

# Shepherding the Shepherds

## – *Caring for Suspended or Laicised Priests*

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Following the abuse scandals in the Church in the United Kingdom, Ireland, and elsewhere, steps have been taken, and rightly so, that opportunities for abuse are minimised as much as possible, any allegations are rigorously investigated, and there is maximum cooperation with civil authorities. At the same time, while the response from bishops has been laudable in seeking to remedy the injustices of the past, there have been unintended consequences for the relationship between bishops and their priests in terms of the process itself and its aftermath. A consideration of two cases will help illustrate the issues.

1. Father A is accused of an offence and suspended. The civil authority drops the case finding no evidence whatever to substantiate the allegation. Following internal investigations by the diocesan safeguarding officers, the priest is restored to ministry. What level of emotional or spiritual support might he expect from his bishop, before and after?
2. Father B is convicted of an offence and laicised. He is subsequently found to be living in poverty. Can he expect anything from his former bishop?

### THE PROCESS ITSELF

In any case where abuse is alleged one aspect which has to be taken seriously is canon 220, which says that ‘no one may unlawfully harm the good reputation which a person enjoys...’. That this is reiterated in canon 1717 §2 in terms of the preliminary investigation when an accusation has been made (‘care is to be taken that this investigation does not call into question anyone’s good name’) suggests the idea that anyone accused’s is *innocent until proven guilty*. This is an important point, since much of the actual procedure suggests that the perception is the opposite.

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There are some criticisms of the process itself that can be made, based on the recent experience of accused priests. Firstly, there are questions about the right to representation and to the accused's getting full knowledge of the facts of the accusation made. A second is that the process itself can take a long time, bringing to mind the legal maxim that 'justice delayed is justice denied'. A third criticism is that priests who are accused are 'cut adrift' and often left to fend for themselves (even to the extent of having to fund their own legal representation). Lastly, there is the perception that practices dealing with alleged abuses appear to have been borrowed from a secular context wholesale, without taking into account the particular nature of priesthood, ordination and incardination, and the relationship with the bishop. Several recent cases concerning the treatment of accused priests illustrates all too clearly the observations made by Dr William Richardson that 'the arbitrary procedures endorsed by the bishops' conference in Ireland presume allegations of sexual abuse against clerics to be true'.<sup>1</sup>

### THE RELATIONSHIP OF BISHOP AND PRIEST

Reactions of bishops to priests who have been cleared of any charges is mixed – some have been most supportive, while others are much less so. It is important, then, to examine what are the rights and obligations of priests and bishops towards one another, so as to consider what is a reasonable response of a bishop towards one of his priests who has hitherto been accused, placed on administrative leave, investigated and cleared, and subsequently reinstated to ministry.

The 1983 Code of Canon Law for the Latin Church puts into juridical language the ecclesiology of the Second Vatican Council, and some of the provisions concerning bishops and priests are no exception. The Dogmatic Constitution on the Church, *Lumen Gentium*, places strong emphasis on the relationship of priests with their bishops, with whom they are 'united ... in sacerdotal dignity' as 'prudent co-operators with the episcopal order'.<sup>2</sup> Priests constitute 'one priesthood with their bishops', a priesthood and mission in which they all share, and they are urged to look 'sincerely ... upon the bishop as their father', while the bishop is to 'regard his priests who are his co-workers, as sons and friends'.<sup>3</sup> Similarly, *The Decree on the Ministry and Life of Priests* enjoins

1 W. Richardson, *The Presumption of Innocence in Canonical Trials of Clerics Accused of Child Sexual Abuse* (Leuven, Peeters, 2011), p. 304.

2 *Lumen Gentium*, no. 28. The latter phrase also appears in the Decree on the Bishop's Pastoral Office in the Church, *Christus Dominus*, no. 28 and is included in the opening paragraphs of the Ordination rite.

3 *Ibid.*

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that, by virtue of bishops and priests sharing the same priesthood, 'the bishop should regard priests as his brothers and friends' while priests for their part 'must respect [in the bishop] the authority of Christ' and '*stand by their own bishop in sincere charity and obedience*'.<sup>4</sup> If seen as an obligation, and given that priests are described as co-workers, there is suggested here a mutuality, in that bishops ought to stand by their priests.

