

The Quest for Truth in Sexual Abuse Cases:

A Moral and Legal Duty

In the middle of World War Two, on 1 October 1942, the Servant of God Pope Pius XII gave a prophetic address to the Roman Rota, concerning the moral certitude necessary for judgment, in which he warned: “truth is the law of justice. The world has need of that truth which is justice, and of that justice which is truth” (cf. W. H. Woestman, *Papal Allocutions to the Roman Rota. 1939 – 2002* [Ottawa 2002] ((henceforth: W)). p. 21). I am convinced that our response to the sad phenomenon of sexual abuse of minors should always be determined by an honest quest for the truth and for justice. Indeed, the Church has need of that truth which is justice, and of that justice which is truth.

My paper takes the cue from an Address that Blessed John Paul II gave to the Roman Rota on 28 January 1994 in which he discussed this very fundamental issue of truth as the basis of justice (W pp. 227 – 230). In his address Blessed John Paul II presented a number of teachings which I will apply to cases of sexual abuse of minors by clerics under five points or principles.

[1. Justice is at times called Truth]

The **first principle** I would like to point out is that **“Love for the truth must be expressed in love for justice and in the resulting commitment to establishing truth in relations within human society”** (W p. 228).

«St. Thomas pointed out: “At times justice is called truth” (*quandoque iustitia veritas vocatur: Summa theologiæ*, II-II, q. 58, a. 4, ad 1). He saw the reason for this in the requirement that justice be practiced in accordance with right reason, i. e., according to truth. Hence it is legitimate to speak of the *splendor of justice* (*splendor iustitiæ*) and of the *splendor of the law* (*splendor legis*) as well: indeed the task of every legal system is to serve the truth, “the only solid foundation which can support personal ... and social life” (John Paul II, Address to the Roman Rota, 18 January 1990: W p. 211)».

«It is only right, then, that *human laws* should *aspire to reflect in themselves the splendor of truth*. Obviously, the same can be said of their concrete application, which is also entrusted to human agents» (W pp. 227 – 228).

What do these teachings tell us in our specific context?

Firstly they emphasize the need to establish the facts with a spirit of fairness in every case. This is the task assigned to the delegate in a preliminary investigation and this must be the basis of every judgment, of every decision, in every case.

In order to help establish and recognize the truth of what exactly happened in a particular case, Canon Law has developed special norms for investigating crime, hearing the victim and the witnesses, confronting the accused, ensuring that there is a modicum of what in legal jargon is called the “*contradictorium*” (the possibility for each party to present their case and respond to the opponent’s arguments). Canon Law also safeguards the right of the accused to defend himself, his right to know the reasons for the decision and his right for review of a decision which concerns him. The victim has the right not only to present his or her complaint but also the right to act as the injured party (*pars laesa*) in a penal judicial trial.

Secondly, the teaching of Blessed John Paul II that truth is at the basis of justice explains why a deadly culture of silence or “*omertà*” is in itself wrong and unjust. Other enemies of the truth are the deliberate denial of known facts and the misplaced concern that the good name of the institution should somehow enjoy absolute priority to the detriment of legitimate disclosure of crime.

[2. Justice as a participation in the truth evokes a response from the individual’s conscience]

The **second principle** enounced by Blessed John Paul II in 1994 was that **justice based on truth evokes a response from the individual’s conscience:**

«As a participation in truth, *justice too has its own splendor* that can evoke a free response in the subject—one not merely external but arising from the depths of one’s conscience» (W p. 227).

«[T]he legislator and those who administer the law will be concerned, respectively, to create and apply norms based on the truth of what is necessary in social and personal relations. Legitimate authority, then, must be involved in and promote the proper formation of the personal conscience (see *Veritatis splendor*, no. 75), because, if well formed, conscience naturally assents to truth and perceives within itself a principle of obedience compelling it to conform to what the law commands» (W p. 230).

