are likewise permeated by the word of God. They make clear that it is Christ himself who lovingly welcomes whoever approaches him with a contrite heart: «May the Lord Jesus welcome you. He came to call sinners, not the just. Have confidence in him»<sup>22</sup>. The confession of sins does not impose specific texts, but the rubric is extremely telling:

If necessary, the priest helps the penitent to make an integral confession and gives him suitable counsel. He urges him to be sorry for his faults, reminding him that through the sacrament of penance the Christian dies and rises with Christ and is thus renewed in the paschal mystery. The priest proposes an act of penance which the penitent accepts to make satisfaction for sin and to amend his life. The priest should make sure that he adapts his counsel to the penitent's circumstances<sup>23</sup>.

The issue here is not just to make a list of faults, but to enter into a relationship that continually transitions between the penitent and the priest: the penitent confesses his sins; the priest helps the person, giving suitable counsel, urging to be sorry for his or her faults, proposing an act of penance; the penitent accepts to make satisfaction for the sin and so becomes aware of his or her participation in the paschal mystery of Christ, dying to sin and rising to the life of grace. What is realized here *in mysterio*

<sup>21</sup> RP 17.

<sup>22</sup> RP 42 – third formula.

<sup>23</sup> RP 44.

is the encounter between the penitent, attracted by the mercy of God, and Christ himself — the face of this mercy — present «in the person of the minister» (*SC* 7). It is not without reason that the prayer formulas proposed for the manifestation of contrition are permeated by the Sacred Scriptures, placing on the lips of the penitent the words of David after his sin (Ps 50,4-5) or the words of the younger son in the parable of the merciful Father (Lk 15,18). The penitent, pronouncing the same words used for thousands of years by the people of Israel and by the Church, experiences that his history of sin and the forgiveness of God are part of the great drama narrated in the pages of the Bible, and that the history of salvation continues today in the life of the believer who welcomes the revelation of God, «who desires everyone to be saved and to come to the knowledge of the truth» (1Tm 2,4). The conclusion of the rite is also characterized by this reference to the mercy of God, for which thanks are given: «After receiving pardon for his sins the penitent praises the mercy of God and gives him thanks in a short invocation taken from scripture. Then the priest tells him to go in peace»<sup>24</sup>. Once again, in this sober ritual, the priest and penitent do not pronounce their own words, but rather adopt as their own expressions taken from the word of God. The dismissal, «The Lord has forgiven your sins. Go in peace», is an invitation to go in the peace that is once again granted and welcomed, in order to announce and share it: «Go in peace, and proclaim to the world the wonderful works of God who has brought you salvation». Whoever has experienced mercy is filled with the desire to offer it to others<sup>25</sup>.

Though brief, these references to the rite of the sacrament are sufficient for an understanding that what occurs in the sacrament is an encounter between persons which exceeds the purely human dimension; what takes place is a personal relationship that points to a presence that is not directly perceptible to our senses, but rather is intuited and experienced thanks to the symbolic language rooted in Sacred Scripture (cf. *SC* 24).

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<sup>24</sup> RP 20.

<sup>25</sup> «[The Church in her missionary outreach] has an endless desire to show mercy, the fruit of its own experience of the power of the Father's infinite mercy». FRANCIS, Apostolic exhortation *Evangelii gaudium*, 24 November 2013, AAS 105 (2013) 1019-1137, here n. 24, 1029.

## 6. Conscience: That Place in Which the Voice of God Intimately Resounds

There is, however, a second aspect to consider. The *Praenotanda* of the Rite of Penance affirm the need for the confession of sins to be preceded by a detailed examination of one's conscience<sup>26</sup>, enlightened by the Word of God<sup>27</sup>, which is to be made in the light of God's mercy.

This reference to conscience leads us, as the Vatican Council II affirms, to «the most secret core and sanctuary of a man. There he is alone with God, whose voice echoes in his depths» (GS 16). We should take note of the emphasis conveyed by certain expressions: most secret core, sanctuary of man, alone with God, depths. The conscience is the place in which man converses with himself, comes to know himself, and enters into a dialogue with his own freedom that, enlightened by the word of God, leads him to moral decisions oriented toward the good<sup>28</sup>. It is the conscience that urges, brings to a halt, accompanies, presses, judges, rebukes. The moral conscience of the Christian has its proper origin in the dialogue of the Spirit, who inhabits it (1Cor 3,16; Rm 8,11)<sup>29</sup>. The accusation of sins, preceded by a careful examination of conscience, constitutes, then, a prolongation of that intimate dialogue between the faithful and the Spirit who dwells within. The conscience, which rebukes and exhorts, finds its voice in the recognition of faults committed. It is precisely the manifestation of these faults that attests to the believer's docility to the voice of the Spirit, resounding in his conscience, and at the same time, to the unconditional trust in the mercy of God from which flows forgiveness and the grace to begin anew, with renewed commitment, to follow after Christ. For this reason, every violation of this «sanctuary of man» is not

<sup>26</sup> RP 6b.

<sup>27</sup> RP 24c.

<sup>28</sup> «The conscience, in the first place, is man who thinks his own self; it is thought about thought; it is the interior mirror of experience, of life; and it is ordinarily psychological: man feels, remembers himself, judges himself, discusses himself with himself, comes to know himself. In this interior framework, warnings regarding the use of his own freedom acquire a special emphasis, be it prior to or following a creative act of his personal will, that is regarding the responsible actuation of thinking, free man; this warning is called the moral conscience». PAOLO VI, Udiienza generale, 2 agosto 1972 [ultima consultazione: 27/05/2020], [http://www.vatican.va/content/paul-vi/it/audiences/1972/documents/hf\\_p-vi\\_aud\\_19720802.html](http://www.vatican.va/content/paul-vi/it/audiences/1972/documents/hf_p-vi_aud_19720802.html) (our translation). Cf. also *Catechism of the Catholic Church*, 1777-1778.

<sup>29</sup> Cf. A. FUMAGALLI, *L'eco dello Spirito. Teologia della coscienza morale*, Brescia 2012.

only a *vulnus* to his intimacy and his right to a good name, as the Code of Canon Law expresses, but also and moreover a *vulnus* to the mystery of the intimate dialogue between the freedom of a person and the action of the Holy Spirit. It is precisely this fact that led Pius XII to affirm that:

Conscience is, therefore, to speak of it with an image as old as it is worthy, a *ἀδυτον* – a sanctuary, at whose threshold all must stop; even if it is a boy, the father and mother. Only the priest enters there as curator of souls and as minister of the Sacrament of Penance; neither for this reason does conscience cease to be a jealous sanctuary, of which God Himself wants the secrecy guarded with the seal of the most sacred silence<sup>30</sup>.

The task of the priest, then, is serious indeed, as he enters with discretion into this sanctuary as a minister of forgiveness, not as an insatiable judge in search of crimes to punish. As Pope Francis has insisted, confessors must be an authentic sign of the mercy of the Father, which means

to participate in the very mission of Jesus to be a concrete sign of the constancy of divine love that pardons and saves. We priests have received the gift of the Holy Spirit for the forgiveness of sins, and we are responsible for this. None of us wields power over this Sacrament; rather, we are faithful servants of God's mercy through it. Every confessor must accept the faithful as the father in the parable of the prodigal son: a father who runs out to meet his son despite the fact that he has squandered away his inheritance. Confessors are called to embrace the repentant son who comes back home and to express the joy of having him back again. [...] May confessors not ask useless questions, but like the father in the parable, interrupt the speech prepared ahead of time by the prodigal son, so that confessors will learn to accept the plea for help and mercy pouring from the heart of every penitent. In short, confessors are called to be a sign of the primacy of mercy always, everywhere, and in every situation, no matter what<sup>31</sup>.

## 7. Conclusion

As affirmed above, the intangibility of the sacramental seal, recently reaffirmed by a Note of the Apostolic Penitentiary<sup>32</sup>, must be placed among

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<sup>30</sup> PIUS XII, *Radio Message on the Occasion of «Family Day»*, 23 March 1952, AAS 44 (1952) 271 (our translation).

<sup>31</sup> FRANCIS, Bull of Indiction of the Extraordinary Jubilee of Mercy, *Misericordiae vultus*, 11 April 2015, n. 17, AAS 107 (2015) 412 (our translation).

<sup>32</sup> APOSTOLIC PENITENTIARY, Note on the Importance of the Internal Forum and the Inviolability of the Sacramental Seal, 29 June 2019 [the most recent consultation: 11/01/2021]. [http://www.vatican.va/roman\\_curia/tribunals/apost\\_penit/documents/rc\\_trib\\_appen\\_pro\\_20190629\\_forointerno\\_en.html](http://www.vatican.va/roman_curia/tribunals/apost_penit/documents/rc_trib_appen_pro_20190629_forointerno_en.html).

the «constitutive rules» of the sacrament of Reconciliation. This seal, as Pope Francis has strongly affirmed,

Although it is not always understood by the modern mentality, [...] is indispensable for the sanctity of the sacrament and for the freedom of conscience of the penitent, who must be certain, at any time, that the sacramental conversation will remain within the secrecy of the confessional, between one's conscience that opens to grace, and God, with the necessary mediation of the priest. The sacramental seal is indispensable and no human power has jurisdiction over it, nor can lay any claim to it<sup>33</sup>.

The Church herself does not own the sacrament, nor do individual priests. Rather, the Church is called to guard the sacrament — «So we are ambassadors for Christ, since God is making his appeal through us» (2Cor 5,20) — and to guard with all of her strength, to the point of martyrdom, the priority of the action of God in the ritual action of man; she is called to guard each man and woman in that which is most intimate and sacred to them: their conscience, *locus* of the wonderful encounter between human freedom and the action of the Holy Spirit.

CARD. LUIS F. LADARIA FERRER, S.J.

### Summary

The article comments on the foundations and theological implications of the Sacrament of Reconciliation, in particular highlighting the value of mercy. Particular attention is given to the different denominations of this Sacrament throughout different historical periods and in the documents of the Church, to the role of the confessor that follows from them and to the inviolability of the sacramental seal in the context of the merciful welcoming of the penitent.

**Keywords:** reconciliation; Mercy; forgiveness; confession; sacramental seal; internal forum; examination of conscience.

### Sommario

#### Fondamenti e implicazioni teologiche del Sacramento della Riconciliazione

L'articolo commenta i fondamenti e le implicazioni teologiche del Sacramento della Riconciliazione, in particolare mettendo in luce il valore della misericordia.

<sup>33</sup> FRANCIS, *Address to Participants at the XXX Course on the Internal Forum organized by the Apostolic Penitentiary*, 29 March 2019 (the most recent consultation: 11/01/2021], [http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco\\_20190329\\_penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco_20190329_penitenzieria-apostolica.html).

Particolare attenzione viene data alle diverse denominazioni di tale Sacramento lungo diverse epoche storiche e nei documenti della Chiesa, al ruolo del confessore che da queste consegue e all'inviolabilità del sigillo sacramentale all'interno della misericordiosa accoglienza al penitente.

**Parole chiave:** riconciliazione; Misericordia; perdono; confessione; sigillo sacramentale; foro interno; esame di coscienza.

## CONFIDENTIALITY AND THE PONTIFICAL SECRET

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### Introduction

The question of the secret, in general, immediately points us toward two areas proper to today's cultural context; on the one hand we find something to hide, and on the other hand, a good to protect. The obligation to maintain a secret can, then, be read either negatively, as the will to conceal or not reveal things which hold a common interest, or, positively, as the moral demand to preserve the good name, privacy, and dignity of persons<sup>1</sup>. Both of these meanings coexist in the reception of current canonical legislation, each prevailing at different moments. This juridical institution is not undisputed; its current actuation presents many limitations.

Art. 30 of the *motu proprio Sacramentorum sanctitatis tutela* [= SST], currently in force, which constitutes the starting point for our reflection, affirms that:

§1. Cases of this nature are subject to the pontifical secret.

§2. Whoever has violated the secret, whether deliberately (*ex dolo*) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even *ex officio*<sup>2</sup>.

This is a new provision with respect to the 2001 version, expressly introduced to guarantee a greater protection of the privacy of the persons involved in causes of delicts reserved to the Congregation for the Doctrine of the Faith [= CDF], that does not intend to define a juridical fact, but a *de facto*

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<sup>1</sup> Cf. U. RHODE, «Trasparenza e segreto nel diritto canonico», *Periodica* 107 (2018) 466.

<sup>2</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, Normae de delictis Congregationis pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis, 21 May 2010, AAS 102 (2010) 419-434.

status. If anything, the object of the pontifical secret is a juridical fact, i.e. penal causes<sup>3</sup>. The secret, on the other hand, is a particular *status*, necessary in order that the object may be pursued without compromising other values at play, such as the good reputation of persons. It is, therefore, a norm placed for the juridical protection of a moral obligation, which in turn entails certain rights and obligations. There is a right to the secret, such that whoever participates in the causes in question, according to various titles, may be protected, and there is a consequent obligation to maintain that secret. This obligation is so pressing as to be protected by appropriate penal sanctions in the case of its non-observance.

When we speak of «secret» in the Church, we are actually referring to different meanings. There is the *natural* secret, which is imposed by the very nature of the object in question; regardless of the existence of a norm demanding its observance, to reveal it would be to cause discomfort and damage. There is also the *promised* secret, connected to the commitment not to reveal information of which one has knowledge. There is the *committed* secret, entailing a pact to not reveal information to a third party; the secret of office or the professional secret usually falls under this category. There is also the secret of *instruction*, required to different degrees for the various canonical causes. There is the secret connected to the celebration of the sacraments, among which stands out by reason of its absolute inviolability the secret to which the confessor is held, called the sacramental seal<sup>4</sup>.

In this context, we will limit ourselves to exploring a few aspects of the particular secret that we refer to as «pontifical» [= PS], referenced by *SST*. This secret, in addition to ensuring the protection of the precious good of personal privacy, also raises some issues that we will briefly address, which oblige the Church today to seriously reflect on this question.

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<sup>3</sup> Cf. F.X. URRUTIA, *Les normes générales*, Paris 1992, 209.

<sup>4</sup> «Nihil aliud est quam debitum confessionem celandi». B.H. MERKELBACH, *Summa theologiae moralis ad mentem D. Thomae et ad normam iuris novi*, III, *De Sacramentis*, Parisiis 1933, n. 620, 580. On the topic of the secret in general, cf. also V. DE PAOLIS, «El secreto pontificio: fundamento moral y jurídico», *Ius Communio* 6 (2018) 265-268; R. CORONELLI, «Il significato ecclesiale del segreto», *Quaderni di Diritto Ecclesiale* 26 (2013) 10-15; K. MARTENS, «Le secret dans la religion catholique», *Revue de droit canonique* 52/2 (2002) 259-274; D. MILANI, *Segreto, libertà religiosa e autonomia confessionale. La protezione delle comunicazioni tra ministro di culto e fedele*, Lugano 2008, 141-156; O. ÉCHAPPÉ, «Le secret en droit canonique et en droit français», *L'Année canonique* 29 (1985-86) 229-256. Cf. on the force of the 1917 Code, the dictionary entry of R. NAZ, «Secret», in R. NAZ, ed., *Dictionnaire de droit canonique*, VII, Paris 1965, coll. 895-899; L. BENDER, «Segreto (rivelare un)», in F. ROBERTI – P. PALAZZINI, ed., *Dizionario di teologia morale*, Roma 1957<sup>2</sup>, 1309-1310.



Defining the PS is not simple, nor is finding its univocal normative foundation. «Probably, this notion does not exist in a strictly written form», affirms one author<sup>5</sup>. It is spoken of in the 2019 *Note* of the Apostolic Penitentiary on the importance of the internal forum and the inviolability of the sacramental forum, which gives something between a description and a definition<sup>6</sup>. This category does not explicitly appear in the current Latin Code, even if we can implicitly consider to be «pontifical», in light of previous legislation, the secret to which the Pontifical Legate is held with regard to his function in the nomination of bishops, in accordance with can. 377 §3. It likewise made no appearance in the 1917 Code, despite its production involving the imposition of a secret, commonly referred to as the *secretum pontificium*, on the members involved in the codification<sup>7</sup>. Surprisingly, it is not spoken of in the Apostolic Constitution *Universi dominici gregis* on the vacancy of the Apostolic See and the election of the Bishop of Rome either<sup>8</sup>, despite the fact that there is a specific treatise on the observation of the secret that includes severe penal sanctions established for the case of a violation with fault<sup>9</sup>.

<sup>5</sup> D.J. ANDRÉS GUTIÉRREZ, «La interdicasterialidad del nombramiento de obispos según la Pastor Bonus y el secreto pontificio», in ID., ed., *Il processo di designazione dei vescovi. Storia, legislazione, prassi*, Città del Vaticano 1996, 589.

<sup>6</sup> «A special case of secrecy is that of the “pontifical secret”, which is binding by virtue of the oath connected to the exercise of certain offices in the service of the Apostolic See. If the oath of secrecy always binds *coram Deo* the one who issued it, the oath connected to the “pontifical secret” has as its ultimate *ratio* the public good of the Church and the *salus animarum*. It presupposes that this good is the very requirement of the *salus animarum*, thus including the use of information that does not fall under the seal, can and must be correctly interpreted by the Apostolic See alone, in the person of the Roman Pontiff, whom Christ the Lord constituted and placed as the visible principle and foundation of the unity of faith and of the communion of the whole Church». APOSTOLIC PENITENTIARY, «Nota sull’importanza del foro interno e l’invioabilità del foro sacramentale», 29 June 2019, *L’Osservatore Romano*, 1-2 July 2019, 8 (our translation).

<sup>7</sup> Cf. C. FANTAPPIÈ, *Chiesa romana e modernità giuridica*, II, Milano 2008, 693.

<sup>8</sup> JOHN PAUL II, ap. const. *Universi Dominici gregis*, 22 February 1996, AAS 88 (1996) 305-343.

<sup>9</sup> «Those who, in accordance with the prescriptions of No. 46 of the present Constitution, carry out any functions associated with the election, and who directly or indirectly could in any way violate secrecy — whether by words or writing, by signs or in any other way — are absolutely obliged to avoid this, lest they incur the penalty of excommunication *latae sententiae* reserved to the Apostolic See». JOHN PAUL II, cost. ap. *Universi dominici gregis* [cf. nt. 8], n. 58); «I further order the Cardinal electors, *graviter onerata ipsorum conscientia*, to maintain secrecy concerning these matters also after the election of the new Pope has taken place, and I remind them that it is not licit to break the secret in any way unless a

This secret is, however, discussed in the General Regulations Governing the Roman Curia [= RGCR], which establishes obligations and sanctions, up to suspension or termination<sup>10</sup>.

The challenge, as we will see, is balancing the seemingly conflicting values at play: the protection of privacy and transparency; the right to the protection of one's reputation and the accused's right to defense; guarantee of confidentiality and cooperation with the non-canonical forum (for example, civil judiciary) in the pursuit of justice; the good of the Church and the demands of truth. Is it possible to imagine a juridical framing of this question that maintains the equilibrium among these elements, in tension among themselves? Concretely, how can we guarantee that the accused has full access to the acts without compromising the privacy of those who offered their depositions? How can we collaborate with the justice of the State without betraying the confidences of the persons involved in the cause? How are we to give the proper information to the community, from the perspective of transparency, preventing the spread of false news in the absence of true statements, without allowing all this to prejudice the results of a process or to slander those who have taken part? Substantially, to what extent is it just to inform the community, who, in the name of a common good can lay claim to the right to «be in the know» in order that justice may be re-established and scandal remedied (cf. can. 1341), without this compromising the inviolability of the dignity of the person, even if he is guilty of a more grave delict?

## 1. An Historical Overview

The PS has ancient origins<sup>11</sup>. Over the course of time, legislation concerning it has been substantially modified. Our historical overview will thus be broken down into five phases<sup>12</sup>.

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special and explicit permission has been granted by the Pope himself» (*ibid.*, n. 60). Cf. G. TREVISAN, «Osservare il segreto secondo la costituzione *Universi Dominici Gregis*», *Quaderni di Diritto Ecclesiale* 22 (2009) 290-291.

<sup>10</sup> Art 36 §2: «Con particolare cura sarà osservato il segreto pontificio, a norma dell'Istruzione *Secreta continere* del 4 febbraio 1974 (cfr AAS LXVI [1974], 89-92)»; art 76 §1: «Il licenziamento dall'ufficio si applica: [...] 3) per violazione del segreto pontificio, di cui all'art. 36 §2». SECRETARY OF STATE, *Regolamento generale della Curia Romana*, 30 April 1999, AAS 91 (1999) 629-679.

<sup>11</sup> In the historical archives of the Congregation for the Doctrine of the Faith there are a series of precepts, the first of which dates back to 23 April 1556, under the title «De silentio tenendo in causis Sancti Officii», which impose on all those who participate in the activity of the Holy Inquisition the secret regarding all that which is learned, under penalty of

### 1.1 *The Secretum Sancti Officii (12 December 1709)*

It was Pope Clement XI who established:

that all of the Most Eminent Cardinal Inquisitors General, Consultors, Qualifiers, Examiners of books, and other Officials of the Holy Inquisition, the present and in the future, in each and every cause and affair, as in all other things which in the very same sacred Tribunal will be said, addressed and defined, also in reference to books and doctrines examined, in addition to persons responsible for the examination of the same, namely those designated to report, exception made for solely civil causes that are neither directly nor indirectly related to faith or religion, observe an inviolable secret; such that, neither directly, nor indirectly, nor even by implication, neither in written form, nor by spoken word, nor in any other way or under any pretext whatsoever, even that of a greater good, or of a very grave and very urgent cause, or even of some faculty or dispensation, be it particular or general or even given by His Holiness or by His Predecessors, all of which, were they to have been granted, he revokes completely or renders null and expressly declares as revoked and null, they are not to dare in any way to violate the above-stated secret<sup>13</sup>.

We may note both the scope of the object of the secret (all that with which the Holy Office deals or will deal, with the sole exception of civil causes not

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excommunication *latae sententiae*. However, this is still not, *strictu sensu*, the pontifical secret.

<sup>12</sup> Cf. C. GENNARI, «Sul segreto del S. Ufficio», *Il Monitore ecclesiastico* 10 (1897) 174-186; A. PERLASCA, «Il segreto pontificio», *Quaderni di Diritto Ecclesiale* 26 (2013) 91-99; U. RHODE, «Trasparenza e segreto nel diritto canonico» (cf. nt. 1), 467-476; H. SCHWENDENWEIN, «Secretum pontificium», in P. LEISCHING – F. POTOTSCHNIG – R. POTZ, ed., *Ex aequo et bono*, Innsbruck 1977, 296; 304; J. MARTÍN LAUCIRICA, «Secreto Pontificio», in *Diccionario General de Derecho canónico*, VII, Madrid 2013, 186-189; V. DE PAOLIS, «El secreto pontificio» (cf. nt. 4), 272-276.

<sup>13</sup> «optime noscens praecisam secreti necessitatem [...] statuit et decrevit ut omnes E.mi Cardinales Generales Inquisitores, Consultores, Qualificatores, Revisores librorum aliique S. Inquisitionis Officiales nunc et pro tempore existens, in omnibus et quibuscumque causis et negotiis aliisque rebus, quae in eodem S. Tribunali dicentur et tractabuntur et peragentur, etiam super libris aut doctrinis examinandis, et personis ad eorum revisionem, seu relationem deputandis, exceptis tantum causis mere civilibus nec directe, nec indirecte fidem aut religionem tangentibus, inviolabile secretum servent; adeo ut nec directe, neque indirecte, neque nutu, neque scriptis, neque verbo, vel alias quomodolibet sub quovis, quantumvis colorato praetextu, sive maioris boni, sive urgentissimae et gravissimae causae, sive etiam alicuius facultatis, aut dispensationis tam particularis, quam generalis hactenus habitae a Sanctitate Sua, aut Praedecessoribus suis, quas omnes si quae forte concessae fuerint, omnino revocat, et irritat, revocatasque et irritas expresse declarat, praefatum secretum audeant quoquomodo violare». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174 (our translation).

pertinent to faith or religion), including not only the matter but also the persons involved, and its substantial non-derogability, even for a greater good, or a grave or even very grave cause. Any possible dispensations connected to it, even those previously granted by the supreme pontiffs, are abrogated.

The seriousness and severity of this provision is made clear, also on the basis of the sanction prescribed in the case of a violation or transgression of the norm:

and this even more under penalty of major excommunication *latae sententiae*, which will be incurred *ipso facto*, without the need for any other declaration, and the absolution of which is reserved only to himself, and to his successors the Roman Pontiffs, eliminating in this regard the faculty of the Holy Penitentiary, and of the Cardinal Penitentiary, except at the point of death, also reserving to himself the imposition of other most grave penalties at the choice of His Holiness and Successors, in relation, however, to the type of transgression and transgressors<sup>14</sup>.

This is a censure of absolute importance, rendered even more solemn by the exclusion of the faculty of the Penitentiary to remit this type of excommunication, as it would otherwise be able to do. The obligation of the secret weighs on the Cardinal Inquisitors General «even when [...] they are absent from the curia, and on the other Inquisitors and whomever else»<sup>15</sup>. It extends to the point of covering every matter addressed, «even for causes and affairs, with the sole exception of that which, at the conclusion and in the exposition of the same causes or affairs, have arrived at legitimate publication»<sup>16</sup>.

There is, then, a way around the PS, which does not consist of a dispensation invoking grave or very grave causes or a greater good. Rather, the secret ceases the moment in which it is legitimately decided to publish the

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<sup>14</sup> «et hoc nedum sub poena excommunicationis maioris latae sententiae, quam incurrere voluit eo ipso, absque alia declaratione, cuius absolutionem sibi tantum, suisque successoribus Romanis Pontificibus, dempta super hoc facultate Sac. Poenitentiariae, ipsique D. Cardinali Poenitentiario, praeterquam in mortis articulo, reservavit, sed etiam sub aliis gravissimis poenis arbitrio Sanctitatis Suae et successorum, habito tamen respectu ad qualitatem transgressionis, et transgressorum infligendi». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174 (our translation).

<sup>15</sup> «etiam cum [...], a curia absentibus, coeterisque Inquisitoribus quibuscumque». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174 (our translation).

<sup>16</sup> «eamdem secreti obligationem permanere etiam causis, et negotiis finitis, iis tantum rebus exceptis, quae in fine et expeditione earumdem causarum, et negotiorum legitime publicari contingerit». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174 (our translation).

outcome of a cause. Given the strict premise regarding the substantial lack of exempting causes and the impossibility of invoking specific derogations, it is licit to suppose that the publication could be «legitimately publishable» when this was expressly granted by the Roman Pontiff, either in individual cases, or with a general norm that established the publication of the outcome of every cause handled.

For the greater protection of the PS regarding the causes of the Holy Office, Pope Clement warns of the obligation not to accept endorsements from notable figures of the time, as this would implicitly entail the obligation to justify decisions made<sup>17</sup>. He orders

that in the future, the designation and the instance is to be made by each Cardinal Inquisitor General for his service, in addition to those who are to be admitted to swear to rigorously observe the secret of the Holy Office, among whom one is to be an assistant of study and the other a scribe; only a theologian may be admitted for theological matters, whom His Holiness invites the aforementioned Cardinals to elect from among the qualifiers<sup>18</sup>.

