

# Enforcing the Canon Law: Normative Pluralism and Clerical Abuse in the Catholic Church

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## abstract

This article investigates why clerical abuse of Catholic priests persists in the Church using the sociological and normative pluralist perspectives. It analyzes how the various informal normative standards of the Church—doctrinal, ethical, or biblical—affect the enforcement of Canon Law on clerical abuse by bishops, particularly on how they decide on specific cases on the diocesan level. It also investigates how the cultural values and norms influence the bishop’s decision whether to sanction erring priests or not or to prosecute abuse cases in civil courts. Unlike the state, the Church has no professional judicial system with a set of legal codes, a hierarchy of ecclesial judges and prosecutors, as well as a comprehensive penal law to assess cases of clerical abuse objectively following the principle of “rule of law.” Thus, the informal norms of mercy and compassion, eternal character of the priesthood, camaraderie in the ministry among priests, and other cultural values and norms in the local culture, tend to dominate over the strict penal provisions of the Canon Law against clerical abuse in the bishops’ investigation and decision. Faced with multiple normative criteria in judging abuse cases and given the wide ecclesial powers given to them by the Church, local bishops then acquire more discretionary powers to keep investigations of clerical abuse internally in the spirit of evangelical mercy and compassion in order to preserve Church’s unity and fellowship of the clergy. This strategy, however, slows down the filing of clerical abuses cases in civil courts and faces the risk of being seen by victims and Church members as a cover-up and grave injustice.



**keywords:**

Canon Law, Clerical Abuse, Normative Pluralism,  
Catholic Church, Law Enforcement

**Introduction**

Structural analysis, rather a mere investigation on the moral and psychological defects of people, to understand the major causes of a persistent deviant behavior is important for sociologists. In a sociological analysis of deviance, investigating how different formal and informal normative orders within a social order interact and are implemented by enforcement agents is often necessary if one wants a holistic view of the rule-breaking pattern in group, institution, or society. A structural analysis provides a comprehensive assessment in understanding the effectiveness of a law enforcement system, on why a deviant behavior is tolerated rather than sanctioned strictly and how judges view and apply the official law in relation to other informal normative standards in a particular institution. Despite these benefits, the sociological structural analysis continues to be often overlooked in ecclesial investigation and literature concerning the persistence of clerical abuse in the Catholic Church.

Clerical abuse in the Catholic Church is often attributed to the conspiracy of bishops, supervisory clerics, state functionaries, and erring priests by some investigators. Because of this, the investigation and resolution of cases are said to be surrounded by an aura of secrecy. Cover-ups as well as mere transferring of assignments, instead of bringing the accused to justice, seem to be the typical response of bishops in dealing with criminal acts of secular priests such as sexual abuse. Cardinal Law who resigned as Archbishop of Boston on 11 April 2002, for instance, admitted that he just transferred pedophile priests to new parishes despite knowing that they were guilty.<sup>1</sup> Clerical abuse has caused scandals and severe damage to the Church not only spiritually but financially. Dioceses in the United States, for example, have paid out more than US\$2 billion in compensation claims. In July 2007 alone, the Los Angeles diocese

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<sup>1</sup> The Guardian, "How the Boston Globe exposed the abuse scandal that rocked the Catholic Church", (21 April 2010). Retrieved 3 May 2017, <https://www.theguardian.com/world/2010/apr/21/boston-globe-abuse-scandal-catholic>.

paid out US\$660 million to 500 victims. In Canada, 81 victims at the Mount Cashel Orphanage were paid US\$16 million in 2003.<sup>2</sup> Thus, one may ask: Why do clerical abuses persist in the Church?

