

# The Catholic Church and Child Sexual Abuse:

## It's Time to Come Clean

Kieran Tapsell

### Introduction

This is a speech given by Kieran Tapsell, the author of *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) to a meeting at the Pumphouse Hotel, Melbourne, Australia, organised by Catholics for Renewal and Catalyst for Renewal on 29 October 2014. The organisers invited the Rev. Professor Ian Waters, an Australian canon lawyer to respond. Kieran is a former seminarian from the 1960s who became an Australian attorney. On his retirement in 2004, he became intrigued by the case of one of his seminary professors who had become a bishop and who refused to give to the police a report by a canon lawyer into child sexual abuse by a group of priests in his diocese. The police issued a search warrant and his presbytery was searched. The priests were duly convicted and imprisoned. Kieran suspected that the reason this bishop – a good and honourable man – would have refused to hand over this report was because he felt restrained from doing so. This led to Kieran's returning to the study of canon law and the eventual publication of his book, *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014). At the time of the publication of the book, the Australian Government had established a major investigation into child sexual abuse in institutions in Australia through a Royal Commission headed by Justice Peter McLellan. The Australian Church has made detailed submissions to the Royal Commission, but not once has it referred to the effect of the pontifical secret imposed by canon law since 1922 on allegations of child sexual abuse by clergy. Kieran says that there are two covers up: the cover up of the abuse itself and the cover up of the role of canon law and the six Popes since 1922 responsible for it. The first cover up is admitted by the Church, but the second, initiated by Pope Benedict XVI's Pastoral Letter to the people of Ireland in 2010, continued at an earlier Parliamentary Inquiry in the State of Victoria and is continuing now at the Australian Royal Commission.

The video of Kieran's address can be found on the Catholics for Renewal web site at:

<http://www.youtube.com/watch?v=wIjPqPJ1TuM> . Professor Waters' response can be found at [http://www.youtube.com/watch?v=7\\_jaQKTe4VY&feature=youtu.be](http://www.youtube.com/watch?v=7_jaQKTe4VY&feature=youtu.be)

## A Brief History of the Church and Child Sexual Abuse

Historically, the Church's canon law for 1500 years reflected a serious and consistent attitude to child sexual abuse. It was always a sin, but by the 4<sup>th</sup> century the Church started to regard it as a crime punishable in this life. The first Church law against the sexual abuse of boys was passed at the Council of Elvira in 306CE.<sup>1</sup>

St. Basil of Caesarea, the fourth century Church Father, (330-379CE) and the main author of the monastic rule of the Eastern Church, instructed that a cleric or monk who sexually molests youths or boys is to be publically whipped, his head shaved, spat upon, kept in prison for six months in chains on a diet of bread and water, and after release is to be always subject to supervision and kept out of contact with young people.<sup>2</sup> Leaving out such antiquated punishments as whipping, spitting and head shaving, St. Basil seems remarkably modern in his demand for imprisonment, and for his understanding that sex abusers are often recidivists, and some form of restriction and supervision is needed.

For the next seven or eight centuries, there was little separation between Church and State, but the Church still regarded the sex abuse of children as deserving more punishment than simply dismissing priests from the priesthood. In the 12<sup>th</sup> century Church and State started drifting apart, and that is when we see a series of papal and Council decrees requiring clergy guilty of serious crimes to be stripped of their status as priests and handed over to the civil authority for punishment.<sup>3</sup> Sometimes that resulted in execution.<sup>4</sup>

In 1904, Pope Pius X decided to create a code of canon law out of the 10,000 or so papal and council decrees. He appointed a commission headed by Cardinal Gasparri whose assistant was Eugenio Pacelli, the later Pope Pius XII. The Commission discarded the decrees that required clergy who were guilty of serious crimes to be handed over to the State for further punishment.

---

<sup>1</sup> Council of Elvira, Canon 18: "Bishops, presbyters and deacons, if – once placed in the ministry – they are discovered to be sexual offenders, shall not receive communion, not even at the end, because of the scandal and heinousness of the crime." Canon 71 Council of Elvira: "Men who sexually abuse boys shall not be given communion even at the end". The reference to "communion even at the end" suggests that they will not be forgiven, and therefore will be punished in Hell. [http://www.awrsipe.com/patrick\\_wall/selected\\_documents/309%20Council%20of%20Elvira.pdf](http://www.awrsipe.com/patrick_wall/selected_documents/309%20Council%20of%20Elvira.pdf) (Accessed 15 February 2014)

<sup>2</sup> St. Basil of Caesarea, as quoted in St. Peter Damien, *Liber Gomorrhianus*, cols. 174f. Randy Engel: St. Peter Damian's Book of Gomorrah: A Moral Blueprint for Our Times - Part I: "Other Church Fathers favoured defrocking the offending cleric and then turning him over to the State for punishment", footnote 5. <http://www.ourladyswarriors.org/articles/damian1.htm> (Accessed 6 May 2005). See also Nicholas Cafardi in *Before Dallas* at p 3 cites Burchard, the bishop of Worms for this decree. Burchard wrote 20 books of Canon Law, and it was quite usual for compilers to incorporate decrees from older sources.

