

Navigating the Narrows:

Steering a course between compromising the rights of clerics and jeopardizing the common good in the Church

Today I want to consider how church superiors and church administrators need to address the requirements both of the common good of the Church and of the subjective rights *of the sacred ministers* who very possibly have disrupted the common good. It is my thesis that, in dealing with questions of clerical disability or dishonesty or dissipation or disruption, Church administrators, like Odysseus, must navigate a narrow channel, and are always in danger of being tossed on the rocks of excessive institutionalism, or on the shoals of excessive individualism

In my considerations today I shall do four things:

First, I shall begin by rehearsing a few details involved in the notions of subjective rights and of the common good.

Next I will suggest two ways in which these notions –rights and the common good--can get skewed.

Thirdly, I will propose that *communio ecclesialis* is a lens through which church superiors can best set the course that must be taken between the common good and subjective rights

Finally I will consider three situations in which the law, viewed through the lens of *communio* can assist us in navigating the narrows: (1) cases involving clerical incompetence, (2) cases involving clerical craziness and (3) cases involving clerical corruption.

I acknowledge in advance that I will be saying much more about theories of what might be than about the practice of how to do them. This, alas, has to do with how my brain works. I hope that those with a more practical bent will find what I have to offer helpful in devising policies for steering a course through the narrows.

1. First, the notions of subjective rights and the common good.

A. Subjective Rights

A subjective right is, as you recall, a claim, made by an individual or individuals. This claim is placed upon a member or members of a moral community or upon the moral community itself.

Such a claim may be negative, in which case it is called a liberty, or it may be positive, in which case it is called an entitlement.

- A liberty requires other individuals or the moral community to avoid interfering with the pursuit of a claimant's goals.
- An entitlement requires other individuals of the moral community itself to offer positive assistance to the claimant in the pursuit of his or her goals.

Rights have their foundation and warrant in the intrinsic dignity of the human person; for Christians, rights also have foundation and warrant as a result of the free bestowal of grace, making one who is so graced a new creation, a sacred sibling of the Savior, a child of the Father of Jesus.

B. The Common Good

Rights are based on intrinsic human dignity, and on the sacredness that results from the free bestowal of grace. The common good finds its rationale in the experience that we don't do well—in the first creation or in the new creation -- when we live exclusively by ourselves and for ourselves.

The concept of the common good is not unique to Christian thought.

- Aristotle, in his *Politics*, requires a citizen's having a lively sense of the common good. He declares that humans are political animals – ordered to life in and with the *polis*; and he maintains that human happiness is entwined within the flourishing of the city. Moreover, the city flourishes when it proposes and protects *arête*, *aristeia* —virtue -- for its citizens. And when virtue, or excellence, is proposed and protected, not only does the *polis* flourish: essential humanity flourishes as well.
- Cicero is not so nuanced as Aristotle. In his *On the Commonwealth*, Cicero holds that the common weal requires the *res publica* to flourish, even at the expense of individual happiness. For Cicero, the republic was the core and goal of human ethical life, such that one need sacrifice personal advantage and even personal survival for the sake of the republic.

Christian thinkers also made theories of the common good part of their anthropology and social theory. Two such thinkers have been particularly significant in the history of Christian theology: Augustine and Thomas.

- Augustine, not unsurprisingly, is severe in his criticism of Cicero, claiming that “there never was in Rome any true ‘weal’ of the people”: Augustine maintains that for Cicero the flourishing of Rome itself was so important that there was little regard for the flourishing of Romans and hence there was never any genuine *res publica* in Roman political or ethical thought.
→Notice Augustine's direction of argument: the care for individual members of

the *polis* is essential, he maintains, if the republic is really to be a thing “of the people.”

- Thomas, building on Aristotle, identifies the common good with a life of *arête* and *aristeia*, or excellence of virtue, as this is embodied in the citizenry. In his words:

It is impossible for one to be good, unless one be well ordered to the common good. Neither can the whole be well ordered, unless its parts are proportioned to it. Thus the common good. . . .cannot flourish, unless the citizens be virtuous – or at least those whose task it is to govern. . . .(1a/2ae, 92.1, ad 3).

→It is clear that, for Thomas, the individual good is a life of virtue, and the common good is the virtuous life lived in common.