Research and literature in the Catholic Church that analyzes clerical abuse, such as sexual abuse of minors in the Catholic Church often point to developmental and psychological factors as important causes of this problem. Although it considers some organizational causes of clerical abuse, the 2011 report on sexual abuse of priests by the United States Conference of Catholic Bishops (USCCB), for instance, focused only on the pathological and psychological causes rather than on the structural, particularly on law enforcement aspect of the problem<sup>3</sup> This approach seemed to be consistent with the dominant literature on clerical abuse that primarily applies the psychological<sup>4</sup> rather than the sociological perspective in understanding the perpetration of clerical abuse in the Catholic Church. One dominant explanation that carries psychological undertones on the persistence of clerical abuse is clericalism.<sup>5</sup> Clericalism mainly refers to the general belief that clerics constitute an elite group and, because of their powers as sacramental ministers,

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<sup>2</sup> Brendan Daly, "Sexual Abuse and Canon Law", *Compass Review* 23, (4) (2009), 33. Retrieved 3 May 2017, [http://compassreview.org/summer 09/5.pdf](http://compassreview.org/summer%2009/5.pdf).

<sup>3</sup> John Jay College Research Team, "The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010: A report presented to the United States Conference of Catholic Bishops". (2011), 3-5. Retrieved 1 May 2017, [http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/ The-Causes-and-Context-of -Sexual-Abuse-of-Minors-by-Catholic-Priests-in-the-United-States-1950-2010.pdf](http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Causes-and-Context-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-in-the-United-States-1950-2010.pdf).

<sup>4</sup> See for instance the prevalence of psychological theories in the literature review of child sexual abuse by priests: John Jay Research Team, "Child Sexual Abuse: A Review of the Literature," (2004). Retrieved 5 May 2017, <http://www.usccb.org/issues-and-action/child-and-youth-protect/ upload/child-sexual-abuse-literature-review-john-jay-college-2004.pdf>. For some samples of studies using psychological theories, see Thomas G. Plante, "Catholic priests who sexually abuse minors: Why do we hear so much yet know so little?", *Pastoral Psychology*. 44 (1996), 305-10; M. F. Ruzicka, "Predictor Variables on Clergy Pedophiles," *Psychological Reports*.81 (1997), 589-90; P.J. Isley, "Child sexual abuse and the Catholic Church: A historical and contemporary view," *Pastoral Psychology*.45, (1997), 277-99.

<sup>5</sup> See for e.g. Michael L. Papesh, "*Clerical Culture: Contradiction and Transformation: The Culture of the Diocesan priests in the United States Catholic Church*". (Collegeville, Minnesota: Liturgical Press, 2004); George B. Wilson. *Clericalism: The Death of Priesthood*. (Collegeville, Minnesota: Liturgical Press, 2008); Thomas Doyle. Clericalism: Enabler of Clergy Sex Abuse. *Pastoral Psychol*. 54: 189. (2006), 189–213, doi:10.1007/s11089-006-6323-x

they are superior to the laity.<sup>6</sup> It sees the clergy as a privileged class in the Church. It gives an impression to the laity that bishops and priests knew best, resulting in the reluctance to acknowledge or report the misconduct of priest.<sup>7</sup> Clericalism is said to produce a profound emotional and psychological influence on victims of clerical abuse, church leadership, and secular society and explains why many victims remained silent for years.<sup>8</sup>

But abuses of Catholic priests seem to point to a profound structural flaw in the Church's accountability system. Clericalism alone may not be sufficient to account for the persistence of clerical abuse. Abuses of priests did not only start in the contemporary era after the topic of Roman Catholic priests sexually abusing children emerged as an international crisis since the mid-1980s.<sup>9</sup> Church's legal documentation revealed a steady stream of disciplinary pronouncements from the papacy and the bishops beginning in the fourth century and extending through to the present day. Clerical abuse then is embedded in the Church's 2,000-year history.<sup>10</sup> This perseverance suggests a deeper problem in the Catholic's Church's law enforcement system that tolerates clerical abuse rather than just clericalism or weak moral and psychological formation of priests. The legal and canonical standards of the Church under the new Code of Canon Law (CCL), especially Canon 1395 (§1 & §2.), explicitly condemns clerical abuse such as sexual abuse and punish them penal sanctions, including suspension and dismissal from the priesthood:

Can. 1395 §1. A cleric who lives in concubinage, other than the case mentioned in can. 1394, and a cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue is to be punished by a suspension. If he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state.

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<sup>6</sup> Thomas P. Doyle. Clericalism: Enabler of Clergy Sex Abuse. *Pastoral Psychol* 54: 189, (2006), 189–213, doi:10.1007/s11089-006-6323-x.