<sup>3</sup> For details, see *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) Ch 5

<sup>4</sup> R. Sheer, "A Canon, a Choirboy and Homosexuality in Late Sixteenth Century Italy: a Case Study," *Journal of Homosexuality* 21(1991): 1-22

The 1917 Code of Canon Law provided that those who sexually abused children are to be “suspended”, “declared infamous”, “deprived of any office”, and in more “serious” cases shall be dismissed.<sup>5</sup> There was no suggestion that they be reported to the civil authorities, let alone be handed over.

Five years later, in 1922, Pope Pius XI issued the instruction *Crimen Sollicitationis*, and these requirements were watered down. There would be no more declarations of “infamy”, and the requirement to dismiss for “more serious cases” had become one where dismissal was available only where there was an impossibility of reforming the priest. These crimes were now to be kept secret, and the secret of the Holy Office, a permanent silence, was imposed on all information obtained by the Church in its internal investigations and trials.<sup>6</sup> Breach of the secret incurred automatic excommunication, and this excommunication could only be lifted by the Pope personally.<sup>7</sup>

There were many reasons for this change in attitude, which I have explained in the book:

1. The idea that the priest was ontologically changed by God was gaining in popularity within the Church. In 1905, a French priest, John Vianney who proclaimed that after God, the priest is everything was beatified and he was canonized in 1925.<sup>8</sup> You can find concrete expression of this theology in the attempts by the Vatican around the 1920s and thereafter to negotiate concordats with sympathetic Catholic countries whereby convicted priests would not spend time in jail like everyone else, but in monasteries.<sup>9</sup>

---

<sup>5</sup> Canon 2359§2: ‘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.’ Edward N. Peters: *The 1917 or Pio Benedictine Code of Canon Law in English Translation* p.749.

<sup>6</sup> *Crimen Sollicitationis* Art. 11 [http://www.vatican.va/resources/resources\\_crimen-sollicitationis-1962\\_en.html](http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html) (Accessed 4 August 2013)

<sup>7</sup> <http://reform-network.net/?p=3006> par 27 (Accessed 3 July 2013)

<sup>8</sup> [http://www.vatican.va/holy\\_father/benedict\\_xvi/letters/2009/documents/hf\\_ben-xvi\\_let\\_20090616\\_anno-sacerdotale\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/letters/2009/documents/hf_ben-xvi_let_20090616_anno-sacerdotale_en.html) (Accessed 15 May 2013). The idea, at least as it applies to bishops, can also be traced earlier to St. Ignatius of Antioch: Catholic Catechism par 1549: [http://www.vatican.va/archive/ccc\\_css/archive/catechism/p2s2c3a6.htm](http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c3a6.htm) (Accessed 26 October 2013). Gary Macy argues that this concept of the priest having a special power, rather than being called to perform a particular role in the Christian community only dates from the 12<sup>th</sup> century. <http://scu.edu/ic/publications/upload/sci-0711-macy.pdf> (Accessed 6 September 2013). But there seems little doubt that this culture of clericalism reached a peak at the beginning of the 20<sup>th</sup> century. Pope Pius X in a 1906 encyclical insisted that the Church was made up of two divisions, the hierarchy that led and the flock whose only duty was to obey: [http://www.vatican.va/holy\\_father/pius\\_x/encyclicals/documents/hf\\_p-x\\_enc\\_11021906\\_vehementer-nos\\_en.html](http://www.vatican.va/holy_father/pius_x/encyclicals/documents/hf_p-x_enc_11021906_vehementer-nos_en.html). (Accessed 1 October 2013)

<sup>9</sup> For details of these countries, see the author’s: *Potiphar’s Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) p.70-74

2. The Church had become obsessed with the loss of faith through “scandal” and this could be spread by the new invention of radio. The first commercial licence for a radio station was issued in 1920. One solution to the scandal problem was to cut off the information at its source.

3. By 1922, there had been decades of anti-clericalism in Europe starting from the time of the Reformation and the French Revolution.<sup>10</sup> In 1922, the Church may have had some legitimate reasons to fear that in some countries priests may not receive a fair trial.

The fact is however, that from that time onwards there was an official policy of cover up of child sexual abuse amongst clergy. It was enshrined in canon law, and it continued long after any of these anti-clericalist problems had disappeared.

The pontifical secret over allegations of child sexual abuse was confirmed and expanded by another 5 Popes after Pius XI.

Pius XII, one of the architects of the 1917 Code, continued *Crimen Sollicitationis*.

