

DARK DAYS FOR THE CHURCH: CANON LAW AND THE RESPONSE OF THE ROMAN CATHOLIC CHURCH TO THE SEX ABUSE SCANDALS

Within the past few years, a nearly global scandal has developed over allegations that priests and other religious personnel have sexually abused children.¹ The scandals intensified when it became known that many in the Church hierarchy had not only covered up allegations, but also had reassigned abusers to work in different positions, often in contact with children. This scandal has stretched around the world, causing outrage and resulting in calls for reform by both members of the Church and the public.

The Catholic Church has addressed the scandal in several ways, including settling lawsuits, removing those responsible for the cover-ups from positions of power, and creating policies to address the problem.² However, the intent of the Church leaders to truly fix their mistakes has been questioned, as has the efficacy of the proposed solutions. Bishops and other Church leaders have also faced other obstacles in trying to respond to the scandals. For instance, in 2002, the Vatican rejected the United States Catholic Conference of Bishops' policy for dealing with allegations of sexual abuse because it did not conform to requirements of canon law.³

At the Vatican's direction, the Bishops revised the policy, but questions still remain about the policies, including: whether the first policy truly needed to be changed; whether the second policy will be effective; whether the second policy conveys the appropriate message to victims and others concerned; and whether the measures the Church is taking will redeem its image with Catholics and the public. Answers to these questions can be found by examining the particular policies and comparing them to sexual abuse policies from other countries dealing with their own sex abuse scandals.

Part I of this Note will examine the history of canon law, from its earliest forms to the 1983 Code of Canon Law now in force. It will also look at the role of canon law in society, as well as its role in the development of secular law. It will address the Code of Canon Law itself,

1. *See infra* notes 46–53 and accompanying text.

2. *See infra* notes 56–58 and accompanying text.

3. *See infra* note 60 and accompanying text.

examining in particular the canons relevant to the sex abuse scandal and the canons referenced by the Vatican in rejecting the first United States Bishops' policy.

Part II details the history of the sex abuse scandals within the Church. It will examine the events that triggered the scandal, as well as the Church's response, and the response of victims and others.

Part III of this Note compares the original and revised United States Bishops' policies. I argue that the Vatican was justified in rejecting the original policy. Specifically, the revised policy is the better policy in terms of its procedural protections, as well as its protections for victims, and the stricter measures and punishments that bishops and other religious leaders may utilize.

Part IV of this Note will evaluate the sexual abuse policies enacted by the Church in Australia, New Zealand, and Ireland. It will evaluate the policies in terms of the compassion and respect for victims shown, the comprehensiveness, detail, and understandability, and the level of eagerness to fix the mistakes of the past shown in each.

Part V will compare the U.S. policy with the policies from other countries. It will show that although the revised U.S. policy is better than the original, it is lacking when compared to policies from other countries. Part V also includes suggestions on ways to improve the policy, and thereby improve the Church's effectiveness in fighting the problems and in rehabilitating its image.⁴

The revised U.S. policy, while outlining procedures that afford accused priests greater protection and providing a greater range of responses available to those dealing with allegations, shows little compassion and remorse. Moreover, the procedures lack sufficient detail and comprehensiveness. To improve its standing and help regain the respect it lost, the Church should amend its policies to show greater remorse and compassion for the victims of sexual abuse. The policies should also include more detailed guidelines to direct individual dioceses and bishops as they make the changes necessary to show the world exactly how they are solving the problem.

4. The scope of this Note is limited to evaluating the Church's internal response to the scandals. It does not compare the responses of the civil/secular authorities to the scandal, nor does it examine the relationship between the two procedures. The extent to which it is examined is limited to the statements made by the Church that it will comply with all civil laws.

I. CANON LAW

A. *History of Canon Law*

The Catholic Church has had a “legal order” from the beginning of its existence.⁵ The term “canon” comes from the Greek “kanon,” which means rule or norm, and later developed to mean “a law promulgated” by Church leaders.⁶ The developers of canon law were influenced by many other sources of law, including various parts of the Bible and Roman law.⁷ Systemization of canon law reached a milestone with Gratian’s treatise, *Decretum*, written in 1140, which became one of the main sources of Canon law until the completion of the first *Code of Canon Law* in 1918.⁸

As the Church evolved into a political entity with the establishment of the Holy Roman Empire and the Papal States, the laws of the Church similarly evolved. The hierarchy of the Church became more formalized, with “supreme governance” over the Church and the positions of “supreme legislator” and “supreme judge” being given to the Pope.⁹ Other changes included the creation of innovative political institutions, including the general councils that were Europe’s first legislature.¹⁰

5. HAROLD J. BERMAN, *LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION* 199 (1983). Church laws were present from the beginning of Christianity. *Id.* The New Testament, “especially in the Epistles of St. Paul and the Acts of the Apostles,” shows that early Church leaders created and enforced laws. *Id.* Ecclesiastical laws were also found in the *Didache* from the first century, the *Didascalía Apostolorum* (“*Teachings of the Apostles*”) from the third century, and the *Constitutiones Apostolorum* (“*Enactments of the Apostles*”) from the fourth century. *Id.* Starting in the third and fourth centuries, both local and ecumenical councils enacted laws. *Id.*

6. *Id.* The Church leaders who promulgated canons included synods, ecumenical councils, and individual bishops. *Id.*

7. *Id.* at 200. Other influences on early Church law include the New Testament and the Old Testament, especially the Ten Commandments. *Id.* at 200. The main influential source of Roman law was the *Corpus Juris Civilis*, which was a compilation of Roman law undertaken by Emperor Justinian of the Byzantine Empire in the fifth century A.D. *Id.* at 204. Church law also incorporated Germanic customary law, which emphasized “honor, oaths, retribution, reconciliation, and group responsibility.” *Id.* at 201.

8. *Id.* at 202–03. The process of systemizing canon law spanned from 1050–1200. *Id.* at 199. The earliest example of systemization occurred in 1050 with the publishing of a *Collection of 74 Titles*, containing canons and other texts. *Id.* at 202. During Gregory VII’s tenure as Pope, he enacted new laws called decretals. *Id.* Gratian’s treatise *Decretum* became an authority on the integration of the old law (“*jus antiquum*”) and the new law (“*jus novum*”). *Id.* Thus, Gratian showed that canon law was “not a dead corpse, but a living corpus, rooted in the past but growing into the future.” *Id.* at 202–03.

Later Popes continued to enact new laws, and the Third and Fourth Lateran Councils promulgated “hundreds of new laws.” *Id.* at 203. In 1234, under the direction of Pope Gregory IX, a “comprehensive collection of decretals” was published. *Id.* Along with Gratian’s *Decretum*, the *Decretals* were the main source of canon law prior to its codification. *Id.*

9. *Id.* at 206.

10. *Id.* at 208.

The Church also developed jurisdictional and substantive law, and claimed both personal and subject matter jurisdiction.¹¹ There were six groups that fell under the personal jurisdiction of the Church: clergy and members of their households,¹² students,¹³ crusaders,¹⁴ *personae miserabiles*,¹⁵ Jews,¹⁶ and travelers.¹⁷ The Church also exercised subject matter jurisdiction over spiritual cases.¹⁸ Areas of substantive law that the Church developed during this time included family law, the law of inheritance, property law, contract law, and criminal and tort law.¹⁹

The Church later reformed existing areas of law over which it claimed jurisdiction, including family law,²⁰ inheritance,²¹ property,²² and contracts.²³ Reformers also improved legal procedure, making canonical procedure “more modern, more rational, and more systemized.”²⁴ The

11. *Id.* at 222. The Church also extended its jurisdiction by allowing anyone who wanted to use the Ecclesiastical courts to do so, either by using a procedure known as prorogation and renouncing the jurisdiction of a secular court, or by bringing or removing a lawsuit to an Ecclesiastical court. *Id.* at 223.

12. *Id.* at 222. Canon law forbade the clergy to waive ecclesiastical jurisdiction, but the clergy was subject to the jurisdiction of secular courts and laws for certain crimes. *Id.*

13. *Id.* Students could waive ecclesiastical jurisdiction if they desired. *Id.*

14. *Id.* Like students, crusaders could waive ecclesiastical jurisdiction if they so wished. *Id.*

15. *Id.* *Personae miserabiles* meant “miserable” or “wretched” persons, which included “poor people, widows, and orphans.” *Id.* Such persons had previously been considered wards of secular sovereigns; however, the insufficiency of the protection afforded them by the secular authorities led the Church to extend its ecclesiastical jurisdiction over them. *Id.*

16. *Id.* Jews were subject to ecclesiastical jurisdiction when they were parties in cases against Christians. However, ecclesiastical jurisdiction was not the exclusive jurisdiction in these situations; rather, the Church intended for ecclesiastical jurisdiction to supplement the secular jurisdiction of the sovereign. *Id.*

17. *Id.* The category of travelers included both merchants and sailors, “when necessary for their peace and safety.” *Id.* As in other situations, ecclesiastical jurisdiction over travelers was intended as a supplement to secular jurisdiction. *Id.*

18. *Id.* Spiritual cases included: “administration of the sacraments; testaments; benefices, including the administration of church property, patronage of church offices, and ecclesiastical taxation in the form of tithes; oaths, including pledges of faith; and sins meriting ecclesiastical censures.” *Id.*

19. *Id.* at 223. The Church claimed jurisdiction over these areas of law beginning in the twelfth century. The Church’s claim of jurisdiction over the general areas of law came from its jurisdiction over certain aspects of the area. For example, the Church claimed jurisdiction over family law based on its control over “the sacrament of marriage.” *Id.* at 222–23.

20. *Id.* at 226–30. In family law, the Church instituted reforms for marriage, such as a requirement of free consent by both parties for a marriage to be legal. *Id.* at 228.

21. *Id.* at 230–37. The Church’s main improvement to the law of inheritance was the creation of a will, albeit a “religious will,” which gave the testator’s wishes a sanctity “insofar as those wishes were linked by the preservation of his soul.” *Id.* at 232.

