

## **Catholic Clergy Sexual Abuse Meets the Civil Law**

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### **I. Overview of the Problem**

In 1984, the Roman Catholic Church began to experience the complex and highly embarrassing problem of clergy sexual misconduct in the United States. Within months of the first public case emerging in Lafayette, Louisiana, it was clear that this problem was not geographically isolated, nor a minuscule exception.<sup>1</sup> Instances of clergy sexual misconduct surfaced with increasing notoriety. Bishops, the leaders of the United States Catholic dioceses, were caught off guard. They were unsure of how to deal with specific cases, and appeared defensive when trying to control an expanding and uncontrollable problem. The secular press and electronic media exposed the Lafayette case, and within a year the priest-perpetrator, Gilbert Gauthé, pled guilty to thirty-nine counts of sexual battery, and was sentenced to twenty years in prison.<sup>2</sup> In addition, the bishop and the ecclesiastical jurisdiction that had enabled Gauthé's predatory behavior were subsequently subjected to a civil suit for monetary damages.<sup>3</sup>

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<sup>1</sup>State v. Gauthé, 731 So.2d 273 (1998). Reports of alleged clergy abuse of minors surfaced in the Catholic dioceses of Lake Charles, LA; Boise, ID; Washington D.C.; and Arlington, VA. Also, seven other priests had been reported in the Lafayette diocese shortly after Gauthé had commenced. See **Jason Berry, Lead Us Not Into Temptation** 143 (Doubleday 1992).

<sup>2</sup>See Berry, supra note 1, at 124. Gauthé's plea took place on October 14, 1985. Id.

<sup>3</sup>See generally Gastal v. Hannan, 459 So.2d 526 (1984); see also Berry, supra note 1, at 147-64.

The sexual abuse of young boys by Catholic clerics has served as a catalyst for intensive inquiry into two basic aspects of church life: the sexual abuse of persons by members of a clergy obliged to celibacy, and the response by the authority structure of the Catholic Church. The scrutiny by the secular media has been relentless, and continues to increase in its fearlessness and intensity.<sup>4</sup> This public exposure has strengthened the resolve of vast numbers of victims to disclose their abuse. After first approaching Church authorities for assistance and redress, most victims have found the Church's internal system unwilling or unable to provide the relief sought. Further, in many cases, the official Church reaction amounted to a re-victimization, whereby the victims were treated as an enemy force.<sup>5</sup> This has resulted in the second, but equally vital area of scrutiny – the use of the American civil court system as a means by which victims of clergy sexual abuse seek redress.

Although there are isolated instances of criminal and civil court actions prior to 1984, the Lafayette case appears to have opened a wide gate.<sup>6</sup> Since that time there have been several hundred criminal prosecutions of Catholic clerics throughout the United States.<sup>7</sup> Charges have varied from child endangerment to alienation of affection and aggravated rape.<sup>8</sup> Sentences have varied from probation, to multiple life terms.<sup>9</sup> It is estimated that perhaps 250-300 Catholic

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<sup>4</sup>See Philip Jenkins, **Introduction to Pedophiles and Priests: Anatomy of a Contemporary Crisis** 62 (Oxford Univ. Press 1996); see generally **The Investigative Staff of the Boston Globe, Betrayal: The Crisis in the Catholic Church** ix-263, (Little, Brown and Co. 2002) [hereinafter *Betrayal*]. Both of these books describe the media attention to the issue.

<sup>5</sup> Information obtained by the authors in the course of approximately 1500 interviews with clergy sex abuse victims.

<sup>6</sup> See Jenkins, *supra* note 4, at 36.

<sup>7</sup> Estimates are compiled from private reports by attorneys and from press reports. The Catholic Church has not published any official lists of civil trials, criminal trials, or monetary costs connected with the clergy sex abuse phenomenon.

<sup>8</sup> There is no official list of clergy-abusers who have been charged, tried and sentenced. Information about the variety of charges is based on various media accounts and the authors' experience.

<sup>9</sup> Edward Pratt, *Ex-Priest's Past Surprises Official at Texas Agency*, **Baton Rouge Advocate**, Aug. 6, 2002, at IB (stating that Gilbert Gauthe received a sentence of 20 years); Jay Lindsey, *Ex-Priest Handed Nine to Ten Years*;

clerics have received sentences through the criminal justice system.<sup>10</sup>

Since 1984, there have been about 3000 civil cases related to clergy sex abuse throughout the United States.<sup>11</sup> The vast majority of these cases have ended in settlement. There have been about twelve trials, all of which were high profile.<sup>12</sup> The twists and turns of the civil discovery process have been the most important factors in exposing the extent and nature of clergy sexual abuse. This has also been the most damaging force for the image of Church leadership, because it opened up the Church to public scrutiny on a new and invasive level.

The problem of clergy sexual abuse has been most visible in the United States, but it is by no means confined to this country. Exposure of widespread sexual abuse and consequent hierarchical mishandling has occurred in Canada, Australia, New Zealand, Ireland, Scotland, Wales, Great Britain, Mexico, Spain, Poland, Austria, Germany, France, Argentina, and Hong Kong.<sup>13</sup> The denunciation of clerical abusers, their notoriety, and subsequent legal actions against them depends on several factors: the willingness of victims to go public, the cooperation of the secular media in exposing the problem, and the prosecution of suits by the civil legal system. Beneath these factors is an over-arching dimension that is perhaps the single most important issue: the place of the Catholic Church in the civic culture.

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*Maximum Sentence Ordered in Molestation of Young Boy*, **San Antonio Express News**, Feb. 22, 2002, at A6 (stating that Rudy Kos received a life sentence); Joseph Reaves, *TV Plea: Bishops, Step Down Donahue Hears Mother's Case Against O'Brien*, **Ariz. Republic**, Nov. 27, 2002, at B5 (stating that Mark Lehman received a sentence of 8-10 years); Robin Washington, *Leominster Priest Jailed for Raping Girls in '80s*, **Boston Herald**, Oct. 2, 2003, at 24 (stating that Robert Kelley received a sentence of 5-7 years; Associated Press, *As Release Nears, Ex-Priest Wants 'Just Once Chance'*, **Providence Journal**, July 15, 2002, at A2 (stating that James Porter received a sentence of 20 years).

<sup>10</sup> Statistics have been obtained from news media accounts and from plaintiff attorneys.

<sup>11</sup> The National Conference of Catholic Bishops claims it does not keep statistics on the criminal or civil suits. Estimates are obtained from unofficial consultations with attorneys and from press reports.

<sup>12</sup> Estimates of the actual number of criminal and civil cases are obtained through information provided by plaintiff attorneys. The institutional Catholic Church has maintained no uniform case following.

<sup>13</sup> **Catholics for a Free Choice, The Holy See and the Convention on the Rights of the Child: A Shadow Report** 23-28 (2002).

Countries with a cultural and legal tradition of strict separation of church and State have been in the forefront in exposing the problems and pursuing justice through the civil court system. Ireland, however, long considered to be one of the most “Catholic” countries in the world, has also shown remarkable aggression in calling church leadership to account for its handling of the many abuse cases among the Irish clergy.<sup>14</sup>

The patterns of clergy sexual abuse have not been uniform. The problem has been inaccurately identified primarily one of “pedophilia,” yet actual pedophile cases account for about ten to twenty percent of known cases.<sup>15</sup> Most cases have involved adolescent boys, with a small minority involving adolescent girls.<sup>16</sup> Clinically this type of inappropriate sexual attraction is known as “ephebophilia.”<sup>17</sup> Most of the focus has been on male victims, which is in line with data showing that most cases in the United States have involved clergy sexual contact with young adolescent boys.<sup>18</sup> In the past year, victims and their supporters have also launched an aggressive campaign to highlight the high incidence of sexual abuse of adult women by Catholic clergy.<sup>19</sup> The majority of abuse cases in the United States have involved parish-based clerics and

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<sup>14</sup>**A.W. Richard Sipe**, *Clergy Abuse in Ireland, in Wolves within the Fold* 133 (Anson Shupe ed., Rutgers Univ. Press 1998).

<sup>15</sup>**A.W. Richard Sipe**, *Sex, Priests and Power* 27 (Brunner/Mazel 1995) [hereinafter **Sex, Priests and Power**]. Sipe estimates that one-third of priest abusers are true pedophiles. **Bless Me father For I Have Sinned** 2 (Thomas Plante ed., Praeger 1999). This publication reports that 80-90% of priests have abused adolescent boys.

<sup>16</sup>See **Plante**, *supra* note 15, at 2. Contrary to public perception, the vast majority of priests who sexually abuse children abuse post-pubescent adolescent boys rather than latency-aged children or young girls. *Id.*

<sup>17</sup>See *Interview with Dr. Frederick S. Berlin, M.D., Ph.D* **The U.S. Conference of Catholic Bishops**, available at <http://www.usccb.org/comm/kit6.htm> (September 8, 1997).

<sup>18</sup>**Plante**, *supra* note 15, at 2.

<sup>19</sup>See Elizabeth Mehren, *Women File Suit Against Diocese Courts*, **L.A. Times**, July 2, 2002, at A6; see also Eileen McNamara, *Raping Girls Less Evil?*, **Boston Globe**, June 16, 2002, at B1; Sacha Pfeiffer, *Women Face Stigma of Clergy Abuse Many Are Reluctant to Come Forward* **Boston Globe**, Dec. 27, 2002, at A1; Sam Dillon, *Women tell of Priests Abusing them as Girls*, **N.Y. Times**, June 14, 2002, at A11; Marjie Lundstrom, *Female Victims often overlooked in horror stories of clergy abuse*, **Sacramento Bee**, March 21, 2002, at A3.

victims from among their congregants.<sup>20</sup> In a minority of cases, the abuse occurred in Catholic school settings.<sup>21</sup> There have also been instances of sexual abuse of seminarians (priesthood students) by clergy-faculty members.<sup>22</sup> There has also been high profile exposure of patterns of sexual and physical abuse in Church-run orphanages and industrial schools, especially in Canada, Ireland and Australia.<sup>23</sup> Although most accused perpetrators have been male clerics or religious men,<sup>24</sup> there have been isolated cases of abuse by Catholic religious women as well, usually in orphanage settings.<sup>25</sup>

The term clergy includes priests, deacons and bishops. Priests are the most numerous group of clergy members, and constitute the largest group of alleged abusers subject to civil sanction.<sup>26</sup> However, sex abuse charges have been made against bishops, archbishops and

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<sup>20</sup>See Thomas Doyle, *Roman Catholic Clericalism, Religious Duress, and Clergy Sexual Abuse*, 51 **Pastoral Psychology** 189 (2003).

<sup>21</sup> This refers to abuse which occurred in residential or boarding schools run by Catholic church affiliated religious orders. There are no comparative statistics, only the authors' combined experience.

<sup>22</sup> **Michael S. Rose, Goodbye! Good Men xi** (Aquinas Publishing 2002).

<sup>23</sup> See **Barry Coldrey, The Scheme: The Christian Brothers and Childcare in Western Australia** (1994); see also **Barry Coldrey, Religious Life Without Integrity** (2000). Christian Brother Barry Coldrey has been responsible for the uncovering of the widespread migrant children cases in Australia. He has written twenty books and numerous articles of Catholic clergy and religious sexual abuse.

<sup>24</sup>The term "religious" refers to a member of a Catholic religious order who is under vows but is not technically a cleric. These include both men and women, commonly known as "brothers," "nuns," or "sisters."

<sup>25</sup> See Mark Fischenich, *Veiled Truth*, **Mankato Free Press**, Oct. 5, 2002, at A1, A4; see also Mark Fischenich, *Former Academy Student Seeks Need to Forgive*, **Mankato Free Press**, Oct. 6, 2002, at A1, A8; *Nuns Accused In Orphanage Abuse Claim*, **ABC News Online**, available at [http://www.abc.net.au/news/2002/08/item20020829001110\\_1.htm](http://www.abc.net.au/news/2002/08/item20020829001110_1.htm), (Aug. 29, 2002); "Cruel Regime" Claims at Bristol Orphanage, **England ITV1**, available at [http://www.htvwest.com/news/01\\_04\\_april/orphanage\\_abuse.shtml](http://www.htvwest.com/news/01_04_april/orphanage_abuse.shtml) (Apr. 24, 2001); Henry McDonald, *Woman Beaten by Nuns Attacks Probe into Abuse*, **The Observer**, available at <http://observer.guardian.co.uk/international/story/0,6903,1041780,00.html> (Sept. 14, 2003). There has also been much media attention given to the so-called "Magdelene laundries" in Ireland, where young girls were kept by religious sisters. See Howard Feinstein, *Review of Unholy Orders*, **N.Y. Daily News Online**, available at <http://www.nydailynews.com/entertainment/story/104021p-94133c.html> (July 6, 2003).

<sup>26</sup> See **The Official Catholic Directory, Anno Domini 2002** 2131 (P.J. Kennedy & Sons 2002). Worldwide estimates show that there are 178 Cardinals; 4420 Bishops; 404,208 Priests; and 58,210 Religious Brothers. *Id.* In the United States there are 13 Cardinals; 373 Bishops; 46,041 Priests; 5565 Religious brothers. *Id.*

cardinals, yet none have faced civil trial.<sup>27</sup>

The Gauthé case is not the first instance of sexual malfeasance by a Catholic cleric, nor was it the first time such behavior had entered into the realm of public knowledge. It was, however, the first case to reach such notoriety in modern times. Cases involving clergy sexual abuse came to the forefront of public knowledge starting in 1984, when a large handful of cases in several United States dioceses rapidly developed into an uncontrollable social phenomenon that has profoundly impacted the Catholic Church throughout the world. Sociologists, political scientists, theologians, religious scholars, and lawyers have studied it. It has resulted in a painful scrutiny of aspects of the Catholic Church's clerical structure that had heretofore remained enshrouded in mystery, protected by a high wall of secrecy.

There is little doubt that the publicity surrounding the Lafayette case was a major catalyst for the legal and cultural explosions that have rocked the Catholic Church. This, however, was not the beginning of the problem. Sexual misconduct by clerics extends back to the earliest years of the Church.<sup>28</sup> In the modern era the controversy has centered on the manner Church authorities have handled their responses to reports of clergy sex abuse and how they have shielded this phenomena from the public eye. Prior to 1984, the general public and lay Catholic populations were almost universally unaware of clergy sexual abuse. While there were rumors and vague stories, actual media exposure of individual cases was rare. Most instances of abuse were never brought to the attention of Church authorities. When abuse was reported, victims and

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<sup>27</sup> Fourteen U.S. bishops have been publicly accused of some form of sexual abuse and have resigned since 1990. See **Sipe, *Celibacy in Crisis: A Secret World Revisited*** 238-39 (Brunner-Routledge 2003). Cardinal Hans Hermann Groer, Archbishop of Vienna, was forced to resign in 1995 and died in 2003. See *Exile for Disgraced Austrian Cardinal*, **BBC News**, available at <http://news/bbc.co.uk/1/hi/world/europ/78503.stm> (Apr. 14, 1998); see also William J. Cole, *Vienna Cardinal Accused of Pedophilia Dies*, **Worcester Telegram**, available at <http://www.telegram.com/static/crisiinthechurch/032503.html> (Mar. 25, 2003).

<sup>28</sup> See Doyle, *supra* note 20, at 189-197.

their families were generally constrained to remain silent, and to trust the Church leadership to resolve the issue. Such resolution usually amounted to an admonition to the perpetrator, and a swift transfer to another parish, or in extreme cases, another diocese.<sup>29</sup> Accused clerics were rarely sent for clinical assessment or treatment until the 1970s and 1980s,<sup>30</sup> and even then, this occurred in only a minority of cases.

Criminal prosecution was rare, because law enforcement and judicial authorities generally deferred to Church authorities to take care of matters, presumably so as not to embarrass the institutional Church. Civil cases against bishops or dioceses for monetary damages were non-existent until 1984.<sup>31</sup> Today, this protective, deferential attitude of civil officials towards the institutional Church has all but vanished in the United States.

In the past, victims thought Church officials believed them when they reported sexual misconduct. They placed complete faith in the assurances given that the abuse of clerics would be dealt with properly. However, the post-1984 generation of victims asserts that Church leadership generally disbelieves, or minimizes their claims.<sup>32</sup> Empty assurances that perpetrators would be properly dealt with, have left this generation of victims with little faith in the Church's leadership. This leadership and the Catholic Church's internal legal system, Canon Law, has proven to be consistently ineffective in satisfying aggrieved victims. This has led to widespread referrals to the civil courts for relief.

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<sup>29</sup>Laurie Goodstein & Alessandra Stanley, *As Scandal Keeps Growing, Church and its' Faithful Reel*, **N.Y. Times**, March 17, 2002, at A1. There were no known policies in place prior to 1986. Id.

<sup>30</sup>See Ellen Barry, *Priest Treatment Unfolds in Costly, Secretive World*, **Boston Globe**, Apr. 3, 2002, at A1.

<sup>31</sup>Id.

<sup>32</sup>The authors together and separately have interviewed approximately 1500 clergy and sex abuse victims between 1986 and 2003. The assertions contained in this paragraph represent the unscientific findings of these interviews.

## A. The Church's Legal System

The Catholic Church has its own legal system, commonly known as Canon Law. The Code of Canon Law,<sup>33</sup> a collection of church legislation, is the basic text.<sup>34</sup> The Code contains sections on procedural law, governmental structure, rights and duties of office holders, and penal law.<sup>35</sup> The various canons provide the clergy with a fundamental standard of care to be followed in their dealings with members of the church.

The Code contains legislation that deals directly with sexual abuse, and procedures for dealing with accusations of such abuse.<sup>36</sup> The issue is not the absence of legal structures to meet this vexing problem, but the failure of Church leadership to follow its own rules. The basic law describing sexual abuse is canon 1395.2, which states:

If a cleric has otherwise committed an offense against the sixth commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state if the case warrants it.<sup>37</sup>

A sexual act with a minor of either sex is a violation of a cleric's obligation to celibacy, set forth in canon 277.<sup>38</sup> Such act is also an abuse of his authority as a minister and office holder

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<sup>33</sup>**Canon Law Society of America, Code of Canon Law, Latin-English edition**, (Cannon Law Society of America 1999). Specific laws are known as canons and are cited with the word “canon” followed by the number. The page number of the text is not cited since page numbers vary with publication versions. Canons from the 1983 Code will be cited simply as “canon” with the number and canons from the 1917 Code will be cited as “1917 Code, canon” with the number added.

<sup>34</sup>Id. The present Code is a revision of the first Code, published in 1917. The Catholic Church's legal system is the oldest continuously functioning legal system in the world. Its roots go back to the 4th century at least and it emerged as a distinct science by the 12th century. **The Code of Canon Law: A Text and Commentary 1-4** (James Coriden, Thomas Green, Donald Heintschel, ed., Paulist Press 1985) [hereinafter **Coriden**].

<sup>35</sup>See Code of Cannon Law, supra note 33.

<sup>36</sup>Id. 1983 **Code** c.1395 and 1983 **Code** c. 1717.

<sup>37</sup>1983 Code c.1395, §2. The phrase “sixth commandment of the Decalogue” refers to sexual sins in general . See Coriden, supra note 34, at 929.

<sup>38</sup>1983 **Code** c.277, §1 states “Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy. Celibacy is a special gift of God by which sacred ministers

in the institutional Church, as set forth in canon 1389.<sup>39</sup>

The Code of Canon Law outlines a specific procedure for investigating allegations of clergy sexual abuse, a process roughly equivalent to a common law grand jury.<sup>40</sup> Its purpose is to determine whether there is substance to the allegation.<sup>41</sup> When the process is complete, the evidence gathered by the investigators, who are appointed by the bishop, is presented to the bishop, who then decides whether to proceed with further action.<sup>42</sup> If the bishop finds there is substance to the allegation, he has three choices: a full judicial process, an administrative process, or what is termed a “pastoral” admonition.<sup>43</sup>

The bishop is obliged to investigate if the information received seems to be facially valid.<sup>44</sup> The canon is not specific as to the acceptable sources for the information.<sup>45</sup> There is a broad spectrum of acceptable sources of information on which to base an investigation, including

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can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbor.”

<sup>39</sup> 1983 **Code** c.1389, §1 states “One who abuses ecclesiastical power or function is to be punished in accord with the seriousness of the act or omission not excluding deprivation from office unless a penalty for such an abuse has already been established by a law or a precept.”

<sup>40</sup> 1983 **Code** c.1717, §1 states “Whenever the ordinary [the bishop or his equivalent] receives information which at least seems to be true of an offense, he shall cautiously inquire personally or through another suitable person about the facts and circumstances and about imputability unless this investigation appears to be entirely superfluous.”

<sup>41</sup> 1983 **Code** c.1718 §1 states “When the facts have been assembled, the Ordinary is to decide: 1° whether a process to impose or declare a penalty can be initiated; 2° whether this would be expedient, bearing in mind Canon 1341; 3° whether a judicial process is to be used or, unless the law forbids it, whether the matter is to proceed by means of an extrajudicial decree.”

