PRECEPT, RIGHTS AND ECCLESIAL GOVERNANCE:
A MORAL-THEOLOGICAL ANALYSIS OF THE
CATHOLIC SEXUAL ABUSE CRISIS IN THE U.S.

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An analysis of US Catholic bishops’ responses to ongoing developments in the sexual abuse crisis from 2002-2007 reveals a narrow institutional definition of the problem as a violation of determinate laws governing priestly celibacy. Perceiving sexual abuse as a breach of the Sixth Commandment codified as Canon Law overlooks other salient moral concerns such as culpably-cooperating church leaders, uncritical cultures of clericalism, governance structures closed to accountability, and abuses of human rights. However, reappropriating the Sixth Commandment by means of a Thomistic interpretation of the natural law addresses the crisis from within the Christian moral tradition, because it enables meaningful and legitimate analogical application from the foundational principle into broad areas of human interrelationships in the church (including governing relationships between clergy and the community). With this moral method, the Sixth shows greater theoretical cast and practical application in the sexual abuse crisis because its scope is not restricted to vow-violation. The crisis can be redefined as the failure of the entire Catholic community to observe the wisdom of this fundamental moral concept. The Sixth Commandment demands well-functioning communal sexual boundaries, which in turn require protection of the community’s members, a key task of church governing authority. In performing this task, church
governance must pass the test of plausibility in practical application and of consistency with Catholic moral principles and doctrinal commitment in order to be effective and authentic. As a community of human disciples, the church like all societies requires preemptive authority in governance in order to protect its members; as a relationship with the governed, church authority relies upon their assent and consent contributing in real (if limited) ways to ongoing communal discernment of the direction of governance in the church, including just demands for accountability. Claims of human rights by the victim-survivors themselves hold their own unique moral and juridical authority to block *status quo* practices of governance (such as secrecy and material cooperation), and place duties upon “pastors and the other faithful” to find restoration in justice and peaceful and fruitful interaction for the sake of mission.
To Matt, John, Hannah and Rose, with all my love.

To the victim-survivors, living and deceased, of sexual abuse in the Catholic Church:

“The creation waits with eager longing for the revealing of the children of God.”

(Romans 8: 19)
## CONTENTS

Acknowledgments ........................................................................................................................................ vi

Chapter 1: Introduction ................................................................................................................................ 1
1.1 The Catholic Sexual Abuse Crisis and “the Sin of the World.” (John 1:29) .............................................. 1
1.2 A Moral-Theological Analysis: Precept and Rights in Ecclesial Governance ........................................ 12

Chapter 2: Hierarchy and Hier – archē ........................................................................................................ 18
2.1 Introduction ............................................................................................................................................... 18
2.2 “Delictum contra Sextum.” ......................................................................................................................... 20
   2.2.1 A Narrowly-Defined Precept: Examples ............................................................................................ 27
   2.2.2 Framing the Larger Moral Picture ........................................................................................................ 31
2.3 The Sixth Commandment as Moral Wisdom ............................................................................................. 33
2.4 Episcopal Culpability ............................................................................................................................... 43
   2.4.1 Culpable Material Cooperation ........................................................................................................... 46
   2.4.2 The Bishops Apologize ....................................................................................................................... 53
2.5 Conclusion: The Sexual Abuse Crisis, Redefined .................................................................................... 64

Chapter 3: Church Governing Authority and the Sixth Commandment .......................................................... 70
3.1 The Application of Practical Reason ......................................................................................................... 70
   3.1.1 The Fundamental Moral Concept ....................................................................................................... 70
   3.1.2 The Purpose of Governance ............................................................................................................... 71
   3.1.3 General Principles and Moral Judgment .............................................................................................. 73
   3.1.4 Moral Method ..................................................................................................................................... 76
   3.1.5 Applying the Sixth Commandment to Church Governance ............................................................... 80
3.2 Traditional Justifications for Governing Authority: Divine Authorization, Superiority, Expertise, ................................................................................................................................. 83
   3.2.1 Divine Authorization ............................................................................................................................ 85
   3.2.2 Superiority of the Hierarchy ................................................................................................................. 89
   3.2.3 Episcopal Holiness and Personal Virtue: John Paul II’s Pastores gregis ................................................ 94
3.3 Alternative Justifications for Authority: Expertise (Reworked), Equality .............................................. 103
   3.3.1 The Virtuous Servant ........................................................................................................................... 104
   3.3.2 Professional Competence .................................................................................................................... 107
   3.3.3 Justifications Based on Equality ......................................................................................................... 110
3.4 A Normative Justification for Church Authority ....................................................................................... 126
   3.4.1 Normative Justification from Morality ................................................................................................. 126
   3.4.2 Normative Justification from Rational Coherence ....................................................................... 130
3.4.3 Normative Justification from Plausibility ......................................................... 133
3.5 Governing Authorities in a Community of Equal Disciples ........................................ 136
3.5.1 “The Other Faithful” .......................................................................................... 137
3.5.2 Episcopacy As Relation ..................................................................................... 139
3.5.3 Justice in Interrelationships .............................................................................. 141

Chapter 4: “Pastors and the Other Faithful”: Toward a Governing Convention in the
Catholic Church ........................................................................................................ 143
4.1 Introduction: Salient Features of Governance ........................................................ 143
4.2 Preliminary Consideration: Distinctions in Ecclesiology ......................................... 147
4.3 Consent and the ‘Invention’ of Church Authority ....................................................... 156
  4.3.1 ‘Invention’ of Authority ..................................................................................... 158
  4.3.2 The ‘Invention’ of Authority and an Agency Relationship ................................. 162
  4.3.3 Well- and Poorly-Performing Governing Conventions ..................................... 165
4.4 Catholic Church Governance: Convention or Mastery? ........................................... 166
  4.4.1 The Case for a Relationship of Mastery in Catholic Church Governance .......... 167
4.5 A Poorly-Performing Relationship of Agency in the Catholic Church ................. 172
4.6 Ecclesial Authority and a Governing Convention in the Catholic Church ............. 182
  4.6.1 The Paradox of Authority and an Agential Relationship ................................. 182
  4.6.2 Distinction of Levels in Governance ................................................................. 185
  4.6.3 Structures of Participation in Catholic Church Governance, and the Problem of Accountability ................................................................. 187
  4.6.4 The Tertiary Level: Revising the Governing Convention in the Catholic Church ................................................................. 190
4.7 Conclusion: The Sixth Commandment and a Governing Convention ......... 200

Chapter 5: Human Rights and the Sexual Abuse Crisis in the Catholic Church .......... 207
5.1 Introduction ............................................................................................................ 207
  5.1.1 Rights and the Sexual Abuse Crisis: Preliminary Considerations .................... 209
  5.1.2 What Are Rights? ............................................................................................ 219
5.2 Objections and Challenges to Rights ..................................................................... 224
  5.2.1 Rights in the Church: A Bishop’s Critique ......................................................... 224
  5.2.2 Conceptual Objectios ..................................................................................... 226
  5.2.3 Moral Objections ........................................................................................... 228
  5.2.4 The Way Forward ........................................................................................... 232
  5.2.5 Subjective Rights: A Resource from the Catholic Middle Ages ................. 233
  5.2.6 Linking Objective Morality and Persons: A Response to the Conceptual Objections ........................................................................................................ 236
  5.2.7 Linking Persons and Sociality: A Response to Moral Objections ............... 240
  5.2.8 Claim-Rights and the Natural Law ................................................................. 242
5.3 Human Rights and the Sexual Abuse Crisis in the Catholic Church ..................... 245
  5.3.1 Rights-Claims in the Sexual Abuse Crisis: Basic Features ............................... 246
  5.3.2 The Right to Bodily Integrity: Salient Concerns and Contours ................. 250
  5.3.3 The Right to Bodily Integrity and Correlative Duties in the Sexual Abuse Crisis ........................................................................................................ 255
5.3.4 Human Rights Advocacy Within the Catholic Church...............260
5.3.5 Natural Rights and Ethical Constraints on Ecclesiology ..........271

Chapter 6: Towards an Ethics of Restoration in the Catholic Church..................291
  6.1 Precept, Rights and Ecclesial Governance........................................293
  6.2 “We Are All Patrick McSorley”..............................................................297

Bibliography ........................................................................................................301
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CHAPTER 1:
INTRODUCTION

1.1 The Catholic Sexual Abuse Crisis and “the Sin of the World.” (John 1:29)

Near the beginning of the Christian era, a travelling preacher articulated an understanding of sin that still remains the *locus classicus* on the subject. The preacher showed little patience for those persons or groups within the new Christian communities who made distinctions between their higher status as the saved in comparison with non-Christians, or as privileged possessors of spiritual graces,¹ compared to unholy, ungifted or ordinary Christians; as far as the apostle Paul was concerned, “all have sinned” (Rom. 5:12). The “sin of the world,” inexorably bearing upon all persons produced the wages of “death,” (Rom. 5:23) which meant not only literal (physical) death but perhaps even more sinisterly the turning of human persons into “slaves of sin” (Rom 6:20) – and perpetuating the cycle throughout the entire human community. Understanding the sin of the world in all its deadly gravity against which no one could make lasting headway, Paul then could place himself (and his readers) in humble and right relation to God in Christ: “Much more surely then, now that we have been justified by his blood, we will be saved through him from the wrath of God. For if while we were enemies we were reconciled to God through the death of his Son, much more surely, having been reconciled, will we be saved by his life” (Rom 5: 9-10).

Saint Paul likely was nodding in approval when, almost two thousand years later, the Catholic bishops of the world gathered in ecumenical council invoked the same letter in a theological description of the now-global Christian community: “the pilgrim Church in her sacraments and institutions, which pertain to this present time, has the appearance of this world which is passing and she herself dwells among creatures who groan and travail in pain until now and await the revelation of the sons of God.”

But at the same time St. Paul also would have sided with the observation of German theologian Karl Rahner, that the overall tenor of the document in which this reference is placed – *Lumen gentium*, the dogmatic constitution on the church – is carelessly optimistic about the church as an instrument of holiness, as though the church community sails untroubled to salvation as “the mystical Body [of Christ] passing untouched through history.”

*Lumen gentium* handles the topic of sin in the church poorly, opined Rahner, because it does not convey the depth of perception and conviction about the inexorable vastness and power of sin articulated so clearly and passionately in the Letter to the Romans chapters 5 to 8. “The question of the sin of the church simply was not central to *Lumen gentium*’s framers; they seem to move from what is good in the church to what is better,” he complained. Although Vatican II avoided using the phrase ‘the sinful church,’ nonetheless it acknowledged not only that sinners are the object of the church’s

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2 *Lumen gentium*, no. 48. Cf., Romans 8:20-23: “[F]or the creation was subjected to futility, not of its own will but by the will of the one who subjected it, in hope that the creation itself will be set free from its bondage to decay and will obtain the freedom of the glory of the children of God. We know that the whole creation has been groaning in labor pains until now; and not only the creation, be we ourselves, who have the first fruits of the Spirit, groan inwardly while we wait for adoption, the redemption of our bodies.” NRSV.


4 Rahner, “The Sinful Church in the Decrees of Vatican II,” at 280.
ministry, but also that the church itself is composed of sinners who are engaged in the church’s own mission of preaching, sanctifying and sanctifying (and indeed who sometimes sin while performing these ministries). The church cannot rely upon its own grace as some kind of possession but rather always requires reconciliation with God through Christ. The admission of sinfulness in the church in *Lumen gentium* leads Rahner to observe: “But the Church cannot be the *subject* of her own renewal and purification if she was or is not also in the first place and in a certain sense the subject of sin and guilt.” Following St. Augustine’s writings against the Pelagians, Rahner notes that except for the Mother of God, the members of the church can all proclaim, “we are all sinners.”

At the same time, the admission of sin in the church does not negate doctrines of the church’s holiness; rather it puts the latter in perspective. The church is holy not by its own merits but holiness can be found there because of the providential and gratuitous gift of God’s saving love in Christ and the Holy Spirit which has designated the church as a sacrament of salvation. Clarity and confidence regarding God as the source of grace makes it possible, then, to admit that the church, continuously standing in need of this grace – or as the Baptist hymn proclaims so unabashedly, “it’s me, it’s me, it’s me, O Lord, standing in the need of prayer” -- is not its own salvation. With this reality check

5 Rahner, “The Sinful Church in the Decrees of Vatican II,” at 284.

6 Rahner, “The Sinful Church in the Decrees of Vatican II,” at 286. Regarding the explanatory notes for *Lumen gentium*’s famous passage on the pilgrim church, Rahner explains, “It is in a way regrettable that the footnotes in the text do not refer to the Council of Carthage in 418 and to the Council of Trent. For these texts would really be *loqui classici* compared to those in fact referred to. Nevertheless the notes on this do draw attention to St. Augustine (besides Pius XII); it was this anti-Pelagian conviction ‘we are all sinners’ of St. Augustine and of the Council of Carthage (looking back to St. Paul in Rom 3:23; 5:18, etc.) which was the reason for St. Augustine’s declaring the Church herself to be sinful and promising her the perfection ‘without spot or wrinkle’ only in eternity.” Ibid.
firmly in place, Rahner notes that a curious hope begins to emerge: there is “profound meaning” in the term ‘church of sinners.’ The church is a community of sinners, and thus has an obligation always to become aware of sin internal to the community, so that it can pursue the moral and spiritual duty of rectifying sin. The church is holy only by the grace of God:

[The Church] would not be the really existing people of God but a purely ideal entity, possessing an almost mythological character, if one were to think that the sinfulness of her members did not also determine herself. Only if the Church recognizes herself to be the Church of sinners will she be permanently convinced of the fact, and aware of the full force of the obligation it entails, that she has a constant need of being cleansed, that she must always strive to do penance and achieve inner reform. Otherwise, all demands for reform will become merely presumptuous prescriptions and inefficacious desires all of which, while they can perfect the legal system of an institution and develop a pastoral technique on the grade scale, are not in touch with real life, true faith, and the human Church.  

Only in acknowledging its sinfulness does the church become able to understand “how and why she is the holy Church: namely by the grace of God, which alone does not permit the Church as a whole to fall away from God’s grace and truth and so makes her indefectibly holy.” God’s grace is not some kind of magical add-on to otherwise completely corrupt human tendency, but rather, grace builds on nature: “This grace operates in the Church as such particularly where she actualizes her whole essence fully, that is in the definitive witness to her faith and in the sacraments.”

We Catholics have been pondering St. Paul’s message for two millennia, but somewhere during that interim we seemed to have gotten the idea that his words applied only to individuals falling into temptation in the worldly arena; within the church, within

8 Rahner, “The Sinful Church in the Decrees of Vatican II,” at 291-2
the welcoming embrace and pious peace of communal devotion, there was, we thought, no sin – only holiness. We placed faith, trust and hope in ‘our’ church and ‘our’ clergy who brought us the word of God and the bread of life, who were like the Mother of God herself with us now and at the hour of our death. Our priests were inextricably connected to things holy, good and eternal – they seemed above the worldly fray that led the rest of us into sins venial and mortal. Their governance of the church was willed and ordained by God himself, and in their rule over us they were like another Christ who rules and judges the people of God.\(^{10}\)

Thus it is arguable that no matter how theologically sound is *Lumen gentium*’s insight about the pilgrim church, many church members – perhaps most acutely clergy who received personal benefit by the high regard in which Catholics held them -- were not ready for it and certainly did not want to do something about it in the practical arena.

After all, how can one reconcile decades, if not centuries, of conditioning to respond to

\(^{10}\) For a long time, and despite advances made at the Second Vatican Council to re-envision the church in terms of what it really is – a community of human disciples – Catholics have clung culturally (especially via internal structures of church governance) to a 19th-century conception of the church as *a societas perfecta*, or perfect society, where clergy held all ruling, teaching and sanctifying authority and power. What has happened in the sexual abuse crisis is that this *societas perfecta* has been demonstrated beyond doubt to be a decadent understanding of the church. The church truly is a society or community, but it is not perfect in at least two ways. First, even those members of the church deemed so holy (read: perfect) that they were considered immune from criticism, let alone criminal prosecution, have been shown to be more or less equal to the rest of the members of the church insofar as all members are sinners. But there is a second, more complex way in which the church has been shown not to be perfect. This second way concerns the meaning of the word “perfecta” in Latin, which translates as “complete” rather than flawless. The perfect society construed as a society geared around clerical interests and activities has been demonstrated woefully incomplete. On their own, clerical leaders committed atrocious crimes of direct abuse and cooperation, and were unable to remedy the situation. The church needed external help, in the form of secular investigators, prosecutors, and the rule of law in the US, to bring itself to measures of justice. But even more compellingly, the sexual abuse crisis has highlighted Vatican II’s theology of the baptismal munera of ruling, teaching and sanctifying properly belonging to the laity. The church needs meaningful participation in governance by those who are governed, through structural channels that effect justice. The perfect society defined in terms of clerical interests is anything but complete or flawless. However, the church can advance its own internal interests, broadly speaking, by understanding itself as a community wherein all participate in some measure in the traditional munera of teaching, sanctifying and ruling.
clerics’ ruling the church as though they are Christ (therefore to respond with unquestioning obedience), with the assertion that these priests and bishops can not only make mistakes in their rule, they can sin badly and commit grave moral evil in their official duties, and ought to be held accountable? If we attempted to apply St. Paul’s Letter to the Romans to matters within the church, likely we tended to skip rather lightly from his explication of sin, and move straight towards the redemption part. After all, this was the proper business of the church – to offer grace where sin abounded. Certainly, this interpretation became a favorite one in the watershed year of 2002, when the Catholic sexual abuse crisis exploded in the United States. Speaking to a gathering of US cardinals and bishops of the United States Conference of Catholic Bishops (USCCB), Pope John Paul II asserted:

Now you must ensure that where sin increased, grace will all the more abound (cf. Rom. 5:20). So much pain, so much sorrow must lead to a holier priesthood, a holier episcopate and a holier church.\(^{11}\)

These words were echoed a few weeks later by Bishop Wilton Gregory, president of the USCCB, in a major address on the issue of reforms to internal church governance:

I renew my faith in the words of St. Paul, "Where sin has increased, grace has far surpassed it" [Rom. 5:20], and I invite each of you to do the same. In Jesus Christ there is no cross without resurrection, no death without life, no purgation without cleansing and grace. Let us embrace the grace that God gives us so abundantly, so that the work we do in these days together may be to his glory and contribute to full reconciliation and healing in the church.\(^ {12}\)

The difficulty with this approach is not its correct orientation away from sin and towards grace, it is in its seeming presumption of grace which tends to obscure the depth


of the truth about sin. Certainly there is something theologically problematic about the pope’s command to the bishops “to ensure that where sin increased, grace will all the more abound.” This illustrates in miniature the theological issue highlighted by Rahner: the church is not the subject of its own grace as some Catholics may presume by their behavior and attitudes – only God is the subject of grace. Using language that seems to presume grace, as though God’s grace is the church’s own tool to apply at will, distracts from the real problems of sin, and minimizes the importance of ethics to assist persons in figuring out morally-acceptable solutions. This is particularly true with a sin that usually has deep and systemic manifestations, such as sexual abuse. At this early stage of the crisis, the focus should have been on understanding this sin and the multivalent, concrete ways that communal structures and interrelationships must change in order to effect the “purgation” Gregory describes. As such, in his speech, he perhaps should have emphasized not that “there is no cross without resurrection” (the great hopeful assurance but not possession of the church), but rather something along the lines of ‘there is no resurrection without the cross.’

Sadly, Rahner’s explication of the sinful church seems to have been lost on church leaders and church members who together have enabled a global institutional disaster predicated upon the perceived holiness, and attendant moral immunity, of the clergy. The sexual abuse crisis in the Catholic Church arising in the late twentieth century surely has provided the evidence, for a church in denial about it, that the church is a church of sinners, and indeed in Rahner’s words “sinfulness determines the church.” The sinfulness of this crisis derives not only from the rape, molestation, psychological intimidation and spiritual damage inflicted by ordained clergy onto thousands of
vulnerable, underage victims, but also from the incapacity of church leaders and communities to respond to this epidemic in ways that meaningfully acknowledge the depth of the problem, the violations of human dignity, and the necessary, difficult, expensive and painful process of accepting the truth about, and resolving, a horrific tragedy whose roots run very deeply into the very structures and styles of governance in the Catholic Church. Indeed, inadequate (and therefore wrongful) responses to allegations and evidence of sexual abuse served to compound the original harms and to prevent any kind of meaningful healing for decades. Hence, although scandals of sexual abuse on the part of clergy have run through American history, this particular scandal mushroomed into a crisis of the entire Catholic Church in the US (and eventually, the Catholic Church in many others countries).

It was with some puzzlement that I turned my attention to the sexual abuse crisis as the object of dissertation research. As a lifelong Catholic, I found it inconceivable that my church, with its centuries-long practices of penance, especially as sanctified in the Sacrament of Reconciliation – sorrow for and confession of sin in number and kind, repentance, amendment of purpose, reception of God’s grace and forgiveness – seemed incapable of stopping a system of sexual abuse in the first place, or of adequately and truthfully handling the many credible allegations springing forth in almost all US

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13 One of the earliest known tragedies in this regard is the story of Sarah Cornell, a young, pregnant and unmarried mill worker murdered in early industrial New England, and the Methodist minister charged with her murder. This narrative mirrors the current Catholic sexual abuse crisis in miniature, because the crime pointed toward multivalent issues of power and vulnerability, as well as of the rights of individuals, emerging (economic) empowerment of a previously unemployable class (women), and social customs and attitudes that lent immunity toward religious institutions in society. *Fall River*, the account of this scandal first was published in 1833, a year after Cornell’s death. Ironically, and tragically, the same location (Fall River, Massachusetts – although in 1833 state boundaries placed it within Rhode Island) was the home of one of the worst serial predators of the 20th-century Catholic sexual abuse crisis, as well as of other priest-abusers. Cf., Catharine Williams, *Fall River: An Authentic Narrative*. Ed. Patricia Caldwell. New York: Oxford University Press, 1993.
dioceses. Puzzlement turned to questioning as I began my research and discovered that, rather than feeling obligated to provide an account of their roles in this tragedy to shaken and anxious congregations and dioceses, and to work with their communities to bring about justice, many church leaders turned within, resisted both calls to tell the truth and honest offers of help, and utilized legal strategies with the object of keeping information secret and deflecting blame from themselves. It seemed like the Catholic Church’s own moral traditions of social teaching, including attention to the common good – not to mention the ways in which Catholics sacramentally integrated the moral life into our seeking of salvation – were being ignored.

There was no one within local dioceses who could force bishops to be open, transparent and accountable; there were no procedures that provided a ‘safety net’ for the church’s own common good. That the bishops eventually were forced to release documents and undergo testimony came about because certain modern professionals entered the picture -- especially those in advocacy groups, law enforcement, psychotherapy and investigative journalism who have empathically entered into the hell of the victim-survivors’ memories and walked with them there, bringing the crisis out into the open and pushing for measures of justice as demanded by the rule of law in the US. As necessary as these measures were (and are), they dripped with irony. As a Catholic, I felt aghast that the church could not own up to the obvious sin in its midst. Were there no internal resources that we could utilize? When things go really, badly wrong in the church do we have to go to the police because our own religious and spiritual resources have failed us?
This question became a challenge to me. As I conducted my research, another surprise -- this time a positive one -- awaited me. The Catholic Church does possess ample ethical resources in its tradition for addressing a crisis of this magnitude. We have not used them; we lacked the will, or we just thought that ethics was something the church taught to the outside world rather than apply internally. Certainly there has been a resistance within the church, accurately pinpointed by Karl Rahner, to understand the church itself in light of the church’s own theologies of sin and self-understanding as a ‘pilgrim church.’ In this matter, Lumen gentium was barely a beginning.

However, in the Catholic moral-theological tradition can be found possess ample ethical theory to ‘make sense’ of what is going on in the sexual abuse crisis – a manifestation of “the sin of the world” within the church community itself -- as well as tools for ethical application to redress harms and revise the kinds of behavior on the part of all Catholics that fostered, or enabled, did nothing about, cooperated with, or directly performed, actions of sexual abuse. These resources are the tradition of natural and divine law as articulated by St. Thomas Aquinas, the idea of natural rights developed by his contemporaries (but only latently present in St. Thomas’ own writings), and contemporary retrievals of the same that enable their usage in light of authentic advances in philosophies of governing authority. Thus the present investigation comprises a comprehensive moral-theological analysis of the sexual abuse crisis, with particular focus on the munus regendi (official charism of governance), utilizing contemporary retrievals and explications of a Thomistic theory of the natural law and a medieval scholastic-canonist idea of natural rights.
I believe that these resources have not predominated (yet) in church responses to sexual abuse because of a perception that they are somehow outdated and/or insufficient. (It would be rather strange, although perhaps accurate in some cases, to say that they were not utilized because responsible parties already knew that they work and did not want to get caught.) This perception appears to be grounded in an uncritical conflation of Thomistic natural-law theory with its decadent, neoscholastic appropriations manifest in Catholic confessional practices in recent centuries to the dawn of the Second Vatican Council. As I note especially in Chapter One, this so-called traditional moral theology tended toward legalism and a strict deontological interpretation of fundamental and broadly applicable precepts of natural and divine law. When the US Catholic bishops took this legalistic approach to dealing with sexual abuse allegations, the results were disastrous. However, I suggest that the antidote towards narrow, “traditional” perceptions of morality is not necessarily found in extra-ecclesial sources. Indeed, an uncritical importation of solutions to the sexual abuse crisis from, say, the secular social sciences and philosophy, may compromise legitimate ecclesial commitments within the Catholic Church. This is not to say that such extra-ecclesial sources ought not be utilized; indeed, I draw on some of them extensively in this project. Such ‘external’ resources show great promise if they are thoughtfully brought in, so to speak, through a critical appropriation of ecclesiology and ethics that maintains the fundamental commitments of the church. At the same time, internal ecclesiological commitments themselves ought to be subjected to ethical scrutiny insofar as these commitments can devolve towards hypocritical practices, wherein the church that preaches adherence to natural and divine law becomes a place where fundamental morality is suspended. My
retrieval of “traditional” moral theology is a retrieval of sources pre-dating the (post-Trent to pre-Vatican II) “traditional” moral theology by several centuries, and issuing from a time in which contemporary ethics and church concerns were understood as mutually-critical and enlightening. Thus the reader ought not to get confused by the two very different meanings of the term “traditional moral theology.”

I believe that the first persons to attempt this kind of synthesis in the sexual abuse crisis in the US Catholic Church did so by a kind of pragmatic application. They were those victim-survivors and parents who as Catholics had internalized the Sixth Commandment of the Decalogue (“you shall not commit adultery”), and believed that bishops respond pastorally, wisely and justly to concerns and complaints on such a serious matter. Yet these same persons simultaneously were Americans who had internalized the moral lesson of secular laws protecting persons from physical assault and sexual violence: rape and molestation are wrong not only because the perpetrator has broken a rule, more importantly they are wrong because they violate the precious human dignity and human rights of those who have been victimized. In this process, the victim-survivors and their parents were beginning to teach the entire church how to be itself, or to be better at being what it should be: sensitive to morality and responsive to grace. Tragically their prophetic message often was met with silence or discrediting.

1.2 A Moral-Theological Analysis: Precept and Rights in Ecclesial Governance

The first order of business in this project is to analyze key contributing factors to the crisis itself. In Chapter One I attend to early (2002-2007) responses of some bishops to allegations, investigations and evidence, and critique common responses both from the perspective of pre-Vatican II moral theology, as well as from a Thomistic natural-law
understanding of the Sixth Commandment (the prohibition against adultery) as a fundamental moral concept. In either perspective, the typical dysfunctional response to sexual abuse revolved around narrowly defined parameters of the problem. If the problem at the heart of the sexual abuse crisis is ‘only’ priests who have broken their vow of celibacy by raping, abusing and molesting the young, then the solution is ‘only’ a matter of removing these offending priests and paying damages to the direct victims. But on the pre-Vatican II moral theology of the confessional manuals many bishops were culpably guilty of material cooperation with the priest-offenders. These bishops either reassigned these priests to new parishes, or hushed the matter up (either by ordering victims and their families to keep silent, or by giving them confidentiality payments), or did their best to delay formal civil prosecution. Excuses such as intent not to harm are insufficient, both on pre-Vatican II moral theology, as well as in US law, with several bishops being held responsible by local prosecutors for child endangerment. Moral evaluation of the actions of such bishops in reassigning known or credibly-alleged molesters to new posts, hinges upon the unintentional (on the part of the bishops) yet real result of these priest-personnel continuing to sexually abuse more young persons in their new posts. Such actions are described as culpable material cooperation.

On a reading of a Thomistic theory of the natural law, the umbrella spreads even wider and begins an exploration of the Sixth Commandment as a fundamental moral concept – an exploration that expands into Chapters Two and Three. As a fundamental moral concept, this Commandment can be understood much more broadly than as a determinate law or precept, and along with its companion precepts in the second tablet of the Decalogue encompasses the terms of any and all social interrelationships. Thus a
basic question can be asked: what is it about the communal structure of the Catholic Church that the church became an enabler of sexual abuse, rather than an upholder of healthy sexual boundaries?

This question particularly concerns governing authority, since one of the basic tasks of authority in a society is to protect its members from harm. Since authority is, if nothing else, a relationship between those who govern and those who are governed, Chapter Two examines Catholic Church governing authority from a variety of angles, based upon recent official church documents and scholarly commentaries on the sexual abuse crisis. The approach is ethical-philosophical, seeking to ask and answer questions regarding ‘what happens’ when persons in a society are ruled by designated authorities. Supportive of the designation of bishops by sacramental ordination and the institution of the episcopal college by Christ, I ask ethical questions based upon what the day-to-day exercise of episcopal authority, ruling over other human members of the church, looks like. The prohibition of the Sixth Commandment, precisely as a fundamental precept of the natural law, supports authority’s protective task in areas of bodily and sexual integrity, as well as supports authority’s efforts to create a society respectful of these boundaries. My conclusions are sure to disappoint both those supporting a return to the status quo ante styles and structures of church governance, as well as those who advocate a somewhat wholesale importation of modern-democratic checks and balances into the Catholic Church. Explanations of church authority are critiqued upon the basis of their rational coherence, practical plausibility and consistency with the ecclesiology of Vatican II’s constitution on the church, Lumen gentium. I provide my own constructive proposal
for the human element of church authority as a relationship obliging obediential assent
from the governed, but in its own way subject to freely-willed consent from the same.

At this point a clarification is in order regarding my own prior conceptions of
ecclesiology. Thus Chapter Three begins with a discussion of the inseparability-yet-
distinction of the divine and human elements in the church, based on ecclesiologist
Joseph Komonchak’s reading of *Lumen gentium*. Without disparaging the divine element
of the church I will be focusing on the human elements subject to ethical obligation. If
the sexual abuse crisis makes anything clear, it ought to be that the sinful actions of
culpable priests and bishops, ordained to sacred ministry though they are, are *not* divinely
sanctioned! Or in other words, although theologically we consider the divine and human
elements of the church united, they are not united in a hypostatic union, as Christ’s divine
and human natures are. Because of this inherent distinction, then, one can examine and
critique even more deeply what happens in an authority relationship, particularly from the
basis of fundamental moral commitments (including the Sixth Commandment and
companion precepts). Utilizing political philosopher Jean Hampton’s theory of authority,
I describe the crisis of authority in the bishops (as a result of the sexual abuse crisis) as
arising from the ongoing “invention” of authority that takes place in any society with
defined authority figures. Hampton’s technical term “invention” ought not to confuse the
reader into seeing popular consent’s replacing sacramental ordination as the instrument
for making someone a bishop. Rather, “invention” is a technical philosophical term
referring to the ongoing, day-to-day, back-and-forth responses of the governed to their
ruling authorities, based upon the designated authority’s success and failure in ruling
morally. World history is littered with figures, ecclesial and secular alike, who were
legitimate authorities, yet lacked a kind of ‘legitimacy’ in the eyes of the governed because they were ruling immorally. In the Catholic Church this ‘invention’ necessarily takes on a Christian cast: thus members of the church pray and listen to the Word of God, they reflect on moral duties, especially as presented in scripture and tradition, they experience the grace of their being created in God’s image and being freely offered salvation in Christ through no merit of their own. All of these aspects of being Christian are taken up into the ways they respond to, and their attempts to influence, their church authorities. Aware that the authoritative relationship has much to do with those who are governed, I outline the contours of a governing convention in the Catholic Church, and suggest that the current monarchical-episcopal structure could indeed be retained if it remained sensitive to and accountably limited by the just needs of the faithful.

Chapter Four moves beyond the Sixth Commandment in exploring another kind of authority – that inherent in all human persons because of their created human dignity, and expressed in contemporary terms as human rights. I suggest that the victim-survivors of sexual abuse possess an inherent human right to bodily integrity. Moreover, assertions of this right do not diminish natural law or traditional moral norms such as the Sixth Commandment, but rather, according to the medieval scholastics and canonists, have their own measure of authority: they provide for a moral urgency and a moral specification unavailable by interpretation of duties alone. Assertions of natural rights can go a long way towards the healing of harms in the Catholic Church, because they put into place behavioral and structural changes without the wait for long-term reforms. They do this first by blocking the unacceptable behaviors and attitudes, thus putting a stop to direct abuses of rights. Secondly, the claiming of rights opens the door to new
possibilities of being in relationship which might never have been imagined prior to the rights-assertion. Finally, rights provide a way to test pragmatically whether the Catholic Church itself – meaning everyone in the church – takes seriously the fundamental dignity of human persons.

It is my hope that this project will in some small way advance needed reforms in behaviors, attitudes and structures in the Catholics Church so that the church might indeed reflect more closely its identification with Christ, the true light of the nations. ¹⁴

Ironically enough, St. Paul’s Letter to the Romans concludes its treatise on sin on a similar note: in hope.¹⁵ What I have learned in my research, however, is that, being human, many people have a tendency to leap straight to hope without considering how deeply and devastatingly they have been wounded by sin, sin for which they are culpable. I do not think there is any hope if the church would rather be a community of Pollyannas. As a community of Christians we have to look to Christ -- the first one to identify himself with the broken, and at the same time also the head of a church possessing of great resources to address moral challenges.

¹⁴ “Christ is the light of the nations.” Lumen gentium, no. 1.

¹⁵ Cf., Rom. 8:18-39.
CHAPTER 2:
HIERARCHY AND HIER – ARCHÊ

2.1 Introduction.

What is the appropriate moral response of the Catholic community to the sexual abuse of minors by its clergy? Answering this question in a detailed way occupies this entire project, but answers both immediate and satisfactory have not been wanting. The Catholic community ought to respond with charity and heartfelt compassion. The community ought to seek truth and justice which leads to restoration. In short, the Catholic church ought to seize this terrible moment to practice and exemplify in Christian freedom a desire for Yahweh’s righteousness and justice (Ps. 146: 6-10), the peace of the risen Lord (Jn. 20:19-22), and the fruits of the Spirit (Gal. 5:13-25).

That the Roman Catholic Church has, despite isolated but worthwhile efforts toward the common good, largely failed to respond in a way consistent with its own faith and morals is evident by the continued referencing of the problem, long after the 2002 Boston Globe series of investigations, as ‘the sex-abuse crisis.’ The crisis has not been

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16 “Pope Benedict XVI, his white robes billowing in a cool breeze, arrived yesterday for his historic first visit to the United States, setting a contrite tone before he even touched down by telling reporters aboard his plane that the Catholic Church is "deeply ashamed" by the abuse crisis that has roiled American Catholicism. The pope's remarks, in which he also said that "for me personally" abuse by priests "is a great suffering," were by far the most direct and emotional offered by a pope in the six years since the abuse crisis erupted in Boston. Benedict himself chose to address the issue en route to the United States, putting to rest questions about whether and how he might deal with the controversy… The question of how Benedict would handle the abuse crisis has lingered over the trip, the first papal visit to the United States since the crisis exploded in 2002.” Michael Paulson, “A
resolved and has not gone away, even though policies to prevent sexual abuse have been
instituted, and numbers of accusations against priests have dropped.17  The crisis still
exists because the Catholic Church’s hierarchical governance and ecclesiology, as
currently manifested in specific persons and concrete organizational structures,
significantly interfered with the Catholic church’s divine charge to conduct itself as a hier
archē, a holy order. The source of this interference is two-fold. On the one hand an
inaccurate moral perception of the problem and an underdeveloped theology of the
church as sinful create what might be called a crisis of ‘moral ecclesiology.’ On the other
hand, the very self-understanding of the nature and mission of the church, and of church
offices, has negatively affected moral perception and response. There exists an ethical
crisis concerning structures of accountability and practices of virtue within the Catholic
community.

The present chapter examines official responses to the crisis in Origins, the
weekly publication of primary documents by the Catholic News Service, from 2002 to
2007. In most cases, the documents studied have been authored or sponsored by
American bishops; other relevant documents include Vatican and papal statements,
addresses given by theologians, canon lawyers and consultants, and related pieces
considered appropriate for dissemination via this journal. The purpose of this analysis is
to reveal the underlying moral theology and ethical presumptions of bishops’ responses to
allegations and evidence of sexual abuse of young persons by priests, and illustrate how

an inadequate moral perception of a spate of sexual crimes rapidly developed into an uncontrollable crisis.

2.2 “Delictum contra Sextum.”

Critics of the US bishops’ handling of the sexual abuse crisis justifiably charge the bishops with misperceiving and misunderstanding the problem of sexual abuse in the Catholic Church. Many of these criticisms hone in on arguably the worst phase of this crisis: that period prior to June of 2002 when it appeared both to American Catholics and the US public in general that bishops were denying the full truth of the problem and even stonewalling efforts to bring abusers and cooperators to justice. My study of bishops’ statements, beginning in 2002 and continuing until the end of 2007, overlaps with and continues beyond this time. As the bishops continued to study the problem, discern the matter and formulate policy, their ongoing responses show differences with and, indeed, distinct improvements over their words and actions up to 2002. However, despite the progress made in policy, the underlying moral perception of the crisis remains, I suggest, fundamentally unaltered from the pre-2002 phases. In order for the Catholic Church in the US to move forward satisfactorily, it will be necessary to identify in detail this intransigent moral perception. At its root, the moral understanding of the crisis conveyed in statements in Origins narrows the understanding of the crisis to a violation of law. By depicting the crisis within the contours of law-breaking, the bishops failed to make use of traditional categories within Catholic moral theology which would have contributed to a more detailed and accurate (and hence, more fully truthful) understanding of the problem. (At the same time, as I will explain at the end of this chapter, even these traditional categories fall short of complete accuracy.) The analysis begins in January, 2002, with
the *Origins* publication of a new update to canon law governing clerical sexual abuse of minors.

In late December, 2001, a short apostolic letter (published in *Origins* in January, 2002) “Sacramentorum Sanctitatis Tutela” (“Protection of the Holiness of the Sacraments”) was published by Pope John Paul II *motu proprio* (on his own initiative).\(^\text{18}\) This letter specified new norms concerning three serious offenses against the sacraments, and made provision for the Congregation for the Doctrine of the Faith (CDF) to take control over handling them. The offenses were not new (e.g., throwing away the Eucharistic species, or violating the seal of confession), but the procedures for investigation and judgment were now transferred to the apostolic tribunal of the CDF, and made “subject to the pontifical secret”\(^\text{19}\) (not available for outside review of any kind). The third of the listed offenses concerned the tragedy at the heart of a rapidly developing crisis: the sexual abuse of minors by clergy. It reads:

> A delict against morals, namely, the delict committed by a cleric against the Sixth Commandment of the Decalogue with a minor below the age of 18 years.\(^\text{20}\)

This letter explains a procedural change in canon law. It affected the bishops insofar as they now were compelled to refer clerical abuse cases to the Vatican rather than to a local tribunal (although the CDF might also then refer the case back). It is important to take note of this procedure in its context: the Holy See required the bishops

\(^{18}\) Joseph Cardinal Ratzinger and Archbishop Tarcisio Bertone, “Letter explains new norms for Vatican handling of certain grave offenses.” *Origins* 31, no. 32, January 24, 2002. An introductory editor’s note explains that this letter actually was dated May 18, 2001. It had been sent to all Catholic bishops and religious superiors at that time, but was obtained by the Catholic News Service only in December, 2001.

\(^{19}\) Ibid.

\(^{20}\) Ibid.
to respond to sexual abuse allegations on the basis of a canonical law violation, and moreover, to refer the cases immediately to the Holy See rather than addressing them ‘in house.’ Arguably, this move – a matter of legal definitions and procedures -- framed or set up the parameters of understanding the crisis from the start; it set constraints both for good and ill on the US bishops’ understanding and responses. At a fundamental level the language of Sacramentorum Sanctitatis Tutela summarizes a moral perception of the problem which will be echoed in ongoing American episcopal efforts to solve the crisis:

1. Clerical sexual abuse is understood as a discrete action.
2. The agent is a “cleric,” meaning any deacon, priest or bishop.\(^{21}\) The only reference made to victims stipulates their age: the canonical definition of “minors” has been altered to include all persons less than 18 years of age. Previously, canon law had defined a minor as a person under age 16.
3. Clerical sexual abuse is depicted in deontological terms, as the breaking of a moral law (“the Sixth Commandment of the Decalogue”).
4. Finally, depicted within the contours of the 6\(^{th}\) Commandment, sexual abuse of minors is understood as a sexual sin: the cleric has engaged in sexual relations outside of marriage.

As the year 2002 unfolded, investigative journalists, beginning with a team from the *Boston Globe*, narrated a painful and horrible history of tens of thousands of minors sexually abused by thousands of Catholic clergy from approximately the 1970s until the

\(^{21}\) Since the letter was sent to bishops, “clerics” for all intents and purposes means priests and deacons. Most abusers were priests, a small number were deacons, and allegations concerning (very few) bishops were based on incidents prior to a bishop’s taking up the episcopal office. Cf., National Review Board, “Executive summary: ‘John Jay’ study of the nature and scope of the clergy sexual abuse crisis,” *Origins* 33, no. 46, April 29, 2004.
present. Victim-survivors and their advocates came forward in almost all dioceses, and local and state prosecutors began to issue subpoenas and to convene grand juries. The crisis escalated so rapidly that by June, 2002, the United States Conference of Catholic Bishops (USCCB) developed a detailed procedure of response to any allegation of sexual abuse by clergy.

Entitled “Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons,” this policy received official Vatican approval in November of the same year. While Sacramentorum remained universal law for the entire church (including the US), the Essential Norms “constitute particular law for all the dioceses/eparchies of the United States.” These norms include procedures for removing credibly-accused priests and deacons, for establishing a majority-lay review board to conduct and monitor investigations of accusations, for complying with civil authorities and preventing reassignment of credibly-accused priests, for assigning penalties (most notably a zero-tolerance policy whereby a cleric is removed “where even a single act of sexual abuse is admitted or established’’), for protecting the rights of the accused, and for providing pastoral care to victims. The basic purpose of the Essential Norms is to detail and facilitate the canonical process of removing credibly-accused or guilty priests. Its companion document, the

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24 USCCB, “Essential Norms.”
Charter for the Protection of Children and Young Persons, established a means within the USCCB to respond to and monitor sexual abuse of minors by clergy.25

Like the Holy See’s earlier document, the Essential Norms document provides important, new details as to the enforcement of Canon 1395 of the Code of Canon Law. As such the Essential Norms are a part of canon law and represent the US church’s internal, legal (canonical) response to the problem of priests’ sexually abusing minors. The law itself, however, would not exist without a prior moral commitment of some kind, a moral commitment so urgent that laws are deemed necessary to enforce it. The Essential Norms helpfully provide a rationale for the fundamental moral commitment at stake, which justifies establishing these new canon laws. The sexual abuse of minors is located within the parameters of violation of the Sixth Commandment:

Sexual abuse of a minor includes sexual molestation or sexual exploitation of a minor and other behavior by which an adult uses a minor as an object of sexual gratification. Sexual abuse has been defined by different civil authorities in various ways, and these norms do not adopt any particular definition provided in civil law. Rather, the transgressions in question relate to obligations arising from divine commands regarding human sexual interaction as conveyed to us by the Sixth Commandment of the Decalogue. Thus, the norm to be considered in assessing an allegation of sexual abuse of a minor is whether conduct or interaction with a minor qualifies as an external, objectively grave violation of the Sixth Commandment. A canonical offense against the Sixth Commandment of the Decalogue (Code of Canon Law, Canon 1395.2; Code of Canons of the Eastern Churches, Canon 1453.1) need not be a complete act of intercourse. Nor, to be objectively grave, does an act need to involve force, physical contact or a discernible harmful outcome. Moreover, “imputability [moral responsibility] for a canonical offense is presumed upon external violation unless it is otherwise apparent.” (Latin Canon 1321.3, Eastern Canon 1414.2).26

25 In the Charter, the USCCB authorized the new Office for Child and Youth Protection, and established a lay National Review Board to better facilitate response to accusations, to monitor dioceses’ compliance with the Charter and with the Essential Norms, and generally to provide a structure of accountability to the entire US Church and the public at large. Cf., USCCB, “Charter for the Protection of Children and Young Persons,” Origins 32, no. 25, November 28, 2002, 409-414. The definition of “sexual abuse” in the Charter largely quotes and refers to the same definition from the Essential Norms.

26 USCCB, Charter for the Protection of Children and Young Persons, ‘Preamble.’ Quotation in the original.
By identifying the problem at hand as a “transgression of the Sixth Commandment,” the US bishops’ policy remained consistent with Catholic moral theology and universal canon law. At the same time, the move evoked strong responses critical of this definition, which appeared, to the critics, to limit the bishops’ concern and focus in the crisis to the errant priests. Confined within transgressions of the Sixth Commandment, formalized into positive canon law, the crisis appears to be one of problem priests only, and rather overlooks traumatized victims, shaken Catholic communities, morally upright but vulnerable priests (worried about due process under false accusation), and, significantly, the potentially culpable role of the bishops in the abuse itself – in other words, all those tragic and terrible developments which elevated the problem from scandal to crisis. Understanding the crisis as one of individual immorality -- priests’ violation of the Sixth Commandment -- appeared to fall quite short of the real scope of the problem. The real scope, to these critics, is one of broader institutional breakdown and communal failure, within which priests’ immorality played but one part.

In narrowing the moral depiction of the problem down to rule-breaking on the part of individual priests, the bishops’ early responses appeared to exemplify the deficient mindset of the pre-Vatican II confessional manuals.\(^27\) Singular attention given to

\(^{27}\) In a memorable nutshell characterization, Richard McCormick noted that preconciliar moral theology “was the stepchild of the Institutiones theologiae moralis of Genicot, Noldin, Prümmer, Aertnys-Damen, et al. Concretely it was all too often one-sidedly confession-oriented, magisterium-dominated, canon-law-related, sin-centered and seminary-controlled. In many books and articles Bernard Häring has excoriated this as “legalism.” Very importantly McCormick notes, however, that the practice of traditional moral theology also contained elements to balance and correct this “legalism”: “[O]ne must add qualifiers that provide perspective to each of these sweeping indictments. Thus: very pastoral and prudent, critically respectful, realistic, compassionate, open and charitable, well-informed.” Richard A. McCormick, “Moral theology 1940-1989: An Overview,” Theological Studies 50 (1989) 3-24, at 3-4. Since these latter qualities were frequently missing in the US bishops’ responses, the crisis itself could be
individual actions of wrong-doing “leads… to an approach to the moral life as discontinuous; ‘freezing’ the film in a jerky succession of individual ‘stills’ to be analysed, and ignoring the plot.”28 Such an understanding describes the moral life fairly rigidly within the contours of individual choices ordered to actions which kept or violated vows and rules. On this view the sexual abuse crisis is, fundamentally, about culpable agents’ delicts against the Sixth -- or, in traditional language, individual disorders leading to sins (the latter understood as a straightforward sort of law-breaking). As a result of not seeing the forest for the trees, so to speak, church authorities did not exhibit sufficient sensitivity either to the whole truth of the crisis, or to key contributions of persons other than abuser-priests. Thus a depiction of the moral theology of the pre-Vatican II manuals seems to apply: “[M]oral theology… has, indeed, almost domesticated and trivialized sin, like the scientist or zoologist handling deadly specimens with careless familiarity. And in attaching the element of sin so readily in the past to positive Church laws…, it has only helped to devalue the currency, and done little to engender and foster a healthy respect for real sin.”29


29 Mahoney, The Making of Moral Theology, 32.
2.2.1 A Narrowly-Defined Precept: Examples.

It would be unfair to characterize the US bishops’ responses to the crisis as totally blind to the reality of the victim-survivors, or callous regarding their welfare. Actual statements published in Origins during the first half of 2002 indicate some perception of the effect of abuse on the victim-survivors, who stand in need of healing. In this respect they reveal potential sensitivity towards toward the larger problem, and an awareness of elements in the equation besides ‘problem priests.’ I suggest, however, that this sensitivity was held in check by the narrow definition of the problem. While depicted in morally-condemning vocabulary (“heinous crime,” “unspeakable sin” and so forth), the problem remains focused on the act of molesting and the agents of that act. In the first half of 2002, bishops typically cast definition of the problem as a problem of individual sinful priests. If there is a crisis resulting from such scandalous behavior, it is a crisis of scale, i.e., many priests in many dioceses broke their vows of celibacy. Yet bishops tend to minimize even the crisis of scale by comparing numbers of clerical molesters to the larger population of Sixth-Commandment-abiding priests. Anthony Cardinal Bevilacqua of Philadelphia described the problem this way:

30 The narrowing of the perception of the problem to individual acts of abuser priests overlooks even the larger, richer and more complex treatment given to the Sixth Commandment in even such a basic and obvious text as the Catechism of the Catholic Church. Here, the prohibition of adultery clearly is placed in a communal context, e.g., “Sexuality affects all aspects of the human person in the unity of his body and soul. It especially concerns affectivity, the capacity to love and to procreate, and in a more general way the aptitude for forming bonds of communion with others… Chastity represents an eminently personal task; it also involves a cultural effort, for there is ‘an interdependence between personal betterment and the improvement of society.’ Chastity presupposes respect for the rights of the person, in particular the right to receive information and an education that respect the moral and spiritual dimensions of human life.” Catechism of the Catholic Church, nos. 2332 and 2344. Accessed at www.vatican.va.

Sadly and tragically, there have been cases of sexual abuse of minors by some priests of the Archdiocese of Philadelphia. Although the number of priests responsible for these actions is relatively few, even one act of abuse against a minor, whether by a priest or any other person, is to be condemned as a grave sin and a serious crime. Furthermore, each such instance of abuse by a priest is a heinous offense against the dignity of the human person and an affront to the sanctity of the priesthood.32

The statement goes on to explain the Archdiocese’s policy to respond to allegations, to screen candidates for the priesthood and to encourage all persons to be vigilant. A brief, vaguely worded paragraph in this section notes that the Archdiocese is making attempts and exploring possibilities for pastoral outreach to victims. No concrete measures for victims are mentioned other than “appropriate therapeutic counseling.” The statement concludes with the focus again on priests:

Among those adversely affected by reports of sexual abuse of minors by clergy are the overwhelming majority of dedicated priests who serve the Lord faithfully, day after day, tending to the spiritual and pastoral needs of those entrusted to their care. The criminal actions of some priests cast a pall of suspicion and uncertainty over all faithful priests… I wish to assure the faithful of the Archdiocese of Philadelphia that the priests who serve them are dedicated to their work and committed to their vocation in imitation of Jesus, our great high priest… Christ established the church to bring light, hope, healing and peace to the world. For transgressions against that work by a few, I am deeply sorry.33

Statements from many other bishops during the same period show similarities to Bevilacqua’s statement. Clerics have broken their vows of celibacy and have harmed the young; this action is a sin and moral transgression. As a result, the church’s credibility is threatened. At the same time, the majority of ‘real priests’ still effectively represent and reflect Christ the high priest. Bishops offered expressions of sympathy to victims;


33 Bevilacqua, “Restoring Trust.”
indeed frequently statements in 2002 were delivered in the form of an apology. Proposals for concrete remedial action, however, are cast in the form of weeding out offending priests and instituting protective policies. While ‘protective policies’ are meant to protect children from future instances of abuse, one might ask whether their ultimate purpose is to protect the remaining clerics (priests and bishops) from damaged reputations.

For example in a January 2002 letter to the Boston Archdiocese, Bernard Cardinal Law expresses the church’s concern to restore trust among Boston Catholics. He mentions the devastation of abuse, but speaks more concretely of the damage done to the church and to faithful priests.

The terrible tragedy of sexual abuse of children by priests has caused deep pain and profound suffering. Most traumatically and severely impacted have been the victims and their families. The failure of the archdiocese to protect one of God’s greatest gifts to us, our children, has been devastating. Trust in the church has been shattered in many cases. With God’s help we must strive to restore that trust.

In a profound manner, although it pales in comparison to what has been endured by victims and their families, all of the faithful have suffered. Faith has been shaken, and relationships of affection and trust between the faithful and clergy have been frayed in some cases...

Considerable damage has also been done to the hundreds of priests of this archdiocese who on a daily basis offer humble, generous, faithful and loving service to their people. These good and holy priests have been deeply wounded by the reprehensible actions of some of their number who sexually abused children, as well as by an archdiocesan response to such tragic incidents which, in retrospect, was flawed and deficient...

My acknowledgment, in retrospect, that the response of the archdiocese and me personally to the grave evil of the sexual abuse of children by priests was flawed and inadequate has contributed to this profoundly difficult moment in the life of this archdiocese and has affected the relationship between us.34

News releases at approximately the same time from Bishop Wilton Gregory, bishop of Belleville, IL and then-president of the US Conference of Catholic Bishops

indicate that bishops have met with victims and “have tried to reach out” to victims, families and communities. No further specification is made as to the content of meeting with and reaching out to victims. Accused priests, however, are being removed from ministry, “heightened seminary-screening processes attempt to identify and weed out unhealthy candidates for the priesthood,” and dioceses are creating lay-run boards to review accusations against priests. The type of attention given to priests, bishops (the “we” in whose name Gregory speaks) and the official ministries of the church leads the reader to wonder whether the speaker’s intention is to portray these as the true victims of the crisis.

I want to say a word about the more than 40,000 wonderful priests in our country who get up every morning to give their lives in full service to the church as witnesses to Jesus Christ in our midst. I am very saddened that the crimes of a few have cast a shadow over the grace-filled and necessary work that they do day in and day out for society and for the church. The priesthood is a unique treasure of our church, and I give you my assurance that we are doing everything to ensure that we have worthy and healthy candidates for the priesthood and to strengthen the many priests who faithfully fulfill their ministry on behalf of all of us.

While we deplore the sexual abuse of young people, especially that committed by a cleric, we are confident that the numbers of priests involved in such criminal activity are few. The damage, however, has been immeasurable. The toll this phenomenon has taken on our people and our ministry is tremendous. This is a time for Catholic people, bishops, clergy, religious and laity, to resolve anew to work together to assure the safety of our children. These events serve to remind us all that the cost of preventing these terrible misdeeds in the future is a careful watch that cannot and will not be relaxed. We bishops intend to maintain that watch together with and on behalf of our people.35

2.2.2 Framing the Larger Moral Picture.

Two items are worthy of note here. First, the definition of the problem only as discrete actions of abuse by agents of abuse appears to have framed attempts at resolving the crisis. (As a side note, I suggest that the term “sexual abuse,” even though it is a serious phrase, still rather euphemistically covers over the horrible actions of rape, groping, forced masturbation, psychological intimidation and the like perpetrated upon children and teenagers.) Admittedly, the terrain within this relatively narrow definition is itself fairly complex, and thus commands much attention. In his own analysis of official church responses to the crisis, Norbert Rigali notes a gradual evolution from the 1980’s until 2004 in the bishops’ understanding, “perceiving a priest’s sexual abuse of a child primarily as the priest’s moral weakness, sin, and (beginning in the later 1980’s) pathology… indeed a psychological compulsion as well as criminal behavior.”36 This observation echoes that of journalists who traced a parallel shift in social understandings of and attitudes toward sexual abuse during the same decades.37 US society as a whole, including the Catholic Church in the US, has been undergoing a necessary, if uncomfortable and disconcerting, education in the nature, prevalence, and effects of sexual abuse of minors. Yet in the case of the US bishops, the evolving grasp of sexual abuse still remained within the definitional framework of individual, delinquent priests’ wrong actions. This stands in contrast to clinical observation, social attitudes and, eventually, criminal laws which changed during this period to reflect an understanding of


sexual abuse as a systemic disorder with long-lasting individual and social effects, rather than an individual disorder manifest only in single acts of perpetration.

Secondly, my analysis of bishops’ statements in *Origins* adds an additional layer to Rigali’s: that by so circumscribing the crisis, the bishops effectively divide all clergy into straightforward categories of ‘good’ and ‘bad’. In so doing, they gather all offenders under the same umbrella without distinction as to the nature and extent of their offense, or (as I will examine below) their ecclesial punishment. Similarly, all non-abuser-clerics are grouped under the same umbrella without distinction made as to their structural contributions to the crisis. Notably missing is some kind of account of the larger, communal picture: how does the ecclesial and social order within the Catholic Church – from formal Church business to casual interrelationships – contribute either to internal harmony and flourishing (including faithful clergy) or to dysfunction (including offending clergy)?

The second point, then, concerns the larger moral picture. Rigali notes how a legalistic cleric characteristically responded to the crisis, as compared with a characteristic victim’s parents:

What, then is the heart of the difference between the clerical and the parental moral perception? In the former the evil of the sexual abuse appears simply as pertaining to the doer of the deed, the priest. It is the priest’s moral weakness and sin – a matter for psychological and/or spiritual counseling and for sacramental confession. In the parental perception, on the other hand, the evil is the harmful way in which persons are in relationship to one another. It is the harm the priest does to the child – a crime of one person against another and against the social order, a matter calling for justice for the victim, punishment and rehabilitation for the perpetrator, and redress of the community life. What is

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38 The term *sexual abuse of a minor* is very broadly defined [in the Charter] to include many very different kinds of acts and circumstances in which perpetrators are related to victims and to the social order in many different ways. The charter disregards these differences and perceives the variety of acts and their circumstances simply as generalized sexual abuse of a minor and prescribes a generalized punishment of permanent removal from ministry.” Rigali, “Moral theology and church responses,” at 202.
missing from the clerical perception and is of the essence of the parental perception is the presence of the other – the person affected by the doer – and of the community social order.\textsuperscript{39}

The larger moral picture, in other words, must include some account of the effect of sexual abuse on victims, on relationships between clerics and lay, and on the common good of church and society. This is precisely what seems to be absent in limiting the moral depictions of the crisis to “delicts against the Sixth Commandment.”

Or is it?

Rather, it appears that the Sixth Commandment itself does indeed provide an essential key to understanding the sexual abuse crisis properly. But in so interpreting the sexual abuse crisis, one must neither reduce the Sixth Commandment to a canonical delict or positive ecclesial law, nor reduce moral theology to canon law, nor reduce sin to an individual’s wrong action.

2.3 The Sixth Commandment as Moral Wisdom.

The Sixth Commandment,\textsuperscript{40} for all its brevity, contains profound moral wisdom and broad moral implications. For its original Hebrew adherents of approximately the 13\textsuperscript{th} century BCE the prohibition probably reinforced the community’s proscription of males’ engaging in sexual intercourse with betrothed or married females, for reasons “originating in the social and economic spheres as much in the religious and moral

\textsuperscript{39} Rigali, “Moral Theology and Church Responses to Sexual Abuse,” at 189-90. It is important to note that earlier Rigali qualifies his characterization in terms of “normal parents.” He implicitly acknowledges what clinical experts have long documented: that a large number of reports of sexual abuse of children concern abuse within families. According to the National Institutes of Health, about one third of sexual abusers of children are biologically related to the children they abuse. There are many parents who do not respond according to the typified ‘parental’ characterization given here. See http://www.nlm.nih.gov/medlineplus/childsexualabuse.html#cat57.

