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Sin, Grace, and Zero Tolerance

An Exchange

Germain Grisez

The Charter for the Protection of Children and Young People, adopted by the Catholic bishops of the United States in Dallas in 2002, is being reviewed and will be revisited by the bishops at their meeting in June 2005. Article 5 of the Dallas Charter mandates that a cleric be removed permanently from ministry for even a single act of abuse. (The expression “removed from ministry” involves ambiguities that will be clarified below.) Plainly some in the U.S. and apparently many in Rome want that provision changed, so that some who engage in sexual wrongdoing with minors will be returned to ministry.

In an article in *America* magazine (October 18, 2004), Archbishop Harry J. Flynn offered reasons that tell against significantly changing Article 5, at least in the near future: the lack of means to identify offenders who will never offend again; the likelihood that some dioceses would make mistakes that would harm all dioceses; the difficulties that arise both in informing the faithful that a cleric reassigned to them has been an offender and in not informing them; the reputation of the priesthood as a whole; the Church’s credibility; and the safety of children: “The reassignment of even one priest who then harms another child is utterly unacceptable.”

Avery Cardinal Dulles had previously argued in the same magazine (June 21, 2004) in favor of respect for the rights of accused priests (who might well be innocent), canonical due process in investigating and making judgments, reasonable access to trial for those who

do not admit committing a crime of which they might be guilty, and the need for universal church law to deal with the universal problem of clerical sexual wrongdoing. On these matters, I agree with him.

Cardinal Dulles also argued that in adopting the Dallas Charter the United States bishops were taking positions at odds with the principles they affirmed in their November 2000 critique of the American criminal justice system. This argument assumes that some crimes and punishments in that system are comparable to the canonical crime of clerical sexual wrongdoing with a minor and the ecclesiastical penalties available for it. That assumption, I shall argue, is false.

Cardinal Dulles especially criticized the provision of Article 5 that he called “zero tolerance.” Some of his criticisms concern only past offenses; I will not deal with them. I shall deal with two arguments he offered against “zero tolerance” that bear on future offenses.

I summarize the first one: the principle of proportionality requires that the punishment fit the crime; but “zero tolerance” imposes the ultimate penalty on all offenders; therefore, it is unjust to those whose offenses are comparatively slight. This argument assumes that some instances of clerical sexual wrongdoing involving a minor do not warrant permanent exclusion from ministry. That assumption, I shall argue, is false.

The main argument Cardinal Dulles offered is his second one, which ran as follows:

Forgiveness and reinstatement are appropriate when the sinner has repented and made a firm resolve of amendment, and when there is no rea-

sonable likelihood of a relapse. The John Jay Report, published in February 2004, makes it clear that the majority of accused priests have only a single accusation against them. There is no reason to think that the protection of young people requires the removal from the ministry of elderly or mature priests who may have committed an offense in their youth but have performed many decades of exemplary service. Such action seems to reflect an attitude of vindictiveness to which the Church should not yield.

This argument is vulnerable to several criticisms. First, it assumes that the protection of young people is the *only* end that justifies permanently excluding clerics from ministry. I shall refute that assumption. Second, it rests on a confusion of sin and forgiveness on the one hand with abuse of a role and reinstatement in it on the other. Parents ought to forgive a repentant babysitter who takes their infant out to a party, but they need not employ her again. Third, the 2004 study of clerical sexual abuse by the John Jay College of Criminal Justice does not support an argument based on what is assumed to be true of clerics who “may have committed an offense,” i.e., a single act of abuse. For, although that study makes it clear that 55.7 percent of the accused priests and deacons had only a single allegation against them, it also makes it clear that 71 percent of the victims said they were abused more than once.

Fourth, some who demanded “zero tolerance” in 2002 probably were motivated by vindictiveness. But many who supported Article 5 plainly were motivated by their desire to end the disaster caused by the previous practice of reinstating offenders who had “repented” and seemed unlikely to “relapse.” Finally, Cardinal Dulles intends his argument to apply to future offenses. But it begins with some clerics who committed offenses in the past. In the years when bishops and religious superiors reinstated priests who subsequently behaved well, they also reinstated priests who “relapsed.” Most bishops and superiors probably tried to use criteria like those Cardinal Dulles proposes. Yet despite their best efforts, they failed to identify the many offenders who would, in fact, freely choose to sin again.

With respect to future acts of clerical sexual wrongdoing involving minors, I believe the policy adopted in Article 5 of the Dallas Charter ought to be maintained in its essentials, not only in the United States but in the universal Church. However, permanent exclusion from ministry can take different juridical forms. Therefore, I reformulate, within the framework provided by the 1983 Code of Canon Law, the

policy for which I shall argue, which consists of two provisions.