<sup>42</sup> Id.

<sup>43</sup> 1983 **Code** c.1341. “The Ordinary is to start a judicial or an administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction or reproof, nor by any methods of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.”

<sup>44</sup> See 1983 **Code** c.1717, §1: “Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.”

<sup>45</sup> Id.

rumor, hearsay, and anonymous sources.<sup>46</sup> The investigation includes an evaluation of the credibility of the source.<sup>47</sup> The entire process is to be carefully documented, and the records are to be kept in the special or secret archives of the diocese.<sup>48</sup>

If the bishop decides to proceed with a judicial process, the Code outlines how this is to unfold. Since there are no juries in the Canon Law system, the process is conducted by a panel of three or five judges.<sup>49</sup> Other than excommunication, dismissal from the clerical state is the most severe penalty that can be imposed on a convicted cleric.<sup>50</sup> He cannot function as a priest, and loses all rights and privileges associated with the priesthood.<sup>51</sup> He is barred from exercising his ministry in any way.<sup>52</sup> While he remains technically a priest (or deacon or bishop), he cannot function as one. The accused is given full rights to trial counsel.<sup>53</sup> He can call witnesses, confront the accusers, and appeal the final decision.<sup>54</sup>

What is most important about this very brief outline of the Catholic Church's law regarding clergy sexual abuse is the mere fact that it exists. In practice, however, it has been rarely utilized, a fact that has been repeatedly invoked by those who criticize the manner in which these accusations have been handled by Church authorities.

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<sup>46</sup> To apply the revised canon correctly one can look to the similar canon in the 1917 Code. See **Stanislaus Woywood & Callistus Smith, A Practical Commentary on the Code of Canon Law: Vol. II** 358 (Joseph F. Wagner, Inc. 1952). Canon 1939 states, "If an offense is neither notorious nor altogether certain but has become known through rumor and public report, or through denunciation, or from complaint for damages, or from general inquiry instituted by the Ordinary, or from any other cause, a special investigation must be conducted to ascertain whether and how far the incrimination is justified, before a person can be summoned to answer for his offense." Id.<sup>47</sup> **Coriden**, supra note 34, 1024.

<sup>48</sup> 1983 **Code** c.1719. "The acts of the investigation, the decrees of the Ordinary by which the investigation was opened and closed, and all those matters which preceded the investigation, are to be kept in the secret curial archive, unless they are necessary for the penal process." Id.

<sup>49</sup> 1983 **Code** c.1425, §1.

<sup>50</sup> 1983 **Code** c.1336, §5.

<sup>51</sup> 1983 **Code** c.290.

<sup>52</sup> See **Coriden**, supra note 34, at 229-37.

<sup>53</sup> 1983 **Code** c.1723.

<sup>54</sup> See **Coriden**, supra note 34, at 1025-27.

The Church's failure to utilize the available processes is rooted in a variety of factors, but one that is fundamental, is the very governmental structure of the Catholic Church.

Understanding the Church's hierarchical governmental system is essential to understanding the practical role of Canon Law in the day-to-day life of the Church. All power rests in individuals, with very little authority being given to groups.<sup>55</sup> Offices such as bishop or pastor are filled by appointment, not election.<sup>56</sup> The Church's governmental system is essentially monarchical. The Pope is the supreme authority in the Church; attaining full power from the moment he accepts his election by the College of Cardinals.<sup>57</sup> He possesses plenary power with respect to judicial, legislative, and executive functions for the entire Catholic Church.<sup>58</sup> The Pope is subject to no judicial scrutiny, and there is no appeal from his decisions.<sup>59</sup>

A bishop or archbishop heads each geographic division of the Church, known as a diocese or archdiocese.<sup>60</sup> In his diocese the bishop possesses full judicial, legislative, and executive power.<sup>61</sup> There is no separation of powers, nor are there any checks and balances. Although the local bishop is subject to the authority of the Pope, his nearly absolute role in his own territory enhances the possibility of canonical abuses. Although the mandate for a structured and documented investigation into allegations of sexual abuse by the clergy is unequivocal, diocesan bishops have customarily handled such reports in a much more informal

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<sup>55</sup> See 1983 Code c.338, §1: Collegial bodies in the Catholic Church are consultative. Even the highest such body, the Ecumenical Council, requires the Pope's approval of all decrees and decisions.

<sup>56</sup> Cf. Coriden, *supra* note 34, at 134-35 regarding papal appointment of bishops. See also *id.* at 135-36 regarding appointment of pastors.

<sup>57</sup> See *id.* at 82-83.

<sup>58</sup> See *id.* at 98-99.

<sup>59</sup> See *id.* at 100.

<sup>60</sup> See *id.* at 141.

<sup>61</sup> 1983 Code c.381, §1 and 1983 Code c.391.

manner, relying on their unquestioned status to do so.<sup>62</sup> Most cases have been handled with strict secrecy, and adequate documentation has been minimal, if not non-existent.

Complainants have often been assured that their allegations would be thoroughly investigated, yet civil cases reveal that time after time, victims of abuse were never informed of the outcomes, if indeed there ever was an investigation. Discovery has rarely produced evidence of properly documented canonical preliminary investigations.

### B. The Victims

The clergy sex abuse phenomenon has been commonly referred to as a “pedophilia scandal”, yet the data shows that only about twenty percent of offending clerics can be classified as pedophiles with pre-pubescent victims.<sup>63</sup> Most clergy abusers have preferred younger adolescents, and are thus clinically classified as “ephebophiles”.<sup>64</sup> Pedophilia is listed in the **Diagnostic and Statistical Manual of Mental Disorders** as a sexual disorder, while ephebophilia is not listed.<sup>65</sup> This may be because ephebophiles have fewer victims, and are more likely to respond to treatment.<sup>66</sup> However, this clinical distinction has no bearing on the canonical or civil legality of engaging in sex with minors.

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<sup>62</sup> The authors have never seen documented evidence of a full-scale canonical investigation in any of the cases they have reviewed.

<sup>63</sup> See Sipe, *supra* note 15, at 172. “However, our best estimates suggest that approximately 6 percent of Catholic priests have been sexually involved with minors with the vast majority of these offenders (about 80% or more) targeting postpubescent adolescent boys.” *Id.* (citing Thomas G. Plante, *Catholic Priests Who Sexually Abuse Minors: Why Do We Hear So Much Yet Know So Little*, **Pastoral Psychology** 305-310 (1996)). One third of the priest abusers, or two percent of the priest population, can be classified as true pedophiles with a three to one preference for boys. Sipe, *supra* note 15, at 27. Two-thirds of the priest abusers, or four percent of the priest population, become sexually involved with adolescents. *Id.*

<sup>64</sup> John Money, *Love Maps* 261 (1986). Money defines ephebophilia as a paraphilia of the eligible/stigmatic type distinct from nepiophilia and pedophilia in that the age of the partner is postpubertal and adolescent. *Id.*

<sup>65</sup> **Diagnostic and Statistical Manual of Mental Disorders** 571-572 (American Psychiatric Association, 4<sup>th</sup> ed. rev. 2000).

<sup>66</sup> See L.M. Lothstein, *Psychological Theories of Pedophilia and Ephebophilia*, in Stephen J. Rossetti, *Slayer of the Soul* 19-43 (1990).

Turning to a profile of the victims, studies show that most young victims of clergy sex abuse are male.<sup>67</sup> However it is worthy to note that a significant minority are female adolescents.<sup>68</sup> The gender ratio is inverted however, when looking at adult victims of clergy sex abuse or harassment, because these studies indicate that most adult victims are female.<sup>69</sup>

Most child or adolescent victims are raised in devout Catholic families who possess strong ties to the Church, as well as individual clergy members. In most cases, the abuse is preceded by a period of grooming or courtship, and once sexual abuse begins it consists of repeated acts over prolonged periods.<sup>70</sup> This is why it sometimes takes years for victims to report abuse. In many cases, child or adolescent victims do not disclose their abuse until they reach adulthood. These victims' intimate affiliation with the Church is also related to the historical unwillingness of their parents and other adults in their lives to believe reports of clergy sexual misconduct with children.

### C. The Perpetrators

Any study of clergy sex abuse requires some degree of clarification and precision in labeling the perpetrators. The incorrect tendency has been to lump together as pedophiles all those who have victimized children or adolescents.<sup>71</sup> Instead, a more precise distinction between sexual abusers is necessary. Regressed pedophiles have a primary sexual orientation towards

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<sup>67</sup> See **Sex, Priests and Power**, *supra* note 15, at 27. Also, the authors' joint experience with clergy abuse cases since 1985 and 1992 has shown that about 90% of plaintiffs have been male.

<sup>68</sup> *Id.* at 28.

<sup>69</sup> Richard Sipe wrote in a private communication to the authors: "I have no other data to change my estimates, between 1960 and 1985 6% of priests were involved sexually with minors. 20-25% were involved with adult women. 15% were involved with homosexual relationships or patterns of behavior." See **A.W. Richard Sipe, A Secret World: Sexuality and the Search for Celibacy Figure 13.1** 265 (1990); see also **Sipe**, *supra* note 15, at 321-23.

<sup>70</sup> There are no statistical studies of the practices of clergy sexual abusers. This statement is based on the authors' joint experience.

<sup>71</sup> **Stephen J. Rossetti & L.M. Lothstein, Myths of the Child Molester, in Slayer of the Soul: Child Sexual Abuse and the Catholic Church** 9, 14-16 (Stephen J. Rossetti, ed., Twenty-Third Publications 1990).

adults of the opposite sex.<sup>72</sup> Under certain circumstances such as extreme stress, the regressed pedophile may revert to an earlier emotional and psychological age, and engage in some form of sexual behavior with a child.<sup>73</sup> A fixated pedophile, on the other hand, has a primary sexual attraction to children or teens; sexual activity with age appropriate partners is rare.<sup>74</sup> In both cases, the pedophile identifies both emotionally and sexually with his victim.<sup>75</sup> According to Lothstein, this identification factor is critical.<sup>76</sup>

A third type of offender, the ephebophile, may also be either fixated or regressed.<sup>77</sup> The ephebophile is attracted to older children only, not age-appropriate sex partners.<sup>78</sup> This attraction reflects a higher degree of social and sexual development.<sup>79</sup> Since his victims are at the beginning stages of their sexual maturation, the ephebophile is often unaware of the degree of coercion that has occurred on his part, and he may be deluded into thinking that the teen is not a victim, but a willing partner.<sup>80</sup> He may deny that he has caused any harm, based on his assertion that his victim was actually a willing partner.<sup>81</sup> This demonstrates the perpetrator's impaired judgment, a trait common in both ephebophiles and pedophiles.<sup>82</sup>

Two key features of clergy sexual misconduct relate directly to the perpetrators, and also influence the way the institutional Church responds to individual cases and to general accusations that the Church has responded inadequately. These features are the power

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<sup>72</sup> **Lothstein**, *supra* note 66, at 19, 21.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 33.

<sup>76</sup> *Id.* at 32.

<sup>77</sup> *See id.* at 21.

<sup>78</sup> *Id.* at 35-37.

<sup>79</sup> *Id.* at 35.

<sup>80</sup> *See id.* at 36.

<sup>81</sup> *See generally id.*

<sup>82</sup> *See id.* at 36-38.

differential, and perpetrator aggression. The first possible element of clergy sexual abuse is the power of the perpetrator against the weaker position of the victim. This power imbalance also exists between ephebophiles and their victims, and even between adult clerics and age appropriate victims. This aspect will be considered in more detail later in this Article, within the context of the traumatic bond that arises between clergy abuser and victim.<sup>83</sup> Experts agree that sexual misconduct, as opposed to true consensual sex, occurs because there is a power differential.<sup>84</sup> This differential is perhaps much more complex and certainly more powerful when it is between a trusted clergyman and a trusting congregant. Because of the role of the clergyman in the congregant's life, there can be no true consent to a sexual relationship, even when the victim is age appropriate.

Confronting the institutional Church on instances of sexual misconduct by Catholic clergy is further complicated by the historical fact that the Church has institutionalized this power imbalance in its theology, law, and pastoral practice. Church leadership has responded with a heightened degree of defensiveness, undoubtedly propelled by the threat to its exalted position. At the same time, the Church has failed to fully grasp the part that the power differential plays in patterns of abuse and re-victimization.

Clergy sexual abuse of any kind is always an aggressive act. Yet, the perpetrators often fail to see the aggressive component of the seduction or grooming process:

The perpetrator's lack of awareness . . . is akin to disavowal or denial and is a delusional suspension of reality. Such persons may rationalize their molestation as serving a caretaker or parental role (taking the child/teen away for a holiday), performing an

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<sup>83</sup> See generally Candace R. Benyei, *Understanding Clergy Misconduct in Religious Systems: Scapegoating, Family Secrets and the Abuse of Power* 65 (1998).

<sup>84</sup> See *id.* This power imbalance may be one of status, vested authority, hierarchy, age, gender, or physical strength. *Id.*

educational function (serving as a sex educator), or providing friendship.<sup>85</sup>

This power differential enables the clergy perpetrator to establish an aggressive relationship with the victim. This establishes the clergyman's dominance and control, yet it is aggression disguised as concern or friendship.

The paternal role played by the clergyman is based on trust and power, and is successful only because of these two elements. Since most pastoral ministry is grounded in such a paternal relationship and requires trust, it is easy to see how the Church leadership would slip into denial and defensiveness when confronted with the assertion that the perpetrator's success is often contingent upon his role as a clergyman.

#### D. How Church Leadership Has Responded

Church leadership has responded to allegations of clergy sexual abuse on two levels: responses to individual victims, and responses to the general public through explanation or defense of accusations about its reaction to abuse. The responsibility for promulgating these responses falls largely upon Church leadership, made up of diocesan bishops. A number of office holders with a variety of titles assist them in exercising these responsibilities.<sup>86</sup> Individual victims usually meet with staff members below the bishop's level, and only later with the bishop

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<sup>85</sup> Lothstein, *supra* note 66, at 37.

<sup>86</sup> See 1983 **Code** c.475, 476, 479. These sections discuss Vicars General and Episcopal Vicars. The Vicar General possesses the same executive power as the bishop, and acts as the bishop's "alter ego." 1983 **Code** c.476. Other "vicars" with delegated power from the bishop handle specifically defined matters such as personnel issues. 1983 **Code** c.479. The Chancellor is appointed by the bishops to act as custodian of the diocesan files and records. 1983 **Code** 482, §1. See also Coriden, *supra* note 34, at 387-92.

himself. In many cases, victims accusing clergy of sexual misconduct have never met with the diocesan bishop.<sup>87</sup>

Regarding their meetings with Church leadership, individual victims reported being threatened, manipulated, intimidated, and disbelieved.<sup>88</sup> Only a few reported that the bishops or other officials with whom they met treated them with care and compassion, and seemed genuinely sympathetic.<sup>89</sup>

The Church's public response has also been defensive, and generally reveals a significant level of denial about the seriousness of the problem.<sup>90</sup> Church defenses have become standardized, and are often used in court. However, most of these have been effectively countered by historical, canonical or psychological data. The Church's leadership has attempted to explain the inadequacy of its responses by pointing to the influence of outside forces and to its own limited understanding of the nature of sexual abuse.<sup>91</sup>

Despite the strides made in Church recognition of the problem, Church leaders in the United States and in the Vatican still blame the secular press and electronic media for sensationalizing and exaggerating the problem.<sup>92</sup> They initially argued that the secular media had an anti-Catholic agenda and sought to weaken the Church's strong moral stand on certain issues through unnecessary hype by placing a disproportionate focus on isolated reports of sexual

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<sup>87</sup> In the authors' combined experience, there have been no instances wherein a victim first met with a bishop upon reporting an alleged abuse. There are no specified procedures in Canon Law although the bishop is obligated by canon 1717 to supervise the preliminary investigation into abuse allegations.

<sup>88</sup> Pat Schneider, *Diocese Shamed Sex Victims' Families*, **The Capital Times**, May 25, 2002, at 1A. Most reports are in the form of conversations with lawyers or counselors. Some are reported to the press. *Id.*

<sup>89</sup> An unpublished unscientific poll conducted by author Thomas Doyle in 2001 through the LinkUp, a survivors' support network, asked participants to report on instances of compassionate treatment by bishops. This study revealed that a total of 78 abuse victims responded and only 3 claimed sympathetic care from church officials.

<sup>90</sup> See Doyle, *supra* note 20, at 203-04. See also **Karol Jackowski, The Silence We Keep** 16-17 (2004).

<sup>91</sup> See **Eugene Kennedy, The Unhealed Wound** 138-39 (2003).

<sup>92</sup> See John Richard Neuhaus, *The Public Square: Boston and Other Bishops*, **First Things**, February 2003, Number 130, at 67-69.

misconduct.<sup>93</sup> This assertion was given some temporary support by Philip Jenkins, professor of history and religious studies at Pennsylvania State University.<sup>94</sup> However, Professor Jenkins' conclusions that the apparent crisis was both exaggerated by a hostile press and manipulated by opposing Catholic special interest groups have been greatly relativized, and were later disproved by the continuing revelations brought about by the present crisis erupted with the Boston Globe publication of previously classified documents in January 2002.<sup>95</sup> In spite of the hard data produced in the many civil court cases, Church leaders in the United States and abroad continue to blame the secular media for misrepresenting the problem. One cardinal compared the American press coverage of the abuse scandals to ancient Roman persecutions, and went as far as to liken it to modern persecutions under Hitler and Stalin.<sup>96</sup>

Some have blamed the crisis on a spirit of dissent that arose after the close of the Vatican Council II in 1965.<sup>97</sup> They focus on the departure from traditional Catholic teachings about sexual matters, especially contraception. In their view, this coincided with the so-called sexual

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<sup>93</sup> Id.

<sup>94</sup> **Jenkins**, supra note 4. The author claims that there is a tradition of anti-Catholicism in the American media. Some excerpts from the dust jacket description provide a sense of his direction:

There is a long standing anti-Catholic stereotype of priests as lascivious predators. The Catholic Church is a more attractive target for lawsuits than other denominations.... Perhaps most important, however, dissidents within the Roman Catholic Church itself -both liberals and traditionalists- seized upon the issue as a rhetorical weapon.... It [**Pedophiles and Priests**] also delivers a disturbing message about how vulnerable we are to the news media, and how easily the media can be manipulated by special interests. Id.

<sup>95</sup> See Betrayal, supra note 4, at 205-51.

<sup>96</sup> Michael Paulson, *A New Leader Reaches Out Installed as Bishop, O'Malley Voices Remorse and Looks to Renewal*, **Boston Globe**, July 31, 2003, at A1, available at 2003 WL 3410880. Cardinal Oscar Rodriguez Maradiaga of Honduras made the remarks. Similar remarks were made by Cardinal Norberto Rivera Carrera of Mexico City, Cardinal Juan Sandoval Íñiguez of Guadalajara, Mexico, retired Cardinal Eugenio Araujo Sales of Rio de Janeiro and Archbishop Julian Herranz of the Vatican's Pontifical Council for the Interpretation of Legislative Texts. See John L. Allen Jr., *Curia Official Blasts U.S. Media Coverage*, **Nat'l Catholic Reporter Online**, available at [http://natcath.org/NCR\\_Online/archives2/2002b/051702/051702e.htm](http://natcath.org/NCR_Online/archives2/2002b/051702/051702e.htm), May 17, 2002. American Cardinal Avery Dulles is reported to have said "I don't think there's any great crisis in the U.S. It's practically no news. To the extent it's a crisis, it's created by the news media." Jack Sullivan and Eric Convey, *Pope Takes Action: Cardinals Ordered to Vatican*, **Boston Herald**, Apr. 16, 2002, at 1, available at 2002 WL 4073550. See also *Cardinal Dulles Calls Clergy Sex Scandal a Media Beat-up*, **Catholic News Broadcast**, available at <http://www.cathnews.com/news/204/91.htm> (Apr. 17, 2002).

<sup>97</sup> See generally **George Weigel, The Courage to be Catholic** 57-86 (2002).

revolution of the 1960s and 1970s, and these two social phenomena worked together to corrupt the ideals of the priesthood and create an environment that enabled clergy sexual abuse.<sup>98</sup> Some have also maintained that the clergy sexual abuse problem is grounded in a failure of clerics to be faithful to their vows.<sup>99</sup> In their view, the apparent broad-based acceptance of homosexuality in the priesthood is closely allied with the reputation of same-sex abuse by members of the clergy.<sup>100</sup>

#### E. Scarcity of Information About Sexual Abuse

Bishops assert that until recently, they never really understood the destructive nature of sexual abuse.<sup>101</sup> Furthermore, bishops claim that they have only lately come to realize that clergy who abuse children and young people suffer from serious psychiatric disorders, and not simply moral failure.<sup>102</sup> Many bishops admit to thinking of sexual abuse solely in terms of moral fault and sin.<sup>103</sup> Because the Church-accepted remedy is admission of guilt, penance, and a commitment by the abusers not to sin again,<sup>104</sup> bishops attribute blame to the priests' presumed weakness of religious commitment, and disregard their highly relevant psychological motivations.<sup>105</sup> Since the alleged perpetrators were priests, bishops tended to minimize the

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<sup>98</sup> Id. at 68-78. Weigel's assessment reflects that of a small group of conservative Catholic commentators including Richard John Neuhaus. See also Richard John Neuhaus, *Sexual and Related Disorders*, **First Things**, March 2003, no. 131, at 68-74; Benedict Groeschel, **From Scandal to Hope** (Our Sunday Visitor Press 2002).

