SCANDAL AND DUE PROCESS: A CANONICAL RESPONSE TO THE MCCARRICK CASE

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On June 20, 2018, the Catholic Church was rocked by the highest profile scandal in modern history. While Theodore McCarrick was no longer a sitting archbishop, his position as a cardinal and the perception that he was a close advisor to Pope Francis made the twin press releases from the Archdioceses of New York and Washington, D.C. top news across the world. There is little doubt of then-Cardinal McCarrick's influence in the American Church; there is equally little doubt that the accusations against McCarrick set off a global media firestorm and that his prosecution directly led to new legislative efforts by Pope Francis to close a perceived gap in the Church's continued prosecution of clerics' sexual offenses. This Article will recreate McCarrick's prosecution using only the information found in three press releases. This reconstruction will demonstrate some of the fundamental differences between civil and canon law, both procedurally and substantively, as well as highlight the Church's efficacious legislative efforts of the last twenty years to prosecute clerics' sexual crimes and canon law's ability to respond in moments of crisis.

I. THE BEGINNING[1]

On the morning of June 20, 2018, the Archdiocese of Washington, D.C. released a statement by then-Cardinal Theodore McCarrick.[2] The opening line

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1. Unless otherwise noted, all canons referenced in this paper are found in *Codex Iuris Canonici auctoritate Ioannis Pauli PP.II promulgates*, Libreria Editrice Vaticana, 1983 [hereinafter 1983 CODE]. The texts will be given in the English translation unless it is necessary to use the original Latin to illustrate a point. The English translation is that of the *Canon Law Society of America*. Furthermore, while Pope Francis introduced modifications to the penal section of CIC-83 in June 2021, reference to any canons from the penal section of the 1983 CODE (*liber vi*) refer to the text applicable to McCarrick's canonical process, which took place in 2018–19.

2. *See* Press Release, Cardinal Theodore McCarrick, Archbishop Emeritus of Washington, Statement of Cardinal Theodore McCarrick (June 20, 2018), https://archny.org/ministries-and-

of the press release reveals that an allegation of sexual misconduct had been made against McCarrick "from almost 50-years ago," dating to the time he was a priest incardinated in the Archdiocese of New York. McCarrick further stated that the allegation had been reported to the police, investigated by an independent agency, and then considered by the Review Board[3] of the Archdiocese of New York.

Later that same morning, the Archdiocese of New York released its own statement regarding the allegation.[4] That statement adds some other pertinent information. Firstly, the archdiocesan statement notes that "[t]his was the first such report of a violation of the *Charter for the Protection of Children and Young People*" made against McCarrick.[5] Secondly, it repeats what McCarrick's own statement noted about following standard procedures, that is, informing the competent civil authorities of the accusation and engaging in an investigation, here entrusted to an outside agency.[6] It adds the detail that "[t]he Holy See was alerted as well, and encouraged us to continue the process."[7] The statement adds two more pieces of information that are pertinent: the diocesan review board "found the allegations credible and substantiated" and that Pope

offices/child-protection/statement-of-cardinal-dolan-on-cardinal-mccarrick/statement-of-cardinal-theodore-mccarrick/.

3. For background, see United States Conference of Catholic Bishops, A Statement of Episcopal Commitment (June 2018), https://www.usccb.org/test/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final(1).pdf. A "diocesan review board" is an institution called for by the bishops of the United States of America in the landmark *Charter*, first proposed following the United States Conference of Catholic Bishop's plenary assembly in June 2004. It was approved by the body of bishops in June 2005 and has been subsequently modified and updated (most recently in 2018). The document is known colloquially as the "Dallas Charter." The *Charter* describes the review board as a consultative body, mandatory in each diocese in the United States of America, whose primary purpose is "to advise the diocesan/eparchial bishop in his assessment of allegations of sexual abuse of minors and in his determination of a cleric's suitability for ministry." *Id.* at 9–10. Also pertinent is article 5 of the *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons*, contained within the *Charter*: The review board, established by the diocesan/eparchial bishop, will be composed of at least five persons of outstanding integrity and good judgment in full communion with the Church. *Id.* at 23. Most of the review board members will be lay persons who are not in the employ of the diocese/eparchy; but at least one member should be a priest who is an experienced and respected pastor of the diocese/eparchy in question, and at least one member should have expertise in the treatment of the sexual abuse of minors. *Id.* The members will be appointed for a term of five years, which can be renewed. It is desirable that the Promoter of Justice participate in the meetings of the review board. *Id.*

4. *See* Press Release, Cardinal Timothy Dolan, Archbishop of New York, Statement of Cardinal Dolan on Cardinal McCarrick, https://archny.org/ministries-and-offices/child-protection/statement-of-cardinal-dolan-on-cardinal-mccarrick/.

5. *Id.*

6. *Id.*

7. *Id.*

Francis had "instructed" McCarrick that he was not to perform public acts of priestly ministry.[8]

Given that the presumption of this article is that the reader has little knowledge of the Church's internal law ("canon law"), it is necessary to expound upon the two brief press releases summarized above to better understand exactly what they tell us about the initial stages of McCarrick's case.

I. UNPACKING THE PRESS RELEASES

What the press releases refer to as an allegation is properly called a *notitia de delicto* in canon law.[9] That is, the law requires that, upon receiving a *notitia de delicto*, an ordinary[10]—for our purposes, a residential bishop—undertake an investigation.[11] The English translation prepared under the auspices of the Canon Law Society of America of can. 1717 renders the phrase *notitia de delicto* as "knowledge . . . of a delict."[12] Delict is a term of art used in canon law that corresponds to the use of the term "crime" in state law.[13] So, the principle of law is that any, and every, time a local bishop[14] receives knowledge that indicates that someone has violated a penal canon, he is obligated to investigate the matter. This investigation is known as a "preliminary investigation," not because it precedes a more detailed investigation, but because it is preliminary to a canonical adjudication of the matter. This

8. *Id.*

9. "Quoties Ordinarius notitiam, saltem veri similem, habet de delicto, caute inquirat, per se vel per aliam idoneam personam, circa facta et circumstantias et circa imputabilitatem, nisi haec inquisito omnino superflua videatur." 1983 CODE c.1717, § 1.

10. The 1983 Code states who normally receives the title of ordinary and what duties the ordinary must exercise:

> In addition to the Roman Pontiff, by the title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed over some particular church or a community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power.

1983 CODE c.134, § 1.

11. For the Latin text of 1983 CODE c.1717, §1, *see supra* note 9. The English text is as follows: "Whenever an ordinary has knowledge, which at least seems true, of a delict, he is carefully to inquire personally or through another suitable person about the facts, circumstances, and imputability, unless such an inquiry seems entirely superfluous." 1983 CODE c.1717, § 1.

12. CANON LAW SOC'Y OF AM., CODE OF CANON LAW: LATIN-ENGLISH EDITION (1998).

13. *See* 1983 CODE, Book VI "de Sanctionibus in ecclesia," Pars I. de delictis et poenis in genere. *See also* NEW COMMENTARY ON THE CODE OF CANON LAW 1529–33 for a general introduction to some terminology used in ecclesiastical penal law. Technically speaking, the term "delict" denotes both crimes and torts, as there is no distinction between the two in canon law.

14. As shown above, the term "ordinary" does not merely refer to a diocesan bishop, but is used here for the purposes of simplification, and because the "ordinary" in this particular case was a diocesan bishop.

knowledge need not be a direct allegation but, rather, could be any information that indicates that a law has been violated, that a crime has possibly been committed. By using the term "allegation," the press releases indicate that the knowledge came in the form of an accusation against McCarrick which was brought to the attention of the Archbishop of New York.

Finally, the press release of the Archdiocese of New York states that the review board determined that the allegation was "credible and substantiated."[15] Just as the use of the term "allegation" goes beyond the requirement of the law to begin an investigation, so too do the terms "credible" and "substantiated," when it comes to analyzing the *notitia de delicto* in this earliest stage of a canonical process. A close examination of can. 1717 reveals that the purpose of the investigation is not to determine the credibility of an accusation, which is a question to be answered later, during a canonical process, nor whether the claim has been substantiated. These are terms that have crept into press releases of Catholic dioceses in the United States of America over the past twenty years, specifically in regard to allegations of clerical sexual misconduct. While "credible" and "substantiated" are terms that are easily understood in the American vernacular, neither of them is appropriate for the application of canon law. The goal of a preliminary investigation is merely to determine the verisimilitude of the information received by the ordinary. In an ironic turn, in trying to make canon law more easily understood, these press releases (and countless others) present a higher standard than the law requires. If the law only requires "information" of a possible violation to trigger a preliminary investigation, and the goal of this investigation is merely to determine the verisimilitude of the information, then claiming that the information has been deemed "credible" or "substantiated" goes well beyond what is required by the law to initiate a canonical process to adjudicate the claim. The Latin used in can. 1717 is *notitia saltem veri similis*. While the standard English translation is "knowledge which at least seems true,"[16] it is better to describe this knowledge as not being manifestly false. The law of the Church sets a very low standard in order to trigger an investigation and, given that the investigation is preliminary to an eventual adjudication of the claim, it need only establish that the claim is not manifestly false.[17] While there is much more that can (and should) be said about a preliminary investigation, for the purposes of this paper, these are the essential distinctions that will be drawn out between the use of American vernacular and the technical language of canon law.