→It is likewise clear that Thomas sees the common good as the *telos*, the final cause, if you will, of the virtuous life of the members of a community, whereas the virtuous life of the community is both a precondition and a formal cause of the common good.

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The notion of the common good may have been simple enough in fourth-century BC Athens; it may have been simple enough toward the end of Rome’s western empire in the fifth century; it may have been simple enough in the early urbanization of southern Europe at the end of the thirteenth century.

But by the twentieth century, at least in the West, the social situation had become more complex, the cultural situation had become more diverse, the economic situation had become more chaotic. Moreover, men and women of the twentieth century had to struggle to incorporate a new array of “isms” into their traditional social structures and personal values. Chief among these “isms” were social Darwinism, economic liberalism, and legal positivism.

In the last half of the twentieth century, a man came on the scene who tried to revive the theory of common good, and to integrate the theory into contemporary cultural and social awareness. That man was John XXIII.

In his encyclicals *Pacem in Terris* and *Mater et Magistra* the Pontiff calls for renewed focus on the ancient principles of the common good. In paragraph 60 of *Pacem in Terris* he emphasizes Thomas’s principle that human flourishing is precondition and formal cause of the common good. In the pope’s words:

. . . it is agreed that in our time the common good is chiefly guaranteed when personal rights and duties are maintained. . . . For to safeguard the inviolable rights of the human person, and to facilitate the fulfillment of his duties, should be the essential office of every public authority.

The emphasis of the need for restoring theories of the common good continued into the Vatican Council, where, in *Gaudium et Spes* 26, a descriptive definition of common good is given. This definition has served as a mainstay-foundation for Catholic social ethics over the last forty five years. Here's what the Council Fathers have said:

[The common good is] the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment,

This definition of the common good, and also Pope John's writing about the common good is primarily focused on political society, not on ecclesiastical society. But, it seems to me, if we link the common good of the Council with Thomas's notion that the apex of the common good is a community's life in Christ, then the council's definition, with a tweak or two, results in the following definition of the common good within the Church:

The common good is the sum of those conditions of ecclesial life which allow the *Christifideles*, either as individuals or in associations, relatively thorough and ready access to life with Christ, which is at the heart of salvation.

There is another good, which is related to the common good as a condition *sine qua non*, and which is inadequately distinct from the common good, called the public good.

Whereas the common good looks to the **well being** of the community, the public good looks to the community's **basic existence**: without the principles of the public good in place, the community is in jeopardy of extinction.

The common good looks to the arrangement of conditions and the moderation of rights as a result of which by which personal and community life can flourish. The public good looks to the guarantee of conditions and the guarantee of rights (and the imposition of obligations) as a result of which community members and community existence are protected from physical or moral destruction.

This distinction between the common good and the public good is part of our heritage of philosophical ethics and political science. Sorting out where the public good ends and the common good begins, however, has always been a dicey matter – both in civil and ecclesiastical jurisprudence. This difficulty has often led to skewing the notion of common good and of subjective rights—in civil and in ecclesial society.

Theories of rights and common good can also be skewed simply as a result of our culture. It is to this possibility I now wish to turn.

2. Ways in which rights theory and the notion of the common good can get skewed

While theories of rights and of the common good have long standing in our tradition, these notions have never been free from jeopardy.

In our time, rights-theory and the common good are jeopardized as they are interpreted through the sole lens of what Paul Ramsey has termed “atomistic individualism.” (Paul Ramsey, "Observations," in *Worldview* (October 1977): 33.)

As a result of such atomistic individualism:

- We see ourselves as atoms with shared interests, who use rights-speak to get what we want, while horse-trading with others, so that they can get what they want
- There is no shared conception of the good; all claims we make upon one another aim at creating acceptable policy, not moral consensus.
- The principle holding our individual differences and our different individualisms together is tolerance: which produces no claims about the superiority of one notion of good, or one form of good or one structure of good over another.

When tolerance becomes the operating system for a community of atomistic individuals, four other principles get elaborated, that prescribe the form of social interaction in a pluralist, atomistic world:

- Autonomy
- Beneficence
- Nonmaleficence
- Justice

For a social construction of a pluralistic society of autonomous selves, in which there is no shared concept of the good, the notion of the common good can mean no more than an amalgam of individual goods. In such a society, autonomy is the honored beginning and tolerance is the overarching social form.