<sup>7</sup> Andrew Hamilton. "Cultures of Accountability for Priests and Celebrities". *Eureka.com.au*, (9 March 2016). Retrieved 20 April 2016, <https://www.eurekastreet.com.au/article.aspx?aeid=46061#.WQmrWYiGPIU>.

<sup>8</sup> *supra*, note 5.

<sup>9</sup> P.J. Isley & P. Isley, "Sexual abuse of male children by church personnel: Intervention and prevention" *Pastoral Psychology*. 39. (1990),85-98.

<sup>10</sup> *Supra*, note 6.

§2. A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.<sup>11</sup>

Despite the CCL's strict penalties against abuses involving priests, the clerical abuse continues. Ecclesial investigations of clerical abuses by local bishops and their prosecution in civil courts are scarce. And those cases that prospered in courts often happened after intense media scrutiny. Thus, one may ask: What's wrong with the Church's law enforcement system? Why is it difficult to prosecute erring priests despite the CCL's explicit provisions against clerical abuse?

This paper which applies the sociological perspective aims to explain how the plurality normative system, both informal and canonical, affect the law enforcement system in the Catholic Church, particularly on the bishops' judgment in applying the Church's statutory provisions against clerical abuse. It examines how some biblical and doctrinal teachings and normative standards which might compete with the canonical statutes and blur the bishops' penal judgment on the criminal offense of their priests. This paper has three parts. The first part provides the overall theoretical framework of the article and expounds the effects of normative pluralism on law enforcement. The second part investigates the various informal normative standards in the Catholic Church and how they compete with the legal provisions of the Canon Law and complicate the normative criteria of bishops or supervisory priests handling cases of clerical abuse.

## **Normative Pluralism and the "Rule of Law"**

What constitutes law remains a continuing debate among sociologists. But one thing is sure for socio-legal scholars: If there is no law enforcement, there is no legal order. The German sociologist Max Weber was the first to point out the necessity of a "gapless" law

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<sup>11</sup> "Code of Canon Law", Retrieved 4 May 2017, [http://www.vatican.va/archive/eng1104/\\_index.htm](http://www.vatican.va/archive/eng1104/_index.htm).

where the law is enforced in all its aspects by a specialized staff to ensure coercion, sanction, and deterrence against persons who intend to violate the law.<sup>12</sup> Having clear and “gapless” laws constitute an essential requirement in the three- stage process of an effective law enforcement.<sup>13</sup> Both the state and the Catholic Church uphold the “rule of law” in society. But this principle requires, above all, clarity and coherence of standards to attain its criteria of impartiality, neutrality, objectivity, and universality in judging cases.<sup>14</sup> The “rule of law” cannot exist without a transparent legal system, the main component of which a clear set of legislation that is freely and readily available to all.<sup>15</sup> To achieve moral certainty and the guilt or innocence of the accused, lawyers and judges are expected to follow objective and stable criminal standards to attain justice in penal proceedings following “due process” of law.<sup>16</sup>

But the Catholic Church has no professional judicial system to achieve clarity of rules and to pursue a more objective criminal investigation and prosecution in accordance with this principle of the “rule of law.” Under this situation bishops who already possess broad ecclesial authority would then acquire more discretionary powers on how to appreciate, judge, and prosecute cases of clerical abuse within their jurisdictions. In the absence of a formal penal code and lack of review courts in the diocesan level, the bishops’ handling of abuse cases can be prone to subjectivism owing to the pluralist normative standards of the Church.

### ***Legal Centralism and Normative Pluralism***

The awareness that a plurality and intertwining of formal and informal normative standards that govern society and institutions started gaining ground in the social sciences and sociology in the early 1970s. “The idea of “legal pluralism” emerged as a counterbalance to the then dominant notion of “legal centralism,” according to which

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<sup>12</sup> Vivencio O. Ballano, *Sociological Perspectives on Media Piracy in the Philippines and Vietnam*, (Singapore: Springer Nature, 2016), 191.

