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Abuse in Care

Royal Commission of Inquiry

UNDER THE

Inquiries Act 2013

IN THE MATTER OF

**The Royal Commission of Inquiry into Historical Abuse
in State Care and in the Care of Faith-based Institutions**

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CONTENTS

- i. Preface
- ii. Introduction
- iii. Terminology

PART ONE: THE MULTI-FACETED NATURE OF SEXUAL ABUSE BY CLERGY

I. QUALIFICATIONS AND EXPERIENCE

- A. Academic qualifications
- B. Experience in this area
- C. Previous contact in New Zealand
- D. Basis for the content of my submission

II. CLERGY SEXUAL ABUSE: THE STATE OF THE ISSUE

- A. What is the basic scope of this phenomenon?
- B. What is the state of the issue today?

III. CANON LAW

- A. Historical context
- B. Application of canon law
- C. Relationship with civil law
- D. Relevant provisions of canon law
- E. Canon law process
 - 1. Crime and penalty
 - 2. Co-operation in an offense
 - 3. Investigations
 - 4. Outcomes

5. Timing

IV. REACTIONS OF POPES AND BISHOPS TO CLERGY SEXUAL ABUSE

- A. Reactions of the popes
 1. Pope John Paul II
 2. Pope Benedict XVI
 3. Pope Francis
- B. Reactions of the bishops

V. CULTURAL AND ACADEMIC RESPONSE

- A. Media reporting
- B. Documentaries and movies
- C. Books and academic articles

VI. THE GOVERNANCE AND STRUCTURE OF THE CATHOLIC CHURCH

- A. Context
- B. What is “the Church”?
- C. The sacraments of the Church
- D. The structure of the Catholic Church
 1. Clerics and lay men and women
 2. The papacy
 3. The Vatican Curia
 4. Bishops and dioceses
 5. The parish
 6. Religious institutes
- E. The governance of the Catholic Church
- F. Accountability

1. Bishop's accountability for clerics
2. A cleric or religious is always "on duty"
3. Accountability of bishops
4. *Vos Estis Lux Mundi*

VII. THE NATURE, ROLE AND IMAGE OF THE PRIESTHOOD

- A. The nature of the priesthood
- B. The Church, the priesthood and the treatment of victims
- C. Seminary formation and clericalism
- D. Mandatory celibacy
- E. The primacy of the institutional Church

VIII. ACCOUNTABILITY IN PRACTICE – WHAT DIDN'T HAPPEN

- A. The preliminary investigation and the default practice
- B. Excuses for not following canon law
- C. Canonical revisions in 2001 and 2010
- D. The accountability of bishops
 1. The basis for concern
 2. Areas of accountability
- E. Papal legislation directed at accountability of bishops
 1. Pope John Paul II, Pope Benedict XVI and accountability
 2. Apostolic letter *As a Loving Mother*, 2016
 3. Apostolic letter *Vos Estis Lux Mundi*, 2019
 4. Effect of papal legislation

PART TWO: THE SYSTEMIC PROBLEM

I. WHAT DOES THE “SYSTEMIC PROBLEM” MEAN?

- A. The two dimensions of sexual abuse in the Catholic Church
 - 1. The actual physical violation
 - 2. The influence of the ecclesiastical world
- B. Membership in the clerical world
- C. Power in the clerical world

II. WHAT IS THE “ECCLESIASTICAL SYSTEM”?

- A. The institutional Church – an end or a means to an end?
- B. Threats to the institution
- C. Secrecy
- D. Mental reservation

III. THE INFLUENCE OF THE SYSTEM

- A. Clerical narcissism
- B. The development of clerical narcissism
- C. Acquired situational narcissism

IV. HOW THE INSTITUTIONAL SYSTEM ENABLES ABUSE

- A. Spirituality infused with clericalism
- B. Enabling sexual abuse
- C. Fear caused by religious duress
- D. The direct effect on the victim

V. THE TRAUMA BOND

- A. Relationship or destructive interaction
- B. Abused again by the institution’s response

VI. THE SPIRITUAL DAMAGE

- A. Treatment needs
- B. The spiritual damage
- C. Some symptoms of spiritual damage
- D. Healing the wounds

VII. THE FINAL ANALYSIS – WHY THIS HAS BEEN A TRAIN WRECK

- A. The failure of the hierarchy to be pastors
- B. The failure of canon law
- C. The Church cannot clean itself up
- D. Everyone in the Church must accept the central role of victims
- E. This is not a homosexual problem
- F. Concluding observations

APPENDICES

Appendix 1: Letter from Archbishop Luciano Storero, papal ambassador to Ireland, to each Irish bishop, January 31, 1997

Appendix 2: Speech of Enda Kenny, Taoiseach [Prime Minister] in the Dáil Éireann on the Report of the Commission of Investigation into the Catholic Diocese of Cloyne, July 20, 2011

Appendix 3: Pope John Paul II's letter to the U.S. bishops, June 11, 1993

Appendix 4: Letter from Cardinal Castrillón Hoyos to Bishop Moreno of Tucson AZ, December 13, 1996

Appendix 5: Letter from Bishop Moreno of Tucson AZ to Cardinal Castrillón Hoyos, January 6, 1997

Appendix 6: Letter from Cardinal Castrillón Hoyos to Bishop Moreno of Tucson AZ, October 31, 1997

Appendix 7: Letter from Bishop Moreno of Tucson AZ to Cardinal Castrillón Hoyos, December 22, 1997

i. Preface

1. On January 3, 1988, an American bishop wrote to Archbishop Pio Laghi, Papal Nuncio to the United States. The purpose of his letter was to complain that a colleague and I had been speaking to the secular media about the clergy sexual abuse issue that was rapidly developing at that time. His closing remarks are reflective of the attitude then and still apparent among some clergy and lay people in the Catholic Church:

“I am afraid that such articles [referring to one in which I was quoted] will continue to flow from time to time. The Church has weathered worse attacks, thanks to the strength and guidance of the Holy Spirit. So too will the pedophile annoyance eventually abate.” (Letter of Bishop A. J. Quinn to Archbishop Pio Laghi, January 3, 1988; emphasis added.)

2. Two years prior to this I was in a conversation with an American archbishop whom I knew and respected. We were at a reception at the Vatican Embassy in Washington D.C. The sexual abuse issue, which had been catapulted into the public eye by the case of Fr. Gilbert Gauthier in Lafayette, Louisiana, was a major topic of conversation among the bishops present that evening. The archbishop made a comment to me that I have never forgotten: *“Tom, don’t get too excited about all of this. Nobody is going to sue the Catholic Church.”*
3. It is now 2021. The “pedophile annoyance” has proven to be an annoyance of global proportions that has changed the Catholic Church in ways and to an extent that no one could have imagined back in the second half of the 1980s. The archbishop who assured me not to worry about lawsuits has since passed from this life to the next. His prediction was not only wrong but was a kind of reverse prophesy. From *“nobody is going to sue”* we have gone to \$US 4 billion in compensation to victims in the United States alone in 30 years and the end is *not* near.
4. The phenomenon of sexual abuse by Catholic clergy and non-ordained religious men and women has existed in the Catholic Church throughout its history. When it emerged from deep secrecy in the latter half of the 1980s, the fact of sexual violation of the young by trusted clergy and religious caused shock waves that are still

reverberating. But the monumental outrage and mind-boggling disbelief has been in reaction to the way the leadership of the institutional Church, primarily the hierarchy and the papacy, have responded. Pope John Paul II first tried to pin the blame on American materialism and media sensationalism. When that crashed and burned, the next target for blame was the English-speaking countries, a theory that had the appearance of validity for little more than a month. Inevitably, the scourge of sexual abuse surfaced in one country after another, in spite of the strident claims of some bishops that it could not possibly exist in “my diocese” or in “our country”.

5. The efforts worldwide at shattering the institutional denial and shifting accountability to where it really belongs have not been spearheaded and sustained by the Church’s official leadership. Rather, it has been the victims and their supporters who have continued to forge ahead. They, more than anyone, know how horrific and devastating it is to be sexually violated, especially by those whom they have been taught by their Church to trust the most, the clergy and religious.
6. The worldwide movement to expose the causes and heal the victims has led to the harsh realization that this is truly a very dark side of the institutional Church, and that the essential causes are systemic in nature. In other words, the root problem is not in the individual clergy and religious perpetrators, or in the bishops and religious superiors who have mishandled reports and scrambled to cover up, minimize, shift the blame and demonize the victims and their supporters. The root cause is deeply embedded in the ecclesiastical system upon which the institutional Church is built.
7. Marty Baron, newly hired editor-in-chief of *The Boston Globe* in December of 2001, met with the Spotlight Team that was researching sexual abuse and cover-up in the Boston Archdiocese. He told them not to focus on the cardinal and the priests because they were not the fundamental problem. He told them the problem was systemic. He was dead right.
8. This Royal Commission, if it is to succeed, must first accept that sexual abuse by clergy and the problematic response of the hierarchy is no different in Aotearoa than in any other country. In looking into the complex array of systemic causes, the massive amount of data produced will reflect horror stories, institutional bumbling, lay and

clergy denial, boundless anger, the unmatched courage of the victims and — here and there — rays of hope.

9. Internationally, clergy, religious and lay people in the Church, and plenty of people outside the Church have wondered: *“What went wrong?”* There is no single answer that can grasp the phenomenon of such cosmic proportions, but one reality keeps recurring: this is a human problem that cannot be adequately helped by administrative programs or carefully crafted expressions of generic apology. But it *can* be changed if the men and women who make up the Body of Christ ask themselves what Christ would do and then pray for the courage to do it.

ii. Introduction

10. This submission consists of two parts:
 - (a) Part One – The multi-faceted nature of sexual abuse by clergy; and
 - (b) Part Two – The systemic problem.
11. Part One will focus mainly on the core areas that make up the complex phenomenon of sexual abuse by clergy. I use the term “phenomenon” deliberately to describe the subject of this submission and the subject of the Royal Commission’s inquiries into the Catholic Church. The sexual abuse issue has been described as a “crisis”, a “problem” and, in the words of one American bishop, a “nuisance”. In reality, it is none of these and all of these. The revelations of sexual abuse by church personnel in our era (1980s to the present) have shown that the response of the leadership of the Church, primarily the hierarchy and the papacy, have drawn more attention and concern than the acts of abuse themselves.
12. We have learned that this is far more than a crisis, isolated in time, responded to by “crisis intervention” and followed by a return to business as usual. It is certainly a problem of global dimensions, but the various aspects of its complexity have shown that it is much more: it is a phenomenon that has revealed a very dark and toxic dimension of the institutional Catholic Church. It is not an issue the origin of which can be isolated to the clergy, to the hierarchy, or to the popes. The darkness is

rooted in essential elements of the theological system that serves as the foundation of the Church as an institution and which have a profound influence on all members.

13. Sexual violation of minors and adults by clergy or non-ordained religious men or women cannot be isolated to a discussion of the instances of sexual abuse and the reasons that prompt or compel individuals to sexually harm vulnerable minors or adults. The perpetrators are clergy and religious who are full-time personnel of the institutional Catholic Church. Their identification with the Church places the sexual abuse into a unique category. They are part of a worldwide religious denomination. The relationship of the perpetrators to the institutional Church is complex and the sexual abuse of vulnerable members is equally complex.
14. Part Two will integrate the areas of response in Part One into a discussion of the elements of causality that originate in the system itself. It will focus more explicitly on the systemic issues and how and why victims are so traumatized by clergy sexual abuse, including as a result of spiritual damage. Part Two will end with a section that attempts to sum up the key reasons why we are where we are, and what we must do to emerge to a healthier and certainly holier Church.

iii. Terminology

15. The phrases “sexual abuse”, “sexual abuse by clergy” (and the commonly used term “clergy sexual abuse”) as they are used in this submission are understood to include sexual abuse perpetrated by clergy (also referred to as “clerics”) as well as by non-ordained men and women religious and by lay persons associated with, and under some form of supervision by, the institutional Church, unless otherwise noted. Clergy in the Catholic Church include three ranks of men who are ordained: deacons, priests and bishops. “Bishops” includes archbishops and cardinals unless otherwise noted.
16. Non-ordained religious refers to men and women who are members of religious institutes, commonly referred to as “religious orders” or “religious communities”. This category includes men who are not ordained, commonly referred to as brothers. Their proper title is Brother X, usually abbreviated as “Br.” or “Bro.”. Women who are

members of religious institutes are commonly referred to as nuns or sisters. Their proper title is Sister.

17. Members of religious institutes include ordained deacons and priests as well as non-ordained. In Catholic literature and writing, both official and non-official, members of religious institutes are commonly referred to simply as “religious”. The word is here used as a noun (not an adjective) and includes both singular and plural as for example, “Fr. Duckworth is a religious” or “Mount Cashel orphanage was run by religious”.
18. It is also important to mention that references to victims and survivors includes both males and females.

PART ONE: THE MULTI-FACETED NATURE OF SEXUAL ABUSE BY CLERGY

I. QUALIFICATIONS AND EXPERIENCE

A. *Academic qualifications*

19. I was ordained a Catholic priest in 1970. I have graduate training and degrees in six different areas: Canon Law (doctorate), Theology, Philosophy, Church Administration, Canon Law and Political Science (master's degrees). I am also a trained and licensed addictions therapist.

B. *Experience in this area*

20. I have been directly involved in the issue of sexual abuse of minor boys and girls by clerics since 1982. At that time, I worked as the staff canon lawyer at the Vatican Embassy in Washington D.C. The first two cases I was called on to assist with involved bishops and were covered in secrecy at the time. Years later, the identities of each of the bishops were revealed in civil court actions.

21. My intense involvement began in 1984 with the case of a priest named Gilbert Gauthe from the Diocese of Lafayette in the southern state of Louisiana. He was a prolific predator and a true serial pedophile in that all of his victims were prepubescent boys. His case involved the first civil trial against a Catholic diocese based on the diocese's (bishop's) responsibility for the sexual abuse of a minor by a cleric. The jury awarded the plaintiff, a 12-year-old boy who had been nine years old when the abuse occurred, approximately \$1 million.¹

22. The priest also faced criminal charges and spent 10 years in prison. The facts of this case became known to the public because of the criminal charges which the media picked up. The secular news sources focused on the actual abuse but even more so on the cover-up by the bishop. The case is considered to have been the one that changed the course of history because it started a course of action that brought

¹ See *State v. Gauthe*, 731 So. 2d 273 (La. 1998) and *Gastal v. Hannan*, 459 So. 2d 526 (La. 1984).

worldwide disclosure of sexual abuse of minors in the Catholic Church and of the systemic mismanagement of cases by the official leaders of the Church — from the papacy down to the bishops of dioceses.

23. My initial involvement was simply to manage the flow of information about the case between the bishop and the papal ambassador (nuncio). I enlisted the help of a priest–psychiatrist to assist the bishop of the diocese in the determination of decisions to be made about the accused priest. The priest, Fr. Michael Peterson, and I were joined in January 1985 by an attorney retained by the diocese to represent the accused priest on the criminal charges he faced. The three of us worked very closely together and quickly came to the conclusion that this issue was actually a very serious problem for the institutional Church that would only get worse unless the hierarchy took some decisive steps. With the encouragement and support of the papal ambassador and several high-ranking bishops (actually two cardinals and two bishops who were at the core), we composed a detailed “manual” for the bishops to assist them if and when they faced reports of sexual abuse by one of their clerics. The three of us had no idea how extensive this problem really was. Additionally, we had no idea of the prior knowledge by many bishops, nor of the bishops’ belief that the problem had to be shielded from any public knowledge.
24. We presented a copy of our “manual” (which was 100 pages in length with three appended articles from professional journals describing aspects of pedophilia), to the papal ambassador, who in turn offered it to the United States Conference of Catholic Bishops (USCCB). The papal ambassador’s primary contact was the Secretary-General of the USCCB. The leadership cadre of the USCCB responded quickly. They informed the papal ambassador that they did not need the manual because they already were well aware of everything it contained. They also claimed to have already created policies that were in place to respond to the problem.
25. Within a very short time, the papal ambassador realized that there were no such policies in existence and that in fact the USCCB had information related to sexual abuse that was only indirectly related to their written policies on how to respond to civil law cases involving the actions of clerics. It was clear that the USCCB leadership did not consider the sexual abuse of minors to be a potentially serious problem, nor

did they believe there was a serious threat to the dioceses' finances and image. Although the USCCB held a one-day closed seminar on sexual abuse at their June 1995 plenary meeting, they took no other decisive measures beyond issuing some statements. The key factor motivating them to pay attention to the problem was the nation-wide publicity that the Louisiana case had generated.

26. The inaccuracy of their estimate of the severity of the problem is reflected partially by some contemporary statistics. Between 1986 and 2019 the dioceses of the U.S. (not including religious orders) have paid out the following amounts:
- (a) \$US 3,997,798,471.00 (nearly \$US 4 billion) in court awards and settlements to victims.
 - (b) \$US 871,400,000.00 – bankruptcy settlements for 17 out of 26 dioceses in bankruptcy.²
 - (c) \$US 154,929,153.00 – other payments to victims, including therapy.
 - (d) \$US 235,606,275.00 – costs for the support and defense of offenders.
 - (e) \$US 642,968,347.00 – in attorney's fees.³
27. In addition to the lawsuits, the number of which is estimated to be about 11,600 since 1986, 26 of the 196 dioceses and archdioceses in the U.S. have filed for bankruptcy protection. Three religious institutes have also filed for such protection.
28. Since 1984, I have been continuously involved in the phenomenon of clergy sexual abuse. This involvement is very wide-ranging, covering probably every possible aspect of the issue: pastoral care of victims and their families, canonical defense

² Bankruptcy settlements represent the amount the diocese settled for to compensate victims. All amounts are officially published once the settlement has been reached.