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<sup>17</sup> «He moreover commanded and admonished in order that the Most Eminent Cardinals Inquisitors General, the Consultors, and the other aforementioned Officials dare not to knowingly admit the recommendations of any person whatsoever, of any rank or preeminence, even if these be made by letter in the above-mentioned causes and affairs, or if they have unknowingly admitted these, they must take to the Assessor the correspondence sent to them, nor are they to respond except by mandate of the S. Congregation, and in the act of voting in such cases they are held to reveal those by whom the cause was recommended to them, even if it regards a guilty person who is free by commutation or who implores the lessening of his penalty» («mandavit insuper ac praecepit ut tam E.mi DD. Cardinales Generales Inquisitores, quam Consultores, et alii Officiales praedicti commendationes quarumcumque personarum cuiusvis dignitatis ac praesentiae sint etiam per litteras in praefatis causis et negociis scienter recipere non praesumant, vel si non praecauti receperint, epistulas ad se missas Adessori tradant, nec rescribant nisi de mandato S. Congregationis, et in actu votandi in huiusmodi causis propalare teneantur, a quibus causa fuerit sibi commendata, etiamsi agatur de reo expedito pro commutatione aut diminutione poenae supplicante»). C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174 (our translation).

<sup>18</sup> «quoniam vero ex inordinata facilitate admittendi ad idem secretum, et ex nimia multiplicitate admissorum ad illud oritur, vel oriri potest facilitas et multiplicitas transgressionum, Sanctitas Sua stricte mandavit quod in posterum ad nominationem et instantiam faciendam ab unicoque D.no Cardinali Generali Inquisitore pro suo servitio praeter quos ad iuramentum de secreto S. Officii amplissime servando admittendos, quorum alter sit studii adiutor, et alter amanuensis, unus tamen theologus pro materiis theologicis admitti possit, quem ex qualificatoribus eligere Sanctitas Sua praefatos Dominos Cardinales hortatur [...]». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174-175 (our translation).

Limiting the number of people involved would have protected the secret to a greater degree.

In the case of doubt, the pontifical order warns, «his Holiness has declared that it must be interpreted in favor of the secret»<sup>19</sup>. To adapt an expression proper to our juridical tradition, we can say: *in dubio pro secreto*.

### 1.2 *Subsequent Confirmations and Mitigations*

A few years later, on 1 February 1759, Clement XIII confirmed the decree of his predecessor, maintaining the force of the formula of the oath and, above all, the penalties consequent to its violation<sup>20</sup>.

An initial attenuation of the severity of the PS came about, however, with the *Ordus servandus* appended to the ap. const. *Sapienti Consilio*, of 29 June 1908<sup>21</sup>, requiring only the *common secret* for certain matters<sup>22</sup>. A response from the Sacred Consistorial Congregation dated 25 April 1917<sup>23</sup> confirms a slight mitigation of the penalty, such that whoever transgresses the PS still incurs the *latae sententiae* excommunication reserved to the Person of the Supreme Pontiff, but can also incur another penalty *ferendae sententiae*. Beginning in 1940, the Congregation of the Holy Office itself starts to require only the *secretum prudentiae* for marriage causes, for dispensations from the Eucharistic fast and from impediments and irregularities, and for the granting of the license to read or retain prohibited books.

### 1.3 *The Unpublished Instruction of the Secretariat of State (24 June 1968)*

Following the *motu proprio Integrae servandae*<sup>24</sup>, in 1965 the Sacred Congregation of the Holy Office changed in nature and was named the *Sacred Congregation for the Doctrine of the Faith*. With its restructuring, the need to revisit the content and sanctions of the so-called «secret of the Holy Office» became immediately clear<sup>25</sup>. A first step in this direction of greater mitigation

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<sup>19</sup> «Quod si in aliquo casu quis dubitet de huius secreti obligatione, Sanctitas Sua declaravit interpretationem faciendam esse in favorem secreti». C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 174-175 (our translation).

<sup>20</sup> C. GENNARI, *Sul segreto del S. Ufficio* (cf. nt. 12), 175-177.

<sup>21</sup> PIUS X, ap. const. *Sapienti Consilio, de romana curia*, 29 giugno 1908, AAS 1 (1909) 7-19.

<sup>22</sup> Cf. pars II, cap. VII, n. 11.

<sup>23</sup> AAS 9 (1917) 232-233.

<sup>24</sup> PAUL VI, m.p. *Integrae servandae*, 7 December 1965, AAS 57 (1965) 952-955.

<sup>25</sup> To this, it is added that the «secret of the Holy Office» was in use not only in the same Congregation, but also in the Sacred Consistorial Congregation and the Sacred

took place with an *Instruction* emanated by the Secretariat of State that was never published in *Acta Apostolicae Sedis*, perhaps because it was destined for internal use within the Roman Curia. Its existence is known only from the fact that it is cited a few years later in the first public Instruction, *Secreta continere*, of 1974. It is a brief text that contains a schematic outline of the object of the secret, the subjects bound to it, penalties in the case of an infraction by fault, and the formula of the oath to be pronounced upon assuming an appointment<sup>26</sup>.

#### 1.4 *The Instruction Secreta continere (4 February 1974)*

Over the course of more than 250 years, norms regarding the secret defined its extension, object and subjects, gravity and penalties, without any mention of the theological, moral, or spiritual motivations that justified its observance. This was done with the instruction *Secreta continere, de secreto pontificio* (4 February 1974)<sup>27</sup>; it speaks of the common good, which can require that certain facts, persons, or circumstances be kept silent or only partially revealed, or else be made known at the suitable and convenient time as established by the ecclesiastical authority.

The Instruction is structured into four articles.

The first indicates the matter covered by the PS: 1) the preparation and drafting of pontifical documents, for which it is expressly required; 2) office information regarding material protected by the PS, handled by the Secretariat of State and by the Council for the Public Affairs of the Church; 3) reports or denunciations acquired by the Congregation for the Doctrine of the Faith regarding doctrine or publications, in addition to the examination of these by the same dicastery; 4) accusations received extra-judicially regarding delicts against faith or customs, and delicts perpetrated against the sacrament of

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Congregation *de propaganda fide*, in addition to in the Secretariat of State for the nomination of bishops and in other affairs of greater importance.

<sup>26</sup> Perlasca writes, in this regard: «La violazione colpevole del segreto pontificio era qualificata come un peccato riservato “ratione sui” alla Santa Sede. Da esso, tuttavia, poteva assolvere qualunque confessore, restando comunque l’obbligo di ricorrere alla sacra Penitenzieria. Nelle prime stesure del testo era prevista la scomunica *latae sententiae*. Alla fine, però, si optò per una pena che risultasse più comprensibile per la mentalità del tempo. Inoltre, per manifestare l’aspetto della riparazione esterna ad un’offesa grave contro l’intera comunità si era proposto di prevedere la sospensione *a divinis* per gli ecclesiastici e l’esclusione dalla comunione per i laici. Alla fine, però, la proposta in parola non venne accolta». A. PERLASCA, «Il segreto pontificio» (cf. nt. 12), 95.

<sup>27</sup> SECRETARIAT OF STATE, Rescriptum ex audientia, instruction *Secreta continere*, de secreto pontificio, 4 February 1974, AAS 66 (1974) 88-92.

penance, with trials and decisions relative to the accusations, without prejudice to the right of the accused to know the accusation when this is necessary for his defense (nonetheless, the name of the accuser can be made known only if such is retained opportune by the Authority for a discussion between accused and accuser); 5) the reports of representatives of the Holy See regarding matter covered by the PS; 6) office information regarding the creation of Cardinals; 7) office information regarding the nomination of bishops, of apostolic administrators and of other ordinaries with episcopal power, of apostolic vicars and prefects, and of pontifical representatives, and the relative processes of informing; 8) office information regarding the nomination of superior prelates and major officials of the Roman Curia; 9) that which concerns ciphers and coded correspondence; 10) the affairs or causes retained by the Holy Father, by the Cardinal at the head of a dicastery, and by pontifical representatives to be of such importance as to be protected by the PS. An eleventh point was recently added to this list, with a rescript of the Secretariat of State dated 5 December 2016, which concerns news or acts of a juridical, economic, or financial nature, pertaining to the Supreme Pontiff or the Secretariat of State<sup>28</sup>.

The second article indicates the subjects bound to observe the PS: 1) Cardinals, bishops, superior and minor prelates, consultors, experts and the subordinate personnel of the dicasteries; 2) Legates of the Holy See and their staff, in addition to the persons consulted by them in these matters; 3) all those to whom it is imposed, in particular circumstances, to observe the PS; 4) all those who, in any way, have knowledge of documents covered by the PS.

Art. 3 specifies the penalties for those who violate negligently, and not only with malice, the PS: 1) he who must observe the PS is bound to maintain it *sub gravi*; 2) if the violation is learned in the external forum, the accused will be judged by a special Commission, to be constituted by the Cardinal in charge of the competent dicastery or, lacking this, by the competent superior, who will inflict congruent sanctions in proportion to the fault and to the damage caused by it; 3) if the guilty party is an employee of the Roman Curia, he will be liable to the sanctions established by the general regulations (art. 39 §2; art. 61, 5°; art. 65 §1, 3°).

Finally, art. 4 presents the formula of the oath of observance<sup>29</sup>. «The obligation to observe the PS was qualified as grave and, therefore, its violation

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<sup>28</sup> SECRETARIAT OF STATE, Rescriptum ex audientia de Regulis, quae ad Secretum Pontificium spectant, 5 December 2016, AAS 109 (2017) 72.

<sup>29</sup> «Ego [...] constitutus coram [...] tactis per me sacrosanctis Dei Evangeliiis, promitto me fideliter “secretum pontificium” servaturum esse in causis et in negotiis quae sub eodem



entailed a grave sin in the moral order, although no longer reserved to the Holy See»<sup>30</sup>.

The treatment of the PS was no longer, then, an end unto itself, but was to be found in the distinction between it and the more common secret of office (*quod autem ad Curiam Romanam attinet [...] communi secreto ex officio obteguntur*). Differentiating the two obligations entails distinguishing their objects according to gravity and importance, defining their subjects (which can be the same), and establishing commensurate penalties.

It was precisely the question of penalties that animated the debate during the drafting of the Instruction. The need to pass from the previous *reserved Instruction* to a public, better written one, was attested to by the acknowledgement of the frequent and unjustified violation of the obligation of the secret on the part of those bound to it, such that, for some, an exacerbation of the penalties was necessary for the purposes of deterrence. To affirm that «*qui secreto pontificio astringitur, ad illum servandum gravi semper obligatione tenentur*» was, for some, too weak. It was thus that the following aside was introduced to art. III, 2: «*pro gravitate delicti eiusve damni*», allowing for the possibility of a severe penalty, on account not so much of the gravity of the violation as of the extent of the damage caused.

### 1.5 *The Declaration of the Secretariat of State of 29 December 1981*

In relation to the underestimation of the importance of the PS, the Secretariat of State stepped in just a few years later, with a Declaration on 29 December 1981<sup>31</sup>. The legislative framework underwent no modifications, its realm, object, subjects, and penalties remaining substantially the same with respect to the 1974 Instruction. It reiterates that a violation constitutes not only

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secreto sunt tractanda [pro iis, qui ad secretum pontificium admittuntur in aliqua peculiari causa servaturum esse in causa mihi commissa], adeo ut nullo modo, sub quovis praetextu, sive maioris boni, sive urgentissimae et gravissimae causae, secretum praefatum mihi violare liceat. Secretum, ut supra, me servaturum esse promitto etiam causis et negotiis finitis, pro quibus tale secretum expresse imponatur. Quod, si in aliquo casu me dubitare contingat de praefati secreti obligatione, in favorem eiusdem secreti interpretabor. Item scio huiusmodi secreti transgressorem peccatum grave committere. Sic me Deus adiuvet, et haec Sancta eius Evangelia, quae propriis manibus tango». SECRETARIAT OF STATE, Rescriptum ex audientia, instruction *Secreta continere* [cf. nt. 27], 92. The change from «iuro» to «promitto» was explicitly desired by the Holy Father.

<sup>30</sup> Cf. A. PERLASCA, «Il segreto pontificio» (cf. nt. 12), 97 (our translation).

<sup>31</sup> SECRETARIAT OF STATE, Declaratio, 29 December 1981, Prot. N. 78.638/158, in X. OCHOA ed., *Leges Ecclesiae*, VI, Romae 1987, 8340-8341. The Declaration was not published in AAS.

a grave sin but also a canonical delict, and dicastery Heads and pontifical representatives are invited to see to the observance of this grave obligation and to report eventual infractions, even when the violation does not result in harm to third parties.

#### 1.6 *Side Note: Is the Instruction *Secreta continere* still in force?*

The category of the PS has not been abolished, as it is still in force in certain legislative documents, albeit not expressly in the Latin Code. We must first understand the nature of the Instruction. If, indeed, in accordance with the current Code, instructions «clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them» (can. 34), then we must observe that *Secreta continere*, more than «clarifying» or «elaborating on», in reality establishes true and proper penal laws, as it renders effective new legislation, determining subjects, object, circumstances, violations and penalties not contemplated by the Code. Now, since can. 6 §1, 3° CIC establishes that when the Code takes force, it abrogates «any universal or particular penal laws whatsoever issued by the Apostolic See unless they are contained in this Code», we could deduce that what is prescribed by the Instruction, being true and proper penal laws, in spite of the literary genre in which they are contained (*Instruction*), is abrogated. The following various possibilities for interpretation are thus brought to our attention.

a) accepting the literary genre of the text in question as the founding issue. As an *Instruction*, which can only explain — not formally issue — a penal law, its provisions are not abrogated by the Code, and it thereby remains in force. Common interpretation seems to go in this direction, also keeping in mind the 2016 decision to complete art. 1 with the addition of an eleventh point<sup>32</sup>;

b) accepting as the founding issue the tenor of the Instruction, which is a *de facto* penal law, and which is thereby abrogated pursuant to can. 6 §1, 3° CIC;

c) considering the secret that must be observed by Pontifical Legates, as in can. 377 §3 CIC to be the «PS», based on the interpretation made possible by *Secreta continere*, which explicitly speaks of it, thus allowing the PS to not be abrogated by can. 6 §1, 3° CIC, given that it is still, albeit implicitly, cited in the Code;

d) accepting its abrogation for the reasons stated, but considering that the RGCR and the m.p. *SST* subsequently rendered it newly in force, with regard to the persons expressly affected: in the first case, members of the Dicasteries

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<sup>32</sup> SECRETARIAT OF STATE, Rescriptum ex audientia (cf. nt. 28), 72.

that make up the Roman Curia<sup>33</sup>, in the second case, all those who take part, according to any title, in the causes regarding delicts reserved to the Congregation for the Doctrine of the Faith.

## 2. The Reasons for the PS

The need to introduce the PS into the 2010 *Norms* was motivated by the right and obligation to protect the good reputation of persons involved in causes relating to reserved delicts. Nonetheless, it is clear that particular attentiveness to this was due to contingent reasons, namely the magnification — above all in means of communication — of incorrectly reported news concerning these delicts, capable of conditioning public opinion and influencing the judgement itself<sup>34</sup>.

We may now refer to some canons from the Latin Code which, read as a sort of combined provision, will help provide the framework for not only the matter and actors, but also the nature of the secret and its motivations.

We will first refer to can. 220, which states: «No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy»<sup>35</sup>. The immediate reference in the realm of penal causes in question here is the accused, who up until the definitive judgement must enjoy the presumption of innocence. Any eventual cautionary measures must not be put in place as a penalty or penal remedy, but exclusively as a condition for preventing scandal, protecting the freedom of witnesses, and favoring the course of justice (cf. can. 1722). The obligation to protect the good reputation finds even greater juridical force faced with the concrete difficulty of restoring dignity to those who have been

<sup>33</sup> This hypothesis must, however, overcome the obstacle of the difference between sanctions in the case of violation, as *Secreta Continere* and the RGCR are different. Cf. V. DE PAOLIS, «El secreto pontificio» (cf. nt. 4), 282.

<sup>34</sup> Cf. D. CITO, «Trasparenza e segreto nel diritto penale canonico», *Periodica* 197 (2018) 515-517.

<sup>35</sup> Cf. A. SOLFERINO, «I diritti fondamentali del fedele: il diritto alla buona fama e all'intimità», in *Diritto «per valori» e ordinamento costituzionale della Chiesa. Giornate canonistiche di Studio, Venezia, 6-7 giugno 1994*, Torino 1996, 372-382; J. HORTA, «Diritto all'intimità. Fondamenti storici e proiezione del can. 220 CIC e can. 23 CCEO», *Antonianum* 82 (2007) 735-756; D. LE TOURNEAU, «Le canon 220 et les droits fondamentaux à la bonne réputation et à l'intimité», *Ius Ecclesiae* 26 (2014) 127-148; P. SKONIECZNY, «La tutela della buona fama del chierico accusato degli abusi sessuali su minori. Un modo di procedere nel caso concreto in base al can. 220 CIC/83», *Angelicum* 87 (2010) 923-941.

defamed, especially by accusations as grave as those for which judgment is reserved to the Congregation for the Doctrine of the Faith.

Thus, in the general procedural realm there is a demand to protect privacy by means of the observance of the secret (though this is not the pontifical secret):

§1. Judges and tribunal personnel are always bound to observe secrecy of office in a penal trial, as well as in a contentious trial if the revelation of some procedural act could bring disadvantage to the parties.

§2. They are also always bound to observe secrecy concerning the discussion among the judges in a collegiate tribunal before the sentence is passed and concerning the various votes and opinions expressed there, without prejudice to the prescript of can. 1609 §4.

§3. Whenever the nature of the case or the proofs is such that disclosure of the acts or proofs will endanger the reputation of others, provide opportunity for discord, or give rise to scandal or some other disadvantage, the judge can bind the witnesses, the experts, the parties, and their advocates or procurators by oath to observe secrecy (can. 1455)<sup>36</sup>.

Still prior to the process, during the phase of the preliminary investigation, the Code prescribes: «Care must be taken so that the good name of anyone is not endangered from this investigation» (can. 1717 §2). There is no explicit mention of the PS, but rather of the fundamental value inherent in natural law, namely one's good reputation, which the PS must protect even more rigorously when the accusation, and consequently the danger of defamation, are grave. The seriousness of this issue is also demonstrated by its penal protection. Thus, can. 1389 §2 sanctions: «A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty». In this matter, the Eastern Code expresses the following in can. 1115:

§1. Judges who refuse to try a case even if they are certainly and obviously competent, who declare themselves competent without any legal basis and hear and decide cases, who violate the law of secrecy or who inflict some damage on the parties out of malice or serious negligence can be punished by the competent authority with fitting penalties, including deprivation of office.

§2. Other officers of the tribunal and auditors also can be punished with the same penalties if they do not fulfill their office as above; the judge can also punish all of them.

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<sup>36</sup> Cf. the recent study E. SAINT-LOUIS, *Le secret d'office du juge ecclésiastique: application du canon 1455 du CIC/83 par rapport au bien commun*, Ottawa 2017.

Whoever violates the secret can and must be punished with a just penalty if that violation results in harm to the good reputation or privacy of the other party.

The reasons for the PS are, then, placed within the context of the observance of and respect for a natural right. The protection of one's good reputation is such as to also justify the opposite of the secret, i.e. the divulgence of news, though within the appropriate measure, as long as this serves to restore the dignity of the unjustly accused. Thus can. 1361 §3 establishes: «Care is to be taken that the petition of remission or the remission itself is not divulged except insofar as it is either useful to protect the reputation of the offender or necessary to repair scandal».

This puts into relation two values that must be reconciled, which an improper interpretation of the PS runs the risk of pitting against one another. On the one hand, there is the *favor rei*, namely the protection of the dignity of the person. On the other hand, there is transparency, the knowledge of the truth of the facts, and the need to involve a community in the external knowledge of penal provisions so as to restore justice and remedy the scandal caused.

Ultimately, the PS finds its *raison d'être* in the need to protect a good that is inherent in the natural law, and not to avoid or hide an evil in order to defend an image. This good is, on the one hand, the good reputation of the persons involved (accused, witnesses, accuser, victim, etc.) and, on the other hand, the *bonum Ecclesiae*, which can. 1722 summarizes in the expression «guarding the course of justice»<sup>37</sup>. The good of the individual and the good of the community are inter-dependent, such that protecting the good reputation of the individual builds up the common good<sup>38</sup>. Generally, peaceful coexistence is impossible unless each individual commits to the moral and juridical obligation to preserve the confidentiality of information that can cause harm to others<sup>39</sup>. The course of justice must be free from conditioning

<sup>37</sup> Cf. D. CITO, «Trasparenza e segreto» (cf. nt. 34), 518.

<sup>38</sup> «Hay que subrayar que el bien común y el bien individual personal no estan en oposición, sino en relación de complementariedad. Así, el bien común el que exige que el individuo esté protegido en el ámbito del secreto que él confía a uno o a otro y especialmente a un profesional, porque sin esa protección el individuo ya no se fiaría del otro y la comunidad recibiría de ello un daño grave, al faltar la confianza recíproca». V. DE PAOLIS, «El secreto pontificio» (cf. nt. 4), 260.

<sup>39</sup> «La rigorosa tutela della sfera d'intimità è un requisito indispensabile per la coabitazione serena e pacifica tra gli uomini. La sua violazione impunita creerebbe un clima di sospetto: ognuno potrebbe considerarsi vittima di un possibile ricatto dal suo simile oppure da parte della collettività, e dovrebbe temere di continuo un'intrusione in quegli ambiti della

that is not useful for the purposes of the cause, from media pressures, from claims lacking juridical foundation, and from unjustified expectations that could be caused by the uncontrolled and distorted divulgation of news.

### 3. Who is Bound to Observe the PS?

The m.p. *SST* does not explicitly define the subjects bound by the secret. Nonetheless, by declaring its object («*huiusmodi causae*», art. 30), it implicitly binds, without distinction of category or degree, all those who are in some way involved in reserved causes. If one of the ends is the protection of the good reputation of persons, it is clear that anyone who on the occasion of the penal procedure comes to learn of its details, regardless of the degree, is subject to the obligation of the secret. Such would be the person who receives the report, the ecclesiastical authority who has the right and obligation to proceed accordingly (Bishop, Superior...), the investigator, the delegate, the assessors, the notary, etc. Is a witness, involved according to any title in the cause, also bound to the obligation of the secret? In light of the ends of the secret and the goods that it intends to protect, we could respond in the affirmative, although we must clarify that the *motu proprio Vos estis lux mundi* [= *VELM*] frees from the bond whoever reports a possible delict against the sixth commandment of the Decalogue committed by clerics or members of institutes of consecrated life or societies of apostolic life<sup>40</sup>. While anyone could, in theory, consider themselves free to publicize information regarding themselves that does not prejudice the good reputation of others, it is also true that we should not forget about the other dimension that makes the PS necessary, that is, the good of the Church as a whole, on the basis of which it is necessary to adequately consider the value of the secret even when this regards one's own self. It is, in fact, not rare that the revealing of information, even that which is partial and apparently non-damaging, causes public

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sua esistenza del tutto unica marcati da estrema vulnerabilità. È in questa ottica che il segreto, nelle sue variegata forme, gioca un ruolo sociale e culturale importante. L'oggetto del segreto naturale, affidato, e, infine, professionale, possono essere difetti naturali, misfatti e simili particolari la cui rivelazione arrecherebbe un danno ingiusto sia al singolo che alla comunità. Mantenere il segreto è inoltre un servizio che si rende alla protezione della libertà del singolo». K. DEMMER, *Medicina Salutis. La pastorale del sacramento della riconciliazione*, Roma 1996<sup>2</sup>, 51.

<sup>40</sup> «Art. 4 §1. Making a report pursuant to article 3 shall not constitute a violation of office confidentiality. [...] §3. no obligation to keep silent may not be imposed on any person with regard to the contents of his or her report». FRANCIS, ap. lett. issued *motu proprio Vos estis lux mundi*, 7 May 2019, *L'Osservatore Romano*, 10 May 2019, 10.

prejudice with regard to a case, and can generate unfounded expectations or orient public opinion in one specific direction.

The members of the Congregation for the Doctrine of the Faith who handle the causes in question, are also, by reason of their office, subject to the PS, which they assume by oath.

#### 4. The Extent of the PS

What does the PS cover? What does it not cover? Art. 30 of *SST* does not speak of process, but of «causes». Whereas can. 1455 of the Code, concerning the actions of ecclesiastical tribunals, speaks of «tribunal» and of «process», thus limiting the obligation of the secret (of office, in this case) to the procedural realm, *SST* refers more generically to «causes». Is such a distinction relevant?

One broader interpretation understands this to include not only the formal beginning of the process, but all acts regarding the treatment of the matter, from the report to the *res iudicata*. In fact, note 41 of *SST* specifies the secret of art. 30 with a reference to the text of *Secreta continere* art. 1, 4°, which states:

Included in the pontifical secret are [...] 4) denunciations received outside of a trial regarding delicts against faith and customs, and regarding delicts perpetrated against the sacrament of Penance, in addition to the process and decision consequent to these denunciations, without prejudice to the right of him who was referred to the authority to know the denunciation, if this is necessary for his defense. However, it will be licit to make the name of the accuser known only if it appears opportune to the authority for the accused and the one who accused him to appear together<sup>41</sup>.

In favor of subjecting reports to the secret, we can position the explicit citation in the notes of *SST*. The starting point must be at least the report, not the mere *notitia criminis*. In order to be such, the cause must have its own form, which in this interpretation requires that there at least be a duly signed report.

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<sup>41</sup> «Art. 1. – Secreto pontificio comprehenduntur: [...] 4) Denuntiationes extra iudicium acceptae circa delicta contra fidem et contra mores, et circa delicta contra Paenitentiae sacramentum patrata, nec non processus et decisio, quae ad hasce denuntiationes pertinent, salvo semper iure eius, qui ad auctoritatem delatus est, cognoscendae denuntiationis, si id necessarium ad propriam defensionem fuerit. Denuntiantis autem nomen tunc tantum patefieri licebit, cum auctoritati opportunum videatur ut denuntiatus et is, qui eum denunciaverit, simul compareant». SECRETARIA STATUS SEU PAPALIS, Rescriptum ex Audientia, instructio *Secreta continere* (cf. nt. 27), 90.

Another, rather more strict interpretation could equiparate «cause» to «process», despite the footnoted reference to *Secreta continere*, thus excluding from the secret all that which precedes the formal initiation of the process, including the preliminary investigation. We must ask, however, what is the sense of the possible divulcation of information that has not yet been proven and which risks compromising the good reputation of persons, as would be the case if the report and the *investigatio praevia* were excluded. Especially in a case of particular gravity, the guarantee of the secret could facilitate the gathering of elements supporting the well-foundedness of the accusation, and also allow for a greater and freer level of participation on the part of those who are asked to give a deposition or present other elements as witnesses.

It is a matter of understanding whether this requires absolute, rigorous observance. For example, it is not rare for the press office of a diocese or institute of consecrated life to confirm news of the opening of an investigation into a cleric, especially if such news has already been disclosed by other information sources. In this way, the clarification or correction of information so as to prevent the spread of false and biased news that might potentially harm the dignity and course of justice, can be accepted as a demand of justice that does not violate the secret. An entirely different issue, however, is the tendency present today in certain local Churches to preempt the news, publicly disclosing names and facts as soon as an accusation is made. For example, we may think of the lists periodically published by national episcopal conferences or religious institutes that include not only convicted clerics, but all those who have been accused in any way of a reserved delict<sup>42</sup>.