<sup>13</sup> The second stage is implementation, and the third is monitoring and, where necessary, enforcement of implementation. See C. Stewart, “Enabling Environments: The Role of the Law”, in V. Luker & S. Dinnen (eds.), *Civic Insecurity: Law, Order, and HIV in Papua New Guinea*, (ANU Press, 2010), 277.

<sup>14</sup> A. Sarat and T.R. Kearns, *The Fate of Law*, (Ann Arbor: University of Michigan Press, 1993), 36-37.

<sup>15</sup> See <http://www.lexisnexis.com.ph/en-ph/about-us/rule-of-law>. page.

<sup>16</sup> *supra*, note 13.

“law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions.” The advocates of legal pluralism rejected the monolithic view of legal centralism that supports the “rule of law” and claimed that law is not a single system necessarily linked to the state as a unified entity, but rather a complex of overlapping systems or normative orders.”<sup>17</sup>

The difficulty of defining what delineates the legal from the non-legal normative orders has led some scholars to adopt instead the concept of normative pluralism which sees the legal or judicial order as only one of the many normative systems in society. In this sense, legal pluralism, particularly juristic pluralism, is one of the species of the larger normative pluralism in society. The policy system relationships between the official legal system and the social normative system are “various and complex, sometimes conflicting, sometimes complementary, sometimes benign and sometimes cautious engagement. Thus, people can invoke these coexisting systems in various ways for various instrumental and normative reasons. The official legal realm affects and is affected by the multiple regulatory orders in the social realm; the regulatory orders in the social realm affect and are affected by the official legal realm”<sup>18</sup> Normative pluralists argue that legal norms can only become laws if actors in a particular social organization and setting perceive them as such. Under an environment of normative pluralism, judges can invoke coexisting normative systems in various ways for different instrumental and normative reasons.

### ***Judging Clerical Abuse in the Church***

The Catholic Church as a complex religious institution in society does not only have a legal code but also a myriad of intertwining doctrinal, ethical, sacramental, and moral normative standards that affect decision-making and behavior. Thus, local ordinaries or bishops face a variety of normative considerations in judging clerical abuse aside from the Canon Law. Without a clear

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<sup>17</sup> P. Sartori, & I. Shahar, “Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain”, *Journal of The Economic & Social History of The Orient*, 55(4/5), (2012), 638. doi:10.1163/15685209-12341274.

<sup>18</sup> Brian Z. Tamanaha, “A Holistic Vision of the Socio-Legal Terrain”, *Law and Contemporary Problems*, 71 (2), (2008), 90. Retrieved 10 March 2017, <http://www.jstor.org/stable/27592239>.

hierarchy of judicial authority, the inconsistent and conflicting applications of the Church's normative standards to specific cases are not automatically subject to judicial review.<sup>19</sup> The Church has given the bishops more ecclesial powers to settle local cases. The Vatican seldom interferes with bishops' discretion in deciding cases of clerical abuse of their priests unless these cases erupted into public scandals such as the sexual abuses of priests in the United States that attracted the attention of the Roman Curia and the Pope. With many norms and religious teachings to apply to individual cases, the bishops' decisions may not always follow the Church's canonical provisions and people's judicial expectations strictly.<sup>20</sup> To local ordinaries, legality is not the only criteria for the Church hierarchy in deciding cases, but also morality and, ultimately, the unity of the Church as one Body of Christ. The Church's common response to clerical abuses supports the belief that criminal abuse by clergy should be sanctioned by the Church internally—if at all—under canonical commands of contrition and forgiveness, and not by civil authorities.<sup>21</sup> Thus, the state's version of legality based on a professional judicial system is not the absolute standard for the Church to judge clerical abuse—to the dismay of the victims and the general public.

## The Church's Normative System

Unlike the state that adheres exclusively to the legal provisions in judging cases, the Catholic Church has overlapping doctrinal, scriptural, ethical and canonical standards to address clerical abuse. A religious or moral norm, for instance, can also be a canonical standard or vice versa. The canon law condemns and punishes sexual abuse of priests as grave sins (canon 1395), but it also highlights the

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<sup>19</sup> The lack of a professional judicial system in the Catholic Church is a major cause of delay in the investigation and prosecution of abuses committed by priests. See Nicolas N. Cafardi, *“Before Dallas: The U.S. Bishops' Response to Clergy Sexual Abuse of Children”*. (New York: Paulist Press, 2008).