\textsuperscript{40} “You shall not commit adultery.” Exodus 20:14, NRSV.
aspects of society.” ⁴¹ For example, the prohibition would make it easier to be certain about the paternal line of descent. From this beginning, the Sixth Commandment expanded to symbolize Israel’s faithfulness (or not) to the covenant. ⁴² In the Christian era, from ancient times up to and including the present day (see the US episcopal documents under consideration) the Sixth Commandment was understood as prohibiting all sexual sins, approving sexual intercourse only for lawfully married couples, and thereby preserving the marriage bond. Without excluding the Sixth’s underwriting of these particular moral norms, however, one can also examine the Sixth Commandment more fundamentally. For example, St. Thomas Aquinas and his scholastic contemporaries analyzed the precepts of the Decalogue in a tri-fold way: in their fundamental sense as precepts of natural law, and as norms of the Decalogue, and as “precepts of a particular virtue, namely justice.” ⁴³ As Aquinas succinctly noted, “Now the precepts of the Decalogue contain the very intention of the lawgiver, who is God… [T]he precepts of the second table contain the order of justice to be observed among men, that nothing undue be done to anyone, and that each one be given his due.” ⁴⁴

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⁴² “Because adultery does appear in this foundational set of precepts, it is often alluded to when prophets charge Israel with violating the covenant… What may have originated in social and economic concerns becomes integral, for ancient Israel, to the notion of living in a covenantal relationship with God. The importance of the marriage bond is thereby given a sacral dimension.” Carol Meyers, *Exodus*, at 175-6.


Similar to its companion precepts (e.g., prohibitions against murder and theft), the prohibition against adultery expresses a fundamental moral norm of justice for human persons (“that each one be given his due”), who by their very nature live and interact together in social contexts (“the order of justice to be observed among men”). There are specific kinds of actions which express this fundamental precept. “In this case, the relevant paradigms [of behavior] are mostly negative rather than positive, and thus they represent a moral ideal negatively, as it were, by contrast with the paradigms of immoral behavior they present.”45 The Sixth Commandment prohibits agents from performing the action of adultery, a form of harm and violation of justice in the human community. Prohibiting harm, by its own logic, however, also promotes or upholds the protection of those who would be harmed by these prohibited actions. (The logical connection between fundamental prohibitions and the protection of potential victims will be pursued more closely in subsequent chapters’ discussion of human rights practices in the context of the crisis, but is worth noting here.) So understood in its fundamental rationale, the Sixth Commandment is considered binding and exceptionless, even though there continue to this day debates concerning which specific actions count as sexual sins. (I will not focus on the latter type of debate here.)

Fully to understand the Sixth in the context of the sexual abuse crisis, then, one needs to see it as expressing a basic wisdom prohibiting harms which persons could inflict on each other, and more positively, as providing divinely and socially approved support for a fundamental type of human relationship. The Sixth and its companion precepts

should be understood as expressions of our specific nature as social animals. Among the inclinations informing our lives as creatures of a specific kind, we experience inclinations to live together with others of our kind in accordance with a structured way of life – and this implies not only seeking the company of our conspecifics, but doing so in such a way as to respect the structures which make a common life possible. Expressed in terms of fundamental practical principles, these would be equivalent to the injunctions Aquinas mentions as per se nota starting points for moral reflection pertaining to our life with others.⁴⁶

So, while all healthy persons have the capacity to engage in sexual practices, they do not thereby act in a sexually-expressive way with any and all persons, anywhere and at any time. To do so would result in personal and social chaos: first in the form of harm to the victims (of sexual abuse) or to the directly betrayed parties (in adultery), and also to the common good (because the communal understandings about the ways in which specific community members interact have been disrupted). In the case of the sexual abuse crisis, this harm became manifest first in the physical, spiritual and psychological trauma of the immediate victim-survivors, and later in time (if simultaneously in the logical implications of such violations) in the collapse of trust of clergy by laity.

It is perhaps easier to see how the Sixth Commandment functions ‘on the ground,’ so to speak, by understanding this moral rule as a boundary or delineation, a rule “about who may do what and on which occasions.”⁴⁷ Medical and psychological professionals have noted that healthy boundaries support human flourishing, whereas too-permeable or too-rigid boundaries restrict, and in more extreme cases, severely damage human well-being. Persons behave in reliable ways conforming to the boundary: permissible behavior includes, for example, appropriate sexual activity between married persons and

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appropriate ‘dating behavior’ between singles of age, but excludes forms of casual sex, sexual exploitation or sexual violence. For example,

[i]f the father in a family should make a romanticized quasi-girlfriend of a favorite daughter, he would be violating two boundaries – the marital boundary, and the boundary of the parental subsystem. His behavior would constitute emotional exploitation of his child, whether father and daughter became involved in an overtly sexual relationship or not. In short, family boundaries may be thought of as the rules that determine who is within which subgroup within the overall system; that is, who can do what, and with whom, and on which particular occasions.

Thus a desirable and necessary social function highlighted in the Sixth Commandment concerns the shared, public knowledge that certain members of the community have an explicit sexual relationship with each other, exclusive of all others. The sexual relationship appropriate to marriage involves a variety of behaviors beyond the act of sexual intercourse; in this respect the definition of sexual abuse in the Essential Norms echoes the understanding of sexual exploitation offered by clinical therapists. The prohibition establishes a clear, but not rigid, boundary between mutually-committed persons who might engage in sexually explicit behaviors in private, and everyone else in the world. With this boundary in place, a variety of necessary human interactions are possible among all persons, as couples sexually-committed to each other also work, play and interact with others in the human community, as all human persons do. Within these larger, extra-marital interactions, sexual activity is kept off-bounds, and this results, for

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48 I focus here on sexually-expressive behavior because such actions triggered the sexual abuse crisis. The question of the inter-relationship between personal boundaries and the human need for touch is large and complex. Children in particular require appropriate touch in order to grow and prosper, and frequently receive this touch from a (more powerful) adult – hence the need to understand appropriate boundaries, the need for touch, and the responsibility to care for others by touching them appropriately. Cf., Cristina Traina, “Touch on Trial: Power and the Right to Physical Affection,” Journal of the Society of Christian Ethics 25 (1), 2005, 3-34.

49 Scarf, Intimate Worlds, at 311.
married persons, in preserving a key component of the marital relationship. For everyone else who is not a member of the married couple, the prohibition provides safety from the particular kind of community and relational disruption, and/or personal harm, that results when sexual boundaries are not appropriately observed. Especially in the case of married and religiously-vowed persons, the public vows offer the community a reliable guide as to these persons’ commitments, as well as the security that these persons will not be engaging with others in behaviors reserved to the spouse (or renounced for the sake of the Kingdom). Finally, because the Sixth Commandment is cast in the form of a prohibition, its moral weight is directed toward the prevention of the type of harms resulting from sexual sins. As much as the Christian community desires to support marriage and the married in a positive sense, on a very basic and fundamental level the community’s morality is expressed in a negative form, as a prohibition against something that causes harm.

The sexual abuse crisis in the Catholic Church resulted in part from an insufficient grasp of the breadth of harms caused by breach of this prohibition. As noted above, when the crisis is defined as a problem of abuser-priests alone – that is, a violation of positive law (in this case Canon 1395 of the Code of Canon Law) -- the remedy becomes rapid response to allegations and quick removal of these priests. When the Sixth Commandment as a basic moral norm becomes perceived as or reduced to positive law only, the response narrows to remedies within the confines of that law. But when the Sixth Commandment is seen through the lens of the law’s own moral grounding in the Decalogue, a far more serious view obtains. It is not enough simply to say that a moral norm has been violated: one needs to specify what it means when something so
fundamental as the Sixth Commandment is violated. In the sexual abuse crisis, this meant the violation of the basic humanity of thousands of underage victims.

Simultaneously – not as a ripple effect as it is so often described, but logically within the actions of abuse – communally understood and approved sexual boundaries also became unpredictable. The reality of the victim-survivors gave evidence to the church at large that the relational and sexual boundaries necessary to protect individuals and support a functioning community were unreliable.

Ironically, Pope John Paul II’s early characterization of the crisis as symptomatic of widespread sexual immorality in the US rings true. I say ‘ironically’ because John Paul’s characterization of the problem of sexual sin in the Catholic Church in the US drew upon his perception of widespread sexual licentiousness in American culture, and identified that as an underlying cause particular to the US. By limiting the depiction of the crisis to adults’ breaking vows (within a culture apparently fostering such vow-breaking), John Paul missed the opportunity to see the crisis from the perspective of the victim-survivors and the community. Without the unspoken, internal guarantee of relational safety provided by observance of the Sixth Commandment, the community naturally needed to take defensive measures – these defensive measures began reflexively, in suspicion towards and lack of trust in church authorities. The opportunity for the pope to explore from the perspective of fundamental moral theology why the Sixth Commandment undergirds healthy communities was, for that moment, lost – although the defensive reactions on the part of victim-survivors and their parents did convey (at least) an unconscious grasp of this basic moral tenet.

Catholics’ emotional reactions towards the crisis conveyed an enormous sense both of outrage and shame, and seemed to demonstrate the degree of harm which the violation of a fundamental moral norm causes the community. These reactions are conveyed by bishops, priests and laity alike.\(^{51}\) Indeed, this particular moral norm can be identified as ‘fundamental’ precisely because it carries within it an understanding of the basic point of morality itself.

In light of the widespread damage caused by violation of the Sixth Commandment, one can see with greater precision the shortcomings of the bishops’ concrete responses. Again, recall that canon law (the Code, Sacramentorum, and the Essential Norms), while grounded in the Decalogue, takes the form of positive laws directing the bishops to handle cases in a specified manner. The Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons do mandate “immediate pastoral care of persons who claim to have been sexually abused when they were minors by priests or deacons (Norm no. 3).”\(^{52}\) On the details of such pastoral care, however, there is little follow-up in the document itself. As its formal title indicates, the rest of the twelve Norms focus on the nuts-and-bolts of removing priests and deacons, including establishing a majority-lay review board, conducting an investigation, assigning penalties, protecting rights of the accused, and monitoring compliance. The details of the Essential Norms spell out the canonical

\(^{51}\) “The sustained media coverage, disillusionment and passion aroused by the sexual abuse crisis have no parallel in US Catholic history… All told the sexual abuse crisis and its ripple effects have become the single most important event in US Catholicism since the Second Vatican Council.” John T. McGreevy, “The sex abuse crisis: the view from recent history,” in Governance, Accountability and the Future of the Catholic Church, ed. Francis Oakley and Bruce Russett. New York: Continuum, 2004, at 137.

investigation, trial and judgment, with no specification or suggestion made as to what constitutes “immediate pastoral care” of alleged victims. The narrow moral perception of the problem – a cleric has broken a moral law – finds an echo in canon law.

But canon law itself does not mandate such a restrictive moral perception. Despite the few words given over to pastoral care of alleged victims, Essential Norm no. 3 does not actually restrict the bishops’ response to victims; they are free to interpret and implement this canon as widely as possible in order to provide proper pastoral care. Thus, Essential Norm no. 3 provides the space, so to speak, to address the widespread damage done to the community in the persons of the victims. While it rather unfortunately does not go into detail – surely greater attention to detail here would indicate a more profound grasp of the crisis and provide a more satisfactory response -- a codification of bishops’ responses to victims arguably is not needed. While canon law does describe the duty of a local bishop to show concern for all Christians in the diocese, 53 more fundamentally the very definition of bishop as pastor indicates that he provides meaningful pastoral care, especially to those most in need. Given the severe damage suffered by vulnerable children at the hands of church personnel, and by implication the damage to relational boundaries in the Catholic community, surely not to search for the very best and appropriate pastoral response, using all available resources, would constitute dereliction of duty and vocation. As is frequently the case in matters of law everywhere, situations arise where the law directs and guides, but does not prescribe

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53 Canon 383.1 In exercising the function of a pastor, a diocesan bishop is to show himself concerned for all the Christian faithful entrusted to his care, of whatever age, condition, or nationality they are, whether living in the territory or staying there temporarily; he is also to extend an apostolic spirit to those who are not able to make sufficient use of ordinary pastoral care because of the condition of their life and to those who no longer practice their religion. The Code of Canon Law, accessed online at www.vatican.va/archive/.
an exact response. A literal interpretation both of Sacramentorum and the Essential Norms keeps the focus of attention on the handling and removal of errant priests, with some awareness of the fallout on victim-survivors and the community, and few assurances about the nature and type of pastoral care the bishop might actually provide to them.

To this point I have documented and analyzed a narrow moral perception of the problem of sexual abuse in the Catholic Church, and argued that this perception fails to comprehend the larger moral reality. I suggest that the failure to address the whole picture, understood within the moral parameters of the Sixth Commandment, contributed to the breakdown of communal trust typical of this crisis. A moral theology which understands “the moral meaning of sexual acts primarily in their relation to clear-cut rules”\(^{54}\) keeps this whole moral picture at bay. At the same time, critics of my argument might point out that such clear-cut rules, if they had been kept properly and sufficiently, would have resulted in zero, instead of 13,000-plus, victims of sexual abuse by clerics. This indeed was one early response to the crisis – the simple assertion that priests should keep their vows. But such an assertion (along with its accompanying hypothetical depiction) both seems unrealistic in its grasp of the possibilities of human sinfulness, and also begs the question of the meaning of moral rules in the first place. Vow-keeping for celibates and the married is a derivative rule, whose foundation traditionally has been expressed in a fundamental prohibition. However, the prohibition exists in the first place because of human wisdom gained from the experience of and understanding of what it means for persons and communities to be sexually harmed. An additional layer of

\(^{54}\) Rigali, “Moral Theology and Church Responses to Sexual Abuse,” at 199 and 200.
reinforcement is provided by the locus of the Sixth Commandment in the Decalogue, thus underscoring the importance of observing this fundamental precept’s wisdom as a matter of the divine will for human communities.

Thus, while the characteristically pre-Vatican II moral theology provides some help in understanding and confronting the sexual abuse crisis, it requires additional depth to grasp the crisis completely. At the same time, the manualist moral theology (in which many bishops were trained and formed) might have offered, within its own limitations, a greater degree of precision than that actually forthcoming. For, while the crisis began with clerics’ actions of sexual abuse, it is not defined solely by these actions. Very quickly upon the 2002 newspaper investigations came the question of whether, or how, the bishops themselves (the vast majority of whom were not sexual offenders) might have contributed to the crisis. The next section explores episcopal culpability from the perspective of traditional Catholic moral theology, and, through an analysis of bishops’ statements, continues to draw the contours of a more sufficient moral response.

2.4 Episcopal Culpability.

Do the US Catholic bishops share in the guilt of sexually-abusive priests whom they (the bishops) placed in parish and other official Catholic ministries? There are (at least) two major ways in which this question has been addressed. One has examined the theology of the church (ecclesiology) and has noted practical deficiencies in current-day, institutional church operations, which themselves reflect in a structural way the theological understanding of the church’s hierarchical nature. Theologically the

55 Perspectives here note that practical (historical) ecclesial structures and lines of authority seem to derive their theological grounding from Chapter III (“The hierarchical nature of the church”) of Lumen...
Catholic Church connects the power conferred in the Sacrament of Orders with the tri-fold ministerial functions (*munera*) of sanctifying, teaching and governing. The Sacrament of Orders is fully conferred on a bishop in episcopal ordination, but by their own (priestly) ordination, priests share or participate in the bishop’s “fullness of power.”

This power exists ontologically in ordained persons, and is directed towards the three *munera*. “Bishops, with their helpers, the priests and deacons, have taken up the service of the community, presiding in place of God over the flock, whose shepherds they are, as teachers for doctrine, priests for sacred worship and ministers for governing… In the bishops, therefore, for whom priests are assistants, Our Lord Jesus Christ, the Supreme High Priest, is present in the midst of those who believe.”

Theologically, this power to teach, to govern and to sanctify is given only to the ordained. Its practical embodiment results in restricting official celebrations of sacraments, official church teaching, and the final responsibility for parishes and dioceses to bishops (and through bishops to priests and deacons). As I shall explore in Chapter Two, aspects of this theology, and ethical implications of its practical embodiment, have begun to be questioned and challenged in light of the sexual abuse crisis. At issue here are concerns

*gentium*, Vatican II’s Constitution on the Church. Although the very same constitution famously redefined the church first as mystery (chapter I) and secondly as the People of God (chapter II), along with the traditional church hierarchy (chapter III), these redefinitions were not reworked in an official way into the governing structures of the Catholic Church. Indeed, the traditional hierarchical ecclesiology seems to preclude such a reworking; thus theological advancements are necessary.

56 Vatican II famously reversed the pre-Vatican II idea that the power of orders was derived from all priests’ sacramental power to consecrate the Eucharist. The Sacrament of Orders, rather, does not derive its power from another Sacrament or the mission of the church, but is identified with episcopal ordination. “[B]y Episcopal consecration the fullness of the sacrament of Orders is conferred, that fullness of power, namely, which both in the Church’s liturgical practice and in the language of the Fathers of the Church is called the high priesthood, the supreme power of the sacred ministry. But Episcopal consecration, together with the office of sanctifying, also confers the office of teaching and of governing…” *Lumen gentium*, chp. III, para. 21, accessed at [www.vatican.va](http://www.vatican.va).

about the type of church culture, and particular structures of wielding power in day-to-day matters, which foster communal dysfunction and set the stage for a crisis of this magnitude. These questions are valid ones, and take seriously institutional contributions to the crisis.

The present section’s concerns are somewhat more direct, asking the question from a different perspective. That is, are there persons besides the abuser priests who also share some measure of moral responsibility for sexual abuse of minors by clergy? If a bishop assigned a priest to ministry, and that priest during the course of his ministry sexually abused minors, is the bishop culpable in some way for that abuse? When, in 2002, the US bishops first publicly acknowledged their own part in the crisis, their statements reflect an awareness of individual episcopal culpability, for which they repented. Generally, they themselves do not engage broader questions of institutional ethics and Catholic Church culture; these issues appear in Origins almost exclusively as documents authored by lay persons. Concerns of the bishops include the response (or failure to respond) to allegations of past and present abuse within their parishes, as well as the action of assigning at-risk priests to ministry.

58 In some cases, abuser-priests were not newly assigned, or reassigned, but rather allowed by the bishop to remain in their ministerial assignments. In all these cases, the point is that the authority of the bishop provides the official approval for priests to engage in ministry.


2.4.1 Culpable Material Cooperation.

In a moral analysis of the crisis up to and including the watershed events of 2002, Stephen Pope highlighted an early, pre-Essential Norms response: “exculpatory strategies” based on assertions of ignorance about the nature of sexual abuse and proper treatment of abusers. Most of these strategies used the excuse of some level of ignorance about the scope and extent of the problem. It is true that the twentieth century witnessed a sea change in prevalent understandings of and responses to sexual abuse.

Typical cultural attitudes earlier in the century might either suppress overt knowledge of abuse (a ‘sweep it under the rug’ approach), or infamously take a ‘blame the victim’ approach. However, by the last quarter of the century, the US civil and criminal codes had been altered to protect citizens from predatory abusers, and even the USCCB adopted (in response to growing evidence of clerical sexual abuse) “Five Principles” for diocesan response to allegations.

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61 “One approach reads: ‘As bishop, it is my responsibility to ensure that our parishes be safe havens for children. I acknowledge that, albeit unintentionally, I have failed in that responsibility.’ A second is that certain predatory priests were able to continue in ministry because of ‘inadequate record keeping’, the blame for which lies with ‘those who deal with clergy personnel’ (i.e., not the Ordinary). A third exculpatory strategy communicated in the plural rather than in the singular. Sorrow was expressed for ‘our mistakes’ in the plural but never in the first person singular. A fourth tack explained mistakes as due to an excessively narrow perspective: ‘we’ were ‘too focused’ on ‘individual components of each case’ and should have been ‘more focused on the protection of children.’ All of these strategies claimed moral innocence on the grounds of good will. Stephen Pope, “Accountability and sexual abuse in the United States: Lessons for the universal church,” Irish Theological Quarterly 69 (2004), 73-88, at 76.

62 “From the mid-1970s, the problem of child sexual abuse, whether in families or in institutions, began to generate public concern. Government hearings and studies, new psychological research, and in some states mandatory reporting laws reflected a new awareness that abuse was far more widespread than previously believed, that its effects could be extensive and lasting, and that perpetrators were not necessarily dirty old men skulking around school yards or snatching children into alleys. Perpetrators could be respectable citizens, family friends, educators – even clergymen. Peter Steinfels, A People Adrift: The Crisis of the Roman Catholic Church in America. New York: Simon & Schuster, 2003, at 47.

63 The Five Principles adopted in June 2002 were: “(1) Respond to allegations promptly. (2) Immediately suspend anyone reasonably suspected, while proceeding with an investigation and making use of ‘appropriate medical evaluation and intervention.’ (3) Comply with civil law and cooperate with criminal investigations. (4) Reach out to victims. (5) Deal with the issue ‘as openly as possible.’ A year later, after sponsoring further exchanges with victims and experts, the conference formed a special Ad Hoc
So, by 2002, the bishops could not culpably excuse themselves on the basis of ignorance about sexual abuse – and as the highest authority in their dioceses they could not excuse themselves on the basis of ignorance of the law. The exculpatory strategies collapsed under their own irrelevance and sheer inability to stand up to common sense on the one hand, and the bishops’ own 1992 record of response on the other. By 2002 it could be fairly charged that “[s]ome bishops appear guilty of… voluntary ignorance: either they did not consider what they ought to have considered, perhaps out of institutional myopia, and/or they did not know what they ought to have known... The former suggests a lack of care, the latter a severe lack of good judgment.”

Eventually, some civil authorities held bishops legally liable for these failures of knowledge, action and judgment. For example, in May, 2003, a grand jury reported on this matter in the Diocese of Phoenix:

A Maricopa County grand jury is investigating and considering information relating to criminal sexual misconduct by diocesan personnel including, but not limited to, the criminal conduct of individual priests. The grand jury has also been investigating whether [Bishop] Thomas J. O’Brien or the diocese failed to report to law enforcement authorities criminal sexual misconduct by priests and other diocesan personnel, and whether Thomas J. O’Brien or the diocese placed or transferred priests or other diocesan personnel in or to a position to commit additional criminal conduct after becoming aware of prior criminal conduct...

During the course of the grand jury’s investigation, to this date, no credible evidence has been received that would establish that Thomas J. O’Brien personally engaged in criminal sexual misconduct. However, the investigation developed evidence that Thomas J. O’Brien failed to protect the victims of criminal sexual misconduct of others associated with the Roman Catholic Diocese of Phoenix.

Committee on Sexual Abuse to address the issue and fill out the Five Principles.” Steinfels, A People Adrift, 48.

64 S. Pope, “Accountability and sexual abuse,” at 78.

65 “Statement on agreement with Maricopa County attorney and agreement of Bishop Thomas O’Brien, Phoenix Diocese and Maricopa County Attorney,” Origins 33, no. 5, June 12, 2003, 68-71, emphasis added.
The response by Bishop O’Brien was an assertion of good intention and personal innocence:

Is it possible to second-guess decisions that have been made… yes. Hindsight is 20/20. Have a committed a crime… NO. Many of the allegations date back to the 70s, before I was bishop. We did our best then and we are doing our best now to ensure that the children in our schools and churches are safe.

It was never my intention to obstruct or interfere in any way. I certainly never intentionally placed a child in harm’s way. To suggest a cover-up is just plain false. I did not oversee decades of wrongdoing.

The problem of sexual abuse is complex and has plagued every aspect of our society for decades. This is not a problem unique to the Catholic church.66

At this point in time, other prosecutors were beginning to notice that such assertions of good will and good intent did not negate or minimize culpability for assigning known abusers to ministerial positions. Similar prosecutions unfolded in other parts of the country. In Manchester, New Hampshire, the diocese similarly was found guilty of endangering children and not reporting allegations to civil authorities -- crimes related to but defined separately from actual sexual abuse by offending clerics:

Whereas, in light of the documents produced, the testimony obtained and the nature of the elements which are required to be proved to establish a criminal violation of the New Hampshire child endangerment statute, RSA 639:3, I, the diocese acknowledges that the state has evidence likely to sustain a conviction of a charge under RSA 639:3, 1, against the diocese… The Diocese of Manchester acknowledges that certain decisions made by it about the assignment to ministry of priests who had abused minors in the past resulted in other minors being victimized. Accordingly, the Diocese of Manchester has published and is implementing a policy that no person who is known to have abused a child will either continue or ever be placed in ministry.67

66 Bishop Thomas O’Brien, “Statement on agreement with Maricopa County attorney.” Origins 33, no. 5, June 12, 2003, 68-71. Emphasis added. Rather than seek prosecution, the Maricopa County attorney worked out an agreement with O’Brien (as the chief authority in the diocese) for the county prosecutor’s office to monitor internal diocesan practices and policies regarding the protection of children and youth.

These examples enlarge the definition of the problem, from individual instances of abuse (which carried their own legal and moral consequences), to the institutional context within which the abuse occurred. At the same time, they highlight the reality that the actions of certain non-abusers, while not being sexually-abusive actions per se, still contributed to and made possible the direct sexual abuse of minors by clerics. Indeed, these examples illustrate how the personal intentions of the one making pastoral assignments (i.e., the bishop deciding and intending to assign a priest to ministry) do not alter the definition of the whole action (i.e., sexual abuse of minors). Assigning a credibly-accused priest to ministry, even with the best of intentions for that priest’s behavior and the protection of children, constitutes a wrongful (and even criminal) action. In this way, and separate from other distinct actions contributing to the overall crisis (like warding off press inquiries and refusing to speak to families of victims), bishops hold moral responsibility for specific actions of abuse, which they themselves neither directly did, nor wanted.

Traditional moral theology from the centuries prior to Vatican II possesses the resources to make precise distinctions identifying the degree and nature of individual guilt or innocence in moral cases involving different contributions from different agents towards an action. Evolving over centuries of confessional practice at least since the Council of Trent, traditional moral theology trained confessors to hear and judge confessions – rather than ethics professors to teach and publish -- and addressed the urgent need to know the degree and type of moral culpability (so that the appropriate penance could be assigned, and the guilt of the penitent absolved). Rigali identifies a major shortcoming of this moral theology which likely informed episcopal responses to
sexual abuse allegations: since understandings of the natural law had been stripped from a holistic theological-spiritual, scriptural and rational context, the commandments of the Decalogue were grasped as straightforward, determinate laws rather than fundamental moral concepts. The end result: “moral theology was related directly and explicitly to canon law rather than to Scripture, dogmatic theology and spirituality and was accordingly fitted to a legalistic presentation of Christian life.” However, I suggest that if that old moral theology had been applied according to its own rules for discernment of culpability, it might have provided a valuable resource for understanding and making distinctions among the many morally-relevant actions of Catholic Church personnel. (Ironically, this is what was already going on “legalistically” as part of the American civil prosecution of bishops for endangering the welfare of children.) As part of an intra-ecclesial ‘examination of conscience,’ so to speak, traditional Catholic moral theology might have provided a basic level of clarity regarding episcopal cooperation in the sexual abuse of minors, and whether or not that cooperation incurs moral guilt.

Much of the literature on material cooperation treats the question of the permissibility of actions good or morally-neutral in themselves, done with good intent, yet also contributing directly to another’s sin. Such actions may be considered permissible with sufficient cause, for which the chief safeguards against undue permissiveness are proportionate reason, the principles of justice and the ordering of actions to the common good. It is essential first to understand correctly the specific

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68 Norbert Rigali, “Moral Theology and Church Responses to Sexual Abuse,” at 191.

69 An example from more recent times includes the US bishops’ allowing HIV-infected couples to educate themselves on the use of prophylactics to contain the disease; they publicly disapproved of artificial contraception -- i.e., using a prophylactic to prevent conception -- but, in order to “safeguard life and protect the common good,” opened the door for married couples to consider disease-blocking strategies other than total abstinence. Cf., James F. Keenan, SJ. “Prophylactics, toleration and cooperation:
action undertaken, by identifying the object of the action. In the cases considered here, the bishops’ action (object) is the assigning of priests to ministry. This action generally is not only good in itself, it is in fact one of the principle ways in which the bishop exercises his ministry of governance, and by which the ecclesial community receives sacramental grace. No priest can perform ministry in a diocese, or take up residence in a parish rectory, without explicit permission of the local bishop.

But the sexual abuse crisis made the church painfully aware that even this good-in-itself object of the act of assigning priests also directly made possible sexual abuse of minors by some priests, in at least two ways. One way is in the nature of ministry itself: ministry makes possible proximity to minors. Keeping a distance between sex offenders and minors prevents incidents of abuse. (Thus it is common in the US for convicted sex-offenders to be forbidden by law, upon their release from prison, to reside within a certain distance of schools.) Another way concerns the definition of a priest: a bishop does not (and is forbidden in canon law to) assign an unqualified person to priestly ministry. The assignee first must be qualified by screening, training, recommendation and sacramental ordination for the post. By their own 1992 studies and principles, the bishops knew that priests with a history of ‘delicts against the Sixth’ should not be assigned to any ministry involving children and families.

Such accuracy was the aim of post-Trent, pre-Vatican II Catholic moral theology. The inherent challenges of discerning licit from illicit material cooperation demanded skilled handling. As the moralist Henry Davis noted,

In estimating the sufficiency of the excuse for material cooperation, we must consider the spiritual character and needs of another, our relations to him, what and how great is his offence against God, the harm that may accrue to a third person, the public harm likely to ensue, how close the cooperation, how indispensable it may be. So many factors enter into all the questions of material cooperation, that only the most general principles can be laid down. Great varieties of opinion, therefore, on any given case except the most obvious, are inevitable, and there is no more difficult question than this in the whole range of Moral Theology.  

What is at issue in the sexual abuse crisis is not whether the assigning of an at-risk or credibly accused cleric might be permissible. Given the potential risk of severe harm to persons and the common good (a risk understood by the bishops and forbidden by civil law), such an action of assigning could never be considered morally permissible. As examined in the previous section, sexual abuse causes a type of harm (both to direct victims and to the social group in which the victim and perpetrator have membership) for which it is very difficult (if not impossible) to imagine any permissible situation. Rather, the principle of material cooperation functions here to identify and define precisely the moral culpability of the bishops. Davis’ list of factors is telling, for it calls attention to the fact that many human actions occur in a relational context, not in the proverbial vacuum. “The greatest contribution of the logic of cooperation is its recognition of an individual’s practical inextricability from the society in which she functions.”  

The bishops themselves did not engage in formal cooperation (“in which one willingly assists or encourages another in a clearly evil action, and really intends and approves of it”).

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72 Traina, “Oh Susanna,” at 382.
Yet their material cooperation can be seen as mediate (“an act that is secondary and subservient to the main act of another”\(^{73}\)) and proximate (“if the help given is very intimately connected with the act of another”\(^{74}\)). Insofar as the action of assigning occasioned the sin of sexual abuse, the action of assigning violated the common good. This is the moral rationale behind the civil law holding not only bishops, but also (for example) school principals or athletic directors responsible for preventing the assignment of sex offenders or any at-risk personality as teachers or coaches. As Stephen Pope observed,

‘Good faith’ can only be claimed when all the proper objects of one’s will are taken into account… Caring less than one ought is a form of negligence that constitutes a failure of good will… If I was doing my best, how could I have been morally guilty, rather than just mistaken? That is the nub of the issue here. Acting in ‘good faith’ does not encompass only the agent’s private good and that of his friends and co-workers. Good will is oriented to the common good, and when it is not so oriented it is *ipso facto* disordered… This is clearly a lesson of the parable of Lazarus and the Rich Man (Lk 16:19-31), and it clearly applies to bishops who ‘walked by’ innocent victims of sexual abuse.\(^{75}\)

2.4.2 The Bishops Apologize.

In an earlier section, I analyzed the moral perception of the sexual abuse crisis within statements issued by US Catholic bishops. Most problematic in earlier responses to the crisis was a moral perception that narrowed the difficulty down to individual acts of abuse by priests, and subsequently focused on the direct agents of the acts according to canonistic-legalistic definition. My analysis of documents from 2002-2007 indicates that

\(^{73}\) Davis, *Moral and Pastoral Theology*, at 341.

\(^{74}\) Davis, *Moral and Pastoral Theology*, at 342.

\(^{75}\) S. Pope, “Accountability and Sexual Abuse,” at 79-80.
this moral perception received some helpful expansion during this later time period, as
the bishops began to articulate a sense of their cooperation in the crisis. The Charter for
the Protection of Children and Young Persons, and its companion canonical document,
the Essential Norms, not only promulgate and implement measures to protect young
persons, they also hold the bishops to pastoral sensitivity toward victims and fraternal
correction of one another. At their historic meeting in Dallas in 2002, the bishops
appeared ready to admit and apologize for their own contribution to the sexual abuse of
the young. Acknowledging that a “crisis without precedent” in the US church has arisen
from sexual abuse of children and an atmosphere of “secrecy,” the bishops “apologize for
grave harm, … offer victims “our help for the future,” “commit ourselves to pastoral
outreach,” and “pledge ourselves to act in a way that manifests our accountability to God,
to his people and to one another in this grave matter.”76 The bishops were aware of “our
need to be in dialogue with all Catholics, especially victims and parents,” and were
committed “to do all we can to heal the trauma” of victim/survivors and “the wound that
the whole church is experiencing.”77 When the much-needed measures to protect
children were put into place in 2002, the USCCB president concretely named the
bishops’ failings in a speech famously modeled after the Sacrament of Reconciliation and
Penance.

We are the ones, whether through ignorance or lack of vigilance or – God
forbid – with knowledge, who allowed priest abusers to remain in ministry and
reassigned them to communities where they continued to abuse. – We are the ones
who chose not to report the criminal actions of priests to the authorities because
the law did not require this. – We are the ones who worried more about the

June 27, 2002.

77 US Catholic Bishops, “Charter for the Protection of Children and Young People.”
possibility of scandal than in bringing about the kind of openness that helps prevent abuse. – And we are the ones who at times responded to victims and their families as adversaries and not as suffering members of the church.\textsuperscript{78}

This language and the framing of the problem contrast remarkably with pre-2002 statements issued by a number of bishops who denied cooperation in the crisis, and/or minimized the damage inflicted by sexual abuse.

Ironically, however, statements and even the very policies put into place after bishops publicly implicated themselves as contributors to the crisis continue to illustrate the same fundamental moral perception from the early stages of the crisis. The problem as described remains the act of sexual molesting by priests. Newly developed are the priorities of taking complaints seriously, and the investigation of alleged offenders. Yet the moral evil continues to be perceived within the discrete actions of sexual sin. By this logic, the reversal of attitude on the part of the bishop (investigation, rather than protecting alleged perpetrators; listening to, rather than rebuffing, alleged victims) simply implies that the bishops are trying to distance themselves from, or reject altogether, their roles as cooperators (knowing, or unknowing) with sexual abuse by priests. It appears that the basic definition of the problem remains intransigent, as an examination of bishops’ apologies from 2002-2007 demonstrates.\textsuperscript{79}

Apologies are important because they convey moral meaning, and surely one of the worst tragedies emerging from the already-tragic news of the victims of sexual abuse

\textsuperscript{78} Bishop Wilton Gregory, “Presidential Address Opening Dallas Meeting of US Bishops,” emphasis added.

\textsuperscript{79} This intransigency shows up an inherent weakness in pre-Vatican II moral theology, examined at the start of this chapter. In traditional terms, the assigning of a priest is understood as a good act; cooperation in evil occurs when a bishop knowingly assigns an unqualified priest to this post. But, as I will explore in subsequent chapters, there are reasons to question the inherent goodness of the action as so described.
was the sense that the bishops did not grasp the moral depth of the problem. Somehow, offering a sincere apology (a tack largely rejected by US bishops prior to 2002) changes this picture. Why is this so? Legal scholar Nick Smith has identified many reasons, among them an acknowledgment of harm (which itself leads to understanding the full scope of the problem that led to the apology), an acceptance of blame and an explanation as to why certain actions were wrong. Perhaps more important in the ecclesial context than even ‘getting the facts right,’ an apology begins a process of restoring a relationship – a process made possible by the shared and accepted values conveyed in the apology.

[The victim] can begin or resume a relationship based on these shared values. The offender also treats us differently at the most fundamental level when she apologizes to us: instead of viewing us as an obstacle to her self-interests, we become a person with dignity. If the apologizer regrets her actions and promises not to repeat them, we can take some security in the hope that she will not harm us again. This provides a reason to trust the offender and may be terribly important if she is someone for whom the victim cares deeply.80

Additional moral meaning is conveyed in the ways the offender honestly seeks to relieve and heal the offended for having been injured, including pursuing justice.

Stephen Pope’s study of the bishops’ “exculpatory strategies”81 prior to 2002 made note of probably the most prominent ‘apology’ prior to 2002: the “ambiguous apology.”82 The content of these statements is rife with ambiguity, and indeed appears to convey the internal confusion of the bishops. Bishops appear baffled to be so criticized for a problem they inherited from their predecessors or other diocesan personnel, or for

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81 Pope, “Accountability and sexual abuse.”

82 Smith, *I Was Wrong*, at 142.
which they were already seeking help, or which they never ‘intended’ as they governed their dioceses.

Some bishops attempted to communicate regret without actually going so far as to apologize for moral guilt. These bishops did not issue a clear, resounding, unambiguous admission of personal moral guilt... without an admission of wrongdoing it is impossible to know the content or purpose of the apology. What was it for, exactly? Was it about behavior or attitudes? Consequences of policies or their improper execution? Defective judgments or malice?"  

After June 2002, bishops’ language demonstrates a different manner of apologetic tone and speech. Here the apologies are not inscrutable or completely ambiguous; nor do the bishops refrain from making them. However, they continue to keep the perspective of the problem narrowly focused. A paradox is at work here: many apologies employ apologetic-sounding language in a way which actually displaces blame from the bishops themselves. So, even while utilizing the language of regret, sympathy and proposed responsive action, many of these statements still cannot be considered full-fledged apologies.  

Bishop Gregory’s speech cited above notably stands out insofar as it points towards episcopal vices (ignorance, worry, antagonism) as causal factors in the crisis. However, even this statement is remarkably general, since it groups all bishops together into an anonymous “we” and continues on to propose programs to correct priests’ actions -- not bishops’ formal cooperation, lack of virtue and poor judgment.

This way of apologizing contrasts with the robust, categorical apology defined by Smith. A categorical apology generally consists of: details of salient events including identifying all harms, accepting moral responsibility for harm, commitment to moral

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83 S. Pope, “Accountability and sexual abuse,” at 77.

84 I refer here to the robust form of categorical apology delineated by Smith in Chapter 7, “Varieties of Apologies,” Chapter 7 in I Was Wrong, 140-152.
principles violated in the harm, recognizing the victim as possessing human dignity and moral agency, categorically regretting the action, expressing the apology directly to the one harmed, reforming behavior and refraining from repeated harmful actions, intending the apology to help the victim (rather than letting the apologist ‘off the hook’), and personally experiencing appropriate guilt, sorrow and sympathy. The parallels of a categorical apology with the requirements for an authentic confession in the Sacrament of Reconciliation are noteworthy: the penitent must accept guilt for offenses, identify them by number and kind, express true contrition, and take up a penance designed to promote healing of injuries and relationships. Also, a robust apology shows obvious compatibility with regret for violation of a fundamental moral norm as basic as the Sixth Commandment, properly understood. Bishop Gregory appeared to be off to a good start, but ended with an insufficient expression of contrition.

The most common form of apology running through 2007 appears to be the “expression of sympathy” which “admits no wrongdoing, but instead offers condolences or sympathy.” While invoking poignant language, the apologizer yet avoids taking “personal blame for the wrongdoing,” usually by not identifying with precision his culpable role in causing the harm. Only superficial connections are made to the moral principles at hand. For example, in the November 2002 version of the Charter for the Protection of Children and Young Persons, the USCCB notes mistakes and failures, and

85 Smith, I Was Wrong, 140-42.
86 N. Smith, I Was Wrong, 146-8.
87 N. Smith, I Was Wrong, 141.
88 The November 2002 version of the Charter was the final draft which received the approval of the Holy See.
even mentions a causal factor (secrecy); however, these mistakes are “past,” and the sexual abusers are few in number. Gone are precise descriptions of personal episcopal ethics; it is not clear how or why the bishops failed:

The sexual abuse of children and young people by some priests and bishops and the ways in which we bishops addressed these crimes and sins have caused enormous pain, anger and confusion. Innocent victims and their families have suffered terribly. In the past, secrecy has created an atmosphere that has inhibited the healing process and in some cases enabled sexually abusive behavior to be repeated. As bishops, we acknowledge our mistakes and our role in that suffering, and we apologize and take responsibility for too often failing victims and our people in the past. We also take responsibility for dealing with this problem strongly, consistently and effectively in the future. From the depths of our hearts, we bishops express great sorrow and profound regret for what the Catholic people are enduring.89

The above selection raises huge questions which the bishops do not address. Why did the bishops fail their people? In what precise ways did they fail them? Who takes responsibility for secrecy? Saying that “secrecy has created an atmosphere” rather embarrassingly blames “secrecy” for the problem! What personal or institutional causal factors contributed to the bishops causing pain and confusion? What and how were they thinking/feeling at the time? Why such a destructive response to an already destructive situation?

Some apologetic expressions of sympathy appear to be well-meaning but misplaced attempts to move beyond the present difficulty, without examining any causal factors other than priest-personnel and child-protection policies. The following examples

are oriented toward future healing, and lack discussion of responsibility for causing past harm.\textsuperscript{90}

Over the past several years, I have had the opportunity to meet with some of you to listen to your anger, your hurt, and your sense of betrayal. This has touched my heart and left me struggling to know how best to help you heal. As the diocese enters the process of reorganization, again I think of you with concern and with a longing to restore your trust and heal your hurt. To each of you I extend my deepest personal sorrow, and I communicate to you the sorrow of all the people of the church of the Diocese of Tucson.\textsuperscript{91}

The sexual abuse of children by anyone is wrong. It violates the very foundation of love and trust that is at the heart of our church. Choosing to ignore these horrendous acts against children is also a violation of love and trust. I continue to apologize for the harm done to children and their families that was caused by the sexual abuse of some priests in the diocese of Davenport decades ago. No amount of apology is enough. My apology remains sincere.

During my ordination as bishop, I resolved myself to show kindness and compassion in the name of the Lord to the poor and to strangers and to all who are in need. My concern must always be for the victims of abuse who are in need of the healing grace of God.\textsuperscript{92}

[The bishops] are aware that they have to pray that forgiveness will be forthcoming for whatever mistakes were made in the name of the church for the misdeeds perpetrated by its representatives. We are all sorry for what has happened. We are sorry for the damage that our inadequate decisions have caused. I know that I am sorry for what has happened here in our archdiocese, and I expect that I will carry that sorrow with me to the grave.\textsuperscript{93}

In these expressions of sympathy, we do not know if the bishops have really caused the sexual abuse crisis, either \textit{in toto}, or by isolated causal factors. Use of the

\textsuperscript{90} In an interesting example, the 2003 case of the Archdiocese of Cincinnati illustrates the morally puzzling arrangement whereby the archbishop did take full “responsibility for failing to report sexual abuse” in a no-contest plea; at the same time the archdiocese also was allowed to “not admit to committing the crimes, which are a fourth-degree misdemeanor.” On File, \textit{Origins} 33, no. 26, December 4, 2003.


passive voice and plural person constructions contributes to obfuscation regarding who is responsible and how they culpably caused something terribly wrong. Identifying cover-ups and lies and failure/refusal to respond as “whatever mistakes” and “inadequate decisions’, as Pilarczyk does in the third example above practically re-draws the entire moral picture. The USCCB Charter acknowledges some kind of failing and third-party contribution, but stays well away from admissions of direct guilt, such as, “we bishops knowingly reassigned sex-offenders to roles where they would be in direct and unsupervised contact with children,” or, “we bishops tried our utmost (including going to court) to prevent release of diocesan records detailing crimes of priests against children.”

The first two block quotes above (from the Tucson and Davenport bishops, respectively) are expressions of sympathy but assume a cushion of innocence because the actions of abuse occurred before the speakers became bishop. Affirming the personal innocence of these particular bishops in matters which occurred before their terms, one must still raise the question of the role of the office of the bishop in the sexual abuse crisis.

In all cases these sympathetic statements do not precisely or specifically commit the speakers to any particular type of change or reform. The speakers remain free within themselves to decide what to do – the USCCB decided to promulgate child-protection policies, and the other bishops appear to have decided to show some (undefined) form of kindness and compassion. None of the statements indicates what victims want, or what justice (of which the Sixth Commandment is a natural-law precept) demands – thus the responses on the part of the bishops above come across as free and gratuitous gifts rather than as obligations of justice. Smith notes that we often express sympathy in a way which does not imply personal responsibility for a wrong. In avoiding talk of personal
responsibility, the moral meaning of these expressions remains at the level of sympathy, not culpability.

I might offer a grieving grandchild gifts of mourning such as flowers and [a] judge might send [a] convict away with a few of her favorite books to her pass the time [in prison] productively, but we ordinarily think of such gestures as a kind of gift rather than a form of compensation. We do not consider a debt owed. Likewise, I have no reason to reform if I have done nothing wrong. For this reason we should take little security from either kind of expression of sympathy. In the case of categorical apologies, we know that the offender caused our injury and has committed to forbear from reoffending. We can then identify the cause of our suffering and have some assurance that the offender will not do it again… An expression of sympathy alone offers little justification for restoring trust between the victim and offender if it has been breached.\(^\text{94}\)

Indeed, given the slipperiness of the word ‘sorry’ in our language – its capacity to be conflated with a variety of meanings, and to be exploited to mean more than the speaker really wants to commit to – Smith advocates saying not ‘I am sorry’ in an apology but rather ‘I was wrong.’ The latter phrase brings a greater measure of clarity and precision, and makes possible a deeper dialogue into the causal factors of the injury.

Perhaps most insidiously, if causal factors originating with a bishop are not addressed, what is to prevent crimes from continuing to occur? An apology in early 2002 made by Bernard Cardinal Law appears sound on the surface, but problematic when compared to public knowledge of Law’s history of reassigning abusers.

At the outset I apologize once again to all those who have been sexually abused as minors by priests. Today that apology is made in a special way with heartfelt sorrow to those abused by John Geoghan.

There is no way for me to describe the evil of such acts. All sexual abuse is morally abhorrent. Sexual abuse of minors is particularly abhorrent. Such abuse by clergy adds to the heinous nature of the act. It affects a victim’s relationship to the church. A child’s ability to trust is shattered by such abuse, and self-esteem is damaged…

\(^{94}\) N. Smith, I Was Wrong, 147.
Here in this archdiocese I promulgated a policy to deal with sexual abuse of minors by clergy. This went into effect on Jan. 15, 1993. All priest personnel records were reviewed in light of this policy…

However much I regret having assigned him, it is important to recall that John Geoghan was never assigned by me to a parish without psychiatric or medical assessments indicating that such assignments were appropriate. 95

In fact, Father John Geoghan had been evaluated by a doctor and psychiatrist without expertise in sexual deviancy, the archdiocese had records of this ‘problem priest’ dating back to at least 1980, and “by 1994 criminal authorities were finally investigating Geoghan.” 96 Not only does Cardinal Law not “reform and forbear from reoffending… and repeatedly demonstrate this commitment by resisting opportunities… to reoffend,” 97 but he had proven himself untrustworthy in handling and speaking about this matter.

Four years later, an internal report of the Archdiocese of Chicago noted multi-level institutional failures which led to additional incidents of sexual abuse. 98 Francis Cardinal George’s apology shows a fair amount of precision in taking responsibility and accurately reflecting the grave errors which occurred under his watch.

For the many missteps in responding to the accusations of sexual abuse of minors by Father McCormack, I accept responsibility. For the tragedy of allowing children to be in the presence of a priest against whom an accusation of sexual abuse had been made, I


97 N. Smith, I Was Wrong, 142.

98 “The most significant finding of the independent due-diligence review was the failure of the various archdiocesan departments involved with issues of allegations of sexual misconduct with minors by clergy to communicate among themselves… Cardinal Francis George did not know what he needed to know to make a definitive decision… because he was not advised of all the information in possession of his staff… The Archdiocese of Chicago did not follow its own established policies, procedures and protocols, including those related to the reporting of allegations and the monitoring of an accused priest. The archdiocese is not in compliance with the USCCB 2002 Charter for the Protection of Children and Young People with regard to completion of safe-environment training and background checks. Defenbaugh and Associates [a forensic investigation firm], “Key Findings of Defenbaugh Due Diligence Report. Origins 35, no. 42, April 6, 2006, 692-699.
am truly sorry. I should have focused more clearly on the actions we needed to take, and I should have taken them more quickly. For not following the advice of our independent professional responsibility review board to remove Father McCormack temporarily, even without a judgment about his actions, I am deeply sorry. I am committed to a full disclosure of the facts and to the implementation of deliberate, meaningful changes to do all in our power to ensure that such events never happen again.\(^9^9\)

However, since this incident occurred four years after the USCCB’s commitment to ensure safety and protection of children,\(^1^0^0\) the apology rings hollow. At this late date, one begins to wonder whether apologies are simply reruns of expressions of sympathy designed to avoid larger questions of blame, of the bishop’s fitness for office, and of structural blocks to the common good.

2.5 Conclusion: The Sexual Abuse Crisis, Redefined.

The preceding analysis indicates that many apologetic-sounding statements of bishops take the form of expressions of sympathy, rather than robust apologies. These expressions fail to meet the criteria of an apology because of the generality of their content; they lack specificity regarding who the culpable party is, and what kinds of actions must be performed (or refrained from) in order to make the apology sincere. In the matter of apologies, the traditional moral-theological principle of cooperation might have provided a helpful measure of exactly the kind of specificity lacking in the sympathetic expressions. Certainly it is apparent that some civil authorities thought so, and pursued prosecution on the basis of bishops’ assigning credibly-accused priests to ministries where the priests would be in proximity to youth. At the same time, the moral


\(^1^0^0\) Chapter Four refers to a similar situation in Philadelphia in 2011, wherein the Archdiocese was proven not to have followed the 2002 protocol; sexual abuse allegations made after 2002 were handled just as poorly as they had been for decades.
focus remains still remains somewhat constricted, defining the problem as specific incidents of abuse, toward which the bishops may have cooperated by their action of assigning a priest. So defined, the action of assigning a righteous priest to ministry would be considered a morally good or at least morally neutral act. But as I shall examine in the next chapter, even common, day-to-day diocesan operations, when understood within the context of structures of church governance closed to transparency and accountability, and or an internal culture privileging clerical concerns over those of laity, can raise profound questions of ecclesial ethics.

All these factors bring us back, once again, to Norbert Rigali’s question regarding the moral perception of the crisis. Rigali, we recall, noted that the bishops tended to define the crisis as a violation by a cleric of the Sixth Commandment considered as a law (embodied in Canon 1395). Victims of sexual abuse were perspicuously absent in this definition; pastorally the bishops came across as concerned mostly for priests or for their own (the bishops’) reputation, and cold towards victims and their families. Adding to Rigali’s analysis, I have noted that the bishops appeared to have missed the opportunity to grasp and explain the Sixth Commandment as a fundamental moral concept which not only forbids a prohibited action but preserves right relationships in human community. It is not only not doing the forbidden action that protects the vulnerable; having ways to positively enable trustworthy social interrelationships are a crucial and necessary bulwark for the same. The Charter for the Protection of Children and Young Persons and the Essential Norms, while establishing policy to address allegations, does not necessarily prevent incidents of abuse because it does not attend well to factors other than ‘problem priests.’ Bishops could, and did, assign credibly-accused priests to ministries where they
sexually abused youth, even after the 2002 policies were put into place. In sincere statements, bishops express sympathy for victims and for the situation in the church, but do not offer categorical apologies. In the Origins documents from 2002-07, the only bishops implicating themselves as formal cooperators in a priest’s sinful acts are those who were compelled to do so as a result of civil prosecution. Other ‘apologies’ remain too vague to offer assurance. This is true both of bishops who were personally implicated in enabling alleged abuse, as well as of bishops who were personally innocent but who offered little concrete suggestion as to how a new person in the same episcopal office would manage differently. And regarding official structures of the Church, bishops’ statements up to 2007 show little attention to structural factors contributing to the crisis other than the manner of response to allegations (the Charter and the Essential Norms) and the screening of seminary candidates. Yet clearly what started out as a sex scandal mushroomed into a full-blown crisis precisely because of breakdowns of structural relationships (e.g., safety, trust, communication, authority) within the Catholic community. There is much, obviously, to consider in drawing up an accurate moral perception of the sexual abuse crisis in the Catholic Church in the US.

101 It is important to note that even canon lawyers have criticized the Essential Norms for its canonical deficiencies. The Norms are faulty and shortsighted insofar as these norms address the offense only after it has occurred. “The zero-tolerance approach of the charter and norms distorts the law and pastoral practice. Its aim is to protect children, yet it does so by “zeroing” in on punishment of an impure act rather than on the removal of danger to children.” At the same time, any action labeled ‘sexual abuse’ is treated with the same penal response (zero tolerance), rather than with a variety of more fitting responses depending on the relative gravity of the act, and the particular circumstances affecting its assessment. As one canonist opined, “we would be much better off… simply adopting a rational process that has as its only criterion the protection of children with varying remedies or punishments (as civil law tries to do).” In other words, if the problem is defined or pictured as an offense against the Sixth Commandment, it will be these offenses, rather than pro-active prevention within a communal context, or discerning appropriate punishments and treatment according to each offender’s situation, which receive attention. Msgr. John Alesandro, “The Code of Canon Law: Past, Present and Future,” Origins 37, no. 23, November 15, 2007.

From the foregoing analysis, I believe it is necessary to redefine the crisis in such a way that encompasses all of its causal factors and resultant effects. Without grasping the full picture – a moral perception consistent with all the facts – worthy attempts to fix broken structures and heal broken souls and bodies may not be effective or long lasting. Indeed, in the final examples above, even the much-touted (and certainly necessary) reforms spelled out in the Charter and in the Essential Norms still did not accomplish their goal – “to end the scourge of sexual abuse within the Catholic Church in America.”

I would redefine the crisis as follows: the sexual abuse crisis in the Catholic Church in the United States represents the failure of the community to grasp and internalize the fundamental moral wisdom contained in the Sixth Commandment. It is very important to recognize, as explained earlier in this chapter, that this definition does not understand the Sixth Commandment simply as a strict law. That is why I have used the phrase “fundamental moral wisdom;” I mean the Sixth Commandment as a linguistic rendering of a moral concept so basic to human well being both personally-individually and socially, that without this wisdom widespread personal and social breakdown occurs. In the Catholic sexual abuse crisis in the US, there are at least three distinct locations in which the crisis has been most visible. Like the ‘hot spots’ in a forest fire, these locations are the places where the most injury has been inflicted and suffered, and from which the crisis spread. These locations also remain the source of further conflagration unless they are dealt with properly. The three areas are: the sexual sin of the agents, the actual perpetrators of the incidents of abuse; the de facto breach of trust and right relationship

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103 Bishop Wilton Gregory, “Press conference at the close of Dallas meeting.”
among clergy and laity, authority and community; and the violation of bodily integrity and human dignity inherent in the victims as rights-bearers in the community.

As explored above, the Sixth Commandment understood not only as a prohibition directed to specific agents, but also as a prohibition against harm, provides the ground for a truly accurate moral perception of the crisis. The US bishops’ tendency to see the crisis in the more narrow terms of violation of a law by a cleric led to necessary, but not sufficient, norms for responding to allegations of abuse. The Charter for the Protection of Children and Young Persons and the Essential Norms set in motion a variety of procedures for addressing violations. However, these policies are insufficient in that they tend to address situations *ex post facto*; they do not in themselves prevent harm, keep children safe, provide internally enforceable limits to broader exercises of episcopal authority, or restore trust and credibility. In this chapter, I have explained that the bishops’ responses have been insufficient because they were directed toward specific actions and agents of abuse. The incidents of abuse are only one of the three areas in which the crisis is generated. In addition, even from the perspective of traditional moral theology the bishops were unable to identify and apologize for their roles as cooperators.

Subsequent chapters of the present study, then, must address the implications for the Catholic sexual abuse crisis of the moral wisdom of the Sixth Commandment. To this end, Chapters Two and Three examine governing authority and the role of the non-ordained faithful in their own governance in the Catholic Church. Here I will develop a constructive proposal for structural reform of Catholic Church governance characterized by a governing authority strong enough to protect church membership but whose scope necessarily will be limited by the consent and moral responsibility of the same
membership. Chapter Four takes up the issue of human rights in the church, and will examine the victims as rights-bearers and their advocacy as an ecclesial human rights practice. I will conclude with suggestions for further research regarding the application of ethics within the Catholic Church, and an outline of basic features of a restorative justice as a hopeful response to the sexual abuse crisis.
3.1 The Application of Practical Reason

3.1.1 The Fundamental Moral Concept

The failure of the Catholic community to observe the wisdom of the Sixth Commandment (understood as a fundamental moral concept) implies that the breach of the Sixth goes beyond individual rule-breaking and implicates broader phenomena of human interaction such as customs, culture, and social institutions. The very discordance of the sexual abuse crisis with the cherished values of the Catholic Church points particularly towards the institutional governance of the church in and through which the bishops exercise their apostolic authority. From the beginnings of the crisis, much attention has been given to the variety of ways in which many church authorities not only failed to put a stop to the problem, but actually held off investigations, rebuffed complaints and kept credible-offender priests in ministry. The crisis has revealed that the responsible leaders of the community allowed and enabled persistent and widespread sexual abuse of minors and cover-up of these crimes. Since the Sixth Commandment is unquestioningly a key component of the Judeo-Christian moral tradition, as well as a basic precept of the natural law pertaining to all human persons, the Catholic Church ought to be a community where persons encounter not the breaching of sexual boundaries (and their cover-up) but rather the kind of wisdom, social relationships, structural
protection and practiced virtue that discourages and responds justly and quickly to such violations.

3.1.2 The Purpose of Governance

The *raison d’être* of any government, authority structure or ruling regime in organizations as large as states or as small as the local garden club is to secure the shared goals and commitments of the group, most commonly by coordinating actions, resolving conflicts, and addressing problems arising from antisocial behavior (itself the result of violence, vice or irrationality).  

The Catholic Church is no different from other organizations in these broad characteristics, precisely because the church, like nation-states and garden clubs, is composed of human persons.  For example, Pope John Paul II, speaking directly of episcopal governance, articulated characteristics shared by all governing authorities:

> The Church is an organically structured community which finds expression in the coordination of different charisms, ministries and services for the sake of attaining the common end, which is salvation. The Bishop is responsible for bringing about this unity in diversity... [T]he ministry of the Bishop absolutely cannot be reduced to the function of a simple coordinator. By its very nature, the *munus episcopale* entails a clear and unequivocal right and duty of governance, which also includes the element of jurisdiction.  

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105 Even in the communion of saints, the church is composed of human persons, although this community, existing in beatitude with the Holy Trinity, has no need for the kinds of ethical applications proposed here. It is important not to conflate the church in history either with the Kingdom of God or the communion of saints, a point stressed by the Second Vatican Council. Cf., *Lumen gentium*, no. 5-6. This point is important to keep in mind, as the sexual abuse crisis has challenged those – particularly church leaders – for whom it provides incontrovertible evidence threatening an identification of the church with God’s Kingdom.

