

Sanctions in the Church: A Discourse on the Revised Book VI of the Code of Canon Law

Charles N. Ozioko, ISch
Institute of Theology
Saints Peter and Paul Major Seminary
Bodija, Ibadan
ndukwefr@gmail.com
+2348037712151

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Abstract

With the apostolic constitution, *Pascite Gregem Dei*, Pope Francis promulgated the revised text of Book VI of the Code of Canon Law. This new revised version abrogated what until now in the 1983 Code of Canon Law was known as Book VI on Sanctions in the Church. The promulgation brought to light again some of the questions many have asked. Do we really need Sanctions in the Church? What is their relevance? Has penal law ever made anyone better? Is it not better just to forgive everyone who has committed a crime in the Church, in other words show mercy and life will be normal? The other side of the coin remains, however, how to reconcile the demands of justice and good governance with mercy. The difficulty of combining the demands of charity with those required by justice has remained a concrete one in the Church. This article reviews the new Book VI of the 1983 Code of Canon Law using the pastoral nature of the penal law as the context.

Keywords: Book VI of the Code, Sanctions, Pastoral approach, Justice, Mercy.

1.0 Introduction

Should someone who has committed a crime be punished? And what kind of punishment can be given that will be commensurate or adequately repay a damage that has been done by someone through a criminal conduct? Is there a sufficient punishment that can be given to someone who has broken the law? In other words, is there a correspondence between crime and punishment? One

may think immediately here of the principle of proportionality in penal law. Little wonder, many civil systems choose the retributive and vindictive response, aiming, in most cases at compensating only the social damage caused by the commission of a criminal offence. And since the point of departure is the conception that the negative should be answered with a corresponding negative, the penalty par excellence in many civil systems is imprisonment or death penalty for the commission of certain crimes.

How is it in the Catholic Church? Should the Church punish her members who commit crimes? Why do we have and need penal law in the Church that preaches love? To what end? Is it not better just to forgive everyone who has committed a crime in the Church, in other words, show mercy, and life will be normal? The title of a work on penal law in German published in 2006 says it all, “*Strafrecht in einer Kirche der Liebe: Notwendigkeit oder Widerspruch* [“*Penal Law in a Church of Love: Necessity or contradiction?*].¹ What, therefore, is meant, when it is said that in the Church sanctions aim to realise the supreme ecclesial goal, i.e., the *salus animarum*, which permeates not only the penal law but the entire Church’s legal order?

2.0 Overview of the Revised Book VI on Sanctions in the Church

On the 23rd of May 2021, Pope Francis, with the apostolic constitution *Pascite Gregem Dei* promulgated the revised text of Book VI of the Code of Canon Law, which entered into force on the 8th of December 2021.² With this act, what until now has been the Book VI of the Code of Canon Law was abrogated. In other words, what we have until now as Book VI of the Code is totally abolished and replaced with the new revised version. In the apostolic constitution

¹ Ludger Müller, Alfred E. Hierold, Sabine Demel, Libero Gerosa and Peter Krämer, eds., *Strafrecht in einer Kirche der Liebe. Notwendigkeit oder Widerspruch?* (LIT Verlag, Berlin 2006).

² Pope Francis, Apostolic Constitution, “*Pascite Gregem Dei qui Liber VI Codicis Iuris Canonici reformatur*,” 23rd May 2021; *L’Osservatore Romano*, June 1, 2021, 2. The new Book VI is also published in this volume immediately after the Apostolic Constitution from pages 2-4.

Pascite Gregem Dei, Pope Francis recounts not only the reasons that necessitated the revision of the penal regulations contained in the 1983 Code, but also the process of the revision, which according to him was ordered by his venerable predecessor Benedict XVI in 2007.

