

August 7, 2013

# Cracking the Code: Amending Canon Law to Exclude Sexual Abuse Offenders from Roman Catholic Ordination

Hannah C. Dugan, J.D.

# Cracking the Code: Amending Canon Law to Exclude Sexual Abuse Offenders from Roman Catholic Ordination

By Hannah C. Dugan<sup>1</sup>

- I. Introduction: The Code of Canon Law as a Tool in Preventing Ordination of Sexual Abuse Offenders
- II. A Brief Historical Context of the Smoldering Clerical Sexual Abuse Scandal
- III. The Circumstances That Necessitate Code Amendment: The Smoldering Scandal Becomes a Crisis
  - A. The Scandal Turned Crisis
  - B. The U.S. Catholic Conference of Bishops' Reaction to the Crisis: *Charter for the Protection of Children and Young People*
  - C. The Current State of the Crisis and the Need for Code Amendment
- IV. Identification of Relevant Canons to Amend
  - A. The Code of Canon Law
  - B. Canons Related to Impediments and Irregularities That Prevent Receiving or Retaining Orders
    - 1) Impediments and Irregularities - Before the Reception of Orders
    - 2) Impediments and Irregularities - After the Reception of Orders
  - C. Dispensation of Impediments and Irregularities to Receive or Retain Orders
  - D. Canons That Should Be Amended To Preclude Sexual Abuse Offenders from Receiving or Retaining Orders
  - E. Canons Should Limit Dispensation of Sexual Abuse Irregularities to Pope Exclusively
- IV. Precedent Justifies Amending the Code of Canon Law: the Church's Positive Law.
  - A. Pope John Paul II's Apostolic Letter *Motu Proprio Ad Tuendam Fidem* by which certain norms are inserted into the Code of Canon Law and into the Code of Canons of the Eastern Churches.
  - B. Pope Benedict XVI's Apostolic Letter "Motu Proprio" *Omnium in Mentem* Of The Supreme Pontiff Benedict XVI On Several Amendments To The Code Of Canon Law.

---

<sup>1</sup> University of Wisconsin- Madison *Juris Doctorate*, 1987; Boston College Master of Arts- American Studies, 1983. The author has practiced poverty law for most of her legal career, and has taught at both Marquette University Law School and Seattle University Law School, as a clinical and adjunct assistant professor, and as a visiting professor, respectively. She served as a charter member and the only lawyer on the Archdiocesan Review Board of the Archdiocese of Milwaukee when it was first established in 2003 by His Eminence Archbishop Timothy P. Dolan, currently Cardinal of New York. She also served on the Archdiocese's Equitable Treatment of Priests Commission. She served as the executive director of Catholic Charities of the Archdiocese of Milwaukee during the creation and implementation and staffing of the Archdiocese's sexual abuse victim mediation program.

## V. Conclusion

### I. Introduction: The Code of Canon Law as a Tool in Preventing Ordination of Sexual Abuse Offenders

Depending upon your perspective, the highly publicized 2002 revelations<sup>2</sup> of child sexual abuse<sup>3</sup> by Roman Catholic priests<sup>4</sup> were shocking.... or were long overdue; were concealed

---

<sup>2</sup> In 2002 the numeric scope of allegations of sexual violence against minors and bishop "cover-up" or mishandlings of cleric sexual abuse/violence were featured and followed in headlines throughout the world. A particularly notorious Boston sexual abuse trial set off a journalistic investigation that created a national and even international outrage about Church practices regarding sanctioning of offending clerics. See, Boston Globe, *Betrayal: The Crisis in the Catholic Church*, (Boston: Little, Brown and Company, 2002). Also critical to the watershed year was a 2002 change in Massachusetts's "mandatory reporting" statute. It was extended to include clerics as "mandatory reporters" of child victimization. As abuse reports gradually were released, the civil authorities pressed the Archdiocese of Boston and its ordinary, Cardinal Law, for more information-- with unsatisfactory success. The reluctant archdiocesan cooperation led the Office of Massachusetts Attorney General to launch an investigation, conducted by its Civil Rights and Criminal Divisions. The Attorney General eventually reported that Boston's Cardinal Law and his Vicars and others had files documenting a shocking 789 victim complaints over six decades, 250 persons who could be charged with rape and first degree sexual assault, the reassignment of offending clerics to unsuspecting Catholic parishes, and internal policies in place which addressed pedophilia from a clerical-protective mode rather than from proactive, prosecutorial or preventive modes. Office of the Att'y Gen., *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston* (2003), available at <http://www.bishop-accountability.org/resources/resource-files/reports/ReillyReport.pdf>

After Boston's investigations, dozens of U.S. dioceses were pressed to reveal their processes and similar statistics. See, Michael R. Merz, *A History of the National Review Board* (2009) <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/NRB-History-5-17-2011.pdf> (last visited July 20, 2013).

<sup>3</sup> The term "child sexual abuse" is a broad term which inadequately captures the range of actions by clerics reported by victims- from providing intoxicants to children to child pornography to pedophilia, to sexual assault to physical and psychic torture. See, Center for Constitutional Rights, *Victims' Communication Pursuant to Article 15 of the Rome Statute Requesting Investigation and Prosecution of High Level Vatican Officials for Rape and Other Forms of Sexual Violence as Crimes Against Humanity and Torture as a Crime Against Humanity*, International Criminal Court / File No. OTP-CR-15911 (2011). Ruadhan MacCormaic, *UN Watchdog criticizes Magdalene Report for Lack of Independence*, (Irish Times, June 2, 2013) <http://www.irishtimes.com/news/un-watchdog-criticises-magdalene-report-for-lack-of-independence-1.1415043/>. Terminology for child sexual abuse has changed over time and in different countries' civil and criminal jurisdictions. The Code of Canon Law, and the clerics who historically managed abusive clerics, frame the abuse as violations of the Sixth Commandment or sins rather than as crimes. Church officials have been criticized for language that seems to minimize and marginalize the acts of clerics; referring to "rape" as "inappropriate behavior." Report of the Grand Jury, *In re County Investigating Grand Jury*, MISC. NO. 03-00-239, (Philadelphia, 2003), available at [http://www.bishop-accountability.org/reports/2005\\_09\\_21\\_Philly\\_Grandjury/Grand\\_Jury/Reprot.pdf](http://www.bishop-accountability.org/reports/2005_09_21_Philly_Grandjury/Grand_Jury/Reprot.pdf), at pp. 2-3.

<sup>4</sup> References to Roman Catholic clerics and dioceses include reference to Eastern Rite Catholic clerics and eparchies and to the clerics of religious orders chartered by the Vatican.

intentionally by a male, hierarchical culture sequestered from civil authorities.....or were handled clumsily by befuddled bishops managing increasingly scarce numbers of priests; were a reflection of bishops concerned more with protecting Mother Church than with protecting minors in the Church..... or were a reflection of an ecclesia's outdated sensibilities of religious redemption of a sex offender-sinner rather than a secular culture's emerging understanding of perpetrator predation and victim vulnerability. While sexual and other abuse by clerics are centuries old, until the end of the 19<sup>th</sup> century the Roman Catholic Church had not recognized publically such abuse as abuse, reprimanded publically such abuse as abuse, pursued publically actions to prevent the milieu that allowed such abuse, or acknowledged and apologized publically for its complicity in allowing such abuse to occur and, more tragically, to continue.<sup>5</sup> This paper calls for the Church to amend the Code of Canon Law <sup>6</sup> to explicitly declare that sexual abuse is an "irregularity"<sup>7</sup> to ordination, and must be

---

<sup>5</sup> See, Thomas P. Doyle, A. W. Richard Sipe, Patrick J. Wall, *Sex, Priests and Secret Codes: The Catholic Churches 2,000 Year Paper Trail of Sexual Abuse*, (Los Angeles: Volt Press 2006). *Ibid.* Center for Constitutional Rights, ICC File No. OTP-CR-15911 2011, *supra*. On May 19, 2011, on behalf of victim organizations, the CCR submitted a seventy- one page request for an investigation by the Prosecutor of the ICC. The filing identified the Pope and other named Vatican officials for Crimes against Humanity and Torture, vis a vis child sexual abuse. The Vatican is a signatory to the ICC. The CCR submitted more than 20,000 pages of supporting materials. It cited policies and practices of the Roman Catholic Church that allowed sexual violence to occur and continue, and named among the most notorious locations of United States, Canada, Ireland, Australia, Austria, Belgium, France, Germany, Italy, the Netherlands and Mexico.

For years Church officials throughout the world had addressed cleric sexual violence/abuse allegations internally and undertook a variety of private and even secret responsive actions- from denial and obfuscation and victim-blaming to clerical medical treatment, reassignment, removal from ministry, and (more recently) confidential financial settlements with clerics and with victims. Using Ireland as an example, The Irish Commission to Inquire into Child Abuse studied child abuse in Catholic institutions from 1914-2004; the Ferns Commission, convened by Ireland's Minister for Health and Children, reported about 100 internally-handled allegations from 1962 to 2002 Francis D. Murphy, Helen Buckley, and Larain Joyce, *The Ferns Report*, Diocese of Ferns, presented to the Minister for Health and Children (Dublin: Government Publications, 2005), available at [http://www.bishop-accountability.org/reports/2005\\_10\\_Ferns/Complete\\_Ferns\\_Report\\_SO.pdf](http://www.bishop-accountability.org/reports/2005_10_Ferns/Complete_Ferns_Report_SO.pdf).; *The Ryan Report on Irish Residential Institutions*, The Commission to Inquire into Child Abuse, Dublin, Ireland (20 May 2009), available at <http://www.childabusecommission.com/rpt/index.php>.