For a canonist, the language of the press releases cited above poses two foundational questions, the answers to which will present another series of

15. Statement of Cardinal Dolan on Cardinal McCarrick, *supra* note 4.

16. CANON LAW SOC'Y OF AM., *supra* note 12.

17. The preliminary investigation is supposed to inquire into the claim that is presented to establish three things: the facts, the circumstances, and imputability. That is, the goal of the preliminary investigation is to determine that the substance of the claim (facts) and the details presented therein (circumstances) clearly indicate the person who is alleged to have violated the law (imputability).

questions: (1) "Which law is applicable in this case?" and (2) "Is the alleged behavior a violation of applicable law?"

Which crime is alleged to have been committed? Both press releases use the term "abuse" to describe the alleged offense; McCarrick's own statement refers to "sexual abuse of a teenager."[18] While it may seem like a superfluous question, one must ask the question of whether "sexual abuse of a teenager" is considered a crime in Church law and, given that the allegation refers to events that happened some time ago,[19] one must further ask whether it would have been considered a crime at the time it allegedly occurred. These questions are posed to illustrate two simple points. The first is a fundamental principle of law: *tempus regit actum*. The time in which an action occurs determines its legality, based on the applicable law at that time. Law, in general, is not retroactive.[20] In this case, then, the norms of canon law promulgated by Pope John Paul II in 1983 are not applicable to the accusation made against McCarrick. One must examine the prior code of law, promulgated in 1917[21] and applicable up to the first day of Advent of 1983, in order to consider whether the "sexual abuse of a teenager" was a crime under those norms. The second is a definition of the crime: Does the code of canon law list the "sexual abuse of a teenager" among the crimes it proscribes?

Can. 2359 § 2 CIC-17 establishes as a crime the violation of the sixth commandment of the Decalogue by a cleric with a minor under the age of sixteen.[22] Subsequent to the promulgation of the Pio-Benedictine Code in 1917, the Supreme Sacred Congregation of the Holy Office—now known as the Congregation for the Doctrine of the Faith—promulgated an instruction entitled *Crimen sollicitationis*, in 1922, later amplified and reprinted in 1962.[23] This

18. *See supra* notes 2 & 4.

19. *See* Press Release, Cardinal Theodore McCarrick, *supra* note 2 (stating that the events occurred "almost fifty-years ago"); *see also* Press Release, Cardinal Timothy Dolan, Archbishop of New York, *supra* note 4 (stating that the events occurred "over forty-five years ago").

20. In canon law, no law is retroactive unless it is expressly stated to be so when it is promulgated. *See* 1983 CODE c.9 ("Laws regard the future, not the past, unless they expressly provide for the past."); *see also* 1983 CODE c.7 ("A law is established when it is promulgated.").

21. 1917 CODEX IURIS CANONICI. Citations of canons from this Code are taken from THE 1917 OR PIO-BENEDICTINE CODE OF CANON LAW IN ENGLISH TRANSLATION, curated by Dr. Edward N. Peters, Ignatius Press, 2001.

22. The English text of c.2359, § 2 of the 1917 CODE is as follows:

> If they [clerics] engage in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or engage in adultery, debauchery, bestiality, sodomy, pandering, incest with blood-relatives or affines in the first degree, they are suspended, declared infamous, and are deprived of any office, benefice, dignity, responsibility, if they have such, whatsoever, and in more serious cases, they are to be deposed.

1917 CODEX IURIS CANONICI c.2359, § 2.

23. *See generally* John P. Beal, *The 1962 Instruction* Crimen sollicitationis*: Caught red-handed or handed a red herring?*, 41 STUDIA CANONICA 199–236 (2007).

instruction[24] dealt primarily with a different crime, that of the solicitation to sin against the sixth commandment of the Decalogue in confession. However, in paragraph 72,[25] that same instruction established that the procedures laid out in the document for the crime of solicitation were also to be followed in cases of a *crimen pessimum*, which is defined as any obscene, gravely sinful, external act, perpetrated or attempted, by a cleric with a person of the same sex. Equated to the *crimen pessimum* for penal effect is any obscene, gravely sinful, external act perpetrated or attempted by a cleric with a young person of either sex.[26] The category[27] used in the law no longer exists but referred expressly to pre-pubescent youths. The above-cited paragraph 72 also expressly mentions 1917 CODE c.2359 § 2, thereby making it necessary that in such cases the procedural norms of *Crimen sollicitationis* be followed.

Before proceeding, it is necessary to mention two parallel principles of penal law to that of *tempus regit actum*: Penal laws are subject to strict interpretation; and, if there is a change in law after a delict (crime) has been committed, the law more favorable to the accused is to be applied.[28] So, while the elements of the crime are determined by the applicable law of the time, all penal laws are subject to strict interpretation. In this case, merely establishing that the presumptive victim is a "teenager" is not sufficient to establish the verisimilitude of the crime. If a crime were to have been committed before the promulgation of CIC-83, and the subsequent modifications introduced that raised the age of majority from sixteen to eighteen in regard to this particular crime, it must have been perpetrated against one who was not yet sixteen years old at the time of the incident for the law to apply. As the Instruction treats matters of penal law, the rule of strict interpretation applies to the details established in *Crimen sollicitationis* regarding what constitutes a violation of the sixth commandment of the Decalogue: The act must be obscene, gravely

24. While given the title of "instruction," *Crimen sollicitationis* was binding law for the Catholic Church throughout the world.

25. An English translation of the 1962 version of *Crimen sollicitationis* is available at https://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html (last visited Mar. 13, 2022).

26. *Id.*; *see also Crimen sollicitationis* ¶ 73 ("Equated with the *crimen pessimum*, with regard to penal effects, is any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way with pre-adolescent children [*impuberes*] of either sex or with brute animals (*bestialitas*).").

27. *Crimen sollicitationis* ¶ 73 uses the term "*impuber*," which originated in Roman law and referred to a young boy under the age of fourteen or a young girl under the age of twelve. Given that, until the age of seven, children were considered *infans* in Roman law, the category of *impuber* began at age seven and ran until age twelve or fourteen.

28. "Laws which establish a penalty, restrict the free exercise of rights, or contain an exception from the law are subject to strict interpretation." 1983 CODE c.18. "If a law is changed after a delict has been committed, the law more favorable to the accused is to be applied." 1983 CODE c.1313, § 1. "If a later law abolishes a law or at least the penalty, the penalty immediately ceases." *Id.* at § 2.

sinful, external, and could have been completed or merely attempted.[29] Here, the union of Catholic moral theology and penal law is clearly demonstrated. In order to constitute a crime of a sexual nature, the act in question is judged not by any civil standard, but by that of traditional moral theology, the divine precept of the sixth commandment: You shall not commit adultery.[30] The tradition of Catholic moral theology has expounded upon this divine precept, establishing an understanding of sexual ethics based on the virtue of chastity. Clerics, like all people, are called to chastity, which, because they are unmarried,[31] is perfect continence. Therefore, any sexual act—whether one of masturbation or one that included another person—is a violation of that virtue of chastity and, therefore, constitutes a sin against the sixth commandment of the Decalogue. Hence, a strict interpretation of can. 2359 § 2 CIC-17, enlightened by the subsequent delineation found in paragraph 72 of *Crimen sollicitationis*, shows that any attempted or completed sexual act with a person under the age of sixteen would be subject to punishment in accord with the norm of law.

The second of these parallel principles involves the application of the law more favorable to the accused, in case of subsequent modifications. Here, there are a number of factors to consider. Certainly, the definition of the crime McCarrick is alleged to have committed is narrower in the older legislation than in the current substantive law, which raises the age of a minor from sixteen to eighteen. So, the more favorable law of punishing only those sexual acts committed with someone who had not yet reached the age of sixteen is to be applied. Hence, in order for McCarrick to be punished for what is called "sexual abuse of a teenager" that was to have occurred in the 1970s, the actions in question must have constituted a violation of chastity with a minor under the age of sixteen.

Returning briefly to the requirements of can. 1717, regarding the principal elements to be examined in the preliminary investigation, we have so far treated the first two elements—the facts and circumstances of the information received. The information described as an allegation of sexual abuse of a teenager must not, in facts and circumstances, have been manifestly false in regard to a violation of the sixth commandment of the Decalogue with a minor under the age of sixteen. The third element, imputability, requires a more detailed explanation. Can. 1321 states that no one is to be punished unless the external violation of the law is gravely imputable by reason of malice or negligence.[32] It is not necessary to determine imputability in the preliminary investigation, but it is important to consider, as it factors into the determination as to whether a

29. *Supra* note 24; *see also Crimen sollicitationis* ¶ 71 ("The term *crimen pessimum* ["the foulest crime"] here is understood to mean any external obscene act, gravely sinful, perpetrated or attempted by a cleric in any way whatsoever with a person of his own sex.").

30. Exodus 20:14.

31. *See* 1983 CODE c.277. While married clergy do exist in both the Latin Church and various Eastern Catholic Churches, McCarrick was a celibate priest and, therefore, like all celibate clergy, chastity for him required perfect continence.

