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Comment

A Response to Timothy Lytton: Staunch Resistance to the Inclusion of Laity in Priest Discipline Has Stymied Permanent Change to the Structure of the Roman Catholic Church

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Professor Lytton's article correctly states that there were considerable attempts at reform made by the laity, the clergy and the Bishops in the United States when the abuse scandals broke.¹ To many it appeared a new day was dawning, perhaps one where the laity would be expected to be more involved within the Catholic Church than simply "pray, pay and obey." Although Lytton has asserted that the crisis caused by revelations of long-term systematic sexual abuse of children by Catholic priests has resulted in significant changes to the policy and practice of the Catholic Church,² the fact remains that all significant attempts at true reform have been blocked by the Vatican, whose primary concern is maintaining the power of the clerical hierarchy.³

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¹ Timothy Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809, 838-39, 842-44 (2007).

² *Id.* at 842-44.

³ While not the subject of Professor Lytton's analysis, the California clergy sexual abuse litigation demonstrates clearly there is no interest in reform. See Editorial, *Disturbing Revelations*, L.A. TIMES,

The Catholic Church is strictly hierarchal in nature.⁴ Bishops and archbishops are generally provided with complete autonomy in the operations of their diocese and archdiocese.⁵ The Pope, and through the Pope's authority the offices of the Vatican, have dominion and control over all aspects of the Church.⁶ Within the Church hierarchy, power is held individually, be it the control of a priest over his parish, the control of a Bishop over a diocese, or even the pope over the entire Church.⁷ Positions such as Bishop or pastor are filled by appointment, not by election.⁸ There are no "checks and balances" within the Church hierarchy; power is strictly contained within the individual with the only oversight being the individual at the next higher rung of the hierarchical ladder.⁹ At the highest rung, there is the Pope, who holds person dominion over every member of the Church and who is answerable only to God.¹⁰

The hierarchical nature of the Catholic Church and the concentration of power within individuals rather than groups have given rise within the Church to an outlook known as "clericalism." Clericalism holds that the members of the clergy are in a special relationship with God and thus have greater moral authority than the laity.¹¹ Although the term "clericalism" is generally perceived to be a negative one, studies have consistently shown that members of the hierarchy believe they possess moral authority superior to that of the laity.¹² Additionally, the laity themselves often promote the idea that priests must be obeyed because of their superior

Oct. 13, 2005, at B10, *available at* LEXIS, News Library, LAT File (stating that, although documents released showing predator priests being moved from parish to parish were disturbing, "[m]ore frightening is that the documents represent only brief, sanitized information that the archdiocese wanted to release in an effort to settle pending suits. That makes one wonder what may be in church records that Cardinal Roger M. Mahony continues to resist giving to prosecutors, despite two court rulings ordering their release. . . . The best way for Mahony to show he cares about victims more than about protecting the church would be to release the records"). *See also* 10News Editorial: *Bishop Brom* (KGTV television broadcast Sept. 4, 2006), *available at* <http://www.10news.com/editorials/9786087/detail.html> ("But now, attorneys for Bishop Robert Brom and the local diocese want [the confidential names of victims of clergy sexual abuse] revealed in public court documents. They say it's in 'the interest of fairness' to make their identities known to everyone. Fairness? 10News says call it what it is—intimidation. Subjecting these plaintiffs to the glare of public exposure simply doesn't benefit the legal process.").

⁴ VATICAN COUNCIL II: THE CONCILLAR AND POST-CONCILLAR DOCUMENTS 369–72 (Austin Flannery ed., 1975).

⁵ THE CODE OF CANON LAW: A TEXT AND COMMENTARY 319 c.375, 324–25 c.381 (James A. Coriden et al. eds., 1985).

⁶ 1983 CODE c.1404 (Canon Law Soc'y of Gr. Brit. and Ir. trans., 1983) ("The First See is judged by no one.").

⁷ *Id.* at c.341 § 1 (providing that even the highest collegial body within the Catholic Church, the Ecumenical Council, requires the Pope's approval of all decrees and decisions).