We need to take a long, hard look at autonomy and tolerance and the amalgam of private goods they engender in societies of atomistic autonomous selves. Our inner cities are disaster areas; our schools, in cities and suburbs, are battle zones; our rich are getting richer and our poor are getting poorer. It is my contention that when the common good is all about autonomy and tolerance, there is not strength enough to support the human good lived in common.

In this world of autonomous selves the common good suffers not only because it becomes an amalgam; it also can suffer because the term “common good” becomes a code word for institutional self-preservation, particularly as institutions feel threatened by forces too dark to contend with and too numerous to name.

When *common good* becomes such a code word, community members often suffer **at the hands of their leadership.** For one or another reason, community members get hung out to dry for the sake of institutional image, institutional advantage, institutional solvency.

In the culture of business, this is called scapegoating. In ecclesiastical culture, Allan Donegan calls it “exercising the Caiphas Principle.”

Those of us who are church administrators need to be wary about the Caiphas Principle, which is neither Christian nor canonical. We need a way of respecting subjective rights and promoting the common good that will remove the blinders, get beyond the rhetoric, and de-compartmentalize the functions as we exercise of the *munus regiminis*. One such way may be found in the insights of ecclesial *communio*.

Part 3: Ecclesial commuio as the lens through which church superiors can best set the course that must be taken between the common good and subjective rights

I am grateful to Gladstone Stevens, my colleague at St Mary’s. This section on ecclesiastical commuion is basically his work.

In this section I wish to discuss the following:

1. The nature of *communio*
2. Jesus Christ as the absolute disclosure of *communio*
3. The Church as sacrament of *communio*

The Nature of Communio

1. At one level there is nothing new in a theology of *communio*. There roots of this type of theology stretch to the very origins of Christianity and we find manifestations of it throughout our long history. What is new is a sense of urgency about the subject. In the “Final Report of the 1985 Extraordinary Synod of Bishops” we find the following statement, “The ecclesiology of communion is the central and fundamental idea of the Council’s documents.” What the Synod fathers were trying to accomplish was to find a way beyond the divisions that have emerged in the Church since the Council’s end. This synodal statement does not mean to assert that we have a single theological system or method of theological lockstep mandated by Vatican II. Rather, the synod fathers maintain that the texts of the Council reflect a consistent theme and theological outlook and that the term which best covers this approach is *communio*.
2. What is *communio*? In his book *Theology and the Church* Walter Cardinal Kasper makes the point that *communio* does not mean “community.” There is nothing particularly Catholic or Christian about the term community. Thus if one defines the Church by saying “the Church is a community” nothing really theologically significant is being offered. After all, the Republican Party is in a certain sense a community; Hell’s Angels is a community as well. The term “Community” by itself is not going to be terribly helpful in getting to the heart of a theology of communion.

3. Kasper contends that at the most fundamental level *communio* means **participation**. His argument is that Christian life is in essence about participating in something transcendent, something more than ourselves. What, however, is it in which Christians are called to participate? For Kasper, as well as for other theologians of *communio*, the answer is ***the life of God***.

For that reason, a theology of *communio* has to begin with the Doctrine of God. More specifically, it has to begin with the Doctrine of the Trinity, which is the unique claim that Christians make about the God they worship.

4. →Please note that Christians DO NOT confess belief in one God ***and*** three persons. What we proclaim is this: the One God ***is*** a fellowship of persons. From all eternity we believe that God ***is*** Father, Son, and Holy Spirit united in a perfect communion of love. This is a radical claim and it separates Christian belief in God from all others. We hold that *Absolute Reality*, the basic principle of existence, Being Itself is not a monad, not an atom, not an isolated static entity. Rather, it is a *harmonious union of persons*.

If we follow this line of thought it means that at the heart of reality are love, fellowship, and communion. Thus the Trinity opens for us a whole Christian metaphysics, a whole Christian jurisprudence. If we take the Trinity to heart we must say that ***loving relationality is the most basic truth of being, that living relationally is the most basic principle of law***.