<sup>99</sup> Weigel, supra note 97.

<sup>100</sup> See Richard John Neuhaus, *Scandal Time*, **First Things** 122, April 2002, at 61-84; see also Richard John Neuhaus, *Scandal Time*, **First Things** 124, August/Sept. 2002, at 75-100. Neuhaus examines the contention that the crisis is primarily a result of infidelity to celibacy obligations. See also generally Michael S. Rose, **Goodbye Good Men** 23-26 (2002); see also Weigel, supra note 97, at 19-22 (2002).

<sup>101</sup> Barbara Susan Balboni, *Through the Lens of the Organizational Culture Perspective: A Descriptive Study of American Catholic Bishops' Understanding of Clergy Sexual Molestation and Abuse of Children and Adolescents* 218-41 (1998) (unpublished Ph.D. dissertation, Northeastern Univ.) available at <http://webhost.bridgew.edu/bbalboni/dissertation.htm>.

<sup>102</sup> Id. at 221.

<sup>103</sup> Id.

<sup>104</sup> Id.

<sup>105</sup> Id.

impact of abuse on their victims, and maximize the possible consequences for the institutional Church.<sup>106</sup>

The Church's leadership has made every effort to rein in the problem. Although the celebrated Lafayette Louisiana brought the problem of clergy sexual abuse to the forefront, it was not the first time it had occurred, nor was it the first signal that the priesthood suffered from significant emotional and psychological problems.

The tumultuous period following the end of the Vatican Council in 1965 brought, among other things, a mass exodus from the Catholic priesthood and religious life throughout the world. This shocking development, coupled with the rapidly dwindling numbers of students for the priesthood, prompted Church leaders in the United States and other countries to look outside of their own ranks for help in understanding why phenomena occurred. Noted Jesuit sociologist Joseph Fichter, S.J., produced several books, all of which looked closely into the various problems of American priests, with particular attention to alcohol abuse.<sup>107</sup> One important work was produced by Dr. Conrad Baars,<sup>108</sup> a psychiatrist. Dr. Baars presented his work as a scholarly paper to the 1971 Synod of Bishops at the Vatican, an assembly of representative bishops from throughout the world. Baars and his collaborator on the paper, Dr. Anna Terruwe, cited forty years of psychiatric practice during which they had treated about fifteen-hundred priests.<sup>109</sup> Baars concluded that twenty to twenty-five percent of priests in North America had serious

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<sup>106</sup> Id.

<sup>107</sup> See generally **Joseph H. Fichter, Priest and People** (1965); **Joseph H. Fichter, America's Forgotten Priests: What They are Saying** (1968); **Joseph Fichter, Organization Man in the Church** (1974); **Joseph H. Fichter, The Rehabilitation of Clergy Alcoholics: Ardent Spirits Subdued** (1982) (illustrating an in-depth look into the lives of priests with substance abuse problems).

<sup>108</sup> **Conrad Baars, The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood** (1971).

<sup>109</sup> Id. at 2.

psychiatric difficulties, while sixty to seventy percent suffered from emotional immaturity.<sup>110</sup>

One of their most common clinical findings in these patients was psychosexual immaturity, which manifested itself in heterosexual or homosexual activity.<sup>111</sup> Baars included specific recommendations in his presentation, such as improving the screening of candidates for the priesthood, and revising standards of admission.<sup>112</sup> Baars also urged bishops, seminary directors, and others in key leadership positions to gain an adequate working knowledge of neurotic psychopathology.<sup>113</sup> Most importantly, Baars recommended that the Church handle offending

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<sup>110</sup> Id. at 10. “In general, we estimate that ten to fifteen percent of all priests in Western Europe and North America are mature; twenty to twenty-five percent have serious psychiatric difficulties, especially in the form of neuroses and chronic alcoholism, or a combination of both; and sixty to seventy percent suffer from a degree of emotional immaturity which does not prevent them from exercising their priestly function, but precludes them from being happy men and effective priests whose fundamental role is to bring the joy of Christ’s love and to be the appointed affirmers of men.” Id.

<sup>111</sup> See id. at 10. “Our clinical observations over many years have convinced us that priests in general and some to an extreme degree possess an insufficiently developed or distorted emotional life while at the same time they must be considered to belong to a group of men whom nature has endowed with superior intelligence and sensitivity. In some, the causes . . . go back to childhood and remained unrecognized during the seminary years. Others enjoyed a fairly normal childhood but became emotionally disturbed through misguided ascetical practices in the seminary.” Id. at 11.

<sup>112</sup> Id. at 15-17. “Rectors of seminaries are advised to admit only young men who have been affirmed by their parents. A priest with average intelligence coupled with a mature emotional life is a far greater asset to the Church than one with superior intelligence and a retarded or neurotically disturbed emotional life. Investigation of the candidate's background by a knowledgeable rector is superior to psychological testing. Some unfavorable home factors: working mothers of young children; "absent" fathers; passive submissive fathers and domineering mothers; cold, unaffectionate parents; utilitarian attitudes toward life and family, etc. Home and seminary must avoid attitudes and teachings which unduly stimulate the emotions of the utility (irascible) appetite and the inevitable consequence of a retarded, underdeveloped pleasure (concupiscible) appetite. Fearful or excessively driven priests who are not capable of finding joy in the sensory and spiritual goods of this life, are obstacles to the Church's mission to bring Christ's love and joy to men and to help them to love God in freedom and without fear.” Id. at 15.

<sup>113</sup> Id. at 15-16. “Bishops, religious superiors, priests, rectors of seminaries, vocational directors, and moral theologians should be fully instructed in the psychology of normal man, and also have an adequate working knowledge of neurotic psychopathology. The Church is advised that as the result of the many diverse, if not opposing views in psychology and psychiatry, it cannot be safely assumed that every psychologist or psychiatrist is properly qualified to teach these important subjects. Too many widely-read psychiatrists and psychologists consider it the highest degree of maturity to have no need of God and to reject His love in favor of complete self-reliance.” Id.

clerics not with the traditional disciplinary approaches, but with professional clinical assessment and treatment.<sup>114</sup>

The National Conference of Catholic Bishops also commissioned a study by Dr. Eugene Kennedy,<sup>115</sup> who found that only seven percent of American priests were psychologically and emotionally developed, while sixty-six were underdeveloped, and eight percent were maldeveloped.<sup>116</sup> The remaining eighteen percent were termed “developing.”<sup>117</sup> The findings about the underdeveloped priests, which concur with those of Baars and Terruwe, resemble the profile of priests who have sexually abused children and adolescents.<sup>118</sup>

Symptoms of the underdevelopment in patients included a lack of psychological growth in relationships with others, and a failure to achieve an integrated psychosexual identity.<sup>119</sup> Therefore clergy members diagnosed as such were found to have not resolved the psychosexual problems and issues usually worked through during adolescence. In other words, many functioned at a pre-adolescent or adolescent level.

The underdeveloped priest patients had few, if any, close friends among their professional or age peers.<sup>120</sup> They usually had problems dealing with authority, and often came from familial backgrounds that had failed to provide proper emotional and spiritual nourishment.<sup>121</sup> Such priests were generally “allowed” to continue inappropriate, or even destructive behavior patterns or lifestyles, because they lacked adequate and effective guidance

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<sup>114</sup> *Id.* at 16. “Already existing neuroses, with or without chronic alcoholism, in priests should be speedily diagnosed and treated in the shortest and most effective manner.” *Id.*

<sup>115</sup> See generally Eugene C. Kennedy & Victor J. Heckler, **The Catholic Priest in the United States: Psychological Investigations** (1972) [hereinafter **Kennedy & Heckler**].

<sup>116</sup> **Kennedy & Heckler**, *supra* note 115, at 153-71; see also Balboni, *supra* note 101, at 222-23.

<sup>117</sup> **Kennedy & Heckler**, *supra* note 115, at 153-72.

<sup>118</sup> See Balboni, *supra* note 101, at 222-25.

<sup>119</sup> **Kennedy & Heckler**, *supra* note 115, at 84-86; see also Balboni, *supra* note 101, at 224.

<sup>120</sup> **Kennedy & Heckler**, *supra* note 115, at 88; see also Balboni, *supra* note 101, at 224.

<sup>121</sup> **Kennedy & Heckler**, *supra* note 115, at 92.

and supervision during their formative years.<sup>122</sup> Any mentoring these individuals might have received as young priests centered around the performance of their priestly duties, and not on their total human development.<sup>123</sup> The disturbing percentage of underdeveloped and maldeveloped priests at the time of the study was a clarion call for a close examination of the seminary training system and the clerical world in general. Yet the Church's official response was devoid of any further investigations or action proposals.<sup>124</sup>

Many of the incidents that have prompted recent civil suits took place during the era when the Kennedy and Baars reports were written.<sup>125</sup> This was a time of intense criticism of the clerical lifestyle, particularly with regards to celibacy, as well as an era of unprecedented departures from the priesthood.<sup>126</sup> Although sexual abuse issues did not gain widespread public attention until the mid-1980s, many of the psychological symptoms, such as under-developed sexuality and emotional immaturity, were likely obvious traits of these perpetrators at least a decade prior to the first notorious clergy sex abuse case, as is evidenced by Baars' paper, recommendations, and the Kennedy-Heckler study.<sup>127</sup>

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<sup>122</sup> Id. at 15-16.

<sup>123</sup> See id. at 79-93.

<sup>124</sup> Balboni, supra note 101, at 87-88. "But I could find no evidence that the NCCB [National Conference of Catholic Bishops] initiated discussions on the findings of the psychological report, made any attempts to follow through on the suggestions made to respond to the needs of the struggling priests, to address the questions raised by the study, or to urge the bishops to attempt diocesan responses to the institutional call for setting priorities." Id. at 87-88.

<sup>125</sup> There are no scientific studies or statistics on the age of the victims of sexual abuse, or the age at which the abuse was reported. This statement is based on the authors' combined experience dealing with significant numbers of adult victims who alleged clergy abuse during their early teen years.

<sup>126</sup> See David Rice, Shattered Vows: Priests Who Leave 10-11 (1990). Between 1965 and 1990 approximately 100,000 Roman Catholic priests left the priesthood. Sociologist Richard Schoenherr estimates that forty-two percent of priests in the United States have left or will leave before they have completed twenty-five years of priesthood. Id. at 10-11.

<sup>127</sup> See Baars, supra note 108. See also Kennedy & Heckler, supra note 115.

Another researcher, Dr. Susan Balboni, also found that individual bishops who tried to seek help for their psychological problems were ignored by the American episcopate as a whole.<sup>128</sup> In response to these attempts, the Church defended the status quo of its own political structure, as it grew increasingly critical in areas of secular or civil public policy, social action, and economic structures.<sup>129</sup>

As a group, Catholic clergy continued to approach sexual issues, particularly sexual dysfunction, from the same moralistic mind set as their counterparts in the middle ages. This deep-seated resistance to a non-traditional view of human sexuality was especially true of the Church hierarchy. The most common opinion of the clergy and Church hierarchy was that the problem and solution were both rooted in the will of man; the temptation to sin is one which he will either resist or to which he will succumb.<sup>130</sup> In either case, there are no acceptable mitigating factors provided by the behavioral sciences. Consequently, the average Catholic cleric remained significantly immature and emotionally underdeveloped. The institutional Church frowned upon authentic human maturity and the approaches used by the scientific community. It posed a threat to the complex and intricate science-based approach that had been constructed over the centuries as a way to understand the human person.

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<sup>128</sup> See Balboni, *supra* note 101, at 87-88.

<sup>129</sup> This is the authors' opinion based on their private study of the topics of public statements issued by the National Conference of Catholic Bishops-U.S. Catholic Conference of Catholic Bishops between 1980-2002. See generally Pastoral Letters of The United States Catholic Bishops, National Conference of Catholic Bishops-United States Catholic Conference, Vol. 1, 1792-1940 (1984), Vol. 2 1941-1961 (1984), Vol. 3 1962-1974, Vol. IV 1975-1983 (1984), Vol. V 1983-1988 (1988) and Vol. VI, 1989-1997 (1998).

<sup>130</sup> See **Charles Callan & John McHugh, Moral Theology** 462 (1929). Moral theology textbooks and religious education texts of the pre-Vatican council era all proposed a nearly identical doctrine. *Id.* at 462. Callan and McHugh's book states: "Sex pleasure has been ordained by God as an inducement to perform an act which is both disgusting in itself and burdensome in its consequences." *Id.* See also **Gerald Kelly, Modern Youth and Chastity** 84 (1941).

Until very recently, sexual dysfunction of any kind was evaluated and judged from a generalized negative concept of human sexuality.<sup>131</sup> Illicit sexual acts were presumed immoral, and were historically linked directly to the weakness of the human will.<sup>132</sup> The perpetrator is considered a sinner and his actions evil, and the solution is repentance and conversion.<sup>133</sup> This outlook has begun to change within the past ten years, as a result of consistent pressure on Church leadership to seek a more enlightened understanding of why sexual abusers act as they do. In spite of this pressure, there is significant resistance to evaluating such problematic sexual issues in a non-traditional, scientific context.

Priests were generally not offered professional treatment for sexual problems until the late 1960s.<sup>134</sup> Most were sent to treatment centers affiliated with the Church who dealt exclusively with clerics, centers that have also met with difficulty in fulfilling their treatment objectives.<sup>135</sup> As the number of sexually offending clerics grew rapidly, these institutions became key players in the drama that would begin to play out in the mid-1980s. The Paraclete Fathers' program is one program that was criticized for allegedly allowing priests who received treatment for sexual disorders, to work in parishes on weekends.<sup>136</sup> Although their facilities remain open they no longer treat clergy with sexual disorders.<sup>137</sup> Another center was The House

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<sup>131</sup> See **Kennedy**, *supra* note 91, at 8-10.

<sup>132</sup> *Id.* at 8-10.

<sup>133</sup> See **Balboni**, *supra* note 101, at 164.

<sup>134</sup> See **Ellen Barry**, *Priest Treatment Unfolds in Costly, Secretive World*, **Boston Globe**, April 3, 2002 at A1. "By the mid-1960s . . . the Paraclete retreat began welcoming an increasing number of pedophiles and, more commonly, ephebophiles, or adults who are sexually aroused by pubescents, usually males, Lechner said."

<sup>135</sup> The authors are aware of the existence of the following: St. Luke's Institute, Silver Spring, MD; St. John Vianney Center, Downingtown, PA; Southdown, Toronto, Ontario; the Houses of Affirmation and the facilities directed by the Paraclete Fathers in New Mexico and Missouri. A noteworthy exception is the Institute for the Living, a secular facility in Hartford CT.

<sup>136</sup> See **Barry**, *supra* note 134.

<sup>137</sup> See **Ellen Barry**, *Catholic Church has spent millions on Secret Treatment*, **Boston Globe**, Apr. 7, 2002, at A1. "In 1994 the Paraclete fathers shut down the sexual disorders treatment center in New Mexico, after they were

of Affirmation, founded in 1970, as an outpatient counseling center in Worcester, Massachusetts.<sup>138</sup> It was founded by Reverend Thomas Kane, who claimed to have a psychology degree from the University of Birmingham, and the late Sister Anna Polcino, a Maryknoll Sister and trained psychiatrist.<sup>139</sup> The organization developed an in-patient program, with several satellite facilities throughout the United States. The facility treated numerous priests with sexual problems until 1989.<sup>140</sup> Father Kane left his position two years prior to this, after several of the center's managers and executives brought allegations of financial improprieties.<sup>141</sup> After that, the organization suffered more setbacks which came to a head in 1993, when a lawsuit was filed against Kane that named him as an abuser.<sup>142</sup> While questions about the professional integrity of several of these and other institutions commonly used by Catholic religious leaders for the treatment of sexually abusing clerics have arisen over the years, for our purposes the most problematic revelation to arise in recent months has concerned the bishops' responses to clinical reports submitted to them.

These reports provide scientific proof of psychological problems that ran rampant amongst clergy members, which Church leadership has chosen to ignore. At the conclusion of a

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forced to pay millions of dollars to settle lawsuits against [former priest James] Porter." *Id.*

<sup>138</sup> See *The House of Affirmation and the Worcester Diocese*, **Geminiwalker**, at [www.geminiwalker-ink.net](http://www.geminiwalker-ink.net) (last visited Oct. 24, 2003);

<sup>139</sup> *Id.*; see also Andrew O'Connor, *The Diocese and the D.A.*, **Worcester Magazine Online**, available at <http://www.worcestermag.com/archives/archives/03-14-02/Cover.htm> (Mar. 14, 2002); Leslie Payne, *Salt for their wounds*, **Catholic World Report**, Feb. 1997, Vol. 7, No. 2.

<sup>140</sup> See *The House of Affirmation and the Worcester Diocese*, *supra* note 139.

<sup>141</sup> **Jason Berry, Lead Us Not Into Temptation** 281 (1st ed., Doubleday 1992). "Former Worcester Magazine co-editor Paul Della Valle reported in 1992 that Kane had embezzled a large sum of money from The House of Affirmation, which he helped found in 1973. There was no criminal case because Kane made an out-of-court settlement. The money that he was taking was thought to be going to support real estate investments. Among other properties, Kane was caught owning an inn in Isleboro, ME, which he would later sell for \$650,000, condominiums in Florida and Boston, and a Newbury Street pet store in Boston reportedly called Fish on a Lease." O'Connor, *supra* note 139.

<sup>142</sup> See Richard Nangle & Kathleen Shaw, *Accused Priest in Mexico*, **Worcester Telegram & Gazette**, Feb. 7, 2002, at A1, available at [www.telegram.com/crisisinthechurch/020702.html](http://www.telegram.com/crisisinthechurch/020702.html).

therapeutic process, which sometimes involves residential treatment, bishops naturally would ask the therapists about the prognosis and advisability of re-assigning a cleric to some form of pastoral ministry. Though no detailed studies have been performed, interviews with Dr. Harold Schwartz, Chief of Psychiatry at the Institute of the Living, and Dr. Leslie Lothstein, also from the Institute of the Living, reveal that in their experience, some bishops either misconstrued the evaluations, or ignored recommendations, thereby returning psychologically impaired priests to active ministry.<sup>143</sup> Schwartz and Lothstein stated that in some cases Church leaders concealed information about past complaints and disregarded warnings issued by the hospital.<sup>144</sup> Dr. Lothstein summarized this by reporting that the church rarely followed their medical recommendations for these patients.<sup>145</sup> James Gill, Jesuit priest, and a psychiatrist formerly associated with the Institute for the Living stated that bishops frequently failed to share information about past allegations with their ministries.<sup>146</sup> Gill attributed this to the fact the Catholic Church, a secretive organization by nature, “is unaccustomed to the full disclosure required in treatment centers.”<sup>147</sup> Gill also admitted that there had been times when he believed that bishops sent priests to treatment, with the sole intention of obtaining a favorable report in order to send the priest back to ministry.<sup>148</sup>

It is unfortunate that the clinical data on sexually abusive clerics accumulated by the

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<sup>143</sup> Katherine DeGiulio, *Church in Crisis: Interview of Dr. Leslie Lothstein*, **National Catholic Reporter**, June 17, 2002, available at <http://www.natcath.org/NCR-online/archives2/2002c/081602/lothstein.htm>.

<sup>144</sup> *Id.*

<sup>145</sup> See Elizabeth Hamilton & Eric Rich, *Doctors: Church Used Us*, **Hartford Courant Online**, Mar. 24, 2002, at A14, available at [http://nl.newsbank.com/nl-search/we/Archives?p\\_action=list&p\\_topdoc=21&p\\_maxdocs=220](http://nl.newsbank.com/nl-search/we/Archives?p_action=list&p_topdoc=21&p_maxdocs=220); see also DeGiulio, *supra* note 143.

<sup>146</sup> Fr. James Gill, M.D., is presently director of the Christian Institute for the Study of Human Sexuality at the Catholic Theological Union, Chicago, IL.

<sup>147</sup> Hamilton & Rich, *supra* note 145, at A14.