³ The amount of total awards and settlements does not include bankruptcy settlements. The amounts from 1986 to 2004 are from the website www.bishop-accountability.org and all are from public sources. The remaining amounts in the total awards category and the other three categories, except the bankruptcy amounts, are from the annual reports published by the USCCB and available on their website. These totals are from the years 2004–2019 so they are obviously incomplete.

counselor for accused clerics, consultant to dioceses and religious communities, expert witness and consultant in civil and criminal cases throughout the U.S., in Canada, England, Ireland, Belgium, Australia, New Zealand and Israel. I have addressed the State legislatures of Pennsylvania, Ohio, Illinois, Colorado, California, Delaware, Maryland and the City Council of the District of Columbia on child protective legislation. I have also served, and continue to serve, as a consultant and expert in matters related to sexual abuse by Catholic clergy for grand juries in the U.S. and at the present time am actively involved as a consultant and expert in investigations being conducted by the Attorneys General of 10 States in the U.S. wherein every Catholic diocese in each State is being investigated. I have served as an expert witness in litigation involving sexual abuse by clerics of several non-Catholic denominations. I have also served as a consultant and expert in several of the investigatory commissions in Ireland and served as an expert witness before the Royal Commission in Australia.⁴

29. In 2011, I was invited to address the Belgian parliament regarding sexual abuse by Catholic clerics. In addition to the above, I have conducted extensive research into several areas related to clergy sexual abuse.

C. *Previous contact in New Zealand*

30. In December 1988, I was invited by the Canon Law Society of Australia and New Zealand to give a series of lectures at their annual convention. The general topic of the lectures was the canon law on marriage contained in the revised *Code of Canon Law*. I was also asked to address the issue of sexual abuse of minors. The convention took place in Adelaide, South Australia. While there, I was invited to meet with and discuss the issue of sexual abuse with Bishop Geoffrey Robinson, auxiliary bishop of Sydney, and Bishop Joseph O'Connell, auxiliary bishop of Melbourne. Over the years since then, I developed a close working relationship and cherished friendship with Bishop Robinson.

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA).

31. After the convention, I traveled to New Zealand and remained there for several days. While I was there, a meeting was arranged between me and Cardinal Thomas Williams. I met with the cardinal at his home. The meeting lasted for three or four hours and included a luncheon prepared by the cardinal. I shared with him everything I knew at the time about clergy sexual abuse, including my experiences with the U.S. bishops and my estimation of their attempts at a systemic cover-up, which at that time appeared to have its beginnings in 1985. Cardinal Williams told me that New Zealand was culturally about 20 years behind the United States but that he would like to see the bishops take action on this issue before it was too late. He informed me that he would see about having the bishops publish a protocol for use throughout the country.
32. At that time, I was an officer in the U.S. Air Force on active reserve duty. Within a few days of my return to the U.S., I was assigned by the Air Force to duty at Thule Air Base, Greenland, and flew there about a week after returning from New Zealand. While I was there, mail was forwarded to me and it included a copy of the statement prepared by the New Zealand bishops. Unfortunately, I am not able to locate a copy of this document.
33. My discussions with the clergy in Australia and New Zealand, including my discussion with Cardinal Williams, were based on information I had accumulated between 1984 and 1988 when I visited both countries. I broke down the discussions into the following areas: the medical information about pedophilia and the abuse of minors who were not prepubescent; the absolute necessity of compassionate pastoral outreach to the victims and their families; the absolute need for complete honesty with the media and with the "faithful" (meaning the lay people of any parishes or dioceses involved); the canonical processes to be followed upon receipt of a report (meaning the required preliminary investigation); how to deal with clerics when they have been accused; and finally, the absolute need for education of all the clergy about this issue.

D. *Basis for the content of my submission*

34. I have included the above information to provide context for the substance of my submission. My experience and expertise go far beyond the realm of canon law. From almost the first years when I began to slowly realize the complex and extensive nature of the reality of clergy sexual abuse of minors and vulnerable people, I have been driven to find the answer to the essential question: “*Why?*” My submission is based on my experience in the United States and in several other countries. In searching for the answer to the essential question “*Why?*”, I have learned that the “*Why?*” of clergy sexual abuse is only partially answered by looking at the pathology, motivations and lifestyle of the clerics who have harmed the vulnerable. To comprehend the true nature and complexity of this particular genre of pathological sexual behavior, one must look beyond and beneath the instances of sexual violation. One must look at the history, culture and theological foundations of the institutional Church. The “*Why?*” is only partially answered by looking at the perpetrators. The more pressing and more profound question begins with acknowledging that this terrible phenomenon has been a destructive element of the institutional Catholic Church throughout its history.

II. CLERGY SEXUAL ABUSE: THE STATE OF THE ISSUE

A. *What is the basic scope of this phenomenon?*

35. The sexual violation of children and minors by anyone is one of the most heinous and disgusting crimes known to civilized society. When these terrible acts are committed by the most revered and trusted persons in the young person’s life, the pain and trauma are much worse. The basic impact on the victims of clergy and religious is commonly referred to by psychologists and others as “soul murder”, and so it is.
36. This phenomenon — and I reiterate the fact that I use this word intentionally because we are not talking about a crisis, a problem, a singular issue, or a “difficulty” with distinct parameters — is particularly toxic because it has a number of distinct yet connected elements, and an unknown depth and breadth. The three fundamental areas of this phenomenon are:

- (a) **The actual sexual violation of minors and vulnerable adults by Catholic clerics and lay employees** or associates of agencies or institutions sponsored by the Catholic Church.
- (b) The **corporate response of the hierarchical leadership of the Catholic Church** to individual cases of sexual abuse and to the overall problem of sexual abuse.
- (c) The **lack of adequate pastoral and spiritual care for victims** of sexual abuse, their families and their communities.

- 37. These three elements of sexual abuse in the Catholic Church cannot be separated one from the other. Of the three, the central and essential or foundational aspect is the response of the governmental structure of the leadership of the Catholic Church.
- 38. The reference to the leadership of the Church includes not only the bishops of dioceses, but also the leadership of the religious institutes.

B. *What is the state of the issue today?*

- 39. Although sexual abuse by Catholic clergy has existed in the Church and has been known by the hierarchy since the first century of the Church's existence, in our own era it was not widely known until the mid-1980s due to a notorious case in the U.S. that received very widespread media coverage. Since 1984, when this particular case surfaced, cases of clergy sexual abuse have been steadily and increasingly reported, first in the English-speaking world, then in continental Europe and, within the last 10 years at least, regular reports have come forth from Latin American, Sub-Saharan African, and Asian countries.
- 40. No one knows how many actual cases have been reported although there have been attempts at tracking the numbers in some countries, especially in the U.S. When the issue first surfaced in the United States in the 1980s, the late Pope John Paul II and several high-ranking Vatican prelates attempted to authoritatively claim that this was an American problem. When that theory collapsed due to reports in Canada, Ireland and England, the same sources decided it was a problem confined to the English-speaking world. From the outset, both theories were baseless and, in time, were

proven so by the rapid increase in revelations from country after country in other parts of the world.

41. Between 1970 and 2021, there have been 105 inquiries into some aspect of sexual abuse in the Catholic Church. The earliest was a report of an investigation into reformatory and industrial schools by the government of the Republic of Ireland (also known as the Kennedy Report), published in 1970. The most recent was the *Final Report of the Commission of Investigation into Mother and Baby Homes* by the Irish Government, published January 12, 2021.⁵
42. Two of the early reports were not about sexual abuse as such but about the sexual maturity, or lack thereof, of Catholic priests. The first was by Drs. Conrad Baars and Anna Terruwe. It was first presented to the world Synod of Bishops in 1971 and later that same year to the United States Conference of Catholic Bishops at their annual meeting.
43. In 1972, Drs. Eugene Kennedy and Victor Heckler published *The Catholic Priest in the United States: Psychological Investigations*.⁶ This was the report of a study which they had conducted at the request of the U.S. bishops. The bishops in general rejected the conclusions and therefore did not act in any way on the report.
44. The breakdown of the remaining 103 reports is as follows:

(a) Civil government mandated reports	59
(b) Church-sponsored reports	17
(c) Reports by agencies contracted by the Church	10
(d) Reports by independent sources	17

⁵ Available at <https://www.gov.ie/en/publication/d4b3d-final-report-of-the-commission-of-investigation-into-mother-and-baby-homes/>

⁶ Eugene Kennedy and Victor Heckler, *The Catholic Priest in the United States: Psychological Investigations* (Washington D.C.: National Conference of Catholic Bishops, 1972).

45. Some of these reports, especially the government-sponsored ones, have included a section on causality based on an analysis of the data in the report. The focus in each report was not on the offenders but on the systemic or institutional role in the causality. Each of the reports singled out the hierarchy — the bishops and popes — as the primary aspect of systemic causality.
46. These inquiries, but especially the government inquiries, have been crucial for discovering as accurate a description as possible of the complex problem of clergy sexual abuse of minors. The inquiries reflect the serious concern of civil governments. The impact of the public revelations of worldwide sexual violation over the past 36 years has reached far beyond the institutional Church. It would have been tragic had the New Zealand Government decided not to include the victims of faith-based institutions in the scope of this inquiry, because these institutions enjoy a level of trust higher than purely secular or government institutions and this trust has obviously been seriously violated. This was seen in the shocking revelations arising from some of the earlier investigations, including the Australian Royal Commission (2017), *The Ryan Report* in Ireland (2009), the reports of three Grand Jury Investigations in Philadelphia, PA, USA (2003, 2007, 2011) and the latest, the *Final Report of the Commission of Investigation into Mother and Baby Homes* in Ireland (2021).
47. Some have argued that these investigations concerned events of the past and do not reflect the present situation. This is a completely irrelevant statement and reflects a lack of understanding of what these investigations have been about. The fundamental point at issue is not so much recitals of the facts but a clear understanding as to why these events happened in Catholic institutions.
48. Some also refer to the cases of sexual abuse that occurred years or decades in the past but are coming forth in the present as “historic cases”. The pejorative nature of this classification is obvious. The sexual violation of a person in his or her early years leaves deep emotional, psychological and — in relation to clergy sexual abuse — spiritual scars. These do not heal by themselves over time. Rather, the toxic and highly destructive effects worsen over time. Perhaps the single most shameful and scandalous aspect of the institutional Church’s response has been the absence of

compassionate pastoral care for victims and their families. Numerous statements made by bishops over the past three decades, but especially in the present, reveal that in general they know very little about the effects of sexual abuse inflicted on minors or adults. One of the most disturbing realities to come out of the investigations — but especially from the thousands of civil cases brought by victims as well as the countless conversations I have had with them — is that upon learning of a report of abuse, the bishops, rather than reaching out to the victims, instead reached out to their lawyers.

49. The most common conclusion from the various investigations, as well as the evidence produced in civil litigation, is that the hierarchy's primary concern is the image and welfare of the institution and not the welfare of the victims. A study of the statements of Pope John Paul II reveals clearly that his primary concern was the institutional Church first, the welfare of the bishops second, and at the bottom of the list, the victims.
50. The inquiries and investigations mentioned above are not a thing of the past, nor do they tell the story of what was and not what is. In other words, the findings of these many investigations across a broad spectrum of countries are still relevant today. The sexual abuse of minors by clergy is not an "historic problem" that has been faced and fixed. The conditions and factors that have made the sexual abuse issue as scandalous and destructive as it is are, to one degree or another, still part of the theological and cultural fabric of the institutional Church.
51. The success of this Royal Commission of Inquiry should be measured not by the discovery that reports of sexual abuse have declined over the years that have been the focus of the study, nor can true success be evaluated in terms of the number of policies, programs, protocols or committees that have been created. These goals could have been achieved by any government or by other institutions without going through the expensive and extended process of a full-blown inquiry.
52. The measure of success will be the excavation and honest acknowledgement of the toxic beliefs and the arrogant and narcissistic attitudes that have prevented the pillars of the institutions, especially the religious bodies, from seeing beyond their own

defensiveness, from seeing beyond their concern for their own security, and minimizing and distorting the grave nature of the reasons why this inquiry is taking place in the first place. The success of this and any similar inquiry must be judged not by the creation of more administrative ventures but by the honest acknowledgement of beliefs and attitudes that have victimized, and continue to victimize, so many of the men and women whose lives have been irreparably damaged — not so much by the actual sexual violence but by the institutions that have treated them as commodities rather than persons; as a threat rather than as our brothers and sisters.

53. In other countries, the defensive, narcissistic and hypocritical attitudes and thinking are still alive and still drive the responses of church leaders and their spokespersons, who do not seem to be able to get past the illusion that the institutional Church and the reputation of its leaders are more important than the spiritual welfare of the victims of the Church's harmful behavior. In addition, beyond the victims, their families and their close friends, we must also seriously consider the impact the whole nightmare has had on the believing, devout and donating members of the Body of Christ.
54. Whether this lesson will be lost on the institutional Church of New Zealand remains to be seen, but there is little doubt that it has not penetrated the minds and hearts of the bishops in several other countries, my own in particular. Let me offer as an infuriating example the stark contrast between the bishops' continuous pledges of concern for the victims and their actual actions. In several States in the U.S., there were movements to have State legislation changed to enact much more realistic statutes of limitation for child abuse cases. The consistent opposition in every State came from the Catholic bishops who have spent between \$US 10 and \$US 15 million to influence State lawmakers to reject any legislation that would change the status quo.⁷ Those dollars were all donated by the "faithful", as the obedient Catholics are often called. The bishops' efforts were, in the end, unsuccessful.

⁷ The amount spent between 2011 and 2019 was \$US 10.6 million. See: Christina Capatides, "Catholic Church spent \$10.6 million to lobby against legislation that would benefit victims of child sex abuse", June 6, 2019, CBS News. The story cites a report, *Church Influencing State: How the Catholic Church Spent Millions against Survivors of Clergy Abuse*, published by Williams Cedar LLC in 2019.

55. In addition, two of the dioceses that have most recently petitioned the courts for bankruptcy protection, Buffalo and Rockville Center, both in New York State, have each engaged several law firms — not several lawyers but several law firms — to minimize as much as possible the amounts of money that will be made available in recompense for the damage done to the hundreds of victims. Each diocese has retained Jones Day, the largest law firm in the world, whose senior members are paid \$US 1250.00 per hour and junior associates \$US 900.00 per hour for their services.
56. Dioceses in the U.S. and in several other countries continue to preach how important it is to support and believe victims, but it appears that this applies only so long as the victims do not challenge them.

III. Canon law

A. *Historical context*

57. The Catholic Church, like most other religious denominations, has its own internal regulatory system known as canon law. The word “canon” is derived from the Greek word *kanon* which meant a rule or a straight line. Canon law is the oldest continuously functioning legal system in the world. The earliest recorded legislation dates from 309, consisting of a collection of 81 rules or canons passed by a gathering of territorial bishops at the town of Elvira in southern Spain. More recent research into the early medieval period (fourth to ninth centuries), has found evidence of similar official regulations concerning clerics’ or monks’ sexual relations with young teenaged boys.
58. As the institutional Church expanded throughout what is now known as Europe, the British Isles and northern Africa, bishops in other areas gathered to create rules to respond to issues involving internal discipline and the growth of the community. From the sixth century, church lawyers, called canonists, gathered the canons passed at local synods and councils and combined them into canonical collections.
59. The vast tangle of local rules was first systematized in 1140 by a Camaldolese monk named Gratian, a legal scholar working at the University of Bologna. The proper

name of his work is the *Concordance of Discordant Canons*. Though not official, his massive work, commonly called *Gratian's Decree*, remains the single most important historical source for canon law. His efforts, and those of other scholars at the time, were greatly influenced by the discovery of the main works of ancient Roman law. Thus, canon law took on many of the attributes of Roman law in terms of concepts, structure and legal philosophy.

60. The Church's laws, regulations, norms and guidelines remained uncodified until the beginning of the 20th century. The first *Code* as such was officially published or promulgated in 1917. This *Code* was replaced by the revised *Code of Canon Law* on November 27, 1983.
61. The role of canon law in the life of the Catholic Church is highly relevant to this inquiry. As set out below, canon law explains the extent and nature of the bishop's authority in his diocese, and it explains the responses expected from a bishop when he learns of the possible commission of a canonical crime. The issue of the authority of the diocesan bishop over members of religious orders working in his diocese is also explained by canon law. Sexual abuse of a minor by a lay person or a cleric is included in the *Code* as a specific crime.

B. *Application of canon law*

62. Canon law applies to everyone in the Church. Canon law not only regulates the lives of Catholics, but also assists in understanding how the institutional Church works. For example, the various lines of authority and the details of the offices that manage this authority are contained in the *Code*. It contains the requirements and procedures to be followed for establishing church structures, such as dioceses, parishes, universities and seminaries. It also contains the basic requirements that bishops should look for in assigning priests to various posts, and it explains the legal or canonical relationships between bishops of dioceses and religious orders that are established in their dioceses, as well as the ministries or works conducted by the religious orders.
63. Although the *Code* is the fundamental source of all church laws, popes regularly give official interpretations to certain laws, add new laws, or suspend laws. These changes

are not included in the *Code* but are considered canon law all the same. As the supreme lawgiver, only the pope can issue official interpretations of canon law. The pope can also dispense from all laws except those that are grounded in divine law. (To “dispense” means to exempt a person or a group of persons from the obligation of obeying specifically-named canon laws.)

64. The diocesan bishop also has the authority to dispense from certain laws in the *Code*. He cannot dispense from liturgical laws, procedural laws or legislation based on divine law. This means he cannot dispense himself or others from laws in these categories. The canon laws that pertain to sexual abuse of minors are among those the bishop cannot dispense.
65. The Church also has “particular law”, which consists of laws passed (promulgated) for either specific geographic areas or specific groups of people. Special laws that pertain only to religious institutes are particular laws. The Catholic Church in the U.S. has its own particular law concerning sexual abuse. This is commonly known as the “Dallas Charter”, but more precisely consists of the “Essential Norms”, which are formally known as the “Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons”. This is real canon law, but it applies only to the dioceses that are part of the United States Conference of Catholic Bishops.

C. *Relationship with civil law*

66. The *Code of Canon Law* has sections on procedural law and on criminal law. It contains specific procedures that are mandatory for a bishop to follow when he receives a report of the possible commission of certain canonical crimes.
67. When members of the clergy, church officials or church entities are examined in civil court, canon law can be helpful to determine what the Church’s own internal expectations were of an officeholder in a given situation, or what the Church’s internal regulations are pertaining to the authority over church structures. The *Code of Canon Law* is not, however, a substitute for the civil law systems of the various countries where the Church is established. It does not “trump” civil law. In fact,

there are canons that stipulate that the civil laws are to be obeyed in all things that are not immoral or contrary to God's law. Lay people, but especially priests and bishops, are not immune from civil laws and are bound to obey them unless those laws are contrary to divine law. In matters related to sexual abuse of minors by clergy or religious, any civil laws of whatever country the Church is in supersede canon law.