Just like what can now be referred to as the old Book VI of the Code, the New Book VI contains 89 canons. However, 63 canons representing 71% have been amended, 9 others were repositioned (10%), while 17 (19%) remained unchanged.³ Juan Ignacio Arrieta in this intervention at the press conference to present the new Book VI gave the three guiding criteria for the revision. They are: better determination of the norms, i.e., setting out the cases in which the penal system is to be applied and how offences are to be punished; the protection of the community with a focus on repairing the scandal and compensating for damage; and finally, providing the authority with adequate instruments to be able to prevent offences, intervene in time to correct situations before they become more serious and to promote amendments.⁴

Regarding the concrete changes, revisions and updates that were made, we resort to the intervention of Archbishop Filippo Iannone, the president of the Dicastery for Legislative Texts at the press conference to present the new Book VI of the Code of Canon Law.⁵ According to him, the new penal code introduced new criminal offences, defined better other offences already provided for, punishing them with different penalties. In addition, new offences have been introduced in financial and economic matters. New penalties have been envisaged, such as fines, compensation for

³ Juan Ignacio Arrieta Ochoa de Chinchetru, “Intervention at the Press Conference to present the new Book VI of the Code of Canon Law,” accessed June 10, 2023, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html>

⁴ Arrieta Ochoa de Chinchetru, “Intervention.” See also the interview he granted to Christopher Wells, “Bishop Arrieta: How Book VI of Canon Law has changed”, accessed June 10, 2023, <https://www.vaticannews.va/en/vatican-city/news/2021-06/book-vi-vatican-penal-code-apostolic-constitution.html>

⁵ Filippo Iannone, “Press Conference to present the new Book VI of the Code of Canon Law,” accessed June 1, 2021, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html>

damage, and the deprivation of all or part of ecclesiastical remuneration, in accordance with the regulations established by the individual Episcopal Conferences, without prejudice to the obligation, in the case of a cleric who is subject to a penalty, to ensure that he does not lack the necessary means for an honest livelihood.

Attention was also paid to listing the penalties in greater order and detail, to allow the ecclesiastical authority to identify the most appropriate and proportionate for individual crimes, and the possibility has been established of applying the penalty of suspension to all the faithful, and no longer only to clerics. More suitable means of intervention have also been provided to correct and prevent crimes. The explicit affirmation in the text of the fundamental principle of the presumption of innocence is also worth mentioning, and the amendment of the rule on prescription, to encourage the conclusion of trials in a reasonably short time.

The crimes reserved to the Congregation for the Doctrine of the Faith, specified after the promulgation of the 1983 Code, have also been included in Book VI. The crime of sexual abuse of minors and child pornography are now also extended by the Code to members of Institutes of Consecrated Life and Societies of Apostolic Life and to the lay faithful who enjoy a dignity or hold an office or function in the Church.

3.0 Sanctions vis-à-vis Charity, Mercy, and Justice

Cataldo Zuccaro concluded his contribution to the 47th Study meeting of the Italian Group of Professors of Canon Law with the subtitle '*justice as mercy*'.⁶ Citing Romans 3,21-24, he concluded that one could say that in the New Testament perspective, and particularly in Pauline thought, the meaning of divine justice lies in mercy.

⁶ The theme of the 2021 conference of the Canon Law Association of Italy was 'The penal law at the service of communion of the Church'. For the proceedings, see Gruppo Italiano Docenti di Diritto Canonico, ed., "Il diritto penale al servizio della comunione della Chiesa," *Quaderni della Mendola* 29, (Edizioni Glossa, Milano, 2021). Cataldo Zuccaro, "Peccato e Delitto tra Teologia morale e Diritto canonico," in *Il Diritto penale al servizio della Comunione della Chiesa*, 24.

Indeed, the difficulty of combining the demands of charity with those required by justice has been a concrete one in the Church. Especially, in the years following the Second Vatican Council, widespread anti-juridic tendencies flourished. The notion, especially present in some quarters, was that the idea of law in the Church, and the idea of the Church as a coherent society in need of law, is antiquated, draconian, or at odds with Christian charity.⁷ G. Boni recalls how, in the post-conciliar climate, the very existence of the *potestas puniendi* (the right to punish) of the Church (and its *ius coactivum* – coercive right) had been placed fundamentally in question, if not even virulently censured by those who considered it not only obsolete – inasmuch as it was considered inseparable from the outdated ecclesiology of the *societas iuridice perfecta* (juridically perfect society), and counterproductive “for a community that intended to bring the good news to all and to dialogue even with people contrary to the Gospel and with the faithful guilty of crimes, without condemning anyone”.⁸