<sup>148</sup> *Id.*

treatment centers has not been adequately used by the Catholic bishops.<sup>149</sup> The Institute for the Living reports having treated about 600 Catholic priests by 2002.<sup>150</sup> The Paraclete Fathers report having treated about 2000 priests for a variety of issues between 1947 and 1968.<sup>151</sup> In the mid 1990s, a group of psychotherapists from several hospitals in the United States treating clergy sex offenders asked the United States Catholic Bishops to approve a research project which would study the data to assess causes, patterns of behavior, and after-care issues.<sup>152</sup> The bishops refused to approve the project.<sup>153</sup> Ironically, the bishops allege that they lack sufficient information to tackle the problem of clergy sex abuse, yet when presented with a serious offer to study a mass of available clinical data from several health care institutions, they refused.<sup>154</sup> When presented with clinical assessments, diagnoses, and recommendations concerning specific abusers, some Church leaders ignored recommendations and misconstrued data.<sup>155</sup> In view of the fact that sexual abuse of children and minors is a felony crime in the United States and most other countries, it is difficult to accept the excuse that adult men in important leadership positions in a church with a strict code of sexual morality do not grasp the serious nature of sexual abuse. They may not have had in-depth knowledge of the more complex clinical aspects

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<sup>149</sup> Jason Berry, *Above the Fray: The Vatican Remains Detached in Pedophilia Crisis Despite Scores of Abuse Cases Over the Years, Rome Has Yet to Investigate Problem's Roots*, **Boston Globe**, Feb. 3, 2002, at C1. "The Vatican has not since developed a response policy nor, most critically, has there to this day been a principled investigation of root causes. In the mid-'90s a group of psychotherapists at US hospitals treating clerical sex offenders asked the bishops to approve a research project, pooling clinicians' findings, assessing causes and patterns. 'The bishops refused,' says Dr. Leslie Lothstein of the Institute for Living in Hartford. 'Maybe their lawyers were against it.'" Id.

<sup>150</sup> See DeGiulio, supra note 145. "Dr. Leslie Lothstein is the Director of Psychology at the Institute of Living, part of Hartford Hospital's Mental Health Network. He has been at the Institute of Living for 16 years. Before that, he was at Case Western Reserve University in Ohio. Lothstein estimates that he and his colleagues have treated 600 Catholic priests, 100 Protestant ministers, 1 rabbi and about 50 religious women who come from all over the world."

<sup>151</sup> Berry, supra note 137.

<sup>152</sup> Berry, supra note 141.

<sup>153</sup> Id. Information on this proposal has been obtained from some of those who originated it but there is no official documentation available.

<sup>154</sup> Id.

<sup>155</sup> See DeGiulio, supra note 145.

of the sexual disorders in question, and they may not have been aware of the complete range of negative effects on victims, but they surely had the fundamental knowledge that such abuse causes grave harm to its victims.

## II. The Long Look Back into History

Clergy sexual abuse did not begin suddenly in 1984. It has been a recognized problem throughout the two thousand year history of the Catholic Church. Throughout the centuries, Church leadership has not reacted to clergy sexual abuse in a consistent manner. Catholic Church law was never systematically codified until the turn of the Twentieth century, in the first Official Code of Canon Law, which was published in 1917, and the revised Code was published in 1982.<sup>156</sup> Prior to codification, church law was a complex tangle of legal texts. These texts are the primary source for information about clergy sexual misconduct. The texts reveal periods when popes, bishops, and reformers were openly concerned about the misdeeds of the clergy.<sup>157</sup> The fact that the problem is intermittently mentioned in various legal texts that date back to the earliest centuries, verifies its perennial presence. More tellingly, these texts indicate that Church's leadership has all along believed it to be a moral wrong.

Each version of The Code of Canon Law, 1917 and 1983 respectively, contain specific canons or laws that address the issue of sexual misconduct by clerics. For example, Canon 1395 of the revised Code basically repeated canon 2359 of the 1917 Code, which states:

If they [clerics in major orders] have committed an offense against the sixth commandment with minors under sixteen years of age, or been guilty of adultery, rape, bestiality, sodomy, traffic in vice, or incest with blood-relatives or relations by marriage in the first

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<sup>156</sup> See **Coriden**, *supra* note 34, at 4, 8.

<sup>157</sup> Doyle, *supra* note 20. The two major historical sources are the *Corpus Iuris Canonici*, originally published between 1230-1234 and the *Codicis Iuris Canonici Fontes* (sources of the code of canon law), edited by Pietro Gasparri, published between 1923-1939 in nine volumes.

degree, they shall be suspended, declared infamous, deprived of every office, benefice, dignity or position that they may hold, and in more grievous cases, they shall be deposed.

If they have sinned against the sixth commandment in other ways, they shall be corrected with appropriate penalties in proportion to the gravity of their sin, even with deprivation of office or benefice, especially if they have care of souls.<sup>158</sup>

The official sources for the content of the canon also reveal references to the problem of clergy sex abuse. Those listed for canon 1395 in the 1983 Code refer back to canon 2359.<sup>159</sup> The sources for the older canon include references to medieval law and several papal documents issued through the centuries. These form the basis for an examination of legal and theological texts, which reveal the historical development of the church's treatment of clergy sexual abuse.<sup>160</sup>

A clear understanding of medieval and pre-medieval terminology is essential to an accurate appreciation of the historical context. Clergy sexual misconduct has involved male and female victims, including underage and adult individuals. Yet the contemporary focus has disproportionately been on underage male victims, while this was not the case throughout history. Though early and medieval Church leaders were also concerned with clergy abuse that was homosexual in nature, it was not to the exclusion of inappropriate or abusive behavior that involved women.<sup>161</sup>

The word “homosexual” did not exist, and is not found in any medieval or pre-medieval

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<sup>158</sup> Rev. Stanislaus Woywood, O.F.M., L.L.B., **A Practical Commentary on the Code of Canon Law** 550, Canon 2359 (1<sup>st</sup> ed., Rev. Callistus Smith, D.F.M., J.C.L., tran., Joseph F. Wagner 1952). This canon, 2359, applies to clerics in “major orders” meaning deacons, priests or bishops. The third paragraph refers to “care of souls” which is a canonical term referring to ecclesiastical position with direct responsibility over lay people. Examples are pastor, assistant pastor, and chaplain. Id.

<sup>159</sup> Id.

<sup>160</sup> See id.

<sup>161</sup> Vern Bullogh, **Sexual Variance in Society and History** 358-60 (1980).

literature. The term “homosexual” was first used in 1869,<sup>162</sup> while the use of the word “gay” is an even more recent term, used to describe persons sexually attracted to members of their own gender.<sup>163</sup> Rather, historically the term used was “sodomy” and its variants. Ecclesiastical literature used the Latin word *sodomia* to mean homosexual behavior.<sup>164</sup> It was also previously referred to as *luxuria*, meaning “lust” or “lechery”, and as a *peccatum contra naturam* or “sin against nature.”<sup>165</sup>

The ecclesiastical and secular literature of the time did not distinguish between pederastic homosexual behavior, and homosexual behavior between adults. The presumptive form of homosexual behavior was what we would today call “ephebophilic” behavior or sexual behavior between adults and young adolescents of the same gender,<sup>166</sup> because that same-sex interplay in the ancient world was ninety percent adult-adolescent, or pederastic, as opposed to adult-infant, or pedophilic.<sup>167</sup> This trend may have continued into the late middle ages, and beyond.<sup>168</sup> Consequently, when the medieval ecclesiastical literature refers to clerics committing *sodomia*, it is most probable that the reference is to sexual relations with young adolescent boys, not reference to sex with infants, or “pedophilia,” as we call it today.

The historical development of the Church’s approach to clergy sexual misconduct is based on a variety of sources, including church laws enacted by Popes, bishops, bishops’

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<sup>162</sup> **John Boswell, Christianity, Social Tolerance and Homosexuality** 42-43 (1981).

<sup>163</sup> Id.

<sup>164</sup> See Mark D. Jordan, **The Invention of Sodomy in Christian Theology** 29 (Univ. of Chicago Press 1997). The author attributes the invention of the word “sodomia” to St. Peter Damian (11th century). Id.

<sup>165</sup> Warren Johansson & William Percy, *Homosexuality*, in **Handbook of Medieval Sexuality** 156 (Vern Bullough & James Brundage eds., Garland Publ’g 1996) [hereinafter Johansson & Percy].

<sup>166</sup> Id. at 158.

<sup>167</sup> Id. at 159.

<sup>168</sup> Id. at 159, 165-72.

assemblies (called synods or councils), and general councils of the Church.<sup>169</sup> Insights into the Church response are obtained from theological writings of various Church leaders. The “official” sources are those derived from Church authority, the canonical texts.<sup>170</sup>

The negative attitude towards homosexual or sodomitic acts reaches back to the earliest days of organized Christianity.<sup>171</sup> The first Christians were generally from a Jewish religious and secular culture.<sup>172</sup> Although Christianity quickly embraced converts from other ethnic and religious traditions, notably Hellenistic or Greek, it was, at the outset, primarily Judaic in origin.<sup>173</sup> The doctrines of the Hellenistic and Judaic traditions equated homosexual acts with murder, possibly in reaction to the Greek cultural acceptance of pederastic sexuality.<sup>174</sup> The early Christians clearly adopted Judaic homophobia,<sup>175</sup> as evidenced by the various examples of ecclesiastical sources from the Second century onward, which outwardly condemn sodomia. As early as the year 177 A.D., Bishop Athenagoras characterized adulterers and pederasts as foes of Christianity and subjected them to excommunication, then the harshest penalty the church could inflict.<sup>176</sup> The Council of Elvira in 305 severely condemned pederasts.<sup>177</sup> Canons 16 and 17 of the Council of Ancyra in 314 inflicted lengthy penances and excommunication for male homosexuality.<sup>178</sup>

Another important source of insight into the Church’s early view of sexual abuse comes

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<sup>169</sup> Id. at 168-71.

<sup>170</sup> See Coriden, supra note 34, at 29-30. Catholic Church law must be officially promulgated by an authoritative lawgiver. This is the pope for the entire church and bishops for their individual dioceses. Laws proposed by groups of bishops must received papal approval for official standing. Id.

<sup>171</sup> **Vern Bullough & James Brundage, Sexual Practices and the Medieval Church** 55 (1982).

<sup>172</sup> Johansson & Percy, supra note 165, at 159-60.

<sup>173</sup> See Raymond Brown, *Early Church, in The New Jerome Biblical Commentary* 1340-42 (1992).

<sup>174</sup> Id. at 160.

<sup>175</sup> Johansson & Percy, supra note 165, at 160-65.

<sup>176</sup> Id. at 162.

<sup>177</sup> Id.

<sup>178</sup> Id.

from the body of penitential literature dating back to the Seventh century. The penitential books were handbooks compiled by priests, which were used to assist them in hearing the individual confessions of members of the Church.<sup>179</sup> During this period, individual confession of sins replaced the general or group confession of sins that had been in place since the earliest years.<sup>180</sup> The handbooks contained descriptions of particular sins, and the recommended penances and related prayers. Their popularity resulted in their widespread use throughout Europe. They continued in popularity until the late medieval period around the Thirteenth century, and remained in evidence until the Sixteenth century.

Although the Penitential books lacked uniformity, and never achieved an officially-approved status, they are a valuable source of factual information on problems of the time,<sup>181</sup> that illustrate Church views toward sexual abuse. Several of the more prominent Penitential books refer to sexual crimes committed by clerics against young boys and girls.<sup>182</sup> The Penitential of Bede, dating from England in the Eighth century, advises that clerics committing sodomy with children be given increasingly severe penances commensurate with their rank.<sup>183</sup> Laymen who committed such crimes were excommunicated and made to fast for three years; clerics not in holy orders, five years; deacons and priests seven and ten years respectively, and bishops who sexually abused children were given twelve years of penance.<sup>184</sup>

The Church's canonical texts serve as the primary source for learning about the

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<sup>179</sup> See *Penitential Books*, in **The Oxford Dictionary of the Christian Church** 1042 (F.L. Cross ed., 1957).

<sup>180</sup> See *The Sacrament of penance*, in **The Encyclopedia of Theology** 1189 (Karl Rahner, ed., 1975).

<sup>181</sup> See Cross, *supra* note 179, at 1060; see also **Medieval Handbooks of Penance** 25-30 (John T. McNeill & Helena M. Gamer trans., Austin P. Evans et al. eds., 1938) [hereinafter **McNeill & Gamer**].

<sup>182</sup> Pierre Payer, **Sex and the Penitentials: The Development of a Sexual Code, 550-1150**, 40-44 (1984).

<sup>183</sup> **McNeill & Gamer**, *supra* note 181, at 226.

<sup>184</sup> There are examples of such crimes in the *Penitential of Columban* (c. 600 AD), the *Penitential of Theodore* (c. 668-690) and the *Penitential of Cummean* (c. 650). *Id.* at 98-99, 102-105.

ecclesiastical and secular attitude toward homosexuality. These texts regularly speak of penalties levied against men accused of sex with other males.<sup>185</sup> The role of the clerics seemed less protected as compared to more recent times, inasmuch as the same legal texts also address sodomia among the clergy. The earliest of these texts, the Visigothic laws of Spain, originating in the 7th and 8th centuries, contains legislation against homosexuality, with a specific canon providing for the degradation of clergy guilty of sodomy.<sup>186</sup> By the turn of the millennium, canon law was becoming less scattered and more systematically articulated. Consequently, there is more available information about the Church's treatment of erring clerics subsequent to this time.

Sexual crimes brought double liability for clerics. First, homosexual sex and sex with minors was considered to be a very serious sin.<sup>187</sup> If a cleric was the perpetrator, this added the offense of sacrilege, since the cleric's body was considered specially consecrated to God and he was not supposed to engage in such acts.<sup>188</sup> Payer comments that his study of canonical collections to the year 1048 revealed that all contained legislation against homosexuality.<sup>189</sup> In 1179, the Third Lateran Council, a medieval equivalent to Vatican Council II, decreed that clerics who commit sins against nature be confined to a monastery for life or leave the church.<sup>190</sup> After 1250 the penalties became much harsher, and sodomy was often linked to heresy.<sup>191</sup> There is some indication that sodomy was commonly identified with clerics in the popular

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<sup>185</sup> Id.

<sup>186</sup> Vern L. Bullough, *The Sin Against Nature and Homosexuality, in Sexual Practices in the Medieval Church* 59 (Vern L. Bullough & James Brundage eds., 1982).

<sup>187</sup> See id.

<sup>188</sup> Johansson & Percy, supra note 165, at 159-60.

<sup>189</sup> Id. at 10.

<sup>190</sup> Id. at 168.

<sup>191</sup> Id.

mind.<sup>192</sup> The sacral offense entered secular law, and offenders were subjected to severe punishments including fines, castration, exile, and even death.<sup>193</sup> The Church added an additional penalty to their scheme of punishment, entitled “infamy of fact.” This amounted to a perpetual exclusion of the offender and even his family from the Christian community. This was tantamount to a civil death, with complete ostracization and economic boycott. This penalty was imposed on clerics as well as on laymen.<sup>194</sup>

#### A. Peter Damian and the “Book of Gomorrah”

Proof that clergy sexual misconduct has clearly not been an unknown quantity until the latter 20th century is provided by Liber Gomorrhianus, or Book of Gomorrah, written by Saint Peter Damian in 1051, while he was prior of the Benedictine community of Fonte Avellana, and addressed to Pope Leo IX (1048-1054).<sup>195</sup> Peter Damian was created a Cardinal Bishop in 1057, and was recognized as a saint and declared a “Doctor of the Church” in 1828.<sup>196</sup> He was one of the would-be reformers working to improve morals in his own monastic community and the surrounding area.<sup>197</sup> The Book of Gomorrah<sup>198</sup> contains numerous references to a variety of ecclesiastical laws and rules pertaining to clergy sexual abuse with men or young boys.<sup>199</sup>

The moral life of the Church had seriously deteriorated by the end of the tenth and

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<sup>192</sup> Id. at 169.

<sup>193</sup> Id. at 168.

<sup>194</sup> **Michael Goodrich, The Unmentionable Vice 71 (1979); see also, Johansson & Percy, supra note 165, at 69.**

<sup>195</sup> **Peter Damian, Book of Gomorrah: An Eleventh Century Treatise Against Clerical Homosexual Practices 1051 (Wilfrid Laurier Univ. Press 1983).** Peter Damian, born in 1007 in Ravenna, became a Benedictine monk in 1035 and in 1043 was chosen superior of the monastery. He was known as an uncompromising preacher against worldliness and clerical corruption. He was named a Cardinal and bishop of Ostia in 1057 and died in 1072. Cross & Livingstone, supra note 179, at 1072.

<sup>196</sup> See **Jordan**, supra note 164, at 45. See generally **Cross & Livingstone**, supra note 179, at 1072.

<sup>197</sup> Id. at 12.

<sup>198</sup> See supra note 197.

<sup>199</sup> **Damian**, supra note 195, at 9-10.

beginning of the eleventh centuries.<sup>200</sup> “Simony,” the buying and selling of ecclesiastical offices, and clerical sexual immorality were considered to be two of the most serious problems.<sup>201</sup>

Individual bishops or monastic superiors sporadically attempted to institute reforms among their own subjects, yet no universally acknowledged movement emerged from the morass.

Several reform movements arose in order to promote change, but historians point to the lack of a strong centralized authority as the key reason for the failure of widespread change.<sup>202</sup> The Gregorian Reform movement began during the papacy of Pope Leo IX (1048-1054).<sup>203</sup> Three popes, none of whom reigned longer than two and-a-half years, followed Leo.<sup>204</sup> These were Victor II (1055-57, Stephen IX (1057-58) and Nicholas II (1059-61). Pope Alexander II was elected in 1061 and reigned until 1073 and was succeeded by Gregory VII. Alexander, like his predecessor Leo IX, enacted several measures whereby he attempted to restore some moral stability to the clergy.<sup>205</sup> These reform efforts were spearheaded by the controversial Pope Gregory, whose name and papacy have been identified with the reform, though it actually spanned approximately 150 years (1000-1150), and well outside of his reign.<sup>206</sup>

There are remarkable parallels with contemporary Catholicism in Peter Damian’s work. He decried the extent of homosexual practices among the clergy of the time, and urged the Pope to take decisive measures to prevent it.<sup>207</sup> Although Damian is considered to have been a

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<sup>200</sup> **Damian**, *supra* note 195, at 11.

<sup>201</sup> **Gregorian reform**, in **Catholic Encyclopedia** 455-56 (Rev. Peter M.J. Stravinskias ed., 1991)[hereinafter **Catholic Encyclopedia**].

<sup>202</sup> **Damian**, *supra* note 195, at 11.

<sup>203</sup> **See Catholic Encyclopedia**, *supra* note 201, at 455.

<sup>204</sup> *Id.* at 765.

<sup>205</sup> **See Cross & Livingstone**, *supra* note 181, at 33.

<sup>206</sup> **See Catholic Encyclopedia**, *supra* note 201, at 455-56. Clergy immorality was one of many objects of reform during this period. Most prominent was the lay investiture conflict and the papal efforts to wrest power from the hands of lay princes. *Id.*

<sup>207</sup> **See Damian**, *supra* note 195, at 14-16.

stringent moralist and harsh critic of the clergy of his time, scholars nevertheless deem his work credible.<sup>208</sup> He was a church reformer, and one of his consistent themes was the sexual immorality of the clergy and laxness of Church superiors who refused to take a strong stand against it.<sup>209</sup> Although he condemned all forms of homosexual practice, priests' sexual contact with adolescent boys particularly angered and scandalized him.<sup>210</sup>

Damian began by singling out superiors who, prompted by excessive and misplaced piety, failed to exclude sodomites.<sup>211</sup> He asserted that those given to "unclean acts" not be ordained, or if they were already ordained, be dismissed from Holy Orders.<sup>212</sup> He held special contempt for those clergy members who defiled men or boys who came to them for confession.<sup>213</sup> Likewise, he condemned clerics who administered the sacrament of penance through confession to their victims.<sup>214</sup> Damian also refutes the canonical sources relied upon by offending clerics to justify their sexual proclivities.<sup>215</sup> Damian was uncompromising and harsh in his condemnation of monks and priests who engaged in sexual perversion. He was no less so concerning bishops and other religious superiors:

They [the bishops] appear in the third person, as intended but unspecified recipients of the booklet. If their eavesdropping is not problematic their moral character is. Peter begins by supposing them lenient; he goes on to charge that they are idle and worse. They must fear that they will have a share in the Sodomites' guilt. Moreover, at least some of the bishops are themselves

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<sup>208</sup> Id. at 5. "The Book of Gomorrah stands out as a carefully planned and eloquently executed discussion of the subject reflecting both a legalistic concern with correct ecclesiastical censure and a passionate pastoral concern for those caught up in the behavior." Id.

<sup>209</sup> Id. at 12.

<sup>210</sup> Id. at 13. See also Paul J. Isely, *Child Sexual Abuse and the Catholic Church: An Historical and Contemporary Review*, 45 **Pastoral Psychology** 281 (1997).