22. *Id.* at 245.

23. *Id.* at 250. Many of the reforms canonists made to contract law were related to the law of marriage, such as requiring consent by both parties. *Id.* See *supra* note 20.

24. *Id.* at 251. In amending canonical procedure, the reformers used both Roman law and Germanic customary law; however, the canonists “gave a new twist to both (if only by combining

reforms were so successful that many secular courts adopted similar procedures.²⁵

Canon law has decreased in prominence in the modern era. This is somewhat attributable to the fact that the Church is no longer a political entity in the traditional sense,²⁶ a development that coincided with the rise of secular states.²⁷ Most Catholic laypeople today have little contact with canon law; if a layperson does have contact with canon law, it will most likely have to do with annulments.²⁸

One of the signs that canon law has decreased in significance is that many Catholics today believe that canon law is an “anachronism, antiquated and suppressive, assembled by elderly men, working in some murky recesses of the Vatican, for a culture and times far distant from current reality.”²⁹ This view is even shared by members of the clergy; a Catholic bishop, who was a canon lawyer, reportedly called canon law “the arteriosclerosis of the Mystical Body.”³⁰

them.” *Id.* at 250. One of the biggest changes was the requirement of written documents, including written complaints, to start both civil and criminal actions, transcripts, and judgments. *Id.*

Oaths, which the canonists adopted from Germanic customary law, were another reform. Unlike Germanic custom, which used the oath as a method to purge one’s self of accusations (compurgation), in canonical procedure the oath was used to require a testifier to tell the truth. *Id.* Canonists also changed the role of counsel; in previous traditions, counsel had been “a substitute rather than a representative,” but the canonists transformed counsel into a representative. *Id.*

A system of “judicial investigation of the facts of the case, whereby the judge was required to interrogate the parties and the witnesses according to principles of reason and conscience” was yet another reform. *Id.* at 251. A judge, following those principles, had to be “convinced, in his own mind, of the judgment.” *Id.* Another aspect of the system of investigation was the creation of evidence rules that defined certain types of evidence as inadmissible. Inadmissible evidence included, “superfluous evidence (matters already ascertained), impertinent evidence (matters having no effect on the case), obscure and uncertain evidence (matters from which no clear inferences can be drawn), excessively general evidence (matters from which obscurity arises), and evidence contrary to nature (matters from which it is impossible to believe).” *Id.*

25. *Id.*

26. Microsoft Encarta Encyclopedia Standard Edition CD-Rom, *Holy Roman Empire* (2002). The Church exerted great influence over the Holy Roman Empire, especially in the crowning of the Emperor, but the Empire dissolved in 1806. *Id.* The Church had direct control over the Papal States, but after the King of Italy annexed the territory in 1870, the Papal States dissolved. Microsoft Encarta Encyclopedia Standard Edition CD-ROM, *Papal States* (2002). In 1929, the Lateran Treaty created the Holy See in Vatican City, which gave the Church some recognition as a political entity. Microsoft Encarta Encyclopedia Standard Edition CD-ROM, *Vatican City* (2002). However, although the Vatican continues to be recognized as a political entity, the Church’s political influence has decreased since the nineteenth century. See generally Microsoft Encarta Encyclopedia Standard Edition CD-Rom, *Church and State* (2002).

27. Microsoft Encarta Encyclopedia Standard Edition CD-Rom, *Sovereignty* (2002).

28. KEVIN E. MCKENNA, *THE MINISTRY OF THE LAW IN THE CHURCH TODAY* 5 (1998).

29. *Id.* at 6.

30. *Id.* at ix.

B. *The Code of Canon Law*

Until the twentieth century, canon law did not exist in a codified form.³¹ The Church promulgated the first Code of Canon Law in 1917.³² Although many considered the Code “handy, well-ordered, and accessible,” it quickly became outdated as the world rapidly changed.³³ One of the reasons the first Code became outdated was because the intended audience was canon law scholars and not laypeople.³⁴ The Code’s limited audience became problematic as the Church moved toward greater inclusion of laypeople, a main goal of the Vatican II reforms.³⁵

Pope John XXIII first mentioned revising the first Code of Canon Law in 1959; however, the revision process did not begin in earnest until 1963.³⁶ The stated principles of the Commission for the Revision, the Church body charged with revising the Code, included a comment stating that, “[t]he Code is to define and protect the rights and obligations of the faithful in relation to one another and to the church.”³⁷

The Church promulgated the new Code in 1983. The 1983 Code is simpler than the 1917 Code, containing only 1,752 canons.³⁸ Of the 1,752 canons, several are applicable to the sexual abuse policy. Canon 1395, entitled *Various Violations of Clerical Chastity*, prohibits clerics from engaging in sexual contact with minors and sets out punishments if a cleric engages in the prohibited activity.³⁹ Canons 1717–1719 define the

31. Prior to 1918, the main sources of law for the Church were Gratian’s *Decretum* and the *Decretals*. BERMAN, *supra* note 5, at 203. *See also supra* note 8 and accompanying text.

32. Codification of the first Code began in 1904 and was completed in 1914. World War I prevented the promulgation of the Code until 1917, and the Code took effect in 1918.

33. JAMES A. CORIDEN, *AN INTRODUCTION TO CANON LAW* 27 (1991).

34. For example, the first Code was written entirely in Latin. MCKENNA, *supra* note 28, at 13.

35. *See* Pope Paul VI, *Constitution on the Sacred Liturgy*, *Sacrosanctum Concilium* ¶¶ 1, 4, 10, 14, 30, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19631204_sacrosanctum-concilium_en.html (last visited Nov. 11, 2004) (outlining liturgical changes that the Vatican II Council enacted).

36. CORIDEN, *supra* note 33, at 35. Changes to the first Code began at the same time as the Church began the Vatican II reforms. *Id.* The objective of the Code reforms was to “reorganize the [C]hurch’s discipline and to accommodate it to the teachings of the [Vatican] [C]ouncil,” as well as to “reform the [C]hurch’s canonical style, to give it a ‘new way of thinking,’ responsive to new needs.” *Id.*

37. *Id.* at 36.

38. The 1917 Code contained 2,414 canons. Also, unlike the 1917 Code, which was in Latin, the 1983 Code has been made available in other languages, including English.

39. Canon 1395 reads:

If a cleric has otherwise committed an offense against the Sixth Commandment of the Decalogue with force or threats or publicly or with a minor below the age of sixteen, the cleric is to be punished with just penalties, including dismissal from the clerical state if the case warrants it.

requirements for investigations.⁴⁰ Canon 1717 sets out the procedures for an investigation into wrongdoing,⁴¹ while Canon 1718 states that disposition of the accused cannot be decided until there is sufficient evidence.⁴² Canon 1719 states that the investigation file will be closed if it is “not necessary for the penal process.”⁴³ Canon 1722, *Restrictions on the Accused*, allows the Ordinary⁴⁴ to restrict an accused cleric’s activities or movements if necessary “[t]o prevent scandals, to protect freedom of witnesses, and to safeguard the course of justice.”⁴⁵

II. THE SEX SCANDAL IN THE CATHOLIC CHURCH

Several years ago it came to light that several high-ranking members of the Church around the world, including in Australia,⁴⁶ Ireland,⁴⁷ Poland,⁴⁸

1983 CODE c.1395, § 2, in THE CODE OF CANON LAW 929 (James A. Coriden et al. eds., 1985) [hereinafter CODE OF CANON LAW].

40. 1983 CODE c.1717-1719, in CODE OF CANON LAW, *supra* note 39, at 1024–25.

41. Canon 1717 is entitled *Initiation of the Investigation*, and it requires that a credible accusation be investigated. *Id.* at c.1717, § 1. It also mandates that care be taken to protect the good name of the accused and prohibits the investigator of an accusation from acting as a judge. *Id.* at c.1717, §§ 2–3.

42. *Id.* at c.1718. The Canon, *Decree of Ordinary Regarding the Penal Process*, states that the Ordinary will decide various matters only when there is “sufficient evidence.” *Id.*

43. *Id.* at c.1719.

44. An Ordinary is a cleric, such as a bishop, that has jurisdiction over an area, such as a parish or diocese. New Advent Catholic Encyclopedia Online, *Ordinary* (2004), <http://www.newadvent.org/cathen/11284b.htm> (last visited Nov. 11, 2004).

45. CODE OF CANON LAW, *supra* note 39, at c.1722.

46. In 1996, the Australian Church agreed to settle 126 cases and pay \$1.7 million (U.S.) (\$3 million Australian) in compensation, and another \$850,000–1.1 million (U.S.) for victims’ counseling. *Australia Church Apologizes for Abuse*, BBC NEWS, June 8, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2032698.stm> (last visited Sept. 3, 2004). That year, the Australian Church also formally apologized to victims. *Abuse Spotlight on Australian Nuns*, BBC NEWS, Aug. 28, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2220843.stm> (last visited Sept. 3, 2004). However, the Australian Church’s sex abuse problems did not end in 1996. Another scandal began in May 2002, when allegations were made that Sydney Archbishop George Pell offered to pay victims of sexual abuse for their silence in 1993. Pell denied the charge. *Bishop Admits Abuse Money Offer*, BBC News, June 3, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2022620.stm> (last visited Sept. 3, 2004). While again denying the allegations, Archbishop Pell, along with another archbishop, took out newspaper advertisements in which they apologized for the Church’s “failure to deal more swiftly with the issue.” *Australia Church Apologizes for Abuse*, BBC NEWS, June 8, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2032698.stm> (last visited Sept. 3, 2004). However, shortly after Archbishop Pell’s denial, the Australian Church admitted “secrecy clauses were included in compensation payments to sexual abuse victims.” *Church Admits Hush Payments*, BBC NEWS, June 10, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2035823.stm> (last visited Sept. 3, 2004). In its defense, John McCarthy, the diocese’s lawyer, stated that the secrecy clause was standard in damage settlements and, consequently, Church leaders were not told of it. *Id.*

In August 2002, allegations of sexual abuse of children in an orphanage by nuns surfaced. *Abuse Spotlight on Australian Nuns*, BBC NEWS, Aug. 28, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2220843.stm> (last visited Sept. 3, 2004). The accused Order admitted paying \$75,000

Austria,⁴⁹ France,⁵⁰ and the Philippines,⁵¹ had mishandled allegations of sexual abuse of minors by priests; these revelations in turn prompted a

(Australian) to allegedly abused women, but a spokeswoman asserted that the payments were not an admission, but rather a way to help the victims heal. *Id.*

Additional allegations surfaced in August 2002 when Archbishop Pell himself was accused of sexual abuse of a twelve-year-old boy forty years earlier. *Catholic Church in Fresh Abuse Row*, BBC NEWS, Aug. 20, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2204855.stm> (last visited Sept. 3, 2004). Although Archbishop Pell denied the allegations, he voluntarily stepped down temporarily from his post while the Church investigated the charges. *Id.* The Church later cleared Archbishop Pell of the charges after an independent investigation. *Australia Archbishop Cleared of Abuse*, BBC NEWS, Oct. 14, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2325353.stm> (last visited Sept. 3, 2004).

