

The Abuse-and-Coverup Scandal:

The Church Should Not Oppose Extending Statutes of Limitation

Introduction

The mission of the Catholic Church is evangelization - the bringing of the Good News to mankind, the bringing of mankind to Christ. The word "evangelization" has been reclaimed from the television evangelicals but we might say, to put it in the vernacular, that it is about public relations, about putting out a message. The Church has had a continuing evangelization disaster, a public relations disaster, on its hands since 2002 with respect to its internal abuse-and-coverup scandal -- partly as a result of an inversion of episcopal priorities: placing concern for property and the institutional Church ahead of concern for souls. The present public opposition, by most dioceses, to extending statutes of limitation continues the same mindset and exposes the institutional Church to the charge of hypocrisy. It should end.

Statutes of Limitations

"Equity Aids the Vigilant"

A statute of limitation is a legislative act which limits the time within which an action must be brought. Statutes of limitation are, in short, pragmatic and practical devices to preclude stale claims. In a sense, the idea of statutes of limitation embodies the maxim

(and maxims are often merely slogans, not necessarily embodying legal principles, much less natural law): *Vigilantibus et non dormientibus aequitas subvenit*, that is, the law aids those who are vigilant, not those who sleep on their rights.

Statutes of limitation are legislated and vary from state to state, representing a sort of pragmatic judgment call by a particular legislature, perhaps influenced by lobbyists for the insurance industry, perhaps influenced by the plaintiffs' trial bar. The usual rationale is that old claims are hard to defend against because of the passage of time, the fading of memories, the disappearance of witnesses, and the loss of records. This argument ignores the reality that the burden of proof is on the plaintiff in any event and that, in trial combat, as in military combat, it is usually easier to defend than to attack. An even less appealing rationale is that statutes of limitation are calendar-clearing devices, a way to reduce overcrowded court dockets - the courts already being burdened by a surfeit of lawsuits for various reasons. There is a Latin maxim for that as well: *Interest reipublicae ut sit finis litium*. It is in the interest of the state that there should be an end to litigation. Latin, as we know, is back in fashion.

Exceptions - There is obviously a certain degree of common sense about the principle - potential plaintiffs with good claims do not tend to merely sit on them but demand redress -- but there are recognized exceptions. The running of the fixed time in which to bring a lawsuit for an injury can be suspended, or tolled, or extended. These exceptions to statutes of limitation vary from state to state but fall generally into two categories concerned with either discovery of an injury, sometimes referred to as the DELAYED DISCOVERY, or notice exception, or the IMPAIRMENT of the potential plaintiff for such cause as his minority, or mental incompetence. The usual simple example of the notice situation would be the belated discovery, long after a hospital stay, of the proverbial sponge-left-in-the-stomach; time runs from the discovery, not from the date of the negligently performed operation. The idea of tolling during minority, until a plaintiff reaches the age of majority, is to protect the legal rights of those unable to assert their own rights and to mitigate the difficulty of preparing a suit while a party is under a disability; the same rationale applies to a mental incompetent.

“Repressed memory” of sexual abuse and “Post-traumatic stress disorder.”¹ The relatively new development, of which we have heard so much in the years since the abuse-and-coverup scandal erupted in 2002, is, of course, what has been termed “Post traumatic stress disorder” (“PTSD”); it is related to the concept of “repressed memory.” PTSD has been defined as “an anxiety disorder that can occur following the experience or witnessing of a traumatic event. A traumatic event is a life-threatening event such as military combat, natural disasters, terrorist incidents, serious accidents, or physical or sexual assault in adult or childhood.”² This may be somewhat new psychiatry (commencing in the aftermath of the Vietnam war) but the concept has been advanced as a just extension of the impairment exception or of the discovery exception, or an amalgam of the recognized exceptions. Is it bona fide?

Some of the early cases were mixed in result and went against the plaintiffs. We might refer to a few but the focus of this discussion will be on the efforts of the institutional Church to block extending the statutes of limitation with respect to any arguable causes of action.