Jesus the Christ: the Absolute Disclosure of Communio

1. The classical formulation of the person of Christ was offered by the Council of Chalcedon. Part of the symbol of this Council reads as follows:

We confess that one and the same Christ, Lord and only-begotten Son, is to be acknowledged in two natures, without confusion, change, division or separation. The distinction between the natures was never abolished by their union, but rather the character proper to each of the two natures was preserved as they came together in one person...

2. Let us pay attention to what the Church is saying here. This text declares that the person of Christ is the meeting place of two realities: humanity and divinity. In this union, the divine nature does not absorb Christ's humanity nor does His humanity compromise His divine nature. Instead, in Christ the created and uncreated are *united in perfect fellowship*. To put this another way, Christ's very person is characterized by *Communio*.

3. We have to keep in mind that there is no absolute distinction between the way one views the person and work of Christ. If His ***person*** is to be understood in terms of a communion between God and human reality, His ***work*** must be viewed in the same light. To put it another way, Christ acts in history to realize in others the *communio* He already possesses by virtue of the hypostatic union.

The Church: Sacrament of Communio

1. We say in the creed that we believe in “one, holy, catholic, and apostolic Church.” These four marks of the Church deserve some mention. First, they fall within the context of the creed’s affirmations about the Holy Spirit. Thus somehow the mission of the Church is connected to the mission of the Spirit. The marks themselves clarify the nature of that mission. They speak of the Church’s **identity** but also her **vocation**. *She is to manifest and realize-- in history – (1) unity, (2) holiness, and (3) universality and she accomplishes this through the apostolic ministry.*
2. We find this reaffirmed in the texts of Vatican II. The Council speaks of the Church as being a sacrament/efficacious sign in two ways: (1) as the sacrament of unity and (2) as the universal sacrament of salvation. I think that these two images are meant to interpret each other. *To be saved means to be united and to be united entails salvation.* To put it another way the Church acts as the universal sacrament of salvation by manifesting *communio*.
3. In his essay titled “the Ecclesiology of the Constitution *Lumen Gentium*” Joseph Cardinal Ratzinger has written the following:

Fellowship with God is mediated by the fellowship of God with man, which is Christ in person; the encounter with Christ brings about fellowship with him and, thus, with the Father and the Holy Spirit; on this basis it unites men with one another. All this is directed toward perfect joy.
4. What the Holy Father is saying in this passage is that communion ***within*** the Church results from the gift of Christ who offers divine *communio* ***to*** the Church. Thus human fellowship finds its condition of possibility in divine fellowship.

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Communio is made apparent and present within the Church in its exercise of the *munera* of its apostolic charge—by teaching, sanctifying and ruling. This is to say that the Church manifests and brings about its reality as a saving communion and the communion of the saved by the proclamation of the Word, by the celebration of the Sacraments – and also by the construction and performance of juridic function.

John Paul II, in *Sacrae Disciplinae Leges* points out the relationship of code and *communio* in revealing the image of the Church. In his words:

*Among the elements which characterize the true and genuine image of the Church [which the Code attempts to translate into canonical language], we should emphasize especially the following: the doctrine in which the Church is presented as the People of God (cf. *Lumen gentium*, no. 2), and authority as a service (cf. *ibid.*, no. 3); the doctrine in which the Church is seen as a *communio*. . . .*

To summarize:

- A. The life of God in which we are invited to participate is *commuio*
- B. Jesus the Christ is a sacrament of *communio*
- C. The Church is a sacrament of Jesus Christ, functioning as the effective sign of *communio* in its proclamation of the word, in its celebration of sacraments and in its construction of its juridic structure.

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I would suggest that it is through the lens of *communio* and in its disclosure and effectiveness within the Church that we discover the course we must steer in navigating the narrows. I would now like to set forth the way the law recommends bishops and ordinaries navigate the narrows as they deal with priests. Specifically I wish to consider how they are to deal with priest who are (1) incompetent or (2) crazy, or (3) corrupt.

Part 4: Actuating *communio* in dealing with priests

In addressing this, I shall begin with a juridical matrix. I shall then propose that the *jus vigens* offers a mirror and a model of how *communio* can work when dealing with priests who are incompetent, insane, or immoral.

1. The juridic matrix that I propose considers the clerical state of sacred ministers on axis one --a vertical axis , and a priest's exercise of *potestas sacra* on axis two--a horizontal axis.