68. Some bishops in certain countries, notably the U.S., have claimed they did not know that sexual abuse of minors by adults is a crime in canon law. Nevertheless, even if they claim they were not aware of the canon law (which is very difficult to believe), they are still subject to civil law.
69. In theory, as the leader of a religious denomination, the pope is subject to the secular or civil laws in whatever country he is in. However, he is not only the head of the Catholic Church but also the head of the Holy See (the official name of the seat of government of the Church), which is considered by the world community of nations to be a member nation. Consequently, as the head of state the pope has sovereign immunity.

"The pope is accountable to no earthly power. He has total power over everyone in the Church and over every aspect of the Church". (canon 1556 & canon 1404)

70. Each diocesan bishop is accountable to the pope, not to the archbishop of the ecclesiastical province or the head of the national bishops' conference. The diocesan bishop is also accountable to the secular laws of the country where he lives and to the laws of any country he visits. (canon 341 & canon 381)
71. If a particular country has reporting laws that apply to child abuse of any kind (physical and sexual), the clergy – especially the bishops – are not immune from obeying these laws. Over the years, several highly placed Vatican officials have publicly stated that bishops are not obliged to report specific cases and clergy perpetrators to civil officials.⁸ These are purely private, and incorrect, opinions. The

⁸ "Vatican prelates oppose move to report priests", *National Catholic Reporter*, May 31, 2002. The article mentions four senior leaders: Archbishop Tarcisio Bertone, Archbishop Julian Herranz, Cardinal Oscar Maradiaga and Fr. Gianfranco Ghirlanda.
<http://natcath.org/NCR Online/archives/053102/053102h.htm>

example that gained widespread publicity was an official secret letter sent by the papal ambassador to Ireland, Archbishop Luciano Storero, to each Irish bishop on January 31, 1997 (see **Appendix 1**). The letter was intended to inform the bishops of the wishes of the Congregation for the Clergy, a Vatican congregation, which had reviewed the proposed norms passed by the Irish bishops in a document called “Child Sexual Abuse: Framework for a Church Response”. Among the observations in the letter was this: “*In particular, the situation of ‘mandatory reporting’ gives rise to serious reservations of both a moral and a canonical nature.*” The letter went on to inform the bishops that their proposed norms were to be considered “*merely a study document*” and in their place the norms of the *Code of Canon Law* were to be followed.

72. In 2011, Archbishop Storero’s letter was leaked to the media, which caused outrage in Ireland, especially on the part of the Prime Minister, Enda Kenny, who sharply criticized the Holy See for interfering in an inquiry of a “sovereign, democratic republic” (see **Appendix 2**).⁹

D. Relevant provisions of canon law

73. The *Code of Canon Law*, promulgated in 1917, contained a canon that named sexual abuse of a minor by a cleric as a canonical crime (canon 2359). The *Code* also had procedural norms that were to be followed when a bishop received a report of a canonical crime. (canon 1939)
74. In 1922, the Holy See published a special set of procedural rules (*Crimen Sollicitationis*) that were to be followed in cases of four types of crimes committed by clerics: solicitation in the course of sacramental confession, sex with males, bestiality, and sexual abuse of a minor under 16 years. These procedures were to be followed in place of the procedures in the *Code*.

⁹ The speech was delivered by Enda Kenny on July 20, 2011 before the Irish Parliament. The full text was immediately available from the government through multiple sources.

75. In 1962, Pope John XXIII had the Congregation for the Holy Office issue a renewed version of the rules issued in 1922.¹⁰ These norms remained in force until 2001.
76. In 1983, the revised *Code of Canon Law* was published. It repeated the canon that named sexual abuse as a sin (canon 1395), and it also contained procedures to be followed in the investigation and prosecution of a cleric accused of sexual abuse. (canons 1717–1719)
77. In 2001, the Holy See issued a new set of procedural rules for certain crimes considered to be extremely serious. One of these was sexual abuse of a minor by a cleric. These norms replaced the ones from 1962 and were to be used as the primary source of law for investigating reports of sexual abuse. They were to be supported with the appropriate norms from the *Code* in matters of canonical procedure. In 2010, Pope Benedict XVI issued a new set of norms that replaced those of 2001.
78. The canon law to be applied depended on when the abuse took place. The 1962 norms, also called *Crimen Sollicitationis*, were to be used for cases that were reported between 1962 and 2001. After 2001, the new norms were to be used until replaced in turn by the 2010 norms.

E. Canon law process

1. Crime and penalty (canon 2359 & canon 1395)

79. Sexual abuse of a minor is a canonical crime and is listed as such in the *Code of Canon Law*. The *Code* specifies certain penalties that are applicable, the most severe of which is dismissal from the clerical state — commonly known as laicization. Laicization can come about in three ways:
- (a) By the pope’s decree if a priest voluntarily wishes to be laicized.

¹⁰ Instruction of the Supreme Sacred Congregation of the Holy Office addressed to all Patriarchs, Archbishops, Bishops and other local ordinaries “also of the Oriental Rite”: Instruction on the Manner of Proceeding in Causes involving the Crime of Solicitation. 16 March 1962. http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html

- (b) By the pope's decree even if the cleric opposes being laicized.
- (c) Imposition as a penalty by a church tribunal or court if it is applicable for the crime for which the cleric is convicted.

80. A deacon, priest, bishop or cardinal who is laicized can no longer function as one in Holy Orders (see **paragraph 141**, below). He cannot celebrate Mass or any sacraments or present himself as a minister of the Church. In essence, laicization means the man can no longer function in any manner, way, shape or form as a sacred minister, except in cases of danger of death when he is authorized to hear the confession and to give last rites.

2. Co-operation in an offense (canon 2209 & canon 1329)

81. If anyone, but especially a cleric of any rank, is aware of a possible incident of sexual abuse that he learns about directly, indirectly, from an anonymous informant or from general knowledge, he is obliged to report this to the local bishop. If the alleged culprit is a member of a religious institute, the local bishop is obligated to process the case. If someone, but especially a cleric, knows of an offense and neglects to report it, he can be charged with co-operation in the offense.
82. Many bishops said that they ignored anonymous reports or unsigned letters. This was wrong. The canons that described the preliminary investigation to be carried out by order of the bishop said that the report was to be investigated even if it came from anonymous sources (canon 1717 & canon 1939).
83. On July 16, 2020, Pope Francis had a document issued known as a *Vademecum*.¹¹ This was not a new law but a kind of manual that explained how the present law was to be applied. This document was very clear that anonymous reports and unsigned letters were to be investigated.

¹¹ Congregation for the Doctrine of the Faith, *Vademecum: On certain points of procedure in treating cases of sexual abuse of minors committed by clerics*. 16 July 2020.
http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html

3. Investigations

84. Once the bishop receives a report, he is obligated to obey any civil reporting laws that exist in the secular jurisdiction where the alleged act took place.¹² He is then obliged (this is mandatory and not optional) to conduct what the *Code* calls the “preliminary investigation”. This investigation examines the report itself to make sure it has at least a semblance of credibility. It also looks at the viability of the available proofs (canon 1939 & canon 1717). This investigation is also required under the current norms issued in 2010.
85. The report of the investigation, which must always be recorded in writing, is then given to the bishop. Prior to 2001, he decided if the case should be investigated further or be submitted for further canonical processing. If the allegation involved the possible sexual abuse of a minor, the only option was a full tribunal process conducted on the diocesan level. (The other possible option is what is called the “Administrative Process” wherein the bishop can base his decision on the evidence gathered. The accused is allowed to have a canon lawyer as his defense attorney. In cases of sexual abuse of minors, this alternative is not applicable because among the possible penalties under the 1917 *Code* was permanent suspension or deposition and a bishop cannot impose permanent penalties of this type. The same is true with the 1983 *Code* and the 2010 norms. Under the present canon law, the ultimate penalty is even more severe than that of the 1917 *Code*: dismissal from the clerical state and from whatever order the man holds (deacon, priest, bishop). Contrary to what some bishops have erroneously claimed, there is no “pastoral” alternative approach if the allegation is sexual abuse of a minor. There is such a thing as a pastoral alternative, but it is not applicable in this type of case.)
86. Before 2001, the bishop had the option to conduct a trial in the diocese or he could refer the case to the Congregation for the Doctrine of the Faith (CDF, the Vatican department that deals with sexual abuse of minors by clerics), either for assistance

¹² Apostolic Letter issued Motu Proprio by the Supreme Pontiff Francis, *On the Protection of Minors and Vulnerable Persons*, 26 March 2019.
http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190326_latutela-deiminori.html

and direction or with a request that they continue the process from that point. In fact, the bishops in most countries rarely conducted the required preliminary investigations so it is not known how many actually took place — and consequently it is not known if any were referred to the CDF.

4. Outcomes

87. According to the norms issued in 2001, the bishop was mandated to send the files and documents of the complete preliminary report to the CDF. The CDF would study the case and decide one of four courses of action:
- (a) The case would be sent back to the diocese with orders to conduct a canonical trial.
 - (b) The case would be sent to another tribunal more capable of conducting the canonical trial.
 - (c) The case would be tried by the tribunal of the CDF.
 - (d) The Prefect of the CDF could ask the pope to laicize the priest without the normal process, depending on the circumstances of the case.
88. If the case is tried on the local diocesan level or at the CDF, the accused, if convicted, has the right to an appeal (*Crimen Sollicitationis*, par. 58). All appeals are heard by one of the tribunals of the CDF. If the appeal tribunal upholds the conviction, it could also ratify the sentence of the first court or change it.
89. If the first court (either in the diocese or at the CDF) convicts the cleric and imposes the penalty of laicization or any lesser penalty, this penalty becomes effective if neither the accused nor the Promotor of Justice (the church equivalent of the District Attorney or the Crown Attorney) decides to appeal it. If either side appeals it, then the appeal is heard by a special tribunal convened at the CDF.

5. Timing

90. Although there are recommended time limits, in practice they have never been followed. The prosecution of the case in first instance, that is, on the local or diocesan level, could be completed within a period of months or it could go on for years before a final decision was given. An added problem was that these decisions were not automatically published, nor were the victims notified. The bishop would be notified and had the option of informing the interested parties and the public or not.
91. One of the most notorious canonical cases was that of former priest Michael Teta of Tucson, Arizona. The formal canonical process was started in Tucson on **September 24, 1990** using the procedures in *Crimen Sollicitationis*. The judges in the case reached their verdict of guilty on **April 15, 1997** and imposed the penalty of dismissal from the clerical state. The defendant, Teta, appealed the case so it then went to the CDF on **April 28, 1997**. On **August 15, 2004** the CDF denied the appeal and confirmed the penalty. The time from beginning to end (1990–2004) was approximately 14 years. This case was highly unusual because the advocate for the accused, Fr. Gregory Ingels, a canon lawyer, created roadblocks from start to finish. Subsequently, Ingels himself was credibly accused of sexually abusing a boy.¹³

IV. REACTIONS OF POPES AND BISHOPS TO CLERGY SEXUAL ABUSE

A. Reactions of the popes

1. John Paul II (1978–2005)

92. There is no available documentation on what John Paul II knew about clergy sexual abuse prior to his election in 1978 or during the first seven years of his papacy.
93. Officials in the administration of the Holy See, known as the Roman or Vatican Curia, were informed by telephone about the situation in Lafayette, Louisiana, at least by

¹³ See: www.bishop-accountability.org. Gregory Ingels, ordained in 1974, worked as a canon lawyer for the archdiocese of San Francisco. He was accused of sexual abuse in 1996 but his archbishop, Cardinal William Levada, allowed him to continue in active ministry until 2002. He was criminally charged in 2003. This site has a long list of media sources.

December 1984. The parents of one of the minor boys withdrew from a secret settlement and brought a civil suit before the local court. In the suit, they named as defendants the cleric (Fr. Gilbert Gauthé), the vicar general (Msgr. Henri Larroque), the bishop (Gerard Frey), the papal ambassador (Pio Laghi), and the pope. Because the situation had quickly escalated to include accusations against clerics in another diocese, the papal nuncio was reporting information to the Holy See by telephone.

94. In February 1985, I was asked to compose a detailed report on the situation in the Diocese of Lafayette. I did so, and the report was both detailed and graphic. It was hand-carried by Cardinal John Krol to Rome on a Monday flight in February and given by him personally to the pope. He reported back by Thursday that the pope had read the report but did not report the pope's reaction or comments.
95. In June 1985, Cardinal Silvio Oddi, Prefect of the Congregation for the Clergy, visited Washington and requested information on the sex abuse issue. I was asked by the papal ambassador to prepare a report and deliver it orally to the cardinal, which I did. At the conclusion of the three-hour meeting, Cardinal Oddi informed me that he would take the report to Rome and give copies to the other heads of the congregations of the Vatican Curia — all cardinals. He also said he would give a copy to the pope and then he would urge that the Holy See issue a decree on the matter. We knew that he had circulated copies to the other cardinals and the pope but never heard whether any action was taken.
96. Pope John Paul II neither said nor did anything that had any impact on the situation until June 1993 when he sent a one-page letter to the bishops of the United States (see **Appendix 3**). Between 1993 and 2004, Pope John Paul II made 14 statements in which he mentioned sexual abuse. It is certain that hundreds of victims sent letters to the pope or to other departments of the Vatican between 1978 and 2005. There is no evidence to be found that Pope John Paul II ever acknowledged any of these, much less responded to them. Organized groups of victims asked to at least be presented to the pope at the World Youth Celebrations in Denver (1993) and Toronto (2002). They were denied any access to the pope on both occasions.

97. In 1998, nine former members of a religious community known as the Legion of Christ submitted a petition to the Congregation for the Doctrine of the Faith in Rome, alleging that they had all been sexually abused as very young teenagers by the man who was the founder of the Legion and its superior general until 2005. They did not want to pursue the matter in civil courts but rather in the Church's canonical court system. In 1999, they were informed that Pope John Paul II had ordered that the canonical process be stopped, giving no reasons to the nine petitioners.
98. Overall, Pope John Paul II's response to the sex abuse issue can be described as more than simply passive enabling. He sympathized with bishops, was highly critical of priest-offenders, tried to shift the blame to the secular media and to the secular culture, and claimed that the best way to deal with the issue was by prayer.
99. The one positive move made by John Paul II was the promulgation of the new norms for processing certain special cases, issued in 2001 (see **paragraph 231**, below). The norms included a mandate that all reports be investigated by the local bishop (which had already been in the *Code* since 1917) and the report be sent to the Congregation for the Doctrine of the Faith. The norms also established a statute of limitation for the first time since there was none in the 1917 or 1983 *Code*.

2. Pope Benedict XVI (2005–2013)

100. Pope Benedict's response was mixed, but on balance was supportive of the victims. He made numerous statements in support of victims and ordered bishops in general to treat them with compassion. Pope Benedict also met with victims in five different countries. The meetings were orchestrated by the local bishop and the officials of the Holy See. There was no time for any extended conversation — in fact, the average amount of time for each victim was 11.1 minutes per person.
101. On the plus side, Pope Benedict re-opened the investigation against Maciel, the head of the Legion of Christ, before John Paul II had died. After he was elected, Benedict banished Maciel to a life of prayer and penance. Pope Benedict is also the second pope in history known to have laicized a bishop. He laicized three bishops — in 2008,

2009 and 2012 — two for sexual abuse of minors and one for a variety of reasons including an illicit marriage.

102. In 2010, Pope Benedict also issued revised norms for processing cases of clerics accused of sexual abuse (see **paragraph 234**, below). He was criticized, however, for never taking any action against the hundreds of bishops who covered up cases of sexual abuse.

3. Pope Francis (2013 to the present)

103. It is too early to try to come up with an accurate evaluation of Pope Francis' response. On balance, it has been positive. He has taken the time to actually listen to victims. He has reversed at least two decisions concerning the appointment of bishops after listening to victims. He has removed several bishops and has laicized five. In 2019, he removed Cardinal Theodore McCarrick from the College of Cardinals and shortly thereafter, following a canonical trial, he reduced him to the lay state because he had sexually abused minors. This was a remarkable move because the only other known case of a cardinal being transferred to the status of a lay man was that of Cesare Borgia, the son of Rodrigo Borgia who was Pope Alexander VI.

B. Reactions of the bishops

104. The sexual abuse of minors by clergy has been revealed throughout the world in a very gradual and uneven manner between 1984 and the present. It not possible to generalize that all bishops have responded in precisely the same manner.
105. The experiences of victims and survivors in several countries in all parts of the world have revealed, however, that overall bishops have responded much the same way everywhere as the phenomenon unfolded in country after country. The catalogue of negative, toxic and destructive responses is long and not unique to any single country. The bishops of many countries have expressed attitudes, misunderstandings, judgments and erroneous beliefs that are not confined to any single country or nationality. If there is to be the deep attitudinal change that is essential, there must be a fearless examination into, and acknowledgement of, the essential reasons for

these attitudes. Many of these attitudes are held not just by the bishops, but by others, also.