<sup>20</sup> Canon law is the of the Catholic Church. It includes the Code of Canon Law and many other canonical documents issued by Popes, Roman Congregations, Bishops' Conferences and Bishops. The current ecclesiastical code in the Catholic Church is the Code of Canon Law for the Latin Church was promulgated on January 25, 1983, and went into effect on the First Sunday of Advent that same year (Daly, 2009, p.33).

<sup>21</sup> Wayne A. Logan, “Criminal Law Sanctuaries”, *Harvard Civil Rights-Civil Liberties Law Review*, Vol 38, (2003), 321.



importance of following the biblical teaching of mercy and compassion to sinners (canon 960). The universal Catechism of the Catholic Church (CCC) likewise recommends the norm of forgiveness and the reception of the sacrament of penance to deal with serious offenses. Canon 1446 of the CCL states:

Christ instituted the sacrament of Penance for all sinful members of his Church: above all for those who, since Baptism, have fallen into grave sin, and have thus lost their baptismal grace and wounded ecclesial communion. It is to them that the sacrament of Penance offers a new possibility to convert and to recover the grace of justification.

The Catholic Church is said to have many rules. But most of these regulations are not like state penal laws of the state that carry formal penal sanctions such as death penalty, imprisonment, or fines. In the Church, only those few actions that injure ecclesial life or seriously imperil the soul of the offender have penalties. Thus, a completed abortion carries the automatic sanction of excommunication or expulsion from the Church (canon 1398). Likewise, a priest's direct violations of the seal of confession or the sexual abuse of minors require severe penalties. But most of the Church "rules" do not impose a penalty for transgressing them like the violation of fasting or abstinence from meat on Ash Wednesday and the Fridays of Lent.<sup>22</sup> Adopting the Scriptures and sacred tradition as the two primary sources of the Christian faith, the Catholic Church does not have a clear distinction of what is scriptural, doctrinal, or moral norms.

There is a difference between doctrine and law but for the Church they serve the same religious function of helping people to understand the meaning of the Gospel and the action of God in people's. Doctrine may be purely theological — that is, focused on the mysteries of God such as the Divine Trinity, or the nature of Christ (Christology), or Divine Revelation. But it may also deal with the practical application of the Gospel to

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<sup>22</sup> Will King, "Why does the Church have so many rules?", *Our Sunday Visitor*, (30 Nov 2010), retrieved 5 May 2017, <https://www.osv.com/thechurch/article/tabid/563/artmid/13751/articleid/10534/why-does-the-church-have-so-many-rules.aspx>.

daily life, as in moral theology, or the social doctrine of the Church (ecclesiology).<sup>23</sup>

Aside from a plurality of normative standards in the institutional Church, a variety of cultural and social norms and values could also influence the bishops' decisions concerning clerical abuse in their dioceses. The Church is not isolated from society. It interacts with society and culture. Thus, the cultural values and norms of the larger society could affect and, at times, reinforce the ecclesial institutional rules. Although it teaches the evangelization of cultures, the Church also considers what is culturally appropriate in deciding cases. The cultural values<sup>24</sup> of "hiya" (shame), "pakikisama" (fellowship), sambayanan (community) and smooth interpersonal relationship (SIR),<sup>25</sup> for instance, are important values in Philippine culture and can thus influence Filipino bishops in giving favorable decisions to accused priests. Thus, is it "nakakahiya" (shameful) for the Church to have abusive priests in its ranks and so abuse must be hidden to the Christian community. Clerical abuse can also create conflict and thus undermines the SIR between the clergy and Church members. "Pakikisama" among priests and bishops for having been serving the ministry and united by one priesthood of Christ can create compassion for the accused. In this case, the cultural values that act as informal rules can reinforce the ecclesial and biblical norm of preserving Church unity and fellowship of the clergy. The concern to maintain the harmony of the clerical community can unwittingly encourage bishops, particularly in the Philippines, to cover up clerical abuse to conform with local cultural norms and expectations.