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<sup>42</sup> This praxis is even defined by certain Authors as «habitual» (D. ASTIGUETA, «Trasparenza e segreto. Aspetti della prassi penalistica», *Periodica* 197 [2018] 523), and regards various countries throughout the world. Names, specific accusations, cautionary measures, eventual civil convictions, expert reports, therapies, or photographs are published, as for example, in the Diocese of Milwaukee, USA. Cf. «List of Clergy Offenders. In line with the assurances given in the Charter for the Protection of Children and Young People, these are the names of diocesan priests of the Archdiocese of Milwaukee who have been (or would be if they were still alive) restricted from all priestly ministries, may not celebrate the sacraments publicly, or present themselves as priests in any way. In addition, in accordance with the canonical norms that have been established, the allegations against any living priest are sent to the Congregation for the Doctrine of the Faith in Rome». <https://www.archmil.org/reorg/clergy-offenders-info/clergy-offenders.htm> [consulted: 20 February 2019]. Also, the archdioceses of Los Angeles (cf. <http://clergyfiles.la-archdiocese.org/listing.html>), Gallup (<https://dioceseofgallup.org/youth-protection/crediblyaccused-list/>), and Winona (<https://www.dow.org/disclosures/index.html>). More recently, the dioceses of Texas have done the same, in addition to the diocese



This sort of initiative is explained as a means of transparency, of the will to not obstruct the course of justice, but it often fails to distinguish between founded and unfounded accusations, between causes in the initial stages and causes that have already been concluded and archived, between living persons, capable of defending themselves, and persons who are since deceased and thereby not imputable, etc. These are actions that could be interpreted as harmful to the dignity of persons, who must be presumed innocent and enjoy the protection of their good name. Could we hypothesize a *vulnus* to the PS in this case?

Under the wide arc covered by the secret, there are specific acts that could be removed in view of a greater good. That which was categorically excluded by the first document analyzed above, *Secretum Sancti Officii* (1709), today seems to be possible: the criterion of the greater good. It has happened, for example that the Press Office of the Holy See has broken the news of the outcome of a process, by means of a public release, both after this was definitively concluded<sup>43</sup> and also when it was still underway, having only reached the first instance of judgement<sup>44</sup>. These episodes, at the local or universal level, attest to the impossibility of interpreting the cover of the PS in a homogenous and monolithic way. That which occurs in an absolute manner with other forms of secret, for example, with the sacramental seal, cannot be transferred over to the realm of the PS, which allows for certain areas of flexibility in view of a greater good. Such a good might be the remedy of scandal, the need to clarify the juridical status of known persons who act or have acted in a known way, the danger that the convicted cleric will take

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of Brooklyn, and the USA Northeast Province of Jesuits. The same has been done in Chile, cf. <http://www.iglesia.cl/4520-declaracion-decisiones-y-compromisos-de-los-obispos-de-la-conferencia-episcopal-de-chile.htm>.

<sup>43</sup> Cf. The press release of the Holy See Press Office from 13 October 2018 regarding the dismissal from the clerical state of two bishops from Chile [consulted: 10 June 2020], <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/10/13/0747/01603.html>; of 28 September 2018 regarding the dismissal of a priest in Chile [consulted: 10 June 2020], <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/09/28/0705/01503.html>; and, more recently, the Press Release of the Press Office of the Holy See from 16 February 2019 regarding the dismissal from the clerical state of an American bishop [consulted: 10 June 2020], <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/02/16/0133/00272.html>.

<sup>44</sup> Cf. Press Release of the Holy See Press Office of 16 March 2018 regarding the conviction in the first instance of judgement of the bishop of a diocese pertaining to the episcopal conference of the United States of America [consulted: 10 June 2020], <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/03/16/0201/00436.html>.

advantage of the ignorance of his juridical *status* in order to continue to commit acts that, in reality, he is no longer permitted to commit, etc. We may, then, maintain that the rigor proper to the PS, while attenuated with respect to its historical origins, can cede in certain areas of its application and for reasons of the common good of the Church and of the persons involved. We can think, for example of the *notitia de delicto* when this has already been made known by other means and must be clarified, or when it becomes necessary to declare decisions and responsibilities on the part of third parties; of the fact that the cause has been concluded by sentence or decree; of the content — briefly outlined — of the final decision<sup>45</sup>, of the existence of a recourse or appeal, or even of the declaration of the *res iudicata*. The PS cedes its rigor above all when the procedure (or pre-procedure, if limited to the preliminary investigation) is resolved in favor of the accused, thereby requiring that his good reputation be fully restored and that his dignity, compromised by the accusation, be publicly redeemed. However, we do not consider that the secret may indiscriminately give way, but only for the purposes of the same «good» that it is intended to favor.

## 5. Specific Cases Removed from the PS

On 6 December 2019, the Holy Father Francis has established to emanate a new Instruction entitled, «On the confidentiality of legal proceedings», in which reports, processes, and decisions regarding certain delicts are removed from the obligation to the PS<sup>46</sup>. This regards the delicts described in art. 1 of

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<sup>45</sup> Regarding the publication of the decision to dismiss from the clerical state, the decree of the Congregation for the Doctrine of the Faith establishes the following wording: «Ordinarius curet, quantum fieri potest, ne condicio presbyteri dimissi novum fidelibus scandalum praebeat. Attamen, si adest periculum minoribus abutendi, Ordinarius potest factum dimissionis necnon causam canonicam divulget». The evaluation is, then, left up to the Ordinary, implicitly acknowledging a faculty to dispense from the PS, at least in its broader sense. Regarding making the decision known, there may be different interpretations which involve the recipient of the decree alone or, more generally, the entire community. Cf. D. ASTIGUETA, «Trasparenza e segreto» (cf. nt. 42), 529-530.

<sup>46</sup> The text reads thus: «1. The pontifical secret does not apply to accusations, trials and decisions involving the offences referred to in:

a) Article 1 of the *Motu proprio Vos estis lux mundi* (7 May 2019);  
 b) Article 6 of the *Normae de gravioribus delictis* reserved to the judgement of the Congregation for the Doctrine of the Faith, in accordance with the *Motu proprio Sacramentorum Sanctitatis Tutela* of Saint John Paul II (30 April 2001), and subsequent amendments. 2. Nor does the pontifical secret apply when such offenses were committed in conjunction with other offences. 3. In the cases referred to in No. 1, the information is to be treated in such a way as to ensure its security, integrity and confidentiality in accordance

the *motu proprio Vos estis lux mundi* (which, in reality, were never expressly subject to the PS), and those of art. 6 *SST*. The intent of the Instruction is to favor cooperation with civil authorities in the persecution of such grave and widespread delicts, preventing the secret from impeding, on the part of the Church, a fruitful understanding directed toward the common aim of reaching the truth and providing for justice. There is also the intent to offer parties involved in such causes, and especially victims, the information which seems to correspond to a true right<sup>47</sup>. The Instruction was hailed as a positive step forward for transparency, inevitably leading to the mitigation of confidentiality of causes in favor of greater awareness. However, this does not entail the abrogation of confidentiality in these causes. To this end, we may briefly note a few significant points.

a) Firstly, at the formal level, it is peculiar to entrust the literary genre of the «instruction» with the task of introducing a new norm to the canonical system. Although this genre was used in 1974 for *Secreta continere*, can. 34 of the 1983 Latin Code expressly entrusted an altogether different task to *Instructions*, namely that of clarifying the prescripts of laws and elaborating on and determining the methods to be observed in fulfilling them. We may observe, then, a formal incongruity that inevitably has a bearing on the degree of reception of this prescription.

b) Secondly, we must observe that not all of the content of art. 6 *SST* is removed from the obligation to the PS, but only «reports, processes, and decisions». The desire was to replicate what is present in *Secreta continere* also in this field, while still expressly excluding the removal from the PS (and thereby leaving it in force) of some parts of the causes relative to art. 6. We might immediately think of the preliminary investigation (cf. canons 1717-1719 CIC), which represents an important part of the cause and corresponds neither to the report (to which it is subsequent) nor to the process and decision (which are acts subsequent to it). The report itself sometimes occurs only after news has reached the Ordinary. In this case, the *notitia* is protected by the PS,

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with the prescriptions of canons 471, 2° CIC and 244 §2, 2° CCEO, for the sake of protecting the good name, image and privacy of all persons involved. 4. Office confidentiality shall not prevent the fulfilment of the obligations laid down in all places by civil laws, including any reporting obligations, and the execution of enforceable requests of civil judicial authorities. 5. The person who files the report, the person who alleges to have been harmed and the witnesses shall not be bound by any obligation of silence with regard to matters involving the case». *L'Osservatore Romano*, 18 December 2019, 5.

<sup>47</sup> We must not forget that victims, even if they are the accuser, are considered to be «witnesses» in the judicial penal process, as the contention is established between the promotor of justice and the accused.

but not the report. Also, for that which concerns the «decision», we could ask whether this indicates only the dispositive part of the decision, or rather the entire text of the penal decree or sentence. In the latter case, it would not be possible to sufficiently protect the confidentiality of possible witnesses, whose names and depositions are often found, even if only partially, in the decision.

c) Finally, the substitution of the PS with the secret of office merits special mention. This latter secret, despite not enjoying the rigor of the former, intends to seriously protect the confidentiality of the acts, the good reputation of the persons involved, and the good of the Church.

Further along (cf. 10.2), we will discuss the unresolved issues relating to an eventual formal concurrence of more than one delict, when some of these would be subject to the PS and others, relative to the art. 6 *SST*, would not be subject to the PS.

## 6. The Form of Subjection to the PS

On what basis is one subject to the observation of the PS? We can identify three modalities by which one is bound to observe this obligation, none of which excludes the concurrence of others.

Firstly, by oath. Those who stably lend a service in an ecclesiastical office connected to the delicate matter of reserved delicts must take an oath to observe the PS. Superiors, officials and officers of the Congregation for the Doctrine of the Faith fall into this category.

Nonetheless, this does not exclude that, in certain causes conducted locally and which regard reserved delicts, the officials involved can take the oath to observe the PS, with all relevant consequences in the case of its violation.

It is more difficult to think that others involved in causes as witnesses, experts, accused or accusers are bound to the PS in accordance with the oath. Although hearings are always preceded by an oath, except that of the accused who is not bound to do this, it is necessary to remember that this is an oath *de veritate dicenda* or *de veritate dictorum*, the object of which it would not be licit to extend.

One is bound to the secret also *ratione materiae*, and thereby not by a formal act but by reason of the object of the cause. Indeed, when a person assumes a cause of reserved delict as the object to be treated, from the opening of the *investigatio praevia* onwards — in accordance with a broad interpretation —, he must consider himself subject to the secret, even if he has not taken an oath. This is the case, for example of a delegation to conduct the cause conferred *ad casum* by the Ordinary to a suitable person. The delegation itself, by reason of the matter treated, entails the obligation to observe the

secret. However, we maintain that this is not the case when it comes to the knowledge of a possible delict on the part of a pastor of souls, or even of an official who, in another context, learns of information dealing with reserved delicts. Despite having an obligation to confidentiality (in this case, we can think of it as the natural secret), this obligation cannot be configured as the case we are discussing here.

Finally, we can consider the subjection *ratione officii*, which does not necessarily require an express oath to observe the secret, but which entails such observances by reason of the office held. This is the case, for example, of the judicial vicar of a diocese who receives a general delegation to handle these causes, not on account of his person, but on account of the function carried out, presupposing that this delegation will be transmitted to whoever succeeds him in the office. This is also the case, as a final example, of the Procurator of an institute of consecrated life who, as such, is bound to the obligation of the secret on account of the office that he occupies<sup>48</sup>.

The distinction made above leads us to clarify that the secret does not only urge when positively expressed. In this way, communications can be marked «under pontifical secret» or «under strict pontifical secret», but the fact that such language is not used does not signify a lack of binding. Art. 30 of *SST* does not establish formal clauses for validity: the material is sufficient to bind to observe the obligation.

## 7. Exempting Causes

Despite not being comparable to the sacramental seal, the PS enjoys a particular obligation of observance that drastically reduces its possibilities of mitigation or exemption. As stated, we can think that in view of a greater good, a derogation may be permitted<sup>49</sup>. The question is, really, extremely delicate, also on account of the difficulty of trying to concretize the concept of «greater good». Who would have the authority to define it as such? We have seen that, at its origin, the rigor of observance was such that it did not allow

<sup>48</sup> Along these lines, see also V. DE PAOLIS, «El secreto pontificio» (cf. nt. 4), 268-280. U. Rhode is of a differing opinion, maintaining that the obligation does not depend on functions, which are only relevant for the determination of eventual possible sanctions in the case of violation. Cf. U. RHODE, «Trasparenza e segreto nel diritto canonico» (cf. nt. 1), 479 (in particular note 76).

<sup>49</sup> «Quodvis secretum, excepto tamen secreto naturali personali, cedit bono publico; iudici, legitime interroganti, rem candido animo manifestare debemus; nam praevallet ius societatis ad hoc ut iustitia fiat vel reintegretur». A. LANZA – P. PALAZZINI, ed., *Theologia Moralís*, II/2, Romae 1965, n. 908. Cf. V. DE PAOLIS, «El secreto pontificio» (cf. nt. 4), 268-270.

for any derogation, not even in view of a *bonum* that was considered relevant to the ecclesial order. Today, the confines of obligatoriness have been scaled down by praxis, but the difficulty of securely identifying reasons that might lead to a mitigation remains. We maintain that, in doubt, the observance of the secret must always prevail, and that the revelation of information that could potentially damage the good reputation of persons and the *bonum Ecclesiae* always falls under the responsibility of him who reveals it, with the possibility of penal repercussions should the criteria for exemption be retained insufficiently founded by a correctly carried-out trial.

### 8. Who Can Dispense?

Recently, there have been many requests for dispensation in favor of transparency, collaboration with the justice of the State, or the obligation to inform the community of procedural outcomes involving persons who are well-known on account of circumstances that have generated public scandal. There is no shortage of cases in which state authorities formally request that the Holy See transmit reserved documents, also by means of international rogatory. It happens that persons involved in canonical processes request an exception from the PS to defend themselves in civil court, wishing to present documents that would demonstrate their non-involvement in the facts. All of these circumstances raise the question of exemption, not only regarding its conditions, but also regarding the competent authority. While the Congregation for the Doctrine of the Faith is competent to handle those causes reserved to it (cf. *SST* art. 1 §1, art. 8), and, while recognizing that said Congregation has a certain function of guaranteeing the observance of the secret in accordance with art. 30 *SST*, the power to dispense from the PS cannot be attributed to this Dicastery, as it is a pontifical norm established by a *motu proprio*.

The only legitimate authority to dispense is, then, the supreme authority, who can act personally or by delegating this power to those that he considers suitable to evaluate and decide in this regard. Specifically, as these are sometimes requests presented through formal means (international rogatories, etc.), the Roman Pontiff could charge the appropriate section of the Secretariat of State with evaluating the presence of legitimizing conditions and, possibly, coming to a decision. As of today, the question of dispensation pertains to the supreme authority, who decides on a case-by-case basis, communicating such decisions through the Secretariat of State.

## 9. The Non-Observance of the PS

Art. 30 §2 *SST* considers the case of an undue disclosure of information that is covered by the PS: «Whoever has violated the secret, whether deliberately (*ex dolo*) or through grave negligence, and has caused some harm to the accused or to the witnesses, is to be punished with an appropriate penalty by the higher turnus at the insistence of the injured party or even *ex officio*».

The sanction is thus established for anyone, regardless of their role in the cause. It is not necessary that the violation be positively willed, with the intention to harm a party (accused or witnesses); it is sufficient that the violation was negligent, which may sometimes be attributed to superficiality, inattention, or mistake. In this case there is an undetermined *ferendae sententiae* penalty. The violation is subject to a sanctionary procedure not only when it causes some harm, but also because, in and of itself, it constitutes a motive for penal action. If it also causes harm (for example, harm to good reputation, personal information not regarding the cause, partially incorrect information, etc.), the urgency to proceed is even greater, and the eventual penalty must take into consideration the harm caused. It is in this way that the «*congruis poenis puniatur*», is to be interpreted, analogous to the more common «*iusta poena puniatur*». The text cites the potential harm to the accused and to witnesses, but we must also keep in mind the possibility of harm to the alleged victim (who may not be a witness), to the competent ecclesiastical authority, and more generally to anyone who participates in the cause in any role.

The procedure for the sanction establishes that the instance must come from whoever claims to have suffered detriment from the violation, or even *ex officio*, thus intending to clarify that the damage can also be done to harm ecclesial communion itself. The competent organ to judge eventual infractions of the secret is the higher *Turnus*, thus separating the judicial instances involved to prevent possible conflicts, vindictiveness, or underestimations.

## 10. The Other Side of the Coin

It is beyond doubt that the reasons underlying the PS inevitably entail certain limitations, which comprise the «other side of the coin» and result in the debate surrounding the question of the secret. While its observance does, indeed, protect good reputation and the *bonum Ecclesiae*, it also presents certain problematic issues that we will now briefly examine.

### 10.1 *Limitation of the Right of Defense*

This is one of the most debated aspects of the issue. If information is reserved and unable to be disclosed, whoever needs to defend himself may find that the rigorous concept of the secret represents an unacceptable limitation of a natural right. Access to the acts of the cause is, in fact, a necessary condition for knowing the accusations, knowing who presented them and in what timeframe, being able to express an opinion regarding credibility and weigh the solidity of the proofs produced, justify certain facts, etc. Now, it is true that can. 1720 CIC, regarding the extrajudicial process, establishes that the Ordinary must «inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned». The right of defense would thus seem to be guaranteed. However, in accordance with the secret, it is equally true that the accused will unlikely be granted access to the acts in full freedom by, for example, receiving a copy. The praxis of the CDF in this regard calls for the accused and his advocate to be summoned and granted the possibility of studying the acts under particular conditions, promising that they will not make copies of any kind. Moreover, the CDF also has the faculty to place certain acts under further secret, to block out the names of witnesses to whom anonymity has been granted, or to limit the availability of documents<sup>50</sup>. Defense is not necessarily compromised, but it is limited<sup>51</sup>. In addition, if the allegation regards art. 4 of *SST*, there is a special protection of information possibly concerning the sacramental seal, such that the accused is not informed of the name of the accuser, the details of the accusation, or the material of the confession, and is warned that, if in the course of the cause the penitent should inadvertently say something related to the seal, this must be omitted from the record and not considered for the purposes of proof<sup>52</sup>. In this

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<sup>50</sup> This is the case contemplated by can. 1598 §1: «After the proofs have been collected, the judge by a decree must permit the parties and their advocates, under penalty of nullity, to inspect at the tribunal chancery the acts not yet known to them; furthermore, a copy of the acts can also be given to advocates who request one. In cases pertaining to the public good to avoid a most grave danger the judge can decree that a specific act must be shown to no one; the judge is to take care, however, that the right of defense always remains intact».

<sup>51</sup> Cf. D. ASTIGUETA, «Trasparenza e segreto» (cf. nt. 42), 532-533.

<sup>52</sup> Cf. *SST* art. 24: «1§ In cases concerning the delicts mentioned of in art. 4 §1, the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented. §2. This same Tribunal must consider the particular importance of the question concerning the credibility of the accuser. §3. Nevertheless, it must always be observed that any danger of violating the sacramental seal be altogether avoided».



latter case, the PS is interwoven with the sacramental seal, rendering the exercise of defense even more difficult. Meanwhile, the prosecution, which in the administrative process then arrives at the issuance of a decision on the merit of the case, has at its disposal all that which the procedural inquiry has brought to light.

The challenge, also in this case, will be how to maintain the balance between two values that would appear contradictory, guaranteeing on the one hand the secret and the protection of the goods examined above, and on the other hand the sufficient exercise of defense in view of the corresponding natural right. An imbalanced relationship between these two factors can generate insufficient consideration of the principle of the presumption of innocence, which ought to always protect the accused until the moment of the conclusion of the cause.

### 10.2 *Less than Full Collaboration with Civil Authorities*

For the Church, this question has arisen above all in the guidelines of national episcopal conferences regarding the prevention and handling of cases of the abuse of minors. For some years now, way has been made for an explicit path of cooperation with investigators at the regional and state level conducting investigations, carrying out trials, and imposing penalties in those places where the canonical delict is also relevant in the civil juridical system. This collaboration is recommended by the CDF to episcopal conferences, and is sometimes made obligatory<sup>53</sup>. The praxis of the CDF recommends waiting

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<sup>53</sup> «e) Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures». CONGREGATION FOR THE DOCTRINE OF THE FAITH, «Circular letter to assist Episcopal Conferences in developing guidelines for dealing with cases of sexual abuses of minors perpetrated by clerics», 3 May 2011, AAS 103 (2011) 408. The recommendation was recently taken up again in the meeting «The Protection of Minors in the Church», held at the Vatican from 21 to 24 February 2019. Among the «points for reflection» given to participants, we will mention the concise n. 5: «Informing civil authorities and superior ecclesiastical authorities in accordance with civil and canonical norms». Cf. Punti di riflessione [consulted: 10 June 2020] [http://www.vatican.va/resources/resources\\_puntidiriflessione-protezioneminori\\_20190221\\_it.html](http://www.vatican.va/resources/resources_puntidiriflessione-protezioneminori_20190221_it.html). Different States have established legislation that requires various professionals, including ministers of worship, to report to the civil authorities information received regarding the question at

for the outcome of the civil procedure, where such has been undertaken, before pronouncing a canonical judgement. This allows for the acquisition of acts, documents and proofs that the canonical process would generally be otherwise unable to obtain. However, this cooperation is asymmetric; while the state authority can hand over the requested documentation to the ecclesiastical authority (which depends, first of all, on the individual juridical system in question), the opposite is not the case, because of the secret that binds the Church, which prevents the release of documents to persons beyond those involved in the cause. The above-cited Instruction «On the confidentiality of legal proceedings» of 6 December 2019 intends to limit this asymmetry, especially in its affirmation that:

Office confidentiality shall not prevent the fulfilment of the obligations laid down in all places by civil laws, including any reporting obligations, and the execution of enforceable requests of civil judicial authorities (n. 4).

However, such a statement of principle cannot dissipate all doubts in this regard. It is a question of understanding whether this cooperation should occur only when faced with a civil obligation or executive order, or whether it could be done upon the initiative of the Church; how to distinguish, in this case, between acts subject to the PS (for example, the preliminary investigation) and acts subject to the secret of office; what to do when the case regards not only art. 6 *SST*, but also, in formal or substantial concurrence, art. 4 regarding the sacrament of penance<sup>54</sup>.

By way of example, we may cite the cases that have recently unfolded in Australia and Chile. These countries have asked the Church to provide them with information obtained, a request which was refused based on the law regarding the secret. In Australia, the recommendations of the Royal Commission established consequent to the plague of abuses — committed not only by clerics of the Catholic Church — against minors, specifically requested of the Holy See in points 16.10 and 16.16 that the PS not cover canonical processes when these regard the abuse of minors. The Holy See responded with the aforementioned Instruction, opening up new possibilities for

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hand. Among these are the United States and Ireland, where mandated reporting is in force. Cf. M. MULLANEY, «Mandatory Reporting and the Seal of Confession», *The Furrow* 62 (2011) 523-527; J.P. KIMES, «*Simul et cura et solertia. Le essential norms della Conferenza Episcopale statunitense*», in C. PAPALE, ed., *I delitti riservati alla Congregazione per la Dottrina della Fede*, Città del Vaticano 2015, 25-44.

<sup>54</sup> The delict against the sixth commandment of the Decalogue with a minor could, indeed, occur in the act, on the occasion, or with the pretext of confession (cf. *SST* art. 4).

cooperation, but maintaining a secret of office that serves to limit indiscriminate access to the acts.

In Chile, there have been multiple requests on the part of the regional and central investigative authority (*Fiscalia*), which, confronted with a response in the negative from the Church, proceeded to coactively seize documents, searching through curial and episcopal conference archives, thus generating tension in the relationship between Church and State.

### 10.3 *From Allies to Enemies*

It is easy to imagine the consequences of all that has been stated above. What should constitute a common goal, namely the pursuit of justice by means of the ascertainment of the truth, with due respect to the differences between juridical systems, is inadvertently transformed into an image of opposition. By reason of the secret, which prevents full collaboration, the Church, rather than an ally of the State in the persecution of delicts, sometimes appears as the opposition, hiding what is at her disposal rather than making it evident as the State does with respect to the Church<sup>55</sup>. The reasons stated above do not appear sufficient to justify such resistance. Thus, an involuntary tension is generated, which fails to benefit the freedom of the Church and runs the risk of conditioning decisions, displaying an obstructionistic face rather than the norm's underlying intention to defend dignity.

### 10.4 *The Lack of Jurisprudence*

One final limit consists in the lack of available jurisprudence. Causes relating to reserved delicts are not known precisely because of the secret, and this necessarily entails a *vulnus* for the progress of the community with regard to justice. Lack of jurisprudence does not only bear the procedural meaning of that term, where jurisprudence is a source of law, but also the absence of criteria that can orient the action of ordinaries and legal professionals. We may cite two examples in this regard. The first concerns the «typification» of the «person who habitually has the imperfect use of reason» (*SST* 6 §1, 1°). The expression, certainly more correct for the identification of those who are commonly defined as «vulnerable adults», is difficult to classify in practice. What does it actually mean? An adequate body of jurisprudence would allow for a greater classification, such as we have seen, for example, with can. 1095,

<sup>55</sup> On the cooperation between Church and State in this area, cf. D. ASTIGUETA, «Trasparenza e segreto» (cf. nt. 42), 526-529.

2° and 3° in the realm of marriage nullity processes. The second example has to do with the question of the extent to which images of minors can constitute a delict if they do not correspond to existing minors, but rather, for example, have been generated by sophisticated computer programs, or simply drawn. In this case, too, jurisprudence would allow for a greater knowledge and application of the law, and contribute to the homogeneity of praxis.

## 11. Imagining a Legislative Development

In the light of all that which we have discussed, both the historical overview and the juridical framework, it is possible to develop a few reflections that, in an exercise *de iure condendo*, allow us to glimpse a possible evolution of the question. Imagining legislation and its application in the future, we might put forth four points of argument.

### 11.1 *Greater Detail*

Currently, as we have seen, the norm on the PS is practically absent from legislative texts regarding the life of the Church: Codes, Apostolic Constitutions, etc. It is present in *SST*, with an explicit cross-reference to *Secreta continere*, but it is expressed fairly synthetically, and doubts remain as to whether or not the *motu proprio* is in force. The issues that we have identified lead us to consider the urgency of a development of the institution of the PS, establishing with a greater degree of detail its confines, content, subjects, form, attenuations and dispensations, competent authorities, consequences for a violation with the procedure to be followed for its verification, and eventual prosecution. All this is currently left up to the praxis of the CDF, which, however, is competent in this area only to a certain degree. There is a lack of legislative points of reference (or authoritative interpretations) to enlighten this issue and limit the unhappy consequences of incorrect applications. Given the significant number of cases of delicts reserved to the CDF, we should not exclude specific and detailed legislation.

### 11.2 *Protecting the Good and Attenuating Limitations*

This must not, in any event, diminish the protection of goods that the secret intends to protect, but rather only mitigate the limitations that it presents. It would be possible, for example, to guarantee a greater freedom of access to the acts in order to allow for the adequate defense of the accused, providing penal protection against the risk of an unauthorized divulgation that results in

harm to the parties involved<sup>56</sup>. Since in the majority of cases the accused defends himself with the assistance of a patron, the penal protection of the secret can also have an effect on the suitability of the patron himself who, if he has proven untrustworthy in the protection of information, can be excluded from the advocacy of penal causes.

Likewise, a healthy cooperation between the Church and the State would call for a greater willingness to consign relevant acts, with the prior consent of the witnesses involved, after discernment regarding the proofs. This, rather than being totally excluded, can be partially consigned to the investigating authority, by means of an intelligent and shared evaluation, thus concretely executing the provision of the Instruction regarding the confidentiality of legal proceedings of 6 December 2019. This would help to generate an image of the Church that inspires greater trust, able to collaborate with other juridical systems in the pursuit of a singular aim: justice through the ascertainment of the truth.

These measures do not necessarily entail the betrayal of the fundamental principles of the PS, as we might tend to believe after a reading of the rigorous documents in its history. On the contrary, it would be a question of continuing to protect a good, while at the same time preventing the consequent compromise of other goods, as would occur with an excessively rigorous reading of the norm<sup>57</sup>.