47. The Church in Ireland has also been embroiled in a sex abuse scandal. In April 2002, a Bishop resigned over his alleged mismanagement of priests accused of sexual abuse of children, admitting that he had not done enough to protect children. *Bishop Resigns Over Handling of Sex Case*, BBC NEWS, Apr. 1, 2002, at <http://news.bbc.co.uk/2/hi/europe/1905395.stm> (last visited Sept. 3, 2004). Later that month, the Irish Church began an investigation into allegations of abuse, some of which were more than sixty years old. *Church to Study Sex Abuse Claims*, BBC NEWS, Apr. 10, 2002, at http://news.bbc.co.uk/2/hi/uk_news/northern_ireland/1920138.stm (last visited Sept. 3, 2004).

Although the Irish Church launched an investigation into the allegations of sexual abuse, the Irish government decided to launch its own investigation, examining both the allegations of abuse and the Church's handling of those allegations. *Irish Catholicism in Crisis*, BBC NEWS, Oct. 24, 2002, at <http://news.bbc.co.uk/2/hi/europe/2356473.stm> (last visited Sept. 3, 2004). Members of the Church also showed a lack of confidence in the Church when, during Mass, Cardinal Desmond Connell admitted that he had failed the victims, and members of the congregation "heckled him, saying 'It's too late.'" *Id.*

The Irish Church released the results of its investigation in late 2003. *In Brief*, HOUS. CHRON., Dec. 7, 2003, at A27, 2003 WL 68826659. The study found that in the last decade, over 100 priests were convicted of sexual abuse. *Id.* The Irish Church expects compensation payments to amount to approximately \$700 million. *Id.* The investigation included a survey of over 1,000 people, and it found that seventy-seven percent thought the Church had not responded "adequately" to the allegations. Press Release, Catholic Communications Office, Bishops Welcome RCSI Report into Child Sexual Abuse by Catholic Clergy (Dec. 4, 2003), at <http://www.catholiccommunications.ie/Pressrel/4-december-2003.html> (last visited Nov. 13, 2004). The survey also found, however, that seventy-two percent thought that priests have been "unfairly judged," while the "overall satisfaction with the Church [stood] at 44%." *Id.*

48. In Poland, Archbishop Juliusz Paetz resigned after the Vatican began an investigation into allegations he sexually abused young priests. *Polish Archbishop Quits in Sex Row*, BBC NEWS, Mar. 28, 2002, at <http://news.bbc.co.uk/2/hi/europe/1898532.stm> (last visited Sept. 3, 2004).

49. In 1998, Austrian Cardinal Hans Hermann Gröer was forced to resign after allegations surfaced that he had sexually molested boys. *Id.* The Austrian Church later admitted that the allegations against Cardinal Gröer were "in essence true." *Austrian Bishops Label Cardinal a Paedophile*, BBC NEWS, Feb. 28, 1998, at <http://news.bbc.co.uk/2/hi/europe/60823.stm> (last visited Sept. 3, 2004). More recently, the Church has begun investigating reports that pornographic materials were found in an Austrian seminary. *Austria Probes Priest Sex Claims*, BBC NEWS, July 12, 2004, at <http://news.bbc.co.uk/2/hi/europe/3887033.stm> (last visited Sept. 3, 2004).

50. In France, a court convicted a bishop of concealing that priests sexually abused children. *Bishop Convicted in Paedophile Case*, BBC NEWS, Sept. 4, 2001, at <http://news.bbc.co.uk/2/hi/europe/1525053.stm> (last visited Sept. 3, 2004). The court sentenced the bishop to a three month suspended sentence, and the bishop stated that he would not appeal. *Id.*

51. In July 2002, the Catholic Bishops Conference of the Philippines apologized for sexual abuse occurring over the past twenty years, and stated that it was drafting new guidelines to deal with future allegations of sexual abuse. *Philippines Church Apologizes for Sex Abuse*, BBC NEWS, July 8, 2002, at <http://news.bbc.co.uk/2/hi/asia-pacific/2116154.stm> (last visited Sept. 3, 2004).

response from the Vatican.⁵² The scandal in the United States stretched across the nation as the public learned of numerous allegations of sexual abuse and mismanagement.⁵³ In many cases, several members of the

52. The Vatican responded to the scandal in several ways. In 2001, the Pope issued a 120-page document in an email, in which he apologized to victims of sexual abuse by priests—the first email message he had ever sent. *Vatican Acts on Paedophile Priests*, BBC NEWS, Jan. 8, 2002, at <http://news.bbc.co.uk/2/hi/europe/1749911.stm> (last visited Sept. 3, 2004). The Roman Catholic Church, through the Congregation for the Doctrine of the Faith, issued guidelines in 2001, and in 2002 published them in the Acts of the Apostolic See, the official legislative record for the Vatican. *Id.* In his annual letter to priests in 2002, the Pope condemned the sexual abuse by priests, saying that they had “succumbed to ‘the most grievous form of evil at work in the world.’” *Pope Denounces ‘Evil’ Sex Priests*, BBC NEWS, Mar. 21, 2002, at <http://news.bbc.co.uk/2/hi/europe/1885380.stm> (last visited Sept. 3, 2004).

53. The first allegations of sexual abuse by priests in the United States occurred in the 1980s. In 1985, Louisiana priest Gilbert Gauthé pled guilty to eleven counts of molestation. *Timeline: Boston Sex Scandal*, BBC NEWS, Dec. 13, 2002, at <http://news.bbc.co.uk/2/hi/americas/2573723.stm> (last visited Sept. 3, 2004). In 1992–93, Rev. James Porter was accused of sexually abusing children in five states during the 1960s and 1970s. *Id.* He later pled guilty to forty-one counts of sexual abuse. *Id.* Bishops first admitted that some priests had been covering up allegations of sexual abuse during a meeting in South Bend, Indiana, in 1992. *Id.*

Dallas, Texas was the scene of one of the most severe early scandals. Abuse by a diocesan priest, Rudolph Kos, led to legal proceedings against the Diocese of Dallas in 1992. *Id.* The Diocese later agreed to a settlement of almost \$31 million, which was divided between twelve former altar boys who were abused by Kos. *Church Pays \$31m to Sex Abuse Victims*, BBC NEWS, July 13, 1998, at <http://news.bbc.co.uk/2/hi/americas/130456.stm> (last visited Sept. 3, 2004).

In 1999, John Geoghan, a former priest from Massachusetts, was indicted on child rape charges. *Timeline: Boston Sex Scandal, supra.* Geoghan was convicted of indecent assault and battery, and was sentenced to ten years in prison in January 2002. *Id.*

In 2002, the scandal worsened. Two men filed legal claims in April, alleging that Church leaders covered up abuses, and “symbolically name[d] the Vatican for its alleged role” in the cover-ups. *Id.* Also, in April 2002, the Pope called Cardinals in the United States to the Vatican for an emergency meeting to discuss the growing problem. *Id.*

A survey released by the *Washington Post* in June 2002 revealed that in 2002 alone, allegations of sexual abuse caused the Church to remove 218 priests from their positions. Alan Cooperman & Lena H. Sun, *Hundreds of Priests Removed Since 60s; Survey Shows Scope Wider Than Disclosed*, WASH. POST, June 9, 2002, at A1. The *Washington Post* also found that “at least 850 priests have been accused of sexual misconduct with minors since the early 1960s, and that more than 350 of them were removed from the ministry before this year.” Yet, according to the survey, at least thirty-four priests who are known offenders still hold positions in churches. *Id.*

In terms of financial settlements, the survey revealed that churches acknowledged paying \$106 million to victims. However, several plaintiffs’ lawyers disputed this, estimating that the true amount the Church has paid to victims is nearly \$1 billion. *Id.* Between January and June 2002, approximately 300 lawsuits were filed, alleging sexual abuse by priests. *Church Abuse ‘Wider Than Thought,’* BBC NEWS, June 9, 2002, at <http://news.bbc.co.uk/2/hi/americas/2034732.stm> (last visited Sept. 3, 2004).

The scandal has also negatively influenced the way Catholics view the Church. An opinion poll found that more than seventy percent of American Catholics believe that the Church is “in the midst of a crisis.” Peter Gould, *US Catholics Worry for Future*, BBC NEWS, Apr. 22, 2002, at <http://news.bbc.co.uk/2/hi/americas/1944738.stm> (last visited Sept. 3, 2004). However, only three percent, according to the survey, intend to leave the Church. *Id.*

Recently, the National Review Board for the Protection of Children and Young People released a survey detailing the extent and reasons for the scandal, as well as recommendations to solve the situation. THE NATIONAL REVIEW BOARD FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE, A

Church hierarchy participated in a cover up of the allegations.⁵⁴ As the allegations became common knowledge, a scandal developed. Widespread dissatisfaction with the Church's handling of the situation swept across the public, including both Catholics and non-Catholics, and calls quickly came for reform.⁵⁵

In response to the scandal, the Church in the United States, like Catholic churches around the world, settled lawsuits,⁵⁶ made personnel changes,⁵⁷ and created a policy detailing how future allegations of sexual abuse by priests would be handled.⁵⁸ The United States Conference of Catholic Bishops (USCCB) drafted the first version of the *Essential*

REPORT ON THE CRISIS IN THE CATHOLIC CHURCH IN THE UNITED STATES (2004), available at <http://www.usccb.org/nrb/nrbstudy/nrbreport.pdf> (last visited Sept. 3, 2004) [hereinafter A REPORT ON THE CRISIS IN THE CATHOLIC CHURCH IN THE UNITED STATES].

