

RIGHTS OF ACCUSED PRIESTS^{1/} **Toward a Revision of the Dallas Charter and the Essential Norms** by Cardinal Avery Dulles^{2/}

Since World War II, the Catholic Church has become a leading champion of the inviolable rights of individual human persons. Applying this principle, the bishops of the United States in November 2000 published *Responsibility and Rehabilitation*, a critique of the American criminal justice system, in which they upheld the dignity of the accused and rejected slogans such as “three strikes and you’re out.” Among other things, the bishops stated: “One size fits all solutions are often inadequate. We must renew our efforts to ensure that the punishment fits the crime. Therefore, we do not support mandatory sentencing that replaces judges’ assessments with rigid formulations.”

“Finally,” they said, we must welcome ex-offenders back into society as full participating members, to the extent feasible.”

In the case of the sex abuse crisis, the United States bishops have taken positions at odds with these high principles. Meeting in Dallas in June 2002 under the glare of adverse publicity and under intense pressure from various survivors’ networks, they hastily adopted, after less than two days of debate, the so-called Dallas charter and accompanying norms that were intended, after approval of the Holy See, to be legally binding in the United States.

In the charter, the bishops rightly expressed the gravity of the problems that needed to be addressed. “The sexual abuse of children and young people by some priests and bishops, and the ways in which we bishops addressed these crimes and sins, have caused enormous pain, anger and confusion.” But in their effort to protect children, to restore public confidence in the Church as an institution, and to protect the Church from liability suits, the bishops opted for an extreme response. The dominant principle of the charter was “zero tolerance.” Even a single offense, committed many decades ago, no matter what the mitigating circumstances, was deemed sufficient to debar a priest for life from the exercise of his ministry. Having been so severely criticized for exercising poor judgment in the past, the bishops apparently wanted to avoid having to make any judgments in these cases.

The Church must protect the community from harm, but it must also protect the human rights of each individual who may face an accusation. The supposed good of the totality must not override the rights of individual persons. Some measures adopted went far beyond the protection of children from abuse. The bishops adopted the very principles that they themselves had condemned in their critique of the secular judicial system. In so doing they undermined the morale of their priests and inflicted a serious blow to the credibility of the Church as a mirror of justice.

Although the charter was modified as a result of consultation with Vatican officials, the revised norms are still subject to criticism. Groups of priests still protest that they are not accorded the basic requirements of due process. Continued discussion may be helpful because the Holy See granted *recognition* to the “Essential Norms” only for a period of two years from their promulgation (Dec. 12, 2002). If the norms are extended, they will probably be first revised. With regard to the rights of accused priests, the following fifteen principles would seem to be pertinent for any re-evaluation of the “Essential Norms:”

Presumption of Innocence

At the time when accusations are made, it is often impossible to judge their truth, and this impossibility may persist indefinitely if the accusations are denied and probative evidence is lacking. When dioceses routinely announce that accused priests have been “removed from public ministry because of a credible accusation of sexual abuse of a minor,” such priests are, in effect, branded as guilty. An accusation is deemed credible unless it is manifestly groundless. When priests are treated as guilty, they suffer the loss of their good name and as a consequence find it difficult in the future to function effectively in their God-given vocation, assuming they are restored to ministry.

The Australian Catholic Bishops Conference, recognizing this problem, decreed in December 2000: "All persons are presumed innocent unless and until guilt is either admitted or determined by due process. If Church personnel accused of abuse are asked to step aside from the office they hold while the matter is pending, it is to be clearly understood that they are on leave and that no admissions or guilt are admitted or proved, those accused should not be referred to as offenders or in any way treated as offenders."

A corollary of the presumption of innocence is that while an accused priest may be prohibited from exercising public ministry while his canonical case is pending, it would be unjust to order him not to wear clerical garb, especially since Canon 284 obliges him to wear such garb. Also it would be unjust and lacking in charity to tell an accused priest, as some bishops have done, that he is not welcome to attend gatherings of priests, including the diocesan priests' convocation, the Chrism Mass or priests' retreats.

Analogous problems, of course, arise in many sectors of our society. Accused policemen and public officials are often suspended pending the investigation of their cases. But they are generally restored to duty unless they are found guilty.

Definition of Sexual Abuse

The "Essential Norms" include under the category of sexual abuse an "external, objectively grave violation of the Sixth Commandment ... by which an adult uses a minor as an object of sexual gratification," even when the act does not "involve force, physical contact, or a discernable harmful outcome" (Preamble). The Report of the National Review Board of February 2004 remarks that this definition of sexual abuse is "expansive and somewhat amorphous." A distinguished canon lawyer, Ladislaus Orsay, S.J., writes in the Boston College Law Review (Fall 2003): "The Preamble concludes without a precise legal definition of the criminal act of abuse; it refers, instead, to a generally accepted understanding in moral theology ... The general terms borrowed from moral theology may leave too much room for ambiguities. To assign ultimate responsibility for the definition of the crime to the diocesan bishop/eparch may result in definitions diverging from place to place and from case to case, not a sound practice in criminal law."