### 11.3 *Rigor in the Persecution of Non-Compliance*

A new and more intelligent legislation in this area necessarily entails greater rigor in the persecution of cases of negligent or malicious non-compliance. Precisely because the parties are at greater risk of defamation, a new legislation that is less rigorous and absolute must establish greater rigor in its consequent penal sanctions. While it is difficult to imagine today an action in that sense — as, *de facto* there are no convictions for such a delict —, one day this will need to be ensured, lest its object be rendered more fragile. In this case, too, it is a question of making the penalty congruent to the delict of violating the PS. We cannot exclude the possibility of, for example, the deprivation of an ecclesiastical office for clerics or lay people involved in the cause, or even for patrons acting as procurators or advocates, providing that at

<sup>56</sup> Cf. P.M. DUGAN, «The Need to Know vs. Confidentiality: Do Pontifical Secret and the Clamoring of the Media Deny Canonical Rights?», in P.M. DUGAN, ed., *Towards Future Developments in Penal Law*, Montréal 2010, 9-31.

<sup>57</sup> On the potential conflict between transparency and secret, cf. U. RHODE, «Trasparenza e segreto nel diritto canonico» (cf. nt. 1), 490-492.

least the negligence has been proven and the damage caused to third parties has been ascertained.

#### 11.4 *The Formation of Legal Professionals*

Finally, new legislation defining the PS ought to be accompanied by the thorough ongoing formation of all those who will be bound to respect it. This is not only a matter of bringing awareness to a new juridical framework, but rather of invoking its theological, (particularly ecclesiological) and moral foundations. Far from a merely positivistic perspective, the PS stands or falls essentially in the measure in which those who are called to protect it understand its underlying reasons, which are based on the dignity of the human person, on the right to always be defended and considered innocent until proven guilty, on the obligation to promote the good of the Church as such, and on the need to arrive at the truth of a matter, persecuting eventual delicts with ethical criteria that respect a greater good and do not bend to the interests of a single party.

#### **Conclusion: Some Concrete Possibilities**

We may identify a few prospects to overcome the current limitations of the PS for causes of delicts reserved to the CDF. These do not represent an absolute solution to the problem, but still offer an improvement over the current situation.

The most drastic measure, regarding which we may still raise numerous uncertainties, could be the absolute abolition of the PS for all reserved delicts. This seems to be excessive, and fails to balance out the imbalances identified, at the risk of itself generating injustices and damaging personal rights.

The decision taken by the Instruction regarding the confidentiality of legal proceedings, as relates to part of art. 6 *SST*, is certainly a step in the right direction. It generates a greater awareness in the Christian community, establishes principles for a healthy cooperation with state authorities, and allows for the actualization of a fuller right of defense. The bounds of such application must, however, still be better defined, as there is a clear risk that abrogating the PS in some areas and undervaluing the secret of office could transform someone who is simply the object of a *notitia de delicto*, and thereby presumed innocent, into a «guilty» person without the possibility of appeal.

In the «Meeting on the Protection of Minors» held at the Vatican from 21 to 24 February 2019, the topic of the PS was addressed in two speeches. Card. Marx affirmed:

Every objection based on pontifical secrecy would only be relevant if compelling reasons could be shown why pontifical secrecy should apply to the prosecution of criminal offences concerning the abuse of minors. As things stand, I know of no such reasons<sup>58</sup>.

In reality, the reasons are known, and comprise the substance of this institution. Thus, Professor Linda Ghisoni, in the same context, evoked them, while still clarifying that:

It will be necessary to reconsider current legislation on the pontifical secret, so that it may protect the values that it intends to protect, namely the dignity of the persons involved, the good reputation of all, the good of the Church, while at the same time allowing for the development of a climate of greater transparency and trust, preventing the idea of the secret from being used in order to hide problems rather than to protect the goods at stake<sup>59</sup>.

MATTEO VISIOLI

### Summary

Originating several centuries ago, over the course of time the pontifical secret has progressively become less rigorous. Present today in only a few normative texts, the Pontifical Secret still presents a challenge to the needs of transparency in our time. This is especially true in the face of events that, in light of the secret, run the risk of being interpreted as a cover-ups or obstacles to the pursuit of truth. How can canonical norms today find a balance between confidentiality, which protects the right to a good reputation, and the understandable desires for shared knowledge and concern for the truth?

**Keywords:** secret; pontifical secret; confidentiality; transparency; reserved delicts; *Sacramentorum sanctitatis tutela*; good reputation.

<sup>58</sup> R. MARX, «Trasparenza come comunità di credenti», in *Consapevolezza e purificazione. Atti dell’Incontro per la Tutela dei minori nella Chiesa*, Città del Vaticano, 21-24 February 2019, Città del Vaticano 2019, 122.

<sup>59</sup> L. GHISONI, «*Communio*: agire insieme», *Consapevolezza e purificazione* (cf. nt. 58), 94 (our translation).

**Sommario****Confidenzialità e segreto pontificio**

Istituto antichissimo, il Segreto pontificio nel corso del tempo ha progressivamente mitigato il suo rigore e ancora oggi, sebbene presente in pochi testi normativi, si presenta come sfida alle esigenze di trasparenza del nostro tempo, soprattutto di fronte a eventi che, se mantenuti del segreto, rischiano di essere letti come nascondimento e ostacolo al perseguimento della verità. Come la normativa può contemperare la confidenzialità che tutela la buona fama con le esigenze di conoscenza e verità?

**Parole chiave:** segreto; segreto pontificio; confidenzialità; trasparenza; delitti riservati; *Sacramentorum sanctitatis tutela*; buona fama.



## TRANSPARENCY AND THE RIGHT OF DEFENSE

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### Introduction

I have been entrusted with the topic of transparency and the right of defense, and offer my thanks for this invitation. Although it has not been specified, the field of my reflections will doubtlessly be that of penal canon law; it is, rightly, in this area that the right of defense acquires an even greater importance, where errors in transparency can obscure the right of defense and other rights at play in the process, such as the rights to privacy and to a good name.

This topic presents us with a problem both of semantics and of content. A problem of semantics in that both of these terms are so widely employed as to have become devoid of a specific meaning; a problem of content, because, at first glance, both terms seem antithetic, such that the affirmation of the former would imply the negation of the latter. In reality, these concepts move in transverse dimensions. While transparency is a *quality* of an act, the right of defense, on the other hand, is a recognized *faculty* of a member of the faithful to protect him or herself from accusations in a trial. Viewed in this way, transparency will sometimes be a way to protect the right of defense. For this reason, a significant portion of this paper reflects on the real weight of these concepts and on how they interact within a canonical penal process.

Another problem is that the term derives from civil usage, especially in the administrative and economic fields, and must be adapted when used in the juridical and ecclesial realm, lest we fall into false antinomies (publicness versus secret or secret equals complicity). I have taken license to borrow the term from the contractual and political spheres to apply it in the canonical field.

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## 1. Concept of Transparency

### 1.1 *Phenomenology of Transparency*

Etymologically, in its Latin form, «transparency» is employed in various ways to indicate a quality of an object that allows an observer to see something that is beyond it<sup>1</sup>. It is a translucency of the intermediate body that renders visible what lies behind<sup>2</sup>.

From this distinction we can deduce certain elements of the phenomenon. Firstly, there is the presence of a *subject* who perceives, observes; secondly, an intermediate object that allows or impedes the perception; and, finally, that which can be observed. Glass is transparent because it allows us to see what is outside or inside of a room. We are not speaking of the property of the glass in itself, but of that which it allows us to see. In this way, we cannot say that a mirror is transparent: it reflects our own image, not that which lies beyond. So, transparency is a quality of the intermediate object<sup>3</sup>.

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<sup>1</sup> «Trasparente, translucens, entis; translucidus, a, um. Sin. perlucens (pellucens), perlucidus, relucens, perspicuus, specularis, vitreus; sost. un trasparente, specularium, ii; specular, is; specular, áris, n.; specularis lapis. Uso: a) agg. Vitris in candido translucens (Plin. 36, 26, 67). Membrana vitri modo translucida (Plin.). Quae (natura) primum oculos membranis tenuissimis vestivit et saepsit; quas primum perlucidas fecit, ut per eas cerni posset (Cic. Nat. deor. 2, 57). Invenio sine vortice aquas, sine murmure euntes, Perspicuas ad imum, per quas numerabilis alte Calculus omnis erat, quas tu vix ire putares (Ov. Met. 5, 587-9). b) veste trasparente: Qui lacernam coloris improbi (provocante) sumunt, qui perlucens togam (Sen. Ep. 114). Annue, pur- pureaque veni perlucida palla (Tib. 4, 6,13). Nunc perlucens circumdata corpus amictu Mollibus aut foliis aut mollibus incubat berbis (Ov. Met. 4, 313-4). Crine nitens, niger unguento, perlucidus ostro (Mart. 12, 38, 4). c) fig. slealtà che prodiga i segreti, più trasparente dei vetro (dei bicchieri bevuii): Subsequitur (dopo la sbornia) caecus amor sui Et tollens vacuum plus nimio gloria verticem, Arcanique fides prodiga, perlucidior vitro (Hor. Od. 1, 18, 14-6). d) stile trasparente: Ita reconditas exquisitasque sententias mollis et perlucens vestiebat oratio (Cic. Brut. 79). e) sost. uso dei trasparenti nelle camere, in lettiga, nelle serre: Quaedam nostra demum prodisse memoria scimus, ut speculariorum usum perlucens testa clarum transmittentium lumen (Sen. Ep. 90). Quae vehitur clauso latis specularibus antro (Juv. 4, 21). Pensiles cucumerum hortos promoventibus in solem rotis olitoribus, rursus hibernis diebus intra specularium munimenta revo- l cantibus (Plin. 19, 5, 23)». A. PERUGINI, *Dizionario italiano-latino*, Città del Vaticano 1976, 2203. See also U. RHODE, «Trasparenza e segreto nel diritto canonico», *Periodica* 107 (2018) 485.

<sup>2</sup> Cf. «Voz: Transparente», in *Enciclopedia Universal Ilustrada Europea-Americana*, LXIII, Madrid 1979, 1103.

<sup>3</sup> «Da un punto di vista meramente naturalistico, si definisce “trasparente” quel corpo che lascia passare la luce e che quindi lascia vedere, più o meno nitidamente, gli oggetti

What we have said of glass can be directly applied to human acts as well. Certain actions will allow us to clearly perceive the intention of the acting subject, the legitimacy of any acts, and their significance, such that we can say that the person is transparent or acts transparently.

One detail that cannot be neglected, though, is that these three elements are inherently connected. That is to say, they are «related» concepts, such that by changing one of the elements (observer, intermediate subject-object, and final object), the others change as well<sup>4</sup>. Sometimes the observing subject is not entitled to see the last object, lacking the right to access that information<sup>5</sup>. When people change their clothes, they naturally close the blinds, so as not to allow indiscrete observers to see their nakedness. Even though it does not allow others to see, this action to defend privacy is transparent; indeed, others are not entitled to receive that information. In the same way, certain acts of the authority cannot and must not be visible to all because they must protect the rights of persons, as, for example in the case of confession, where the content of the confession must always remain hidden to others. This secret is transparent because it allows us to see that which needs to be seen, namely fidelity to the obligation of the sacramental seal.

If we are to continue along the lines of this allegory, we must keep in mind that, just as that which is seen beyond does not pertain to the transparent window, in the same way, certain acts of the authority, such as those considered in can. 223, affect rights that pertain to the faithful and that can be «touched» only on the basis of clear and founded motivations.

### 1.2 *What is the Relationship Between Publicness and Transparency?*

From what has been said up to this point, we can affirm that transparency cannot be equated to publicness or notoriety. Publicness is a component of transparency, but they are not one and the same<sup>6</sup>. If we think of a financial report or other types of information regarding the financial situation of a diocese, this will certainly never be fully complete; such fully

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che rispetto all'osservatore, sono posti al di là del corpo stesso. Il termine possiede la medesima radice "tr" di tanti altri termini che indicano il passaggio da un campo all'altro (trasporto, traduzione, trasloco ecc.)». P. RONZANI, *La pena ecclesiale*, Padova 2004, 8.

<sup>4</sup> Cf. D. DONATI, «Il principio di trasparenza in costituzione», in F. MERLONI, ed., *La Trasparenza Amministrativa*, Milano 2008, 85.

<sup>5</sup> Cf. A. PERLASCA, «Trasparenza e riservatezza nella gestione dei beni ecclesiastici», *Periodica* 107 (2018) 502.

<sup>6</sup> Cf. A. PERLASCA, «Trasparenza e riservatezza» (cf. nt. 5), 498.

complete information lies beyond the legitimate «interest» of the faithful. Herein lies an important point. That which grants a right to information is the possession, as a title, of a concrete and particular interest, which we call legitimate.

Secondly, we can observe that secrecy does not always signal a lack of transparency. On the contrary, such confidentiality can reveal an obligation, something that the person is safeguarding. The opposite of transparency is not secrecy or confidentiality but opaqueness, a quality that prevents us from seeing. The legitimacy of such opaqueness will doubtlessly depend on the legitimate interest of the observer to see or perceive the object to be observed.

Some authors (in the contractual sphere) maintain that there is an instrumental relationship between information and transparency. The information that is offered demonstrates the «rationality» of an act and of its agent, allowing us to verify the coherence of a given act with the rules of that sphere. At the same time, we can say that transparency is the founding reason for the information offered to the observer, as proof of the good faith of the one acting or offering the information<sup>7</sup>.

In the field of contracts, it is said that while information provided serves to form the will or to create an intention, transparency makes reference to the object that such a will seeks. A person who wants to sell something will offer all of the available information to a buyer with the aim that the latter will decide to purchase<sup>8</sup>. By purchasing the object, the buyer confirms that the information received was correct and that the seller's operations were transparent. If we apply this to the Church, it becomes clear that when information regarding the action of her members is complete, trust arises in her way of acting, in her operations<sup>9</sup>.

Obviously, the information offered must be appropriate to the capacity of the observers, in order that they might perceive (or not) the real and not just

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<sup>7</sup> Cf. R. SENIGAGLIA, *Accesso all'informazione e trasparenza. Profili della conoscenza nel diritto dei contratti*, Collana del Dipartimento di Scienze Giuridiche. Università degli Studi ca 'Foscari – Venezia 26, Padova 2007, 175.

<sup>8</sup> Cf. R. SENIGAGLIA, *Accesso alla informazione* (cf. nt. 7), 175.

<sup>9</sup> «Partendo da questa prima definizione, essenzialmente descrittiva, si può dunque osservare come il contenuto intrinseco della trasparenza sia sottoposto ad una “tensione interpretativa” che ne fa ora un mezzo, ossia un valore intermedio, strumentale all'accrescimento di una determinata conoscenza o per la tutela di altri valori, ora un fine, un “modo di essere” dei soggetti ad essa vincolati, ovvero un “obiettivo da raggiungere con vari mezzi”». P. RONZANI, *La pena ecclesiale* (cf. nt. 3), 8.

illusory transparency of the informing subject. Where information is not intelligible, we cannot say that there is transparency<sup>10</sup>.

Thus, transparency is not to be confused with the possibility of universally accessing all institutional information (publicness). Nor can it be identified with a fabricated image of what we would like to transmit (appearances). True transparency has to do with the possibility given to the person who is entitled, to see all that to which he or she is entitled. In other words, transparency has to do with the responsibility of transmitting that which others have the right to see. Finding the balance between these two points naturally requires professionalism, as we will see below.

### 1.3 *Foundations of Transparency in the Church*

The concept of transparency was born in the civil sector and presupposes certain important elements: firstly, the division of powers that arose as an institutional check and balance in reaction to monarchical absolutism<sup>11</sup>; secondly, the awareness that sovereignty lies with the people, and that its exercise demands the possibility of knowing how institutions act, and whether they do so in accordance with the law<sup>12</sup>, which presumes that there is a clear and sharp distinction between public and private<sup>13</sup>. The demand for transparency rests on the awareness of the possibility of an abuse of power on the part of the authority.

According to these civil standards, we can understand transparency to be the «total accessibility of information concerning the organization and

<sup>10</sup> «L'informazione infatti soddisfa un'esigenza di trasparenza e di quest'ultima non può parlarsi se non con riferimento ad un assetto di interessi informato, comunicato in modo chiaro e comprensibile. La trasparenza, dal canto suo, non può ravvisarsi nel risultato della negoziazione e mancare in limine o in itinere. In altri termini, il regolamento contrattuale, già al momento della sua formazione deve presentarsi non solo informato ma pure trasparente, cioè, comunicante un'informazione intelligibile». R. SENIGAGLIA, *Accesso alla informazione* (cf. nt. 7), 176.

<sup>11</sup> Cf. A. PERLASCA, «Trasparenza e riservatezza» (cf. nt. 5), 495.

<sup>12</sup> «Si tratta di un connotato comune alle tradizioni liberali degli Stati moderni, formatosi già prima delle rivoluzioni borghesi del XVIII secolo come strumento salvifico per le monarchie assolute. L'idea del *sovrano legibus solutus, infallibile*, non era più conciliabile con il precetto illuministico che ogni potere fosse soggetto a responsabilità». G.A. CANNETTI, *Il principio di trasparenza nell'amministrazione democratica* [most recent consultation: 30.11.2019], [https://www.academia.edu/25339970/Il\\_principio\\_di\\_trasparenza\\_nellamministrazione\\_democratica#:~:text=33%2F2013%20stabilisce%20che%3A%20%E2%80%9C,%2C%20di%20imparzialit%C3%A0%2C%20buon%20andamento%2C,20](https://www.academia.edu/25339970/Il_principio_di_trasparenza_nellamministrazione_democratica#:~:text=33%2F2013%20stabilisce%20che%3A%20%E2%80%9C,%2C%20di%20imparzialit%C3%A0%2C%20buon%20andamento%2C,20)

<sup>13</sup> Cf. A. PERLASCA, «Trasparenza e riservatezza» (cf. nt. 5), 496.

activities of the public administration, with the aim of favoring widespread forms of control over the pursuit of institutional functions and the use of public resources»<sup>14</sup>.

Are these elements compatible with the juridic system of the Church?

Understood in this way, transparency is not applicable to the Church *tout court*. Firstly, in the Church the same person can exercise the three powers, which in the State have been separated. Power is understood as a service in function of a *munus* received by an authority superior to that of the society-Church.

It is in this authority that sovereignty resides. The Church has been constituted not as a human society alone, but is both divine and human, with grace as its supporting pillar. Christ founded the Church and enriches her with hierarchical and charismatic gifts for the attainment of salvation, which also becomes the supreme good of the human society (common good), toward which all must be ordered. For this reason, the public-private distinction is applicable only in an analogical sense. Even the most isolated actions of a single member of the faithful implicate the entire ecclesial body<sup>15</sup>.

The law guiding the visible structure of the Church is not contraposed to the Gospel; on the contrary, it rests upon it. The entire societary structure of the Church serves as a tool at the service of the mystery of grace and communion. Everything that is needed to facilitate the access to grace and which builds up ecclesial communion possesses the characteristic of transparency. Consequently, we can say that *transparency is the property*

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<sup>14</sup> The legislative decree of 14 March 2013, n. 33, of the Italian Republic [most recent consultation: 30.11.2019], [https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-04-05&atto.codiceRedazionale=13G00076&elenco30giorni=true](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2013-04-05&atto.codiceRedazionale=13G00076&elenco30giorni=true) (our translation).

<sup>15</sup> «Affermato il principio che nella Chiesa non esiste dualità tra fede e autorità ecclesiastica perché il diritto del fedele coincide con quello dell'intera assemblea ecclesiale e soprattutto si realizza e compie insieme a quelli di tutti i componenti del Popolo di Dio, la proclamazione di diritti soggettivi senza ulteriori specificazioni, sembra provenire *de relato* dalla trasposizione di categorie presenti nel multiforme ordinamento statale, provocando in tal modo una certa confusione di concetti, pur essendosi già formate opinioni in materia». F. DOTI, *Diritti della difesa e contraddittorio: garanzia di un giusto processo? Spunti per una riflessione comparata del processo canonico e statale*, Tesi Gregoriana/Serie Diritto Canonico 69, Roma 2005, 23.

*of ecclesial action necessary for the faithful's perception of being in the Church and being part of the Church*<sup>16</sup>.

The CIC reflects the demands of this transparency in different sections, respectful of the role of each member of the faithful within the Church. «This is a demand of communion in its twofold horizontal and vertical dimensions, and so, precisely this communion, united with the right-obligation of witness, constitutes the key to understanding the nature and dimension of an honest and transparent life»<sup>17</sup>.

In this sense, only honest and transparent action on the part of the authority can ensure the possibility of demonstrating the Gospel values within the juridical system, rendering them present and active.

Therefore, if information, considered not only as pieces of data but also as a perception of values, must be clear and sharp to the observer, professionalism is needed. In the realm of communications, professionalism references the capacity of providing people with information in a way that is accessible to them. In the realm of canonical acting, it must be considered as the capacity of transmitting the values that promote communion, which becomes concrete when we perceive the authority's faithfulness to the spirit of the Gospel intrinsic to our laws. Thus, transparency can imply information; to an even greater extent, however, it implies the communication of values. A superior who abuses the power granted him through his office, rather than building communion, generates a lack of trust.

As far as information is concerned, I concur with Perlasca in his affirmation that the problem regards not "what" information to give but «how» to do so, such that it does not produce a negative impact in certain social environments. «The Code, thus, fairly wisely leaves the identification of concrete ways of actualization to particular law»<sup>18</sup>.

I ask myself how we ought to consider the transparency that we have chosen to embrace *ad extra ecclesiam*, toward society. I would say *a priori* that we cannot identify transparency with the complete publicness of every single act of the authority or of members of the Church. In my opinion, this would derive more from a sense of guilt over unaddressed sins than from a positive approach. I believe that the starting point must be that of showing

<sup>16</sup> Cf. G. DAMMACO, «Trasparenza e onestà nell'amministrazione dei beni ecclesiastici», in F. LOSUPONE, ed., *Corresponsabilità e Trasparenza nell'amministrazione dei beni della Chiesa*, Ariccia 2015, 48.

<sup>17</sup> G. DAMMACO, «Trasparenza e onestà» (cf. nt. 16), 49 (our translation).

<sup>18</sup> A. PERLASCA, «Trasparenza e riservatezza» (cf. nt. 5), 505 (our translation).

society that the acts of the authority are ordered toward the affirmation of both the Gospel present in the laws and communion, both *ad intra* and *ad extra*. This presupposes that information will be understandable in both directions. The honest desire to maintain a sure balance between necessary, legitimate information and a prefabricated image to be «sold» for credibility's sake has so often led us to worry more about what people will say than about justice for the faithful. We cannot overlook the need to awaken the trust of society, while always remaining faithful to Gospel principles. This delicate balance requires faithfulness to the Gospel and professionalism in communication.

## 2. The Right of Defense

### 2.1 *Concept and Foundation of the Right of Defense*

It would be impossible to give an exhaustive presentation of the right of defense, just as it would be unhelpful for the aims of our reflection. I will, therefore, limit my considerations to a few points for reflection.

Can. 221 CIC presents the right of defense. It states:

§1. The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.

§2. If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity.

§3. The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law.

As we know, this norm comes to us from the *Lex Ecclesiae Fundamentalis*, and possesses the characteristics proper to its section: it is a fundamental right of all the faithful<sup>19</sup>. This simple affirmation entails various consequences.

Firstly, it is a *natural right*, a human right, which is pre-existent to all juridical systems<sup>20</sup>, and the roots of which are found in the basic demand of

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<sup>19</sup> Cf. D. SALVATORI, «Le eccezioni dilatorie e il confine tra uso e abuso del diritto di difesa. Alcune note all'interno del processo di nullità matrimoniale», *Periodica* 105 (2016) 107; D. CENALMOR, «Comentario al c. 221», in A. MARZOA – J. MIRAS – R. RODRÍGUEZ Ocaña, ed., *Comentario exegético al Código de Derecho Canónico*, II/1, Pamplona 2002<sup>3</sup>, 143.

<sup>20</sup> «Da notare che questi autori, quando parlano dello *ius naturale*, non intendono riferirsi soltanto alla natura rei, cioè del processo, che ha come parte essenziale il contraddittorio, cioè la “*facultas utriusque parti concessae se defendendi adversus*



justice<sup>21</sup>. It is inherent in human nature to defend what is one's own (*proprium*), that which belongs to us, starting with the right to life and the right to sustenance. Some say that all of human history is founded on how to actualize this tendency. This propensity was the basis for taking the deprivation of one's rights into one's own hands and engaging in private vendetta. Over time, and with the evolution of institutions, vendetta was replaced by the intervention of an authority for the resolution of conflicts that the action of private parties was unable to attain.

And so, we arrive at a second level: its recognition as a *fundamental right* with constitutional character that pervades the entire juridical system, as in can. 221. The Church is no stranger to this phenomenon, especially since the Vatican Council II. It includes this right among the fundamental rights — a system of rights of rights — that are recognized in a general way for all the faithful and must find a concrete application in each individual field. Consequently, we find concrete examples of the right of defense in the canons regarding administrative law (cann. 50 and 1733), or on consecrated life (cann. 694-697). We must affirm, then, that all rights rest on the right of defense. When not respected, it gives origin to the judicial *action*, which is nothing other than the right to defend one's claim before a judge.

However, given the nature of can. 221, it cannot be read and observed other than in light of the canons regarding the rights of all the faithful, beginning with can. 209, which indicates that, in the exercise of their rights, the faithful must always maintain ecclesial communion, a strong reminder of what we have said about transparency in the Church. This section of the Code concludes with the need to safeguard the common good of the Church (the salvation of souls, as in can. 1752). So, the exercise of the right and its claim must transpire with the values of the Gospel, which in procedural terms is the «true truth», as opposed to the procedural truth<sup>22</sup>.

Thirdly, as we have just mentioned, the CIC foresees a privileged space for the exercise of the right of defense: the *process*, wherein both parties

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*alteriuspartis asserdones et allegationes*”, ma al diritto naturale vero e proprio, cioè insito e sgorgante dalla natura umana». R.J. CASTILLO LARA, «La difesa dei diritti nell'ordinamento canonico», in *Il diritto alla difesa nell'ordinamento canonico. Atti del IXI Congresso canonistico, Gallipoli, Settembre 1987*, Città del Vaticano 1988.

<sup>21</sup> Cf. G. ERLEBACH, «Voz: Defensa [=Derecho de]», in J. OTADUY – A. VIANA – J. SEDANO, ed., *Diccionario General de Derecho Canónico*, II, Pamplona 2012, 999-1000.

<sup>22</sup> Cf. J. LLOBELL, «Giusto processo e “amministrativizzazione” della procedura penale canonica», in *Stato, Chiesa e pluralismo Sociale. Rivista telematica* 14 (2019) 21.

have the faculty to ask that a conflict be resolved in their favor. In this field, the right of defense is never presented as a faculty with enumerated particular details; rather, there is space left for the discretion of the judge to limit it, such as: when the number of witnesses to be heard is limited (can. 1553) or when certain documents are excluded from those made known to the parties (can. 1598 §1); when the judge may go beyond the action of the parties and nominate an advocate in the penal process (can. 1723 §2), or supplement, when necessary, with proofs that the parties have not themselves solicited (can. 1452 §2)<sup>23</sup>.

Connected to the right of defense are two concepts that serve as its support and guarantee: the *juridical contention* (*contraddittorio*) and the *just process*<sup>24</sup>. If the right of defense is acknowledged in §1 of can. 221, the second and third paragraphs reflect the rights to be summoned to trial and to not be punished except «according to the norm of law». That which renders the right of defense practicable is precisely the dialogic character of the process, which is foreseen as a continuous movement of both parties before the judge who, in turn, guarantees that the movement is adequately completed. It pertains to the judge of the cause to guarantee to each party the faculties called for by the legislator, which are the expression of the contention<sup>25</sup>.

