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Court's ruling on church responsibility the correct one

Thomas P. Doyle | Nov. 10, 2011 Examining the Crisis

The British High Court ruled Tuesday that the Roman Catholic Church can be held responsible for the wrongdoings of its priests, according to BBC News [1].

"The Church had claimed it could not be held vicariously responsible because there was no formal employment relationship with its priests," the site reported.

It appears that Mr. Justice MacDuff used a realistic test to determine if the Diocese of Portsmouth was liable for the actions of its priest, Fr. Wilfred Baldwin, who is accused of raping a woman, now 47, when she was a girl at a children's home in Hampshire.

MacDuff bypassed the literal interpretation of a classic employer-employee relationship when it came to the diocese and the priest and focused instead on the relationship itself as well as the role of the bishop of the diocese in the activities of the priest.

The justice also quoted for his purposes a landmark decision from the Supreme Court of Canada (Bazley vs. Curry): "This requires trial judges to investigate the employee's specific duties and determine whether they gave rise to special opportunities for wrong-doing. Because of the peculiar exercise of power and trust that pervade cases such as child abuse, special attention should be paid to the existence of a power dependency relationship which on its own creates a considerable risk of wrong-doing."

This cuts to the heart of the priest-parishioner relationship and acknowledges the dependency that exists between a Catholic lay person and the members of the clergy, both priests and bishops. These men instill into the Catholic laity the standard church teaching that their ultimate goal is eternal salvation, and to achieve this, they *must* subject themselves to the power and authority of the priest.

The justice looked rightly to the nature and features of the relationship between priest and lay person. In his last paragraph, MacDuff sums it up well: "In this case, the empowerment and granting of authority to Father Baldwin to pursue the activity on behalf of the enterprise are the major factors."

Fortunately for the claimant, other victims of Catholic clergy and justice itself, MacDuff did not give primary weight to the information provided him by the church concerning the relationship of the bishop to a priest because this information, no doubt provided by canon lawyers, is clearly and intentionally *erroneous and misleading*.

"There is effectively no control over priests once appointed." This is ludicrous.

A poll of any group of priests, young and old, liberal or conservative, would quickly dispel this inane myth. A bishop has a spectrum of control over priests officially assigned to his diocese and to priests from elsewhere who are working there, control that is more comprehensive than the relationship of any employer to his employees. The closest analogy would be the relationship between an inferior to a commanding officer in the

military.

The bishop alone appoints a priest to his post, and the bishop alone can remove him. It is true that the pope alone has the power to involuntarily "defrock" a priest, but that is not the point.

The bishop can suspend a priest with little or no due process. He can remove a priest's *faculties*, which are the special permissions needed to perform key priestly functions. The bishop lacks the power of complete dismissal from the priesthood itself, but he certainly can dismiss a priest from an assignment, ministry or even residence in a diocese.

The bishop has ultimate authority over all pastoral or ministerial activities that are performed by priests anywhere in his diocese. He can determine the schedule for liturgical celebrations. He alone can discipline priests for breaches of liturgical or canon law. He can remove a priest from an assignment and leave him with no assignment. The bishop can also suspend a priest's salary, health care and retirement benefits. The bishop can stipulate where a priest can live and even what he can wear when he is out in the community.

The assertion that the bishop's role is advisory and not supervisory could not be more contrary to the actual nature of the bishop-priest relationship in theory and in practice. The bishop alone can issue norms, laws or regulations for the priests of the diocese apart from the detailed rules found in canon law. The church cloaks its descriptions of the relationship in language that misleads the reality of the situation.

Priests are referred to as "collaborators," "brothers," "sons" and co-workers with the bishop, all of which lead to the mistaken impression that there is a standard collaborative relationship based on some degree of equality. Nothing could be further from the truth. The bishop is part of a governmental system that is the last absolute monarchy in the world. He is an aristocrat and the sole authority in his own share of the overall church-kingdom.

The criterion of recompense is clearly misrepresented by the church in this case. It is true that in most parishes, the priests are paid from the funds collected by the parish, but the bishop sets the salary scale and assigns a priest so that he may receive a salary. If a parish is unable to support its priest, most dioceses provide subsidies. What is even more important to understand is that though the bishop does not technically "own" the property and the funds of a parish, he does have control over them. The priest's monthly check may be drawn on the parish bank account, but it is the bishop who has ultimate control over that account.

It is true that there is no formal contract between a priest and a bishop, but there is no need for one. During the ceremony of his ordination to the priesthood, the priest promises "obedience and respect" to his bishop and to his successors. This is not mere decoration but is a real promise with real consequences. The bishop's word is final subject in some cases to appeal to the Holy See. The priest is pledged to obey the bishop, thereby fulfilling God's will for him in his life and ministry.

MacDuff said in his judgment that "[Father Baldwin] had immense power handed him by the Defendants. It was they who appointed him to the position of trust which he so abused."

This is a crucial element. The very fact of ordination gives the priest instant power, prestige and an aura of mystery that he does not have to earn. Irrespective of his personal qualities and defects, he starts out with an extraordinary degree of power given to him simply because of his ordination and his assignment.

On the one hand, the bishop exerts an extraordinary and, some would say, anachronistic degree of control over a priest, but on the other hand, the bishop also gives him an extraordinarily effective degree of prestige, power and control over those who are taught to depend on him for that which Catholics are taught is the ultimate purpose of their life in the Church, eternal salvation.

In arguing this case, the church's representatives did what was expected: They painted an erroneous picture of the priest's stature in the diocese that would be laughable were the potential consequences not so disastrous.

Fortunately for the claimant and for the countless others who have suffered sexual molestation at the hands of Catholic clerics, MacDuff saw beyond the superficial to the heart of the matter. He bypassed the intentionally misleading and false canonical legalism to the main issue, which is power, given and misused in violation of all that the Catholic church stands for.

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[1] http://www.bbc.co.uk/news/uk-england-hampshire-15637611