106. The hierarchy, from the papacy on down to the diocesan level, have displayed defensiveness in their responses to the victims, to the media and in general to anyone who questions the institutional Church's role in the overall disastrous response to the harsh reality of worldwide sexual abuse by clerics and religious. The defensiveness has spawned denial and minimization of the issue. It has given rise to the shameful blame-shifting from any aspect of the institutional Church, to cultural influences, the media, greedy lawyers and — worst of all — to the victims themselves, or their parents. One of the documents I reviewed recounted the story of a New Zealand diocesan official who claimed that parental failure to report was the problem and not the assaults themselves. This same irresponsible and shameful attitude has been revealed all too often by bishops and prelates in other countries and, perhaps most infuriatingly, by senior members of the Vatican Curia. All these officials know full well that reports made by victims or their parents have been regularly dismissed or ignored for decades, which is the main reason why the victims have turned to the civil courts for support, relief and accountability.
107. In spite of the countless assurances of the Church's concern for the victims and the promises of support, mixed with the litany of expressions of regret, there remains a strong undercurrent of disdain and distrust directed not only at the victims but those who actively support them. Clerics and religious who have openly supported victims and criticized the official Church's pattern of mishandling reports, protecting perpetrators and ignoring — or worse, re-traumatizing — victims, have been routinely threatened, ridiculed, slandered, sidelined and penalized in one way or another by church leaders, other clergy and religious and lay people.
108. The documented responses of the hierarchy and many clergy across the various cultures and nationalities where the Church exists reveal a deplorable list of beliefs and attitudes:

- (a) *Defensiveness*: The first reaction is to defend the institutional Church and the clerical subculture. This takes a variety of forms and is expressed in a variety of ways, but all serve to distort the fundamental issue.
- (b) *Minimization*: Since the clerical culture as a whole is perceived to be “under attack” by claims of victims, it is not unusual that the hierarchy — as the clerics responsible for the welfare of the Church — will seek to minimize the nature and extent of sexual violation by clerics. The old saying “*it’s just a few bad apples in the barrel*” has turned out to be irrelevant because it is not the apples but the barrel that is the cause of the problem.
- (c) *Blame-shifting*: From the outset, the hierarchy have tried to shift the blame or the cause anywhere but where it belongs. Pope John Paul II blamed the American materialistic culture and media sensationalism. Cardinal Ratzinger at one point blamed the media. A common target for bishops and “loyal” Catholics are the victims’ attorneys, who they claim are only in it to make money. But they conveniently forget that the attorneys hired by the bishops to defend them are not paid on contingency as are plaintiff lawyers, but by the hour — and the hourly rates can soar from \$US 400.00 an hour to \$US 1250.00, depending on the firm. Another example is shifting the responsibility for the abuse from the Church’s clerical leadership to the laity by asking them to do penance and to contribute to the support of accused priests or to payment of reparations to victims. More than one furious lay person has said: “*The bishops caused this and not us so why are we being asked to do penance or help repair the damage?*”. The most despicable attempt at blame-shifting is to blame the victims and/or their parents.
- (d) *Obsession with control*: Catholic bishops are accustomed to being in control of their environment. In the context of clergy sexual abuse, this need to control manifests itself in various ways. Some dioceses insist on limiting the counseling sessions allowed to victims. Some also insist that victims see therapists they either provide or must approve. If victims approach bishops or religious superiors on their own with no support, the outcome of the negotiations depends on the bishop or superior.

- (e) *Insularity*: Many, if not most, dioceses that have had to confront the clergy sexual abuse issue have diocesan review boards, victim assistance coordinators or positions with similar titles. These have been mandated in the U.S. and have been created in several other countries, though not necessarily mandated. Studies done in the U.S. and Canada have shown that these entities have had very mixed results. In far too many cases, the victims leave feeling re-victimized. The bishops and religious superiors generally conduct their own internal investigations into accusations and then will pronounce on the apparent credibility or lack thereof. They fail to realize that the institution that is the context or source of the problem cannot be trusted to properly investigate it. Investigations need to be done by competent individuals and not by churchmen. Similarly, decisions as to the need for, or type of, therapy for victims should be left to the victims and their own support sources.
- (f) *Misplaced priorities*: The documented evidence about clergy sexual abuse has shown that, almost exclusively, the first priority of the hierarchy — from the popes down to diocesan bishops and religious superiors — has been the image, prestige, power and financial security of the institutional Church, and not the welfare of victims. There is much truth to the accusation that the Church's leaders have outsourced the gospel to their attorneys. Upon learning of a possible incident of abuse, the bishop's first call has, in most known cases, been to the attorney and not to the victim (in fact the number of bishops who have called victims upon learning of possible sexual abuse is miniscule). The fundamental problem with this very powerful attitude is that it is based on an erroneous and even heretical theology of "the Church". A common excuse for the actions taken to protect a diocese has been that "*it's for the good of the Church*". On its face, this is true: it is all for the good of the Church, but the meaning of "the Church" is limited to the governing structure and its incumbents and to the institution. This theology completely forgets that, in the authentic ecclesiology, the victims and the bishops are spiritually equal, although they have different duties within the community of the People of God (see **paragraph 131**, below). The victims are the members of this community

who are rejected and in greater need of compassionate pastoral care and therefore they would, according to the teaching of Jesus, take precedence.

- (g) *Confusing declarations of intent:* The popes and bishops have issued countless expressions of regret and apology accompanied by public promises to care for victims. This flood of words has not been consistently accompanied by actions. The sympathetic expressions are valid so long as the victims remain docile and refrain from criticizing or challenging the Church in any way. Probably the clearest evidence of this hypocrisy is the bishops' employment of attorneys to stonewall victims and, in general, to resort to all manner of tactics to control and defeat them. The common excuse is that the bishops have a right to defend themselves and an obligation to protect the Church's patrimony. This is true except for the fact that the only reason the victims go to court is because it has been the only way to achieve justice and acknowledgement that what happened to them is real.
- (h) *Adversarial attitude:* The most common descriptive term for the relationship between the victim (and the victims' supporters and advocates) and the Church is "adversarial". If victims report abuse, too often the report is not believed until there has been a source of proof determined by the Church official. The victims are reporting a grave crime allegedly committed by a member of the clergy or religious life — by an "insider". Consequently, feelings of loyalty to the perpetrator dominate and overshadow any sense of compassion for the victim. If the person was reporting sexual abuse by a neighbor or a public school teacher or anyone not connected with the clerical world, the response from the church official would no doubt be much different.
- (i) *Disdain for victims:* One cannot generalize that there is a universal disdain for victims because many bishops and superiors have shown true Christian charity, kindness and understanding. But the disdain, which so many sense, is real. This has been an attitude that has been constant for the past nearly four decades. It is manifested in a variety of ways. Refusing to speak to or listen to victims is one sign of a negative attitude. Allowing attorneys to attack them is certainly another. Treating victims as if they were customers and shifting them

to review boards or victim assistance coordinators rather than initiating face-to-face encounters, is another. One wonders if the fact that many of the victims are now adults makes a difference. It is easy to forget that these men and women were vulnerable, defenseless children when they were abused.

109. If there is a bottom line to describe the common response of the hierarchy, it is the shocking absence of authentic, compassionate pastoral concern, not only for the victims themselves but for their families, friends and indeed the entire church community.
110. The sexual abuse we are speaking about is, in the opinion of one noted American psychologist, the most painful and destructive type, even more so than incest.¹⁴ This is because the victims are abused by a priest or religious whom they have been taught takes the place of God. For many, this is conflated to the belief that it is God who is inflicting the violence on them. Thus, the spiritual damage cannot be adequately described or evaluated.
111. Yet among the many pronouncements of church officials, there is an almost complete absence of reference to the spiritual damage. Bishops and religious superiors all too often believe that the need for healing is for the realm of mental health professionals. From my experience with victims over the last 36 years, I can attest that hardly any victims ever experienced from any church official a recognition of the spiritual damage inflicted, or any idea as to how to either evaluate the extent of that damage or begin a healing process. Pope Benedict XVI, in his letter to the people of Ireland, suggested that healing would come from a return to the institutional Church and to sacramental practices in particular.¹⁵ Such suggestions completely fail to comprehend the nature of the damage done to victims by clergy within the context of the institutional Church. For many, a return to the institutional Church only deepens the wounds. Those who advocate healing through the institutional channels need to

¹⁴ "Church in Crisis: Interview of Dr. Leslie Lothstein by Katherine DiGiulio, 'Crossroads Magazine'", June 17, 2002 television interview, in *National Catholic Reporter*, August 9, 2002. http://www.natcath.org/NCR_Online/archives/081602/lothstein.htm

¹⁵ Pastoral Letter of the Holy Father Pope Benedict XVI to the Catholics of Ireland, 19 March 2010. http://www.vatican.va/content/benedict-xvi/en/letters/2010/documents/hf_ben-xvi_let_20100319_church-ireland.html

realize that this means a submission once again to clerical control and it is this control that served as a major enabler of the sexual abuse.

112. Although there have been exceptions, the overwhelming response from victims when asked about their treatment by the institutional Church has been negative. In the early years, that is in the late 1980s, several U.S. bishops said they wanted to reach out to victims but were prevented from doing so by their attorneys, who told them that doing so would be an admission of liability. The only guidance the U.S. bishops were getting from the United States Conference of Catholic Bishops (USCCB) was through the Office of the General Counsel and there was absolutely no guidance from the Holy See. They were getting no assistance from any official source in providing true pastoral care.
113. The relationship between the bishops and the victims (and their supporters) has changed little over the past 30 years. It is true that there have been many individual bishops who have shown genuine compassion. Unfortunately, the general impression of the bishops as a group has not changed significantly. In every country where the victims and their supporters have forced the issue out of the shadows, the response has been the same. The victims (and their supporters) are treated as a threat to the bishops' security and not as deeply wounded persons who have only wanted to be believed, affirmed and treated with dignity.
114. The three exceptions that have stood out from their approximately 5,000 colleagues are: Bishop Geoffrey Robinson from Australia who died very recently; Bishop Thomas Gumbleton of Detroit; and Archbishop Diarmuid Martin, retired archbishop of Dublin. These three men have publicly sided with the victims and have publicly criticized the standard response of the institutional Church.
115. Bishop Robinson publicly criticized Pope John Paul II's lack of leadership, then suddenly resigned as auxiliary bishop in 2004 "for health reasons" — which was bogus because he was in excellent health. His resignation was forced by the Holy See.
116. In 2006, Bishop Gumbleton publicly supported victims who sought to have the Statute of Limitations changed by the legislature of the State of Ohio. The only opposition

came from the Ohio bishops whom Bishop Gumbleton publicly opposed. Within a month, he received a communication from the Holy See, sent through the Archbishop of Detroit, Cardinal Adam Maida, that he was removed as auxiliary bishop and as pastor of the parish he had led for 25 years. The excuse given in the letter from the Congregation for Bishops was that he had “broken communion” with his brother bishops.

117. Archbishop Martin won the trust and praise of Irish victims because of his open support of them and his voluntary disclosure of the clergy files to the Murphy Commission. Archbishop Martin was not removed but was passed over for the cardinalate five times by Benedict XVI and seven times by Pope Francis.
118. Why have there been so few bishops who have publicly supported victims while thousands have not? No doubt many are very sympathetic but are kept from any public expression by the pressure exerted by other bishops and the Holy See.

V. CULTURAL AND ACADEMIC RESPONSE

A. *Media reporting*

119. Prior to the Lafayette, Louisiana case in 1984 referred to above (see **paragraph 21**), the secular media in the English-speaking world gave little attention to those few reports of clergy sexual abuse that became known.
120. In 1985, Jason Berry, an independent writer, wrote a four-part series on the situation in Louisiana. In the face of strong opposition from church supporters — including an advertising boycott — the *Times of Acadiana* published the series, which focused more on the lengthy cover-up by the bishop and diocesan officials than on the extensive sexual abuse perpetrated by the priest. The other print and electronic local media gave the case intensive coverage, and this was picked up by the national media. *Newsweek* magazine published a story about the case and included a photo of Gauthe in his jail cell. Since then, the secular media in the English-speaking world has provided continuous coverage. As cases of abuse were revealed in other countries,

usually by victims and victims' support groups, foreign, non-English media has also provided extensive coverage.

B. Documentaries and movies

121. Since 1990, at least 86 documentaries have been produced about sexual abuse in the Catholic Church. Most have been in English, but a significant minority are in other languages including Italian, French and Polish. The earliest was a documentary about the Louisiana case produced in 1990; the most recent was a Polish documentary that came out in November 2020.
122. There have been 29 movies produced in the U.S., Canada, Ireland, Germany, Mexico, Chile, France and Poland. Among the more prominent ones have been: *The Magdalene Sisters* (2002), about the inmates of the Magdalene Laundries in Ireland; *The Boys of St. Vincent* (1992), about the abuse of young boys by the Christian brothers at Mount Cashel orphanage in St. John's in Newfoundland; *Our Fathers* (2005), about the uncovering of sexual abuse in the Archdiocese of Boston; *Spotlight* (2015), about the investigation carried out by *The Boston Globe* in 2001–2002 (which won the Academy Award for Best Picture in 2016); and *Kler* (2018), about sexual abuse by Polish clergy.

C. Books and academic articles

123. Since 1984, at least 258 books have been published that are either exclusively or primarily about clergy sex abuse. All but four are about sexual abuse by Catholic clerics. It is entirely possible that the number is greater than what I have recorded here, because although I regularly check the Internet for new publications, it is likely that I will have missed those that have been privately published. This number includes:
- (a) 36 that are autobiographical or biographical, either by or about victims of clergy abuse
 - (b) 6 novels based on true experiences of clergy sexual abuse

- (c) 4 books that are scholarly examinations of certain periods of the medieval era
- (d) 4 historical works on sexual abuse in the contemporary era
- (e) 206 scholarly books that include psychological, sociological and religious–theological studies.

124. There have been hundreds of articles published in popular secular magazines over the past 36 years. The focus ranges from specific cases to the overall problem. Far more important have been the scholarly articles that have appeared in academic and professional journals in several countries. The subject areas include theology, canon law, civil law, trauma studies, history, psychology and psychiatry. Additionally, at least 36 doctoral dissertations have been written that focus on some aspect of sexual abuse by clergy. These are from candidates at universities in the U.S., Canada, Australia, Ireland, Spain, the Philippines and India.

125. The significance of the academic and cultural response does not need to be belabored. The phenomenon of sexual abuse in the Catholic Church has prompted great interest not only from the general public but also from specialized academic disciplines. This is not simply a “Catholic” problem but a harsh reality that has significant importance for society in general. One fact seems certain: the revelations in the Catholic community throughout the world have prompted similar concern about sexual abuse in other religious denominations and in private institutions such as the Boy Scouts and non-public schools, as well as in public institutions such as the military, public schools and government offices.

VI. THE GOVERNANCE AND STRUCTURE OF THE CATHOLIC CHURCH

A. Context

126. The governmental structure of the Catholic Church, the theology that supports it, and the popular beliefs that surround it, all have a direct impact on several aspects of clergy sexual abuse. The following important, recurring questions open the window to the relationship of church structures to clergy sexual abuse:

- (a) Why are victims (and their parents) reluctant to report sexual abuse?
- (b) Why have parents refused or been afraid to believe their children's accounts?
- (c) Why have secular agencies such as the media, law enforcement, the judiciary and the medical profession favored religious organizations over victims?
- (d) Why have church leaders gone to such great lengths to protect the image of the institutional Church and the reputation of the clergy?
- (e) Why has the Holy See traditionally protected bishops, even those accused of sexual abuse themselves?
- (f) Why has there been denial on all levels of the church hierarchy – clergy and laity – even in the face of hard facts about the extent of sexual abuse?
- (g) Why do bishops in some countries spend vast amounts of money to hire lawyers to try to deny compensation to victims?

127. The answers to these questions are directly related to the Church's official teaching about itself, known as a branch of theology called "ecclesiology". Directly related to the theological nature of the Church is the official teaching about the nature of the ordained priesthood. Additionally, the Church's traditional teaching on human sexuality has heavily influenced the response to abuse because it has shaped beliefs about the nature of aberrant psychosexual behavior and the effects of forced sexual acts on victims.

B. *What is "the Church"?*

128. There are two separate definitions or understandings of the reality we call "the Church". The Catholic Church is a religious way of life and it is also a sociopolitical structure that exists in society. It is the largest religious denomination in the world and also the largest corporation in the world.

129. The Catholic Church is the only religious denomination on earth that is recognized as the equivalent of a country. It has a diplomatic service and has full diplomatic

relations with 183 of the 195 countries in the world today. In some of the countries that do not have diplomatic relations with the Holy See, there is an “apostolic delegate” who is the pope’s representative to the Catholic Church in the country and, in some instances, the pope’s private envoy to the head of the government. New Zealand has had diplomatic relations with the Holy See since 1973.

130. The meaning of “the Church” for most Catholic people is that which they see: the sociopolitical structure commonly known as the “institutional Church”. The dominant feature of this concrete reality is the governmental structure. The model of government used by the Catholic Church since the third century has been the hierarchical model. In actual practice, this model is monarchical, in that power is centered not in the people or in representative bodies but in two separate offices: the papacy (pope) and the episcopacy (bishops who are heads of dioceses).
131. The other model of the Church is that which was revived by Vatican Council II (which ran from 1962 to 1965). It is grounded in the scriptures and is described in non-revisionist Catholic history. This model emphasizes the concept of community, not government and power. Vatican Council II referred to the Church as the “People of God”, a concept that is understood more as a dynamic way of life than as a static governmental structure (canon 204, 1). The official church teaching is that the People of God is organized as a society in this world and subsists in the institutional Church.
132. The official teaching of the Catholic Church states that the hierarchical model was instituted by God through the encounter between Jesus and St. Peter, who, traditionally, is considered to be the first pope. However, scripture scholars and independent Catholic theologians assert that there is no clear historical or scriptural basis for the assumption that Jesus Christ even founded a church, much less a church with a clearly defined political structure. There is more credible historical evidence that the Church as an organized structure developed gradually as the number of followers of Christ increased. A key point in the organizational development came in the early fourth century when Emperor Constantine recognized the followers of Christ as a religion. At that time, the common model of government was monarchical with ascendance to leadership depending on lineage or power.

133. Despite historical questions about the authenticity and accuracy of the official teaching on the origin of the hierarchical model, the teaching that this governmental system is of divine origin is essential for supporting the power of the hierarchical leaders.
134. The Catholic Church is also commonly identified, though erroneously, with the subclass comprised of the men who govern the Church, namely the clerics. The institutional Church claims a membership of 1.31 billion people. The clerical class, which includes all deacons, priests and bishops (including archbishops and cardinals) totals 457,798 people (approximately 0.035% of the Church membership). The entire billion-plus Catholic population is ruled by approximately 3040 men, comprising the active bishops (including those who are archbishops and cardinals but excluding all who are retired or not in positions of authority) in governing positions throughout the Catholic world. (Although there are 5,578 living bishops in the world, not all are in positions of power.)¹⁶
135. The Church, as an earthly society and not a way of life, is officially understood to be a stratified society. Canon law (canon 204) states that there are two levels or strata in the Church: the clergy and the laity. A more realistic and practical way to look at the stratification would be with four strata. The lay men and women who comprise the vast majority of the Church's membership are the bottom layer. The next layer consists of the non-ordained men and women who are members of the various religious institutes (the brothers and sisters or nuns) because they live and work within the church structure on a full-time basis. The third layer is made up of the first two ranks of the ordained clerics, deacons and priests. The fourth layer, which historically has been a kind of ecclesiastical aristocracy, consists of the bishops. This fourth level is itself stratified into three more levels which are defined by rank: the auxiliary bishops, the bishops and archbishops who are heads of dioceses, and at the top, the cardinals. Clergy sexual abuse as referred to in this submission includes all members of the top three layers.