The judge's acting here brings us to the equity that must guide the process; when lacking, it renders the role of the superior/judge «opaque», and can render null all that has been carried out. Being summoned to trial entails the possibility of being informed and heard, in a clear and full way, and that one's own declarations be put down integrally, in writing, according to procedural rules.

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<sup>23</sup> This norm rightly rests on the need to protect the common good.

<sup>24</sup> «La disamina della giurisprudenza della Rota Romana sul diritto al giusto processo dimostra che nell'ordinamento canonico vi è una sostanziale equivalenza, *fondata sul diritto naturale*, fra il diritto all'equo processo e quello al contraddittorio e al diritto di difesa come mezzi per garantire la giustizia della decisione, cioè essa riflette l'assioma: giusto processo è quello che meglio garantisce il raggiungimento della verità, senza eccessi, né scrupoli patologici». J. LLOBELL, «Giusto processo» (cf. nt. 22), 21.

<sup>25</sup> Cf. A. STANKIEWICZ, «I doveri del giudice», in P.A. BONNET – C. GULLO, ed., *Il processo matrimoniale canonico*, Città del Vaticano 1994, 309. On this point, it is beneficial to consult: «One cannot conceive of a just judgment without the contention (*contraddittorio*), that is without the concrete possibility granted to each party in the case to be heard and to be able to know and contradict the requests, proofs, and deductions adopted by the opposing party or *ex officio*». JOHN PAUL II, Address to the Roman Rota, 26/01/1989, AAS 81 (1989) 923, n. 3.

Just process, on the other hand, makes reference to the juridical or executive authority's faithfulness to the norms for carrying out the process, established by the Legislator in order to attain the truth in conflictual situations. This faithfulness must be enacted, accounting for the margin of discretionality at the disposal of the authority, when following the prescriptions of the law by either applying it or «not» applying it. If we take can. 1344 into consideration, it is clear how the Legislator invokes conscience and prudence in the non-application of a penalty, offering concrete criteria that must be the foundation of the decision. If the judge were to act according to other criteria, out of friendship or simony or some other motive, this act would be illegitimate. Obviously, the superior or judge's faithfulness concerns not only the ordinary judicial process, but also administrative processes, in addition to, *mutatis mutandis*, all those areas of the exercise of the rights of the faithful, as we have mentioned.

It is not only the judge or superior who is bound to respect these dimensions of the right of defense, but also the parties themselves. They enact this, first of all, by asking that a right of theirs be recognized by means of an action. Subsequently, the law indicates that they must do this in the proper way, respecting the values proper to the process, such as truth, good reputation, and the privacy of the other party<sup>26</sup>. The right of defense may not be abused, especially through an attitude of obstructionism<sup>27</sup>.

## 2.2 *Transparency in Certain Moments of the Process*

Various canons touch on the topic of the right of defense, especially can. 1620, 7°, which affirms that the sentence is vitiated by irremediable nullity if the right of defense was denied to one of the parties to the process<sup>28</sup>. This norm is exemplar for all parties, but especially for judges who must guarantee the parties' rights.

The problem arises when there is either no norm protecting the right of defense, or the norm itself opens the possibility for an errant interpretation and, without denying this right in theory, renders a defense impracticable in reality.

<sup>26</sup> Cf. G. ERLEBACH, «Voz: Defensa [= Derecho de]» (cf. nt. 21), 1003.

<sup>27</sup> On this point, see C. DE DIEGO LORA, «Criterios morales de la actuación de abogados y peritos en las causas matrimoniales», *Ius canonicum* 41 (2001) 233f.; J. LLOBELL, «I patroni stabili e i diritti-doveri degli avvocati», *Ius Ecclesiae* 13 (2001) 71ss, cited by G. ERLEBACH, «Voz: Defensa [= Derecho de]» (cf. nt. 21), 1003.

<sup>28</sup> Canons that determine the nullity of the process: 1433, 1437 §1, 1465 §2, 1478 §4, 1511, 1507 §3, 1514, 1598 §1, 1620, 1622.

### 2.2.1 When the Norm is Lacking

In the preliminary phase of the penal process, whether judicial or extrajudicial, the CIC calls for the preliminary investigation, to determine whether the *notitia criminis* has a semblance of truth (can. 1717). Legislation is sparse and meagre in this regard, prescribing only the protection of the investigated person's right to a good name (can. 1717 §2). No particular formalities or solemnities are prescribed.

Is there an obligation to summon the accused during the preliminary investigation? May the investigation be conducted without citing that person to learn his or her version of the facts?

The answer is twofold. Technically speaking, the penal process has not yet begun. Since there has been no citation to the *contestatio litis*, the accusation has not yet been consolidated into the *dubium*; thus, the contention has not yet been instituted and, consequently, the right of defense has not yet arisen. The investigation may be conducted, then, without summoning the accused; this does not invalidate the procedure. The norm in this case is non-existent.

But, is this opportune?

When a norm is lacking, experience takes the lead in our search for a response. Some authors affirm that, given the importance of the right of defense in the penal sphere, where the life and reputation of a person are on the line, the spirit of the law would be that of giving some sort of advantage to the *reus*, who seems to be the weaker party in the process.

Serrano Ruiz (following civil legislation, which protects the accused by informing him, at the moment of his arrest, that he has the right to remain silent, precisely to avoid that he might prejudice himself through a lack of legal counsel, and keeping in mind that cautionary measures are often imposed from the beginning of the preliminary investigation) affirms that, in this phase there is already a sort of «judicial contention», marked by the investigator's intention to look into indices of the accused's guilt. This would motivate the need to defend the accused, who is still to be considered innocent, lest his good name be harmed<sup>29</sup>.

This author is right to recall the need to look after the good name of the person, summoning him to present his version of the facts so as not to aggravate the psychological damage that the weight of a penal process inherently places on the accused. I believe that hearing the person lends to the transparency of this procedure, to the care for the denounced. The

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<sup>29</sup> Cf. J.M. SERRANO RUÍZ, «Cuestiones actuales de derecho procesal penal canónico», *Anuario Argentino de Derecho Canonico* 17 (2011) 130.

result, excepting a special case, will always favor a just process. The superior's action in this case will doubtlessly be proof of the intention not only to follow the law, but also to attain knowledge of the real truth.

We cannot neglect the fact that can. 1469 §3 CCEO, prescribes that the Hierarch must, prior to any decision, listen to the accused, the promoter of justice and two other experts in the matter. This obligatory norm, in a certain way, lends support to the thesis of the benefit of listening at minimum to the accused, who, ultimately, is the true protagonist of the process<sup>30</sup>.

Occasionally, we come across unclear attitudes on the part of the authority. Immediately making the accused's name public, such that he is guilty by public opinion, appears as a dark approach that fails to look after the right to a good name and the presumption of innocence until the definitive sentence. The same may be said when the accuser receives full support while the accused is left totally on his own, without juridical recourse. The transparency typical of the Church seems to be lacking here: it is not reflected.

Sometimes, the presumed transparency of the Church is nothing more than the quest to «sell» a certain image of herself as pure, or as purifying herself, with the desire of regaining the trust of a society that will never be satisfied until the Church cedes her principles. Automatically adding the name of the accused to a publicly accessible internet database, or automatically removing the accused from office — with no possibility of gaining it back — when the preliminary investigation demonstrates verisimilitude (not guilt), seem to be measures that look in one direction alone, using criteria that do not pertain to the Church.

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<sup>30</sup> «Cada momento tiene su papel y ambos momentos (el de la Investigación previa y el del proceso posterior) afectan directamente al investigado y a sus derechos fundamentales entre los que se encuentra el de defensa. Por tanto, se debe evitar a toda costa incurrir en una inadmisibile confusión de planos: ni llevar el principio inquisitivo del proceso hasta límites que supongan indefensión, ni la falaz asimilación de regularidad jurídico-formal de los actos (elementos) por su virtualidad probatoria. Al final de la Investigación previa, el sumario podrá valer (jurídicamente) en ciertas condiciones, pero lo obtenido a partir de ella, lo habrá sido sin contradicción real, con inevitable pérdida de calidad probatoria». R. ROMÁN SÁNCHEZ, «La investigación previa al proceso penal canónico y la defensa del acusado», *Revista Española de Derecho Canónico* 74 (2017) 232.

### 2.2.2 When the Norm is Not Interpreted Properly

Can. 1598 §1. After the proofs have been collected, the judge by a decree must permit the parties and their advocates, under penalty of nullity, to inspect at the tribunal chancery the acts not yet known to them; furthermore, a copy of the acts can also be given to advocates who request one. In cases pertaining to the public good to avoid a most grave danger the judge can decree that a specific act must be shown to no one; the judge is to take care, however, that the right of defense always remains intact.

The norm in question determines, in the first place, a principle: the acts of the process that are not yet known to the parties must be made known to them. This principle, however, contains some exceptions. The first of these regards a cause that affects the public good (penal or matrimonial law); the second is when there is a most grave danger, which is to be understood as something very serious. This latter requirement is frequently misevaluated. In a penal cause, a most grave danger might involve the accuser's life being at risk, obviously supposing, then, that the accused is a normally violent person, subject to fits of rage; or it might be that the accused is part of a criminal association, or that he represents financial interests that could produce harm to the accuser.

What happens with this norm? In different penal causes, we can observe that what, in the law, is an exception, in practice becomes the basis for hiding the name of the actor from the respondent or the accused, or the details of the facts attributed to him (circumstances of time, place, etc.), in the absence of a very grave danger. Even though I have a specific recent case in mind, I discovered in my research that John Paul II had already addressed this issue in an Address to the Roman Rota; it has long been a problem. In his discourse, John Paul II indicated that:

One cannot conceive of a just judgment without the contention (*contraddittorio*), that is without the concrete possibility granted to each party in the case to be heard and to be able to know and contradict the requests, proofs, and deductions adopted by the opposing party or *ex officio*<sup>31</sup>.

As we can see, the Holy Father directly connected the essential information of the cause with the contention, as an expression not of the legitimate limitation of the right of defense, as the norm establishes, but as a pure and clear denial of that right.

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<sup>31</sup> JOHN PAUL II, Address to the Tribunal of the Roman Rota, 26/01/1989, AAS 81 (1989) 923, n. 3.

In the cause that we have been able to examine here, there was a justification for the decision to omit information, found in Art. 24 of the Norms regarding the *delicta graviora*, which considers the secrecy of the accuser's identity without, however, considering that this norm directly refers to cases of the violation of the sacramental seal and that the name could be indicated upon the «penitent's» consent<sup>32</sup>.

It seems clear, in our opinion, that when a norm is instrumentalized in this way, the lack of information communicates an image of the authority's acting that is hardly transparent, in addition to gravely damaging the rights of the accused priest in question<sup>33</sup>.

### 2.2.3 A Norm on Transparency

Finally, I would like to propose a norm that, without directly touching on the right of defense, brings together the safeguarding of both transparency and the just process. Can. 1448 determines that:

§1. A judge is not to undertake the adjudication of a case in which the judge is involved by reason of consanguinity or affinity in any degree of the direct line and up to the fourth degree of the collateral line or by reason of trusteeship, guardianship, close acquaintance, great animosity, the making of a profit, or the avoidance of a loss.

§2. In these circumstances the promoter of justice, the defender of the bond, the assessor, and the auditor must abstain from their office.

We have said that the right of defense permeates the entire juridical system of the CIC, which establishes the rules for a process to be just and equitable. Equity is formulated as the equality of the parties before the judge or superior, who appears as a «servant of the truth»<sup>34</sup>. This equality can be undermined by relationships external to the process, such as family bonds or social relationships between one of the parties and the object of the process. All of these elements are foreign to the process and should not affect the mind of the judge, who must remain impartial.

<sup>32</sup> Art. 24 §1 SST: «In cases concerning the delicts mentioned of in art. 4 §1, the Tribunal cannot indicate the name of the accuser to either the accused or his patron unless the accuser has expressly consented».

<sup>33</sup> These decisions are often the result of a desire on the part of the Ordinary's delegate to «win» the cause, to «get even» with the accused, or to satisfy public opinion, rather than a search for the truth.

<sup>34</sup> Cf. P.A. BONNET, «Comentario al c. 1448», in A. MARZOA – J. MIRAS – R. RODRÍGUEZ OCAÑA, ed., *Comentario exegético al Código de Derecho Canónico*, IV/1, Pamplona 2002<sup>3</sup>, 924.

A judge who fails to recuse himself from intervening in a cause that regards him for some reason extraneous to the process would demonstrate a non-transparent attitude, that is to say, would not show the true face of the search for the «true truth» (can. 1448 §1).

## Conclusions

From all that we have said here, it appears clear that transparency and the right of defense are not opposing terms; on the contrary, a truly transparent act always aids the exercise of the right of defense. Allowing the values of the Gospel of truth and the respect for rights to shine forth is the true transparency that we can demand and seek in the Church and as the Church.

To conclude, I would like to take up two points that, in my opinion, should be present in ecclesial transparency:

a) The action of the *authority must always follow the law of the Gospel* and canon law. The poison of scandal that has stained the image of the Church with suspicions of partiality and favoritism arises from the action on the part of some members of the faithful outside of the norms, and on the part of the authority when it fails to respect its responsibilities of vigilance and intervention. This has provoked an opposite reaction: complete and total publicness. Acting in function of public opinion, rather than of real and technical justice, has left us with an image of abuse and distrust for pastors.

b) We can put into place a *mechanism of information that is simple and accessible to the parties, regarding the steps to be taken at each moment*. So often accusers are uninformed regarding what steps the law prescribes in order to ascertain the truth of the alleged facts. We should inform them in this regard, so as to foster an attitude of commitment to that which they have denounced. We should also clearly inform the accused of the accusations made against them and of their rights, listen to the accused during the preliminary investigation, and give them a space for defense that is consistent with each moment in the process. These are all examples of a transparent way of acting toward the parties. This action, simple and appropriate to the person, guarantees their right to information while maintaining respect for the confidentiality of the process. In my opinion, this demonstrates a great professionalism that is at once juridical and evangelical<sup>35</sup>.

DAMIÁN G. ASTIGUETA, S.J.

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<sup>35</sup> Cf. A. PERLASCA, «Trasparenza e riservatezza» (cf. nt. 5), 509.



### Summary

1. Introduction. 2. Concept of Transparency: phenomenology, relationship with advertising, the foundation of transparency in the Church. 3. Right of defence: concept and foundation; transparency at certain times in the process, when the norm is lacking, when the rule is not well interpreted, a rule on transparency.

**Keywords:** transparency; right of defence; values; justice.

### Sommario

#### La trasparenza e il diritto di difesa

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**Parole chiave:** trasparenza; diritto alla difesa; valori; giustizia.



## **PRACTICAL ASPECTS OF THE SACRAMENT OF RECONCILIATION REGARDING THE PROTECTION OF MINORS AND VULNERABLE ADULTS**

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The title of this reflection serves to both bring into focus and define the limitations of our topic. We are speaking of practical, applicative aspects; theological doctrine and norms regarding the sacrament of Reconciliation will therefore be assumed as a premise. This study will focus on a few concrete cases that might arise in confession, involving the confessor's responsibility when faced with a penitent who reports facts relative to the protection of minors and vulnerable adults. Certain operative proposals, also with regard to the formation of sacred ministers, will arise from this analysis and the questions it raises.

Preliminarily, it would be beneficial to briefly recall some of the fundamental points regarding the inviolability of the seal, which will serve as the basis for the reflections and practical suggestions to follow. An introductory reference to the Note of the Apostolic Penitentiary on the topic of the sacramental seal will provide a helpful and authoritative support for our reflection.

### **1. The Inviolability of the Seal**

We refer the reader to other studies published in this same volume of *Periodica* that deal more directly with the issue of the sacramental seal. Here, we will limit our considerations to the recollection of two premises. The first fundamental point is the absolute and unconditional nature of the inviolability, which cannot even be at the disposal of the penitent. In line with the criteria according to which the seal would exist precisely for the penitent's protection, some have attempted to maintain the position that

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penitents have the right to manage the seal and, therefore, the aptitude to free the confessor from the bond, on the condition that this is done with an unequivocal form of authorization<sup>1</sup>. The authority of Thomas Aquinas has commonly been invoked in support of this thesis. In his writings, he poses the question of if, with the license of the penitent, the confessor can reveal to others that which is the object of the seal<sup>2</sup>. The reading of Aquinas's text, however, inspires some fundamental reflections. First and foremost, Thomas reiterates the doubtless motivations in support of the inviolability of the seal, the first of which is that the seal pertains to the essence of the sacrament<sup>3</sup>, «such that, even when every obligation *secretum servandi* that is due in justice to the penitent himself might cease, when, that is, the penitent renounces this right *of his*, there still remains the more-than-sufficient motivation that *longe praevalet*, which is the *bonum sacramenti*, namely the respect due to the sacrament, to the act of divine worship which is the celebration of the sacrament of penance»<sup>4</sup>. The second motivation in favor of the inviolability of the seal is the risk of scandal<sup>5</sup>. Despite the persuasive strength of these two motivations, Thomas envisions the possibility of the penitent giving the priest license to speak<sup>6</sup>. However, to admit that the penitent can «play» with the material of confession, considering the confessor as God in one moment and man in another, seems to be a position that is not fully embraceable with respect to the relationship with God that, once realized, no longer falls under the sole

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<sup>1</sup> Among others, see the interesting and effective summary in R. CORONELLI, «Il significato ecclesiale del segreto», *Quaderni di diritto ecclesiale* 26 (2013) 30-34.

<sup>2</sup> Art. 2. «Utrum de licentia poenitentis possit sacerdos peccatum quod sub sigillo confessionis habet, alteri prodere». THOMAS AQUINAS, *In 4 Sent*, Dist. 21, q. 3, a. 2.

<sup>3</sup> «(solutio) Duo sunt propter quae sacerdos tenetur peccatum occultare. Primo et principaliter, quia ipsa occultatio est de essentia sacramenti, in quantum scit illud ut Deus, cuius vicem gerit ad confessionem. Alio modo propter scandalum vitandum». THOMAS AQUINAS, *In 4 Sent*, Dist. 21, q. 3, a. 2.

<sup>4</sup> D.-M.A. JAEGER, «Situazioni particolari e questioni specifiche del ministero penitenziale», in K. NYKIEL – P.CARLOTTI – A.SARACO, ed., *Il sigillo sacramentale e la privacy pastorale*, Città del Vaticano 2015, 94 (our translation).

<sup>5</sup> «Tamen debet cavere scandalum dicendo, ne fractor sigilli praedicti reputetur». THOMAS AQUINAS, *In 4 Sent*, Dist. 21, q. 3, a. 2.

<sup>6</sup> «Potest autem poenitens facere ut illud quod sacerdos sciebat ut Deus, sciat etiam ut homo; quod facit dum eum licentiat ad dicendum; et ideo si dicat, non frangit sigillum confessionis». THOMAS AQUINAS, *In 4 Sent*, Dist. 21, q. 3, a. 2.

responsibility of man<sup>7</sup>. To insist on the text of Thomas, moreover, would fail to account for the opposing positions of other scholars<sup>8</sup>.

Recently, there was an attempt to base this line of argumentation in reference to the interpretation of the verb *prodere* in can. 983<sup>9</sup>. The meaning of the term, in line with preceding canonical legislation, requires that no nuances or specifications that do not pertain to the proper sense of the term be introduced<sup>10</sup>. Accepting the penitent's invitation to break the initial pact is also to betray the penitent.

The doctrine affirming the absolute inviolability of the seal, on the other hand, appears more solid. Indeed,

The sacramental seal does not protect the individual penitent alone, such that, on the basis of the principle *scienti et consentienti non fit iniuria*, he could free the confessor from the bond of the secret originating from sacramental confession. The sacramental seal is designated to (also) protect the sacrament itself and, therefore, is it not at the penitent's disposal to free the confessor from the seal<sup>11</sup>.

<sup>7</sup> It is altogether different to admit that the penitent may repeat his accusations in the extra-sacramental forum: «Cum autem poenitens dat licentiam loquendi confessario, hic notitiam rerum percipit *ut homo*, secundum ipsum *Angelicum*, ideoque *in foro humano*. Porro toto coelo differt profecto, quod sacerdos rem aliquam cognoscat *qua Deus* vel *qua homo*, quod fidelis loquatur *in foro Dei* vel *in foro humano*. Nec sane in potestate poenitentis est, quod res cognita *in foro Dei*, fiat cognita *in foro humano*, sine nova atque expressa eiusdem rei communicatione in ipso foro humano facta». F. CAPPELLO, *Tractatus canonico-moralis De Sacramentis*, II, Romae 1963<sup>7</sup>, n. 621.

<sup>8</sup> It exceeds the scope of this study to delve into the question. Regarding the positions of Duns Scotus and Felice Cappello, see G. INCITTI, «Il Confessore e il Sacramento della Riconciliazione. Doveri e diritti dei penitenti», Address to the XXX Course on the Internal Forum, 25-29 March 2019, Rome, Palazzo della Cancelleria, consultable on the official site of the Apostolic Penitentiary.

<sup>9</sup> Cf. D.S. BREWER, «The Right of a Penitent to release the Confessor from the Seal: considerations in Canon Law and American Law», *The Jurist* 54 (1994) 446.

<sup>10</sup> This seems to be the limitation of Brewer's proposal when, in the article cited, on the basis of definitions taken from language dictionaries, he affirms that the verb *prodere* means «“to betray perfidiously, surrender treacherously”. Both “perfidious” and “treacherous” denote a violation of faith or trust. Hence, there can be no betrayal if there is no disloyalty. Canon 983, in its use of *prodere*, presupposes some violation of trust if a crime or truly heinous act is to be imputed to the confessor. There can be no such violation when a penitent expressly consents to the revelation of confessional matter». D. S. BREWER, «The Right of a Penitent» (cf. nt. 9), 446.

<sup>11</sup> G.P. MONTINI, «La tutela penale del sacramento della penitenza. I delitti nella celebrazione del sacramento (Cann. 1378; 1387; 1388)», in GRUPPO ITALIANO DOCENTI DI DIRITTO CANONICO, ed., *Le sanzioni nella Chiesa*, Milano 1997, 226-227, nota 42

A second fundamental point is that the type of sin or delict that is the object of this particular study falls fully under the matter of the seal, presenting no elements that would justify its removal. Authors have always debated whether it is licit to use material acquired in confession, as it remains true that not all that which is learned in confession falls under the seal. Words or actions that are hypothetically accused of revealing the material proper to the seal must necessarily be connected to it. Whenever, for example, a request is made of a priest on the occasion of confession (bringing communion to a sick person), he would not break any seal by carrying out that request because, at the very most, he would reveal only a piece of information that was in no way connected with the material of confession falling under the sacramental seal.

Therefore, it does not appear suitable to invoke such topics in order to justify a request to renounce the seal in the matter of abuses.

## 2. The Note of the Apostolic Penitentiary

We will now refer to the recent Note of the Apostolic Penitentiary<sup>12</sup> which, among the various topics addressed, offers noteworthy elements useful for the purposes of the topic at hand. As a premise, though, it is necessary to clarify the juridical nature of such a pronouncement. It was the Pontifical Council for Legislative Texts who began publishing orientations of this type, referring to them as «Notes». Strong objections have been raised in this regard, saying, among other things, that such interventions may more easily encroach on territory outside the specific competence of that dicastery<sup>13</sup>. Criticism has come mostly from the academic world, which often considers itself the sole authority competent to interpret the *mens legislatoris*. In reality, these «Notes», which were not academic speculations and which did not arise from the initiative of the Council, were responses to «pastoral» problems raised by the competent dicasteries

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(our translation); the author writes: «A nessuno infatti sfugge che se il sigillo fosse nella disponibilità del penitente, quest'ultimo potrebbe essere soggetto indirettamente a pressioni tali (moralì, sociali ecc.) perché liberi il confessore dal vincolo di segreto, che in realtà equivarrebbe alla cancellazione della tutela reale del sigillo sacramentale».

<sup>12</sup> Note of the Apostolic Penitentiary on the importance of the internal forum and the inviolability of the sacramental seal, 01.07.2019, *L'Osservatore Romano*, 2 July 2019.

<sup>13</sup> «otro tipo de soluciones por el contrario están más expuestas a invadir áreas de competencia que pueden parecer no decididamente propias del Consejo». J. OTADUY, «Sobre las “notas explicativas” del Consejo pontificio para la interpretación de los textos legislativos», *Ius Ecclesiae* 9 (1997) 645.

to which, generally, diocesan bishops had turned<sup>14</sup>. Therefore, we must not underestimate the value of the pronouncement merely because it lacks the binding force of a law. Its force derives from the authoritativeness of its source, given the specific competence of the Penitentiary. We also cannot overlook the fact that the Note was approved by the Roman Pontiff who, moreover, spared no praise in its regard, perhaps revealing his own personal involvement in its origin<sup>15</sup>.

### 3. Self-Reporting as a Condition for Absolution?

The above-cited Note affirms that «In the presence of sins that involve criminal offenses, it is never permissible, as a condition for absolution, to place on the penitent the obligation to turn himself in to civil justice»<sup>16</sup>.

In the area of abuses, this affirmation is in contrast with the position held by authors, either generally<sup>17</sup>, as a possible «conciliatory» response with relation to the civil authority<sup>18</sup>, or as a «hope»<sup>19</sup>. Some religious orders<sup>20</sup>

<sup>14</sup> See, for example, among the first: Note on the obligation of the Bishop to reside in the Diocese, *Communicationes* 28 (1996) 182-186; Note on general absolution, *Communicationes* 28 (1996) 177-181; Note on the binding value of n. 66 of the Directory for the ministry and life of priests, *Communicationes* 27 (1995) 193-194.

<sup>15</sup> «Un'altra cosa tipica dell'atteggiamento di proselitismo è che non distingue tra il foro interno e quello esterno. È il peccato in cui molti gruppi religiosi cadono oggi. Per questo ho chiesto alla Penitenzieria apostolica di fare una dichiarazione sul foro interno, e la dichiarazione che hanno fatto è davvero molto buona». A. SPADARO, ed., «La sovranità del Popolo di Dio». I dialoghi di papa Francesco con i gesuiti di Mozambico e Madagascar», *La Civiltà Cattolica* 170/4 (2019) 6.

<sup>16</sup> The Note continues with the motivation on which we will not comment here, as it exceeds the scope of our topic: «by virtue of the natural principle, incorporated in every system, according to which “*nemo tenetur se detegere*”».

<sup>17</sup> «Se a confessarsi è l'abusatore, è essenziale condizionare l'assoluzione all'auto-denuncia». REDAZIONE\*, ed., «10 domande e 10 risposte sulla pedofilia», *Tredimensioni* 8 (2011) 297-307.

<sup>18</sup> «Sin embargo, la opción de la retención de la absolución sacramental podría ser considerada para aplicarse, como último recurso, en jurisdicciones donde tal posición pacificara a las autoridades civiles». T. MBADIWE OSUALA, «Sigilo sacramental y denuncia obligatoria del abuso de menores. Una mirada global», *Revista Española de Derecho Canónico* 76 (2019) 237-238.

<sup>19</sup> It is our hope that some statements appearing in the press prove untrue: «al prete confessore il diritto canonico concede solo la possibilità di imporre al penitente un'adeguata riparazione, come condizione indispensabile per l'assoluzione, compresa quella di consegnarsi alle autorità civili» [the most recent consultation 18/11/2019], <https://www.linkiesta.it/blog/2012/12/abusi-sessuali-su-minori-e-se-il-segreto-confessionale-non-esistesse-p/>.

and particular churches<sup>21</sup> have introduced it as praxis.