⁸ *See, e.g., id.* at c.377 § 1 (establishing appointment or confirmation of Bishops as the province of the pope).

⁹ THE CODE OF CANON LAW, *supra* note 5, at 319 c.375, 324–25 c.381.

¹⁰ *See* 1983 CODE c.331.

¹¹ Conference of Major Superiors of Men, *In Solidarity and Service: Reflections on the Problem of Clericalism in the Church*, Washington, D.C., 1983 at 2.

¹² DONALD COZZENS, *SACRED SILENCE: DENIAL AND THE CRISIS IN THE CHURCH* 117 (2002).

moral authority.¹³ Time and time again, individuals who have been abused by priests have cited the moral authority of the priest as a reason they did not report the abuse, even though they later stated that the abuse made them feel “wrong.”¹⁴

Throughout the child abuse scandals that have rocked the Church, there were clear indications that the concept of clericalism was alive and well within the hierarchy. Take the removal of Cardinal Law from the Boston Archdiocese, for example.¹⁵ Whenever commentators want to argue that the outrage of the laity has had a definitive effect on the Church, they often point to Law’s resignation as evidence of the Church responding.¹⁶ In point of fact, it seems clear the definitive factor in Law’s removal from the Archdiocese was not public outrage, but rather a letter signed by fifty-eight priests within the diocese and delivered to the Vatican, which stated that the priests no longer believed Law had the ability to lead the Archdiocese.¹⁷ The objections of the laity who were horrified at Law’s essential complicity at moving predator priests from parish to parish with full knowledge that they were recidivist child molesters, all the while providing no warning to the members of the new parish, had little to no effect according to Vatican sources.¹⁸ The primary concern for the Vatican in determining that Law should be allowed to resign as leader of the Archdiocese was the fact that the internal hierarchy of the church did not support him.¹⁹

Although Law was allowed to resign as leader of the Archdiocese, he was not laicized, nor was he demoted from his standing as cardinal.²⁰ Where other cardinals or church leaders had previously been asked to step down or retire from active life inside the Church, Law remained intimately involved with the Church’s inner workings.²¹ In fact, Law remained a member of several important clerical councils which would have important responsibilities for dealing with the sexual abuse crisis within the Church.²² Those councils included:

¹³ ANSON SHUPE, *IN THE NAME OF ALL THAT’S HOLY: A THEORY OF CLERGY MALFEASANCE* 27–29 (1995).

¹⁴ *Id.* at 27–31.

¹⁵ John L. Allen Jr., *Law Still Holds Key Vatican Positions*, NAT’L CATH. REP., Dec. 27, 2002, at 7.

¹⁶ See, e.g., Thomas Farragher, *Admission of Awareness Damning for Law*, BOSTON GLOBE, Dec. 14, 2002, at A15, available at LEXIS, News Library, BGLOBE File (discussing the impact of public outrage on Law’s decision to resign).

¹⁷ John L. Allen Jr., *The Word from Rome: Behind Law’s Final Days*, NAT’L CATH. REP., December 20, 2002, <http://nationalcatholicreporter.org/word/pfw1220.htm>.

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ See Allen, *supra* note 15.

²¹ *Id.*

²² *Id.*

1. The Congregation for Bishops, which oversees the performance of Bishops and recommends new Bishops to the Pope;²³
2. The Congregation for Clergy, responsible for handling clerical discipline and handles financial management of diocese (including decisions concerning potential bankruptcies);²⁴
3. The Congregation for Consecrated Life, which handles clerical discipline within religious orders and is likewise responsible for their financial management;²⁵
4. The Congregation for Catholic Education, which is responsible for seminaries and priestly formation;²⁶ and
5. The Congregation for Divine Worship, which handles laicization of priests.²⁷

In short, the man most tarred by the sexual abuse scandals, who was responsible of the shuttling of notorious predator priest Geoghan from parish to parish without any warning to the laity, remained on several counsels which would determine the direction of the Catholic Church with regard to the sex abuse scandals.²⁸ The individual who most represented the face of an uncaring church was the same individual who would be largely responsible for any potential reform to the Church as a result of the sex abuse scandal.²⁹ This is not someone who was forced to leave in disgrace for his outright complicity in allowing predatory priests access to numerous victims. This is an action taken to shelter a loyal Bishop from what the Vatican views as a hostile, anti-Catholic American press.

