



Nate's Mission: Proposed Zero Tolerance Law and Analysis

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POSITION:

A universal law of the Catholic Church prohibiting sexual violence and its concealment that mandates the removal, including laicization of clergy, of all Church agents found guilty of these acts is the single most significant step Church leaders can take to address the persistence of these acts within the Church and ensure there is Zero Tolerance for them. Such a law and the canonical process it entails permanently removes those responsible for the system that enables the ongoing sexual abuse of children and adults, offers current victims a means for justice under Church law, and demonstrates the firm commitment to a post-abuse Church. It is a legal means to identify and remove those parts of the Church's organization that facilitate and conceal sexual violence. Our proposed law challenges assumptions that have failed to understand and address abuse in the Catholic Church and commits agents of the Church to abide by an occupational code in keeping with the public trust necessitated by their ministries.

Our position demonstrates the history and scale of this problem, offers our understanding of the organizational structure and culture that contributes to it, and proposes a universal law as a means to ensure that all abuse is addressed and prevented within the Church.

Our analysis emphasizes the following points:

- No rule, canon, or law in the history of the Catholic Church has prevented the the Church from creating the longest-lasting and most widespread campaign of sexual violence in the world.

- Clergy sexual abuse is a unique form of sexual violence, manufactured by the Catholic Church and reproduced and intergenerationally transmitted through centuries of Church history.
- Even in countries with laws that prohibit and punish sexual violence, clergy sexual abuse and its institutional concealment have managed to persist and continue into the present time.
- Because clergy sexual abuse is internally generated, the solution to the problem must also be internally generated in the form of a binding and universal prohibition against sexual violence.
- A Zero Tolerance law for the Catholic Church must eliminate any reference to the sixth commandment, instead prohibiting the commission of a sexual act against another person's will.
- All people have criminal and civil rights, but not the right to practice an occupation. A person's license and title should be revoked when they violate the occupational code.
- Because the priesthood is a "guardian occupation" that operates within the public space and requires public trust, a cleric who violates public trust must be ejected from the occupation, or they compromise the work of the entire occupation on behalf of the public good.
- When an occupation fails to eject a person who has egregiously violated the occupational code, the entire occupation is responsible because it cannot be trusted to regulate its members.
- Our Zero Tolerance law provides a proper occupational code that leaves no room for abuse and its institutional concealment with no statute of limitations.

THE SCALE OF ABUSE AND THE URGENCY OF A ZERO TOLERANCE LAW

For close to four decades, reports of sexual abuse by clerics and its institutional concealment by the Catholic hierarchy have been the subject of headlines around the world. From Canada, the United States, Chile, Ireland, and Australasia to Poland, the Congo, Spain, Argentina, the Philippines, and the Pacific, a global torrent of scandals, court cases, and state investigations continue to expand our understanding of the scope and magnitude of the Catholic clergy abuse catastrophe. Sexual abuse by priests, religious, and lay agents of the Church has been reported across all varieties of dioceses, religious orders, and ecclesial communities.

The laws of any given society can give us insight into the priorities and values of that society. When abusive clerics and the institutions that enabled them are prosecuted, it demonstrates that the behavior will not be tolerated. When state governments adopt more stringent child protection laws, they signal they are serious about preventing the recurrence of abuse.

There is a long history of monastic rules, canons, and laws dating back to the fourth century¹ pertaining to the sex lives of Catholic clerics. Through millenia, these laws, the punishments

¹ Doyle, Thomas P., Richard A.W. Sipe, and Patrick J. Wall. *Sex, Priests, and Secret Codes: The Catholic Church's 2000-Year Paper Trail of Sexual Abuse*. Los Angeles, CA: Volt Press, 2006.

they commanded, and the enforcement of them varied widely. What they tell us is that the Catholic Church has aimed to take measures, some quite extreme, to enforce clerical celibacy. These rules pertained to sexual contact between clerics and men, women, concubines, clerical wives, animals, and children, generally with the harshest punishments assigned to the acts that had held the greatest potential for scandal.² But none of these laws have prevented the catastrophe that exists today: the most widespread and longest-lasting campaign of sexual violence in the world.

Despite insistence by the hierarchy, including the Pope who has stated that he is responsible for instituting a “zero tolerance” approach³, it is clear that not only do abuse, cover-up, and institutional backlash against affected persons continue, the abusive culture that provides the basis for these crimes continues to be intergenerationally reproduced and transmitted by the Catholic hierarchy.