¹⁶ The statistics come from several sources: The Vatican website, The Center for Applied Research in the Apostolate at Georgetown University, Washington, D.C., and the *Annuario Pontificio*, which is popularly known as the Vatican yearbook, published yearly by the Vatican bookstore.

136. The nature of the Church as an earthly society was described by Pope Pius X in an encyclical written in 1906 but which is still valid:¹⁷

“[T]he church is essentially an unequal society, that is, a society comprising two categories of persons, the Pastors and the flock ... So distinct are these categories that with the pastoral body only rests the necessary right and authority for promoting the end of society and directing all its members towards that end; the one duty of the multitude is to allow themselves to be led, and, like a docile flock, to follow the Pastors.”

137. Vatican Council II initiated wide-ranging reforms on just about every level of the Church, including attempts to move away from the monarchical and triumphalist manner of church government and culture. These attempts were successful on some superficial levels. Nonetheless, in 2021 the Church remains a hierarchical entity with a stratified society. As noted above, over a billion people are ruled by the 3040 bishops in positions of authority, none of whom is married and presumably none of whom has ever experienced not just being a biological father, but true parenthood.
138. The Catholic clergy are, for the most part, obligated by choice to total celibacy. There are official exceptions: priests of the Eastern or Oriental rites and the very small number of former Anglican priests and Protestant ministers, most of whom are married, who have been allowed to be re-ordained as Catholic priests and function in the Church as married priests.
139. To sum up: the Catholic Church is a political structure that is hierarchical in name and monarchical in practice. The bishops are believed to be the spiritual successors of the 12 apostles and therefore are essential to the political structure of the Church. They are, in a very real sense, the pillars upon which the Church stands. All bishops are appointed personally by the pope. Only the pope can appoint a bishop, transfer a bishop, or permit a bishop to retire — and only the pope can remove a bishop.

¹⁷ Vehementer Nos: Encyclical of Pope Pius X on the French Law of Separation, February 11, 1906. http://www.vatican.va/content/pius-x/en/encyclicals/documents/hf_p-x_enc_11021906_vehementer-nos.html

140. Since the governmental model is hierarchical, all power resides in the pope over the entire Church and in the bishop of each diocese. The three main functions of government — executive, legislative and judicial — are not separate in the sense that they are fulfilled by three different persons or offices but are joined in the office of pope and bishop. Consequently, there is no separation of power and no system of checks and balances. Power is delegated to those who hold the various positions in the Vatican bureaucracy and in diocesan governance. The pope is accountable to no human power (canon 1404). Bishops, even retired and auxiliary or assistant bishops, are accountable only to the pope. The various boards, commissions and committees that are part of the governmental structure of the worldwide Church and of individual dioceses are consultative and not deliberative in nature. There are no instances in which the pope is obliged to consult with anyone about anything. Diocesan bishops are obliged to consult with the priests' council and finance council of the diocese on a small number of issues, but the power of these collective bodies is consultative only. The absolute power of the diocesan bishop is believed to be rooted in the nature of the office itself and therefore it is willed by God. The only time a collegiate body has any real power is when the College of Cardinals gather to elect a new pope.

C. The sacraments of the Church

141. The life of Catholics in the Church is grounded in the sacraments. A sacrament is a liturgical ceremony or ritual during which Catholics believe Christ is present and acts in a very special way in the person's life. There are seven sacraments, each corresponding to a key moment in a person's life (baptism – birth, confirmation – adulthood, matrimony – marriage, penance – reconciliation with God and the Church, sacrament of the sick – healing from illness). The Eucharist (or Mass) is the central sacrament and is believed to be the re-enactment of the Last Supper. At the Eucharist, bread and wine are changed into the body and blood of Christ by the priest, thus Christ is really present in the church community. The sacraments are essential to the life of the Church and to the spiritual life of Catholics and to their eternal salvation. The sacraments are accessible only in the institutional Church and access to the sacraments is controlled by those in Holy Orders (which is the sacrament of ordination as a member of the clergy), especially priests and bishops.

142. Viewing this in the context of clergy sexual abuse, one can see why the stability and power of the institutional Church, and especially the clergy, is so important and why it has occupied the primary place of concern. The hierarchical institution and its pillars, the bishops, are the sole source of spiritual security. Consequently, when victims were, and are, enjoined by priests or bishops to remain silent about sexual abuse so as not to hurt the Church, the sheer weight of this threat becomes understandable. The structure of the Church and the role of the sacraments have a direct bearing on the Church's response to sexual abuse perpetrated by clerics:

- (a) The sociopolitical reality that is the Catholic Church, present in the secular world, is a stratified, unequal society.
- (b) All real power in the Church is held and exercised by individual celibate males, all of whom are clerics.
- (c) The institutional Church is essential for that which all Catholics strive for: salvation.
- (d) The bishops, who were originally instituted by Christ, are the essential supports or pillars of the institutional Church.
- (e) The power and survival of the institutional Church and its pillars is of paramount importance and must be protected and preserved.

D. The structure of the Catholic Church

1. Clerics and lay men and women

143. As I have outlined, the two fundamental classes of people within the Catholic Church are clerics, and lay men and women, who are referred to as the laity or as "the faithful" (canon 207, 1). Clerics (also referred to as "clergy") consist of deacons, priests and bishops. An archbishop is a bishop who has been appointed to head an archdiocese.

144. Only clerics can receive Holy Orders (canon 1024). When a man is ordained by a bishop to the order of deacon, he automatically becomes a cleric. If he leaves the

clerical state, either by his own volition or because his departure is imposed, he then is once again a lay man and is prohibited from functioning as a deacon, priest or bishop.

145. A cardinal is not one of the ranks of Holy Orders (i.e., it is not part of the sacrament of ordination). Rather, is a title or rank that is given by the pope. A man does not have to be a bishop to be a cardinal. In fact, when the pope creates cardinals, most of those named are either bishops or archbishops, although he often also names priests who are not bishops. These are usually priests who are advanced in age and have given exceptional service to the Church as theologians. At the present time, five of the members of the College of Cardinals are not bishops.

2. The papacy

146. The pope is the absolute leader of the worldwide Catholic Church. He is elected for life or until he freely decides to resign or retire, as did Benedict XVI. The pope is the immediate superior of every bishop. In the office of the papacy, the three main governmental functions are joined: executive, legislator, judge. The pope is assisted by the Vatican Curia, which is the administrative center of the Catholic Church.

3. The Vatican Curia

147. The administrative departments of the Catholic Church are commonly known as the “Vatican Curia”. The Curia is divided into various departments, each of which has a specific area of competence. The head of each department, as well as all subordinate personnel, are appointed by the pope. The Curia includes three tribunals (or courts). As noted earlier, the department of the Curia that is charged with dealing with sexual abuse of minors by clerics is the Congregation for the Doctrine of the Faith.

4. Bishops and dioceses

148. The worldwide Church is divided into geographically defined entities known as dioceses. There are some exceptions to the geographic norm – these are called personal dioceses and are created for specific classes of people. They are defined by

their subjects and not by geographic boundaries. The dioceses for military personnel are an example of personal dioceses.

149. Dioceses are created by the pope and can be divided or suppressed only by the pope. An archdiocese is a diocese that is so designated because of its historic or geographic importance.
150. Dioceses are grouped together into ecclesiastical provinces. The main diocese is called an archdiocese and the bishop of the archdiocese is known as an archbishop. The archbishop has no real authority over the dioceses that are part of the province, however. In New Zealand, there is one ecclesiastical province for the whole country. Wellington is the archdiocese. The other five dioceses (Auckland, Hamilton, Palmerston North, Christchurch and Dunedin) are the other members of the province.
151. The office of bishop is one of the three Holy Orders that make up the sacrament of Holy Orders. Unlike priests, bishops are chosen and personally appointed by the pope. A priest cannot volunteer or apply to be a bishop, nor can he campaign to be a bishop. The bishop has full authority in his diocese. The scope of this authority is determined by canon law and by any special rules or decisions given by the pope. The pope is the immediate superior of every bishop. Like the pope, the bishop of a diocese is the executive, legislator, and judge of the diocese. He is assisted by members of the administrative departments of the diocese, which are also referred to as the curia of the diocese. Some offices are determined by canon law and some are determined by the bishop. The bishop has certain collegiate bodies to assist him, but these bodies do not have deliberative power.
152. Auxiliary bishops are bishops appointed by the pope to assist the diocesan bishop. They have whatever authority and responsibilities the diocesan bishop gives them. There are no auxiliary bishops in New Zealand, but there is a coadjutor bishop in Wellington. A coadjutor is a bishop who is appointed to assist a diocesan bishop and who will succeed the diocesan bishop.

5. The parish

153. The fundamental entity in the overall structure of the Church is the parish. A parish is a community of Catholics who generally live in the same geographic area. The parish is the center of the sacramental and educational life of the Church in this area.
154. A parish is the main element in the overall structure of a diocese. The number of parishes in a diocese depends on the size of the Catholic population. The leader of the parish must be a priest. The proper title of this office is “pastor”. The pastor may be assisted by assistant pastors (also called associate pastors or parish vicars), who must also be priests. Only the bishop has the authority to create, close, suppress or divide a parish and only the bishop has the authority to appoint the pastor or any assistant pastors of a parish.
155. The pastor is the head of the parish and the representative of the bishop who is his immediate superior. The assistant pastors are also immediately subject to the bishop.

6. Religious institutes

156. Religious institutes, commonly known as religious orders or religious congregations, are communities of men or women who live and work together for a common purpose in serving the Church. The official generic term for all classifications is “institutes of consecrated life”. These are more commonly known by the type of institute, such as religious orders, congregations or societies. Men or women join religious institutes to devote their whole life to the service of God and the Church. Most religious institutes were founded to fulfill a need in the Church and to conduct a special ministry such as teaching, mission work or health care.
157. Technically, members of religious institutes who are not ordained are lay persons. Some religious orders of men have members who are clerics ordained to the diaconate (relating to deacons) or to the priesthood. There are also religious men, commonly called “brothers”, who have professed their vows but are not ordained nor referred to as clerics. Similarly, members of religious institutes of women are not clerics and are not ordained. They are women who have professed their vows and are religious women and are commonly referred to as “sisters”. Technically they are

lay women. Members of religious institutes are commonly referred to as a “religious”. The word is used as a noun and not an adjective, as in “*Fr. Smith is a religious*”. This simply means the person is a member of a religious institute.

158. Most religious communities are international in scope. They serve in various countries and in various dioceses at the invitation and with the permission of the bishop. The religious communities have their own internal regulatory system, usually consisting of a rule (e.g., the Rule of St. Benedict), constitutions, and in some cases even more detailed rules. A religious institute’s internal rules govern its life within that institute.
159. A religious institute must have permission from the local bishop to establish a local community of its members in a diocese. In many dioceses, the bishops invite religious communities of clerics to manage parishes. This is known as “entrusting” a parish to the community. Religious communities of men and women run schools at all levels, health-care facilities, and other ministries to serve special needs.
160. The members of religious communities are subject to their own superiors in all matters that pertain to their life in community. The chain of command of religious communities starts with a general superior, many of whom live in Rome. Each geographic division, called a region or province, has its own superior who is either appointed by the superior general or elected by the membership. On the local level, each community has a superior who is either appointed by a higher superior or elected by the members. How superiors are appointed depends on the constitutions of the particular community. For example, in the Jesuit order, all superiors are appointed either by the superior general or by provincial superiors. The only exception is the superior general who is elected by delegates at a general congregation, which is a gathering of representatives of the society. On the other hand, in the Dominicans, superiors at every level are elected by the members of the local community or province.
161. For the purposes of this inquiry, it is essential that the authority of the diocesan bishop over members of religious communities of men and women be clearly understood. One often hears the misleading claim that bishops have no authority

over members of religious communities in their dioceses, or members of religious communities may claim that they are totally independent of the local bishops. Both claims have an element of truth to them but, in general, they are both erroneous and misleading.

162. The bishop of a diocese has the fundamental authority over, and responsibility for, every ministry and apostolate that takes place in his diocese, including all those under the direction of religious communities (canon 678, 1). This includes every ministry or, as the *Code* says, “*those matters which involve the care of souls, the public exercise of divine worship and other works of the apostolate*”. The *Code* has several canons that refer specifically to the bishop’s authority over schools, orphanages or similar establishments. Both the religious superiors and the bishop have authority over individual members. The superior is responsible for ensuring that the individual member is faithful to his vows and obeys all church laws and regulations, and the bishop has authority over anything the members do that pertains to the care of souls. For example, if a parent complains to the local parish priest that his son was sexually abused by a Christian Brother at the high school he attends, the pastor must report this to the bishop and the bishop must take direct action. He cannot pass it off to the religious superior.

E. The governance of the Catholic Church

163. As noted above, the governmental structure of the Catholic Church and the model of governance is formally known as “hierarchical”, but the actual style is monarchical. The term “hierarchy” is Greek in origin and its literal meaning is the “rule of the great priest”. In the Catholic Church, it means that power, authority and responsibility are grounded in specific offices and is exercised by the office-holder.
164. The only two offices in the church government with “ordinary” power – power coming from the office – are the papacy and the episcopacy (the office of diocesan bishop). Collegiate or aggregate bodies are set up by canon law or by the pope or bishop, but they are consultative in nature. There is no such thing as representative government in the Catholic Church.

165. The pope or bishop can choose to exercise his authority in a collaborative manner or in an authoritative manner. In a diocese, the bishop has direct and broad authority over every diocesan priest. His authority over priests who are members of religious institutes is limited to the ministry or work in which the priest is engaged. However, he also has authority to intervene or otherwise act in situations where a priest-religious is engaged with a member of the diocese (clergy, religious, lay) in a harmful manner, and sexual abuse is a clear example. He also has authority over all ministerial work in a diocese, including those conducted by members of religious institutes.

F. Accountability

1. Bishop's accountability for clerics

166. A cleric or religious enjoys freedom to exercise his ministry and live his life, but within the limits of his duties and obligations as laid out in canon law as well as any other normative statements issued by religious superiors, popes or bishops. This applies to non-ordained religious as well.
167. A cleric promises obedience and reverence to his bishop and the bishop's successors during the ceremony of ordination. This obligation is also set forth in canon 127 of the 1917 *Code* and in canon 273 of the 1983 *Code*.
168. The bishop's authority and responsibility for a priest assigned to his diocese is not limited in any way by geographic boundaries or time. In other words, he has authority over the cleric at all times and in all places under all circumstances. The bishop has authority over much of a cleric's private life as well as his public life. The bishop's authority is summed up in canon 384 of the 1983 *Code*, which states that the bishop's obligation is to see that clerics "*correctly fulfill the obligations proper to their state*". This means that the bishop has an obligation to see that a cleric lives up to his responsibilities to lead a virtuous life.
169. Some defense attorneys have argued that since the sexual abuse of minors is not within the scope of a cleric's duties, the bishop cannot be held responsible under the legal doctrine of *respondeat superior*. While it is certainly true that any kind of abuse

is outside the scope of a cleric's duties, it is also true that in most cases the clerics gain access to their victims, groom and seduce their victims, and eventually physically abuse them, within the context of the exercise of their duties.

170. Another empty defense against responsibility is the false assertion that a cleric is not an employee of the diocese or the bishop. In truth the employer–employee analogy cannot be used with accuracy because it only describes one aspect of the relationship. The bishop is the cleric's immediate superior. He assigns the "job duties" to the cleric and he sees to it that the cleric receives proper financial support. He also is the only person in the diocese who can assign, reassign or remove a priest who is a pastor or assistant pastor.¹⁸
171. Clerics who work in parishes or in other diocesan works of ministry are paid through the institution for whom they work. Parish priests are paid from the parish revenues but the bishop must approve the salary scale. If a parish cannot afford to support a cleric, the responsibility shifts directly to the bishop (canon 281). The cleric is an employee but much more. He shares or collaborates with the bishop in the bishop's fundamental ministry to support the moral and spiritual growth of the people entrusted to his care. To claim that a cleric is "employed by God" and therefore accountable to no one is a farcical absurdity.

2. A cleric or religious (male or female) is always "on duty"

172. A frequent argument advanced by defense attorneys is that the alleged perpetrator committed the act while on vacation or at a time when he was not acting as a cleric. Consequently, so the argument goes, since he was not on duty, the bishop or superior was not responsible for his actions.
173. The argument is baseless. A cleric performs a variety of duties, the most well-known being the celebration of the Eucharist (the Mass) and the celebration of the sacraments. To celebrate the Eucharist and administer most of the sacraments the

¹⁸ Only priests can hold the positions of pastor or assistant pastor. Clerics who lead the worldwide Church, dioceses or parishes are known as "pastors" to emphasize that their role is primarily about caring for people and not administration. A diocesan bishop is also known as the "Chief Pastor" of the diocese and the heads of parishes are known by their official title which is "pastor".

man must be in Holy Orders. A man need not be ordained to teach, counsel or perform any activity that does not require ordination. Is a cleric or religious on duty only when he is performing functions unique to ordination or when he is performing duties assigned by the bishop or superior? The basis for determining when a priest or religious is on duty is not the performance of specific duties of any kind, the wearing of distinctive religious or clerical garb, or functioning on church-owned property.

174. A cleric or religious is “on duty” at all times, whether he is performing assigned or religious duties or not. He is “on duty” while on vacation, on a day off, outside the diocese, and when performing purely secular duties such as acting as an auto-mechanic, working as a health-care professional or selling encyclopedias (all of these are actual examples). The reason is that the cleric or religious’ fundamental and primary ministry is to preach the Word of God and the Image of Christ by the example of his life. The following are the canons from the 1917 and 1983 codes of canon law that pertain to both clerics and non-ordained and ordained religious:

“Both the interior life and the exterior conduct of the clergy should be superior to that of the laity, to whom they should furnish an example of virtue and good deeds.” (canon 124 of the 1917 Code)

“In leading their lives clerics are especially bound to pursue holiness because they are consecrated to God by a new title in the reception of orders as dispensers of God’s mysteries in the service of his people”. (canon 276 of the 1983 Code)

“Religious [men and women, ordained and non-ordained] are to have as their highest rule of life the following of Christ as proposed by the gospels and expressed in the constitutions of their institutes.” (canon 662 of the 1983 Code)

175. It would be close to impossible to cite all the documents by which the apostles and the popes have urged this obligation. The following are among the most notable:
- (a) Epistle of St. Paul to Timothy, 3 and 4.