It is important to recognize that, although the Catholic Church can also be described in strictly spiritual terms, nonetheless the church in history is composed of limited human persons who comprise a church ‘on pilgrimage.’ Morally speaking, persons need authorities with power to govern because the consequences of no governing authority – disorganization, violence or failure to achieve the community’s purpose – harm themselves and others. However, the sexual abuse crisis revealed a church governance that failed its people: rather than coordinate, serve and protect the community, priests directly raped and molested young persons, and the bishops cooperated with this direct harm. The laity found themselves with few internal channels through which to pursue justice and restore right relationships in the community.

But the moral problem was not confined simply to absence of institutional procedures to secure justice. It also included a personal dimension illustrated most vividly in bishops’ refusals to assist victims, slowness in responding to allegations, and apparent incapacity fully to grasp the seriousness of the situation. So, criticism of Catholic bishops and the institutional church has abounded since 2002, with proposals to fix what is perceived as an arcane and self-isolated hierarchy that range from full-scale American-style democracy complete with checks and balances, to insistence that the problem lies not in governing structures but only in bishops lacking the correct competence, holiness and virtue. I suggest that many of these proposals, diverse in conclusion though they be, share two fundamental points: (1) they all agree that as a

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107 Lumen gentium, Vatican II’s Constitution on the Church, addresses this point well by opening with an extended reflection on the church as spiritual mystery and closing with an acknowledgment of “the pilgrim Church,” which “has the appearance of the world which is passing.” Lumen gentium, no. 48, www.vatican.va (accessed May 11, 2011).
result of the sexual abuse crisis the structures and procedures of governance in the Catholic Church must change, and (2) their particular proposals for change are based fundamentally on ecclesiological, rather than ethical grounds – that is, preferences in ecclesiology, rather than an ethical method, shape and guide concrete proposals for ecclesial governance. While ecclesiology and doctrine surely should contribute to proposals for structural change in the church, I suggest that such approaches inevitably will show deficiencies in practice; in turn, such deficiencies could work towards harm and against human flourishing.

3.1.3 General Principles and Moral Judgment

Rather, the Sixth Commandment, and its companion precepts of divine and natural law, ought to be the theoretical foundation on which to build the structures of governance of the Catholic Church. As described in Chapter One, the Sixth Commandment belongs to the Decalogue’s “second tablet,” precepts which govern the order of justice among persons who naturally interact in social groups. Its wisdom articulates the prohibition of harm, implies support and divine approval for human relationships that honor the sexual dignity of self and others, and as such provides a basis on which to build new social structures or amend existing ones. The fundamental moral concept provides a ground from which to rationally discern determinate, specific norms and social practices within the church – for example, those of governance.

Observance of the Sixth Commandment is not confined only to individual persons’ complying with its prohibition as a component of individual virtuous action. Because it governs social interrelations, the Sixth also implicates larger and more complex human interactions besides one-on-one relationships, such as institutional
organizations, structures and procedures. Although originally codified long before the rise of modern institutions and ways of life, this commandment’s wisdom still applies because modern organization still are composed of human persons, and healthy sexual boundaries still are requisite for human flourishing. So, discerning the way out of the sexual abuse crisis must involve an examination of the ways in which, institutionally speaking, such widespread abuse became possible, with an eye to structural change for the common good. In the pursuit of structural change, responsible persons in the Catholic Church can also draw on a multitude of secular resources addressing similar problems in society. The basic prohibition of sexual abuse here has been exemplified in recent decades by development of laws against sexual harassment and abuse, advocacy for victims of sexual assault, and publication of sex-offender registries. These secular laws and procedures arguably remain true to the fundamental moral concept known as the Sixth Commandment to religious believers and available as a precept of natural law to all persons.

3.1.3.1 Against Harm and Malfeasance

Yet the objection might be raised that all these aspects of the Sixth Commandment are obvious, at least to persons as authoritative as Catholic bishops and priests. Of course the church and other organizations should abide by the commandments of the second tablet; that goes without saying. And the improper handling of the matter by many bishops is addressed by the age-old wisdom that an unjust law or unjust ruler does not have binding force. Thus Avery Dulles comments, “Members of the hierarchy are bound... by the ethical precepts of natural law and the gospel. If they were to
command sinful acts such as torture or mutilation, or if they were to wage an unjust war, they could and should be resisted.”

As noted in the previous chapter, however, this objection suffers from too narrow a reading of what the Sixth Commandment actually entails. First, the kind of understanding of natural law evidenced by Dulles is that of straightforward ethical rules that guide particular actions on the part of direct agents. I have already described how the Sixth Commandment, understood as such, becomes narrower in focus than the Sixth Commandment understood as a fundamental moral concept. For example, it obscures the ways in which the Sixth becomes institutionally manifest. As a result, in the sexual abuse crisis not all of the morally culpable (e.g., cooperating bishops) were targeted by efforts to stop violators (understood solely as directly offending priests). Secondly, this perspective narrows the scope of moral concern down to agents committing wrongful actions, and misses moral obligations towards real and potential victims of the offending agents’ actions. Finally the population of those harmed is not confined to direct victim-survivors of sexual assault; the entire Catholic community has suffered harms. For these non-direct ‘victims,’ it became painfully obvious that the bishops did “command sinful acts” in ordering victims and families to remain silent in the face of sexual violence. The fallout from mishandling the situation caused a crisis of legitimacy and credibility in the authority of the bishops. It also raises questions for all conscientious Catholics to examine the ways in which they, as lay persons, supported a status quo situation where such events were going on. The Catholic Church was revealed as a place where sexual

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boundaries could not be trusted, nor could church authorities, church law or the church institution be trusted to protect the very people they are meant to serve.

When social breakdowns occur, with their terribly harmful results of death, loss of property or sexual abuse, our obligation to observe the Decalogue naturally implies a responsibility to fix the underlying conditions that made the harms possible in the first place. This is why a general rule originally articulated as “you shall not commit adultery” can lead us by its own logic to concerns for justice in human interrelationships, which in turn raises questions of the exercise of governing authority.

3.1.4 Moral Method

3.1.4.1 Not a Direct Application of General Principles

As a fundamental moral concept, the Sixth Commandment by itself does not straightforwardly yield a set of specific rules for human behavior, much less a road map for institutional reorganization. The Sixth remains on a level of generality not immediately translatable in these ways. Indeed, on a superficial reading, the Sixth yields not any action at all, only a refraining from action (i.e., from adultery). And as we have seen in Chapter One, canon law closely follows this reading. Canons regarding breaches of the Sixth have to do with priests’ violating their vows of celibacy – at least, this was the way in which the US bishops handled the matter. It might also appear to some that reform and healing in the Catholic Church cannot occur on the basis of the Sixth at all, or only using the Sixth as a general guide quickly supplanted by contemporary models of
institutional management.\textsuperscript{109} Either the commandment is too general and vague to address the complexities of church ethics and organization in the 21\textsuperscript{st} century, or the traditional application fails the church by its narrowness and inattention to communal harm. Neither of these alternatives is satisfactory.

3.1.4.2 Determine Specific Norms by Interpreting General Principles

A Thomistic interpretation of the natural law avoids these unsatisfactory alternatives, and better yet, provides a method that preserves the core truth in each. As developed in Jean Porter’s \textit{Nature As Reason: A Thomistic Theory of the Natural Law}, this kind of interpretation relies upon the natural law – in this case, the Sixth Commandment – to provide the framework within which the community may responsibly discern specific constraints and liberties in its daily interrelationships.\textsuperscript{110} Some such rules, examined in Chapter One, already exist – such as canons handling priests’ violations of vows of celibacy. These rules track the obvious reading of the Sixth (at least, as applied to priests), but additional determinate rules and the actual structures and protocols of governance could be discerned that enable the community as a whole to be the kind of place where healthy sexual boundaries can be maintained.

\textsuperscript{109} In this regard, while areas of expertise such as business ethics and organizational sociology provide interdisciplinary resources to understand the dynamics of a large corporate group, utilizing these resources to the exclusion of resources from within the Catholic tradition itself runs the risk of denigrating legitimate ecclesial commitments in the interest of ‘fixing the organization.’ My support for such efforts, such as those articulated in a 2006 volume resulting from a conference at Boston College on the sexual abuse crisis, remains conditional upon their capacity to integrate proposals into a sound understanding of ecclesiology. \textit{Cf.}, Jean M. Bartek, Mary Ann Hinsdale and James F. Keenan, eds., \textit{Church Ethics and Its Organizational Context: Learning from the Sexual Abuse Scandal in the Catholic Church}. Lanham, MD: Rowman and Littlefield, Publishers, 2006.

From the general principle, additional determinate rules can be arrived at by communal discernment. This discernment is intellectual; it engages human reason and makes use of ethical resources available today. At the same time, the discernment always relies upon scripture – that is, discerning through reflection on the Word of God which institutional rules and procedures ought to obtain. Doctrinal elements, especially of an ecclesiological nature, also come into play here, since doctrine itself results from the community’s ongoing interpretation of revelation. Grounded in faith and scripture, the community can select the most appropriate contemporary resources regarding, for example, political philosophy or organizational ethics, in order to fashion church structures and procedures better responsive to both moral obligation and to the church’s own understanding of itself. Specific rules or procedures which the community adopts ought to truly reflect salient aspects of scripture and doctrine, yet they may not be ‘true’ eternally, in the sense of being specific and applicable to all places, times, cultures, etc. This may seem to ‘downgrade’ the specific rules, but the opposite is true: this process keeps the general precepts foundational to morality and develops specific rules to assist real human persons (who live in space and time). And while the selective utilization of external resources may be instrumental to the final goal of arriving at church structures which are more just and functional, the entire discernment process is anything but instrumental. (In this respect the Sixth functions not as ‘window dressing’ to a church ethics arrived at otherwise straightforwardly adopted from principle of organizational management.) It is, indeed, the Christian way of life, or more technically a Christian-theological understanding of the natural law as participating in a real if finite and limited way in God’s eternal and continually-creative wisdom.
Yet this theological construal of the natural law only works if we understand the law as Aquinas and the other scholastics did, that is to say, primarily in terms of our capacity for moral judgment and the general principles through which that capacity operates... [O]ur created congruity with, and yet distance from, God’s goodness is reflected, albeit imperfectly, by the congruence and yet distinction between the first principles of the natural law and the specific norms and social practices through which those first principles are expressed.¹¹¹

In the process, the Sixth as a fundamental moral concept functions neither merely as a springboard to ‘better’ conclusions, nor underwrites moral norms which could be determined independently, from secular moral philosophy; it holds an architectonic place in the application of practical reason. Additionally, the Thomistic interpretation preserves the flexibility and creativity that allows church governance to be an ongoing process; on the specific, determinate level there has never been one fixed, determinate expression of church governance for all times and all places. Although Christians have always understood themselves as communities with bishops at their head, different local churches, cultures and historical periods influence the precise relationships and expressions – structures, personnel and procedures – through which the ministry of governance is exercised. The determinate moral norms are a product of human rationality, and as specific norms for governance may well look like they have little to do with the prohibition of Exodus 20:14. But this state of affairs argues not for the irrelevancy of the Sixth, but rather its flexibility in giving rise to governance structures that will facilitate a type of human flourishing in the church that is more closely reflective of the Sixth’s moral wisdom than did prior forms of governance. “[O]ur theology can accommodate secondary yet legitimate senses in which the natural law is comprised of

determinate precepts, whether revealed or rationally discerned or both at once.”\textsuperscript{112} The analysis at times might seem to go far afield from the codified Sixth Commandment – but this does not indicate the Sixth’s irrelevancy but rather its very broad reach.

3.1.5 Applying the Sixth Commandment to Church Governance

The sexual abuse crisis exposed already-existing difficulties and dysfunctions in many structures of church governance, from defects in canon law to conflicting perceptions of bishops’ duties. It is unsurprising, then, that many responses to the crisis involve proposals for internal structural reform in the church. These in turn invoke ecclesiology, or perhaps more accurately, ecclesiologies, since their authors are not of a mind when it comes to depicting what the institutional church is or how it should operate. However, I suggest that proposals for change in Catholic Church governance based solely or primarily in ecclesiology are morally problematic insofar as an ecclesiological preference trumps natural-law obligations in the daily life of the church. Proposals for reform of structures of governance ought to be based in ethics, which will place constraints not on the theological doctrine of, say, apostolic authority, but in the pragmatic, specific systems, procedures and institutions within the church through which

\textsuperscript{112} Ibid, at 330. Thomas Aquinas famously noted that determinate norms do not reflect the totality of the natural law for all times and places, but yet are ethically required because they are the way in which the general principle can be applied in this situation. “For, since the speculative reason is busied chiefly with the necessary things, which cannot be otherwise than they are, its proper conclusions, like the universal principles, contain the truth without fail. The practical reason, on the other hand, is busied with contingent matters, about which human actions are concerned; and consequently, although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly then, in speculative matters truth is the same in all men, both as to principles and as to conclusions: although the truth is not known to all as regards the conclusions, but only as regards the principles which are called common notions. But in matters of action, truth or practical rectitude is not the same for all, as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known to all.” St. Thomas Aquinas, \textit{Summa Theologica}, I-II, q. 94, a. 4. Trans. Fathers of the English Dominican Province. London: Burns, Oates and Washbourne, Ltd., 1920.
authority is exercised. These concrete and specific applications, in turn, function as those “secondary yet legitimate” precepts of the natural law, without which overriding moral concepts such as the Sixth would be condemned to irrelevance or abstraction.

Since many US bishops in particular and Catholic Church authority in general, have been targeted for criticism as a result of the sexual abuse crisis, it is instructive to examine not simply governance in general, but justifications for the exercise of church authority. The moral method described above outlines how to pursue such a study. As a discernment of the Catholic Christian community, justifications for the exercise of church authority should show compatibility with scripturally-based, core aspects of ecclesiology such as apostolic authority. (So, this method from the beginning will disappoint those who would replace the hierarchical structure of the Catholic Church with a kind of congregationalism.) At the same time, these determinate rules are the direct result of *human* moral judgment – albeit a moral judgment not unmoored from the Christian faith but rather, in faith, participating in God’s eternal wisdom. Yet God does not come up with the determinate rules, but rather creates persons in the divine image to undertake in their own responsible way what God has providentially ordered, first in the creation of the world, and then in establishing the church. And rational persons ought, by being so created by God, use their minds and intellects to draw on creative and workable alternatives to a type of governance defined by distance from the laity, lack of accountability and transparency, etc. (So, this method will similarly disappoint those who unrealistically imbue the hierarchy with unlimited and unaccountable power to govern.) Proposals for reform of governance based in ethics will place constraints not on the theological doctrine of, say, apostolic succession or the universal call to holiness, but
in the pragmatic, specific systems, procedures, laws and institutions within the church through which authority is exercised at this time in history.\footnote{13}

One does not have to go far to see evidence of ecclesiology’s triumph over the moral obligation. One of the most frequent ‘excuses’ heard from US bishops in the earlier phases of the sexual abuse crisis demonstrates preference for protecting the holy image of priests and bishops over seeking justice for victims. Securing the good name of the Catholic Church was held as a duty of greater import than justice for victims. In this matter, the bishops seemed not to be informed by the ecclesiology of Vatican II, according to which the Church is a sacrament of God’s kingdom but not to be equated with the kingdom itself on earth.\footnote{14} Rather, they seemed to be informed by an ecclesiology of the church as a \emph{societas perfecta}, which held sway especially during the 19th and early 20th centuries, according to which the structures and institutions of the church \emph{do} represent God’s kingdom on earth (and hence must be protected from investigation, prosecution, etc.).\footnote{15} Disturbingly, the problem is not that bishops or pastors were personally opposed to justice, or unfeeling towards victims. Rather, securing justice for victims meant public revelation of the horrible details of sexual abuse. To publish such grave crimes would cause scandal and invite prosecution; the duty of the

\footnotetext[13]{“[T]his approach to the natural law has the effect of locating Christian ethical reflection squarely within the world – that is to say, with the socially and historically specific locations within which actual Christians find themselves. Where else should Christian ethical reflection take place? We are not angels, and in the church triumphant there is no need for moral judgment. Indeed, the dichotomy between the church and the world, cast in these terms, is misleading. The church, whether considered as a congeries of institutions or as individuals sharing a common faith, is always necessarily located within a particular society... The boundaries between the church and the world will always necessarily involve appraisal and selective affirmation, as well as critique and rejection, of the alternatives presented to it by its complex history and social location.” Porter, \textit{Nature As Reason}, at 332-3.}

\footnotetext[14]{Cf., \textit{Lumen gentium}, nos. 5-6, 48-50.}

\footnotetext[15]{I am grateful to Professor Robert Krieg for alerting me to this point.}
bishop is to protect the church. Better to keep quiet and prevent the truth from leaking out. Only the Holy See had the power to make them do otherwise.

3.2 Traditional Justifications for Governing Authority: Divine Authorization, Superiority, Expertise.

In this section I will analyze and critique three common understandings of episcopal authority in church governance. I hope to demonstrate that each contains fallacies that render these preferences unfitting as bases on which to build structures of governance that impact real people in their daily lives, and I will use the sexual abuse crisis as the example *par excellence*. Their respective unsuitability results, I suggest, from underlying and unexamined philosophical conceptions of authority, which can be problematic for at least two reasons. One is that the underlying philosophy of authority shows internal (rational) inconsistencies, and/or is at cross purposes with the same theory’s scriptural basis for episcopal authority. The result is a kind of rational incoherence. Another problem concerns realism, or the lack of it. An understanding of authority may be so unrealistic as to be implausible in this finite and imperfect world, except as an imagined or hoped-for ideal, not suitable for direct translation into specific structures of governance.\textsuperscript{116} This is not to say that ideals and hopes should absent themselves from church governance, but rather to call attention to the fact that ideals and hopes exist at a level of generality and aspiration. The goal here is to move the

conversation on church governance away from easy-to-agree-upon generalities and towards pragmatic specifics.¹¹⁷

In the sexual abuse crisis in the Catholic Church, it seems that something immensely wrong has happened within church governance, as leaders were free to – and did – cooperate with and enable direct harms, as well as forestall redress of grievances and revelations of the truth. But how, exactly, did things go wrong – what happened that turned a serious scandal regarding priests into a major crisis of credibility in the hierarchy? Here, I shall attempt to answer this question by analyzing relevant church documents¹¹⁸ on episcopal governance. Given the belief that apostolic succession and the college of bishops are willed by Christ (a scriptural-doctrinal justification), what is the church’s official moral justification for the exercise of authority – that is, for the way in which the bishops ‘do their job,’ so to speak? Three common normative accounts in official documents reveal notions of governing authority which end up being self-diminishing because of internal incoherence or implausibility:

(1) Appeals to divine authorization of the apostolic office (a doctrinal and theological ‘given’) are uncritically utilized to provide normative backing for everything the bishop

¹¹⁷ “It is very tempting, when faced with these and similar conundrums, to make short work of them by moving back to a level of generality at which agreement can be secured. The temptation should be resisted. If we formulate our claims at a sufficiently high level of abstraction, we will almost certainly be able to come up with some normative claims that everyone could accept. The difficulty is that once we have moved to that level, we will find ourselves at the level of very general statements along the lines of “Courage is good” or “Killing should be avoided, outside carefully defined parameters.” These kinds of generalities are not simply empty or formal; they do have some substance, and… they can be made to do normative work. Nonetheless, by themselves they fall short of the kinds of determinate, substantive norms that are needed to provide actual practical guidance in specific situations of choice. No individual or society can live at the level of general ideals of virtue and unspecified admonitions to place constraints on certain kinds of action.” Jean Porter, Nature As Reason, at 355.

¹¹⁸ Cf., Pope John Paul II, Pastores gregis, nos. 1, 10-25, 31, 42-47; and Lumen gentium, Dogmatic Constitution on the Church, especially nos. 18-27.
does in governing (thus raising the question of divine authorization for egregious episcopal error);

(2) Appeals to superiority of the hierarchy (with relative inferiority attached to the laity) raise questions regarding moral and other inequalities, especially in light of the seeming reversal of roles during the sexual abuse crisis (lay righteousness and episcopal moral error).

(3) Appeals to the virtue and holiness of bishops as exemplars of the Good Shepherd raise questions of whether bishops then lose their authority when they enable widespread violations of a fundamental moral concept.

I shall examine each of these normative appeals in turn.

3.2.1 Divine Authorization

*Lumen gentium* nos. 20–21 identify the bishops as successors to the apostles “by divine institution” (no. 20) made visible in the liturgy of episcopal consecration. “By means of the imposition of hands and the words of consecration, the grace of the Holy Spirit is so conferred, and the sacred character so impressed, that bishops in an eminent and visible way sustain the roles of Christ Himself as Teacher, Shepherd and High Priest, and that they act in His person” (no. 21). The high ecclesiology of these passages compares the exercise of the triple episcopal *munera* to divine authority, noting that bishops preside “in place of God over the flock, whose shepherds they are, as teachers for doctrine, priests for sacred worship, and ministers for governing,” and soberly asserting that “he who hears them hears Christ, and he who rejects them, rejects Christ and him who sent Christ” (no. 20). Vatican II emphatically re-embraced the scriptural and doctrinal warrants for apostolic authority and apostolic succession; acknowledging
ongoing ecumenical discussions and developments in this area, nonetheless the Catholic Church is the place where the college of bishops exists in its traditional union with the primacy of Peter.\textsuperscript{119} The divine authorization thesis, then, shows consistency with scriptural foundations for episcopal authority.

However, the lofty language of \textit{Lumen gentium}, while successfully identifying the church as unlike and set apart from institutions of merely human creation, could uncritically support an implied pastoral logic that everything a bishop says or does in underwritten by God. Here, the idea of divine authorization encounters problems of rational incoherence. It is one thing to assert that the episcopacy was instituted by Christ to govern the church (a general, doctrinal statement), it is another to say that particular canon laws or episcopal decisions are divinely willed. This point sounds obvious, yet in the present crisis cannot be stressed enough; early victims and their families were silenced precisely on the basis that \textit{this} (abusive) priest or \textit{this} (cooperating) bishop was called by God to stay in ministry. Or, some bishops chose to follow a legal route to delay investigation, rather than the moral path of admitting the truth and seeking justice, because of a perception that their decision, rather than the desires of plaintiffs, was closer to what God wanted (protection of the church). This amounts to accepting the erroneous decision of a bishop (to reassign a priest-abuser, or to file lawsuits to prevent the release of information) as in accord with the divine will, because the office of the bishop is divinely willed. The loss of credibility among the US bishops often seemed to arise from their inability to distinguish their erroneous practical actions from the doctrine of episcopal institution.

\textsuperscript{119} Cf., \textit{Lumen gentium} no. 21; also Vatican II’s \textit{Christus dominus} (“Decree Concerning the Pastoral Office of Bishops in the Church).
For many Catholics at the time (and in retrospect even the bishops themselves) episcopal mishandling of allegations did not reflect the mind of Christ whose model of leadership was characterized not by closed doors but by a commitment “that they may have life and have it abundantly.” But human fallibility, evident in persistent reassignment of abusers and cover-ups or minimizing of offenses in pursuit of a perceived ‘good’ (the good name of the church and the clergy), seemed to be packaged as eternal truth by means of appeal to a foundational, doctrinal narrative. This appeal conflates the episcopal office, the duties of office, and the actions undertaken in pursuit of those duties by the actual holder of the office at any given point in history. Doctrinally, such an understanding reflects an “ecclesial monophysitism” which has lost its grasp on the authentic human element of the church. The pastoral logic leads to a (sacrilegious) conclusion that God sanctioned either sexual abuse or its cover-up, since God wants the bishops to protect the church (equated more or less with the clergy). This logical trajectory has created enormous pastoral fallout.

Another, related, pastoral problem arises. Justifying the authority of bishops and priests as divinely willed at all times promotes deference and submission even when it is

120 John 10:10, NRSV.

121 “This ecclesiology promoted the belief that in the creation of the Church God has formed a singular identity, a subject, that is, like the incarnate Son of God, informed by the divine principle of God’s agency in its identity and mission. This affirmation of the Church as a singular, holy and even divine, subject provides the background warrant for the exercise of the universal Church’s teaching office and the ministrations of the sacraments. Within this frame of reference individuals can and do sin, but the collective identity and mission of the Church universal, since divinely instituted and obediently received, remain intact.

The danger of this line of argument has been described as ecclesial monophysitism or christomonism, a position unable to recognize the human role in ecclesial matters, one that discredits human agency both in moments of creativity and in matters of sin. From this vantage point any effort to speak about the sinfulness of the Church is viewed as an impious attack on the divinely instituted character of the Body of Christ, when in fact it may be simply a striving for a more complete articulation of the reality of the Church under the influence of divine and human agency. Bradford E. Hinze, “Ecclesial Repentance and the Demands of Dialogue,” Theological Studies 61(2000) 207-238, at 226.
not due. Always treating clergy, regardless of their words and actions, as though they are another Christ contributes to the phenomenon of clericalism\(^{122}\) affecting lay, clergy and (more seriously) victim-survivors.\(^{123}\) The mindset of divine authorization of the church and of the ordained has hardly been the exclusive possession of clerical office-holders; it is also embedded uncritically in the understanding and attitudes of many Catholics towards the clergy.

Divine authorization of bishops differs from the parallel secular phenomenon of the divine right of kings insofar as the right to rule is established by communal, sacramental ordination rather than by isolated, individual claim. But beyond this point, in the arena of actual governance, the problems with divine authorization of kings and bishops show similarities. Candidates for the episcopacy are not brought down from heaven by God, nor do they emerge from some unusual and elite social group (a point to be pursued

\(^{122}\) “Clericalism is the conscious or unconscious concern to promote the particular interests of the clergy and to protect the privileges and power that have traditionally been conceded to those in the clerical state. There are attitudinal, behavioral and institutional dimensions to the phenomenon of clericalism. Clericalism arises from both personal and social dynamics, is expressed in various cultural forms and often is reinforced by institutional structures. Among its chief manifestations are a hierarchical worldview, and a virtual identification of the holiness and grace of the Church with the clerical state and, thereby, with the cleric himself. As such, clericalism is particularly evident in the ordained clergy, though it does not pertain exclusively to it.” Conference of Major Superiors of Men, *In Solidarity and Service: Reflections on the Problem of Clericalism in the Church*. Washington, DC: Conference of Major Superiors of Men, at 2. Quoted in Donald Cozzens, *Sacred Silence: Denial and the Crisis in the Church*. Collegeville: The Liturgical Press, 2002, at 118.

\(^{123}\) Repeatedly, sexual abuse victims reported that they dare not complain about abuse, out of awe for the priest or fear of God’s reprisal. “Of his parents, one victim said, ‘there is no way... my parents would have believed it. They were very religious and I might as well have told them a Martian landed in my backyard.’ Mark V. Talley, who was abused by the Rev. Louis Miller, explained, ‘I dared not say anything; I thought God would punish me in some way for ratting out one of his priests.’ Paul Barrett, a victim of Daniel Clark of Louisville, explained that ‘if I spoke out, who would believe... my word against a priest’s? In the Church you are raised to worship the men God sent to spread his word. You are taught not to question the Church.’ Douglas Dukes, molested at twelve by the Rev. Arthur L. Wood, said that ‘all he had to do was ask me not to tell my parents and I didn’t tell my parents. I trusted everything he told me.’” Leon J. Podles, *Sacrilege: Sexual Abuse in the Catholic Church*. Baltimore: Crossland Press, 2008, at 264-5. Quotations are from interviews in the *Louisville Courier-Journal* at the times of various offenders’ criminal trials.
below), but rather come from the ordinary community of all the faithful\textsuperscript{124}, and are chosen by other (human) bishops through a discernment and selection process regulated by canon law.\textsuperscript{125} All of these persons and processes are subject to fallibility. Alliance of the ruler (whether king or bishop) with God can all too easily underwrite governmental powers unlimited in scope and capable, when wrong, of causing great harm. Appeals to divine authorization of bishops fail as a \textit{normative} account of church authority because these appeals neither make distinctions between which actions of the bishop God has and has not authorized, nor provide meaningful and pragmatic rationales for limits to ecclesial authority.

3.2.2 Superiority of the Hierarchy

Divine authorization as a normative justification for governance reflects Catholic doctrine in a general sense (i.e., that scriptural warrant and sacramental ordination establish bishops in office), but fails to support on-the-ground episcopal decision-making and specific procedures of governance. Bracketing the question of which actions/decisions of a specific bishop God does and does not approve\textsuperscript{126}, a more pragmatic view suggests that bishops (and by extension, priests) possess superior qualities which the laity do not share. There is something fundamentally and inherently different between clerics and laity, and this difference qualifies the former, but

\textsuperscript{124} “[B]ishops should be mindful that they have been taken from among men and appointed their representative before God[.]” \textit{Christus dominus}, no. 15. “Being taken from among men, and himself beset with weakness he [the bishop] is able to have compassion on the ignorant and erring.” \textit{Lumen gentium}, no. 27.


\textsuperscript{126} \textit{Lumen gentium} refers to episcopal accountability as a matter for the afterlife. “As having one day to render an account for their souls, he takes care of them by his prayer, preaching and all the works of charity[.]” \textit{Lumen gentium}, no. 27.
disqualifies the latter, for governance in the church. While *Lumen gentium* insists on the baptismal equality of the laity and the ordained,\(^\text{127}\) this equality does not extend into church governance, properly a ‘clergy only’ area. Descriptions of the hierarchy as taking the initiative, giving direction, and pointing the way forward on behalf of the laity contrast with the laity’s following, assisting and submitting. This depiction of church order is linked to the New Testament witness of Christ’s own ministry.

Pastors of the Church, following the example of the Lord, should minister to one another and to the other faithful. These in turn should enthusiastically lend their joint assistance to their pastors and teachers… The laity should, as all Christians, promptly accept in Christian obedience decisions of their spiritual shepherds, since they are representatives of Christ as well as teachers and rulers in the Church.\(^\text{128}\)

One support of this stance sees that the ontological change rendered to the priest upon ordination makes him ‘different’ (read: superior to) from the laity relative to church governance. With an ordained-ontological difference endowing clergy with the authority to govern, and the same difference disqualifying the laity, this justification for church authority echoes philosophies of natural subordination. The laity simply do not possess key, internal qualifications for governance, while the ordained do possess the necessary qualifications, brought about by sacramental transformation. And while notions of superiority and subordination may be cause for concern – there is always the danger of the ‘subordinates’ being manipulated to wrong ends by ‘superiors’ -- there are common

\(^{127}\) “If therefore in the Church everyone does not proceed by the same path, nevertheless all are called to sanctity and have received an equal privilege of faith through the justice of God. And if by the will of Christ some are made teachers, pastors and dispensers of mysteries on behalf of others, yet all share a true equality with regard to the dignity and to the activity common to all the faithful for the building up of the Body of Christ. *Lumen gentium*, no. 32.

\(^{128}\) *Lumen gentium*, nos. 32, 37. “In matters of faith and morals, the bishops speak in the name of Christ and the faithful are to accept their teaching and adhere to it with a religious assent. This religious submission of the mind and will must be shown in a special way to the authentic magisterium of the Roman Pontiff, even when he is not speaking ex cathedra; that is, it must be shown in such a way that his supreme magisterium is acknowledged with reverence, the judgments made by him are sincerely adhered to, according to his manifest mind and will.” Ibid, no. 25.
areas of life where the subordination of one group vis-à-vis another makes sense. One certainly would want parents and not young children to make household and financial decisions, or medical doctors and not critically-injured patients to take charge of the emergency room. But does the distinction between laity and clergy support a normative justification for clergy-only church governance? That is, does ordination to the episcopacy make bishops personally different from the laity “with respect to those properties relevant to governance”?

The answer to this question depends on what is meant by “properties relevant to governance.” Aristotle’s *Politics* famously describes slaves and women as unfit to govern because they lack the rational capacity to make the kinds of decisions and take the kinds of actions that characterized ruling leadership. These include a rational and full grasp of the good, an ability to discern the right direction of action, and control of emotions and temptations which might subvert right decision and action. These groups of people, according to Aristotle, simply are unable to rule themselves well; they do not possess the right kind or the right amount of reason, or their reason too easily may be overrun by emotions and passions. Does an analogous argument hold for laity and

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130 [I]t is certainly possible, as we have said, to observe in animate beings – and to observe there first [with any certainty] – the presence of a ruling authority, both of the sort exercised by a master over slaves and of the sort exercised by a statesman over fellow citizens. The soul rules the body with the sort of authority of a master: mind rules the appetite with the sort of authority of a statesman or monarch. In this sphere [i.e., in the sphere of man’s inner life] it is clearly natural and beneficial to the body that it should be ruled by the soul, and again it is natural and beneficial to the affective part of the soul that it should be ruled by the mind and the rational part; whereas the equality of the two elements, or their reverse relation, is always detrimental. What holds good in man’s inner life also holds good outside it; and the same principle is true of the relation of man to animals as is true of the relation of his soul to his body…Again, the relation of male to female is naturally that of the superior to the inferior – of the ruling to the ruled. This general principle must similarly hold good of all human beings generally [and therefore of the relation of masters and slaves].” Ernest Barker, trans. and ed., *The Politics of Aristotle* Book I, chapter V, para. 6-7. New York: Oxford University Press, 1946, at 13.
hierarchy in the church? Is there some kind of broad and significant inequality between these groups that requires consistent dominance of the one by the other?

Bishops are positively distinguished for governance by means of ordination, through which they receive the sacred power to govern.\textsuperscript{131} So the laity, by lack of ordination, do not hold this power. But so far, these qualifications are descriptive. Is there anything about a given bishop that \textit{normatively} tends toward right governance – that ensures that any given bishop will rule with prudence, skill, wisdom, humility, service, and so forth? Does ordination actually endow such personal virtues and capacities? And, by contrast, does ‘non-ordination’ mean that laity are normatively unfit to make a rational and moral discernment of good and right action, and live a life of virtue? The sexual abuse crisis provides a reality check here, in the failures of so many bishops to protect the innocent and secure justice in the Catholic community. At the same time, it was laity – particularly victim-survivors, their parents and other advocates – who took the right action in seeking to put a stop to sexual abuse at a time when many bishops looked the other way. Ordination does not seem to guarantee that any given bishop will take the right action; many bishops worldwide have been guilty of material cooperation with direct offenders.

Thus normative distinctions can be made. Catholics believe that the authority of the episcopal office is established by Christ, and even further that Christ in the Holy Spirit calls specific persons to become bishops. But while the bishop holds authority, he may or may not rule ‘with authority,’ in the sense of deciding and acting rightly in all things, and ordering the diocese to the common good. This latter sense of ‘authority’ has to do

\textsuperscript{131} Cf., \textit{Lumen gentium}, no. 18-19.
with personal skill sets pertaining to governance. One can assert that all bishops always rule ‘with authority’ because they hold the office of bishop, but that some of these simultaneously rule ‘without authority’ because they exercise their powers of office in wrong and sinful ways. Ordination bestows a sacred power for governance on the bishop, a power not shared by the laity. The possession of power is not simply ‘official’ (i.e., in the office alone) but is held by the ordained person. Nonetheless this power is linked to authority in the first sense. The bishop exercises the power of office in order to govern the church as authorized by Christ. Simply exercising the power of office does not mean that this power will be used well. It could even be used for harm, as the sexual abuse crisis demonstrates so clearly. The bishop still holds the power and authority, but holding these does not mean that they belong ‘naturally’ to the bishop as part of his personal skill set. The crisis of credibility in the US bishops over the sexual abuse crisis can be located here: that the sacred power of governance was used for harm, not good, and that the authority of office was used to bolster wrongful responses to something as serious as sexual abuse allegations.

Attempts to locate normative superiority for governance in persons who are bishops because ordination turns them into a different, select class of human beings is an exercise in futility because the kinds of attributes required to govern well can be located equally, more or less, throughout the church; they are not confined to its ordained members. Bishops, pastors and popes are not angelic beings transported to earth to rule the church. Perhaps the equality of baptismal dignity is most evident by the basic fact that priests and bishops do not spring by themselves, fully formed, into their vocations, but are raised as lay persons, in families and local Catholic communities – a sensitive period of human
development crucial for moral formation, vocational awareness and integration of a balanced personality.\textsuperscript{132} It would seem that many of the normative qualifications of any given bishop for his ministry have foundations in his formation and development while still a member of the lay state. At the same time, the explosion of lay ministries and lay leadership in the church since Vatican II has proven that lay persons possess capacities relevant to carrying out the mission of the church (particularly in areas where clergy are absent). Lay persons and ordained clergy see and experience themselves as “co-workers in the vineyard.”\textsuperscript{133} While an internal dysfunctional culture such as clericalism can still perpetuate notions of clerical superiority, this kind of ideology can be exposed by equally powerful interruptive moments (such as the sexual abuse crisis).\textsuperscript{134} When the Catholic Church in the US needed wise and assertive leaders, its own ordained clergy failed grandly.

So, theologies of natural subordination and unfitness of laity, and/or subgroups within the laity fail to provide a normative account for episcopal governance. But another justification looks to the interior qualities of holiness and virtue.

3.2.3 Episcopal Holiness and Personal Virtue: John Paul II’s \textit{Pastores gregis}.

Another approach to normatively justify a bishop’s authority over the church focuses not on what is lacking within ‘the ruled,’ but rather on the bishop’s exceptional holiness and virtue, which identifies the truth and guides person to it. This tack is shown

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\textsuperscript{132} This echoes a similar point in the previous section on divine authorization.


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in Pope John Paul II’s 2003 apostolic exhortation, *Pastores gregis*, released only a year after the *Boston Globe* investigations of sexual abuse of minors and sexual predators at large in the Boston Archdiocese. In retrospect this was only the beginning of what would turn out to be a very long learning curve for the Catholic Church. The treatment given to the office of episcopal governance comes late in the exhortation (Chapter 5), after lengthy treatments of the spirituality, identity and mission of the bishop (Chapters 1 and 2), and the offices of teaching and sanctifying (Chapters 3 and 4). The prior chapters provide the context within which episcopal governance is to be understood. The primary qualifications for church governance for John Paul, are not what one might think of as customary skills for, say, civic or corporate leadership: prudence, communication, ability to identify and pursue goals, decisiveness of action; these are necessary but secondary. Rather, a bishop’s normative justification is based on his holiness and his capacity to represent Christ the Good Shepherd; thus the bishop himself must be an inspiring image and symbol of hope.  

Developing a somewhat realized eschatology of episcopal ministry, John Paul notes that since the primary image of the bishop is that of the Good Shepherd, the bishop is “configured to Christ.” This image is not mere aspiration or inspiration, but real:

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136 “We were all agreed that the figure of the Bishop, on which the Church continues to count, is that of the pastor who, configured to Christ by his holiness of life, expends himself generously for the Church entrusted to him, while at the same time bearing in his heart a concern for all the Churches throughout the world.” John Paul II, *Pastores gregis*, no. 1.

137 John Paul II, *Pastores gregis*, no. 1. Also see no. 13 from the same document: “Each bishop is configured to Christ in order to love the Church with the love of Christ the Bridegroom, and in order to be in the Church a minister of her unity, enabling her to become ‘a people gathered by the unity of the Father, of the Son and of the Holy Spirit.’”
Jesus Christ himself is present in the community through bishops and priests,¹³⁸ and their authority simultaneously is that of God the Father, of Jesus Christ, and of the Holy Spirit.¹³⁹ So far, the bishop is seen in a traditional, if lofty way; of note here is a de-emphasis upon the bishop’s embeddedness in the community and identity as servant of that community.¹⁴⁰

But John Paul seems to understand that scriptural foundations and theological depictions are not enough as a meaningful appeal for authority, especially given the context of the sexual abuse crisis within which he promulgated this document. He wants bishops not merely to have the authority of Christ, but also to possess “authoritativeness,”¹⁴¹ a normative justification for office. From where does “authoritativeness” come? Here, John Paul makes an interesting move by not sourcing it entirely in the grace of the Sacrament of Orders. Instead, he exhorts bishops to develop their “subjective sanctification,” especially their personal credibility and moral authority

¹³⁸ “Thus through the Bishops and the priests, their co-workers, the Lord Jesus Christ, seated at the right hand of God the Father, remains present in the midst of believers.” John Paul II, Pastores gregis, no. 6.

¹³⁹ John Paul II traces the tradition of associating the bishop with God the Father to St. Ignatius of Antioch. “Every Bishop therefore, stands in the place of the Father of Jesus Christ in such a way that, precisely because of this representation, he is to be revered by all… Conversely, as an ancient text exhorts, the faithful are to love their Bishops who are, after God, their fathers and mothers… The Bishop, who acts in the person and in the name of Christ himself becomes in the Church entrusted to him a living sign of the Lord Jesus, Shepherd and Spouse… Finally, the anointing of the Holy Spirit, by configuring the Bishop to Christ, enables him to be a living continuation of the mystery of Christ for the Church.” John Paul II, Pastores gregis, no. 7.

¹⁴⁰ John Paul insists that the bishop’s office does not detract from his “being with” the rest of the faithful, on the equal plane of baptism into the “common priesthood.” Nonetheless, his argument ends up contradicting itself, e.g.: “[T]he Bishop, who is and remains a baptized member of the Church, yet is incorporated into the high priesthood. This deeper reality of the Bishop is the foundation of his “being among” the other faithful and of his being placed “before” them.” John Paul II, Pastores gregis, no. 10.

¹⁴¹ The witness of his life becomes for the Bishop a new basis for authority, alongside the objective basis received in episcopal consecration. “Authority” is thus joined by “authoritativeness.” Both are necessary. The former, in fact, gives rise to the objective requirement that the faithful should assent to the authentic teaching of the Bishop; the latter helps them to put their trust in his message.” John Paul II, Pastores gregis, no. 31.
to exercise juridical office. In elaborating the qualifications for the episcopal office of teaching, he writes [T]he bishop’s teaching is prolonged in his witness and his example of an authentic life of faith… were he not to live as he teaches, he would be giving the community a contradictory message. Similarly, in the office of sanctifying, the bishop’s “life should be profoundly shaped by the theological virtues,” so that when presiding at Eucharist he will be a source of inspiration, capable of “transmitting the supernatural meaning of the words, prayers and rites, in a way that enables everyone to share in the sacred mysteries.”

But John Paul II’s theological development is perhaps best displayed in his discussion of the office of governing. Rather than using ordination with its attendant sacred power as the basis on which to build a theory of episcopal governance, he sandwiches a brief reference to objective, juridical power in between two sections appealing to holiness and personal ethics. In these he insists “that governance will be effective only if it rests on a moral authority bestowed by his life of holiness… The exercise of authority in the church cannot be understood as something impersonal or bureaucratic, precisely because it is an authority born of witness.” Concluding the trajectory of his thought, John Paul establishes the primacy of holy witness and exemplary morals; these precede and give rise to the sacred power that comes with

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142 “Objective sanctification, which by Christ’s work is present in the sacrament through the communication of the Holy Spirit, needs to coincide with subjective sanctification, in which the Bishop by the help of grace, must continuously progress through the exercise of his ministry… Unless the episcopal office is based on the witness of a holiness manifested in pastoral charity, humility and simplicity of life, it ends up being reduced to a solely functional role and, tragically, it loses credibility before the clergy and the faithful.” John Paul II, *Pastores gregis*, no. 11.


144 John Paul II, *Pastores gregis*, no. 34.

145 John Paul II, *Pastores gregis*, no. 43.
ordination. “Sacred power itself is rooted in the moral authority which the bishop enjoys by virtue of his holiness of life. It is this which facilitates the acceptance of his every act of governance and makes it effective.” So, John Paul II’s theology unites holiness, moral authority and power of governance together in a dynamic relationship. Instead of the situation tolerated in the secular world, where a government official’s private morality is seen more or less apart from or parallel to his expertise in governing – say, for example, a skilled mayor who is also a glutton – John Paul II grounds governance in holiness (the theological virtues, the exemplarity of the Good Shepherd, etc.), first by understanding that holiness gives rise to a moral authority, and moral authority gives rise to the actual power of sacred governance. Holiness, of course, is a grace of God, not a personal creation or possession of a bishop (although they prepare themselves to receive it through a life of “subjective sanctification” and spiritual practices). But these attributes are only the external sign that the bishop’s governing authority and power reflects the Holy Trinity itself.

3.2.3.1 Holiness As Normative Justification?

John Paul II’s theory of church governance is elegant and complex; it does not require spurious theologies of inferiority on the part of the laity. Indeed, by implication

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146 John Paul II, *Pastores gregis*, no. 43

147 It is clear that John Paul II prefers this line of argument. However, he also insists that authority and power come with the office, without completely reconciling this approach with the ‘subjective sanctification’ argument. E.g., “Bishops have the sacred right and duty before the Lord to make laws for their subjects, to pass judgment on them, and to moderate everything pertaining to the ordering of worship and the apostolate. The Bishop, by virtue of the office that he has received, is thus invested with an objective juridical power meant to be expressed in authoritative acts whereby he carries out the ministry of governance (munus pastorale) received in the sacrament. The Bishop’s governance, nonetheless, will be pastorally effective – once again this must be recalled – only if it rests on a moral authority bestowed by his life of holiness.” John Paul II, *Pastores gregis*, no. 43.
this theory shows confidence that all the faithful themselves are rationally and spiritually mature persons, capable of recognizing the Good Shepherd and interiorly responsive to God’s call in all circumstances of their lives (including when their local shepherd preaches, sanctifies and governs). Furthermore, using the Good Shepherd as the “primary image of the bishop” ups the ante, so to speak, and places the highest (and highly timely) moral and spiritual expectations upon bishops. In the wake of the sexual abuse crisis one can almost hear the sighs from millions of Catholic faithful: ‘if only our bishop were like that.’

And this is precisely the problem with John Paul II’s theory; it lacks practical application and thus suffers from implausibility. Mere mortals are not like that, usually. The saintly bishops of times past, held up as exemplars\textsuperscript{148}, number so few compared with the thousands of bishops whose episcopacies could be placed on the range of pretty good, okay, not so bad, needing major improvement, or disastrous. As the German theologian Karl Adam noted nearly a century ago,

So it may happen, and it must happen that pastor and flock, bishop, priest and layman are not always worthy vessels of the Divine, and that the infinitely holy is sometimes warped and distorted in passing through them. Wherever you have men, you are bound to have a restricted outlook and narrowness of judgment. For talent is rare, and genius comes only when God calls it. Eminent popes, bishops of great spiritual force, theologians of genius, priests of extraordinary graces and devout layfolk: these must be, not the rule, but the exception. God raises them up only at special times, when He needs them for His

\textsuperscript{148} It appears from a passage such as this that merely being a bishop does not qualify one for membership in the communal mosaic of the Good Shepherd; rather holiness, virtue and pastoral skill are required. “[W]e follow in the footsteps of a great multitude of holy pastors who have been eloquent images of the Good Shepherd in medio Ecclesiae. This prompts us always to praise and thank almighty and eternal God, for, as we sing in the sacred Liturgy, he strengthens us by their example, instructs us by their teaching and gives us protection through their intercession. As I said at the conclusion of the Synod’s work, the face of each of these holy Bishops, from the beginning of the Church’s life to our own day, is like a tile places in a sort of mystical mosaic forming the face of Christ the Good Shepherd. It is he, then, that we contemplate, setting an example for the flock entrusted to us by the Pastor of Pastors, so that we can become ever more committed servants of the Gospel for the hope of the world. John Paul II, Pastores gregis., no. 5, emphasis in the original.
Church. We may and should pray for them, but we cannot reckon on their coming. And so as a rule it is the ordinary and average man who bears God’s truth and grace throughout the world. The Church has from God the guarantee that she will not fall into error regarding faith or morals; but she has no guarantee whatever that every act and decision of ecclesiastical authority will be excellent and perfect. Mediocrity and even defects are possible… An immoral laity, bad priests, bishops and popes – these are the open, festering, never-healing wounds of the Body of the mystical Christ.\(^\text{149}\)

The normative justification for episcopal governance given in *Pastores gregis* shows parallels to perfectionist theories of authority, such as that found in Plato’s *Republic*, and suffers from similar difficulties. These stem, critics have noted, from grounding the authority of practical governance (“practical authority”) in personal expertise, knowledge or charisma (“theoretical authority”).\(^\text{150}\) In *Pastores gregis*, bishops are these “theoretical authorities,” and they are so designated because of their “expertise” in holiness due ultimately to God’s gift of grace, but cultivated through “subjective sanctification.” Even though all the faithful can be characterized as equal in Christian dignity by virtue of baptism, and sharers in holiness – and, indeed, many of these persons may hold their own expertise in holiness due to their own pursuit of Christian perfection - - nonetheless only the bishop is the one identified as *alter Christus* and *in persona* Christi. His holiness is different. In other words, all may be the elect – indeed, Christian maturity is presumed, so that the community may understand and freely respond -- but bishops are the elite among the elect; their presence makes Christ himself present to the people. Elitism may offend modern sensibilities, but being elite by virtue of some quality possessed by a person often does provide the basis of authoritativeness. Persons rely on


and defer to experts all the time, from the car mechanic to the brain surgeon. As these examples indicate, expert authorities stand in some kind of higher or asymmetric relationship vis-à-vis the ‘subjects’ in their field of ‘governance.’

But as a normative justification, a theory like this leaves itself open to serious problems. What if these elites, fulfilling the duties of quotidian governance, commit errors ranging from simple mistakes to egregious and persistent violation of precepts of divine and natural law? The purpose of an expert is to provide the right answers, direction or solutions to those wise and motivated enough to seek them. Those experts who commit errors will soon find themselves without any ‘subjects.’ The failed car mechanic’s customers will walk away, and the sloppy surgeon will face malpractice investigations and potential loss of license. “It is an essential feature of expert-advisee relationships that advisees should not act on expert advice when they know them to be wrong… There is no value in deferring to theoretical authority when one knows them to be wrong.”¹⁵¹ This is precisely why American Catholics found themselves in a crisis of credibility with church authorities over the handling of sexual abuse allegations. So many bishops seemed to be so very wrong when it came to grasping the implications of a fundamental moral concept.

The governed, then, ought not follow an expert they know to be wrong. Historically rulers have overcome this problem by forcing ‘the governed’ to obey – because rulers hold inexorable control over the machinery of governance, or by threat of punishment (either this-worldly or in the afterlife). This strategy, however, simply undoes the point of ruling by theoretical expertise, which seeks a response from the

¹⁵¹ Shapiro, “Authority,” at 399.
governed which is both free and obedient. In moving from the realm of abstract ideas and beliefs into pragmatic application, it also transforms theoretical expertise into a practical tyranny. And this has become another element of crisis in the sexual abuse crisis. As noted by church historian John McGreevey, “[i]f we are to salvage the credibility of hierarchical religious organizations – and I think this is crucial in a society casually accepting of the belief that morality is merely a matter of majority rule – authority must be distinguished from raw power.” But when it comes to the “authoritativeness of his lived holiness,” which John Paul II identifies as the bishop’s “personal witness of faith, hope and love,” the sexual abuse crisis has raised some serious challenges. Either many bishops who handled sexual abuse allegations are egregiously lacking in the theological virtues – perhaps a point that John Paul himself wanted to raise – or personal holiness does not necessarily or automatically translate into rightness of governing actions.

152 “It was after Socrates’ death that Plato began to discount persuasion as insufficient for the guidance of men and to seek for something liable to compel them without using external means of violence. Very early in his search he must have discovered that truth, namely, the truths we call self-evident, compels the mind, and that this coercion, though it needs no violence to be effective, is stronger than persuasion and argument. The trouble with coercion through reason, however, is that only the few are subject to it, so that the problem arises of how to assure that the many, the people who in their very multitude compose the body politic, can be submitted to the same truth. Here, to be sure, other means of coercion must be found, and here again coercion through violence must be avoided if political life as the Greeks understood it is not to be destroyed. This is the central predicament of Plato’s political philosophy and has remained a predicament of all attempts to establish a tyranny of reason. In The Republic the problem is solved through the concluding myth of rewards and punishments in the hereafter[.]” Hannah Arendt, “What is Authority,” in Between Past and Future: Six Exercises in Political Thought. New York: The Viking Press, 1961, at 107-8.


154 Pastores gregis, no. 43.

155 Immediately after his assertion that a bishop’s personal faith, hope and love ground his authoritativeness, John Paul II lists examples of presumably paradigmatic actions on the part of the bishop. No doubt many American Catholics at the time were discovering that in cooperation with and cover-up of sexual abuse, many bishops demonstrated precisely the opposite actions. John Paul II’s list of authoritative
Justifying church authority through theoretical expertise, then, shows major difficulties. If authority normatively depends upon personal holiness, evident in right decision and action, then harmful decisions and actions call into question both holiness and trustworthiness. At this point, to stay in charge — that is, to have people respond to his directives who otherwise would reject them or walk away because of moral error — a bishop must rely only on coercive power (executive, legislative, judicial). That is, the bishop effectively becomes identified with authority *de iure* but not *de facto*.156

Ironically, given the Catholic Church’s tradition and self-understanding, authority understood in this traditional way weakens and even eviscerates itself. The problem does not lie in an ecclesiology that affirms the hierarchical nature of the church, nor does the solution does lie in a Protestant-style abolition of hierarchy. Rather, hierarchical authority requires normative justification other than theoretical expertise.

3.3 Alternative Justifications for Authority: Expertise (Reworked), Equality

The extent of harm caused by the sexual abuse crisis has prompted numerous studies on governance and authority in the Catholic Church, by theologians, ethicists and many other informed observers.157 These studies seek to locate the underlying causes of such a

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156 “Authorities may claim legitimate authority in certain areas but fail to possess it. Someone has *de facto* authority just in case they have the ability to enforce their threats and those threatened are aware of this ability. This does not, all by itself, confer upon them *de jure* authority. Shapiro, “Authority,” at 395.

157 In the United States, much of the cutting-edge informed commentary has appeared in weekly or monthly periodicals such as *The National Catholic Reporter, America, Commonweal, First Things and National Catholic Register*. Additionally, American Catholics with varying responses to the sexual abuse crisis have authored articles appearing on the op-ed pages of major newspapers. My own sources here are academic journal articles, monographs or edited volumes.
widespread disaster, and in that quest many have identified the structures of Catholic Church governance as problematic. The ecclesial holy order represented by the term ‘hierarchy’ has been replaced for all practical (governing) purposes by a closed, self-serving aristocracy.

The Roman Catholic leadership functions as a true aristocracy, in that it operates on an assumption that those outside leadership have lesser worth, and exist in large part to service leadership... From this perspective, the point of reference is always above: the crucial factors in decision making are the needs of the layer above. The different layers can have different needs, and as difficult situations rise to the attentions increasingly higher in the hierarchy, the operative needs change, and the Church’s responses seem contradictory. The immediate impression is one of chaos, but the underlying principle is that the operative needs of the next level up will govern decision making.158

Church leaders failed the people by handling the crisis according to their perceptions of the church’s needs. Since the bishops hold all powers of governance, their directives became the rule for everyone else to follow. But both the perceptions of many bishops, as well as actions taken in response, were terribly wrong. In light of this recent history, contemporary critics have made a variety of constructive proposals for normative governance of the Catholic Church.

3.3.1 The Virtuous Servant

Observers from the social sciences have noted dysfunctional and harmful modes of conduct emerging from styles of leadership characterized as institutional, authoritarian and hierarchical. “We have seen offending priests and many church officials unjustly abusing their professional power by using it directively, in an authoritarian fashion, for

their own ends, by coercing, manipulating and harming others." An alternative set of professional behaviors for church leaders will use “power and authority synergically as the means to promote the ends of human development and community, and thereby the common good.” On this view, the justification for governing authority relies upon personal leadership styles conducive to building positive relationships and strengthening communal ties. The leader’s role is situated in service to the community, and demands actions that demonstrate and evoke trust and empathy, which then bear fruit in the community. Leaders are not merely a superfluous “add-on” to relationships that ordinary persons might evolve on their own, but rather generate positive possibilities and enable achievements otherwise impossible on an individual or communally-chaotic level. When applied to the church, this understanding sees that the primary mission of church leadership includes inspiring us (i.e., the community of all of us, i.e., episcopal leaders, clerics, religious and laity) to be a spiritual, holy and hopeful people, and guiding us to care for one another by enabling us to bring love and kindness to our personal relationships, and to work for peace and justice in the world. In short, the primary mission of the hierarchy is to inspire holiness and to foster care. To pursue this mission the church needs persons of integrity, who understand authority as a relational construct, focused on “authoring” spiritual growth or other goods.

A contrasting view also calls for professional virtues, but those specified are decisiveness, moral conviction and strength of faith within the traditional Catholic hierarchical context. The sexual abuse crisis revealed that “bishops in the United States seem to see themselves as men whose primary tasks are administrative and bureaucratic,


rather than evangelical, pastoral and catechetical.”¹⁶² Some bishops showed themselves rather more as spineless functionaries than resolute authorities, having lost a grasp of moral truth and obligatory pastoral action both in their denials of problems among their priests, and cover-ups of malfeasance. “Too many bishops, in a word, have reacted to the multiple problems posed by the meltdown of priestly discipline and the subsequent outbreak of clerical sexual abuse as managers, not as apostles.”¹⁶³

The social-science and the traditional views both justify episcopal leadership as expertise of virtue (although they disagree about which virtues) within the person of the bishop. The failings of theoretical expertise were explored above and will not be reviewed here. However, the frequent appeal to episcopal theoretical expertise by authors who are not bishops themselves suggests that this option continues to hold much attraction. Catholics want their bishops to be just like Christ, however unrealistic this is, and however difficult it may be to get persons to agree on what “just like Christ” actually means. Appeals to bishops’ being ‘caring’ or ‘apostolic’ ultimately seem inspired by contrasting scriptural depictions of Christ as, say, healer and feeder of thousands or as decisive leader and moral judge. Theoretical expertise is attractive in yet another way: it temptingly offers the hope of solving complex problems of governance by fixing the problems of an individual leader.

However, a superficial resolution can blind observers to the underlying complexities. An individual bishop might have well-developed, personal empathy and compassion, but is held back because of loyalty to Vatican directives or the mandates of canon law. A


¹⁶³ Ibid, at 32.
decisive, faith-convicted bishop may be wrong in his assessment of a problem; certainly this was the case with Boston’s Bernard Cardinal Law. In cases of crisis in an organization, “maintaining perceptions about what “good leaders” look like… may actually hinder effective leadership.”

Since appeals to personal virtue have limited application, other observers have focused on the pragmatic outcomes of leadership.

