

CHRISTIFIDELIS

TO DEFEND CATHOLIC TRUTH AND UPHOLD CATHOLIC RIGHTS

July 31, 2008

Feast of St. Ignatius of Loyola

Vol. 26, No. 3

What Happens When Bishops Are Found Wanting?

By Charles M. Wilson

[I am most grateful to our General Counsel, Michael Dunnigan, JD, JCL, for his assistance in the preparation of this article. Any errors or omissions remain my responsibility. CMW]

More than a few faithful Catholics perhaps would be tempted to answer this question with one word, “nothing.” And the members of the Saint Joseph Foundation’s professional staff, with combined experience of approximately fifty years, might well sympathize. But I would also point out that while “nothing” might apply to many of the cases that we have seen it cannot be applied to all. To say that bishops are never called to account would be incorrect. Be that as it may, however, the harm done to souls by inept or mean-spirited bishops is beyond human reckoning and the existing evidence, scant though it may be, indicates that far too little has been done to repair the damage.

In the aftermath of the eruption of the sexual abuse crisis in 2002, there has been no lack of criticism of the U.S. bishops by the secular media. Many of the Catholic faithful believe as well that their bishops’ handling of sexual abuse complaints has been negligent or even reckless.¹ But this article is not about the obvious shortcomings displayed by the American bishops in dealing with sexually abusive clerics. In this article, my key concern is about what has happened — or not happened — whenever there has been good reason to believe that diocesan bishops have fallen short of fulfilling their responsibilities to teach and to defend the faith (canon 386), to foster the common discipline of the Church (c. 392) and to administer the temporal goods of the Church in accord with the norms of law (canon 393).

As revolting and destructive as the sexual abuse issue is, it is the exercise of ecclesiastical office with respect to upholding the teaching and laws of the Church that is more closely related to the work of the Saint Joseph Foundation. After all,

in almost twenty-four years of existence, the Foundation has received only a handful of complaints related to sexual abuse, while we have received thousands of complaints alleging deficient or erroneous teaching, violations of liturgical norms and the abusive exercise of the ministry of governance. Using the very limited amount of data available, I will try here to give our readers some idea of what has happened whenever bishops’ performance in these areas has been called into question.

What Does the Law Provide?

A diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority (c. 381, §1).



General Norms

Diocesan bishops, including the bishop of Rome, receive their power not from those who nominate them for their offices but from God. Particular churches (dioceses or their equivalent) are not wholly-owned subsidiaries of Rome and their bishops are not merely managers who can be moved or discharged at the whim of the pope. In those sad instances when a bishop has led his diocese into schism, he retained the power to ordain priests and bishops, albeit illicitly, and to administer the other sacraments. That is why the Eastern Orthodox

churches are recognized as such by the bishop of Rome even though they are not in union with him.²

Nevertheless, like all baptized Catholics, bishops are bound to abide by the law of the Church.³ Moreover, with episcopal ordination they assume additional legal responsibilities that other clerics and the lay faithful do not share. Should they be nominated as shepherds of dioceses, their legal and spiritual responsibilities then become even greater.

(Continued from page 1)

And if the personal conduct, the exercise of office or the adherence to the law by a bishop should be called into question, Congregation for Bishops is empowered to address the matter in accord with Article 79 of the Apostolic Constitution *Pastor bonus*, which states:

*Furthermore, the Congregation applies itself to matters relating to the correct exercise of the pastoral function of the bishops, by offering them every kind of assistance. For it is part of its duty to initiate general apostolic visitations where needed, in agreement with the dicasteries concerned and, in the same manner, to evaluate their results and to propose to the Supreme Pontiff the appropriate actions to be taken.*⁴

After the facts have been compiled, “The pope alone has coercive power over a bishop; the Roman Curia cannot take any penal action against a bishop, or even threaten him with a penalty, without the express approbation of the pope.”⁵

The Role of the Laity

Most of the requests for assistance that the St. Joseph Foundation receives from lay members of the faithful arise out of disputes at the level of the parish or parochial school, but occasionally we receive inquiries from Catholics complaining directly about the ministry of a diocesan bishop himself. Although Church law provides for the possible removal of a parish pastor by means of a procedure that considers the opinions of serious-minded parishioners (can. 1741, 3^o), it provides no corresponding procedure for the removal of the chief pastor of the diocese.

As a result, an upright layman who reasonably believes that his bishop has gravely neglected his duties may wonder whether he has any remedy at all. The upright layman no doubt would be relieved to learn that the law does indeed provide measures for the correction of erring bishops, but he would need to keep in mind that the role of the laity in setting these processes and procedures in motion is very limited.