Conciliar texts such as these underpin and find canonical expression in the juridical norms governing the relationship between the bishop and his priests. Perhaps the *locus classicus* is canon 384, building on the earlier provisions that the bishop is entrusted with care for the diocese (c.381 §1) and that he 'is to be solicitous for all Christ's faithful entrusted to his care' (c. 383 §1). Canon 384 reads:

He is to have a *special concern for the priests*, to whom he is to listen as his helpers and counsellors. *He is to defend their rights* and ensure that they fulfil the obligations proper to their state. He is to see that they have the means and the institutions needed for the development of their spiritual and intellectual life. He is to ensure that they are provided with adequate means of livelihood and social welfare, in accordance with the law.

## ORDINATION AND INCARDINATION

For the priest, and indeed deacon, obligations and rights flow from incardination, the juridical bond by which, for life, the cleric is incorporated into a particular Church, usually to serve in a diocese. At the same time he becomes the responsibility of the bishop and his successors. Ordination is not *in vacuo*, and canon 265 prescribes incardination (which could also be described as a form of enrolment or affiliation) for every cleric without exception.

Incardination is a juridical fact, an automatic consequence of ordination as a deacon, when a candidate receives the juridical status of 'the clerical state', and it forms the fount not only of a cleric's ministry but of his life. From incardination into the diocese or a religious order stems the duty of canonical obedience to his bishop, or other Ordinary. The general obligation of obedience, placed upon all of Christ's faithful to their sacred pastors (c. 212 §1) is raised to a higher level for those in the clerical state as a 'special obligation to show reverence and obedience to the Supreme Pontiff and to their own Ordinary' (c. 273).

In summary, the relationship between the priest and his bishop, as the Pontifical Council for Legislative Texts in a recent *Explanatory*

<sup>4</sup> *Presbyterorum Ordinis*, no. 7.

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*Note* has emphasised, ‘arises from ordination and incardination’.<sup>5</sup> More precisely, the priest’s service: ‘... is attached to a stable and lasting involvement that he has assumed, not with the person of the bishop, but with the diocese through incardination ...’<sup>6</sup>

### REMUNERATION

The Council’s decree *Presbyterorum Ordinis* stressed that priests are worthy of receiving a just recompense, with means of support for their needs when infirm and elderly.<sup>7</sup> Canonically, these conciliar statements find expression in clerics having the right to ‘remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place (c.281 §1), entitlement to receive ‘suitable provision ... for such social welfare as they may need in infirmity, sickness or old age’ (c.281 §2) and recognition that they may ‘take a rightful and sufficient holiday every year’ (c. 283 §2) These provisions may be seen as the priest’s right corresponding to the bishop’s correlative duty to provide them with adequate means of livelihood (c. 384).

Incardination, as a fundamental bond of incorporation or affiliation, transcending any employment relationship, also means that when a parish priest ceases to hold office (whether at seventy-five years old, if the bishop accepts the offer of resignation,<sup>8</sup> or upon earlier resignation) and ceases to receive remuneration, the bishop must still make provision for his appropriate maintenance and residence (c. 538 §3). It is worth emphasising that no cleric holding an ecclesiastical office strictly retires, but continues to serve in the particular Church in which he is incardinated. A recent *Directory* concerning the obligations and rights of clerics, published for the Episcopal Conference of England and Wales, offers this observation:

The secular idea of retirement from employment is not consistent with the theological reality of the ordained ministry. A cleric, although no longer holding a particular office, continues to live the mystery of his order in the service of the Church to the glory of God and remains bound by the rights and duties of his state.<sup>9</sup>

5 Pontifical Council for Legislative Texts: Explanatory Note: *Elements to establish the canonical responsibility of the diocesan bishop on clerics incardinated within the diocese and who exercise their ministry within it.* (12 February 2004, *Communicationes* 36 [2004] 33-38), para. II.

6 *Ibid.*

7 *Ibid.*, no. 21.

8 A parish priest is ‘requested to offer his resignation from office’ at seventy-five years of age (c. 538, §3); he is not required to do so, and the bishop is not bound to accept the offer.