32. 1983 CODE c.1321.

canonical proceeding to adjudicate the claim can be initiated. This determination is not final, as can. 1718 § 2 requires the authority to revoke or modify his decision, whenever new evidence indicates that such is necessary.[33]

One final preliminary consideration must be made regarding the competent authority. A cursory reading of the aforementioned *Charter for the Protection of Children and Young People* clearly indicates that the principles and norms contained therein are to be applied to priests and deacons; it expressly does not mention bishops or cardinals. The fact that McCarrick was the retired Archbishop of Washington, D.C. and a cardinal of the Roman Catholic Church caused confusion in the minds of some as to who would have authority to investigate or prosecute the accusation made against him. However, can. 2359 § 2 CIC-17 uses the generic term *clericus*, which includes all in the clerical state: deacons, priests, and bishops.[34] Furthermore, the norm of can. 1717 does not make any qualification to "which" ordinary may or may not conduct a preliminary investigation. It states merely that *an* ordinary who receives information about a possible crime is to investigate.[35] Whether the accused be a deacon, priest, bishop, cardinal, or the pope himself, there is no requirement of the law to seek permission to investigate information of a possible crime that does not appear *prima facie* to be manifestly false. This is true regarding an investigation under the legislation at the time; perhaps in part as a reaction to questions raised by McCarrick's case, subsequent legislation has further addressed the issue.[36]

The matter of prosecution is slightly different. In the procedural norms of canon law, one finds can. 1401,[37] which establishes the parameters of the Church's authority to adjudicate matters: cases that regard spiritual matters or those connected to spiritual matters, and the violation of ecclesiastical laws and all those matters in which there is a question of sin. This is further delineated in subsequent canons, the most pertinent of which, for this discussion, is can. 1405 §1, 2°: It is solely the right of the Roman Pontiff himself to judge cardinals in those cases defined in can. 1401.[38] Clearly, this is the case of a cardinal, and

33. 1983 CODE c.1718, § 2.

34. 1917 CODE c.2359, § 2.

35. 1983 CODE c.1717.

36. In the wake of the scandal caused by the McCarrick case, Pope Francis promulgated legislation in May 2019 titled *Vos estis lux mundi*, which seeks, among other things, to clarify the question of investigating allegations of sexual misconduct raised against bishops. The English text of the *motu proprio* is available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html.

37. Can. 1401 provides the scope of ecclesiastical authority to adjudicate matters:

> By proper and exclusive right the Church adjudicates: 1° cases which regard spiritual matters or those connected to spiritual matters; 2° the violation of ecclesiastical laws and all those matters in which there is a question of sin, in what pertains to the determination of culpability and the imposition of ecclesiastical penalties.

1983 CODE c.1401.

38. 1983 CODE c.1405.

one in which there is a question of sin. In 2001, Pope John Paul II promulgated a new set of norms called *Sacramentorum sanctitatis tutela*,[39] delineating those crimes reserved to the Congregation for the Doctrine of the Faith, and updating certain aspects of *Crimen sollicitationis*, including the exclusive competence of the Congregation to adjudicate accusations of violations of the sixth commandment of the Decalogue perpetrated by clerics with minors.[40] Simply put, any accusation of sexual abuse of a minor by any cleric, anywhere in the world, is, by law, the purview of the Congregation for the Doctrine of the Faith. This does not exclude accusations made against bishops or cardinals. The norms foresee this possibility and provide for it expressly in art. 1 § 2: "With regard to the delicts mentioned above in § 1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in can. 1405 § 3 of the Code of Canon Law, and in can. 1061 of the Code of Canons of the Eastern Churches."[41] So, whenever there is an accusation of a cardinal or other Church leader, the Congregation for the Doctrine of the Faith may adjudicate the matter, as it does for all other clerics. The only caveat of the law is that since such cases are reserved directly to the pope by the universal norm of can. 1405, the Congregation must request and receive prior permission from the pope in order to begin adjudication.

II. TWO HICCUPS

Beginning on June 20, 2018, the *New York Times* and the *Washington Post* began running a series of articles regarding the McCarrick case. Much of the attention was given to an accusation brought forward by a man called "James," who was identified as being sixty years old, which would have made him roughly the same age as the unidentified "teenager" mentioned in the initial press releases. However, in its initial story on "James," the *New York Times* stated the following: "As the decades passed, Father McCarrick became Cardinal McCarrick, one of the most prominent public faces of the Catholic Church in America. He was suddenly removed from ministry last month over a substantiated allegation that he sexually assaulted a sixteen-year-old altar boy in 1971."[42] If this claim were accurate, then, as demonstrated above, there could be no prosecution of McCarrick for the alleged sexual "assault," given the

39. *See* Pope Benedict XVI, *Congregatio pro Doctrina Fidei*, *in* 102 ACTA APOSTOLICAE SEDIS NO. 7, 419–32 (2010) (consists of the Essay about the primary changes made to the *Sacramentorum sanctitatis tutela* 432–34 [hereinafter SST-2010]).

40. These norms were subsequently updated both by Pope Benedict XVI and Pope Francis. For a brief description of these updates, see John Paul Kimes, *Considerazioni generali sulla riforma legislativa del motu proprio Sacramentorum sanctitatis tutela*, *in* QUADERNI DI IUS MISSIONALE (3), 2014.

41. SST-2010, *supra* note 39, at art. 1 § 2.

42. *See* Sharon Otterman, *Man Says Cardinal McCarrick, His 'Uncle Ted,' Sexually Abused Him for Years*, N.Y. TIMES (July 19, 2018), https://www.nytimes.com/2018/07/19/nyregion/mccarrick-cardinal-sexual-abuse.html.

reported age of "James." If the *New York Times* report were correct, then either "James" is not the same person who presented an allegation to the Archdiocese of New York, or the investigation of the Archdiocese of New York ignored the question of age, or the same investigation determined that "James" was actually not yet sixteen years old when some violation of the sixth commandment of the Decalogue is alleged to have taken place.

Another hiccup took place on July 28, 2018, in a Vatican-issued press release.[43] The text of the statement was released simultaneously in the original Italian and in English translation. The Vatican announced that the pope had received a letter from Cardinal McCarrick in which he offered his resignation from the College of Cardinals. The statement also said that the pope had suspended McCarrick's public exercise of ministry and that he was to live in a house to be indicated where he would live a "life of prayer and penance" until the adjudication of the allegations against him. It is to be noted that, where the press release of June 20, 2018, indicated a single allegation, this one of July 28, 2018, indicates more than one by the use of the plural *accuse*.

While there are other observations that could be made, the major hiccup comes in the last line of the press release. The original Italian states that the restrictions imposed on McCarrick are to remain in place until the "accusations that have been brought against him are clarified in a normal canonical process (*regolare processo canonico*)."[44] The official English translation, however, rendered *processo canonico* as "canonical trial."[45] While this may appear to be a difference without a distinction, a canonical "process" does not necessarily indicate a trial. Particularly in the area of accusations of sexual abuse of minors, great use is made of what is known as an extrajudicial process,[46] which has different procedural norms than a "canonical trial." While "process" is a generic term that could indicate any of a number of possible means of adjudicating an accusation or resolving a situation, "trial" indicates a single, specific means of adjudication. Is the Vatican announcing to the world that McCarrick will face a canonical trial, subject to the procedural norms found in canon law, or was it

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43. *See* Press Release, Holy See Press Office, Acknowledgement of Cardinal McCarrick's Resignation (July 28, 2018), https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/07/28/0548/01187.html.

44. Author's own translation of the original.

45. *See* Press Release, Holy See Press Office, Acknowledgement of Cardinal McCarrick's Resignation, *supra* note 43.

46. The full English text of can. 1720 is as follows:

> If the ordinary thinks that the matter must proceed by way of extrajudicial decree:
>
> 1° he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned;
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> 2° he is to weigh carefully all the proofs and arguments with two assessors;
>
> 3° if the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cann. 1342–1350, setting forth the reasons in law and in fact at least briefly.

1983 CODE c.1720.

merely trying to indicate that the accusations against McCarrick, like those brought against any other cleric, would be subject to adjudication? Given the intricacy of the procedural norms for a canonical trial and the fact that trials often take a considerable amount of time, it was unlikely that this was the Vatican's intention.[47] The final press release to be examined answers that question, and many more, about what substantive and procedural law was followed in this high-profile case.

III. ALL (?) QUESTIONS ANSWERED

On February 16, 2019, the Vatican released a carefully worded statement[48] that, unlike the one of July 28, 2018, was drafted with the intention of answering technical questions for those trained in canon law. Like the previous statement, this one was issued simultaneously in the original Italian and in English translation. Below is the English version in its entirety:

> On 11 January 2019, the Congresso of the Congregation for the Doctrine of the Faith, at the conclusion of a penal process, issued a decree finding Theodore Edgar McCarrick, archbishop emeritus of Washington, D.C., guilty of the following delicts while a cleric: solicitation in the Sacrament of Confession, and sins against the Sixth Commandment with minors and with adults, with the aggravating factor of the abuse of power. The Congresso imposed on him the penalty of dismissal from the clerical state. On 13 February 2019, the Ordinary Session (Feria IV) of the Congregation for the Doctrine of the Faith considered the recourse he presented against this decision. Having examined the arguments in the recourse, the Ordinary Session confirmed the decree of the Congresso. This decision was notified to Theodore McCarrick on 15 February 2019. The Holy Father has recognized the definitive nature of this decision made in accord with law, rendering it a res iudicata (i.e., admitting of no further recourse).[49]

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47. Less than two months after this initial Vatican press release, on September 12, 2018, it was announced that the pope had decided to convoke the presidents of all of the world's episcopal conferences to discuss "the protection of minors." It is difficult to imagine, given the enormous level of scrutiny given to the matter by the world's media, that it was not desired that the McCarrick case be definitively resolved before the beginning of that gathering, scheduled to take place February 21–24, 2019. Resolving a canonical trial in such short order would have been nearly impossible. *See* Press Release, Holy See Press Office, Comunicato del Consiglio di Cardinali (Sept. 9, 2018), https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2018/09/12/0632/01358.html. The urgency to complete the process before this meeting began made it unlikely that the more time-consuming judicial penal trial would be the means chosen to adjudicate the accusations in question.

