

TRANSPARENCY and Secrecy Within the Catholic Church

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PREFACE

THE PROBLEM WITH THE PROBLEM OF SECRECY

by Russell Shaw

In setting out some years ago to write a book about the problem of secrecy in the Church,¹ I discovered at the start that Catholic theologians had little or nothing to say about it. When I consulted one prominent theologian about sources, he told me secrecy was a canonical issue, not a theological one, and I should look in canon law. When I looked in the *Code of Canon Law*, I found canons dealing with the confidentiality of Church records and things like that, but nothing about the abuse of secrecy in the Church. To be sure, moralists have written a great deal over the centuries about truth-telling and lying, but that is a different matter. And the abuse of secrecy is nowhere to be found on the theological radar screen.

Now, why is that? My guess is that it reflects the fact that the abuse of secrecy in the conduct of ecclesiastical affairs has come to be considered simply just part of the way things are done, almost as if secrecy arose from the very nature of the Church and the words "Go into all the world and preach the gospel"² had never been spoken. But they were spoken. As far as I know, Jesus did not say, "Go into all the world and keep quiet about what you are doing." Yet sometimes we have acted, and act now, almost as if they were. And against this background I am delighted that this book by Father Rolando Montes de Oca and Father Jordi Pujol breaks the silence and makes an important contribution to the discussion of transparency and secrecy.

1. R. SHAW, *Nothing To Hide: Secrecy, Communication, and Communion in the Catholic Church* (San Francisco: Ignatius Press, 2008).

2. Mk 16:15d.

The book I wrote — now, more than a decade ago — does not take an exclusively negative view of secrecy. As a matter of fact, it makes the case for secrecy and does it quite well. The seal of confession is the strongest example of strictly obligatory secrecy in the Church; current efforts in several countries to override this sacred imperative in the name of rooting out and punishing sex abuse, though perhaps understandable, are deeply alarming. There is also a serious obligation of secrecy in pastoral counseling situations. Furthermore, the Church has the same right to confidentiality to protect its legitimate financial and administrative interests that any other institution has, along with the obligation it shares with other groups to respect people's privacy rights.

Thus, the argument advanced in my book is not that the Church must make a total disclosure of everything. Rather, it is that the presumption in doing the Church's work should be in favor of openness and accountability, with the burden of proof in any particular case resting with those who favor secrecy.

It goes without saying that the Catholic Church is hardly the only institution in which secrecy is abused. This problem exists in government, the military, and the private sector — wherever the people in charge use secrecy to cover up wrongdoing and mistakes by themselves or their subordinates, or simply as a tool for exercising control over others, or just because they find it convenient not to have to explain what is going on to those who do not belong to the "in" group. Still, the fact that the abuse of secrecy is common among members of the leadership and management class in many institutional settings is important to understanding the same phenomenon as it is found in the Church.

At the same time, however, it is reasonable to ask whether there anything *special* about the abuse of secrecy in the Church. The answer, I believe, is both *yes* and *no*. It is *no* just to the extent that the same sort of abuse of secrecy is practiced in so many other contexts beside the religious one. Ethicist Sissela Bok expresses the problem in general in these strong terms:

When linked, secrecy and political power are dangerous in the extreme. For all individuals, secrecy carries some risk of corruption and irrationality; if they dispose of greater than ordinary

power over others, and if this power is exercised in secret, with no accountability to those whom it affects, the invitation to abuse is great. . . . In the absence of accountability and safeguards, the presumption against secrecy when it is linked with power is therefore strong.³

What is special about the abuse of secrecy in the Church becomes clear when one asks oneself who exercise “power over others” in the ecclesial setting. Historically considered, the answer, both *de facto* and *de jure*, is clear: Within the Catholic Church, power over others is exercised by the members of the clerical hierarchy, as well as these days to some extent by their lay and religious collaborators. And this is to say that the abuse of secrecy in the Church is intimately bound up with clericalism.

Some years ago, I also wrote a book about that problem.⁴ As with the book about secrecy, so also with the book about clericalism, I discovered that not much had been published about the subject. Of course, since the eruption of the scandal of clergy sex abuse and its concealment by bishops and religious superiors, that has changed, and more and more voices have been raised in condemnation of clericalism. The National Review Board, an entity established by the bishops of the United States to monitor their efforts to deal with the crisis, spoke for many in a report on the “causes and context” of the sex abuse scandal published in February 2004:

Some witnesses likened the clerical culture to a feudal or a military culture and said that priests and bishops who “rocked the boat” were less likely to advance. Likewise, we were told, some bishops did not want to be associated with any problem for fear of criticism because problems arose on their watch. As a result, problems were left to fester.

And the report left no doubt about the link between clericalism and secrecy.