(1) In every case in which a cleric has committed a gravely imputable offense against the sixth commandment of the Decalogue with a minor, the penalty of dismissal from the clerical state is just, warranted, and ought to be imposed (see Canon 1395, § 2).

(2) In cases in which a cleric has engaged in similar behavior but it is apparent that his act was not gravely imputable, he is not liable to penal sanctions (see Canon 1321, §§ 1 & 3). However, such a cleric must be presumed to be permanently disabled. Therefore, his Ordinary should provide for his welfare and for the Church’s public good through appropriate means (see Canon 1348). If the cleric wishes to continue in ordained ministry, his Ordinary should assign him to some ministry, consistent with his disability, for which he already is, or can become, qualified. But he is unqualified for any ministry involving face-to-face contact with anyone other than fellow clerics, members of institutes of consecrated life, and adult employees of the Church. The Ordinary should treat him with the same respect and provide him with the same benefits (see Canon 281, § 2) as a cleric afflicted with some physical disability that gravely limits his capacity to serve. But if such a cleric prefers removal from the clerical state, that preference along with his permanent disability ought to be counted as one of the most grave causes that are required for the Apostolic See to grant a rescript of laicization (see Canon 290).

In his article, Cardinal Dulles specifically argued against laicizing offending clerics. Noting that involuntary loss of the clerical state can be imposed (see Canon 290), he went on: “But such removal from the clerical state should be exceedingly rare, since it obfuscates the very meaning of ordination, which confers an indelible consecration. It reinforces the false impression that priesthood is a job dependent on contract rather than a sacrament conferred by Christ.” This argument assumes that even if the penalty of dismissal from the clerical state were regularly imposed on clerics who engage in sexual wrongdoing with minors, that crime would not become rare. That assumption, I shall argue, is false. Still, by this argument, Cardinal Dulles rightly calls attention to a relevant and very important truth: ordination is an indelible consecration conferred by Christ.

For Christians, sexual immorality is evil not only in the ways it is for others but in a far graver way: “Do you not know that your body is a temple of the Holy Spirit within you, which you have from God, and that you are not your own? For you were bought with a price; therefore glorify God in your

body" (1 Corinthians 6:19–20). By violating their own bodies in committing sexual sins, Christians, paradoxically, violate what is not their own. By Jesus' redemptive act and their baptism into it, Christians are consecrated and incorporated into Christ. Forming one body in him, they are the temple of the Holy Spirit. Rather than profane that temple, Christians must glorify God in their bodies.

A Christian spouse glorifies God in his or her body not only by engaging in chaste marital intercourse but by using every bodily capacity in carrying out his or her unique, personal vocation. Those publicly committed to permanent celibate chastity are consecrated by their profession of the evangelical counsel or by the Church's rite of clerical ordination or the consecration of a virgin. They glorify God in their bodies in an especially perspicuous way by closely following Jesus and carrying out the services to his kingdom—to God and to neighbor—to which the Father calls each of them. Moreover, in being ordained, all clerics, whether married or committed to celibacy, are "consecrated and designated, each according to his grade, to nourish the people of God, fulfilling in the person of Christ the Head the functions of teaching, sanctifying, and governing" (see Canon 1008). Therefore, besides glorifying God in their bodies as other married or celibately chaste Christians do, clerics do so in a special and marvelous way when they cooperate with the Lord Jesus, the Church's head, in his use of their bodies as living instruments to carry out his own saving acts.

Some entities are especially sacred—places, persons, and things specifically dedicated to God and his worship. Such entities deserve special respect; one who fails to give it commits a sacrilege. That sin "consists in profaning or treating unworthily the sacraments and other liturgical actions, as well as persons, things, or places consecrated to God" (*Catechism* § 2120). Those who wish to dishonor God and, in order to do so, choose to violate the sacred are gravely irreverent. But even if a gravely sinful action that violates the sacred is chosen for another reason, and the irreverence is only a side effect, the sacrilege is grave matter. Thus, a Christian who severely assaulted a priest or a sister in a quarrel over a parking space, knowing the victim to be a man or a woman "of God," would be guilty not only of a grave sin of battery but of grave sacrilege.

All violations of the sixth commandment by or with anyone who has undertaken celibate chastity for the kingdom's sake are also sacrileges. Some classical moralists debated whether such sins involving a priest consecrated both by ordination and by a vow of chastity constituted one or two sacrileges. Be that as it

may, just as chaste clerics acting *in persona Christi* glorify God in their bodies in a special and marvelous way, clerics who violate the sixth commandment of the Decalogue profane their bodies in a special and awful way. For by ordination, their bodies have been consecrated permanently, so that at all times they are Jesus' living instruments. Therefore, clerics who violate the sixth commandment not only commit a sacrilege against the triune God but also precisely against the Word incarnate, who does his saving acts by using the bodies of ordained ministers, bodies he has appropriated as his own living instruments.