<sup>211</sup> **Damian**, supra note 195, at 30-31.

<sup>212</sup> Id. at 32-33.

<sup>213</sup> Id. at 41-42.

<sup>214</sup> Id. at 43-44.

<sup>215</sup> Id. at 51-56.

Sodomites.<sup>216</sup>

Damian also assesses the damage done to the Church by offending clerics.<sup>217</sup> His final chapter is an appeal to the Leo IX, the reigning Pope, to take action.<sup>218</sup>

However, The Pope's response was one of inaction, which served to be a prophetic indicator of contemporary responses.<sup>219</sup> Pope Leo praised Damian, and verified the truth of his findings and recommendations.<sup>220</sup> Yet he considerably softened the reformer's urges that the Church take decisive action to root offending clerics from the ranks of the clergy. The Pope decided to exclude only those who had offended repeatedly and over a long period of time.<sup>221</sup> Although Damian had paid significant attention to the impact the offending clerics had on their victims, the Pope made no mention of this, and focused only on the sinfulness of the clerics and their need to repent.<sup>222</sup>

One of Damian's references is of unique interest. Although clergy sexual misconduct has generally been enshrouded in secrecy in the recent past, it seems that this was not always the case. Damian quotes a text from a contemporary monastic rule:

A cleric or monk who seduces youths or young boys or is found kissing or in any other impure situations is to be publicly flogged and lose his tonsure. When his hair has been shorn, his face is to be foully besmeared with spit and he is to be bound in iron chains. For six months he will languish in prison-like confinement and on three days of each week shall fast on barley bread in the evening. After this he will spend another six months under the custodial

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<sup>216</sup> See **Jordan**, *supra* note 164, at 49.

<sup>217</sup> **Damian**, *supra* note 195, at 72-77.

<sup>218</sup> *Id.* at 91-92.

<sup>219</sup> Pope Leo IX, *Nos Humanius Agentes*, in **John Boswell, Christianity, Social Tolerance and Homosexuality** 365-66 (1980).

<sup>220</sup> **Damian**, *supra* note 197, at 95. "The book which you have published my son, against the fourfold pollution of carnal contagion, frank in style and even more direct in reasoning, provides indisputable evidence of the intention of your mind to enter the holy fray o the side of the splendid might of shining modesty." *Id.*

<sup>221</sup> See *id.* at 96.

<sup>222</sup> See **Bullough**, *supra* note 186, at 61.

care of a spiritual elder, remaining in a segregated cell, giving himself to manual work and prayer, subject to vigils and prayers. He may go for walks but always under the custodial care of two spiritual brethren, and he shall never again associate with youths in private conversation nor in counseling them.<sup>223</sup>

## B. The Corpus Iuris Canonici and Decretum Gratiani

The Corpus Iuris Canonici, or Body of Canon Law, published in 1234 is the most extensive and single-most important source of Canon law history which reveals the Church's attitude toward clergy sexual abuse.<sup>224</sup> In the centuries prior to the compilation of the Corpus Iuris Canonici, most legislation on sexual abuse took the form of canons or laws enacted by groups of bishops in various areas.<sup>225</sup> There was no single official collection or source book for the law of the Catholic Church. In addition, the Papacy had not yet reached the level of centralized authority, as it did in later years. Although as a collection it is unofficial, it contains a wealth of both official and unofficial legal source texts. The most important component is the Decretum Gratiani, or Decree of Gratian, published in 1140.<sup>226</sup> This mammoth work contains texts from a wide variety of sources, dating back to the First century. Gratian incorporated not only strictly legal sources, but also scriptural and theological texts as well, in his systematic reconciliation of the legally related literature that existed at the time. As a source for the Church's legal and political history, the Decretum Gratiani is unparalleled.

The Decretum includes a specific reference to the sexual violation of boys, probably

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<sup>223</sup> Id. at 61. The citation is from C.W. Barlow, Rule for the Monastery of Compludo in Fathers of the Church, 169 (1969), cited in Damian, supra note 197.

<sup>224</sup> Corpus Iuris Canonici (Aemilio Friedberg ed., 1959). The Corpus Iuris Canonici was compiled under the initial direction of the Dominican canonist, Raymond of Penafort. It consisted in the Decretum Gratiani and the Decretales Gregorii IX or Decretals of Pope Gregory IX and was published in 1234. In time collections of the decrees of Popes Boniface VIII, Clement V, John XXII were added and finally a book entitled Extravagantes communes, a collections of decrees of various popes between 1261 and 1471. Id.

<sup>225</sup> This was the only form extant at the time insofar as the first codification of church law was published in 1917.

<sup>226</sup> Gratian (1159) was an Italian monk of the Camoldolese Order. Because of his mammoth work in compiling the Decretum, Gratian is known as the "Father of Canon Law." However, practically nothing is known about his life.

meaning young adolescents, covered under the heading De Stuprum Pueri.<sup>227</sup> An activity included in the category “stuprum pueri” was the abduction and corruption of boys, which merited capital punishment if the offense was “perfectus,” but only banishment if it was “imperfectus.”<sup>228</sup> Gratian also included a canon from the 1102 Synod of London stating that clerics found guilty of sodomy, should either be deposed or excommunicated.<sup>229</sup> The law was modified in 1179, the Third Lateran Council ruled that clerics guilty of sodomy must either leave the Church or be perpetually confined to a monastery. Lay people committing similar crimes received the harsher punishment of excommunication.<sup>230</sup>

### C. Later Responses to the Problem of Clergy Sexual Abuse

The Council of Trent (1545-1563) took place after the Protestant Reformation and is regarded as a result of the need for moral and administrative reforms within Roman Catholicism.<sup>231</sup> This council faced even more profound challenges than Vatican II. It enacted legislation that was far more revolutionary, and made changes that were more fundamental.<sup>232</sup> Among the many reform canons passed, were several that dealt directly with clerical department. One urged bishops to admonish and punish priests whose lives were “depraved and scandalous.”<sup>233</sup> If this failed, such priests were to be deprived of their benefice, completely

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<sup>227</sup> Gratian, *Decretum Pars Secunda, Causa XXXIII, de Poenitentia, Q. iii, dist. xv*, in *Friedberg Vol. 2* 1161 (1140).

<sup>228</sup> See Bullough, *supra* note 186, at 62. *Sexual Practices and the Medieval Church* 62 (1982). It is not clear if the distinction between *perfectus* and *imperfectus* refers to acts which were performed and completed with ejaculation or merely attempted and not completed.

<sup>229</sup> *Id.* at 63.

<sup>230</sup> See Boswell, *supra* note 163, at 277.

<sup>231</sup> See Cross, *supra* note 179, at 1373-74.

<sup>232</sup> See *id.* at 1392-93.

<sup>233</sup> See *id.* at 148. “But, those who live shamefully and scandalously, they shall, after having first admonished them, restrain and punish; and, if they shall still continue incorrigible in their wickedness, they shall have power to deprive them of their benefices, according to the constitutions of the sacred canons, setting aside every exemption or appeal whatsoever.”

cutting them off from all financial support.<sup>234</sup> Members of religious orders who committed publicly known crimes were to be severely punished by their superiors, while a report on the disciplinary action taken was to be referred back to the local bishop.<sup>235</sup> Although the two canons do not explicitly refer to sexual abuse of minors by the clergy, the official notification betrays a problem of significant proportion.

Buried in the literature are occasional glimpses of the Church's attitude toward victims. There is no evidence in medieval or early modern legislation referring to damages awarded to victims, nor are there any available works in pastoral theology that provide recommendations for the care of victims. However, one clue is found in an article that described a case from the Sixteenth century.<sup>236</sup> The victim, a teen-aged choirboy, was whipped and banned from the Papal States. The clerical abuser, a priest in charge of the choir, was tried in an ecclesiastical court, deposed, handed over to the secular authorities, and decapitated.<sup>237</sup> This story illustrates that victims themselves may have received harsh penalties, though they were not at fault.

Law and custom prescribed a variety of punishments for sexual sins. These ranged from fasting and exclusion from Communion to torture and even execution by the civil authorities.<sup>238</sup> Documentation indicates that penances also included abstinence from sexual intercourse, pilgrimages, flogging and imprisonment.<sup>239</sup> Later medieval laws, including papal dictates,

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<sup>234</sup> See *id.* at 148.

<sup>235</sup> See *id.* at 246.

<sup>236</sup> Richard Sherr, *A Canon, A Choirboy, and Homosexuality in Late Sixteenth Century Italy: A Case Study*, 21 *Journal of Homosexuality* 1 (1991).

<sup>237</sup> *Id.* at 8.

<sup>238</sup> See Johansson & Percy, *supra* note 169, at 168, 175; see also James A. Brundage, *Law, Sex and Christian Society in Medieval Europe* 319-23, 481-85, 544 (Univ. of Chicago 1987).

<sup>239</sup> See Cross, *supra* note 179, at 1060; see also Peter Damian, *Regula Fructuosi, Book of Gomorrah* (C.W.Barlow trans., Wilfrid Laurier Univ. Press 1969). Chapters X and XII list of penances applied to clerics at the

regularly refer to degradation or dismissal from the clerical state.<sup>240</sup> Peter Damian cites monastic rules that prescribe torture and imprisonment.<sup>241</sup> The previously mentioned reform legislation of Pope Pius V also required that after the ecclesiastical processes found a cleric guilty, he be turned over to the secular arm for additional punishment.<sup>242</sup>

The Church's condemnation of homosexuality has been consistent since the earliest centuries.<sup>243</sup> Similarly, clergy sexual misconduct has been acknowledged and disavowed for as long. The various kinds of canonical documentation already cited indicate that the official church recognized various kinds of sexual actions by clerics to be problematic. Church leaders have not always denied the existence of clergy sexual misconduct, nor have they always been secretive in the way they dealt with guilty clerics. We can conclude that despite the claims of some contemporary Catholics, cleric and lay, this is certainly not a new problem.

### **III. Confronting Clergy Sexual Misconduct Today**

Clergy sexual misconduct was a deep secret in the contemporary Catholic Church until 1984. Before that time, there had been a few isolated cases of priests who were criminally prosecuted for sex crimes, but none received any significant degree of secular press coverage. This was due to the deference accorded not only the Catholic Church, but to churches in general.

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time. These included fasting for periods of several years, exclusion from the community and exclusion from communion.

<sup>240</sup> See Gasparri, *supra* note 157.

<sup>241</sup> See **Damian**, *supra* note 195, at 34.

A cleric or monk who seduces youths or young boys or is found kissing or in any other impure situations is to be publicly flogged and lose his tonsure. When his hair has been shorn, his face is to be foully besmeared with spit and he is to be bound in iron chains. For six months he will languish in prison-like confinement and on three days of each week shall fast on barley bread in the evening. After this he will spend another six months under the custodial care of a spiritual elder, remaining in a segregated cell, giving himself to manual work and prayer, subject to vigils and prayers. He may go for walks but always under the custodial care of two spiritual brethren, and he shall never again associate with youths in private conversation nor in counseling them.

<sup>242</sup> See Gasparri, *supra* note 157.

<sup>243</sup> See Johansson & Percy, *supra* note 165, at 155-89; see also **Bullough**, *supra* note 186, at 55-71.

The first incidences of clergy sexual abuse did not occur within the era of widespread secular media coverage, which easily dates back to the 1984 Lafayette Louisiana case of Father Gilbert Gauthé.<sup>244</sup> Adult victims have come forward in significant numbers with stories of sexual abuse that happened prior to 1984 and even prior to the Vatican Council era of 1962-65.<sup>245</sup>

Most instances of clergy sexual abuse of children or young adolescents were never reported, even to parents. Even those who were victims of decades of abuse, admit that they were too shocked or frightened to reveal the abuse, and were especially fearful of revealing it to devout parents.<sup>246</sup> In those cases where children did manage to admit “something happened” between the child and the priest, it was rare that a parent then took the matter to the local priest, and even more rare that it was taken to a bishop. Child victims, now adults, have remarked that they doubted their parents would have believed them. In some cases, when the child’s parents did believe the story, many were still apprehensive about moving forward.

There were a few cases, however, that did make it to the attention of Church officials, and even law enforcement agencies. When reports were made to bishops alone, often from pastors on the local scene, the entire matter was handled in secret.<sup>247</sup> Parents were strictly admonished, urged, intimidated, and even threatened with dire consequences if they reported the

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<sup>244</sup> State v. Gauthé, 731 So.2d 273 (1998).

<sup>245</sup> There are no reliable statistics available that show the dates of clergy abuse. Conclusions on the frequency of abuse prior to 1984 are obtained from anecdotal reports of victims and attorneys. However, the accounts of clergy abuse by several of the more notorious perpetrators indicate that much of the abuse took place in the 1960’s and 70’s. See **Elinor Burket & Frank Bruni, A Gospel of Shame** (1993); see also **Berry**, *supra* note 1; **Betrayal**, *supra* note 4; **Sipe**, *supra* note 15.

<sup>246</sup> The authors have questioned several hundred victims about why they failed to report abuse at the time it was happening. The common reason given was fear of not being believed or fear of being punished for speaking ill of a cleric.

<sup>247</sup> See Philip Jenkins, **Creating A Culture of Clergy Deviance**, in **Wolves Within the Fold** 118-19, 127-28 (Anson Shupe ed., Rutgers Univ. Press, 1998); see also **Balboni**, *supra*, note 101, at 207.

matter to the police, to the press, or disclosed it in any way.<sup>248</sup> For the most part these coercive tactics worked.

The bishop often privately confronted the errant priests. The illicit act of sexual abuse was treated as a moral failing, not as a symptom of a psychological or psychiatric disorder.<sup>249</sup> Therapeutic intervention was never considered a viable option until the late 1960s, and even then the majority of bishops considered any acting out of a sexual nature to be measured in terms of sin. The remedy was spiritual, and involved the sacrament of penance (confession), a retreat, and in more serious cases, a transfer to another location. The bishop himself, along with a very small group of the most trusted advisors, handled the cases. Most often this group consisted of only three to four clerics. Civil authorities were never notified, even if required by applicable reporting statutes. If law enforcement agencies became involved, every effort was made to use influence and persuasion at all levels, to maintain silence on the matter. Bishops relied on sympathetic law enforcement officers and judges if matters reached the criminal justice system. There were no trials. There was no press coverage. Serious offenders were generally transferred quickly and quietly with little or no explanation for the action.<sup>250</sup>

This pattern changed radically with the widespread press coverage of clergy sexual misdeeds, that began in 1984 in Louisiana. Victims are now believed. Secular law enforcement

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<sup>248</sup> There are no known studies of oppressive tactics used by church officials. There are however, abundant media accounts. See e.g., Aamer Madhani, Breaking Vow of Silence on Abuse, **Chi. Trib. Internet Edition**, Apr. 14, 2002 available at <http://web.lexis.com/lawschoolRep./research/open.asp>; Schneider, supra note 88; Staff, Report: Church Hired Private Eye, **Hartford Courant**, Mar. 22, 2002; Alison Leigh Cowan, Little Solace for Family in Lawsuit Against Priest, **N.Y. Times**, Apr. 12, 2002; Michael Powell and Lois Romano, Roman Catholic Church Shifts Legal Strategy, **Wash. Post**, May 13, 2002.

<sup>249</sup> See Balboni, supra note 101, at 187.

<sup>250</sup> The pattern of handling abuse cases is a summation based on the authors' experience. There were no written procedures. Evidence is derived from accounts provided by victims and church officials in civil and criminal proceedings over the past 18 years. See **Anson Shupe, In The Name of All That's Holy: A Theory of Clergy Malfeasance** 79-116 (Praeger Publishers 1995) (provides a sociological study of the common response to allegations of abuse).

has abandoned its hesitation to press criminal charges.<sup>251</sup> Judicial sympathy for bishops and the institutional church gradually vanished as more and more examples of the cover-up came to light.<sup>252</sup>

The institutional Church's leadership has continued to react defensively. The hierarchy, or their attorneys, gradually replaced secrecy with obstructionism. Victims have accused church leaders of "re-victimizing" them through obstructionist tactics, time consuming legal roadblocks, demeaning depositions, and even counter-suits.<sup>253</sup> In some cases, victims, their families, or their witnesses have been subjected to harassment by church-hired private detectives; and others have been publicly shamed. Some bishops have excused their behavior by appealing to their canonical obligation to safeguard the church's patrimony, meaning the financial foundation.<sup>254</sup> Others have denied any control over their lawyer's tactics.<sup>255</sup>

Victims have accused the bishops of ignoring them, caring only for the stability of Church structures and protecting the priests.<sup>256</sup> The bishops see their primary responsibility as preserving the visible institutional structures of the Church. They are selected and named bishops not because of their potential for revolutionary change, but because of the assurance that

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<sup>251</sup> There is no centralized reporting system for clergy abuse in the U.S. Catholic Church or in the worldwide church. Data is obtained from law enforcement sources, attorneys or the secular media. The Linkup, a survivors support group founded in 1990, has tracked clergy abuse cases with some success and reports civil and criminal actions on its web site, <http://www.thelinkup.org>.

<sup>252</sup> See **Betrayal**, *supra* note 4, at ix-xiii. This book notes that the prime example of the demise of judicial sympathy, was the judicial decision to open the Boston Archdiocese's files. *Id.*

<sup>253</sup> See Alan Cooperman, **Bishops Urged to Halt Lawsuits**, *Wash. Post*, Aug. 31, 2002, at A13; Jack Dolan, **Church Investigated an Accuser: Private Detective Reported to Vicar About Priest's Alleged Victim**, *Hartford Courant*, Mar. 22, 2002, at A1; Michaelm Powell & Lois Romano, **Roman Catholic Church Shifts Legal Strategy**, *Wash. Post*, May 13, 2002, at A01.

<sup>254</sup> See 1917 **Code** c.1276.

<sup>255</sup> See *id.*

<sup>256</sup> The authors have spoken personally with hundreds of victims, men and women. The most common complaint is that bishops are more concerned about protecting the institution than they are about the harm done to victims.

they will preserve the institutional Church.<sup>257</sup> They are “organizational men” whose identity is dependent on the institutional church. Furthermore, the bishops themselves teach that their office is directly connected to God Himself.<sup>258</sup>

In defense of their secretive methods of handling abuses cases, many bishops have said that their foremost desire was to prevent scandal.<sup>259</sup> They feared that dealing openly with cases of sexual abuse would diminish the exalted perception of the Church.<sup>260</sup> In nearly every instance, the bishops’ concern for the Church has prevented them from acting forthrightly when faced with clergy abuse cases. It has also prevented them from offering adequate pastoral care to the victims and their families, or from even realizing the extreme depth of the damage that sexual abuse brings to them. Church leaders were distracted by their concern to protect the institution’s image. Thus, the sexual abuse crisis was not a pastoral problem, but a public relations problem.<sup>261</sup>

#### A. Why the Victims Are Coming Forward Now

Since 1985, thousands of victims claiming sexual abuse by clerics have come forward in several countries.<sup>262</sup> Within months of the media breakthrough in the United States, victims were going public in Canada and several European countries.<sup>263</sup>

The secular news coverage made the problem real, and not the subject of limited

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<sup>257</sup> See Balboni, *supra* note 101, at 161-63; Doyle, *supra* note 20, at 204.

<sup>258</sup> 1917 **Code** c.375 states: “Through the Holy Spirit who has been given to them, bishops are the successors of the apostles by divine institution; they are constituted pastors within the church so that they are teachers of doctrine, priests of sacred worship and ministers of governance.”

<sup>259</sup> See Balboni, *supra* note 101, at 162.

<sup>260</sup> See *id.* at 160.

<sup>261</sup> *Id.* at 161-63, 170-71, 190.

<sup>262</sup> See Catholics for a Free Choice, **Annex A: An International Crisis, The Holy See and the Convention on the Rights of the Child: A Shadow Report**, Sept., 2002, 23-28 (Washington, D.C., Catholics for a Free Choice). This documented report lists several countries with examples of the impact of the clergy abuse crisis. *Id.*

<sup>263</sup> See *id.*

backroom gossip. What many “good Catholics” could not even bear to think about now was real. Victims were believed. In effect, they had been “given permission” to tell their stories, and the community had been given permission to believe them.

A common perception among victims is that they are alone.<sup>264</sup> They began to band together in informal support attempts, and by the beginning of the 1990s support groups were founded. These organizations grew rapidly and provided support, encouragement, direction, and information to the victims.<sup>265</sup>

Organized Church bodies were long held sacred, yet their attempts to control people and influence society for their own benefit have often resulted in serious trouble for church organizations. The exalted position of the churches in the United States and in other countries helped shield them from criticism, negative press coverage, and legal attacks.<sup>266</sup> Prominent churchmen held positions of esteem in the civic society. There was something special about churches, and those who governed them.