The acknowledgment and recognition of the full truth of the matter in all its sorrowful effects and consequences is at the source of true healing for both victim and perpetrator.

Experts in psychology are better equipped to explain how and why the perpetrator develops coping mechanisms, whether primitive or complex, like denial, sublimation, minimizing and projection. No coping mechanism can substitute the liberating effect on the cleric’s conscience

and on his whole being as a person and as a minister of God derived from the full, humble, honest and contrite acknowledgment of his sin, his crime, his responsibility for the harm he has caused to the victims, to the Church, to society.

Experts in psychology are also better equipped to explain the radical need of the victim to be heard attentively, to be understood and believed, to be treated with dignity as he or she plods on the tiresome journey of recovery and healing. We need the input of experts in order to be able to evaluate the so called “recovered memories” concerning events that allegedly happened decades previously. No less challenging is the limited phenomenon of some victims who refuse to move on in life, who seem to have indentified “self” simply with “having been victims”. These fellow brothers and sisters of ours merit our special attention and care.

In his Address to the Irish Bishops on 28 October 2006, Pope Benedict XVI gave a succinct and compelling account of the response which the Catholic Church needed to give to the problem: «In your continuing efforts to deal effectively with this problem, it is important to establish the truth of what happened in the past, to take whatever steps are necessary to prevent it from occurring again, to ensure that the principles of justice are fully respected and, above all, to bring healing to the victims and to all those affected by these egregious crimes».

In his Letter to the Catholics of Ireland (19 March 2010), Pope Benedict XVI also addressed perpetrators of abuse: «I urge you to examine your conscience, take responsibility for the sins you have committed, and humbly express your sorrow. Sincere repentance opens the door to God’s forgiveness and the grace of true amendment. By offering prayers and penances for those you have wronged, you should seek to atone personally for your actions. Christ’s redeeming sacrifice has the power to forgive even the gravest of sins, and to bring forth good from even the most terrible evil. At the same time, God’s justice summons us to give an account of our actions and to conceal nothing. Openly acknowledge your guilt, submit yourselves to the demands of justice, but do not despair of God’s mercy».

[3. Respect of the Truth generates confidence in the Rule of Law: Disrespect for the Truth generates distrust and suspicion]

The **third principle** is that **respect of the truth generates confidence in the rule of law, whereas disrespect for the truth generates distrust and suspicion:**

«If those who administer the law strive to maintain an attitude of complete openness to the demands of truth, with rigorous respect for procedural norms, the faithful will remain convinced that ecclesial society is living under the governance of law; that ecclesial rights are protected by the law; that in the final analysis, the law is an opportunity for a loving response to God's will» (W p. 229).

«On the other hand, taking advantage [of the administration] of justice to serve personal interests or pastoral practices—however sincere—that are not based on truth, will result in creating social and ecclesial situations of distrust and suspicion, in which the faithful will be tempted to see merely a struggle of competing interests and not a common effort to live in accordance with law and justice» (W p. 228).

It was Blessed John Paul II himself who promulgated the *Motu Proprio Sacramentorum sanctitatis tutela* on 30 April 2001. This was a special law, by which sexual abuse of a minor under 18 years of age committed by a cleric was included in the list of more grave crimes (*delicta graviora*) reserved to the Congregation for the Doctrine of the Faith (CDF). Prescription or the statute of limitations for this delict was fixed at 10 years beginning at the completion of the 18th year of the victim. The norm of the *motu proprio* applied both to Latin and Eastern clerics, as well as for diocesan and religious clergy. In 2003, Cardinal Ratzinger, then Prefect of the CDF, obtained from Blessed John Paul II the concession of some special faculties in order to provide greater flexibility in conducting penal processes for these more grave delicts. These measures included the use of the administrative penal process, and, in more serious cases, a request for dismissal from the clerical state *ex officio*. These faculties have now been incorporated in the revision of the *motu proprio* approved by the Holy Father, Benedict XVI, on 21 May 2010. In the new norms prescription, in the case of abuse of minors, is set for 20 years calculated from the completion of the 18th year of age of the victim. In individual cases, the CDF is able to derogate from prescription when indicated. The canonical delict of acquisition, possession or distribution of pedo-pornography is also specified in this revised *motu proprio* (cf MP SST art. 6 §1, n. 2). As from May 2010, a person who habitually lacks the use of reason is to be considered equivalent to a minor for purposes of the canonical delict of sexual abuse of a minor (cf MP SST art. 6, §1, n.1).