In 1962 John XXIII revised and expanded it to cover priests who were members of religious orders.<sup>11</sup>

In 1974 Paul VI issued the instruction *Secreta Continere* which replaced the secret of the Holy Office with the pontifical secret, the Church’s top secret classification, and extended it to cover even the allegation. There were no exceptions for reporting the crime to the civil authorities.<sup>12</sup>

In 2001, Pope John Paul II expressly imposed the pontifical secret in Art 25 of his Apostolic Letter *Sacramentorum Sanctitatis Tutela* when he introduced some new procedures for child sexual abuse.<sup>13</sup>

---

<sup>10</sup> José Mariano Sánchez, *Anticlericalism: a Brief History* (University of Notre Dame Press, 1972)

<sup>11</sup> [http://www.vatican.va/resources/resources\\_crimen-sollicitationis-1962\\_en.html](http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html) (Accessed 4 August 2013)

<sup>12</sup> The Instruction does contain one exception – the accused priest can be told of the allegation if it is necessary for his defence. One might have thought that was implied, bearing in mind that it is talking about a trial of a priest, but *Secreta Continere* leaves no room for implications. There is no exception for reporting to the civil authorities. The text is published in *Acta Apostolicae Sedis*, 1974, pages 89–92, see at <http://www.documentcloud.org/documents/243690-10-sacramentorum-sanctitatis-2001-with-2003.html> Footnote (31) (English), [http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html) Footnote 41 (Latin)(Accessed 4 August 2013). A translation of the whole document can be found in Woestman *Ecclesiastical Sanctions and the Penal Process* (St. Paul University 2003). The most significant sections are Art 1(4), and Art III (1) which says: ‘Whoever is bound by papal secrecy is always under grave obligation to observe it. See also John P. Beal: “The footnote to Normae, art. 25, §1, in WOESTMAN,p. 309, makes clear that the norms of *Secreta continere* remain the *ius vigens*; it cites the 1999 *Regolamento generale della Curia Romana*, art. 36, §2, in A.A.S. 91 (1999), p. 646: “The 1962 Instruction: *Crimen Sollicitationis: Caught Red Handed or Handed a Red Herring?*” 41 *Studia Canonica* 199, at 232, fn 128 <http://www.vatican.va/resources/Beal-article-studia-canonica41-2007-pp.199-236.pdf>

<sup>13</sup> <http://www.documentcloud.org/documents/243690-10-sacramentorum-sanctitatis-2001-with-2003.html>

In 2010 Pope Benedict XVI revised those procedures and expanded the reach of the pontifical secret, to cover priests who sexually abused intellectually disabled adults, and who had in their possession child pornography.<sup>14</sup>

In 2010, the Vatican announced that it would dispense with the pontifical secret where the local civil law required reporting.<sup>15</sup> The pontifical secret on all allegations and information about child sex abuse is still imposed by canon law where there is no civil law requiring reporting. And, as I have explained in the book, there are very few countries and States that have such reporting requirements for the bulk of the allegations of sexual abuse against priests. In Australia, only New South Wales and Victoria have them.<sup>16</sup>

### Statements from the Cardinals

There have been a number of statements made by Church spokesmen that the pontifical secret did not prevent bishops from reporting these crimes to the police, because it only applied to the Church's internal investigations.<sup>17</sup> Well, of course it only applied to them. But from where did the Church get its information? It firstly received an allegation. Prominent canon lawyers, Professors Beal from the Catholic University of America, and one of the authors of the New Commentary on the Code of Canon Law and Professor Gerardo Núñez from the famous Faculty of Canon Law at the University of Navarra state that the pontifical secret applied to the allegation itself, as well as any information obtained through any investigation and trial.<sup>18</sup> Sr Elizabeth Delaney, an Australian canon lawyer confirmed this in her doctoral thesis.<sup>19</sup> Dr Rodger Austin, another Australian canon lawyer, told the Cunneen Special Commission that a dispensation was necessary to reveal to a civil court any information obtained in a canonical investigation.<sup>20</sup> If you need a dispensation, it must be forbidden.

---

<sup>14</sup> [http://www.vatican.va/resources/resources\\_introd-storica\\_en.html](http://www.vatican.va/resources/resources_introd-storica_en.html) (Accessed 3 July 2013)

<sup>15</sup> [http://www.vatican.va/resources/resources\\_guide-CDF-procedures\\_en.html](http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html) (Accessed 17 July 2013)

<sup>16</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) Ch. 11 and 12.

<sup>17</sup> *Ibid* p.278-287

<sup>18</sup> John P. Beal: *The 1962 Instruction: Crimen Sollicitationis: Caught Red Handed or Handed a Red Herring?* 41 *Studia Canonica* 199 at 231. <http://www.vatican.va/resources/Beal-article-studia-canonica41-2007-pp.199-236.pdf> (Accessed 15 July 2013), Gerardo Núñez in *La Competencia penal de la Congregación para la Doctrina de La Fe, Comentario al m.p. Sacramentorum Sanctitatis Tutela*, *Ius Canonicum*, XLIII, N. 85, 2003, 351-390 at 389

<sup>19</sup> Elizabeth M. Delaney sgs, *Canonical Implications of the Response of the Catholic Church in Australia to Child Sexual in Australia*, a doctoral dissertation submitted to the Faculty of Canon Law, Saint Paul University, Ottawa, Canada, (2004), 231. She also said: "Several factors make the observance of such secrecy difficult: the requirements of mandatory reporting, the nature of some forms of sexual abuse of minors, and the need for healing for the victim."

<sup>20</sup> [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/vwFiles/Transcript\\_Day\\_20\\_-\\_TOR\\_2\\_-\\_31\\_July\\_2013.pdf/\\$file/Transcript\\_Day\\_20\\_-\\_TOR\\_2\\_-\\_31\\_July\\_2013.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Transcript_Day_20_-_TOR_2_-_31_July_2013.pdf/$file/Transcript_Day_20_-_TOR_2_-_31_July_2013.pdf), 2233.