1.1 On the vertical axis: While sacred ministers are of divine institution (canon 207) the clerical state is not. The clerical state is the juridic status accorded to sacred ministers who have been consecrated by God by a new title in the reception of Orders and are dispensers of the mysteries of God in the service of his people (Canon 276). This axis determines **essentially who they are. This axis regards sacred ministers as sacred ground, and employs juridic status to express and maintain the reality of this sacred ground.**

1.2 On the horizontal axis: *These sacred ministers are consecrated and designated . . . to nourish the people of God, fulfilling in the person of Christ the Head the functions of teaching, sanctifying, and governing.* (Canon 1008) This axis describes existentially how they are to act. **This axis regards the People of God in ecclesial communion to be**

sacred ground, and gives honor and protection to their claims to be nourished by their clergy.

2. As we consider these axes and the sacred ground they represent, my thesis is this: the law itself offers a way of seeing how *communio* may be manifested and honored as church superiors deal with priests who are incompetent, crazy or corrupt.

2.1 First, let's consider priests who are incompetent:

Incompetence touches how priests act, along the horizontal axis, in their response to the needs of the People of God.

A. Priestly incompetence may be because of lack of intelligence, lack of psychological integrity, or lack of physical wherewithal.

B. this incompetent may be absolute—where it exists in all cases—or relative, where it exists in specific cases.

C. Priests may be incompetent either to fulfill the requirements of *ministry* or to fulfill the requirements of *office*.

2.2 The law offers us a way to honor, in *communio*, the sacred ground of the sacred minister, and also to honor the need for nourishment of the People of God.

A. In the case of the exercise of ministry:

A-1 When the incompetence results from lack of intelligence or minimal lack of psychological integrity, the canons on faculties should be employed with regard to preaching, hearing confessions and assisting at weddings.

Recall that *faculties* in the Revised Code involves a loosening up of *potestas sacra*. The removal of faculties does not involve the removal or denial of *potestas sacra* itself. Limiting or removing faculties responds to the estimative judgment by ecclesiastical superiors that the claims of God's people for appropriate nourishment outweigh the claims of the sacred minister to supply nourishment.

A-2 With regard to the celebration of Baptism and the Eucharist, the ever-ready utility player, canon 223 may be employed and limitations may be set by competent authority. Once more, the needs of the People of God are met, and the rights of the cleric to exercise *potestas sacra* is “**moderated**” in view of the needs of the common good, i.e., **the sum of those conditions of ecclesial life which allow the *Christifideles* . . . relatively thorough and ready access to life with Christ, which is at the heart of salvation.**

B. In the case of exercise of office

The Code offers a paradigmatic procedure for dealing with incompetence in the office of pastor, which might easily be extended to most other cases of incompetence. In this procedure:

- the fact of a pastor's unproductive or damaging office is established,
- two pastors who are selected from a list established by the presbyteral council are consulted,
- two solicitous invitations to resign are offered to the pastor by the bishop,
- reasons and arguments for the invitation to resign must be produced by the bishop,
- the possibility of responding, resigning with special conditions, and of recourse against removal are extended to the pastor.

It is important to note that if the issue of pastoral incompetence concerns only the pastor's ability as an administrator, the first course of action is to see if this incompetence can be addressed by the appointment of a financial administrator, not by removing him from office. This method of procedure respects the pastor, looks to the good of the community, and extends protection of personal claims in an effort to honor the requirements of *communio*.

→ **In all cases of dealing with incompetent ministers and office-holders:**

a. the claims of the people of God for nourishment are primary

b. the claims of the priest who is holy ground cannot be disregarded.

Moreover, the law stipulates that in all cases the priest's reputation cannot be trashed (220) and the priest's claim to decent support cannot be disregarded(384)—and, above all, the priest has the right to legitimate defense (221).

3. Let us consider priests who are crazy.

Here I am talking about the really crazy clergy: not those who are obsessed with the latest appearances of the Blessed Mother or those who are convinced that the only good church is the church of their understanding. These folk can be handled by controlling or limiting or restricting faculties.

Here I am speaking about the truly boffo, bonkers, off-the-wall guys who are so seriously affected by mental illness that **after experts have been consulted**, they are judged to be *inhabilis ad ministerium rite implendum*.