Even internal attempts to emphasize the role of the laity in the Catholic Church have been consistently rejected by the Vatican. As noted in the Lytton article, concern among the laity was the driving force behind the Catholic Church's hierarchy feeling compelled to make reforms as a reaction to the sex abuse scandals.³⁰ The Bishops would have had no trouble ignoring cries for reform if it came only from the press; it was the upraised voices of the laity that caused conflict within the Church.³¹ This pressure placed the issue of dealing with abusive priests front and center on the agenda of the Bishops within the hierarchy of the American Church through their membership organization, the United States Council of Catholic Bishops (USCCB).³²

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Matt Carroll, *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE, Jan. 6, 2002, at A15, available at LEXIS, News Library, BGLOBE File.

²⁹ Allen, *supra* note 15.

³⁰ Lytton, *supra* note 1, at 833.

³¹ *Id.*

³² *Id.* at 842–44.

As noted in the Lytton article, the predecessor organization to the USCCB had been involved in attempts to resolve issues surrounding child sexual abuse by priests at least since the Gauthé scandal in 1984.³³ When the second wave of scandals hit around 2000, the USCCB was essentially forced to meet and propose reforms that would quell the unrest within the ecclesiastical community.³⁴ When the USCCB met from June 13–15 of 2002 to discuss the child abuse crisis, they proposed a number of reforms, several of which addressed the lack of any voice by the laity in the disciplining of errant priests.³⁵

However, there is considerable doubt whether the goal of the USCCB was policymaking and reform as asserted in the Lytton article,³⁶ or just an attempt to protect the powers of the hierarchy against a hostile press and laity. Lytton asserts that these frames of abuse as provided by the scandals involving Gauthé and Porter provided focusing events that allowed reformers within the hierarchy to generate information and theory about policy change, which could later be made into actual policy once the issue reached a crisis at the 2002 meeting of the USCCB.³⁷ However, even before the proposed changes were submitted for “recognito” (essentially, “recognition,” under which the proposals would become part of the actual law of the church),³⁸ there were indications that the Bishops were not fully behind them.³⁹ Several Bishops indicated privately to reporters that they hoped that the Vatican would reject several of the more “radical” aspects of the proposed norms.⁴⁰ In addition, even as the reforms were being

³³ See *id.* at 843.

³⁴ See *id.* at 862.

³⁵ Chronology of Events from USCCB General Meeting June 13–15, 2002, at 1, <http://www.usccb.org/comm/charter/CHRONCOR.DOC> (last visited Nov. 17, 2006). At the June 13–15 meeting of the American Council of Catholic Bishops in Dallas, Texas, the USCCB issued a Charter for the Protection of Children and Young People. UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE (2005), available at <http://www.usccb.org/ocyp/charter.shtml>. That Charter contained several articles, which were advanced as changes to the policy of the Catholic Church and put forward for “recognito,” see *infra* note 38 and accompanying text, as the official internal policy and/or canon law of the Catholic Church. Article 4 of the Charter required diocese/eparchies to report all allegations of sexual abuse of a minor to public authorities. *Id.* art. 4. Article 5 instituted a “zero-tolerance” policy and required accused priests to undergo psychological treatment and counseling. *Id.* art. 5. Also important were Articles 8 and 9, which created an Office for Child and Youth Protection to oversee the development of the policies proposed in the Charter, and the creation of a review board, including parents, which would monitor and assist the Office of Child and Youth Protection. See *id.* arts. 8, 9.

³⁶ See Lytton, *supra* note 1, at 861.

³⁷ *Id.* at 864.

³⁸ See Helen Hull Hitchcock, *The Authority of Church Documents*, ADOREMUS BULL., Sept. 2002, available at <http://www.adoremus.org/0902AuthorityChurchDoc.html>.