In a New York case involving Covenant House (Bruce Ritter), it was held on a motion to dismiss that the delayed discovery rule did not apply to extend the limitations period in an action brought by a victim who contended that he delayed for seventeen years because “psychological coping mechanisms” made him unable to perceive the existence or nature of his psychological and emotional injuries.³ In an Ohio case, it was argued unsuccessfully that childhood sexual abuse led to a victim becoming “of unsound mind”⁴ and in a Pennsylvania case, where a priest allegedly abused a teenaged male preparing for the priesthood, it was held that the victim was not relieved of his duty to bring suit timely.⁵

Initially, many loyal Catholics were appropriately skeptical in reaction to what seemed yet more psychobabble. But there were too many verified cases which have emerged and we are

¹51 AmJur, Limitations of Actions, sec. 181, Posttraumatic stress syndrome, p. 568

² National Center for PTSD, US Department of Veterans Affairs; Mental Health America.

³ Bassile v. Covenant House, 152 Misc. 2d 88 (1991), aff'd on appeal.

⁴ Livingston v. Diocese of Cleveland, 126 Ohio App. 3d 299 (1998).

⁵ E.J.M. et al. v. Archdiocese of Philadelphia, 622 Atl.2d 1388 (1993).

painfully aware of the two billion dollars now paid out in settlements, most notably recently in Los Angeles after years of legal dodgeball by Cardinal Mahony. In the fullness of time, some academic (perhaps a member of this Society or a graduate of John Jay College of Criminal Justice) will do a comprehensive study as to all the cases. This is ongoing, of course, but statistics will emerge as to how many cases were genuine and how many were fraudulent; at the moment it appears that the fraudulent cases have been relatively few. Those statistics will be shaky, certainly, in view of settlements made, out of court, and the proverbial explanation offered: “The case had no merit but we settled to avoid the litigation expenses.” To be anecdotal, the CNN story earlier this year,⁶ of previously unrevealed clerical abuse by a trusted friend of news anchor Thomas Roberts in Maryland, was touching and credible. Because of his media career, Roberts, now a practicing homosexual, only came forward when another victim of the same predatory priest did so. Presumably many others have not come forward.

The Church: What is Her Proper Role in this Discussion??

The Church as Mystery

To touch on ecclesiology, and I am no ecclesiologist, what should be the attitude of the Church at this sorry juncture? The Church is characterized in the Catechism as the People of God, united in the Body of Christ, and as the temple of the Holy Spirit.⁷ A mystery, visible and invisible, the essential mission of the Church is to evangelize all men. Vatican II made changes in ecclesiology, not in dogma but certainly in emphasis.⁸ Some writers (rather like Kremlinologists noting placement at public events during the Cold War) seek significance in the placement order of key ideas in *Lumen Gentium*, The Dogmatic Constitution on the Church, a critical document of the Council. For example, while the main image of the Church is that of the Body of Christ, it has been noted that Chapter 2 of *Lumen Gentium*, considering the People

⁶ “Anderson Cooper 360,” 2/12/07.

⁷ Sequence as appearing in the Catechism at Nos. 781-797.

⁸ McDermott, John, S.J., *Lumen Gentium The Once and Future Constitution* (in *After Forty Years: Vatican Council II's Diverse Legacy, Proceedings from the 28th Annual Convention of the Fellowship of Catholic Scholars*, 2005, Whitehead ed.) pp. 142-143.

of God, precedes Chapter 3, which considers the hierarchy⁹. The British historian Paul Johnson has remarked that in mediaeval times, “[t]here was a tendency to equate the clergy with ‘the Church’”¹⁰ a concept which now, a few hundred years after the Council of Trent and four decades after Vatican II, has perhaps been adjusted by a newer emphasis on the “People of God” as a dominant vision.

In considering the proper role of the Church in the statute of limitations extension argument, we can turn usefully and briefly to what Cardinal Avery Dulles terms visions or “models” of the Church. He considers five models: the Church as institution, as mystical communion, as sacrament, as herald, and as servant, with particular reference to the institutional Church and what he terms the deformation of institutionalism.¹¹ And at the outset, he warns that, in discussion, the Church should not be lowered to the same plane as other human communities¹².

The Institutional Church is Secondary

Cardinal Dulles refers to an institutional vision of the Church, a view that defines the Church primarily in terms of its visible structures. As to institutionalism, he means “a system in which the institutional element is treated as primary. From the point of view of [Dulles], institutionalism is a deformation of the true nature of the Church—a deformation that has unfortunately affected the Church at certain periods of its history, and one that remains in every age a real danger to the institutional Church.”¹³

As Dulles expresses it, “[t]he institutional structures of the Church are secondary in the sense that they are intended to preserve and promote communion.”¹⁴

⁹ Ibid.

