

Guilty until proved innocent

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The Cumberlege Commission's review of the Church's child-protection policy is about to be published. While treatment of the abused has improved, disturbing evidence has emerged that priests who have been accused and not charged are left in limbo, suspicion still hanging over them

Ever since Caiaphas observed that the destruction of an innocent man was justified to save a nation, the law of Christian countries has upheld the presumption of innocence and the need for hard evidence to convict. In the Church's legal tradition, this is known as favor rei: the accused enjoys the benefit of the law. Due process and individual rights, Pope John Paul II said in 1979, should never be sacrificed for the sake of the social order.

Yet this is precisely what has happened through the implementation of the UK Catholic Church's child-protection regime, according to canon lawyers giving evidence to a commission set up to review it.

Unlike the 2002 US norms which, after revisions, received the recognitio from Rome, the UK's child-protection policy has never been Vatican-stamped. A 2004 report by British canonists spelt out the need for restoration of due process and the rights of the accused in order to bring the policies in line with canon law, but that report was ignored.

There is a pattern here. It was the bishops' failure to follow canon law in the 1970s and 1980s which in many ways lay behind the clerical sex-abuse crisis. Sexual abuse of minors is one of the most serious offences in the 1983 Code (as it was in the earlier 1917 Code), one of the gravora delicta for which penal sanctions, up to and including dismissal from the clerical state, are demanded. The purpose of those sanctions, as the Code puts it, is "the reform of the offender, the reparation of scandal, and the restoration of justice". In the 1970s and 1980s the failure to repair scandal and restore justice through penal sanctions left the victims, and the wider Church, indignant and angry. When the media storm broke, the bishops, under pressure to restore confidence, opted for policies that effectively renounced their responsibilities under canon law, to be implemented by quasi-judicial bodies such as Copca (the Catholic Office for the Protection of Children and Vulnerable Adults), the child-protection agency of the Catholic Bishops' Conference of England and Wales, set up after Lord Nolan's report on abuse in 2001.

Nolan was alive to the possibility of false or malicious allegations, and the danger of reputations being destroyed, and canonists are agreed that it is the implementation of Nolan, rather than the report itself, which is at fault. Yet Copca's policies have ridden roughshod over these qualms. "Nolan would be turning in his grave," more than one canonist has told me.

The problem is what happens to priests who are accused and deny the accusation, and there is no evidence to judge them guilty. They should, of course, be regarded as innocent.

At the heart of Copca's policy is the "paramountcy principle", according to which the safety of children must override all other considerations. This means that any accusation, however vague, spurious or old,

results in the priest's instant dismissal from his parish - in most cases, indefinitely. If the police do not consider it worth investigating, if the evidence is inconclusive, and even if the charges are thrown out in court, the priest does not return to his parish but must undergo "risk assessment" by a psychological expert whose best verdict can only be that a priest is "low risk". This small window of uncertainty can be used by bishops to keep a priest on administrative leave for years, for fear that a reinstated priest might later abuse and the bishop face legal claims and calls for his resignation.

Archbishop Vincent Nichols of Birmingham, the bishop in charge of Copca, acknowledged last year that an accused priest is unlikely ever to be reinstated: of the 40 clergy in England and Wales who had been accused by 2005, only two had been restored to ministry (four were dismissed). Of 41 reports in 2006, 24 resulted in no further action by the police, while 14 are still being investigated. And the fate of those whose cases have been dropped by police? Many of them live in limbo, their reputations and vocations cast to the wolves. All too often, they leave the priesthood.

Archbishop Nichols sat thunder-faced at the National Conference of Priests (NCP) meeting in Leeds last year as Fr Paul Bruxby, the Brentwood canonist who defends accused priests, spelt out the consequences of the policy. "In the Church in England and Wales, which preaches justice in and out of season," he told the NCP, "a man is no longer innocent until proven guilty but guilty until proven innocent."

Most of the 20 priests Fr Bruxby is defending have been cleared by the courts and have been assessed as "low risk"; yet still, five or six years on, they are unable to return to their parishes. "They feel shunned by their bishops, and describe themselves as lepers," he says. "They feel hopeless, and sometimes imagine committing suicide."

Fr Bruxby believes, in line with canon law, that there must be moral certainty about an accusation - not least because some accusers are mentally disturbed. It is abhorrent, he says, to argue that priests' rights should be cast aside for the sake of the safety of children. Both are "paramount".

Bishops are obliged, in civil law, to notify police and social services when an accusation is made. And they do. But they are also obliged, in canon law, to investigate the truth of a claim before removing a priest from active ministry - a process the Code describes as a "preliminary investigation". Yet this is not taking place, suggests Fr Brendan Killeen, a Northampton canonist who lectures at Heythrop College. "Priests are removed, irrespective of the strength of the allegation."

Fr Dominic McKenna, the popular 56-year-old parish priest of Our Lady of Hal in Camden Town, London, knows this all too well. In January 2005 he learned, to his bewilderment, that a man in Ireland believed he had been abused by him 30 years earlier. Copca considers that such allegations should be taken as seriously as if they had been made last week, even when a priest has never had another accusation made against him.

Fr McKenna was banished to a Hertfordshire safe house for two years. Westminster's bishops were supportive and his fellow clergy kept him going with regular phone calls, but the months dragged: his identity as a priest was shattered, and he felt utterly disheartened. The Crown Prosecution Service eventually dropped the charge, and the judge directed a "not guilty" verdict. Then Copca kicked in. The Commission insisted he be risk-assessed. A canonist advised that if he took his objection to Rome (which disapproves of risk assessments as self-incriminating and injurious to a priest's reputation) he would almost certainly win. But that would take three to four years. Instead, in the weeks that followed, he underwent a series of four-hour assessment interviews at Birmingham Cathedral, and was made to fill in questionnaires asking explicit questions about his fantasies. He still shudders to recall it.

Back in Westminster, mounting indignation on his behalf was indicative, in many ways, that six years on from the British clerical sex-abuse crisis, public opinion was changing. Protests meant that once the

assessment was over he was allowed to return last Christmas to his overjoyed parish. He has told his story to the Cumberlege Commission, set up to review the way the Church responded to the Nolan Report, and he outlined the concerns he shares with canonists. A priest, he believes, should not be asked to leave his parish until charges are brought; and he should only be risk-assessed if there is reasonable certainty that he poses a risk, or a guilty verdict has been served.

The assessments are not independent, says Fr Bruxby: they are ordered by the bishops and, because they almost never clear a priest, are self-incriminating. Nor do they necessarily spot abusers - as the case of William Hofton, a Westminster priest who was declared low risk but who in 2004 was subsequently convicted for serious abuse, painfully illustrated. "What are they assessing?" Fr McKenna wants to know. "Are you assessing me on something I've never done? Or assessing me on whether I might repeat in the future what I've never done in the past?"

Priests are angry to find that they have been wrong to expect their bishops to protect their good name (as canon law obliges them to) unless the law takes away that right. The implementation of child-protection norms, says Fr Ladislav Orsy SJ, an American canonist, has caused "a very deep resentment within the clergy - an emotional break between the bishops and their priests".

It is now time, canonists agree, to send Caiaphas packing. Creating a safe environment for minors and defending the basic rights of priests to innocence until proven guilty, and the need for due process, should not be incompatible. Child-protection policies can be brought into line with canon law.