In her opinion, this tendency came from the conviction that the demands of charity were trampled upon and stifled by canon law, seen to be inflexible and lacking in clemency. It held further that justice and good governance cannot be reconciled with mercy.⁹ Some even went as far as raising the question “of the theological foundations of the right to punish and their appropriation in a canonical ‘penal’ doctrine, including the reflection intrinsic to it on the penitential nature of ‘penal’ sanctions”.¹⁰

⁷ Edward Condon and J.D. Flynn, “The Church’s new Penal Canon Law: The good, the bad, and the ugly,” *The Pillar*, accessed June 10, 2023, <https://www.bishop-accountability.org/2021/06/the-churchs-new-penal-canon-law-the-good-the-bad-and-the-ugly/>.

⁸ Geraldina Boni, “Il Libro VI De sanctionibus poenalibus in Ecclesia: novità e qualche spigolatura critica” [“The Book VI De sanctionibus poenalibus in Ecclesia: innovations and some critical gleanings”], *Stato, Chiesa e pluralismo confessionale*, Revista telematica (<https://www.statoechiese.it>), fascicolo n. 11 (2022): 3. https://d1vbhhqv6ow083.cloudfront.net/contributi/Boni.M_Il_Libro_VI.pdf. (Accessed 10/06/2023).

⁹ Boni, “Il Libro VI,” 3.

¹⁰ Boni, “Il Libro VI,” 25, footnote 88; see also 28, footnote 98.

We therefore understand the position of Pope Francis, when he denounces in the apostolic constitution *Pascite Gregem Dei*, a way of thinking that failed to appreciate the close relationship existing in the Church between the exercise of charity and recourse to disciplinary sanctions, especially where circumstances and justice require it. According to him, this manner of thinking risks leading to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies.¹¹

St. John Paul II had earlier denounced a like manner of thinking, noting how such misunderstanding is not only unfortunate but harmful, as he responded to those who believe, taught, and have attributed the scope and pastoral intentions uniquely only to those aspects of moderation and humanity that can relate directly to canonical equity, i.e., those who maintain that the scope and pastoral intentions consist only in the exceptions to the laws, the avoidance of recourse to processes and canonical sanctions.¹² Therefore, to avoid the danger that over time immoral conducts become entrenched, making corrections more difficult, the creation of scandal and confusion in the Church and above all the denial of justice, it is necessary for bishops and superiors to inflict penalties. It is, indeed, charity that requires Pastors to have recourse to the penal system as often as necessary, bearing in mind the three purposes that make it necessary, namely, the restoration of the requirements of justice, the amendment of the offender and the reparation of scandals.¹³

In the words of Jorge Miras, “when situations arise that require by their nature a penal action, it is an indication of the commitment of the Good Shepherd to pursue it with prudent diligence, tempered strength and justice quickened by charity towards God, towards his Church, towards the flock entrusted to him and towards the person with the behaviour that is perhaps criminal”.¹⁴ In fact, today, the

¹¹ Francis, “Pascite Gregem Dei”, §7.

¹² Pope John Paul II, “Address to the Tribunal of the Roman Rota, 18th January 1990,” n. 3. *Acta Apostolica Sedes* 82 (1990): 873.

¹³ Iannone, “Press Conference”.

¹⁴ Miras, “Practical Guide.” 2.

omission of penal action could even constitute a specific offense (cf. c.1389) as confirmed by the apostolic constitution *Pascite Gregem Dei* which maintains that the negligence on the part of a bishop or superior to resort to the penal system, when this is required, is a sign that he has failed to carry out his duties honestly and faithfully, as pointed out in the Apostolic Letter issued *Motu Proprio As a Loving Mother* (4th June 2016) and *Vos Estis Lux Mundi* (7th May 2019).¹⁵

Undoubtedly, the quarrels, punishments, and trials that we all have are the sign of a Church that is not yet living its divine vocation to the full, thus denouncing its shortcomings and its sins. But it is a reality that cannot be ignored. If the Church is on a journey, and the Church by its very nature is always on a journey, it also includes sinners in its bosom, and must come to terms with the harshness and difficulties of human life. In this perspective, the penal law and subsequently the penal process is an indispensable service to justice, truth, and human dignity.¹⁶ Hence, it is expected that bishops and superiors will incorporate penal law into their ordinary governance of the Church's life.