Professor Beal has called the pontifical secret a “stupid law”, and said it even prevents a bishop telling anyone whether the priest has been found innocent or guilty after a canonical trial.<sup>21</sup> Sr. Moya Hanlen, another Australian canon lawyer, recently confirmed this at the Royal Commission in the Nestor case.<sup>22</sup>

Other spokesmen have said that the pontifical secret was never intended to frustrate or undermine any civil investigation or prosecution.<sup>23</sup> There will be no civil investigations or prosecutions to be frustrated if the police did not know about the allegations.

The pontifical secret did not prevent a bishop from going straight to the police if he walked into a priest’s bedroom and found him sexually abusing a child, because his knowledge came from his own eyes and not what he was told in a canonical investigation.<sup>24</sup> But how often did that happen? Probably never.

In the common law system, civil lawyers are guided by the decisions of courts on the meaning of the law. In the canonical system, the same function is carried out by the legislature, that is, the Pope, and the Curia Congregations. Further guidance can come from canonical scholars.<sup>25</sup> These Curia Congregations have confirmed that the pontifical secret prevented reporting to the police.

In 1996, the Irish bishops asked the Vatican to comment on their proposal for mandatory reporting. They received back a letter from the Congregation for the Clergy stating that their proposals for mandatory reporting gave rise to “serious reservations of both a moral and a canonical nature”.<sup>26</sup> The Congregation also threatened that if they reported such priests to the police, any canonical procedures against them could be set aside on appeal to Rome.<sup>27</sup>

---

<sup>21</sup> John P. Beal: “*The 1962 Instruction: Crimen Sollicitationis: Caught Red Handed or Handed a Red Herring?*” 41 *Studia Canonica* 199 at 212 and 233. <http://www.vatican.va/resources/Beal-article-studia-canonica41-2007-pp.199-236.pdf> (Accessed 3 July 2013) and <http://ncronline.org/news/vatican/vatican-secrecy-keeps-victims-accused-dark> (Accessed 22 July 2013).

<sup>22</sup> <http://www.childabuseroyalcommission.gov.au/case-study/bb3eaadf-9283-41ef-9694-e560738d186a/case-study-14,-june-2014,-sydney.aspx>, 8144

<sup>23</sup> Martin Long, on behalf of the Irish Catholic Bishops Conference: <http://www.irishtimes.com/newspaper/letters/2009/1222/1224261109324.html> (Accessed January 2013)

Martin Long, letter to the Irish Times 10 December 2009  
<http://www.irishtimes.com/newspaper/letters/2009/1210/1224260419632.html> (Accessed January 2013)

<sup>24</sup> See the opinion of the Irish canon lawyer, Monsignor Maurice Dooley, [http://www.fifavideos.com/Colm-OGorman-and-Monsignor-Maurice-Dooley-The-Last-Word-with-Matt-Cooper\\_F9wtljHDT-c.html](http://www.fifavideos.com/Colm-OGorman-and-Monsignor-Maurice-Dooley-The-Last-Word-with-Matt-Cooper_F9wtljHDT-c.html) at 5.56 (Accessed 16 July 2013)

<sup>25</sup> Canon 16§1; Doyle: *Canon Law: What is it?* [http://www.awrsipe.com/doyle/2006/2006-02-Canon\\_Law-What\\_Is\\_It.pdf](http://www.awrsipe.com/doyle/2006/2006-02-Canon_Law-What_Is_It.pdf) (Accessed 24 July 2013), Beal, Coriden and Green: *New Commentary on the Code of Canon Law*, (2000) Paulist Press, 71  
Dr Edward Peters: *Lest Amateurs Argue Canon Law: A reply to Patrick Gordon’s brief against Bp. Thomas Daily*, *Angelicum* 83 (2006) 121-142. [http://www.canonlaw.info/a\\_gordon.htm](http://www.canonlaw.info/a_gordon.htm) (Accessed 3 July 2013), internet copy between footnotes 34 and 35.

<sup>26</sup> <http://graphics8.nytimes.com/packages/pdf/world/Ireland-Catholic-Abuse.pdf?ref=europe>  
[http://www.nytimes.com/2011/01/19/world/europe/19vatican.html?\\_r=0](http://www.nytimes.com/2011/01/19/world/europe/19vatican.html?_r=0) (Accessed 9 July 2013)

<sup>27</sup> <http://graphics8.nytimes.com/packages/pdf/world/Ireland-Catholic-Abuse.pdf?ref=europe>

Some three months after the pontifical secret was again imposed in 2001 by Pope John Paul II, Cardinal Castrillon, his Prefect of the Congregation for the Clergy, wrote to the French Bishop Pican congratulating him for not reporting a serial paedophile priest to the police. Pican was given a three month suspended jail sentence for breaching French law on reporting.<sup>28</sup> Castrillon told him that he was sending a copy of the letter to all the bishops of the world to tell them how to behave: don't report paedophile priests to the police and go to jail if need be. He later said that the letter was authorised by Pope John Paul II.<sup>29</sup>