WHY DOES SEXUAL VIOLENCE PERSIST IN THE CATHOLIC CHURCH?

In spite of continuous public exposure on this issue, there is still limited understanding of the conditions that have led to the alarmingly high percentage of clerics who have sexually abused children. Common sense might argue that the best course of action for the Vatican to avoid further scandal and move beyond the issue would be to turn documents and evidence over to state governments and justice officials, own up to its role in allowing the catastrophe to continue, pay reparations to survivors, and institute more stringent globally binding prevention measures. But for the most part, the Church has not done this. And contrary to what one might expect, the result of this choice has not been a political weakening of the institution, but rather an exponential growth in Catholic power and influence, especially among the right-wing.

Although the hierarchy has characterized clergy sexual abuse largely as a problem of the past, making great efforts to highlight the reforms and represent the Catholic church in its present form as “safe,” recent polling in the United States, for example, demonstrates that a large percentage of the laity does not accept this claim. A 2021 poll by the Center for Applied Research in the Apostolate (CARA) at Georgetown University found that 59% of Catholics report paying “a great deal” or “quite a bit” of attention to the issue of clergy sexual abuse of

² Elliott, Dyan. *The Corrupter of Boys: Sodomy, Scandal, and the Medieval Clergy*. University of Pennsylvania Press, 2020.

³ Kottasová, Ivana. “Pope Declares ‘Zero Tolerance’ for Catholic Church Abuse, Saying He Takes Personal Responsibility for Ending It.” *CNN*, Cable News Network, 5 Sept. 2022, edition.cnn.com/2022/09/04/europe/pope-francis-interview-ukraine-abuse-intl/index.html. Accessed 31 May 2024.

minors.⁴ A Pew Research poll from 2019 found that 69% of Catholics believe that recent reports of sexual abuse “reflect ongoing problems that are still happening.”

Despite the hierarchy’s continuous attempts to minimize any narrative that suggests that the problems that have led to widespread sexual abuse have not been resolved, the actions they have taken in response to public revelations of abuse seem to indicate that the threat posed by survivor activism, statewide investigations, criminal and civil lawsuits, and investigative journalism is critical and ongoing. Across the world, dioceses are employing armies of lobbyists, consultants, and attorneys to obstruct statewide investigations into clergy abuse and stop the passage of legislation that would make the institution more vulnerable to civil penalties for its role in facilitating the abuse. The intensity and ferocity of this coordinated campaign suggest that there is something integral to the Church’s functioning - some precious and irreplaceable “thing” - that they seem to believe would be lost if its full truth were exposed to the public.

Although civil lawsuits, whistleblower documents, and survivors’ testimonies have expanded the public understanding of what this “thing” is, the full extent of it, the most complete picture, the truth in its stark and obscene form, is still somewhat of a mystery. What is unique about the Catholic Church that it has produced and reproduced a clerical environment that has enabled systematic sexual violence across centuries of its documented existence? How have vast human rights abuses targeting children around the world been permitted to continue unimpeded in societies governed by laws that mandate punishment for these crimes? And why is it that after 40 years of public exposure, it seems as though the answers to these questions are, at best, incomplete?

THE LIBERAL-CONSERVATIVE BINARY: A FALSE LINE OF DIVISION

Since the introduction of the abuse catastrophe into the mainstream media, two dominant positions have emerged across political-theological ideologies that attempt to account for this unresolved mystery. The conservative position sees modernization and the rejection of traditional sexual norms in secular culture as the cause for the breaking of clerical celibacy in the form of child sexual abuse. For instance, Cardinal Raymond Burke articulated this position in his response to the Pennsylvania Grand Jury report and revelations of abuse allegations made against Cardinal Theodore McCarrick:

“I believe that there needs to be an open recognition that we have a very grave problem of a homosexual culture in the Church, especially among the clergy and the hierarchy, that needs to be addressed honestly and efficaciously...I think it has been considerably aggravated by the

⁴ Pew Research Center. *Americans See Catholic Clergy Sex Abuse as an Ongoing Problem*. June 11, 2019. <https://www.pewresearch.org/religion/2019/06/11/americans-see-catholic-clergy-sex-abuse-as-an-ongoing-problem/>.

anti-life culture in which we live, namely the contraceptive culture that separates the sexual act from the conjugal union.”⁵

This position that blames the sexual revolution and the Second Vatican Council for a dissolution of traditional sexual norms, leading to an explosion of abuse in the decades that followed, ignores sixteen centuries of documented evidence of efforts by church leadership to conceal sexual abuse of children from the public. While knowledge of sexual violation of children by Catholic clerics was not a part of the global public consciousness prior to the Second Vatican Council, records demonstrate a continuity of awareness by the hierarchy of the risk that clerical pederasty posed to the political and social power of the Church.