In many instances, Church leaders valued confidentiality and a priest’s right to privacy above the prevention of further harm

3. S. BOK, *Secrets: On the Ethics of Concealment and Revelation* (New York: Vintage Books, 1989), 126.

4. R. SHAW, *To Hunt, To Shoot, To Entertain: Clericalism and the Catholic Laity* (San Francisco: Ignatius Press, 1993).

to victims and the vindication of their rights. Both confidentiality and privacy are valuable.... But these values should not be allowed to trump the duty to keep children safe from harm.⁵

Needless to say, we have paid a very heavy price for ignoring that counsel. The case of former cardinal Theodore McCarrick is emblematic. Here was an instance, at a very high level in the hierarchy, where secrecy and clericalism worked in tandem to produce a disaster for the whole Church.

As that suggests, there is a special dimension to the abuse of secrecy in the Church in that it undermines the Church considered from the viewpoint of *communio*—that is, as a hierarchically structured communion or community of faith in which all the members are fundamentally equal in dignity and rights.

When I first became conscious of the abuse of secrecy in the Church as a serious problem, I saw the situation simply in pragmatic terms. As the person responsible for the media relations of the episcopal conference of the United States, I had become convinced that unnecessary secrecy on the part of the bishops was harmful to their own best interests by provoking continued tension and conflict between them and journalists. As time passed, however, I came to realize that the reasons for openness and accountability in the Church went far beyond merely improving their relations with reporters and facing up to the harm being done by secrecy to communion within the Church. A secretive ecclesial community is a handicapped ecclesial community; we are dealing here not merely with a problem in media relations but with a fundamental issue in ecclesiology, touching directly on the nature of the Church itself.

In any group or community, communication among the members is necessary for the group's health and good functioning, and that is certainly true of the Church. But what is at stake in the Church is something even larger. Back in 1971, the Pastoral Instruction on Social Communications, *Communio et Progressio*, published by what was then called the Pontifical Council on Social Communications, made the important point

5. National Review Board, "A Report on the Crisis in the Catholic Church in the United States," in *Origins* (March 11, 2004).

that members of the Church have “the right to all the information they need to play their active role in the life of the Church,” a right that extends to both “the faithful as individuals and as organized groups.”⁶

Plainly, of course, ecclesial communion has a vertical dimension: It begins in and is grounded in the relationship with God, and the primacy of this vertical dimension must always be recognized and respected. But ecclesial communion also has a *horizontal* dimension to which the statement of the Pontifical Council for Social Communications and other, similar statements by the Holy See point: It involves the human relationships among us who are members of the ecclesial community. The systematic abuse of secrecy and other offenses against open, honest communication in the conduct of Church affairs conflict with this basic principle of ecclesial communion by denying some members of the Church information that they need in order to be full, active, responsible members.

Recognition of this fact is far from universal even now. Progress is slow, but it is occurring, and this book contributes to it. I hope its message will be widely heard and taken to heart.

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6. PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS (PCCS), Pastoral Instruction *Communio et Progressio* (May 23, 1971), 119–120, www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_23051971_communio_en.html.

CHAPTER 1

THE ABUSE OF SECRECY IN THE CHURCH

*He will surely rebuke you
if in secret you show partiality.
—Job 13:10*

Talking about secrecy in the Catholic Church often elicits conflicting reactions: there are those who defend it at all costs and those who instead reject it with no “ifs,” “ands,” or “buts.”

Some believe that it is right to defend the institution, its spaces, and its rights, while others think that this is an unacceptable excess in an information society. Certainly, the Church is not a democracy and the “right to know” arises from citizens’ claims against the constituted authority. The Church operates according to other parameters, which are predominantly spiritual, since she is mystery and the Sacrament of Salvation for all souls. For this reason, the Church must consider, in order to be faithful to her Founder (Jesus Christ) and her high purpose (the salvation of humanity), when to protect what is secret and when to provide information.

We shall focus on a case that may help us reach the most balanced and honest view, in the face of a goal that can never be considered definitively achieved.

In 2002, a team of journalists from the *Boston Globe* published a report on at least seventy clergymen who had sexually abused minors for decades. On the part of the Church hierarchy, the handling of this information had been maintained in the strictest secrecy.¹

1. Among those accused of abuse have been priests, religious, catholic schoolteachers, etc. Since we are dealing with representatives of the Church, we have preferred to use the term “clergyman” or “cleric,” as these are more general terms.

According to this report, the bishops and superiors in many cases procured the silence of victims and their families. They often required psychological treatment for the abusers before transferring them elsewhere. At the place of the transfer, however, no report was sent either on the incident or on the opinion of the psychologists or psychiatrists. The superiors or leaders and the faithful were unaware of the condition in which the new clergyman arrived; as a result, children were continuously put in harm's way and crimes were repeated, with the number of victims increasing, especially in the 1970s. Among the most deplorable cases is that of John Geoghan, who was accused by more than 100 people of having committed sexual abuse.²

The problem was not confined to Boston. The first case to make national news was verified in 1985 in Lafayette, Louisiana, where eleven children claimed to have been abused by their priest, Gilbert Gauthé. The trial showed that his superiors were aware of the issue with this clergyman, and they had made efforts to get him treated but had then gone on to transfer him—even though they had reason to believe he was still dangerous. They had even paid the victims to remain silent.