### ***Canonical Standards against Clerical Abuse***

The primary source of legal norms in the Catholic Church is the Code of Canon Law. Canon law is the name for the official set of rules of the Catholic Church that includes the Code of Canon Law

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<sup>23</sup> *ibid.*

<sup>24</sup> The anthropologist Felipe Landa Jocano sees cultural values such as Filipino values as "pamatayan" (norm). Values set a paradigm for action; thus, they set standards for behavior and ultimately serve as social norms. See Felipe Landa Jocano, "Filipino value system", (Quezon City: Punlad Research, 2000).

<sup>25</sup> Frank Lynch, "Social acceptance, reconsidered". In Frank Lynch and Alfonso de Guzman II (eds.), *Four Readings on Philippine Values* (IPC Papers No.2). (Quezon City: Ateneo de Manila Press, 1973), 1-63.

(CCL) and many other canonical documents issued by Popes, Roman Congregations, Bishops' Conferences and Bishops. Other nonlegal moral, sacramental and pastoral norms can only indicate what is fitting and proper conduct, leaving it to each faithful to make responsible use of his freedom to act accordingly."<sup>26</sup> But canon law is said to stipulate what is juridically binding and hence owed if not outright enforceable. However, most of the canonical laws deal with church administration, general norms, hierarchical structure, institutes of consecrated life, and only a few concerning criminal offenses of the clergy.<sup>27</sup> One of these few penal provisions includes Canon 1395 of the 1983 CCL which explicitly provide that sexual contact with a minor qualifies as one of four classifications of sexual offenses for which a priest may be permanently removed from the clerical state. The other three grounds include any form of coerced sex, a public offense against the sixth commandment of the Decalogue, and continued open concubinage with a woman after an official warning. The permanent removal from the clerical state constitutes one of the most serious penalties contemplated by the CCL. Canon 1389 of the 1983 Code imposes a penalty, including deprivation of ecclesiastical office, for bishops or officials who abuse church power or omit through culpable negligence to perform an act of ecclesiastical governance. "A bishop who fails to employ the appropriate provisions of canon law in a case of sexual abuse of a minor is liable to penal sanctions imposed by the Holy See."<sup>28</sup>

The penalties under CCL against clerical abuse are of two types: expiatory and medicinal. On the one hand, the expiatory penalties aim to deter offenders, to restore right order and to repair the harm caused to the community. They include removing a parish priest because of sexual abuse. Medicinal penalties, on the other hand, are aimed at reforming the offender. They include penalties such as excommunication, interdict, and suspension. Unless they are automatic penalties, the offender must be warned first and told if that if he carries out this action again, he will be suspended (Canon

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<sup>26</sup> Jaime Blanco Achacoso, "The Canonical Imperatives of Priestly Sanctity: Priests as Witnesses and Apostles of Christ's Love in the Light of Canon 276, 1", *Philippine Canonical Forum*.XII, (2010), 188.

<sup>27</sup> See *Code of Canon Law*. Available at [http://www.vatican.va/archive/eng1104/\\_index.htm](http://www.vatican.va/archive/eng1104/_index.htm).

<sup>28</sup> John J. Coughlin, "The Clergy Sexual Abuse Crisis and the Spirit of Canon Law" (2003), 980. *Scholarly Works*. Paper 45. Retrieved 2 May 2017, [http://scholarship.law.nd.edu/law\\_faculty\\_scholarship/45](http://scholarship.law.nd.edu/law_faculty_scholarship/45).