In 2002, the American bishops asked the Vatican to change canon law for their country to allow the reporting of all allegations of sexual abuse by clergy. Half the American States had reporting laws which could mean bishops going to jail if they observed the pontifical secret.<sup>30</sup> Cardinal Re from the Congregation of Bishops told them that their proposals conflicted with canon law. A delegation of bishops went to Rome for a meeting and the compromise was reached: reporting was permitted only when there was a civil law requiring it. The Vatican was more concerned about bishops going to jail than the welfare of children.<sup>31</sup>

In 2002 – again, the year after Pope John Paul II confirmed the pontifical secret for child sexual abuse, two Cardinals and two Archbishops from the Roman Curia, and one judge from the Holy See's highest court stated publically that bishops were not to report accused priests. Four other Cardinals, not members of the Curia, said similar things. Cardinal Rodriguez Maradiaga, now in charge of reforming the Roman Curia also said that a bishop should be prepared to go to jail rather than report a paedophile priest to the civil authorities.<sup>32</sup>

Bearing in mind that the Vatican is the supreme interpreter of canon law, it is very clear that *Secreta Continere* means what it says: any allegation and any information from the Church internal inquiries cannot be reported to the police, unless, since 2010 there is a civil law requiring reporting.

---

[http://www.nytimes.com/2011/01/19/world/europe/19vatican.html?\\_r=0](http://www.nytimes.com/2011/01/19/world/europe/19vatican.html?_r=0) (Accessed 9 July 2013)

<sup>28</sup> <http://www.reuters.com/article/2010/04/15/us-pope-abuse-france-idUSLDE63E2H420100415> (Accessed 23 June 2013)

<http://blogs.reuters.com/faithworld/tag/castrillon-hoyos/> (Accessed 23 June 2013)

<http://www.reuters.com/article/2010/04/15/us-pope-abuse-france-idUSLDE63E2H420100415> (Accessed 23 June 2013)

<http://www.eltiempo.com/archivo/documento/MAM-3925512> (Accessed 23 June 2013)

<sup>29</sup> [http://www.nytimes.com/2010/04/22/us/22priest.html?\\_r=0](http://www.nytimes.com/2010/04/22/us/22priest.html?_r=0) (Accessed 23 June 2013)

[http://article.wn.com/view/2010/04/23/Colombia\\_Cardinal\\_Defends\\_Churchs\\_Abuse\\_Policies\\_d/](http://article.wn.com/view/2010/04/23/Colombia_Cardinal_Defends_Churchs_Abuse_Policies_d/)

<sup>30</sup> Report of Assoc. Prof Ben Mathews to Australian Royal Commission says that all United States jurisdictions have mandatory reporting laws: Twenty seven States have clergy as mandated reporters:

<http://www.childabuseroyalcommission.gov.au/documents/royal-commission-report-ben-mathews-for-rc-publica> 1.2.3, par 16,p.125

<sup>31</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) p.270-276

<sup>32</sup> *Ibid*, p229-240.

In 2012 and 2014, the Italian Catholic Bishops Conference stated that its members will cooperate with any ongoing police inquiry, but will not be reporting any allegations against priests to the police, because Italian law did not require them to.<sup>33</sup> This is totally in accord with canon law. The exception for reporting only applies where there is a civil law requiring it.

### **The Australian Royal Commission**

On 30 September 2013, the Australian Church forwarded to the Royal Commission a 207 page submission.<sup>34</sup> Francis Sullivan, the CEO of the Truth, Justice and Healing Council, which represents the Australian Church at the Royal Commission, described it as:

“The most comprehensive document ever produced by the Church dealing with child sexual abuse. It is a warts-and-all history, going back many decades.”<sup>35</sup>

Yet none of the history that I have just mentioned appears in that 207 page submission. There is a special section on canon law on dealing with the accused, and over 50 references to canon law, but the pontifical secret, the biggest wart of all, is never mentioned. The submission has this carefully crafted sentence:

“There is nothing in the 1983 Code that is in conflict with any applicable civil law obligations relating to the reporting of allegations of child sexual abuse.”<sup>36</sup>

That statement is true, because the secrecy provisions relating to child sexual abuse are not in the Code. They are in *Sacramentorum Sanctitatis Tutela* of 2001, invoking *Secreta Continere* of 1974, which are not part of the Code, but are part of canon law.<sup>37</sup> The submission even says that *Sacramentorum* has the force of canon law. Further, the submission made no mention of the fact that the conflict between canon and civil law over reporting was only removed four years ago in 2010, when the Vatican announced that it would be issuing instructions to obey civil laws on

---

<sup>33</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014) p.323, and for the 2014 restatement of that position, see <http://www.thetablet.co.uk/news/619/0/italian-bishops-exempt-clergy-from-reporting-abuse-allegations-> (Accessed 15 June 2014)

<sup>34</sup> <http://www.childabuseroyalcommission.gov.au/wp-content/uploads/2013/10/15.-Truth-Justice-and-Healing-Council1.pdf> (Accessed 25 November 2013)

<sup>35</sup> Francis Sullivan, ABC *Religion and Ethics Report*, 15 October 2013 <http://www.abc.net.au/religion/articles/2013/10/15/3869414.htm>, David Marr: “Catholic church admits grave faults in dealing with Australian abuse victims” <http://www.theguardian.com/world/2013/oct/03/catholic-church-grave-faults-abuse> (Accessed 29 October 2013).