In response to the Gauthé case, Father Thomas P. Doyle, counsel for the canonical nunciature in Washington; F. Ray Mouton, defense counsel for Gauthé; and psychiatrist Michael R. Peterson wrote a ninety-three-page report calling for policies to address the cases of abusive priests. The report was, however, shelved without a response from the bishops' conference.

Meanwhile, the scandal was growing, and allegations of sexual abuse were popping up all over the country. The words of a 1987 article, distributed by Knight Ridder, sound like a true prophecy today: "The church's reluctance to address the problem is a time bomb waiting to detonate within American Catholicism."³

2. THE JOURNALISM SCHOOL, *Reporting an Explosive Truth: Boston Globe and Sexual Abuse in the Catholic Church* (Columbia University: Case Consortium), ccnmtl.columbia.edu/projects/caseconsortium/casestudies/14/casestudy/files/global/14/Boston%20Globe%20and%20Sexual%20Abuse%20in%20the%20Catholic%20Church_wm.pdf.

3. Cf. *Ibid.*

AFTERWORD

RESEARCH AND
COMMUNICATION OF
THE TRUTH ARE AT THE
FOUNDATIONS OF JUSTICE

by Charles J. Scicluna

The timeliness and immediacy of digital communication pushes the Church to move toward a more proactive way of communicating, aware that she must accompany, dialogue with, and be close to the faithful. The right to information has shifted gears with the digital age. Concepts such as transparency, accountability, access to information, and a two-way relationship between the faithful and Church authorities are cultural milestones on which there is no going back.

As Pujol and Montes de Oca show, these changes introduce new demands; they call for greater accountability in terms of transparency and accountability, and they challenge legal aspects of the canonical system, especially in the area of child sexual abuse by Church ministers. However, this is not merely a media issue; it is not merely a matter of coming to terms with public opinion: We are faced with a new call—that of confronting truth and justice in a deeper sense.

The search for truth, not only from the formal standpoint but also, above all, from the material standpoint, is the first task of every juridical order, which translates the aim of making truth radiate (*veritatis splendor*) both in legislating (*splendor legis*) and in carrying out justice (*splendor iustitiæ*). The recent reforms of the canonical penal system—which aim to address the tragedy of sexual abuse committed by priests and negligence on the part of the authorities—are part of this desire for truth and justice

within the Church. The Church, in her prophetic mission, is aware that “respect for the truth engenders confidence in the role of the law, while disrespect for the truth engenders distrust and suspicion.”¹

1. A Proactive Attitude of “Seeking the Truth”

The reform of Book VI of the *Code of Canon Law*, proposed by Pope Francis following a long period of discernment at different ecclesial levels and made public with the Apostolic Constitution *Pascite Gregem Dei* of May 23, 2021, is an expression of the Church’s determined will as a community to discern in reasonableness and goodness. It is a sign that she intends to provide herself with an effective norm to punish the most serious behaviors against communion, in particular, those that we know are *delicta graviora contra mores* or *contra sextum præceptum Decalogi cum minore*. Norm, community, discernment, and consent would be the four elements necessary for any true *receptio legis*.²

The effective and affective reception of this ecclesial penal law, *ordinario rationis* (rule of reason) endowed with *rationabilitas* (reasonableness) and obedience to the ethos of the Gospel, is also expressed in a set of other norms and, above all, in ecclesial consensus. For this reason, the aforementioned reform would not be understood in its proper scope without knowing the previous legislative reforms and without taking note of the benevolent reception by the People of God.

In particular, the Apostolic Letter in the form of Motu Proprio *Vos Estis Lux Mundi* (VELM), dated May 7, 2019, stands out. It imposed a set of obligations for a rigorous, serious, and speedy investigation that would allow for an eventual penal trial. The entire ecclesial community understood that it is impossible to bring justice to victims without promptly reporting any abuse or neglect to ecclesiastical authorities.

1. C.J. SCICLUNA, “La ricerca della verità nei casi di abuso sessuale: un dovere morale e legale,” in *Verso la Guarigione e il Rinnovamento*, ed. C.J. SCICLUNA, H. ZOLLNER, D.J. AYOTTE (Bologna: EDB, 2012), 89; translation ours.
2. Cf. M.C. RUSCAZIO, “Considerazioni sulla receptio legis alla luce del Motu Proprio *Mitis iudex Dominus Iesus*,” in *Stato e Chiesa* 9 (2018), www.statoechiese.it/images/uploads/articoli_pdf/Ruscazio.M_Considerazioni.pdf?pdf=considerazioni-sulla-receptio-legis-alla-luce-del-m.p.-mitis-iudex-dominus.