48. *See* Press Release, Holy See Press Office, Regarding Findings of the Guilt of Cardinal McCarrick (Feb. 16, 2019), https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/02/16/0133/00272.html.

49. *Id.*

This short statement contains almost all the information a canon lawyer needs to completely reconstruct the process by which McCarrick's guilt was determined.

As discussed above, it is clearly the case that a preliminary investigation was undertaken by the Archdiocese of New York. Furthermore, it is now clear that the outcome of that investigation must have been that the allegation or allegations examined were deemed not to be manifestly false. At that point, the Congregation for the Doctrine of the Faith must have requested a *mandatum*, that is, authorization from the pope to adjudicate the matter, as defined in SST-2010 art. 1 § 2.[50] It is also clear that no "regular canonical trial" took place, but, rather, that the claims against McCarrick were adjudicated in an extrajudicial process, according to the norm of can. 1720. Moreover, it is clear that this process was conducted *coram Congregatione*.[51] Furthermore, McCarrick exercised his right to present recourse against this decision, and his arguments in recourse were rejected, in whole or in part, as the decision was confirmed by the appropriate authority and is final. Starting with the procedural norms, we will unpack this dense statement and mine it for all the answers it can provide.

IV. PROCEDURAL CONSIDERATIONS

A canonical trial does not end by issuing a decree, but, rather, by issuing a sentence.[52] Furthermore, a judicial sentence can be challenged in several ways—a complaint of nullity[53]; an appeal,[54] or a *restitutio in integrum*[55]—but not by presenting recourse.[56] Unlike a judicial trial, an extrajudicial process concludes with a decree. Therefore, by indicating that McCarrick had presented "recourse," the press statement informs the alert reader of the process by which the allegations made against him were adjudicated.

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50. *Sacramentorum sanctitatis tutela* elaborates on the process by which the Congregation for the Doctrine of the Faith, having first requested a mandate by the Holy Father to receive proper authorization, may adjudicate matters involving prelates:

> With regard to the delicts mentioned above in § 1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in can. 1405 § 3 of the Code of Canon Law, and in can. 1061 of the Code of Canons of the Eastern Churches.

SST-2010, art. 1, § 2.

51. This Latin phrase indicates that a case would be argued not in an external tribunal but "before the Congregation" itself.

52. *See* 1983 CODE c.1607 (stating that when a case has been handled in a judicial manner, if it is the principal case, the judge decides it through a definitive sentence).

53. *See* 1983 CODE c.1619-c.1627.

54. *See* 1983 CODE c.1628-c.1640.

55. *See* 1983 CODE c.1645-c.1648.

56. *See* John Paul Kimes, *How Many Bites of the Apple? Impugning Decisions in Cases of* Delicta Reservata, *in* PROCEEDINGS OF THE EIGHTIETH ANNUAL CONVENTION/CANON LAW SOCIETY OF AMERICA 206-20 (2018).

An extrajudicial process is more streamlined than a canonical trial, while still guaranteeing due process and the right of defense. This type of process, unlike a canonical trial, is governed by only one procedural norm: 1983 CODE can. 1720. This canon outlines the three principal phases of an extrajudicial process, also known as an "administrative" process. The first stage[57] requires that the ordinary inform the accused of the accusations made against him or her, and then share all of the collected evidence with the accused, allowing an appropriate amount of time for the composition of a defense. The second phase[58] of the process calls for the ordinary, having received the defense arguments of the accused, to present those arguments and the evidence to two others, called "assessors." This phase resembles convening of the judges defined in can. 1609.[59] Unlike in a trial, however, the assessors do not have a deliberative vote in the decision but, rather, they are to "weigh carefully" the evidence and the defense arguments and to express their opinion regarding the matter. Ultimately, however, the decision is entirely that of the ordinary, as is evident in the third phase of the process described in can. 1720.[60] The decision

57. The first stage of can. 1720 proceeds as follows: "If the ordinary thinks that the matter must proceed by way of extrajudicial decree: 1° he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned." 1983 CODE c.1720, 1° .

58. The second stage of can. 1720 proceeds as follows: "If the ordinary thinks that the matter must proceed by way of extrajudicial decree: 2° he is to weigh carefully all the proofs and arguments with two assessors." 1983 CODE c.1720, 2° .

59. For the purpose of comparison, the full English text of can. 1609 is as follows:

§ 1. In a collegiate tribunal the president of the college is to establish the date and time when the judges are to convene for deliberation; unless a special reason suggests otherwise, the meeting is to be held at the tribunal office.

§ 2. On the date assigned for the meeting, the individual judges are to submit their written conclusions on the merit of the case with the reasons in law and in fact which led them to their conclusions; these conclusions are to be added to the acts of the case and must be kept secret.

§ 3. After the invocation of the Divine Name, the individual judges are to present their conclusions in order of precedence, always beginning, however, with the ponens or relator of the case. A discussion then follows under the leadership of the tribunal president, especially to determine what must be established in the dispositive part of the sentence.

§ 4. In the discussion each judge is permitted to withdraw from his or her original conclusion. The judge who is unwilling to assent to the decision of the others, however, can demand that his or her conclusions be transmitted to the higher tribunal if an appeal is made.

§ 5. If the judges are unwilling or unable to arrive at a sentence during the first discussion, the decision can be deferred to a new meeting, but not for more than a week, unless the instruction of the case must be completed according to the norm of can. 1600.

1983 CODE c.1609.

60. The third and final stage of can. 1720 proceeds as follows:

If the ordinary thinks that the matter must proceed by way of extrajudicial decree; and

to be made regards: the establishment of the crime, that is, that the action defined in the accusation presented to the accused constitutes a delict in ecclesiastical law; that the accused is imputable for the action;[61] whether any of the mitigating or aggravating circumstances foreseen in the law are present;[62] and that prescription[63] has not expired.

What are some of the presumptions of the law that underlie this type of canonical process? Firstly, it presumes that all the available evidence has been collected before the process begins; therefore, unlike a trial, there is no phase during the process itself that allows for the collection of new evidence.[64] This is one of the major differences between a canonical trial and an extrajudicial process. A second presumption, at least in the formulation of the canon, is that the accusation is not one of a crime of the highest degree of gravity, given that 1983 CODE c.1342 § 2 establishes that perpetual penalties cannot be imposed by decree. The same was true in the original text of *Sacramentorum sanctitatis tutela*, promulgated by Pope John Paul II in 2001. It stated clearly that all cases reserved to the Congregation for the Doctrine of the Faith were to be prosecuted exclusively by a penal trial.[65] This was modified by the same legislator less than two years later[66] when then-Cardinal Joseph Ratzinger requested

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> 3° If the delict is certainly established and a criminal action is not extinguished, he is to issue a decree according to the norm of cann. 1342-50, setting forth the reasons in law and in fact at least briefly.

1983 CODE c.1720, 3°.

61. 1983 CODE c.1321, § 2, for example, requires that, in order to impose a penalty, the guilty person must have violated the law deliberately and not merely by omitting due diligence.

62. *See* 1983 CODE c.1322-30 for factors that can aggravate, mitigate, or otherwise modify the penalty to be imposed on the guilty party.

63. Prescription is a term of art in canon law that corresponds to the term "statute of limitations" in U.S. civil law.

64. Obviously, if new evidence were to become available, or suggested by other evidentiary elements, such as testimony previously collected, this new evidence could be collected and then added to the "proofs" that are then to be shared with the accused. However, the text of 1983 CODE c.1720 clearly shows that the legislator's original intent for the use of this type of process was for situations in which there was no expectation of collecting further evidence.

65. Kimes, *supra* note 40; *see also* SST-2001 art. 17 ("The more grave delicts reserved to the Congregation for the Doctrine of the Faith may only be tried in a judicial process.").