¹⁰ Johnson, P., *A History of Christianity*, p. 215.

¹¹ Dulles, Avery Cardinal, *Models of the Church*, esp., chapter II.

¹² Ibid., p. 9.

¹³ Ibid., p. 27.

¹⁴ Dulles, Avery Cardinal, *The Ecclesiology of John Paul II* (in *The Gift of the Church*, Phan, ed.), p. 97.

We might thus say that the institutional structure constitutes a sort of useful infrastructure. In other words, the Church is not primarily the hierarchical power structure, the clergy, and the buildings, Rather, it is, in the words of John Paul II, “a communion in many different ways. Its character as communion renders the Church similar to the communion of the Divine Trinity...Thanks to this communion, the Church is the instrument of man’s salvation. It both contains and continually draws upon the mystery of Christ’s redemptive sacrifice.”¹⁵

If the mission of the Church is to lead men to Christ, to save people through the Church but by the grace of Christ, what then should be the proper attitude of the Church toward victims of its errant churchmen? As secondary - lower in importance than, and supportive of, the *communio* -- the institutional Church should be more than merely apologetic. Put another way, as *Gaudium et Spes* of the Vatican II documents expresses it, “The order of THINGS must be subordinate to the order of PERSONS and not the other way around, as the Lord suggested when He said that the Sabbath was made for man and not man for the Sabbath.”¹⁶

The question is whether the entire discussion on the litigation situation flowing from the sexual abuse and coverup scandal has been dominated by an obsessive concern for the physical institution, that is, institutionalism. Let us consider the ecclesial posturing, and arguments posited, in response to the claims and litigation directed against the institutional Church.

Institutional Church Response to Proposals to Extend Statutes of Limitation

Lawyers and spokesmen for different dioceses have assumed a variety of legal and/or public relations defenses in their opposition to legislative efforts to extend statutes of limitation with respect to sexual abuse by clergy and enabling bishops. We can list and consider some of the arguments against extending statutes of limitation which have appeared in various dioceses and court actions, and mention one or two which are particularly shameful or legally ludicrous:

- a) “These legislative efforts treat the Catholic Church differently from other institutions”;

¹⁵ Pope John Paul II, *Crossing the Threshold of Hope* (1994), pp. 138-139.

¹⁶ Pastoral Constitution on the Church in the Modern World, 26 (1965).

- b) “these efforts are anti-Catholic in nature”;
- c) “these efforts are motivated by ‘greedy lawyers’”;
- d) “extending statutes of limitation will create new causes of action”;
- e) “the institutional Church will be crippled in its efforts to conduct charitable works”;
- f) “this is unnecessary because the 2002 “Charter” now precludes the kinds of behavior which led to the sexual abuse crisis”;
- g) “these legislative efforts will penalize present day Catholics for transgressions committed in the past”; and
- h) “as a policy, let us have ’closure.’”

In addition, and apart from these quasi-serious positions, there came out of Boston an early legal argument that the young abuse victims were contributorily negligent and therefore not entitled to consideration.¹⁷ (The same argument appears to have been posed in California in a case involving a Jehovah’s Witness leader.¹⁸) Also out of Boston came a deplorable episcopal shrug – if the victim goes to the police instead of talking with the Church, said the archbishop, that’s his choice.¹⁹ Out of Connecticut (in the Egan era), there briefly emerged the priest-as-independent-contractor-not--under-the-control-of-the-bishop argument. (This embarrassment was likely concocted by an old defense litigator while his brain was at rest²⁰ or by a newly-minted insurance attorney.)