<sup>36</sup> The Australian Church submission, p. 132 par 10 <http://dev.childabuseroyalcommission.gov.au/wp-content/uploads/2013/10/14.-Truth-Justice-and-Healing-Council.pdf> (Accessed 12 October 2013)

<sup>37</sup> The submission on page 132, par 13 says that *Sacramentorum Sanctitatis Tutela* has “the force of canon law”. Art 30 of the revised norms says that “cases of this nature are subject to the pontifical secret” and the footnote reference is to Art 1(4) of *Secreta Continere* of 1974.



reporting, the same limited concession it gave to the United States in 2002.<sup>38</sup> As I have said in the book, there is not one cover up, but two, and the second, the attempt to hide the responsibility of six popes for the first cover up through canon law is still going on now before our eyes.

## The United Nations

On two occasions now, in January and May this year, the United Nations Committee on the Rights of the Child and the Committee against Torture have demanded that the Church abandon the pontifical secret, and impose mandatory reporting under canon law.<sup>39</sup>

On 26 September 2014, the Holy See provided its response. It rejected these demands. It stated that in signing the Convention on the Rights of the Child, it only had responsibility for the handful of children resident in the 44 hectares of the Vatican City. It said it had no capacity or obligation to impose principles under the Convention “upon the local Catholic churches and institutions” because they are governed by national civil laws. It said that attempting to impose conditions on local Churches worldwide “could constitute a violation of the principle of non-interference in the internal affairs of States.”<sup>40</sup>

This new found sensitivity to the sovereignty of States is in marked contrast to the conduct of the Holy See from 1922 to 2010, requiring bishops to breach any civil law on reporting. Now it is dragging out national sovereignty as an excuse for not imposing mandatory reporting. The national sovereignty of a country would only be infringed if canon law required mandatory reporting, and the civil law forbade reporting crimes. No such country exists.

The Church in Australia both before the Victorian Parliamentary Inquiry and the Royal Commission rightly has supported the idea of mandatory reporting of all allegations of sexual abuse, while recognizing the right of victims not to report.<sup>41</sup>

---

<sup>38</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse* (ATF Press 2014), p.118

<sup>39</sup> <http://www.treatybodywebcast.org/> (Viewed 16 January 2014)

[http://www.nytimes.com/2014/01/17/world/europe/un-sex-abuse-panel-questions-vatican-officials.html?\\_r=0](http://www.nytimes.com/2014/01/17/world/europe/un-sex-abuse-panel-questions-vatican-officials.html?_r=0) (Accessed 21 January 2014), Committee against Torture, Fifty-second session, Summary record of the 1223rd meeting Held at the Palais Wilson, Geneva, on Thursday, 6 May 2014, at 3 p.m.

[http://ccrjustice.org/files/CAT\\_C\\_VAT\\_CO\\_1\\_17271\\_E.pdf](http://ccrjustice.org/files/CAT_C_VAT_CO_1_17271_E.pdf) (Accessed 17 June 2014)

<sup>40</sup> The Response was entitled “*Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child*”

[http://en.radiovaticana.va/news/2014/09/26/holy\\_see\\_publishes\\_reply\\_to\\_un\\_committee\\_/1107343](http://en.radiovaticana.va/news/2014/09/26/holy_see_publishes_reply_to_un_committee_/1107343) (Accessed 27 September 2014)

<sup>41</sup> [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Catholic\\_Church\\_in\\_Victoria.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Catholic_Church_in_Victoria.pdf) at 16.5 (Accessed 6 April 2013)

If civil law ought to be changed to reflect that policy, it is impossible to understand why canon law cannot also reflect it. Pope Francis's refusal provides ammunition for critics to say that the Church fully intends to continue the cover up of child sexual abuse in those countries that do not have adequate reporting laws. And that is likely to be the underdeveloped world where there is no money for Royal Commissions.

### **The Church's Disciplinary System and the Zero Tolerance Myth**

A large part of my book explains that the second reason for sexual abuse by clergy going unchecked was because the Church's disciplinary system was hopeless.<sup>42</sup> Canon law required that before a priest could be dismissed, every effort had to be made to reform him. The *1983 Code of Canon Law* imposed a 5 year limitation period on bringing an action to dismiss a priest. Children were expected to complain about their abuse within 5 years of it happening. Otherwise, the canonical crime was "extinguished." In 2001, that period was extended to 10 years from the 18<sup>th</sup> birthday of the victim and in 2010, it was extended to 20 years. These extensions were not made retrospective so many priest abusers escaped prosecution under canon law. Prior to 1983 there was no limitation period. Why do they need one now? Canon law also has the "Catch 22 defence": a priest cannot be dismissed for paedophilia because he is a paedophile. Two of Ireland's most notorious paedophile priests, Fr Tony Walsh and Fr Patrick Maguire were dismissed by a Dublin canonical court. The appeal court in Rome set aside the dismissals because they had been diagnosed as paedophiles. Canon 1321 that provides this defence has not been changed.<sup>43</sup> The more children a priest abuses, the less likely he will be dismissed.