- (b) Second Epistle to Timothy, 4.
- (c) Council of Trent (1545–1563), Session XXII, Cap. 1, Session XXV, Cap.1.
- (d) Pope Pius X, *Exhortation to the Clergy*, August 4, 1908.
- (e) Pope Pius XI, *Encyclical on the Priesthood*, February 8, 1936.
- (f) Pope Pius XII, Apostolic Exhortation, *Menti Nostrae*, September 23, 1950.
- (g) Pope John Paul II, Apostolic Exhortation, *Pastores dabo vobis*, March 25, 1992.

3. Accountability of bishops

176. As explained above, the power of the pope is absolute, and the power of bishops is close to absolute in their own dioceses. Bishops are answerable only to the pope, not to the papal ambassador, the regional archbishop or anyone else. Any real accountability demanded of bishops depends solely on the pope.
177. The bishops in the U.S. have claimed that they would hold one another accountable by virtue of the concept of fraternal correction.¹⁹ This was a meaningless claim from the beginning and has proven to be such with the passage of time.
178. Although canon law has provided a process of accountability for the hierarchy, in practice it is — and has been — highly ineffective. In practice, there is more accountability for priests as they are answerable to their bishop or their major religious superior. In the matter of sexual abuse, this level of accountability has traditionally been very ineffective, however.

¹⁹ Editorial, “Fraternal Correction”, *America: The Jesuit Review of Faith and Culture*, March 15, 2004. <https://www.americamagazine.org/issue/477/editorial/fraternal-correction>

4. Vos Estis Lux Mundi

179. On May 7, 2019, Pope Francis issued an apostolic letter called *Vos Estis Lux Mundi* (*You are the Light of the World*).²⁰ This letter addressed the issue of sexual abuse by clergy and the responsibility of the bishops to safeguard minors. The pope added two important norms to the existing canonical regulations dealing with sexual abuse. The first included the production, possession, distribution or exhibition of child pornography as a canonical crime and this included the enticement or recruitment of minors or adults to participate in pornographic exhibitions. The second sanctioned any conduct by prelates of any rank (e.g., bishops, archbishops, cardinals) who interfered with or attempted to avoid civil or canonical investigations of any kind into accusations of sexual abuse by a cleric. The letter also included specific protections against any form of retribution for anyone who submitted a report of abuse, and it removed any obligation of secrecy regarding such reports.
180. The second part of the letter provided some concrete provisions concerning bishops, which were not merely exhortative but imposed real action. A report of sexual abuse allegedly committed by a bishop (or more senior prelates) is to be transmitted to the Holy See and to the archbishop of the ecclesiastical province where the accused prelate lives.²¹
181. The archbishop is then to request a mandate from the Holy See to carry out an investigation. (In the *Code*, such investigations could only be carried out at the express direction of the pope.) After the archbishop completes the investigation, he is to submit the results along with his opinion (called a *Votum*) to the Holy See. The final decision and the imposition of any penalty is the responsibility of the Holy See, which in practice means the congregation that is competent depending on the identity of the bishop (for most bishops it would be the Congregation for Bishops). The pope then would have to approve the final decision and any penalty. The

²⁰ Apostolic Letter issued Motu Proprio by the Supreme Pontiff Francis, *Vos Estis Lux Mundi*, May 7, 2019. http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

²¹ Priests who have been consecrated as bishops or who have been appointed to a higher position of authority but are not bishops are known as “prelates”.

document uses the term “metropolitan archbishop” which is the full, formal title for the archbishop of an ecclesiastical province.

182. The problem with this procedure is that the obligation for conducting the investigation devolves to the metropolitan archbishop and the first question that was raised when these norms became public was the possibility of a lack of integrity, impartiality and complete objectivity. For example, the bishop of Brooklyn, Bishop DiMarzio, was accused of sexual abuse when he had been a priest. Cardinal Dolan, the metropolitan archbishop, received the mandate from the Holy See to carry out the investigation on January 7, 2020. Over one year later, there has been no word as to whether an investigation has even taken place. In addition to this, not long after the accusations were made public, Cardinal Dolan made public statements to the effect that Bishop DiMarzio was a close friend of his. There have been three other such allegations made in the U.S. both early in 2020, and to date there seems to have been no movement. The skepticism that a bishop could competently and credibly investigate another bishop is both valid and realistic.

VII. THE NATURE, ROLE AND IMAGE OF THE PRIESTHOOD

A. The nature of the priesthood

183. The distortion of the authentic theology of the priesthood (and the episcopacy which is considered the fulness of the priesthood) has created a seriously flawed but commonly held belief about the nature and stature of a priest.
184. Sacrifice has been an integral element of most religious systems throughout history. With the notion of “sacrifice” comes the concept of “priesthood”. Priesthood is the most ancient form of religious office. In primitive religions, it was given to those thought by the community to be in a special, privileged, favored position in the estimation of the unseen powers, the gods. The earliest known religions had priestly offices. Because of their closeness to the deities, the priests themselves have traditionally been thought to have special powers. Since primitive and ancient societies were generally patriarchal and male-dominated, the priests were usually men.

185. The priest was the special person deputed by the community and favored by the gods to lead worship services but, more importantly, to offer sacrifices on behalf of individuals and the community. Sacrifices were necessary to appease the gods whom people perceived had the potential for highly destructive anger. This belief was based on their belief that certain elements of nature that they could not control were manifestations of the power of the unseen, super-human powers. The two most prominent meteorological phenomena that elicited fear were thunder and lightning, both products of cumulonimbus cloud formations and not angry gods.
186. The priesthood has been central to the Catholic theological system because of the essential concept of sacrifice. Catholic theology and culture are firmly structured around the belief that the Eucharist (more commonly referred to as the Mass) is the only acceptable sacrifice to God, having replaced all forms of sacrifice that preceded it. The notion of sacrifice presumes a belief that there remains a need for intercession and advocacy before God, who is perceived as loving and benevolent but also just. The Mass is the center of Catholicism. The priest is essential to the Mass: without the priest there can be no Mass and without the Mass, there could be no Catholicism.
187. The two major powers of Catholic priests are the power to celebrate Eucharist and the power to forgive sins in the name of God. Catholicism teaches that both are essential for salvation and fundamental to the nature and life of the Church. The Church claims that the priesthood and the powers attached thereto are derived from Christ, who initiated the new form of priesthood at the Last Supper at which he also instituted the Eucharist. The Eucharist has been treated primarily as what is commonly referred to in traditional Catholic theology as an “unbloody sacrifice” — but a sacrifice, nonetheless.²²
188. For centuries, the Catholic Church has taught that priests are men set apart and above others. The difference begins with ordination. At that moment, by divine action, the man is made a priest and is joined to Christ in such a way that he is substantially different from other humans. The ordination ceremony is long and

²² Kenneth Osbourne, *The Nature and Function of Priesthood* (Mahwah NJ: Paulist Press, 1988). This is but one of hundreds of source materials on the nature of the priesthood.

somewhat complicated by the sacramental theologians' claim that the actual moment when the man becomes a priest is the moment when he kneels before the bishop, who then puts his hands on the head of the man. The "imposition of hands", as it is called, is the key moment. This theology, which is based on the theory that a man is "ontologically changed" at ordination and, as John Paul II often said, is "configured to Christ", has led to the popular but inaccurate belief that the priest is some sort of being who is between God and humans and therefore is treated as if he were such.

189. Catholics are taught from the time they first are exposed to Catholic culture as children that priests represent Christ.²³ Consequently, priests are to be accorded the highest respect and are to be believed and obeyed without qualification or question. Nearly all victims of clergy sexual abuse were raised in very devout families in which the parents reinforced the beliefs about the priesthood and priests and looked on priests with a mixture of awe and fear. The common belief was that if one insulted, gossiped about, or harmed a priest in any way, that person would be severely punished by God in the next life and probably in this life as well. This belief is still very much alive among especially devout Catholics. Steeped in this traditional teaching about the priesthood, with its mix of official theology and popular cultural conflation, victims commonly described their reaction at the time of both the seduction process and the abuse itself as being paralyzed with a combination of shock, disbelief, and fear.
190. Though it is hardly intentional, the institutional Church predisposes victims to abuse by means of the teaching and cultural image of the Catholic priest. This image, and the accompanying fear of doing anything to offend a priest, profoundly influences victims so that they are unwilling — or, more often, emotionally unable — to report. The official theology of the priesthood, that the priest is "another Christ" and is "configured to Christ" is enmeshed with a legacy of "folk theology" that is both initiated and encouraged by clergy and laity alike. It influences those parents who are unable or unwilling to believe their children. It influences the Catholic community when it refuses to support victims. It influences civil officials such as judges or law

²³ See, for example: *Catechism of the Catholic Church*, n. 1581.
https://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c3a6.htm

enforcement officers when they give preferential treatment to a confirmed sexual abuser “for the good of the Church”.

191. The belief that the institutional Church is truly God’s kingdom on earth and must be protected at all costs served to protect the institution from the embarrassment and loss of image and power that would occur if information about sexual abuse by clerics were to become public. The bishops have been especially motivated to protect this image, not only because of their belief in its essential nature, but also because of their indispensable role in its structure.
192. Apart from the influence of the theology of the Church, there is also the fact that the institutional Church nurtured, formed and educated the priests and bishops. For bishops, because of their belief that they have been chosen by God to lead, the institutional Church is the source of their identity and the security of their present and their future. Consequently, when bishops proclaim that they acted as they did “for the good of the Church”, this “good” is intermingled with the “good of the bishop”.

B. The Church, the priesthood and the treatment of victims

193. The damage to victims from sexual abuse only begins with the actual act of sexual violation. It continues and intensifies as the victims perceive that the Church itself is not only not supporting them but viewing them as a threat and as an enemy.²⁴
194. This has put them in a self-perceived no-win situation. Stunned by the sexual violation by one whom they were taught to trust and revere, they are even more stunned and perplexed when they realize how they are being treated by the institutional Church, which is now not the “Holy Mother” but a bastion defending itself. The profound contradiction between what the institutional Church and its clergy claim to be, and the sexual invasion of the most vulnerable followed by their rejection, is difficult to comprehend until one looks deeply into the traditional

²⁴ A. W. Richard Sipe, *“Preliminary Expert Report, Fourth Phase: Victims of priest sexual abuse/the bishops’ response”*, 2007.

seminary formation and the complex influence of mandatory celibacy on seminarians who later become priests — and some of whom become bishops.

195. Individual priests and bishops all may have their own reasons, but there is something very clearly wrong on the institutional level for such a profound dichotomy to exist between the Church's avowed mission and the action of its leaders. There has been significant research and writing done to find systemic answers to behavior that is contradictory to the basic principles that priests and bishops are expected to live by. The research has focused on several possible sources of causality:
- (a) The effects of the traditional seminary formation on character development.
 - (b) The influence of mandatory celibacy and the theological reasons used as a justification for celibacy.
 - (c) The primacy of "the Church" and the bishops' identification with the Church.

C. *Seminary formation and clericalism*

196. The seminary experience of priests who have been ordained from the 1950s to the present has been criticized for its effect on the maturation process of prospective priests.²⁵ Seminaries were isolated and seminarians lived in an all-male environment. The main habits required for survival were obedience, docility and conformity. Creating and maintaining an image of docility and obedience, never questioning or expressing individuality, was essential to survive in the system. Obedience was required because questioning was detrimental to the holiness (or at least appearance of holiness) demanded, as seminarians were taught that the will of the superiors was the will of God.
197. Clericalism was firmly and deeply rooted in the system. Clericalism (derived from the word "cleric"), is an elitist mindset which takes for granted, or believes, that clerics —

²⁵ Eugene Kennedy and Victor Heckler, *The Catholic Priest in the United States: Psychological Investigations* (Washington D.C.: National Conference of Catholic Bishops, 1972). The work of Kennedy and Heckler, although it was completed in 1972, remains one of the most respected assessments of the psychological state of priests. Since then, numerous books have been written but the Catholic bishops have not commissioned another such study.

and in the Catholic context it pertains especially to priests and bishops — are intrinsically superior to other members of the Church (meaning the non-ordained who are mostly lay people), and deserve automatic deference and unquestioned respect.²⁶ Seminarians were taught all the theology that supported the image of the priest as a representative of Christ. The institutional Church was held up as the kingdom of God on earth; consequently, the absolute importance of the “good of the Church” was deeply engrained from the beginning of seminary training.

198. The seminary system prepared men to accept mandatory celibacy by presenting human sexuality in a negative, pejorative manner, while at the same time holding virginity and chastity as a higher calling than marriage. Intimacy was equated with sexuality and sexual expression, and therefore was a sure path to grave sin. Holiness was equated with obedience and visible signs of piety and not compassion and charity. Absolute loyalty to the clerical fraternity was expected and without it a seminarian would not survive.
199. Survival meant relinquishing a significant amount of “self” to the all-male authority figures who governed every aspect of the Church. Seminaries, like the clerical subculture of which they were an essential part, were closed institutions that conferred an alternative identity and a promise of complete security. The young man sacrificed himself in exchange for membership in the group. Seminarians were rewarded by the assurances that they were part of a subsociety that had all the right answers to life’s questions. As a man progressed through the seminary to ordination — and from ordination into the hallowed, mysterious, dimension of the clerical culture occupied by the ordained — more conformity, docility and obedience was demanded.
200. This was the seminary experience of the clerics who have sexually abused minors between the 1950s and the new millennium, and it was also the experience of the bishops. For a period of about 15 years after Vatican Council II ended in 1965,

²⁶ There are a number of excellent works that closely examine the Catholic brand of clericalism: Russell Shaw, *To Hunt, To Shoot, To Entertain: Clericalism and the Catholic Laity* (San Francisco: Ignatius Press, 1993); George Wilson, *Clericalism: The Death of Priesthood* (Collegeville: Liturgical Press, 2008); Michael Papesh, *Clerical Culture: Contradiction and Transformation* (Collegeville: Liturgical Press, 2004).

seminary formation experts, which included bishops, made serious efforts to change the structure of seminary training by, among other things, opening it up. Seminarians in many countries attended Catholic universities where they pursued their courses with lay people. The strict quasi-monastic model of seminary life was changed to a model that hopefully would more realistically prepare men for the diocesan priesthood and not life as a monk. There was resistance to these changes from the more conservative and traditionalist quarters among both lay people and clergy, however.

201. Over the past 20 years there has been a very drastic change in seminary formation and discipline in many countries. For example, there has been a fascination with the pre-Vatican II symbolism and vesture. Seminarians now look to Pope John Paul II as their idol. They have returned to a highly clericalized way of life, complete with the traditional clerical garb of cassocks, capes and birettas. The change has included a very miscible movement to return to the pre-Vatican II Latin liturgy, complete with heavily elaborate vestments. Ironically, this expression of the clerical culture was dying or had disappeared before the majority of these young men were born. The most troubling aspect of this “reform of the reform”, as it is commonly referred to, has been the return to the clerical ways of thinking, especially regarding the priesthood. Seminarians are being taught that they are indeed ontologically different, sacred persons who are removed from and above lay people because of their powers of the priesthood.
202. The clerical world, which far too many identify as “the Church”, presents an image of holiness, but this holiness covers and protects a culture of excessive narcissism. This is unavoidable since the ordained clerics have been taught during their entire formation that upon ordination they will be special, elevated, given immense spiritual powers over people’s lives and, above all, will be uniquely joined to Jesus Christ. The culture of narcissism has supported a brand of clerical spirituality that is toxic and has enabled the culture of sexual abuse. This image of the clerical culture has returned with a vengeance in the past two decades and has brought with it a new strain of clerical narcissism that is more insidious than that which preceded it.

D. *Mandatory celibacy*

203. Mandatory celibacy has had a definite influence on the development of dysfunctional sexuality within the context of the closed clerical world. The strain of misogyny that had been dominant in seminary formation, the clerical subculture, and the ecclesiastical governing system, has been both very subtle yet glaringly obvious. Although many clerics would deny the presence of misogyny, it was in fact very subtly but surely injected into the seminary culture and continued into the clerical culture. By subtly teaching seminarians about the humility of the Virgin Mary, the image of a woman as docile, obedient and supportive of clerics (as Mary supported Jesus) was geared to creating a positive image of celibacy that seminarians would embrace. On the negative side, they were taught to avoid situations where they could be alone with women lest they be tempted or lest the woman tempt them.
204. The mere fact of being celibate does not turn a priest into a sexual predator, nor does accepting the official teaching on sexuality universally lead to emotional and psychological dysfunction. But mandated celibacy can set up barriers around the cleric that he knows will help protect his purity. These are reinforced by the centuries-old belief system that sexuality is completely forbidden and mortally sinful except as between men and women who are married.
205. Sexuality is presented as an aspect of the human person that can be turned off in order to avoid sin. Doing so requires heroic virtue and strength, which in turns feeds the underlying strain of narcissism. Clerical spirituality can become highly self-centered, persuading the priest that spiritual perfection is his most important goal and that perfection is centered around him: perfect obedience, prayer, avoidance of worldly temptations and distance from those not part of the clerical world.

E. *The primacy of the institutional Church*

206. For the clergy, “the Church” is the center of everything. It is all around and influences and shapes every aspect of life. The Church is God’s special enclave on earth and priests and bishops have been entrusted with it, and they are also essential parts of it. The narcissism and self-centeredness are surely not dissipated for those very few

among the priests who are chosen to be bishops. At his episcopal consecration, the new bishop is given a ring which symbolizes that he is wedded to the Church — not to Christ, but to the Church.

207. The celibate clergy may preach and write about the dignity of marriage and the gift of parenthood, but the truth is that they have no real idea what either really means, and certainly have no idea what they demand. The obsession with the power and image of the Church, and the bishop's deeply rooted and vowed obligation to protect the Church at all costs, leaves no room for consideration of the welfare of children and the vulnerable. The clergy, especially the bishops as the official leaders, may proclaim a commitment to children and "the least of my brothers", but this is not translated into action if it in any way threatens the security of the Church and the bishop.
208. In the context of the sexual abuse phenomenon, bishops (including popes) have shown a grievous breach of trust by their failure to protect children and by their shameful treatment of the abused. The animosity of so many in the clerical world towards victims is explained by the fact that the victims are a serious threat to the power and security of the clerical and hierarchical world. Those in the religious life and the clerical world who have risen above the obsession with loyalty to the institution, if indeed this obsession ever took hold, are demonized, criticized, undermined, slandered and regarded as both a danger and as traitors.
209. Barbara Balboni, at the time a member of a religious community, wrote a doctoral dissertation in 1998 titled *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.*²⁷ Her study involved 20 American bishops. Her findings included the following:
- (a) The bishops viewed sexual abuse as a private moral failing with spiritual solutions.