³⁹ John L. Allen Jr., *The Word from Rome: Vatican View on the Sex Abuse Charter*, NAT'L CATHOLIC REP., Sept. 20 2002, <http://nationalcatholicreporter.org/word/pfw0920.htm> (stating that several Bishops who voted for the proposed changes felt they may have gone too far, and several indicating that they were hoping that the Vatican would ask for changes).

⁴⁰ *Id.*

argued, it was already clear that the Vatican was strongly opposed to several of the proposals and would almost certainly require that significant changes be made.⁴¹ In retrospect, one must consider the possibility that the objective of the proposals put forward by the Bishops at the 2002 meeting was not, in fact, significant reform within the Church, but rather to put on a good show for the assembled press so that when the inevitable changes were made at the request of the Vatican, the Bishops would be provided with an excuse that reform had been attempted, but blocked by the Vatican.

The Vatican likewise has resisted all real attempts at reform related to these incidents of child sexual abuse by priests. Although Lytton has asserted that “[t]he frame of institutional responsibility has dominated discussion of clergy sexual abuse within the church,”⁴² the Vatican has routinely viewed the child-abuse crisis as a problem not internal to the Catholic Church, but unique to the anti-Catholic nature of the English-speaking American and Western European press.⁴³ There was a feeling within the Vatican that if the matter had been handled in a “proper” manner, then the allegations of abuse would not have risen to the level of scandal.⁴⁴ Lytton notes that the Pope first made a comment on the allegations of child sexual abuse in the American Church in 1993, but overlooks the fact that the Pope focused his comments on deploring the “public scandal” and “sensationalism” in the news media.⁴⁵ This position that the media had sensationalized the issue out of proportion to its actual importance was further demonstrated in press conferences given by the Vatican throughout the sex abuse scandal. During these conferences, the Vatican would frequently act in a dismissive manner to the assembled reporters.⁴⁶ Likewise, throughout the scandal at least two cardinals spoke publicly and intimated that the scandal was overblown and was a result of the particular culture of the United States, which the cardinals believed was

⁴¹ John L. Allen Jr., *Global Perspectives: American Zero Tolerance Policy Headed for Trouble in Rome, Sources Say*, NAT'L CATH. REP., June 14, 2002, <http://www.nationalcatholicreporter.org/dallas/allen3.htm>.

⁴² Lytton, *supra* note 1, at 872.

⁴³ John L. Allen Jr., *The Word from Rome: On Claims of Media “Anti-Catholicism,”* NAT'L CATH. REP., June 7, 2002, <http://nationalcatholicreporter.org/word/pfw0607.htm> (discussing an article in *Civiltà Cattolica*, a Jesuit Magazine, which is reviewed by the Secretariat of State prior to publishing). The article in question referenced a “morbid and scandalous curiosity” in the American media in covering the sex abuse crisis and warning of an “anti-clerical” and “anti-papal” spirit in the United States media. *Id.*

⁴⁴ *Id.*

⁴⁵ Lytton, *supra* note 1, at 865.

⁴⁶ John L. Allen Jr., *The Word from Rome: Cultural Gap: The Extra Hurdle in Covering the Vatican*, NAT'L CATH. REP., Mar. 29, 2002, <http://nationalcatholicreporter.org/word/pfw0329.htm> (discussing a press conference given by Cardinal Dario Castrillón Hoyas, then in charge of the Congregation for Clergy, on March 21, 2002 in which Cardinal Castrillón Hoyas acted dismissively towards reporters asking questions regarding the sex abuse scandals). During that conference Cardinal Castrillón Hoyas noted that all the questions regarding sexual abuse were being asked in English and stated “[t]hat, in itself, is an x-ray of the problem.” *Id.*

under the influence of a rabidly anti-Catholic press with a focus on bringing up decades-old scandals for the purpose of hurting the Church.⁴⁷

The USCCB did not have long to wait for a response to their proposed reforms, and by September 27, 2002 it was clear that the proposed changes would not receive recognition and that significant changes were required.⁴⁸ The Vatican had already made it clear that they were not in favor of a “zero tolerance” policy for priests, believing it would be unfair in cases where there was only one instance of abuse many years ago and the priest in question had behaved well since that incident.⁴⁹ The unspoken assumption being that even a priest who molests children only once, or even a few times long ago, can still be a moral leader for his congregation.