<sup>6</sup> For a concise description and history of Canon Law, See, Reverend John J. Coughlin, O.F.M, *Canon Law*, Notre Dame Law School, Legal Studies Research Paper No. 07-27, the Social Science

included among the Code's current list of unwaivable irregularities to ordination. The necessity for Code amendments and conclusion of this article are one in the same: the credibility of the hierarchy of the Roman Catholic Church and the credibility of all of Mother Church's values and virtues require that its own legislation and juridical processes explicitly preclude and prohibit a person from receiving orders and an ordained person from continuing in orders if he has perpetrated sexual abuse against a vulnerable person.

The article will present a brief historical backdrop of the Church's sanctioning for clerical sexual abuse, and outline the circumstances that necessitate Code amendment. It will identify relevant canons to amend and thereby to remedy the Code's current deficiencies, and will explain the precedent which justifies and supports the immediate amendment of the Church's positive law.

## II. A Brief Historical Context of the Smoldering Clerical Sexual Abuse Scandal

For two millennia, the Roman Catholic Church has known and managed the difficult issue of sexual abuse by its ordained clerics; the Catholic ecclesiastical authority various sources of law were

---

Research Network electronic library at: <http://ssrn.com/abstract=982132> (last visited October 12, 2011). See, *1983 Code of Canon Law*, 1983 Libreria Editrice Vaticana (Vatican City, 1983) English Translation The Canon Law Society Trust prepared by the Canon Law Society of Great Britain and Ireland in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, (Grand Rapids MI: William B. Eerdmans Publishing Co. distributor, 1983). The CIC is also available at [http://www.vatican.va/archive/ENG1104/\\_P16.HTM](http://www.vatican.va/archive/ENG1104/_P16.HTM) which is the completely revised Code of the Church, replacing in its entirety *Codex Iuris Canonici* (1917), *Providentissima Mater Ecclesia*, Pope Benedict XV, 27 May 1917.

Since 1990, the Eastern Rite Catholic Churches also have a Code of Canon Law for its eparches and eparchies, subject to Vatican authority. It includes canons similar in purpose and language to the Latin Church's Code. See, *Codex Canonum Ecclesiarum Orientalium Auctoritate Ioanni Pauli PP. prolugatus* (October 12, 1990), 82 AAS 1047-1363 (1990). *Code of Canons of Oriental Churches*, IntraText Edition CT (Eulogos 2007). <http://www.intratext.com/IXT/ENG1199/Index.HTM> (CCOC) (last visited July 17, 2013). CCOC-1990 Canon 1- The canons of this Code affect all and solely the Eastern Catholic Churches, unless, with regard to relations with the Latin Church, it is expressly stated otherwise.

<sup>7</sup> CIC-1983 Canon 1040, at pp. 185-186. An irregularity is a "perpetual" "impediment." Irregularities are specified in Canon 1041 and nearly all of them can only be dispensed by the Holy See, if at all. An "impediment" bars a person from the reception of orders, most of which the local ordinary can dispense under certain facts.

referenced by to address “sexual abuse.”<sup>8</sup> The focus in the most recent centuries has been to address sexual solicitation of a penitent by a cleric against the Sixth Commandment, for himself or for a third party within the sanctity of the Sacrament of Penance.<sup>9</sup>

In the modern era, the Vatican promulgated into a single body of law the Code of Canons.<sup>10</sup> In its Canon 1555, the 1917 Code recognized the Sacred Congregation of the Holy Office (SCHO)<sup>11</sup> as the canonical tribunal with exclusive competence to address, *inter alia*, other certain crimes or delicts, the most grave crime of sexual solicitation by clerics.<sup>12</sup>

Through the *Crimen Sollicitationis*, first issued in 1922, the pope first granted the SCHO with explicit jurisdiction over sexual abuse of minors, and established procedures for processing such cases. In 1962 the pope expanded *Crimen Sollicitationis* to include religious orders, in addition to dioceses.<sup>13</sup> The 1983 revision of the Code of Canon Law stated that the sexual abuse delict should have punishment considered for “force or threats or publicly or with a minor below the age of sixteen” with trials held in the dioceses and appealed to Rome.<sup>14</sup> In 1994 the pope granted the USCCB an indult extending the crime of sexual abuse of a minor to include those children below age eighteen and that the prescription (*i.e.*, statute of limitations) was extended to ten years from the

---

<sup>8</sup> See, Thomas P Doyle, A. W. Richard Sipe & Patrick J. Wall, *Sex, Priests and Secret Codes: The Catholic Church's 2,000 Year Paper Trail of Sexual Abuse* (Los Angeles: Volt Press 2006).

<sup>9</sup> The Apostolic Constitution, *Sacramentarium Poenitentiae*, promulgated by Pope Benedict XIV in 1741. [http://www.vatican.va/resources/resources\\_introd-storica\\_en.html](http://www.vatican.va/resources/resources_introd-storica_en.html) (last visited July 31, 2013).

<sup>10</sup> *Codex Iuris Canonici* (1917), *Providentissima Mater Ecclesia*, Pope Benedict XV, 27 May 1917. [http://www.vatican.va/resources/resources\\_introd-storica\\_en.html](http://www.vatican.va/resources/resources_introd-storica_en.html) (last visited July 31, 2013).

<sup>11</sup> Renamed Congregation for the Doctrine of the Faith (CDF) in 1965.

<sup>12</sup> Specifically solicitation of a penitent against the Sixth Commandment in the act of, context of or pretext of the Sacrament of Penance.

<sup>13</sup> *Crimen Sollicitationis*, Instruction on the Manner of Proceeding in Cases of Solicitation, *The Decree Crimen Sollicitationis*, The Vatican Press, 16 Mar. 1962.

<sup>14</sup> CIC-1983 Canon 1395, §2.

victim's eighteenth birthday. In 2001 Pope John Paul II promulgated *Sacramentorum Sanctitatis Tutela* which updated the penal procedures for addressing sexual abuse cases under CIC-1917 Canon 1262 §2 and CCOC Canon 1152 §3. Since 1965, the Congregation for the Doctrine of the Faith continues to be the filter for clerical sexual abuse issues (reviews, sanctions and discipline) along with other clerical delicts.<sup>15</sup>

### III. The Circumstances That Necessitate Code Amendment: The Smoldering Scandal Becomes a Crisis

#### A. The Scandal Turned Crisis<sup>16</sup>

In 2002, the levees of the U.S. Catholic Church— U.S. Constitutional protections, hierarchical prerogatives, vows of obedience, legal protections precluding public scrutiny, and a trusting laity—broke under the torrential storm of controversy related to clergy child sexual abuse and its “cover up” by presiding bishops.<sup>17</sup> The ensuing floods of criminal prosecutions of priests, of

---

<sup>15</sup> See, Congregation for the Doctrine of the Faith, *The Norms of the Motu Proprio “Sacramentorum Sanctitatis Tutela” (2001)* <http://www.vatican.va/resources/resources/introd-storica/en.html> (last visited July 31, 2013). Rarely and only in the most egregious of cases does the Pope judge a petition. See, USCCB.org, <http://www.usccb.org/issues-and-action/child-and-youth-protection/resources/upload/qa-canonical-process-sexual-abuse.pdf> (last visited July 30, 2013).

<sup>16</sup> By definition a “crisis” is a an “emotionally significant event or radical change of status in a person's life” or “a decisive moment” or “an unstable or crucial time or state of affairs in which a decisive change is impending, especially one with the distinct possibility of a highly undesirable outcome” or “a situation that has reached a critical phase.” See, *Merriam-Webster Dictionary*, <http://www.merriam-webster.com/dictionary/crisis> (last visited July 23, 2013). As immediate situations needing problem solving, crises are often addressed with speed and containment and short term management and inputs until stability and long term processes can be put in place. The Roman Catholic Church does not act in “crisis” mode. It is its own government with internal standards of accountability for ministry decisions and financial matters and human resource deployment (of lay and ordained) unlike any other government. The Church has taken years to canonize a saint and decades to write its own Creed.

See, Phillip Jenkins, *Pedophiles and Priests: An Anatomy of a Contemporary Crisis*, (New York: Oxford University Press, 1996) which contextualizes the sexual abuse by priests and other ministers prior to the current scandal. He emphasizes the role of media in overstating the “crisis.”

<sup>17</sup> See, USCCB.org; John Jay College, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002* (Washington, D.C.: United States Conference of Catholic Bishops, 2004). John Jay College, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002: 2006 Supplementary Report* (Washington, D.C.: United States Conference of Catholic Bishops, 2006); National Review Board, *A Report on the Crisis in the Catholic Church in the United States* (Washington, D.C.: United States Conference of Catholic Bishops, 2004).

resultant civil lawsuits filed by newly-empowered victims seeking redress from offending dioceses, of erosion of liability insurance coverage for priests' and dioceses' heinous acts, and of tremendous laity backlash in America engulfed the hierarchy and could not be ignored.<sup>18</sup>

Revelations in the new millennium of the pervasiveness of child sexual abuse by priests, bishops and deacons were eye-opening to even the most engaged and involved of Catholics. An incredulous Church had to acknowledge the unthinkable: a priest's sacred vow of pastoral care profaned by the most profound and blasphemous violation of trust and intimacy perpetrated against vulnerable persons.<sup>19</sup> To a shocked laity, it is difficult to prioritize that which was most striking: perhaps the bishops' unconscionable reassignment of abusive priests to unknowing parishes; or perhaps the decades-old practice of confidential settlements and personnel and financial "cover-ups;" or perhaps the Curia's unpublished institutions to bishops and its secret archives,<sup>20</sup> or perhaps the sheer number of victims of clergy abuse who were emerging after years of living in silence and in shame and in the shadows of disregard.<sup>21</sup>

---

<sup>18</sup> See, CIC-1983 Canons 447-459 at pp. 80-82 which provides that each bishop is the independent authority that directs all pastoral and operational aspects of the Church within his diocese.