Society has as much interest in not having sex abusers amongst priests, ministers, imams and rabbis as it has in not having lawyer thieves and drug dealing doctors. Disciplinary proceedings against these professionals are open to public scrutiny. The Church's dealings with its priests are not, because of the pontifical secret.

On 19 March, 2014, Pope Francis said that Pope Benedict had supported "zero tolerance" for clergy who sexually abused children.<sup>44</sup> On 27 May 2014, he promised that he would apply the same "zero tolerance" standard.<sup>45</sup> The legal profession in many jurisdictions has for decades adopted zero tolerance for certain kinds of professional misconduct. Attorneys who steal from trust accounts are

---

<sup>42</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse*, (ATF Press 2014), Ch 9, 14 & 17.

<sup>43</sup> *Ibid* Ch 14

<sup>44</sup> <http://ncronline.org/blogs/ncr-today/pope-francis-supports-zero-tolerance-child-abuse> (Accessed 25 October 2014)

<sup>45</sup> <https://www.osv.com/OSVNewsweekly/Vatican/Article/TabId/719/ArtMID/13626/ArticleID/14793/Pontiff-to-meet-with-sex-abuse-victims.aspx> (Accessed 25 October 2014)

struck off the rolls, and at least in my experience in New South Wales, are never allowed back on. That is what most people understand by “zero tolerance”.

On 6 May 2014, the Holy See produced figures to the United Nations, showing that more than 3,400 credible allegations of sexual abuse of minors had been referred to it since 2004. As a result, 848 clerics had been dismissed and other disciplinary measures had been applied in more than 2,500 other cases.<sup>46</sup> We don’t know what these disciplinary measures are, because they won’t tell us. But the Vatican’s *Guide to Understanding Basic CDF Procedures* provides that where a priest ‘has admitted to his crimes and accepted to live a life of prayer and penance’, the bishop can issue a decree prohibiting or restricting the priest’s public ministry. It is only if he violates those conditions that he can then be dismissed.<sup>47</sup>

The Church’s own figures establish that there was no zero tolerance during Benedict’s pontificate but a 70% tolerance. Struck off attorneys were only stealing money. These priests were stealing the lives of children.

### Coming Clean

But getting back to mandatory reporting: on 26 July 1990, nearly 25 years ago, Dr Nicholas Tonti-Filippini, a Catholic ethicist said to the Australian bishops:

“For the sake of the Church, reasonable suspicion of a crime must be reported to the authorities. Any attempt to contain it within an in-house investigation and management risks bringing the Church into disrepute.”<sup>48</sup>

It took 20 years for the Australian bishops to have that written into *Towards Healing*, but at least it is there now, even though, in my opinion, it conflicts with canon law.<sup>49</sup> Dr Tonti-Filippini’s prediction

---

<sup>46</sup> Committee against Torture, Fifty-second session, Summary record of the 1223rd meeting Held at the Palais Wilson, Geneva, on Thursday, 6 May 2014, at 3 p.m.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=75&ctI00\\_PlaceHolderMain\\_radResultsGridChangePage=1\\_50](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=75&ctI00_PlaceHolderMain_radResultsGridChangePage=1_50) (Accessed 25 October 2014)

<sup>47</sup> [http://www.vatican.va/resources/resources\\_guide-CDF-procedures\\_en.html](http://www.vatican.va/resources/resources_guide-CDF-procedures_en.html) (Accessed 24 December 2013)

<sup>48</sup> [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/vwFiles/Transcript\\_Day\\_16\\_-\\_TOR\\_2\\_-\\_25\\_July\\_2013.pdf/\\$file/Transcript\\_Day\\_16\\_-\\_TOR\\_2\\_-\\_25\\_July\\_2013.pdf](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/vwFiles/Transcript_Day_16_-_TOR_2_-_25_July_2013.pdf/$file/Transcript_Day_16_-_TOR_2_-_25_July_2013.pdf), 1744-45 (Accessed 28 July 2013)

<sup>49</sup> *Towards Healing* 2010, par 37.4. In the previous versions, 2003 at par 37 did not require the Church to report, except where it was “mandatory”: 37.2, 37.3. *Facing the Truth*, Appendix 1A. [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Catholic\\_Church\\_in\\_Victoria\\_Appendix\\_1\\_Part\\_A.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Catholic_Church_in_Victoria_Appendix_1_Part_A.pdf) (Accessed 15 August 2013). The same was true of the 2000 version (Appendix 1B), and the original 1996 version, par.4.3, *Facing the Truth*, Appendix 1B, [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Catholic\\_Church\\_in\\_Victoria\\_Appendix\\_1\\_Part\\_B.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Catholic_Church_in_Victoria_Appendix_1_Part_B.pdf) (Access 15 August 2013). The Australian Catholic Bishops Conference in 2003 had accepted reporting irrespective of a law requiring it, but it was not written into the document until 2010, because it said it was only relevant to New South Wales because of S.316 *Crimes Act NSW 1900: Truth Justice and Healing Council submission to the Australian Royal Commission*: <http://dev.childabuseroyalcommission.gov.au/wp-content/uploads/2013/10/14.-Truth-Justice-and-Healing-Council.pdf> par 71 (Accessed 3 October 2013). It cannot have been coincidental that the Australian bishops postponed this decision just a few months after the Vatican had made its

has come true. The Church has brought itself into disrepute, and will continue to do so, so long as it retains the pontifical secret, and so long as mandatory reporting in all cases is not required by canon law.