66. On three separate occasions (November 7, 2002, February 7, 2003, and February 14, 2003), after the promulgation of *Sacramentorum sanctitatis tutela*, Pope John Paul II approved modifications to the text. These modifications were not incorporated into the text, but, rather, granted authority to the Congregation for the Doctrine of the Faith to apply the modifications to individual cases and, therefore, they were classified as "faculties." The fact that these modifications were proposed and approved shortly after the promulgation of the original text could in part be due to the scandal that erupted in the United States of America following the *Spotlight* series of the Boston Globe, which began publication on January 6, 2002. *See* Carroll et al., *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE (Jan. 6, 2002), https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTIrAT25qKGvBuDNM/story.html.

permission for the Congregation to proceed in these "more grave"[67] cases by means of an extrajudicial process. It was also necessary, then, that the Congregation have the authority to derogate from the norm of 1983 CODE c.1342 § 2, otherwise the ability to adjudicate cases of sexual abuse of minors by an extrajudicial process would preclude the possibility of imposing a perpetual penalty. These modifications were made by granting "faculties" to the Congregation for the Doctrine of the Faith; a "faculty" is a different type of legal construct and must be renewed.[68] In order to make these important changes permanent, they were incorporated into the new version of the law promulgated by Pope Benedict XVI in 2010.[69]

Returning to the Vatican press release of February 16, 2019, the text informs the reader that the decision made in this extrajudicial process was done so by the *Congresso*.[70] The *Congresso* is the regularly occurring meeting of the superiors of the Congregation (the prefect, the secretaries,[71] the under-secretary and the promoter of justice); these meetings, usually weekly, are the session in which various matters are presented and debated, with decisions taken by the superiors.[72] That McCarrick was found guilty of certain crimes and that the penalty was imposed by the *Congresso* indicates two possible manners in which the process took place: either *coram Congregatione*, or the Congregation for the Doctrine of the Faith could have nominated a delegate to instruct the process while reserving the decision to itself. The manner of proceeding *coram Congregatione* goes back to the earliest days of the Congregation for the Doctrine of the Faith, when it was originally established in 1542 by Pope Paul

67. Many of the delicts (crimes) reserved to the Congregation for the Doctrine of the Faith belong to a category known as *delicta graviora*, that is, "more grave delicts." The comparative is used here out of grammatical necessity, as there is no category of crimes considered to be more grave than these; legally, these are the most serious crimes in canon law.

68. *See* ANDREW MEEHAN, *Canonical Faculties*, CATH. ENCYC. (Robert Appleton Company, 1909).

69. For a discussion of the modifications introduced in 2010, see John Paul Kimes, *La riforma legislativa circa i delicta graviora*, *in* VI QUADERNI DI IUS MISSIONALE 227–41 (2012).

70. *See* Press Release, Holy See Press Office, Regarding Findings of the Guilt of Cardinal McCarrick, *supra* note 36.

71. The typical structure of the Roman curial offices is to have a head, called a prefect (normally a cardinal), who is assisted by a secretary (normally an archbishop) and an under-secretary. The unique structure of the Congregation for the Doctrine of the Faith, as a tribunal, includes the role of promoter of justice. The particular role of the promoter of justice has been likened to that of the Attorney General in the U.S. federal government. However, the role is more nuanced and is not merely prosecutorial. In recent years, the Congregation for the Doctrine of the Faith has also had "adjunct" secretaries, who have all the rights and responsibilities of the secretary. Currently, the Congregation has two adjunct secretaries and a secretary, as well as a prefect, under-secretary, and promoter of justice.

72. *See* VATICAN, TO PROMOTE AND SAFEGUARD THE TRUTH: FROM THE HOLY OFFICE TO THE CONGREGATION FOR THE DOCTRINE OF THE FAITH, https://www.vatican.va/roman_curia/congregations/cfaith/storia/documents/rc_con_cfaith_storia_20150319_promuovere-custodire-fede_en.html#PERSONNEL,_OFFICES,_PROCEDURES_ (last visited Mar. 18, 2021).

III as the "Supreme Sacred Congregation for the Roman and Universal Inquisition."[73] At that time, the purview of the Congregation included maintaining and defending the integrity of the faith and examining and condemning false doctrines. Over time, its purview was expanded to include a series of crimes committed primarily by clerics that were deemed to be so grave or so sensitive that they were reserved to this particular tribunal, among these were crimes against the sacrament of penance and certain cases of sexual misconduct by the clergy. Given the delicate nature of a penal process against a cardinal who had resigned the dignity of that title, it is likely that the procedure was done *coram Congregatione*. In this way, the information collected would have been shared with McCarrick and his canonical advocate; they would have provided defense arguments and any counterproofs they collected. This information would then have been presented *en masse* to the superiors of the Congregation who would, in an analogous manner to the norm of 1983 CODE c.1720, evaluate all the evidence and the arguments presented both in prosecution of as well as in defense of the accused. After considering all these materials, the superiors would discuss the matter, again in a manner analogous to 1983 CODE c.1720, 2° , and then issue their decision in the form of a decree. This decision is not subject to approval (or disapproval) of the pope but, as seen in the Vatican press release of February 16, 2019, it was subject to a challenge from McCarrick, known as recourse.[74] We will return to the question of recourse, and the involvement of the pope, later.

V. SUBSTANTIVE CONSIDERATIONS

When considering what kinds of legal arguments would have been presented, given the initial press releases referring to actions that possibly occurred half a century ago, one thinks immediately of prescription (statute of limitations). The general norm of law establishes that criminal actions can only be prosecuted within a three-year period.[75] The same norm further specifies, however, that crimes reserved to the Congregation for the Doctrine of the Faith have their own norms, while for certain other crimes of sexual misconduct, the prescription is five years.[76] Crimes reserved to the Congregation for the

73. *See Congregation for the Doctrine of the Faith Profile*, https://www.vatican.va/content/romancuria/en/congregazioni/congregazione-per-la-dottrina-della-fede/profilo.html.

74. Press Release, Holy See Press Office, Regarding Findings of the Guilt of Cardinal McCarrick, *supra* note 36.

75. 1983 CODE c.1362, § 1.

76. The 1983 CODE distinguishes between types of crimes with regard to prescription:

§ 1. Prescription extinguishes a criminal action after three years unless it concerns:

1° delicts reserved to the Congregation for the Doctrine of the Faith;

2° an action arising from the delicts mentioned in 1983 CODE c.1394, 1395, 1397, and 1398, which have a prescription of five years; or

3° delicts which are not punished in the common law if particular law has established another period for prescription.

Doctrine of the Faith are subject to the norms of *Sacramentorum sanctitatis tutela*, which originally established that these crimes were subject to a ten-year period of prescription; ten years were then expanded to twenty and, most important for this case, the Congregation was granted the ability to derogate from prescription on a case-by-case basis.[77] While there has been much discussion about what this ability to "derogate" from prescription means,[78] the application of this derogation effectively makes it possible to prosecute a crime committed at any point in the past.[79] Again, this is reserved to the judgement of the Congregation in individual cases.

The ability to determine that a particular crime[80] warrants prosecution, regardless of when it was committed, raises several questions. What is the purpose of prescription? Is it to protect the rights of the accused, ensuring that he or she is prosecuted for an action in temporal proximity to that action, making it more possible to collect evidence and counterproofs and the testimony of witnesses? Should serious crimes be subject to prescription, or is it better to allow certain crimes to be prosecuted whenever they are reported? Whatever the purpose of prescription, the norm of 1983 CODE c.1341 establishes three criteria that an ordinary must consider before beginning any penal process. A process is only to take place when an ordinary has determined that "fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, [and] reform the offender."[81] This determination is left to the discretionary judgement of the ordinary.[82] If these

§ 2. Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased.

1983 CODE c.1362.

77. *See* John Paul Kimes, *Considerazioni generali sulla riforma legislativa del Motu Proprio Sacramentorum sanctitatis tutela*, *in* I DELITTI RISERVATI ALLA CONGREGAZIONE PER LA DOTTRINA DELLA FEDE 11–28 (Urbaniana University Press, Città del Vaticano 2014). The current version of the norms of *Sacramentorum sanctitatis tutela* can be found at THE HOLY SEE, SUBSTANTIVE NORMS, https://www.vatican.va/resources/resources_norme_en.html (last visited Mar. 15, 2022). For this particular question, art. 7 is the pertinent text.

78. There has been much discussion among canonists as to what this derogation might mean, legally. Does it mean that, if prescription has not yet expired, that the Congregation can prolong it? Or does it mean that, in cases where prescription has already expired, the Congregation can "revive" a case and prosecute it? This second interpretation is the operative one.

79. For a contrary opinion, see Charles G. Renati, *Prescription and Derogation from Prescription in Sexual Abuse of Minor Cases*, 67 THE JURIST 503, 503–19 (2007).

80. Again, it is important to note that the derogation from prescription is only possible for those crimes reserved to the Congregation for the Doctrine of the Faith, that is, those crimes found in the substantive norms of *Sacramentorum sanctitatis tutela* cited above.

81. 1983 CODE c.1341.

82. It is worth noting that, in the recent changes to penal law introduced by Pope Francis, the wording of this canon has been modified, such that the emphasis is no longer on the ordinary's discretionary judgment but on the necessity of beginning a process. It is also noteworthy that the three conditions (repairing scandal, restoring justice, and reforming the offender) are repeated in other canons, whereas these conditions were only found in 1983 CODE c.1341. This repetition

conditions must be considered in determining whether it is necessary to begin a penal process, then it is logical that they also frame the purpose of that same process. By extension, one can imagine that the determination of the Congregation for the Doctrine of the Faith to derogate from prescription for a crime that was committed many years ago would also be based on these considerations. To the case in hand, without addressing the question of possible reformation of the alleged offender, the questions of scandal and the restoration of justice clearly needed to be addressed.