4.0 The Pastoral Character of Penal Laws¹⁷

St. John Paul II has been cited as affirming that the Code of Canon Law is the last document of the Second Vatican Council.¹⁸ We, therefore, understand when Woestman writes, for instance, that the members of the Commission for the revision of the Code sought not only to avoid anything that would contradict Vatican II, but to

¹⁵ Francis, "Pascite Gregem Dei," §7.

¹⁶ Claudio Papale, "Il Processo Canonico. Commento al Codice di Diritto Canonico, Libro VII, Parte IV," (Urbaniana University Press, 2012), 15, footnote 8.

¹⁷ This was the chosen title of a paper presented at the 17th Congress of the "Consociatio Internationalis Studio Iuris Canonici Promovendo," [Webinar: Riforma del Liber VI], 14th September 2021 by Andrea D'Auria. Id., "La pastorality del Diritto penale canonico. Il can. 1311 § 2". http://www.consociatio.org/webinar-2021/Dauria_Consociatio-Webinar.pdf (Accessed 11/06/23).

¹⁸ Velasio De Paolis, "Il Codice del 1983 del Vaticano II," *Periodica* 102 (2013): 517-548.

be most faithful to the mandates and spirit of the Council.¹⁹ This was already the longing of the 1967 Synod fathers as they approved the *Principles for the revision of the Code of Canon Law*. The *Principia* in number 3 states, “To foster the pastoral care of souls as much as possible, the new law, besides the virtue of justice, is to take cognizance of charity, temperance, humaneness, and moderation, whereby equity is to be pursued not only in the application of the laws by pastors of souls but also in the legislation itself”.²⁰

For the Church, therefore, in as much as unduly rigid norms are to be set aside and rather recourse is to be taken to exhortations and persuasions where there is no need of a strict observance of the law on account of the public good and general ecclesiastical discipline, it also affirms that sanctions are neither contrary to the spirit of the gospel nor the religious liberty of the Christian faithful. On several occasions, Pope Francis, has repeated that the canonical sanction also has a reparatory and salutary medicinal function and seeks above all the good of the accused.²¹ Typical instances of the pastoral import of the Church’s penal law are cc. 1313 and 1317. Can. 1313, § 1, for instance, has it that, ‘If a law is changed after an offence has been committed, the law more favourable to the offender is to be applied’. Can. 1317, on the other hand, stipulates that ‘Penalties are to be established only in so far as they are really necessary for the better maintenance of ecclesiastical discipline’.

5.0 Some of the Fundamental Principles Codified in Book VI of the Code

The New Book VI of the Code contains, as expected, many fundamental principles of penal law. The first canon of Book VI of the Code, namely, c. 1311 sets out synthetically and underlines in a concise manner many of these principles.²² This canon is, therefore,

¹⁹ William Woestman, *Ecclesiastical Sanctions and the Processes: A Commentary on the Code of Canon Law*, (Bangalore: Theological Publications in India, 2009), 3.

²⁰ Synod of Bishops, “Principia quae Codicis Iuris Canonici recognitionem dirigant, 7th October 1967,” *Communicationes*, 1 (1969): 77-85. The principles were thereafter incorporated the *Preface* of the 1983 Code.

²¹ Iannone, “Press Conference”.

²² D’Auria, “La pastoraltà,” 2.

very fundamental both in understanding the entire book on Sanctions and the pastoral character of canonical penal law.

Canon 1311, §1, incorporating an affirmation already present in the former CIC and throughout canonical tradition, stipulates the first of these principles in these words, “The Church has its own inherent right to constrain with penal sanctions Christ’s faithful who commit offenses”. The Church, aware that offenses and their necessary punishment are a reality of human existence, even for Christians, restates in this first paragraph its right and obligation to punish its errant members, which flows from its nature as a visible community or society, and the consequent necessity to recall delinquent faithful to their Christian duty and repentance.