Significantly, this right-wing Catholic position equates homosexuality with pedophilia. The position, rooted in ancient Roman thinking,⁶ has seen a recent violent resurgence in far-right social movements that have labeled LGBTQ+ people as “groomers” who pose a danger to children through their very existence. The conflation of homosexuality and pedophilia has been repeatedly refuted by medical and scientific experts.⁷ This position only contributes to heightened stigma around gay men while ignoring every non-male victim of clergy abuse. The right-wing position is a defense of clerical identity which, on paper, is male, heterosexual, and celibate.

Conversely, the liberal Catholic sees the resistance to modernization and the repression of healthy sexual desire as the cause for widespread sexual abuse of children among the clergy. The liberal Catholic position is that in order to curb the abuse crisis, the Church must institute reforms surrounding exclusion from the priesthood on the basis of gender and sexuality, specifically, diversifying the clergy by allowing married men and women to be ordained. There are implicit assumptions within this position, namely that married Catholic men are straight men, and that straight men are less likely to abuse children. This is, in fact, not so far removed from the conservative position.

The second assumption is that there is a non-abusive quality attached to the female gender, and that by inducting women into the clergy, the abusive qualities of male clergy can be moderated. While women less frequently participate in the direct acts of sexual abuse, women have historically played important roles in grooming and trafficking victims, as well as covering

⁵ McKenna, Thomas, and Raymond Leo Burke. Cardinal Burke Addresses the Clergy Scandal. Other. *Catholic Action for Faith and Family*, April 16, 2018. https://www.catholicaction.org/cardinal_burke_addresses_the_clergy_scandal.

⁶ Doyle, Thomas P., Richard A.W. Sipe, and Patrick J. Wall. *Sex, Priests, and Secret Codes: The Catholic Church's 2000-Year Paper Trail of Sexual Abuse*. Los Angeles, CA: Volt Press, 2006.

⁷ Herek, Gregory M. “Facts About Homosexuality and Child Molestation,” 2018. https://lgbpsychology.org/html/facts_molestation.html.

up abuse. There is also a significant percentage of female religious that have sexually abused both children and adults.

Much of the public conversation surrounding the clergy abuse crisis focuses on the tension on each side of a false line of division. Despite the ideological positioning, there has been no discernable difference between liberal and conservative Catholic bishops in the hierarchical management of the abuse crisis. This is demonstrated by millions of pages of documents and evidence that have been made public through litigation and court-ordered public release across decades of survivor activism around the world. These lines of division have not altered the basic dynamic. There is no evidence that the stated ideological and theological position of any bishop has had any impact on the frequency of abuse or managerial patterns and practices of transferring abusive clergy and concealing their crimes from the community. The root of the abuse and its repetition must be sought outside of this false line of division. The cause must be internal to the clerical system and shared across members of the clergy from a range of ideological, theological, and political positions.

There must then instead be something unique within the Catholic clerical structure that accounts for a high percentage of its clerics, relative to other similar occupations, committing acts of sexual abuse against children. The answer must be sought within two different conceptual levels. One is the written law of the Catholic Church which entails its priestly codes and ordinances surrounding ordination, the role of the priest in Catholic governance, and the exercise of Church-based power. The other, while indirectly linked to the first, is more difficult to discern, as it has to do with a group formation that is organized around the breaking of the written law. One need not break the law to consent to the group formation, however, one must allow the clerical management of the broken law to operate unimpeded so that it becomes part of the regular functioning of the system. Clerical pedophilia is not a phenomenon that occurs as the result of an external perversion of the Catholic hierarchy,⁸ but rather, a distinct form of sexual violence that is produced, manufactured, and reproduced within the clerical system.

This is evidenced by history of abuses that were committed and concealed through the collaboration of bishops and other Church leaders who permitted abusers to remain in active ministry. The history of abuse in the Church reveals organized attempts by networks of Church officials to perpetuate, ignore, or conceal abuse. While these affiliations persist in the Catholic hierarchy, sexual violence will continue to be reproduced within the clerical system.

