

CHRISTIFIDELIS

TO DEFEND CATHOLIC TRUTH AND UPHOLD CATHOLIC RIGHTS

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Feast of the Sacred Heart

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Reflections on Some Themes of the Holy Father

By Charles M. Wilson

Commenting on the lead article in the last issue, a CHRISTIFIDELIS reader wrote as follows:

With all the abuses that you point out, it is troubling to me that the Vatican is not using its authority to put a stop to it. Most of these abuses, I believe, come from those dissenting clerics and theologians who no longer believe in the authority of the Pope.

We have received quite a few similar comments from other readers. As a matter of fact, many Catholics have asked in various forums why the Apostolic See does not take more vigorous and timely action to intervene whenever public violations of lawful norms in matters of true teaching, proper worship or right governance take place.

Four Key Problems

In the aftermath of the Holy Father's Apostolic Journey to this country, many more questions about the internal state of the Church have been raised by Catholics and non-Catholics alike. And a frequently recurring theme involves the way in which leaders of the Church fulfill their responsibilities. And, if they are lacking, how are they to be held accountable? There are various ways of doing this, including resort to the Church's legal system, which as we know often does not provide relief to Catholics whose rights have been violated. In the previous lead article, I discussed four factors — antinomianism, lack of faith, internal dissent and external anti-Catholicism — that have contributed significantly to the present state of affairs by influencing the acts of those who exercise the ministry of governance in the Church. The result is that whenever the circumstances call for a canonical solution, little or nothing happens.

We should remember that there are also many good and faithful shepherds who do their best to serve the souls committed to their care. We know of cases where a canonical approach was taken; but did not work because of defects in the system itself. In this article, we will briefly examine four continuing problems that the Pope mentioned while he was in this country and then consider whether the failure to alleviate them is due to the ineffectiveness of the legal system or the human shortcomings of those in authority. There is a fifth problem, the abuse of the sacred liturgy, which has done terrible damage to souls. I decided not to include it here just to keep the article within the boundaries of the available space.

1. Conflicts over Faith and Morals

The Church, too, sees signs of immense promise in her many strong parishes and vital movements, in the enthusiasm for the faith shown by so many young people, in the number of those who each year embrace the Catholic faith, and in a

greater interest in prayer and catechesis. At the same time she senses, often painfully, the presence of division and polarization in her midst, as well as the troubling realization that many of the baptized, rather than acting as a spiritual leaven in the world, are inclined to embrace attitudes contrary to the truth of the Gospel. [Emphasis added.]¹

Many faithful Catholics have been saying much the same thing for years and it is indeed heartening to hear similar words from the lips of the Holy Father. The division and polarization over faith and morals are not only bad enough in themselves; they have played a major role in contributing to the severity of the other three problems that will be brought up in this article.

Over the past twenty-four years the Foundation has processed over 3,600 cases. I believe that it would be accurate to say that not more than 10% involve theologically neutral points of law; but the remaining 90% or so are based upon a perception that someone exercising authority in the Church is not acting in accord with truth of the Gospel. I submit that the main reason such actions take place is attributable more to the shortcomings of individuals than to defects in the Church's legal system. The primary systemic difficulty lies with the canons governing the choosing of bishops. These canons (377-380) might look good on paper. In practice, however, they have not prevented the elevation to the episcopacy of many whose suitability is not apparent.²

The problem of Christians not living according to the truth of the Gospel has existed since the earliest days of the Church and it would be unrealistic to expect that it will ever be entirely eliminated. However, it would surely be alleviated by the appointment of many more good and faithful shepherds.³

2. The Sexual Abuse Crisis

It is a great suffering for the church in the United States, for the church in general, and for me personally that this could happen. If I read the histories of these victims, it's difficult for me to understand how it was possible that priests betrayed in this way their mission to give healing and to give the love of God to these children. We are deeply ashamed, and we will do all that is possible that this cannot happen in the future.⁴

The Holy Father began speaking of the sexual abuse crisis in the Church in America even before his plane touched down on April 15th at Andrews Air Force Base. The comment above was in response to a question asked by American reporter John Allen. As the dreadful story unfolded over a period of more than two decades, rank and file Catholics also struggled to understand how it could have happened in the first place

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and, once the bishops were aware of the scope of the problem, why so little was done to stop the offenses and bring the perpetrators to account. Was the primary reason for the lack of action the inadequacy of the Church's legal system, or was it the personal failings of those to whom the mission of ecclesiastical governance had been entrusted?