The survey stated that between 1950 and 2002, 4,392 priests were accused of sexual abuse, a number representing approximately four percent of the 109,694 priests who served during that time. *Id.* However, others dispute these numbers. In response to the numbers reported in the draft of the survey, David Clohessy, director of Survivors of Those Abused by Priests (SNAP) stated that, "[b]ishops have tried to hide this for years, so there is no reason to believe all of a sudden they would change their ways." He added that, "[t]he only prudent thing to do is to assume this is not the entire truth." *Draft Survey: 4,450 Priests Accused of Sex Abuse*, CNN.COM, Feb. 17, 2004, at <http://www.cnn.com/2004/US/02/16/church.abuse/index.html> (last visited Oct. 28, 2004).

Despite their detractors' allegations, the United States Bishops have reported that of the nearly 200 dioceses in the United States, ninety percent were complying with the pledge to protect children that the Bishops adopted in June 2002. *Report Backs US Catholic Bishops*, BBC NEWS, Jan. 6, 2004, at <http://news.bbc.co.uk/2/hi/americas/3373073.stm> (last visited Sept. 3, 2004).

54. In many cases, bishops often moved accused priests "quietly" to a new parish. Peter Gould, *Analysis: US Church Shaken by Sex Scandals*, BBC NEWS, Apr. 16, 2002, at <http://news.bbc.co.uk/2/hi/americas/1932791.stm> (last visited Sept. 3, 2004). Defending the Church, one clergyman stated that, "[i]nitially, the Church viewed sexual offenses as sins to be confessed, rather than a sickness to be treated." After a priest confessed his sins, including sexual abuse, he would be forgiven and sent back to work. *Id.*

55. Various victims' groups have pressured the Church to change its policies, and lawsuits were filed alleging that the Church's response was inadequate. *See supra* note 53, and *infra* note 56.

56. There have been several settlements agreed upon by churches, including the settlement in Dallas in 1998. *See supra* note 53. In 2003, the Diocese of Boston agreed to an \$85 million settlement with more than 500 victims of sexual abuse. *US Diocese Settles Sex Abuse Cases*, BBC NEWS, Sept. 10, 2003, at <http://news.bbc.co.uk/2/hi/americas/3095230.stm> (last visited Sept. 3, 2004). Recently, the Diocese of Kentucky agreed to pay almost \$5.2 million to twenty-seven plaintiffs. *Catholic Diocese Settles for \$5.2M*, CNN.COM, Oct. 12, 2003, available at <http://www.cnn.com/2003/LAW/10/12/church.abuse.ap> (last visited Sept. 3, 2004). The archdiocese of Portland, Oregon, recently filed for bankruptcy after settling more than one hundred cases. *Portland Archdiocese Declares Bankruptcy*, CNN.COM, July 7, 2004, at <http://www.cnn.com/2004/LAW/07/06/portland.archdiocese/index.html> (last visited Sept. 3, 2004).

57. For example, Cardinal Law, former head of the Boston Archdiocese, admitted transferring accused priests and resigned from his post with the Vatican's consent on December 12, 2002. *Abuse Scandal Forces Out Boston Cardinal*, BBC NEWS, Dec. 13, 2002, at <http://news.bbc.co.uk/2/hi/americas/2572517.stm> (last visited Sept. 3, 2004).

58. *See infra* notes 68–90 and accompanying text.

Norms in June, 2002,⁵⁹ however, the Vatican refused to approve the *Essential Norms*, claiming that it did not afford accused priests enough due process protections and was vague in its wording.⁶⁰ The Vatican also claimed that the policy did not conform to the procedures set out by the Church in *Canonical Delicts Involving Sexual Misconduct and Dismissal from the Clerical State*.⁶¹

After the Vatican's rejection of the *Essential Norms*, the USCCB again met and devised a revised policy in order to conform to the Vatican's requirements. The USCCB completed the revised policy in November 2002, and the Vatican approved it on December 16, 2002.⁶² The revised policy has greater due process protections for accused priests, and contains harsher penalties for priests whom investigations have shown to be guilty.

III. THE ESSENTIAL NORMS

A. A Comparison of the Two Policies

A comparison of the two versions of the *Essential Norms* shows that the revised policy is better. The revised policy has greater procedural safeguards to protect priests,⁶³ as well as stricter and more detailed guidelines governing transfers of priests.⁶⁴ Another change from the

59. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ESSENTIAL NORMS FOR DIOCESAN/EPARCHIAL POLICIES DEALING WITH ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY PRIESTS OR DEACONS (June 2002), <http://www.usccb.org/comm/compare.htm> (last visited Nov. 13, 2004) [hereinafter ORIGINAL NORMS].

60. Letter of Cardinal Prefect Giovanni Battistare of the Congregation for Bishops, to The Most Reverend Wilton D. Gregory, President of the USCCB, Oct. 14, 2002, http://www.vatican.va/roman_curia/congregations/cbishops/documents/rc_con_cbishops_doc_20021018_re-usa_en.html (last visited Sept. 3, 2004). The letter states that there are aspects of the USCCB's policy that are "difficult to reconcile with the universal law of the Church." *Id.* Revision was also necessary because the language of the policy was "vague and imprecise" and would be "difficult to interpret." *Id.*

61. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CANONICAL DELICTS INVOLVING SEXUAL MISCONDUCT AND DISMISSAL FROM THE CLERICAL STATE (1995). The Delicts, which were set out several years before the sexual abuse scandal broke, address how the Church would deal with allegations of sexual abuse by priests. Specifically, the Delicts establish reasons justifying the requirement of chastity while also addressing canon 1395, which prohibits sexual abuse of a minor. *Id.* at 3–7. The Delicts also outline the procedures for investigation and determination of claims. *Id.* at 8–11. If an investigation finds that an allegation of sexual abuse is true, the Delicts list possible penalties and other options that Church leaders may employ. *Id.* at 12–21.

62. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, ESSENTIAL NORMS FOR DIOCESAN/EPARCHIAL POLICIES DEALING WITH ALLEGATIONS OF SEXUAL ABUSE OF MINORS BY PRIESTS OR DEACONS, Preamble (Oct. 2002), available at <http://www.usccb.org/ocyp/norms.htm> (last visited Nov. 13, 2004) [hereinafter REVISED NORMS].

63. See *infra* notes 68–74 and accompanying text.

64. See *infra* notes 78–80 and accompanying text.

original policy is the elimination of an appellate review board.⁶⁵ Many other changes give Church leaders greater and more explicit powers in effectively dealing with allegations of sexual abuse.⁶⁶

The revised *Essential Norms* complies with the requirements of canon law more closely than the original. There are many similarities between the two policies, but even more subtle differences.⁶⁷ Both policies state that the norms' definition of sexual abuse is not the same as the civil definitions of sexual abuse.⁶⁸ Both require that each individual diocese and eparchy⁶⁹ have their own written sexual abuse policies on file with the USCCB.⁷⁰

The biggest difference between the policies involves the procedures for investigating an accusation and dealing with the accused cleric. In the original policy, when a credible accusation was received, the accused religions would have been "relieved of any ecclesiastical ministry or function," and then an investigation would have been launched into the allegation.⁷¹ Thus, the priest would have been punished for wrongdoing before an investigation began.

In contrast, in the revised policy, when an allegation is received, an investigation will be undertaken to determine the credibility of the accusation.⁷² If the investigation uncovers "sufficient evidence" that the accusation is true, only then can the Ordinary implement the measures outlined in canon 1722, which include removing the accused from the sacred ministry or from any ecclesiastical office or function.⁷³ Thus, the revised policy requires an investigation finding sufficient evidence

65. See *infra* notes 75–77 and accompanying text.

66. See *infra* notes 82–87 and accompanying text.

67. Most of the differences between the policies involve rephrasing concepts or rearranging the order of the norms.

68. The original policy stated that the norms' definition should not "be equated with the definitions of sexual abuse . . . in civil law." ORIGINAL NORMS, *supra* note 59, pmb1. The second policy, in contrast, states that the norms do not adopt "any particular definition provided in civil law." REVISED NORMS, *supra* note 62, pmb1.

69. An eparchy is the name for the Eastern Catholic Church's dioceses. New Advent Catholic Encyclopedia Online, *Eparchy* (2004), <http://www.newadvent.org/cathen/05484a.htm> (last visited Nov. 11, 2004).

70. Although each version of the *Norms* requires individual written policies from each diocese and eparchy, the *Revised Norms* specifically state that those policies must be in compliance with canons 1717–1719. REVISED NORMS, *supra* note 62, Norm 2.

71. ORIGINAL NORMS, *supra* note 59, Norm 7. The investigation that would follow the removal of the accused priest from his duties would be "in harmony with canon law." *Id.* The Norm does not specify any specific canons that investigators should follow.

72. REVISED NORMS, *supra* note 62, Norm 6. The investigation immediately following the accusation would be "preliminary" and would be "in harmony with canon law." *Id.* The revised norm also specifies that investigators must follow canon 1717. See *supra* note 41.