Under this special law the bishop or religious superior who receives a credible allegation of sexual abuse of a minor committed by a cleric should conduct an investigation on the matter and then inform the Congregation for the Doctrine of the Faith. The law was changed in 2010 in such a way as to authorize the bishop or the superior to impose restrictions on the ministry of the accused at the earliest stages of the proceedings. Provision is made by the praxis of the Congregation so that the accused is heard before the case is sent to Rome. He should be advised that there are a number of options concerning procedure. In fact the Congregation can opt for a judicial penal trial or for an administrative penal process. In very grave cases the accused himself is encouraged to request to be returned to the lay state by decree of the Holy Father. In cases where the accused has been convicted by a civil tribunal the Congregation may refer the case directly to the Holy Father for dismissal from the clerical state *ex officio*.

The law is clear. But, as Blessed John Paul II rightly remarked in 1994, the faithful need to be convinced that ecclesial society is living under the governance of law. The law may indeed be clear. But this is not enough for peace and order in the community. Our people need to know that the law is being applied.

[4. The protection of rights is implemented within the context of the concern for the common good]

The **fourth principle** states that **the protection of rights is implemented within the context of the concern for the common good**

«Ecclesiastical law is concerned with protecting the rights of each person in the framework of the duty of all towards the common good. In this regard, the *Catechism of the Catholic Church* notes: “. . . justice towards men disposes one to respect the rights of every person and to establish in human relations the harmony that promotes equity toward individuals and the common good” (no. 1807)» (W p. 228).

«*Truth, however, is not always easy*: its affirmation is sometimes quite demanding. Nevertheless, it must always be respected in human communication and human relations. *The same applies for justice and the law*: they do not always appear easy either. The legislator—universal or local—does not have an easy task. Since the law must look to the common good — “*omnis lex ad bonum commune ordinatur*” (*Summa theologiæ*, I-II, q. 90, a. 2) — it is quite understandable for the legislator to ask even heavy sacrifices of individuals, if necessary. The latter, for their part, will respond with the free, generous consent of those who are able to acknowledge the rights of others in addition to their own. A strong response will follow, one sustained by a spirit of sincere openness to the demands of the common good, with awareness of the consequent advantages, in the end, for the individual himself» (W p. 229).

A careful and attentive reading of the recent magisterium of the Church on the subject of sexual abuse of minors by clerics will show that safety of children is a paramount concern for the Church and an integral part of its concept of the “common good”.

In 2002, Pope John Paul II stated: “there is no place in the priesthood and religious life for those who would harm the young” (n. 3, *Address to the American Cardinals*, 23 April 2002). These words call to mind the specific responsibility of Bishops and Major Superiors and all those responsible for the formation of future priests and religious.

As I have already said elsewhere, “institutions concerned with the misconduct of their Agents are faced with the dilemma of what future role, if any, they should give to perpetrators of abuse. The welfare of children and of the community must be the paramount criterion in decisions concerning such personnel. Perpetrators who are not able to observe set boundaries forfeit their right to roles of stewardship in the community” (C. J. Scicluna, *Address to the International Forum “The World’s Children and the Abuse of their Rights”*, Senate of the Republic of Italy, 3 November 2011).