To briefly consider these arguments:

“The Church is being treated differently.” This argument was raised in various jurisdictions. In the District of Columbia at hearings on legislation to extend statutes of limitation held earlier this year, the Chancellor for the archdiocese asserted that the local public schools were not being treated in the same fashion as the Catholic schools. The Church, in other words, would be held, she complained, to a different -- dare we say higher --standard. But why should it be

¹⁷ NYTimes, 8/8/01, Catholic Church Backs Bill on Child Molesting

¹⁸ West v. Silva, Cal. 2003

¹⁹ Boston Pilot, 2001

²⁰ An Arnold Lunn euphemism.

otherwise? As Pope John Paul II asked, “*Ecclesia, quid dicis te ipsae?*” Church, what do you say of yourself? Cardinal Suenens had posed the same rhetorical question at the Council.²¹ What do we say of ourselves as Catholics? The Church should be held to a higher standard; the Church claims to be much more than a human community, saying at Vatican II: “He founded after His death and resurrection a new brotherly community composed of all those who receive Him in faith and in love. This He did through His Body, which is the Church.”²²

“These statute of limitations extension efforts are anti-Catholic.” Raised in various places, this argument started with the assertions back in 2002 when the *Boston Globe* led the exposure efforts against the Archdiocese of Boston. It was asserted that the *Globe* is basically anti-Catholic and was into a “feeding frenzy.” Well, everyone who lives in the Boston area knows of its bias. The question was – what is the truth here? We might paraphrase the English writer Cowper, who said, “Truth is unwelcome, however divine,” to say, “Truth is unwelcome, especially from the *Boston Globe*.” And the degrading truth did emerge but only through recourse to the secular courts and despite the resistance, sometimes dishonest, of the archdiocese and its attorneys.²³ If there was anti-Catholicism at the root of the *Globe*’s efforts, what of it? Did not Christ Himself say, “Blessed are you when men persecute you” (Mt. 5:11)?

“These lawsuits and statutes of limitations extension efforts are motivated by ‘greedy lawyers.’” Well, I do not usually rise to the defense of lawyers, and I do not here, but this is really just a distraction. One chancery referred melodramatically to opening “the floodgates to trial lawyers for a lawsuit lottery”²⁴. A pastor chimed in to say that extending the statute would open “the door to third-party lawsuits (sic) that would require the Archdiocese and our parishes to dedicate precious resources to defend against opportunistic trial lawyers.”²⁵ *Our Sunday*

²¹ As described by Rev. Donald Campion, SJ, in his introduction to *Gaudium et Spes* (Documents of Vatican II, Abbott ed., p. 184).

²² Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes* #32 (Abbott ed.)(1965)

²³ Boston Herald, “Hush, hush: Church lawyers urged silence on priest conduct,” 8/20/01

²⁴ Belford testimony before DC City Council Committee on Legislation, 6/1/07, p. 4

²⁵ Bara, D.A., Rev. testimony before DC City Council, etc., 6/1/07

Visitor boomed in to say that abuse cases are becoming “a cash cow for some members of the legal profession.”²⁶ Well, this is rather off the topic of justice for the victims although suggesting interesting questions as to the legal profession, for which we do not here have time.²⁷ It rather sounds like the American Medical Association complaining of malpractice cases and insurance premium rates; the way to avoid medical malpractice litigation, of course, is for the doctors to stop committing malpractice.

“New causes of action would be created.” This was a statement in connection with legislation proposed in Maryland and as to which the *Catholic Standard* wrote, in urging its readers to contact their legislators, “The Maryland State Senate is considering a bill, Senate Bill 575, that would create new civil lawsuits for money...it disregards that we already protect children and compensate victims through our model policies and procedures”²⁸. This is rather obvious legal nonsense; the cause of action arises from, or is created by, the tortious activity, not from the applicable time limitation or its extension.

“The charitable activity of the institutional Church will be adversely affected.” Because of the potential financial impact in some dioceses, this argument was imported into the statute of limitations extension discussion. In Washington, touching testimony was presented in the chancery’s programmed appearance along with colorful overstatement. It was there said by the Chancellor that extending the statute of limitations for civil actions would be “financial evisceration of the Archdiocese of Washington that disregards—indeed, penalizes—us for our two-decade old model safety and prevention program...”²⁹. Earlier in the year she had testified in Maryland as to similar proposed legislation: “Senate Bill 575 is an unconstitutional, unfair, financial evisceration of the Catholic Church in Maryland.”³⁰ (More disemboweling was

²⁶ Erlandson, *Our Sunday Visitor*, 2/25/07

²⁷ Such as champerty, promoting litigation, the efficacy of the contingent fee arrangement (tolerated here but banned in England where our legal system originated) and whether we just have too many lawyers.

²⁸ *Catholic Standard*, 3/15/07, p. 6.

²⁹ Belford testimony, DC City Council Committee on Public Safety and the Judiciary, 6/1/07.