Penalties

In general, canonical penalties are either incurred automatically with the occurrence of the offense (*latae sententiae*) or imposed by judicial or administrative penal process (*ferendae sententiae*). Medicinal penalties are excommunication, interdict and suspension. As the name implies, their purpose is to reform the offender, and they are remitted upon his repentance. The other class of penalties is called expiatory and their purpose is to repair a breach of public order.⁶ Expiatory penalties include deprivation of office (c. 1336, §1) and dismissal from the clerical state (c. 1336, §1, 5^o).⁷

If a bishop commits an ecclesiastical crime, or delict, which carries with it a *latae sententiae* penalty, a formal declaration of same is necessary to bring about the full legal effects. This was done in 1988 by the Congregation for Bishops against Archbishop Marcel Lefebvre and Bishop Antônio de Castro Mayer for ordaining four bishops of the Society of St. Pius X without the required pontifical mandate (c. 1382) and for schism (c. 1364).

If a bishop commits a delict which does not carry with it an automatic penalty, then guilt is to be determined and a penalty imposed by a penal process, either judicial or administra-

tive (*ferendae sententiae*). Of the two, the latter is ordinarily less difficult; but Church authorities at all levels tend to avoid any penal process, preferring instead non-penal remedies, which are often viewed as less complicated but equally effective. I know of no penal process against a bishop in the United States or Canada since the present Code came into force in 1983.

Alternatives to Penalties

If the pope believes that the exercise of episcopal ministry by a diocesan bishop is wanting to the extent that something needs to be done, among the several possibilities are two that will be mentioned here. One is to try to encourage the bishop and assist him by fraternal correction in improving his performance. The other is to replace him.

There are many ways that the pope, with the assistance of the Roman Curia, can correct a bishop without resorting to canonical penalties. The starting point might be an apostolic visitation, which is essentially an investigatory process.⁸ If the results of the visitation or some other fact-gathering process indicate further action, several non-penal measures are available. Among them are precepts (c. 49), penances (c. 1340), appointment of a coadjutor or an auxiliary with special faculties (c. 403) and the appointment of an apostolic administrator *sede plena*.⁹ If the measures taken to correct the bishop prove fruitless, the pope might then consider replacement.

As noted above, deprivation of office is a canonical penalty that can be imposed only by judicial process. However, there are non-penal means of accomplishing the same ends.¹⁰ The one that seems to be used most often is to request the bishop’s resignation in accord with c. 401, §2, which states: *A diocesan bishop who has become less able to fulfill his office because of ill health or some other grave cause is earnestly requested to present his resignation from office.*

One might think that a request for the resignation of a diocesan bishop, coming from Rome with the approval of the pope would be very difficult to resist. In point of fact, I know of only one instance where the bishop did resist — to no avail. Most Rev. Jacques Gaillot was appointed bishop of the diocese of Evreux, France on May 5, 1982. During his thirteen year tenure, he produced a cascade of public statements in support of leftist political causes and against the teaching of the Church, especially in the areas of priestly celibacy, the ordination of women and homosexual behavior. When fraternal correction proved fruitless, the French Episcopal Conference sought the intervention of the Holy See. When Bishop Gaillot refused to resign, the see of Evreux was declared vacant on January 13, 1995 and he was appointed bishop of the titular see of Partenia, a diocese in North Africa that no longer exists.¹¹ Afterward, Bishop Gaillot created his own virtual diocesan website and has become something of an international gadfly by calling attention to himself in any number of ways, including making public appearances at such functions as Call to Action conferences.¹²

Overall Considerations

The origins and character of the episcopacy will of necessity have considerable bearing on a papal decision to correct, remove or otherwise discipline a bishop. Yet it remains equally

true that Catholic bishops do not exercise their office as if they were independent both of their fellow bishops of the episcopal college and of the pope. Circumstances have arisen in the past and certainly can arise today in which a pope might feel obliged to intervene if the common good or the salvation of souls — which is always the supreme law of the Church (c. 1752) — requires it.

What Does the Record Show?

Matters involving the correction or discipline of a bishop are handled under strict secrecy and are not made public, except in rare circumstances such as in the case of Bishop Gaillot. If it is determined that a bishop must be replaced, it seems that he is usually permitted to resign his office with nothing said as to the reasons why. Given these conditions, it is not difficult to understand why, with virtually no public record, no extensive research on disciplining bishops has been published in recent years.¹³ This also explains why finding examples for this article was no easy task.