The understanding of scandal in Church law, however, is not the same as that perceived in society at large. The Catholic Church has a specific definition of scandal: an attitude or behavior that leads another to do evil.[83] As a result, the question of the scandal of a particular action is not gauged by the number of headlines, newspaper articles, website hits, or media clamor, but by the damage done to the body of Christ by the negative example given.[84] Similarly, the question of justice within the Church is slightly more complicated than it is in the civil forum. An easy example of this complexity can be seen in the procedure used in examining the validity of marriages. Setting aside the differences between a declaration of nullity and a civil divorce, when examining a marriage, the Church process foresees three parties, not two. That is, the sacramental reality that is a specific marriage has its own attorney, known as a defender of the bond.[85] Even the most intimate questions regarding a specific marriage between a certain man and woman are seen in the larger context of the Christian community. Similarly, the question of the restoration of justice is not limited to the restoration of the harm caused by one person to another, but also the harm that is done to the entire community of the Church. Needless to say, the allegations made against McCarrick, if proven true, are of a gravity to demand the restoration of justice and the reparation of scandal. These are the kinds of considerations the Congregation for the Doctrine of the Faith must make when determining whether to initiate a penal process in individual cases when prescription has expired. Given that the allegations reported in various media outlets and acknowledged in the initial two press releases refer to actions that would have been prescribed by canon law and, therefore, unactionable, it was necessary that the Congregation for the Doctrine of the Faith exercise its

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reinforces the insistence of the legislator on these three conditions as being fundamental to the application of penal law.

83. THE CATECHISM OF THE CATHOLIC CHURCH provides the following definition of the term "scandal":

> Scandal is an attitude or behavior which leads another to do evil. The person who gives scandal becomes his neighbor's tempter. He damages virtue and integrity; he may even draw his brother into spiritual death. Scandal is a grave offense if by deed or omission another is deliberately led into a grave offense.

CATECHISM OF THE CATHOLIC CHURCH ¶ 2284 (2d ed. 2000).

84. *Id.*

85. The origin of the defender of the bond dates back to the Apostolic Constitution *Dei Miseratione* (Nov. 3, 1741); *see also* I CODICIS IURIS CANONICI FONTES 695 n.341. The current role is defined in 1983 CODE c.1432.

ability to derogate from prescription, making these allegations subject to prosecution and, therefore, punishment.

The ability of the Congregation for the Doctrine of the Faith to derogate from prescription is, however, limited to those delicts that are its exclusive competence, that is, to those delicts contained in *Sacramentorum sanctitatis tutela*. The final Vatican press release lists three separate crimes of which McCarrick was found guilty. The first two, solicitation in the Sacrament of Confession and sins against the sixth commandment of the Decalogue with minors, are the exclusive competence of the Congregation for the Doctrine of the Faith and, therefore, subject to the derogation of prescription. The final crime listed in the Vatican press release, sins against the sixth commandment of the Decalogue with adults, however, is not.[86]

What kinds of violations of the sixth commandment of the Decalogue committed by a cleric with adults are considered criminal are found in 1983 CODE c.1395? The behaviors that are criminalized by the law are concubinage, persisting with scandal in another external sin against the sixth commandment, and committing the sin publicly or with force or threats.[87] These crimes, however, are subject to a five-year statute of limitations.[88] Given, then, that the press release clarifies that McCarrick was also guilty of sins against the sixth commandment of the Decalogue with adults, those sins must have been categorized in one of the ways mentioned above. Furthermore, those same sins either took place within the five-year window allowed by the law, that is, no later than sometime in 2013, or there was an extraordinary intervention by the pope—who is the supreme legislator—lifting the prescription *ad casum*. The press release does not give any indication of which of these possibilities is true, or if it were the case that there were both recent accusations of sexual misconduct with adults *and* the pope lifted prescription for the prosecution of older crimes of the same nature. Given that 1983 CODE c.1341 establishes the reparation of scandal as one of the criteria to be evaluated before beginning a canonical process and, given the genuine global scandal in the Church caused by the continuous reporting on allegations of McCarrick's sexual misconduct with seminarians and young priests, it is not hard to imagine that the pope lifted prescription for actions that would have otherwise not been subject to prosecution.

The final substantive consideration regards McCarrick's conviction for the crime of solicitation in confession.[89] In 1741, Pope Benedict XIV promulgated the apostolic constitution *Sacramentum poenitentiae*, which provided the definition of the crime of solicitation in confession, a definition

86. *See* Press Release, Holy See Press Office, Regarding Process Finding Cardinal McCarrick Guilty, *supra* note 47.

87. 1983 CODE c.1395.

88. For the text of 1983 CODE c.1362, *see supra* note 76.

89. *See* Press Release, Holy See Press Office, Regarding Process Finding Cardinal McCarrick Guilty, *supra* note 47.

that has not been substantially modified since.[90] The crime consists of a priest (or bishop) soliciting a penitent to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of the sacrament of confession. Soliciting, or provoking, a penitent to a sin against the sixth commandment of the Decalogue, according to *Sacramentum poenitentiae*, can be done by word−spoken or written, which can be read at that time or later− gesture, or touch.[91] The provocation or solicitation to a sexual act can be directed at the priest or a third party.[92]

The extension of this crime outside merely the immediate context of the sacrament of confession shows its gravity. The Church criminalizes any action, in any way connected with the sacrament of confession, that solicits or provokes sexual misbehavior. It is not a requirement that any sexual activity take place; what is criminal is merely the suggestion of such an act, in connection to the sacrament of confession. Given the breadth of the *species facti* in this crime, it is difficult to propose a hypothetical reconstruction of it for those who are unfamiliar with canon law. However, what is available is the report of the alleged victim, James Grein, who stated that before touching his genitals, McCarrick would hear his confession.[93] Were this to be proven, this kind of action would constitute the crime of solicitation. This kind of solicitation−when the sexual misconduct provoked is directed at the confessor, the priest himself− is reserved to the Congregation for the Doctrine of the Faith and thus also subject to a derogation from prescription.[94] Therefore, if this were the kind of

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90. Benedict XIV, *Sacramentum Pœnitentiae* (June 1, 1741), in CODEX IURIS CANONICI, prepared at the order of Pius X, Supreme Pontiff, and promulgated by the authority of Pope Benedict XV. This document can be found in *Documenta*, Document V, in ACTA APOSTOLICAE SEDIS NO. 9, Part II, 505–08 (1917).

91. GIOVANNI CHELODI, IUS CANONICUM DE DELICTIS ET POENIS ET DE IUDICIIS CRIMINALIBUS 136 (Trent, 1943).

92. *Id*. at ¶ 1. The crime of solicitation is defined here as attempting to "solicit or provoke a penitent, whoever he or she may be, to immoral or indecent acts." This can take place "whether in the act itself of sacramental confession, or before or immediately after confession, on the occasion or under the pretext of confession, or even apart from confession [but] in a confessional or another place assigned or chosen for the hearing of confessions and with the semblance of hearing confessions there." *See also Crimen sollicitationis* ¶ 1, *supra* note 24.

93. *See* Julie Zauzmer Weil & Chico Harlan, *The Vatican's Investigation into Theodore McCarrick's Alleged Crimes is Underway*, WASH. POST (Dec. 28, 2018), https://www.washingtonpost.com/religion/2018/12/28/vaticans-investigation-into-theodore-mccarricks-alleged-crimes-is-underway/.

94. *Sacramentorum sanctitatis tutela* specifies those delicts reserved to the Congregation for the Doctrine of the Faith occurring in the context of the Sacrament of Penance. The text of the fourth delict is quoted below:

> The more grave delicts against the sanctity of the Sacrament of Penance reserved to the Congregation for the Doctrine of the Faith are:
>
> > 4° the solicitation to a sin against the sixth commandment of the Decalogue in the act, on the occasion, or under the pretext of confession, as mentioned in 1983 CODE c.1387 of the Code of Canon Law, and in can. 1458 of the Code of Canons of the Eastern Churches, if it is directed to sinning with the confessor himself.

action that were alleged, no extraordinary action would be necessary to prosecute such an accusation.

VI. CHALLENGING THE DECISION

The Vatican press release informs the reader that McCarrick was given the opportunity to present recourse against the decision made by the Congregation for the Doctrine of the Faith. It also indicates which body reviewed this challenge: the *Feria IV*. Here, there are a number of factors that need to be taken into consideration. The first of these has already been discussed. While the original text of *Sacramentorum sanctitatis tutela* did not allow decisions in these matters to be made by means of an extrajudicial process, Pope John Paul II modified this on February 7, 2003. One week later, the pontiff further addressed this issue when he established that "the revocation of administrative acts of the CDF and all other recourses against the said acts, made in accordance with art. 135 of the *Regolamento Generale della Curia Romana*, shall be referred to the *Feria IV* [of the CDF] which will decide on the merits and on questions of lawfulness. Any other recourse under art. 1233 of the Apostolic Constitution *Pastor bonus* (recourse to the Apostolic Signatura) is excluded." [95]

The *Feria IV* is the short-hand term for the Ordinary Session of the Congregation for the Doctrine of the Faith.[96] The ordinary session is the regular (usually monthly) meeting of all the cardinal and bishop members that have been appointed to the Congregation by the pope. It is this body that was originally charged with deciding challenges made when an accused cleric had been tried in an extrajudicial process rather than in a judicial trial. On November 3, 2014, Pope Francis changed this disposition, creating the *College for the examination of recourses in matters of* delicta graviora.[97] While this new *College* took on the role of examining recourses presented in cases of crimes reserved to the Congregation for the Doctrine of the Faith, it still remained the purview of the *Feria IV* to examine certain recourses, in particular those cases in which the accused was a bishop. This explains why the press release indicates it was that body, and not the *College*, that eventually confirmed the decision made in the *Congresso*.