<sup>19</sup> See, Karen Terry & John Jay College Research Team, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010* (John Jay College, 2011). The John Jay Report asserts that by clinical definitions, the vast majority of abusive clerics are not classified as fitting psychiatric disorders. This assertion is premised on definitions that include such factors as the number of victims of a cleric, the number of incidents of abuse, and /or the lack of negative effect on the perpetrator's personal life or occupation. A pedophile is an adult with a psychiatric disorder characterized by sexual attraction to prepubescent children including fantasies, urges, or behaviors involving sexual activity with a young child (often aged thirteen or younger) for at least six months. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, revised 4th ed. (Washington, D.C. 2000) (DSM-IV). Additionally, to be clinically classified pursuant to the DSM-IV, the adult must have acted on these fantasies or urges with a child, or must be excessively distressed by the fantasies and urges to the point where the adult's personal life or occupation is affected negatively. Further the adult must have had several victims. This sexual offender is in contrast to an ephebophile, an adult who is sexually attracted to post pubescent children, and to an hebephile, an adult who is sexually attracted to pubertal youths. Ephebophilia and hebephilia are not classified in the DSM-IV. Earlier versions of the DSM didn't include certain of these categories (*i.e.*, pedophilia), using instead diagnoses such as sexual deviance or personality disorder. Therefore, clerics included in the report from mid-century would not have been identified and/or diagnosed with terms used by clinicians in the 21<sup>st</sup> century.

<sup>20</sup> John P. Beal, *The 1962 Instruction Crimen Sollicitationis: Caught Red-Handed or Handed a Red Herring?*, *Studia Canonica*, 41 (2007), at pp. 200-201. An instruction is an administrative document issued by the now-CDF that facilitates the implementation of a law. The *Instruction Crimen Sollicitationis* also "created" a new law with respect to the delict of clerical sexual abuse of minors. It was issued to the patriarchs and ordinaries and its uses were discussed. However it was kept in the secret archive of the Curia, was used only internally, and was not to be published; it bound to "secrecy" (confidentiality) participants in the processing of clerical cases, pursuant to the Norms.

<sup>21</sup> See, Karen Terry, *The Nature and Scope of Sexual Abuse (2004)*. The study found that between 1950 and 2002, more than 10,000 credible allegations of "child sexual abuse" were reported to U.S. Church officials. The *Charter* called for bishops to provide their dioceses with transparency and accountability, and to engage in detailed data collection and to undertake cleric file reviews. All

B. The U.S. Catholic Conference of Bishops' Reactions to the Crisis: *Charter for the Protection of Children and Young People*<sup>22</sup>

The clergy sexual abuse “crisis,”<sup>23</sup> which reached its apex in the United States in 2002,<sup>24</sup> is not a crisis in the usual sense. It is a series of successive stories of clergy abuse and hierarchical inaction; a series of legal judgments from secular civil, criminal and bankruptcy courts;<sup>25</sup> a series of victims and their sympathizers organizing and insisting on greater Church transparency and

---

cooperating dioceses and religious orders manifested cases of clerical sexual abuse, and of mishandling of victim complaints and perpetrators. The reports revealed that for years church officials had undertaken a variety of responses to clerical sexual violence and abuse: from reactive denial, obfuscation, clerical reassignment and victim-blaming, to proactive medical treatment, removal from ministry and confidential financial settlements.

In two year intervals, the USCCB had reports prepared which collected incidents and resolutions of clerical sexual abuse allegations. Both historical and contemporary documents were gathered and reviewed. John Jay College, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002* (Washington, D.C.: United States Conference of Catholic Bishops, 2004). John Jay College, *The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States, 1950-2002: 2006 Supplementary Report* (Washington, D.C.: United States Conference of Catholic Bishops, 2006).

Per the USCCB *Charter*, its National Review Board prepared its own document, *A Report on the Crisis in the Catholic Church in the United States* (Washington, D.C.: United States Conference of Catholic Bishops, 2004).

<sup>22</sup> United States Catholic Conference of Bishops, *Charter for the Protection of Children and Young People* (Washington D.C. 2002).

<sup>23</sup> See, Phillip Jenkins, *Pedophiles and Priests: An Anatomy of a Contemporary Crisis*, footnote 16, *supra*.

<sup>24</sup> *Id.*; See, The Boston Globe, *Betrayal*. On January 6, 2002, The Boston Globe's reported on the criminal sexual abuse of children trial of a former priest of the Archdiocese of Boston. Quickly The Boston Globe reports became investigative journalism about the depth of the sexual abuse of children by Catholic priests and the bishops' mishandling and reassignment of abusive priests. The Boston story became a national story, and quickly a national scandal. The USCCB leadership directed the Ad Hoc Committee on Child Sexual Abuse to create a national policy for adoption by the Conference and implementation by all the U.S. bishops. In March 2002 the Committee drafted the *Charter* for the Protection of Children and Young People for the USCCB's June 2002 meeting in Dallas; it was the only agenda item. After an intense and unusually public meeting, the bishops almost unanimously adopted the *Charter* for the Protection of Children and Young People, Essential Norms for Diocesan Policies on Sexual Abuse, and a Statement of Episcopal Commitment to carry out the *Charter*.

<sup>25</sup> Eight United States dioceses have filed bankruptcies since 2004 to 2013. See, Annysa Johnson, *Multiple Issues Still Await Resolution In Complex Church Bankruptcy*, Milwaukee Journal Sentinel July 17, 2013. See, bishop-accountability.org.

accountability;<sup>26</sup> a stream of laity angry and disaffected and a stream of laity in turmoil and denial about the verity of such heinous allegations against trusted priests.<sup>27</sup> All of these reactions have continued to unfold for over a decade and all of these scandalous events are gathered and still identified under the rubric “sexual abuse crisis.”<sup>28</sup>

At the beginning of the “crisis,” the public pressure on U.S. bishops led to an atypical celerity of action by its deliberative body.<sup>29</sup> In fewer than two months a draft document applicable to

---

<sup>26</sup> United States Catholic Conference of Bishops, *Charter for the Protection of Children and Young People* (Washington D.C. 2002) states that sexual abuse includes contacts or interactions between an individual under the age of eighteen (a minor) and an adult, when the minor is being used as an object of sexual gratification for the adult. A minor is considered abused whether or not this activity involves explicit force, genital or physical contact, or discernible harmful outcome, and regardless of who is the initiator of the contact.

<sup>27</sup> See, Michael R. Merz, *A History of the National Review Board*, 2009. <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/NRB-History-5-17-2011.pdf>, (last visited July 20, 2013). After the press coverage of the 1984 civil and criminal child sexual abuse trials of a notorious Louisianan priest, the USCCB discussed clerical sexual abuse of minors during its Spring 1985 general assembly. Father Thomas Doyle presented a confidential report which warned the bishops about possible consequences to the U.S. Church, including widespread negative reaction and attention, and possible losses to the American dioceses of over \$1 billion. The unheeded report suggested creating a national response team. No national plan was adopted.

In 1992, after other trials of priests, the USCCB President suggested that bishops develop their own local plans and recommended following Five Principles: respond promptly to allegations; remove the offender and refer him for evaluation; report abuse to civil authorities; reach to victims pastorally; and be as open as possible with the community. Also in 1992, the Conference created the Ad Hoc Committee on Sexual Abuse, which, from 1993 to 1996, gathered materials for the bishops about addressing abuse allegation cases and released them to the Bishops under the title Restoring Trust. Again, some dioceses adopted practices recommended in the Five Principles and in the Restoring Trust materials; others did not. The Conference does not have the authority to impose policy on local ordinaries as a matter of law. See, CIC-1983 Canons 447-459 at pp. 80-82.

In June 2002, after the January 2002 scandal of the Archdiocese of Boston (see, footnote 23, *supra*) the USCCB members reviewed and adopted the *Charter for the Protection of Children and Young People*, Essential Norms for Diocesan Policies on Sexual Abuse, and a Statement of Episcopal Commitment to carry out the *Charter*.

<sup>28</sup> See, USCCB.org for news, monitoring and perspectives of the bishops; bishop-accountability.org for updates and reporting of emerging cases, lawsuits, and abuser locations and perspectives of victims/survivors. The Vatican’s website includes a page entitled “Abuse of Minors The Church’s Response” which includes numerous documents and papal statements. See, [http://www.vatican.va/resources/index\\_en.htm](http://www.vatican.va/resources/index_en.htm) (last visited July 27, 2013).

<sup>29</sup> *Id.*; See, Boston Globe, *Betrayal*; and Merz, *History of the National Review Board*. At the beginning of January, 2002, The Boston Globe began its extensive reporting of a criminal sexual abuse in the

all dioceses/eparchies was drawn; in less than one week the USCCB debated, promulgated, and pledged themselves to a *Charter for the Protection of Children and Youth* and Essential Norms for papal *recognitio*.<sup>30</sup>

The USCCB's *Charter* was atypical in several respects. First, that when the public demanded accountability and transparency, the bishops so responsively acknowledged the demand; and, further, that that acknowledgment was affirmed by a written response. Secondly, that such a sensitive document was drawn so hastily by any deliberative body, much less the contemplative USCCB, on a topic so controversial and so fraught with potential missteps.<sup>31</sup> Thirdly, that the esoteric proceedings of a private religious leadership were "headlining" national and international newspaper and appearing nearly in real-time news broadcasts.