9 *Directory on the Canonical Status of the Clergy: Rights, Obligations and Procedures* (2009, Catholic Truth Society, approved for publication by the Catholic Bishops’ Conference of England and Wales, para.10.7.

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Furthermore, the cleric's right to provision for his basic needs continues if the bishop, by administrative act, removes a parish priest; the cleric, if he is not suitable to be assigned to another office, is to be 'given a pension in so far as the case requires and the circumstances permit' (c. 1746). After any imposition of penalties (for example, the censure of suspension), 'care must always be taken that [the cleric] does not lack what is necessary for his worthy support' (c. 1350 §1). This norm specifically excludes dismissal from the clerical state, but *even in those circumstances*, if someone 'is truly in need', states the succeeding provision, 'the Ordinary is to provide in the best way possible' (c. 1350 §2).

In summary, from a review of the canonical provisions touching upon the bishop-priest relationship, it may be concluded that this relationship is rooted in ecclesiological and sacramental realities of communion, ordination and incardination, in which the fulfilment of a cleric's duties and his means of support are far removed from secular notions of employment. References to resigning from office and to receiving a pension may at first sight appear analogous to employment terms, yet the notion of incardination is life-long; unlike the secular employee, a cleric, whether he holds office or not, wherever he goes and whatever he does, remains subject to his diocesan bishop, or other superior. Being cut adrift emotionally, financially or physically are in contradiction to the covenantal reality of incardination.

## THE CASES OF FATHER A AND FATHER B

What might then be said in regard to the cases of Father A and Father B? The process as it stands suggests that an accused priest is not presumed innocent in the face of an allegation; rather, the reverse is true, that he has to prove his innocence. This clearly may affect his relationship with his bishop, who may feel that he has to distance himself from the accused party. However, this presumption of guilt is contrary to natural justice and to the provisions in the 1983 Code of Canon Law. Even if a priest is cleared in a civil process, Church authorities can carry out their own investigation, though it must be made clear that this is not entirely a negative point as it affords the accused due process and the opportunity to be heard. Being cleared of all charges, civil and canonical, should leave the presumption of innocence intact, and any priest should be returned to ministry with unblemished reputation and with the wholehearted support of his Ordinary. That any Ordinary does not actively engage with any of his priests in terms of emotional and pastoral support after such an incident is contrary to the letter and spirit of the tradition of the Church, which has been more recently outlined in the documents of the Second Vatican Council and the

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1983 Code. Such a lack of fraternal care might also be judged to be a scandal, in that it may well actively discourage men from joining the diocesan priesthood if they perceive such a lack of leadership, solidarity and compassion. It is also scandalous to those of us in the Church who observe the same.

In terms of a priest who has been dismissed from the clerical state, there is a question about the level of financial support he ought to receive. Canon 1350 is clear that the needs of a former cleric are to be attended to as an act of charity. Factors that should be taken into account include the age of the former priest, his present earning possibilities, and whether any provision has been made for future retirement. In line with Religious brothers or sisters who depart, and for whom canon 702 §2 urges 'equity and evangelical charity' in helping them establish themselves outside of the religious institute, a lump sum settlement is recognised as a charitable gift. In considering the application of canon 1350, bishops might draw on the experience of how such institutes have treated members who have left voluntarily or have been dismissed. The covenantal nature of incardination strongly suggests that there be a re-assessment of how former priests are supported.

**Commonplace Miracle.** It may seem odd at first that almost all of the births recounted [in the Bible] are in some way out of time, out of place. Births come to women who are barren like Hannah, or to women past child-bearing age like Sarah or Elizabeth. The news is usually greeted with shock, with disbelief or even with laughter. But by drawing our attention to the unusual, the storytellers highlight the ordinary as graced. It is not the barrenness of Elizabeth nor the old age of Sarah nor even the virginity of Mary that matters most, but the surprise and gift of every birth, the reminder that life is not ours to control, to take as right, but to receive with thanks and praise, this commonplace miracle.

– ANNE THURSTON, *Small Wonders* (Dublin: Veritas) p. 24.