Although such sacrileges always are grave, as with other sins, circumstances can increase their gravity. Just as insulting one's mother in someone else's presence is worse, other things being equal, than insulting her in private, so the sacrilege involved in a cleric's sexual wrongdoing with another is worse, other things being equal, than that involved in solitary sins. Moreover, when the sexual wrongdoing not only is with another but is done with someone who might well make it public, the irreverence, and therefore the gravity of the sacrilege, is greater still.

The preceding considerations show why a cleric's sexual wrongdoing with a minor is graver than similar wrongdoing by a lay person. The following considerations show how other circumstances not only further increase the gravity of the cleric's sin but make it an offense against the Church, an offense that warrants the most severe available penalty.

Sometimes unchaste men who are not clerics pick up a girl or a boy to whom they are a stranger for casual sexual activity. Because minors are vulnerable and deserve special protection, doing that is not only gravely immoral but is—or surely ought to be—a crime in every nation's law code. If a school teacher behaves similarly with one of his own students, the seriousness of the crime is greater. The teacher betrays the trust not only of the child's parents, but of the youngster, of the school board and administrators who employ him, and of his fellow teachers, with whom he ought to cooperate in safeguarding the welfare of the students.

Although ordained men are assigned to minister in some particular community, Jesus may call on them to make his saving acts available to any human being, and they are always and everywhere deacons, presbyters, or bishops of the Catholic Church. Every person they meet—not least, every child—is entrusted to them by Jesus and the Church for whatever word of faith or other spiritual help they can reasonably provide. So, the cleric who offends against the

sixth commandment with a minor betrays the trust of Jesus, of the Catholic Church, of his bishop or religious superior and fellow clerics, of the minor's parents, and of the victim himself or herself. While that betrayal of trust is closely related to the wrong done to the minor, the two are distinct. The betrayal of trust is the basic thing that justifies canonically punishing the cleric's act.

Another element of the justification for canonical punishment is the damage to the Church and her mission that will result from the cleric's act if it becomes known. From now on, every cleric in the world should know that surrender to a temptation to sin sexually with a minor means accepting the risk that his sin and crime will be widely publicized. Even if the act does remain secret, taking that risk greatly wrongs Jesus, the Church, and her mission. For if it becomes known, the act will damage the Church and her mission in many ways. For example, awareness of a Catholic cleric's sexual wrongdoing with a child will make some people less open to hearing the gospel the Church teaches, less disposed to believe it, and less inclined to respond favorably to it. It will make approaching any Catholic cleric less appealing to some people. It will impede spiritually fruitful free association and relaxed familiarity between Catholic clerics and minors. It will make a vocation to the clergy harder to discern and less attractive to accept. Nobody doubts that the good work clerics do in carrying out the Church's mission provides people with salvific benefits they would not otherwise enjoy. A cleric choosing to sin sexually with a minor accepts the risk of lessening those benefits. In doing so, he also accepts an incalculable risk to innumerable souls. This sinner's betrayal of trust is like treason that might well lead to the loss of many lives. But what traitors to Jesus and his Church imperil is immeasurably more precious than mortal life.

The final element of the justification for canonical punishment is the injury done the victim. It sometimes includes physical and often includes psychological injury. But serious as those forms of injury can be, more serious is the spiritual injury that always is likely to result from—and very often is an essential part of—a cleric's violation of the sixth commandment with a minor. The victim will be less likely to trust and to relate appropriately to clerics in the future. Those who were sexually abused even when they were very young often later experience difficulties in dealing with sexual desires and integrating them with marital fidelity, celibate chastity, or some other upright commitment—something essential not only to psychic

health but to rectitude and holiness. Any minor who could resist the cleric's sexual advances or tell about his misbehavior must be led to allow what the cleric does and not reveal it. Thus, those having any sense of the wrongness of the activity must be seduced. Their being led into sin is scandal in the strict sense, that scandal of which Jesus, for good reason, speaks so harshly. God only knows the gravity of a minor's sexual sins with a cleric who seduces him or her, and of the many subsequent, and worse sins, to which the sexual sins of a small child or a young man or woman with his or her seducer are likely to lead.