The 1983 Code of Canon Law came into force on the First Sunday of Advent of that year. This was around the same period when media reports about the abuse of children and young people, mostly males, by members of the clergy began to appear on a large scale. One of the earliest of such accounts concerned accusations of abuse against a priest of the diocese of Lafayette in Louisiana. His name is Gilbert Gauthé.

The first public accusations against Gauthé appeared in 1983, although private allegations of sexual misbehavior with young boys may have been made as early as 1972. He received psychological treatment for his condition, although there is no mention that any report was made to the civil authorities prior to 1983 and there is no record at all of any canonical penal process. Eventually, civil criminal charges were brought and Gauthé was convicted in 1985 and sent to prison for ten years. After his release, Gauthé pleaded no contest to charges of abusing a three year old boy in Texas and was given seven years probation.⁵ In April 2008, Gauthé was arrested in Galveston County, Texas for failure to register as a sex offender and is now awaiting trial.

Only a small minority of priests accused of sexual abuse have been sent to prison because their offenses were not known to public prosecutors until after the state statutes of limitation had expired. With this exception, the handling of the Gauthé case by the diocese was typical of how these matters were addressed by other U.S. dioceses until the Boston meltdown forced the issuance of the "Dallas Norms" in 2002.⁶

The bishop of Lafayette, Most Rev. Gerard Louis Frey, served as a role model for other diocesan bishops who were to find themselves in similar fixes in the future. He was aware of the accusations against Gauthé before they become known to the public, yet transferred the priest to other parishes, which served only to place more children and youths at risk.⁷ A coadjutor bishop was appointed in 1986. Even so, like most of the other bishops who did little or nothing to protect the children of their dioceses, Bishop Frey remained at the helm of the diocese of Lafayette until he retired at the age of 75 in 1989. He died in 2007 at the age of 93.

There is one more similarity between the Gauthé case and the thousands of others that were to follow. Even though the sexual abuse of children is a canonical crime (c. 1395), penalties were not inflicted on any of the offenders. It is possible that this was due to problems in the Church's legal system. These problems are certainly there; but I am more inclined to believe that the available canonical tools were not used because of misguided decisions on the part of those in charge.⁸ We know that Bernard Cardinal Law resigned as archbishop of Boston in the aftermath of his decisions related to the abuse crisis there. As far as I know, following the pattern established in the Gauthé case over twenty years ago, no other diocesan bishop has suffered any consequences of his negligence.

3. Loss of Catholic Identity by Institutes of Higher Education

Teachers and administrators, whether in universities or schools, have the duty and privilege to ensure that students receive instruction in Catholic doctrine and practice. This re-

*quires that public witness to the way of Christ, as found in the Gospel and upheld by the Church's Magisterium, shapes all aspects of an institution's life, both inside and outside the classroom. Divergence from this vision weakens Catholic identity and, far from advancing freedom, inevitably leads to confusion, whether moral, intellectual or spiritual.*⁹

Most of us, in particular those who were lucky enough to have completed our undergraduate studies before the disordered 1960's, have fond memories of our own college days. Today, these memories have been largely replaced by feelings of sadness, loss and even anger that our alma maters, be they Catholic or otherwise, are no longer what their founders intended them to be. This is especially true of institutions which at one time had a clear religious identity and it is by no means limited to those which were originally Catholic.¹⁰ Indeed, it was the Protestant universities that provided the examples of shedding their original religious identities that many of their Catholic counterparts show disturbing signs of following. As one historian on the faculty of the University of Notre Dame notes:

Are there historical forces operating that make it virtually inevitable that Catholic universities will follow the path taken by formerly Protestant universities in moving away from meaningful religious identities? One thinks, for example, of Northwestern, Duke, Boston University, Syracuse, Vanderbilt, and the University of Southern California, all formerly Methodist universities, none of which has much more than vestigial Christian identity. Will Notre Dame become, say, within two generations, another Duke or Syracuse? Should that be its goal?¹¹