Another corollary of this “paramount criterion” is the duty to cooperate with state authorities in our response to child abuse. Sexual abuse of minors is not just a canonical delict or a breach of a Code of Conduct internal to an institution, whether it be religious or other. It is also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries, nevertheless it is important to cooperate with such authorities within their responsibilities. The CDF Circular Letter (3 May 2011) further specifies: «without prejudice to the sacramental internal forum [the seal of confession], the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures».

[5. Respect for procedural laws avoids unfortunate distortions of the “pastoral” nature of Church law]

The **fifth principle** makes the point that **respect for procedural laws avoids unfortunate distortions of the “pastoral” nature of Church law.**

Blessed John Paul II had this to say in 1994: «You are well aware of the temptation to lighten the heavy demands of observing the law in the name of a mistaken idea of compassion and mercy. In this regard, it must be firmly said that if it is a question of a transgression that concerns the individual alone, one need only refer to the injunction: “Go your way, and from now on do not sin again” (*Jn* 8:11). But if the rights of others are at stake, mercy cannot be shown or received without addressing the obligations that correspond to these rights» (W p. 229).

«One is also duty-bound to be on guard against the temptation to exploit the proofs and procedural norms in order to achieve what is perhaps a “practical” goal, which might perhaps be considered “pastoral,” but is to the detriment of truth and justice.

In his 1990 address to the Roman Rota, Pope John Paul II had already referred to a “distortion” in the conception of the pastoral nature of Church law: it “lies (He said) in attributing pastoral importance and intent only to those aspects of moderation and humanness in the law which are linked immediately with canonical equity (*æquitas canonica*)—that is, holding that only the exceptions to the law, the potential non-recourse to canonical procedures and sanctions, and the streamlining of judicial formalities have any real pastoral relevance” (January 18, 1990: W p. 210). However, the Pope warned that in this way one easily forgets that “justice and law in the strict sense—and consequently general norms, proceedings, sanctions and other typical juridical expressions, should they become necessary—are required in the Church for the good of souls and are therefore intrinsically pastoral” (*Ibid.*: W p. 210).

Blessed John Paul II repeated the following phrase from 1990 in 1994: «It is indeed true that resolving practical cases is not always easy. But charity or mercy ... “cannot put aside the demands of truth”(Ibid.: W p. 211)» (W p. 229 – 230).

No strategy for the prevention of child abuse will ever work without commitment and accountability. Pope Benedict XVI addressed the Bishops of Ireland in no uncertain terms in 2010: «Only decisive action carried out with complete honesty and transparency will restore the respect and good will of the Irish people towards the Church to which we have consecrated our lives. This must arise, first and foremost, from your own self-examination, inner purification and spiritual renewal. The Irish people rightly expect you to be men of God, to be holy, to live simply, to pursue personal conversion daily. For them, in the words of Saint Augustine, you are a bishop; yet with them you are called to be a follower of Christ (cf. *Sermon* 340, 1). I therefore exhort you to renew your sense of accountability before God, to grow in solidarity with your people and to deepen your pastoral concern for all the members of your flock. In particular, I ask you to be attentive to the spiritual and moral lives of each one of your priests. Set them an example by your own lives, be close to them, listen to their concerns, offer them encouragement at this difficult time and stir up the flame of their love for Christ and their commitment to the service of their brothers and sisters. The lay faithful, too, should be encouraged to play their proper part in the life of the Church. See that they are formed in such a way that they can offer an articulate and convincing account of the Gospel in the midst of modern society (cf. *1 Pet* 3:15) and cooperate more fully in the Church’s life and mission. This in turn will help you once again become credible leaders and witnesses to the redeeming truth of Christ » (Letter to the Catholics of Ireland, 19 March 2010, § 11).

[Conclusion]

The words of our Holy Father Benedict XVI remind us of what the Lord says in the Gospel of John: “the truth will set you free” (Jn 8, 32). The honest quest for truth and justice is the best response we can provide for the sad phenomenon of the sexual abuse of minors by clerics.

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