Jesus firmly directed the apostles not to despise children but to welcome and serve them. He thus made it part of the clergy's pastoral responsibility to help minors recover from any spiritual injuries inflicted by adults' wrongdoing. When minors have been sexually seduced by anyone other than a cleric, good pastors can help them understand both that they have been wronged and how they ought to deal with what happened—not only with what was done to them but with what they themselves did. For example, talking with a twelve-year-old lad seduced by a homosexual, a wise pastor will share the boy's disgust with what the two did, gently help him understand how limited and yet real his own responsibility was, reassure him about his manhood, and use that reassurance to encourage and support his repentance and purpose of amendment. But if the seducer is a cleric, the boy and his parents are far less likely to be open to such pastoral help. To offer it will seem to blame the victim. Therefore, the spiritual damage done to minors by clerical sexual wrongdoing with them is not only very serious but difficult if not impossible to remedy even by the best pastoral effort. (According to the John Jay study, 40 percent of all victims were boys between eleven and fourteen. No doubt some good pastors tried to provide appropriate pastoral care to those boys. But the John Jay study reports that nearly twenty-five million dollars was paid for the "treatment" of alleged victims.)

In sum, any offense by a cleric against the sixth commandment with a minor is an extremely serious crime. It is a betrayal of trust comparable to treason against one's country. It always risks seriously injuring the spiritual goods for which the Church is responsible—goods immeasurably more precious than human life itself. The injury done to the victim's spiritual well-being is likely to be serious and might well be pastorally irremediable. In each and every case, so great a crime warrants a more severe penalty than any penalty a political society can impose on a criminal. So, every cleric who has committed a gravely imputable offense against the sixth commandment of the Decalogue with a minor can be justly dismissed

from the clerical state—a penalty lighter than some of the penalties political societies impose.

Some argue that to laicize clerics who have abused minors would be to deprive them of the oversight and support the Church should give them, to increase the likelihood that they will abuse again, and thus to increase risks to children. However, laicizing offenders may well reduce the likelihood that they will “abuse” again, for it will deprive them not only of their clerical status, which can be exploited to reassure potential victims and control actual ones, but also of the many opportunities to associate closely with minors that clerical ministry affords. Moreover, to dismiss such clerics is not necessarily to deprive them of the Church’s support. God calls every sinner not only to repent but also to live a holy life that will make the most of his or her gifts. In dealing with any cleric who is being dismissed, the Church should treat him as a beloved, prodigal son and make every reasonable effort to encourage him to repent, to discern the vocation to which God then calls him and to undertake it. Clerics being laicized who spurn such pastoral care probably also would evade the Church’s oversight, exploit her support, again betray Jesus and his Church, and in doing so inflict on them injuries that cannot be inflicted by a man without clerical status.

Since every cleric who has committed a gravely imputable offense against the sixth commandment with a minor can be justly dismissed from the clerical state, the deterrent value of imposing that penalty without exception can override any consideration that might otherwise argue for mercy in some instances. Still, some will maintain that there will remain many clerics so strongly motivated to commit such offenses that the prospect of dismissal from the clerical state, even if imposed in every instance, will not suffice to deter them, with the bad result that the penalty will become rather common. Various arguments can be made for that view, but none provides cogent support for it.

Some will argue that besides potential discipline by their bishops or religious superiors, clerics always faced the same penalties for sexual wrongdoing with minors that deter most other men; yet many were not deterred; so, there is little reason to expect any penalty to deter all or almost all those tempted to offend. This argument is unsound. In practice, most clerics did not face the same penalties for sexual wrongdoing with minors that deter other citizens. Victims, their parents, wrongdoers’ fellow clerics, and their bishops or religious superiors usually did not report the matter to public authorities. Of the 4,211 cases in which information about both clerical status and police contact were reported to those who compiled the John

Jay study, only 1,021 were reported to the police. In only 252 cases was a priest convicted of a crime, and only one hundred priests spent time in prison. In some cases, public authorities no doubt left the matter to ecclesiastical authorities. However, their disciplinary measures were not severe. Where those who compiled the John Jay study received allegations with the indication that they had been “substantiated,” the priest had been “removed from the clergy” in only 6.1 percent of the cases, while in 53.3 percent he was “sent for treatment.”

Others will raise a different objection: criminal law provides severe penalties for crimes such as murder and armed robbery; many people nonetheless commit such crimes; thus even severe penalties do not deter. This argument also is unsound. Even the penalties for crimes such as murder and armed robbery fail to deter certain people—some who are poor and live for the moment, some drug addicts, some psychologically troubled people, and so on. But most Catholic clerics, rather than having the characteristics that prevent such people from being deterred, are more similar to the very many people who are deterred by severe penalties from committing such crimes.

Another possible objection is that criminal law and various professional associations provide severe penalties for people who are socially and psychologically very similar to Catholic clerics; yet those severe penalties do not deter them from some very serious crimes. In response it is only necessary to note that those severe penalties, although available, are rarely imposed. White-collar criminals defraud people of millions of dollars but are forced to pay fines that are hardly more than a light tax on their ill-gotten gains. Physicians known to be guilty of gross negligence are allowed to continue to practice. Lawyers who obviously suborn perjury are not disbarred. In short, upper-middle-class people who bear the responsibility for penalizing serious wrongdoing by their peers or colleagues seldom impose the severe penalties that are available. There is no reason to think those penalties would fail to deter if they were regularly imposed. The same is true of available ecclesiastical penalties.

