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A blessing for the Vatican in (really) deep disguise

John L. Allen Jr. | Sep. 23, 2011 All Things Catholic

Pope Benedict XVI is in Germany at the moment, where last year?s sex abuse scandals brought his own record squarely into focus. That debate has flared up anew with a splashy public appeal by a New York based legal foundation, along with the Survivors Network of those Abused by Priests, to the International Criminal Court to prosecute the pope and other senior Vatican officials.

Granted, most experts say the Vatican probably has a point in calling the idea a ?publicity stunt.? Whatever one makes of Benedict XVI, he?s hardly a war criminal in the same league with Slobodan Milosevic or Omar al-Bashir. (As British attorney Neil Addison put it, ?the Swiss Guard hasn?t invaded anywhere.?)

The ICC is supposed to step in only when national courts can?t act, which wouldn?t seem to be the case in places like Ireland and the United States. Moreover, a key element of an indictment is usually that a regime not only covered up human rights abuses, but orchestrated them. Even the fiercest critics have never claimed that Benedict XVI, or any other Vatican official, actually directed somebody to abuse a child.

That said, I want to float a counter-intuitive hypothesis: In the unlikely event the ICC were to take the case, it might do the Vatican more good than harm.

Here?s why. Whenever criticism has been lodged of the Vatican and Benedict XVI on the crisis, officials have responded with some version of three core arguments:

- First, oversight of individual priests is not, and never has been, the responsibility of the Vatican. It?s lodged with local bishops and religious superiors. Factually and legally, it?s a mistake to focus on the Vatican, because that?s not how personnel questions work in the church; analytically it?s dangerous, because it suggests the problem can be magically solved by flipping a switch in Rome.
- Second, Benedict XVI is a reformer on the sex abuse issue, not a culprit. He was the Vatican official who pushed for new norms to weed abusers out of the priesthood back in 2001, against significant internal opposition, and who got John Paul to make them even tougher in 2002-2003. He famously warned of ?filth in the church? in his 2005 Good Friday meditations. It was Benedict who went after the founder of the Legionaries of Christ, who met victims of sexual abuse and who apologized for the crisis, and on and on.
- Third, the Catholic church has turned a corner over the last decade, adopting tough new policies and investing considerable resources in making them stick. Today, the church wants to be a partner with other social agents in healing the wounds of victims and in promoting abuse prevention and detection. Demonizing the church or the Vatican for past failures thus does not serve the aim of keeping children safe today.

As someone who has followed this story both from Rome and the States, I believe each of these claims is basically true. To be sure, the Vatican can?t wash its hands of the crisis; there was a culture of silence in the church, from the top to the bottom, in which the Vatican was obviously complicit. Vatican officials, including

the future Benedict XVI, were late in waking up to the problem?s scope and gravity. Moreover, there is still important unfinished business ? oversight and accountability for bishops, for instance. Nonetheless, I think a fair reading of the record would find considerable support for the three points above.

If that?s true, the unavoidable question is why the Vatican has had so little luck convincing anyone of those points. (Don?t believe it? Just book a flight to Ireland, and take the temperature in the street.) While there are plenty of reasons, one is probably that the arguments have never really been examined by a neutral outfit with the patience and the tools to do it right.

In today?s world, most people rely on the court system to be that arbiter of truth and falsehood. The Vatican has faced legal action over the crisis before, most notably in American courts, but those cases have never really reached matters of substance because they?ve been bogged down in skirmishes over jurisdiction, related to the Vatican?s sovereign status under international law.

The Vatican is, of course, perfectly within its rights to assert the protections to which international law entitles it. Defending the independence of the papacy is deeply encoded in the Vatican?s DNA, as a bulwark against powerful states exerting pressure to serve perceived national interests. Even the most cursory reading of history, both distant and recent, suggests that?s hardly an unrealistic concern.

In terms of public opinion, however, reacting to a sex abuse lawsuit by invoking sovereign immunity can?t help but seem like a dodge -- trying to wiggle off the hook on a technicality rather than facing the charges head-on.

Sovereignty wouldn?t be an issue in an ICC case, since the court was erected precisely to prosecute regimes and heads of state which hide behind their immunity. If the Vatican didn?t simply ignore the whole business on the grounds that it?s not a party to the 1998 treaty creating the court, it would be forced to engage the accusations on their merits.

Let?s assume, for the sake of argument, that the ICC would conduct a review without turning it into a media circus driven by politics and public opinion. Let?s also assume the Vatican would respond effectively, enlisting people who understand both international jurisprudence and communications strategy to make its case. (New York-based attorney Joseph Weiler, who successfully defended Italy?s right to display crucifixes in public schools before the European Court of Human Rights, comes to mind.)

All these assumptions, of course, are things one can?t take for granted in the real world. But if they fell into place, the end result might be a secular tribunal persuading reasonable people of a conclusion the Vatican so far has failed to get across: On the sex abuse crisis, the pope is not the problem.

Being hauled before a court intended to prosecute the most ruthless offenders humanity has to offer is nobody?s idea of a good time, and it?s hardly a development the Vatican could be expected to welcome. Yet if the stars were to align just the right way, the experience might prove to be a blessing in, admittedly, very deep disguise.

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