In addition, members of the Vatican hierarchy made it clear that they would not tolerate any reforms that placed members of the laity on equal or superior footing with members of the clergy.⁵⁰ Even if the American Bishops did acknowledge, as Lytton suggests, that the lack of proper oversight was a significant factor in the long-term abuses that the creation of lay councils was intended to address,⁵¹ the Vatican made it clear they were unable to accept any dilution of clerical power. Pope John Paul II specifically rejected oversight by the laity during a January 10, 2004 address to the Congregation for Clergy when he stated “[t]he legitimate pastors, in the exercise of their office, must never be considered simply executors of decisions based on majority opinions that emerge in the

⁴⁷ John L. Allen Jr., *The Word from Rome: One Papabile's Take on the Sex-Abuse Scandal*, NAT'L CATH. REP., May 17, 2002, <http://nationalcatholicreporter.org/word/pfw0517.htm> (quoting Cardinal Oscar Rodríguez Maradiaga of Honduras, who was then widely considered a possible successor to Pope John Paul II). Cardinal Maradiaga stated that “I have my doubts about the motivation behind some of the scandals” and that he felt the American media was being “obsessive” in bringing up abuse scandals that happened thirty or forty years ago. *Id.* Cardinal Maradiaga also stated that tort litigation was “a kind of industry” in the United States and that the real reason these old cases were being examined was “there is money in play.” *Id.*; see also John L. Allen Jr., *The Word from Rome: The 'Secret' Norms; Another Latin American Blames the Press*, NAT'L CATH. REP., Nov. 29, 2002, <http://nationalcatholicreporter.org/word/pfw1129.htm> (quoting Cardinal Julio Terrazas Sandoval of Bolivia who, when asked if the American press was anti-Catholic and had exaggerated the sex-abuse scandal replied “I don't know the situation well, but it does seem there is an institution in [U.S.] society that has as its goal to speak ill of the Church”). The question was in direct response to further quotations from Cardinal Maradiaga published in the June issue of *30 Giorni* magazine in which Cardinal Maradiaga strongly criticized the American press for its focus on scandals and compared the coverage to persecutions of the church carried out under Stalin and Hitler. *Id.*

⁴⁸ See John L. Allen, Jr., *The Word from Rome: An 'Experiment' Still Isn't Law*, NAT'L CATH. REP., Sept. 27, 2002, <http://nationalcatholicreporter.org/word/pfw0927.htm>.

⁴⁹ Allen, *supra* note 41.

⁵⁰ John L. Allen, Jr., *The Word from Rome: Vatican Reply Not a Rejection of Zero Tolerance*, NAT'L CATH. REP., Oct. 22, 2002, <http://nationalcatholicreporter.org/word/pfw1022.htm> (stating that among the concerns the Vatican had with the proposed changes was “the [proposed] role and powers of lay review boards to be created in each diocese to help the Bishop adjudicate complaints. To the extent these boards are advisory there is no problem. If a Bishop turns over his decision-making authority to the board, however, the Vatican objects”).

⁵¹ See Lytton, *supra* note 1, at 864 (discussing the Bishops' attempted creation of law review boards).

ecclesial assembly[.]”⁵² The Vatican also expressed strong reservations about the requirement that any allegations of abuse be immediately reported to the authorities, regardless of whether or not such reporting is required by local law.⁵³ Again, the primary concern with regard to the required reporting was internal to the hierarchy—the worry was that it would restrict the ability of a Bishop to minister to the priests in the diocese.⁵⁴