Selecting Examples

From a variety of sources, I selected nine instances for inclusion in this article that involved the harmful, or at least seriously questionable, exercise of episcopal ministry. All of the cases involved requests from the bishops' subjects that the Holy See intervene, and all of them took place far enough in the past to allow a reasonable person to conclude that by now the Holy See has taken whatever corrective action it intends to take.

I thought it best not to reveal the identity of seven bishops used as examples. The circumstances surrounding the remaining two are already well known to the public.

1. **Bishop A** — This bishop was an auxiliary. He is known to have delivered public lectures at diocesan parishes where he denied the binding nature of key Church teachings on marriage and family life. The evidence was presented to higher authority and no corrective measures were observed. The bishop continued in his position until he retired soon after reaching his seventy-fifth birthday.
2. **Archbishop Raymond G. Hunthausen** — The account of Archbishop Hunthausen's difficulties is well documented. In short, he expressed opinions and set policies similar to those that Bishop Gaillot would pursue just a few years later. He was subjected to an apostolic visitation in 1983.¹⁴ Bishop Donald Wuerl was sent as an auxiliary with special faculties to make the needed corrections and served from January 6, 1986 until Bishop Thomas Murphy became coadjutor on May 26, 1987. Archbishop Hunthausen retired on August 21, 1995, exactly five years before his seventy-fifth birthday, saying that "no one asked for my resignation."¹⁵
3. **Bishop B** — Bishop B was known for his harsh treatment of good priests and lay faithful who questioned certain aspects of his exercise of authority. Some of his attempts to declare penalties and to

alienate property were reversed by the Holy See. He retired several years before his seventy-fifth birthday.

4. **Bishop C** — This bishop was in the mold of Gaillot. He openly endorsed and attended annual conferences of Call to Action. The Holy See did intervene in one instance to ameliorate his treatment of parishioners who resisted his assignment of a "New Age" parish coordinator. There were no further indications of other interventions prior to his retirement.
5. **Archbishop Rembert G. Weakland** — His record is as well if not better documented in the media than that of his colleague in Seattle. During his twenty-five year tenure as Archbishop of Milwaukee, he demonstrated endless patience with those who did not accept Church teaching on such matters as homosexual behavior, women's ordination, artificial contraception or priestly celibacy while seemingly showing little appreciation for those who adhered to Catholic doctrines. The only known action taken by the Holy See in response to Archbishop Weakland's conduct was to withhold an honorary degree that the University of Fribourg had planned to award him in 1990. Archbishop Weakland submitted his resignation upon completing his seventy-fifth year in 2002. However, he asked the Holy See to accelerate his retirement after a scandal arose involving his personal life.¹⁶
6. **Bishop D** — This bishop is another who I believe would readily identify with the views expressed by Bishop Gaillot. He caused much suffering to orthodox clergy in his diocese and any number of the lay faithful complained to Rome about his exercise of governance. The Apostolic See reportedly looked closely at the situation but left him in place. He retired after reaching the age of seventy-five.
7. **Bishop E** — The diocese headed by Bishop E was subjected to a range of difficulties during his tenure. Initially, the problems that surfaced had to do with catechetics and liturgy and then concerns over the general exercise of governance became manifest. There were indications that there was intervention from Rome, most likely in the form of a "request" for the bishop's resignation, which was accepted several years before the standard retirement age.
8. **Bishop F** — Our initial introduction to this bishop involved problems in catechetics, liturgy and is said to have encouraged admitting non-Catholics to the Eucharist. The evidence was gathered and a petition for intervention was sent to the proper authorities in Rome with no apparent results. Several years later, he resigned due to accusations of improper behavior that were unrelated to the earlier controversies.
9. **Bishop G** — Serious questions arose concerning the safeguarding of the temporal goods of the diocese

(Continued from page 7)

headed by Bishop G and a request for intervention was sent to the Apostolic See. Again, as in the case of Bishop F, there was no perceptible result; but after an unrelated accusation of misconduct, Bishop G found it convenient to submit his resignation.

Summary

Of the nine bishops cited above, four served until the normal retirement age of seventy-five and five retired early. Four of the early retirees were faced with accusations of personal misconduct and might well have felt the need to resign before being asked. The fifth, Archbishop Hunthausen, stated that he retired on his own initiative. Therefore, I cannot say with certainty that any of them were pressured to resign in accord with c. 401, §2.

Since 1983, some twenty-five bishops in the United States have retired before reaching the age of seventy-five. I believe that it is reasonable to assume that most have done so for reasons of physical or mental health. Several, including four of the nine cited above, have resigned because of scandal arising from allegations of sexual misbehavior or financial mismanagement. Archbishop Hunthausen remains the only American bishop known to have faced serious repercussions arising from accusations of violating the rights of the faithful to true teaching and true worship. I have heard rumors of a few forced resignations, none of which could be substantiated.