The turbulent 1960s brought many profound changes to western society. Included were the beginnings of the gradual socio-cultural process or trend whereby certain of society’s most sacred institutions: the judiciary, the presidency, the medical profession, and the churches, would be criticized for actions and attitudes contrary to their fundamental purposes.<sup>267</sup> The process was swift with some, and gradual with others. The Watergate break-in, and President Nixon’s

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<sup>264</sup> Based on the authors’ combined experience of speaking directly with approximately 500 victims as well as participating in victims’ support meetings since 1990.

<sup>265</sup> Survivors Network of those Abused by Priests (“SNAP”) is a major support organization in the United States which was, founded in 1990. See generally **Survivors Network of Those Abused by Priests** website, at <http://members.cox.net/survivorconnections> (last visited October 30, 2003). See also **LinkUp** (formerly VOCAL) website, at [www.thelinkup.org](http://www.thelinkup.org) (last visited October 30, 2003).

<sup>266</sup> See Theresa Krebs, *Church Structures that Facilitate Pedophilia Among Roman Catholic Clergy*, in **Wolves Within the Fold** 15-32 (Anson Shupe ed., 1998).

<sup>267</sup> See generally **Rosemary Gibson & Jordan Prasad Singh, Wall of Silence** (2003) (discussing the issue of medical malpractice).

subsequent resignation, significantly changed the image of the presidency in a short period of time. In contrast, it took a gradual process in the civil courts and the emergence of “medical malpractice” suits followed decades later by the HMO's to effectively de-mythologize the medical profession.<sup>268</sup>

The same process of de-mythologization for the Catholic Church started from within during the Vatican Council (1962-65), and has continued with results never imagined by the conciliar participants. This process brought the institutional Church down to a human level, and made it vulnerable to attack by the victims of clergy sexual misconduct.<sup>269</sup>

#### B. The Power of Clericalism

Sexual abuse, especially the abuse of children, is a particularly insidious form of criminal activity. The long-term destructive effect on the victims is obvious. Segments of society look on in horror and amazement when they view the limp responses of Church authorities to revelations of the actions of sexual offenders in their midst.<sup>270</sup> As a crime, sexual abuse of the young is one of the most odious and socially repugnant. What then is there in the very nature of an organized religious body that prompts it to react so defensively about itself and with so much indifference towards the victims? The complex nexus between clergy sexual misconduct and the church is colored at every level by the socio-cultural reality known as clericalism.<sup>271</sup>

Suing an established church in the United States presents unique challenges to plaintiff and defendant alike. The Church's most common defense is brought under the First

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<sup>268</sup> Id.

<sup>269</sup> See Anson Shupe, Religion, Sociology and the Scandal of Clergy Malfeasance, in **In the Name of All That's Holy** 11-14 (1995).

<sup>270</sup> See Eileen McNamara, A Higher Authority, **The Boston Globe**, Nov. 13, 2002, at B1. The editorials appearing in various U.S. secular newspapers expressing critical responses to the Catholic Church's official actions in face of the sex abuse scandals are too numerous to list.

<sup>271</sup> See Doyle, supra note 20.

Amendment. Church attorneys argue that the courts are prohibited from interpreting Church laws and dogmas. Canon law, however, is not dogma. Those parts that are relevant in court describe standards of care, administrative procedures, duties of office-holders, and the ecclesiastical chain of command.<sup>272</sup> The section in canon law that deals with crimes and penalties lists a number of actions that the Church considers criminal.<sup>273</sup> Some of these acts are also considered crimes within secular society. The fact that a cleric commits them, and is therefore liable to his own internal rule system does not mean that he is exempt from prosecution in the secular courts.

Sexually abusive relationships involving clerics often involve an abuse of the power held by the perpetrator. In the opinion of some experts, the abuse happens precisely because of the power differential that exists between victim and cleric.<sup>274</sup> There is no religious dogma, tradition, or belief held by the Church that would be compromised by a civilian law enforcement investigation, or the exercise of civilian legal jurisdiction.<sup>275</sup>

To understand the basis for the Church's arguments for special or unique consideration by the courts, one must first understand the meaning and power of clericalism. Clericalism helps explain the traumatic bond that comes into being between a clergy abuser and his victim. This bond serves to strengthen the unhealthy relationship between the two. This bond, and the related concept of "religious duress," explains why many victims would not terminate the relationship

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<sup>272</sup> Canon Law is a collection of rules imposed by Catholic church authority on church members. Catholic Church teaching holds that some individual cans or laws are based on divine law or the law of God but that most of the laws of the Code are a reflection of structural or disciplinary needs. See **The Code of Canon Law: A Text and Commentary** 5-14 (James Coriden, et al. eds., 1985).

<sup>273</sup> See 1917 **Code** c.1364-1399.

<sup>274</sup> See **Benyei**, supra note 83, at 65.

<sup>275</sup> See Zanita Fenton, Faith in Justice: Fiduciaries, Malpractice and Sexual Abuse by the Clergy 8 **Mich. J. Gender & L.** 45, 73 (2001).

because they could not break from it even after repeated abusive acts. It explains why victims were unable to disclose the abuse to parents, siblings, friends, Church authorities, or law enforcement authorities at the time it happened, and often for years or even decades thereafter. Clericalism and religious duress are grounded in the reality of an inordinate power held by clerics over lay people, and within the clerical subculture, by higher clerics over those of lower rank.<sup>276</sup>

Lay Catholics and congregants of other denominations have almost universally held their clergy in the highest esteem, without them having earned it. They are taught to extend to them the greatest respect and deference.<sup>277</sup> The cleric was traditionally presumed to be a man of integrity and impeccable morals.<sup>278</sup> Perhaps because of this lofty position, clerics have been able to carry out the seduction and grooming process of victims without arousing suspicion.

Catholicism is both a complex socio-cultural reality and a worldwide political entity. It touches the spiritual, moral, emotional, psychic, and economic aspects of the lives of its members. For many people, the Church is identified with the clergy who hold all-important positions of power in it.

Clericalism is a radical misunderstanding of the place of clerics in the Church. It is an ism that describes the erroneous belief that clerics form a special elite within the Church, and because of their powers as sacramental ministers they are superior to the laity, are deserving of special and preferential treatment, and have a closer relationship to God.<sup>279</sup> The mistaken belief that the members of the clergy are a spiritual elite, superior to the average lay person, and in

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<sup>276</sup> See Doyle, supra note 20, at 209-15.

<sup>277</sup> See Russell Shaw, An Overview of Clericalism, in **To Hunt, To Shoot, To Entertain** 1-37 (1993).

<sup>278</sup> Id. at 28-29.

<sup>279</sup> Conference of Major Superiors of Men, In Solidarity and Service: Reflections on the Problem of Clericalism in the Church, Washington D.C., 1983, at 2.

closer touch with the Almighty leads to clericalism. Clericalism has always had a pejorative connotation, and has been a negative force in the Church and in society. Even the dictionary definitions of the word create a negative impression.<sup>280</sup>

Official Catholic teaching states that within the Catholic Church there are two classes of people: clerics and lay people.<sup>281</sup> Clerics are men, and all officially functioning ordained persons are clerics.<sup>282</sup> A man becomes a cleric when he is ordained a deacon.<sup>283</sup> Prior to the Vatican council, a man went through a special liturgical ritual to become a cleric. The rite was known as tonsure, and involved the symbolic cutting of the candidate's hair.<sup>284</sup> Clericalism developed in the Fourth century as the Church began to fashion itself after the Byzantine Empire. There was no clerical state that included all sacred ministers prior to the acceptance of Christianity as the official state religion by Emperor Constantine. In the Roman Empire, the kleros were the municipal administrators, and the laos were the subjects who were ruled. Soon the newly organized Church adopted the clergy-laity dichotomy, which is foreign to the scriptures but has been deeply ingrained throughout history as a guarantor of power for the leaders.<sup>285</sup>

To be ordained, a man must be a cleric, and to continue to function as a priest, a man must remain a member of the clerical state.<sup>286</sup> When a man is dismissed or leaves the active ministry by choice, he does not cease to be a priest. Rather, his canonical and

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<sup>280</sup> See **Webster's New College Dictionary** 209 (2001). This dictionary defines clericalism as "A policy of supporting the power and influence of the clergy in political or secular matters." See also **The American Heritage Dictionary of the English Language** (4th ed., 2000).

<sup>281</sup> 1917 Code c.207, § 1: "Among the Christian Faithful by divine institution there exist in the church sacred ministers, who are called clerics in law, and other Christian faithful, who are called laity."

<sup>282</sup> 1917 Code c.1024, 1034.

<sup>283</sup> 1917 Code c.266.

<sup>284</sup> 1917 Code c.108.

<sup>285</sup> See Shaw, *supra* note 277, at 39-52.

<sup>286</sup> See 1917 Code c.1034.

legal status changes from the clerical to the lay state.<sup>287</sup> He is always a priest, for the Church teaches that the character received at ordination is never lost, but being a member of the clerical state is a matter of Church law. As a member of the lay state, a man is forbidden to exercise any of the functions or powers of a priest.<sup>288</sup>

In the Latin rite of the Church, the vast majority of clerics are bound by a vow or promise of celibacy.<sup>289</sup> There are two classes of exceptions: permanent deacons and former Protestant clergymen who have converted to Catholicism.<sup>290</sup> Permanent deacons are married men who are ordained deacons but without the possibility of becoming priests.<sup>291</sup> Accession to the higher governmental positions in the Church is restricted to bishops, and bishops are chosen from among the celibate clergy.<sup>292</sup>

Clerics obliged to celibacy constitute a clearly defined subgroup or elite within the Church. As a group, it is more marginalized from society than clergy of other denominations, primarily because of the added aspect of celibacy. The claim of personal celibacy by members of this elite has significantly added to the mystery and separateness of the Roman Catholic clergy.<sup>293</sup>

Catholic Church law reflects the theological teaching that the ordained ministry

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<sup>287</sup> 1917 **Code** c.290.

<sup>288</sup> 1917 **Code** c.274, 835-44.

<sup>289</sup> 1917 **Code** c.277.

<sup>290</sup> In 1980 the Holy See, in response to requests from priests and laity of the Episcopal Church who were seeking full communion with the Catholic Church, created a Pastoral Provision to provide them with special pastoral attention. The Pastoral Provision is under the jurisdiction of the Sacred Congregation for the Doctrine of the Faith whose Delegate directs the working of the Provision. Under the Provision the ordination of married Episcopal priests was made possible.

<sup>291</sup> 1917 **Code** c.288.

<sup>292</sup> 1917 **Code** c.378. The Code does not specifically state that bishops must be celibate. However it has been unbroken tradition in the Roman Catholic church since the earliest centuries that bishops have been chosen from among the celibate clergy.

<sup>293</sup> **A.W. Richard Sipe, A Secret World: Sexuality and the Search for Celibacy** 48-51 (1990).

(bishop, priest, deacon) is derived from divine institution.<sup>294</sup> The law states that “sacred ministers” are called “clerics in law.”<sup>295</sup> This does not mean that the clerical state is believed to be of divine institution as well since it came into being at least four centuries after the institution of the priesthood, according to Catholic teaching.<sup>296</sup>

Clericalism as a pejorative term describes an attitude the clergy themselves caused by fostering the false assumption that the clerical state is of divine origin.<sup>297</sup> Much of clericalism is about power. Power seeking, power sharing, and power keeping are part of the clerical mindset, but not part of the essential concept of authority, which is rooted in scripture.<sup>298</sup>

Clericalism was deeply entrenched in the pre-Vatican Church, and in the secular culture as well. The clerical mind set assumes that clerics are meant to be the dominant elite in the Church, responsible for all aspects of governance and direction, while laity are meant to be subservient.<sup>299</sup> The clerics were the essence of what the pre-Vatican II Church defined as the “perfect society.”<sup>300</sup> Although certain manifestations of clericalism have changed over the years, it is still firmly entrenched as a religious and social phenomenon.

Most clerics progressed from early adolescence to adulthood within a completely ecclesiastical milieu. The seminary system began at the high school level, and progressed through the college level and then to the final four years of theological

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<sup>294</sup> 1917 Code c.207.

<sup>295</sup> *Id.*

<sup>296</sup> **New Catholic Encyclopedia**, Catholic Univ. of America, 1967 vol. III, at 948.

<sup>297</sup> **Donald Cozzens, Sacred Silence: Denial and the Crisis in the Church** 117 (2002).

<sup>298</sup> Bishop Peter Cullinane, Clericalism: Avoidable Damage to the Church, **Australasian Catholic Rev.** 187 (1997) (stating “Power sharing, by those who want it, and power, by those who have it, belong equally to the clericalist mindset, and not to the Gospel understanding of authority.”).

<sup>299</sup> Shaw, *supra* note 277, at 9.

<sup>300</sup> See **New Catholic Encyclopedia**, *supra* note 296, at 93-93.

studies.<sup>301</sup> This process culminated in ordination, the ceremony whereby a man became a priest.<sup>302</sup> Seminaries at all levels were isolated. Academic instruction and personal formation took place within this culture. Future priests had minimal contact with the secular world, and their understanding of common human problems, especially marriage and family problems, came only from textbooks.<sup>303</sup>

The Church was the clerical world, and this was its world. They were raised in the all-male, unmarried clerical sub-culture that unofficially defined itself as “the Church.”<sup>304</sup> It is still difficult for most clerics, and also many lay persons, to move away from such a concrete, clearly defined notion of “Church” to one that is much more spiritual, and much less identified with traditional political structures:

The Catholic laity may now be more clericalized than their clergy. . . . By a kind of dialectical process, the distorted views of the church, clerics and laymen that helped spawn the classic clericalism of the past are today giving rise to another set of confusions about priesthood and the lay condition that are the mirror image of clerical elitism.<sup>305</sup>

Anti-clericalism is the rejection of the belief that the clergy have the power to direct the lives of the laity, and a rejection of their claim to special privileges.<sup>306</sup> Ironically, anti-clericalism has occurred primarily in the so-called “Catholic” countries of Europe and Latin America.<sup>307</sup> Although it has been primarily a Roman Catholic phenomenon, anti-clericalism has nevertheless surfaced in other cultures where a

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<sup>301</sup> See **Coriden**, *supra* note 34, at 176-77.

<sup>302</sup> 1917 Code c.1008.

<sup>303</sup> Based on the author’s (Doyle) personal experience, having lived and studied in a seminary setting from 1964-1971.

<sup>304</sup> *Id.*

<sup>305</sup> Shaw, *supra* note 277, at 9.

<sup>306</sup> See **Cross**, *supra* note 179, at 64, 76-78.

<sup>307</sup> See **J. Salwyn Schapiro**, *Anticlericalism: Conflict Between Church and State in France, Italy and Spain* 9-13, 32-34 (Louis L. Snyder ed., 1967).

religious elite claim a disproportionate share in secular power.<sup>308</sup> The violent Bolshevik reaction to the Russian Orthodox Church and the post revolutionary attitude toward organized religion in Russia serve as classic examples of extreme anti-clericalism.<sup>309</sup>

Throughout the history of the Catholic Church in the West, there have been recurring periods of anti-clericalism in reaction to the excessive influence of clerics in many areas of secular life, as well as to the abuses that came with such influence and control. At times, anti-clerical sentiment reached such a high level of intensity that it resulted in violent reaction to the clergy, as well as anti-clerical legislation against churches, priests, and bishops.<sup>310</sup> Such legislation often included severe restrictions on the power, property rights, and privileges of the clergy, and, in Mexico, even the prohibition of wearing clerical garb in public.<sup>311</sup>

The United States experienced a wave of anti-clericalism in the second half of the Nineteenth century. The effects of this wave diminished with the turn of the century, and it was nearly buried in American society by the advent of World War II. By contrast, the institutional Church and its clergy enjoyed an unparalleled degree of respect, privilege, and power in the years immediately prior to the Vatican council, and for several years thereafter.<sup>312</sup> Within the past two decades, however, public revelations about clergy sexual abuse and other abuses of power have seriously challenged the secure image of the clerical state.<sup>313</sup>

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<sup>308</sup> See **S. J. Bennett, *Idol Temples and Crafty Priests: The Origins of Enlightenment Anticlericalism***, 18-19 (St. Martin's Press, Inc. 1999).

<sup>309</sup> See **Religious Policy in the Soviet Union** (Sabrina Petra Ramet ed., 1992).

<sup>310</sup> See e.g., **New Catholic Encyclopedia**, *supra* note 296, at vol. IX 778-80, 783.

<sup>311</sup> *Id.* at 783.

<sup>312</sup> See **Kennedy**, *supra* note 91, at 45-52.

<sup>313</sup> **Donald Cozzens, *Sacred Silence: Denial and the Crisis in the Church*** 5 (2002). "In a number of ways it [the present sex abuse revelations] is unlike previous sex scandals involving priests, religious and bishops. For one thing, it is unmasking a systemic or structural crisis that threatens the current lines of

Scholars from a variety of disciplines have studied clericalism. Catholic author Russell Shaw opined that clericalism was directly responsible for the death of Christ, in that Christ had challenged the authority of the clerical elite of his time.<sup>314</sup> Shaw also claims that clericalism is responsible for many contemporary church problems:

In the Catholic Church today clericalism is not literally responsible for anybody's death. Although its victims are very numerous, they suffer mainly a psychological and spiritual martyrdom of which, very often, they are not even themselves fully aware. Yet the clericalist mind set does fundamentally distort, disrupt, and poison the Christian lives of members of the church, clergy and laity alike, and weakens the church in her mission to the world. Clericalism is not the cause of every problem in the church, but it causes many and is a factor in many more. Time and again . . . it plays a role in the debilitating controversies that today afflict the Catholic community in the United States and other countries.<sup>315</sup>

Understanding clericalism helps to explain why the contemporary institutional church reacts to reports of abuse with denial, scape-goating, and blame shifting. It helps to comprehend why secular institutions such as law enforcement agencies, the press, or the judiciary have at times deferred to the institutional Church when dealing with sex abuse cases, protecting the image of the church and its leaders at the expense of true justice for the victims.

Clericalism depends on the presumption that clerics, especially those professing celibacy, are superior to the laity, and are therefore entitled to special privileges and respect. The effects of clericalism are found in clerics and laity alike. One symptom commonly seen in the laity is the attitude that it is sinful to make any kind of accusation

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power that have gone unchallenged for centuries. This in itself is enough to make some prelates and clergy afraid, very afraid. Another is the Catholic anger rising from conservatives, moderates and progressives alike against the duplicitous arrogance of some prominent archbishops and other church authorities.” *Id.*

<sup>314</sup> Shaw, *supra* note 277, at 13.

<sup>315</sup> *Id.*

against a priest or a bishop.<sup>316</sup>

The governmental structure of the Catholic Church is hierarchical.<sup>317</sup> Power descends from the top and is held by persons and not by groups.<sup>318</sup> Positions of power are, for the most part, attained through appointment by a person higher in authority.<sup>319</sup> The only major exception is the papacy, which is attained by election.<sup>320</sup> According to Catholic teaching, there is no earthly power higher than the pope, hence the belief that God works through the cardinals to choose a pope.<sup>321</sup>

That the hierarchical governmental system is divinely inspired and constructed is a claim made by the incumbent hierarchical office holders to justify both absolute power retention and exemption from accountability for abuses of power. The basic claim of the divine origin of episcopal power is defended through authentication by interpretations of

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<sup>316</sup> This commonly held opinion is given concrete force in Canon 2344 of the 1917 Code which made it an ecclesiastical crime to directly or indirectly, by speech, in the press or in writing, make injurious attacks upon any church authority or stir up opposition to any of their decisions or decrees. 1917 **Code** c.2344. The 1917 Code contains several other canons relative to opposition to the clergy. 1917 **Code** c.2343 (concerning violence against a prelate or cleric); 1917 **Code** c.2341 (summoning a cardinal, archbishop, bishop or cleric before a civil court).

<sup>317</sup> **Vatican Council II: The Conciliar and Post-Conciliar Documents** 369-72 (Austin Flannery, ed., 1975) (setting forth the hierarchical governmental structure of the Catholic Church according to Canon 204) [hereinafter **Flannery**].

<sup>318</sup> The major power holders are the pope and individual bishops of dioceses. *See id.* at 371. “The holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren. . . . This sacred council . . . teaches and declares that Jesus Christ, the eternal pastor, set up the Holy Church by entrusting the apostles with their mission as he himself had been sent by the Father. He willed that their successors, the bishops namely, should be the shepherds of his church until the end of the world.” *Id.*

<sup>319</sup> All bishops are directly appointed by the pope. 1917 **Code** c.377. All officials of the Vatican bureaucracy and all officials of diocesan bureaucracies are appointed by the pope, 1917 **Code** c.330-41, and the diocesan bishop. 1917 **Code** c.460-572. On the bottom level, pastors of parishes are appointed by the bishop. 1917 **Code** c.523.

<sup>320</sup> The pope is elected by the College of Cardinals. 1917 **Code** c.332. From the moment that he accepts the election, he possesses full, immediate and universal power over the entire Catholic Church. 1917 **Code** c.331.