The Church has, in addition, a certain degree of power over its members, which includes also protecting the innocent faithful from bad examples and behaviours disruptive of ecclesial communion, promoting the unity of faith and deterring the weak from being led astray. Thus, when the Church affirms its ‘inherent right’ (*nativum*, i.e., not acquired during time, but existing from the Church’s foundation by Jesus as a necessary element for its social nature), it has also to do with the affirmation of its autonomy and independence from any human, civil power. In other words, this right is proper, and not vicarious or by delegation by civil authority.²³

Furthermore, the Church feels that its primary mission in history is to proclaim the salvific Presence, which includes pointing out those truths that are the way to heaven and to allow the continuous redemption of mankind. This will never be sufficiently possible if the Church does not equip itself with instruments, including penal ones, capable of defending, safeguarding, and adequately protecting its goods and its wealth, which is above all the gift of communion with the Lord.²⁴ In the apostolic constitution *Pascite Gregem Dei*, Pope Francis notes, “As I observed recently, canonical sanctions also have a reparative and salvific end, and are primarily directed to the

²³ Woestman, “Ecclesiastical Sanctions,” 8; See also Papale, “Il Processo Canonico,” 15. The other instances in the CIC where reference is made to this right are for example in cc. 232 & 747, § 1.

²⁴ D’Auria, “La pastoraltà,” 2-3.

good of the faithful. In this sense, they represent “a positive means for the realization of the Kingdom and for rebuilding justice in the community of the faithful, who are called to personal and common sanctification”.²⁵

In the second paragraph of c. 1311, which did not exist in the old book VI in the formulation that it has today, many other fundamental principles are recalled in these words,

“The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ’s faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.”

Therefore, the first of the principles set forth in this second paragraph may be said to be that the role of sacred pastors includes the power to impose proportionate sanctions to protect relevant ecclesial values, when required by the common good of the Church. In fact, the sacred pastors have a duty to ensure the integrity of communion in the faith, in worship and in governance, which are essential elements of the common ecclesial good: that is to say, of the set of conditions necessary to make it possible to carry out the mission of the Church - as well as other values of special human and Christian transcendence, protecting them, even coercively when necessary.²⁶

Secondly, safeguarding and promoting the good of the community and Christ’s faithful are part of the ways to live out pastoral charity. In line with Vatican II, it is maintained that penal law of the Church should be marked in a special way by Christian mercy and a pastoral spirit so that even the sanctions would never harm those punished and penalties always respect the personal dignity and rights of those punished.²⁷ In other words, there should

²⁵ Francis, “Pascite Gregem Dei,” §9.

²⁶ Miras, “Practical Guide,” 2.

²⁷ Rafael Domingo, “Penal Law in the Roman Catholic Church,” *Ecclesiastical Law Journal* 20 (2018) 158-172, <https://www.researchgate.net/publication/>

be a pastoral approach in the application of penalties. Here we are reminded of the instances in the Code where reference is made to the pastoral care demanded of the Church pastors in the exercise of their functions: in the exercise of the office of the bishop (c. 383 §1); The parish priest and the exercise of pastoral care (c. 519) and the pastoral care offered to those preparing for marriage (c. 1063). In the apostolic constitution *Pascite Gregem Dei*, Pope Francis explains,

“The observance of penal law is binding on the whole People of God, but responsibility for its correct application . . . lies specifically with the bishops and the superiors of individual communities. It is a task that cannot be separated in any way from the *munus* pastorale entrusted to them and is to be carried out as a concrete and essential requirement of charity, not only towards the Church, the Christian community, and potential injured parties, but also towards those who commit crimes and are themselves in need of the Church’s mercy and correction”.²⁸

The third is the example of life that is demanded of those in authority. C. 1311, § 2 adds the obligation placed on those in authority to lead by example. They are to safeguard and promote the good of the community and of each of Christ’s faithful also by example of life. It is, in our opinion, firstly, an emphasis on a change in mindset. And secondly, of a reminder of Pope Francis’s conviction expressed also in the apostolic letter *Vos Estis Lux Mundi*, that the credibility of the gospel message has been so much undermined by the tragedy caused by the abuse of minors and vulnerable adults in the Church.²⁹ The promotion of the credibility of the gospel, therefore, requires a continuous and profound conversion and renewal of the educational mission of the Church. This must be attested to by concrete and effective actions that involve everyone in the Church but especially those who lead.³⁰

325016353_Penal_Law_in_the_Roman_Catholic_Church. (Accessed 25/06/2023).