73. *Id.*

supporting the accusation before measures are taken against the accused and imposes a stricter penalty—removal from the sacred ministry (defrocking).⁷⁴

Another change from the original policy is the elimination of the provision relating to the Appellate Review Board.⁷⁵ The original policy created an Appellate Review Board to further advise the Bishop on a case if requested to do so by the Bishop, the accused, or the victim.⁷⁶ However, the Appellate Review Board was completely eliminated in the revised policy.⁷⁷

There are other, more subtle differences between the two policies that make the revised policy the better one. Regarding the transfer of accused priests, the original policy states that before a transfer, the originating diocese will forward the cleric's records to the new diocese or eparchy.⁷⁸ The revised policy states explicitly that no one who has committed sexual abuse can be transferred to a new diocese or eparchy, yet it also states that regardless of whether the priests have been accused of sexual abuse, transferring priests' records must be forwarded to the new diocese prior to the transfer.⁷⁹ The additional requirement imposed by the revised policy is especially important. Previously, the Church covered up the occurrences of sexual abuse by transferring priests; this provision ensures that the Church will not continue to transfer abusive priests.⁸⁰

74. REVISED NORMS, *supra* note 62, Norm 6. Other "precautionary measures" include imposing or prohibiting "residence in a given place or territory," and the ability to "prohibit public participation in the Most Holy Eucharist pending the outcome of the process." *Id.*

75. ORIGINAL NORMS, *supra* note 59, Norm 6.

76. *Id.* The appellate review board would have consisted of "at least five persons of outstanding integrity and good judgment." *Id.* The board would have been made up of mostly members of the laity, but "at least one member should be a bishop, and at least one member should be a canon lawyer." *Id.*

77. There is no reason given within the revised policy for the elimination of these provisions. One possible reason might be that the Appellate Review Board did not have an actual judicial function, but rather had an advisory function. Further, the USCCB might have reasoned that, given the additional procedural protections added in the second policy, an advisory body such as the Board might no longer be necessary. This also might be true in light of other options for appeal available to the parties, including the Review Board, which is similar to the Appellate Review Board in composition. *See* ORIGINAL NORMS, *supra* note 59, Norm 5; REVISED NORMS, *supra* note 62, Norm 5. However, as the only option for review is the review board, allowing another level of appeal would be more consistent with the requirements of due process.

78. ORIGINAL NORMS, *supra* note 59, Norm 11. The diocese would forward the priest's or deacon's record to the new parish "if there is anything in his background to indicate that he would be a danger to children or young people." *Id.*

79. REVISED NORMS, *supra* note 62, Norm 12. The diocese will transfer the records in a "confidential manner" and they will contain "any and all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger to children or young people." *Id.* The Norm requires that dioceses forward records before transfers, even if the transferring priest is moving to an "institute of consecrated life or society of apostolic life." *Id.*

80. At the very least, it shows that the Church has a policy against transferring priests to cover up

There are many smaller changes that evidence the revised policy's greater compliance with canon law and make it the better policy.⁸¹ For instance, in the revised policy, the USCCB added Norm Nine, which gives the Bishop or Eparch the power to remove the accused at any time from his position.⁸² Another difference relates to the ways in which the Church will interact with civil authorities in these situations. In the original policy, the norms stated that accusations would be reported to the public authorities.⁸³ In contrast, the revised policy states that the Church would comply with all civil laws.⁸⁴

Also, there is a difference in the way the policies set out the standards for instituting punishment. The original policy calls for permanent removal from the sacred ministry, "[w]here sexual abuse by a priest or deacon is admitted or established."⁸⁵ Later, the Norm states that "even a single act" will be enough for removal.⁸⁶ The Norm in the revised policy states directly that a single act will be sufficient to warrant removal.⁸⁷

allegations of sexual abuse. However, that the *Revised Norms* explicitly states procedures for transferring all priests, not just those who have been accused of sexual abuse, indicates that the USCCB is trying to correct the mistakes of the past, and provide ways to avoid future problems.

81. The revised policy is more specific, gives greater detail in its requirements, and cites to the relevant canons it is employing. It also contains greater due process protections, as well as stricter rules and penalties.

82. REVISED NORMS, *supra* note 62, Norm 9. Norm Nine in the revised policy creates another tool for Church leaders to protect alleged victims. Providing for the opportunity to take swift and decisive action, if necessary, to protect those involved is especially significant in light of the inaction that characterized the Church in the past. This Norm evidences that Church leaders are both willing and able to take swift action if necessary. Also, because Norm Nine explicitly grants power to remove accused priests, the bishops and other Church leaders may be less hesitant to take steps when necessary to protect children and others from being sexually abused.

83. ORIGINAL NORMS, *supra* note 59, Norm 10. There is an exception to the requirement that Church leaders and members report allegations for instances when allegations are canonically privileged—in such cases, those with the information were not to report them. *Id.* The Norm also specifies that the Church will "cooperate [in the public authorities'] investigation." *Id.* Church leaders "[i]n every instance . . . advise and support a person's right to make a report to public authorities." *Id.*

84. REVISED NORMS, *supra* note 62, Norm 11. The Norm also repeats the requirements set out in the original Norm 11, including cooperation with the public authorities' investigation and the requirement that Church leaders will "advise and support a person's right to make a report to public authorities." *Id.* See also *supra* note 83. This change shows a greater commitment to complying with secular laws. Although in practice both policies probably would have been implemented the same way, specifically stating that they will comply with "all applicable civil laws" (emphasis added) is a gesture of good will toward the secular community that could help reestablish trust in internal Church proceedings.

85. ORIGINAL NORMS, *supra* note 59, Norm 9.

86. *Id.* Norm 9(A).

87. REVISED NORMS, *supra* note 59, Norm 8. The Norm reads:

[w]hen even a single act of sexual abuse by a priest or deacon is admitted or is established after an appropriate process in accord with Canon law, the offending priest or deacon will be removed permanently from ecclesiastical ministry, not excluding dismissal from the clerical state, if the case so warrants.

B. The Vatican was Justified in Requiring a New Policy

The original policy was misguided, providing very few due process protections for accused priests and violating both the letter and spirit of canon law. This is especially serious as certain provisions of canon law specifically outline the procedures to be followed in situations where a cleric is accused of a crime.⁸⁸ Implementing the original policy would have led to a witch-hunt, with accused priests, deacons, and other clerics being punished for merely being accused.⁸⁹ The Vatican, as the head of the Church, could not allow such a flagrant violation of both the letter and spirit of canon law. Thus, despite public disapproval of the Vatican's instruction to revise the original policy, the Vatican's decision to require the revisions was not only in accordance with canon law, but was the necessary and right course of action, despite public opinion.

Further, the Vatican was justified in exercising jurisdiction and requiring the revisions because the policy seems to have been influenced by the hysteria that accompanied the scandal. The Vatican has a responsibility to protect its members from unjust rules and laws, even if those rules are made by subordinates in the Church in response to public outcry.⁹⁰

IV. SEXUAL ABUSE POLICIES FROM OTHER COUNTRIES

Just as the United States was not the only country to have a sexual abuse scandal within its Catholic Church, the United States is not the only country to have enacted a policy outlining its procedures for dealing with the scandal and the actions that caused it.⁹¹ Many of the other policies are

This change, though minor, is appropriate, as it clarifies the "single act" aspect by stating it at the beginning of the norm, and not burying it in the middle. This simple rearrangement of words emphasizes the "single act" aspect, and though the change is one of semantics, it illustrates the Church's intent to make the penalties stricter, and to show the world that they are taking action.

88. Canons 1717–19 set out the procedures Church leaders must follow. *See supra* notes 41–43 and accompanying text.

89. I am not attempting to belittle the seriousness of child sexual abuse, or deny that many priests, deacons, and other Church personnel did sexually abuse children, and that the Church covered it up. I am simply arguing that the original policy had no standard of proof beyond a "credible accusation" before penalizing the accused. Although protecting children is important, so too is not punishing those who are innocent. The original policy essentially implemented a "guilty until proven innocent" standard for these cases, which conforms to neither canon law nor to U.S. law.

90. The Vatican, in requiring a revision of the policy, exercised the same power any other government would if its citizens were threatened. The Vatican has responsibility for, and control over, its members, especially the clergy, and therefore does, and should have, the power to protect its members around the world.

91. Other countries in which sexual abuse scandals have erupted include Australia, New Zealand,

comprehensive, in depth, detailed, compassionate, and show both regret and a desire to help the victims.

A. Australia: "Towards Healing"

Australia's policy, entitled "Towards Healing," consists of three parts: the Introduction, Principles for Dealing with Complaints of Abuse, and Procedures for Dealing with Complaints of Abuse.⁹² One of the most striking aspects of this policy is its name, which invokes a conciliatory tone and focuses on the plight of the victims.⁹³ The policy's introduction begins with an acknowledgement of the abuse committed by clergy, and issues a "sincere apology" to the victims.⁹⁴

Part One of the policy, Principles for Dealing with Complaints of Abuse, describes the effects of sexual abuse on the victims,⁹⁵ the offenders,⁹⁶ and the Church.⁹⁷ The policy also outlines seven goals the Church is aiming to achieve with its response: truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused, an effective response to those who are guilty of abuse, and prevention of abuse.⁹⁸

Ireland, the Philippines, Brazil, and Austria. See *supra* notes 46–51.

92. AUSTRALIAN BISHOP'S CONFERENCE & THE AUSTRALIAN CONFERENCE OF LEADERS OF RELIGIOUS INSTITUTES, *TOWARDS HEALING* (2000), available at http://www.acbc.catholic.org.au/statements/sexual_abuse_th2001_1.htm (last visited Sept. 3, 2004) [hereinafter *TOWARDS HEALING*]. The Australian bishops first enacted the *Towards Healing* policy in 1996; they amended it as part of a planned update in 2000. They also selectively amended the policy in July 2003.

93. The conciliatory tone struck by the title is found throughout the entire policy.

94. *TOWARDS HEALING*, *supra* note 92, at 1. The introduction was written by and on behalf of bishops and other religious leaders in Australia. They acknowledged the abuse "with deep sadness and regret." *Id.* Beginning the policy with an apologetic tone signals the Church's intent to make amends for the abuse that has occurred.