<sup>321</sup> The teaching is summed up in canon 1404: “The First See is judged by no one.” 1917 **Code** c.1404. “First See” means the papacy. For a comprehensive and non-revised historical description of the papacy, see **Paul Collins, Papal Power** (1997); **Garry Wills, Papal Sin: Structures of Deceit** 13-60 (Doubleday 2000); **Garry Wills, Why I Am A Catholic** 53-221 (Houghton Mifflin Co. 2002).

scripture and events in Church history.<sup>322</sup>

There is ample evidence of the abuse of clerical power throughout Western history. This abuse gave rise to anti-clerical sentiment in several countries where the Catholic Church had accumulated vast economic, political, and social power. Although clericalism and anti-clericalism existed from the earliest years of the Church, the scholarly study of the theological and social dimensions of these twin phenomena tends to focus on the late medieval and reformation periods of Europe.<sup>323</sup> Studies have also been done on anti-clericalism in the Spanish colonies of the New World and in Nineteenth and early Twentieth century Mexico.<sup>324</sup>

Some of the most vocal critics of medieval and pre-Reformation clerical abuses were themselves members of the clerical estate, including Martin Luther, a one-time Augustinian Monk whose reaction to rampant clerical abuse led to his involvement with the Protestant Reformation. Martin Luther was not an isolated voice of criticism, although he was perhaps the most prominent critic of his time. A review of some of Luther's writings, especially his sermons, illustrates significant parallels with today's Church.<sup>325</sup>

The Second Vatican Council attempted to revivify the theological concept of the Church as the "People of God."<sup>326</sup> Such revolutionary thinking understandably posed a serious threat to many in the clerical world who argued that the clerical state was

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<sup>322</sup> Flannery, *supra* note 317, at 564-65.

<sup>323</sup> See **Anticlericalism in Late Medieval and Early Modern Europe** (Peter Dykema & Heiko Oberman eds., 1993) [hereinafter **Dykema & Olberman**].

<sup>324</sup> See Donald J. Mabry, Mexican Anticlerics, Bishops, Cristeros and the Devout During the 1920's: A Scholarly Debate, 20 **J. of Church & St.** 81-82 (1978).

<sup>325</sup> Robert Bast, Anticlericalism, The Law and Social Ethics in Luther's Sermons on Matthew 22:34-41, in **Dykema & Oberman**, *supra* note 323, at 367-78.

<sup>326</sup> See Marie-Joseph le Guillou, History of Ecclesiology, in **Encyclopedia of Theology: The Concise Sacramentum Mundi** 206-09 (Karl Rahner, ed., 1975). 58

instituted by God Himself and was essential for the existence of His Church. At stake were the power and other “worldly” benefits that accrued to clerics, especially those in positions of authority.

The Vatican Council clearly rejected clericalism perhaps without fully understanding how such a rejection would threaten the clerical establishment for decades to follow. It referred to the “secular” as the proper realm of the lay person, implying that “secular” was good, and not a world to be feared as the source of evil and damnation.<sup>327</sup> The Council took decisive steps against the passive role of the laity in ecclesiastical life by opening up positions in the administration and judicial systems of the institutional Church.<sup>328</sup> It also made the revolutionary step of welcoming the laity into the sacred realm of liturgical worship. Lay people could not only read at Mass, but they could do what had formerly been unthinkable—they could touch the consecrated host and distribute communion.<sup>329</sup>

Thirty-five years after the Vatican council ended, reformers were still arguing about the detrimental presence of clericalism in the Church.<sup>330</sup> In spite of the far-reaching changes brought about by the Council, clericalism has remained alive. In 1983, the United States Conference of Major Superiors of Men conducted a study of clericalism.<sup>331</sup> The study affirmed the existence of clericalism among those in holy orders, and also found that persons other than clerics exhibit traits of clericalism.<sup>332</sup> Yet the chief manifestations are found in the clergy themselves. These include an

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<sup>327</sup> See **Flannery**, *supra* note 317.

<sup>328</sup> See 1917 **Code** c.228.

<sup>329</sup> See 1917 **Code** c.230.

<sup>330</sup> See **Shaw**, *supra* note 277, at 9.

<sup>331</sup> See *id.*

<sup>332</sup> *Id.* at 2.

authoritarian style of ministerial leadership, a rigidly hierarchical worldview, and a virtual identification of the holiness and grace of the church with the clerical state.<sup>333</sup>

The report acknowledged that more oppressive forms of clerical domination and privilege breed anti-clericalism.<sup>334</sup> This has been especially true when clerical domination and influence has spilled over into civil life. This influence in civil life has taken many faces: from free dinners for clerics, to bishops who influence the justice system when their particular interests are involved.<sup>335</sup>

Significant voices among faithful Catholics have looked at the contemporary ecclesiastical landscape, and have wondered if the momentum initiated by Vatican II has not only dwindled but has been urged along in its slow death by the centralizing influence of the clericalized Roman curia.<sup>336</sup> Perhaps the most significant call has come from Franz Cardinal Konig, retired archbishop of Vienna who was a key figure at the Vatican council. The Cardinal sums up the problem by accusing the present-day Roman curia of undermining the vision and direction of the Vatican Council with its present style of centralized leadership in his statement: “A gradual decentralization is needed . . . . What is often felt to be defective is the present style of leadership practi[c]ed by the authorities in the Roman curia in dealing with the diverse and multiple dioceses throughout the world.”<sup>337</sup>

Canon Law has consistently favored and protected clerics. The 1917 Code of Canon Law, the first such codification in the church’s history, contained several canons

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<sup>333</sup> Id.

<sup>334</sup> Id.

<sup>335</sup> See **Cozzens**, supra note 313, at 121-123.

<sup>336</sup> See **Collins**, supra note 321, at 97-117.

<sup>337</sup> Franz Cardinal Konig, My Vision for the Church of the Future, **Tablet** Mar. 27, 1999, available at [http://www.thetablet.co.uk/cgi-bin/archive\\_db.cgi?tablet60268](http://www.thetablet.co.uk/cgi-bin/archive_db.cgi?tablet60268).

which outlined the many privileges of the clergy.<sup>338</sup> These canons were not new, but were compiled from already existing legislation. In addition to the privileges, clerics were protected against any kind of harm inflicted by the laity. Canon 119, for example, stated “All the faithful owe reverence to clerics according to their various grades and offices; and they commit a sacrilege if they do a real injury to a cleric.”<sup>339</sup>

Clerics were not to be hailed before the civil courts.<sup>340</sup> To summon a cleric before a civil court without the required permission was to invite excommunication. Permission to sue was only granted by ecclesiastical superiors.<sup>341</sup> For cardinals, papal legates, bishops, and abbots this permission came only from the Pope. To hail a deacon or priest as a defendant required the permission of his bishop or religious superior.<sup>342</sup>

The Code enshrined the basic tenets of clerical privilege. This Code was comprised of legislation based on a clericalist mind set that dated back to the early Middle Ages. Commenting on the philosophy of this first Code, James Provost, one of the authors of the 1984 commentary on the revised Code states:

Underlying the 1917 Code is an understanding of the Church as composed of two fundamentally distinct and unequal groups - clergy and laity. The roots of clerical domination are ancient, ranging from reform efforts and practical necessity to defense of Church interests against the encroachment of lay investiture and state domination.<sup>343</sup>

The sum of the historical, theological, and legal supports for clericalism constitutes an example of the sociological tendency known as group bias. Group bias is the tendency whereby a specialized group within an organization equates its specialized

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<sup>338</sup> See T. Lincoln Bouscaren, et al., *Canon Law: A Text and Commentary* 104-08 (Bruce Publ. Co., 4th ed., 1963).

<sup>339</sup> *Id.* at 105.

<sup>340</sup> See *id.* at 106-7, 925.

<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 925.

<sup>343</sup> Coriden, *supra* note 34, at 131.

interests with the interests and needs of the organization as a whole.<sup>344</sup> The primary governing elite in the Catholic Church has been the clergy.<sup>345</sup> Within the clergy there are levels of elitism, with the deacons at the bottom of the theological and sociological ladder.<sup>346</sup> The bishops form the most powerful and influential elite within the Church, with the College of Cardinals constituting the highest level of this elite body.

### C. Religious Duress

Plaintiffs in sexual abuse lawsuits have often stated that they believed what they had been taught: that priests and bishops are representatives of God, take the place of God, and are deserving of the highest respect and obedience.<sup>347</sup> While priests are believed to be representatives of Christ, bishops hold even higher positions. It has been traditionally taught that bishops are direct descendants of the original twelve apostles, individually selected by the Holy Spirit, who in turn inspire the Pope to appoint them.<sup>348</sup> The common perception of the exalted state of bishops and priests is not simply “folk” theology; it is grounded in the Catholic Church’s official theological teaching, as well as its legal discipline. It is enmeshed in an age-old heritage that has been initiated by the clerical elite, but nurtured by both clergy and laity alike. An account of the famous Mount Cashel case contains a statement that aptly sums this up:

The most eloquent insight into how men of the cloth had been able to perpetrate such monstrous crimes against their parishioners’ children and get away with it for so long came from a woman whose cultural eyesight was 20/20. She laid the blame for the tragedy on the traditional role of the priest in outport Newfoundland, which she said was as

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<sup>344</sup> Anson Shupe, *In The Name of All That's Holy: A Theory of Clergy Malfeasance* 27-31 (1995).

<sup>345</sup> 1917 Code c.129, § 1: “In accord with the prescriptions of law, those who have received sacred orders are capable of the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction.”

<sup>346</sup> The three grades of ordained persons consist of deacons, priests and bishops. See 1917 Code c.1009.

<sup>347</sup> See Shupe, *supra* note 344, at 27-29.

<sup>348</sup> 1917 Code c.375; see also Coriden, *supra* note 34, at 62-20.

close to God as you could get without playing a harp. Expressing a feeling shared by many of Newfoundland's 205,000 Catholics, she told the meeting: 'If a child was born without an arm, people said it was because the mother said something against a priest.' That was nonsense, but a priest with that kind of shield could get away with anything. We are victims of our own heritage.<sup>349</sup>

The Catechism of the Council of Trent contains statements that summarized the Church's understanding of the priesthood, as it was taught up to the era of Vatican Council II. The present official understanding is much akin to that found in this document, although couched in terms that are less triumphalistic:

In the first place, then, the faithful should be shown how great is the dignity and excellence of this Sacrament considered in its highest degree, the priesthood. Bishops and priests being, as they are, God's interpreters and ambassadors, empowered in His name to teach mankind the divine law and the rules of conduct, and holding, as they do, His place on earth, it is evident that no nobler function than theirs can be imagined. Justly, therefore are they called not only Angels, but even gods, because of the fact that they exercise in our midst the power and prerogatives of the immortal God. In all ages, priests have been held in the highest honor; yet the priests of the New Testament far exceed all others. For the power of consecrating and offering the body and blood of our Lord and of forgiving sins, which has been conferred on them, not only has nothing equal or like it on earth, but even surpasses human reason and understanding.<sup>350</sup>

Official Church teaching was given practical application through the Code of Canon Law. Only clerics could hold the power of jurisdiction or actual power in the Church and only hold ecclesiastical offices.<sup>351</sup>

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<sup>349</sup> Michael Harris, *Unholy Orders: Tragedy at Mount Cashel* 19 (1990).

<sup>350</sup> *Catechism of the Council of Trent* 318 (Rev. John A. McHugh & Chas. J. Callan eds., 1923).

<sup>351</sup> The 1917 Code summarized the age-old tradition that only clerics in sacred orders could possess the power of governance or hold church offices. See 1917 **Code** c.118. This tradition was somewhat mitigated after Vatican Council II which allowed lay persons to have limited power of governance in minor matters and to occupy certain, minor jurisdictional office and liturgical roles.

#### D. The Vatican II Era

The exalted phrases of the pre-Vatican era were not included in Vatican II documents, nor in the revised Code of Canon Law. The conviction, however, of the superiority of the priests and bishops is still present, though couched in less flamboyant terms. The Vatican council issued a document on the priesthood.<sup>352</sup> Although the council stressed the “priesthood of the faithful,” it reinforced the sacred and special concept of the ordained priesthood, and changed little of the underlying theology of bishops and priests as special emissaries of God.<sup>353</sup> The revised Code of Canon Law contains canons about priests and other “sacred” ministers, and carries on the ancient tradition:

The Christian faithful, conscious of their own responsibility, are bound by Christian obedience to follow what the sacred pastors, as representatives of Christ, declare as teachers of the faith or determine as leaders of the Church.<sup>354</sup>

Through the Holy Spirit who has been given to them, bishops are the successors of the apostles by divine institution; they are constituted pastors in the Church so that they are the teachers of doctrine, priests of sacred worship and ministers of governance.<sup>355</sup>

One who uses physical force against a cleric or religious out of contempt for the faith, or for the Church, or ecclesiastical power, or ministry, is to be punished with a just penalty.<sup>356</sup>

Among the Christian faithful by divine institution there exist in the Church sacred ministers, who are called clerics

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<sup>352</sup> See Flannery, *supra* note 317, at 863-902.

<sup>353</sup> See Coriden, *supra* note 34, at 713-16.

<sup>354</sup> 1917 Code c.212, § 1.

<sup>355</sup> 1917 Code c.375.

<sup>356</sup> 1917 Code c.1369.

by law, and other Christian faithful, who are called laity.<sup>357</sup>

The “specialness” of the priesthood and episcopacy in particular is supported in other ways, such as the ceremonial reception of holy orders. People become Catholics through baptism, a fairly simple ceremony that is usually attended by family and a few friends. By contrast, the ceremonies of ordination to the diaconate, priesthood, and bishopric are richly ornate. In spite of the theological and liturgical assertions that the Mass and other ceremonies are community observances, the priest continues to be the centerpiece of the Mass. When the liturgical reforms were being worked out during and after Vatican II, segments of the clerical world waged a mighty battle resisting the reformers’ attempts to include lay persons in liturgical roles.<sup>358</sup>

Although the post-Vatican II era has witnessed a multitude of growth-producing changes in the Catholic Church, and a significant reduction in the mysterious distance that existed between the minuscule minority of the clergy and the vast majority of lay people, there remain several destructive aspects of clericalism.

The clerical world is shrouded in secrecy. The Catholic Church’s governmental circles have always been obsessed with secrecy, an obsession that rapidly intensifies the higher one moves in the clerical world.<sup>359</sup> Office holders and other functionaries in chanceries and in the Vatican are obliged to maintain secrecy about their duties.<sup>360</sup> The ascendancy process whereby clerics are appointed to positions of power is marked by secrecy. Appointees, especially to the office of bishop, have no idea that they had been

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<sup>357</sup> 1917 Code c.207.

<sup>358</sup> See **Bernard Botte, *From Silence to Participation: An Insider’s View of Liturgical Renewal*** (1988); **Anibale Bugnini, *The Reform of the Liturgy (1948-1975)*** (1990). For an expression of extreme conservatism see Paul Likouodis, *Liturgical Renewal Has Been Run by Sexual Liberationists*, in **The Wanderer** 1, 6 (2000).

<sup>359</sup> **Luigi Marinelli & The Millenari, *Shroud of Secrecy*** 151-156 (2000).

<sup>360</sup> 1917 Code c.127.

under consideration until they are notified of the appointment itself.<sup>361</sup> This profound secrecy marks all levels of ecclesiastical business activity.

Hand in glove with the secrecy is a pervasive fear that any imperfections in the system or its office holders will become publicly known. Honest mistakes, incompetence, negligence, and intentional wrongdoing are all abhorrent to both the higher leadership of the institutional Church and to the clerical world. All are denied, covered up, and rationalized with equal zeal. The clerical world truly believes that God has established it, and that its members are singled out and favored by the Almighty. There is no room for mistakes.

Secrecy and fear enhance the sense of inferiority among the laity, and the compulsion for control among the clerics. All below them regard higher authority figures with a mixture of trepidation and awe. The circles of power are closed, the tightest being those existing among bishops. Secrecy is required for a number of reasons, not the least of which is the fact that there are no checks and balances in the exercise of clerical power.<sup>362</sup> Secrecy provides a layer of insulation between the one in authority and anyone who might be tempted to question its exercise. The appeal to secrecy is generally accompanied by the excuse that it is necessary, and should not be questioned.<sup>363</sup> Furthermore, those who question are often reminded that clerical power is intertwined with the Divine Will.<sup>364</sup> This is especially true of the exercise of the bishop's power.

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<sup>361</sup> 1917 **Code** c.377; see also **Coriden**, *supra* note 34, at 321-23.

<sup>362</sup> The pope is the embodiment of total power for the universal Church which includes legislative, judicial and executive power. 1983 **Code** c.331-33. On the local or diocesan level, the bishop holds the fullness of power. 1983 **Code** c.391. Since there is no distinct separation of these three aspects of governmental power there are no effective checks and balances.

<sup>363</sup> **Sipe**, *supra* note 15, at 27 (“Secrecy is often rationalized as the only way to avoid scandal.”).

<sup>364</sup> See 1917 **Code** c.212, § 1. “The Christian faithful, conscious of their own responsibility, are bound by Christian obedience to follow what the sacred pastors, as representatives of Christ, declare as teachers of the faith or determine as leaders of the Church.” The term “sacred pastors” refers specifically to bishops.

On the diocesan level, the bishop embodies the fullness of ecclesiastical power. He is the primary judge, executive, and legislator for his diocese.<sup>365</sup> He is subject only to the Pope.<sup>366</sup> This monarchical style of governing is grounded in the teaching that the bishop is a direct descendant of the apostles, and that the Holy Spirit has prompted his appointment.<sup>367</sup> To infer that a bishop does not have the fullness of power and knowledge is an insult to God who appointed him.

Roman Catholicism has a long tradition, purportedly grounded in Divine Will, of indoctrinating its members in the importance of the clergy. The power imbalance remains even after the Vatican II reforms. The clergy can impose a variety of penalties on errant lay persons, but the laity has no avenue to reciprocate. They cannot excommunicate priests or bishops. They have little, if any, effective recourse in Church courts, since the canonical system is totally controlled by bishops. The sexual victimization by the clergy and the subsequent mishandling by Church authorities is due in large part to their amassed power. This issue was carefully examined by sociologist Anson Shupe, who stated:

Almost everything written on the subject of clergy malfeasance - by whatever writer imaginable: journalist, theologian, feminist, academic, social worker, clinician, victim - fundamentally identifies the power inequity issue as being at the heart of the problem. It encompasses a fairly regular sequence: perpetration, victim denial and fear, recidivism of perpetration, organizational coverup, later disbelief among some believers, anger and disillusionment of others, and the entire chain of victimization and anguish.<sup>368</sup>

The nature of the Catholic clergy as a trusted body, empowered by God with

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<sup>365</sup> See 1917 Code c.391.

<sup>366</sup> See 1917 Code c.1, 371.

<sup>367</sup> See 1917 Code c.375.

<sup>368</sup> Shupe, supra note 344, at 29.

absolute control over the means to sanctity and organizational control over the institutional Church, as well as their exalted social status, creates a situation where abuse is likely to occur:

Thus, in the sociological sense, instances of abuse, exploitation and manipulation, whether by pedophilic Catholic priests, corrupt televangelists or extremist cult leaders, should not simply be regarded as the occasional outcomes of a few ‘bad apples.’ . . . Rather, the nature of trusted hierarchies systematically provides opportunities and rationales for such deviance and indeed, makes deviance likely to occur.<sup>369</sup>

This hierarchical form of government supports the tendency to victimize others. Power is not shared; it resides in individuals. The laity has no role in the assignment of power, nor do they have any means of curbing abuses. On the other hand, a hierarchical structure also has a greater potential for effectively dealing with abuse among the clergy. The failure of the system to deal with deviance among its key members points to abuse of power on a massive scale.

#### E. Religious Duress and the Trauma Bond

Many recent civil suits against Catholic dioceses have been brought by adults who allege that sexual abuse occurred when they were children or adolescents.<sup>370</sup> Church officials have often questioned the sincerity of plaintiffs who have come forward years after the alleged abuse occurred. Plaintiffs, victims’ supporters, and psychological experts counter such accusations with information about the long term effects of clergy

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<sup>369</sup> Id. at 30.