→ **Once again, the claims of the people of God for appropriate nourishment by their clergy are primary**

-->BUT: The claims of the priest in question is always to be understood through the prism of ecclesial *commuio*: he is holy ground, who must be treated in light of the call of all members of the Church to share in the Trinitarian life.

Once more: his right to a good reputation must be safeguarded, and his claim to decent sustenance must be maintained, his right to defense must be assured.

3-1. In these cases the *Ordinary* (not necessarily the bishop) is to invoke 1044§2.2, is to issue a decree declaring that one is not qualified to exercise the ministry, and to specifically list the things that the priest cannot do. For the sake of *communio*, the Ordinary should also do two other things –

(1) First, he should let the priest know that this disqualification has been set in place because of the responsibility of the diocesan bishop to assure the proper nourishment of his flock

(2) Second, he should let the priest know that the disqualification is not necessarily permanent, and could be revoked in the future. Such revocation of the decree of disqualification could take place if, after experts have been consulted, the Ordinary thinks that this would benefit the priest in question and the People of God whom he serves.

4. Now let's consider priests who are corrupt.

4.1 → In dealing with all cases of corruption, the overarching concern is the appropriate nourishment of the People of God whom the priest in question is called to serve.

4.2 When dealing with corrupt clergy we need to distinguish between those who have committed an offense that is not a delict and those who have committed a delict.

In considering acts of clerical corruption, the rules of law are scrupulous in their prescriptions. Remember the four rules for crimes and penalties:

- **No crime without a lex or a precept**
- **No crime without perfection of act, both externally and internally**
- **No penalty (*poena*) without a crime**
- **No imposition or declaration of penalty without a process**

The law is clear: If there has been no delict, disciplinary or penitential remedies can be invoked: but a penalty, *de jure* or *de facto*, cannot be imposed.

→ Even when it is clear that a delict has been committed, there is an array of legal prescriptions which, while protecting the claims to appropriate nourishment of the people of God, also are scrupulous in honoring the accused priest as sacred ground.

- Recall that, according to Canon 1323, there is an array of circumstances as a result of which a person may not be punished and that, according to Canon 1324, there are circumstances which either reduce the punishment that is to be imposed or result in the perpetrator's not being bound to a *latae sententiae* penalty.
- Recall the rules about imposing penalties as these are detailed in canons 1341-1349:
 - a. Canon 1341: Imposing a penalty is a last resort
 - b. Canon 1343: in the case of facultative penalties: a lighter penalty may be applied or a penance may be substituted
Canon 1344: even if the lex uses preceptive words, the judge can: (a) defer, (b) abstain from , (c) suspend application of penalty
 - c. Canon 1345: When perpetrator's use of reason has been compromised, a judge can abstain from imposing penalty
 - d. Canon 1346: When multiple delicts have been committed, judge may moderate *ferendae sententiae* penalties to reasonable limits.
 - e. **Canon 1347: a censure cannot be imposed validly unless the offender has been warned at least once—after the misbehavior has begun**
 - f. Canon 1349: judge is not to impose stiffer penalties than needed

4.2. B If one particular canon serves as emblematic of how penal law addresses the needs of the People of God and the dignity that needed be afforded to the priest, it may well be Canon 1335. The canon is about censures, and the possibility of a priest's functioning even when a censure is in place. Here's what the canon says:

If a censure prohibits the celebration of sacraments or sacramentals or the placing of an act of governance, the prohibition is suspended whenever it is necessary to care for the faithful in danger of death. If a latae sententiae censure has not been declared, the prohibition is also suspended whenever a member of the faithful requests a sacrament or sacramental or an act of governance; a person is permitted to request this for any just cause.

This canon suggests a basic direction of the law:

(1) for the sake of the horizontal axis and the nourishment of the People of God, prohibitions against administering sacraments or placing an act of governance can be set aside in danger of death. (2) for the sake of the vertical axis and the reverence due to

those who are sacred ministers, prohibitions to perform sacraments or acts of governance-- that arise from from *latae sententiae* non-declared penalties-- can be set aside when such acts are justly requested, and when not to perform such acts would endanger the priest's reputation.