Still another objection is that even the prospect of dismissal from the clerical state is unlikely to deter the two groups who commit most sexual offenses—those overtaken in unusual situations by unexpected impulses on which they act without reflecting on wrongness or consequences, and those with deep-seated psychological problems. This objection fallaciously assumes that deterrence works only at the moment of temptation. Regularly dismissing offenders will prevent some of both groups from being ordained and some who are ordained from offending. Men without the charism for

celibate chastity, including some with profound psychological problems, will be less likely to imagine that clerical ministry and life will provide a safe haven and opportunities to satisfy their “needs.” Those admitted to seminaries more likely will be unmasked by fellow seminarians or identified by someone participating in their formation. Those ordained who become aware of temptations will be more likely to seek help *before* they commit any offense (and such help ought to be readily available without prejudice). Given all that is at stake, clerics will have a grave obligation to avoid occasions of sinning sexually with a minor, including those “unusual situations” in which unexpected impulses arise. And most will take care to avoid those occasions of sin. In particular, clerics will have a grave obligation to be vigilant to reject, gently but firmly, any improper advances by a minor. If a cleric’s failure to fulfill those grave obligations occasions his sexually misbehaving with a minor, his act will be imputable in cause, *and it will be gravely imputable*, even if, for example, he does it while intoxicated and the minor initiates the encounter.

Even many who agree that the penalty of dismissal from the clerical state is *justified* in every instance will make a final objection. Convinced that there will be compelling reasons not to impose that penalty in “a few, truly exceptional cases,” and that the Church’s law should allow bishops to exercise discretion in those cases, they will support their position with examples. For instance: toward the end of a New Year’s celebration, a sexually experienced seventeen-year-old initiates sexual contact with an off-guard priest, who pulls himself together and breaks away within two minutes—but not before another guest observes the couple’s unchaste behavior. Questioned about the incident a few days later by his bishop, the priest, who has an excellent record and great promise, admits that what he did was wrong and that he had not been careful enough. His repentance is heartfelt, and he agrees without hesitation that he deserves dismissal from the clerical state. Anyone who offers such an example thinks it obvious that the bishop should be free to exercise discretion.

However, although the example arouses one’s sympathy, it does not provide compelling reasons against imposing the admittedly justified penalty. Considering realistically how sympathy and friendship affect judgments, one can be sure that if bishops are free to exercise discretion, some will exercise it in many less exceptional cases. Discipline will become uneven as some make many exceptions, some few, and others none. The exceptions will lessen the penalty’s deterrent effect, an effect that benefits many. Thus, so-called mercy to a few will be bought at the cost of depriving others of a

support they badly need, a support that burdens no one who stands firm without it.

Of course, some clerics will still misbehave sexually with minors. However, their doing so despite the prospect of dismissal from the clerical state will itself demonstrate their unsuitability to continue in that state. In some cases, they will be morally inauthentic and unrepentant; in others, their acts will lack grave imputability. The latter group probably will include any true pedophile who, despite all precautions, only after ordination manifests his psychopathology—an affliction generally agreed not to be curable even by good psychological care and treatment.

Iposited above that a cleric whose sexual misbehavior with a minor is not a gravely imputable act must be presumed to be permanently disabled and unqualified for any ministry involving face-to-face contact with anyone other than fellow clerics, members of institutes of consecrated life, and adult employees of the Church. When every cleric knows well that gravely imputable sexual misbehavior with a minor regularly results in dismissal from the clerical state and that similar misbehavior that appears not to be gravely imputable regularly results in permanent and severe restriction of ministry, one can be morally certain that those who misbehave without grave imputability have flaws that disqualify them from any clerical ministry that might give them access to potential victims. Given that their wrongful act appeared not to be gravely imputable, one must presume that the flaws are psychological. In view of the potential injuries that will result from a mistaken judgment that treatment has made it safe to return the cleric to any ministry in which he would have access to potential victims, the psychological disability must be presumed to be permanent. Therefore, unless such men request laicization, they will need close supervision at all times. Such close, constant, and lifelong supervision cannot be provided for them if they freely travel about, but only if they reside in some strictly cloistered, ecclesiastical institution where they will never come into contact with minors and where the only people to whom or with whom they engage in clerical ministry are fellow clerics, members of institutes of consecrated life, and/or adult Church employees.

Still, such men could use their gifts in carrying on authentic and fruitful clerical ministries. Every one of them could support the pastoral service of his fellow clerics with his prayer and self-denial. A priest especially gifted for preaching could help other clerics improve their homilies. A priest gifted for catechetics and communication with children from eleven to fourteen could carry on that apostolate by correspondence. A

suitably gifted priest might learn how to build and maintain websites and use that skill to help many dioceses, religious institutes, and other ecclesial entities communicate more effectively. And so on.