Under the *Charter*, much has been pled and performed officially by U.S. bishops and cardinals to restore faith in the Church. They acknowledged their mistakes, apologized for their

---

Archdiocese of Boston. By February the USCCB leadership met and directed its Ad Hoc Committee on Child Sexual Abuse to create a national sexual abuse policy for adoption by the Conference. In March 2002 the Committee drafted a proposed policy. It was the only agenda item at the USCCB's June 2002 meeting in Dallas, Texas. After an intense meeting that generated tremendous public attention and media coverage, the bishops almost unanimously adopted the *Charter* and committed to implement its provisions.

<sup>30</sup> See, Merz. A difference exists between the *Charter* and the Essential Norms. The *Charter* is an unenforceable agreement among the bishops; the Essential Norms of "local" Conferences have the force of canon law for the United States, however they require the Vatican *recognitio*. In September, 2002 the NRB noted that the Conference officers would shortly visit Rome to discuss the Essential Norms and expected the document's "zero-tolerance" policy to be approved. Revisions by the Vatican included restoring a statute of limitations for prosecuting and punishing priests of 10 years beyond when a victim of abuse turns eighteen. Frank Bruni, *Vatican Approves Revised Plan on Sexual Abuse by U.S. Priests*, New York Times December 17, 2002. After redraft, the Vatican promulgated the papal *recognitio* in March 2003.

<sup>31</sup> See, e.g., Frank Bruni, *Vatican Approves Revised Plan on Sexual Abuse by U.S. Priests*, New York Times December 17, 2002. The Pope considered serious questions of inconsistent due process provisions. Indeed bishops in this deliberative body and bishops worldwide even in 2013 have many differing opinions about the level of abuse and even the fact of the extent of clerical abuse, clerical culpability and sanctioning, accountability to civil legal authorities and solicitousness to canon law regarding delicts and their enforcement.

roles in failing the victims and pledged to “take responsibility” and “offer our help in the future.”<sup>32</sup> They pledged to validate the suffering of priests’ victims,<sup>33</sup> to reassure lay believers about the Church’s pastoral priorities over institutional protections,<sup>34</sup> to arm children and their protectors with information about inappropriate behaviors and relationships,<sup>35</sup> and to assure swift and appropriate Church hierarchy action upon the report of child sexual abuse by any adult under Church authority.<sup>36</sup> They agreed to abdicate their pastoral power to civil prosecutors who became the initial investigators of allegations instead of previous practices of keeping victim complaints from civil authorities.<sup>37</sup> They agreed to “share” their pastoral prerogatives by creating local ancillary victim services and caretaking offices.<sup>38</sup>

The Conference of U.S. bishops, via the *Charter*, established an independent laity-led

---

<sup>32</sup> *Charter* preamble at p.1; Article 1.

<sup>33</sup> *Id.* preamble at p.1.

<sup>34</sup>*Id.* Article 3- no confidentiality agreements; Article 7- communications regarding transparency; Article 8- created, staffed and funded the Office of Child and Youth Protection (OCYP) and committed diocese to audits and annual public reports regarding the implementation and compliance with the *Charter*; Article 13- screening of church personnel and fitness assessments of seminarian candidates; Article 14- cleric transfers will include, prior to assignment, forwarding to the receiving ordinary a complete record of the cleric’s record including identifying issues that could raise questions about the cleric’s fitness for ministry; Article 15- implementation and cooperation of the *Charter* in religious communities of men; Article 17- cooperation of the seminaries and religious houses of formation, and the refocus of teaching programs with respect to the question of human formation for celibate chastity within the priesthood.

<sup>35</sup> *Id.* Article 12- Each diocese/eparch is to establish “safe environment” programs, cooperate with parents and civil authorities and/or education and training programs of children, youth, parents, ministers, educators, and others.

<sup>36</sup> *Id.* Article 2—outreach and care systems; Article 5—removal of an accused cleric from ministry upon and pending investigation of a credible allegation.

<sup>37</sup> *Id.* Article 4; Article 5.

<sup>38</sup> *Id.* Article 2. Each diocese is required to have an independent victim assistance coordinator.

National Review Board (NRB)<sup>39</sup>; the Conference's members agreed to create local, independent, laity-led diocesan review boards.<sup>40</sup> The bishops' NRB, authorized to assist the Office of Child and Youth Protection (OCYP), filtered the diocesan accountability reports, and monitored mandated child protection programs.<sup>41</sup> It also was charged to commission a study of the causes and contexts of the crisis.<sup>42</sup> While not uniformly executed, bishops have paved avenues of spiritual and financial support beyond civil legal requirements to do so.<sup>43</sup> Public changes occurred in bishops' behaviors—away from skepticism of victims and towards listening sessions. Apologies were repeated and

---

<sup>39</sup> *Id.* Article 9. The independent NRB, situated within the Office for Child and Youth Protection, was charged with: approving the annual report of the implementation of the *Charter* in each of the U.S. dioceses/eparchies; implementing any recommendations, commissioning a comprehensive study about the causes of the current crisis; and commissioning a descriptive study of the nature and scope of the problem within the Catholic Church in the United States. The diocese/eparchies were to be fully cooperative with the NRB, including providing data and statistics about local perpetrators and victims. As a reflection of the urgency of the issue, the NRB was appointed post haste and convened in July 2002, one month after the *Charter* was adopted.

In September 2002 the NRB asked the Ad Hoc Committee to formally endorse the Board's independence. The NRB created the Safe Environment Committee, the Research Committee, Canon Law Committee, and Communications Committee. The Board resolved to ask the major superiors of religious orders of men to adopt the *Charter* (which the USCCB facilitated in November 2002) and to ask each diocese to furnish the Board with the names of its diocesan review board members and victim assistance coordinator.

<sup>40</sup> *Ibid.* Article 2 requires each diocese to have a local review board to act as a confidential consultative body to the bishop for these cases.

<sup>41</sup> *Id.* Article 9.

<sup>42</sup> *Id.*

<sup>43</sup> For examples, Boston's Cardinal Law resigned his office in disgrace; he is the only U.S. bishop to do so. His successor Cardinal Sean O'Malley brokered an \$85 million settlement involving over 550 victims. Natalie Sherman, *Disgraced Cardinal Bernard Law Resigns Vatican Post*, Boston Herald, Monday, November 21, 2011. [http://bostonherald.com/news\\_opinion/local\\_coverage/2011/11/disgraced\\_cardinal\\_bernard\\_law\\_resigns\\_vatican\\_post#sthash.AiOG07pP.dpuf](http://bostonherald.com/news_opinion/local_coverage/2011/11/disgraced_cardinal_bernard_law_resigns_vatican_post#sthash.AiOG07pP.dpuf)CITE (last visited July 31, 2013); Archbishop Dolan of the Archdiocese of Milwaukee had an independent mediation program designed and implemented wherein he and/or other bishops of the diocese engaged in face-to-face mediation sessions with victims and agreed to survivor financial support, therapy, enrollment in school for their minor children, etc. <http://www.andersonadvocates.com/Archdiocese-of-Milwaukee-Documents.aspx>.

ritualized. The several revisions of the *Charter* reflect the Conference's efforts to remain responsive to the scandal as it unfolds.<sup>44</sup>

### C. The Current State of the Crisis and the Need for Code Amendment

American Roman Catholic bishops began in the 1980's to formally and publically address abuse in and during meetings of the USCCB conference and to develop strategies for marginalizing priests with sexual abuse histories. Bishops internationally came to such public conversations at different times.<sup>45</sup> Only after scandalous revelations of episcopal complicity in the continued abuse of children through inaction and abuser reassignment, after the attendant outrage by the laity, and after mounting civil lawsuits did the American Church hierarchy undertake a paradigm shift in its attitudes, responses and sincerity of contrition about the abusive acts of their brother and subordinate priests.

It has been one decade since the promulgation of the *Charter for the Protection of Children and Youth*, since the United States Catholic Conference of Bishops established the National Review Board, and since dioceses established local review boards and processes for victim care and prevention. It has been one decade since the first issuance of public apologies, since orders for clergy-removal from ministry pending investigation, since priests officially are referred to civil prosecution authorities upon allegation, since civil law suits are settled only publically, since abuse-prevention training is required of all persons in Catholic ministry for children and other vulnerable persons, and since annual reports regarding *Charter* implementation are required from of each U.S. diocese.

---

<sup>44</sup> *Ibid.* *Charter*, Conclusion. The *Charter* provided the Ad Hoc Committee (advised by the NRB) would review its provisions in the next two years and so also would the Conference of bishops.

<sup>45</sup> See, Center for Constitutional Rights, *ICC File No. OTP-CR-159/11*.

Despite these efforts, episcopal accountability and transparency still is lacking. The delay in Vatican laicization petitions from admitted and adjudicated sexual abuse offenders is both inexplicable and unconscionable.<sup>46</sup> The new revelations of past sexual abuse and bishop mishandling of abusive priests continues to be exposed in Catholic dioceses and in religious communities throughout the world.<sup>47</sup> The Church's pronouncements of sorrow for past abusive actions of the ordained and the Church's stated commitment to prevent future abusive actions, need to have the authority and enforcement of Vatican law, not secular law or bishop-authored *Charters* applicable only to one conference without any authority to compel compliance.

However, no response or program or apology—in the Universal Church or the American Church—has been executed uniformly nor accepted as even adequate.<sup>48</sup> The enormity and variety of

---

<sup>46</sup> See, e.g., petitions to the Vatican for dismissal, dispensation and "laicization" languished for years, with earnest letters sent from then-Archbishop Dolan in Milwaukee, WI who was anxious about substantiated abusers re-offending while still clerics and clerics violating restrictions placed on the upon their removal from ministry. <http://www.andersonadvocates.com/Archdiocese-of-Milwaukee-Documents.aspx>.