I know of no bishop in North America who was removed in a manner similar to that employed in the case of Bishop Gaillot.

Conclusion

An ounce of prevention is worth a pound of cure.

Benjamin Franklin

Whatever our personal preferences might be, we probably will not see anytime soon a noticeable increase in the correction or discipline of diocesan bishops. And even if the number of such actions should happen to escalate, the excessive reliance on secrecy that prevails in many aspects of ecclesiastical governance will serve to keep the lay faithful in the dark.

It remains that if a bishop's exercise of governance is problematic to the extent that it becomes evident to upright and serious-minded members of the faithful, then one might have cause to wonder if it made good sense to ordain him a bishop in the first place. It needs to be remembered that the law of the Church requires that a candidate for the episcopacy be *outstanding in solid faith, good morals, piety, zeal for souls, wisdom, prudence, and human virtues, and endowed with other qualities which make him suitable to fulfill the office in question* (c. 378, §1, 1°). Had these words been more carefully heeded yesterday, how much better would be the state of the Church today?¹⁷ Perhaps Dr. Franklin's wise maxim should be engraved prominently above the entrances to the Congregation for Bishops, "*which deals with everything concerning the appointment of bishops, even titular ones, and generally with the provision of particular Churches.*"¹⁸

Endnotes

1 The website BishopAccountability.org contains a list of nineteen bishops who have themselves been publicly accused of sexual abuse involving minors (<http://www.bishop-ccountability.org/bishops/accused>).

2 See Vatican II, the Dogmatic Constitution on the Church, *Lumen Gentium*, November 21, 1964, Chapter III and the Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus*. See also Thomas J. Green, "The Pastoral Governance Role of the Diocesan Bishop: Foundations, Scope and Limitations," *THE JURIST* 49 (1989): 2, 472-506.

3 See John M. Huels, "The Correction and Punishment of a Diocesan Bishop," *THE JURIST* 49 (1989):2, 507-542.

4 AAS 80 [1988] 880, English translation from http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_19880628_pastor-bonus-index_en.html

5 Huels, op. cit., p. 540.

6 Ibid, p. 533.

7 (Cite Peters.)

8 See John P. Beal, "The Apostolic Visitation of a Diocese: A Canonical-Historical Investigation," *THE JURIST* 49 (1989):2, 347-398.

9 Huels, op. cit., pp. 529-530. (An administrator *sede plena* is one who essentially governs a diocese even while the diocesan bishop remains in office.)

10 Ibid., pp. 516-530

11 For more information, see "How a Bishop is Deposed: The Latest Case" by Farley Clinton, *THE WANDERER*, February 2, 1995. The article can be read online at <http://www.ewtn.com/library/ISSUES/DEPOSE.TXT>.

12 http://www.partenia.org/english/partenia_eng.htm

13 *THE JURIST* 49 (1989): 2.

14 For a summary of the issues, see the letter (Prot. N. 102/79) from then-Cardinal Joseph Ratzinger at http://www.seattlecatholic.com/misc_20040105.html.

15 NY Times, June 21, 1991 <http://query.nytimes.com/gst/full-page.html?res=9D0CEFD7153FF931A15755C0A967958260&sec=&sp on=&pagewanted=print>

16 NY Times, May 27, 2002 (<http://query.nytimes.com/gst/full-page.html?res=9906E2DD123BF934A15756C0A9649C8B63>)

17 See Charles M. Wilson, "Choosing Our Shepherds," *CHRISTIFIDELIS*, May 1, 2004, (<https://ssl4.westserver.net/st-joseph-foundation.org/newsletter/lead.php?document=2004/22-2>)

18 *Pastor Bonus*, Art. 77.

A Prayer to Obtain a Conversion

O glorious patriarch who merited to be called just by the Holy Spirit, I urgently recommend to you the soul of (N.N.) which Jesus redeemed at the price of His precious blood. You know how deplorable is the state and how unhappy the life of those who have banished this loving Savior from their hearts, and how greatly they are exposed to the danger of losing Him eternally. Permit not, I beseech you, that a soul so dear to me should continue any longer in its evil ways. Preserve it from the danger that threatens it. Touch the heart of this prodigal child, and conduct him back to the bosom of the fondest of fathers. Abandon him not. I implore you, till you have opened to him the gates of the heavenly city, where he will praise and bless you throughout eternity for the happiness which he will owe to your powerful intercession.