Therefore, the solution must come from inside the clerical system, and the first step must be to establish as the center of the priestly code, an absolute prohibition of sexual violence by clergy and its institutional concealment by the hierarchy.

⁸ *It is not that some individuals with a predilection for sexual abuse gravitate towards the priesthood, but that there is something about the training, education and culture of the priesthood itself that creates this particular type of offender. The John Jay Report cites that 57% of clerical offenders surveyed were over the age of 35 at the first instance of alleged abuse, a significant difference from the patterns of pedophiles in the general population. See John Jay College of Criminal Justice, The Nature and Scope of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States 1950-2002.*

There are various centuries-old, deeply held assumptions generated by the clerical system that must be challenged and eliminated in the construction of the new law. Here we discuss them:

THE SIXTH COMMANDMENT

Under current canon law, the only way to classify an act of sexual violence against another person, committed by a member of the clergy, is as a violation of the sixth commandment⁹, which reads, “You shall not commit adultery.” Several assumptions are implicit in this classification.

When an act of abuse is only identified by law as sexual activity outside of marriage, it implies that the act is consented to by the victim as a co-participant in the act. It does not recognize that a cleric can commit a sexual act against the will of another person. It does not account for the inherent institutional political and social power granted to the cleric.

As Ashwini Tambe argues “Coercion...should be defined by more than just whether someone says yes or no. It hinges on whether one has power over that other person such that they might interpret a request as force - or even as a threat. If [they face] negative consequences for saying no to a sexual advance, then that sexual advance is coercive.”¹⁰

The victim is classified as a sinner under canon law. In the same way that adultery is a violation against the institution of marriage, a sexual act by a cleric is a violation against the institution of the priesthood. As long as there is no language that recognizes sexual violence as a crime against the affected person(s), victims of sexual violence by clergy do not exist in canon law. Our Zero Tolerance law eliminates any reference to the sixth commandment, instead focusing on the act of abuse against a victim.

OCCUPATIONAL CODE

When a cleric commits an act of sexual violence, they violates three different types of governing laws/codes. The first and second, criminal and civil codes, are secular laws that vary based on the state in which the act was committed. The third is an occupational code that pertains to Catholic clerics. That is canon law. Under the first two types of codes, the cleric is a citizen of a particular state. Under the third code, the cleric is a member of an occupation. Outside of Vatican State territory, an offending cleric is subject to the criminal and civil laws of the state. However, the Catholic Church is responsible for regulating its occupational code for priests. An occupational code does not grant a person any particular “right” in a criminal or civil manner, however, it authorizes a person to practice their occupation within the ethical code of that

⁹ *Code of Canon Law - Book VI - Penal Sanctions in the Church (Cann. 1364-1399): Part II. Particular Offences and the Penalties Established for Them*, www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib6-cann1364-1399_en.html#OFFENCES_AGAINST_HUMAN_LIFE,_DIGNITY_AND_FREEDOM. Accessed 31 May 2024.

¹⁰ Tambe, Ashwini. 2018. “Reckoning with the Silences of #MeToo.” *Feminist Studies* 44, no. 1:197-203.

occupation and to present themselves as a member in good standing of that occupation. In other words, occupationally, ordination to the priesthood, grants a person an occupational title and license.

All persons have civil and criminal rights. Not all people have the right to practice a particular occupation. If it has been determined that an individual has violated the occupational code, their license and title can be revoked.

In all societies, occupations are classified under two different types depending on their functioning. The first has traditionally been designated as a “guardian” occupation; the second is a commercial occupation.¹¹ Both occupations are needed for the functioning of a society, but their functions require two different sets of ethical principles. Guardian occupations include members of law enforcement, government officials, judges, doctors, and teachers; commercial occupations include business, marketing, and any other occupation whose purpose is for profit or trade.

Guardian occupations operate within the public space, require public trust, and, in most cases, take a public oath,¹² where commercial occupations are privately driven. When a member of a guardian occupation violates the public trust in an egregious matter, such as the commission of sexual violence through the use of their occupation, they must be ejected from that occupation, or it compromises the work of the entire occupation on behalf of society.

This is why when it is discovered that a member of the guardian occupation has violated the public trust, without being ejected from that occupation, the entire occupation is responsible because the occupation cannot be trusted to regulate its members.¹³ This is why there must be Zero Tolerance for any form of abuse or its institutional concealment among the clergy. Our Zero Tolerance law provides a proper occupational code that recognizes there must be no room for abuse or cover-up in the priesthood, with no statute of limitations.