<sup>47</sup> See, e.g., Center for Constitutional Rights, ICC File No. OTP-CR-159/11, *supra*. Laurie Goodstein, *Vatican Declined to Defrock U.S. Priest Who Abused Boys*, New York Times March 24, 2010 which documents the abuse of Lawrence Murphy, a priest who worked at a renowned school for deaf children from 1950 to 1974 in Milwaukee, WI. He sexually abused about 200 deaf children. The documentation shows that three successive archbishops in Wisconsin knew that Father Murphy sexually abused children but that they never reported it to criminal or civil authorities. Instead of being disciplined, one Archbishop moved Father Murphy to a diocese in northern Wisconsin in 1974, where he spent his last 24 years working with children in parishes, schools, and a juvenile detention center. Another Archbishop began disciplinary proceedings in 1996— but it was too late. After failing to respond to two of the Archbishop's letters, then-Cardinal Ratzinger instructed the Archbishop to begin a secret canonical trial. But the prosecution was halted after Father Murphy personally wrote to Cardinal Ratzinger protesting that he should not be put on trial because he had already repented and was in poor health and that the case was beyond the church's own statute of limitations. The Vatican file contained no response from Cardinal Ratzinger. Murphy died a priest in 1998. <http://www.andersonadvocates.com/Archdiocese-of-Milwaukee-Documents.aspx>.

<sup>48</sup> See, *Abuse of Minors, The Church's Response*, including several dozen entries under the categories of *Modifications made in the Normae de gravioribus delictis*, *Pontifical Documents*, and *Other Documents* [http://www.vatican.va/resources/index\\_en.htm](http://www.vatican.va/resources/index_en.htm) (last visited July 27, 2013), e.g., "Guide to Understanding Basic CDF Procedures Concerning Sexual Abuse Allegations," [http://www.vatican.va/resources/resources\\_guide-CDF-procedures\\_en.html](http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html), (last visited July 27, 2013).

failed hierarchical responses to allegations of clergy abuse- in the past and currently- continue to be uncovered.<sup>49</sup> With the wounds of the revelations still fresh, the bishops' apologies and programs reacting to past acts largely have been reactive and defensive, have not been enough for the healing of victims and reconciliation with other Catholics; have not been any "magic bullets" to restore the trust of the Faithful; and have not brought social, juridical, or spiritual justice for victims.<sup>50</sup> And

---

<sup>49</sup> See, Davis O. Reilly, *Philadelphia Archdiocese Places 21 Priests on Leave*, Philadelphia Inquirer, March 8, 2011 [http://www.bishop-accountability.org/news2011/03\\_04/2011\\_03\\_08\\_OReilly\\_PhiladelphiaArchdiocese.htm](http://www.bishop-accountability.org/news2011/03_04/2011_03_08_OReilly_PhiladelphiaArchdiocese.htm) (last visited July 27, 2013); *Pontifical Documents, Pastoral Letter of His Holiness Benedict XVI to the Catholics of Ireland (March 19, 2010)*, [http://www.vatican.va/resources/index\\_en.htm](http://www.vatican.va/resources/index_en.htm) (last visited July 27, 2013); Dave Warner, *Philadelphia Monsignor Imprisoned for Covering Up Child Sex Abuse*, Reuters, July 24, 2012. The cleric was the first criminally convicted for failing to protect children vis a vis cleric oversight responsibilities. He had overseen the work of over 800 priests. He was sentenced to three to six years in prison for his conviction on a single count of child endangerment; he was convicted for covering up sex abuse allegations, including transferring predatory priests to unsuspecting parishes.

<sup>50</sup> Reviewing just one diocese one can see the host of outstanding issues that leave the skeptical skeptical of reconciliation and the hopeful hopeful for reconciliation. See, Annysa Johnson, *Multiple Issues Still Await Resolution In Complex Church Bankruptcy*, Milwaukee Journal Sentinel July 17, 2013; [bishop-accountability.org](http://www.bishop-accountability.org); <http://www.andersonadvocates.com/Archdiocese-of-Milwaukee-Documents.aspx>. The article includes a synopsis of one diocese's legal and authoritative status as well as its balance among preserving assets, addressing victim concerns, preventing further public inlets into its operations and actions, and avoiding too much exposure, transparency and accountability. In 2013, one decade after establishment of its local review board, the epicenter of the scandal in the Archdioceses of Milwaukee, Wisconsin USA is a bankruptcy action. The bankruptcy was filed in 2010, after years spent agreeing to settlement pay outs pursuant to a victim mediation program and after years of litigating several major out-of-state, insurance-based settlements. For years the state of Wisconsin case law preserved a statute of limitations for criminal acts of clerics that was favorable to the Church; in 1995 the Wisconsin courts provided the Church with First Amendment protections against the victims' claims of negligence. However, the same court in 2007 provided victims with the right to sue under the state's fraud statutes. Ironically, resource issues arose because negligence claims were covered by the Church insurance assets while fraud claims were not. Also issues of equity arose between those who had mediated settlements and yet now also had unforeseen potential fraud claims. Employee-law based pensions were paid to perpetrator priests; ardent efforts by the local bishops to dismiss and/or laicize offenders languished in Rome for over five years. Transfers of cemetery trust funds were sought for victim-creditors. The bankruptcy's "fresh start" has been delayed because many of the victim's access to justice issues are being played out in the federal courts. To determine an acceptable reorganization plan, the bankruptcy court first needs to determine three things: 1) whether the archdiocese defrauded victims by exposing them to sexually abusive priests, teachers and others without warning them; 2) who of the 575 creditors alleging abuse were assaulted over the years; and 3) what church assets, including insurance coverage, can and should be made available to pay the victim-creditors. Two ancillary federal actions are pending: 1) whether insurance coverage discovered during the bankruptcy can be ordered for victim payment even though a prior state court decision denied such overall coverage; and 2) whether cemetery trust monies of over a half a

nothing in the short term has been or can possibly be held up as an adequate or universal response.

Structural changes to requiring the identification and prevention of the ordination of abusers have been limited and sporadic.<sup>51</sup> Yet the lay faithful and victims continue to call for concrete expressions of structural and attitudinal changes. One concrete expression of an affirmative change, to gain the laity's confidence and regain credibility, is papal amendment to the very canons the Church uses to discern who shall receive and retain orders.<sup>52</sup> Indeed when Pope John Paul II promulgated the revised Code of Canon Law, the "bones" of the Catholic apostolic constitution, he stated that its updating "derives from one and the same intention, the renewal of Christian Living."<sup>53</sup> The extension of that same spirit of renewal requires today that the canonical discipline state, not imply, the Church's rejection and abhorrence of sexual abuse offenders in holy orders.

---

billion dollars were fraudulently transferred in 2008 and therefore available for creditors. The civil cases are complicated by canon law overlay, interplay and comity, and vice versa. The victims' demand for the long-sought after release of archdiocesan records and archived or "secret" priest files curiously is being litigated through the bankruptcy action. On July 1, 2013 the victims achieved the public web-based release of 6,000 pages of file documents that detail the bishops mishandling of allegations and priests; the release has torn off the scabs of some of the scandal's healing wounds and has renewed parishioners' outrage while reviving shocking headlines. These records involve 42 offenders; records of another 100 potential and confirmed offenders continue to be pursued. The legal debates have cost the Archdiocese thousands of hours of time and millions of dollars of costs, e.g. \$9 million in attorney fees alone to February 2013. The spiritual costs include a depletion of people in the pews and of contributions in the coffers, as well as a power struggle between the archdiocese and victim-creditors to claim the moral high ground. Hundreds of persons, employees, organizations and corporation are creditors, besides the victims. The non-victim creditors' interests are sidelined while the archdiocese seeks to dismiss more than 400 of 575 sex abuse claims pursuant to legal strategies not attempted by other dioceses in similar bankruptcies. The bankruptcy judge has allowed six of the claims to be used as "test cases" to determine the legal standards to use to address the other 394 pending motions to dismiss. Pending state legislation to amend the civil statute of limitations for victim claims, retrospectively, further complicates the core federal cases.

<sup>51</sup> See, e.g., *John Jay Report* (2011) regarding psychological testing and screening of men applying for seminary study. See, National Conference of Catholic Bishops, *Program of Priestly Formation*, 1993, no. 513. See, *Charter* at Article 17.

<sup>52</sup> CIC-1983, Canons 1041 and 1042; CCOC Canons 762 and 764.

<sup>53</sup> CIC-1983 at p. xi. Promulgation of the New Code of Canon Law, Apostolic Constitution. John Paul II writes "Our thoughts turn back to this same date in 1959, when our predecessor, John XXIII of happy memory, first publicly announced his personal decision to reform the current body of canonical laws which had been promulgated on the feast of Pentecost 1917."