²⁸ Francis, “Pascite Gregem Dei,” §6.

²⁹ Pope Francis, Apostolic Letter issued Motu Proprio, “Vos Estis Lux Mundi”, On the protection of minors and vulnerable adults, 7th May 2019.

³⁰ Francis, “Vos Estis,” *Preamble*.

The next principle given in the second paragraph of c. 1311, § 2 is the fact that the penal law and application of penalties in the Church is the last resort. Hence, for the Church, the emphasis is more on other pastoral and juridical measures than on penalties. The Code makes it explicit that the Ordinaries should employ penalties only when other pastoral means fail or are not adequate to realise the goal of the Church's penal law, namely, reparation of scandal, restoration of justice, and reformation of the offender (cf. cc. 1311, §2; 1319, §2; 1341). It is, therefore, not without reason that the words, "if necessary" were used. Even when the Ordinary decides to apply penalties, there should be a pastoral approach in their application and must be done in accordance with the law. The coercive power of the Church is therefore necessary, albeit as a last resort, as a service to charity and thus to the eternal salvation of the offender.³¹

The paragraph continues by maintaining that the imposition or declaration of penalties, in accordance with the provisions of the law, are always to be applied with canonical equity (cf. cc. 19, 1752). In his inaugural address for the new juridical year of the Rota Romana on 8th February 1973 – entirely dedicated to canonical *aequitas* – Paul VI described it in these words, "In canon law *aequitas*, which the Christian tradition received from Roman jurisprudence, constitutes the quality of its law, the norm of their application, an attitude of spirit and soul that tempers the rigour of law".³² The jurist, Alexander III, had earlier admonished that 'iuxta iuris aequitatem procedere' (the just law must proceed with equity) since *aequitas* is the reasonable consideration of the peculiarities of individual cases³³ (as against the aphorism, 'Everybody is equal in the eyes of the law'). Honorius III (1216-1227) also pointed to *aequitas* as a sure criterion for every ecclesiastical superior.³⁴

³¹ D'Auria, "La pastoraltà," 3.

³² Pope Paulus VI, "Allocutio Ad Praelatos Auditores et Officiales Tribunalis Sacrae Romanae Rotae, a Beatissimo Patre novo litibus iudicandis ineunte anno coram admissos, die 8 mensis februarii a 1973," AAS 65 (1973): 99.

³³ Paolo Grossi, *L'Ordine giuridico medievale* (Roma-Bari: Laterza, 2011), 212.

³⁴ Grossi, *L'Ordine giuridico*, 212.

Examples of the application of this principle can be seen in c. 1345, for instance, that requires the judge, in the given situations, to refrain from punishment if he considers that the person's reform may be better accomplished in some other way. In the same line c. 1346, §2 demands the prudent decision of the judge to moderate the penalties in an equitable fashion and to place the offender instead under vigilance, when the sum of penalties to be imposed seems excessive for the offender.

Finally, in the last part of c. 1311, § 2, the goal of penal law and all penal proceedings is restated in these words, "... *having in mind the restoration of justice, the reform of the offender, and the repair of scandal*" (see also c. 1341). In other words, in all penal proceedings, the Church seeks primarily to restore justice, that is, to attend to the spiritual and material wounds caused by the crime, eradicating or neutralizing their cause and repairing them, to the extent allowed by the juridical powers of the pastor.³⁵ At the same time, efforts must be made to mend the culpable person for his salvation. Finally, the reparation of the scandal is sought – especially avoiding, not only among the faithful – the spread of doubts, ambiguities, or confusion about the attitude of the Church with respect to certain behaviours that falsify her truth and hurt her image.

Going beyond the fundamental principles stipulated in c. 1311, § 2, we would like to look at some other principles in Book VI that are very necessary for a proper understanding of the Church's penal law.