<sup>370</sup> Laurie Goodstein, Trail of Pain in Church Crisis Leads to Nearly Every Diocese, **N.Y. Times**, Jan. 12, 2003, at A1. Also, the authors conducted an informal poll of 40 plaintiff attorneys the results of which revealed that nearly 100% of their present clients are over 25 and allege that abuse had taken place when they were between 12 and 16 years of age. Id.

sexual abuse.<sup>371</sup> Lengthy delays have also caused significant problems relative to statutes of limitations.<sup>372</sup>

A plausible reason for such delays in reporting abuse is found in the interconnection of clericalism, religious duress, traumatic betrayal, and bonding. The victims are mentally and emotionally impeded to such a profound degree, that they are unable to come forward because of the overpowering experience with the cleric. As one expert has remarked, “[t]he cognitive distortion of that abusive experience is an element of ‘unsound mind’ in that those distortions are a markedly abnormal condition and recognized elements of psychopathology.”<sup>373</sup>

Religious duress is an objective reality. It causes people to react to abuse scenarios in an inappropriate and baffling manner. It is present in cleric-victim abusive relationships, and is fortified by the power differential.<sup>374</sup> Such exploitive relationships create what Dr. Patrick Carnes calls “betrayal bonds,” which occur when a victim bonds with someone who is destructive to him or her.<sup>375</sup>

Clergy abuse involves intensity and exploitation of trust. The signs of a betrayal bond include misplaced and even irrational loyalty, an inability to detach from the abuser,

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<sup>371</sup> See Katherine DiGiulio, Interview with Dr. Leslie Lothstein, **National Catholic Reporter**, Aug. 9, 2002, at 6.

And the victims of Catholic clergy sexual abuse are a bit different from the victims of Protestant sex abuse, Jewish, or Hindu sexual abuse. The difference is that the role of the priest puts the priest in close connection with Jesus and with god. And what you hear from the victims - and I've heard this from priests who have been victims - is that they feel that their soul has been murdered. It's soul murder, soul murder, and they can never get over the guilt and shame of what their responsible role was - why was I chosen, how did this happen to me, and can I ever be reconnected with god? Id.

<sup>372</sup> See Sam Dillon, Means Found to Prosecute Decades-old Abuse Cases, **N.Y. Times**, Aug. 29, 2002, at §A.

<sup>373</sup> Aff. of William Foote, Ph.D., in Does I, II, III vs Catholic Diocese of El Paso, Father Irving F. Klister, (Oct. 9, 1998), County Court of law Number Two, El Paso County, TX, No. 96-1670, at 24. See also **Patrick Carnes, The Betrayal Bond, xvi-xvii** (1997). Carnes is more direct in his book, as he refers to the fact that victims stay in abusive relationships as “insane loyalty.” Id.

<sup>374</sup> **Benyei**, supra note 83, at 63-65.

<sup>375</sup> **Carnes**, supra note 373, at xvi.

and self-destructive denial.<sup>376</sup> Abuse victims see the clergy-abuser with a mixture of awe, respect, and fear. There is an attitude of authority and power about the cleric that inspires a certain amount of emotional security in the unsuspecting victim.<sup>377</sup> These strong feelings can impede victims from recognizing the seductive patterns of abusing clergy, from resisting sexual victimization once it has surfaced, and finally, from coming forward to expose the abuser after the fact. This mind set, tantamount to brainwashing, also explains why some victims have allowed themselves to be abused over prolonged periods of time.<sup>378</sup>

Catholic clerics are not the only clergy who sexually abuse. Yet abuse by a priest is much more devastating and traumatic to a believing Catholic, because the victim has been conditioned both cognitively and emotionally to believe that the priest takes the place of Christ. His power is much greater and more mysterious than that of any other authority figure. The impact on the victim's life is much longer lasting, if not life-long. Dr. Leslie Lothstein has extensive experience treating clergy sexual abuse victims. His experience underscores the unique damage caused by priest-perpetrators:

The victims of Catholic clergy sexual abuse are a bit different from the victims of protestant sex abuse; Jewish or Hindu sex abuse. The difference is that the role of the priest puts the priest in close connection with Jesus and with God. And what you hear from victims - and I've heard this from priests who have been victims - is that they feel that their soul has been murdered. It's soul murder and they can never get over the guilt and shame of what their responsible role was - why was I chosen, how did this

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<sup>376</sup> *Id.* at xviii.

<sup>377</sup> *Benyei, supra* note 83, at 33-36.

<sup>378</sup> *Carnes, supra* note 373, at xvi. "The worst is a mind-numbing, highly addictive attachment to the people who have hurt you. . . . Exploitive relationships create betrayal bonds. These occur when a victims bonds with someone who is destructive to him or her. Thus the hostage becomes the champion of the hostage taker, the incest victim covers for the parent and the exploited employee fails to expose the wrongdoing of the boss."

happen to me, and I can never be reconnected with God.<sup>379</sup>

Sexual abuse results in trauma to the victim. Symptoms and coping mechanisms depend on the identity of the abuser and the impact of the abuse.<sup>380</sup> Clergy sexual abuse victims respond to trauma in predictable ways. Among the most common are trauma blocking, trauma shame, and trauma bonding.<sup>381</sup> Trauma blocking is the attempt to numb, block, or eliminate the pain.<sup>382</sup> Trauma shame emerges from the breach of trust and results in feelings that one is flawed or defective.<sup>383</sup> The victim feels unclean and responsible for the abuse.<sup>384</sup> The trauma bond amounts to a numbing and highly addictive attachment to the abuser. It is a strong, lasting, and almost unbreakable psychic and emotional chain that is quickly forged between the victim and the perpetrator of the abuse.<sup>385</sup> This chain is particularly strong in Catholic clergy abuse cases:

Traumatic bonding is a term coined by Donald Dutton, a Canadian psychologist, who has done extensive research on domestic violence and on sexual abuse of children. He describes traumatic bonding as “the development of strong emotional ties between two persons, with one person intermittently harassing, beating, threatening, abusing or intimidating the other.” Dr. Dutton notes that this phenomenon is based on the existence of a power imbalance wherein the maltreated person perceives him or herself to be subjugated to be dominated by the other.<sup>386</sup>

The existence of a trauma bond explains the apparent irrational repetition found in

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<sup>379</sup> DiGiulio, supra note 371, at 6. This concept is not lost on lawyers. See Eduardo Cruz, Comment, When the Shepherd Preys on the Flock: Clergy Sexual Exploitation and the Search for Solutions, 19 **Fla. St. U. L. Rev.** 499, 501 (1991). “The most insidious aspect of the clergyman’s power is the role he plays as a link between the parishioners and God. The clergyman is perceived as carrying the ‘ultimate spiritual authority, particularly in the eyes of a trusting parishioner who looks to him for spiritual guidance and support’.” Id. at 501.

<sup>380</sup> Lothstein, supra note 72.

<sup>381</sup> Carnes, supra note 373, at 5-6.

<sup>382</sup> Id. at 12-14.

<sup>383</sup> Id. at 21-24.

<sup>384</sup> Id.

<sup>385</sup> Id. at 35.

<sup>386</sup> Aff. of William Foote, supra note 373, at 11.

so many abusive relationships.<sup>387</sup> It also explains the seemingly bizarre attachment that some victims develop for their abusers.<sup>388</sup> The answer to these bizarre human phenomena defies logical understanding. It lies in the deep and mysterious recesses of the psyche.

Trauma bonds become addictive, and, like the object of any other addiction, take control of the victim's mind and will.<sup>389</sup> An essential element of addiction is compulsivity, which is the loss of the ability to freely choose to either stop or continue the behavior. The victims become caught in the abusive behavior despite the obviously adverse consequences.<sup>390</sup>

Traumatic bonding is an implicit force used by a cleric to hold on to a victim, and to shield himself from disclosure after the abuse has taken place.<sup>391</sup> Usually a bond already existed between the cleric and his victim. This bond, based on the sacred and trusted image of the priest, is nurtured and strengthened over time by the implicit and explicit influence of the institutional Church through its teaching and preaching. This supportive environment enables the perpetrator to initiate a seduction or grooming process, often including the creation of a secret and special relationship that entraps the victims and fortifies the bond. Finally, the traumatic bonding is affirmed by the Church's apparent approval of the cleric's behavior.<sup>392</sup> Victims experience profound harm and shame, yet the clergy perpetrators appear to carry on their lives with at least the

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<sup>387</sup> **Carnes**, *supra* note 373, at 24-26.

<sup>388</sup> *Id.* at 31.

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*; See also **Craig Nakken**, *The Addictive Personality* 25-36 (Hazelden, 2d ed., 1996) (1988).

<sup>391</sup> **Carnes**, *supra* note 373, at 99.

<sup>392</sup> **Benyei**, *supra* note 83, at 79 (stating that congregations usually approve of cleric's behavior because the congregants "identify the pastor with God," therefore the approval stems from disbelief that their pastor is involved in sexual misconduct).

appearance of tacit approval by Church authorities. The responsibility for illicit sexual activity is shifted from the perpetrator to the victim. When confronted with a cleric's sexual abuse, Church leaders may assign some of the responsibility to the victims or their families.<sup>393</sup>

A victim's reaction to abuse does not follow a logical, cognitively predictable pattern. The abuse causes trauma, and trauma is irrational.<sup>394</sup> Resistance to disclosing abuse is grounded in the intense shame the victim feels – shame based on the feeling of being flawed, and largely responsible for the abuse. The sexual experience may have been accompanied by some physically pleasurable feelings, which only intensifies the shame and self-blame.<sup>395</sup> Intermingled with all of this is fear, or even terror invoked by the abuser.<sup>396</sup> The cleric is a mysteriously powerful person with an uncanny ability to manipulate the victim's feelings. The complicity and blame-shifting tactics strengthen the trauma bond, as does the fear often inspired by the clergy-abuser.<sup>397</sup>

A trusted, powerful person has betrayed the victim. The resistance to disclosure

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<sup>393</sup> See Archbishop Rembert Weakland, **Catholic Herald**, May 26, 1988, at 15. The Archbishop states:

Sometimes not all adolescent victims are so innocent. Some can be sexually very active and aggressive and often quite street wise . . . we must not imply that the abuser is not guilty of a serious crime but we could easily give a false impression that any adolescent who becomes sexually involved with an older person does so without any degree of personal responsibility. Id.

Canadian Bishop Colin Campbell asks, “[I]f the victims were adolescents, why did they go back to the same situation once there had been one ‘pass’ or suggestion? Were they co-operating in the matter, or were they true victims?” **Harris**, supra note 349, at 16. More recently, Msgr. Robert Rehkemper, former vicar general of the Dallas diocese, stated that the victims and their parents share in the responsibility for the sexual abuse inflicted by Rudy Kos. Ed Housewright, Parents of Abused Boys Share Blame in Kos Case, ex-Diocese Official Says Family Outraged; Church Distances Itself, **Dallas Morning News**, Aug. 8, 1997, at 1A. Such statements infuriate the victims, their sympathizers and the general public. They betray ignorance of the complex impact of abuse on victims and perpetuate the general misguided notion that victims somehow share in the blame.

<sup>394</sup> **Carnes**, supra note 373, at 5-9.

<sup>395</sup> Id. at 9, 86-87.

<sup>396</sup> Id. at 61, 87-90.

<sup>397</sup> **Benyei**, supra note 83, at 77-80.

is only partially rooted in the sex abuse itself. The more powerful inhibitor is the reaction to the identity and the spiritual power of the abuser. Carnes refers to this as “betrayal by the spirit” and rightly identifies the victim’s “no-win” situation:

Betrayal by the spirit means that the person who betrays the victims also plays a critical role in the resources the victim has for defining meaning. The victim’s spiritual path is blocked. The fundamental question all victims have to answer to themselves is: ‘Why do bad things happen to good people?’ It is a far more troubling question when the cause of the problem is supposed to be the resource for the answer.<sup>398</sup>

The exploitive betrayal bond is strengthened by several factors related to clericalism and religious duress. The first of these is the repetition of the abuse. The victim keeps returning for irrational reasons: the conflicted relationship with the priest, and the addictive repetition.<sup>399</sup> Second, the victim and victimizer believe in their own uniqueness. Clergy abuse victims often believe they are the only one. Clergy abusers often underscore this by convincing the victims of their specialness in being singled out for attention.<sup>400</sup> A third factor is the fear inspired by the abuser.<sup>401</sup> This fear is interwoven with the other aspects of this complex web, especially repetition and self-blame. The abuser is a trusted person. This trust does not spring up overnight; it is nurtured over years of participation in the many aspects of Church life. When abuse happens the trust is jolted, but it does not vaporize. Rather, the bond created by the trust is perverted in that it feeds the trauma.

A final element, especially relevant in the clergy abuse context, is the extreme

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<sup>398</sup> Carnes, *supra* note 373, at 68-69.

<sup>399</sup> *Id.* at 31.

<sup>400</sup> *Id.* at 82-83.

<sup>401</sup> *Id.* at 87-90.

reaction of the community.<sup>402</sup> When confronted with a member's wrongdoing, one normally expects a community or institution to condemn the illicit behavior and to provide solace to the offended. With most criminal behavior this is the case. With sexual abuse by clergy members, however, the response of the Church community has often been quite opposite.<sup>403</sup> This reaction has been extreme precisely because it is so radically inappropriate, given the gravity of sexual abuse. Identified clergy sexual abusers have been transferred from one geographic area to another.<sup>404</sup>

Sexual abuse victims often define "church" by the visible institution, its clergy, and its hierarchy.<sup>405</sup> When victims have approached Church authorities, the reaction has generally not been what they had expected. Many victims have mentally separated the abuser from the Church, and believe that the Church will remedy the situation.<sup>406</sup> Those abuse victims who have approached Church authorities in the past did so with expectations of compassion and understanding.<sup>407</sup> They expected to be believed.<sup>408</sup> Most did not seek revenge but rather relief from the abuser, and assurance that he would be provided help and prevented from ever abusing anyone again.<sup>409</sup> The extreme reactions of the institutional Church, so often experienced by victims, multiplied their trauma and fortified the traumatic bond.

The effects of such an extreme reaction are psychologically and emotionally

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<sup>402</sup> Id.

<sup>403</sup> **Benyei**, supra note 83, at 93-96.

<sup>404</sup> In the authors' combined experience with approximately 400 cases, a common element has been the transfer of perpetrators from one parish to another.

<sup>405</sup> Based on the authors' combined experience with victims' interviews.

<sup>406</sup> Id.

<sup>407</sup> Id.

<sup>408</sup> These conclusions are based on the authors' combined experience in interviews with approximately 1500 clergy abuse victims, both male and female of varied ages.

<sup>409</sup> Nanette de Fuentes, Hear Our Cries: Victim-Survivors of Clergy Sexual Misconduct, in **Bless me father for I Have Sinned: Perspectives on Sexual Abuse Committed by Roman Catholic Priests** 135 (Thomas G. Plante ed., 1999).

devastating, because the abuser is a cleric and the community is the Church. This is precisely because of the spiritual betrayal that has taken place. Victims are often plunged into depression and hopelessness because the community in which they had placed their total trust has betrayed them and supported the abuser.<sup>410</sup> Feelings of guilt and shame are now galvanized. The hopelessness often paralyzes the victim from any form of disclosure.<sup>411</sup>

#### E. The Trauma Bond and the Statute of Limitations

Emotional paralysis that clergy abuse victims suffer explains their silence, which often lasts years after the abuse has ceased. This can have particular relevance to answering questions surrounding the application of a statute of limitations. Many victims are cognitively aware of the sexual abuse, but are so traumatized by the fact that the abuser is a priest, and by the fear of attacking the Church, that they remain in a state of emotional and psychological paralysis for long period of time.<sup>412</sup> This paralysis is psychologically identical to the denial felt by alcoholics or drug addicts.<sup>413</sup> The suffering addict experiences incredible mental and physical pain as a result of the substance abuse, but the denial mechanism prevents the individual from making the connection between the substance addiction, the destructive results, and recovery.<sup>414</sup>

Added to the already enslaving power of the trauma bond is the intimidation, and even force, applied by Church leaders. Scores of victims have testified in court that they were urged by bishops or other clergy leaders to keep silent and to trust the Church to

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<sup>410</sup> **Benyei**, *supra* note 83, at 93-96.

<sup>411</sup> *Id.* at 78-79.

<sup>412</sup> Mary Gail Frawley-O'Dea, The Experience of the Victim of Sexual Abuse: A Reflection, U.S. Conference of Catholic Bishops, (June 14, 2002), at <http://www.usccb.org/bishops/frawley.htm>; see also Janet Jacobs, Charisma, Male Entitlement and the Abuse of Power, in **Bad Pastors: Clergy Misconduct in Modern America** 113, 125 (Anson Shupe, William A. Stacey, Susan E. Darnell, eds., 2000).

<sup>413</sup> See **Nakken**, *supra* note 390, at 8-9.

<sup>414</sup> *Id.*

handle the problem. Some have been threatened with various spiritual penalties, including excommunication, and others have actually been subjected to countersuits.<sup>415</sup>

The concept of duress and the consequent impairment of the will are not unknown in the civil courts. One New Jersey case concerned two sisters who were sexually abused by an uncle.<sup>416</sup> The defendant uncle's contention was that the sisters were aware of the abuse in 1992, and that the statute had run its course by 1994, two years before the complaint was filed in 1996. The appeal court noted:

What N.J.S.A. 2A:61B-1c adds in sexual abuse cases is a provision which tolls the running of the statute, if a mental state exists in the victim which, while it may not cognitively impair a victim's ability to know and understand the abuse/injury connection, does impair the victim's capacity to act on that knowledge or overwhelms the victim's will to act.<sup>417</sup>

The judge acknowledged the expert's opinion that both women had suffered from Post Traumatic Stress Disorder, which was reinforced by family dynamics and behavior. Though they were cognitively aware of the uncle's abuse, they were prevented from taking action for many years.<sup>418</sup>

The court in another New Jersey case addressed the issue of duress, finding among other things, that it does not require a threat.<sup>419</sup> In yet another New Jersey case the court defined duress as "that degree of constraint or danger, either actually inflicted or

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<sup>415</sup> Based on authors' combined experience.

<sup>416</sup> *Stinziano v. Quarterbosh*, 769 A.2d 1052 (N.J. 2001).

<sup>417</sup> *Id.* at 3-4.

<sup>418</sup> *Id.* "This case was just such an instance, as the judge below recognized, based particularly on unrefuted expert evidence before him. Both women were diagnosed as suffering from post traumatic stress disorder (PTSD), reinforced by a consistent pattern of family behavior whereby, despite awareness of defendant's conduct, nothing was done about it for years. Two of the defining symptoms of PTSD are accommodation and avoidance. These are tools that the child victim uses to 'tough it out alone' and to live through her trauma, by silence and denial that the events have happened or by accommodating friends and family by pretending they have not happened."

<sup>419</sup> *Smith v. Estate of Kelly*, 778 A.2d 1162, 1173 (2001)77

threatened and impending, sufficient in severity or in apprehension to overcome the mind or will of a person of ordinary firmness. . . . such as in fact works control of the will.”<sup>420</sup>

Religious duress does not necessarily imply a direct threat of physical harm. For the victims of clergy abuse, however, the emotional and spiritual harm can be worse. It can be so powerful that it impedes the person’s freedom to act against the abuser and against the institution that is perceived as the origin of the threat.<sup>421</sup> Religious duress is indirect, in the sense that it is implanted by the very religious formation and enculturation of the victim. Though powerful in itself, it is enhanced and carried to more profound levels of psychological and emotional power when a victim is coerced, intimidated, or threatened by the abuser and other religious authority figures.

The internal resistance to disclose abuse is more powerful and debilitating than a physical barrier placed around a police station or courthouse. It is imposed from without by a centuries-old religious system. It is reinforced by a complex religious ideology that has conditioned the victim to believe and accept the word and actions of the clergy without question, for fear of incurring the displeasure, not of the religious leaders, but God himself.

### **Conclusion**

The civil courts recognize the great power that religious belief has over people. Clericalism has deluded church members and non-members alike into thinking that deference to the clergy is both a sign of faith in God and an act pleasing to God. In truth, clericalism, with all of its unpleasant manifestations, uses the good faith of individuals to manipulate and exploit them. The victim and family who fail to call attention to sexual

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<sup>420</sup> Rubenstein v. Rubenstein, 120 A.2d 11, 13-14 (1956).

<sup>421</sup> Benyei, supra note 83, at 80.

abuse by a cleric, or the judge who allows a guilty priest abuser to get off lightly or massages the judicial system to prevent a diocese from being sued for civil damages, respond to clericalism's manipulative power, but not to an authentic respect for God.

Clergy sexual abuse cases are complex phenomena. The actual sexual abuse itself is the most visible and dramatic aspect, but it is far from the whole story. Sexual abuse committed by clergy members is not something isolated from the dynamics of the Church's power structures. Clericalist control and traumatic bonding are the most important aspects of cases of abuse perpetrated by the clergy. These two human dynamics explain why clerics are able to seduce people and to eventually subject them to a pattern of debilitating sexual abuse. These dynamics explain why the clergy act as if they can get away with their actions and why they feel justified in their attempts at subsequent intimidation of their victims. They explain why the Church leaders have often done little to stop the abuse, and why they persist in treating victims in an adversarial manner. This dynamic also explains why so many victims, abused in their childhood or early adolescence, remained silent for long periods of time before coming forward to demand justice for past events that often have seriously impacted their entire lives, and the lives of other family members.