#### IV. Identification of Relevant Canons to Amend

##### A. The Code of Canon Law

The Code of Canon law is the Church's fundamental legislative and judicial document.<sup>54</sup> It is rooted in the law of the Hebrew and Christian testaments and

“looks towards the achievement of order in the ecclesial society, such that while attributing a primacy to love, grace and the charismas, it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it.”<sup>55</sup>

The Code consists of seven Books, which are codified into consecutively numbered canons and with subsections consisting of Parts, Sections, Articles, Titles and Chapters. The Code begins with the “Apostolic Constitution” by John Paul II which is the promulgation of the new Code of Canon Law and the Code ends with a glossary; in between the two sections are 1752 canons. The Code identifies all aspects of the governance and authority of the Church. It applies to the whole of the Latin Church.<sup>56</sup>

John Paul II affirmed that

a Code of Canon Law is absolutely necessary for the Church. Since the Church is established in the form of a social and visible unit, it needs rules, so that its hierarchical and organic structure may be visible; that its exercise of the functions divinely entrusted to it, particularly of sacred power and of the administration of the sacraments, is properly ordered; that the mutual relationships of Christ's faithful are reconciled in justice based on charity, with the rights of each safeguarded and defined; and lastly, that the common initiatives which are undertaken so that Christian life may be ever more perfectly carried out, are supported, strengthened and promoted

---

<sup>54</sup> See, footnote six, *supra*. The original Code of Canon Law was promulgated in 1917. John Paul II promulgated the revised version in 1983 after years of study by ecclesial bodies. The revised version replaced the 1917 version in its entirety. CIC-1983, Canon 6 §1 at p. 2. Book I: General Norms. Canon 1 of the CCOC states that the CCOC applies to the 21 churches constituting the Eastern Rite Church, as promulgated by John Paul II.

<sup>55</sup> *Id.* at p. xiii. Promulgation of the New Code of Canon Law Apostolic Constitution.

<sup>56</sup> *Id.* at p. 2 Book I: General Norms ,Canon 1 The Canons of this Code concern only the Latin Church.

by canonical laws.<sup>57</sup>

**B. Canons Related to Impediments and Irregularities That Prevent Receiving or Retaining Orders.**

The Code includes a number of canons related to the circumstances under which a man cannot receive and/or retain orders, and the obligations and authority of others with regard to the circumstances under which they cannot administer or retain a man in orders, respectively. The Code provisions are distinguished as “impediments”<sup>58</sup> and “irregularities.”<sup>59</sup>

---

<sup>57</sup> *Id.* at p. xiv. Promulgation of the New Code of Canon Law Apostolic Constitution.

<sup>58</sup> *Id.* at p. 186. Book IV, The Sanctifying Office of the Church, Title VI: Orders, Chapter II: Those To Be Ordained, Article 3 Impediments of the Church, Canon 1042 . The following are simply impeded from receiving orders:

1. a man who has a wife, unless he is lawfully destined for the permanent Diaconate;
2. one who exercises an office or administration forbidden to clerics, in accordance with Canon 285 and 286, of which he must render an account; the impediment binds until such time as, having relinquished the office and administration and rendered the account, he has been freed;
3. a neophyte, unless, in the judgment of the Ordinary, he has been sufficiently tested.

The Code of Canons of the Eastern Catholic Churches Art. II 2 Impediments from Receiving or Exercising Sacred Orders, Canon 762- §1 merges two CIC impediments and six CIC irregularities, creating eight CCOC impediments. The impediment found in CIC Canon 1042 §1 (“impeded from receiving orders: 1. A man who has a wife”) is not included in the CCOC. Instead marriage as a preclusion from receiving holy orders is included at CCOC Canon 759. The CCOC uses vocabulary nearly identical to the CIC in its identification of impediments. However, CCOC Canon 759 §2 draws a distinction not included in the CIC. It states that “The acts which are mentioned in 1, nn. 2-6 do not produce impediments unless they were serious and external sins perpetrated after baptism.” Those “acts” in notes 2-6 are identical to “irregularities” found in CIC. Canon 763 addresses those who are impeded from exercising sacred orders.

<sup>59</sup> *Id.* at p. 185. Canon 1041. The following persons are irregular for the reception of orders:

1. one who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged incapable of being able to fulfill the ministry;
2. one who has committed the offence of apostasy, heresy or schism;
3. one who has attempted marriage, even a civil marriage, either while himself prevented from entering marriage whether by an existing marriage bond or by a sacred order or by a public and perpetual vow of chastity, or with a woman who is validly married or is obliged by the same vow;
4. one who has committed willful homicide, or one who has actually procured an abortion, and all who have positively cooperated;
5. one who has gravely and maliciously mutilated himself or another, or who has attempted suicide;

A Christian is obligated to inform the ordinary of a diocese or of a religious order or a pastor about whether a person who is to be ordained is under an impediment.<sup>60</sup>

If impediments or irregularities are discovered or occur after orders are received than the canons provide that the ordained can revert to a status that prohibits the exercise of orders because they are irregular or impeded.

#### 1) Impediments and Irregularities - Before the Reception of Orders

Persons with “impediments” may be barred from the reception of orders unless the “simple” impediment may be removed. There are three categories of persons with impediments. They are 1) married men except deacons; 2) persons holding an office that shares civil power, that administers goods of lay people, that involve rendering of secular accounts and/or that practice commerce or trade; and 3) converts of less than one year’s time (neophytes)<sup>61</sup>

Persons with irregularities are permanently barred from the reception of orders. There are six categories of persons with irregularities. They are a person: 1) with mental health diagnoses that are judged to render one incapable of fulfilling ministry duties; 2) who has committed an apostasy, heresy or schism; 3) who has attempted marriage when he or his intended wife could not enter a valid marriage; 4) who has committed willful homicide or who has actually procured an abortion or who has positively cooperated in either or both; 5)

---

6. one who has carried out an act of order which is reserved to those in the order of the episcopate or priesthood, while himself either not possessing that order or being barred from its exercise by some canonical penalty, declared or imposed.

<sup>60</sup> *Id.* Canon 1043 at p. 186. If the Christian faithful are aware of impediments to sacred orders, they are obliged to reveal them to the ordinary or pastor before the ordination. CCOC, Canon 771-§2. All the Christian faithful are bound by the obligation to reveal impediments, if they know of any, to the eparchial bishop or the pastor before the sacred ordination.

<sup>61</sup> *Id.* Canon 1042 at p. 186.

who has gravely mutilated himself, another or attempted suicide; and 6) who has performed an act reserved to those in the episcopate or priesthood or while unauthorized.<sup>62</sup>

## 2) Impediments and Irregularities - After the Reception of Orders

The designation of “impeded” after orders are received is conferred on a person: 1) who received orders illegitimately because an impediment precluded him from receiving orders, and/or 2) with mental health diagnoses that are judged to render one incapable of fulfilling ministry duties.<sup>63</sup>

The designation of “irregular” after orders are received is conferred on a cleric who 1) received orders illegitimately because an irregularity precluded him from receiving orders; 2) *publically* commits an apostasy, heresy or schism; 3) has attempted marriage; 4) has committed willful homicide or who has actually procured an abortion or who has positively cooperated in either or both; 5) has gravely mutilated himself, another or attempted suicide; and/or 6) has performed an act reserved to those in the episcopate or priesthood or while unauthorized to do so.<sup>64</sup>

---

<sup>62</sup> *Id.* Canon 1041 at p. 185.

*Id.* at p. 186. Canon 1046 Irregularities and impediments are multiplied if they arise from different causes. They are not multiplied, however, if they arise from the repetition of the same cause unless it is a question of the irregularity for voluntary homicide or for having procured a completed abortion. *See*, CCOC Canon 766.

*Id.* at p. 186. Canon 1045 Ignorance of the irregularities and impediments does not exempt from them. *See*, CCOC Canon 765.

<sup>63</sup> *Id.* Canon 1044 §2 at p. 186. The following are impeded from the exercise of orders:

1. a person who has received orders illegitimately while prevented by an impediment from receiving them;
2. a person who is affected by amentia or some other psychic illness mentioned in Canon 1041, n. 1 until the ordinary, after consulting an expert, permits the exercise of the order.

<sup>64</sup> *Id.* Canon 1044 §1 at p. 186. The following are irregular for the exercise of orders received:

1. a person who has received orders illegitimately while affected by an irregularity to receive them;
2. a person who has committed a delict mentioned in Canon 1041, n. 2, if the delict is public;

### C. Dispensation of Impediments and Irregularities to Receive or Retain Orders

The canons also proscribe whether an irregularity and/or impediment can be indulged in order for a man to receive or retain orders. “Dispensation” is reserved to the Holy See himself from all irregularities if brought to a judicial forum.<sup>65</sup> Dispensation also is reserved to the Holy See if the impediments or irregularities involve 1) *publically* committing an apostasy, heresy or schism; 2) *publically* attempting a marriage when one cannot validly enter a marriage; 3) committing willful homicide or actually procuring an abortion or positively cooperating in either or both; and 4) marrying or being married unless in the permanent diaconate.<sup>66</sup> (emphasis added) For the dispensation of irregularities or impediments not reserved to the Pope, an ordinary is permitted by the Code to provide dispensation.<sup>67</sup>

Whether afforded by the Pope or an ordinary or whether pursued pre-ordination or post-

---

3. a person who has committed a delict mentioned in Canon 1041, nn. 3, 4, 5, 6.

<sup>65</sup> *Id.* Canon 1047 §1 at p. 149 Title VI: Orders, Chapter II: Those to Be Ordained. Dispensation from all irregularities is reserved to the Apostolic See alone if the fact on which they are based has been brought to the judicial forum.

<sup>66</sup> *Id.* Canon 1047 §2. Dispensation from the following irregularities and impediments to receive orders is also reserved to the Apostolic See:

1. irregularities from the public delicts mentioned in Canon 1041, nn. 2 and 3;
2. the irregularity from the delict mentioned in Canon 1041, n. 4, whether public or occult;
3. the impediment mentioned in Canon 1042, n. 1.

*Id.* Canon 1047 §3. Dispensation in public cases from the irregularities from exercising an order received mentioned in Canon 1041, n. 3, and even in occult cases from the irregularities mentioned in Canon 1041, n. 4 is also reserved to the Apostolic See.