Clerical sexual wrongdoing with minors is a very grave offense wherever it occurs. If in some nations it does not yet appear to be very injurious to the spiritual goods for which the Church is responsible, appearances can be deceiving. Good pastors who consider the matter in the light of faith will not tolerate even a lesser degree of such injuries. They will recognize that their first responsibility is to Jesus and to those he has entrusted to their care, and that failing to fulfill it will be cooperating, materially but unjustifiably, in the sacrileges and betrayals to which that failure will lead—and thus will be sharing in the offenders' guilt.

The policy for which I have argued could not be implemented fully and effectively without fair and uniform facilities in—or available to—every local church for receiving and considering allegations of clerical sexual wrongdoing with minors, identifying which ones must be investigated, and trying every cleric whose innocence is not morally certain and whose guilt is not admitted. Facilities also would be needed to help those who are found guilty and dismissed or assigned to very restricted ministries. Providing suitable facilities would require work and money. However, doing so would be a far more fruitful use of the Church's resources than using them to settle claims resulting from the failure of some to fulfill their duty to try to put an end to clerical sexual offenses against the sixth commandment with minors.

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Avery Cardinal Dulles

Germain Grisez and I have broad areas of agreement. Near the beginning of his article he notes four such areas. First of all, he affirms as I do that accused priests (and other clerics) who might well be innocent should be accorded their rights, but he does not specify what those rights might be. Like most others, I would assume that this means a right to their good name and a right to be presumed innocent until found guilty. If the bishop removes them from certain kinds of ministry while the investigation is pending, they should not be treated forthwith as though they were no longer priests. They should not at that point be prohibited from wearing clerical garb or forbidden to attend gath-

erings of priests, as sometimes happens. The bishop should remain in communication with them; he should grant them a decent salary on which to live, see to it that they obtain competent civil and canonical counsel, and assist with their legal expenses. Many priests have been convicted, it would seem, because they have had to rely on lawyers who volunteered their services but lacked the necessary competence.

Secondly, Dr. Grisez states, as do I, that accused priests should be accorded due process according to canon law. This, too, sometimes fails to happen. Priests are summarily removed on the basis of an accusation perhaps made only by telephone or an anonymous note, often in ways that give the impression that they must be guilty. Many accused priests complain that they are not even told the nature of the charges against them. The charges should be specific and should be in writing, made under oath, and signed by the accuser. The canonical norms for a preliminary investigation should be observed (Canons 1717-19).

The third area of agreement mentioned by Dr. Grisez is that if the preliminary investigation results in a finding that a trial is warranted, and if the priest denies his guilt, he should have access to a timely trial by competent judges, according to the norms of canon law. Many priests have to wait for years in a kind of limbo, unable to clear their names. In some cases the bishop puts pressure on them to apply for laicization, even though they protest their innocence and ardently desire to live out their vocation as priests.

When a trial results in a favorable sentence, the priest should in principle be restored to ministry. It is an abuse if a bishop keeps such a priest for a long or indefinite period from performing the ministries for which he has been ordained, such as saying Mass and hearing confessions. Some bishops, appealing to their discretionary power to apply nonpenal administrative measures for the sake of the common good (see Canon 223, § 2), keep priests indefinitely out of ministry, thereby rendering their vindication by the courts meaningless.

Fourth and last, Dr. Grisez and I agree that there should not be separate canonical legislation for the United States and other countries. At the present time, the policies promulgated by different bishops' conferences are so disparate that, as I remarked in my *America* article, they raise the issue of "geographical justice." Charges that in one country call for permanent exclusion from priestly ministry are treated far less drastically in neighboring countries. The Catholic Church, as a universal society, should have a legal code that holds all over the world. This would not exclude certain exceptions or dispensations in different countries to harmonize with the civil law.

Readers should also note that whereas in my article I

dealt principally with allegations about past misconduct, Grisez states that the recommendations he is making bear only on future offenses. I take this to mean that the penalties he proposes would not be applied retroactively. As he is surely aware, the Code of Canon Law discourages retroactive laws, especially when they impose burdens rather than grant favors (Canons 9 and 1313). The prohibition of *ex post facto* laws is widely recognized in jurisprudence, and is explicit in the United States Constitution (Article 1, sections 9 and 10). Normally cases should be tried according to the law as it existed at the time of the alleged crime.