³⁰ Belford, testimony before the Maryland Senate Judicial Proceedings Committee, 3/1/07.

projected than that to which the English Forty Martyrs were subjected in Tudor times!) The Chancellor went on to say that large awards with a “steep percentage going to lawyers, would have a severe financial impact upon our ability to provide the programs that serve the poorest among us, including children, immigrants, the sick and disabled, elderly and others who depend upon our help”³¹.

But the facts appear otherwise; as but one example, much of the funding of Catholic Charities USA -- 65% -- actually comes from government contracts.³² Nevertheless, the institutional Church has argued that “a church that is forced to use its funds to pay attorneys, cannot use that money for ministry....” Moreover, this argument is rather like that of the boy who had killed his parents and sought mercy on sentencing because he was an orphan. And, of course, although five dioceses have sought Chapter 11 protection in bankruptcy court, no diocese has apparently been declared bankrupt.

f) “The bishops’ Charter is now in place and so abuses will be precluded by its procedures.” This suggests that procedures firmly established on paper will affect clerical and episcopal behavior - a consummation devoutly to be wished. (On the Jersey Turnpike, the announced procedure is 65 mph, but it’s rather more honored in the breach.) Apart from the flaws in the hastily drawn Charter itself -- such as the reality that it attempts a self-monitoring system and ignores the dubious record of the bishops themselves³³ -- abuse cases continue to emerge, post-Dallas. The fact is that it was not through procedures firmly established in canon law or through episcopal governance pursuant thereto that the truth about sexual abuse and coverup emerged - it was through litigation in the secular courts.

g) “Present day Catholic contributors will be unfairly impacted for the transgressions of the institutional Church officials of the past.”³⁴ This may be true enough, however superficial. We

³¹ Ibid., p. 6

³² Catholic Charities USA.

³³ *Dallas Morning News*, 6/12/02

³⁴ A point made by the estimable Archbishop Charles Chaput, inter alia.

often do pay for the sins of the past whether of slavery, wars, or injustice in general. The emphasis here seems to be on preserving the physical institutional assets.

h) Finally, there is the argument for “closure,”³⁵ translatable as “let’s not talk about this any more.” It merits little comment. The very word “closure” sounds too much like closing the door to the victims who are out of time. (A sort of Clintonian dismissal: “That’s old news”.)

Thus are we and our legislatures asked to trust the bishops -- to whom we have been entrusted by the Church and canon law -- and to block legislation which might afford justice to some victims now cut off by statutes of limitation.

Ducking Episcopal Responsibility: Careerism, Clericalism, Posturing and Secrecy

Routinely omitted from the press releases of the US Conference of Catholic Bishops, and not addressed in the bishops’ Charter, is the fact that this crisis has always had *two* distinct aspects: abuse *and* coverup. The abuse aspect involved a tiny percentage of priests; the coverup aspect involved a majority of the bishops³⁶ The overriding policy of the coverup bishops - some behaving criminally - was the protection of the institutional Church, its physical assets and the careers of its churchmen.

Boston may, of course, have been the initial “epicenter” of the ongoing scandal but it has been overtaken by Los Angeles. The lesson to be drawn from the litigation carried on in both locales, and elsewhere, is that it was only through the secular court system, despite vigorous resistance by the institutional Church, that truth emerged as to sexual abuse and coverup by clerics and bishops. Has the institutional Church corrected itself since its Dallas meeting and “Charter”?^{37 38} Are the bishops demonstrating the concern with which they are charged³⁹ for all the Christian faithful entrusted to their care?

³⁵ Argument by outside counsel for the Archdiocese of Washington, 6/1/07

³⁶ Dallas Morning News, 6/12 /02

³⁷ Cf. Lawler, Philip, Catholic World Report, June 2007, “We Have Been Enlightened,” for an analysis, from the traditional wing of the Church as to whether the US bishops have succeeded

The usual abuse situation, as the John Jay Report of 2004 describes, involves homosexual activity with a vulnerable teenager (81% of whom were male) who comes forward years later. In some extreme cases, churchmen have been alleged as sacrilegiously conducting confessions and warning victims that the confessional seal barred them from discussing their abuse or reporting to authorities.⁴⁰