The quoted statement contains two elements that could generate doubts: the notion of «condition for absolution» and the notion of «turning oneself in to civil justice». When it is said that absolution must or should be conditional to the completion of another action, this action would then be configured as a prejudicial act or *conditio sine qua non*. But is this a «debt» that must be «paid» prior to absolution? The combined dispositions of canons 959 and 987 CIC, distilling the broadest theological content of the penitential path, identify in the *propositum sese emendandi habens* a condition for receiving forgiveness. The Note, too, affirms that «belonging to the very “structure” of the Sacrament of Reconciliation, as a condition for its validity, is sincere repentance, together with the firm intention to reform and not repeat the evil committed». The variation present in the CCEO is interesting in this regard, which in can. 718 affirms even more incisively the *propositum novae vitae ineunt*.

Repentance is the space, and perhaps the only space which the confessor can and, at times, must «investigate»<sup>22</sup>. In fact, in these types of crimes, there is no *latae sententiae* sanction that would impede the confessor, in normal circumstances, from proceeding to give absolution. In the case of a doubt, he could proceed in dialogue with the penitent, but never in an inquisitorial way<sup>23</sup>; however, once he has confirmed the presence of

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<sup>20</sup> For example, the French province of Jesuits: «l’absolution dans ce cas est normalement conditionnée par l’acceptation sincère du pénitent de respecter les exigences ci-dessus, et en particulier l’obligation de se dénoncer aux autorités publiques. Il sera clairement expliqué au pénitent que “l’absolution est sous condition”». PROVINCE DE FRANCE DE LA COMPAGNIE DE JESUS, «Face aux situations d’abus sexuels. Préventions et actions», 29/08/2016 [the most recent consultation: 24/11/2019], <https://www.jesuites.com/wp-content/uploads/2018/09/Province-de-France-de-la-Compagnie-de-J%C3%A9sus-Face-aux-situations-dabus-sexuels.pdf>.

<sup>21</sup> We are referring, for example, to a praxis in force in the diocese of Lausanne, Geneva and Fribourg which establishes, among other things, that «si un auteur d’abus demande pardon, le confesseur doit lui demander de se dénoncer aux autorités compétentes et de réparer le préjudice auprès de la victime. Ce n’est qu’après avoir satisfait à ces deux exigences que l’absolution peut lui être accordée». A new formulation present on the same site no longer employs the previous formulation. Cf. [https://www.diocese-lgf.ch/fileadmin/documents/Documents/Abus/20190912\\_charte\\_abus\\_f.pdf](https://www.diocese-lgf.ch/fileadmin/documents/Documents/Abus/20190912_charte_abus_f.pdf) [the most recent consultation: 17/11/2019].

<sup>22</sup> As concerns absolution, the confessor is indeed asked to have no doubts about repentance (can. 980).

<sup>23</sup> The teachings of Pope Francis on this topic are numerous and extraordinarily rich, such as: «There is no need to shame someone who has already recognized his sin and knows he has done wrong; an inquisition is not necessary — those confessors who ask



repentance, the confessor must absolve<sup>24</sup>.

The confessor is called to confirm that the penitent has the proper disposition, sincere repentance, and the will to convert — elements that may never be true if the penitent is to exclude, substitute or avoid the process of both making reparation for the damage caused and re-establishing civil and ecclesial justice<sup>25</sup>. The penitent's sincere willingness to undertake an itinerary that would lead him, outside of confession, to turn himself over to the authority is, in our opinion, a sufficient element of the integral sincerity of his repentance. The only «condition», therefore, is repentance.

We may then ask whether turning oneself in can be imposed as «penance». Firstly, it is helpful to observe that the terminology «condition/penance» runs the risk of relegating the richness and gravity of the subject's personal responsibility to a bottleneck of juridical positivism. It is not the mere external execution of an activity, often consisting, even today, in a certain number of prayers, that perfects and concludes the phase of «penance», but rather the person's commitment to change. Assuming the commitment to embark on a path of moral discernment in the «external forum» before the ecclesial authority, not only helps the person to dig deep into their own conscience, but above all serves to ensure decisions that are more just, which could only be made with difficulty within the act of sacramental confession. To use traditional terms, we could say that this commitment is the «penance»: a proposition not only to «not do it again», but also to complete a path that was already begun prior to the confession,

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and ask, 10, 20, 30, 40 minutes.... “And why was it done? And how?...” — it is not necessary to question where the Father's grace has already intervened; it is not permissible to violate a person's sacred space in his relationship with God». FRANCIS, Address to the Missionaries of Mercy, 10/04/2018, AAS 110 (2018) 607-608.

<sup>24</sup> The deferment of absolution, therefore, is a decision characterized by exceptionality: «Il confessore eviti qualsiasi specie di intransigenza, non parli mai di “rifiuto” oppure “negazione”; un termine come “rinviare” oppure “posporre” l'assoluzione sarebbe più consono alla delicatezza della situazione [...] le porte devono rimanere spalancate». K. DEMMER, *Medicina salutis. La pastorale del sacramento della riconciliazione*. Handbook for student use, Roma 1996<sup>2</sup>, 43.

<sup>25</sup> «Absolution for clerical offenders can raise suspicion. This applies all the more as many do not see the church as a neutral mediator or third party. In light of these concerns, it is crucial to emphasize that a confession does not replace a judicial inquiry». H. ZOLLNER, «The Child at the Center: What Can Theology Say in the Face of the Scandals of Abuse?», *Theological Studies* 80 (2019) 701-702.

not on account of the confessor's ability but thanks to the grace of God<sup>26</sup>. This commitment ought to remain such also in the terminology used. In contrast to «penance», this terminology would appear in greater conformity with the structure and dynamic of the sacrament, wherein the conscience of the subject is called to place himself before the demands of Grace and, thereby, of the validity of the absolution which responds back to paths known only to God.

### 3.2 *The Competent Authority in the Context of Confession*

The primary authority of reference for the confessor is the ecclesial authority competent to carry forth the penitential path, of which the confession represents only one phase.

The historical development of penitential discipline demonstrates how, starting in the 6<sup>th</sup> century and with the diffusion of so-called private penance, priests became ministers of the sacrament. This had previously been reserved to Bishops, who regulated and celebrated the sacrament in the entirety of its community dimension. The priest, who with ordination already possessed the power of remitting sins, was bound by the concession of a further attribution on the part of the episcopal authority in order to validly celebrate it. The Bishop, to whom the pastoral care of the local Church is entrusted, thus remained solely responsible for the sacrament; this role was consolidated with successive reflections on the need for «jurisdiction». Current legislation calls this a «faculty», a terminological change determined by the fact that the term *jurisdiction* is now employed to indicate the power of governance, wherein the absolution of sins does not enter. Through the regulation of this faculty, the Bishop continues, in a certain way, to occupy his role as the responsible and guarantor of the penitential discipline, in view of the protection not only of the rights of the faithful, but also of the sacrament's ecclesial dimension. The minister does not confess according to a private title, but rather in a public dimension. Indeed, he authorizes the faithful to return to their life as an active member

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<sup>26</sup> «Reconciliation is not, as is often thought, our private initiative nor the result of our diligence. If that were so, we would fall into that form of neo-pelagianism that tends to overestimate man and his projects, forgetting that the Saviour is God and not us. We must always emphasize, but especially with regard to the Sacrament of Reconciliation, that the first initiative is the Lord's; it is he who precedes us in love, but not in a universal form: case by case. He precedes in every case, with every person». FRANCIS, Address to the Missionaries of Mercy (cf. nt. 23), 606.

of the community, of which the Bishop, as head, is the visible interpretive prolongation.

Self-reporting to the Bishop both adds another significant phase to the penitential path and begins the process of the necessary involvement of the civil authority<sup>27</sup>. It cannot be the responsibility of the priest, within the act of confession, to evaluate with the penitent all aspects involved in the incident, as, for example, the need to hear and consider the wishes of the victim. Conversely, the Bishop, having received the report in the external forum, will act in due compliance with the legislation in force in his own State.

#### 4. When the Penitent, who committed the Sin, is a Cleric

Before any analysis of the specific circumstances inherently related to the cleric, we must reaffirm the gravity of abuse, primarily in relation to the victim, the person violated. The act that concerns a cleric who abuses is characterized by a certain specificity that can never be considered as a momentary weakness, as though to excuse its gravity<sup>28</sup>. Indeed, we are dealing with a delict that distorts the very being of a priest in his sacramental dimension, as a transparent and attractive sign of Christ. Of course, this falsification takes place every time the priest betrays his being and his mission, but here, in the context of abuse, it assumes its own

<sup>27</sup> «L'abuso sessuale di minori e persone vulnerabili non solo infrange la legge divina ed ecclesiastica, ma è anche un comportamento criminale pubblico. La Chiesa non vive in un mondo isolato di sua creazione. La Chiesa vive nel mondo e con il mondo. Coloro che si sono resi colpevoli di un comportamento criminale sono giustamente responsabili nei confronti dell'autorità civile per quello che hanno fatto. Sebbene la Chiesa non sia un agente dello Stato, essa tuttavia riconosce l'autorità legittima della legge civile e dello Stato. Pertanto la Chiesa collabora con le autorità civili in tali contesti per rendere giustizia ai sopravvissuti». O. GRACIAS, «Accountability (il dover rendere conto) in una Chiesa collegiale e sinodale», in *Consapevolezza e purificazione. Atti dell'incontro per la tutela dei minori nella Chiesa, Città del Vaticano 21-24 February 2019*, Città del Vaticano 2019, 68.

<sup>28</sup> «You have forfeited the esteem of the people of Ireland and brought shame and dishonor upon your confreres. Those of you who are priests violated the sanctity of the sacrament of Holy Orders in which Christ makes himself present in us and in our actions. Together with the immense harm done to victims, great damage has been done to the Church and to the public perception of the priesthood and religious life». BENEDICT XVI, Pastoral letter to the Catholics of Ireland, 19/03/2010, n. 7, AAS 102 (2010) 213.

particular gravity by reason of the victims' vulnerability<sup>29</sup>. All this requires that, for the truth of repentance, the cleric himself must both «feel» and manifest the need to present himself to the Bishop, placing into his hands his life as a priest and the exercise of his ministry.

In this sense, we may also reconsider the criteria of «zero tolerance». In the ministry of confession, this criterion must be commensurate with the penitent's right to forgiveness, because no crime annuls the faithful's right to receive forgiveness when he is repentant. Outside of confession, however, this criterion must never be attenuated. In this way, for example, in the case of a cleric, the Bishop or Superior must never permit, or even suggest, a so-called «settlement», since the cleric is not a «private» person. The justification that has been shared and propagated in certain authoritative circles, according to which this type of agreement would not entail an admission of guilt, is incomprehensible<sup>30</sup>. On the contrary, the very request for and acceptance of a settlement always indicates recognition of the criminal fact and, therefore, an admission of guilt. Scandal among the faithful is grave: good common sense cannot ignore that the cleric is attempting to flee from justice. If he is innocent, he must defend himself; if he is guilty, he must accept his punishment.

##### **5. When the Penitent, who committed the Sin and is responsible for the Crime, is a not a Cleric**

Despite differences with respect to the above case, the common denominator of baptismal co-responsibility is the foundation for an equal dignity and equal responsibility with regard to the demands rooted in the sacrament of Reconciliation. Also in the case of a non-ordained member of the faithful, it is necessary that the Bishop be the one responsible for the completion of the sacramental itinerary. When we say Bishop, we are of course considering also those structures, ever more common in dioceses, created by the Bishop or otherwise subject to him. Of course, the Bishop has greater «power» over clerics; regardless, even the non-cleric, once convinced of the need to «denounce» as required for absolution, could be

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<sup>29</sup> «Il existe des actes en contradiction absolue avec le message évangélique et qui, sans préjuger de la capacité des personnes à une véritable contrition, ne permettent plus d'envisager qu'ils assument leur fonction au milieu de la communauté des fidèles». E. BOUDET, «Les atteintes commises par des ministres de l'Église: que dit le droit de l'Église catholique?», *Revue d'éthique et de théologie morale* 300 (2018) 127.

<sup>30</sup> The topic is only given brief mention here out of respect for the limitations posed by the title of this contribution.

suitably helped within the ecclesial structures to take up the path of making reparation for damage caused, also in light of the civil legislation in force in each State.

It will be the confessor's obligation to indicate how to reach such competent authorities<sup>31</sup>, advising the abuser that, in any event, it is necessary that the delict become object of an investigation outside of the sacrament of penance. If the penitent accepts, it is not possible to withhold absolution, nor should the confessor wait for the penitent to turn himself in.

## 6. When the Penitent is the Victim

At first glance, this case would seem to fall outside the limits of our reflection. Yet, it could happen that the confessor is the victim's only «person of trust». Remaining in a juridical perspective, and presupposing the necessary pastoral questions regarding welcoming, it is the task of the confessor to instruct the penitent on his or her rights and obligations. The Note of the Penitentiary affirms, to this end:

Should there be a penitent who has been a victim of the evil of others, it will be the concern of the confessor to instruct him regarding his rights as well as about the practical juridical instruments to refer to in order to report the fact in a civil and/or ecclesiastical forum to invoke justice.

The wise prudence of the confessor in this case lies in not allowing for names to emerge during the penitent's free narration. The confessor is to help, but only with the aim of offering the victim necessary and useful indications for the process to be undertaken outside of confession. The confessor must not run the risk of learning facts that are unnecessary for the ends proper to confession and which could, instead, «implicate» him, especially civilly, as a person with knowledge of the facts. It is not a question of cunning, but rather of guiding the confession back to its natural course when the content no longer regards the penitent's own fault.

It could, moreover, happen that victims blame themselves, feeling that they share responsibility for the crime. In this case, the confessor has a wide field of intervention and, if the conditions so suggest, could invite the penitent to pursue this path in the «external forum».

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<sup>31</sup> Here we may add the confessor's obligation to be adequately informed of such structures or persons, and to be able to give precise indications of these in the confessional.

## 7. When the Penitent is a Third Party

Let us consider the case in which, in the act of sacramental confession, the penitent recounts «facts» relating to this matter and which could constitute a crime, but which involve a third party and do not implicate the penitent personally. This could be the typical case of a person who comes to confession to «wash their hands» of the situation and «put their conscience at ease», unloading onto the confessor the responsibility for a decision on what course of action to take. This might be the most difficult case for the confessor, given the consequences that certain civil jurisdictions would like to draw regarding his responsibility. It would appear opportune that the confessor stop the penitent before he or she enters into detail regarding specific facts or persons, and that he offer the necessary and opportune indications regarding the seal and the benefit of dealing with similar questions outside of confession. The confessor, indeed, is called to «welcome» only those in whom he perceives, from the beginning, the presence of a profound contrition for their own errors.

Here we are faced with the challenge of the seal, such that the context of confession might become the beginning of a judicial process leading to the truth. In order to help the penitent, who has direct knowledge of the acts and persons involved, to be responsible, the confessor will seek to indicate possible avenues, such as speaking to other persons of trust outside of the sacrament.

Can the confessor exempt himself from this responsibility only because it is not the direct object of the penitent's confession? Could the confessor propose to act «in the external forum» whenever the penitent wishes to «free» him from this bond, repeating the narration outside of confession and, perhaps, at a time and place typical of the «external forum»?

## 8. Obligations of the Confessor with Regard to the Civil Justice System<sup>32</sup>

We must still examine the other element in the above-quoted Note of the Penitentiary, which affirms that «it is never permissible, as a condition for absolution, to place on the penitent the obligation to turn himself in to civil justice», thus offering a clear criterion for action which contrasts both various lines of thought, in addition to the proposed or enacted legislation of certain States.

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<sup>32</sup> Inquiring into the sense and reach of this notion is useful, though beyond the limits of this reflection.

In the canonical realm, there is no shortage of authors who have defended this criterion: the obligation to turn oneself over to civil authorities would have no link to confession, as they are two distinct sectors and orders<sup>33</sup>. The confessor, then, must limit himself to inviting the penitent to report himself to the civil authorities<sup>34</sup>. We are in agreement with this position, though not fully. It seems incoherent with the theological structure of the sacrament to confine the obligation of denunciation to the civil authority to the sole realm of the personal responsibility and decision of the penitent<sup>35</sup>.

Indeed, the ontology and dynamic of the sacrament of penance require that the penitent, beyond amending himself at a personal level, must respond to the demands of justice which, in order to truly be such, cannot be reconfigured as pertaining to a solely private realm, with the consequent risk of being falsely ecclesial.

Moreover, we do not consider that the obligation to turn oneself over to the civil justice necessarily entails the danger of violating the seal<sup>36</sup>. No one forces the penitent to reveal the «why» at the origin of this action.

## 9. When Confession Becomes the Setting for Abuses

From the perspective of this case, we may recall that which is typified in the delict of solicitation, configured in canons 1387 CIC and 1458 CCEO. This delict is unfortunately also committed with minors and vulnerable adults. The sacrament of reconciliation can become the place and time for identifying potential victims, but also for committing a delict, with the

<sup>33</sup> «The sacrament of Penance deals with sin and mercy; the state deals with crime and punishment». M. MULLANEY, «Mandatory Reporting and the Seal of Confession», *The Furrow* 62 (2011) 526.

<sup>34</sup> «While a confessor must advise the penitent of the need to report the abuse to the civil authorities, he cannot impose this as a penance». M. MULLANEY, «Mandatory Reporting» (cf. nt. 33), 526.

<sup>35</sup> «It is a different matter altogether for a confessor to give firm and clear direction to the penitent to report their abuse to the civil authorities. Such a step on the part of the penitent would be a personal decision, not because the penance demanded it». M. MULLANEY, «Mandatory Reporting» (cf. nt. 33), 527.

<sup>36</sup> Mullaney very wisely recognizes that «penance or “satisfaction” is not the “price” paid for sins confessed, but an expression of the penitent’s contrition». However, he adds: «penance is directly connected with the sacrament and any penance that would publicly manifest the matters discussed in confession would risk indirectly betraying the seal. The impositions of such a penance would fatally undermine the regard the faithful have for confession as an encounter with the mercy of God». M. MULLANEY, «Mandatory Reporting» (cf. nt. 33), 526-527.

aggravating factor of the dominant position of power that the confessor assumes in the exercise of sacramental ministry<sup>37</sup>. The modalities of the delict of solicitation are broader than that which concerns the direct involvement of the confessor in the criminal act<sup>38</sup>. This delict is committed whenever the confessor, in confession, not only encourages the penitent to sin with a third party, but also simply if, in confession, he teaches or approves of behaviors of the penitent that are contrary to the moral teachings of the Church<sup>39</sup>. Together with solicitation, penal legislation considers the absolution of one's accomplice; when this occurs in the realm of an abuse, it devastates the priestly ministry<sup>40</sup>.

All of these cases, in addition to corresponding to a specific penal regime, bring out the fundamental right/obligation of the Christian faithful to denounce to the competent authority any sign of unsuitability perceived in the confessor.

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<sup>37</sup> «In clergy abuses, three specific challenges have been faced with regard to the sacrament of reconciliation: (1) in some cases, the confession itself turned into a *locus delicti*; (2) in addition, many victims see it as a situation in which the “power difference” became visible; (3) furthermore, priests have “often identified potential victims and their vulnerability in the confessional, leading them to begin the grooming process”». H. ZOLLNER, «The Child at the Center» (cf. nt. 25), 701.

<sup>38</sup> Regarding this crime, see D. CITO, «Il delitto di sollecitazione in confessione», in C. PAPAIE, ed., *I delitti contro il sacramento della Penitenza riservati alla Congregazione per la Dottrina della Fede*, Città del Vaticano 2016, 68-69.

<sup>39</sup> «A confessor encouraging a penitent, in the act, occasion or context of a sacramental confession, to commit a sin against the sixth commandment of the Decalogue with another person. What I would call *passive* solicitation (if one can truly speak of a passive crime) is more insidious and, perhaps, more common. It consists in the confessor approving a behavior of the penitent that is contrary to the sixth commandment. For example, if a confessor does not correct a penitent who thinks that the use of contraceptives is licit, or that premarital sex is not a sin against the sixth commandment, or that masturbation is not really a sin, or that any other behavior contrary to the moral teaching of the Church about the sixth commandment is not sinful, this also considered by some canonists as a form of *sollicitatio contra sextum*». J.P. KIMES, «Crimes against the Sacrament of Penance in the two Codes», in C. PAPAIE, ed., *I delitti contro il sacramento della Penitenza* (cf. nt. 38), 68-69.

<sup>40</sup> «Afin de minimiser le sentiment de culpabilité ou de faciliter un comportement de prédation, le confesseur propose d’entendre en confession son complice (pour les relations consenties) ou pire encore la personne abusée, afin de lier un pacte de silence entre les différents protagonistes. Là encore, le sacrilège aggrave la responsabilité du clerc délinquant». E. BOUDET, «Les atteintes commises par des ministres de l’Église» (cf. nt. 29), 122.



In this context, at the risk of being accused of being stuck in the past, it appears opportune to recall the praxis of the confessional *crate fixa* and to repropose the anonymous practice of the sacrament of Reconciliation. It is impossible to disagree with those who, in the matter of abuses, see the traditional confessional as a weapon of insurance and defense for the priest, especially in the context of civil juridical systems that do not recognize the inviolability of the seal<sup>41</sup>.

The screened confessional traditionally served the function of safeguarding the necessary level of discretion and confidentiality, also because:

The right of every member of the faithful to confess their own sins without revealing their own personal identity is guaranteed, as is the right of every member of the faithful (confessor and penitent) to defend their own integrity and honor from any sort of danger or suspicion<sup>42</sup>.

Emblematic is the position of the Legislator, who defended its value in the face of requests to move beyond this modality<sup>43</sup>.

## 10. The Bishop and the Formation of Confessors

The topic of the confessor's responsibility naturally entails certain possible responsibilities on the part of the Bishop. If, on the one hand, the Bishop is not an employer and «the bond of canonical subordination of the presbyter to his own Bishop is limited to the realm of the exercise of ministry and, thus, to those acts directly connected to it, as well as the general obligations of the clerical state»<sup>44</sup>, on the other hand, there are not many areas removed from the vigilance of the bishop, given that can. 384 (CCEO can. 192 §4) extends the obligation of the Bishop to seeing that presbyters *obligationes suo statui proprias adimpleant*. This obligation

<sup>41</sup> Cf. T. MBADIWE OSUALA, «Sigilo sacramental y denuncia obligatoria del abuso de menores» (cf. nt. 18), 238.

<sup>42</sup> T. RINCÓN-PÉREZ, *La liturgia e i sacramenti nel diritto della Chiesa*, Roma 2014, 309 (our translation).

<sup>43</sup> The norm of this canon led to no shortage of doubts, both interpretative and applicative in nature. In particular, it was asked whether the confessor was always obliged to accept the penitent's decision or, on the contrary, whether the canon protected also the confessor's right to determine the modality. The response is given in PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Responsa ad propositum dubium: de loco excipiendi sacramentales confessiones*, 7/07/1998, AAS 90 (1998) 711.

<sup>44</sup> PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Note of 12 February 2004, *Communicationes* 36 (2004) 35 (our translation). We will not enter into the question of the limitations of the Norm, determined in any event by the «politics» of the time, necessitating such an intervention.

necessarily entails a sort of sense of responsibility that exceeds the respect for merely positive regulations<sup>45</sup>.

Omissive conduct here could become criminal by reason of «neglecting to use adequate measures in order that one's own behavior does not lead to the violation of the norm»<sup>46</sup>. This diligence is presumed of a «prudent» person, or in any event of a person holding an office that presupposes certain requirements of its titleholder<sup>47</sup>.

We will now briefly examine only a few of the «formative» circumstances that are relevant to the topic at hand.

### 10.1 *The Path of Formation*

For many years now, each time that we address the deficits observed in the exercise of priestly ministry, there is a mantra that seems to be repeated: «it is the seminary's fault». Certainly, the seminary is, and must be, subject to continual revisions, in order that it may correspond to the needs of our time, but it will always be difficult for an itinerary of formation to offer up a «final product»<sup>48</sup>.

The case of abuses highlights the need to reconsider the composition of formation teams, which, in this field, ought furthermore to involve women<sup>49</sup>. Despite provisions established by the new *Ratio*<sup>50</sup>, this has not

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<sup>45</sup> On the contrary: «è limitato a tutto quanto riguarda lo stato proprio dei presbiteri, ma non costituisce un dovere generalizzato di vigilanza su tutta la loro vita». PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Note (cf. nt. 45), 35.

<sup>46</sup> V. DE PAOLIS – D. CITO, *Le sanzioni nella Chiesa. Commento al Codice di diritto canonico. Libro VI*, Città del Vaticano 2000, 350 (our translation).

<sup>47</sup> Cf. D. ASTIGUETA, «Abuso de potestad», in *Diccionario General de Derecho Canónico*, I, Cizur Menor 2012, 96.

<sup>48</sup> «I presbiteri appena ordinati hanno ancora bisogno di essere aiutati e accompagnati per consolidare la formazione raggiunta e avviare l'inserimento nel vivo del ministero. Il curriculum del seminario, infatti, non va inteso come un percorso compiuto, ma come una preparazione a un ministero sempre aperto al rinnovamento, alla conversione, all'attenzione avveduta ai mutamenti culturali e sociali». CONFERENZA EPISCOPALE ITALIANA, *La formazione dei presbiteri nella Chiesa italiana. Orientamenti e norme per i seminari (terza edizione)*, Città del Vaticano 2007, n. 125.

<sup>49</sup> «Possono fare parte della squadra dei formatori, in particolare nel discernimento delle vocazioni. In questo campo abbiamo bisogno del parere delle donne, della loro intuizione, della loro capacità di cogliere il lato umano dei candidati, il loro grado di maturità affettiva o psicologica». M. OUELLET, «Per formare preti, servono più donne», *Donne Chiesa mondo* (mensile de *L'Osservatore Romano*) n° 89 (2020) 10.

<sup>50</sup> «The presence of women in the Seminary journey of formation has its own formative significance. They can be found as specialists, on the teaching staff, within

been sufficiently adopted<sup>51</sup>. The role of the human sciences plays a fundamental role. If, on the one hand, we affirm the need to be open to the collaboration of these fields, especially psychology, this will unfortunately remain at the level of a «desire» as long as fundamental legislation does not establish it as obligatory, and instead relegates it to the *si casus ferat* of a strictly therapeutic intervention<sup>52</sup>, limiting its authority in formation<sup>53</sup>. In this area, particular norms are now providing for tools that exceed the bonds of the *Ratio*<sup>54</sup>.

What are the models of formation in the seminaries, including those seminaries of the young Churches from which an ever-greater number of priests present in the Churches of ancient Christendom come? Is the seminary still a time of «trial»<sup>55</sup> or, on the contrary, is the formative path completed under «anesthesia», so to speak, especially in those places

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the apostolate, within families, and in service to the community. Their presence also helps to instill a recognition of how men and women complement one another». CONGREGATION FOR CLERGY, *The Gift of the Priestly Vocation. Ratio Fundamental Institutionis Sacerdotalis*, 8 December 2016, Vatican City 2016, n. 151.

<sup>51</sup> «Credo che questo testo necessiti di ulteriori aperture e sviluppi. Siamo ancora in una concezione clericale della formazione che si sforza di progredire ma rimanendo nella continuità di ciò che si è fatto. Ci sono elementi in più riguardo alla formazione umana, ma credo che sia ancora molto carente per quanto riguarda l'integrazione della donna nella formazione». M. OUELLET, «Per formare preti, servono più donne» (cf. nt. 49), 10-11.