4.3 When a priest has been accused of committing a delict and when criminal procedure seems the way to go, the prescriptions of the code are once again helpful in actuating reverence for the sacred grounds of both the priest and the People of God.

A. Canon 1717

- In respecting the sacred ground of the People of God, Canon 1717 stipulates that every notification of a delict that has a hint of truth is to be taken seriously and investigated.
- This same canon requires respect for the holy ground of the priest in question, as it stipulates that the good name of the priest who is accused is not to be compromised as a result of this preliminary investigation.

B. **Canon 1718** gives a lot of discretion to the Ordinary, who can determine whether a criminal procedure, as the last resort, is expedient,

C. Canon 1722 is very important here. It stipulates that, once a criminal trial is under way, there are an array of reasons because of which the **Ordinary** has the power (*potest*: not *debet*) to keep a priest away from ministry or from office (*arcere*= keep away from). Moreover the Ordinary can impose or interdict a residence, or can also prohibit any public participation at the Eucharist.

The canon then specifies the reasons because of which the Ordinary can exercise this power, all of which touch upon the claim to pastoral nourishment by the People of God: (1) so that scandals may be prevented, (2) to protect the freedom of witnesses and (3) to protect the course of justice.

The canon also requires that the Ordinary do two things, if he is to exercise this power validly: (1) hear the promoter of justice and (2) cite the accused priest, i.e. call him to the halls of power.

The canon also states that when the causes for which the restrictions have been imposed cease, these restrictions are to be revoked. Moreover, when the penal process ceases, these restrictions are ended *ipso iure*.

At this juncture, I wish to make a comment or two on the way that dioceses often employ Norm 6, which is the analog of Canon 1722, as it deals with restrictions to be imposed when a priest has been accused of sexual abuse of a minor.

Here is what Norm 6 stipulates:

*When there is sufficient evidence that sexual abuse of a minor has occurred, the Congregation for the Doctrine of the Faith shall be notified. The **bishop/eparch shall then apply** (not “has the power to apply” as in the universal law) the precautionary measures mentioned in CIC, canon 1722, or CCEO, canon 1473-- i.e., **withdraw** (not “keep away” as in the Universal law) the accused from exercising the sacred ministry or any ecclesiastical office or function, impose or prohibit residence in a given place or territory, and prohibit public participation in the Most Holy Eucharist **pending the outcome of the process.** (not or when the causes for these restrictions have ceased)”*

Note that the Norm does not explicitly require consultation with the Promoter of Justice or the citation of the accused priest, as does Canon 1722.

Note further that the Preamble to the *Essential Norms* says this:

These norms are complementary to the universal law of the Church and are to be interpreted in accordance with that law

Finally, recall the requirement of Canon 127§2 for the validity of a juridic act of a superior:

When it is established by law that in order to place acts a superior needs the consent or counsel of certain persons as individuals:. . . .

2/ if counsel is required, the act of a superior who does not hear those persons is invalid; although not obliged to accept their opinion even if unanimous, a superior is nonetheless not to act contrary to that opinion, especially if unanimous, without a reason which is overriding in the superior’s judgment

Going beyond Norm 6 to the Essential Norms themselves: it appears to me that the Norms do not explicitly lay open to bishops the path of discretion whereby an accused person may be found non-punishable, or whereby a lesser penalty or penance is imposed, or where some means other than a penalty seems appropriate.

A fair conclusion, it seems to me, is that the Universal Law does a better job in navigating the narrows in the case of priests accused of abuse than does the particular law of the Essential Norms, at least as these norms are generally practiced.

.....

Those of us who spend more time than we would like addressing accusations of misbehavior tend to get worn down by the process. We also tend to get short-sighted and adversarial, with concerns for our clients or our dioceses keeping us from seeing the dangers to be encountered as we navigate a precarious channel.

Ecclesial communion can help us; a two-axis quadrant can guide us; the attempt to be perfect in charity can direct us, as we navigate the narrows and to arrive at **the sum of those conditions of ecclesial life which allow the *Christifidles*, either as individuals or in associations, relatively thorough and ready access to life with Christ, which is at the heart of salvation.** And, as the last canon on the Code reminds us, within this Sacrament of Unity and Sacrament of Universal Holiness which is our Church, the salvation of souls must always be the supreme law.