There are more than 200 colleges and universities in the United States which describe themselves in one way or another as Catholic. It is far beyond the mission and resources of the Saint Joseph Foundation to attempt to determine how many of them are in fact Catholic as defined by the Apostolic Constitution *Ex Corde Ecclesiae*.¹² Fortunately, there is a respected organization, the Cardinal Newman Society, which does have as its primary mission the "renewing and strengthening Catholic identity at America's 224 Catholic colleges and universities."¹³ In October 2007, the Society published *The Newman Guide to Choosing a Catholic College*, which recommends just twenty institutions in the United States and one in Canada as genuinely Catholic. Among those not on the list are such well known and venerable institutions of higher learning as Boston College, Georgetown, Notre Dame, DePaul and Holy Cross. That gives us some idea of the dimensions of the problem.

The Saint Joseph Foundation has handled considerably more cases related to Catholic identity than it has concerning sexual abuse. Since 1991, we have processed 95 cases in which the matter at issue was the Catholicity — or lack thereof — of schools, hospitals and universities. While it is possible to challenge the Catholic identity of an institution, compiling the voluminous evidence necessary to support the allegations has usually proven to be too daunting a task for most petitioners. And once the evidence has been assembled, arguments must be prepared that will convince the competent authority that — to echo the Pope's words quoted above — the *public witness to the way of Christ, as found in the Gospel and upheld by the Church's Magisterium*, [do not in fact shape] *all aspects of an institution's life, both inside and outside the classroom*.

We have seen indications here and there that some Catholic colleges and universities, other than the few that appear in the Cardinal Newman Society's Guide, are looking at the possibility of strengthening their Catholic identity. We pray that the Holy Father's words will inspire them to do more.

4. Confusion over Pro-Life Issues

May you find the courage to proclaim Christ, "the same, yesterday, and today and for ever" and the unchanging truths which have their foundation in him (cf. Gaudium et Spes, 10; Heb 13:8). These are the truths that set us free! They are the truths which alone can guarantee respect for the inalienable dignity and rights of each man, woman and child in our world – including the most defenseless of all human beings, the unborn child in the mother's womb.¹⁴

If the legalization of abortion and the ensuing loss of tens of millions of innocent lives had taken place in spite of the vigorous and unified opposition of the Catholic faithful, that would be one thing. But it is quite another when the abortion holocaust was aided and abetted by judges, politicians and media personalities who claim to be Catholic, yet who see nothing wrong in their actions and continue to receive Holy Communion. Some even received at the recent papal Masses in Washington and New York. For contrasting episcopal approaches to these events, see "Straws in the Wind."

Sad to say, episcopal actions that have the effect of impeding of the pro-life cause continue. Within the past few months, we have the shameful example of Catholic bishops in several states derailing legislative proposals to "legally declare every human being a person from the moment of fertilization until natural death."¹⁵ In Georgia, for example, House Resolution 536 proposed that an amendment to the state Constitution be submitted to the voters for approval. However, on January 17, 2008 the Catholic bishops of Georgia issued a statement which said, in part:

While we agree with the objective of HR 536 to defend human life at all stages and share the conviction that human life begins at the moment of conception, we have come to the conclusion that the approach taken by HR 536 to amend the state constitution does not provide a realistic opportunity for ending or reducing abortion in Georgia.¹⁶

Many pro-lifers in Georgia spent a good deal of time and energy on behalf of HR 536 and are disheartened and angered by this statement, which contributed to the Resolution being tabled.

There is one more pro-life issue that should be mentioned. It is complex and we do not have the space here to provide all the details. In short, the issue is the treatment by some **Catholic** schools of children whose parents do not wish to have them immunized with vaccines produced with cell lines from aborted humans. At the present time, there are no ethically acceptable vaccines in the United States for chickenpox and rubella. Ironically, most states have laws requiring **public** schools to respect the consciences of parents; but, difficult as it may be to believe, there are dioceses in this country that refuse to respect the right of parents to form their own consciences. Thus they are forced to choose between having their children immunized with what they believe are unethical vaccines and having them educated in Catholic schools. Fortunately, there may be help on the way in the form of an announcement by a new biotech firm in Seattle, AVM Biotechnology, will produce vaccines untainted by fetal cells. This development was made possible by the prayers and hard work of several pro-life organizations, especially Children of God for Life.¹⁷ Had the courageous parents who objected to the unethical vaccines received the encouragement and support of their bishops rather than hostility and contempt, untainted vaccines might have been produced much sooner.