In a variant from the typical scenario, a short statute of limitations allowed the bishop of Arlington to escape possible liability where a pastor was conducting an adulterous affair; the husband's lawsuit against the bishop for failure to act was dismissed because of a two-year statute.⁴¹ The bishop's inaction and courtroom success were disturbingly followed by his posturing that the dismissal was on the merits; this was untrue, the court having made clear that the statute was the "overarching" consideration.⁴²

In the case of an abusing priest in Minnesota, not only was the confessional repeatedly exploited⁴³ but the bishop suggested to his archbishop that "the archdiocese posture itself in such a way that any publicity will be minimized."⁴⁴

It appears, moreover, that in at least some of the five diocesan bankruptcy situations, a motive for voluntary bankruptcy being sought was to avoid document discovery. In its distorted concern

in their pledge at Dallas to end the abuse and coverup scandal. Lawler, editor emeritus of Catholic World Report, is skeptical.

³⁸ Cf. Casey, Bill and David O'Brien, *Commonweal*, October 12, 2007, "Shared Burden: A Manifesto for the Laity," for an analysis, from the liberal wing of the Church as to whether the US bishops have succeeded in their Dallas pledge. Casey and O'Brien, members of the Board of Trustees of Voice of the Faithful, are skeptical.

³⁹ Code of Canon Law, Canon 383.

⁴⁰ A Boston victim was reportedly warned by the archbishop not to discuss his abuse as a matter of confessional secrecy, (*Betrayal: The Crisis in the Catholic Church*, p. 96)

⁴¹ *Lambert v. Loverde*, Circuit Court for Arlington County, Law No. 02-423 (2002)

⁴² *Arlington Catholic Herald*, 12/3/02; Transcript on motion to dismiss, p, 78; see also letter from plaintiff's counsel to Bp Loverde, 1/3/03

⁴³ Incomplete confession being urged by Adamson (Cf. BishopAccountability.org).

⁴⁴ Bp Carlson to Abp Roach, 8/9/84.

for the public image and perception of the institution, the institutional Church was, in Jacques Maritain's apt description, "kneeling before the world."⁴⁵

The Bishops' Bouleversement: Can We Trust Them Now?

Put not your trust in princes. Ps. 146

In one of his last works, the philosopher Jacques Maritain criticized what he perceived as a theological overturning, a Christianity turned upside down, by Teilhard de Chardin in the latter's consideration of the relationship of Christ to the world.⁴⁶ Might we ask whether we have witnessed an analogous ecclesiological overturning, effected by the bishops – an inversion of priorities from concentration on the spiritual, the invisible, to concentration on the visible, physical aspects of the Church? In the aftermath of the Dallas meeting there followed the devastating reports of the National Review Board and of the John Jay College of Criminal Justice. Immediately following their issuance, Bishop Wilton Gregory of the United States Conference of Catholic Bishops declared: "The terrible history recorded here today is history." But is it? Was his remark but an example of the wish being father to the thought?⁴⁷

The implementation by the bishops of their governing function in the Church certainly seems to have given priority to protection of image and property - hierarchy and assets. In other words, the bishops have had it upside down: instead of the institutional Church supporting and providing the infrastructure for the People of God, the Mystical Body, the continuance of Christ's presence in the world, the focus was on the institution and careers. In the Boston situation, the Attorney General of the Commonwealth of Massachusetts described it this way: "...For decades, Cardinals, Bishops and others in positions of authority within the Archdiocese chose to protect the image and reputation of their institution rather than the safety and well-being

⁴⁵ Maritain, *The Peasant of the Garonne: An Old Layman Questions Himself about the Present Time* (1965) p. 68.

⁴⁶ *Ibid.*, pp. 144, et seq.

⁴⁷ Henry IV

of children...[there was] an institutional acceptance of abuse and a massive and pervasive failure of leadership....”⁴⁸.

In opposing legislative extensions to statutes of limitation, the bishops appear to be of the same mindset, and continue in the same *modus operandi*, which, in part, had contributed to the abuse-and-coverup scandal. Sadly, the fact remains that the institutional Church has only acted in response to the legal compulsion of the secular courts and/or in response to media pressure and public outrage. In short, the bishops no longer have the credibility or enjoy the trust of the laity. The focus on assets and image continues. After Dallas, when the first chairman of the bishops’ own National Review Board committed candor, so to speak by comparing the bishops’ secrecy to that of the Mafia, he was forced out. With this mindset, the extension of statutes of limitation, however such extension might make justice available to victims, is to be resisted because lawsuits might result in expanded financial liability. Forgotten was the urging of *Lumen Gentium* to remedy the conditions of the world that they may be conformed to the norms of justice. Where is the priority?