<sup>67</sup> *Id.* Canon 1047 §4. An ordinary is able to dispense from irregularities and impediments not reserved to the Holy See. The Eastern Churches provide for a similar process and authority for dispensation for impediments pursuant to CCOC Canon 767. The applicant must petition regarding dispensation pursuant to CCOC Canon 768- §1. Reserved for the Holy See are impediments in a judicial forum; one who has committed the offense of apostasy, heresy or schism; one who attempted marriage, even a civil marriage, either while himself prevented from entering marriage whether by an existing marriage bond or by a sacred order or by a public and perpetual vow of chastity, or with a woman who is validly married or is obliged by the same vow; and one who has committed willful homicide, or one who has actually procured an abortion, and all who have positively cooperated.

ordination, a man must petition regarding dispensation indicating specifically all the irregularities and impediments one is under, including frequency if arisen from different occasions.<sup>68</sup> Petitions can be denied, and therefore ordination or retention of orders can be denied or removed, respectively.

D. Canons That Should Be Amended To Preclude Sexual Abuse Offenders from Receiving or Retaining Orders

A person who sexually abuses another can be categorized as engaging in a delict, a depravity, and/or a mental or personality disorder. Arguably if one reads the canons broadly, the current Code could be interpreted to preclude a sexually abusive man from retaining orders.<sup>69</sup> However, by so specifically identifying who is irregular and who is impeded the current Code eclipses a broader reading of the canons. Even if a vicar were inclined to read the Code more broadly, no guidance exists either to preclude from ordination the unsuitable sexual abuse offenders who apply for ordination or to prevent the unsophisticated episcopal review of seminary applications from abusers.

---

<sup>68</sup> *Id.* Canon 1046 Irregularities and impediments are multiplied if they arise from different causes. They are not multiplied, however, if they arise from the repetition of the same cause unless it is a question of the irregularity for voluntary homicide or for having procured a completed abortion.

*Id.* at p. 187 Canon 1048 In more urgent occult cases, if the ordinary or, when it concerns the irregularities mentioned in Canon 1041, nn. 3 and 4, the Penitentiary cannot be approached and if there is imminent danger of grave harm or infamy, a person impeded by an irregularity from exercising an order can exercise it, but without prejudice to the obligation which remains of making recourse as soon as possible to the ordinary or the Penitentiary, omitting the name and through a confessor.

*Id.* Canon 1049 §1. Petitions to obtain a dispensation from irregularities or impediments must indicate all the irregularities and impediments. Nevertheless, a general dispensation is valid even for those omitted in good faith, except for the irregularities mentioned in Canon 1041, n. 4, and for others brought to the judicial forum, but not for those omitted in bad faith.

§2. If it is a question of the irregularity from voluntary homicide or a procured abortion, the number of the delicts also must be mentioned for the validity of the dispensation.

§3. A general dispensation from irregularities and impediments to receive orders is valid for all the orders. See, CCOC Canon 767 §3.

<sup>69</sup> For example, CIC-1983 Canon 1395, § 2.

The credibility of the Church's expressed contrition --for training, harboring, and protecting sexually abusive ordained men-- requires that it specifically declare that it will not receive nor retain such men in holy orders.

Additionally, the canon law inclusion of sexual abuse as an irregularity serves three other purposes. First, it obligates Christian faithful to reveal a seminarian's sexually abusive acts to the ordinary or pastor before an abuser's ordination.<sup>70</sup> Secondly, it can serve to deter sexually abusive men from attempting to enter seminary.<sup>71</sup> Thirdly it can redirect ordinaries from minimizing such acts or proclivities when a sexually abusive man presents himself for ordination as "cured" or shriven.<sup>72</sup>

Canon 1041 is the logical canon to amend.<sup>73</sup> The canon provides for six irregularities which could have been manifested in the past or could be made manifest in the future.<sup>74</sup> This canon can be bi-furcated as 1) certain states that preclude one from orders (i.e., persons with mental health

---

<sup>70</sup> *Id.* at p. 186 Canon 1043 If the Christian faithful are aware of impediments to sacred orders, they are obliged to reveal them to the ordinary or pastor before the ordination. See, CCOC Canon 771-§2. However, amendments to canon law or interpretations of this canon could contemplate whether sexually abused victims could be exempt from directly exercising this obligation or allowed to report anonymously when exercising the obligations of this canon.

<sup>71</sup> See, Doyle, *Sex, Priests and Secret Codes*. See, Terry and John Jay College Research Team, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests*.

<sup>72</sup> *Id.*

<sup>73</sup> The question then becomes whether sexually abusing another should be considered an irregularity or an impediment. The contemporary understanding of the pathology that leads to sexual abuse directs the answer: it should be considered an irregularity. The lack of a universal appreciation of the victimization and power imbalance between an ordained person and the person he abused direct the answer: it should be considered an irregularity.

<sup>74</sup> They are: persons with mental health diagnoses; persons who have committed an apostasy, heresy or schism; persons who have attempted marriage to enter an invalid marriage; persons who have committed willful homicide or who has actually procured an abortion or who has positively cooperated in either or both; persons who have gravely mutilated himself, another or attempted suicide; and /or persons who have performed an act reserved to those in the episcopate or priesthood or while excommunicated.

diagnoses or who have entered invalid marriages) and 2) certain acts against others that preclude one from orders (i.e., homicide, procuring an abortion, grave mutilation). It is in the “acts” category of Canon 1041 irregularities for reception to orders that “sexually abusive acts” should be included. While the U.S. *Charter* addresses clergy abuse of children and youth,<sup>75</sup> the Code need not and should not be limited to excluding from the clerical state any known or admitted sex offender, regardless of the age of his victim.<sup>76</sup>

#### E. Dispensation by Pope Exclusively

By identifying sexual abuse as an irregularity in Canon 1041, the dispensation to receive orders shall be limited to the Pope. The gravity of the sexual offender’s acts is similar to the gravity of irregularities delineated in canon 1041. The Church cannot continue to leave to the local ordinary the determination that sexual abuse is “waivable; or continue to misunderstand sexual abuse as a merely forgivable act or as anything less than depraved and therefore preclusive to ordination.”<sup>77</sup> The history of bishops’ failures to appropriately protect children and other vulnerable persons from abusive priests and the current failure of some bishops to apprehend the depravity of such abusive

---

<sup>75</sup> See, *Charter* which states that sexual abuse includes contacts or interactions between an individual under the age of eighteen and an adult, when the minor is being used as an object of sexual gratification for the adult. A minor is considered abused whether or not this activity involves explicit force, genital or physical contact, or discernible harmful outcome, and regardless of who is the initiator of the contact.

<sup>76</sup> See, *Crimen Sollicitationis*, Instruction on the Manner of Proceeding in Cases of Solicitation, *The Decree Crimen Sollicitationis*, The Vatican Press, 16 Mar. 1962. Canon 1395, Sec. 2 was updated to state that the delict should have punishment considered for “force or threats or publically or with a minor below the age of 16” with trials held in the dioceses and appealed to Rome. However, the *Crimen* and Canon 1395 also include various sections addressing prohibited sexual acts against others besides those against children.

<sup>77</sup> Significant and influential clerics continue to publically sympathize with abusers. *E.g.*, In an extended, planned interview with the National Catholic Register, Father Benedict Groeschel, who founded the Franciscan Friars of the Renewal, hosts a weekly show on the Catholic television network EWTN, and holds a PhD. in psychology from Columbia University, asserted that boys sometimes seduce priests and that cleric abusers should not go to jail on a first offense. <http://abcnews.go.com/US/catholic-priest-rev-benedict-groeschel-defends-child-sex/story?id=17114892> (last visited July 30, 2013).

priests directs codification of sexual abuse acts as an irregularity for which the Pope alone has the authority of dispensation in a judicial forum.

#### IV. Precedent Justifies Amending the Code of Canon Law: the Church's Positive Law.

The Code of Canon Law is a relatively recent phenomenon. It took nearly two millennia to formally codify the legislative and juridical “bones” of church law in 1917.<sup>78</sup> The Code offered to and expected from the universal Church a uniformity of social and church justice among and between the episcopal fiefdoms located in countries with a host of secular forms of governments, increasing religious diversity in democracies and decreasing religious expression in emerging communist countries. For the next forty years, popes and other Vatican offices issued official documents and interpretations of Church law for religious and laity to follow.

In 1959 John XXIII announced his intention to revise the Code.<sup>79</sup> However such work did not begin until after the seminal and foundational work of the Vatican Ecumenical Council (1962-1965) ended.<sup>80</sup> The revision of the Code – conducted by the bishops, the Episcopal Conferences, the various offices of the Vatican and the Pope-- continued during the Pontificates of Paul VI, John Paul I and John Paul II. A final product, including Code renumbering, was presented to the Pope John Paul II who promulgated the Code on January 23, 1987, stating

---

<sup>78</sup> Code of Canons, *Codex Iuris Canonici* (1917), *Providentissima Mater Ecclesia*, Pope Benedict XV, 27 May 1917.

<sup>79</sup> *Id.* at p. xi, Promulgation of the New Code of Canon Law Apostolic Constitution. John Paul II writes “Our thoughts turn back to this same date in 1959, when our predecessor, John XXIII of happy memory, first publicly announced his personal decision to reform the current body of canonical laws which had been promulgated on the feast of Pentecost 1917.”