Proportionality

While speaking of "grave" offenses, the "Essential Norms" do not distinguish among different degrees of gravity. Pope John Paul II, however, insisted on this distinction. In an important address given on February 6, 2004, to a plenary meeting of the Congregation for the Doctrine of the Faith, he declared, "Once a delict is proven, in each case you need to discern well both the just principle of proportionality between the offense and the penalty and the predominate need to safeguard the people of God."

Displaced by zero tolerance, the principle of proportionality finds no place in the "Essential Norms." A priest who uttered an inappropriate word or made a single imprudent gesture is treated in the same way as a serial rapist. The National Review Board, in its report, comments that according to some observers, the penalty of laicization for each and every offense is "inconsistent with concepts of natural justice and canon law that are premised upon differentiation with that are premised upon differentiation in penalties depending upon the gravity of the misconduct."

Retroactivity

As a general rule, neither civil nor canon law is retroactive. The Code of Canon Law declares that "laws regard the future, not the past, unless they expressly provide for the past" (Canon 9). It seems unjust to apply particular laws created in 2002 to oppose offenses committed long ago, as is now happening. Often priests in good faith entered into agreements with their bishops that they would be restored to ministry if they underwent therapy and were pronounced cured. In some cases, after many years of unexceptional service, they were suddenly ejected from ministry in spite of such previous agreements.

Statue of Limitations

In canon law an action against a priest for crimes against a juvenile may not be brought more than ten years after the alleged victim has reached adulthood, currently defined as beginning with one's 18th

birthday. In canon and civil law, statutes of limitation or prescription, derived from classical Roman law, have been incorporated in virtually all legal systems in then Western tradition. These limitations are established for many reasons. With the passage of time, memories fade or become distorted, witnesses die or leave the area, and physical evidence becomes more difficult to obtain. In short, with the passage of time, the possibility of erroneous conviction increases. Another reason for statutes of limitations is that if the only accusation against a person is from the distant past, it is reasonable to conclude that the accused does not pose a present danger to society.

According to Father Orsy, statutes of limitations and prescription are virtually different in nature. Statutes of limitations merely bar actions; prescriptions create or extinguish rights or obligations. Dispensation from rights created by prescription, he says, does not make sense. Accused priests should not be denied their acquired rights. Some canon lawyers believe that there needs to be a reconsideration of the faculty to dispense from prescription that was given by the pope to the Congregation for the Doctrine of the Faith on Feb. 7, 2002. This dispensation, they believe, was exacted under intense pressure and does not conform to the canonical tradition.

Oversight and Therapy

Prior to the Dallas charter, a priest with a problem was able to apply for therapy and be sent to an institution with the support of his bishop. Under “Essential Norms,” as they are being interpreted, this possibility is foreclosed. The bishop will not restore the priest to ministry and probably will not pay the costs of his rehabilitation. Thus priests with such problems have no motivation to seek treatment that might prevent future acts of abuse. The National Review Board, in its assessment of the “Essential Norms,” reports: “Both experts and board witnesses have noted that the public may be protected more effectively if such priests remain under Church oversight rather than if they are laicized and live in a secular world without oversight. In addition, some individuals with whom the board spoke question whether the policy discourages self-reporting that could pre-empt further actions of abuse...”

Confidentiality

Some bishops, though not all, acting as though confidential communications made to them outside of sacramental confession should be reported to civil authorities, turn over their confidential files to district attorneys and civil lawyers. Other bishops quite properly refuse to surrender these files, especially when there are civil laws prohibiting them from so doing – statutes, for example, that protect the confidentiality of medical and psychological records. If confidential records are not protected, priests with personal problems are discouraged from turning to their bishops for help and advice. As a result, the relationship between bishops and priests is seriously wounded. In addition, bishops become unable to minister timely help to priests who may need it.

Settlements

Not infrequently, diocese or religious institutes enter into a financial settlement with accusers, even if the accusation is deemed false, in order to avoid the expense and negative publicity of a trial. This occurs even in cases in which the accused priest protests his innocence and requests a trial. When such settlements are reached, great care should be taken to protect the good name of the accused so that the public does not see the settlement as tantamount to an admission of guilt. If no guilt or liability has been admitted or accepted, the announcement should make this clear.

Remuneration of Accused Priests

The “Essential Norms” say nothing about the support of priests who have been removed from ministry, and as a result, some bishops seem to be failing to give decent remuneration required by Canons 281 and 1350 §1. Accused priests are in many cases very inadequately supported by their diocese, even in cases where they have not been found guilty of any offense. In effect, such priests are forced into secular employment without being accorded due process of law.

In keeping with the principle expressed by the Australian bishops, quoted above, accused priests should be receiving their full salary and benefits until there is a final resolution of their case. If they are not provided with room and board, they should be given additional compensation for these expenses.

Access to Trial

Although priests have a theoretical right to an ecclesiastical trial, such trials are in most cases not accessible to them, at least until years after the accusation. Part of the delay is caused by the fact that hundreds of cases have been referred to the C.D.F. in the past two years. Many of these are cases in which there is a single accusation dating back decades. If the principle of prescription were re-established as being indispensable, many or most of these cases would be resolved early on.