SST-2010 art. 4, § 1, 4°.

95. *See Normae substantiales et processuales* promulgated with the motu proprio *Sacramentorum sanctitatis tutela* (Apr. 30, 2001) and subsequent amendments (Nov. 7, 2002–Feb. 14, 2003), http://www.iusecclesiae.it/issue/view/44/36 (last visited Mar. 15, 2022).

96. Traditionally, the various offices of the Roman curia would have their "ordinary sessions"—the meetings of the cardinal and bishop members—on a specific day of the week. The term "*feria IV*" refers to the fourth day of the week, Wednesday.

97. THE HOLY SEE, CONGREGATION FOR THE DOCTRINE OF THE FAITH, *"Rescriptum ex Audientia SS.MI" Regarding the Creation of a College, Within the Congregation for the Doctrine of the Faith, for the Examination of Ecclesiastical Appeals Involving* Delicta Graviora (Nov. 3, 2014), https://www.vatican.va/roman_curia/secretariat_state/parolin/2014/documents/rc_seg-st_20141103_rescriptum-congregazione-dottrina-fede_en.html.

Another issue that merits particular attention is the timeline reported in the February 16, 2019, press release. The original decree condemning McCarrick was issued on January 11, 2019. The norms for presenting recourse are found in SST-2010 art. 27,[98] which establishes a period of sixty days in which one can challenge a decree issued by the Congregation for the Doctrine of the Faith. Returning to the press release, already its date of February 16 demonstrates that just over a calendar month had passed between the original decision and the final decision made in examination of the recourse that was presented. This indicates that one of two things must have happened: either McCarrick and his canonical advocate chose to present his recourse quickly, or the sixty-day period foreseen by the law was modified. As mentioned earlier, Pope Francis had already established the dates for the so-called "summit" on sexual abuse for February 22–24, 2019. While it might be cynical to presume that this date somehow influenced the timing of the recourse in McCarrick's case, the timing is conspicuous. Whether McCarrick chose to present his recourse early or the time-period was somehow restricted, it is still the case that he was allowed to present arguments to challenge the conclusions of the Congregation for the Doctrine of the Faith.

This point is imperative because there was a tremendous risk that any Church condemnation of McCarrick be seen merely as a confirmation of the "prosecution" to which he had already been subjected in the media. The universal acclaim of his guilt by the media[99], aided by the repeated calls of "we all knew"[100] by Church leaders in America, created a common perception that McCarrick was guilty long before he had been declared so by any court. While this is not a new phenomenon, it was one that must be taken into consideration. The public pressure for the pope to merely "defrock" McCarrick, rather than put him on trial, must have been overwhelming; it was likely a possibility that was seriously considered. However, a mere papal declaration that McCarrick had been dismissed from the clerical state[101] would not go as far in restoring justice as would a juridical process in which the claims against McCarrick were

98. The pertinent language of SST-2010 art. 27 proceeds as follows:

> Recourse may be had against singular administrative acts which have been decreed or approved by the Congregation for the Doctrine of the Faith in cases of reserved delicts. Such recourse must be presented within the preemptory period of sixty canonical days to the Ordinary Session of the Congregation (the *Feria* IV) which will judge on the merits of the case and the lawfulness of the Decree. Any further recourse as mentioned in art. 123 of the Apostolic Constitution *Pastor bonus* is excluded.

SST-2010 art. 27. The language of this norm has not been modified to reflect the creation of the *College* in November 2014.

99. *See, e.g.*, Laurie Goodstein & Sharon Otterman, *He Preyed on Men Who Wanted to Be Priests. Then He Became a Cardinal.*, N.Y. TIMES (July 16, 2018), https://www.nytimes.com/2018/07/16/us/cardinal-mccarrick-abuse-priest.html.

100. *See, e.g.*, Jack Crowe, *Bishop: 'We All Knew' of McCarrick's Abuse*, NAT'L REV. (Aug. 30, 2018), https://www.nationalreview.com/news/bishop-we-all-knew-of-mccarricks-abuse/.

101. This is the formal name for the perpetual penalty commonly referred to in the media as "defrocking."

investigated and critically examined, and in which the accused were allowed to fully exercise his right of defense. In the face of extreme scrutiny, it is sometimes hard to remember that justice must also appear just, and nothing is more just than a process in which one can fully exercise the right of self-defense, a right which the media had not afforded McCarrick.

The final point made by the press statement of February 16, 2019, regards the role of the pope: "The Holy Father has recognized the definitive nature of this decision made in accord with law, rendering it a *res iudicata*." When authorized to adjudicate accusations made against prelates,[102] the Congregation for the Doctrine of the Faith follows the same norms that it does in cases of accusations made against priests, deacons, or even lay men and women.[103] SST-2010 art. 8 defines the Congregation in these actions as the "Supreme Apostolic Tribunal" for the universal Church in the judgment of the crimes mentioned early in the same text. Paragraph 3 of Article 8 states the following: "The sentences of this Supreme Tribunal, rendered within the limits of its proper competence, do not need to be submitted for the approval of the Supreme Pontiff." While this language refers expressly to judicial trials and can be traced back to the original intention of the legislator that all crimes listed in *Sacramentorum sanctitatis tutela* be adjudicated in that forum, it clearly extends to those decisions that are made by means of an extrajudicial process as well. Therefore, the decision of the Congregation for the Doctrine of the Faith regarding McCarrick's guilt, once his right to challenge that decision had been exhausted, was not subject to any further legal scrutiny, nor did it need any recognition by another authority to become effective. What the press release states is that the pope took no specific action. That is, he "recognized the definitive nature" of what had occurred according to the norm of law.[104] The pope is not described as taking any intervening action, nor was it necessary that he do so.

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102. 1983 CODE c.1405 § 1 provides:

It is solely the right of the Roman Pontiff himself to judge in the cases mentioned in can. 1401:

1° those who hold the highest civil office of a state;

2° cardinals;

3° legates of the Apostolic See and, in penal cases, bishops;

4° other cases which he has called to his own judgment.

1983 CODE c.1405 § 1.

103. While the majority of the crimes that fall under the exclusive purview of the Congregation can only be committed by clerics, some can also be committed by lay persons: *see, e.g.*, art. 2 (in cases that are challenged); art. 3 § 1, 2° ; art. 4 § 1, 2° ; and art. 4 § 2, 5° .

104. Press Release, Holy See Press Office, Regarding Process Finding Cardinal McCarrick Guilty, *supra* note 47.

Nevertheless, as noted elsewhere,[105] in the wake of the *Extraordinary Jubilee of Mercy* declared by Pope Francis in 2015,[106] some referred to the norm of can. 1417, claiming it allowed them to make a further appeal directly to the pope, regardless of the fact that the challenges described in procedural law were exhausted. Needless to say, that is not the intention of that norm, which speaks only to the right of any member of the Church to refer a legal matter directly to the pope, as he is the supreme judge for the entire Catholic community. The fact that the press release specifically mentions a role for the pope at this final stage of the case can be seen as an oblique reference to this practice. Alternatively, the mention of the pope in this final stage could be a response to other concerns that are beyond the scope of this paper.

VII. THE AFTERMATH

While any direct connection between McCarrick's case and the legislative changes that were introduced afterward cannot be proven, it is hard to believe that there is no connection between the changes that were introduced in the following months and the former cardinal's conviction. The first set of changes went almost unnoticed, as they were made to the civil law of the Vatican City State. On March 25, 2019, just over a month after McCarrick's conviction was made public, Law CCXCVII "On the Protection of Minors and Vulnerable Persons" was introduced into the civil code of the Vatican City State. It should be noted that this is the only section of the Vatican City State civil code that can be found on the Vatican's website.[107] This law formally introduced the legal category of "vulnerable person" into the legal language of the Vatican City State. This new category includes anyone who is "in a state of infirmity, of physical or mental deficiency, or deprived of personal liberty, which, in fact, even if occasionally, limits their ability to understand or to want or otherwise resist the offence."[108]

This new legal definition was directly exported into canon law in the more well-known changes introduced shortly afterward. On May 7, 2019, Pope Francis issued a new law, *Vos estis lux mundi*,[109] introducing both substantive and procedural changes to canon law. What is of interest at this point are not the substantive changes, which deserve a separate investigation, but the procedural ones. These procedural norms respond to the impression that there were some "gaps" in the law that had previously prevented the prosecution

105. *See* Kimes, *supra* note 56, at 219–20.

106. *See Jubilee of Mercy*, PONTIFICAL COUNCIL FOR THE PROMOTION OF NEW EVANGELIZATION, http://www.iubilaeummisericordiae.va/content/gdm/en.html (last visited Feb. 9, 2022).

107. LAW NO. CCXCVII, ON THE PROTECTION OF MINORS AND VULNERABLE PERSONS, VATICAN CITY STATE (Mar. 26, 2019), https://www.vatican.va/resources/resources_protezioneminori-legge297_20190326_en.html.