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Is It The System or The People?

We are now at the point where we can reflect on whether the root of the problems is deficiencies in the Church's legal system or the human weakness of those who exercise the ministry of governance. While recognizing that elements of both are present in all four of the issues mentioned in this article, my personal conclusion is that the state of the Church would be much better today had there been a greater number of good and faithful bishops overseeing the legal system just as it is than it would be with a much improved system run by the same college of bishops that we have had for the past four decades. That is why we need to pray fervently for the appointment of faithful and conscientious bishops and for the strengthening of those already in office, especially those who most in need of our prayers.

Among the many questions that remain, there are two that merit special consideration here. Could Canon Law have been applied to prevent a meaningful portion of the harm done by ineffective, unprincipled or unfaithful Churchmen in the aftermath of the Second Vatican Council? And how effective would it have been in limiting the damage? In looking at the first question, we must remember that there are two distinct time periods. One is the period between the close of the Council in 1965 and the promulgation of the revised Code of Canon Law in 1983 and the other is from 1983 to the present. During the earlier period, in which confusion and antinomianism were rampant, the 1917 Code was widely ignored on the grounds that it was about to be replaced by a Code more in the "spirit of Vatican II." There were some who proposed that this same spirit would be best served if all penal laws were eliminated and a few even argued that canon law itself should disappear. When the revised Code finally appeared in 1983, many canonists pointed out that it had limitations, just as did its predecessor. The Saint Joseph Foundation has done the same more times that I can cite here. We know that there are gaps, ambiguities and imprecise expressions Code that in some instances might make its use needlessly difficult. These difficulties, however, are not always insurmountable. Nonetheless, Church authorities have chosen other approaches or, as we have seen too often, simply ignored the problem. In his work cited above, Dean Cafardi gave eight reasons why the canonical process was not used before 2002 in sexual abuse cases.¹⁸ The reasons are sensible and are not without merit, although that does not mean that I agree wholeheartedly with them. I have selected five that would apply just as well to kind of offenses that the Foundation has dealt with and have put them in my own words along with some brief comments.

- **The law states that penalties should be imposed only as a last resort.** According to c. 1341, the ordinary is to begin a penal process only after he has satisfied himself that justice cannot adequately be served by other means. While the canon does say this, there is little doubt in my mind that it has also served on more than one occasion as a convenient excuse for doing nothing.
- **The penal process is too bulky and unwieldy.** Secular legal processes can also be complex. That is why we have things like law schools, bar exams and norms of professional conduct so that lawyers will be properly qualified to deal with complex legal issues and processes. Similar standards exist for canon lawyers and it seems reasonable to expect they should be equally capable of handling complex legal matters.

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- **Canon lawyers did not receive sufficient training and lacked experience in the penal process.** According to c.1483 an advocate *must be a doctor in canon law or otherwise truly expert*. How is it that at least three years of study beyond a graduate degree in theology or the equivalent does not prepare one to prosecute or act as defense counsel in a penal process?
- **The canonical time limits on the penal process had expired.** According to c. 1362, excluding cases involving the sexual abuse of minors and few additional exceptions, a penal process is extinguished by prescription after either three or five years, depending upon the offense. Once the time limits have passed, a penal process cannot be started.
- **The rights of the accused place undue limits on the canonical process.** For example, canons 1323 and 1324 contain a laundry list of factors that eliminate or reduce the responsibility for violations. Moreover, if the violator has been found guilty after an administrative or judicial penal process, the effects of the penalty are suspended pending the outcome of an appeal (c. 1353). While these safeguards do pose challenges for the prosecution, they do not justify simply throwing up one's hands and declaring the penal process unusable.