95. *Id.* ¶¶ 6–8. The section entitled, "The Victims," details the effects sexual abuse can have on those who suffer it, including "fear, shame, confusion, and the violation of their person." *Id.* ¶ 6. The policy goes further and acknowledges that victims have received a variety of responses from Church officials, as well as expressing "regret and sorrow for the hurt caused whenever the response denies or minimises the pain that victims have experienced." *Id.* ¶ 8.

96. *Id.* ¶¶ 9–11.

97. *Id.* ¶ 1. The first subsection, "Sexual Abuse," states that, because of the positions of authority clergy and other religious leaders hold, sexual abuse is a "breach of trust, an abuse of authority, and professional misconduct." It also points out that "[c]ompliance by the other person does not necessarily imply meaningful consent," and that all sexual behavior with a child is "always sexual abuse," and is "both immoral and criminal." *Id.* ¶ 3.

98. *Id.* ¶¶ 13–32. The policy elaborates on each goal. For truth, it states "[c]oncealing the truth is unjust to victims, a disservice to offenders, and damaging to the whole Church community." *Id.* ¶ 14. The policy elaborates on humility by acknowledging that, "[i]t is very humbling for a Christian Church to have to acknowledge that some of its clergy . . . have committed abuse. We must recognize that humility is essential if we are to care for victims and prevent abuse in the future." *Id.* ¶ 15.

The policy reiterates the presumption of innocence for those accused. *Id.* ¶ 26. However, if a

The second part of the policy outlines the procedures the Church will use in dealing with complaints of sexual abuse.⁹⁹ The procedures state that each state and territory in Australia shall set up a Professional Standards Resource Group.¹⁰⁰ The Resource Groups will advise the Church in professional standards¹⁰¹ and proactively give advice to any Church organization in the state.¹⁰² Each Resource Group will appoint individuals to act as “Contact Persons,” who will receive complaints, and “Accused Person’s Support Persons,” who will represent the accused individual’s interests.¹⁰³ The Resource Groups shall also keep lists of people to fulfill several other positions, including: Assessors, who will investigate complaints; Facilitators, who help devise a plan between the victim and the Church about what the Church “can and should do to assist the victim”; and Reviewers, who shall review the process.¹⁰⁴

The procedures for dealing with complaints of sexual abuse are long and detailed.¹⁰⁵ However, the language is plain and easy to understand, making it easier for everyone to read and follow the procedures.¹⁰⁶

person accused is found guilty by due process of law, “the response must be appropriate to the gravity of what has happened, while being consistent with the precepts of Canon law or civil law which govern that person’s position.” *Id.* ¶ 27. To prevent further abuse, the Church will make “every effort to reduce the risk of abuse by Church personnel.” *Id.* ¶ 30.

99. *Id.* ¶¶ 33–45. The procedures are to be used for “all complaints of abuse by Church personnel, whether they be clerics, religious personnel, lay employees, or volunteers.” *Id.* ¶ 33.3.

100. *Id.* ¶ 35.2. A National Committee for Professional Standards will be established to “oversee the development of policy, principles, and procedures in responding to complaints of abuse against Church personnel.” *Id.* ¶ 35.1. The state and territorial Professional Standards Resource Group shall consist of a maximum of twelve individuals, including at least one priest and one religious, as well as others with diverse backgrounds. *Id.* ¶ 35.2.1. The others shall be both men and women and shall have experience in such areas as “child protection, the social sciences, civil and Church law, and industrial relations.” *Id.* “The bishops and leaders of religious institutes” shall appoint the members of the Professional Standards Resource Group. *Id.*

101. *Id.* ¶ 35.2.2.

102. *Id.* ¶ 35.2.3.

103. *Id.* ¶ 35.4. Both the Contact Person and the Accused’s Support Person can be chosen either from the Resource Group itself, or from elsewhere. Contact Persons must be “skilled listeners, sensitive to the needs of complainants.” *Id.* They may also, after the complaint has been filed, “act as a support person for the complainant and may assist, when appropriate, with communication between the complainant, assessors, and the Church authority.” *Id.* However, the procedures caution that the contact person is not a counselor for the complainant, and cannot be the complainant’s therapist. *Id.* The Accused’s Support Person can assist with caring for the accused and with communication between the various parties involved. *Id.* The procedures again caution that the Accused’s Support Person shall not be the accused’s therapist. *Id.*

104. *Id.* ¶ 35.5. The Assessors, Facilitators, and Reviewers shall be chosen from individuals who are not members of the Resource Group. *Id.*

105. *Id.* ¶¶ 33–45. The second part includes sections on definitions, structures and personnel, receiving a complaint, criminal offenses and the reporting of child abuse, responding to a complaint, selecting the appropriate process, assessment, outcomes relating to the victim, outcomes relating to the accused, review of process, and preventive strategies. *Id.*

The level of detail goes to every aspect. For instance, the policy states that an accused can get

B. New Zealand: “A Path to Healing”

Like the Australian policy, the New Zealand policy, *A Path to Healing*, is comprehensive, highly detailed, easy to understand, and focused on the victims.¹⁰⁷ *A Path to Healing* is divided into three main sections: Principles, Structures, and a Handbook.¹⁰⁸ The policy states that although there may be circumstances in which the procedures outlined in the policy cannot be implemented exactly, the principles “should always be followed.”¹⁰⁹ The “living” nature of the document is also emphasized in the policy.¹¹⁰

Part One of *A Path to Healing* begins by stating that the Church’s response to the sexual abuse scandal “must be founded on an acknowledgement of the wrong which has been done to those who have suffered from the abuse.”¹¹¹ The policy then outlines the approach that the Church in New Zealand will take in dealing with sexual abuse complaints.

legal assistance at his or her own cost, but the Church may exercise its discretion and help pay an accused’s legal fees if he or she cannot afford it. *Id.* ¶ 40.5.1. The procedures also specify that all interviews shall be recorded, either by written or taped means. *Id.* ¶ 40.9.

106. Although the policy is very dry, the lack of technical terms, and the extensive definitions would suggest that anyone, not just the highly educated or those trained in canon law, can understand the policy. This is another sign of the Australian Church’s desire to reach out to everyone.

107. NEW ZEALAND CATHOLIC BISHOPS CONFERENCE AND THE CONGREGATIONAL LEADERS CONFERENCE OF AOTEAROA, *A PATH TO HEALING—TE HOUHANGA RONGO* (2001), http://www.catholic.org.nz/resources/path_to_healing.php (last visited Sept. 3, 2004) [hereinafter *A PATH TO HEALING*]. The current policy is a revision of a policy published in 1998, which was intended to be in place only for three years, after which time the policy would be reviewed. New Zealand had previously enacted a provisional sexual abuse policy in 1993. *Id.* Introduction. The current policy will be in place for five years before it will be reviewed. W. John A. Dew, *Foreword to A PATH TO HEALING*.

The title of the New Zealand policy, just like the title of the Australian policy, emphasizes the wrongs to the victims and the need for healing—both on the part of the victims, but also on the part of the Church. It is a conciliatory title, and reflects the attitude that pervades the entire policy. The title is in both English and in the native Maori language, which shows that the New Zealand Church is reaching out to both the native community and the community of European descent.

108. See *A PATH TO HEALING*, *supra* note 107. The principles outline the Church’s position on the events and acts that led to the need for the policy. *Id.* Part 1, ¶¶ 1–20. These are the procedures Church leaders must follow when dealing with a complaint of sexual abuse. *Id.* Part 2, §§ 1–9.2. The handbook gives more detailed procedures, and includes examples of the forms to be used for consent of complainant to proceed, when a complainant has been received, the abuse protocol committee’s summary of process, and a letter to a complainant thanking him or her for coming forward with the complaint, and praising his or her courage. *Id.* Handbook, §§ 1–8.7; apps. 1–3.

109. *Id.* Introduction.

110. *Id.* The “living” nature of the policy is explained to mean that it shall be “developed and improved as experience and practice dictate.” *Id.* Previous revisions to the policy also serve as evidence of the living nature of the policy. See *id.* The expressed hope is that by publishing the newest policy, it will allow “all interested persons in the community to work together to find ways to respond more effectively to the evil of sexual abuse within the Church.” *Id.* Introduction.

111. *Id.* Part 1.

The principles recognize the need for truth, compassion, and accountability for the particular harm caused by the sexual abuse.¹¹²

The procedures outlined in *A Path to Healing* are similar to those in *Towards Healing*.¹¹³ The procedures are divided into nine parts: Introduction, Definitions, Structures and Personnel, Procedures, Review of Process, Outcomes Relating to the Accused, Other Persons Affected, Preventive Strategies, and Conclusion. Like the Australian procedures, *A Path to Healing* sets up an Abuse Protocol Committee to deal with complaints of sexual abuse.¹¹⁴ The Committee's members perform four

112. *Id.* Part 1, ¶¶ 1–20. Unlike the Australian policy, the New Zealand policy does not list a set of goals. See TOWARDS HEALING, *supra* note 92. Rather, *A Path to Healing* outlines principles that Church leaders should follow when dealing with complaints of sexual abuse. The first priority in dealing with complaints of sexual abuse, according to the policy, is to give a “compassionate response to the complainant.” A PATH TO HEALING, ¶ 2. Further, Church leaders must take complaints seriously, and those taking complaints must react “sympathetically and sensitively,” and treat the complainants with “compassion and respect.” *Id.* When sexual abuse has occurred, the Church will take on the responsibility of ensuring that the victims receive “the assistance demanded by justice and compassion.” *Id.* ¶ 4. In addition, the Church will offer assistance to others affected by the sexual abuse, such as the victim’s family members and other members of the community. *Id.* ¶ 5.

