NATIONAL CATHOLIC REPORTER
Published on *National Catholic Reporter* (http://ncronline.org)

# Canon lawyer questions Maryknoll's move against Bourgeois

Tom Roberts | Sep. 14, 2011
Roy Bourgeois

Maryknoll Fr. Roy Bourgeois speaks to a supporter at the SOA Watch vigil outside the gates of Fort Benning, Ga., Nov. 21, 2010. (NCR photo/Joshua J. McElwee)

Fr. Roy Bourgeois recently took another step in his fight to remain a member of the Maryknoll Fathers and Brothers, when he asked his superiors to engage reputable theologians to reconsider issues stemming from his support for the ordination of women.

?In spite of the apparently clear orders of the Congregation for the Doctrine of the Faith and the related norms of church law, the overall situation with Roy is anything but clear-cut and simple,? Dominican Fr. Thomas Doyle, a canon lawyer representing Bourgeois, wrote in an Aug. 16 letter to Fr. Edward Dougherty, Maryknoll?s superior general. Doyle is most widely known for his advocacy on behalf of victims of sexual abuse by clergy.

Doyle contends that the church?s prohibition of female ordination is not infallible teaching and asks in his letter ?that the assistance and input of reputable theologians be sought in order to look much more deeply? into two central issues: the church?s claim that the teaching is infallible and the right of a Catholic ?to act and think according to the dictates of his conscience? even if the conclusions put one in conflict with the church?s highest authorities.

Doyle also argues that the punishment of excommunication and expulsion from the society is disproportionate. As a comparison, he notes that priests and bishops who sexually abused children and/or covered up the abuse have not been excommunicated.

In response to a question, Maryknoll spokesman Mike Virgintino said that Doyle?s letter had been received and that the general council had not yet responded to it ?but will review his letter and will respond to him at earliest opportunity.?

In October 2008, the Vatican Congregation for the Doctrine of the Faith gave Bourgeois, who had participated in a woman?s ordination ceremony, 30 days to recant his ?belief and public statements that support ordination of women? or face automatic excommunication. Bourgeois never recanted, saying he could not in good conscience do so.

Whether the priest was formally excommunicated is unclear, because the Vatican never issued a public statement to that effect. At the same time, while never responding directly to Bourgeois, doctrinal congregation officials have communicated with Maryknoll, a society founded 100 years ago to train priests to work in foreign missions.

In a July 27 letter to Bourgeois, Dougherty warned the priest a second time that if he continued his ?campaign in favor of women priests and failed to recant publicly your position on the matter? he faced dismissal from the order. Bourgeois was given 15 days from reception of the letter to recant or the dismissal proceedings would begin. However, the letter also noted that Bourgeois had the right to defend himself against the warning and the proposed dismissal.

In an interview with *NCR*, Doyle said his intent in filing a response with Dougherty was to have the order ?take a deep breath and step back from starting the process.? He said there were substantial issues that should be considered by the society?s leadership and members.

In one of several documents filed with Dougherty between Aug. 15 and Aug. 30, Doyle explains that Bourgeois? defense is based on two rationales: first, Bourgeois? right to not violate his conscience and, second, his conviction that ordination of women is not an infallible teaching.

Doyle said Bourgeois believes the teaching is not ?so essential to the core beliefs of Catholic Christians that to question or reject it is tantamount to a rejection of the fundamental teachings of Jesus Christ which form the core of Catholicism as a people of God.?

Bourgeois? view of women?s ordination ?is shared by countless others, including scripture scholars, theologians and church historians from among the ranks of the laity, priesthood and episcopacy,? Doyle said.

Bourgeois formed his views, Doyle said, ?in an unselfish and honest manner, well-aware of the consequences of taking a position that is contrary to the present and past pope as well as most (at least) of the Vatican curia.? At the same time, argues Doyle, there is ?no evidence of either consensus or unanimity among theologians, scripture scholars and bishops? that the ban on women?s ordination is ?solidly grounded? in either tradition or teaching of the church, as asserted by the late Pope John Paul II in his 1994 apostolic letter *Ordinatio Sacerdotalis*.

?There is a massive body of scholarly work,? writes Doyle, ?that credibly challenges the assertion that Jesus ordained anyone as priests and an equally credible and persuasive body of scholarly work that can find no consistent and continuous theological tradition that would support the preclusion of women from sacred orders, other than the tradition that official power in the church has been held by men.?