<sup>52</sup> «During formation for the priesthood, the presence and contribution of experts in certain disciplines is helpful, owing to their professional abilities and for the support they can give, where particular situations call for it». *Ratio Fundamentalis* (cf. nt. 50), 146.

<sup>53</sup> «It is useful for the Rector and other formators to be able to count on the cooperation of experts in the psychological sciences. Such experts [...] cannot be part of the formation team». *Ratio Fundamentalis* (cf. nt. 50), 192. This is an exhortation, citing the previous *Orientations* of 2011 without the addition of any formative content.

<sup>54</sup> «Oltre alla documentazione stabilita dal diritto universale, particolare e proprio, venga sempre richiesto ai candidati agli ordini sacri e alla vita consacrata di sottoporsi a una valutazione specialistica effettuata da un esperto approvato dall'Ordinario, che possa ragionevolmente escludere che il candidato sia affetto da deviazioni sessuali ovvero da disturbi della personalità o da altri disturbi psichiatrici, che possano incidere sul controllo degli impulsi sessuali, favorendo la commissione di reati sessuali o l'assunzione di comportamenti sessuali inappropriati». CONFERENZA EPISCOPALE ITALIANA E CONFERENZA ITALIANA SUPERIORI MAGGIORI, Linee guida per la tutela dei minori e delle persone vulnerabili, 24/06/2019, n. 4.3, consultable on the official website of the Italian Church- Service «tutela dei minori».

<sup>55</sup> For the requirement prescribed for the licit conferral of orders: *probatione ad normam iuris peracta* (can. 1025 §1).

experiencing a shortage of clergy? In place of previous forms of anesthesia, today we are substituting others, perhaps more diabolical than those that came before. We might think of the paternalistic way in which young men today are invited to continue in formation, trusting in Grace and the Sacrament which, once received, will help to resolve their problems.

The Bishop should be in the wise position of he who discerns with «external» involvement regarding the various phases of formation, conducted with respect for dynamics that would require clarifying interventions<sup>56</sup>. What meaning and what breadth should be given to the norm according to which the admission to orders pertains to the prudent judgement of the Bishop/major Superior (can. 1029 CIC)?

## 10.2 *Permanent Formation and the Faculty to Hear Confessions*

With regard to confessors, we must move beyond the conception of a type of permanent formation that is characterized almost exclusively by the intellectual dimension<sup>57</sup>. Bishops' oversight of the practice of spiritual accompaniment and the supervision of pastoral service often proves very disappointing or, even worse, altogether non-existent<sup>58</sup>. Statistical analyses increasingly reveal the need for prolonged accompaniment after the first, immediately post-seminary phase<sup>59</sup>. In this context, the situation of abuses

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<sup>56</sup> Such as, for example, the time (number of years) required for formation; the relationship between spiritual director and other formators, which currently leads to too many misunderstandings in the handling of «internal forum» and «external forum»; the presence of «parallel» rectors and spiritual directors; the ambiguous and damaging figure of the «spiritual life moderator», etc.

<sup>57</sup> As, unfortunately, emerges from legislation of the CIC, which in can. 279 goes no further than recommending studies.

<sup>58</sup> «Cela semble une évidence, pourtant la pratique fait apparaître que parmi les clercs, peu nombreux sont ceux qui ont un accompagnement spirituel régulier ou encore une supervision de leurs pratiques pastorales. Cette situation est le fruit de la culture du cléricalisme et de l'absence de la reddition de compte, mais aussi du relativisme et de l'individualisme du temps». S. JOULAIN, «Le cléricalisme et les abus sexuels sur mineurs. Un défi pour le pontificat du pape François», *Revue d'éthique et de théologie morale* 300 (2018) 112.

<sup>59</sup> «L'età media del primo abuso da parte di un chierico è di circa 40 anni (più tardi che nella popolazione generale, e certamente più tardi che nelle persone affette da pedofilia) e avviene mediamente 11-14 anni dopo l'ordinazione [...] i fattori di stress lavoro correlato, l'isolamento, l'abuso di alcol, medicine, droghe illegali, la mancanza di competenza sociale (ad esempio nel rapporto con parrocchiani o superiori), lo scarso grado di maturità o disturbi psichici, rappresentano fattori di rischio da monitorare con attenzione». S. LASSI, «Quasi mai chi abusa è da poco prete», *L'Avvenire*, 24.01.2020, 10.

calls us back to a serious consideration and «recuperation» of the sense of reserving to the Bishop the concession of the faculty for hearing confessions. The priest is subject to a natural, experience-based evolution that passes through specific «crises». He is a relational figure. However, if this is true in general, it is also the reason for a greater commitment to formation in those complex relationships that the sacrament of confession entails<sup>60</sup>. What type of specific psycho-therapeutic preparation is prescribed prior to granting the faculty to confess?

The Bishop can and must intervene, and has various means at his disposal that would adequately support the young confessor in early experiences, perfecting his exercise of this ministry over time, and preventing, or at least seeking to prevent the need to revoke the faculty, which always remains a possibility at the Bishop's disposal<sup>61</sup>.

What tools? These will be suggested by pastoral prudence, in light of particular situations: formation meetings, lessons with evaluations, etc.

## Conclusion

Defending the inviolability of the seal does not entail an opposition to the obligation of reporting. In consideration of each type of penitent, the confessor must use all of the means at his disposal in order that the delict become known, and thus reported, to the religious and civil authorities. The sacrament of Reconciliation cannot be mistaken for a reporting office. New challenges faced by priests and new pastoral situations require a revision of seminary formation and, above all, a responsible vigilance on the part of the Bishop as regards the sacrament of Reconciliation, not only in the concession and verification of the faculty to confess, but also in all that concerns the right exercise of priestly ministry. The sad experience of those who have had to encounter and persecute abuses committed by clerics has led them to underline the particular responsibility of Bishops and Superiors<sup>62</sup>. But in order that the confessors of tomorrow might be better, it

<sup>60</sup> There are many valid and interesting suggestions and pathways indicated in G. SOVERNIGO, *L'umano in confessione. La persona e l'azione del confessore e del penitente*, Bologna 2003.

<sup>61</sup> The faculty to habitually receive confessions is not to be revoked, except for a grave cause, cf. can. 974 §1 CIC and 726 §1 CCEO.

<sup>62</sup> «Il Vescovo e il Superiore religioso dovrebbero esercitare la loro paternità spirituale *vis-à-vis* nei confronti dei sacerdoti affidati alle loro cure. Questa paternità si realizza attraverso l'accompagnamento con l'aiuto di sacerdoti prudenti e santi. La prevenzione è più efficace quando i Protocolli sono chiari e i Codici di condotta ben noti. La risposta alla cattiva condotta dovrebbe essere giusta e anche equilibrata. I

is necessary that the priests of today convert. This is also the condition for the flourishing or re-flourishing of vocations. Hope is nourished by the force of the Spirit. Nonetheless, it is an unfortunate discovery to see just how true Juvenal's affirmation, originally made in a more worldly context, rings in the Church with regard to the sad object of these reflections: *quis custodiet custodes?*<sup>63</sup>.

GIACOMO INCITTI

### Summary

This article aims to examine the responsibility of the confessor in the area of the protection of minors and vulnerable adults. In this perspective it considers the cases where a penitent is an abuser, a victim, or a third party. Since it is not permitted to condition absolution on a prior self-denunciation to civil authorities, what space is left for the confessor as regards the penitent's self-reporting in the external forum? What is the role of the Bishop, to whom the granting of the faculty to hear confessions is reserved? The article concludes with indications regarding priestly formation.

**Keywords:** confessor; penitent; repentance; self-reporting and absolution; seal.

### Sommario

#### **Aspetti pratici nel sacramento di riconciliazione riguardanti la protezione dei minori e degli adulti vulnerabili**

Scopo di questo articolo è esaminare la responsabilità del confessore in ambito di protezione dei minori e adulti vulnerabili. In tale prospettiva vengono considerati i casi in cui il penitente è l'abusatore, la vittima o anche una terza persona. Poiché non è permesso condizionare l'assoluzione alla previa autodenuncia all'autorità civile, quale spazio resta al confessore circa la pur necessaria autodenuncia del penitente in foro esterno? Quale il ruolo del Vescovo al quale è anche riservata la concessione della facoltà di ascoltare le confessioni?

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risultati dovrebbero essere chiari fin dall'inizio. Soprattutto, l'Ordinario ha la responsabilità di garantire e promuovere il benessere personale, fisico, mentale e spirituale dei sacerdoti. I documenti del magistero su questo tema sottolineano la necessità di una formazione permanente e di momenti e luoghi in cui vivere la fraternità nel *presbyterium*». C.J. SCICLUNA, «Assunzione di responsabilità. Per il trattamento dei casi di crisi di abuso sessuale e per la prevenzione degli abusi», in *Consapevolezza e Purificazione* (cf. nt. 27), 40.

<sup>63</sup> IUVENALIS, *Satura* VI, 48-49.

In questa ottica l'articolo offre qualche indicazione anche in ambito di formazione al ministero sacro.

**Parole chiave:** confessore; penitente; pentimento; autodenuncia e assoluzione; sigillo.





## THE SACRAMENT OF RECONCILIATION: PRIESTLY FORMATION AND PASTORAL PRACTICE

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I must begin with a necessary premise: this contribution was born as a reflection for a day of study among specialists regarding the canonical secret of confession in relation to pastoral and moral questions that may arise in the celebration of the fourth sacrament. The following text, while structured as a systematic reflection, primarily seeks to respond to the input received in the context of a discussion among experts in the field, and will require further reflection in the theological and canonical realms.

The contribution essentially consists of two parts. In the first, I have sought to offer a theological foundation for the ongoing formation of confessors; the second is characterized by a more discursive style that seeks to respond to certain moral issues regarding the vulnerability of minors that may arise during the exercise of the sacrament of reconciliation.

### 1. Theological Foundation

My reflections are rooted in the merciful vision of the ministeriality of the confessor, emphatically repropounded by the magisterium of Pope Francis, particularly in *Misericordiae vultus* and *Misericordia et misera*, which has brought about a change in practice with regard to the sin of abortion (cf. also the perspectives outlined in chapter VIII of *Amoris laetitia*). This is the vision that St. Alphonsus M. de Liguori (1696-1787), patron of confessors and moral theologians, had summarized, adopting the great tradition of the Church: the task of the confessor is an «office of charity, instituted by the Redeemer solely for the good of souls», for which

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«he must indeed teach the truth well, but only those truths which benefit the penitents, rather than bringing about their condemnation»<sup>1</sup>.

Alphonsus de Liguori, strong in this theological and spiritual conviction confirmed by the pastoral practice of the Church, delineates the tasks of confessors: «Four are the offices that the good confessor must exercise: those of father, physician, teacher and judge»<sup>2</sup>.

The teachings of de Liguori show that the action of the confessor must be such that the penitent experiences the preceding merciful embrace of the Father, maturing the uncertain initial «step» motivated by hunger into a true and joyous «return home» (cf. Lk 15,11-32). Only true spiritual fatherhood will allow the confessor to act as a physician who, rather than being interested in the sins themselves, seeks to understand their origin in order to administer saving medicine to the soul by means of the application of the law. In this light, for St. Alphonsus, the office of judge pertaining to the confessor becomes such precisely at the moment in which, after having heard the motives of the penitent, he emits his sentence, keeping always in mind the mercy of God, who heals human weakness<sup>3</sup>.

The practice of the celebration of the sacrament, however, has long preferred the objectivistic ethical model. Up to the Vatican Council II, the attention of confessors was concentrated more on the acts of the penitent and on material content than on the intentions of the acting subject.

In this way, confession became the denunciation of one's own acts-sins, which was followed by absolution, without even a minimal consideration of the penitent's disposition. This dynamic led to the definition of confession as the «tribunal of conscience». The theological dimension of reconciliation and conversion loses its original meaning<sup>4</sup>.

In the second half of the 19<sup>th</sup> century, a complex and articulated reflection on the practice of this sacrament was undertaken. Penance is a sacrament that has undergone a noteworthy evolution over these two thousand years of the Church's history.

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<sup>1</sup> A.M. DE LIGUORI, *Istruzione e pratica pei confessori*, cap. XVI, punto VI, n. 110, in *Opere*, IX, Torino 1861, 415 (our translation).

<sup>2</sup> A.M. DE LIGUORI, *Pratica del confessore*, Frigento (AV) 1987, cap. I, § I, n. 5 (our translation).

<sup>3</sup> Cf. A.V. AMARANTE, «Dignità e servizio. La formazione morale del sacerdote secondo Alfonso de Liguori», *Studia Moralia* 50/1 (2012) 89-114.

<sup>4</sup> A.V. AMARANTE, «Lo stile pastorale-teologico del confessore», in A.V. AMARANTE – F. SACCO, *Riconciliazione sacramentale. Morale e prassi pastorale*, Padova 2019, 175 (our translation).

### 1.1 *From the Vatican Council II to Pope John Paul II*

The theological reflection developed during the Vatican Council II placed the primary emphasis on the constitutive dimension of the minister of reconciliation, formed to remit sins, called to accompany consciences in their search for the good and for the saving truths.

In this light, the post-Conciliar reflection witnessed a paradigm shift. If, previously, the role of the confessor was almost exclusively relegated to that of the judge and president of the «tribunal of consciences», with the Vatican Council II, the reflection began to favor the approach of the «Father» who is called to welcome, accompany, and form the penitent in the fullness of Gospel truth.

This change is delineated in the Conciliar document on priestly ministry and life, *Presbyterorum ordinis*<sup>5</sup>. The decree urges priests to help the faithful to develop their own vocations, in faithfulness to the Gospel:

Priests therefore, as educators in the faith, must see to it either by themselves or through others that the faithful are led individually in the Holy Spirit to a development of their own vocation according to the Gospel, to a sincere and practical charity, and to that freedom with which Christ has made us free (n. 6).

The Council Fathers emphasize two aspects of the ministry of reconciliation: that of witness and that of educator. Thus, the decree demands a coherence of life from the priest in order to exercise this ministry as a father.

John Paul II, in his 1984 apostolic exhortation *Reconciliatio et poenitentia*<sup>6</sup>, outlines a collective vision of reconciliation and penance «in the mission of the Church today». From a reading of this text, we may highlight three aspects that every priest must cultivate in the exercise of this ministry.

The first obligation of the priest is that of welcoming the penitent, who often opens his heart with difficulty and trepidation (cf. n. 29). The second obligation of the confessor is that of placing himself at the service of this sacrament, which brings so many souls back to God. In light of these two obligations, the Pontiff reminds us that, in order to properly exercise this ministry, the presbyter must cultivate three dimensions: *in primis* he «must

<sup>5</sup> VATICAN COUNCIL II, Decree *Presbyterorum ordinis*, on the ministry and life of priests, 7.12.1965, AAS 58 (1966) 991-1024.

<sup>6</sup> JOHN PAUL II, Apostolic exhortation *Reconciliatio et poenitentia*, on reconciliation and penance in the mission of the Church today, 2.12.1984, AAS 77 (1985) 185-275.

necessarily have human qualities of prudence, discretion, discernment and a firmness tempered by gentleness and kindness». He then adds that, *in secundis*, the priest must have

a serious and careful preparation, not fragmentary but complete and harmonious, in the different branches of theology, pedagogy and psychology, in the methodology of dialogue and above all in a living and communicable knowledge of the word of God.

Finally, though of no less importance, the minister of this sacrament must possess

an intense and genuine spiritual life. In order to lead others along the path of Christian perfection the minister of penance himself must first travel this path. More by actions than by long speeches he must give proof of real experience of lived prayer, the practice of the theological and moral virtues of the Gospel, faithful obedience to the will of God, love of the church and docility to her magisterium (n. 29).

The ongoing formation of the minister of reconciliation must always be able to unite scientific formation, continuing education on human issues, and a life of prayer. Indeed, the confessor is not just a judge summoned to apply a law, but also a mediator of the grace of God, who listens to the weakness of man.

## 1.2 *From Pope Benedict XVI to Pope Francis*

The formation of confessors once again occupied a central position among the pastoral concerns of the pontificate of Pope Benedict XVI.

In 2011, the Congregation for Clergy published an aid for confessors and spiritual directors<sup>7</sup>. This document, too, emphasizes the centrality of the spiritual life and cultural formation of priests, in order to then give some pastoral indications on how the priest should help the penitent to set off on the path of evangelical perfection. There is a central phrase referencing the disconcerting situation of today. The confessor has

a compelling obligation to know the spiritual maladies of his flock and also to be close to the penitent. He has a duty of fidelity to the Church's Magisterium in matters pertaining to Christian morality and perfection, to living an authentic life of prayer, to be prudent in listening to penitents and in putting questions to them. He should also be available to those who reasonably request the sacrament and to follow the promptings of the Holy Spirit (n. 55).

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<sup>7</sup> Cf. CONGREGATION FOR CLERGY, *The Priest, Minister of Divine Mercy. An Aid for Confessors and Spiritual Directors*, Vatican City 2011.

This aid reminded confessors of their task of knowing how to understand and interpret the new problems posed by society. Regarding issues concerning minors and the vulnerability connected to this, it unfortunately offers few pastoral indications; although the problem exploded to the full extent of its gravity thanks to the investigation of journalists, it had not yet been addressed with parrhesia in the ecclesial sector.

The first to denounce the plague of «filth» in the Church was the then-Cardinal Ratzinger, on the occasion of the *via crucis* at the Colosseum in 2005. Pope Francis, by means of his *motu proprio* and ordinary magisterium, is openly addressing this issue with courage<sup>8</sup>.

With Pope Francis, the topic of priestly formation has made its way back to the center of our reflection, precisely on account of the character that his Pontificate has impressed with the constitutive dimension of mercy. Alongside the topic of mercy, and thereby of formation of ministers for the exercise of this sacrament, the Pope has addressed the plague of violence against minors in the Church, with all that it entails.

Let us quickly recall a few points that, in my opinion, can be considered the cornerstone of the Pontiff's magisterium on the general formation of confessors.

A first general indication may be found in the programmatic document of his pontificate, *Evangelii gaudium*<sup>9</sup>. Speaking of the ministry of reconciliation, he reminds us that

the confessional must not be a torture chamber but rather an encounter with the Lord's mercy which spurs us on to do our best. A small step, in the midst of great human limitations, can be more pleasing to God than a life which appears outwardly in order but moves through the day without confronting great difficulties. Everyone needs to be touched by the comfort and attraction of God's saving love, which is mysteriously at work in each person, above and beyond their faults and failings (n. 44).

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<sup>8</sup> With three different *motu proprio*, Pope Francis has addressed the plague of pedophilia. The first intervention, *Like a loving mother*, dates to June 4, 2016. In this document, the Pontiff addresses the juridical responsibility of the ecclesiastical authority in cases of abuse. The second *motu proprio*, on the protection of minors and vulnerable persons in the Roman Curia and the Vatican City State, dates to March 19, 2019. Finally, the last *motu proprio* *Vos estis lux mundi*, also about sexual abuses, regarding the responsibility of bishops placed by God in positions of pastoral guidance, is from May 7, 2019.

<sup>9</sup> Cf. FRANCIS, Apostolic exhortation *Evangelii gaudium*, 24.11.2013, AAS 105 (2013) 1019-1137.

A second indication is found in the apostolic letter *Misericordia et misera*<sup>10</sup>. The pope renews the invitation to priests «to prepare carefully for the ministry of Confession, which is a true priestly mission», to then ask that they

be *welcoming* to all, *witnesses* of fatherly tenderness whatever the gravity of the sin involved, *attentive* in helping penitents to reflect on the wrong they have done, *clear* in presenting moral principles, *willing* to walk patiently beside the faithful on their penitential journey, *far-sighted* in discerning individual cases and *generous* in dispensing God's forgiveness (n. 10).

The Pontiff concretely indicates certain attitudes that every confessor must cultivate in the exercise of the ministry of reconciliation: sincere welcoming, fatherly witness, solicitude in discussion, doctrinal clarity, availability to walk with penitents, prudent discernment and, finally, extending the mercy of forgiveness, which the priest facilitates but does not control.

Listening to and reading the Pontiff's ordinary magisterium, it is possible to gleam a continual push for the formation of confessors. From the addresses that the Pope offers each year to participants at the Course on the Internal Forum promoted by the Apostolic Penitentiary, we may take away many points of reflection for an ongoing formation with the celebration of the sacrament in view.

For example, during the XXVIII course on the internal forum (2017), Pope Francis presented three essential aspects for every confessor. Every good confessor, he recalled, is *in primis* a friend of Jesus, then, a man of the Spirit capable of evangelical discernment, and finally, he underlined that the confessional is a place for evangelization.

During the XXIX course on the internal forum (2018), the Holy Father asked participants to reflect on the instrumental dimension of the minister of reconciliation. In a quick passage, he reminded them that

the confessor priest is neither the source of Mercy nor of Grace; he is certainly an indispensable instrument of them, but always only an instrument! And when the priest holds onto them, he prevents God from taking action within hearts. This awareness must favor careful vigilance over the risk of becoming «masters of consciences», above all in the relationship with young people,

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<sup>10</sup> Cf. FRANCIS, Apostolic letter *Misericordia et misera*, 20.11.2016, AAS 108 (2016) 1311-1327.

whose character is still developing and therefore much more easily influenced<sup>11</sup>.

He then added that the confessor must «be able to *listen to questions*, before offering answers»<sup>12</sup>.

Listening and respect for consciences are indicated as necessary steps in order that mercy may act in the lives of penitents.

Finally, I would like to focus my attention on the words that the Pontiff pronounced during the XXX annual course for confessors, where he emphasized the sacrality of the sacrament of reconciliation and the bond of secrecy:

Reconciliation itself is a benefit that the wisdom of the Church has always safeguarded with all her moral and legal might, with the sacramental seal. Although it is not always understood by the modern mentality, it is indispensable for the sanctity of the sacrament and for the freedom of conscience of the penitent, who must be certain, at any time, that the sacramental conversation will remain within the secrecy of the confessional, between one's conscience that opens to grace, and God, with the necessary mediation of the priest. The sacramental seal is indispensable and no human power has jurisdiction over it, nor can lay any claim to it<sup>13</sup>.

In this address, the Pontiff's position on the inviolability of the confessional secret is of fundamental importance.

From this brief *excursus*, it is clear how the theme of the formation of confessors, connected to the wound of pedophilia and the vulnerability of minors in general, has only recently been systematically addressed.

One example are the words that Pope Francis expressed in his strong address upon the conclusion of the summit on the «Protection of Minors in the Church», pronounced on February 24, 2019. In one passage, the Pontiff declared that

The Church's aim will thus be to hear, watch over, protect and care for abused, exploited and forgotten children, wherever they are. To achieve that

<sup>11</sup> Cf. [http://www.vatican.va/content/francesco/en/speeches/2018/march/documents/papa-francesco\\_20180309\\_penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2018/march/documents/papa-francesco_20180309_penitenzieria-apostolica.html) [the most recent consultation: 13.01.2021].

<sup>12</sup> Cf. [http://www.vatican.va/content/francesco/en/speeches/2018/march/documents/papa-francesco\\_20180309\\_penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2018/march/documents/papa-francesco_20180309_penitenzieria-apostolica.html) [the most recent consultation: 13.01.2021].

<sup>13</sup> Cf. [http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco\\_20190329\\_penitenzieria-apostolica.html](http://www.vatican.va/content/francesco/en/speeches/2019/march/documents/papa-francesco_20190329_penitenzieria-apostolica.html) [the most recent consultation: 11.04.2020].

goal, the Church must rise above the ideological disputes and journalistic practices that often exploit, for various interests, the very tragedy experienced by the little ones<sup>14</sup>.

These words require no commentary.

## 2. Some Indications in the Light of the Magisterium

From these few references to post-Conciliar magisterium, where pedophilia is seldom discussed, it is still possible to take away some important indications for the formation of confessors to the exercise of the ministry of mercy in truth.

In the formation of confessors, as the Pontiff has reminded us in his address of February 24, 2019 on the protection of minors in the Church, it is necessary to reiterate the absolute respect for the consequences of the sacramental secret as a fundamental condition because:

– this is the way in which the sacrament is seen and lived out by the penitent, not as a «tribunal» that judges faults, but as a «tribunal» that administers grace, such that the penitent may effectively welcome the merciful embrace of the Father and come to bear fruit on a trusting path of conversion;

– at the same time, the confessor must see the penitent more as «sick» than «guilty»: not with the inquisitor's gaze of Simon the Pharisee, but with the welcoming and merciful gaze of Christ, echoing his words to the sinful woman: «Your sins are forgiven [...] Your faith has saved you. Go in peace!» (cf. Lk 7,36-50).

From this fundamental and essential merciful value of the sacrament derive certain demands or criteria that cannot be neglected by pastoral efforts, above all as regards the formation of confessors. I will recall them systematically before concretely analyzing them in the cases that have been proposed to me:

– while they are serious and urgent, the problems that we are addressing cannot lead to a pastoral practice that somehow obscures the end of the sacrament. Confessing one's sins is directed not toward punishment, but *conversion*; it is opening oneself and welcoming the forgiveness that God freely gives, from which flows a path of conversion that is certainly demanding but, above all, joyous and trusting on account of its possibility

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<sup>14</sup> Cf. [http://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco\\_20190224\\_incontro-protezioneminori-chiusura.html](http://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html) [the most recent consultation: 11.04.2020].



of liberation from sin and growth in the *sequela Christi* that God reveals to us;

– it cannot be denied that there is a temptation to see the penitent not so much as a sinner to help but as a guilty person to condemn. This tension, fruit of the internal history of the fourth sacrament, has become evident with the pastoral practice established after the Council of Trent, when the confessional was also referred to as the tribunal of consciences or the motive for how the moral law was applied;

– in the celebration of the sacrament of penance, the pedophile should be regarded first of all as a sinner rather than a guilty person. It pertains to canonical and civil judges to ascertain the facts, establish a means to help, and impose sanctions. The relationship between the sacrament of penance and the canonical process would merit, in my opinion, a separate study. It is not possible to simply transport the sinful material from the sacramental forum to the judicial forum. The dynamic of the sacramental forum is different from that of the judicial forum;

– the objects of confession as a sacrament and of the civil or penal process are essentially different. A process has the aim of applying the law to a concrete case, to a crime committed. The sacrament of penance bestows the mercy of God. We could summarize by saying that the sacrament of reconciliation looks to *conversio* in order to return to the way of perfection by means of sacramental absolution, which gives the mercy of God. A canonical or civil process exercises the jurisdictional function, and concludes with a sentence of absolution or conviction;

– certainly, the confessor is called to ask himself if the sin of the penitent is a habit, an addiction that generates violence, and how he can help the penitent to break it. In the case of a dependency that the confessor cannot constructively address, he has the obligation to push the penitent to seek specialized accompaniment. This consideration opens up yet another question: what relationship ought to exist between therapeutic accompaniment and that which is specific to the sacrament of reconciliation? The relationship between these two areas merits its own separate consideration. Both address these issues with different ends, though sharing the horizon of the common good. In fact, it is not possible to mistake the object and dynamic of the fourth sacrament for a specialized type of human accompaniment;

– the suggestion of any other judicial-type consideration or professional help to be offered must always be made according to a merciful perspective. The priest who exercises the ministry of confession is neither a

judge nor a specialist in psychological accompaniment; he bestows mercy in the name of God. This is why the confessor, beginning with the language that he employs, must always allow the salvific nature of the sacrament to be perceived. The confessor must be formed for this fatherly responsibility, to welcome without reserve, in order that the penitent may once again take up the path of salvation;

– consequently, although it recognizes the fundamental positive intentionality and shares in the concerns of justice, sacramental practice cannot be determined by the juridical practice in force in different States or by international declarations<sup>15</sup>. Formation of confessors must insist on the importance of and faithfulness to the specific characteristics of the sacramental «forum» with respect to any other type of «forum». To avoid all ambiguity, I believe it is also opportune to deepen the distinction between the internal and external forum. In any event, it must be reiterated that the sacramental forum cannot be reduced to only the internal forum, but that it has its own specificity;

– the confessor must be formed to propose the common good as an essential demand of conversion itself. Reiterating the centrality of the penitent's conversion does not mean ignoring or putting aside the pre-occupation for the common good; rather, it implies bringing the common good to the center of conversion, as one of its essential demands. The continual references made in current magisterium to the common good (*Evangelii gaudium*, *Laudato si'*, to cite only a few recent documents) demand that we overcome not only every sort of individualistic ethic, but also any sort of pastoral approach that does not clearly evidence the responsibility we have for the consequences of our decisions on others and on society. All of this must be clearly proposed in the sacramental dialogue, underlining that it is not possible to speak of true conversion where this is lacking.