Dr. Grisez, therefore, says nothing in this article about penalties for sexual abuse of minors committed long ago. A particularly sensitive point, raised in my article and elsewhere, is the effort by some states to remove the statute of limitations in such cases and the effort by some bishops to obtain dispensations from the canonical period of prescription, which establishes an acquired right not to be charged with crimes alleged to have happened many years in the past. It is very hard for a priest to defend himself against accusations from the remote past, since memories fade, witnesses die or leave the area, and physical evidence is difficult to obtain. The "recovered memories" stimulated by psychotherapy are notoriously unreliable.

I believe that I have already shown a very large area in which Dr. Grisez either explicitly agrees with me or does not contest my positions. He specifies only two issues on which he thinks we disagree: the definition of sexual abuse and the principle of "zero tolerance." The two issues are not entirely separable, since zero tolerance is most questionable if the definition of sexual abuse is broad or ambiguous.

The Dallas Charter and the accompanying Norms define sexual abuse rather broadly, as including the use by an adult of a minor "as an object of sexual gratification." They state that the transgression must be external and objectively grave, but add that the act need not "involve force, physical contact, or a discernible harmful outcome." They presume that the external act is imputable "unless it is otherwise apparent."

Following other commentators, I have maintained that the definition leaves too much room for ambiguities, especially because some moral theologians maintain that every violation of the sixth commandment is objectively grave. Heribert Jone, in his nearly classic manual *Moral Theology* (1956), lays down the principle that "all directly voluntary sexual pleasure is morally sinful outside of matrimony. This is true even if the pleasure is ever so brief and insignificant. Here there is no lightness of matter." Similarly, Henry Davis in his *Moral and Pastoral Theology* (1936) declares

that "it is grievously sinful in the unmarried deliberately to procure or accept even the smallest degree of true venereal pleasure; secondly, it is equally sinful to think, say, or do anything with the intention of arousing even the smallest degree of this pleasure." Dr. Grisez himself in his *The Way of the Lord Jesus* (1983) holds that "all intentional sexual acts violating the marital good are grave matter." Whether or not this position is morally sound, it does not suffice in the realm of canonical criminal law.

The Code of Canon law states that "just penalties, not excluding dismissal from the clerical state" may be imposed "if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years . . . if the case so warrants" (Canon 1395, § 2). This canon imposes no mandatory penalty for all cases of sexual abuse of a minor but allows for various penalties, depending on the nature of the act and the circumstances. It does not recommend dismissal except in the most serious cases.

At the request of the U.S. Bishops, the Pope in 1994 issued a special derogation from the universal law, so that the special penalties of Canon 1395, § 2 could be applied to misconduct with minors below the age of eighteen rather than sixteen. But it was understood that the diocesan bishop or tribunal judge would take into account the nature of the act and the circumstances of each case in determining the appropriate penalty. In general it may be said that the closer a young person comes to the age of marital consent, the greater his or her responsibility in sexual matters. Exchanging a passionate kiss in an embrace initiated by a sexually experienced girl of seventeen is not equivalent to the molestation of an innocent ten-year-old.

There ought to be something in the Dallas Charter and the Norms corresponding to the distinction made in civil courts between a misdemeanor and a felony. Secular criminal codes generally set forth distinctions among a whole range of offenses, such as indecent solicitation of a child, public indecency, sexual exploitation of a child, obscenity, child pornography, criminal sexual assault, aggravated assault, and predatory assault. Some of these crimes are misdemeanors; others are felonies of various degrees. So, too, in the Church's criminal law, conduct that is crude, offensive, indecent, or inappropriate should be punished, but not necessarily by permanent removal from the ministry. Casual words or touches, even if seriously sinful, should not be treated in the same way as genital penetration, still less as child rape or serial rape.

Proposing to amend the Dallas Charter and accompanying Norms, Dr. Grisez makes a distinction based on the 1983 Code of Canon Law between acts that are and are not "gravely imputable." This is surely an

improvement on the present texts, but it does not meet the difficulties I have just mentioned. Distinctions ought to be made between different kinds of acts as well as between different degrees of imputability.

This brings me to the second disagreement mentioned by Dr. Grisez: the principle of “zero tolerance.” The term itself is misleading, since the question at issue is not whether abuse should be tolerated but whether all abuse should be punished in the same way. Grisez defends severe and permanent penalties for every case, but does so more flexibly than the Charter. Unless the sins are “gravely imputable,” he contends, dismissal from the clerical state is not in order. But even for these lesser offenses he at one point calls for permanent exclusion from ministry.

I agree that there are acts of sexual abuse of minors for which permanent exclusion from ministry or dismissal from the clerical state is the appropriate penalty. But I find the category of grave external sin against the sixth commandment too broad for the reasons I have stated. Footnote 2 of the Essential Norms recommends that in cases of doubt about the gravity of the offense, the writings of recognized moral theologians should be consulted, but their opinions are various and inconsistent and fail to address the canonical questions.