3.3.2 Professional Competence

If personal virtue fails as normative justification, perhaps honing in on practical expertise is the answer. A professionally competent leader exercises authority through skills aimed at the needs of the community, which actually bring about their practical achievement. The difference between this approach and that of the ‘virtuous servant,’ is that the definition and measure of competency arises from real needs of real persons in community, rather than abstract truths understood first by the authority (who then passes them ‘down’ to others). Expertise is located not in the ability to understand truth but rather to apply it. Here, efforts are exerted to make episcopal governance plausible within a communal context, partly by appealing to interdisciplinary, social-science resources. The community’s needs and values can be measured and translated into objective goals and action plans, which a bishop can consult when deciding upon a

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164 Kimberly D. Elsbach, “Looking Good vs. Being Good: Pitfalls of Maintaining Perceptions of Strong Leadership Following Organizational Scandals. In Jean Bartunek, Mary Ann Hinsdale and James F. Keenan, eds., Church Ethics and Its Organizational Context. Lanham, MD: Rowman & Littlefield, 2006, 69-82 at 69. Elsbach goes on to argue for the “need to resist desires to maintain stereotypic leadership perceptions,” and replace these with behaviors and thinking that indicate attempts to do things entirely differently. “In the end, it may be better for a leader to be, temporarily, uncertain, inconsistent and lacking in complete control, but on the path to being right.” Church Ethics, at 78.
course of action, and against which his past actions can be evaluated (for the purpose of better service in the future).\textsuperscript{165}

Professional codes of ethics for bishops and priest would be tools which “aim to assure the public of the trustworthiness of those accepted into the profession… by serving as a set of criteria for screening candidates for ministry,” and by providing “a set of standards that help to define, interpret and measure responsible pastoral practice.”\textsuperscript{166} Such codes are practical devices for both congregations and their leaders; they at least set a concrete “baseline for the morally appropriate exercise of ministry,” and define a “common set of realistic expectations.”\textsuperscript{167} Having concrete and measurable (i.e., subject to evidence) requirements of professional competency, whether spelled out in a code or simply as strong intra-communal pressure, compels bishops and priests to draw closer to their communities and discern its needs from the people – thus reducing or undoing the distance and exclusivity of much hierarchical rule.

But proponents have also identified problems with simply establishing a professional code of ethics for Catholic Church personnel professional apart from addressing the underlying values, structures and culture that support such a code. Adopting professional standards simply begs the question of who determines the standards, and who regulates

\textsuperscript{165} One way to understand the sexual abuse crisis is as a “social drama” wherein revelations of misdeeds upended long-held personal and cultural expectations. The most common example is that of priests and bishops, understood as ‘experts’ in moral and spiritual matters, seemed to be different ‘in real life’ from doctrinal description. “The long-term outcome of a social drama depends to a considerable degree on how the tensions and contradictions inevitably unearthed by it are handled.” The sexual abuse crisis revealed that beliefs about church leaders, and their actual behaviors, were far from matching up. Jean M. Bartunek, “The Sexual Abuse Scandal As Social Drama,” in Bartunek et al., Church Ethics, at 18.

\textsuperscript{166} Richard M. Gula, S.S., “A Professional Code of Ethics?” In Bartunek et al., Church Ethics, 147-56, at 150.

\textsuperscript{167} Gula, “A Professional Code of Ethics?, at 150.
and evaluates the professionals who enact the standards.\textsuperscript{168} Without numerous changes in infrastructure, canon law,\textsuperscript{169} theology,\textsuperscript{170} and internal church culture,\textsuperscript{171} appeals to professional competency as a justification for official authority fail to bring consistent results. This is not because such competency is inapplicable in the context of Catholic ministry -- on the contrary, it is sorely needed -- but rather because professional competency requires changes in prior governance structures and internal expectations (culture). The normative justification for the authority of office-holders would be spelled out in these prior structural and cultural arrangements, such as a reworked Code of Canon Law.\textsuperscript{172}

\textsuperscript{168} “Based on the experience of lawyers, we would predict that the challenges to an ecclesiastical code [of ethics] fall into five broad areas. First, who gets to craft the first draft, quite apart from the complex question of adoption, will reveal much about the goals and likely success of a code. Second, such a code must acknowledge and confront the inherent limitations of all rules: identifying the optimum level of discretion and understanding the role of fact-finding within a code. Third, drafters must understand – as they inevitably do – the necessity of ethical awareness as a precondition for the effectiveness of any code. Fourth, as a code articulates the contours of the role-differentiated behavior of the professional, it must be sufficiently flexible to reflect the challenges of role-differentiated behavior. Finally, and perhaps most importantly, a code of conduct by its nature focuses on the function of the individual professional and can be an awkward and often ineffective vehicle for addressing the need for changes in the institutional structures within with the professional functions.” Daniel R. Coquillette and Judith A. McMorrow, “Toward an Ecclesiastical Professional Ethic: Lessons from the Legal Profession,” in Bartunek et al., Church Ethics, 157-67 at 159-60.

\textsuperscript{169} Cf., John Beal, “It Shall Not Be So Among You! Crisis in the Church, Crisis in Church Law,” in Oakley and Russett, Governance, 88-102.

\textsuperscript{170} “The first step [for structural change in the church] has to be to develop a theology of the laity. Theological reflection upon what it is to be a layperson implies a whole ecclesiology, and this in turn will point the way toward developing appropriate structures. Right now, polity is the tail that wags the ecclesiastical dog, and it has to change.” Paul Lakeland, “Understanding the Crisis in the Church,” in Bartunek et al., Church Ethics, 3-15, at 9.

\textsuperscript{171} “For the organizational culture of the church to change, ordained leaders within the church need to see their interests as being broader than that of the institution and the hierarchy, they need to identify their interests with the laity and truly see the church as a unity of priests, vowed religious, laity, tradition and institutions. Only when the organizational culture shifts toward seeing the laity as part of “us” rather than “them” will the bureaucratic culture begin to reflect the interests of the entire church rather than simply the ordained.” Patricia M. Y. Chang, “An Ethical Church Culture,” in Bartunek et al., Church Ethics, 187-94 at 193.

\textsuperscript{172} “Canonical laws, which are often denigrated as unimportant, attempt to render the other three canons specific in the small details of daily living. When canonical laws are overlooked too long, the other
In the Catholic Church as presently structured, requirements for professional competency would have to arise ultimately from the bishop. Presently, initiatives are entirely dependent upon the will of bishops to move forward or even exist at all – although admittedly the bishops’ wills in this matter have been influenced by embarrassment and enormous public criticism over their mishandling of sexual abuse allegations. Nonetheless, without the right cultural and infrastructural support, professional competence becomes its own kind of theoretical expertise.

3.3.3 Justifications Based on Equality

A number of other commentators have ‘called the bluff,’ as it were, and charged that recent reforms in the matter of sexual abuse allegations – say, by implementing the Charter for the Protection of Children and Young Persons, and establishing the National Review Board -- have little real effect on persistently dysfunctional structures of church governance. A bishop still holds all executive, legislative and judicial powers in diocesan governance, and attempts to create new policies have amounted only to rearranging deck chairs on the Titanic. Priests’ abuses of power in direct actions of three canons are likely to drift away from the church’s consciousness and be honored only in the breach. When this happens, such a church will invariably discover its apostolate to be compromised, its faith dubious, its worship more concerned with current events than with the presence of the living God, and its efforts bent more to maintaining its own coherence than to restoring the unity of the world to God in Christ.” Aidan Kavanaugh, On Liturgical Theology. Collegeville, MN: The Liturgical Press, 141-2.


174 Comparing the 1983 Code of Canon Law to Bishop John England’s 1820’s-era constitution for the (then-sprawling) diocese of Charleston, SC, Francis Sullivan notes “that most of the opportunities the Code provides for the participation of the laity in decision-making depend for their effective implementation on decisions that are made by bishops. It is the bishops’ conference that decides whether to hold a plenary council and, if so, whether to invite the number of lay people that the law allows the bishops to invite as members with consultative voice. It is the local bishop who decides whether and for what reasons to have a diocesan synod. It is the bishop who decides whether to have a diocesan pastoral council and how their members are to be selected. It is up to the bishop to decide whether each parish of
sexual abuse\textsuperscript{175} were echoed in episcopal abuses of power\textsuperscript{176} that stalled the pursuit of justice. There seems to be little that the laity can do pragmatically about this situation, since the official justifications for authority – such as the “theoretical expertise” of \textit{Pastores gregis} – reinforce the notion of governance by clerics alone.

But for many, Vatican II’s assertion of equality of discipleship, indicated by the powerful sacramental language that all Christians are baptized into Christ as priests, prophets and kings, opened the door for the laity to take roles as empowered agents within the church itself.

The council stated, for instance, that the laity “should be given every opportunity to participate in the saving work of the church”; that they should be permitted to express informed opinions on issues “pertaining to the good of the church”… Most notably, Vatican II shifted the understanding of authority in the church to impose a new ethics in which communal authority – the interpretative authority of Catholics as a whole, the ‘People of God’ in informed conversation with the bishops and priests – would come to a reasoned, practical understanding of Catholicism.\textsuperscript{177}

\begin{footnotesize}


\textsuperscript{176} Besides holding all powers of governance, most US bishops also hold title to diocesan real estate and finances through the legal device known as corporation sole. Bishops could (and did) agree to monetary settlements with victims, without any requirement of accountability for funds, since finances technically belonged to bishops themselves. Sometimes these funds were used as confidentiality payments, to keep victim-survivors quiet, a tack condemned in the 2002 Charter for the Protection of Children and Young Persons. Cf., John P. Beal, “Business Class: Corporate Body and Church Soul in the United States,” in T. Frank Kennedy, SJ, ed., \textit{Inculturation and the Church in North America}. New York: Crossroad, 2006, 79-123.

\textsuperscript{177} Michele Dillon, “The Struggle to Preserve Religious Capital: A Sociological Perspective on the Catholic Church in the United States,” in Bartunek et al., \textit{Church Ethics and Its Organizational Context},

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Vatican II’s theological developments made possible a substantial shift in the normative justification for church authority. This theology set in motion an internal sociological and cultural reality, coexisting with and parallel to the clergy-only institution, wherein lay persons increasingly understood and experienced themselves as full, adult and responsible members of the church with participatory rights. Vatican II rejected a church culture based on 19th-century notions of the *societas perfecta* where “ecclesiology… has been reduced to hierarchology;”\(^{178}\) “Correcting the older dualism that identifies the clergy with the church and the laity with temporal affairs, the Second Vatican Council taught that, in virtue of the sacrament of baptism, the entire People of God shares a common call to holiness and responsibility for the church and the world.”\(^{179}\) Vatican II officially brought an end to the belief that there are salient inequalities between clerics’ and laypersons’ capacities and skills for Christian discipleship (the cultural persistence of clericalism notwithstanding). Christian discipleship itself bestows an authority, made visible in the *sensus fidelium*, which justifies the sharing of all Catholics in the responsibilities of teaching, sanctifying and governing.\(^{180}\)

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43-56 at 45. Dillon cites *Gaudium et spes* 55, 56 and 62; similar points are made in *Lumen gentium* 37 and the *Code of Canon Law*, canon 212.3.

178 Francis Oakley, “Constitutionalism in the Church?,” in Oakley and Russett, *Governance*, 76-87, at 77.


180 Not surprisingly, these theological and cultural changes have led to increased calls for a greater diversity of Catholics in official leadership, e.g., ordination of women and married men to deaconate, priesthood and episcopacy, as well as for non-ordained persons to take responsibility for official church ministries. The explosion of lay ministries in the Catholic Church since the Council has made clear that many lay Catholics are not waiting for ordination to ‘get on with it.’ On lay ecclesial ministry, see USCCB, “Co-Workers in the Vineyard of the Lord,” *Origins* 35:25, Dec. 1, 2005. For John Paul II’s rejection of the ordination of women (and ban on even discussing the topic) see Pope John Paul II, *Ordinatio sacerdotalis* (*Apostolic letter on reserving priestly ordination to men alone*), May 22, 1994, accessed at
The changes brought about by Vatican II were not understood by the Council Fathers to be completely original to them, but rather an authentic retrieval of the New Testament and early church witness (summed up in the phrase *ressourcement*), channeled into a communal discernment for authentic present and future developments (summed up in the phrase *aggiornamento*). This theological foundation opens the door for justifications of governing authority based on theories of consent.

3.3.3.1 Social Contract Theory and Church Governance

Vatican II’s theological development seems to echo changes in secular political theory and practice noticeable in the modern period and often associated with the rise of democratic regimes. Instead of relying on (non-existent) perfection or superiority reserved to the few, justifications for secular governance appealed to a rationale that “people are roughly equal in their abilities to reason and live well” so that “whatever differences exist among human beings are not sufficient to render some so superior in reasoning or knowledge as to have the authority to rule over others.”

Since the members of the group are equal, they must figure out through some kind of process of mutual consent how to order their society and achieve the benefits of associating together. In so doing, they will also devise ways for persons to hold political authority, that is, to make laws, execute justice, and the like, so that the group may achieve the

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181 Hampton, *Political Philosophy*, at 28.
benefits of association in ways that bring life rather than harm to the community as a whole, and to individual members of it.

But the sexual abuse crisis has underscored for many observers the great distance between the theological developments of Vatican II, which recognize an active and responsible role for the laity in matters of ecclesial concern, and continuing practices of church governance, with authority locked up in the hierarchy and governing structures closed to laity. These continuing practices of governance simply are wrong because they do not reflect a community of equals. Among equal persons, justification of authority comes not from, say, divine authorization or expertise in holiness but from “the assent of those over whom such authority is exercised, e.g., one who is elected into a particular office has the power and authority to carry out the duties of that office because those people have invested their own ‘powers’ and interests in that person, hence investing their authority in, authorizing that individual.”

Drawing on social contract philosophies, this view holds that the governed properly possess the authority of governance, which they invest in or loan to their governing leaders, to use on their behalf.

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182 Gerard Mannion, “Introduction: Gifts and Challenges for the Roman Catholic Church Today,” in Gerard Mannion, Richard Gaillardetz, Jan Kerkhofs, and Kenneth Wilson, eds., Readings in Church Authority: Gifts and Challenges for Contemporary Catholicism. Burlington, VT: Ashgate Publishing Company, 2003, 1-11 at 4. Elsewhere Mannion has expanded this line of argument. “[I]t is helpful to return to the notion which Hobbes helped illustrate concerning the idea of authority as representation – of rights being invested ‘in trust’ to certain societies, institutions and even individuals for the legitimate exercise of authority. This authority is granted for the benefit of the whole society. Of course, Hobbes had a social contract theory in mind, which is not a concept that is emphasized much in ecclesiological debates, but which perhaps could prove beneficial were it to be considered… One of the main problems with the issue of authority and governance in the Church is the assumption that those who hold and exercise authority do so de facto as if the issue is no more complicated than that. However, when speaking of authority de jure – that is, by right – it must not be mistakenly understood as something akin to the ‘divine right’ of kings or even something which goes by way of right with certain offices. The right is granted by the ‘authors,’ the authority comes from those whom the person exercising the authority represents.” Gerard Mannion, “What Do We Mean by ‘Authority’?” in Bernard Hoose, ed., Authority in the Roman Catholic Church: Theory and Practice. Burlington VT: Ashgate Publishing Company, 2002, 19-36.
On this view, the sexual abuse crisis is a crisis of authority because those ‘in authority’ (i.e., the bishops) are exercising the powers of governance as though authority resides only in them. This way of governing lacks moral legitimacy not only because it caused harm, but also because it disregards accountability to the many who “authorize” church leaders in first place.

Too often in the church today, confusion exists between what constitutes genuine authority and the outright abuse and exploitation of power. Authoritarianism is as far away from genuine authority (which, of course, is something literally invested in persons by those who are then subject to their authority; i.e., they authorize those in authority) as it is possible to be. Thus what appears to be at work in the church today is the exercise of power without real authority. Authority cannot be exercised without regard for the opinions, wishes and needs of the wider community of the church faithful, for it is they who provide the church with its authority in the first place… We are faced with a crisis of legitimation. Church leaders are increasingly perceived as no longer having any claim to legitimate authority and leadership, yet many church policies are shaped in the mistaken assumption that blind obedience and automatic deference continue to exist.183

Ideas found in modern social-contract theories – particularly the notion that ‘the governed’ hold authority and provide from themselves the mandate for government leaders to rule -- make sense as a way forward. Experience by many Catholic citizens of western democracies underscores the pragmatic value of governance that, while not problem-free, seems geared to meet the needs of its citizens (including the need for transparency and accountability). It seems to be an easy step to import democratic structures modeled in secular society into the Catholic Church.

Yet such a step would be premature if it assumes a fairly straightforward relationship between the people’s authorizing their leaders, and what leaders actually do

183 Gerard Mannion, “‘A Haze of Fiction’: Legitimation, Accountability and Truthfulness.” In Oakley and Russett, eds., Governance, Accountability and the Future of the Catholic Church, 161-177 at 162 and 170. Emphases in the original.
when they govern. Modern, stable democracies are complex entities where authority shows a philosophical paradox. How can free and authoritative people create governing authority, which by definition will obligate obedience and constrain freedom? Yet another paradox obtains: how can governing authority be authoritative at all if it holds authority only on loan from the people? The idea of governing by the consent of the people is now so common that it is easy to think that any such political organization will be successful. But commonality is not the same as success. As political theorist Jean Hampton notes,

[w]e who approve of the Lockean idea that such an agency relationship exists between ruler and people ought to be able to allay these concerns if that idea is genuinely sound and thereby show that if rulers are empowered and authorized by the people whom they govern, the political society will nonetheless be stable.

Yet this is remarkably difficult to do. If there is such an agency relationship between ruler and people, how does it make sense to consider the people “ruled”? And if the people who are being “ruled” are themselves in charge of their rulers, how can their political society last?

The presumption of success and stability in democratic states is widespread; persons who live in such regimes often “dismiss the charges of inconsistency – without, however, understanding why we are justified in doing so or indeed why these regimes work despite their paradoxical character.”

This is not to claim that governance by consent of the people is rationally incoherent, nor to dismiss is as inappropriate as a potential model for Catholic Church governance. On the contrary, this model offers promising possibilities to address the church’s crisis in governance. However, simplistic

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184 Hampton, *Political Philosophy*, at 63.

185 Ibid, at 64.
or too-quick attempts to resolve the paradox and apply democratic structures may themselves end up as implausible and/or incoherent.

Take, for example, the implication that governing authority is legitimate only when it does the right thing by the people, e.g., serving their needs and interests. This move appears to ‘flatten’ authority by figuratively bringing authority ‘down’ to the level of service to society’s needs, and/or raising ‘up’ the people as the sole authorizers of what is going on in government. The motivation behind this view is to accept governing authority as legitimate only when it is morally right, and/or when it does what the people want; otherwise authority degenerates into mere exercise of power (authoritarianism). Considering the abuses of authoritative power in the sexual abuse crisis, this argument seems straightforward enough.

However, the right course of action can be hard to know at any given moment – what is morally right can be open to dispute, or impossible to know except in retrospect, or theoretically knowable but pragmatically impossible to achieve. To have the people act as moral judge and hold power ‘over’ church authorities creates problems of its own – or perhaps, like the apprentice’s broom, this move solves a prior problem but creates innumerable others. A society is rarely of one mind; in the Catholic Church, for example, how could one reconcile disagreements among its sub-groups in order to approve an official mandate? Communal flourishing requires internal communal order and stability; these would be hard to obtain if those in authority simply followed ‘the will of the people.’ As G.E.M. Anscombe observed, what happens “where the subjects of authority are so willy-nilly”186? Instead of the authoritarianism of individually powerful leaders,

the situation might degenerate into permanent rebellion every time governing leaders go wrong, or, since rebellions require a hard-to-come-by unity of mind and purpose, an inertia born of conflicting interests.

Calls for reimagining church governance which omit or even reject the authoritative use of coercive power skip over a key characteristic of western democratic regimes shared by church authorities. I do not mean that the church needs to resort to police and armies, but simply that church authorities issue commands to be obeyed by those subject to them. This feature of governance is important not because governing authorities – either in the church or in secular contexts -- have rights to do whatever they wish with their power, but rather because the nature of any society is such that internal conflicts inevitably arise, and malicious persons inevitably coexist alongside the righteous. People in the community require protection from potential chaos and harm. Protection itself is a large and complicated endeavor involving authoritative directives that restrict some persons’ freedom in specific ways, and even inflict punishment on others. Was it not the lack of protection of the vulnerable a major component of the sexual abuse crisis?

One purpose of governing authority is to enable communal flourishing by ensuring communal order. But “ensuring order” is simply a mild way to say ‘possessing and using coercive power’ and ‘presuming some kind of obligation of obedience’ on the part of the people, at least in terms of protection from harm. If restrictions and punishments were issued “willy-nilly” by individual members of a society, such actions

University of Minnesota Press, 1981, 130-155 at 135. Emphasis in the original. I am indebted to Anscombe’s account of state authority to clarify some of the theoretical pitfalls in contemporary proposals regarding church governance.
would be considered gross injustice. But when performed as part of the “task” of proper governance – directed towards the goal of the common good and communal flourishing -- authoritative directives can be considered legitimate and binding. “[T]he ground of authority is most often a task. Authority arises from the necessity of a task whose performance requires a certain sort and extent of obedience on the part of those for whom the task is supposed to be done.”

But the ‘authoritative’ possession of power indicates that those ‘in authority’ do possess authority of their own, since the authority to ensure order does not lie in the people, but in the authoritative leader that the people have agreed to obey in these matters. It is problematic to see the success of modern democratic regimes solely or directly in terms of the consent of the people. This overlooks the use of coercive power -- which paradoxically restricts how much people consent to what happens in their community -- in the quotidian work of governance. Coercive power is supposed to be directed towards the regime’s stability (and ultimately towards its flourishing), not towards its harm. That it can be used for harm does not diminish its essential role in providing stability, protection, security and the like, but only signals caution in its exercise.

So, appeals to some kind of inherent agency of governed persons in their own governance require an account not simply of the people’s consent, but also of their assent, that is, their morally-obligatory obedience to governing authority.

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3.3.3.2 Participation, Anarchism and ‘Good Governance’

Other approaches simply ‘go the distance,’ either coming close to an anarchist rejection of authority, or redefining it in such a way as to ‘flatten’ it entirely. Participation, dialogue, healthy debate and interaction among equal persons are seen as the most important features of church governance. That is, church governance does not simply enable participation and so forth, but participation itself becomes the hallmark of how the church runs; participation or dialogue is understood not generically but as a practical, structural element. “The term “participation”… stresses community more than ecclesial rank and signals a sense of cooperation between individuals of equal dignity, relative to the work that needs to be done.”

At the same time, the asymmetric relationship between those in authority and the rest of the community is minimized or even removed, because “the notion of hierarchy is increasingly thought to mean domination, oppression, authoritarianism and patriarchy.” Where an authoritarian “command hierarchy” communicates in terms of unidirectional mandates, true authority actively engages in the essential social phenomenon of ongoing communal dialogue, participation and interaction, allowing insights among all the baptized to contribute meaningfully to the life of the whole community. The former understanding and style of authority disinvites responses and tends to exclude participation. The latter

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189 Terence L. Nichols, “Participatory Hierarchy,” in S. Pope, ed., Common Calling, 111-126 at 111.

190 “[T]he Catholic Church is meant to be a participatory hierarchy, sourced in the Holy Spirit, in which the will and mind of the Spirit is expressed both through the magisterium and through the laity, priests and religious. The contemporary crisis in the church has come about because over the centuries participatory hierarchy has been supplanted by a one-sided command or monarchial hierarchy.” Nichols, “Participatory Hierarchy,” at 111. Cf., also Terence L. Nichols, That All May Be One: Hierarchy and Participation in the Church. Collegeville, MN: The Liturgical Press, 1997, especially Chapter 11, “The Church As Society,” 285-309.
contributes in an organic way to the life of the whole community because directives are sourced in an ongoing dialogue.

In a reconfigured understanding, those in authority do not issue unilateral commands – indicative of authoritarianism and the conflation of ruling power with authority – but rather participate in the larger communal dialogue as a servant-leader. Through listening to others and implementing discerned courses of action, the person in authority establishes a trustworthy relationship with the rank and file.

Proper authority, then, should not be confused with authoritarianism. Christian authority is best based on trustworthiness and reason-giving; authoritarianism expects commands to be obeyed without reflection or internal conviction. Genuine authority engages in respectful dialogue and moves toward conclusions after listening to all the relevant sources; authoritarianism does not. Genuine authority is essentially a form of teaching, and forms of governance follow from its primarily educational task – a notion communicated in the word *magisterium*, which means “teaching authority.” Governance is, or ought to be, exercised in the service of genuine authority in the church.

On these and similar views authority disqualifies itself when it issues a command, that is, a directive which arises from the leader alone, apart from necessary communal discernment, and imposed on others forced to live with its effects without appeal. The sexual abuse crisis saw many such commands issued, e.g., the matter of reassigning abuser priests, which resulted in grave harm visited upon additional victims of abuse. Surely it is not enough to say that there is a ‘loss of credibility’ on the part of such bishops, as is often lamented. It would be more accurate to say that there is an entire loss of authority. Such bishops seemed to have completely lost – or perhaps never possessed

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in the first place – any kind of meaningful relation and communication with their flocks. Authority was replaced by authoritarianism.

The reconfiguring of authority in such accounts seems to lean toward a sort of political anarchism.¹⁹³ (None of the authors cited here mentions political anarchism by name, but their descriptions of community organization suggest that kind of community). According to political anarchists, “the only morally defensible form of human association is one in which there are no persons or institutions issuing commands that they back up through the use of force.”¹⁹⁴ Social organization emerges not ‘top-down’ from the imposition of authority but through ‘bottom-up’ means such as consensual and collective decision-making in smaller, local groups that contribute together to large-scale organization. The advantages of political anarchism include the affirmation of individual freedom and equality within the very structures of the organization. What the church “looks like” would be what it is, a community of disciples¹⁹⁵ called by Christ to witness to the gospel and serve the world in faith, hope and charity – rather than as a rigid organization headed by the pope, who sends orders down through the hierarchical ladder (with the laity seen as extraneous to the clerical ‘official church’). Privileging Christian baptism and discipleship, this kind of organization dispels “authoritarianism, which is the

¹⁹³ By suggesting the resemblance to political anarchism I am not identifying these authors with any specific type of anarchist view, but rather in a broad way, as “a theory of society without any coercive authority in any area.” Even among ‘established’ theories of anarchism, there appears to be “no single defining position that all anarchists hold, and those considered anarchists at best share certain family resemblance.” The Oxford Companion to Philosophy, 2nd edition, ed. Ted Honderich. New York: Oxford University Press, 2005.

¹⁹⁴ Jean Hampton, Political Philosophy, at 7.

use of one’s position of power for one’s own benefit rather than for the benefit of those subject to authority.”196 Especially in light of the sexual abuse crisis, where cooperating bishops seemed oblivious to the needs of their communities, or even oblivious to the fact that the church exists outside the ranks of clergy, anarchist-leaning remedies appear to meet the church’s needs.

Alternatively, an account might allow for authority – e.g., utilizing one of my own criteria (the Scriptural and early church witness) in affirming authority structures in church governance.197 But there is a presumption towards what one might call good authority, that is, authority that effectively promotes spiritual welfare and life-giving communal relationships. What I am calling “good authority” can be defined as

a positive, dynamic force ordered to growth. Authority’s essentially dynamic character is obvious from its root, shared with “author” and “augment,” in the Latin augere: “to create, to enlarge, to make able to grow.” Authority generates life. It is a living substance that frees the possibilities of other persons as, for example, in parents who “author” the growth of their children…

Everyday illustrations include health authored by physicians in relationship to patients, learning generated by teachers in relationship to their students, and spiritual growth authored by pastors in relationship to the members of their flock. The crucial work for all those achievements is done in and through the relationship. Generative authority may be identified by its context of human relationships and by the positive accomplishment that flows from it.198

196 Hampton, Political Philosophy, at 7.

197 E.g., “I am not persuaded by the arguments of Crossan and others that the Jesus movement was egalitarian… However, if there is hierarchy in the Jesus movement, it is not dominance or command hierarchy. Jesus denounces those in positions of hierarchy and flouts social convention by eating with tax collectors and sinners. He declares that authority is service (Mark 9:35), and he so represents it (the washing of the feet in the Gospel of John). When Jesus sends out disciples, he gives them the same powers to preach, heal and exorcise that he has (Matthew 10; Luke 9). His aim seem to be to bring the disciples into the kind of loving relationship with God that he himself experiences.” T. .Nichols, “Participatory Hierarchy,” at 116-7.

198 Eugene Kenney and Sara C. Charles, Authority: The Most Misunderstood Idea in America. New York: The Free Press, 1997, 2-3. This passage was also referenced in Meara, “Rebuilding Community,” at 10. “In short, the primary mission of the hierarchy is to inspire holiness and foster care. To pursue this mission the church needs persons of integrity, who understand authority as a relational construct, focused on “authoring” spiritual growth or other goods.”

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This non-coercive kind of authority appears consistent with a church characterized by egalitarian, dialogic communal relationships.

Whether governance is described as anarchistic or simply as ‘good,’ both approaches weaken authority (full-blown anarchism by definition rejects it altogether) by distancing themselves from one of authority’s key characteristics: its right to control and constrain others. In so doing, they have not simply redefined authority; I would suggest that they have un-defined it. (A related, ecclesiological problem: the term ‘hierarchy’ itself is understood in terms of mastery and is cordoned off – either by qualifying hierarchy as ‘participatory,’ or condemning it outright, e.g., “[The church’s] current institutional structure of government is extraordinarily centralized and hierarchical.”199) That is, having conflated authority with mastery over others, and rejected mastery and coercion within a community of equals, these approaches fail to distinguish between, as Hamptons says, “what intuitively strikes us as “good” and “bad” kinds of control.

The control of a parent over a two-year-old is normally thought to be not only permissible but morally required. The control of a gunman over a victim he has kidnapped at gunpoint is normally thought to be highly impermissible. The second kind of control is condemned as morally unjustified – a violation of the coerced person’s “rights.” The first kind of control is thought to be morally justified and consistent with, and even supportive of, the child’s rights… Intuitively, we speak of the good forms of control as arising from some sort of authority that the controller rightfully exercises over the person she is controlling… Whatever it is, it is not the same as (sheer) power. Authority is about the entitlement to rule; mere power isn’t enough to supply entitlement… Connected to this entitlement is the obligation the subjects have to obey the (authoritative) ruler’s commands.200

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199 Bruce Russett, “Monarchy, Democracy or ‘Decent Consultation Hierarchy’?”, in Oakley & Russett, eds., Governance, 196-202 at 196. In the same article, Russett reminds readers that even John Rawls, in his term “decent consultation hierarchy,” seemed compelled to redefine hierarchy away from accepted connotations of total mastery.

200 Hampton, Political Philosophy, at 4.
It is worth speculating whether official distaste for democratic governance in the Catholic Church\textsuperscript{201} arises not from antagonism toward democratic polity per se, but rather from concerns over what might more accurately be identified as the dismantling of governing authority in favor of some kind of direct governance by all members of the church. On this view, a system of ecclesial governance based on democratic consent introduces the possibility of altering Christian ethics and doctrine according to the oft-changeable will of the majority. “Everything that one majority decides upon can be revoked by another majority. A church based on human resolutions… is reduced to the level of the makeable, of the obvious, of opinion.”\textsuperscript{202}

I suggest that movement forward requires not a weakening or flattening of authority, but rather a clearer understanding of the purpose of governing authority, and why it is required in large organizations. As I will propose below, authority need not be conflated with coercive mastery, nor must all exercises of authority be correct ones in order to be authoritative. While authorities do possess the right to rule, and their directives compel obedience, nonetheless these remain compatible with additional features of governance found in modern democracies, i.e., “an institutionalized system to restrain leaders and, if necessary, to make it possible for the people to remove leaders who consistently make decisions that damage the general well-being.”\textsuperscript{203} In the following section I shall outline the parameters of governing authority in the Catholic Church; this understanding will

\textsuperscript{201} “In 2002, Pope John Paul II warned a group of Austrian bishops visiting the Vatican, “The church is not a democracy, and no one from below can decide on the truth.” Russett, “Monarchy, Democracy,” at 196.


\textsuperscript{203} Jean Hampton, \textit{Political Philosophy}, at 5.
eventually provide a foundation for Chapter Three’s constructive proposal for a consent-based governance.

3.4 A Normative Justification for Church Authority

The foregoing sections reveal a variety of normative justifications for governing authority in the Catholic Church. While all the normative justifications explored above identify important points, they suffer from defects of plausibility and/or rational coherence, making them unpromising candidates to address urgent moral concerns. I suggested that one approach to overcoming such defects is to provide a normative justification for governing authority not driven by ecclesiological preferences but rather by an ethical appropriation of a Thomistic theory of the natural law. Such an analysis can make meaningful use of scriptural and doctrinal resources, and will provide an account of ecclesial authority that strengthens it properly for its work of service. The goal is not to entirely re-imagine Catholic Church governance but to make a sound justification for governing authority in it.

3.4.1 Normative Justification from Morality

I begin with the Sixth Commandment as both divine law and a fundamental moral concept concerning the justice of human interrelationships in community. The Sixth provides ethical parameters which can be grasped by believers as in accord with God’s will, but which also can provide normative justification for church governing authority. As explained in Chapter One, these parameters can be inferred from the Sixth as boundaries or limits for human interrelationships in the church; as norms of justice, they encompass more than the traditional rule not to commit adultery. These ethical
parameters still exist at a fairly general level, but generality does not render them impotent. On the contrary, the Sixth as a precept of justice holds its own ‘authority’ “because it indicates the common goals that motivate a social group which takes the law to be obligatory upon itself.” In other words, the Sixth provides the basis for some of the most fundamental values of the Catholic community by which it identifies itself, and translates them into communal moral constraints.

To move to a more specific level, one can refer to the “task” of governing authority identified above. A community is characterized by human interrelationships and interactions. In an imperfect world, these interrelationships and interactions cause harm as well as good, so justice requires protection for the vulnerable. A governing authority is the one with the right to provide this protection by means of compelling rules and procedures for all; this task belongs to authority per se and not to ‘the ruled’ as individuals. Persons in authority hold this capacity or power, and then issue directives for the sake of justice in the community. ‘Protection’ can be understood as direct protection from physical or sexual assault – that is, coercive powers intervening between potential offenders and victims – or in a more extensive sense as an entire system of law-making, bureaucratic initiatives, executive orders, due process, law enforcement, courts, judges and the like. Or, governing authority simply coordinates communal activity in such a way as to reduce friction points and maximize flourishing. The point is that governing officials not only provide for safety by having the means and power to protect from harm, but also hold this authority in contradistinction to those subject to them. Authority’s ‘task’ to protect its subjects from harm provides the ground for understanding

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authority as belonging to that official person who holds it. The people do not individually possess authority to do this task (which is then loaned to governing officials), but rather they (paradoxically) establish and obey that authority.

Authority is normatively justified by its own special task of ensuring justice by protection of persons from harm. This holds true for ecclesial as well as secular (state) authority, although the practical machinery of protection obviously differs between these two contexts. What is perhaps most surprising in light of commonly-held understandings of the bishop as a holy figure presiding over sacerdotal functions or judging right doctrine, is that episcopal governing authority is justified by such an apparently mundane reason. There does not seem to be anything particularly ‘holy’ about protection from harm – secular governments do this all the time. However, this justification sets the necessary moral conditions under which people interact in the first place. Also the fundamental moral concepts expressed by the Sixth and other commandments of the Decalogue are associated in the Christian tradition not simply with generic right living, but also with the seeking of salvation and of right relationship with God in Christ and the Holy Spirit. The church cannot ‘be itself’ if it is not a community; but for a community to ‘be itself’ persons must be free to interact and do creative things together in pursuit of their common goal of Christian mission and ultimate beatitude. It does not make sense to call an organization a ‘community’ if some persons in it are regularly harmed, if there are known scoundrels and culprits at large with no action taken for defense, and if all persons know they are making themselves vulnerable to harm by participating in the community.²⁰⁵

²⁰⁵ Anscombe observes that one of the major differences between authority of the state and that “some club that one belonged to” is “that one can resign from the club and so escape the obligation arising
Authoritative protection as the external face of governing authority’s commitment to justice provides a necessary condition for the possibility of real community. A trustworthy and safe communal environment makes it possible for persons to interact, cooperate and grow together. That is, when justice is observed, then the community flourishes; or, in the phrase from Isaiah embraced in the Catholic social tradition, “peace is the fruit of justice.” Protection can be understood as a foundation to a Christian community, which can then ‘get on with’ its call to discipleship. It is in this context that the US bishops’ Charter for the Protection of Children and Young Persons can be understood; protecting the vulnerable maintains justice in interrelationships, and just relationships mean that the community can live together. The Charter has been rightly criticized for its shortcomings, particularly its focus on errant priests to the exclusion of the cooperating bishops. Nonetheless, in enacting this and other protective measures, the US bishops performed the task of governing authority.

206 As Paul VI observed, “[l]ife is movement, growth, work, effort and conquest. Is that what Peace is like? Yes, for the very reason that it coincides with the supreme good of man as he makes his way through time, and this good is never attained totally but is newly and inexhaustibly acquired…[T]he invitation we give to celebrate Peace resounds as an invitation to practice Justice: “Justice will bring about Peace” (Cf., Isa. 32:17). We repeat this today in a more incisive and dynamic formula: “If you want Peace, work for Justice.”’’ Pope Paul VI, 1972 Message for World Day of Peace. Accessed online at www.vatican.va. Cf. also James 3:18, “And a harvest of righteousness is sown in peace for those who make peace.” (NRSV).

207 One cannot read the Charter’s stipulations for prompt removal of credible offenders, with little focus on what the Catholic Church must do about cooperating bishops, without getting a sense that, as the saying goes, the foxes are still in charge of the chicken coop.
3.4.2 Normative Justification from Rational Coherence

If the ‘task’ of authority is protection, it necessarily follows that governing authority has a right to issue compelling directives in this regard. Governing authorities “have not only the power to make and enforce rules but also the entitlement to do so”. These directives, in turn, necessarily oblige ‘the governed’ to obey them. That is, making and enforcing rules requires internal assent on the part of everyone else. Authoritative directives oblige not primarily because they (often) are be backed up with threat of punishment but because, as Hampton notes, they put “me under an obligation, independently of the content of [the] directive.

I can hate or like what I am being commanded to do, but as long as that command comes from an authoritative political ruler, I understand that I have an obligation to obey it. That obligation purports to preempt or “trump,” all sorts of reasons I may have against performing as the command directs[.] The common phrase that some authority or other (say, one’s parents) ‘made me do such and such’ conveys this intuitive understanding of what authority is. It would weaken the notion of authority to see this dynamic simply as authority’s external imposition of power over another, i.e., the frequent misunderstanding that authority is the same thing as imposed power. An authority is strong largely because its directives evoke a particular kind of obedience whereby the directives supplant other rationales for action on the part of the governed. The political philosopher Joseph Raz distilled this understanding into the following definition:

Person $x$ has political authority over person $y$ if and only if the fact that $x$ requires $y$ to perform some action $p$ gives $y$ a reason to do $p$, regardless of what $p$ is,

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208 Hampton, Political Philosophy, at 4.
209 Ibid, at 5.
where this reason purports to override all (or almost all) reasons he may have not do $p$.\textsuperscript{210}

In other words, “[w]hen authorities require performance of an action, their directives are not merely added to the balance of reasons, but they also exclude these reasons and take their place.”\textsuperscript{211} An authoritative directive would not truly be authoritative without this ‘preemptive’ characteristic; it would exist simply as another potential influence or reason for the governed to consider among other more or less equal rationales. This is not to say that the governed turn off their minds when given an authoritative directive, but rather to acknowledge that such directives supplant other potential reasons running through people’s heads. “If the authority is legitimate, it is rationally unacceptable for the subjects to rely on their own judgments rather than the authoritative directives themselves.”\textsuperscript{212}

Political philosopher Scott J. Shapiro further refined Raz’s notion of authority to stress the way in which authoritative directives do not operate simply at the level of the intellect – in the way in which an authoritative directive provides a kind of reason that trumps other potential reasons for action. Directives also, and possibly more accurately, operate on subjects at the level of the will insofar as directives restrict the willingness of subjects to act in some ways and not in others. Critical of the implication that authoritative rules are merely instrumental to decision-making on the part of ‘the ruled,’ Shapiro argues that directives more accurately are ways to prevent “decisions from being made.

\textsuperscript{210} Quoted in Hampton, \textit{Political Philosophy}, at 5.


\textsuperscript{212} Shapiro, “Authority,” at 404.
When someone submits to authority, the aim is to constrain his future self to act in accordance with the demands of some third party… A directive, once issued, is not a factor to be considered in future deliberation about whether to comply. After submission, the agent no longer deliberates about whether to comply. The subject merely figures out which action counts as the implementation of the rule.\textsuperscript{213}

These two philosophical definitions of authority suggest \textit{Lumen gentium}'s “religious submission of the mind and will”\textsuperscript{214} (although it was referring directly to episcopal and papal teaching, not governing, authority). This phrase itself has been the subject of much dispute, especially insofar as it has been misinterpreted as a kind of ‘blind submission’ to church authority. The present discussion hopefully will place church authority and religious submission in the correct context. Authorities issue directives that morally oblige subjects to assent and obedience. Even further, this obligation to authority obtains even when a given directive is wrong, or when the subject thinks that it is wrong. In a large organization such as the church what counts as ‘wrong’ or ‘right’ is so often open to dispute that an authoritative ruling is needed to ensure order. Authorities settle internal conflict, mediate disputes and solve problems of communal coordination eventually by ruling in such a way that all others must assent, so as to preserve the communal order. Actions that preserve the communal order, in turn, are not simply tasks done to satisfy the authority, let alone to arbitrarily impose things on the community, but rather to continually establish the conditions of positive social interaction and cooperation mutually benefitting individuals and society.

The preemptive nature of authoritative directives provides for a stronger account of authority than some accounts identifying authority as ‘in’ the people and on loan to

\textsuperscript{213} Shapiro, “Authority,” at 418.

\textsuperscript{214} \textit{Lumen gentium}, no. 25.
governing leaders, or other accounts defining directives as authoritative only when they are correct or acceptable to the people. These accounts tend to ‘flatten’ authority so that it is broadly shared by equals; but a flattened authority seems to dispel the notion of authority altogether. In my analysis, the attendant requirement of assent or internal moral obligation to preemptive authoritative directives prevents the collapse of authority into mere coercive power. While the historical record shows all manner of merely coercive regimes with proven track-records of success in keeping social order, nonetheless social order without assent remains impossible. Even dictatorships rely upon supporters to carry out the orders. There must exist “at least some population of persons who recognize the state’s legitimacy and remain loyal to its ideology. It is simply not possible to have ‘threats all the way down.’ At some point, someone has to carry out the will of the authority because he feels not only obliged, but morally obligated to so do.”\(^{215}\)

However, the issuing of directives and the exercise of coercive power are (or ought to be) constrained by justice, particularly so if the task of authority is to establish the conditions for justice. In the sexual abuse crisis, so many bishops were so wrong in their perception and handling of abuse of minors, that authority’s performance of its primary task of protection was rendered into kind of an anti-task.

3.4.3 Normative Justification from Plausibility

The preceding section outlined a rationally coherent understanding of church governing authority. Church leaders such as bishops issue compelling directives to their congregations; these directives or rules are binding not so much because the bishop actively ‘forces’ people to accept them, but because the people experience internally a

\(^{215}\) Shapiro, “Authority,” at 397-8.
moral obligation to assent. Moreover the task of authority distinguishes those who posses it from everyone else, who properly do not possess the same rights to ensure order and coordinate communal activity.

However rationally coherent this depiction of authority may be, by itself it is not a plausible account; that is, most regimes, churches and groups so organized simply do not work on the unilateral basis of authoritative directives alone. The reason for this is that, all things being equal, all persons are equal, or at least roughly equal in their capacity to understand the good and to seek justice in their interrelationships. Earlier I discussed two alternative justifications for authority based on equality, one inspired by the social-contract tradition and the other by philosophical anarchism. Here I wish to retrieve their insights regarding equality, and similarly affirm Vatican II’s theological developments (e.g., the church as the people of God, the universal call to holiness, the duty of the laity to express their convictions about internal matters to the hierarchy). My understanding, however, does not underwrite an anarchist-type of ‘people’s authority’ to actively take up the task designated for the hierarchy, nor does it see hierarchical authority as spread out (‘flattened’) among the laity who loan it to or invest it in their leaders.

Rather, it recognizes that there is more going on in governance than unilateral commanding; any society of equals cannot be characterized simply by authority’s giving of orders and subjects’ (freely and obediently) following them. A real society shows much more complexity than this, partly because equal persons, characterized as mature and responsible, are free to take up initiatives not specifically commanded by authority, and partly because their activity necessarily feeds back into and influences the governing leaders’ authoritative directions, although usually at some distance of removal. This kind
of activity includes disagreement with the direction of authority itself. Now, governing
authority ensures order and promotes justice in particular community, not in abstract
ones. To be effective (i.e., to actually ensure justice and order) determinate rules must
successfully meet the actual moral challenges of solving real conflicts and ensuring order
in a community with concrete needs and issues. It is of little use to command the people
in a very general way to justice (e.g., ‘do not injure others’) without naming how justice
obtains in these particular circumstances of this particular community. It is of no use at
all to command the people with highly specific directives that do not actually match up
with what is actually going on (e.g., exhortations against stealing when the community’s
problem is not theft but sexual abuse). It is entirely counterproductive to the purpose of
community to issue directives that are morally wrong and cause harm relative to the
conflict at hand (e.g., ‘stop investigations and inquiries because this diocese is free of
abusive priests’). 216

While authoritative directives can be considered preemptive, nonetheless to be
plausible they must also ‘link up’ as it were with the moral reality at hand – in other
words, they have to work. But in order ‘to work,’ directives must work for someone, that
is for the actual community experiencing a specific conflict or harm. If they do not solve
the problem of conflict or harm, then communal life misses the mark of justice; the

216 Leon J. Podles, for example, chronicled many documented falsehoods and perjuries on the part
of church officials in the matter of sexual abuse. For example: “Davenport’s next bishop, William E.
Franklin, thanked God and told the media that his diocese was not like other dioceses, that with one or two
minor exceptions, Davenport was free of abusive priests, a claim that he got away with until the courts
forced him to hand over some of the diocesan documents about abuse. All the evils present in other
diocestes are concentrated and encapsulated in Davenport: abusive priests in a pedophile ring with links to a
larger network, bishops who make disapproving noises but never discipline effectively, perjuring bishops
and chancellors, deceived psychologists, police who do not pursue cases, and a laity who blame the boys
for revealing the abuse and disturbing the comfortable illusions upon which Catholics base their view of the
world.” Leon. J. Podles, Sacrilege: Sexual Abuse in the Catholic Church. Baltimore: Crossland Press,
2008, at 36.
people cannot ‘get on with’ the various things that they do, individually and as part of a community (e.g., in the words of Paul VI quoted above, “movement, growth, work, effort.”). The ‘consent of the people’ becomes visible not by continual plebiscites on executive orders but rather in the collective activity of the people as they either go along with authoritative directives or participate in structural channels to challenge them.

In negative contrast, the sexual abuse crisis revealed just how little participation in or influence upon the governance of their church American Catholics had. Again and again, partial solutions proffered by individual bishops or the USCCB were criticized as not meeting the needs of real persons and/or not addressing key issues such as structural inequalities. The problem is not that the laity, or a democratic majority, should carry out the work of governance. The problem is that non-ordained members of the community have no meaningful way to given their consent to it. Hence, Catholic Church governance appears as a self-serving aristocracy more concerned to maintain a narrow sense of ‘justice’ -- the right to rule for specific members of the hierarchy – than to protect actual and potential victims of sexual abuse. Authoritative directives of bishops, issued without the consent of those actually experiencing harm and conflict, devolved into mere exercises of authoritarian power bereft of moral legitimacy.

3.5 Governing Authorities in a Community of Equal Disciples.

The purpose of this chapter has been to identify parameters of governing authority in the Catholic Church in such a way as to honor the moral obligation inherent in the Sixth Commandment to establish justice by ensuring right order in the Catholic community. After rejecting several traditional and contemporary theories of ecclesial authority, in the previous section I outlined these parameters of governing authority in a
community of equals. This discussion drew upon resources in political philosophy regarding the nature and limits of governing authority, and suggested that in the sexual abuse crisis governing authority suffered most acutely from internal incoherence, a misdirected sense of justice and a lack of plausibility. In this section I seek to demonstrate briefly the compatibility of the above discussion with Catholic ecclesiology. I will suggest that the nature of the episcopacy itself, as well as the theology of the people of God found in *Lumen gentium*, support an understanding of authority so outlined.

3.5.1 “The Other Faithful”

Appeals to Vatican II’s theology of the people of God have been made in support of theories of governance which place authority in the laity. These appeals lead to a problematic “flattening” of authority. Catholics need not make an either-or commitment to the hierarchical understanding of the church on the one hand, or the theology of the people of God on the other, as though these were two mutually incompatible ecclesologies. Hierarchy and laity exist in a relationship in which each group takes essential and mutually-informing roles in church governance.

*Lumen gentium*’s treatment is spare, but nonetheless indicates that church governance amounts to more than unilateral authoritative directives on the part of the hierarchy. Acknowledging the differences between ordained and lay persons, the document states:

“yet all share a true equality with regard to the dignity and to the activity common to all

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217 “*Lumen gentium* brought together several notions of the Church – communion in mystery, Body of Christ, People of God, Sacrament. But after the Council it was not uncommon for people to put these notions into tension with one another, even in opposition to one another. The result was that it almost seemed that one had to choose among the various images and concepts of the Church employed by the Council. Avery Dulles’ *Models of the Church* was at times misinterpreted, as if his five models were mutually exclusive, or even as if they described, not five ways of thinking and speaking about the Church, but five ways of being the Church.” Komonchak, *Who Are the Church?* At 22-3.
the faithful for the building up of the Body of Christ. For the distinction which the Lord made between sacred ministers and the rest of the people of God bears within it a certain union, since pastors and the other faithful are bound to each other by a mutual need.218

While the specific descriptions of activity sound somewhat unilateral – with pastors doing the ministering and “the other faithful” following their lead and helping out219 -- nonetheless Lumen gentium famously affirms a relationship of equality (repeating no. 32’s affirmation that the laity and hierarchy are “brothers”) while yet maintaining that the hierarchy possess the right to govern.220

My ethical analysis of governing authority indicates that the theological-ecclesiological tension between hierarchy (the church’s governors) and equality (of all the faithful) mirrors the philosophical paradox of governing authority in a society of equals. To maintain meaningful authority ‘over’ equal persons requires that church authorities have the right and power to issue compelling directives, which morally oblige assent on the part of the governed. But these directives themselves are constrained by the limits of governing authority – the pursuit of justice, the constraints of moral law and attention to the needs and concerns communicated by “the other faithful.”

The sexual abuse crisis has offered the Catholic Church an opportunity not merely to condemn ‘delicts against the Sixth,’ but also to identify what else counts as a violation of

218 Lumen gentium, no. 32.

219 “Pastors of the Church, following the example of the Lord, should minister to one another and to the other faithful. These in turn should enthusiastically lend their joint assistance to their pastors and teachers.” Lumen gentium, no. 32.

220 “The laity have the right, as do all Christians, to receive in abundance from their spiritual shepherds the spiritual goods of the Church, especially the assistance of the word of God and of the sacraments. They should openly reveal to them their needs and desires with that freedom and confidence which is fitting for children of God and brothers in Christ. They are, by the knowledge, competence or outstanding ability which they may enjoy, permitted and sometimes even obliged to express their opinion on those things which concern the good of the Church.” Lumen gentium, no. 37
the Sixth. Since this is a matter which affects all in the community, securing justice eventually is going to require that governing authorities attend to the reality of what is happening to the actual persons in their diocese. Structures of transparency and accountability, while some steps removed from the issuance of authoritative directives, provide ways in which the governed may affect their own governance. Not having structures of accountability and transparency does count as a violation of the Sixth Commandment! A community of equals must have the channels by which they can exercise their consent, and that is what structures of accountability and transparency are for. Thus it behooves the Catholic Church to establish such structures.

3.5.2 Episcopacy As Relation

Throughout this discussion I have been referring to the episcopacy as an office in the church, with bishops identified as holders of the episcopal office. These designations reflect the correct usage of the terms, but the terms themselves tend to stress certain aspects of the episcopacy and mask others. Thus the term ‘office’ connotes the task of authority to issue directives, and the power associated with this task. But this usage masks the fundamental nature of the episcopacy, which is not an office but a relation, that is, a subject defined by means of its relationship to others. The episcopal relation has a two-fold term: with all other bishops in union with the bishop of Rome, and with the members of each bishop’s local see, in which the bishop exercises the triple munera of sanctifying, teaching and governing.

The triple munera frequently are understood simply, as a job description of a bishop, accompanied by the power to carry out duties. But the ecclesiological meaning is far richer. As Michael Buckley has noted, the munera imply not just the bishop’s power to
exercise duties (the habitual potency), or his actual carrying out of his ministry (actual potency), or merely the laity’s ‘receiving’ the bishop’s ministry. The triple *munera* signify all the above *together with* the sanctifying, teaching and governing’s having real and existential outcomes in building up the life of faith and the vitality of the local diocese.\(^{221}\) A bishop is fundamentally defined, then, as one who is in a vital relation with the members of his see; these members are absolutely necessary for the church to exist in that place.\(^{222}\) Their relation with the bishop exists “like the Church itself… only in the concrete circumstances of history.”\(^{223}\) Thus, when the power of office is exercised in a way that enables harm or inhibits justice in communal relationships, then not only is ethics compromised, but so is the very actualization of the church in history. In a theological sense, then, structures of governance which enable meaningful participation on the part of the laity also enable the bishop to ‘be himself.’ Conversely, without these very structures that hold him to accountability, he is paradoxically lessened as an authority.

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\(^{221}\) “The sacrament of episcopal consecration confers the triple *munera*, by which the relationship of an individual bishop to the other bishops is generally secured and his relationship to the Church generally stated. But in order that the *munus regendi*, the office of governing – as well as the other two *munera* – can come into actual exercise, can emerge from within, it is obviously necessary that there be someone to govern, to teach, and to sanctify. There must be a concrete determination of the subjects that bear the term of the relationship. This canonical determination does not endow one with the triple *munera*, but it does designate a specific office of a special community, a local church, in which he is to exercise the triple *munera*, by which he is related to others. Michael J. Buckley, *Papal Primacy and the Episcopate: Toward a Relational Understanding*. New York: Crossroad Herder, 1998, at 41.

\(^{222}\) Buckley emphasizes that the relation between the bishop and his see ought to be characterized by ‘vitality,’ that is, of existential experiences of “communities within which one can and does come to experience the fullness of the Body of Christ precisely as a community; where this interchange of love and mutual interest is common and expected; where the Gospel is read and discussed, preached and assimilated into life; where the Eucharist calls to a common life and to those commitments in which the Spirit of Christ is obviously present. Ibid, at 83.

\(^{223}\) Ibid, at 44.
3.5.3 Justice in Interrelationships

In this chapter I have argued that duties to protect persons and ensure order are essential and crucial to church governing authority. Although the focus on justice and order may seem pedantic, a closer look revealed that the protection from harm necessarily emerges from a broad appropriation of the Sixth Commandment. Moreover, trustworthy relationships can be assured by understanding the reach of this fundamental moral concept: beyond mere prohibitions of vow-breaking to include responsibility to protect, the (often complex) understanding of ‘what is going on,’ and the moral maturity to take right action. Structures of accountability and transparency make it possible for the rest of the community to consent to and participate in the direction of the communal order, oriented proximately to the common good and ultimately to salvation. A community grounded in justice then can ‘get on with’ its creative purpose; in the case of the Catholic Church this means living together, and witnessing and evangelizing as committed disciples. When the bishop’s authority ensures order and justice in the community, and as part of ensuring order he is held to account for his actions by those whom he rules, then his authority also provides the condition for the possibility of ‘vitality.’ But injustice undermines communal relationships, and thus the crisis of sexual abuse in the Catholic Church in the US struck precisely at the vital relationship between many bishops and their dioceses.

In order for church governance to work well, the paradoxes of governing authority in a community of equals must be addressed. This occurs in a necessarily concrete – hence, complex -- process of relationship between the governing authority and the governed. It is not enough to espouse certain ideals of governance, or agreed-upon values which the
Catholic Church as a society ought to exhibit. After all, the church’s members are human persons with human needs (for justice, protection and the like), so ideal definitions of governance eventually need to yield to pragmatic application. To this end, in the next chapter I will outline a constructive proposal for a Catholic governing convention.
4.1 Introduction: Salient Features of Governance

The previous chapter examined the broad contours of governing authority in an attempt to identify those basic features of authority required by the Sixth Commandment -- understood as a natural-law precept of justice and a fundamental moral concept regulating human social interrelationships. The task of governing authority is to ensure order, resolve conflicts and coordinate the activities of a community; the Sixth Commandment further delineates this task in terms of protection of from malicious harms, especially those involving physical and sexual violence (and its accompanying psychological and emotional harm). Morally-legitimate authoritative directives compel persons not only because they often are backed up with some kind of force (or at least protection against being dismantled), but also because they morally oblige the governed to assent; they call forth personal obedience.

In this chapter I will examine a feature of the Sixth Commandment identified, but not sufficiently analyzed, at the end of Chapter Two: the Sixth Commandment as a fundamental moral concept underwrites not only obediential assent but also legitimate consent. That is, the governed are the ones who experience (and then responsibly judge)

\[224 \text{Lumen gentium, no. 32.}\]
whether or not a given authoritative directive actually does move the community towards justice and flourishing in the matter of communal sexual boundaries, or in the opposite direction, towards injustice and harm. Ruling authority must have the power to issue “preemptive” directives (even when these are wrong) and expect assent, yet also (paradoxically) ruling authority depends upon on some kind of consent of the governed for its continued existence and its necessary functioning. That this is so can be seen in negative contrast by considering the kind of regime in which consent of the ruled is outlawed and suppressed. In this kind of masterful (autocratic, tyrannical, dictatorial or despotic) regime, the ruler shares with, say, the rulers of modern western democracies the characteristic of issuing authoritative, preemptive directives obliging assent. The difference lays in the relationship of the masterful ruler with the ruled; in a masterful regime the kinds of consenting activity that might tilt the governing arrangement into new forms necessary to accommodate real needs, are suppressed. (Somewhat similarly, in a government ruled by a “theoretical expert,” concerns arising from the governed themselves need not be taken into account because they lack the necessary “expertise” to determine whether these concerns are worthwhile to pursue or not.) By contrast, in a non-masterful regime the ruler’s job is not only to issue authoritative directives but also to take into consideration the exercise of moral responsibility on the part of the governed – which concerns not only private matters, but sometimes obligations to confront wrongful exercises of authoritative power which negatively affect individuals and the common good. In the sexual abuse crisis, this kind of responsibility was illustrated by victim-survivors and their parents who at least implicitly understood the moral obligation
of the Sixth Commandment as supporting their attempts to change the ways, pertinent to communal sexual boundaries, by which the church’s governors were governing.

Usually, persons implicitly consent to authoritative directives when these are directed towards just interrelationships, all things considered; however, they rebel or walk away when the directives cause egregious harms such as sexual abuse. It is important that this consenting feature of governance not displace proper assent. At the same time, however, consent provides a space in which the governed may responsibly resist or refrain from authoritative directives intending moral evil. In matters of sexual boundaries, bodily protection and the like, the Sixth Commandment, I suggest, supports the kind of responsible feedback mechanism represented by consent which ultimately alerts governing authorities as to whether their directives actually do meet their morally-obligatory goal of providing protection from sexual assault and harm, or not. The Sixth Commandment makes provision not only for governing authorities to protect the governed in these matters, but also for the governed not to mindlessly or blandly accept everything they are ordered to do – but rather to take up their responsibility as mature and participating citizens.