Over the past twenty-five years, canonists have been discussing the meaning and application of the canons in Book VI (Sanctions in the Church) of the 1983 Code.¹⁹ There appears to be a general consensus in favor of the reasons cataloged by Dean Cafardi. Although I agree that there are sometimes good reasons to avoid the use of penalties, there are situations where they are the most effective means of protecting the common good and the rights of the faithful. Despite the legal obstacles involved, in such cases not using the penal process would risk a serious injustice. There is abundant evidence to show that injustices have occurred and, when all is said and done, I believe that the cause can be found more in human imperfections than in defects in the system, serious as these defects may be.

One Last Question

In dealing with the problems discussed here, there are frequent occasions when the diocesan bishop appears to neglect the responsibilities of his office. There are even times when a bishop goes beyond neglect and is perceived as cooperating with forces that oppose the Church. In such cases, can a penal process be undertaken against him?

This question will serve as the subject of the lead article in the next issue of CHRISTIFIDELIS.

Notes

- 1 Homily during the celebration of Holy Mass at the Washington Nationals Stadium, April 17, 2008.
- 2 See "Choosing Our Shepherds" in CHRISTIFIDELIS, May 1, 2004. <https://ssl4.westserver.net/st-joseph-foundation.org/newsletter/2004/22-2.pdf>.
- 3 See *Please Look Behind the Bishops' Potemkin Village* by Russell Shaw, Catholic World Report, February 2008. I highly recommend this entire article, which can be read on-line at http://www.ignatius.com/Magazines/CWR/shaw_feb08.htm.
- 4 Transcript from Papal Plane by John L. Allen, Jr aboard Shepherd One, April 15, 2008, <http://ncrcafe.org/node/1736>.
- 5 <http://bishop-accountability.org/priestdb/PriestDBbylast-Name-G.html>

6 See Nicholas P. Cafardi, *Before Dallas: The U.S. Bishops' Response to Clergy Sexual Abuse of Children*, Paulist Press, Mahwah NJ, 2008. The author is the Dean Emeritus of the Duquesne Law School in Pittsburgh and also holds a Doctor of Canon Law degree from the Pontifical University of St. Thomas Aquinas in Rome. Dean Cafardi was an original member of the National Review Board established in 2002 by the USCCB. This very useful book contains an account of the development of the sexual abuse crisis between 1983 and 2002 and an insightful analysis of the reasons why the canonical penal process was not used to deal with accused perpetrators.

7 Cafardi, op. cit., p. 10. See also: Leon J. Podles, *Sacrilege: Sexual Abuse in the Catholic Church*, Crossland Press, Baltimore, 2008. This is a detailed (675 pages), documented account that is not for the squeamish; but it is probably the most useful report available.

8 Cafardi, op. cit., pp. 18-44. Dean Cafardi submits eight reasons why the canonical penal process was not used. These will be discussed in another section of this article.

9 Address of His Holiness Pope Benedict XVI, Meeting With Catholic Educators, Conference Hall of the Catholic University of America in Washington, D.C., Thursday, April 17, 2008.

10 For example, see James T. Burtchaell, *The Dying of the Light: The Disengagement of Colleges and Universities from Their Christian Churches*, Wm. B. Eerdmans Publishing Company, Grand Rapids MI, 1998.

11 "What Can Catholic Universities Learn from Protestant Examples" by George M. Marsden, published in *The Challenge and Promise of a Catholic University*, ed. Theodore M. Hesburgh, C.S.C., University of Notre Dame Press, Notre Dame & London, 1994. George Marsden is the Francis A. McAnaney Professor of History at the University of Notre Dame.

12 August 15, 1990, AAS 82 (1990) pp. 1475-1509. It took another 10 years for the U.S. Episcopal Conference to approve implementing norms, which have been largely ignored.

13 <http://www.cardinalnewmansociety.org/>

14 Homily of His Holiness Benedict XVI, Yankee Stadium, Bronx, NY, 5th Sunday of Easter, 20 April 2008.

15 "Wanted: Pro-Life Integrity," commentary by Judie Brown, American Life League, February 2, 2008. <http://www.all.org/article.php?id=11252&search=wilton%20gregory>

16 <http://www.georgia-bulletin.org/local/2008/o1/17/hr536/>

17 <http://www.cogforlife.org/>

18 Cafardi, op. cit., pp.

19 For example, see Elizabeth McDonough, O.P. "A *Novus Habitus Mentis* for Sanctions in the Church." *The Jurist* 48 (1988) 727-746.

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.