<sup>80</sup> *Id.* at p. xii. John Paul II writes “Turning our thoughts today to the beginning of that long journey, that is to 25 January 1959 and to John XXIII himself, the originator of the review of the Code, we must acknowledge that this Code drew its origin from one and the same intention, namely the renewal of Christian life. All the work of the (Vatican II) Council drew its norms and its shape principally from that same intention.”

it is very much to be hoped that the new canonical legislation will be an effective instrument by the help of which the Church will be able to perfect itself in the spirit of the Second Vatican Council, and show itself ever more equal to carry out its salsify role in the world.<sup>81</sup>

The history of convening a deliberative body for church law codification and revision suggests that amending the Code of Canon Law requires a deliberative body. However, both Pope John Paul II and Pope Benedict XVI revised the Code using Apostolic Letters without convening a deliberative body.

- A. Pope John Paul II's Apostolic Letter *Motu Proprio Ad Tuendam Fidem* by which certain norms are inserted into the Code of Canon Law and into the Code of Canons of the Eastern Churches.<sup>82</sup>

With seeming great urgency Pope John Paul II's Apostolic Letter orders

“established and ratified, and ....prescribe[d] that .... insertions be introduced into the universal legislation of the Catholic Church that is, into the *Code of Canon Law* and into the *Code of Canons of the Eastern Churches*.”

He provides his rationale for the edicts before detailing the amendments:

TO PROTECT THE FAITH of the Catholic Church against errors arising from certain members of the Christian faithful, especially from among those dedicated to the various disciplines of sacred theology, we, whose principal duty is to confirm the brethren in the faith (Elk 22:32), consider it absolutely necessary to add to the existing texts of the Code of Canon Law and the Code of Canons of the Eastern Churches, new norms which expressly impose the obligation of upholding truths proposed in a definitive way by the Magisterium of the Church, and which also establish related canonical sanctions.<sup>83</sup>

John Paul II does not state that he has consulted with any deliberative body or confidant before issuing his Letter. He outlines the inconsistencies he sees among and between the Codes and

---

<sup>81</sup> *Id.* at xv.

<sup>82</sup> Pope John Paul II, “Apostolic Letter *Motu Proprio Ad Tuendam Fidem*, by which certain norms are inserted into the Code of Canon Law and into the Code of Canons of the Eastern Churches,” Vatican City, Vatican, May 18, 1998  
[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/motu\\_proprio/documents/hf\\_jp-ii\\_motu-proprio\\_30061998\\_ad-tuendam-fidem\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/motu_proprio/documents/hf_jp-ii_motu-proprio_30061998_ad-tuendam-fidem_en.html).

<sup>83</sup> *Id.*

contents of the *Profession of Faith* as developed by the Congregation for the Doctrine of the Faith.

John Paul II identifies that paragraph two of each of the creeds states

“ *I also firmly accept and hold each and everything definitively proposed by the Church regarding teaching on faith and morals,*’ [but it] has no corresponding canon in the Codes of the Catholic Church.”<sup>84</sup>

The remainder of the letter orders specific changes to sections of both Codes.<sup>85</sup>

B. Pope Benedict XVI’s Apostolic Letter “*Motu Proprio*” *Omnium In Mentem* Of The Supreme Pontiff Benedict XVI On Several Amendments To The Code Of Canon Law.

Pope Benedict XVI affirmed that his amendments to the Code by papal edict have “the force of law.”<sup>86</sup> The pope states that he chose to change the Code after consultation with the Congregation

---

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* The pope added a second paragraph to Canon 750 of the CIC-1983 to now read: Canon 750 § 2. Furthermore, each and everything set forth definitively by the Magisterium of the Church regarding teaching on faith and morals must be firmly accepted and held; namely, those things required for the holy keeping and faithful exposition of the deposit of faith; therefore, anyone who rejects propositions which are to be held definitively sets himself against the teaching of the Catholic Church.

To be complete, he also amended Canon 1371, adding n. 2 to make an appropriate sanction reference to Canon 750 §2 to now read: Canon 1371 – The following are to be punished with a just penalty: 2° a person who in any other way does not obey the lawful command or prohibition of the Apostolic See or the Ordinary or Superior and, after being warned, persists in disobedience.

The pope also added a second paragraph to CCOC Canon 598 to now read: Canon 598 §2. Furthermore, each and everything set forth definitively by the Magisterium of the Church regarding teaching on faith and morals must be firmly accepted and held; namely, those things required for the holy keeping and faithful exposition of the deposit of faith; therefore, anyone who rejects propositions which are to be held definitively sets himself against the teaching of the Catholic Church.

To be complete he also amended Canon 1436 §2 to make an appropriate sanction reference to CCOC Canon 750 §2 to now read: Canon 1436 §2. ... (W)hoever obstinately rejects a teaching that the Roman Pontiff or the College of Bishops, exercising the authentic Magisterium, have set forth to be held definitively, or who affirms what they have condemned as erroneous, and does not retract after having been legitimately warned, is to be punished with an appropriate penalty.

<sup>86</sup> Pope Benedict XVI, “Apostolic Letter ‘*Motu Proprio*’ *Omnium In Mentem* Of The Supreme Pontiff Benedict XVI On Several Amendments To The Code Of Canon Law,” Vatican City, Vatican, October 26, 2009.

for the Doctrine of the Faith, the Pontifical Council for Legislative Texts, as well as those of the Bishops' Conferences and the Cardinals of Holy Roman Church in charge of the Dicasteries of the Roman Curia. He does not clearly state that he was obligated to so consult. However he does state clearly his rationale for amending the Code:

[t]he norms ought to reflect, on the one hand, the unity between theological doctrine and canonical legislation, and, on the other, the pastoral usefulness of the prescriptions whereby ecclesiastical ordinances are directed to the good of souls. The more effectively to safeguard this necessary doctrinal unity and pastoral purpose, the Church's supreme authority, after careful deliberation, decides, from time to time, to make suitable changes or to introduce additions to the canonical norms.<sup>87</sup>

The Apostolic Letters amend several canons related to two general topics: the sacrament of Holy Orders and the canonical form of marriage.<sup>88</sup> Even the subject matter of the amendments as proposed

---

[http://www.vatican.va/holy\\_father/benedict\\_xvi/apost\\_letters/documents/hf\\_ben-xvi\\_apl\\_20091026\\_codex-iuris-canonici\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/apost_letters/documents/hf_ben-xvi_apl_20091026_codex-iuris-canonici_en.html).

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* After providing minimal context or rationale for doing so, Pope Benedict changed the language of five separate Code sections.

Art. 1. The text of Canon 1008 of the Code of Canon Law is modified so that hereafter it will read:

"By divine institution, some of the Christian faithful are marked with an indelible character and constituted as sacred ministers by the sacrament of holy orders. They are thus consecrated and deputed so that, each according to his own grade, they may serve the People of God by a new and specific title";

Art 2. Henceforth Canon 1009 of the Code of Canon Law will have three paragraphs. In the first and the second of these, the text of the canon presently in force are to be retained, whereas the new text of the third paragraph is to be worded so that Canon 1009 § 3 will read:

"Those who are constituted in the order of the episcopate or the presbyterate receive the mission and capacity to act in the person of Christ the Head, whereas deacons are empowered to serve the People of God in the ministries of the liturgy, the word and charity".

Art. 3. The text of Canon 1086 § 1 of the Code of Canon Law is modified as follows:

"A marriage between two persons, one of whom was baptized in the Catholic Church or received into it, and the other of whom is not baptized, is invalid".

Art. 4. The text of Canon 1117 of the Code of Canon Law is modified as follows:

"The form prescribed above must be observed if at least one of the parties contracting the marriage was baptized in the Catholic Church or received into it, without prejudice to the provisions of Canon 1127 § 2".

Art. 5. The text of Canon 1124 of the Code of Canon Law is modified as follows:

"Marriage between two baptized persons, one of whom was baptized in the Catholic Church or received into it after baptism, and the other a member of a Church or ecclesial community not in full communion with the Catholic Church, cannot be celebrated without the express permission of the competent authority".

herein—holy orders—already has been revised canonically by Benedict XVI’s papal decree rather than by a deliberative body.

## V. Conclusion

Within the most recent twenty five years, two popes have amended the Code of Canon Law to advance the Church’s positive law and to console the Faithful. Despite the scandalous acts of priests sexually abusing minors followed by the scandalous acts of bishops abdicating accountability for their complicity in the abuse and pastoral care of their dioceses, popes have not seen the Code of Canon Law as a means for needed remedies in the prevention of future abuse and of the means to rid itself of the ordained engaged in past abuse. Many of the faithful remaining in the pews have witnessed a Catholic diaspora, fueled in part by the failure of the Vatican to demonstrate concrete ecclesial changes or to compel accountability of bishops regarding clergy sexual abuse. Sporadic revelations of devastating failures in the bishopric’s leadership continue; anemic apologies without action ring hollow; diversion of financial and human resources have depleted parishes’ coffers and parishioners’ patience.

The Vatican and only the Vatican can explicitly state via amendment of the Code of Canon Law that sexually abusive men will not receive ordination—and thereby acceptance, harboring or sanctuary-- in the Church. Papal amendment of Canons 1041 and 1047 §§2 and 3 is a means “to protect the faith of the Catholic Church against errors arising from certain members of the Christian faithful”<sup>89</sup> and to “more effectively ... safeguard this necessary doctrinal unity [between theological doctrine and canonical legislation] and pastoral purpose [of ecclesiastical ordinances].”<sup>90</sup>

The credibility of the hierarchy of the Roman Catholic Church and the credibility of all of its values and virtues require that its own legislation and juridical processes explicitly preclude and

---

<sup>89</sup> As John Paul II intended per his statements in Apostolic Letter *Motu Proprio Ad Tuendam Fidem*.

<sup>90</sup> As Benedict XVI achieved via his statements in Apostolic Letter *Motu Proprio Omnium In Mentem*.

prohibit a person from receiving orders, and an ordained person from continuing in orders, if he has perpetrated sexual abuse against a vulnerable person.