Indeed, numerous revisions were made to the norms proposed by the USCCB, essentially blocking any significant reform that may have come from the proposals. These revisions were overseen by a council composed of a membership largely hostile to any significant changes being made in the structure of the Church.⁵⁵ The revised Norms completely removed any oversight of the church hierarchy by the laity.⁵⁶ Although the revised Norms do clearly call for the creation of councils of the laity, the function of these councils is to serve in an advisory council only.⁵⁷ The changed language makes clear that there are to be no circumstances where the laity would have the power to overrule a Bishop or other member of the internal Catholic hierarchy.⁵⁸

Any hopes that may have existed that the laity in the American Church were about to be embraced as vital members of the church after the 2002 meeting of the USCCB were soundly thrashed by these new Norms. These new Norms were granted recognition on December 16, 2002, making them the official internal law within the Church.⁵⁹ Assurances by members of the Vatican hierarchy that it would be a poor Bishop who refused to pay attention to these advisory councils were no doubt met with a jaundiced eye by members of the laity who had seen abuser priests shuffled from parish to parish without warning.⁶⁰

In fact, the primary effect of the changes made to the proposed norms was to make the American Bishops more beholden to Vatican and less responsible to the laity. The language of the new Norms roundly rejected

⁵² John L. Allen, Jr., *The Word from Rome: The Pope's "State of the World" Survey*, NAT'L CATHOLIC REP., Jan. 16, 2004, <http://nationalcatholicreporter.org/word/pfw011604.htm>.

⁵³ Allen, *supra* note 39.

⁵⁴ *Id.*

⁵⁵ John L. Allen, Jr., *The Word from Rome: "Mixed Commission" Work Completed, Results to be Announced*, NAT'L CATHOLIC REP., Nov. 1, 2002, <http://nationalcatholicreporter.org/word/pfw1101.htm> (noting that the commission assembled to amend the proposed changes to the sexual abuse norms proposed by the United States Conference of Catholic Bishops was “top-heavy with critics of the policies adopted by the U.S. bishops in June”).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ John L. Allen, Jr., *The Word From Rome: Issues Loom as Bishops Take Up Revised Norms*, NAT'L CATH. REP., Nov. 8, 2002, <http://nationalcatholicreporter.org/word/pfw1108.htm>.

⁵⁹ Allen, *supra* note 17.

⁶⁰ Allen, *supra* note 58.

the desire by the USCCB to expand the internal statute of limitations from ten years to thirty years past the age of eighteen when bringing a priest up on internal charges.⁶¹ Language requiring the reporting of any allegations of sexual misconduct to civil authorities was removed and replaced with language requiring the Church to comply with any local laws requiring reporting.⁶² Additionally, the structure of the revised norms made it clear that even where a priest was dismissed by a Bishop for sexual misconduct, it was possible that the Vatican might still re-institute the priest in question without the Bishop's consent.⁶³ Concerns by Bishops that they might be forced to allow priests who they knew to be molesters to practice within their diocese were not addressed by the Vatican.⁶⁴

CONCLUSION

In summary, there has been no real reform of the internal working of the Catholic Church as a result of the sexual abuse scandals. The Vatican consistently placed blame for the scandals not upon the actions of the Church hierarchy, but instead on the supposedly anti-Catholic press and upon individuals reveling in scandal. All meaningful attempts to reform the position of the laity within the hierarchy of the Church have been comprehensively blocked by the Vatican. Reforms proposed by the USCCB in 2002 that would require mandatory reporting of abuse were replaced with policies requiring only that Bishops conform with applicable local reporting laws. Zero-tolerance policies were outright rejected. Even if we are to assume that the reforms proposed by the Bishops were honestly intended to reform the workings of the Church, those reforms have been blocked. The Vatican simply does not see the internal structure of the Church as being in any way culpable for the extent of the abuse. In short, there has been no meaningful internal reform of the Catholic Church as a result of the clergy sexual abuse scandals.

⁶¹ *Id.*

⁶² John L. Allen, Jr., *The Word From Rome: Longing for an Italian Repast*, NAT'L CATH. REP., Nov. 15, 2002, <http://nationalcatholicreporter.org/word/pfw1115.htm>.

⁶³ Allen, *supra* note 17.

⁶⁴ *See id.*