²⁷ Barbara Balboni, September 1998. A dissertation presented for the degree of Doctor of Philosophy, Northeastern University, Boston MA.

- (b) The bishops were highly motivated to prevent scandal — meaning public revelation of clergy sex abuse.
- (c) Immaturity in priests was not a negative but a sign of docility.
- (d) Individual bishops did not want to share the issue of problem priests with other bishops lest they be seen as incapable of dealing with their own problems.
- (e) Bringing the issue up at the bishops' conference would be seen as a sign of weakness.
- (f) The bishops claimed they acted alone in their responses to sexual abuse. However, data proves that two-thirds acted similarly.

210. Dr. Balboni's findings continue to prove accurate in the years since her dissertation was written.

211. A. W. Richard Sipe was deeply immersed in the sexual abuse phenomenon for most of his professional life in one way or another. His extensive study of documentation produced by the Church itself, as well as his own interviews with 2,500 priests, which included diocesan priests and priests who were members of religious institutes, led him to conclude that the bishops as a group placed pressure on individual bishops to remain secretive about abuse and also about their knowledge of widespread sexual activity in clerical ranks.²⁸

212. Dr. Clare McGrath-Merkle searched for reasons why the Catholic bishops have failed to protect children, since the failure to protect children has been a main area of concern in the entire sexual abuse phenomenon. Her conclusions include the following:²⁹

²⁸ A. W. Richard Sipe, *A Secret World: Sexuality and the Search for Celibacy* (New York: Brunner-Mazel, 1990). Sipe presented the results of the ethnographic study to the U.S. bishops who rejected them. This led to his decision to publish them.

²⁹ Clare McGrath-Merkle, 25 September 2009, "Generativity and the U.S. Roman Catholic Bishops' Responses to Priests' Sexual Abuse of Minors", *Journal of Religion and Health* 49(73–86) 2010, p. 83.

“These findings point to the idea that both secularization and mandated celibacy have contributed to a clerical environment that does not identify with the needs of children ... Based on this review a case could be made that pre-existing tendencies coupled with prolonged, sheltered, all-male, celibate environments and formation indoctrination have led to deficits in psychological development, moral judgment and leadership capacity on the part of bishops. The lack of identity differentiation and over-identification of priests with each other and the Church are the same traits of bishops that have proven dangerous to children.”

213. Before leaving this section, I would like to share an aspect of my personal history. I was ordained in 1970 and served as an Air Force chaplain for nearly 20 years. I retired in 2004 and bought a home in northern Virginia. One of my nieces, aged 26 at the time, was planning to live with me while doing an internship in Washington. Another unexpected event happened that had a profound impact on my original living condition and on my life. A young woman, 29 years of age, who was part of a family with whom I had been extremely close for 40 years, had a baby in 2004. The relationship with the baby’s father deteriorated and the young woman needed a place to live. Moving in with her mother would have been possible but quite crowded. In a moment of spontaneous emotion at a family dinner, I told her that she and her little boy could stay with me as long as it took her to get her life squared away.
214. Within a week, I had two 20-something young women and a four-month old baby in my home and I was terrified, not of the young women but of the close proximity of a little baby. The closest I had come to babies was baptizing them and that lasted but a few moments, which is the way I wanted to keep it. I vowed to keep my distance and therefore my personal space and equilibrium. As the weeks unfolded, I found I had no choice but to help with some of the tasks involving the baby like shopping or briefly watching him, but nothing “heavy-duty”.
215. After a couple months had passed, I was beginning to relax with the whole situation, until one day the mother called me at dawn from her bedroom and almost begged

me to help her. She had been hit by the flu and was totally out of commission. She asked if I could take care of Phineas because she simply could not even stand. At age 60 I had never fed a baby much less changed a diaper. I now was faced with the daunting and terrifying challenge of changing him, feeding him and doing whatever else needed to be done. Babies don't come with "operating manuals" like airplanes or cars, so this was rock-bottom, on-the-job education. I made it through the first major challenge that early morning without doing serious harm to either one of us. As the days went on I had to do what his mother did: feeding him, entertaining him, changing him and so forth. After a week, she started getting better. I felt like I had been through a transformative experience that made Air Force basic training seem like playing in a sandbox by comparison. But something I never expected happened and it was that I bonded with little Phineas and saw him in a radically new light. Feelings I didn't know existed surfaced. The bond only strengthened because what originally was to have been a short-term arrangement ended up lasting 15 years. I learned and realized that the experience filled a void in my life I never knew was there. Additionally, after that fateful week when I had to jump in with both feet, I became convinced, and still am, that every seminarian, priest, bishop and cardinal should be made to live for one week at least with an unmarried mother and share with everything that parenthood entails. I firmly believe that if that were to happen, the Church would change profoundly, and child abuse would quickly be relegated to a dark moment in Church history.

VIII. ACCOUNTABILITY IN PRACTICE – WHAT DIDN'T HAPPEN

A. The preliminary investigation and the default practice

216. The actual practices of bishops were first discovered as individual victims brought their cases before the civil courts. As described above, the first cases were in the U.S. in the late 1980s. These were followed by civil complaints against dioceses and religious orders in Canada in the late 1980s and the early 1990s, followed by the Republic of Ireland at the end of the 1990s.
217. The first major challenge the victims' attorneys faced was obtaining the accused clerics' personnel files and any other files pertaining to sexual abuse by clerics from

the church institution. Initially the bishops, through their lawyers, claimed these files were privileged in both canon law and civil law and therefore could not be released. This was challenged by the victims' lawyers. The first court challenge (in my memory) was in a Pennsylvania appellate-level court in the early 1990s. The court ruled that the files in question were not privileged. The next major challenge was that brought by the Archdiocese of Boston in November 2001. The lower court ruled against the archdiocese and ordered the release of files to *The Boston Globe* newspaper. The appellate court upheld this lower court in a ruling on December 21, 2001.³⁰

218. In the course of acting as a court expert in civil trials in the U.S., the U.K., Canada and Ireland, as well as serving as an expert for several grand juries in the U.S., I have reviewed over a thousand personnel files produced by dioceses in the U.S., Canada, Ireland and England between 1989 and the present. I recall seeing evidence of the use of the proper canonical procedures in six such files from the U.S., one from Canada, and one from Colombia. The personnel files contained documents that were part of a full canonical investigation but the complete files from the investigations and from the canonical trials, if such took place, were not included.
219. The U.S. bishops never started using the canonical processes until after their meeting in Dallas in 2002, which signaled also a greater degree of scrutiny of church practices by the general public and by the Holy See. The vast majority of canonical complaints, including the ones I have studied and those I have not, were not handled according to the required canonical processes. There are no valid excuses for neglecting these processes, especially the preliminary investigation. In numerous documented instances, if the bishop confronted the accused and he denied the allegation, the bishop would believe him and that would be the end of it.
220. The default response was to admonish the priest and then send him to another assignment either in the diocese or in another diocese. When such priests were sent to other assignments in the diocese, the receiving parish pastors were sometimes warned by the bishops and sometimes not. Lay members of a parish were never told

³⁰ The Investigative Staff of *The Boston Globe, Betrayal: The Crisis in the Catholic Church* (Boston: Little Brown & Company, 2002): xi. The appellate decision was rendered by Judge Constance Sweeney.

that an accused child molester was serving as one of their parish priests. In a minority of cases, usually those that showed a potential for media exposure or if the bishop found out it was a repeat offender, the cleric was sent away to receive some form of assistance. In the 1940s and into the 1950s, many bishops believed that a retreat would solve the problem, so the priest would be sent off for a week or even a month for retreat and consultation with a spiritual director. The priest would return to the diocese, promise to mend his ways, and return to ministry, usually to offend again.

B. *Excuses for not following canon law*

221. Prior to the era when sex abuse victims began to come forward and disclose their abuse (prior to the mid-1980s) there were no lawsuits filed in civil courts against dioceses or religious institutes for negligence or for other crimes related to sexual abuse. Similarly, there were very few criminal cases, and those which are now known received little if any publicity. The criminal cases came about when clerics were caught or were reported to police in districts where the local law enforcement authorities, notably county prosecutors, district attorneys or Crown Attorneys, were not afraid to prosecute Catholic clerics.
222. When questioned by attorneys in civil cases, bishops and religious superiors came up with a variety of reasons why they neglected to act in the appropriate and responsible manner:
- (a) Some have claimed they did not know that sexual abuse of a minor boy or girl was a crime in civil law, canon law or both. Some claimed they did not know that victims of sexual abuse suffered serious harm. One bishop, when asked what he thought about the harm one of his priests had inflicted on about 50 very young boys, said that *"little boys heal"*.³¹

³¹ The bishop was Bishop Loras Watters of Winona, Minnesota. The statement was the response to an attorney's question in a deposition in a civil case in which the plaintiff was suing the diocese over the sexual abuse of one of the priests, former Fr. Thomas Adamson. This was the first civil case filed against a diocese based on sexual abuse of a minor by a cleric.

- (b) Some claimed they could not follow the canonical processes because they had no canon lawyers in their diocese who had been trained in the proper use of the penal procedures in the *Code of Canon Law*.
- (c) Some claimed they did not act because canon law was so complicated on the issue that it prevented them from taking action.
- (d) Some claimed they could not report to appropriate civil authorities because the complaint and the issue was covered by pontifical secrecy (a grave obligation of confidentiality).

223. Some of the excuses offered have no validity. Others have some validity and reflect the honest concern of many bishops that both canon law, including rules around secrecy, and the Vatican bureaucracy and Vatican Curia were a major reason for inaction.

224. It is important to provide a brief word about secrecy in the Catholic Church. There are three kinds of secrecy. The first is that which is attached to certain ecclesiastical offices such as vicar general, tribunal judge or diocesan consultor, to name but a few. This is secrecy that is imposed on the office-holder and it pertains to all matters they deal with that are confidential by nature or are declared so by the bishop. Pontifical secrecy is the highest level of secrecy in the Church. In some cases, depending on the matter itself, the violation of pontifical secrecy can result in the penalty of excommunication. Pontifical secrecy must be specifically mentioned in some form of documentation related to the matter to be kept secret. One example would be the deliberations that take place during the election of a pope. Finally, there is the secrecy of the confessional. This is imposed on any cleric who hears confessions. He is bound never under any circumstances or for any reason to reveal what he has heard during a sacramental confession or the identity of the person who came to him for confession. The penalty for violating confessional secrecy is automatic excommunication. (This binds only the priest. The person who made the confession is free to share the information.)

225. The matter of pontifical secrecy has caused a significant amount of discussion over the past 20 years. A number of church sources maintained that bishops were forbidden to report a case because, according to the law in *Crimen Sollicitationis* and the newer legislation from 2001 and 2010, cases of this nature were covered by the pontifical secret and to violate this would result in automatic excommunication. This assertion is true — however the pontifical secret does not apply until a case has been formally opened. Prior to 2003 or 2004, when much more attention was being given to the canon law procedures, the vast majority of bishops never even initiated a canonical case against an accused cleric, so the imposition of the pontifical secret was a non-issue. In fact, a number of bishops had no idea that such cases were covered by the pontifical secret. This information comes from the responses of bishops in civil court proceedings or responses to questions from the secular media. The whole issue became purely academic on December 17, 2019 when Pope Francis issued a decree removing the pontifical secret from all accusations, investigations, trials and decisions involving cases of sexual abuse of minors.³² In the same decree, he also said that pontifical secrecy of the confidentiality connected to any ecclesiastical office did not apply to fulfilling reporting obligations or the disclosure of files as part of the civil law discovery process.
226. In retrospect, although a number of U.S. bishops said they did not follow the canonical norms for investigation and prosecution of sexual crimes because they had no familiarity with the process and had no canon lawyers trained in using the process, they could have easily sought the assistance of the Canon Law Society of America which could have provided the names of competent canon lawyers. The bishop of Tucson, Arizona faced such problems when he finally realized that he had two very serious serial predators among his priests. Rather than offer excuses, he brought in a very competent canon lawyer, a priest of a religious community who was teaching canon law at the time. He appointed this priest as presiding judge and appointed other priests to serve as judges. In the course of both processes, the bishop and the presiding judge faced serious interference from officials in the Vatican Curia. The

³² Rescriptum ex Audientia SS.MI: Rescriptum of the Holy Father Francis to promulgate the Instruction *On the Confidentiality of Legal Proceedings*, 17.12.2019.
<https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html>

most serious and outrageous was from the late Cardinal Darío Castrillón Hoyos who was head of the Congregation for the Clergy at the time. He had the audacity to ask the bishop to allow one of the accused priests to retire with full retirement benefits and cancel the trial, knowing that the priest had been accused in multiple acts of serious abuse against young boys.³³

227. Another solution would have been for the bishops to instruct the canon lawyers in their dioceses to acquaint themselves with the penal processes and prepare to use them. Any priest with a doctorate in canon law would have studied the sections in the *Code* on “Crimes and Penalties” and the section on procedures.
228. For many years, however, bishops simply transferred priests quietly but other than that did nothing. Some were sent to receive treatment, but when treatment reports strongly advised that certain priests be removed from ministry, some bishops either ignored this advice or asked the therapy center to have the reports re-written without mention of the dangers posed to children. Dr. Leslie Lothstein, a psychologist at the Institute for Living in Hartford, Connecticut, publicly stated in 2002 that bishops frequently ignored the doctors’ recommendations or asked that they be re-written. Another complaint he made was that when bishops sent priests to him for treatment, they often would not disclose the real reason, namely accusations of sexual abuse. Instead, they would give other non-related reasons such as depression or substance abuse.³⁴
229. Actually, bishops had several alternatives if a priest was reported to have abused a child. Since sexual abuse is clearly a canonical crime, suspension, removal from a ministry assignment, removal of faculties or reassignment to a position where there were no children are possibilities. All are less than adequate in themselves. If a bishop actually initiated a canonical process, he was justified in removing the accused

³³ The four letters that illustrate Cardinal Castrillón Hoyos’ attempt to interfere with the process date from 1996 and 1997. Because of their importance, they are included as **Appendices 4 to 7** of this submission.

³⁴ E. Rich and E. Hamilton, “Hartford Institute of Living Doctors Say the Church Used Them to Keep Abusive Priests on the Job”, *The Hartford Courant*, 24 March 2002. <https://www.courant.com/hc-egan-0324-story.html>

priest from his assignment and changing his residence until the canonical process was finalized. The problem, however, is that this was very rarely done.

230. Perhaps the most serious problem during this period was the failure of bishops to take decisive action. There are countless case files that show that bishops received numerous warnings yet did nothing. Even after some priests were sent for treatment, they were more often than not returned to ministry. If they reoffended and were caught, the bishops often claimed they were only acting on the psychiatrists' advice in an effort to avoid responsibility for their lack of action. This excuse was even used by Pope John Paul II in his address to the U.S. cardinals on April 23, 2002 at the Vatican in efforts to avoid facing accountability for their lack of action. Part of the problem with that excuse is that it bypasses the other reality: the priest had committed a serious canonical crime and this was being ignored.

C. Canonical revisions in 2001 and 2010

231. On April 30, 2001 Pope John Paul II issued a letter titled *Sacramentorum Sanctitatis Tutela*.³⁵ This letter accompanied a set of procedural norms revised by the Congregation for the Doctrine of the Faith and signed by Cardinal Ratzinger. (Supporters of John Paul II who claim he did a great deal to help victims point to this letter and the revised norms.)
232. These new norms made a difference in the process of reporting cases to the Holy See, which previously had rarely been done. The problem is that these newly revised norms, while they somewhat streamlined the canonical process, had a very minor impact on the overall problem because they pertained only to canonical processes — yet sexual abuse by clergy is complex and multi-faceted. A good way to describe the new norms is that they were a software solution to a hardware problem.
233. The major changes in the 2001 document were as follows:

³⁵ Apostolic Letter issued Motu Proprio, *Sacramentorum Sanctitatis Tutela*, of the Supreme Pontiff John Paul II, by which are promulgated norms on more grave delicts reserved to the Congregation for the Doctrine of the Faith, 30 April 2001.

- (a) The document formally announced that these norms replaced *Crimen Sollicitationis*, which had been in force until then but rarely used.
- (b) It raised the age of minority from 16 to 18 years, meaning minority ends when one reaches the age of 18.
- (c) It established a prescription (Statute of Limitations) of 10 years, which begins to run when the minor reaches the age of 18 years.
- (d) The Congregation for the Doctrine of the Faith (CDF) could dispense from the requirement that officials in a trial must be priests.
- (e) The bishop was to send the completed preliminary investigation to the CDF, which would then tell him how to proceed.
- (f) If a case was sent without a preliminary investigation, the CDF would carry out the investigation.
- (g) Once a case was finished on the local level, the entire file (the Acts of the Case) was to be transmitted to the CDF.
- (h) All cases covered by these procedures were covered by the pontifical secret. Unlike the above norms, this was not new but a repetition of the previous law.

234. In May 2010, the CDF, on orders from Pope Benedict XVI, issued an official decree that consisted of a revision of the 2001 norms. The decree was accompanied by five other documents,³⁶ two of which appeared in July 2010. These were all signed by Cardinal Levada, the Prefect of the CDF. All of the documents are listed below although the actual titles differ slightly from these descriptive titles:

- (a) A guide to understanding the basic CDF procedures.

³⁶ The names and content of all documents that are related to the 2010 changes published by the CDF can be found on the Vatican website at the indicated page of the Congregation for the Doctrine of the Faith, under the heading: "Documents – Complete List". Documents are listed according to the date in a descending order with the most recent at the top.

- (b) An introductory letter to the modifications, addressed to the bishops.
- (c) A brief introduction to the modifications.
- (d) An historical introduction to the norms of 2001.
- (e) The texts of the revisions.
- (f) A letter from Levada introducing the guidelines (May 3, 2011).
- (g) A letter from Levada to assist the bishops (May 3, 2011).