Another departure of Grisez from the Dallas Norms is that, in the later sections of his article, he modifies his position on removing the offending priest from all ministry. If the offense was not gravely imputable, he holds, “permanent and severe restriction of ministry” might be appropriate. Living in institutions in which they would never come into unsupervised contact with minors, convicted priests could, Grisez maintains, carry on “authentic and fruitful clerical ministries.” He suggests, for example, helping other clerics to improve their homilies, conducting catechetics by correspondence, and maintaining websites for better communication of religious materials. These examples could be multiplied almost without number.

Although I am not fully satisfied with this proposal, I regard it as a vast improvement over the undifferentiated approach of the Dallas Charter. There are some offenses for which the kind of permanent institutionalization Grisez suggests would be appropriate. But I deny that such virtual imprisonment is a necessary and fitting penalty for all gravely imputable acts of sexual misconduct with minors. In some cases return to a normal life with restricted or supervised ministry may be recommended.

I therefore continue to urge the principle of proportionality. In its favor I cite the critique of the United States criminal justice system issued by the United States bishops in November 2000. The bishops

declared: “One-size-fits-all solutions are often inadequate. . . . We must renew our efforts to ensure that the punishment fits the crime. Therefore, we do not support mandatory sentencing that replaces judges’ assessments with rigid formulations.” Pope John Paul II clearly supports the principle of proportionality. In an address to a Plenary Assembly of the Congregation of the Doctrine of the Faith on February 6, 2004, he stated: “Once a delict is proven, in each case you need to discern well both the just principle of proportionality between the offense and the penalty and the predominant need to safeguard the people of God.”

Dr. Grisez allows for some proportionality since he proposes different penalties for different degrees of imputability. But he contends that even for an offense that might correspond to a misdemeanor in civil law, the priest should be removed from ministry without possibility of restoration. This penalty seems to me to be unjust and contrary to the gospel. It runs against the apparent meaning of the Pope, who declared, in a meeting with American cardinals on the sexual abuse crisis on April 23, 2002: “We cannot forget the power of Christian conversion, that radical decision to turn away from sin and back to God, which reaches to the depths of a person’s soul and can work extraordinary change.”

Dr. Grisez objects that in taking a position like that of the Pope, I am failing to recognize the distinction between forgiveness of a sin and reinstatement in ministry. But I am only insisting that there are cases in which offending priests can be not only forgiven but also rehabilitated. Prudence must of course be used. I grant that in some cases it may be difficult to predict the probability of a relapse, even though much has been learned in recent decades about the prognosis in different types of cases. Where there is only a single offense, committed early in life, and a record of decades of unexceptionable service, it may be possible to reach moral certainty that the offense will not be repeated. Recidivism is particularly improbable if, in addition, the priest is aged and infirm.

The trump card in Dr. Grisez’s case for severity is the appeal to deterrence. Deterrence is, in my judgment, a legitimate goal of punishment, but this principle must be applied within the framework of justice. Deterrence can sometimes be applied at the expense of justice, as in medieval England, where sheep-stealing was punished by the death penalty. In my view, permanent exclusion from priestly ministry is the spiritual equivalent of the death penalty. For many priests their ministry is the very *raison d’être* of their lives. They have been ordained priests forever “according to the order of Melchizedek.” To be forced to present themselves as if they were lay persons is for them a very painful deception; they feel that they are living a lie.

In an age when priesthood is easily regarded as just another profession, the Church should make every effort to treat her priests with the reverence their indelible consecration deserves. If they have sinned and gone astray, the bishop should still be their father in Christ; he should not deal with them at arm's length, as if he were their prosecutor. And, especially if there is doubt about their guilt, priests should not be cast out of the priestly fraternity to meet the unreasonable demands of hostile groups. In yielding to such pressures, the Church sacrifices the credibility she needs. Whatever the pressures may be, the Church should remain, as Pope John Paul II has said, the mirror of justice.

I have not dealt with every point in Dr. Grisez's vigorously written article. He has some excellent things to say about the importance of chastity, especially among persons consecrated to God by sacred ordination or by vows. I heartily recommend these passages for study and reflection.

At one point, Dr. Grisez seems to refer to the saying of Jesus that it would be better to be thrown into the sea with a millstone about one's neck than to give scandal to the young and innocent (Mark 2:42). This saying can be applied to sexual seduction, but the commentators I have read interpret it as referring directly to those who would induce young or uneducated disciples to fall into apostasy. Sexual sins are one way in which priests can betray the grace of their ordination. But our preoccupation with unchastity should not blind us to the many other ways in which priests can cause the faithful to waver or fall. To judge from the Gospels, it would seem that sins of pride probably cause more spiritual damage than sins of weakness. Repentant sinners may do more for God's glory than some of those who judge them harshly.

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