1347).<sup>29</sup> An excommunication (canon 1331) is the harshest penalty in the Catholic Church. This sanction means that the priest is cut off or expelled from the Church, reserved for severe cases such as marrying a woman in civil court without authority. An interdict (canon.1332) is a medicinal censure that prohibits a person from ministerial participation in and reception of the sacraments and sacramentals." A suspension (canon 1333) prohibits the clergy from "some or all acts of the power of orders" and the "power of governance, (such as performing the sacraments or administering Church property). It can also include "some or all rights or functions attached to their offices" (such as witnessing marriage).<sup>30</sup>

Despite the strict provisions of some canons of CCL against clerical abuse, canonical penalties are only seen by the Church as a last resort when all other pastoral efforts to help the erring individual by warnings, instruction, etc. have been exhausted and have failed (canon 1341). Pope Francis' traditional address to the Roman Rota, the Church's ecclesiastical court, for instance, exhorted canon lawyers to consider, above all, mercy and compassion, when applying canonical sanctions to individual cases in the Church.<sup>31</sup> This ecclesial attitude towards compassion rather than strict legality implies that the legal norms is not the absolute normative standard in the Church, but only one of the many normative criteria to consider when judging misbehavior of priests. Bishop-judges or supervisory priests who are handling abuse cases must first explore other biblical, doctrinal, pastoral or informal ecclesial norms that do not prescribe penal sanctions before turning over abusive priests to the civil authority.

### ***Non-Canonical Normative Standards***

The following are some significant Biblical and Church teachings which can serve as important normative criteria that compete for the strict provisions of the canon law against clerical abuse. These exhortations or informal norms can influence the bishops' judgment or supervisory priests dealing with cases of clerical abuse:

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<sup>29</sup> *supra*, note 2, 34.

<sup>30</sup> Canon Law, Crimes, and Fitting Punishments. Retrieved from <http://www.ewtn.com/library/canonlaw/zfitpunish.htm>.

<sup>31</sup> Kevin McKenna, "The First Canon: Mercy: Pope Francis and the Canon Lawyers", *America*, (12 Oct 2015), 19.

*The Biblical Teaching on Eternal Character of Priesthood*

One important consideration that weighs heavily on the decision of bishops whether to punish severely the abusive priests or not is the eternal character of the priesthood. Although secular priests only share the fullness of priesthood of their bishops, they are nevertheless seen as “Alter Christus” (Another Christ), the representative of Christ, the High Priest. The Church believes in the indelible character of the priesthood. Once a person is ordained, he remains a priest forever in the Order of Melchizedek. Even clerics who are officially removed from the ministry are still considered as priests until their death. The norm of compassion can color the judgment of the bishops as it is painful to see their priests who share the priesthood with them rotting in jails. Once ordained by the bishop, the person will always be a priest due to the permanent character of the ordination. In cases of emergency or danger of death, the suspended priest can still administer the sacraments. The belief in the eternal and sacred character of priesthood creates clericalism or belief that priests are a special group of people in the hierarchical Church. The priest is different from the rest of the population by the dignity and authority inherent in the priesthood. The Old Testament typified priests as the seventy elders who were chosen by Moses to assist him in the government of the people (Exodus 18: 4-26; 24:1). So, there is a tendency of the local bishop to see the priesthood in the offender rather than the personal offense. To him, the priesthood is sacred and thus—unintendedly—sees it as a priority than what happened to the victim, as one bishop confided:

So, no matter what the person did, the priesthood, as a thing, must be saved. I sometimes think it’s even more important than the person who’s actually a priest. It’s certainly, for many, more important than any victim.<sup>32</sup>

*The Informal Norm of Christian Forgiveness*

Unlike secular institutions that apply formal sanctions against abusive persons, the Church uses the ultimate norm of mercy, forgiving persons who commit sins or rule-breaking behaviors inside

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<sup>32</sup> Dreher, R. (4 Feb 2013) “Priest: Here’s Why Bishops Cover Up Abuse”. The American Conservative. Feb. 4, 2013. Retrieved from <http://www.theamericanconservative.com/dreher/priest-bishops-cover-up/>.

and outside the Church. Although the Church requires restoration of the damages caused by serious sins, confession and forgiveness can nevertheless obliterate grave sins, including clerical abuse. Except for very few grave offenses reserved to the Holy See, all sins of Catholics, including sexual abuses, can be forgiven by priests and bishops. In this sense, bishop-judges can view clerical abuses as part of the fallen nature of humanity that needs forgiveness and restores the person to a state of grace. There is a popular belief among priests that the challenge to observe chastity applies to all clerics regardless of sexual orientation. All priests are also sinners and need God's mercy in confession for grave violations including sexual abuse and concubinage.