Catholic bishops and the Pope are responsible for regulating the occupation of the priesthood, therefore, if they have failed to do so by knowingly allowing a cleric who has committed an act of sexual abuse to remain in public ministry, they must also be removed from the occupation.

Our Zero Tolerance law expands on existing canonical prohibitions against abuse and its concealment, in particular by insisting that removal from the occupation (in the case of ordained ministers, laicization) is a necessary consequence for those found guilty. It does not suffice to simply sequester offenders by removing them from public ministry. Sexual violence or its

¹¹ Jacobs, Jane. *Systems of Survival: A Dialogue on the Moral Foundations of Commerce and Politics*. CNIB, 2008.

¹² Agamben, Giorgio, and Adam Kotsko. *The Sacrament of Language: An Archaeology of the Oath*. Stanford University Press, 2011.

¹³ Jacobs, Jane. *Dark Age Ahead*. Random House, 2004.

concealment violates the occupational code in such a permanent way that the agent must no longer be permitted to operate within the Church in any capacity at all. They should no longer benefit from being housed or materially assisted by the Church, living in ecclesial communities, or associated with any of the positions, titles, honorifics, and status that accompany their occupation.

Following the current form of canon law, some offenders have been disciplined in an incomplete manner which is not in keeping with Zero Tolerance. They have been housed in Church living facilities or communities; they have continued to keep their title as ordained ministers or religious brothers and sisters; they have continued to be financially supported by the Church, or have continued their association with other clergy or religious. The removal from public ministry on behalf of the Church but not from the occupation itself and its benefits is a half-measure that does disservice to all parties and complicates all efforts to ensure abuse no longer occurs.

As the current canonical laws stand, laicization is the maximum penalty for clergy who abuse. Our Zero Tolerance law standardizes this as the mandated penalty not only for abusers but those who illicitly concealed them. In both instances, there is a serious breach of the occupational code required for ordained ministers that cannot be repaired and necessitates their dismissal from the clerical state.

UNIVERSALITY

Zero Tolerance is the articulation within Church law and practice of the universal prohibition against sexual violence or harm. As a universal law it applies to everyone. It supersedes all particulars or differences between people, cultures, nations. Regardless of the criminal or civil codes in the country in which the abuse is committed, as an occupational code, Zero Tolerance mandates that the abuser and the persons responsible for concealing and enabling their crimes must be removed permanently from the occupation.

In 2002, Pope John Paul II said “There is no place in the priesthood and religious life for those who would harm the young.”¹⁴ Yet since that time, the Catholic Church has still to make dismissal from the priesthood the universal penalty for the abuse of children. The fact remains that there *is* a place in the priesthood and religious life for those who would harm the young, even those found guilty by civil and canonical courts.

Individual bishops’ conferences, dioceses, and religious communities have their own policies or rules of life which have a range of approaches to abuse and its concealment, in addition to current Vatican policies. In the United States, the *Dallas Charter for the Protection of Children and Young People* committed to removing from ministry any clergy found guilty after even a single instance of abuse. But currently, only the Dicastery for the Doctrine of the Faith has the

¹⁴ “Address of His Holiness John Paul II to the Cardinals of the United States.” 23 Apr. 2002, Vatican City, Vatican City.

jurisdiction for the permanent dismissal from the clerical state. This further emphasizes the need for a law that is universally binding.

Our law ensures that Zero Tolerance is not merely an aspiration, or adequate when existing policies fail to remove those who enacted and concealed abuse.

A Zero Tolerance law is a negative prohibition that enforces a limit or restraint on Catholic clergy not to commit, enable, or encourage sexual violence. But the function of this law is not simply negative. It is also positive. It will uphold and enforce, for the first time in Catholic Church history, the positive conditions to remake the Catholic priesthood into a trusted public occupation working on behalf of the common good.

Freedom is usually understood in negative terms as freedom *from* limits or constraints, oppressive norms, and restrictive or prejudicial laws. But limits and constraints are also what allow humanity to exercise freedom *for* innovation, social equality, and political change. The negative limits imposed by Zero Tolerance on the priesthood, inclusive of the hierarchy and the Pope, is a universal affirmation by the Church to the positive principles and practices of sexual justice for its survivors and an abuse-free Catholic ministry for its clergy.