Doyle also challenged imposition of the punishment of automatic excommunication, saying it did not conform to the requirements of canon law in this case because Bourgeois? actions do not involve a ?malicious disregard? for church authority but rather his belief ?that to act contrary to the dictates of his conscience ? would be tantamount to a serious sin on his part.?

In a separate document, Doyle submitted a list of quotes from St. Thomas Aquinas, Vatican documents, and the Gospel of Matthew upholding the primacy of conscience in Catholic teaching.

In the same vein, said Doyle, Bourgeois? actions have not ?gravely harmed? anyone, nor has anyone lost belief in God or been ?so physically or emotionally damaged that he or she has been deprived of the ability to lead a happy and productive life? because of Bourgeois? convictions or actions.

In contrast, Doyle notes some 20 members of the hierarchy in the United States, 15 in Europe and three in Canada, including some cardinals, ?have been confirmed by credible sources to have committed the canonical delict named in canon 1395.2, that is, the sexual molestation of minors, or the crime mentioned in Title V of the Papal Instruction *Crimen Sollicitationis*, in force until May 18, 2001, namely sex with men.?

Those infractions, said Doyle, carry a punishment up to and including dismissal from the clerical state.

Yet no member of the hierarchy to date has undergone even a papal investigation, said Doyle, ?much less any form of penal sanction. ? To this date no archbishop, cardinal or bishop who has violated both canon law and civil law by sheltering known sexual abusers among the clergy or by knowingly reassigning known molesters to other assignments where they could and often did continue to violate the vulnerable, has been asked to resign, much less face justified canonical investigation and prosecution.?

Even among the thousands of priests across the globe who have been credibly accused of molesting minors or convicted in criminal proceedings, not one has been excommunicated, said Doyle, though most have been removed from the clergy ranks.

?The contrast is striking: Thirty-eight bishops who have committed grave sexual crimes which have resulted in serious emotional and spiritual damage to innocent Catholics have faced no disciplinary action, while four bishops who have followed their consciences and publicly questioned Vatican practices or doctrine out of concern for the spiritual welfare of the faithful have not only been humiliated but removed from office.?

Doyle concludes by asking on Bourgeois? behalf that the process that has arrived at an ultimatum ?be seriously and fearlessly re-evaluated? by outside theologians against the backdrop of concerns raised in his correspondence.

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**Statements of the primacy of conscience**

In a separate document to Maryknoll Fr. Edward Dougherty, Fr. Thomas Doyle submitted a list of quotes from St. Thomas Aquinas, Vatican documents, and the Gospel of Matthew upholding the primacy of conscience in Catholic teaching. Following are a few selections from Doyle?s letter.

?Conscience is more to be obeyed than authority imposed from the outside. By following a right conscience you not only do not incur sin but are also immune from sin, whatever superiors may say to the contrary. To act against one's conscience and to disobey a superior can both be sinful. Of the two, the first is the worse since the dictate of conscience is more binding than the decree of external authority.? [St. Thomas Aquinas, *De veritate*, q. 17, a.5]

?Every judgment of conscience, be it right or wrong, be it about things evil in themselves or morally indifferent, is obligatory, in such a way that anyone who acts against his conscience always sins.? [St. Thomas Aquinas, *Questiones quodlibetales*, 3, q. 12, a.2]

?Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey. Its voice, ever calling him to love and to do what is good and to avoid evil, tells him inwardly at the right moment: do this, shun that. For man has in his heart a law inscribed by God. His dignity lies in observing this law and by it he will be judged. His conscience is man's most secret core, and his sanctuary. There he is alone with God whose voice echoes in his depths. By conscience in a wonderful way, that law is made know which is fulfilled in the love of God and of one's neighbor.? (*Gaudium et Spes*, no. 16)

"Over the pope as expression of the binding claim of ecclesiastical authority, there stands one's own conscience which must be obeyed before all else, even if necessary against the requirement of ecclesiastical authority. This emphasis on the individual, whose conscience confronts him with a supreme and ultimate tribunal, and one which in the last resort is beyond the claim of external social groups, even the official church, also establishes a principle in opposition to increasing totalitarianism." (Josef Ratzinger, *Commentary on the Documents of Vatican II*, 1967)

--*Tom Roberts*

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