The confessor called to sacramental accompaniment, particularly with regard to the problems that we are addressing, must be concerned with helping the person to free himself from an individualistic rights perspective

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<sup>15</sup> In July 2019, the Apostolic Penitentiary published a detailed note on the topic of the sacramental seal, which discusses: the relationship between the extra-sacramental internal forum and spiritual direction, and secrets and other limits proper to communication. This is apt to provide an orientation on the question at hand. Cf. <http://www.penitenzieria.va/content/dam/penitenzieriaapostolica/magistero-e-biblioteca-di-testi/NOTA/Note%20of%20the%20Apostolic%20Penitentiary%20on%20the%20Importance%20of%20the%20Internal%20Forum%20and%20The%20Inviolability%20of%20the%20Sacramental%20Seal.pdf> [the most recent consultation: 11.12.2020].

and to open himself to a co-responsible reciprocity. Only in this dimension may there be personal growth in view of the common good. This is the vision that St. Paul points to when he speaks of freedom finding its realization in the reciprocal growth of all;

– the paschal perspective must always open us up to hope. The confessor must remember:

\* that whoever has committed an evil can be forgiven and enabled to assume, with trust, the path of liberation and rehabilitation of the consequences brought about by his action;

\* that a victim of abuse must be accompanied in reading their own suffering in light of the mystery of the paschal cross, and helped to put aside any sort of vindictive perspective, persevering in overcoming evil and following the demands of the common good according to what the Lord Jesus taught us in the *Pater noster*: «Forgive us our trespasses, as we forgive those who trespass against us» (Mt 6,12);

\* that the person who has suffered an abuse must be accompanied along the path of self-reconciliation and gospel forgiveness. In light of the *Rescript of the Holy Father Francis to promulgate the Instruction on the confidentiality of legal proceedings*<sup>16</sup> of late December 2019, I believe that theologians and canonists must elaborate a global reflection on the confessional secret in the area of abuses and vulnerability. Precisely in light of this rescript, I believe that it is possible to suggest that the person who has been the victim of abuse speak to the authority that is competent to address the violence suffered. The accusation, as stated above, is not to be made as a personal vendetta, but in order to safeguard the common good.

The concrete cases that I am attempting to address in such a delicate and complex area — as that proposed to me by the organizers of this seminar — are to be read according to this perspective, keeping in mind the aim to seek out a proper discernment of personal realities, each of which must be viewed in its specificity, always remembering that:

what is part of a practical discernment in particular circumstances cannot be elevated to the level of a rule. That would not only lead to an intolerable casuistry, but would endanger the very values which must be preserved with special care (*Amoris laetitia* 304)<sup>17</sup>.

<sup>16</sup> Cf. <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/12/17/1011/02062.html> (the most recent consultation: 23.04.2020).

<sup>17</sup> FRANCIS, Post-synodal apostolic exhortation *Amoris laetitia*, on love in the family, 19.03.2016, AAS 108 (2016) 311-446.

### 3. Some Specific Cases

Below, we will illustrate some problematic cases encountered in confession, to which we have attempted to give a response that is faithful to both the magisterium and recent canonical norms in this area.

The *first case* proposed may be summarized thus: what can a confessor do when a penitent confesses that his acts involve a minor or vulnerable adult? The sin could regard an act that is sexual in and of itself, or the involvement of a minor or vulnerable adult via internet, for example in the uploading or downloading of pedo-pornographic material.

This case, taken by itself, requires certain distinctions to be made. Here, I will limit myself to addressing only the problem of the gravity of the sin that involves another person.

The first step here is to make the penitent understand the gravity of this sin by means of a sacramental dialogue that is able to embrace the sinner before prescribing to him a saving medicine. The confessor will need to convey to him that every time that another person becomes an object rather than the horizon of good, we fall into the individualistic ethic of which I spoke above. At the level of sacramental dialogue, it is necessary for the penitent to mature a true repentance, not as remorse, but as recognition of the dignity of the other, which must always be respected because it is founded on the *imago Dei*. This will enable the conversion to last, because it will be based on love rather than fear.

True repentance, understood as a path of comprehending the evil committed and of viewing the other person as a subject rather than an object, also requires, to the extent possible, remedying the evil committed.

The confessor cannot force a penitent to denounce himself to the civil authorities, but he must help him to understand the gravity of the evil committed. In the sacramental dialogue, founded on a perspective of salvation, it is necessary to suggest that the penitent seek out some sort of specialized help. At the same time, as stated above, the confessor can also ask the sinner to make reparation for the evil he has done.

In this case, absolution, the first step to access the sacramental medicine, could be deferred only if this dynamic guarantees the path of maturation toward a full conversion. Just as in the case of a homicide, the confessor cannot force a penitent to turn himself in, but must invite the penitent to choose the good, in consideration of the injured party.

The *second case* proposed may be summarized as follows: What should a confessor do when a person has been the victim of abuse, or thinks that he or she has been abused by a family member or another person?

The sacrament of reconciliation points us to the deep meaning of redemption. When lived out as an experience of redemption, it is able to free us because it helps the penitent to give a paschal meaning to what has happened. If the sacrament is not lived out as a meeting of faith, it is not able to grant this freedom and, therefore, is not able to offer the paschal experience of liberation-redemption.

After weighing all of the relational, family and moral implications, the confessor can suggest that the victim denounce the author of the abuse when the common good is in danger. The accusation made with feelings of vengeance for the evil suffered does not enter into the sacramental logic, but rather becomes a sin against others. I believe that the accusation is to be considered as a *ratio ultima*, always according to the perspective of safeguarding the common good.

Canon law reminds us of the need both to restore justice and for the person who has committed the evil to reform, to prevent other cases of abuse. At the level of the sacrament of reconciliation, in the case where there has not been a public accusation, it is necessary to impose on the sinner healing measures to avoid other cases of abuse. All this is to help the aggressor to find a path of human and spiritual healing.

If the abuse, or alleged abuse, were to happen within the family, I believe that it would be opportune to suggest doing all that is possible in order that the conditions making that situation possible no longer persist.

If the abuse is denounced by a minor, it is necessary to accompany them along a process of notifying their family members, so that they may protect the minor with their presence and also enact strategies so that the abuser may be stopped. If the aggressor is family member, it is necessary for the confessor to urge the victim to direct himself, with courage and trust, toward a person of trust, who could be a member of the nuclear family, a school employee, or a social worker, in order to bring the evil suffered out into a non-sacramental context.

Finally, before arriving at the penal accusation — which may prove necessary to stop the person — it is necessary to make the person understand the moral evil committed. The gospel mentality does not accuse on account of an evil suffered, but rather because the good is at risk.

1. Glossary of
2. Hierarchy
3. Sacrament
4. Normae de
5. Letters to
6. As a
7. Vox Estis
8. The
9. On the
<b>10 Pontifical</b>

A *further case* may be presented as follows: what can a confessor do when a third party (extraneous to the facts) reports that their spouse is abusing a relative (minor or vulnerable adult) and that they do not want to denounce this to the police for fear that this will bring about the destruction of their marriage?

This case presents certain analogies to the previous case. In this specific situation, there are two values at play for believers: the dignity of the person, which cannot be violated, and the sacrament of marriage.

In this case, it is necessary to also keep in mind one ulterior factor. Parents have the obligation to take care of, educate, support, and help their children. In the case that one of the two parents is abusing a minor or vulnerable person, the other spouse has the obligation to protect the child because the child's right to wellbeing is involved. In fact, the Church always recognizes the primacy of the best interest of the child. Faced with violence against a minor, enacted in the context of a marriage, the priority, attention, and care must be directed first toward the weakest person and second toward the spouse. As long as this abuse, or suspicion of abuse, continues, the dynamic of the marriage is damaged and cannot be lived out serenely. Once the child is truly protected, the spouses will be able to take up a path of dialogue in order to heal their conjugal relationship.

At the sacramental level, due to the complexity of the situation and the prudence required for the exercise of this ministry, I think that the only feasible path for the confessor is that of asking the penitent to do what is possible in order that the conditions in which this violence occurs not be created. In other words, that he invites the person to take charge of the suffering of others, helping them to prevent possible forms of abuse by means of their presence. In this case, the reciprocity between the abused and the closeness of the person taking charge of the situation enacts the dynamic of shared responsibility. At the moral level, this protective dynamic avoids the sin of omission and of cooperation. In fact, the correlation between the protection that must be offered to the child, the marriage bond, and moral obligation, offers points of reflection that must be investigated both canonically and morally.

Also in this case, as in that which precedes it, the confessor can suggest that the penitent, as a last resort, denounce. If the penitent does not want to do this, they may not be forced.

The *fourth case* proposed asks whether the problems addressed above, when heard in confession or in a conversation of spiritual accompaniment, are covered by the seal.

All that which pertains to confession is covered by the sacramental seal. The same principle holds true for that which is heard in conversations of spiritual direction.

In the dynamic of ongoing formation among confessors, it is not rare that real cases are brought up in order to ask for clarification or confirmation regarding the proper way to administer the sacrament. When the presentation of a case is made without entering into detail, far removed from the context in which it occurred, if it is sure that the other person/priest can in no way determine the identity of the penitent, and if this is done for clarification, I believe that such sharing is possible because it does not break the sacramental seal.

The *final case* proposed may be summarized as follows: What are the rights and responsibilities of a confessor? What are the responsibilities of Ordinaries when a priest breaks the sacramental seal because he is unable to bear the weight of the sin that he has heard or because his silence would not allow for the prevention of abuse?

Priests have the obligation to hear penitents and the right (responsibility) to continually form themselves because morals, as St. Alphonsus taught, is a chaos that never ceases to stun, as real life always exceeds our imagination. If a confessor fears that he is unable to receive confessions of abuse, this must be clearly stated to the Ordinary.

When it is certain that a priest is unable to maintain the sacramental seal, for the most varied of reasons, then he cannot hear confessions. Indeed, in these cases, the Ordinary must retract his permission to hear confessions.

He who is incapable of handling the sacrament of confession cannot hear confessions, but this does not exempt him from observing the sacramental seal.

As stated above, at the level of language I prefer speaking of the sacramental dialogue, to avoid terminological confusion in light of our modern mentality, avoiding the terminology of internal and external forum, which references juridic language. This clearly presupposes the difference that must exist between the sacramental and juridical regulations.

The sacrament must remain within the dynamic that frees from sin as a concrete experience of redemption.

1. Glossary of
2. Hierarchy
3. Sacrament
4. Normae de
5. Letters to
6. As a
7. Vox Estis
8. The
9. On the
<b>10 Pontifical</b>

#### 4. The Formation and Theological-Pastoral Style of Confessors

The final case proposed offers me the possibility, in this last part of my contribution, to underline the importance of the ongoing formation of confessors and of, consequently, the style with which to administer this sacrament<sup>18</sup>.

Being a confessor is not something to be improvised. Prayer and the grace of the ministry are not sufficient if these are not founded on theology and a personal experience of redemption. I believe that it is a right and obligation of all priests to continually form themselves in light of the complexity of the moral problems that present themselves daily (cf. *Reconciliatio et pœnitentia* n. 29).

The Vatican Council II, with the conciliar decree *Presbyterorum ordinis* (n. 6) asks priests to form the people of God in the faith, such that they may understand the will of God in the painful experience of sin.

Recent magisterium has highlighted three dimensions of the confessor as helper, guide and father. Already Alphonsus de Liguori spoke of four offices that must characterize the confessor: father, physician, teacher and judge.

In *Misericordia et misera* (cf. n. 10), Pope Francis outlines a true life-plan for the confessor. Stressing the verbs «welcome, be available, discern and integrate», he makes this text a clear orientation for confession, to be used by those constituted as its ministers. In light of the two-thousand-year-old teaching of the Church, I believe that the formation of priests to exercise this ministry should keep in mind the following dimensions.

The *first dimension* is that of *welcoming*, capable of embracing the sinner in one's heart, and welcoming their weakness. The priest's welcoming, a true gesture of charity, must be like that of the «father» who is open to listening in a sincere and loyal way. Before giving answers, it is necessary to listen<sup>19</sup>.

The *second dimension* is the *salvific dialogue* upon which this sacrament rests. The priest is called more to understand the person than to investigate the details of their life. Listening opens us to trust and reciprocity.

The *third dimension* is that of *accompanying weakness*, respecting timeframes, silence, falls, and fears, in light of a decision of conscience in

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<sup>18</sup> Cf. A.V. AMARANTE, «Lo stile pastorale-teologico del confessore» (cf. nt. 4), 179-180.

<sup>19</sup> Cf. V. TIRIMANNA, «Alcuni orientamenti pastorali per un buon confessore emergenti da *Amoris laetitia*» in A.V. AMARANTE – F. SACCO, *Riconciliazione sacramentale* (cf. nt. 4), 181-195.



favor of the good where the horizon is the other person. A fundamental aspect of this accompaniment is the discussion about only those salvific truths which open the conscience up to vigilance and to a desire for God.

Finally, if confession takes place in a fraternal climate of welcoming, this allows for a serene *discernment*, so as to arrive at solutions where even wrongs that have been suffered become a moment for growth.

Confession, when it occurs in a serene climate, allows us to encounter the Prince of Peace.

### Conclusion

When the confessor finds himself faced with sin, and in a particular way faced with the drama of pedophilia, beyond the canonical and moral indications that he possesses to address the situation, he has one weapon that no one can take away: the salvific dialogue.

By means of the salvific dialogue, it is possible to constructively activate the circularity between that which is experienced, as negative or limiting as it may be, and the norms that clearly reflect Christian values. In this way, «practicity»<sup>20</sup> is assured to moral truth, as *Gaudium et spes* suggests, speaking about decisions that the laity are called to make:

Often enough the Christian view of things will itself suggest some specific solution in certain circumstances. Yet it happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others on a given matter. Even against the intentions of their proponents, however, solutions proposed on one side or another may be easily confused by many people with the Gospel message. Hence it is necessary for people to remember that no one is allowed in the aforementioned situations to appropriate the Church's authority for his opinion. They should always try to enlighten one another through honest discussion, preserving mutual charity and caring above all for the common good (*GS* 43).

The salvific dialogue, when it is true and free from fear and from all worry, is capable of understanding the practical effects of its affirmations, transforming divergent viewpoints into a source of riches<sup>21</sup>.

I would like to conclude this contribution with the words of Aphonius de Liguori who, participating in the theological-moral debate of the 18<sup>th</sup> century regarding the probabilistic system, asserted:

<sup>20</sup> Cf. A.V. AMARANTE, «Pastoralità come criterio morale», *Studia Moralia* 53/1 (2015) 37-59.

<sup>21</sup> Cf. *Evangelii gaudium*, n. 226.

In the most doubtful questions, I have spared no effort to consult both modern and ancient authors, both the benevolent and the rigid sentence [...] I have especially labored to observe as a source all of the canonical texts pertaining to the matters addressed [...] Moreover, in the most intricate controversies, not having been able to resolve my doubts by reading the authors, I have procured counsel from various learned men. In the choice, then, of opinions, I have always sought to prefer reason to authority; and before giving my judgment, I have taken care to put myself in a position of total indifference and to divest myself of every passion that may have been able to lead me to defend any sort of opinion that is not sufficiently solid<sup>22</sup>.

The confessor, as a minister of God, must have the courage to «get his hands dirty» with the problems that are actually at play in the consciences of the faithful, as these actually are in reality<sup>23</sup>.

ALFONSO V. AMARANTE, C.Ss.R.

## Summary

This contribution begins with the affirmation of Saint Alphonsus M. de Liguori that, «The task of the confessor is an office of charity, instituted by the Redeemer only for the good of souls». It reflects on some dimensions of the ongoing formation of confessors, who are, first of all, a father and teacher, then a doctor, and finally the judge.

The Author presents the main indications of the post-Conciliar magisterium on the theme of formation and offers various elements for reflection in response to the new and delicate situations with which our consciences are confronted.

In light of magisterial indications, and without falling into casuistry, the Author seeks to reflect on some concrete pastoral cases by emphasizing two unavoidable aspects: the inviolability of the sacramental seal and a mature fatherhood in the administration of God's mercy.

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<sup>22</sup> A M. DE LIGUORI, «Risposta a un anonimo...», in *Apologie e confutazioni*, I, Monza 1831, 77-78 (our translation); cf. S. MAJORANO, «La teologia morale e il ministero sacerdotale nella visione alfonsiana», *Studia Moralia* 34 (1996) 433-459; ID., «Misericordia e teologia morale: il contributo della visione alfonsiana», in S. WODKA, ed., *Inaugurazione Anno Accademico 2014-1015*, Roma 2015, 45-63.

<sup>23</sup> «Ideas are at the service of communication, understanding, and praxis. Ideas disconnected from realities give rise to ineffectual forms of idealism and nominalism, capable at most of classifying and defining, but certainly not calling to action. What calls us to action are realities illuminated by reason. Formal nominalism has to give way to harmonious objectivity. Otherwise, the truth is manipulated, cosmetics take the place of real care for our bodies» (*Evangelii gaudium*, n. 232).

**Keywords:** abuse; vulnerability; formation; pastoral practice; Alphonsus Liguori.

### Sommario

#### **Il sacramento della riconciliazione: formazione sacerdotale e prassi pastorale**

Il presente contributo — partendo dall'affermazione di sant'Alfonso M. de Liguori «il compito del confessore è ufficio di carità, istituito dal Redentore solamente in bene delle anime» — riflette su alcune dimensioni della formazione continua dei confessori, il quale è prima di tutto padre, maestro, poi medico ed infine giudice.

L'Autore presenta le indicazioni portanti del magistero post-Conciliare sul tema della formazione ed offre vari elementi di riflessione per affrontare le delicate situazioni sempre nuove che le coscienze ci sottopongono.

Alla luce delle indicazioni magisteriali, e senza voler cadere nella casistica, l'Autore cerca di riflettere su alcuni casi pastorali concreti sottolineando due aspetti ineludibili: l'intangibilità del sigillo sacramentale e la matura paternità nell'amministrazione della misericordia di Dio.

**Parole-chiave:** abusi; vulnerabilità; formazione; prassi pastorale; Alfonso de Liguori.



## OUTLOOK AFTER THE SEMINAR BY THE PONTIFICAL COMMISSION FOR THE PROTECTION OF MINORS

MYRIAM WIJLENS - NEVILLE OWEN\*

### Introduction

The Working Group «Safeguarding Guidelines and Norms» of the Pontifical Commission for the Protection of Minors [= PCPM] organised in cooperation with the Working Group «Education and Formation» in Rome from December 4 to 6, 2019 a seminar entitled: Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability<sup>1</sup>.

The seminar reflected on an appropriate balancing of confidentiality, transparency and accountability in particular in the way the Church reacts to allegations of abuse of minors and vulnerable adults. The seminar very consciously chose to do so from the hermeneutical perspective of

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<sup>1</sup> For a more extensive elaboration on the origin, intention, and participants of the seminar see M. WIJLENS – N.J. OWEN, «Introduction», *Periodica* 109 (2020) 401-413.

the dignity of persons. In this way it not only moved away from what might be called a «hermeneutic of protecting the reputation of the church», it also intended to contribute to bringing about a new internal attitude of those in leadership who have to act.

The seminar focused on two major aspects: one concerns the seal of confession and the other different topics related to transparency and accountability in relation to canonical penal processes. This included the pontifical secret, the right to information for those concerned while balancing this with a need to see to confidentiality (which is not the same as secrecy), the role of victims in the canonical procedures, as well as questions concerning the notion and implementation of transparency and accountability in canonical procedures.

The seminar was attended by thirty-seven persons from around the globe, who hold different responsibilities in the church be it within the Holy See, in local churches or in academic institutions. Ten participants presented an input for discussion to a previously assigned topic. The authors generously made their contribution available for publication in this issue of *Periodica*. One was impeded from doing so due to Covid-19.

The purpose of the seminar was not to provide final answers. Rather, it was to clarify and sharpen the questions, identify those areas and subjects that were in need of further research and propose possible ways and steps forward to respond to them, for example, by recommending further research. For this reason following each presentation, the seminar members engaged in deep and rich reflections about this given task. On the last day of the seminar, those who were then in attendance spent time reflecting on the proceedings and on the issues that had been canvassed.

After the seminar had concluded the members of the Working Group Safeguarding Guidelines and Norms, with helpful assistance from other members of the PCPM, developed a series of observations setting out what might be

termed outcomes from the deliberations that are in need of further study. They are thus an outlook.

The authors are grateful to all those who participated in one way or the other in the seminar and / or contributed to the reflective discussions about the outcomes. However, it is important to note that the observations (set out below) depict the thoughts of the members of the Working Group Safeguarding Guidelines and Norms. They do not necessarily represent the views of individual participants in the seminar or of the organisations to which they are attached or of the other members of the PCPM.

## Observations

### 1. *The Pontifical Secret*

There was much discussion about the prescription of the Pontifical Secret in relation to sexual abuse of minors and vulnerable adults wherever that may appear (e.g. in the *Motu proprio Sacramentorum sanctitatis tutela*, nr. 30<sup>2</sup>). This led to the conclusion that the so-called Pontifical Secret should be re-examined and explained publicly, including:

- Its name – replacing the word «secret» with a word such as «confidentiality».
- Its content – describing with some specificity what it covers and what it does not (especially that it is not a prohibition against reporting allegations of child sexual abuse to civil authorities).
- Its limitations – describing the limitations on the concept, in particular with regard to communications with victims and an accused person and in any respect in which it concerns safeguarding.

A significant advance in the cause of safeguarding occurred in a Rescript signed on 6 December 2019 and

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<sup>2</sup> JOHN PAUL II, *motu proprio, Sacramentorum sanctitatis tutela*, AAS 93 (2001) 737-739.

published on 17 December 2019 in which Pope Francis decided to abolish the pontifical secret connected with reporting, trials and decisions regarding the crimes listed in the first article of the *Motu Proprio Vos estis lux mundi*<sup>3</sup>. However, there is room for study and discernment on other aspects of the so-called Pontifical Secret, including those mentioned above.

## *2. Procedures in canonical penal processes*

There is a strong need to continue examining the rights of victims and accused persons in judicial and extra-judicial canonical processes, including:

- A comparative study of civil law regimes (both judicial and administrative) that deal with issues similar to delicts against the Sixth Commandment and that might be instructive about canonical processes.
- Balancing transparency and the provision of information in canonical processes with regard to rights of victims, rights of defence of the accused, and the rights of the faithful.
- Developing means for assessing accountability in the implementation of norms for transparency.
- Providing a procurator or other assistance for victims in canonical processes from the preliminary investigation onwards and clarifying the rights and responsibilities of the procurator or other assistant.

There is scope for a research project and (or) an academic conference in conjunction with a university or universities and publication of the studies devoted to these important questions.

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<sup>3</sup>[https://www.vatican.va/roman\\_curia/secretariat\\_state/2019/documents/rc-seg-st-20191206\\_rescriptum\\_it.html](https://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191206_rescriptum_it.html) [most recent consultation: 23/09/2020].



### 3. *Awards of Damages in canonical processes*

Questions of awards of damages in canonical processes, both judicial and extra-judicial, raise some difficult issues and there is a need for further examination of those questions, including:

- a comparative study of civil law regimes in relation to damages awards;
- a study of how these provisions have been used in canonical processes and what has been learned.

Again, there is scope for a research project and (or) an academic conference in conjunction with a university or universities and publication of the studies about the questions raised.

### 4. *Developing a body of jurisprudence*

Relevant dicasteries and tribunals should be encouraged to publish reasons for decision as the basis for the development of an accessible body of jurisprudence in relevant areas, while respecting confidentiality and privacy of the persons concerned.

Canon law faculties in particular can assist in this regard by providing opportunities to develop practical skills for collecting proofs and for writing sentences in penal cases in a way that respects rights to privacy.

### 5. *The sacrament of reconciliation and the seal of confession*

It was never suggested that the seal of confession should be abandoned or violated. However, the seminar identified crucial questions about the sacrament of reconciliation and, in particular the seal of confession that require deep study and clarification, including:

- What is and what is not a sacramental confession?
- What is, and what is not covered by the seal of confession (in particular whether it covers mention of the sins of, or crimes by, another person)?

- Issues relating to the internal and external fora, for example:
  - \* the confessor facilitating the penitent revealing again in the external forum matters first disclosed in the internal forum, and,
  - \* without breaching the seal, the confessor accompanying the person in the healing journey in an extra-sacramental setting, including respecting norms for mandatory reporting, and
  - \* commenting on the circumstances in which, and the methods by which this can occur.

The cause of a better understanding of the sacrament and the seal could be advanced by research projects and (or) academic conferences in conjunction with a university or universities related to these matters.

#### 6. *Internal Forum, both sacramental and extra sacramental – formation*

There is an urgent need for further reflection on matters such as:

- Creation of resource materials to assist those who minister in the internal forum when matters are rightly to be manifested in the external forum.
- Re-examining programs for the education and formation of those who minister in the internal forum, in particular in seminaries and formation houses, to ensure they have a proper understanding of the moral problems that might be encountered in these ministries.
- Encouraging the development of ongoing education and formation programs for those who minister in the internal forum.

Once again, a research project and (or) an academic conference in conjunction with a university or universities on these matters would be useful.

### 7. *Delicts concerning sexual offences*

The Code of Canons of the Eastern Churches uses the expression «delict» and «external sin against chastity» (can. 1453 §1), while the Code of Canon Law speaks of «delict/offense/external sin against the sixth commandment» (can. 1395). The motu proprio *Vos estis lux mundi*, art. 1 refers to «sexual acts»<sup>4</sup>. Against that background, and for sake of clarity, these notions should be reexamined, including:

- Whether it is better to describe the delicts as crimes rather than, or as well as, as moral failings?
- A study of the definitions of «sexual abuse» of minors and vulnerable adults in civil or ecclesiastical fora.
- Whether it is appropriate to include a graduation of acts of sexual abuse according to their gravity?
- Study to which extent it is possible and helpful to introduce a corresponding graduation of penalties according to the principle of proportionality.

The most efficient way of pursuing this objective will be to sponsor a research project and (or) an academic conference in conjunction with a university or universities about them.

### Conclusion

The points outlined reveal that there is a continuing and urgent need for further scholarship in a wide range of relevant areas. The purpose of the needed studies is to develop proposals how to best secure on the one hand that the Church is a safe place for all to be and on the other hand that allegations of abuse are handled by those in leadership in the church responsibly. A balancing of confidentiality and transparency will be necessary. In this the hermeneu-

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<sup>4</sup> [http://www.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio-20190507\\_vos-estis-lux-mundi.html](http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html) [most recent consultation: 10/06/2020].

tics of «promoting and protecting the dignity of persons» would seem to be a key perspective. Engaging in these studies will contribute to help the Church to be perceived (again) to be an institution that acts with integrity. That in turn will allow the Church and the faithful who comprise it to fulfil their core task, namely to be a missionary Church.

MYRIAM WIJLENS – NEVILLE OWEN