As citizens of a modern democratic regime, American Catholics are perhaps more familiar with the language of rights associated with citizen-participation in governance. In the United States we talk about the right to vote or the right to petition or assemble, and the exercise of these rights leads to peaceful and procedural alterations in governance itself. Rights, especially those called human rights, are very important and provide a conceptual apparatus upon which to figure participation of the ruled in their own governance. In Chapter Five I pursue this line of thinking. However, it would be
incorrect to think that the influence of the Sixth Commandment upon governance is restricted only to governing authorities, and that the only way for the ruled members of the church (or any society) to participate in governance is by means of asserting their rights. This kind of approach sets up a rather thin and unfortunate view of a society as ruling authorities competing by means of directives against the governed, pushing back via their rights-claims. Rather, at this juncture, I am examining how moral obligation and responsibility tied to the Sixth Commandment support a responsible, if limited, participation in church governance on the part of the non-ordained governed.

This does not mean that the Sixth Commandment underwrites direct rule of the people. Rather, the Sixth Commandment demands *effective* governance, and effective governance requires persons to participate in real – if more remote – ways in their own governance by influencing authorities towards the common goal of just interrelationships. In this way governance becomes an exercise in responsibility towards the common good on the part of both church leadership and membership. In this regard, the observation of the Council fathers at Vatican II, directed toward secular society, also applies within the Catholic Church: “It grows increasingly true that the obligations of justice and love are fulfilled only if each person, contributing to the common good, according to his own abilities and the needs of others, also promotes and assists the public and private institutions dedicated to bettering the conditions of human life.”

In this chapter I will develop these parameters into a constructive proposal for a governing convention – that is, a relationship of agency between the hierarchy and “the other faithful” -- in the Catholic Church. The argument will combine the positive

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aspects of other proposals for church governance without, hopefully, showing
deficiencies in rational coherence and/or plausibility. I shall rely upon the understanding
of the Sixth Commandment as a fundamental moral concept to indicate the parameters of
morality within which structures of governance function. That is, a governing
convention will tend to be stable and morally legitimate when it works (maximally) to
honor the moral boundaries and relationships consistent with the Sixth and (minimally) to
directly protect the vulnerable by means of authoritative use of coercive power against
breaches of the Sixth.

4.2 Preliminary Consideration: Distinctions in Ecclesiology

Where does governing authority in the Catholic Church come from? How does it
originate? These questions may be answered in several ways, all of them accurate in
themselves yet prone to confusion because various answers arise from and address
different theological concerns and philosophical categories. In Chapter Two I examined
‘authority’ as a highly pragmatic reality that exists among persons in a society. I argued
that since the Catholic Church in history is composed of human persons, its governing
authority can be studied on the basis of the ethics of authority. But when the society in
question is the Catholic Church -- which is unlike purely human social arrangements in
history insofar as the church is willed by God, founded and authorized by Christ,
sustained by the Holy Spirit and continually composed of both divine and human
aspects\textsuperscript{226} -- such a pragmatic and philosophical treatment might seem out of place. A

\textsuperscript{226} As explained in \textit{Lumen gentium}: “Christ, the one Mediator, established and continually
sustains here on earth His holy Church, the community of faith, hope and charity, as an entity with visible
delineation through which He communicated truth and grace to all. But, the society structured with
hierarchical organs and the Mystical Body of Christ, are not to be considered as two realities, nor are the
counter-argument will challenge this stance with the doctrine of a divinely-willed order pertaining to the church, which human persons cannot set aside.

In this section I address this point as a preliminary observation. The first item to consider is the somewhat colloquial understanding of church order as ‘divine’ or ‘holy.’ The Catholic Church assuredly can claim a divine aspect, but without qualification this doctrine is open to misinterpretation. To say that the church itself is divine, as though it is the source of grace, is a heretical position; the church’s holiness comes from God’s free and gratuitous disposal of grace upon it. The church must be understood, as Lumen gentium insists, as a communion (not hypostatic union) of both divine and human elements; as such the church essentially is a mystery. As a human community, the church can be understood as a society of human persons in history; as a community founded by Christ and sustained by the Holy Spirit, the church can be seen as a divine initiative in ushering in the Kingdom of God. In definitions of the church stressing the divine aspects, the question of the origin of church authority may be answered by appeal to doctrines of the divine will in the founding of the church. It is a truth of faith that governing authority in the Catholic Church comes from Christ; bishops and pastors participate in the ministry of Christ, who through their ordination has authorized them to teach, sanctify and govern the church. Jesus Christ himself called and chose the original visible assembly and the spiritual community, nor the earthly Church and the Church enriched with heavenly things; rather they form one complex reality which coalesces from a divine and a human element. For this reason, by no weak analogy, it is compared to the mystery of the incarnate Word. As the assumed nature inseparably united to Him, serves the divine Word as a living organ of salvation, so, in a similar way, does the visible social structure of the Church serve the Spirit of Christ, who vivifies it, in the building up of the body.” (Lumen gentium, no. 8). Joseph Komonchak explains that the comparison with Christ must necessarily be a cautious one since “there is no hypostatic union between divinity and humanity” in the church. Joseph Komonchak, Who Are the Church? Milwaukee: Marquette University Press, 2008, at 21.
bishops, i.e., the twelve apostles, and these in turn sacramentally ordained their successors for the same ministry.

A difficulty arises, however, by giving in to the temptation to move quickly from this doctrine to application by simple identification between concrete instantiations of authority and divine authorization of ecclesial office. On this understanding, since church authority originates from and is given by God, the divine will for church governance becomes associated fairly completely with directives of ordained persons who govern the church. Ideally, of course, authoritative directives of the human leaders of the church should match up with the divine will, as noted by Pope John Paul II:

The special outpouring of the Holy Spirit with which the Risen Lord filled the Apostles (cf. Acts 1:5; 8; 2:4; Jn 20:22-23) was shared by them through the gesture of laying hands upon their co-workers (cf. 1 Tim 4:14; 2 Tim 1:6-7). These in turn transmitted it by the same gesture to others, and these to others still. In this way, the spiritual gift given in the beginning has come down to our own day through the imposition of hands, in other words, by episcopal consecration, which confers the fullness of the sacrament of Orders, the high priesthood and the totality of the sacred ministry. Thus, through the Bishops and the priests, their co-workers, the Lord Jesus Christ, seated at the right hand of God the Father, remains present in the midst of believers. In every time and place it is he who proclaims the word of God to all peoples, administers the sacraments of faith to believers and guides the people of the New Testament on their pilgrimage to eternal happiness.227

But understanding authority in the church as a kind of closed circuit between God and bishops obscures relevant aspects of church governing authority by de facto bracketing out of consideration other essential human contributions to this authority. Obviously one such contribution is that of the bishop himself, but in this respect he must be understood not as an angelic person (as though not really human) or channel of divine truth (along the lines of the theoretical expert), but as a human person in interrelation with others

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(albeit an interrelation where the bishop is the governing authority and everyone else is ‘the governed’). Another key human component of church authority is that of the society – the local church for an individual bishop, the church universal for the college of bishops in union with the primacy of Peter -- over which the bishop governs and without which his authority would be meaningless.

The problem with the ‘closed circuitry’ depiction of the origins of church authority is that it over-emphasizes the divine foundation of church authority and sequesters away, in an a priori fashion, the real (if fallible) ways that church authority, like any human authority in history, exists as a political and social interrelationship between authoritative rulers and the governed. This leads not only to the ethical problem of discounting participation in church governance by the laity, considered as full church members with morally-obligatory duties. It also leads into ecclesiological error. An over-emphasis on divine initiative is consistent with a reification of the church in terms of divine action alone and, notes Joseph Komonchak, demotes Vatican II’s “insistence that the divine and the human in the Church not be separated from one another as if they referred to distinct entities[:]

This is in fact what the Council meant by speaking of the Church as “mystery”: it took the word in its Pauline sense to refer to a “transcendent and salvific reality which is revealed and made manifest in some visible way”: thus there is a mystery of divine election in Israel, there is the mystery of Christ, and there is the mystery of the Church. Remove the humanity from either Christ or the Church, and there is no mystery. Remove the divinity, and there is no mystery. Separate the two as if one set of statements apply to one reality and one to another, and there is no mystery. One of the chief tasks of ecclesiology is to try to understand how such glorious things can be said of a group of sinful human beings. 228

228 Komonchak, ibid, at 21-22.
Invocations of divine authorization alone for episcopal ministry clarify theological doctrine in a general sense, yet obscure it in ways that affect real persons living as members of the church community. Not only does the divine initiative becomes linked to current historical manifestations of church authority and church structures (as a kind of “default ecclesiology”\textsuperscript{229}) thus rendering the Catholic community confused when church authority and structures have caused harm – an ethical concern. Perhaps the greater harm is caused at the level of the doctrine of the church itself – that is, tendencies toward ‘ecclesial monophysitism’ of their own logic de-emphasize or simply ignore the human element of the church and its union with the church’s divine element. This in turn marginalizes a key ecclesiological doctrine, that of the mystery of the church.\textsuperscript{230} The pastoral fallout from this tendency cannot be overestimated; if church leaders persist in promoting, by word and example, an ecclesial-monophysitic understanding of the church, they are clearly promoting doctrinal error.

Komonchak has identified one source of this difficulty as the failure of theological symbols or ecclesiological models of themselves to denote a precise historical or real-world referent. A ‘monophysitic’ understanding that depicts church authority

\textsuperscript{229} “Thinking historically about the church is not the first instinct of Roman Catholic ecclesiology. The “default mode” is to think dogmatically and imagine the church as an unchanging, divinely willed institution that has always looked the way it looks now. An aura of mystery clothes this image of the church and sets it apart from other human institutions and communities – beyond the “world” and its ways as studied by history, sociology or politics. For the most part we have become so accustomed to this way of thinking about the church that we fail to notice how curious it really is, or how it precludes other important modes of reflection.” Francine Cardman, “Myth, History and the Beginnings of the Church,” in Francis Oakley and Bruce Russett, eds., Governance, Accountability and the Future of the Catholic Church. New York: Continuum, 2004, 33-48 at 33.

\textsuperscript{230} Even the emphasis on divine initiative in the quote from \textit{Pastores gregis} above implicitly raises (but does not answer) questions about who humanly selects successors to the apostles and who humanly does the ordaining. These decisions and actions are not directly performed by Christ or the Holy Spirit even though, in faith, Catholics believe that they are aligned with the divine will. What is the connection, then, between theology and practice?
solely or primarily with reference to the divine appears so removed from the daily living out of the Christian vocation for ordinary, fallible and sinful church members – ordained clerics and laity alike -- that it fails to connect beliefs with what ordinary people – ordained clerics and laity alike -- actually experience in their faith-lives. Even contemporary attempts to describe the church in terms of commonly-understood “models” run the risk of not making this connection. Referring to Avery Dulles’ highly influential *Models of the Church*, Komonchak notes

> It is striking that… the whole book… leaves unstated what it is that these are models of, what it is that these are features, characteristics of. The question may appear too obvious, banal even, since its answer is so obvious: they are efforts to understand the Church! It is as if everyone knows what is meant by “the Church,” as if the object of ecclesiology is so obvious that it does not need to be stated.\(^\text{231}\)

In Komonchak’s opinion, it took Dulles two tries to get it right. It was not until the second edition of *Models* that Dulles worked out an additional sixth ‘model’ that actually does better service not as a model at all but as a sociological and theological definition, or primary referent, of the word ‘church’: the community of disciples.\(^\text{232}\)

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\(^{231}\) Komonchak, ibid, at 25. Regarding the first-order symbols and images of the church from the New Testament, Komonchak observes, “Must one not have some at least heuristic notion of the Church in order to be able to say that these symbols refer to the same reality? If so, what is the reality to which they point? Or better, to approach my question, who are they to whom these images and symbols point?

If one turns to the second-order reflections articulated as models, the same question can be asked. If these are models of the same reality, one must have some notion of that reality that transcends the different theories. Is it a notion of people, of human beings? If so, who are the Church that may be thought of as an institution, a mystical communion, a sacrament, a herald, a servant? Are the same persons intended when one speaks of the Church in terms of each of these and other possible models? Of whom are these statements true? In whom are they true? And what does it mean to say that they are true of them and in them? What must be true of the Church’s members if these things are true of the Church? Can they be true of the Church if they are not true of the Church’s members? Of is it enough that it be true of some of them?” Ibid, at 26-7.

Now we are on firmer ground. If the church is understood not as a closed circuit between God and bishops (e.g., a monophysitic community of spiritually superior beings -- by definition removed from the ordinary lives of ordinary Christians), but as a community of disciples (understood as all members attempting to live out their baptismal charisms and vocational callings in their everyday lives), then investigating the origins of church authority means to investigate how authority arises in this society of persons who have all taken on the name of the Lord. This does not license a move in an opposite monophysitic direction, that is, to study church authority as though it is just like secular authority – a purely sociological arrangement without necessary divine elements. “Whatever a critique of reification in ecclesiology might mean, it cannot mean eliminating or even downplaying the divine initiative in the constitution and life of the Church.”

But this approach does mean understanding God’s providential initiative in bringing the church into existence in Christ, as this initiative is freely received and responded to by all the members of the church. The members of the church do not passively receive either God’s grace or authoritative directives of the hierarchy as though they are robots responding to whoever wields the remote control device. Neither is the Christian’s response merely a private feeling or attitude alone; as members of the community of disciples their responses necessarily involve interaction and relationships in the community as a whole. In Komonchak’s words, Christian men and women’s “co-intentionality is their community.” In terms of ethics, the moral limits of this co-

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233 Ibid, at 37.

234 Ibid, at 38
intentionality that creates community will be described by fundamental precepts of the natural law, such as the Sixth Commandment. Without observance of these boundaries, which are inherently tied to fundamental exigencies of human existence, it becomes impossible for a community to ‘advance’ to its Christian calling of faith, hope and love. This is also why the church is a mystery, because it is both glorious and incomprehensible to imagine the closeness of God to what we often take to be such humble, ordinary or insignificant components of human nature.

The human response to the divine initiative in word and grace is itself a constitutive element of the Church… By the word and grace of God we are introduced into a share in the divine life itself, a share in the life of the Risen Lord so intimate and real that we can be called his very Body; but this is, as Lumen gentium reminds us, the unfathomable depth precisely of a human community. All of the initiative lies with God, out of his freedom; but what this free initiative enables and effects is the liberation of our freedom by the common love, hope and faith that constitute and distinguish the Church. The ontological reality of the Church consists of the common intentional acts of meaning and value of her members. The Church is an event of intersubjectivity.\textsuperscript{235}

But what does this discussion have to do with an ethical analysis of church authority and governance? It is simply to establish as a point of departure that apostolic authority arises from Christ and the Holy Spirit in the sense of being established by Christ and continually sustained by the inspiration of the Holy Spirit. At the same time, particular, concrete historical instantiations of church governing authority are created by persons; the community of disciples in history is not yet the communion of saints beyond history. Church authority is influenced and shaped by all the members of the church as they participate in this “event of intersubjectivity.” Authority in the church is more than a theological belief; it is also a phenomenon resulting from the quotidian interrelationship of “pastors and the other faithful” (Lumen gentium, no. 32).

\textsuperscript{235} Ibid, at 38-9.
It will be essential to keep these points in mind as I develop my argument, and especially as I introduce a technical philosophical term, the “invention” of authority on the part of the governed. This term “invention” is not to be understood as a displacement or renunciation of the divine initiative in establishing or maintaining authority. Members of the church do not possess authority and power which they then bestow upon bishops at ordination; the authority and power of ecclesial ministry come from God de jure divino. But the phenomenon called ecclesial authority is dependent for its determinate form – e.g., the scope of commands, laws and judgments, the structures through which governance operates, the persons who hold office – on actual historical persons and the ongoing interrelationships between “pastors and the other faithful.” These interactions mold and shape the concrete ways and means by which authority rules and is experienced by the governed.

Furthermore, theologically speaking, these instantiations truly are “the church,” the community of disciples, in this case studied in its particular forms of governance. They are not to be considered concessions to the needs of mortals begrudgingly tacked on to spiritual understandings of the church as a work of God alone or in concert with those few with the ability to perceive divine truth. The precise term “invention of authority” calls to mind an ongoing discernment and behavior on the part of the governed towards persons in authority and towards their directives. This process collectively and over time results in the determinate shape of a governing convention. “Invention” should not be

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236 In this respect I would argue that Pastores gregis unnecessarily exhibits a kind of dualism, with the emphasis upon the bishop as an image of Christ, or of the Holy Trinity, carrying the weight of the argument. However, John Paul II also insists in the document that there is an essential place in church governance for participation by the rest of the faithful. It is not that either of these ways of understanding church governance is wrong per se; it is simply that they seem disconnected from each other, with the latter point (participation by the faithful) appearing literally as an add-on, outside the main stream of the discussion. Cf., Pope John Paul II, Pastores gregis, especially no. 44.
confused with God’s providential establishing of the church in its hierarchical structure, as though the people of God have now usurped the role of Christ and the Holy Spirit. Rather, “invention” here evokes its etymology – a collective process of discovery, or of “coming into” the determinate governing structures of the church as the people of God responsibly seek to respond to the demands of discipleship in particular historical circumstances. ‘Invention’ calls to mind its Latin root, *invenio*, a finding or a seeing ‘in’ something, or coming into something. In the church the process of invention necessarily involves an ongoing and communal ‘discovery’ of God’s will in the matter – something traditionally handled through Christian practices like moral discernment and living out of the rules of the Decalogue, as well as by contemplation, holy listening, discernment and works. If governing authority in the church is so “invented” by the people, this does not mean that it is subject to the whim of a merely social group, but rather that it emerges from the Body of Christ itself in history, that community of disciples (pastors *with* the other faithful) who daily discern and follow God’s call in the particularities of their lives – including morally-relevant aspects of being human persons.

4.3 Consent and the ‘Invention’ of Church Authority

In the previous chapter I argued that the Sixth Commandment requires as a matter of moral obligation that church authority be strong and truly ‘authoritative’ such that commands of church authorities preempt other reasons and motivations for action. In the present context this argument is applied to church *governing* authority, bracketing for the purpose of distinction the *munera* of teaching and sanctifying. This theoretical move makes it possible to distinguish an authority as one who has the right to fulfill the task of governance, which primarily involves protection from harm (and the solving of
coordination problems, where a lack of solution leads either to harm or to the inability of members of the community to reap the benefits of mutual association.\textsuperscript{237} It was precisely the inability of church authorities and structures of church governance to protect vulnerable individuals from severe harm that caused the grave scandal of clergy sexual abuse to morph into a national and global church crisis.

But I also argued that authority cannot be truly ‘authoritative’ without some kind of consent to authority on the part of those who are governed. The idea of consent of the governed arises from an understanding that all members of a society are equal in ways relevant to responsibility in social interrelationships. In the Catholic Church this idea is also given further theological expression; \textit{Lumen gentium} notes an equality of baptismal dignity and vocation to Christian discipleship, which of course includes moral responsibility in intra-church interrelationships. While ideas of authoritative governance in a society of equals also require a solution to the paradoxes of authority, this challenge is not insurmountable and, moreover, it gives rise to an acceptable understanding of church governance that honors the equality of baptism and discipleship, and the

\textsuperscript{237} It is an intriguing issue but beyond the scope of this project to delve into the ethical, theological and philosophical relationship among the three episcopal munera. However, such an investigation shows relevance to the present one, insofar as in pragmatic actions and decisions of governance a bishop or pastor may unnecessarily blur proper distinctions among the munera, particularly in the kinds of authoritative directives he issues. For example: “The concept of instruction is ambiguous. If I am “instructing” someone, I may be teaching or I may be issuing a command. Someone who is “under instruction” is being educated, but “I instructed him to stop” reports a command… I have long maintained that the heart of the crisis of contemporary Catholicism lies in just such subordination of education to governance, the effect of which has too often been to substitute for teaching proclamation construed as command. As Yves Congar said, it is impossible to make the function of teaching an integral element of jurisdiction because it is one thing to accept a teaching, quite another to obey an order: “\textit{Autre chose est agréer une doctrine, autre chose obéir à un ordre.}” Nicholas Lash, “Teaching or Commanding: When Bishops Instruct the Faithful.” \textit{America}, vol. 203, no. 18, December 13, 2010, 17-20 at 20. Lash has developed this argument more in other published works, e.g., Nicholas Lash, “Authors, Authority and Authorization,” in Bernard Hoose, ed., \textit{Authority in the Roman Catholic Church: Theory and Practice}. Burlington VT: Ashgate Publishing Company, 2002, 59-72; and Nicholas Lash, \textit{Voices of Authority}. Shepherdtown WV: Patmos Press, 1976.
universality of moral obligations arising from fundamental precepts such as (but not limited to) the Sixth.

By contrast, the disallowing of consent of the governed logically implies the embrace of mastery in a system of governance. Since a system of mastery is incompatible with the ecclesiology of *Lumen gentium*, it appears that Catholic Church governance ought to be characterized not only by preemptive authority that demands obediential assent, but also by the consent of the governed who freely and rationally respond to authority as it affects them. Finally, authority so understood is characteristic of the human element of the church, that is, of a group of persons who understand themselves as the community of disciples of Jesus Christ. Being disciples does not make them more ‘divine’ at the expense of their humanity, but rather calls them in their humanity towards the fulfillment of human life in Christ. Taking place in this life (even if only completed in the next), this process is tied to observance of natural and divine law, those moral guideposts given by God for the expression of a truly human life in history. Whatever fulfillment of human life in Christ means, it does not mean the setting aside of fundamental precepts of the Decalogue in order to pursue ‘Christian’ goals.

4.3.1 ‘Invention’ of Authority

The process or phenomenon of the consent of the governed is called the ‘invention’ of authority\(^{238}\) because it cannot be equated with the immediate answer given by the governed to authoritative directives. As I have discussed, except for acute situations the

\(^{238}\) “I used the word ‘invent’ deliberately here, because on the analysis I’m proposing political authority is indeed invented by the people rather than derived from them. The point is that the people don’t have it naturally as individuals; rather, they have to create it in order to solve certain kinds of problems that would otherwise plague them were such an authority not present. This means that in the analysis to follow I reject Locke’s claim that political authority is something that has to be transferred from a subject to a ruler (via a political society)[.] Jean Hampton, *Political Philosophy*. Boulder CO: Westview Press, 1997, at 76.
answer to authoritative directives is preemptively ‘yes,’ even when the governed have
cause to think that the authority is wrong.\textsuperscript{239} The ‘invention’ of authority a different
phenomenon; it is a more indirect process that creates and maintains a governing
convention in a society. According to political philosopher Jean Hampton, ‘invention’
occurs when the free and independent, but concurrent, behavior of members of a society
collectively affirms a ruling equilibrium. I am borrowing this term “invention of
authority” from Hampton, and find it useful in many ways, including disparaging the idea
that authority lies in the governed who then loan it to rulers.

The affirmation of the rulers by the governed does not consist in something so
explicit and duty-bound as a contract or promise, as social-contract theorists may
envision. Rather it is comprised of individuals’ behaving in such a way that positively
acknowledges one certain, salient social equilibrium – such as rules or customs for doing
things one way rather than another, in situations that affect all. Individuals behave out of
“self-interest,”\textsuperscript{240} a broad term that ought not be construed as an immoral kind of
selfishness. While persons always have the capacity to take self-interest to this kind of
extreme, nonetheless self-interest best is understood within the morally-acceptable
connotation of the proper, healthy and responsible looking out for and taking care of
oneself and one’s own, especially within the bounds of fundamental moral concepts like
those expressed in the second tablet of the Decalogue.

Thus, one obeys authoritative directives because, as a member of a society, one
believes these directives to support and enable one’s own self-interested goals of personal

\textsuperscript{239} Obviously the violation of persons and of fundamental moral concepts, such as occurred in the
sexual abuse crisis is one of those acute situations where noncompliance with authoritative directives is
considered morally permissible.

\textsuperscript{240} Cf., Hampton, \textit{Political Philosophy}, at 81-86.
and familial flourishing, all things (including moral obligations) considered. Moreover, self-interested behavior on the part of individuals combines with the understanding that others in the society are behaving in more or less similar ways. In other words, the moral wisdom of the Sixth and its companion precepts has been internalized by others (as a component of their ‘self-interest’) to the extent that this wisdom becomes expressed in customary behaviors and cultural expectations. The ‘invention’ of authority can occur as the ongoing maintaining of an already-established authority, as though the designated authority is doing things so well that this person receives a ‘thumbs up’ from the membership, in the form of their obeying directives or at least not resisting or interfering with authoritative decisions. The invention of authority can also occur as an outright creation of authority within a socially-entropic situation (in classical political philosophy, this is often referred to as ‘the state of nature’). Here, out of self-interest many independent individuals seek an authority to establish order, because conflicts of self-interest make communal life impossible or unendurable. Finally, the invention of authority can be seen in the ongoing tweaking and development of the scope and capacities of an already-established authority, where powers may be added to or removed from the authority of office, and even the persons holding office can be replaced with others. This final situation occurs most smoothly in political systems characterized by actual structures of participation at various levels on the part of the membership. In the United States, for example, there are regular ways in which the citizenry can have some kind of say in the way authority rules. Voting is undoubtedly the most frequent structure for participation, but there are others such as serving on a jury or submitting a petition for consideration.
At best, says Hampton, the invention of authority is a minimalist expression of consent, but at the same time reflects more closely than does, say, social-contract theory, what actually happens when a society of morally and rationally (and, as *Lumen gentium* observes regarding the church, spiritually) equal persons relates to authority. Indeed, most of the time, persons are not actually inventing authority ‘de novo,’ as in the classic example of persons’ deciding to leave a state of nature and form some kind of political rule. Rather, persons are born into an already ongoing political situation. Their ‘invention’ of authority -- that is, their consent -- serves to maintain authority structures by means of behaving in self-interested ways – supportive of true human need and bound by fundamental moral concepts -- which collectively support “a convention governing which equilibrium to realize, and that convention can be generated even without agreement if there is an obviously salient equilibrium, one that stands out from the rest in some unique respect.”

Authority itself is rendered meaningless without the existence of a society of persons to rule over; authorities protect persons from harm and promote cooperation (and correspondingly solve or at least reduce conflicts). That is, authority is ‘authority’ only in relation to a society over which authority rules – this society does not exist in the abstract, but is composed of real persons whose self-interest can be morally acceptable (i.e., within the bounds of the moral concepts of the second tablet) and bear on the ways that authority rules.

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241 Hampton, *Political Philosophy*, at 83.

242 Hampton’s discussion of the authority of the state can also be applied to governing authority in the church when she notes, “the state’s power and authority to wield sanctions and issue binding commands are fundamental to understanding what it is and how it is created and maintained. This is because a person is a ruler – that is has *authority and power* – only when her subjects do what she says, so people presumably make someone a ruler when they (or at least most of them) obey her commands.” Hampton, *Political Philosophy*, at 87; emphasis in the original.
4.3.2 The ‘Invention’ of Authority and an Agency Relationship

Likewise, without the capacity to consent freely to authority – even if this consent is “not explicit, promisorial, or overtly directed at some ruler but rather implicit, nonpromisorial and directed at developing… a governing convention”\(^{243}\) -- persons find themselves in a grossly unequal situation of mastery where they are incapable of influencing the ruling authorities because the latter owe nothing to them. The invention of authority distinguishes a morally justifiable relationship between ruler and ruled, considered in the church as rational, moral and spiritual equals, from an unjustifiable relationship of “mastery” where the rulers subjugate the ruled by means of coercive control alone. “To be mastered is to be subject to the use of coercion in a way that disables one from participating in the process of creating or changing a governing convention.”\(^{244}\) Authority actually is lacking in a system of mastery, because there is no governing convention, that is, no means by which the people invent authority and designate, via the convention, the possessor(s) of that authority. And while a “master” can solve coordination problems – simply by forcing everyone to do things his way – such a one is dangerous because “they need respect no limits – neither the limits of good sense nor the limits of morality.”\(^{245}\) Surely the victim-survivors of sexual abuse in the

\(^{243}\) Hampton, *Political Philosophy*, at 78.

\(^{244}\) Hampton, *Political Philosophy*, at 90.

\(^{245}\) Hampton, *Political Philosophy*, at 91. Plato pushed this point further and argued, through Socrates, that a “tyrant” (one who rules through purely coercive power) actually possesses the least power of anyone because a tyrant’s coercive measures are directed towards their own desired (unjust) ends and not towards the good. Cf., Plato, *Gorgias*, 466b ff. “For I assert, Polus, that both rhetors and tyrants have the smallest power in the cities, as I was saying just now: for they do nothing, one might also say, of what they wish, although they certainly do what seems to them to be best.” Plato, *Gorgias and Phaedrus*. Trans. James H. Nichols, Jr. Ithaca, NY: Cornell University Press, 1998, at 50.
church, and their families, have had direct experience of a kind of mastery at work in high levels of church administration.

By contrast, an ‘agency relationship’ between the rulers and the ruled is considered morally justifiable because it honors the equality of all persons in the community. An agency relationship does this because it is based on the understanding that, whatever else the ruler may be or do, the ruler is significantly “the people’s agent, hired by them to perform certain tasks and capable of being fired by them if they believe he performs those tasks badly.” Recall that these tasks are not whimsical or frivolous ones, as though the governed can make authority do whatever they want. Rather, the authority is the agent of the people in relation to those tasks that maintain a society’s proper order.

Again, in the Catholic Church we often think of ‘church order’ in terms of the sacraments or right doctrine; this is a correct but insufficient approach. Church order also involves the munus of governing, which for the purposes of pursuing my argument I am keeping somewhat distinct from the other two munera. The basic tasks of the munus of governance involve (as described in Chapter Two) authoritative protection from harm and coordinating or keeping order in the social interrelationships among members of the church. As such a governing authority (as distinct from a sacramental or doctrinal authority, although in the bishop these are all united) exists as the one everyone recognizes to solve problems of protection and social coordination. By addressing and

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246 For example, persons in a society may have expectations that their governing authorities take creative initiatives in moving the society forward, or be capable of delivering inspiring addresses. While it almost always helps social well-being to have such gifted leaders, these positive attributes are not necessary for a governing authority to be authoritative.

247 Hampton, *Political Philosophy*, at 88.

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completing these fundamental tasks of governance, the governing authority is able to establish a social equilibrium, and a governing convention can be said to exist.

By respecting ‘the law of the land’ persons in the society continue to preserve not only conventional behavior regarding social order but also the conventional solution to coordination problems – i.e., the recognition of this precise person as the governing authority. However, this respect and recognition are elicited because the governing authority has acted in such a way as actually to further the interests of those in the society. ‘Furthering social interests’ means to advance the individual self-interest of all persons by establishing a social equilibrium where before there was actual or potential conflict or chaos or outright harm. It is in the doing well of the basic task of governance that an authority can be considered the people’s agent, because that task is tied so closely and fundamentally to their own well-being and to their potential to experience the benefits of mutual association in the society. These basic characteristics of a governing convention are worked out by Hampton in regards to modern, secular governments, but one can see how they apply to the Catholic Church as well. There would have been no sexual abuse crisis if the governing authorities and the structures through which they govern had been ordered in such a way as to protect the vulnerable from sexual assault. Perhaps one of the greatest scandals of the crisis has been the revelation that bishops and other church leaders neglected to protect the fundamental self-interests of their people as supported by the Sixth Commandment – such as bodily integrity and communal sexual boundaries – and favored instead ineffective strategies designed to keep themselves from blame or prosecution.
4.3.3 Well- and Poorly-Performing Governing Conventions

That governing conventions exist in societies of equal persons can be understood in negative contrast by reflecting on situations where one or more members of the society believe that the current convention is wrong in some way. Either authorities are not doing the essential task of governance (persons are experiencing harm and conflict), or they are doing it inefficiently or badly when there are better alternatives available. (Comparisons to the sexual abuse crisis should be obvious.) The malcontents may wish to remove the governing authority or change the structures through which authority is exercised. They may persuade the rest of the society to join them in some kind of (hopefully non-violent) rebellion. On the other hand, they may be unable to persuade the majority to see it their way, and their attempts to install an alternative leader or alternative structures will be doomed to failure. As Hampton notes, even in such a very realistic case, where persons are unhappy about the current establishment – and, such as for Catholics who reacting to bishops’ enabling of serial sexual abuses, are morally right in their desire for change -- but at the same time cannot replace the ruler, “a convention, albeit a bad one, does exist.”}\(^{248}\) The malcontents then are forced into another calculus: perhaps they “should obey the ruler if, for either moral or self-interested reasons, the consequences of acting to change the convention will be worse than the consequences of acquiescing in the bad convention.”\(^{249}\) The authority of the ruler, ultimately, “is sustained by the group, via a convention in which many members of the group participate.”\(^{250}\)

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248 Hampton, *Political Philosophy*, at 90.

249 Ibid.

250 Ibid. Later in her chapter, Hampton notes that governing conventions are often characterized by stability, because once a convention is established it becomes difficult to replace it. Malcontents have
When considered as a human relationship, authority continually springs into existence by this convention, which is unable to be dislodged by those individuals or small groups opposed to it.

4.4 Catholic Church Governance: Convention or Mastery?

Above, I outlined the broad features of a governing convention characterized by the invention (creation or maintenance) of governing authority on the part of those who are governed. This account demonstrates plausibility insofar as it reflects what actually happens in a society of equals, at least more closely than do classic social-contract accounts. At the same time, this notion of a governing convention also preserves the social-contract insight that it is the agency aspect of a governing convention that lends moral legitimacy to a regime. (Realistically, even good conventions show a mix of mastery and agency, thanks to unequal power distributions – prompting Hampton to observe, “for better or worse, when people create a state, they create a “leviathan,” literally, a powerful monster, over which it may not be easy to maintain control.251) The sexual abuse crisis has given much evidence that Catholic Church governance, up until the late 20th century, could be characterized as a relation of mastery between authorities and the governed. Yet the crisis itself seems to indicate that Catholics as a whole are implicitly renegotiating their relationships toward their bishops. Certainly the laity now expect their bishops to be not their governing masters, but their governing agents.

the double challenge of both overcoming government power and persuading a critical majority of people to join their side.

251 Hampton, Political Philosophy, at 93.
4.4.1 The Case for a Relationship of Mastery in Catholic Church Governance

Since 2002, countless scholarly articles and opinion pieces on Catholic Church governance have criticized the church for both structures and personal styles of governance that function to exclude the laity and ‘lower clergy’ from participation.\textsuperscript{252} The sexual abuse crisis was cause for alarm precisely because it seemed to indicate that Catholic Church governance was no more than some form of mastery, where the hierarchy could act and decide at will, with no accountability, duty or sense of direct connection to the governed. The stage was set for a human and moral disaster such as the sexual abuse crisis. Yet it seemed puzzling (as well as terribly wrong) that this state of affairs obtained within the Catholic Church: not only because mastery per se is a morally problematic form of governance, but also because it seems at odds with the understanding of the church as a community of disciples. The distancing from (or disconnection of) the hierarchy from the laity flies in the face of the fundamental definition of the episcopacy as a “radically relational”\textsuperscript{253} reality given “character or intelligibility or definition”\textsuperscript{254} by its twofold term in the college of bishops and in the vitality of the faith of the local church. By this logic, the vitality of the local church is the


\textsuperscript{254} Ibid, at 37.
precondition for disciples to exist in community at all with their bishop as the governing authority.

Yet the ontological definition of episcopacy, with its dual term, may itself be the source of difficulty. Michael Buckley notes that the two-fold term of the episcopal relation makes real-world application problematic insofar as it becomes difficult to discern when (or whether) one term holds prominence. “This complicated dual relationship inherent in “episcopate” may underlie something of the problem whether the primary relationship of a bishop is to his fellow bishops in college or to the members of his diocese.”255 In terms of practical, real-world application, it appears to many commentators that the term of the college of bishops has won out:

From this point of view, calls to hold bishops accountable save to the pope himself, offend the dignity of the bishop’s office and are framed by Vatican officials as attacks on the church. Instead of accountability, we are told that mistakes were made, sometimes tragic in their consequences. But, it is explained, they were mistakes made in the best interests of the church. Anything more, the Vatican fears, would undercut the authority of the bishop’s teaching office and diminish his credibility… As elite members of the last feudal system in the West and one of the last absolute monarchies in the world, we shouldn’t be surprised if bishops, as princes of the realm, are answerable only to their sovereign, the bishop of Rome.256

In this view a self-reinforcing insularity among bishops (including the bishop of Rome) ensues which renders it pragmatically difficult for church authorities even to see when the local church’s vitality is being sapped by their inattention to its true needs. “It remains exceedingly difficult for anyone in power to feel the pain of others, even the pain of young victims abused by their pastors.”257 When the term of the episcopal relation

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255 Ibid, at 36.


257 Ibid.
effectively is identified with the college of bishops, the church itself becomes identified, as noted in Chapter Two, with the hierarchy and its interests. “It’s the exceptional bishop who maintains real contact with members of his flock, who listens to the laity as one disciple to another, who lets the pain of the abused rend his heart. Sadly, it appears that it’s the exceptional bishop who puts the good of the children ahead of the good of the institutional church.”

But how, then, can Catholic Church governance be considered ‘mastery’ rather than simply an out-of-touch and insular system? Mastery involves a kind of response from the governed that externally resembles obedience insofar as the governed do what they are told, but is not the obedience characterized by internal and free assent to authority (as described in the previous chapter). Mastery occurs when the governed are prevented from ‘inventing’ authority through the absence or the disabling of participative structures of governance, through control of communication, through superior technology, or even by utilizing our normal psychological processes of repression. In the previous chapters I have examined examples where laity felt disabled from doing the right thing because they had deeply internalized the culture of clericalism, and where bishops utilized legal tactics that prevented the release of documents and the publishing of the truth about abuser priests and cooperating bishops. Keeping ‘the governed’ in the dark about the truth of the matter is one means to promote a relationship of mastery.

258 Ibid.

259 Cf., Hampton, Political Philosophy at 90-91 and Scott J. Shapiro, Authority, in Jules Coleman and Scott Shapiro, eds., The Oxford Handbook of Jurisprudence and the Philosophy of Law. New York: Oxford University Press, 2002. Shapiro observes that normal submission to authority often makes use of the psychological ability to repress reasons and feelings from our motivation for action; see ibid at 428.

This kind of church governance arguably arose in the Catholic Church during the recent modern period, roughly between the French Revolution and the convocation of Vatican II in 1962. Ecclesiologists and church historians have observed that during that time the Catholic Church developed “a new sociological form which differed in significant ways from the Catholicism of earlier eras.”261 This new form comprehensively embraced uniform styles of worship and devotion (e.g., a somewhat ‘ultramontanist’ piety replaced local church customs262), negative attitudes toward the modern world (with official papal approbation of Catholic ‘integralism’ standing off against the secularization of society and modern liberal philosophies263), and most pertinent to the present project, the centralization of church governance in bureaucracies based in the Holy See.264 Vectors of centralization included the Code of Canon Law (originally promulgated in the early 20th century), the Syllabus of Errors to control intellectual currents, Encyclical Letters through which to supervise bishops, and Vatican I’s definitions of the sovereignty and infallibility of the pope. Ironically, even though the Holy See highly criticized modern forms of governance based on philosophies of liberalism, socialism and communism, at the same time its own governance began to


263 “Modern Roman Catholicism is often accused of promoting an a-political, privatized notion of religion; but at least in its formative decades, this is an unjust indictment. An integral Catholicism was proposed, integral precisely because it refused the liberal insistence that religion has no public or social role to play. Its often remarked “intransigence” was precisely a refusal of the privatization of religion.” Komonchak, “Modernity and the Construction of Roman Catholicism,” at 361.

264 Joseph Komonchak identifies the saliency – which works against fundamental ecclesiological tenets – of Catholicism’s development into Roman Catholicism, because the centralization of governance made it possible for the Holy See (that is, the bishop of Rome’s primatial see) to impose uniformity of procedure, worship and activity throughout the universal church. “Catholicism was becoming, in senses largely unknown in previous centuries, Roman Catholicism.” “Modernity and the Construction of Roman Catholicism,” at 373.
reflect, via its new centralized bureaucracy and effective imposition of the will of the bishop of Rome over the church universal, the same kind of masterful control these repudiated forms exerted over their respective populations. As Joseph Komonchak observes,

[A]t the same time that the Catholic Church was defining itself in anti-modern terms, its own response to the challenge it faced reflected and embodied essential features of the modernization of western society…The paradox is that at the very moment in which the Church was repudiating the effects of the Enlightenment on society and culture, it was making use of important features of it in the articulation of its own life. Roman Catholicism presented itself as the antithesis of emancipation from tradition and authority; but it innovated in many areas of Church life, devotion, structure and thought, and the authority which it exercised represents a classic illustration of that self-conscious, rationalized, and bureaucratized mode of thought in which Max Weber saw the distinctive mark of modernity. This anti-modern Roman Catholicism was very modern indeed.265

So, the Catholic Church extended a masterful form of governance over its people, even as modern nations did the same. Western democracies were no exception here; pragmatically speaking, most regimes are mixtures of agency and mastery. In modern democracies, the rulers usually possess some measure of superiority over the ruled, since the former are the only ones who have the right to exert coercive power; this difference amounts to an inequality of power between ruler and ruled. But the difference between a modern democratic state such as the United States and the Catholic Church in this regard is that over time the state has accrued structures and procedures, such as due process and the rule of law, for keeping governing authorities accountable and attuned to the real needs of their actual citizens. Some of these structures and procedures were built into US government by the architects of its constitution, and others have had to be created since that time. As citizens of the US often realize, merely having in place structures of

265 Komonchak, “Modernity and the Construction of Roman Catholicism,” at 380, 383.
participation reflective of the inherent equality of all does not ensure equal treatment under the law. Constant attention, communication, watchdog efforts, and actively utilizing legal means (such as voting) to contribute to the governing convention are all responsible and necessary measures to prevent the devolution of agency into mastery.

4.5 A Poorly-Performing Relationship of Agency in the Catholic Church

4.5.1.1 Mastery Is Flawed, at Best

Catholic Church governance, then, has inherited from its recent past a form of governance characterized as a system of what Hampton terms mastery. In this section I shall qualify that argument. At the present time, Catholic Church governance demonstrates evidence of mastery, but this does not seem to be either complete or efficient. Recall that Hampton characterizes masters as those who have the upper hand in technology and communication, and can easily dictate the rules of engagement to the masses and thwart any attempts at citizen action and organization. But the sexual abuse crisis morphed into a crisis precisely because victims and their advocates arguably held the upper hand in communication (once investigative journalism took up the cause) and technology (e.g., the use of the internet and various forms of social networking – which themselves contributed to ease of communication). Instead of keeping quiet, victims and their advocates communicated with each other and with the public. So, if one were to characterize Catholic Church governance as a system of mastery, one ought also add that this system performs poorly as a system of mastery. There are too many opportunities, at least in the US, for the governed to speak freely, assemble, publicize their cause and utilize their secular agential governing convention to investigate and prosecute criminal
activity within the church. At the present time it appears that on the basis of these opportunities the older system of mastery is giving way to a new type of relationship between “pastors and the other faithful.”

4.5.1.2 A Real, if Badly-Performing, Convention

In order to identify positively the existence of a governing convention in the Catholic Church, we need to recall that people ‘invent’ governing authority through some kind of implicit activity or behavior aimed at defining the convention’s contours. ‘Invention’ of authority is a way for the governed to relate to their agents in government, the ruling authorities, in matters regarding protection of basic human interests, such as those identified by the precepts of the Decalogue, considered as fundamental moral concepts. The authoritative agents of the governed – the ruling authorities – are, notes Hampton, “‘hired’ by the convention and can be ‘fired’ when the people decide not to sustain that convention”. Thus far the description of a governing convention seems not to apply to the Catholic Church, where the selection of candidates for the episcopacy is a process tightly controlled by canon law and Vatican officials. It is true that there are no regular ecclesial procedures or structures available to American Catholics comparable to the rights to vote, petition and find out information available to the same Catholics as citizens of the US. But direct and overt structures of participation mask the implicit consenting

266 In US culture, this kind of external (secular) assistance was not always available for victim-survivors; indeed, there is a history of the police and criminal justice systems’ looking the other way when allegations of sexual abuse were made against noteworthy citizens (whether priests or any other upstanding member of society). In a way, the old ecclesiastical immunity from prosecution more characteristic of pre-Enlightenment Europe, survived in attitudes in the US and elsewhere until recently. Changes in both laws and awareness in the second half of the 20th century made victim advocacy a reality. Cf., Leslie M. Lothstein, “Collaboration between the Catholic Church, the Mental Hea and the Criminal Justice Systems Regarding Clergy Sex Offenders,” in Thomas G. Plante, Sins Against the Innocents, 123-138.

267 Hampton, Political Philosophy, at 90.
behavior that goes on in US secular governance, and also exists (with little or no formal or official structural recognition) in the Catholic Church. I suggest that the difference between the two is that the implicit consenting behavior vis-à-vis secular governance (on whatever level) also can be connected to direct structures for citizen participation and the rule of law. In other words, there are structural channels that facilitate citizens’ consenting (or rebelling) behavior in the democratic systems of the US and other countries. There are no, or very few, structures for the laity to participate in their own church’s governance. But this does not mean that the consenting behavior giving rise to a governing convention is absent. Indeed, a phenomenon such as the sexual abuse crisis has revealed, among other things, that ordinary Catholics do question and resist certain authorities and their directives in matters relating to the handling of allegations.

What appears to exist in the Catholic Church is a governing convention, but a poorly-performing one. (Hampton prefers to use the term “bad convention” to describe the same thing.) A bad or poorly-performing governing convention is still a real convention. It exists when the present ruling equilibrium does its task of governance badly, such that there are better alternatives to protect persons and to solve coordination problems. Some, or many, or even all of the governed may desire change. But sometimes the consequences of trying to change the convention are worse than the consequences of acquiescing to the bad convention. At the same time, having some kind of recognized authority is preferable to total internal chaos, or dissolution of the society. So, for the time being at least, the disgruntled members of a community cannot disrupt the ruler’s authority, because the authority is sustained by the group via a convention. That is, everyone else, or at least most of them, obey the ruler’s authoritative directives.
I suggest that a poorly-performing convention describes the current state of the human element of Catholic Church governance more accurately than does mastery. This is true not only because the Catholic hierarchy is unable to silence opposition, as has been the case in severely oppressive secular regimes – thus removing a major characteristic of mastery. The present system of governance in the Catholic Church fits better the description of the poorly-performing convention, which is characteristic of regimes that recognize equality but lack participatory structures, viable due process and the rule of law common to modern democracies. Here, “the citizen’s role as a member of the group that creates or maintains or destroys the governing convention is often ill-defined, little understood, easily thwarted by the ruler, and made up as the citizens go along.” The history of the sexual abuse crisis in the US Catholic Church is, if anything, the history of a long learning curve for everyone who sincerely desired the protection of youth specifically and the upholding of the Sixth Commandment more comprehensively, but had to figure out new ways of doing so because their own church – usually seen as an authority in matters of morality – had caused harm to them. This process was accompanied by the disorganization characteristic of non-democratic regimes, as well as by inept rule enabling such harms.

4.5.1.3 Why Support a ‘Bad Convention’?

However, why would persons want to support a bad governing convention? In the case of the sexual abuse crisis in the Catholic Church, if a poorly-performing convention exists, why would Catholics continue to support, by their implicit behavior, a

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268 Hampton, Political Philosophy, at 108.
type of governance that has the potential to cause such great harm? Why do Catholics more or less go along with the present structures of church governance, even though, in light of the sexual abuse crisis, it seems that most want these altered in some way to assure transparency towards and protection of members of the church?

One realistic answer proffered by Hampton’s study of secular states is that the costs of changing a current governing convention, even though it performs poorly, are so great that it is better to support the status quo. Changing the current equilibrium may itself cause harm to persons, and that harm might be worse than the harms to which they are presently exposed. (One can readily think of historical examples where the civil strife ensuing from overthrow of an established regime caused more and longer-lasting harm to the population than did the poor performance of the regime.) Thus there are moral reasons to uphold the status quo. There are other self-interested reasons as well: the malcontents still benefit in other ways from the poorly-performing governing convention, and they may be unwilling to sacrifice their own personal interests for the sake of overall improvement in the society.

I suggest that it is primarily that latter of these two possibilities that can be observed analogously in the Catholic Church. That is, most Catholics desire change for moral reasons -- in order that the community as a whole might observe the Sixth Commandment comprehensively considered. These moral reasons are also self-interested reasons, because observance of the Sixth (and other fundamental precepts) protects them from harm and promotes the common good of the community (of which individuals partake). The sexual abuse crisis has come about precisely because the structures of church
governance have been proven unreliable regarding procedures for accountability, transparency and due process; so, church governance requires fundamental change.

But, on the other hand, there are other self-interested reasons for maintaining the status quo. For Catholics, bishops are not only governors, they are sanctifiers and teachers – arguably any given Catholic’s personal experience with the bishop occurs via the sacraments. In other words, for most lay Catholics the bishop is experienced primarily as ‘sanctifier,’ and sanctification is the reason why persons are Catholic at all; they encounter the God of Jesus Christ through the sacraments and they are strengthened for living the Christian life by partaking in the sacraments, especially the Eucharist. The bishop is the leader par excellence of the prayer and sacraments of the community. So, Catholics may cling wholeheartedly to sacraments and doctrine, while half-heartedly ‘putting up with’ the poor decisions of bishops as governors. But their behavior in support of communal sacramental life and doctrinal teaching also implicitly supports the present governing structures.

Conversely, since (as I argued above) the present governing convention in the Catholic church is a poorly defined one, it is difficult to address the question of governmental change without also affecting the munera of sacraments and doctrine. I do not believe this difficulty is insuperable, but it does require maintaining distinctions or boundaries among the munera in the face of tendencies to conflate them. One example of meshing the munera can be seen in negative contrast in objections to democratic governance in the Catholic Church: in large measure these objections rightly oppose any

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269 For example, John Paul II tends to stress the relationship among the munera balancing this with their internal distinctions. “In view, then of their common purpose and aim, the three munera of teaching, sanctifying and ruling are clearly inseparable and interpenetrating. “When the bishop teaches, he also sanctifies and governs the people of God; when he sanctifies he also teaches and governs; when he governs he teaches and sanctifies.”” Pope John Paul II, “Characteristics of the Bishop’s Apostolic Governance.”
majority-rule changes in sacred doctrine or liturgy. It would make a farce of doctrine if it
could be substantially changed merely willfully. Another example can be drawn from the
sexual abuse crisis itself, where the withdrawal of support from a specific bishop or
particular law could not be accomplished without major upheaval in the church’s overall
political structure. For some critics, lay-majority (or entirely lay) diocesan and national
review boards with the power and authority to audit diocesan compliance with the
Charter and the Essential Norms, and publish or criticize non-compliance translates into
lay persons’ having power ‘over’ the bishops.

Both examples fail to make important distinctions, and thus show errors. The first
conflates all the episcopal munera, such that structural or procedural limits on
governance open the door to willful changes in, say, doctrine. The second example sees
governing power as residing only in the bishop (even though canon law does allow for
delegations of power). They fail to see that lay influence over church governance, such
as the national review board, is a limited exercise of a limited form of authority by equal
disciples intent, ultimately, on strengthening the governing authority of the bishop for the
essential task of governance by, proximately, uncovering and eliminating real and
potential instances of sexual abuse. This authoritative exercise by review boards
strengthens real episcopal authority for governance by assisting the bishop to do the true
task of governing authority – to protect persons from harm and to solve conflicts and
coordination problems. These exercises of authority on the part of lay persons are limited
in scope to the particular task at hand, so there is a procedural boundary to the area of
church governance over which a review board, for example, has authority. Ironically,
while general episcopal authority is strengthened because it is held more accountable to
the self-interest of the community, particular bishops in the short term may be shown to be incompetent governors.

Any concerns about such groups’ ‘taking over’ local church governance must confront the reality that faithful Catholics, for the most part, support the current poorly-performing governing convention, not because they think that widespread sexual abuse is of no concern, but because they desire access to the sacraments. This desire in turn is an expression of an overall seeking for salvation through the Catholic Church.

4.5.1.4 “Convention Consent” Compared to “Endorsement Consent”

So far, I have argued that Catholic Church governance can be characterized as functioning through the consent of the people via a governing convention, but that this governing convention is a poorly performing (“bad”) one because it does not enable the community to achieve a desirable coordination equilibrium that furthers individuals’ self-interest in the matter of the moral concerns of the Sixth. Many, perhaps most, Catholics support the status-quo equilibrium because it does further other key aspects of self-interest such as provision for the church’s sacramental life. However much revelations of sexual abuse of minors by clergy have alarmed all Catholics, most have not had the unfortunate experience of their own children, or children they knew, being victims of abuse. When abuse does occur, it seems that victim-survivors and their advocates are the ones who directly experience just how poorly performing the present governing convention is. It has been difficult enough for these persons to receive the proper response of justice from church authorities, let alone to persuade others (without their personal experience) that Catholic Church governance must indeed change lest others’ children be put at the same risk of danger. Prior to 2002 Catholic Church governance
proved itself incapable of protecting the vulnerable from harm (on the one hand), and of internal positive change to make possible such protection to future potential victims (on the other).

Yet this state of affairs is made possible and supported by all the governed. Some directly, consciously support it (surely a very small minority of Catholics); others implicitly support it by behavior that does not undermine or challenge the status quo. Still others – e.g., those engaged in ongoing confrontations with the hierarchy and direct and persistent advocacy for change – may remain committed to church governing authority but overtly are challenging certain procedures, means and laws of their governance that they believe are immoral and unjust. Using the sexual abuse crisis in the Catholic Church as an example, it is easy to understand why a kind of minimal consent – termed “convention consent” – is not only “an attenuated notion of consent” but also demonstrates “exceedingly limited… moral justifying power.”

Convention consent in the Catholic Church ‘merely’ creates and sustains governing authority, rather than expressing approval for and direct advocacy of the regime.

“Convention consent” exists in the Catholic Church because, first, the church is not overall a system of mastery, even if it retains features that limit expression of Lumen gentium’s ideal of baptismal equality. Catholics have been able to organize themselves and seek ways to alter the hierarchy’s handlings of sexual abuse allegations in particular, and accountability and transparency in general. Secondly, consent does not ever confer governing authority; rather it ‘invents’ it by affecting the concrete scope and limits of governing power. While to many it is taking a frustratingly long time to affect church

\[\text{270} \text{ Hampton, Political Philosophy, at 94.}\]
governance actually to revise itself, nonetheless, revisions (e.g., the Essential Norms) have already been codified into canon law. Thus another characteristic of convention consent is that it revises, as well as invents, the structure of authority in a society of equals. (At the same time, authority still retains all the characteristics of authority outlined in the previous chapter.) But the overall sense of convention consent is that this minimally, or even begrudgingly, supports an ongoing system of governance.

By contrast, “endorsement consent… expresses not merely acquiescence in a political regime but also explicit approval of and support for it.”271 Such a system of authority is characterized by vibrancy and strength, because it is supported both by positive attitudes and respect of the society’s members, as well as by their active determination to support it. This kind of consent often results when the members of a society see themselves reflected in and personally supported by their community, in such a way that we can say that they are loyal to it, they trust it, and they possess ‘ownership’ of it or are empowered (as opposed to dispossessed and disempowered) by it. I suggest that the ecclesiological concept of communio, upheld as the ideal relational state of the community of disciples in numerous Vatican II documents, entails a kind of endorsement consent on the part of “the other faithful.” It seems that mere convention consent, while it creates a governing order, is too weak to support and effect the vibrancy characteristic of communio. (Of course, ecclesiological concepts like communio also make room for the providential action of divine grace; but what I’m describing here is communio seen from the perspective of the human element of governance.) While endorsement consent also does not cause a ruling regime to be just, nonetheless, “it is instead a (reliable but

271 Hampton, Political Philosophy, at 96.
not infallible) sign that in its dealings with its subjects and others outside it (probably) is reasonably just.”

I suggest that endorsement consent does not at present exist in Catholic Church governance because the church’s laws, structures and procedures largely reflect clerical and episcopal interests rather than those of the laity, or even just communal relationships (as exemplified in actions that allowed sexual abuse in the cause of ‘protecting’ the church). Nonetheless, as I have argued in this section, church governance also lacks the consistent and strong ingredients necessary to make it a system of mastery. Church authority and a kind of governing convention are invented by mild convention consent, but the result has allowed egregious harms to occur. In the following section I suggest a way of understanding church governance that allows authority truly to be preemptive and properly powerful, but at the same time enables a healthier governing convention than that which presently obtains in the Catholic Church.

4.6 Ecclesial Authority and a Governing Convention in the Catholic Church

4.6.1 The Paradox of Authority and an Agential Relationship

If the Catholic Church does exhibit a convention consent among its members which ‘invents’ authority and sustains a governing convention – albeit in a disorganized and somewhat attenuated fashion – the question arises as to how governance in the Catholic Church might be envisioned pragmatically, such that the bishops remain truly authoritative yet the laity participate meaningfully (i.e., a governance that elicits endorsement consent). The previous sections hopefully have demonstrated that

\[272\] Ibid.
‘meaningful participation’ on the part of the laity ought not be construed as measures whereby bishops control the processes of governance alone. In a society of equals, the governed invent authority and create or sustain a governing convention. Episcopal authority, understood as a relation with the local diocese, can now be seen as a relation of agency: the bishop promotes the moral and spiritual self-interests of members of the local diocese, rather than masterfully imposing his own will upon them. But at the same time, and paradoxically, only bishops have the right to issue authoritative directives for the purpose of accomplishing the task of governance.

The paradox of authority is impossible to solve if the agential relationship is understood as some kind of zero-sum game: either the governing authority is in charge, ordering around the governed, or the governed are in charge and order around government officials to do their bidding. Such an understanding is simplistic and incorrect. An insight of modern, stable democracies demonstrates a more complex understanding of the agential relationship. Even though we call elected officials – our agents in government -- ‘representatives,’ these persons really don’t literally ‘represent’ us – “as if we were doing the ruling “through them.” This is nonsense. They rule, and we don’t.”273 US citizens beguile themselves if they perceive Lincoln’s famous phrase from the Gettysburg Address – “government of the people, by the people and for the people” – to mean that ordinary citizens are somehow government authorities, or have the power to run the government directly. Similarly, the Lumen gentium’s statements of the universal call to holiness, equality of baptismal dignity and call to discipleship, and the

273 Hampton, *Political Philosophy*, at 106.
right of the laity to express their needs and opinions to the hierarchy, do not constitute license to issue authoritative directives for “the other faithful” to govern the church.

But an authority in an agential relationship with the governed cannot rule in a way that is aloof and masterful – as critics of the bishops have pointed out during the sexual abuse crisis – because of the nature of this relationship. That is, the governed will react and communicate their distress and their desires for change in some way or other. A wisely-constructed government will erect procedures for this purpose so that meaningful changes can be incorporated smoothly with minimal jolts to individual and common good. But this process likewise could take place in a haphazard and ad hoc fashion, if no effective procedures or governmental structures exist to handle the governed persons’ side of the relationship. Clearly, this is what has happened in the Catholic Church in the US, as victims and their advocates, held off by their bishops, turned outside the church to local prosecutors, investigative journalists, advocacy organizations and others to communicate their needs and desires, and seek justice. This situation seems far from what Lumen gentium intended:

The laity have the right, as do all Christians, to receive in abundance from their spiritual shepherds the spiritual goods of the Church, especially the assistance of the word of God and of the sacraments. They should openly reveal to them their needs and desires with that freedom and confidence which is fitting for children of God and brothers in Christ. They are, by reason of the knowledge, competence or outstanding ability which they may enjoy, permitted and sometimes even obliged to express their opinion on those things which concern the good of the Church. When occasions arise, let this be done through the organs erected by the Church for this purpose. Let it always be done in truth, in courage and in prudence, with reverence and charity towards those who by reason of their sacred office represent the person of Christ. (Lumen gentium, no. 37, emphasis added.)
4.6.2 Distinction of Levels in Governance

The basic premise of a governing convention is that authority is ‘invented’ by the governed; Hampton’s term ‘invention’ is deliberate because it rejects the notion that governing power resides in the governed, who then loan it out to rulers. How, then does one solve the paradox of the governed, especially in pragmatic application?