As for the sexual abuse itself, the policy states that, because of the “special position of trust and authority” that clergy and other religious people hold in the community, sexual abuse by them is “a betrayal of their calling” and a “betrayal too of the Christian community.” *Id.* ¶¶ 6–7. The policy declares sexual abuse of children and adolescents both “immoral and criminal.” *Id.* ¶ 8. Also, sexual behavior with adults seeking pastoral care, who are in a “vulnerable position,” is an “abuse of power.” *Id.* ¶ 9. The Church accepts its responsibilities to “ensure that offenders are held accountable for what they have done, come to a true appreciation of the enduring harm they have caused, seek professional help in overcoming their problems, and do whatever is in their power to make amends.” *Id.* ¶ 3.

The policy also outlines the Church’s commitment to truth in dealing with complaints of sexual abuse. Those investigating complaints must do so with an “open mind,” and must carry out their duties with discretion and “respect for confidentiality.” *Id.* ¶¶ 11–12. However, the policy cautions that those accused shall be treated “fairly and with respect,” and his or her rights as both a “person and a member of the Church community will be respected and every effort will be made to preserve their good name.” *Id.* ¶ 13. When the accusation is “mistaken or without foundation,” the Church will take “positive steps” to ensure that the accused is cleared of wrongdoing and suspicion. *Id.* ¶ 18. The policy also affirms the use of the “innocent until proven guilty” standard. *Id.* ¶ 14.

The principles look to the effects of the sexual abuse scandal on the Church community, which include whatever “shame and hurt” was suffered by the community as a result of the scandal. *Id.* ¶ 20. However, the scandal also served as a “call for all of us to work for justice and reconciliation, forgiveness and healing, and to make a strong commitment to work towards preventing such abuse from happening again.” *Id.*

113. See *supra* notes 92–106 and accompanying text.

114. A PATH TO HEALING, *supra* note 107, Part 2, §§ 3.9–3.16. The Abuse Protocol Committee has three functions: “(a) to receive the complaint and investigate the allegation; (b) to advise the accused of the nature of the allegation and receive the response; (c) to make recommendations to the bishop or the congregational leader with regard to the resolution of the complaint . . .” *Id.* § 3.10. The Abuse Protocol Committee will appoint, either from its own members or from people outside the committee, contact persons; the contact persons, whose names will be advertised so that the general public will know who they are, will take complaints of sexual abuse. *Id.* § 3.12.

The policy also calls for each diocesan bishop to appoint a delegate who will act as the bishop’s representative when the Church receives a complaint of sexual abuse. *Id.* § 3.1. The delegate’s

main functions: conduct an “interview of the person making the complaint and/or victim; [provide] ongoing support for the person making the complaint; [conduct an] investigation of the complaint; [and provide] ongoing support for the accused.”¹¹⁵

The policy outlines procedures for reviewing the Church’s process in dealing with complaints of sexual abuse,¹¹⁶ comprehensive preventive strategies are also included.¹¹⁷

The third part of *A Path to Healing* is the handbook, which includes more detailed guidelines for the procedures outlined in the second part of the policy.¹¹⁸ It also contains a section on the Canonical Preliminary Inquiry and the Canonical Civil Trial.¹¹⁹ Another part of the handbook contains forms that should be used for the various procedures.¹²⁰

Overall, the New Zealand policy, *A Path to Healing*, is comprehensive, easy to understand and follow, and is written with a high level of detail.

responsibility will be to ensure that those dealing with complaints of sexual abuse follow the principles and procedures outlined in the policy. *Id.*

115. *Id.* § 3.16. The policy states that different members of the Abuse Protocol Committee will perform the various functions. *Id.*

116. *Id.* § 5.1. Either the accused or the complainant can request a review if they are “not satisfied with decisions taken by the relevant Church authority in relation to any aspect of the complaint.” *Id.* The review is an “independent evaluation” of whether the principles and procedures outlined in the policy were followed by the Abuse Protocol Committee. *Id.* § 5.2.

117. *Id.* § 8. The preventive strategies include educating Church personnel as to the “seriousness of sexual abuse and . . . the professional boundaries that must be observed in the conduct of ministry and pastoral practice,” as well as to what behavior would be inappropriate. *Id.* § 8.1. They also specify procedures that bishops must follow when transferring priests from one diocese to another in order to ensure that sexual abuse offenders are not transferred to cover up the abuse. *Id.* § 8.4. A written statement from the first parish certifying that they are “not aware of any complaint of sexual abuse” is required. *Id.* § 8.4.1. Also, psychosexual assessments are mandatory for candidates for the seminary and other religious institutions. *Id.* § 8.6.

118. *Id.* Handbook. The more detailed guidelines relate to the delegate, the Abuse Protocol Committee, Procedures by the Abuse Protocol Committee, Bringing a Case to Resolution, Keeping the Records, Canonical Matters, Relations With the Media, and Assistance to Parishes. The section on Procedures by the Abuse Protocol Committee is further divided into several sections that deal with receiving the complaint and interviewing the accused. *Id.*

119. *Id.* app. 1. The Appendix specifies that, if a Canonical Preliminary Inquiry becomes necessary, the procedures undertaken by the Abuse Protocol Committee can be substituted for canonical procedures. *Id.* at A.1.

120. *Id.* apps. 2–5. The forms include the Consent of Complainant to Proceed; That a Complaint has Been Received; the Abuse Protocol Committee’s Summary of Process; and a letter thanking the complainant for making the complaint and praising the complainant’s courage in making a complaint. *Id.* The forms include the general information and contain blanks that can be filled in as needed. *Id.*

C. Ireland: “*Child Sexual Abuse: Framework for a Church Response*”

One of the countries with the worst sexual abuse scandals is Ireland.¹²¹ Its policy, *Child Sexual Abuse: Framework for a Church Response (Child Sexual Abuse)*, dates from 1996.¹²² *Child Sexual Abuse* follows the same basic format as the Australian and New Zealand policies, and includes both the principles and the procedures that Church leaders can use in dealing with complaints of sexual abuse. The Irish policy also contains several appendices, which include sections detailing the state of the law in both Ireland and Northern Ireland.¹²³ Sample forms are also included in the appendices.¹²⁴

The first section of the policy, *A Church Response to Child Sexual Abuse*, acknowledges the wrong done to the victims.¹²⁵ The effects of child sexual abuse on the victims and their families are discussed in detail, and the policy asserts that the victims are the first priority for the Church.¹²⁶ The policy also lays out eight guidelines to direct the Church’s response to child sexual abuse.¹²⁷

121. See *supra* note 47.

122. IRISH CATHOLIC BISHOPS’ ADVISORY COMMITTEE ON CHILD SEXUAL ABUSE BY PRIESTS AND RELIGIOUS, *CHILD SEXUAL ABUSE: FRAMEWORK FOR A CHURCH RESPONSE* (1996), available at <http://www.catholiccommunications.ie/pastlet/csafamework.pdf> (last visited Sept. 3, 2004) [hereinafter *CHILD SEXUAL ABUSE*]. Although dated 1996, it appears to be Ireland’s most recent policy.

123. *Id.* at 55. The policy applies to the Church in both Ireland and Northern Ireland. Neither country, at the time of this policy, had laws specifically requiring that instances of child sexual abuse be reported. *Id.* In Northern Ireland, the law states that people must report “arrestable offenses.” *Id.* at 55–56. Most, though not all, instances of sexual abuse against children qualify as arrestable offenses. *Id.* at 56.

Appendix Three discusses the United Nations Convention on the Rights of the Child, to which both Ireland and Northern Ireland are signatories. *Id.* at 57. The treaty requires signatories to “take all appropriate legislative, administrative, social, and educational measures to protect children from abuse or exploitation, including sexual abuse.” *Id.* The Appendix points out that the treaty is not binding law in either country; however, ratification of the treaty obligates both countries to “ensure that the terms of the treaty are honoured.” *Id.*

124. *Id.* at 63–64. The included sample forms are a “Request for Permission to Minister in the Diocese of _____,” “Grant of Permission,” and “Agreement of Applicant.” *Id.* The sample forms, like those provided in the New Zealand policy, contain general terms and leave blanks for individualized information. See *supra* note 120.

125. *CHILD SEXUAL ABUSE*, *supra* note 122, at 11. The policy deems sexual abuse of children a “grave violation of their right to bodily integrity and an invasion of their right to physical and emotional privacy.” *Id.* The policy also states that sexual abuse by priests and other religious persons is a “betrayal of a trust,” as well as a “betrayal of their calling to serve others.” *Id.*

126. *Id.* at 12–13. The effects of sexual abuse outlined include physical, emotional, and spiritual effects, all of which can be suffered in both the short and long term. *Id.*

127. *Id.* at 18–19. The eight guidelines are that:

1) The safety and welfare of children should be the first and paramount consideration following an allegation of child sexual abuse;

The procedures for dealing with child sexual abuse prescribe that local bishops should appoint a Delegate who will receive the complaints of sexual abuse.¹²⁸ Bishops are also directed to appoint other individuals to assist in dealing with the complaints of sexual abuse.¹²⁹

V. A COMPARISON OF SEXUAL ABUSE POLICIES

Although many countries around the world have enacted policies outlining their response to allegations of sexual abuse, the various policies are not equal in terms of compassion, comprehensiveness, clarity, respect for victims, and willingness to rectify past mistakes. The revised USCCB policy, though an improvement on the original USCCB policy, is lacking when compared to several other countries' policies.

The main omission from the revised version of the *Essential Norms* is that it lacks any significant principles guiding the procedures; in contrast, the Australian, New Zealand, and Irish policies have provided such principles.¹³⁰ The principles give the other policies not only a guide to

- 2) A prompt response should be given to all allegations of child sexual abuse;
- 3) In all instances where it is known or suspected that a priest or religious has sexually abused a child, the matter should be reported to the civil authorities;
- 4) Care should be given to the emotional and spiritual well-being of those who have suffered abuse and their families;
- 5) There should be immediate consideration, following a complaint, of all child protection issues which arise, including whether the accused priest or religious should continue in ministry during the investigation;
- 6) The rights under natural justice, civil law, and canon law should be respected;
- 7) An appropriate pastoral response to the parish and wider community should be provided with due regard to the right of privacy of those directly involved, and to the administration of justice;
- 8) Adequate positive steps should be taken to restore the name and reputation of a priest or religious who has been wrongly accused of child sexual abuse.