The Australian Church is to be commended for its efforts since 1996 to find ways around canon law, and for developing protocols which often defied it, but it has now spoiled its copybook at the Royal Commission by failing to acknowledge the role of the pontifical secret and those responsible for it, the six Popes who from 1922 set up, maintained and expanded a system of cover up through canon law.

On his appointment as the new Archbishop of Sydney, Anthony Fisher said, “The Church can do better. No excuses, no cover ups. I don't think people want spin.”<sup>50</sup> Quite right. But that is what we have been getting. When the Royal Commission calls for submissions on reporting, let's have a real warts and all submission from the Australian Church. Forget about this paltry excuse that the Church was on a learning curve.<sup>51</sup> There was no learning curve about child sexual abuse being a crime. Forget about this nonsense that the Church succumbed to the theories of some psychologists in the eighties, and that's why the bishops tried to reform these priests.<sup>52</sup> That requirement was written into canon law before these psychologists were born. And forget about blaming the problem on the sexual liberation of the sixties.<sup>53</sup> That might explain why most abuse took place in the seventies, but the cover up was enshrined in canon law in the twenties. And stop blaming dead and elderly and ailing former bishops when you knew they were prohibited from reporting these priests to the police, and that canon law was useless for getting rid of them.<sup>54</sup> And above all, acknowledge the damage done to children by the imposition of the pontifical secret, and have the courage to criticize

---

position clear to the American bishops that it would only approve reporting where the civil law required it. There is no conflict between canon and civil law now in NSW and Victoria because they have comprehensive reporting laws for all cases. But in other States where there is no requirement to report historic abuse, or where clergy are not listed as reporters for “children at risk”, the pontifical secret still applies. If the figures for Victoria can be applied nationally, that means that the pontifical secret prohibits reporting in those States in more than 99% of all cases. Reporting to the police of any allegation or information about child sexual abuse in those States, as required by *Towards Healing* 2010, breaches canon law.

<sup>50</sup> <http://www.smh.com.au/national/archbishops-elect-anthony-fisher-pledges-a-humbler-catholic-church-no-excuses-no-coverups-20140919-10jffm.html>

<sup>51</sup> Speech by Francis Sullivan to the Thomas More Society Canberra, 22 April 2013, <http://www.tjhcouncil.org.au/media/32495/130622-Speech-St-Thomas-More-Forum-Francis-Sullivan-copy.pdf> (Accessed 15 January 2014), Truth, Justice and Healing Council, Issues Paper No. 2, Annexure D, Evidence of Archbishop Coleridge, “The Holy See has been on a learning curve in this tormented area.” Royal Commission 13 December 2013, p2741.

<sup>52</sup> This was a claim made by Pope Benedict XVI in his 2010 revised historical introduction to *Sacramentorum Sanctitatis Tutela*: [http://www.vatican.va/resources/resources\\_introd-storica\\_en.html](http://www.vatican.va/resources/resources_introd-storica_en.html) (Accessed 5 August 2013) It was repeated by Bishop Bird of Ballarat at the Victorian Parliamentary Inquiry on 29 April 2013, [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Transcripts/Catholic\\_Diocese\\_of\\_Ballarat\\_29-April-13.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Transcripts/Catholic_Diocese_of_Ballarat_29-April-13.pdf), 5 (Accessed 24 October 2014)

<sup>53</sup> McGillion and Grace: *Reckoning: The Catholic Church and Child Sexual Abuse* (ATF Press 2014) p.13

<sup>54</sup> *Potiphar's Wife: The Vatican Secret and Child Sexual Abuse*, re Bishop Mulkearns at p.7, 208-210, and re Archbishop Little, p286.

Pope Francis for refusing to agree to the request from the United Nations Committees to abolish it, and to impose mandatory reporting of all allegations against Church personnel. If Catherine of Sienna could pull a pope into line, so can you.

In 1986, Raymond Mouton, a lawyer working with Fr Thomas Doyle to develop a child sex abuse protocol, told a meeting of canon lawyers in Washington:

“The Church.....cannot credibly exert moral authority in any area where the public perceives it is incapable of maintaining moral authority internally”.<sup>55</sup>

The Church’s internal moral authority in this country has been undermined by its failure to be frank to the Victorian Parliamentary Inquiry and to the Royal Commission. But it is not too late. The Commission has a two more years to run. In 1972, the great reforming Australian Prime Minister, Gough Whitlam, recently deceased at the age of 98, started his election campaign to end 23 years of conservative government in Australia with the theme: “It’s Time”. As a tribute to Gough Whitlam, let me say to the Church: It’s time to come clean.

---

<sup>55</sup> Michael D’Antonio: *Mortal Sins: Sex, Crime and the Era of Catholic Scandal*, St. Martin’s Press (2013) 44