Hampton circumvents a stalemate or a zero-sum solution by means of a stratification analysis that distinguishes between two fundamental and different levels of government. The first of these is the immediate, “object level”274 over which the governed have no immediate influence because this level is defined by the scope of authority of those who rule. Hampton identifies this level with the ongoing, already-in-place governing convention complete with a legal system and authorities with power to prosecute those who do not obey directives. But there also exists a second, “metalevel”275 of governance composed of its own effective rules; however these rules are of a very different type than the legal system and official duties concretely realized at the “object level.” This second level of rules ultimately defines the content of the first (object) level276 – in part by determining who it is that shall be “the makers, interpreters and enforcers of the primary

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274 Hampton, Political Philosophy, at 102.

275 Ibid.

276 Hampton acknowledges her debt to H.L.A. Hart in identifying the distinction between the primary and secondary rules (or object level and metalevel) of governance. Noting three main defects in the primary rules (object level) – “uncertainty” (the rules may be doubtful and their scope difficult to discern), a “static character” (they do not of themselves adapt to changes in society) and “inefficiency” (difficulties in interpreting the rules and identifying violations) -- Hart notes that “[t]he remedy for each of these three main defects in this simplest form of social structure consists in supplementing the primary rules with secondary rules which are rules of a different kind… Thus they may all be said to be on a different level from the primary rules, for they are all about such rules; in the sense that while primary rules are concerned with the actions that individuals must or must not do, these secondary rules are all concerned with the primary rules themselves. They specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined.” H.L.A. Hart, The Concept of Law, 2nd edition. Oxford: Clarendon Press, 1994, at 92-94.
(or “object”) law… Those who are not authorized by the governing convention to perform some aspect of governing would be appropriately considered “the ruled,” pure and simple.”

At the “object level,” the everyday running of government is carried out by authorities with the power to issue preemptive directives. In the Catholic Church, the local bishop holds all legislative, judicial and executive power in his diocese, and so rules at the object level. But the metalevel provides for the necessary response of the governed in their ‘invention’ of his authority. Periodically, through structures and procedures designed for this purpose, the governed participate in and influence the scope and content of governance within reasonable limits set by faith and morals. “We are engaged in being ruled when we follow the law and experience sanctions set by legal authorities. And we are engaged in interpreting the governing convention when we either participate in activities that create and maintain our governments or when we do what we can to overthrow them.”

In what way may “the other faithful” participate in Catholic Church governance through metalevel structures?

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277 Hampton, Political Philosophy, 102.

278 Leon J. Podles comments, “Even if the laity should not share in the direct government of the Church, they suffer if the Church is misgoverned, as it has been in the United States. To ensure that bishops carry out their responsibilities, episcopal government must be open to inspection by the laity. If a bishop cloaks his government in secrecy, it is usually because he is doing something he knows he should not be doing and that would not stand up to public scrutiny. The laity should certainly always be consulted on matters that concern them.” Leon J. Podles, Sacrilege: Sexual Abuse in the Catholic Church. Baltimore: Crossland Press, 2008, at 497-8.

279 Hampton, Political Philosophy, 103.
4.6.3 Structures of Participation in Catholic Church Governance, and the Problem of Accountability

Because of the theological import of participation of all the faithful in the mission of the church, Vatican II called for a variety of consultative structures through which the faithful could express themselves. Among these structures at the diocesan level are the diocesan synod, pastoral council, finance council, local boards or commissions for particular ministries (education, peace and justice, etc.), and the bishop’s regular parish visitation. Perhaps the newest such structure, established at both the local and national levels after the crisis exploded in 2002, is the review board which investigates allegations of sexual abuse by clergy and advises the bishop on these matters. Following Hampton’s stratification analysis, the local bishop holds proper governing authority, and governs at the object level. Yet “the other faithful” have the right and opportunity for expressing their consent (or not) through procedures and structures at the metalevel by being active members of such bodies, or utilizing such bodies in matters of appropriate concern. At the same time, sharing responsibility for governing the church at the metalevel is never identical with episcopal governance at the object level.

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280 Cf., Sister Sharon Euart, RSM “Structures for Participation in the Church,” Origins 35:2, May 26, 2005, for a succinct summary of each of these structures.

281 “The notion of shared responsibility is derived from Vatican II’s ecclesiology of communion and its teaching on the basic equality of all believers, a unifying concept grounded in baptism which imparts to the believer responsibility for carrying forward the mission of the church in partnership with other members of the church, according to the gifts and functions of each person. Many discussions today on decision making in the church often seemed focused on the notion of power. Persons who make decisions affecting the life and direction of the church are said to have power; those who have no part in making such decisions are said to be powerless or without significance or influence in the life of the church. Without this power, which many refer to as decision-making power, they believe they cannot truly “share responsibility” in the church. Shared responsibility comes to mean shared power, and efforts to implement shared responsibility become efforts to wrest such power from those who are considered to possess it, namely those in ecclesiastical office such as bishops and pastors.
Yet the sexual abuse crisis seems to indicate that such meta-level structures and procedures are not really functioning according their purpose. The ineffectiveness of participative structures of governance is not only morally problematic because such a situation minimizes or eliminates the concrete expression of consent, through which the governed can take up their proper moral responsibilities vis-à-vis church authorities. It is also theologically incoherent with Catholic ecclesiology. “Consultation in the church is rooted in the theological principles that the church is the people of God, a people gathered around their bishop, a holy people incorporated into the body of Christ with a share in the threefold mission of Christ to teach, to sanctify and to govern.”282 The sexual abuse crisis revealed not only a problem with governance at the “object level,” when bishops undertook authoritative actions and decisions that enabled priest-offenders (as analyzed in Chapter One). Lay participation at the metalevel of already-established participative structures was ineffective at influencing and changing the terms of the governing convention, towards accountability and justice and away from secrecy and cover-up.

Canon lawyer Sister Sharon Euart cites a common criticism, that such structures really are “second class” and “merely consultative” in a church where “the decision making power rests with the bishop or pastor.”283 True, only the authority has the right to issue morally obliging authoritative directives. Improving church governance does not

Administrative decision making is clearly an exercise of shared responsibility which involves the recognition of a variety of roles and gifts. It is not identical with choice making or having the final authority to say yes or no to a particular course of action. Euart, “Structures for Participation in the Church.”


283 Ibid. See n. 24 for a longer discussion of decision making power from a canon law perspective.
lie in the direction of rendering authorities powerless to do the task of governance. But what about the other criticism – that the current structures of participation are “merely consultative”? The derogatory-sounding tone of this phrase indicates that there exists no necessary, causal connection between the convention-generating activities that normally occur through such structures, and the actual, concrete forms of governance that govern the church. That is, the faithful may express themselves through such structures, but these expressions need not alter the governing convention. The bishop may, if he wills, allow himself to be influenced, but canonically he can just as easily ignore many of these expressions. In other words, the present set of structures for participation is unable to hold bishops accountable for their authoritative decisions and actions.

The sexual abuse crisis has made clear that present structures for participation allow for the faithful to speak up and share their views, but, as Euart notes, these must be “reviewed, renewed and revitalized in order to serve better the life and mission of the church.”284 As these structures currently stand, they do allow for some kind of metalevel participation (“shared responsibility”) in church governance. The bishop seeks the help, wisdom, experience and advice of, for example, his pastoral, personnel and finance councils. The members of these groups, in turn, affect and influence the actual decisions and actions of the bishop at the object level of governance. Euart is correct in noting that these are viable structures for participation of the faithful at the proper metalevel of governance. But critics are just as correct to respond that lay members of such councils are usually invited by pastors or bishops to membership in these consultative bodies – thus these lay members are not structurally indebted to the people of God but rather to the

284 Ibid.
gate-keeping cleric who gave them the position. Accountability remains elusive, as does thus the potential for the ecclesially-powerful to ignore the broad obligations of fundamental moral concepts like the Sixth Commandment.

Another difficulty arises about when there are no additional procedures, structures or laws to bring about the ‘revitalization and renewal’ that Euart suggests is necessary regarding the current “metalevel” of participative governing structures. What presently obtains in church governance is the object level (belonging to bishops and pastors) and an initial metalevel (comprised of various consultative bodies as called for by Vatican II and canon law, but whose membership is up to the discretion of bishop or pastor). To revitalize the metalevel structures, what is needed is an additional ‘meta-meta’ or ‘tertiary’ level of governance empowered to change the nature and function of the metalevel itself – analogous to, say, constitutional amendment in the US government.

4.6.4 The Tertiary Level: Revising the Governing Convention in the Catholic Church

One of the more ingenious insights of the founders of modern democracies concerns the recognition that both the “object level” and the “metalevel” of governance themselves can be affected by a tertiary level. At this third level, large-scale changes and alterations of course of the governing convention can be achieved. History provided ample examples to the founders of the American government how dangerous it could be to change a government. Violent, revolutionary overthrow was frequently the only means for accomplishing such a task. These events often come at great personal cost, including the cost of lives; but then again, so does putting up with unjust and oppressive regimes and not mounting a revolution. However, as Hampton notes, if genuinely new insights and revolutionary energy could be peacefully harnessed and shaped into the government in an
orderly and timely manner, then the society could benefit from new developments while not suffering so badly from the jolt of a game-changing initiative.

Call rules of this type *convention-revising rules*. They dictate how the people install or replace those who hold the offices defined by the structural type of rule [metarule] just discussed, either through direct or indirect voting procedures. Second, these rules set out the procedures for changing the rules that define these offices and the procedures for fulfilling them. (For example, the US Constitution sets out an elaborate process for constitutional amendment.) By including these rules in the governing convention, the people not only define the object political game but also determine the system by which the people can revise that game and under what circumstances they will be warranted to do so. So with the addition of these latter rules, the overall governing convention now contains components that are *tertiary* as well as secondary: That is, it contains rules about rules insofar as it defines not merely the object political game and the primary rules generated in that game but also the game of changing the object political game. Politics becomes a three-tier, not a two-tier, activity.\(^\text{285}\)

I have quoted Hampton at length because this passage also indicates where Catholic Church governance, although it consists of a governing convention, breaks with modern democratic regimes. In the latter, the convention operates on (at least) three levels, whereas in the vaguely-participatory but nondemocratic Catholic Church the tertiary level often goes missing. That it is not entirely absent can be demonstrated by a scan through church history, from the elections (and even dismissals) of local bishops by congresses of local laity and clergy in the church’s early centuries, to the many changes in church governance wrought by the interventions of the Vatican II council fathers. Nonetheless, in terms of currently conventional church culture and practice, local clergy and bishops are indebted not to their people for their jobs, but to their superiors (bishops or popes), and it is to these that they are held accountable. What the Catholic Church lacks in large part are the culture, the practices, the mindset and finally the orderly

procedures by which the governors of the church must show accountability to their people -- or risk losing their position of authority.

In contrast, the strong centralized authority structures now constituting Catholic Church governance actually weaken authority by practically guaranteeing no regular means by which “the other faithful” may change the governing convention. Again, it needs to be stressed that “changing the governing convention” takes place within moral and doctrinal limits. It is necessary for ecclesial governance to make room for this kind of change ‘from below’ insofar as the governed have the obligation to take responsibility for morally-salient aspects of their lives, such as protection from bodily harm of themselves and their dependents. Critics’ siren songs warning of the replacement of church order by majority whim unnecessarily distract attention away from moral obligations of “the other faithful” to meaningful participation in church governance. There are many ways in which the “other faithful” are structurally barred from such participation. For example, local bishops are not accountable to the members of local churches because they are not elected, nor can be removed, by the local church in a way similar to voting representatives into (and out of) the US Congress. This situation seems an irregularity in a church that theologically characterizes itself in terms of communion among its members. Additionally, the concentration of governing power in the clerical state represents an irregular situation. Notes Michael Buckley, the “current highly centralized procedures of the Apostolic See in the selection of bishops might well be seen as a substitutional use of its authority necessitated by the social and political pressures of these past centuries… [T]he manner of appointing bishops cannot be reduced to simply Church discipline and practice; it involves a profound understanding of the nature of the
diocesan bishop and his union with his people.” Even though the substitutional, as opposed to regular, exercise of authority may be warranted in times of need – such as, for example, even in modern democratic regimes when chief executives invoke unusual powers during times of national emergency – it ought not become the anticipated, ordinary practice. To do so ultimately weakens governing authority by weakening the connection between an authority’s exercise of official power and the consent of the governed. It certainly robs a society such as the Catholic Church of the opportunity for “endorsement consent.”

So, the difficulties inherent in Catholic Church governance – difficulties which enabled the scandal of sexual abuse to explode into a worldwide crisis – lie not only with bishops’ misinterpreting what the problem is, or consultative bodies who did their job poorly. These difficulties arise also from lack of accountability; and lack of accountability can be traced to the absence of regular, tertiary-level procedures such as being voted into and out of office. Without any church officials or mid-level bodies feeling the need or responsibility to handle sexual abuse allegations in all their complexity and depth, without meta-level procedures through which Catholic individuals can bring matters of egregious concern to the attention of their pastors, victim-survivors, their families, and advocates turned to other sources of assistance outside the church. In so doing, they engaged (as secular citizens) in the governed’s role in secular governance at the “metalevel” – they utilized civil institutions to get the law enforced and justice served. At the same time, as disciples in the community, they were beginning an engagement with church governance at the tertiary level. Their actions initiated game-

changing procedures into church governance. It is surely one of the great ironies of the sexual abuse crisis that secular US institutions—e.g., police, judges, prosecutors, courts and the press—made possible a kind of accountability that pastors and bishops refused to “the other faithful.”

4.6.4.1 What Kind of Governance? Practical Possibilities

Since Vatican II one of the sticking points making the issue of church authority so neuralgic has concerned the importation of ideas and structures of modern democracies into Catholic Church governance. Pope Paul VI asserted in his first encyclical, “The church is not a democratic association established by human will.” A successor echoed: “The church is not a democracy, and no one from below can decide on the truth.” Yet these seemingly unequivocal rejections of democratic governance in the church themselves have been embedded in larger contexts calling for open-mindedness in utilizing authentic insights from intelligent inquiry in direct application to the church’s self-understanding and mission. Thus, Paul VI’s first encyclical Ecclesiam suam also made a pointed distinction between the ideal and the actual church (based on the ecclesiology of early 20th-century German theologian Karl Adam). Although the actual church of everyday experience reflects in many ways the mind of Christ and the inspiration of the Holy Spirit, nonetheless, “the actual image of the Church will never attain to such a degree of perfection, beauty, holiness and splendor that it can be said to correspond perfectly with the original conception in the mind of Him who fashioned it.”

287 Pope Paul VI, Ecclesiam suam.

288 Cited in Oakley & Russett, eds., Governance, Accountability and the Future of the Catholic Church, at 106.
(Ecclesiastm suam, no. 10) Thus, concluded Paul, the church’s engaging in its own “renewal [is] the ultimate result.” (Ecclesiastm suam, no. 11). Similarly, John Paul II also made room for the church’s changing its structures of governance towards participation and accountability: “Within a sound ecclesiology of communion, a commitment to creating better structures of participation, consultation and shared responsibility should not be misunderstood as a concession to a secular, “democratic” model of governance but as an intrinsic requirement of the exercise of episcopal authority and a necessary means of strengthening that authority.”

As this chapter has explored, strong authority is not only compatible with governance structures that reflect the consent of the governed; authority actually is strengthened by these structures because authority in its human capacity is invented by the governed who support a particular governing convention. The sense that pits hierarchy versus or against democracy is, I suggest, fundamentally incorrect.

4.6.4.1.1 Government ‘of the people’?

In the early post-Vatican II years, the establishment of (then novel) participatory organs like parish and diocesan pastoral councils, finance councils, regional and universal synods, and the like, spurred a series of studies and proposals regarding how American-style structures such as a bill of rights, a democratic constitution, and laws protecting the rights of the rank-and-file membership could be incorporated into church governance, often under the aegis of the notion of collegiality. It was precisely a wholesale kind of

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importation of such structures that recent popes rejected. More recent scholarly critiques have noted where some of these efforts had gone amiss: “The church is not, in any formal sense, a democracy since ultimate sovereignty does not rest with the people, expressed through majority voice and/or representative organs of government accountable, in the final analysis, to majoritarian scrutiny and control… [U]ltimate legislative, executive and judicial authority rests in the college of the world episcopacy, presided over by the pope, who exercises, within this college, primacy.”

However, neither are modern democracies to be considered directly “of the people,” either. The notion that sovereignty for rule belongs to the people is, pragmatically speaking, prone to confusion, because of essential distinctions between authorities and the governed. At any given moment, ruling belongs to the authorities. But there are procedures by which the governed may effect change in both laws and the actual authorities. These procedures themselves are managed by tertiary-level rules, so all other things being equal, ‘the rule of the people’ is itself constrained by requirements of the common good, such as peace, order and justice. In the Catholic Church, the understanding that all the faithful share baptismally in the triple munera (although, obviously, most are not episcopal or pastoral authorities) and are responsible for the running of the church, underwrites their participation in such procedures.

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4.6.4.1.2 What Kind of Church Governance?

One of the interesting things about the convention model is that it allows for a variety of actual governing conventions, subject to any given society’s understanding about moral and other limits to governing authority. Different conventions will give rise to different kinds of governments. Governing authority in all of these governments will generally be defined the same, in terms of its preemptive character and the right of authorities to issue morally obliging directives. But actual governments will differ about what counts as an authoritative area in which directives are obliging. Authority’s “scope will be defined differently by different societies so that they will disagree about which “domains of decision” belong to the ruler.”

Hampton observes that the ruler’s jurisdiction and the purpose of authority must be specific enough in order for their directives to have pragmatic effect. But additionally, governing authorities also rely on the structures of governance which themselves are subject to the governing convention.

People may create a very expansive authority or a very limited one. That authority may be constructed as perfectionist in its ambitions (attempting to make the subjects good and help them to attain to the truth, as Plato advocated…), or it may be construed as antiperfectionist and limited only to ensuring that people do not injure one another. And this authority may be “housed” in a monarchical or oligarchic or democratic form of government… When people “invent” political authority, they agree that in order for it to work as a solution to state-of-nature problems, it must have a preemptive character, but they can structure in a variety of ways the scope and strength of the preemptive commands that the political authorities are permitted to make.

There are rich implications here for Catholic Church governance, particularly for cutting the Gordian knot of ‘hierarchy versus participation.’ It is entirely possible, for example, for church governance to retain its present, monarchical structural form.

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292 Hampton, Political Philosophy, at 75.

293 Hampton, Political Philosophy, at 75-6.
supported by a governing convention. The rationale for so doing is to preserve and reflect in government structures the theological doctrine of the church as a hierarchy – the college of bishops with the bishop of Rome as primate. Catholic Church governance need not become a “democracy” in order to be accountable, transparent and participatory. The key to the matter is exactly what John Paul II advocated: “better structures of participation, consultation and shared responsibility.” In order for any government – even a monarchy – to have its authority supported by the governing convention, these structures must first exist, and secondly, function well. The ‘catch’ if you will is that in order to function well these structures must also enable the expression of the consent of the governed. So, monarchical rule by the bishops does not mean willful governance lacking in true accountability. A monarchy does not mean a tyranny.

While many western Catholics have become familiar with the notion of consent of the governed via the secular regime they live under, governing conventions need not be restricted to democratic forms of governance. Historical studies of secular and church governance of Europe’s Middle Ages have discovered “alongside the expected assertions of pure papal absolutism, a variety of alternative views about the constitutional structure of the church. In various ways it was maintained that divine authority was not concentrated wholly in the pope or in a papal bureaucracy but was diffused throughout the Christian community.”294 Understanding how governing conventions work, and what the nature of governing authority is, help to show that an episcopal-monarchical form of governance is compatible with true accountability to the governed, who invent authority via a governing convention. In his study of the medieval prince, Kenneth Pennington

noted that the prince’s exercise of power was constrained by rules and laws recognizing due process and natural rights, in ways that would look familiar to modern-day citizens of democratic-style governments. As he notes it is mistaken to think that “rule of law” and “democracy” are tautological – one cannot exist without the other.” On contrary,

“rule of law”…can mean a society regulated by an ordered, just legal system, or it can mean a narrow legal principle… [T]he rule of law is a cornerstone of democratic institutions in the late twentieth century. But a reverential belief in the “rule of law” can and did exist long before Western democracies. In its earlier lives, “rule of law” was an important element in monarchical and republican (that is, non-monarchical but not necessarily democratic) governments.  

Theologically, the recognition at Vatican II that all the faithful have a shared responsibility for the church, opened the door to reconsidering and reforming structures of church governance along the lines of accountability and participation. The sexual abuse crisis has amplified and called attention to how the present system of governance fails both “pastors and the other faithful.” But reform need not mean dismantling the current episcopal-monarchical type of governance; it only means ensuring that our local episcopal monarchs remain structurally accountable to those they serve.

Michael Buckley has noted two salient areas for reform in this regard: the appointment and translation of bishops. If the appointment of bishops relied upon election processes common to the church’s early centuries, then those elected would rely upon the local church – or a representative or select group of local laity and clergy -- for their position. Moreover, if there were a rule that the bishop-elect must come from the local diocese, he would be known by and accountable to people and a place in which he has personal and vocational investment, as well as ties of friendships and family.

Similarly, if bishops were so elected to serve a particular church, and not subject to so-called promotion to sees far away from where they were raised in the faith and committed to the local church, then bishops would have reason to rule well – they must maintain healthy relationships with those with whom they live, minimally out of self-interest, maximally out of love for the Christ present in them. One can also envisage the membership of the various consultative bodies as subject to election, term limits and (if necessary) removal, such that these persons directly engaged at the metalevel of church governance also have to answer to those “other faithful” who elected them and have a vested interest in their doing their job well. In all these cases, the possibility of direct participation in governance by “the other faithful” will ultimately make authority better by ensuring that it does its job well.

4.7 Conclusion: The Sixth Commandment and a Governing Convention

In Chapter One, I redefined the sexual abuse crisis in the Catholic Church in the US as the failure of the entire community to observe the moral wisdom of the Sixth Commandment. The present chapter has added additional flesh onto the bare bones of that redefinition, particularly by making it possible to identify one area where an entire Catholic community ‘went wrong’ as it were. The Catholic Church understands itself as a community of disciples whose communion with each other reflects the communion of Persons in the Holy Trinity. But that is not all – as though communio refers only to matters divine, spiritual, immaterial. The church’s human aspect requires that its

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communion extend to the ordinary intersocial relationships that characterize human, communal life. This kind of communion is impossible without justice being observed in these relationships – that is, without a secure grasp on the meaning of the Decalogue’s second tablet (which includes the Sixth), considered as fundamental moral concepts.

Governing authority exists to ensure the task of protection of persons from the kind of harms covered by the second tablet. To this end it is necessary for authority to be strong enough actually to accomplish this task. In order for church authorities to rule well, they require necessary church structures ensuring preemptive, authoritative directives at the “object level.” The Sixth Commandment supports the existence of object-level structures so that members of the community may be protected from harms resulting from the breach of sexual boundaries. These concerns of church governance were analyzed in Chapter Two. In the present chapter, I noted that object-level governing authority in a society of equals is only one part – although an absolutely essential part – of governance.

The other part of governance concerns that vast majority, ‘the governed.’ They, too, have an absolutely essential role of consenting to their own governance, participating in it and on occasion changing the terms of the governing convention. The invention of authority, as described in this chapter, is consistent with the moral obligations of the Sixth and similar fundamental moral concepts. Catholics ‘invent’ their church authority in the context of the church as a human community. They do this in a way parallel to the invention of authority in secular contexts – by seeking to maintain and further their own self-interest. It is in the self-interest of all persons to rely on healthy communal sexual boundaries and to be protected from real and potential sexual assault. It is in the self-interest of Catholic parents to keep their children protected from sexual harm, and to raise
children in healthy and affirming ways through the normal stages of psychosexual
development. The self-interest of parents in regards to the sexual safety and well-being
of their children and the dignity of their own families, obviously does not arise from
selfish, individualistic concerns but rather is inscribed in the natural law as a distinct
feature of human flourishing intended by God in the creation of human persons. The
Sixth Commandment takes this aspect of human nature a step further by directly
prohibiting immoral use of the sexual faculty. The narrowly stipulated precept of the
Decalogue has logical implications; the processes of inventing of governing authority and
creating and maintaining a governing convention reflect one way in which human reason
validly interprets the precept. To prohibit breaches of the Sixth means, in the context of
governing authority, that the people being governed have a meaningful role in advancing
their particular self-interest -- of which one component is the bodily respect, human
dignity and flourishing of themselves and their families. The participation of mature lay
Catholics in metalevels of church governance would work to ensure that their self-interest
in this regard is served. By participating in church governance “the other faithful” would
provide a measure of oversight in the matter of accountability and create, in an ongoing
way, a governing convention supportive of their needs.

Now we can begin to see where and how ordinary Catholics, far removed from either
direct influence upon their bishop or from instances of clergy sexual abuse, still
(indirectly) contributed to the sexual abuse crisis. The lack of tertiary-level interventions
in the governing convention stymied persons desiring or attempting necessary reforms in
church governance. The costs – in time, money, and personal energy -- of attempting to
remove a bishop who cooperated with clergy offenders and mishandled credible
allegations -- were huge. Ordinary Catholics are ‘powerless’ to bring about changes in
governing authorities, or more precisely, the costs are so great that most persons have not
attempted any such changes, even when numerous credible allegations regarding sexual
abuse by priests began to surface.

This is not because these persons are completely excluded from shared responsibility
for governance. On the contrary, there exist a variety of consultative structures through
which lay persons can influence the direction and priorities of their diocese, even if their
participation in these structures is up to the discretion of the local bishop. However, the
bishop’s capacity as ‘gatekeeper’ over membership in diocesan consultative bodies
prevents structural accountability to the people at large. Their individual self-interest
does not in any meaningful way contribute to those processes of invention of authority
and creation of a governing convention. Clergy and bishops do not owe their position to
the laity, nor are they subject to procedures involving the self-interest of “the other
faithful” when they are removed – they are subject only to the level of cleric above them
in hierarchy. Hierarchy itself then devolves into the conventional understanding of ranks
and levels of superiors and inferiors, rather than reflecting its root etymology of ‘holy
order,’ surely one of the characteristics of a true community and communion of disciples.

To turn this situation around, the Sixth Commandment and other precepts of natural
law ought to provide the moral framework within which the activity of governance takes
place – whether authoritative directives from those who hold office, or the implicit
activity of consent on the part of the governed. Individuals and communities, as well as
the global church, can identify and specify conditions for human flourishing. A well-
functioning governing convention would support such flourishing within the Catholic
Church because it would be responsive to morally legitimate demands of ‘the governed’ and also feature a strong authority to meet those moral obligations. The natural law and the Decalogue provide an understanding of moral boundaries and of morally-legitimate self-interest of persons and families. Determinate structures of governance, by supporting real families in a community, may show variability in different times and places, but all varieties of governance should share the fundamental characteristic of being created by convention. Over time, determinate ‘mistakes’ may occur, or changes to particular laws may be necessary, but the governing convention makes possible responsible reactions to mistakes or needful changes in the form of meaningful changes and updates. Governing authority does not lose its preemptive, obliging character even if it is unjust or incompetent; but remaining subject to review and alteration ironically makes authority itself stronger. Political authority ‘invented’ by the governed contributes better to human flourishing if the very structures, laws and procedures of church governance reflect justice and respond to communal needs.

Concretely, a good place to start would be the development of structures and procedures characteristic of the meta- and tertiary levels of church governance, wherein demands for transparency and accountability can be met, and particular changes made in laws or office-holders (if necessary). By setting forth such new procedures in motion, church authority would become responsive to the ongoing process of convention-creating among the governed. By contrast, in the present system a kind of poorly-performing convention obtains wherein governance is largely restricted to determinate decisions and actions of pastors and bishops, guided by canon law. If pastors and bishops are wrong in judgment, or if canons do not treat salient areas of moral action, then persons are liable to
be harmed. This situation is not only morally problematic, but it also works against the Catholic Church’s self-understanding as a community of disciples. Speaking to a group of US bishops in 2004, Pope John Paul II noted,

[M]any of you have expressed your concern about the crisis of confidence on the church’s leadership provoked by the recent sexual abuse scandals, the general call for accountability in the church’s governance on every level and the relations between bishops, clergy and the lay faithful… While the bishop himself remains responsible for the authoritative decisions which he is called to make in the exercise of his pastoral governance, ecclesial communion also “presupposes the participation of every category of the faithful, inasmuch as they share responsibility for the good of the particular church which they themselves form.” (Pastores gregis, 44). Within a sound ecclesiology of communion, a commitment to creating better structures of participation, consultation and shared responsibility should not be misunderstood as a concession to a secular “democratic” model of governance but as an intrinsic requirement of the exercise of episcopal authority and a necessary means of strengthening that authority.297

To be truly participative, however, church governing authority ought to result from a governing convention whereby persons ‘invent’ that authority. The strength of this authority is tied both to its relationship to the governing convention, as well as by morally legitimate actions and decisions. The present chapter has explored possibilities for the Sixth Commandment and related fundamental moral concepts to support a type of church governance responsive to and shaped by families gathered into the larger community of disciples. The next chapter will go a step further and identify resources in the Catholic tradition to support the rights-claims of individuals as a feature of the ongoing governing convention. Catholics’ convictions that victim-survivors of clerical sexual abuse are also human rights bearers served as a moral impetus for convention-changing (i.e., the church’s governing convention) activity. Chapter Five will analyze

advocacy for victim-survivors as a human rights practice and as the latest phase in the Catholic Church’s centuries-old relationship with human rights.
CHAPTER 5:
HUMAN RIGHTS AND THE SEXUAL ABUSE CRISIS IN THE CATHOLIC CHURCH

5.1 Introduction

To this point I have been examining issues of authority and governance in the Catholic Church in light of the sexual abuse crisis and via a Thomistic natural-law understanding of the Sixth Commandment as a fundamental moral concept. Attention naturally has been focused upon church hierarchy, who largely failed both to grasp the obligations of the Sixth as a precept of natural law and to meaningfully reform flawed structures of church governance. At issue are the preeminent place of protection as a key obligation of governing authority, and the many ways in which Catholic Church authority has failed to provide protection for many of its most vulnerable members. But as noted frequently in the analysis, ‘authority’ exists not as some freestanding institution; rather the very notion of authority implies a relationship among persons in a society. I have suggested that the relation of bishops and pastors to all the other members of the church, in its concrete manifestations, ought not to be driven by or based on ecclesiological concepts alone, but rather requires clear ethical parameters in order to translate theology into practices of justice and love that will actually make possible communion among the church’s members. In this chapter I wish to refine and specify more closely a normative understanding of interrelationships in the Catholic Church, especially the relationship
between the church’s clerical governors and the lay governed, by turning attention to those for whom the sexual abuse crisis has caused the most pain: the victim-survivors.

The victim-survivors of sexual abuse in the Catholic Church are bearers of human rights, a personal moral ‘property’ that serves to specify more precisely the nature of persons who are members of the church, and thus the terms and scope of interrelationships within the church which these persons enter into. Analyzing the sexual abuse crisis from the perspective of the victim-survivors as bearers of human rights is both a legitimate and a necessary extension of Catholic moral (and thus juridical) theory and practice. In a manner analogous to Chapter One’s reinterpretation of the Sixth Commandment from narrowly-construed canon to fundamental moral concept, the analysis of human rights in the present chapter will extend the scope of morality and juridical practice in the church beyond even the Sixth Commandment – that is, beyond fundamental principles and objective norms and practices deduced from them. This move is necessary because while the notion of human rights is consistent with a Thomistic theory of natural and divine law, it is not derivable from it. The basis of human rights theory and practice in the church is theological anthropology – that is, a theological interpretation of the human person as created by God, saved in Christ and called by the Holy Spirit. The medieval scholastics and canonists who first developed this notion (which they called natural rights) took notice of morally-salient implications of Christian anthropology, and utilized these in a mutually-critical relationship with fundamental principles and customary and positive laws. What they came to realize, and what contributes to making human rights morally relevant today, is that the notion of rights (human and otherwise) has a way of challenging longstanding practices and/or
powerful persons because it serves to protect relatively powerless individuals, as well as suggest ethical alterations to customary but injurious ways of communal interrelationship.

5.1.1 Rights and the Sexual Abuse Crisis: Preliminary Considerations

Given the widespread abuses of rights in the sexual abuse crisis, it may come as somewhat of a surprise that fundamental rights are granted recognition and support in the Catholic Church’s Code of Canon Law, which is the most recent formulation of a legal system in continual use since the twelfth century. These rights are not created by the code, but are recognized in it as moral properties adhering to persons because of their humanity generally as well as because of their rebirth in Christ. (Thus due to their membership in the Catholic community, their rights receive recognition via codification). Indeed rights within the church receive urgency and saliency directly related to the church’s mission, because true rights derive, broadly speaking, from claims of individuals to seek salvation within the Catholic community; rights-claims exert special force in cases where this quest has been compromised by the wrongdoing of others:

Individuals within the church can and do sin; at times, the rights of others are violated. Such violations need correction in order for the Church to fulfill its mission. From this perspective, the listing of obligations and rights… provides one means for the Church on pilgrimage in this world to strive consistently to

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298 “In Bologna… an innovative textbook of canon law, appearing sometime in the 1140s and commonly known as “Gratian’s Decretum,” soon displaced earlier canonical collections, both in the schools and in the courts. Although no pope ever formally declared it the official version of Western canon law, the Decretum attributed to Gratian nevertheless remodeled the study of the church’s law into a systematic discipline that was also taught in specialized law schools. Canon law gradually began to separate itself from theology during the twelfth century and soon acquired a distinct identity as an autonomous discipline. In addition, Roman and canon law commenced to cross-fertilize one another. Bishops and popes, as well as practicing canonists and teachers of canon law, discovered that numerous Roman law concepts, categories and analytical tools could usefully be applied to canonical problems.” James A. Brundage, The Medieval Origins of the Legal Profession: Canonists, Civilians and Courts. Chicago: University of Chicago Press, 2008, at 75.
fulfill its mission. Thus, canon 221, affirming the rights of the Christian faithful to vindicate their rights, is of foremost importance.299

Thus the 1983 Code of Canon Law explicitly recognizes a number of rights of Catholics, such as the right to proclaim the gospel according to one’s state in life,300 the right to “manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful,”301 the right to receive the sacraments and other “spiritual goods of the Church” from the ordained,302 the freedom of assembly within reasonable limits of promoting the apostolic work of the church,303 the right to a Christian education,304 the “right to be free from any kind of coercion in choosing a state of life”305 and the right of parents to educate their children.306

One of the embarrassing features of the sexual abuse crisis for Catholics is that the right to bodily integrity claimed by the victim-survivors was recognized in civil laws and procedures that protect persons from sexual assault and seek justice for them. In this


way the secular law informed the moral consciences of the victim-survivors, their parents and advocates. But church law itself actually is not silent in this respect. Even without an explicit canon naming a right to bodily integrity the code of canon law stipulates procedures for authorities’ responses to sexual abuse allegations.\textsuperscript{307} The bishops’ (or other responsible persons’) refusals to act upon such procedures (codified, although differently, in church and secular law) transformed individual priests’ misdeeds into a global, catastrophic crisis. (As we now know, the culpable and knowledgeable overlooking of canon law and secular law requirements for handling allegations continually accompanied the direct-offenders’ actions,\textsuperscript{308} partly as a strategy to wait out the legal statute of limitations.) Civil authorities’ having to force the Catholic Church to appropriate practices of respect for rights embarrassingly (for the church) flies in the face of both canon law and church history, where the origins of the notions of rights can be located in medieval Catholic advances in theology, ethics and law. It speaks poorly of

\textsuperscript{307} Among the relevant canons in this regard are canon 1341: “An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice and reform the offender;” canon 1389 §1: “A person who abuses an ecclesiastical power or function is to be punished according to the gravity of the act or omission, not excluding privation of office, unless a law or precept has already established the penalty for this abuse;” canon 1717§1: “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;” and canon 1718§1: “When the facts have been assembled, the rdinary is to decide: 1° whether a process to impose or declare a penalty can be initiated; 2° whether this would be expedient, bearing in mind Canon 1341; 3° whether a judicial process is to be used or, unless the law forbids it, whether the matter is to proceed by means of an extrajudicial decree.”

\textsuperscript{308} “In September 2003, a grand jury of local citizens released a report detailing a sad history of sexual abuse by priests of the Archdiocese of Philadelphia. That abuse was known, tolerated and hidden by high church officials, up to and including the Cardinal himself. The previous grand jury was frustrated because it could not charge either the abusers or their protectors in the church, because the successful cover-up of the abuse resulted in the expiration of the statute of limitations. Now, measures taken in response to the previous report have led to new information about more recent abuse, which this grand jury was empaneled to investigate… The present grand jury, however, is frustrated to report that not much has changed. The rapist priests that we accuse here were well known to the Secretary of Clergy, but he cloaked their conduct and put them in place to do it again. Worst of all, apparent abusers – dozens of them, we believe – remain on duty in the Archdiocese today, with open access to new, young prey.” Grand Jury Report, First Judicial District of Pennsylvania, Criminal Trial Division. Misc. No 0009901-2008, p. 1. Accessed at http://www.phila.gov/districtattorney/PDFs/clergyAbuse2-finalReport.pdf.
the Catholic Church to have to rely on civil authorities in a matter in which Catholics served as intellectual and pragmatic pioneers. It is far worse that Catholic Church authorities seemed to have forgotten, or perhaps never learned, that modern understandings of the human right to bodily integrity now codified in US civil and criminal law are not antagonistic to church law and tradition and could serve to protect vulnerable young persons in ways consistent with the Catholic moral tradition. Both codifications of rights into law (US-secular and Catholic-ecclesiastical) are descended from the medieval scholastic-canonist development of the idea of natural right (*ius naturale*).

The right to bodily integrity, which so phrased is a recent formulation, reflects a longstanding moral commitment stretching back to the medieval era regarding personal authority over the body and sexuality. Here, the regulation of marriage and the specification of immoral sexual practices were the ground upon which the idea of natural rights began to develop. Naturally, the terms of analysis were contoured by the moral and physical limits of the body, as well as by practices emanating from bodily persons’ being

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309 The right to bodily integrity is implied in various internationally accepted statements regarding personal liberty and security, and freedom from torture and physical violence. For example, Article 3 of the Universal Declaration of Human Rights (1948) states, “everyone has the right to life, liberty and security of person.” Accessed at [http://www.un.org/en/documents/udhr/index.shtml](http://www.un.org/en/documents/udhr/index.shtml). Fifty years later, increased sensitivity to the prevalence of sexual violence, especially against women and girls and utilized as a form of genocide, led to increasing specification of what the right to bodily integrity entails. Thus in a list of “crimes against humanity” the Rome Statute of the International Criminal Court lists, among others, murder, enslavement, torture, and “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity,” as well as “other inhumane acts of a character intentionally causing great suffering, or serious injury to body or to mental or physical health.” Accessed at [http://untreaty.un.org/cod/icc/statute/romefra.htm](http://untreaty.un.org/cod/icc/statute/romefra.htm). The term “bodily integrity” was used by philosopher Martha Nussbaum to identify one of several “central human functional capabilities” essential to human personhood and therefore protected as a human right. Aspects of Nussbaum’s definition of bodily integrity relevant to this present project include, “having one’s bodily boundaries treated as sovereign, i.e., being able to be secure against assault, including sexual assault, child sexual abuse, and domestic violence.” Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach*. Cambridge, UK: Cambridge University Press, 2000, at 78.
in social interrelationships. The right to consent to marry\textsuperscript{310} was asserted and explained not first on the basis of abstruse theory but by sorting out novel and conflicting claims for and against particular marriages or sexual practices of specific persons in a rapidly changing society.\textsuperscript{311} The then-new understanding of marriage as a sacrament illustrated the Catholic Church’s embrace of a positive theological interpretation of sexuality, intercourse, the body and marital commitment, against dualist-leaning heterodoxies.\textsuperscript{312} The free and mutual consent\textsuperscript{313} of the couple to self-disposal of their bodies was seen not only a natural right, but also as the human action within the sacrament of matrimony through which grace itself was conferred.\textsuperscript{314} Consistent with this positive appropriation of the right to decide whether or not to dispose one’s body in marriage were condemnations of and punishments for actions which compelled persons against their

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\textsuperscript{310} “The basic right to marriage was not… a “vague and subordinate” part of the law. Rather, it was fundamental to the creation of the entire sacrament of matrimony. A marriage was formed by consent. That consent had to be free and unencumbered from outside interference. It was a protected freedom that might be asserted against familial authority, but it could also be asserted, in the appropriate context, against public authority. One could not be compelled unwillingly into marriage, and legislation restricting the right to marry was suspect. Deaf-mutes, lepers, serfs and the blind were all canonically free to marry… Women as well as men enjoyed the free exercise of the right to marry.” Charles J. Reid, Jr., \textit{Power Over the Body, Equality in the Family: Rights and Domestic Relations in Medieval Canon Law.} Grand Rapids: Eerdmans Publishing Company, 2004, at 50, 55.

\textsuperscript{311} Among many factors contributing to large-scale social development in Europe, James A. Brundage notes a population explosion, the rise of towns, resettlement of local populations, aggressive internal church reforms, and a burst of intellectual creativity, especially at a novel institution called a university. Cf., James A. Brundage, \textit{Law, Sex and Christian Society in Medieval Europe.} Chicago: University of Chicago Press, 1987, 176 ff.

\textsuperscript{312} “The more positive attitude toward marriage adopted by Catholic writers in the thirteenth and fourteenth centuries was partly a reaction against the Cathar heresy, which… held marriage worthless. The Cathars likewise denied that marriage was a sacrament. Those who supported that position often found themselves suspected of heresy.” Brundage, \textit{Law, Sex and Christian Society} at 431.

\textsuperscript{313} “Although custom often insisted that sexual consummation was essential to complete a marriage, canonists and theologians continued to insist that only present consent was needed to create a valuable and indissoluble union.” Brundage, \textit{Law, Sex and Christian Society} at 437.

\textsuperscript{314} “The teaching of Aquinas and others in this period… affirmed that marriage was a sacrament and that the exchange of consent itself conferred grace in the same way that other sacraments did. This view was adopted as a dogmatic truth by the Council of Florence; the Council of Trent ultimately condemned contrary views as heresy.” Brundage, \textit{Law, Sex and Christian Society} at 433.
will in these matters. Among the latter are condemnations of rape (with violations of the victim’s consent essential to its definition), abductions and forced marriages, and “sins against nature” including pederasty.

But as the medieval scholastics and canonists developed the notion of what they called natural rights (a term which I shall use somewhat synonymously with ‘human rights’), they noticed that such rights cannot be reduced to fundamental precepts. For them, rather, natural rights describe a moral reality that makes sense within a natural-law framework but is not directly derivable from it. Thus in turning attention to human rights in this chapter, I shall be going beyond the Sixth Commandment, although obviously not contradicting its wisdom. The basis for human rights is not a precept but human personhood itself – and, obviously, notions of personhood in this period were heavily influenced in theological-philosophical and normative directions by scripture and the broader Judeo-Christian tradition.

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315 As Brundage notes, “by the last decade of the eleventh century, the canonists had begun to redefine raptus as a sexual offense. Ivo’s collections also indicate that the victim’s consent to sexual intercourse was becoming an essential element in determining the nature of raptus and the severity of its punishment.” Two centuries later, Raymond de Peñafort opined regarding cause for divorce that “if [a husband] used physical force to compel [his wife] to submit to him… her consent could not be presumed either to intercourse or to marriage.” Brundage, Law, Sex and Christian Society at 209, 484.

316 “Violence was thus a necessary element in the offense of rape, regardless of whether the force was directed against the victim’s family or against the victim herself. Marriage procured by force or threats of force against the girl’s family likewise constituted rape, according to Gratian’s reading of the law. But marriage resulting from duress was, as Gratian saw things, no marriage at all and should not be considered binding since free consent, which was essential to marriage, was absent.” Brundage, Law, Sex and Christian Society at 249-50.

317 Brundage notes that the “sins against nature” was a broad euphemistic phrase referring to a variety of sexual vices and acts considered unnatural. That pederasty is on the list of these sins indicates that the church has long been aware both that some of their membership, including priests, engage in it, and that it is a sin. Cf., Brundage, Law, Sex and Christian Society at 212-4; St. Peter Damian, Book of Gomorrah: An Eleventh Century Treatise Against Clerical Homosexual Practices, trans. Peter J. Payer. Waterloo, ON: Wilfrid Laurier University Press, 1982; Thomas P. Doyle, A.W. Richard Sipe, and Patrick J. Wall, Sex, Priests and Secret Codes: The Catholic Church’s 2000-Year Paper Trail of Sexual Abuse. Los Angeles: Volt Press, 2006.
Based on an understanding of human rights within a Thomistic theory of the natural law, I shall expand my analysis of the sexual abuse crisis, and identify even more precisely why this event can be called a ‘crisis,’ and, hopefully, what steps must be taken to restore interrelationships of justice within the church. Rights attaching to particular individuals correlate with duties on the part of others, so the human right to bodily and sexual integrity on the part of both real and potential victims of sexual abuse by clergy places obligatory claims upon those responsible—whether culpable of direct violations, formal cooperation, or the tragically run-of-the-mill enabling that promotes a culture of clericalism and general complacency. A practice of human-rights advocacy can be understood as a means by which individuals and institutions responsibly and prudentially establish just relationships—even prior to canonical reforms and juridical enforcement.

Claims to rights and the correlative performance of duties, in a situation of injustice, realign the relationship between parties, and determine precise contours of this realignment, from an unjust partiality to a just equity. Human rights provide an opportunity to specify more closely than do natural-law precepts what a just state of affairs is in any given situation, because human rights (and their correlative duties) attach to the actual individuals involved—as contrasted with natural-law precepts that apply to everyone generally but require further discernment as to how they are to be particularly interpreted. The notion of human rights provides a conceptual framework within which to work out the type and scope of relational changes that must occur for justice to be served.

The Catholic Church’s victim-survivors of sexual abuse, by claiming their right to bodily integrity, have, in effect, placed a duty upon the entire church to reform the way
members of the church interact. In particular its structures of governance ought to support and enable healthy communal interrelationships (including protection from harm), and allow for transparent and accountable redress of harms, rather than enabling a community that fosters mastery and its frequent companions of secrecy, dysfunctional power inequalities and unjust privilege – all of which make abuses of persons more viable and likely. The end-state of affairs demanded by rights-claims is important not only because it describes some kind of generic good, but also because actual persons need it and claim it. Or, without healthy social interrelationships constituted (at least partially) by respect for rights, it is not simply the case that a society such as the church loses the social glue of communal bonds and ties – more saliently and poignantly, the moral difficulty is that someone, somewhere, some real person made in the image and likeness of God, someone vulnerable, someone beautiful, someone’s child, is being or is going to be egregiously harmed.

An additional term can be added to the list of synonyms for sexual abuse of minors by clergy (and cooperation by hierarchy). Alongside those terms we have already seen, such as “heinous crime” and “mortal sin,” can be added “human rights violation.” Understanding sexual abuse in the church as a human rights violation adds conceptual and moral depth to understand what is going on, and thus refines and expands my basic redefinition of the sexual abuse crisis (“the failure of the entire Catholic community to observe the moral wisdom of the Sixth Commandment”) to incorporate an additional moral salience (“rights”) not reducible to prior moral norms (whether of the determinate or the fundamental type) and duties. On this view, one component of the ‘crisis’ in the sexual abuse crisis is that responsible church leaders who rightly claim the authority to
govern also have cooperated in human rights violations. This statement provides morally-relevant information (‘what is going on’) additional to construing the sexual abuse crisis solely in terms of failed moral obligations on the part of the culpable and the enabling. Most particularly ‘human rights violations’ do not exist abstractly but are given content through specific actions. Catholic Church personnel and leaders raped, molested, coerced, and psychologically intimidated thousands of young persons, and kept the crimes continuing because of secrecy and cover-up. It perhaps goes without saying that a rights-based analysis also helps us understand, accept and confront the sin of the church\textsuperscript{318} in a more comprehensive way.

In the contemporary world, the term ‘human rights violator’ reminds us of recent global hot spots of cruelty and oppression, such as Bosnia and Rwanda, along with measures for hauling the culpable to the International Court of Justice to stand trial. Is this what human rights claims will do – put Catholic bishops on trial in an international court for human rights violations? While undoubtedly there are many who are eager for such a drama to unfold, in actuality practices of human rights advocacy demonstrate more complexity. For one thing, it is naïve to assume that a court trial by itself could ever create the kind of society that honors human rights, and this is precisely the challenge for the Catholic Church. At best juridical measures represent only one formal step towards long-term social, institutional, attitudinal and communal reform. Moreover, the ongoing civil and criminal investigations and trials in the US are already taking the juridical step, so the international courtroom drama would be redundant -- and therefore a rights-violation of its own.

\textsuperscript{318} Cf., \textit{Lumen gentium}, no. 48.
Assuming that civil authorities will continue to pursue investigations as US law requires, I suggest that alongside such necessary interventions the church as a society must realign its understanding and practice of being in relationship. That is, the members of the church will change the way they interrelate based upon an understanding of each member as the bearer of human rights, and the community as a place where persons exist in normatively right relationships with each other, engaged diversely and respectfully in a common goal. Specifically, the changes that must be made along these lines must occur within the church’s governing office, in which (as canon law itself notes) the laity participate by virtue of baptism. That there currently exist few meaningful ways for lay persons to function as ‘baptismal’ governors (as compared to the ordained governors) of the church only increases the moral urgency to concretize theological ideals of communion. As *Lumen gentium* notes, “Established by Christ as a communion of life, charity and truth, it [the people of God] is also used by Him as an instrument for the redemption of all, and is sent forth into the whole world as the light of the world and the salt of the earth” (*Lumen gentium*, no. 9). Examining the sexual abuse crisis through the lens of human rights brings forth more fully the truth of the situation upon which the church can base meaningful reform both in governance structures and in social

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319 “According to Canon 204, the faithful participate through baptism in the threefold functions (*munera*) “in their own way.” Two consequences derive from this. First, all the people of God possess a role in exercising the functions of Jesus Christ priest, prophet and ruler. Through this participation, the Christian faithful continue the mission of Christ entrusted to the Church: to proclaim the gospel and thus continue the work of redemption. The qualifying phrase “in their own way” refers to the second consequence: each of the faithful receives and accepts a specific vocation from God. The code refers more explicitly to participation in the offices of priest and prophet, less explicitly to the governing office.” Robert J. Kaslyn, S.J., “Part I: The Christian Faithful [cc. 204-329]; Introductory Canons [204-207],” in John P. Beal, James A. Coriden and Thomas J. Green, eds., *New Commentary on the Code of Canon Law*. Commissioned by the Canon Law Society of America. Mahwah NJ: Paulist Press, 2000, 245-254 at 247
relationships, via the measures it takes to shift from being a “human rights abuser” to being a “human rights guarantor.”

5.1.2 What Are Rights?

At the outset I wish to clarify briefly what is meant by the term ‘rights,’ especially when this term is qualified as human rights. In a very general sense, rights can be described as claims of one person upon others, or a person’s entitlement to something. These claims or entitlements are connected to moral duties on the part of others. Rather than referring directly to practical reason’s discernment of what is right to do or a right state of affairs (rectitude), “rights claims by contrast focus on the right-holder and draw the duty-bearer’s attention to the right-holder’s special title to enjoy her right.” Thus rights (and the understanding of rights) are inherently connected to actual persons, the right-holders; this is why human rights, for example, “are sometimes called


321 I have been aided, in this section and elsewhere, by Kieran Cronin’s clarification of rights-talk, which can be prone to confusion because of multiple or overlapping definitions and understandings of terms. Cf., Kieran Cronin, Rights and Christian Ethics, especially Chapter 2: “Initial Elucidation of Rights Language.” Cambridge: Cambridge University Press, 1993, 26-56.

322 Cronin observes that despite finessed distinctions between ‘claims’ and ‘entitlements’ in the philosophical literature, these two terms are very close in meaning; I prefer the term ‘claim’ for reasons which shall emerge throughout the chapter. Philosophers Joel “Feinberg and [Richard] Wasserstrom tend to treat these terms as practically synonymous. For instance, Wasserstrom uses them interchangeably in the following statement: ‘Perhaps the most obvious thing to be said about rights is that they are constitutive of the domain of entitlements. They help to define and serve to protect those things concerning which one can make a very special kind of claim – a claim of right.’ And consider Feinberg’s declaration: ‘Generally speaking, only the person who has a title to who is qualified for it, or someone speaking in his name, can make claim to something as a matter of rights. It is an important fact about rights (or claims), then, that they can be claimed only by those who have them.” Cronin, Rights and Christian Ethics, at 29. The citation from political scientist Jack Donnelly (see n. 3, below) also interchangeably defines rights as claims and entitlements.

“subjective rights”: they have as their focus a particular subject (who holds them) more than an “objective” standard to be followed or state of affairs to be realized.”

One can readily see how the awareness of subjective rights widens the morally-salient landscape in the sexual abuse crisis. Without talk of the rights of victims, the crisis still exposed the many moral failures of bishops, priests and lay persons in doing the wrong thing, such as direct actions of abuse, formal cooperation with these direct actions, and enabling or fostering a cultural climate where such abuse could flourish. But here the focus remains on wrong-doers, wrong-cooperators and wrong-enablers – those persons who ‘caused’ the wrong at various levels of closeness and distance. We can identify how these persons caused a situation of objective wrong, and we could likewise discuss how these persons could amend their actions to bring about an objectively right situation. This approach would be correct in and of itself, but would miss something.

Rights-talk, by contrast, expands the moral focus to include the direct recipients of harm – the victims of the wrongs – and thus makes us aware of additional moral dimensions of the situation. It gives, so to speak, additional moral ‘data’ by which to articulate what is going on and what is morally required because of what is going on. An understanding of rights refocuses the moral picture to include not only fairly precise rules for action, but also the persons who stand to benefit from right action (or be harmed by wrong action), and the relationships among persons that can be articulated in terms of rights and correlative duties. As Christian ethicist Kieran Cronin notes, all varieties of rights (legal, moral, human, special) share certain basic features: “all must consist of some normative relationship where some person or persons have claims or entitlements

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324 Ibid.
against other persons to some benefit (or something considered beneficial), the claim or entitlement being correlative to some duty or obligation borne by another or others.”

The rights of the victims of the sexual abuse crisis place claims upon their wrong-doers and, since systematic flaws enabled this wrongdoing, all members of the church -- claims which specify more precisely the nature and terms of redress, because these claims are held by actual persons living in actual circumstances of history. In order to honor the rights-claim, the redress must have practical and long-lasting effect.

In the sense of rights as I am using it, I follow Cronin’s definition of rights as claims “with clear-cut correlative obligations which are enforceable;” they act as “valuable political, moral and legal tools.” This understanding contrasts with a more scaled-down usage when rights are understood not as strong, enforceable and specific claims but rather as liberties “with little or no protection presented to the right-holder.”

Sometimes persons will use the term ‘rights’ to refer to liberties, which do not correlate with specific, active duties on the parts of others. Rather, liberties usually refer to the ‘right’ not to be interfered with in pursuing a course of action; but other than giving the liberty-holder the freedom to pursue her right there are no more specific and particular obligations on the part of others.

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325 Cronin, Rights and Christian Ethics, at 56.
326 Kieran Cronin, Rights and Christian Ethics, at 54.
327 Ibid.
328 Cronin notes that there is still much value in liberties’ inherent minimalism, but we should not expect their scope to be the same as that of claim-rights. “[T]here is some sense in maintaining the language of liberties, for application to situations of competition and conflict where each party is justified in pursuing his or her own projects to the detriment of others. It is very much a laissez-faire type of legal and moral reality, since my liberty offers me a minimum of protection vis-à-vis others. However, this minimum is still important; it amounts to a basic claim against others to permit me to carry out my project within set limits. It does not, however, amount to a claim that others positively help me in my projects, or
The distinction between claim rights and liberties is important. I suggest that the human rights of victim-survivors of sexual abuse in the church are claim-rights with correlative moral (active) duties placed on the rest of the church community, rather than simply having the freedom not to be interfered with. The response to sexual abuse in the church is not simply to stop rape or molestation of young persons (i.e., non-interference in healthy autonomy in the matter of their bodies). Liberties have a way of betraying human dignity when two parties exist in such a grossly unequal relationship that the liberty of the more powerful party overshadows, diminishes and negatively influences the liberty of the weaker party.329

Claim-rights holding the distinction of being human rights show at least three fundamental characteristics. First, they protect basic, fundamental goods (such as, in the present case, bodily integrity) without which (or in violation of which) the right-holder would be egregiously diminished. Secondly, as claims, human rights offer to the right-holder the ability to make a claim against the more powerful and privileged. This act of claiming calls for (if they do not already exist) juridical mechanisms and procedures to redress the situation – and these correlate with specific obligations that the duty-holders must fulfill.

Finally, human rights can be seen not simply as any kind of claim but precisely as moral claims; that is they presume an understanding and “acceptance of the normative

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329 In the sexual abuse crisis, for example, simply ensuring that clerics refrained from interference with young persons in physical ways does not address other areas of mastery in the church, such as the lack of structural transparency and accountability.
relationship stemming from one’s sharing in a common humanity." The qualifier ‘human’ is key, because it allows for appeals to human nature and moral conceptions of human relationships. To put it a bit redundantly, honoring human rights keeps a community human, or is a mark of the community’s respect for their own humanity, which is manifest not as a collective phenomenon but precisely in the community’s individual human members. But usually attention is not called to human rights when they are habitually and voluntarily respected, and thus enforcement mechanisms need not come into play. “In a world of saints, rights would be widely respected, rarely asserted and almost never enforced.” Rather, human rights are claimed (require enforcing) when actions that we call ‘inhuman’ break out (although all along the right-holder still possesses the right -- even when the right is violated or the correlative duty is not performed). This point serves to make an initial distinction between rights and duties. As political scientist Jack Donnelly notes,

[T]he ability to claim rights, if necessary, distinguishes having a right from simply being the (rights-less) beneficiary of someone else’s obligation. Paradoxically, then, “having” a right is of most value precisely when one does not “have” (the object of) the right – that is, when active respect or objective enjoyment is not forthcoming. I call this the “possession paradox”: “having” (possessing) and “not having” (not enjoying) a right at the same time, with the “having” being particularly important precisely when one does not “have” it. So to summarize at this initial stage: all persons always possess the human right to bodily integrity; thus, all Catholics possess this human right. Catholics ideally ought to be free to interrelate respectfully, without their right to bodily integrity being threatened or violated – both because they are human but additionally because they understand

330 Kieran Cronin, Rights and Christian Ethics, at 55.
332 Ibid.
themselves as members of the community of disciples, in loving relationship with one another and in mission *ad extra*. But the sexual abuse crisis gives witness that the Church in history is not a collection of saints – or, as *Lumen gentium* puts it, “the pilgrim church in her sacraments and institutions, which pertain to this present time, has the appearance of this world which is passing.” (*Lumen gentium* no. 48) The human right to bodily integrity, possessed by all but now being claimed with particular force in the church by those whose right has been violated, denotes that victim-survivors of sexual abuse in the church place claims upon all those who performed or cooperated with or enabled sexual abuse. These claims specify moral obligations which all these others ought to fulfill.