Id.

128. *Id.* at 25. The delegates should receive training so that they have "the necessary skills, including an understanding of the dynamics of child sexual abuse, of its impact on victims, and of clinical and public policy developments in the area." *Id.*

129. *Id.* at 25–27. The other positions appointed by the bishops are the support person, the adviser, the advisory panel, and someone to handle media relations. Unlike the Australian and New Zealand policies, the committee (here, the Advisory Panel) does not take or investigate complaints. *See supra* notes 99–104, 114 and accompanying text. The Irish Advisory Panel's function is to "offer advice on a confidential basis . . . when required." CHILD SEXUAL ABUSE, *supra* note 122, at 26.

130. The *Essential Norms* themselves consist entirely of a list of procedures for dealing with complaints, although the Preamble gives a few brief statements. For instance, the Preamble states that the USCCB made a "commitment to deal appropriately and effectively with cases of sexual abuse," and "promised to reach out to" the victims. ESSENTIAL NORMS, *supra* note 62, pmbl. Nowhere in the Preamble are these brief statements of purpose elaborated upon or explained. Strangely, some of these statements are written in the third person—i.e., "the USCCB," or "the bishops" promise, etc., instead of "we" promise. The use of third person makes the statements seem impersonal and less

what the procedures should accomplish, but also express regret over the abuse and compassion for the victims' suffering. By not including significant principles with the procedures, the *Essential Norms* exists in a vacuum and is nothing more than a list of tasks. Further, the title also implies a lack of compassion for victims.¹³¹

The revised *Essential Norms*, though detailing the procedures to be followed when a complaint of sexual abuse is received, is not as comprehensive as the other countries' policies.¹³² It is also lacking in its

compassionate and remorseful. The simple statements in the Preamble are exactly that—simple statements, without any reiteration or expansion. The statements include little about the victims, except that the bishops will “reach out” to them, which conveys little compassion or remorse.

However, another, separate document published by the USCCB in 2003, the *Charter for the Protection of Children and Young People*, does set out principles to guide the procedures. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE—REVISED EDITION (2003), available at <http://www.usccb.org/ocyp/charter.htm> (last visited Sept. 3, 2004) [hereinafter CHARTER]. In addition to an apology, in which “we bishops express great sorrow and profound regret,” the *Charter* states several principles: “to promote healing and reconciliation with victims/survivors of sexual abuse of minors”; “to guarantee an effective response to allegations of sexual abuse of minors”; “to ensure the accountability of our procedures”; [and] “to protect the faithful in the future.” *Id.*

The reason why the *Charter* is separate from the *Essential Norms* is unclear, especially as each document references the other. See CHARTER, *supra* art. 2; see also REVISED NORMS, *supra* note 62, pmbl. However, the separation forces the documents to stand alone when they should be joined. The need to interpret them jointly is especially important in the case of the *Essential Norms*, as they are supposed to be implementing the principles outlined in the *Charter*. Furthermore, because the *Essential Norms* are highly technical and very dry, they need to be tempered by the compassion and remorse shown in the *Charter*.

131. The title of the USCCB's policy is *Essential Norms for Diocesan/Eparchial Policies Dealing With Allegations of Sexual Abuse of Minors by Priests or Deacons*. The USCCB titled the document outlining their principles the *Charter for the Protection of Children and Young People*. These titles are long, dry, and themselves show little concern for the victims or for solving the problems the Church caused for itself.

Although the Irish policy, *Child Sexual Abuse: Framework for a Church Response* is almost as dry as the United States policy, the titles for the Australian and New Zealand policies, *Towards Healing* and *A Path to Healing*, respectively, are more appropriate. These titles instead show not only a desire to help the victims of sexual abuse heal, but also a desire for the Church to solve, and recover from, its problems. Thus, to show greater remorse and compassion, the USCCB should follow the examples of Australia and New Zealand and change this most visible aspect of their policy.

132. In comparison to the policies of other countries, the *Essential Norms* is lacking in terms of coverage. For example, *A Path to Healing* contains provisions relating to the keeping of records, canonical matters, relations with the media, and providing assistance to parishes. A PATH TO HEALING, *supra* note 107, Handbook, §§ 5–8. It also elaborates further on the procedures to be used in dealing with complaints. *Id.* §§ 1–4.

While the *Essential Norms* contain a provision forbidding the transfer of an abuser to another diocese or eparch, there are no procedures for receiving the complaint, for assisting the victims, or for prevention of future sexual abuse. Norm 2 of the *Essential Norms* states that each diocese or eparchy must make its own policy that will “comply with [and] . . . specify in more detail, the steps to be taken in implementing the requirements of Canon law.” REVISED NORMS, *supra* note 62, Norm 2. The lack of specific detail in this context stems from the USCCB's intent that individual dioceses decide on the particulars of their own policies.

This more localized approach makes sense in that individual dioceses will know better what exact

level of detail; instead of stating exactly what should be done, the *Essential Norms* gives only broad guidelines.

The *Essential Norms* is also more difficult to understand. It is written in more technical language, with many references to canons and other documents interspersed throughout the text.¹³³ In contrast, the language of the other three policies is plain and easily understood.¹³⁴

CONCLUSION

The Vatican was justified in requiring that the USCCB revise its original policy to give accused priests greater due process protections in accordance with canon law. The original policy essentially instituted a “guilty until proven innocent” standard, which not only goes against canon and U.S. law, but also violates the spirit of the procedural protections that the Church instituted in its Ecclesiastical Courts centuries ago.

Further, the Church was justified in exercising its authority to protect its members from being victims of a witch-hunt. There is no question that members of the Church sexually abused children, or that the Church mishandled the situation for decades. However, this does not mean that the Vatican should have allowed the USCCB to further mishandle the situation by caving into demands for swift and decisive action. Simply because crimes were committed and mistakes were made in the past does not mean that those accused in the future should be denied the protections outlined for them by law. The Vatican had not only the right, but also the duty, to see that the USCCB handled this situation correctly, and that its members were treated fairly and in accordance with the law.

However, although the revised USCCB policy is an improvement on the original, it is lacking when compared to the policies of other countries. The *Essential Norms* is less compassionate, less comprehensive, less detailed, and less discernible than the other policies. This deficiency is,

measures they need. However, there is a need for uniformity in situations like these because without uniformity, some dioceses might respond inadequately or inappropriately. Thus, the *Essential Norms* needs more specific and detailed standards and requirements to which all dioceses must be held accountable.

133. See *supra* notes 62–87 and accompanying text.

134. The difference in language shows a difference in the intended audiences for the different policies. That the U.S. policy’s language is technical implies that its intended audience was the educated professional, whereas the plain language of the foreign policies suggests that one of their goals was to allow everyone—including laypersons—to read and understand the policy. Indeed, the New Zealand policy states that the bishops invite “all interested persons in the community” to help the Church respond to sexual abuse in the Church. A PATH TO HEALING, *supra* note 107, Introduction.

perhaps, symptomatic of the attitudes toward sexual abuse that caused the actions that led to the scandal.

The scandal has arguably damaged the Church's authority, as well as its standing among the public and its own members. To allow the wounds to heal, and to allow the U.S. Church to regain its lost respect, it will not only have to change its attitudes, but clearly express this change to Church members and others around the world. Although progress has been made, the USCCB needs to reexamine the ways in which it is responding to the sex abuse scandal, and revise them to regain lost trust.¹³⁵ The Church must show greater remorse for the mistakes that it has made and greater compassion for those who have suffered at the hands of priests and clerics. It must also explain clearly and thoroughly the steps it is taking to prevent this sexual abuse from recurring. Revising the *Essential Norms* to include the requirements set out above is the next step the Church can take to begin restoring lost trust.

*Kathleen R. Robertson**

135. Recently, the National Review Board, set up by the *Essential Norms*, published a report detailing the causes and effects of the scandal and offering suggestions to solve the problems. A REPORT ON THE CRISIS IN THE CATHOLIC CHURCH IN THE UNITED STATES, *supra* note 53. The Report is comprehensive and detailed; however, it is also very long (158 pages), which means it is unlikely that the public will read it. The Report will be addressed here only in relation to its recommendations, although another paper could be written solely on its reasoning and conclusions.

The Board's recommendations provided for "enhanced screening, formation, and oversight of candidates for the priesthood; for increased sensitivity in responding to allegations of abuse; for greater accountability of bishops and Church leaders; for improved interaction with civil authorities; and for greater participation by the laity in the life of the Church." *Id.* at 3. These recommendations are a good start because they not only accurately reflect the need for changes, but they also suggest the particular changes that are needed. However, they do not address the policy already in place.

The Board states that it is its "most urgent hope that the bishops zealously enforce and adhere to the Charter and the *Essential Norms*, which can then serve as a beacon for the Church in other countries, for other churches and ecclesial communities, and for secular organizations." *Id.* at 10–11.

While I also hope that the bishops follow the *Charter* and *Essential Norms*, I disagree with the assertion that other countries should follow it; rather, it is the USCCB that should look to other countries' policies.

The Board itself acknowledges that the *Essential Norms* "do not provide much guidance on the conduct of an investigation." *Id.* at 54. However, the Board, while recommending how it thinks an investigation should be conducted, does not recommend that the *Essential Norms* be modified to provide such guidance.

The Board's recommendations should be implemented, but the USCCB should go one step further and revise the *Essential Norms*. The *Essential Norms* not only governs the Church's response to the scandal and its causes, but it is also one of the most visible and accessible signs of the Church's response. Therefore, the USCCB should revise the *Essential Norms*, in addition to implementing the other recommendations made by the National Review Board.

* J.D. Candidate (2005), Washington University School of Law; B.A. Communication and Culture, Indiana University-Bloomington. I wish to thank John Haley and Msgr. Fred Easton for their help with ideas and research. Thanks also go to my family for their unwavering support despite having to endure conversations on this subject for months. Finally, special thanks go to my mom for research assistance and for reading many drafts.