Despite the protestations of Bishop Gregory, and the reference by the president of Catholic University in 2003 to the scandals of “last year,” the Dallas Charter may be but a start. Not only was the role of the bishops in the scandal slighted but there seems to be a lack of follow through as to the scandal’s causes. And new cases emerge. Recent commentary in quite diverse Catholic journals perceives a continuance of secrecy and a deflection of attention from the grave failures of the hierarchy.⁴⁹ Just last week, the diocese of Providence revealed that the number of priests accused there of abusing children is twice what had previously been acknowledged.⁵⁰

The problem of institutionalism, as Cardinal Dulles calls it, is really not new, of course. After Vatican II, but thirty years before the current abuse-and-coverup scandal erupted publicly in 2002, theologian Gregory Baum wrote,

⁴⁸ Report by the Attorney General, *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston*, 2003,

⁴⁹ See Casey and Lawler articles, *supra* n. 36, n. 37.

⁵⁰ Catholic World News, 22 October 2007.

“In the name of tradition and the divine order of society, the hierarchical ministry is tempted to defend its power and privileges, to protect the status quo in the Church, and to advocate conformity and obedience as the great virtues of the Christian people.... Every institution is tempted to regard itself as its own end and forget the purpose for the sake of which it exists.The service, for the sake of which the institution exists, becomes secondary; primary importance is given to promoting its own survival, its own interests, its own power. By a curious inversion of the real situation, the institution then comes to look upon the people it is meant to serve, as being there for its own sake...”⁵¹

This sort of misplacement of priority demonstrates what Carroll Quigley of Georgetown and other historians have analyzed as the evolution of instruments, created for a mission, into institutions, directed toward their own preservation.

There is a magazine advertisement aimed at senior citizens from a consulting firm styled, “Wealth Preservers, LLC.” It reads, “Our focus makes CENTS.” The problem we face is that the bishops’ focus on asset protection does not make sense in light of the Church’s mission and is not justice.

Conclusion

The unpleasant and disappointing reality is that it has only been because of the secular justice system that the institutional Church has been forced to move toward saying that it is making changes in its priorities. But it is apparent that “clericalism” and accompanying secrecy continue in the institutional Church.

When we say, at Mass, “Credo...in unam Ecclesiam,” we express our belief in, and loyalty to the Church. We are a community of faith and prayer, People of God, enhanced by the sacraments instituted by Christ Himself, not a club or fraternity or corporation concerned primarily with asset preservation. Loyalty does not mean blind loyalty to, or tolerance of, thieving priests and luxuriating bishops. The MAGISTERIAL Church merits our total loyalty and acquiescence. No “cafeteria Catholics.” The INSTITUTIONAL Church merits a sort of discrete loyalty. A judge in the Roman Rota explains the difference: “Although we have a

⁵¹ Baum, Dr. Gregory, *The Credibility of the Church Today: A Reply to Charles Davis*, pp. 78, 81 (1968)

guarantee that Christ's truth is behind the solemn exercise of the Church's teaching office, it would be a mistake to look for the same guarantee in relation to the ruling office..."⁵² In the first instance we support with assent and assets the teaching and activity of the bishops appointed by Peter. But, the entire meaning of "the Church" and its basic mission must be perceived. Hiding the fiscal and physical assets of the institutional Church from justice, via outmoded and arbitrary statutes of limitation, is not a consideration when it clashes with the mission of the Church - the bringing of men to Christ, by word and example. The institutional Church should not dodge moral responsibility by invoking pragmatic rules as to the timing of lawsuits or by stalling with secrecy the production of record evidence.

In sum, the institutional Church, its credibility already damaged by careerist, cowardly and criminal bishops, should not now, via its chanceries and lobbyists, attempt to block justice, to block legislative efforts to update outmoded and pragmatic statutes of limitation with respect to the commencement of lawsuits.

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⁵² Burke, Msgr. Cormac, *Church, Nature, Origin, and Structure of*, in OSV Encyclopedia of Catholic Doctrine (Shaw ed.) 1997

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Gaudium et Spes

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