108. *Id.*

109. Francesco, *Lettera Apostolica in forma di Motu Proprio Vos estis lux mundi* (May 7, 2019), in L'OSSERVATORE ROMANO (May 10, 2019).

of McCarrick. In an article from the *New York Times* from July 28, 2018, Cardinal Sean O'Malley, the archbishop of Boston, expresses this impression: "These cases and others require more than apologies . . . They raise up the fact that when charges are brought regarding a bishop or a cardinal, a major gap still exists in the church's policies on sexual conduct and sexual abuse."[110] What this "gap" might have been is not further explained, but one can presume it can be traced back to the specific norms promulgated by the bishops of the United States in 2004, which expressly excluded bishops from investigation and prosecution. This misunderstanding of the law in place at the time the accusations were brought forward against McCarrick was by no means limited to Cardinal O'Malley. Rather, there was general ignorance around how the Congregation for the Doctrine of the Faith had operated, even among Church leaders, and particularly in how it operated in cases regarding prelates.

Cardinal O'Malley, and others who shared this perception, failed to take into consideration that the law that requires an investigation to be undertaken does not make any exceptions regarding the alleged offender. The norm of law, 1983 CODE c.1717, as demonstrated above, speaks of any *notitia criminis*, making no exemption for those regarding possible crimes committed by bishops. As shown above, the universal law of the Church only restricted the prosecution of a bishop in a penal matter to the pope, not the investigation of an accusation against a bishop.[111] Further, the provision of *Sacramentorum sanctitatis tutela* that calls for the Congregation for the Doctrine of the Faith to seek prior authorization of the pope to prosecute bishops shows that the legislator had already foreseen and provided for this possibility. In a similar way, a close examination of the press releases used in this article shows that many of the procedural changes regarding what *Vos estis lux mundi* refers to as a "report" (which corresponds to the *notitia criminis* discussed above) would not actually have made a positive change in the way that McCarrick's case was handled.[112]

The press releases tell us that the archbishop of New York received information regarding possible crimes committed by McCarrick. Even though these crimes were presumptively no longer actionable under the law, the archbishop informed Cardinal McCarrick, who, "while maintaining his innocence, fully cooperated in the investigation.[113] The Holy See was "alerted . . . and encouraged" the local efforts to continue.[114] All of this was done in accord with an application of the existing law, with no procedural "gap" and with procedural economy. Nothing would have been added, except possibly time, if the norms of *Vos estis lux mundi* had been in place. What critics could

110. Elisabetta Povoledo & Sharon Otterman, *Cardinal Theodore McCarrick Resigns Amid Sexual Abuse Scandal*, N.Y. TIMES (July 28, 2018), https://www.nytimes.com/2018/07/28/world/europe/cardinal-theodore-mccarrick-resigns.html.

111. *Supra* note 37.

112. For the procedures established in the *motu proprio Vos estis lux mundi* regarding accusations against Bishops and their equivalents, see articles 6–19, *supra* note 47.

113. Povoledo & Otterman, *supra* note 110.

114. *Id.*

have pointed to was a lack of a clear path for "reporting" such allegations: to whom should an allegation against a bishop be reported and which ordinary should be called upon to investigate a brother bishop? *Vos estis lux mundi*, while adding steps that might not be entirely necessary, does clarify the questions of to whom one can and should present allegations against bishops and who will be in charge of investigating any claims of sexual misconduct with minors or "vulnerable persons" when a bishop is accused of such behaviors.

SOME CONCLUSIONS

What can a non-expert in canon law take away from this reconstruction of the process that led to the dismissal from the clerical state of former Cardinal McCarrick? First, the question of "who knew what and when" was irrelevant for the canonical process that condemned McCarrick. While this issue raised tremendous scandal, it was not a consideration in the penal proceedings.[115]

Second, the Church has her own system of laws, including procedural and substantive norms, that has a three-fold aim in its application of penal norms: the restoration of justice, the reparation of scandal, and the reform of the offender. In the case of McCarrick, the gravity of the resulting scandal was enormous, so much so that, it seems, a special derogation from prescription was made by the pope *ad hoc*, allowing the Congregation for the Doctrine of the Faith to include accusations of sexual misconduct with adults in the charges brought against him, charges that normally would have expired after five years. Similarly, the press release of February 16, 2019, adds that McCarrick's crimes were committed with the "aggravating factor of the abuse of power."[116] This description should be seen as an application of 1983 CODE c.1326 § 1, 2°,[117] which allows a judge to impose a harsher punishment if the offender possesses "some dignity" or "has abused a position of authority or office in order to commit the delict." If what was reported in the media by various priests and former seminarians were found to be true during McCarrick's prosecution, then the scandal caused by the fact that he abused his office as bishop, or even as cardinal, to engage in sexual acts would certainly require a strong response to restore justice.

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115. Given, however, the scandal raised by the persistent questions in this regard, the Holy See took the extraordinary measure of publishing a separate report designed to provide a response to this question. *See* VATICAN CITY STATE, REPORT ON THE HOLY SEE'S INSTITUTIONAL KNOWLEDGE AND DECISION-MAKING RELATED TO FORMER CARDINAL THEODORE EDGAR MCCARRICK (1930 TO 2017) (Nov. 10, 2020), https://www.vatican.va/resources/resources_rapporto-card-mccarrick_20201110_en.pdf.

116. See Press Release, Holy See Press Office, Regarding Process Finding Cardinal McCarrick Guilty, *supra* note 47.

117. 1983 CODE c.1326, § 1 provides, in pertinent part: "A judge can punish the following more gravely than the law or precept has established: 2° a person who has been established in some dignity or who has abused a position of authority or office in order to commit the delict." 1983 CODE c.1326 § 1, 2°.

Third, because the pope is endowed with full legislative authority, canon law can respond to clamorous situations in a way that most other legal systems cannot. But even in the face of such extreme circumstances as the scandal caused by McCarrick's actions, the Church did not abandon due process. While it may be the case that certain modifications were made to the procedural law of the Church to respond more rapidly, McCarrick's right to a full defense was preserved and no special procedural norms were created, such that his case was ultimately adjudicated in a manner that could be applied to accusations made against any cleric. This commitment to due process cannot be emphasized enough, given the extreme media pressure under which this investigation and process took place. The near daily calls for the pope to take more immediate action and merely impose a penalty on McCarrick in the absence of a process must surely have created an atmosphere of tension and the temptation to bring the matter to a resolution quickly. The pope resisted this temptation and gave McCarrick his day in court, respecting due process and the right of defense of the accused.

Fourth, regarding the penalty, justice or mercy is not a zero-sum choice. While extraordinary measures were taken to ensure that the scandal caused by McCarrick was repaired, the same must be applied to the restoration of justice and the reformation of the offender. Well over a millennium ago, in one of the early ecumenical councils, the Church promulgated a single canon that captures the nature of penal law better than any other. Can. 102 of the Council in Trullo (also known as *Quinisextum*) views crime as sin (which it always is, in Church law) and speaks of the wisdom of the one who would seek to heal the sinner: He must neither push the sinner to the precipice of despair, nor should he be so lenient as to lead the sinner to a dissolute life.[118] But the goal is always to call

118. The English translation of Canon 102 of the Council in Trullo, held in the year 692 in Constantinople, is as follows:

> Those who have received from God the power to loose and to bind (*cf. Matthew* 16:19) must consider the peculiar nature of the sin and the readiness of the sinner for amendment, and thus apply a suitable remedy to the illness, lest, exceeding the mark in one of the other sense, he [*sic*] should fail in obtaining the salvation of the one afflicted. For the illness of sin is not simple in nature, but diverse and complex, abounding in many mischievous ramifications, from which the evil spreads further and progresses, until it is stayed by the power of the one treating it. Therefore, he who professes the science of spiritual healing must first examine the disposition of the one who has sinned, and whether he is inclined to health or, on the contrary, has brough the illness upon himself through his own habits; he must observe how the other conducts his life in the meantime: whether he is not resisting the practitioner and the ulcer of his soul is not growing worse through the application of the medicines employed; and thus he must measure his mercy accordingly. For the entire concern of God and of the one entrusted with pastoral authority is to bring back the lost sheep and heal the serpent's bite: neither pushing the sufferer to the precipice of despair, nor giving him rein to lead a dissolute or contemptuous life, but by one or another means, be it more severe and astringent medicines, or milder and more soothing ones, to stay the suffering and strive for the cicatrisation of the ulcer, examining the fruits of repentance and wisely guiding the man who is called to the splendour on high. As the holy Basil teaches us: "We must, then,

the sinner to his ultimate goal: the salvation of his soul. If warnings, the fear of being caught, or the previous restrictions imposed on his public exercise of ministry did not lead to the reform that one might have hoped, here, the imposition of the Church's most severe penalty is done not merely to punish, but also to save. No penalty in the Church is merely expiatory, if the goal of the law is to save souls.[119] Here, the application of such a severe sanction on an old, frail man is meant to save not only his soul, but those of others who might have followed his deplorable example, as well as those who might have lost hope in a Church in which a man like McCarrick was entrusted such great authority.

know both ways, that of strict observance and that of customary usage; and in the case of those who are not amenable to strictness, we must follow the traditional model."

The Canons of the Council in Trullo in Greek, Latin and English, *in* COUNCIL IN TRULLO REVISITED 183–85 (George Nedungatt & Michael Featherstone eds., 1995).

119. *See* 1983 CODE c.1752. This is the final canon of the 1983 CODE, and it ends with these words: " . . . the salvation of souls, which must always be the supreme law in the Church." *Id.*