The norm of forgiveness is a mode of resolving canonical violations in the Church. Thus, mercy and confession to the bishop or priest, for instance, can absolve the crime of abortion through mercy and confession to the bishop or priest. Unlike the state that requires judicial process and imposes formal punishment such as imprisonment, death, or paying of fines for violators, the Church requires only retribution, sincere repentance, and penance from confession to receive God's mercy. The ultimate spiritual goal of the Church is the reconciliation of the offender to God and Christian community. Thus, the Church prefers mediation, reconciliation, amicable settlement rather than strict legal and judicial justice in courts in resolving normative violations.

### ***The Biblical Exhortation not to Commit Scandal and Hypocrisy***

The biblical exhortation not to commit scandal to maintain the unity of the Church can be an informal norm for bishops in deciding clerical abuse of priests. Scandals in the Christian community is also strongly condemned in the Gospel: "Whoever causes one of these little ones who believe in me to sin, it would be better for him to have a great millstone hung around his neck and to be drowned in the depths of the sea." (Matt. 18). Bishops know that discovery of sexual abuse of priests creates scandal and has a huge impact on the Church. Clerical abuse undermines the credibility of the Church and pastors to moralize and to preach the Gospel. Discoveries of clerical abuse can accuse the Church of hypocrisy. This scenario is one reason why bishops transfer erring priests to

another work assignment, hoping that the new parishioners would not know their past abuses and thus avoid hypocrisy.

How can you say to your brother, 'Let me take the speck out of your eye,' while there is still a beam in your own eye?

You hypocrite! First take the beam out of your own eye, and then you will see clearly to remove the speck from your brother's eye (Matt.7: 4-5).

## Summary and Conclusion

This paper has shown that the persistence of clerical abuse in the Catholic Church has something to do with the plurality of informal doctrinal, biblical, ethical, and cultural norms which competes with the ecclesial canonical provisions. With the absence of a professional judicial system in the Church, vast ecclesial powers of local ordinaries in dealing with domestic cases, and overlapping and numerous formal and informal normative standards to judge abuse cases, the bishops then possess a broad discretionary power when and how to handle clerical abuse. The Church's teaching on forgiveness, Church unity, sanctity and eternal nature of the priesthood, and the ecclesial stand that clerical abuse should be dealt with internally within the Church rather than externally through the state's judicial system can prevent the expeditious filing of clerical abuse cases in civil courts. The state's version of legality is not the primary criteria in judging clerical abuse. Following the doctrine of separation of Church and State, the Catholic Church has its accountability system founded on mercy and compassion and not just on the cold neutrality of the state's judicial system. This difference of law enforcement system can create conflict and misunderstanding among Catholics. The Church and the bishops may view the slow investigations of clerical abuse as a way of protecting the sanctity of the priesthood and the overall image of the Church. But for the lay victims and Church members who get used to the state's judicial system and who lack knowledge on the inner dynamics of the Church, this strategy can be interpreted as a mere negligence, conspiracy, and injustice. Unless the Catholic Church starts crafting a comprehensive penal code for the clergy and developing a professional judicial system that handles criminal cases within the

institution, accusations of cover-ups and conspiracy will continue to hound the “People of God”.

### **About the Author**

**Vivencio O. Ballano** obtained his PhD in Sociology from Ateneo de Manila University. He is currently teaching at the Department of Sociology, Polytechnic University of the Philippines (PUP). In 2011, he was chosen Post-Doctoral Research Fellow of the Southeast Asian Studies Research Exchange Program (SEASREP). He does research in Sociology of Law, Religion, and Post-Disaster Management, Media Piracy, Urban/Rural Sociology and Social Policy. He is the author of 2 Scopus books published by Springer Nature: "Sociological Perspectives on Media Piracy in the Philippines and Vietnam" (2016) and "Law, Normative Pluralism, and Post Disaster Recovery" (2017). His current project is "The Catholic Hierarchy, Social Disorganization Theory, and Clerical Abuse: A Sociological Analysis of the Cohesiveness and Social Control of the Catholic Clergy as a Community".