235. The important changes from the 2001 norms in the 2010 norms are:

- (a) The CDF has the right to judge cardinals, patriarchs, papal legates,³⁷ bishops and others mentioned in canon 1405 (any ecclesiastical persons who do not have a superior below the pope).
- (b) The Statute of Limitations was extended to 20 years. The CDF offered the possibility of a derogation (an exemption) from the 20-year limit on a case-by-case basis.
- (c) The CDF could authorize dispensing from a formal trial in certain cases and proceeding to an administrative judgment and imposition of a penalty.
- (d) As far as the crime of sexual abuse is concerned, a person over 18 who is developmentally disabled is considered to be canonically equal to a minor.

³⁷ A "papal legate" is the generic term for an ambassador of the pope. There are permanent legates called papal nuncios who are ambassadors to nations. There are also temporary legates named by the pope for a specific occasion at which the legate represents the pope. All permanent legates are archbishops. Temporary legates are either archbishops or cardinals, depending on the importance of the event or occasion. There are also permanent legates in countries that do not have diplomatic relations with the Holy See. They are called apostolic delegates and act as representatives of the pope to the Catholic bishops in the country and can also be named as the pope's personal representative to the head of state of the country.

(e) The acquisition, possession or distribution of pornographic images of persons under 14 is included as a canonical crime.

236. There is no mention of the obligation of pontifical secrecy and consequently this obligation remained in place.

237. The revisions of both 2001 and 2010 had an impact on the canonical resolution of cases but, in general, they did not have a significant impact on the overall issue. The norms pertained only to the canonical processing of individual cases of priests who violate minors. This, in the minds of the pope and the officials in the Vatican Curia, was probably a great step forward, but it did little if anything to actually promote the healing of victims. The mandate of sending every case to the Holy See in the 2001 norms enabled the Holy See to get a better idea as to the extent of the problem, but this would certainly not provide anything close to an accurate idea as to how widespread sexual abuse by clerics is, nor would it provide an accurate view as to how bishops are actually handling individual cases.

D. The accountability of bishops

1. The basis for concern

238. When the U.S. bishops promulgated the “Essential Norms” in 2002 (see above, **paragraph 65**), one of the first criticisms was its limited scope. It pertained only to diocesan priests and not to priests in religious communities. Further, it did not apply to non-ordained religious such as teaching brothers, and it did not apply to bishops. By 2002, a number of bishops themselves had been accused of either sexual abuse of a minor or an adult. By 2021, the number of bishops accused worldwide had reached 147, most of whom were from the United States.³⁸

239. The 2010 norms gave the CDF the authority to judge cardinals, papal legates and all bishops accused of sexual abuse. This meant that the CDF did not have to get special

³⁸ The most up-to-date list is found on the website www.bishop-accountability.org. Names are not included unless they are verified by reputable media sources, official statements from dioceses or from some other official church source.

permission from the pope to judge the cases of clerics in these positions, which had formerly been reserved to the pope.

240. However, there was no realistic process for investigating and adjudicating cases of bishops or higher who had been accused of sexual abuse. Equally — or more importantly, in the estimation of victim/survivors — none of the legislation paid any attention to bishops who had covered up about known perpetrators, lied about them (including committing perjury in civil judicial hearings or trials), or re-assigned known perpetrators.
241. Another, separate problem with the bishops is that they alone have the authority to decide if a report or accusation is credible. This has caused wide discrepancies in whether certain clerics are publicly listed by dioceses as having been credibly accused or not. Aligned to this problem is the lack of any uniform criteria in canon law or elsewhere with which to determine what “credibly accused” means.
242. Fundamental to the issue of the meaning of “credibly accused” and decisions by bishops as to whether accusations are supported or not, is the fact that the dioceses and religious communities conduct internal investigations and issue decisions about whether an accusation is supported or not. These investigations are sometimes carried out by out-sourced professionals such as retired law enforcement personnel. Sometimes they are assigned to church-retained attorneys, and sometimes they are conducted by unnamed clerics. The problem, and it is a very serious one, is the lack of obvious objectivity and the lack of uniform processes. The investigations are carried out by the same institution that produced the perpetrators and enabled them to abuse. The credibility of bishops and church personnel has been low for three decades and it continues to sink, so the credibility of internal investigations is an issue. Another problem is the question mark over their true motivation. Is it to arrive at the truth or is it an attempt to somehow regain a bit of their lost credibility?

2. Areas of accountability

243. The accountability of the bishops can be separated into seven areas that are related to the sexual abuse phenomenon:

- (a) Bishops who themselves have sexually abused. Bishops have been accused of sexual abuse in the U.S., Canada, Chile, Peru, Australia, Guam, Austria, Scotland, Italy, Argentina, Uruguay, Ireland, South Africa, France, Germany, Mexico, Poland, India, Brazil, Paraguay, Norway, Holland, the Philippines, and Liberia.
- (b) Bishops who have enabled clerics who sexually abused.
- (c) Bishops who have either re-assigned credibly accused clerics or allowed them to remain in active ministry.
- (d) Bishops who have allowed credibly accused priests to move to other dioceses or even other countries with the approval of the receiving bishop.
- (e) Bishops who hired attorneys to defeat victims at any cost (noting that the fees that bishops have paid out to attorneys in U.S. have now exceeded \$US 643,000,000.00. This sum does not include fees paid to attorneys by religious institutes.)³⁹
- (f) Bishops who have opposed any change in civil legislation that would protect all victims, and not just Catholic victims. Between 2011 and 2019, the Catholic bishops in the U.S. spent \$US 10,600,000.00 to fight proposed legislative changes in nine states. This sum does not include the amounts spent opposing similar legislation in at least eight states prior to 2011.⁴⁰
- (g) Bishops who have lied to victims and to the public, and especially bishops who have lied under oath in legal proceedings.

244. As noted above (see **paragraph 238**), in 2002 when the United States Conference of Catholic Bishops (USCCB) approved the *Charter for the Protection of Children and*

³⁹ This amount is the total of amounts reported in an annual report published by the U.S. Catholic Conference of Bishops. The reporting period is from 2004 to 2019. There are no official amounts for the years between 1986 and 2003 nor for 2020.

⁴⁰ Christina Capatides, "Catholic Church spent \$10.6 million to lobby against legislation that would benefit victims of child sex abuse", June 6, 2019, CBS News. The story cites a report, *Church Influencing State: How the Catholic Church Spent Millions against Survivors of Clergy Abuse*, published by Williams Cedar LLC in 2019.

Young People and the “Essential Norms”, they intentionally omitted members of religious orders from those subject to the norms, and they also omitted bishops. The norms as they proposed them applied only to diocesan priests. The reasons were valid: religious superiors are not part of the USCCB. They also could not include bishops because at that time canon law stipulated that only the pope could judge bishops in penal cases (any sex abuse accusation is a penal case).

245. After the *Charter* was passed, the Conference of Major Superiors of Men agreed to subject the members of religious institutes to the *Charter* and “Essential Norms”, and the bishops announced that they would subject accused members of the hierarchy to “fraternal correction”.
246. The bishops’ proposal was a farce because there was no assurance of objectivity. It is not known how many times they used “fraternal correction”, or who was corrected. In fact, they never even defined what constituted “fraternal correction” since it does not appear in canon law and nor is it an official procedure found in any other church source. They made a public statement about one bishop whom they claim was subjected to fraternal correction and was exonerated. The same bishop was later confirmed by a civilian investigation to have committed the abuse of which he was accused.

E. Papal legislation directed at accountability of bishops

1. Pope John Paul II, Pope Benedict XVI and accountability

247. Pope Francis is the first of the popes in our era to take positive steps to hold bishops accountable.
248. Several bishops were accused of sexual abuse while John Paul II and Benedict XVI were in office. Additionally, a cardinal was accused during the papacy of John Paul II. The bishops who were accused were not subjected to any form of canonical investigation or penal process. They were allowed to resign and were not officially removed. After resignation, they were given all the benefits afforded to a retired bishop in canon law. The cardinal was Cardinal Hans Groër, Archbishop of Vienna. He was accused of molesting several boys when he was working at a Benedictine boys’

school prior to becoming a bishop. Although John Paul II accepted his resignation, he continued to support him.

249. Pope Benedict XVI was much more proactive regarding accused bishops. Not long after he was elected, he ordered Marcial Maciel Degollado, the priest-founder of the Legion of Christ, to lead a life of solitude and prayer. Maciel, though not a bishop, had been the subject of worldwide publicity for sexually abusing seminarians. He had been protected by Pope John Paul II.
250. Pope Benedict XVI was also the first pope in two centuries to laicize a bishop. He laicized the former bishop of Antigonish, Nova Scotia, for possession of child pornography,⁴¹ and he laicized Fernando Lugo, former president of Paraguay, reportedly for sexual abuse of minor girls.⁴²

2. Apostolic letter *As a Loving Mother*, 2016

251. On June 4, 2016 Pope Francis issued an apostolic letter, *As a Loving Mother*.⁴³ The subject of this letter is the accountability of bishops. In sum, it says that bishops can be removed or forced to resign for negligence in office that caused grave harm to others. In other words, bishops can be removed for failure to act appropriately and allowing cleric-abusers to continue in ministry. The terms of the letter also apply to superiors of religious orders of men. The document states that accusations and proofs will be examined by the “competent Congregation of the Roman Curia”, which would be either the CDF or the Congregation for Bishops in most cases. The document is not clear on this point, nor does it provide any specific guidance on conducting an investigation at the diocesan level. The competent congregation examines the proofs and makes a decision on culpability and penalty. The pope must approve the final decision and penalty.

⁴¹ See: “Statement on the Laicisation of Raymond Lahey”, by the Archbishop of St John’s. <https://rcsj.org/wp-content/uploads/2017/09/Laicization-of-Raymond-Lahey.pdf>

⁴² The Vatican did not reveal any details about his laicization, but several news reports claim he had at least two and possibly more children and one was by a young woman who was 16 at the time. Cf. *UPI*, 23 April 2009, *Sydney Morning Herald*, 24 June 2009 and *The Guardian*, 14 April 2009.

⁴³ Apostolic Letter issued Motu Proprio by the Supreme Pontiff Francis, *As a Loving Mother*, 4 June 2016. http://www.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco-lettera-ap-20160604-come-una-madre-amorevole.html

252. The primary value of this apostolic letter is that it gave official papal recognition of the fact that bishops, through their negligence, had caused harm to others. Although a relatively small number of bishops have been accused of abuse themselves, most abuse committed by bishops was and is, in a sense, indirect in that their negligent actions and cover-up of accused clerics enabled further abuse.
253. Prior to the USCCB meeting in Dallas, 2002, at which the sole topic was to be sexual abuse by clerics, the *The Dallas Morning News* published a special issue the day the meeting started. It reported an in-depth investigation carried out by the newspaper that listed the U.S. bishops who had been confirmed to have been negligent, which amounted to about two-thirds of the total number of diocesan bishops. There was no known discussion about this at the meeting and although the media gave the issue wide coverage, nothing happened on the part of the bishops or the Holy See in regard to bishops who had intentionally ignored the mandated preliminary investigation and protected accused clerics. Most of the meeting sessions were closed to outsiders.

3. Apostolic letter *Vos Estis Lux Mundi*, 2019

254. As noted above (see **paragraph 179**), on May 7, 2019 Pope Francis issued another apostolic letter, *Vos Estis Lux Mundi*.⁴⁴ This document provided more concrete detail for reporting sexual abuse by clerics, bishops or superiors of religious orders. The main points were as follows:
- (a) Every diocese must have a public, stable and easily accessible system of submitting reports of sexual abuse within one year from the date of the document's publication, which will be June 1, 2020.
 - (b) Presuming a report will find its way to a bishop, the bishop is to send the report to the bishop of the place where the acts took place and to the bishop or major superior of the accused person (if other than the bishop himself).

⁴⁴ Apostolic Letter issued Motu Proprio by the Supreme Pontiff Francis, *Vos Estis Lux Mundi*, 7 May 2019. http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

- (c) This document makes it a canonical crime for a bishop to interfere with or attempt to avoid civil or canonical investigations against a religious or cleric.
- (d) If a cleric or non-ordained member of a religious institute has information about a possible act of abuse, he is obligated to make a report to the local bishop where the events occurred. (This is important because the obligation to report found in canon law is both unclear and little known. This makes reporting a canonical obligation.)
- (e) Making a report does not violate confidentiality attached to an ecclesiastical office in any way, with the exception of confessional secrecy.
- (f) Any form of retaliation, prejudice or discrimination against a person who had submitted a report is considered to be interference with a canonical or civil investigation and is itself a canonical crime.
- (g) Those who have been harmed and their families are to be treated with dignity and respect and offered spiritual, medical or psychological help as required.
- (h) The section on bishops includes those in office and those no longer in office.
- (i) A report of sexual abuse or negligence by a bishop is submitted to the Holy See and to the archbishop of the ecclesiastical province where the person making the report lives.⁴⁵
- (j) If the report concerns an accusation against an archbishop or papal legate, it is sent to the Holy See directly.
- (k) The archbishop who receives the report must ask the Holy See for a mandate to conduct an investigation.

⁴⁵ The official document uses the term “metropolitan archbishop” because the word “metropolitan” distinguishes the archbishop of an archdiocese and an ecclesiastical province from archbishops who have the title “archbishop” but hold an office in the Church other than head of an archdiocese. It also distinguishes from retired archbishops. For the sake of simplicity, I have decided to only use the term “archbishop”.

- (l) The investigation is to be completed within 90 days or a term specified in the mandate sent to the archbishop.
- (m) Once the investigation is complete, the Acts (canonical language for the complete documentation) are sent to the Holy See along with the *Votum* (or opinion) of the archbishop. The Holy See then makes the final recommendation to the pope.
- (n) The reporting laws of the local civil jurisdiction must be followed.

4. Effect of papal legislation

255. The commentators on *Vos Estis Lux Mundi* have both praised it and criticized it. The negative observations include the appointment of the archbishop as the one in charge of the investigation of the bishop. The basis of concern should be obvious: conflict of interest and serious threat to objectivity. Also, the archbishop has the power to reject the report if he considers it unfounded — but in doing so, he does not have the power to terminate the process. He reports his opinion to the papal ambassador (papal nuncio). The norms do not say what the papal ambassador is supposed to do, but given the nature of his office, presumably he is to report it to the Holy See. Also, the archbishop has the option of involving qualified outside experts but is not obligated to do so. Consequently, a report of either misconduct or negligence by a bishop can conceivably be carried out from inside the hierarchical system, which significantly reduces the credibility of the process and the chances of an objective decision.
256. Four dioceses in the U.S. have announced that there have been reports made against their bishops, all of whom have temporarily stepped aside while the investigation is ongoing. The four are the bishops of Brooklyn, New York; Dodge City, Kansas; San Jose, California; and Crookston, Minnesota. The bishops of Brooklyn and Dodge City have been accused of sexual abuse of a minor and the other two of negligence and interfering with an investigation.
257. The overall effect of church (papal) legislation concerning the obligation to report and the investigation of reports remains open to question. Both *As a Loving Mother* and

Vos Estis Lex Mundi have been met with skepticism by victims, their supporters and many lay persons in general. The basic criticism is that the Church continues to insist on conducting its own internal investigations.

PART TWO: THE SYSTEMIC PROBLEM

258. In Part Two, I explore in more detail the systemic nature of the problem of Catholic clergy sexual abuse and its impact on victims and survivors.

I. WHAT DOES THE “SYSTEMIC PROBLEM” MEAN?

A. *The two dimensions of sexual abuse in the Catholic Church*

1. The actual physical violation

259. Sexual abuse involves an act or acts of physical violation. The act of sexual violation by a cleric or non-ordained religious man or woman is not an isolated act perpetrated by a disturbed individual whose pathology is unique to him (or her) and completely distinct from the ecclesiastical institution to which he or she belongs, however. When this issue first became public news in the late 1980s, many in the hierarchy claimed, with absolutely no credible basis, that these isolated acts by clerics or religious were acts of a very small minority of the whole and likened them to a few “*bad apples in the barrel*”. Since then, we have learned that these acts are not isolated with no connection in any way to the institutional Church. The analogy of the few bad apples is irrelevant because it is inapplicable to this phenomenon. The root problem is the “barrel”.

2. The influence of the ecclesiastical world

260. As described in Part One, the official church teaching is that the visible institutional Church, which is a hierarchical governmental system, is one and the same with the spiritual reality known as the “People of God”.⁴⁶ The People of God was introduced at Vatican Council II (1962–1965) as a description of the Church or the whole body of the

⁴⁶ Canon 204 of the *Code of Canon Law*, 1983 revised version.

faithful who have an anointing that comes from God. Membership or participation is based on baptism, a sacrament received by all, lay and cleric alike.⁴⁷

261. At the heart of the toxic systemic problem is a fundamental structural opposition between the concept of Church in its spiritual expression and in its hierarchical system: membership in the Body of Christ is based on baptism and not office or function. While there are different “gifts”, the members share a fundamental equality. As discussed in Part One, membership in the hierarchical institution is not based on fundamental equality, however, but on a stratified structure that the official Church maintains is willed by God. This tiered society consists of two levels. The first level comprises the vast majority, the lay people (or laity), who, in spite of all the rhetoric that has been produced since Vatican Council II, remain in a subordinate position. The second level is the clerical state which is a world and subculture that is quite distinct from the Catholic culture in which the laity live.

B. *Membership in the clerical world*

262. The clerical state is populated only by those males who are ordained: deacons, priests, bishops. Although the Church permits permanent deacons to be married, they are actually on the far outer fringes of the clerical culture. In actual lived practice, the clerical culture is made up of celibate males, some of whom have illicitly fathered children, some who have been true parents and have become priests after their spouses died, and a very small number of married Anglican priests, most of whom are married with families, who have been accepted into the Catholic Church, re-ordained, and are fully functioning priests. There are also the priests of the Eastern Rites for whom marriage is an option and many of whom are married. But the vast majority of the 440,000 priests in the world are officially celibate and have probably never experienced first-hand what parenthood means.

⁴⁷ “Dogmatic Constitution on the Church”, *Lumen Gentium*, November 21, 1964 in Austin Flannery, Editor, *Vatican Council II: The Conciliar and Post Conciliar Documents* (Northport NY: Costello Publishing Co., 1975): Chap II, p. 359.