5.2 Objections and Challenges to Rights

Despite widespread usage of notions of rights around the world, in a variety of applications, there also exist salient challenges to both the concept of rights itself and their practical application in societies. Both conceptual and moral objections can be seen in opposition to rights-language in the context of the sexual abuse crisis.

5.2.1 Rights in the Church: A Bishop’s Critique

Early on in the most recent (post-2002) phase of the sexual abuse crisis, the notion of rights, and appeals to rights in the church, came under criticism as inappropriate. While I do not agree with the argument here, it is nonetheless worth tracking since it raises key issues to address in presenting my own constructive proposal for a human rights practice in the Catholic Church. As this criticism runs, the Catholic Church understands itself as a community of disciples, so emphasizing the rights of
individuals within the community may effect a short-term gain – e.g., in the matter of justice of victims of sexual abuse – but a long-term diminishment of communal bonds and ties, moral responsibility, the practice of the virtues, and the love and vitality that comes from *communio*. Relationships characterized by rights claims and counter-claims interfere with bonds of love and practices of responsibility in the community. In addressing a 2003 conference on the sexual abuse crisis, then-Bishop Donald Wuerl dismissed appeals to rights, and the philosophical-liberal political theory endorsing them, as ways to develop structures of accountability in the Catholic Church:

> There is a temptation to make the church into an American democratic organization as if we, the members, had supreme authority over the body. Thus we come to the point where we would vote on articles of the creed, determine not only how faithful we are to the Gospel but also what that message ought to be to satisfy the circumstances of our day.

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333 As expressed by Mary Ann Glendon in reference to secular society, “Our overblown rights rhetoric and our vision of the rights-bearer as an autonomous individual channel our thoughts away from what we have in common and focus them on what separates us. They draw us away from participation in public life and point us toward the maximization of private satisfactions.” Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse*. New York: The Free Press, at 143.

334 It is beyond the scope of this project to address issues regarding the separation of church and state related to prosecution of church officials in the area of sexual abuse allegations. One opinion regards the cultural atmosphere encouraging prosecution as an unnecessarily intrusive regarding the constitutionally-protected rights of the Catholic Church. What is ironic about this approach is that it decrees what it perceives as the overblown use of rights, and at the same time invokes rights (just different ones) to lead the charge against overuse of rights. As the USCCB’s general counsel noted, “There is never a good time to have a public scandal, but this time was absolutely the wrong time. Like other religious institutions in this society, Catholic institutions were already under tremendous pressures from regulators, legislators and litigants to conform their operations to the prevailing cultural behaviors. We live in a society that more readily accepts abortion as a civil right than religion. If there is any message I would leave with you today it is this: There are forces at work in the society that will, unless checked, radically remake the religious institutions serving the public. Unless we are prepared to defend our constitutional rights as a community of believers, our great gifts to the larger society in health, education and welfare are in jeopardy.” Mark Chopko, “How Abuse Scandal Exacerbated Other, Existing Problems for the Church. *Origins* 32:33, January 30, 2003. An opposite opinion lauds civil prosecution in this area as another step in the dismantling of unnecessary and socially-burdensome ecclesiastical immunities -- which in the US context prior to the 1970s meant cultural practices not specifically prohibited by law – e.g., police looking the other way, prosecutors declining to investigate, etc., when allegations surfaced

335 In 2006 Donald Wuerl became archbishop of the Archdiocese of Washington (DC), and in 2010 was elevated by Pope Benedict XVI to the rank of Cardinal.
Our starting point is different. We begin with the faith community and recognize that there already is a foundation of truth for the consensus out of which we act. We do not vote or take a head count to determine what we should believe or how the church should be structured…

When we address accountability in the church, we must be careful not to use a political model for a reality that transcends human political institutions. For example, the extreme emphasis on the individual and his or her rights has greatly eroded the concept of the common good and its ability to call people to something beyond themselves. This impacts strongly on our capacity to invite people to accept revealed teaching that could not be changed by democratic process and to follow an absolute moral imperative that is not the result of their vote.  

There are a variety of arguments at work in Wuerl’s presentation, some of which point to substantive criticisms of rights in scholarly literature.

5.2.2 Conceptual Objectios

Wuerl’s appeal to a “foundation of truth,” for example, echoes criticisms that rights themselves are either meaningless concepts, or (more generously) are simply another way to express the already-understood content of prior moral norms and duties. Philosophical objections asserting that the notion of rights itself is meaningless maintain either that there is no such thing as a right (or a human right), or that rights are asserted at such a level of generality that our grasp and application of them becomes entirely (and often willfully) subjective. On the other hand the moral content of rights boils down to other prior moral goods, such as responsibilities, duties or salient interests, and rights-  


339  “If these interests are satisfied or protected, then all that is allegedly important about rights is already fulfilled; no further independent consideration is needed about rights to these objects.” Alan Gewirth, “Why Rights Are Indispensable,” Mind, 95 (379), July 1986, 329-344 at 330.
talk itself confuses these matters. In philosopher Alan Gewirth’s succinct summary: objectors “hold that the concept of rights is logically redundant or epistemologically ungrounded or both, so that it can be eliminated, with no loss of meaning or cogency, in favor of other, more basic concepts.”

Such objections would upend the suggestion that notions of rights are important because they do some kind of moral work unattainable by appeals to other moral concepts such as duties. So appeals to rights in the sexual abuse crisis could simply be described from the perspective I have articulated in Chapter Three: the duty of the hierarchy to protect members of the church from harm. Similarly, rights-claims could simply be expressed in terms of the good outcome (or ‘interest’) to which the articulation of the right is tailored. Thus, in the sexual abuse crisis, the duty of protection is directed toward the objective end of personal safety and bodily integrity, not towards the fulfillment of a subjective rights-claim. Wuerl’s appeal to the divine nature of the church – by definition unchanging and transcendent – is a metaphysical claim, but has moral implications insofar as divinity is not subject to moral discernment or democratic voting processes.

This particular appeal is related to objections that rights merely express conclusions already inherent by logical deduction from received truths and traditions. In Chapter Two I spoke of the Judeo-Christian tradition of natural and divine law, particularly as expressed in the Decalogue, as a foundation for morality with continued

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341 Gewirth notes by way of explanation of this position (with which he does not agree) that rights and their correlative duties could be construed not as realities isolated from each other but in relation; what emerges conceptually is a fundamental normative relationship which can be called either a right or a duty depending upon whether one views the relationship from the perspective of the right-claimer or the duty-bearer.
widespread acceptance among Catholics (despite internal disagreements about what these precepts mean in particular contexts). So, rights can be seen as reducible to moral principles such as the Sixth Commandment – which in turn gives rise to moral duties. Alasdair MacIntyre’s brusque rejection of rights as “fictions”\(^{342}\) – “there are no such rights, and belief in them is one with belief in witches and unicorns”\(^{343}\) – is relevant here. Not only do notions of rights fail “to provide a persuasive account of what is moral”\(^{344}\) because they can be reduced to duties and principles, but also the latter are expressed, conveyed and augmented by communal practices of virtue rather than individual claims to rights. Advocates of rights are, so to speak, barking up the wrong tree.

In contrast to these objections (and their construals of rights) I suggest that an understanding of rights based within a Thomistic theory of the natural law preserves both the place of fundamental moral concepts (such as those of the Decalogue), and the proper role of human moral discernment in confronting difficult and novel issues.\(^{345}\)

5.2.3 Moral Objections

Wuerl also calls attention to the eroding of political institutions and the demise of sensitivity to the common good as a result of our society’s obsession with individual


\(^{343}\) MacIntyre, *After Virtue*, at 69.


\(^{345}\) As a respondent to Wuerl noted, the very articles of the creed have been put up for a vote in church councils, so there is historical precedent in ongoing discernment of the path forward. Cf., Peter Steinfels, “Necessary But Not Sufficient: A Response to Bishop Wuerl’s Reflections,” in Francis Oakley and Bruce Russett, eds., *Governance, Accountability and the Future of the Catholic Church*. New York: Continuum, 2004, 25-29.
rights-claims. On this view, the claiming of rights is inherently self-focused (therefore “egoistic”), involving an understanding of human persons as engaged in “adversarial” relationships with one another. Hence, notes Gewirth, “since a right involves a claim that a person makes for the support of his or her interests, it evinces a preoccupation with fulfillment of one’s own desires or needs regardless of broader social goals; hence it operates to submerge the values of the community and to obscure or annul the responsibilities that one ought to have to other persons and to society at large.”

If persons are largely focused on their own interests construed as rights-claims upon others, it follows logically that the kind of society fostered by this sort of self-concern will be characterized by “adversarial and potentially coercive relations whereby each seeks to impose burdens on others for his own benefit.” Many who object to rights on moral grounds take issue with modern liberalism because it seems to have engendered a kind of society that disregards deep communal bonds and practices of virtue, privileging instead a kind of strict justice disconnected from charity and an unfeeling, contractual obligation replacing genuine human solidarity. So, on this view, while victim-survivors of sexual abuse surely ought to pursue justice, this pursuit ought not support selfish goals (such as financial compensation) to the exclusion of reestablishing right relationships in the community. However, since these victim-survivors have made use of the US legal system, with its tendency to atomize individuals, their pursuit inevitably will end up damaging the community.

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The notion of ‘invention’ of governing authority, analyzed in Chapter Four, seems to privilege the kind of deficient understanding of persons targeted by these interlocutors. Consider, for example, that the notion of self-interest lies at the heart of the process of invention of authority and the creation and maintenance of a governing convention. Self-interest is a phenomenon attaching to individuals. From the perspective of philosophical liberalism, a governing convention does not result from the collective self-interest of a community but rather from the establishing of a salient equilibrium from the self-interest of many individuals. A governing convention can be considered a ‘collective’ phenomenon only secondarily, after many persons’ individual self-interest has resulted in that equilibrium or status quo. Once the equilibrium is reached, a governing convention then reflects a collective social will – except for those in the minority, or unless and until the convention fails to support enough persons’ self-interest that the equilibrium tilts again toward an alternative arrangement. Self-interest seems to underwrite a fundamentally individualistic understanding of members of a community. Governing conventions result from a kind of snowballing effect of many individuals’ self-interest, not necessarily from a relational communion or bonds of solidarity. The result: the paradigmatic action of persons in relation to their society seems to be the assertion of individual rights, understood as “egoistic” pursuits largely shorn of moral responsibility.

This understanding of the human person as an atomized individual with weak linkages to others additionally has become buttressed by a kind of anti-foundationalist legal theory. Legal scholar Mary Ann Glendon traces the absence of emphasis on communal responsibilities in part to a widespread strategy in legal education and judicial
judgments of making distinctions between law and morality. “Neglect of the social dimension of personhood has made it extremely difficult for us to develop an adequate conceptual apparatus for taking into account the sorts of groups within which human character, competence, and capacity for citizenship are formed.” Instead of contemporary “rights-talk” which sets individuals against each other and separates them from their essential ties to various communities, Glendon calls for a fuller concept of human personhood and a more ecological way of thinking about social policy. Groups are important, not for their own sake, but for their roles in setting the conditions under which individuals can flourish and order their lives together. Because individuals are partly constituted in and through their relationships with others, a liberal politics dedicated to full and free human development cannot afford to ignore the settings that are most conducive to the fulfillment of that ideal.

In contrast to the moral objections, I suggest that an understanding of rights within a natural-law framework makes inherent appeal to normative Christian understandings of the human person, not as atomized individuals but rather included in a social context. In this matter, the notion of rights which I will espouse raises a challenge (and suggests a solution) to the problem of self-interest at the heart of a governing convention.

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348 Glendon, Rights Talk, at 85-89. “In the single most widely quoted legal article ever written by an American, [Oliver Wendell] Holmes roundly denounced the “confusion between legal and moral ideas,” and asserted that a distinction between them was “of the first importance for the… right study and mastery of the law” “If you want to know the law…” he said, in a sentence that is etched in the memory of nearly every American lawyer, “you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict…”

“Holmes doubted, furthermore, whether any meaningful content could be assigned to morality. In another speech that has passed into American legal folklore, he debunked “natural law” theories, observing that we all have “preferences” and beliefs which we are dogmatic about, but that other people are equally dogmatic about theirs.” Ibid, at 86.


350 Glendon, Rights Talk, at 137.
5.2.4 The Way Forward

No doubt the many interlocutors objecting to rights likely would find appealing an analysis of the sexual abuse crisis in terms of the Sixth Commandment as a moral precept of the Judeo-Christian tradition. However, they would find objectionable, either on conceptual or moral grounds, the claiming of rights by victim-survivors (or advocates on victim-survivors’ behalf). But these stances against rights reflect an understanding of rights described by modern philosophies (both conceptual and applied), as a philosophical notion standing apart from understandings of the objective moral order (such as natural law), and disconnected from communal responsibilities and individual moral obligations (such as Christian notions of the obligations of generosity and charity).

Yet rights need not be so construed, and indeed the Catholic tradition holds resources for understanding rights in such a way that answers the conceptual and moral objections. More to the point, notions of rights articulated within the broader parameters of natural and divine law, and applied both to church and society during the Middle Ages, show promise for application to the present-day sexual abuse crisis within the Catholic Church. These resources overlap with those invoked in Chapter Two regarding the Sixth Commandment as fundamental moral concept. Medieval scholastics and canonists almost a millennium ago worked out an understanding of rights within an overarching moral and theological-anthropological framework, where rights identified an area of substantive moral saliency compatible with moral precepts (such as the Sixth Commandment) but irreducible to duties or responsibilities deduced from them. Retrieving from the western Catholic tradition an understanding of rights that answers the
moral and conceptual objections, I shall then proceed to apply that understanding to advocacy for the victims of sexual abuse.

5.2.5 Subjective Rights: A Resource from the Catholic Middle Ages

The origin of the idea of rights in Western culture can be traced to attempts by medieval scholastics and canon lawyers to clarify the multiple and conflicting definitions of the legal term *ius naturale* in Gratian’s famous *Decretum*. The canonists faced a great deal of challenge in an era of enormous and rapidly unfolding social, legal, economic and ecclesial changes which brought forth complex, conflicting claims and novel social arrangements requiring creative attention. Gratian’s phrase can simply be translated as ‘natural law,’ although problems arose when his many definitions, arrived at in his attempt to “base his whole structure of jurisprudence on an initial distinction between natural law and human usages,”351 seemed not to cohere amongst themselves. This lack of coherence was not due to Gratian’s incompetence but rather signals a tension within the tradition of natural law itself, between objective (unchangeable) principles (which are understood as natural law in one sense) and their contingent application by means of human reason. This latter understanding actually became the scholastics’ privileged understanding of the natural law, as a process of human judgment and reason reflective in its own way of the *imago Dei*.352


352 One example of this tension, commonly expressed at the time, was the apparent discrepancy between the natural-law idea of property – that all things ought to be held in common – and the widespread practice of private ownership of things. This raises a problem: “[i]f the natural law cannot be changed, then how can we account for so many widespread social conventions which seem to be inconsistent with what were traditionally regarded as the mores of primitive or uncorrupted nature?” Jean Porter, *Nature As Reason*. Grand Rapids, MI: Eerdmans Publishing Company, at 345.
Right away this approach signals a difference from contemporary, conventional usages of the term ‘natural law’ – as rules both fixed (unchanging) and determinate,\textsuperscript{353} and echoes some of the issues raised in Chapter Two. (It should be noted that the conventional, everyday understanding of ‘law’ often fails to acknowledge the plain fact that positive laws and rules themselves are not ‘etched in stone,’ having resulted from humans’ rendering moral judgment into language -- as anyone who has confronted an unfair rule or unjust law comes to realize.) Natural law seen as a process of human judgment and moral discernment may raise the specter of slippery-slope ethics and dreaded moral relativism; how can one prevent interpretations of natural law from descending into whatever people want these precepts to mean? But far from seeing human rational judgment and moral discernment as contrary or adverse or flimsily bound to objective principles, the medieval thinkers saw these human capacities as being influenced by the precepts of natural and divine law, as a moral framework providing meaningful boundaries. But they also saw that this general moral framework was handicapped in its inability to stipulate how -- in terms of its necessarily broadly phrased precepts -- to move from the realm of abstract ideas and principles to applications having practical moral effect in the lives of real persons. By the twelfth century, notes historian Brian Tierney, \textit{ius} could mean either subjective right or objective law (depending on the author), and \textit{ius naturale} showed inconsistent definitions.

The everyday use of \textit{ius} to mean a right, a rightful power, infected the language of the canonists when they came to write of \textit{ius naturale}. They

\textsuperscript{353} Undoubtedly part of the confusion here is that the Latin phrase which medieval canonists and scholastics used -- \textit{ius naturale} -- is sometimes translated into English as ‘natural law.’ Yet today the common understanding of law is that of positive law, a codified body of precepts, interpreted somewhat rigidly and thus requiring ‘legalese’ in its articulation. \textit{Ius} by contrast meant really ‘the just’ -- that is, the just state of affairs that results when justice is observed; in Latin an entirely different word, \textit{lex}, corresponds more closely to our contemporary word law (i.e., positive law).
occasionally gave a Stoic interpretation of the term as meaning a force pervading the whole cosmos; usually they included Gratian’s view that *ius naturale* was a code of moral law revealed through scripture and also accessible to reason; but often they added a subjective definition of the term that was not evidently present in Gratian’s texts at all.\footnote{Tierney, *The Idea of Natural Rights*, at 62.}

The “subjective definition” of *ius naturale* was worked out within an understanding of natural and divine law as fundamental precepts revealed by God and accessible to human reason, and eventually gave birth to the notion of rights grounded in a recognition of what human “reason and moral discernment”\footnote{Tierney, *The Idea of Natural Rights*, at 54.} entailed. This latter reality, characteristically human, distinct from fundamental principles, yet also influenced by them, actually made possible a closer fulfillment (than was previously thought) of natural-law precepts in contingent situations.

The natural law seems to imply, by its own logic, a ‘zone’ of subjectivity in arriving prudentially at decisions for many human activities. The infinite complexity of life experience, and the specific, contingent nature of action make it impossible for natural law (understood as fundamental moral concepts, as examined in Chapter Two, and as basic moral norms) to spell out what, in *this* situation *this* person should do. This has frequently been the case in the sexual abuse crisis, where it has become clear that simply ‘not committing adultery’ on the part of individuals is only one small part of human moral response. Natural law understood as principles alone famously defines broader areas of precept, but the determination and application of precepts to finite, this-
world situations requires individual and free exercise of judgment,\textsuperscript{356} which themselves may stipulate complex, novel or multilevel actions as a true response.

This ‘zone’ of subjectivity is not the same thing as subjective right. It has been identified, rather, as the locus of natural law itself -- that is, the exercise of human reason towards the good in contingent situations,\textsuperscript{357} a process characterized by flexibility within an overarching moral framework (although not necessitated by it) rather than by rigidity.\textsuperscript{358} Importantly for this project, it provides the first step in an understanding of rights that is linked to fundamental moral principles.

5.2.6 Linking Objective Morality and Persons: A Response to the Conceptual Objections

In several citations of various canonists from the twelfth century\textsuperscript{359} Tierney identifies a tendency to examine the zone of subjectivity not only from the inner logic of the natural law, but from the perspective of the subject involved. Having already expanded their field of moral awareness from an objective moral order by itself (natural


\textsuperscript{357} “How do we move from the first principles of practical reason, or the immediate conclusions expressed in the Decalogue, to more specific moral judgments?... [I]t would be a mistake to attempt to translate this into a formula for arriving at moral conclusions in any and all circumstances. The kind of reflection that is needed, and the generality and certainty of the conclusions, will legitimately reflect the kind of issue being addressed. So understood, the natural law can be extended to include all the judgments, laws and practices that arise out of rational reflection on the exigencies of human life.” Jean Porter, \textit{Natural and Divine Law: Reclaiming the Tradition for Christian Ethics}. Grand Rapids, MI: Eerdmans Publishing Company, 1999, at 95.

\textsuperscript{358} “We are accustomed to think of natural law as a system of static precepts and invulnerable rights, marked out from eternity without regard for altering circumstances or to the practical effect of its prescriptions. Natural law theory since the time of Locke has indeed tended toward such rigidity; but in an earlier period natural law was a dynamic and flexible principle. In particular, the political philosophers of the Middle Ages came close to a formulation of a theoretical system in which the idea of natural law and the idea of expediency, now generally divorced, were intimately harmonized.” Ewart Lewis, “Natural Law and Expediency in Medieval Political Theory.” \textit{Ethics} 50(2), January 1940, 144-163 at 144.

law alone) to an awareness that persons (subjects) are the ones making day-to-day moral judgments consistent with (or intending to approximate as best as possible in a finite and contingent world) the natural law, the scholastics and canonists ‘naturally’ raised the questions regarding the ‘nature’ of these subjects as such. In fact, such questioning arose not as an abstruse philosophical debate, but in messy, quotidian experience: contracts (including marriage), lawsuits, financial exchanges, boundary disputes, roles of underlings to overlords or vowed religious to religious superiors, and the like. When they examined ethical demands requiring judgment on the part of an individual, then, the canonists began to talk about an individual’s natural right for judgment; and this natural right was associated with the power freely (without obstruction) to make that decision or apply the promptings of conscience in a particular matter.

In the evolution of rights-language, Tierney notes in the writings of the canonist Huguccio (d. 1210) fine examples of the evolving contours of definition of *ius naturale*. Huguccio exhibits at times a flip-flopping between an objective and a subjective understanding of *ius naturale*, but eventually shows a growing insistence on the primacy of the subjective definition. For example, a just situation such as loaned money returned, while often identified as *ius naturale*, should not be so labeled, since that state of affairs is actually the result or the effect of a more basic thing (and the latter should be identified as *ius naturale*). “In his more lenient moods, Huguccio did acknowledge that *ius naturale* could mean a code of conduct, a “judgment of reason;” but this was a secondary, derivative meaning. For Huguccio, *ius naturale* in its primary sense was always an
attribute of individual persons, a “force of the soul,” associated with human rationality.”

By identifying *ius naturale* with subjective right, and defining it as “a subjective force or faculty or power or ability inherent in human persons,” Huguccio (and others) took a simultaneously conceptual and practical step towards what eventually became modern understandings of rights. Although both objective and subjective definitions continued to be applied in various ways to the term *ius naturale*, the arrival of the subjective notion marked a decisive shift in meaning and emphasis. Once *ius naturale* was clearly defined in this subjective sense the argument could easily move in either direction, to specify natural laws that had to be obeyed or natural rights that could licitly be exercised; and canonistic argument soon did move in both directions.

What this phenomenon looks like on the ground, so to speak, is a distinction between an individual’s making a judgment (which requires the free exercise of an individual’s reason towards action), and both the prior moral principles (which inform the reasoning) and posterior conclusions (that flow from human reasoning). When someone exercises her ‘right,’ that means that she is making a claim about a morally-salient situation that concerns her. In comparison, the latter (moral principles and final conclusions) are understood as relatively external to or distinct from the inherent power within a person.

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361 Ibid.

362 Ibid.
Moreover, this subjective right was seen as a kind of power *(potestas)*\(^{363}\) located within individual human persons themselves. It is important to stress, given the contours of contemporary debates about rights (see Section 4.2), that the scholastics’ and canonists’ reference and appeal to scripture identified this power as at least a partial reflection of the image of God in which all persons are created. Hardly lurking the background here is a normative conception of human nature and the human person derived from scripture and Christian dogma; a Christian theological-anthropology informed the medieval development of rights theories from beginning to end. That is, the identification natural right as this power or force within persons was not simply a philosophical discovery or a relativistic-pragmatic adjustment to new social conditions:

> It also reflected the exigencies set by scriptural interpretations and the development of a coherent theology, as the scholastics understood these tasks…  
> [T]his capacity [for moral discernment] is said to represent the Image of God in which the human person is created, and which therefore cannot be extirpated, even, as we are frequently reminded, in Cain himself. It is found in every human person, man, woman and child, including sinners as well as the righteous and even the damned. What is more, the Image is not just identified with reason generically understood; it is interpreted more specifically in terms of the human capacity for autonomous self-direction, mastery over one’s own choices and acts, which is central to a conception of a subjective natural right.\(^{364}\)

Thus, Christian normative presumptions about human nature were intertwined with the overarching moral framework (natural and divine-law precepts) out of which an

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\(^{363}\) Section 4.1 clarifies a distinction between right and liberty. ‘Power’ is yet another term associated with rights. In an influential analysis, American legal theorist Wesley N. Hohfeld explained that rights properly are correlated with duties, privileges (or liberties) are correlated with no-right (thus they are rights to non-interference), powers are correlated with liabilities, and immunities with disabilities. Wesley N. Hohfeld, *Fundamental Legal Conceptions As Applied in Judicial Reasoning*, ed. Walter Wheeler Cook. Clark, NJ: The Lawbook Exchange, Ltd., 2010.

understanding of rights emerged as morally-salient realities, tied to both objective morality and theological anthropology but not precisely determined by them.

5.2.7 Linking Persons and Sociality: A Response to Moral Objections

The connecting of rights to a theological anthropology delivers a preliminary answer to contemporary critics who object to rights on moral grounds (that they are egoistic, or promote adversarial relations among persons in society). The response to complaints that we need “a fuller concept of human personhood and a more ecological way of thinking about social policy,” is to note that, to the contrary, not only does the notion of rights (as developed in the Middle Ages) retain such a normative conception of the human person, but also the divorce attempted between such normative conceptions and positive law represents by comparison a relatively recent development and a clear departure from the original western notions of rights. The demise of sociality cannot be pegged on rights in general, since the medieval development of notions of rights presumed a theological anthropology which saw a cohesive relation of persons to society -- even as individual rights challenged the pragmatic terms of that cohesion.

Thus, it appears that a notion of rights is highly applicable to the present project. While Christian understandings of human persons may have been excised from contemporary positive law or secular constitutions, the Catholic Church has continued to build upon the normative understanding of the human person as created in the image and likeness of God. In recent centuries, this development can be illustrated in Catholic

\[\text{365}\] See n. 21.

\[\text{366}\] Cf., Vatican Council II, *Gaudium et spes*, nos. 12, 19, 21, 22.
social teaching, through calls to promote human dignity\textsuperscript{367} that see persons as in charge of their own destinies\textsuperscript{368} and as the subjects of rights as well as duties\textsuperscript{369} -- as well as through criticisms of the variety of ways in which persons are abused and violated.\textsuperscript{370} A practice of human rights advocacy within the church, then, will bring rights full-circle back to the tradition from which the concept was originally sprung. Human rights are claims made by persons regarding aspects of human personhood so crucial to human dignity (and thus supported by precepts of natural and divine law) that these claims place moral duties on others to fulfill, including broad support in institutions and laws. The Catholic Church’s beliefs about the human person and the community support the recognition of human rights. It is important to qualify this assertion with the recognition that these human rights are never waived or set aside when Catholics are engaged in internal church affairs.

An additional implication of a Christian normative conception of the human person also affects the understanding of ‘self-interest’ developed in Chapter Three and criticized in moral objections to rights as undergirding a kind of Hobbesian-style self-interest (and subsequent adversarial society comprised of egoistic individuals). Self-interest need not be so defined. Rather, it appears that the medieval scholastics and canonists, while they saw this ‘power’ called natural right as a personal moral property of individuals, likewise understood individuals as persons in relation, not atomized units. This understanding in turn was supported by a Christian theological anthropology which

\textsuperscript{367} Cf., Pope John Paul II, \textit{Sollicitudo rei socialis}, no. 26 and \textit{Centesimus annus}, nos. 11, 13 ff.

\textsuperscript{368} Cf. Pope Paul VI, \textit{Populorum progressio}, no. 34.

\textsuperscript{369} Cf., Pope John XXIII, \textit{Pacem in terris}, nos. 11-34.

\textsuperscript{370} Cf., Pope Benedict XVI, \textit{Caritas in veritate}, nos. 21-22.
saw persons created by God for purposes of relationship in family, community and society, as well as for the individual end of salvation (which itself involves a relationship, namely eternal beatitude with God).\textsuperscript{371} Admittedly, the emergence of a notion of rights came about precisely because these individuals were making claims against the group (e.g., against customary practices and traditions, or positive laws). But this move did not lessen sociality. If anything it strengthened it along its own lines of morality: for claims arising from human need and expressive of what we would call human dignity forced the society as a whole to live up to its own beliefs and ideals where it counts the most – in concrete, pragmatic, daily practice.

5.2.8 Claim-Rights and the Natural Law

Of its own logic, the basic notion of subjective right developed by medieval canonists and scholastics leads to an even richer terrain. If the natural law provides a zone in which human persons exercise their inherent right, then it can be safely said that subjective right is implied in the natural law. Looked at again from the perspective of the subject, this means that an individual can assert a specific right, or make a specific claim, against another particular person or persons, as implied by what the natural law commands or forbids in general. At the same time, and against conceptual objections to rights on the basis that they are reducible to what natural law (understood as precepts) commands or forbids, natural-law precepts themselves do not determine rights. Indeed, they cannot, because their content is not particular and specific enough, nor do they hold

\textsuperscript{371} As Brian Tierney notes, the course of the Middle Ages saw continuing interest in the conceptual development of understandings of the individual and society (and individuals in society). “There can be no more holistic image of society than the medieval vision of the church as a mystical body; and no more starkly individualistic view of human destiny than the medieval vision of the Last Judgment, when each soul would stand alone, naked and trembling, before the divine judge.” \textit{The Idea of Natural Rights}, at 212.
the same kind of urgent force (the subjective power) implied by rights-claims. Whence comes this urgency in rights-claims? Subjective power is characterized not by selfish self-interest (which can lead to the problem of so-called “rights inflation”\textsuperscript{372} characterized by superficial or frivolous claims in gross disregard of their effect on the common good) but rather is a personal seeking to uphold certain features fundamental to human dignity, combined with the pragmatic if daunting and somewhat demoralizing awareness that longstanding custom, powerful institutions, ruling authorities and the like exert enormous pressure in the other direction. Thus, the recognition of natural rights added two things to the accepted framework of mutual obligations: first, the recognition that “individuals enjoy a discretionary power to enjoin or forbid certain kinds of actions in their regard, and (by implication) second, that individuals have the power to specify general obligations in such a way as to render them concrete and exigent.”\textsuperscript{373}

Like the discoveries of previously unknown lands worlds which were already changing European map-making, the precision and the urgency of rights-claims expanded the moral terrain beyond that described by objective norms and moral responsibilities. But like the new lands these rights were, in a sense, there all along. As Tierney notes, “[t]o say that “Thou shalt not steal” is a command of natural law is to imply that others have a right to acquire property, a point that the medieval jurists clearly grasped. In fact, one finds natural rights as correlative with natural law at every stage in the history of the doctrine.”\textsuperscript{374} Duties derived from or prescribed by natural-law precepts remain, relative


\textsuperscript{374} Tierney, \textit{The Idea of Natural Rights}, at 33.
to actual persons in actual relationships, on a general level and open to a certain diversity of interpretation or application in practice – a situation that usually favors customary or more powerful interests. But when these customs and interests are causing uncalled-for wrongs, rights – discovered in claims of individuals who were experiencing harm or unjust hardship -- make evident the actual contours of responsibility in concrete application.

In the moral universe so understood, rights, responsibilities and moral norms exist in a mutually-enriching relationship. At the same time, like a prized grapevine, this relationship bears fruit because it is constantly invoked, addressed and challenged in the messy, quotidian world of human interrelationships with their proclivity to conflict. This reality points toward two additional features of rights. One is that rights need not be discovered in a theoretical venue prior to their pragmatic application. Rather – and this phenomenon was apparent in the Middle Ages as well as in human rights advocacy in the twentieth century – rights are often discovered by a morally-intuitive response to actual events. Seen from the perspective of a Thomistic natural law theory, moral intuitions in turn need not be defined as essentially relativistic, hopelessly pluralistic or sentimentally whimsical. Rather, moral intuition itself can reflect the first response of justice as an internalized virtue. Of course often such first responses may be of messy quality replete with feelings such as outrage – but once again, such (pre-articulate) feelings can be seen as justice’s attention-grabbing first foray into a problematic situation.375 The second feature of rights situates them squarely within the common good. Without a practice of rights-claiming – and without individuals’ being endowed with their own particular

375 This point provides a fascinating entrée from rights-analysis to virtue theory, since in classical Thomistic terms justice commands the passions.
power to claim rights and oblige correlative duties over others -- a society would have few internal mechanisms for self-criticism and subsequent expedient adjustment in its grasp of mutual responsibilities and the conduct of customs and traditions. As it is, rights have an essential role in augmenting the articulation of morality itself. Summoning a different biological metaphor, Tierney observes that “claims for individual rights have commonly existed in a symbiotic relationship, one might say, with theories of objective natural right and natural moral law, rather than in opposition to them.”

Since *The Boston Globe* investigations of 2002, the heart-wrenching and horrible stories of how thousands of children and teens were maltreated by abusers, and put off by authorities while the latter continued to keep abusers in ministry, call for, to use Michael Ignatieff’s term, “firewalls against barbarism.” Since we know how terrible are the evils that human persons can perpetrate – even in the church – we look for some way to stop the harms visited on real human persons, and to create a society where, if such abuses recur, there is swift and just recourse and healing. In the following section I shall apply the medieval scholastics’ understanding of rights to the sexual abuse crisis, and highlight the contours of human rights advocacy within the Catholic Church.

5.3 Human Rights and the Sexual Abuse Crisis in the Catholic Church

The test of any abstract ethical proposal lies in its practical and wise application, and so in this section I shall apply an understanding of human rights as developed by the medieval scholastics and canonists to the recent sexual abuse crisis in the Catholic Church.

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376 Tierney, *The Idea of Natural Rights*, at 34.

Church. Identifying the basic relevant claim in the sexual abuse crisis as the right to bodily integrity, I shall examine how advocacy for this right might unfold within the Catholic Church. What are the morally-obliging correlative duties of claiming this right, who are the duty bearers, and how might a rights-advocacy support (rather than undermine) mutual responsibilities implied by the Sixth Commandment? How does an understanding of human rights affect our awareness of what the sexual abuse crisis is all about? How does a shared understanding of human rights as an essential part of natural law affect the position of the church’s members within the institution, especially the relation of the governed to ruling authorities? What does it mean, ethically and ecclesiologically, to advocate for human rights in internal church affairs?

5.3.1 Rights-Claims in the Sexual Abuse Crisis: Basic Features

If the sexual abuse crisis in the Catholic Church could be visually distilled, two paradigmatic and related images would emerge. One is the heart- and gut-wrenching activity of direct sexual abuse, the graphic nature of which demands courage and resolve to confront. This image lies behind any justification of rights-advocacy in the church community, since it keeps the concrete truth of the problem in front of us. As Ignatieff underscores, rights may not so much lead us to lofty moral heights, as simply stop or prevent the worst of human atrocity.\textsuperscript{378} It is necessary, pragmatically and morally, for responsible church members (laity and clergy) to understand how badly the victim-

\textsuperscript{378} “[H]uman rights in particular represent a systematic attempt to correct and counteract the natural tendencies we discovered in ourselves as human beings… We must work out a belief in human rights on the basis of human beings as they are, working on assumptions about the worst we can do, instead of hopeful expectations for the best.” Michael Ignatieff, \textit{Human Rights As Politics and Idolatry}, at 79-80.
survivors suffered\textsuperscript{379} in order to get any kind of truthful grasp of the situation. But just as various troubled societies around the world (such as South Africa) could not heal from their past horrors until the full truth was revealed, so the Catholic Church will not grasp how important internal reform is (not to mention which reforms are required) unless we understand how badly thousands of vulnerable young persons were treated. Their rights-claims concretize a moral interest that requires protection. It is all too easy not to do a collective examination of conscience; it is far more appealing simply to move straight to reform without looking at the direct actions that reveal the need for reform. This temptation ought to be resisted. If ‘peace is the fruit of justice,’ then justice surely is the fruit of confronting the truth, no matter how painful. The truth-revelation aspect of rights advocacy makes clear the nature of maleficent activity, and the moral force of rights claims places urgency on its straightforward and pragmatic cessation.

The second paradigmatic image shows the courageous confrontation of pastors and bishops by victims and/or their advocates (especially parents). The latter’s assertions of rights to bodily integrity were countered with the disgraceful insistence that lay persons had a duty to submit in obedience to the directives of church authorities in the matter. This image brings to mind the key role of governing authorities, as practical and symbolic figures representing the community and its values, in recognizing and supporting human rights.\textsuperscript{380} When church governing authorities as representatives of the


\textsuperscript{380} As Cronin notes, human rights cases often make the headlines from poor, unstable or developing countries because such nations lack the legal, judicial and practical infrastructure to protect human rights. “Human rights tend to be important because the goods they protect are fundamental for human flourishing. Problems in relation to such rights occur especially in Third World countries (but not
community – and the often-overlooked ordinary community members (who out of moral responsibility might have sided with victims\(^{381}\)) failed to deliver such support, parents and victim-survivors rightly turned to secular governing authorities. It is important in this regard not to be distracted by the fact that many rights claims emerged in the form of lawsuits involving compensation for damages, that such compensation continues to bankrupt Catholic dioceses around the US and that press coverage of the same continues to embarrass Catholics (although these points are worth examining). Rather, it is necessary at this juncture to highlight the fact that secular governance and civil society already had in place formal – and, more importantly, effective -- mechanisms for meaningful response to sexual abuse allegations – such as lawsuit procedures, prosecutors’ and grand juries’ investigations, depositions, and investigative journalism, not to mention actual laws and law enforcement – and that the Catholic Church was lacking similar effective procedures. Perhaps these mechanisms do not deliver entirely happy results, such as the matters of bankrupted dioceses or sensationalistic news stories. But at the same time these formal mechanisms also fulfilled (or forced responsible parties to fulfill) moral responsibilities correlative with the claim-right to bodily integrity. Fundamentally this amounted to bringing to light the truth about what happened, such as: who committed crimes and who cooperated with them, who the victims are, how many there are, and what happened to them, how much morally-relevant information (actual

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\(^{381}\) Despite the remarkable and ongoing accomplishments of Catholic lay-organized groups such as Voice of the Faithful (VOTF) and the Survivors Network of Those Abused by Priests (SNAP), a long term observer could, in 2011, lament the deafening silence of ordinary Catholics in regards to the sexual abuse crisis. Cf., Mary Gail Frawley-O’Dea, “Where is Catholicism’s Tahrir Square?” National Catholic Reporter, March 16, 2011.
crimes, cooperation with crimes, secret payouts) was hidden from the church and for how long, and why these problems were allowed to persist in the community. Because personal bodily integrity is so essential to human dignity and by extension human communities, it is given formal protection in American legal and judicial structures – a far cry from what victims and their advocates encountered with their own church authorities. But although it is necessary to support rights-claims by enforcement mechanisms, rights-claims as moral realities do not ‘come from’ positive law. Rather, the victim-survivors’ rights-claims are of a prior and more fundamental nature than their inscription in positive law, thus they give rise to it (and have effect beyond its bounds). 

So, at the outset, there are two features of human rights that give credence to their advocacy: one is the inherent connection of human rights-claims to prior normative presumptions about the human person, and the other is the moral force of these rights-claims to demand correlative duties tied to the responsibilities of persons in relationship. That sexual abuse happened within the church, with the directly-responsible parties being ordained church leaders, deepens both features. Not only has the victim-survivors’ human dignity, through which they personally seek salvation, been violated; but also the instrument of that salvation in history – the church itself – has been for them an instrument of sin.

382 As Cronin notes, human rights-claims imply pre-legal (or in the case of the Catholic Church, pre-canonist) normative assumptions both about human nature and about mutual responsibilities. “[F]or human rights to be truly claim-rights and thus to have a strict correlativity with duties imposed on named individuals and groups, there must be a widespread acceptance of the normative relationship stemming from one’s sharing in a common humanity. After all one can recognize that some goods are basic for everyone; one can recognize that some people have no chance of achieving such goods unaided; and one can still say, ‘What is that to me? Why should I have an obligation to do anything for these people?’ Thus, the strongest doctrine of rights implies a strict correlativity with duty based on an acceptance of a relationship with others, which can be general or special, but which calls on one to respond to their valid claims.” Cronin, Rights and Christian Ethics, at 55.
What remains to be examined regarding the first feature is whether the claim to bodily integrity addresses morally-salient aspects of the sexual abuse crisis, or obfuscates the issues and thereby compromises the application of rights theories in the church. Regarding the second feature, questions can be raised whether rights-claims inevitably lead to the kind of enforcement mechanisms thus far invoked, or whether there are more fitting means to deliver on their moral demands. I believe that an understanding of rights claims within an overall framework of natural law, such as the medieval scholastics and canonists developed, can assist with a meaningful understanding of these matters in the Catholic Church community.

5.3.2 The Right to Bodily Integrity: Salient Concerns and Contours

On the rationale of moral objections to rights, rights-claims seem to disrupt community by driving a wedge between individuals, setting persons into adversarial relationships disruptive of the bonds of community and kinship, and generally discounting key elements of human sociality. These criticisms, which track the moral objections examined in above, seem especially pertinent when the rights-claims concern the body; it is because of the physical boundaries of the human body that individuals can be delineated one against the other. Now a counter-argument might hold that the body need not be so understood – the understanding of bodily integrity could be such that it is seen as the condition for the possibility of relationship, for example. Eventually I will take my own argument in such a direction, but at the outset it is important to flag (and avoid) the temptation to describe the sexual abuse crisis in more abstract terms of social
interrelationships.\textsuperscript{383} One could imagine any claims to rights being defined as rights regarding relationship dynamics, such as the right of parents and victims to conscientious dissent from episcopal directives in the matter of hushing up the problem. But something seems wrong about this: there is undoubtedly a profound moral intuition evident in everyone’s calling this problem the sexual abuse crisis, rather than a crisis of conscientious dissent. Nonetheless, the moral objections bring up pertinent issues about the understanding of the body, especially its social dimension.

A moral objection to the right to bodily integrity concerns its problematic narrowness of scope, and thus omission of key aspects of what a human body is. Most saliently, the body ought not to be considered simply a ‘thing’ but rather is an essential aspect of human personhood. So understood, the human body ought to be seen holistically; claims made and actions taken in regard to the human body need to consider such fundamental aspects of human personhood as relationality, affectivity, human freedom and the end and purpose of human life.\textsuperscript{384} Persons exist in a social context characterized by relationships, care, interaction and mutuality. The problem with claiming a right to bodily integrity is that such a claim, reinforced by the physical delineation of bodies separated from one another in time and space, seems to place the individual in an adversarial stance against that social context. This move in turn reframes an understanding of the body as some thing, over which we claim rights of control.

Controlling, in turn, lends itself to seeing the body as property which the person owns for

\textsuperscript{383} This is why, for example, the previous chapters’ arguments, focusing as they do on the errors of church leadership and the real crisis of church governance, cannot stand alone without some direct examination of those harmed by errors of governance.

\textsuperscript{384} In this section I am indebted to many insights and questions raised by Maura A. Ryan in “The Argument for Unlimited Procreative Liberty: A Feminist Critique,” Hastings Center Report 20(4), July-August 1990, 6-12.
his or her own self-disposal, immune from interference.\textsuperscript{385} If persons are immune from interference in the matter of their bodies, then they are free to ignore the many ways that bodiliness itself places on them responsibilities restricting their use of and attitude towards their body, and their manners of relating to others. On this view, claiming the right to bodily integrity within the church community could deliberately and artificially sever all morally-relevant aspects of human bodiliness – including those with social ramifications – from the realm of mutual responsibility.\textsuperscript{386} These are all important issues not only for a human rights practice in general, but especially a human rights practice in the Catholics Church whose members share a normative understanding of the human person as contextually embedded in mutual interrelationships.

A response to this moral objection can be found within an understanding of rights as articulated in the medieval scholastic tradition, and was alluded to earlier in this section. The ‘outline’ of the body does provide a physical delineation of individuality; however, individuality is an essential characteristic of personhood, without which notions of collective membership and responsibility do not make much sense. The challenge is not to maximize mutuality at the expense of individuality (or vice-versa), but rather to

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\textsuperscript{385} For example, rights-claims in the matter of reproductive contracts for the purpose of infertile couples’ establishing a family run counter to the basic notion of a family as persons in loving relation. “[P]romoting a property (or “rights-centered”) model, whether through vigorous protection of familial autonomy or by the rhetoric of the “right to procreate” can only reinforce an ideal of the family that not only does not encourage more respectful and cooperative parenting styles but may further facilitate the abuse of parental power… [T]his sort of familial autonomy underlying arguments for clarity of contract serves largely to protect proprietary interests rather than to facilitate intimacy or the development of creative, more humane forms of parenting for women and men. Since the problem is not only that males have been exclusive holders of rights to property (including their wives and children) but that this way of imaging the family denies the reality of women and children as fully human, it may not be enough simply for feminists to argue for equality between women and men in the holding of these rights. Rather, the very language of rights, implying as it does some exclusive access to property, must be seen as inappropriate when describing the structure of the family. Ryan, “The Argument for Unlimited Procreative Liberty,” at 11. Cf., Janet Farrell Smith, “Parenting and Property,” in Joyce Trebilcot, ed., \textit{Mothering: Essays in Feminist Theory}. Totowa, NJ: Rowman and Allanheld, 1983, at 199-210.

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hold the two together and to recognize their simultaneously mutually-critical and mutually-supportive relationship.\textsuperscript{387} For Christians, individuality (physically visible in the separate delineation of bodies) can be considered theologically as the locus of identifying the image and likeness of God in which all are created.\textsuperscript{388} Human persons are indeed separated and separable in terms of the body, but we also were created that way; so individuality also is inherent in a normative Christian definition of the human person – this is what we are. At the same time, our bodiliness implies equality among all persons regarding the needs of self-preservation and natural, created inclinations (such as sexuality) experienced and expressed through the body. But the fulfillment of these needs and expression of these inclinations involve deeply personal discernment; indeed these inclinations and expressions become the locus in which moral decision-making is exercised and the terms of human interrelationship are negotiated. “Characteristically human capacities for rational inquiry and reflective, self-governing freedom are not simply exercised in the abstract; they are exercised in and through the body, and specified

\textsuperscript{387} As Tierney notes: “In propounding a system of jurisprudence one can emphasize either the objective pattern of relationships or the implied rights and duties of persons to one another – and then again one can focus on either the rights or the duties. The emphasis can fall in different ways depending on social and economic and political circumstances and on the temperament of a particular author. (It will probably have little to do with his abstract metaphysics.)… No society can be entirely holistic or entirely individualistic. It is usually a questions of degree, of deciding which value is considered “paramount,” as Dumont wrote. Normally we expect to find one value subordinated to the other. The unusual feature of medieval Christian thought is that both values – the value of individual persons and the value of Christian community – were asserted with equal passion. Moreover this attitude pervaded medieval life on many levels of theory and practice. Brian Tierney, The Idea of Natural Rights, at 33, 212.

\textsuperscript{388} The medieval scholastics based the “extraordinary authority” of the individual “by grounding natural rights in the \textit{jus naturale}, the natural right, understood as the capacity for free, reasonable judgment and action, which represents the image of God in which each human being is constituted. This latter point should be underscored: the human person is said to be created, constituted or set up in the image of God, in virtue of his or her creation as an individual substance of a given kind of nature.” Jean Porter, Ministers of the Law: A Natural Law Theory of Legal Authority. Grand Rapids MI: William B. Eerdmans Publishing Company, 2010, at 333.
in the first instance as claims over the use and disposal of one’s body.” Especially as it becomes visible in interrelationships, the right to bodily integrity is not only fundamental it also applies equally to everyone. That is, all persons no matter their rank or status must respect others’ bodily integrity; in so doing they create the reliable and healthy sexual boundaries required for proper human functioning. Conversely, every person can be harmed in similarly damaging ways by violations of this right.

Rights attached to persons because of their bodiliness therefore support essential aspects of personhood. At the same time, from the perspective of Christian morality and theological-anthropology, both the human right to bodily integrity and the human body itself imply responsibilities regarding use of and attitudes towards one’s own body as well as those of others. Indeed, many of the proscriptions of the second tablet of the Decalogue, while addressing concerns of social interrelationships, articulate many of their points by reference to the human body, and define prohibition (e.g., against adultery and covetousness) in terms of self-disposal of one’s body and attitudes towards others’ bodies.

In my discussion to this point I have argued that general norms acquire concreteness with the claiming of a subjective right, which in turn correlates with specific duties towards the rights-claim. The duties are duties owed to the one claiming the right. By claiming the right to bodily integrity, victim-survivors of sexual abuse in the church show the way forward: first by specifying precise correlative duties obliging on their offenders and all in the church who cooperate with and enable the latter, and secondly by


390 “If you take your neighbor’s cloak in pawn, you shall restore it before the sun goes down; for it may be your neighbor’s only clothing to use as cover; in what else shall that person sleep? And if your neighbor cries out to me, I will listen for I am compassionate.” Exodus 22:26-27, NRSV.
thus making possible a ‘translation’ of a general and abstract precept (the Sixth Commandment) into an actual, real-world context. A direct examination of duties in the church correlative to the right to bodily integrity will continue to unpack the meaning of a practice of human rights in the church.

5.3.3 The Right to Bodily Integrity and Correlative Duties in the Sexual Abuse Crisis

Thus far my examination of the right to bodily integrity has focused on the claiming of this right on the part of the individual victim-survivors, and the nature of this claim as morally urgent. But these rights-claims also demand correlative duties, on the part of other, more powerful individuals (such as church leaders) and the community as a whole, in order to fulfill the claims. What might these duties be? There are three preliminary points I would like to consider here.

First, it would be misleading in the sexual abuse crisis in the Catholic Church to understand the correlative duties only in terms of strict, personal non-interference. Such a duty is more closely tied to a right to bodily integrity construed as a strict liberty or immunity, associated with notions of control or proprietary ownership over the body (the latter devalued for instrumental purposes). Rather, I suggest that the duties correlative to the right to bodily integrity understood within a natural-law context place specific limits around the interrelationships of persons in the church, especially interrelationships of clergy and laity. This point advances the argument of Chapter One, that the ‘problem’ of sexual abuse in the church cannot be defined so narrowly as simply direct actions of abuse; nor can cessation of these direct actions be equated with an end to the crisis.

Secondly, since respecting the right to bodily integrity requires meaningful and effective protection, among the duties correlated with this right are reforms in church
governance, and these reforms necessarily will run very deeply. Governing authority is, if nothing else, a relationship within a self-identified group, and the dynamics of relationship among persons in the Catholic Church requires positive change. This is especially so in the relationship of “pastors” to “the other faithful.” This in turn will require changes in governing structures such as canon law and procedures such as the appointment, translation and revocation of ordained persons into, between and out of office. There is no point in rehashing text from the previous two chapters, but the association of that material with the present argument from rights begs the question, why do we need rights at all? Does not an understanding of the moral implications of the Sixth Commandment lead to constructive criticism of and proposals for church governance? While there is overlap here, there are also key differences, and a clarification, between understanding changes in church governance on the basis of prior duties, and obliging those changes on the basis of rights-claims.

One difference has to do with the urgency and moral force of rights claims, seen in their capacity to act as moral “trumps” over prevailing custom, laws, and even well-intentioned but slow processes of justice. As noted above, one of the reasons for this moral urgency has to do with the fact that rights claims usually are lodged by relatively powerless or few persons (or even by an individual alone) against relatively powerful, majority groups. The fact that a human rights-claim even needs to be made at all indicates that someone, somewhere experiences violations of human dignity enabled by prevailing practices. As Jack Donnelly notes, in a perfect world persons would have (possess) rights but would not need to claim them because society’s prevailing practices

\[\text{391 Ronald Dworkin, } \textit{Taking Rights Seriously}. \text{ Cambridge, MA: Harvard University Press, 1977.}\]
would be supportive of rights. The minority status of rights-bearers claiming (in the face of wrongs) rights to bodily integrity in the Catholic Church is nowhere so evident in the relative silence of the majority of Catholics personally (in terms of their own families or friends) unaffected by sexual abuse by priests. The absence of a tilt in the governing convention does not undermine the existence of the right to bodily integrity (even direct violation does not remove the attachment of this right to persons), but it does point to a discrepancy between the moral urgency of a rights claim and communal resolve to do something about it. This situation is not unlike those often encountered by human rights advocates working in troubled areas of the world.

However, at least in terms of moral obligation (even if this is met with willful disregard), rights claims place rights-holders in a unique position of authority vis-à-vis the actual authoritative rulers of a society as well as the governed population contributing to the prevailing governing convention. One could go so far as to say that in human rights claims “the ruled rule the ruler”, but this phrase needs to be qualified. It does not mean that the rights claimants become the administrators of the government or have the practical power to make changes in governing personnel; indeed many famous rights-advocates throughout history, such as Nelson Mandela, could not administer anything because they were imprisoned. However, human rights claims are such that they have moral and juridical force, even if this is ignored by the duty-bearers. Additionally,

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393 Mary Gail Frawley-O’Dea, “Where Is Catholicism’s Tahrir Square?”

394 “[W]ithin defined zones of personal liberty, the members of a community can rule their rulers – and this constitutes a powerful safeguard against any tendency to absolutize political authority and to bestow on it a uniquely divine status.” Jean Porter, *Ministers of the Law*, at 332.
because human rights above all highlight profound and essential aspects of human  
personhood, the claims associated with them have inherent, root-like connections to the  
ways any society is run. Thus claims to human rights are authoritative justifications for  
generating law, ruling practices, social customs and the like. Usually the rulers of a  
society wield enormous influence over legal and customary social forms, but human  
rights represent the power of individuals over the scope of the rulers’ authority. The  
nature of human rights claims is such that the interests they describe affect humans  
everywhere and in all things. Thus these claims connect deeply into the formal  
mechanisms, such as governance, that hold a society together; they are intertwined in all  
aspects of any human community – because human communities are composed of bodily  
individuals in interrelationships.

The right to bodily integrity holds moral and juridical force, and commands assent  
in a way analogous to the assent of the governed to authorities, but it works in the  
opposite direction, demanding an internal, moral assent of authorities to the claims of the  
victims. For example, in the sexual abuse crisis, challenging the ordained to ‘stop the  
abuse’ also implies a cessation of longstanding practices, attitudes and traditions of  
clericalism in the Catholic Church, whereby respect for clergy becomes overinflated and  
clerics’ decisions and actions immune from criticism. Likewise, victim-survivors’  
claiming the right to bodily integrity challenges pastoral practices, canonistic  
interpretations, moral judgments and authoritative directives of bishops whose dioceses  
were the loci of abuses. Because connections between human rights and customary or  
attitudinal or codified practices are root-like, the reforms demanded as correlative duties  
are similarly radical in nature. Reforms that go all the way down undoubtedly will be
painful to many, but likewise they will mark a return to Catholicism’s moral roots in natural and divine law.

The connection to natural and divine law leads to a third preliminary observation regarding correlative duties to change structures of governance and social interrelationships in the Catholic Church. The sexual abuse crisis is not the first time that an issue stemming from the right to bodily integrity and conscientious self-disposal of the body has challenged church practices and canon law. As noted earlier in the chapter, an analogous case emerged during the Middle Ages and eventually brought about changes not only in moral behavior, law and customary practices, but even sacramental theology.

The reasoning behind these changes is that in terms of bodiliness all persons are fundamentally equal, so that practices, customs and rules that make possible mastery of one person or a group over others in terms of bodily self-disposal are unwarranted. This somewhat simple and straightforward claim had effects that went ‘all the way down’ so to speak because longstanding institutions had arisen presuming (unwarranted) mastery of some over others – all made visible in claims regarding the human body. The equality of all persons in regards to bodiliness and the universal human right to bodily integrity

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396 As explained in Section 4.1, during this time the claim-right to consent to marriage was contested by persons such as serfs who were outright denied marriage by their overlords (since marriage would mean the serf’s moving from the estate and subsequent loss of a worker), or by wealthier individuals forced into marriage in order to consolidate clan wealth. In both cases, persons’ right to bodily integrity – made manifest in the free consent to join their bodies with spouses in marriage – placed a duty upon governing authorities, powerful families and the church so morally binding that changes brought about far-flung results. Overlords, for example, had to make adjustments to allow their serfs freely to marry, and society began to see marriage not solely in terms of family alliances but as a bond of love between spouses. The church officially instituted matrimony as a sacrament.
thus provides moral force to support *Lumen gentium’s* doctrinal assertion of the equality of all members of the church on the basis of baptism. The difference, I believe, is that appeals to equality on the basis of baptism have led to few changes in terms of power distributions in the church, because any such changes have had to be instituted by official church leaders. But the right to bodily integrity imposes a moral claim correlating with obligatory duties to alter this power distribution, in ways relevant to the content of the claim. This moral claim can push church leaders into effective action, even against their will or judgment, because it is supported by institutions of civil prosecution. Although these changes are still at the initial stages, their very existence will affect many customs and styles of leadership, as well as canon laws regarding ‘business as usual’ practices within Catholic Church governance.

5.3.4 Human Rights Advocacy Within the Catholic Church

What is now a centuries-old shift in canon law and theology regarding marriage makes the practice of human rights advocacy in the church sound easy. But then as now there existed seemingly intractable debates and irreconcilable positions blocking movement forwards. Then as now there were deep doctrinal and ecclesiological issues that need to be addressed when considered fundamental changes in church structures, laws and styles of governance. Some tightly-held positions are no doubt due to the selfish kind of self-interest (particularly in the matter of those personnel who might be sacked), but others are honestly held by appeal to the divine foundations of the church. Each of these disparate stances results in the same pragmatic effect: an institution not very amenable to changes, nor open to morally and juridically binding claims coming from rights-bearers who (until recently) held no influential role in ecclesial
interrelationships. I have noted this problem before as the triumph of ecclesiology over ethics in the handling of the sexual abuse crisis. It becomes worthwhile, then, for the sake of meaningful response to the rights-claims of victim-survivors to look for ways other than doctrine, ecclesiology, or the personal assent of an enlightened bishop to provide the rationale to change behaviors, customs, practices and attitudes formed within structural ambiguity. A practice of human rights advocacy shows promise in this regard. While this tack does not directly solve deeper structural and ecclesiological sticking-points – this is not a call for ‘Vatican III’ in the sense of a large-scale, all-church evaluation and change requiring consensus of the world’s bishops -- it has the advantage of identifying meaningful, practical reforms that meet the moral duties correlative to the victims-survivors’ rights-claims. Far from being mere policy, such duties, if discharged well, make possible in the everyday life and interrelationships of the community sensitivity to actual suffering, an awareness of the social contexts of wrongdoing, a concrete practice of penance and atonement for past sins, and commitment to prevent harm in the future. A second advantage to a human rights practice derives from its focus on real persons, the particular victim-survivors in local churches. Even small concrete changes in customary practices can block the usual trajectory of sinful ones which allowed culpable persons to harm these young people. Finally, calling attention to human rights provides the hope that small practical changes eventually will lead to the right reforms in the broader understanding and application of doctrine and ecclesiology.