Another reason for the delay is that the Church in the United States, and in most other countries, lacks a sufficient supply of canon lawyers adequately prepared to handle criminal cases of this kind. Accused priests therefore wait for years in a kind of limbo. If they are eventually cleared, the clearance comes too late.

Virtual Laicization

Upon being ordained, a priest gains the right to exercise the ministry corresponding to his order. After a formal ecclesiastical process has been initiated, the bishop may for prudent reasons forbid a priest to exercise public ministry for a period of time (Canon 1722), but removal from public ministry without a canonical trial or special action by the Roman pontiff should never be permanent or excessively prolonged, since for practical purposes such removal amounts to the very harsh penalty of forced laicization.

Laicization

Involuntary loss of the clerical state can be imposed by a judicial sentence or by a special act of the pope (Canon 290). But such removal from the clerical state should be exceedingly rare, since it obfuscates the very meaning of ordination, which confers an indelible consecration. It reinforces the impression that the priesthood is a job dependent on contract rather than a sacrament conferred by Christ. The reduction of a priest to the lay state, moreover, does nothing to assure the safety of children, whose protection is supposed to be the decisive norm. As mentioned above, it frequently removes the priest from an environment in which his conduct would be suitably supervised.

Prospect of Reinstatement

The Dallas charter quoted from the pope's address to a meeting with American cardinals on April 23, 2002: "There is no place in the priesthood or religious life for those who would harm the young" (Article 5). But the Charter failed to quote the pope's balancing statement: "At the same time ... we cannot forget the power of Christian conversion, that radical decision to turn away from sin and back to God, which reaches to the debts of a person's soul and can work extraordinary change."

Forgiveness and reinstatement are appropriate when the sinner has repented and made a firm resolve of amendment, and when there is no reasonable likelihood of a relapse. The John Jay Report, published in February 2004, makes it clear that the majority of accused priests have only a single accusation against them. There is no reason to think that the protection of young people requires the removal from the ministry of elderly or mature priests who may have committed an offense in their youth but have performed many decades of exemplary service. Such action seems an attitude of vindictiveness to which the Church should not yield.

The policy of the Canadian bishops, in stark contrast to the U.S. "Essential Norms," contains provisions even for the possibility of reintegrating an offending priest into public ministry after being released from prison.

Offenses Beyond the Scope of the Essential Norms

The norms state that the penalties apply to "acts of sexual abuse by a priest or deacon" (Norm 8). But in some cases bishops have treated the norms as if they targeted offenses committed by priests before they entered the seminary or before they were ordained. This is to go beyond the Charter, strictly interpreted. It is a well-known principle of canonical jurisprudence that laws establishing penalties or restricting rights are to be interpreted as narrowly as the ordinary meaning of the word permits (Canon 18).

Care must also be taken to see that offenses committed with adults are not treated as if they fell under the provisions of the Dallas charter and its “Essential Norms.”

Universal Legislation

The problem of sexual abuse of minors by members of the clergy exists in practically all countries. Efforts to address the problem expeditiously have resulted in different policies being promulgated by different episcopal conferences, such as those of the United States, Canada, England, Australia, Ireland and the Philippines. In some respects these policies are substantially different, as illustrated above in the case of the Canadian policy on reintegrating offending priests who have been released from prison. Such disparities in the law present an issue of “geographical justice,” which is particularly unsuitable in the Catholic Church as a universal society. Some distinguished canon lawyers have recommended that the Holy See should establish, in consultation with the various episcopal conferences, a set of universal norms that would elaborate, as necessary, on the general provisions already in the Code of Canon Law. Such general legislation would not exclude the possibility of certain regional adaptations, but would obviate the need to draw up a whole set of laws for each nation or region.

Equitable Treatment

It is to be hoped that the revision of the “Essential Norms” in the coming year will be undertaken with a sincere desire to give a more equitable treatment to accused priests, especially those who may be pronounced innocent. “Zero tolerance” may be appropriate in cases where a serious crime is known to have been committed as long as there is a palpable risk of being repeated. After doing everything necessary to create a safe environment for children, the bishops should strive to do what they can to see that innocent priests are not treated as if they were guilty and that all priests are treated with justice and Christian charity.

As the U.S. bishops themselves declared less than five years ago in *Responsibility and Rehabilitation*, “One-size-fits-all solutions are often inadequate.” They appealed to the teachings of Jesus in the Gospels: “The parable of the Prodigal Son (Luke 15) shows God’s love for us and models how we are to love one another. In spite of his younger son’s reckless life and squandering of his inheritance, the father celebrates his return home, recognizing that his son has showed contrition and has changed his life. The lost who have been found are to be welcomed and celebrated, not resented and rejected.”

Priests, like others, should be given due process of law. Even when it is clear that an offense has been committed, the Church should not by her policies send the message that she does not care about the clerical sex offender or that she believes him to be beyond redemption. After correction offenders should be welcomed back into their order “as full participating members, to the extent feasible.”

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