The most obvious feature of on-the-ground human rights practices is that they operate within (and on) actual practical cases, and arrive at conclusions by reflecting first upon the actual and potential victims, and subsequently upon the more abstract values at
stake. By taking the first step in the company of the victims, so to speak, such practices avoid applying predetermined conclusions about the nature of the church or rigidly-construed positive or canon law too quickly to the case at hand. This step is important because neither doctrines nor canons by themselves have been able to provide fully morally-satisfactory answers to issues raised in the crisis. This is not to say that internal communal reflection on and response to the crisis ought to occur in a vacuum; clearly all Catholics will be (and ought to be) influenced by fundamental doctrines and pertinent canons. The difference is that moral discernment begins deliberately with rational reflection on the victims themselves, rather than with a preconception about what doctrine or canon law says about them. This method illuminates perhaps one of the most fundamental duties correlative to the rights-claims of the victim-survivors of sexual abuse: it is the duty of the entire church community to do its very best in utilizing human reason, imagination and effort to solve the problem in the church. In the sexual abuse crisis, as in many human-rights difficulties around the world, Catholics have been confronted with a disconcerting reality: their world-views, moral systems and laws – or perhaps more accurately their grasp of the same -- once considered reliable guides to moral behavior, have fallen short. The church as a society has failed to provide protection of a fundamental aspect of human dignity in its internal doings, and needs to do some hard work to arrive at meaningful corrections. In responding to this challenge, however, the church as a society is presented with the opportunity to discover ways, consistent with its own self-interpretation, to support the human rights of the victim-survivors.
To undertake this investigation I will be utilizing the insights of Christian ethicist Sumner B. Twiss regarding practical human-rights negotiation from real-world cases where conflicting world-views and belief systems have rendered it impossible for disputing parties to come to philosophical agreement on values and morality. Yet simultaneously and somewhat paradoxically they are able to work on a pragmatic level to reach a concrete level of respect for human rights in terms of protecting certain basic features of human dignity. Twiss has studied various ways in which human rights lend themselves to pragmatic moral practice, prior to their incorporation in (or even despite) overarching moral systems. This might seem like putting the (moral) cart before the horse, but it reveals something valid about a natural human process of moral discernment. Persons with deeply divergent metaphysical beliefs and value-systems come to recognize shared human interests (such as bodily integrity) they want to protect, even if for different reasons.

My own appropriation of Twiss’ work takes it out of the international human rights arena and applies it within the Catholic Church. This does not invalidate Twiss’ analyses, but rather points to their broader applicability. We ought not to assume that the process of pragmatic agreement within divergent belief-systems happens only in situations where persons of different races or religions or national groups are confronting

each other. It is possible to utilize these insights within a self-defined group such as the Catholic Church that already has in place a common theological vision and an overarching moral framework, but is deeply rent as to their meaning, application and understanding in the present moral crisis.

5.3.4.1 Pragmatic Agreement

Despite the Catholic Church’s external embrace of a morality that prohibits sexual abuse, in the actual sexual abuse crisis the church was unable or unwilling to provide effective protections of the vulnerable to a long-condemned crime. So, the rights-claimants sought ways to ensure some measure of meaningful protection, which included press revelations and interventions by civil authorities (forcing bishops to remove offenders, to make documentation public, to testify as to their mishandling of allegations, to effect internal structural changes, and so forth). Insofar as these actions were successful, they represent a “pragmatic agreement,” defined by Twiss as the reaching by conflicting parties of a common ground regarding very specific concrete goods or behaviors that exemplify “human interests of such fundamental importance that they ought to be socially guaranteed.” At this somewhat superficial (if effective) level, specific, practical agreements of different sorts were reached, even if these were attained (at least at first) only with the help of secular institutions and against the wishes of US bishops. But eventually even the US bishops contributed their own initiative in the 2002 Charter for the Protection of Children and Young Persons (including their persuading Vatican officials to revise canon law in this regard). Fundamentally, both the civil

authorities who prosecuted allegations and the bishops who initially denied or hid them, espoused similar values regarding sexual abuse (it is always wrong) and young persons (they deserve protection), even if they based their responses on different ethical systems and world-views (which translated into divergent approaches).

While the achievements of pragmatic agreement are surely minimalist, they nonetheless signal a significant shift. Pragmatic agreements have already had the effect of interrupting ‘business-as-usual’ church practices that presumed no accountability for actions and decisions. For example, watchdog and publicity efforts, as well as formal grand jury investigations, call attention to lapses in specific practices such as financial accountability (which could have tracked confidentiality payouts) or removal of credibly abused personnel. Such pragmatic agreements are, however, just that: purely pragmatic and requiring no deeper shared commitment regarding theoretical justifications or broader normative outlook. In this matter, civil authorities could perhaps rest a bit, knowing that they discharged their duty to the law and to their citizens; but they have also been put on alert that absent deeper structural change the revelations of 2002 are only the beginning. Church authorities, too, have continuing problems insofar as even the basic pragmatic agreement is ignored or the underlying sources of dysfunction are not addressed.

399 “Last month, three Philadelphia priests were indicted for sexual abuse, and their former vicar for clergy was charged with child endangerment. Perhaps more troubling, those indictments came after a grand jury found “substantial evidence of abuse” committed by at least thirty-seven other priests who remained in active ministry. In response, Cardinal Justin Rigali said that “there are no archdiocesan priests in ministry today who have an admitted or established allegation of sexual abuse of a minor against them.” Six days later the archbishop placed three of the thirty-seven on administrative leave. Three weeks after that, he suspended another twenty-one. For Philadelphia Catholics, the shocking news was not altogether surprising. They recall a 2005 grand jury report that harshly criticized the archdiocese for its handling of sexually abusive priests. Still, nearly a decade after the scandal exploded in Boston, Catholics want to know: How could this happen again? Haven’t we been down this road before? Nicholas P. Cafardi, “Another Long Lent: The Abuse Crisis Resurfaces in Philadelphia.” Commonweal March 19, 2011.
5.3.4.2 Moral Intuition

Another position identified by Twiss focuses on morally-intuitive responses to human rights violations. In the literature on the sexual abuse crisis, for example, most persons automatically respond to stories of abuse with passion (e.g., ‘stomach-churning revelations’) and condemnation (e.g., ‘heinous crime,’ ‘mortal sin’) without having to stop and think deeply. Indeed, some human rights theorists identify moral intuition as the fundamental basis for promoting human rights; Michael Ignatieff’s characterization of rights as “firewalls against barbarism” is one of these. People simply ‘know,’ intuitively at least, that actions like sexual abuse are terribly wrong, and that the human community must respond quickly and effectively to stop the harms and begin a process of healing. The strength and conviction of such an intuition raises the possibility that perhaps an understanding of human rights need not appeal to overarching moral or philosophical systems at all. From the basis of intuitive response, structural reforms and protections can be worked out. Advocates of this approach “are apparently united in seeing the pragmatic consensus as epistemically, rather than metaphysically, grounded and then further developed on a rational basis to preserve and expand these intuitions – reason in the service of primary moral intuitions.”

There are benefits and limitations to the moral-intuitionist approach in terms of applicability to the sexual abuse crisis. On the one hand, the somewhat automatic, viscerally negative reactions to revelations of sexual abuse do seem to indicate a deeper epistemic awareness that these actions are not only wrong, they are about the worst kind of thing one person can inflict on another. These reactions can be seen as the first

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movement of the virtue of justice in response to wrongdoing. Insofar as this kind of intuition preserves sexual boundaries it serves to protect the human right of (real and potential) victim-survivors to bodily integrity. Moreover, these intuitions are understood as good interior promptings, with negative judgments formed about those who did not experience and demonstrate such intuition. The obvious contrast between Catholics viscerally revolted by the revelations of abuse, and members of the hierarchy showing no passion or concern (and whose responses to allegations indicated a callous disregard for the victim-survivors), could not be stronger.

And this is precisely the drawback of the moral-intuitionist approach. What if one’s moral intuition is pathological? Moral intuition could (and did) show itself in its vulnerability to other concerns, some of which appeared to responsible parties as more pressing than institutional protections for young persons. Moral intuition easily became sidetracked when these other concerns came into play, or else was never properly formed on the first place. This latter, more sinister point concerns the displacement of an objectively-sound moral intuition for another; this kind of moral pathology became evident when it seemed like appeals to the good name of the church were more urgent than justice for sexual abuse victims. On this view, ‘this is wrong and must stop’ is an acceptable response only so long as stopping the wrong does not entail defrocking priests, removing bishops and involving the laity in matters of church governance. A ‘default ecclesiology’ (noted in Chapter Three) that sees all current structural aspects of the church, including the consolidation of all governing power and activity into the office of bishop, as divinely ordained and not subject to change, became a roadblock for moral intuition. An understanding of bishops as ‘theoretical experts’ (noted in Chapter Two)
was threatened with demise when bishops demonstrated moral incompetence in their handling of allegations. The slowness on the part of church authorities to put in place meaningful internal structural change indicates that “metaphysics” continues to hold the upper hand over moral intuition.

5.3.4.3 Overlapping Consensus

A third approach to a human rights practice explicitly welcomes the support given by “diverse cultural, moral, or philosophical schemes,” which show disagreements amongst themselves regarding theoretical justifications for human rights, while at the same time showing a pragmatic, “overlapping consensus” regarding the practical protection of these rights. Applied to the Catholic Church, this approach takes note of the often-competing variety of ecclesiologies and moral theories held by faithful Catholics with similarly strong devotion to Christ and his church.


402 Twiss notes that the term “overlapping consensus” is derived from philosopher John Rawls’ analysis of the internal workings of western liberal democracies. “Peoples and communities are encouraged to develop their own ways of justifying the norms in local cultural idioms. This approach… positively emphasisiz[es] and capitaliz[es] on the fact that there are diverse cultural justifications all of which are on par, so to speak, since in our post-modern age we must recognize that no one cultural justification is likely to become dominant or succeed in convincing others outside a given culture that only it is reasonable and true.” Twiss, “History, Human Rights and Globalization,” at 62.

403 “It is generally accepted that Vatican II and then especially the dogmatic constitution Lumen gentium propose several visions of the church.... An analysis of [chapters II and III] shows real differences and one can say that the Council Fathers did not arrive at a way to reconcile these concepts and that the relation between them is not indicated. Lumen gentium itself does not propose one concept as the central one.” In Ad Leys, Ecclesiologica1 Impacts of Subsidiarity, Nijmegen, Kok-Kampden, 1995,135. The difference in these two approaches to the church has been described in a variety of ways in the literature: hierarchical (holy order) ecclesiology compared to communio ecclesiology (Ladislas Orsy, “The church of the third millenium: in praise of communio, in S. Pope, ed., Common Calling: The Laity and the Governance of the Church, Georgetown 2004, 229-251), the “Gregorian form” of the church derived from “illumination” compared to “structured communion” built on imagination and inspiration (Ghislain Lafont, Imagining the Catholic Church: Structured Communion in the Spirit, Collegeville: Liturgical Press, 2000); “ecclesiology from above” compared to “ecclesiology from below” (Roger Haight, Christian Community In History, vol. 1, New York: Continuum, 2004); Vatican II as substantially in continuity with its pre-Vatican II past (A. Marchetto, Il Concilio Ecumenico Vaticano II: Contrappunto per la sua storia, Vatican City:
To delve into such internal controversial terrain is far beyond my purposes but a
generalized example applicable to the present project helps to illustrate an overlapping
consensus within the church. On the one hand, left-leaning Catholics who favor
democratic reforms within church governance might support human rights as defined by
the Universal Declaration of Human Rights and subsequent official UN updates of the
past fifty years. These Catholics sign on to human rights largely because they have been
exposed to rights-practices in their own western democratic regimes. Their
understanding of rights, then, is tied to modern philosophies and developments, rather
than an awareness that the notion of rights itself originally arose within the context of
their own church and the Christian society it supported. Indeed, they show impatience
that an organization such as the Catholic Church appears to be so ‘medieval’ in its
capacity to ignore the rights of victim-survivors and perpetuate styles and structures of
governance where ‘the governed’ do not count. These persons would be in favor of a
human rights practice in the Catholic Church that by and large imports democratic values,
including human rights, into the church. By contrast, right-leaning Catholics might abhor
the invocation of modern concepts of rights applied to the church, remembering how
appeals to rights such as in the French Revolution and the Terror, as well as in openly
atheistic regimes, meant the persecution of the Catholic Church. Importing values and
ideas from such regimes is to put the church on the slippery slope to relativism and

24, 2003) compared to the discontinuity of Vatican II with the past as exemplified primarily in its offering a
new “style” of being church, affecting both structure and individual Christian life (John O'Malley, “The
67:1, 2006; Stephen Schloesser, “Against forgetting: memory, history, Vatican II,” Theological Studies
67:2, 2006.)

269
compromise the church’s mission to proclaim the truth. This is particularly true when the
to bodily integrity is invoked in such as way as to support abortion on demand.
Wholesale suspicion of church officials will negatively impact their ability to guide their
flocks, although culpable priests and bishops ought to do penance for their sins and
amend their errant ways. Advocates of this position might support objective rights
derived from norms, values and duties – i.e., the protection of the young based somewhat
straightforwardly on the Sixth Commandment. Theoretically, their understanding of
rights as objective realities contrasts with the understanding of human, subjective rights
espoused by the left-leaning advocates. But despite different philosophical starting
points, the end result of these two generalized, contrasting approaches is similar. Young
persons will be protected, while the priests and bishops who committed or cooperated
with harm will be brought to justice.

Overlapping consensus offers a possibility that, in time, the newly-instituted
practices of justice and recognition of rights will lead to or bring about readjustments in
attitudes, presumptions and habits of interrelationship such that young persons in the
church might be protected at a variety of formal and informal levels. This kind of
communal protection of the young then would be a ‘regular’ characteristic of the
church’s own communion. But these considerations are jumping ahead. The very
existence of such a consensus begs the question of whether there exist deeper
connections, such as in even the controversial terrain of ecclesiology.404 By way of
conclusion I shall examine this possibility.

404 “On this view, we find a consensus about rights, even among peoples whose overall moral and
religious views are very diverse, because those diverse worldviews all have some elements which would
support a rights commitment. On one level this is a very attractive argument, but there is no denying that it
is also a very strange argument. What are we to make of a moral idea which can be supported by very
5.3.5 Natural Rights and Ethical Constraints on Ecclesiology

A difficulty of the ‘overlapping consensus’ approach is its presumption that agreed-upon norms and values (such as human rights protections) must emerge from prior philosophical commitments (even though the particular commitments differ according to culture). In my generalized example, two different perspectives on ecclesiology yielded two different rationales for supporting similar protections and processes of justice in the church. But this need not be the case; that is, prior theory need not lay the foundation for inquiry before any moral progress can be made. In fact, prior theory may impede ethical inquiry. It seems very clear in the sexual abuse crisis, for example, that prior ecclesiological commitments (from all kinds of perspectives) have obstructed the reform of church governance and practices of justice. As solutions stand different, and even contradictory, sets of considerations? One suspects that any such idea cannot have any particularly strong content, or else that it is not really supported by the considerations in terms of which it is defended.” Jean Porter, Nature As Reason, at 363.
right now, the protections for the vulnerable arguably remain very thin. The morally urgent force of rights-claims for the victims simply is not getting through.

But rights-claims for the victim-survivors of sexual abuse in the Catholic Church need not move from theory to practice. The movement might well go in the other direction, and especially given competing and disparate ecclesial preferences and philosophies, probably should stay focused on practices that affect the most vulnerable.

Twiss has noted as a fourth approach that the very reaching of a pragmatic agreement, or shared moral intuition, or overlapping consensus, potentially opens doors to dialogue about, and exploration and testing of new features of interrelationship between and

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405 “Philadelphia Cardinal Justin Rigali’s move to place 21 priests on administrative leave from their clerical assignments Monday calls into question whether the system the U.S. bishops set in place in 2002 to look into allegations of clergy sex abuse has protected children, say victims' advocates. The unprecedented step to remove such a large group of priests came in the wake of a Philadelphia grand jury’s Feb. 10 report that charged Msgr. William Lynn, who led investigations of abuse allegations for the archdiocese between the years 1992-2004, with two counts of endangering the welfare of children. That report also called for the archdiocese to “review all of the old allegations against currently active priests and to remove from ministry all of the priests with credible allegations against them.” Speaking to NCR yesterday, Terry McKiernan, codirector of BishopAccountability.org said the move highlights the fact that the system of diocesan review boards set in place by the bishops’ “Charter for the Protection of Children and Young People” has “serious, serious problems.”… Asked what Rigali’s move might reveal of how sex abuse allegations are being treated in other dioceses, McKiernan said “we have no reason to think that Philadelphia is unusual in all this.” Said McKiernan: “No doubt there are priests who remain in ministry in other dioceses and no doubt review boards there are doing pretty much what they did in Philadelphia, which is protect priests in the system instead of protecting the children.” Staff of the National Catholic Reporter and Catholic News Service, “Philadelphia Scandal Calls Into Question Bishops’ Reporting System,” National Catholic Reporter, March 10, 2011. Accessed at http://ncronline.org/news/accountability/philadelphia-scandal-calls-question-bishops-reporting-system

406 Few US bishops seem to have understood, or if understood have been unable effectively to communicate by word and deed, the depth of the crisis of sexual abuse and the urgency of victim-survivors’ rights-claims. The recent witness of the Archbishop of Dublin has been a welcome change in the English-speaking world. “In the early years of the priest sex abuse crisis, Catholics often expressed their frustration with how bishops handled the scandal by saying “they don’t get it.” Archbishop Diarmuid Martin of Dublin, Ireland, may be a member of the hierarchy who begins to reverse that perception. In a keynote address April 4 at the Marquette University Law School, Martin described the struggles he encountered in bringing to light the “disastrous situation” of abuse in the Dublin archdiocese, from assembling documentation to facing the resistance of priests and other bishops who opposed disclosing the history of abuse. “I tell these event,” he said, “not to re-open history, but to illustrate just how difficult it is to bring an institution around to the conviction that the truth must be told.” Tom Roberts, “Archbp Martin Renews Call to Examine Culture that Allowed Sex Abuse to Happen,” National Catholic Reporter, April 5, 2011. Accessed at http://ncronline.org/news/accountability/diarmuid-martin-archbishop-who-tells-truth-about-sex-abuse
among disputing parties. As they exchange views on their particular rationales for justifying human rights, disputing parties may be able “to identify not only shared human rights norms but also shared reasons for accepting these norms, for example, similar views of human moral capacity, common vulnerabilities to suffering and oppression, analogous moral principles, rules and virtues and the like.” Moreover, this process remains consistent with a Thomistic theory of the natural law, with its sensitivity to natural human inclinations order-able through precepts. “[C]ertain recurring aspects of moral practices… do seem to cut across cultural and historical lines. As we have seen, these reflect species-specific patterns of behavior, which provide an indispensable basis for morality and as such provide one touchstone for evaluating moral theories.” Twiss calls this kind of approach a “cross-cultural dialogue,” but it can also lead disputants within the same culture (such as the Catholic Church) to identify viable areas of “change and accommodation, thus enabling further possible agreement all-the-way-down, so to speak, so long as their most important legitimate constitutive values are not

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407 Sumner B. Twiss, “Moral Grounds and Plural Cultures,” at 297. Since all parties to human rights disputes are by definition, they all can potentially recognize the importance of protecting interests deemed essential for natural human existence and expression. “The point is that far from preempting or replacing the moral teachings of various cultural traditions, specific expressions of human-rights concerns have arisen from the mutual recognitions by adherents of these traditions that they have a shared interest in the protection of certain important substantive moral values as well as a shared capacity to suffer at the hands of those who would violate the dignity and well-being of persons and communities.” Sumner B. Twiss, “Comparative Ethics and Intercultural Human-Rights Dialogue,” in Lisa Sowel Cahill and James F. Childress, eds., *Christian Ethics: Problems and Prospects*. Cleveland OH: The Pilgrim Press, 1996, 357-378 at 363.

408 NAS- p. 363.

Indeed, this kind of activity represents a responsible and noble, yet at the same time realistic and grounded approach to the challenges of moral difficulty.\footnote{Sumner B. Twiss, “History, Human Rights and Globalization,” at 62-63.}

As in any process of dialogue, the outcome may be uncertain; this approach clearly involves an element of risk and demands intellectual and moral curiosity to enter into complicated terrain, and stamina to see through to the end. Within the Catholic Church, ecclesial preferences or outcomes may well interfere in the process. One could substitute ecclesiology for the secular pressures which Twiss notes here: “Its weakness is that it involves a wager that might be undermined by political and economic pressures and possibly intractable cultural disagreement at the deepest level.”\footnote{Sumner B. Twiss, “History, Human Rights and Globalization,” at 64.}

In the context of the sexual abuse crisis, I believe that the challenge to respect the victim-survivors’ right to bodily integrity is a positive one, insofar as it spurs the church to a collective examination of conscience, identification of problematic practices, and amendment of purpose. At the same time, recent history shows that the community’s moral compunction to be relatively weak and unfocused, compared to the enormous expenditure of time, effort and money put into protecting the hierarchy and their legal interests. In the decade since the \textit{Boston Globe} investigations, new revelations indicate that local diocesan responses to allegations of sexual abuse still amount to keeping the bishops and their assistants in control of the processes of investigation and removal of...
offenders, and responses to victim-survivors. From the standpoint of US Catholic Church leaders, whatever else protection of the young might mean, duties to victim-survivors seem not to oblige a relinquishment of tight control via credible practices of transparency and accountability. How might rights-claims assist in paving a pathway through “possibly intractable disagreement?"

5.3.5.1 Pragmatic Agreement Revisited: Protection, Interruption, Truth and Due Process

To answer this question, I return to Twiss’ first, somewhat basic level of pragmatic agreement between disputants. I have suggested that at best the Catholic Church in the US finds itself here. This invites a closer look. I suggest that the actual “pragmatic agreements” identified above constitute an essential baseline of obligatory response to victim-survivors’ rights-claims. This is so because these practices are characterized both by protection of bodily integrity of actual and potential victims, and by

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413 In what can only be summarized as a flagrant violation of human rights (to bodily integrity, as well as to due process and freedom from intimidation), the case of “Mark” detailed in 2011 by the Philadelphia grand jury showed that the 2002 reforms were not working. “While the Archdiocese was conducting its internal investigation, moreover, it was simultaneously deciding whether to provide discretionary financial assistance to Mark, leaving him with no practical choice but to go along with the Archdiocese’s flawed process. **Archdiocese representatives gave the abuse victim the false impression they were advocates for his interests**… Mark was led to believe that they were on his side, and had no interest other than helping him achieve healing and justice. In addition, Mark said he was under the impression that Father James Oliver, a canon lawyer who sits on the Archdiocesan Review Board, was “my lawyer.” Mark had, in fact, been deliberately denied a lawyer… Without anyone to look out for his interests, Mark cooperated with the Archdiocese representatives he mistakenly believed were his advocates. He trusted them so much that he gave them permission to obtain his confidential mental health and military records… A canonical expert consulted by the Archdiocese recommended that the Cardinal seek approval from Rome to proceed with the administrative penal process. The reason the expert gave was that Father Brennan had admitted to acts – showing a 14-year-old pornography and sleeping in the same bed with him – that justified his removal as a priest. A full trial was, therefore, unnecessary. Yet, without any valid justification that we can find, the Cardinal ignored the expert’s advice and instead asked the Vatican’s permission to conduct a canonical trial. The trial has gone on for nearly three years. A **prolonged, unnecessary canonical trial has added to the victim’s and his family’s suffering.**” “Report of the Grand Jury,” First Judicial District of Pennsylvania, Criminal Trial Division, Misc. No. 0009901-2008, January 21, 2011, pp. 104-106. Emphasis in the original. Accessed at: [http://www.phila.gov/districtattorney/PDFs/clergyAbuse2-finalReport.pdf](http://www.phila.gov/districtattorney/PDFs/clergyAbuse2-finalReport.pdf).
interruption of status quo ante practices that tended to favor not only unjust clerical protection (for abusers and cooperators) but also continuance of rights-violations visited on sexual abuse victims. Claiming the right to bodily integrity, then, means that the community (and especially its leaders) must not only protect victims from rights-violations, but must stop and undo the kinds of reactions, responses and practices that caused direct abuse, cooperation with direct abuse, and enabling of a clericalist culture providing immunity to the ordained. Moreover, in order to truly respond to the claiming of the right to bodily integrity, these interruptive and protective practices must be immediate and effective.

A survey of just one official prosecutorial document among the hundreds produced so far in the US in response to allegations of sexual abuse in the church indicates a pattern of immediate and concrete obligations. It is important to stress that these obligations, while codified in US law, did not originate there. Rather, these obligations reflect recognition of the human right to bodily integrity, which exists prior to any codification of law, as an essential component of human dignity. On the ground, so to speak, US law enforcement procedures do a triple service of protecting this human right, interrupting behaviors that violate persons, and (as sort of a side-effect) promoting the awareness among the population that persons’ bodily integrity must be respected. In the 2011 Philadelphia Grand Jury Report, recommendations called for protection (prosecution of direct abusers and formal cooperators, and changes in pertinent laws to make prosecution more effective), as well as interruption of prior procedures (by calling for independent legal and therapeutic counsel, as well as verifiability of the allegation.
review process, child protection programs, record keeping and the like). But protection and interruption, as I have identified them, also run hand-in-hand with truth-telling: none of these recommendations work without transparency, verifiability of evidence and data, accountability for actions and decisions, and a fair, transparent and agreed-upon procedure that enforces these protections and interruptions.

So, it appears that the rights-claims of victim-survivors place a duty on the rest of the church to protection, interruption of wrongful and dysfunctional procedures, and truth-telling (often encapsulated in calls for transparency and accountability). These duties, at the same time, reflect the American experience of a society under the rule of law. They collectively contribute to a way of being in social interrelationships, where persons’ bodily integrity is respected (prosecution of sexual abusers), where their freedom from coercion and manipulation is protected (independent counsel), and where truth is told (evidence in court trials; accountability and verifiability at all levels). The measures recommended by this grand jury, or put into place in other parts of the country, partially owe their effectiveness to another feature of the rule of law, the independence of the judiciary.

This leads logically to a final suggestion regarding the rights of the victim-survivors and the correlative duties of the church community. While I have focused here mostly on the right to bodily integrity, the gross mishandling of allegations and horrible treatment of victim-survivors brings to light another human right: the right to due process. It is the formal and procedural recognition of this right, as codified in US law, which brought about truth-revealing procedures leading to the current state of “pragmatic

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agreement,” without recourse to harsh and unjustifiable actions (such as the Terror of 18th-century France) which inflict their own human rights violations on those accused of and responsible for crimes. I suggest that the Catholic Church requires, as a duty to the victim-survivors, meaningful procedures of due process. In addition it seems that some kind of independent, ecclesial judiciary – not directly beholden to the diocesan bishop, but accountable to the community as a whole – would be a necessary component of ensuring due process.415 In these matters, the Catholic Church once again would return to its moral roots in the natural law: the right to due process, like theories of natural rights, was recognized during the Middle Ages as a natural-law limit on the power and authority of the medieval prince (a then-secular ruler whose all-encompassing legislative, judicial and executive powers were remarkably similar to those of modern-day Catholic bishops). Thus the recognition (via the structures of governance) of the rights to bodily integrity as well as due process is not some kind of modern, secular device but rather based in natural law and compatible with monarchical governance.416 Recognition of these rights, as well

415 A recent declaration of the International Commission of Jurists sheds light analogously on the handling of the crisis within the Catholic Church. “The role of the judiciary and legal profession is paramount in safeguarding human rights and the Rule of Law in times of crisis, including declared states of emergency. The judiciary serves as an essential check on the other branches of the State and ensures that any laws and measures adopted to address the crisis comply with the Rule of Law, human rights and, where applicable, international humanitarian law. In times of crisis, the principle of judicial review is indispensable to the effective operation of the Rule of Law. Judges must retain the authority within the scope of their jurisdiction as the final arbiters to state what the law provides. The judiciary itself must have the sole capacity to decide upon its jurisdiction and competence to adjudicate a crisis.” International Commission of Jurists, “2008 ICJ Declaration and Plan of Action on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis.” Accessed at www.icj.org.

416 “Paradoxically the [thirteenth-century] jurists created new doctrines of rights at the same time that they fitted the prince with resplendent rhetorical garments that they fashioned to exalt his authority. We may suffer with the illusion that only democratic societies can create and defend human rights, but history can still provoke surprise. Perhaps the jurists’ conceptions of power may have been a factor that prodded them to place a harness on the prince’s authority. As they became aware of the implications of the doctrine that all positive law resided in the will of the prince, the jurists may have responded to a deeply felt conviction that the right to a trial should not be left solely to his arbitrary will. Whatever their reasons were, the jurists changed their minds about the origins of the ordo iudicarius and the rights of litigants in the judicial process. They began to argue that the ordo was not derived from civil law, but from natural
as necessary governance structures to support them, need not erode episcopal authority, but rather will serve to keep it on track with the natural law. Rights-claims provide solid ethical contours around which ecclesial structures can be reformed, and from which ecclesiology itself can take cues as to the nature of the church.

5.3.5.2 Deeper Levels of Moral Agreement

At this point we can perhaps see why the current level of response to the sexual abuse crisis remains ‘only’ on the level of “pragmatic agreement.” Again, it needs to be emphasized that even pragmatic agreements surely represent a significant improvement, insofar as these agreements block morally unacceptable responses to credible allegations prior to formal, juridical change within the institutional church. The fact that civil authorities forced church authorities to change their tack, without first waiting for a curial green light much less a reform-minded church synod, reminds us how seriously Americans take the right to bodily integrity, both as a moral right and as a legal right. However, although pragmatic agreement regarding this kind of issue – a human right – can be considered essential, it is only a first step. For one thing, the “moral intuition” of many who work in and for the church has been shown to be dysfunctional or even pathological. Why, with civil authorities on the alert, with newspapers dispatching their brightest to unearth allegations and decades of cover-up, and grand juries conducting investigations, do church officials still persist in trying to make a system work on their own terms? I believe the answer lies in ecclesiological commitments and attitudes that

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literally place all responsibility, governing power and decisions in the bishop’s hands. With such commitments running so deeply as to be ingrained in habits of action, perceptions of reality and values held dear, they influence many church officials’ “moral intuitions” for the worse and render meaningless attempts at consensus. These commitments in turn negatively influence attitudes toward consensus (overlapping and otherwise). Consensus can be a problematic sticking-point if the bishop is seen as the sole authority, needing only to make moral pronouncements for others to follow. A decent process of consensus clearly ought to make room for the bishop’s distinctive authority as ruler of the local diocese; at the same time the equality of the bishop with everyone else in regards to matters of the body and human rights underscores the bishop’s authority to guarantee the right to bodily integrity for all. But certain views of church authority disparage consensus-building on the basis of equality of bodiliness as contradictory to the church’s self-understanding because they unnecessarily conflate this natural equality with a collapse or diminishment of hierarchy.

By contrast, pragmatic agreements, when firmly put into place, may have a beneficial, long-term effect on persons as they adjust to living under them (or, if they are young enough, they begin to take this ‘new normal’ for granted). So, once it becomes

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417 It was precisely on this point that several American cardinals belittled and condemned the Catholic Common Ground Initiative, established by their brother cardinal, Joseph Bernardin of Chicago for the sake of candid discussion of issues polarizing the US Catholic Church. “If there was any doubt that the American church was riddled by the kind of suspicion and conflict that the Common Ground Initiative set itself the task of healing, the reception given the initiative ironically provided more than ample proof…” Within hours of Bernardin’s announcement of the Common Ground Initiative, Cardinal Bernard Law of Boston publicly criticized it… “The fundamental flaw in this document,” Cardinal Law stated, “is its appeal for ‘dialogue’ as a path to ‘common ground.’ The church already has ‘common ground.’ It is found in sacred Scripture and tradition, and it is mediated to us through the authoritative and binding teaching” of the church. “Dissent from revealed truth or authoritative teaching of the church,” the cardinal said, “cannot be dialogued away. Truth and dissent from truth are not equal partners… Dialogue as a way to mediate between truth and dissent is mutual deception.” Several years later, Cardinal Law resigned in disgrace from the Archdiocese of Boston, having admitted to manipulating the truth to his interests in concealing sexual predators and reassigning them to new parishes.
clear that sexual abuse of children and concealment of clerical offenders are no longer tolerated, and are always subject to swift justice – even if this is enforced by secular authorities external to the Catholic Church – Catholics may begin consciously to question notions of clerical immunity and cultures of clericalism. “Were there factors of a clerical culture which somehow facilitated disastrous abusive behavior for so long? Was it just through bad decisions by bishops or superiors? Was there knowledge of behavior which should have given rise to concern and which went unaddressed?”

These kinds of moral questions are given the approbative space to arise and to be explored because of the pragmatic agreements put into place by law enforcement. If such questions and associated intuitions are given room to grow, then they in turn could lead to a deeper consensus along the lines of a comprehensive, restorative justice consistent with the church’s self-understanding as a community of disciples. “Then the Church becomes a restorative community – a restorative community for all… A precondition for the Church’s providing a service of spiritual healing to victims is that the Church learns to be a truly restorative community, a community which welcomes and accepts the wounded into its community on their terms.”

This kind of acceptance must run very deeply and show itself actively, on the part of all Catholics, in order to become a living reality.

Notions of restorative justice are appealing to Catholics – the US bishops included – but it is contrary to the idea of restorative justice to assume that the church

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419 Ibid. Emphasis added.

420 It is ironic, to say the least, that the US Catholic bishops issued authoritative statements on restorative justice in the US in a time period contemporaneous with the latest phases of the sexual abuse crisis. From my analysis of their statements on sexual abuse (Chapter One) from 2002-07, I would have to conclude that most bishops kept their truly prophetic stance on restorative justice separate from their
community can simply ‘leapfrog’ to that state without achieving some very concrete
goals first on levels analogous to Twiss’ overlapping consensus and cross-cultural
dialogue. While a full exploration of restorative justice in the church is beyond the scope
of my investigation, nonetheless there is a relevant point here. That is, it is difficult to
imagine that a state of restorative justice can be reached on the basis of “pragmatic agreements” alone; the very notion of restorative justice suggests, in Twiss’ words,
“agreement all-the-way-down,” on the basis of “moral principles or rules, shared
understandings of key human moral capacities (e.g., sympathy, compassion), and shared
human vulnerabilities to suffering and oppression.”421 Twiss adds a key qualifier: “so long as their most important legitimate constitutive values are not undermined.”422

Is the Catholic Church anywhere near either an “overlapping consensus” or even an internal “cross-cultural dialogue?” A case can be made for an overlapping consensus, albeit on an abstract theological level not yet articulated in structures and procedures of church governance. At least theoretically, the Catholic Church recognizes the fundamental baptismal equality of its members, and this equality does not simply translate into a basic sort of mutual respect among Christians, but rather has content that
could affect the authoritative handling of church matters (such as responses to sexual abuse allegations). What is this content? It is that all members of the church are baptized governors of the church. An ecclesiology overly focused on the hierarchy tends to overlook Vatican II’s theological assertion that all members of the church are baptized into Christ as rulers (as well as teachers and sanctifiers). Similarly, an ecclesiology that simplistically places clergy and laity into rigid and fixed categories of ‘doers’ and ‘receivers,’ respectively, of the graces of the church wrongly minimizes the absolutely crucial role of natural right – subjective judgment and free, personal discernment on moral action – in the properly free and graced responses of all persons to interpret and follow natural and divine law.\(^{423}\) Without the space to exercise their natural rights, the people of God might as well be construed as a population of robots.\(^{424}\)

Now, baptismal governance (as well as baptismal priesthood and baptismal teaching/prophhecy) to be sure is not the same as the proper governance of the church by ordained clerics. But neither ought it be devoid of meaningful, effective content either – whatever it means, it certainly does not establish ecclesial lay participation in terms of merely helping out with whatever the pastors want, and rubber-stamping clerical decisions. That kind of ineffectual collaboration led to families’ functional helplessness in interfering with priest-offenders at large in their parishes. However, while concrete

\(^{423}\) Thus, an off-the-mark ecclesiology might stress that the faithful “exercise that priesthood in receiving the sacraments,” without also taking seriously the implications of the rest of the sentence “in prayer and thanksgiving, in the witness of a holy life, and by self-denial and active charity.” *Lumen gentium*, no. 10, emphasis added.

\(^{424}\) As Karl Rahner memorably phrased this point, in referring to conscience as an essential aspect of human dignity, But if people are not aware of the exalted dignity of conscience, of the individual’s ultimate responsibility before God, or one’s irresistible yearning for God, all objective morality and every instance of living up to it would, in the final analysis, be nothing but a higher kind of dog training that is unworthy of human dignity and unworthy of God.” Karl Rahner, “Conscience,” in *Theological Investigations*, vol. 22, 1-7 at 6. Limerick, Ireland: Mary Immaculate College, 2000.
structures of baptismal governance wait to be established – and the want in this regard is glaring -- at least there exists on the theoretical level an “overlapping consensus” on the basis of fundamental aspects of the ecclesiology of Lumen gentium.425 Because they are baptized governors of the church, the laity have the right to be involved in church governance in ways that protect, or interrupt practices harming, the bodily safety of their children.

From here, outlines of other salient areas of moral response in the church begin to emerge, like invisible ink held up to a warm light bulb. We can see why certain kinds of social interrelationships in the church are the source of the problem; and we grasp the fundamental nature of governing authority as a dynamic relationship with the governed -- themselves seen as proper authorities in limited matters or tasks -- rather than as a masterful imposition of the will of the rulers on the ruled in all things. Insofar as Catholic Church governance enables mastery, it ought to be changed to enable a healthy authoritative relationship responsive to the proper role of the governed (“the other faithful”) in contributing to a governing convention. Furthermore, natural rights indicate a level of precision and urgency – these are the areas of church governance to address, and they need to change now – unavailable to otherwise dutiful persons simply wishing to institute ‘best practices’ in church governance. Within the parameters of the claim-right to bodily integrity, various types of healthy interrelationships could be imagined among “pastors and the other faithful,” and ought to be encouraged. As an example of a creative response combining insights from the ecclesiological spectrum, the actual structures of

425 “These faithful are by baptism made one body with Christ and are constituted among the People of God; they are in their own way made sharers in the priestly, prophetical and kingly functions of Christ; and they carry out for their own part the mission of the whole Christian people in the Church and in the world.” Lumen gentium, no. 31.
Catholic Church governance could remain monarchical insofar as a monarchy supports the theology of the bishop as governor of the local church.

However, such a monarchy also would be constrained by laws and practices upholding natural rights, and would be shaped and influenced by the church’s baptismal governors in structural meta-levels of governance, such as those described in Chapter 3. There, I noted the ancient tradition of local election of the diocesan bishop as one example. Another example taken directly from the sexual abuse crisis includes the National Review Board and all the local diocesan review boards. These boards ought to have the power and authority to gain access to personnel files, and ought to have legitimate ways to challenge, and even “interrupt” diocesan and episcopal decisions and procedures within recognizable limits (i.e., on matters regarding sexual abuse allegations, alleged offenders, and responses to victims). Their authority in these matters, far from supplanting the authority of the bishop, actually supports it, because they help to ensure that episcopal judgments and decisions regarding sexual abuse allegations follow accountable and transparent procedures for justice. By so doing they maintain episcopal authority as credible.

Does there exist the possibility for this kind of consensus to go “all-the-way-down” in a kind of internal “cross-cultural dialogue?” I believe that there is, on the basis of a right (and duty) considered so fundamental to being Christian that it is often overlooked as a right. This is the right to seek salvation. Again, the foundation for this right is not only the general belief that human persons are created to serve and seek God as their final end, but also that those reborn and re-created in Christ comprise “but one people of God… they are in their own way made sharers in the priestly, prophetic and
kingly functions of Christ.” But salvation in and through the Catholic Church ought not be seen merely as a passive reception of dogma and sacraments – these are necessary but insufficient. Salvation includes the active response of Christians to God’s grace, which takes place in and through their attempts “to live in conformity with God’s law” – actions dependent upon each individual’s “exercising his inherent ius, a faculty or power in accordance with reason.”

But a Christian’s moral responses to God’s law – such as the exercising of natural rights – are not private, individual actions, but occur within the community of the church, and, since the members of the church in history are human persons, involve basic exigencies of being human (not some kind of ‘spiritual life’ dualistically disconnected from the human, the relational and the physical). On this basis I have argued that the victim-survivors of sexual abuse in the church claim a right to bodily integrity that places a duty on the rest of the church to effectively reform all those ways of behaving – from the individual and personal to the multivalent and structural – that contributed to the crisis. But there are other ways in which the church already recognizes rights associated with basic features of humanity essential to seeking salvation. The medieval-era breakthrough in recognizing the rights of consent to marriage, associated with a sacramental theology that construed marriage and the faithful sexual relations of marriage partners as holy, also laid the foundation for additional rights concerning the natural result of marriage and sex: children and family. Thus, parents are the first and primary educators of their children, and have the right to see that their children receive a Christian

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426 Lumen gentium, nos. 13, 31.
427 Brian Tierney, The Idea of Natural Rights, at 228.
education, including discerning the manner in which that education is to take place.\footnote{428} This education is depicted in canon law as active and fruitful, implying continuous personal growth throughout life by means of exercising a free and thinking response to God’s grace.\footnote{429} Thus, it is arguable that on the basis of already-established parental rights within the church, parents ought to have the power and authority to establish and oversee independent, transparent and accountable procedures for addressing grievances in matters affecting their children. Like the example of the diocesan review boards, parents should have the power, within limits, to interrupt regular church business if the latter contributes to harms such as human rights violations. It is their right to do so, not only to protect their children, but also to ensure a Christian education – for how can children freely accept the faith of the church – much less “develop their physical, moral and intellectual talents harmoniously” -- if the official leaders of the church rape them and lie to them? Yet, if parents’ claims to rights of education are able to block such behavioral patterns, then the official clerical governing authority of the church, by being held to the right course of action rather than enabled in sinfulness, is strengthened.

Thus, honoring fundamental natural rights in the church implies support for essential human interests. As Brian Tierney notes regarding the medieval theologian Jean Gerson’s work, “[f]or the individual Christian to reform himself, to renew “the

\footnote{428} “Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to local circumstances.” Canon 793 §1, \textit{Code of Canon Law}. Accessed at \url{www.vatican.va}.

\footnote{429} “Since true education must strive for the complete formation of the human person that looks to his or her final end as well as to the common good of societies, children and youth are to be nurtured in such a way that they are able to develop their physical, moral and intellectual talents harmoniously, acquire a more perfect sense of responsibility and right use of freedom, and are formed to participate actively in social life. Canon 795, \textit{Code of Canon Law}. Accessed at \url{www.vatican.va}. 

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spiritual life of the soul,” he had to follow divine and natural law (*lex*); but in order to do this he needed an innate power or faculty by which he could discern this law and fulfil it (*ius*). In the sexual abuse crisis not only did direct offenders forcefully harm their victims, but they and their cooperators also misdirected victim-survivors and their advocates seeking justice. In other words, the victim-survivors’ exercise of their right (*ius*) – their power to identify, pursue and morally claim a course of action – was stifled by being rebuffed by appeals to narrow interpretations of codified *lex* and also by silence, by secrecy and by elevating abstract ideals of the church’s good over the individual members without whom the church would not exist. In present-day practice in the Catholic Church I suggest deliberately using the term “natural rights” instead of “human rights” so that differences with some modern philosophies of rights (such as those rejecting overarching moral systems such as natural and divine law) might be underscored. Granted there is some overlap: a natural or human right is a claim “stemming from the individual’s power to constrain the behavior of others vis-à-vis himself, or to compel some performance from the other, again relevant to the agent himself.” Within the Catholic Church, however, natural rights and their moral urgency point directly towards a fundamental theological doctrine: the image of God in which all individual persons are created. From this basis the authority of church leaders can be placed in a proper perspective; it is simply not true that all moral interpretation in the church community must be funneled first through the hierarchy. Individuals can make claims against the prevailing practices of the larger group, because “the natural right,

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understood as the capacity for free, reasonable judgment and action… represents the image of God in which each human being is constituted." Rights would lose meaning and saliency if they referred to simply any person’s whim or fleeting desire; rather, rights have force precisely because they specify those areas of natural, created human dignity and expression without which persons’ free expression of their humanity is impeded.

I have suggested that an internal kind of cross-cultural dialogue among persons holding a variety of ecclesiological interpretations could take place in the Catholic Church by connecting human rights practices with a fundamental right to seek salvation in the church. This fundamental right – precisely as a right – involves the recognition that God’s grace operates within the persons God has created at the level of fundamental moral responses. But probing only a bit deeper, these fundamental moral responses can be seen not as abstract ideals but concrete incarnations of elements deemed essential for human dignity, such as bodily integrity and graced self-disposal of the body. So, addressing the need for justice for victim-survivors in the church is closely connected to their desire and right to seek salvation. The pursuit of something like restorative justice in the church, then, could not be more aptly named, for the ultimate restoration of human persons is going to look like a community in true communion with itself and with God, based on truth and trust, and both mirroring and drawing life from the ultimate communion of the Holy Trinity. However, the very nature of contemporary practices of restorative justice requires full disclosure of the truth, an honest listening to the laments

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and needs of the victim-survivors, and concrete steps put in place to ensure that the community does repeat its errors – in other words, it requires meaningful structural and personal change. The moral force of the natural right to bodily integrity carries with it, then, divine approbation to “keep your precepts with care. May my ways be firm in the observance of your laws!” (Psalm 119: 4-5, *NAB*).

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CHAPTER 6:
TOWARDS AN ETHICS OF RESTORATION IN THE CATHOLIC CHURCH

The sexual abuse crisis in the Catholic Church in the US has laid out, for all to see, a Christian community so filled with personal sins and structural flaws that it enabled the ongoing rape and molestation of thousands of young persons for decades. What is more, a deeply-held understanding of the church as entirely dependent upon the ordained in order to function at all promoted responses of defensiveness of clergy and secrecy regarding their actions, rather than shame, sorrow and truth-seeking. This move also must be seen in light of lay codependency that enabled it and cooperated with it. The ethical fallout from promoting such an ideal of the church has been the moral immunity of clergy, even in matters as serious as the breach of a fundamental moral precept and the violation of human rights. Hence for years victim-survivors’ allegations were discounted, minimized or ridiculed. The ethical challenge for a church community so formed to privilege the clergy has been, first, to confront and accept the truth that priests and bishops were sinning. The second ethical challenge came hard on the heels of the first: that there seemed to be no mechanisms internal to the church to get them to stop, to protect Catholic youth, and to rectify underlying contributing causes to the widespread sexual abuse of minors.

The retracting of clergy into a church defined by and based on ordination is an old script in the Catholic Church, still prevalent enough to emerge at the start of Vatican II.
Ecclesiologist Richard R. Gaillardetz’s observation regarding the first (and quickly rejected) draft of Vatican II’s constitution on the church could easily be transposed to describe problematic structural flaws contributing to the sexual abuse crisis. The only difference is that the object of the church’s defensiveness is allegations and prosecution rather than the various ‘isms’ of modernity:

The emphasis was on an institutional structure that presupposed a rigid distinction between clergy and laity and considered the mission of the Church in light of the siege mentality that had become prevalent. The principal mission of the Church was to defend itself against the evils of Protestantism, secularism, communism and indeed, modernity itself. During the first session of the council Bishop de Smedt of Bruges summarized well the shortcomings of this draft when he accused it of triumphalism, clericalism and juridicalism.434

This juridical-clericalist ecclesiology contrasts greatly with that which finally emerged in Lumen gentium. Instead of collapsing the sacred into the sacerdotal, and ignoring the vast majority of Catholics who are not ordained, Vatican II recognized the authentic role of the laity in the church’s mission as “sacrament of grace” and instrument of God’s unmerited love, and also made the important distinction that the church at the same time is sinful and in need of healing – a “recipient of grace.”435 These ecclesiological ‘advances,’ however, were anything but new; they reflected a retrieval of Christian theologies of the church based on scripture and the patristic tradition.

But the Catholic Church, in its structures of governance has largely failed to live according to its own self-understanding. By 1990 Edward Schillebeeckx lamented the lack of progress in “assimilation of the teaching of Vatican II into the daily life of the Church… “[P]recisely those elements in Vatican II which were ‘new’ in comparison to


435 Gaillardetz, Teaching With Authority, at 18.
the post-Tridentine life of the church and its ecclesiology have not been given any consistent institutional church structures by the official church.”

The fact that this lament could well be voiced today in response to the sexual abuse crisis, leads me to concur with Gaillardetz on the matter: “It is useless to speak of real communion within the Church if there are no concrete manifestations of communion in which authentic conversation and consultation can take place.” By way of a conclusion, then, I draw attention to the role of ethics within the church – a kind of intra-ecclesial ethics informing both the personal and the social dimensions – and identify salient points to consider in any meaningful kind of church ethics providing moral foundation to communion within the church.

6.1 Precept, Rights and Ecclesial Governance

The ecclesiological principle of communio conveys the sense of a kind of intra-church flourishing, where individual charisms find harmonious and mutually-uplifting expression in the church’s mission. It is concretely impossible, and theologically heretical, to consider communio as a merely ‘spiritual’ reality as though the members of


437 Bradford Hinze observes a kind of “lament” ongoing in the Catholic Church since Vatican II, where communion characterized by dialogue has not only not been realized in structures of governance, but also in the other two munera. “In the pre-Vatican II era, this structure of ordained and nonordained came to be instantiated in paternalistic and polemical hierarchical modes of relation and communication. Equally important, this particular pre-Vatican II design has remained to some degree intact, even as the new dialogical design has been sketched and practices have been retrieved and reformed, or newer experiments have taken place. After four decades, the outstanding question remains whether and, if so, how the two structures, like two architectural styles, can be integrated without one being violated. The frustration felt by many is that dialogical approaches to teaching, governance, liturgy and service that the council promised have not been realized. The fear is that they will not and cannot be realized.” Bradford E. Hinze, Practices of Dialogue in the Roman Catholic Church: Aims and Obstacles, Lessons and Laments. New York: Continuum, 2006, at 5.

438 Gaillardetz, Teaching With Authority, at 282.
the church, when they are ‘in’ church or doing the church’s work, have sloughed off their human needs and become, say, angels. In referring to the church as a “community of disciples” (Chapter Four), it seems that an additional qualifier needs to be added. Joseph Komonchak saw the need to theologically develop what was latent in Avery Dulles’s naming of the church as a “community of disciples.” Komonchak pointed out that this phrase is no mere model, as had been Dulles’ wont from his earlier book, but actually is an identifier for the church. This trajectory of thought can be continued. What kind of disciples are we talking about when we call the church a “community of disciples?” Are these disciples angels, spirits with no bodies, perfectly sinless human persons? If so, then the church itself has no room for most of us who call ourselves Catholics. Indeed, if the church is composed only of the perfect elite, it might as well be composed of space aliens, for it will have nothing to do with human persons created from the dust of the earth.

That is why, if I might be so presumptuous as to develop both Joseph Komonchak’s and Avery Dulles’ insights, I would have to redefine this nugget term for the church as a “community of human disciples.” We are not a community of angels or space aliens or Gnostic elites. Being human is, admittedly, what makes us susceptible to sin. But it must not be overlooked that being human is also what makes us responsive to grace as well. As Komonchak notes elsewhere, “[t]he church is the human community called into existence by the word of God and the grace of the Holy Spirit, and constituted by the common faith, hope and love of its members.” Komonchak immediately adds in
qualification of this human-and-graced community, “[i]t defines a distinct sphere of social relationships.”

Therefore, whatever communio is going to look like when it is realized, it is going to be composed of human persons, with their beauty and faults, in social relationships. And these social relationships are governed, ethically, by fundamental moral concepts such as the Sixth Commandment, as well as by the authority inherent in each person as identified by their human rights. Thus it behooves Catholics to understand and respect the ways that humans interact in common social relationships, such as the relationship between authoritative rulers and the governed – so that these interrelationships may provide a moral foundation for the community of disciples. This project has been an attempt to explore the complex nature of the social interrelationships in the Catholic Church, especially as this concerns the authority of the church’s leaders and the authority of all members of the church in their human dignity. I am not calling for a reduction of communio to ethics, but rather am observing that ethical social interrelationships must be continuous elements of it.

The sexual abuse crisis demonstrates why the “lack of concrete manifestations of communion” is not merely a matter of failing to practice sound ecclesiology or of laziness in creativity and implementation of the vision of Lumen gentium. This lack within the Catholic Church may arise not from a poor grasp of the theology of Lumen gentium at all, but rather from a poor grasp of the nature and the ethical requirements of a society of persons in interrelationship with their authorities. It would be odd, disrespectful and shameful to suggest that a communion of believers can be realized in a

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community where certain classes of persons are routinely excused from observance of fundamental moral obligations and the consequences of culpable wrongs, or in a community that enables human rights violations. That is why sensitivity to and observance of moral obligation will be essential prerequisites for *communio*.

Ecclesiology is connected to ethics not simply as a structural requirement, however. The same resources upon which *Lumen gentium* drew its vision – scripture and the Catholic tradition -- are the same broad resources which provided guidance for Christians discerning and inquiring regarding matters of right behavior, social interrelationships, and the moral ordering of individuals and the community to our final end. It is to scripture and tradition that Catholics throughout the centuries have made appeal in developing theories of natural and divine law, and, as I have argued here, a Thomistic theory of natural law and a scholastic-canonist theory of natural rights assist us well in this matter even today.

My investigation was limited to a narrow focus: the role of fundamental moral precepts and human rights in that relationship called governing authority. There are many ways in which ongoing research in intra-ecclesial ethics is called for. These would include the theology and ethics of all three *munera* – governing, teaching and sanctifying – considered as intertwined within the church’s mission but also as distinct between the episcopal *munera* of the church’s pastors and the baptismal *munera* of “the other faithful.” As a salient point for further research, I would advocate ongoing investigation into that response-in-ongoing-relationship to authority I identified as the ‘invention’ of authority, and its role in the baptismal *munus* of governance. I also suggest for further investigation the communal movement from minimalist convention consent to full-
bodied endorsement consent built on strong, mutually supportive ties between ruling authorities and the governed. It seems that one hallmark of real *communio* is the presence of endorsement consent, such that this might help the community to gauge whether its governing convention really does have strong ties – or whether such communal strength is mere rhetorical idealization. How might the Catholic Church develop its own legitimate form of endorsement consent, and how would this offer a Christian example of community to the rest of the world? My analysis has made only a few references to Catholic social teaching, and this would be another salient area for additional investigation. For the most part Catholic social teaching has been developed as an idiom for application *ad extra*, so that the church might do its part to ensure peace and justice among the world’s peoples and nations. How might the principles of Catholic social teaching be applied within the church itself; how do these principles apply to the *munus regendi* within the church itself?

6.2 “We Are All Patrick McSorley”

But perhaps the most salient area of further research concerns the development and application of restorative justice in a church rent by decades of sexual abuse of minors. In conclusion to my investigation I shall offer some thoughts about the prospect for restorative justice in the church.
Recently an informed commentator expressed moral outrage at the sexual abuse crisis and the relative silence of ordinary Catholics at the horrible abuse suffered by thousands of children by asking, “Where is Catholicism’s Tahrir Square?”

But Tahrir Square, the focus of the 2011 ‘Arab Spring’ aimed at political liberation and named after the Cairo square from which popular protests were channeled and spread, did not just happen. It was preceded by a gripping and widespread moral intuition. Across the Arab world and especially in Egypt thousands and millions of people began to wake up and realize “We are all Khalid Said.” Said, an innocent victim of oppression, allegedly had been pulled out of a café by Egyptian police, who brutally beat him to death. A Facebook page, featuring his face grossly distorted and barely recognizable from his abusive treatment, was created with the title “We are all Khalid Said.” What happened next was that millions of people who had once been strangers made a connection. They saw themselves in Said, and through him, saw themselves in each other. They began to demand respect for human rights in Egypt, and accountability and transparency in the government including the ouster of the president and other ruling authorities.

I do not know why the story of Patrick McSorley, one of the hundreds of victims of the notorious serial predator Father John Geoghan, touched me. Perhaps it was because by the time I read his story, my own children were close to his age at the time of


441 Cf., http://www.facebook.com/elsaheeed.co.uk

Geoghan’s abuse of him. Surely a simple factor was that his was one of the stories among hundreds selected and highlighted in the Boston Globe staff’s publication. But it was also McSorley’s own later initiative as an adult, displaying fortitude to stand publicly as a victim-survivor, providing encouragement and empathy to others alone and trapped in their memories of abuse, that put me in awe of the human spirit, working with (I believe) the grace of God and despite acute suffering, to stand up for oneself and courageously confront the culpable. Finally, McSorley’s untimely death, of an overdose of drugs taken keep the worst of the memories from resurfacing, brought the story full circle. Sexual abuse by a Catholic priest started a vicious cycle from which he was never, in this life, completely able to recover.

For restorative justice to happen in the church, Catholics cannot simply jump to some kind of Tahrir Square moment without prior understanding, connection and

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444 “McSorley became a vocal and angry critic of the archdiocese's handling of the settlement negotiations. He attended the deposition of Cardinal Bernard F. Law, who resigned as Boston archbishop in 2002, and often appeared at news conferences about the explosive clergy-abuse scandal. McSorley directed some of his harshest criticism at the archdiocese's past practices of transferring abusive priests among its parishes, instead of removing them from positions in which they could interact with children. At one of Law's depositions, he refused to shake the cardinal's hand. David Clohessy, national director of the Survivors Network of those Abused by Priests, was choked with emotion yesterday when he spoke about McSorley's effect on the effort to expose clergy abuse and negotiate a settlement with the Archdiocese of Boston. "By his example, he gave so many others the courage to come forward and to persevere over such a draining but ultimately successful legal struggle," Clohessy said.” Brian MacQuarrie, “Vocal Critic of Abuse by Clergy Found Dead,” The Boston Globe, February 24, 2004. Accessed at http://www.boston.com/globe/spotlight/abuse/stories5/022404_mcsorley.htm

445 “To think he had come this far and just to have it end so abruptly -- it's a tragic ending,” said the friend, Alexa MacPherson, 29, also a victim of clergy sex abuse. "Many of us try to forget the memories. His choice of action was to drink and to use drugs to try to escape the pains that he felt and the memories that he had.” MacPherson said she brought McSorley to many drug-rehabilitation centers and hospitals in a long-running, unsuccessful attempt to help him overcome his substance abuse. However, McSorley could not shed the troubling aftereffects of Geoghan's sexual abuse, she said... "It's something that you never get over," MacPherson said. "Once it happens to you, it's with you for the rest of your life, and that's an unfortunate fact for all of us.” Brian MacQuarrie, “Vocal Critic of Abuse by Clergy Found Dead.”
conversion. Restoration cannot begin until Catholics are able to somehow to make a deep connection with the victim-survivors. Our “Tahrir Square moment” must be preceded, as it was analogously with the Egyptians, by our own humble-yet-empowering conviction that “we are all Patrick McSorley.” This identification is, I suggest, a fundamentally spiritual one; or perhaps more precisely it is one of those deeply true experiences where the human and the spiritual vividly come together. It also helps to illustrate why advocacy for human rights, from a Christian perspective, is not just about doing the right thing in regards to mere human interests or necessary benefits. Human rights advocacy is, for Christians, about honoring the image of God in all persons, an image each of us can recognize because we share it. By so identifying with Patrick McSorley, and all the other victim-survivors of sexual abuse in the Catholic Church, his right to bodily integrity becomes our right, his dignity our dignity, his wounds our wounds.

Yet it is also very human to resist thinking like this. Sexual abuse is deadly in this way, concealing its harm in internal bodily organs, the psyche and the soul. It is one of the easiest of crimes to hide away, since it thrives in customary, if dysfunctional, systems of human interrelationship; moreover, memories of sexual abuse incidents are often driven underground by the human psyche, only to resurface years later. But as Catholics embrace the crucified body of Christ, broken from our sins, they ought to recall that at least one person besides Patrick has already affirmed his dignity and made that identification. It is Jesus Christ, identifying himself with the least and the broken and the weakest (Mt. 25:31-46), who has already said, “We are all Patrick McSorley.”


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