6.0 The Principle of Legality: "*Nullum crimen sine praevia lege poenale*"

One cannot end a discourse on the principles codified in the book on sanctions in the Church without referring to the so-called principle of legality, *Nullum crimen sine praevia lege poenale* (there can be no crime if there is no pre-existing norm that judges it as

³⁵ J. Miras explains that other means undoubtedly can and should be used simultaneously or successively, which accompany and complement, but cannot replace prosecution – except in cases stipulated by the Legislator when this might be the required response. Miras, "Practical Guide," 2.

such, albeit with the limits imposed by c. 1399). This principle expresses the prohibition of subjecting someone to a penal sanction for the commission of an act that, at the time it was committed, the act was not provided for by law as a crime.³⁶ The same applies when the Church in c. 221 §3 stipulates that Christ's faithful have the right to be punished according to the norms of the law.³⁷

7.0 The Principle of Due Process

As Ed Condon and JD Flynn observed, among the changes likely to be praised by canonical advocates and especially those concerned with the protection of priests' rights in the revised Book VI are two small but significant additions.³⁸ The first is in canon 1321, § 1, where the new text adds a positive assertion of the presumption of innocence: "Any person is considered innocent until the contrary is proved". It is a clarification that no one can be punished with a sanction unless he is proven guilty and is imputable, which means that he is psychologically and morally responsible for his actions.³⁹ They conclude, therefore, that the affirmation that the Church maintains a presumption of innocence is like a validation of the human right to a fair hearing of those priests and their advocates, who in recent decades have charged that the mere accusation of a canonical crime should not be enough to remove them from ministry.

The other change that can be taken as – a protection of due process for accused clerics and a measure of accountability and justice for alleged victims of clerical abuse or misconduct is the change in the new time limit on canonical prosecutions. Current

³⁶ Papale, "Il Processo," 34.

³⁷ Condon and Flynn, "The Church's new Penal Canon Law," 36, footnote 90.

³⁸ Condon and Flynn, "The Church's new Penal Canon Law," 36. The part here is dependent on this article.

³⁹ Francesco Zanchini di Castiglionchio, "Riflessioni sul "giusto processo" in diritto canonico, sullo sfondo del riequilibrio in corso fra diritti e poteri nella Chiesa Cattolica," ["Reflections on Due Process in Canon Law, against the background of the ongoing rebalancing of Rights and Powers in the Catholic Church"], *Rivista telematica* (<https://www.statoechiese.it>), fascicolo n. 20 (2022), 87-126. Accessed 20/06/2023.

penal law maintains a general statute of limitations of 20 years for serious crimes, which can be waived when necessary. The new text of canon 1362 allows a window of only three years from the beginning of a formal canonical process for the prosecution to conclude its case, before the clock on the statute of limitations starts running again. It means then that, clerics in lingering canonical processes can now demand a resolution to their status, and eventually make a legal claim that the case against them has expired.

8.0 The Laity

A key thematic change in the revised Book VI is a much-amplified recognition of the laity, and the role they play in the institutional life of the Church.⁴⁰ Lay men and women have for decades played an increasingly important role in the institutional Church, serving as diocesan chancellors and notaries (cf. cc. 482-483, 1437), finance officers (c. 494), judges in diocesan tribunals (c. 1421, § 2), diocesan tribunal directors and assessors like safeguarding officers (c. 1424), auditors (c. 1428), promoters of justice or defender of bonds (c. 1430, 1432), consultors in an ecumenical council (c. 339 § 2); particular councils (c. 443 § 4); diocesan synods (cc. 460; 463 § 1, 5° & § 2); college of arbitrators (c. 1714); particular consultations like in the appointment of bishops or parish priests (cc. 377; 524); experts *ex officio* (c. 1575). At the parish level, other positions have also come into being since Vatican Council II, including the option for some lay people to be given administrative charge of a parish in some circumstances (c. 517), members of the pastoral council (cc. 512, 536); council for economic affairs (cc. 492; 537; 1280), etc.

The revised Book VI includes several new references to the laity, and to men and women religious, including the norm that lay Catholics, religious sisters, and brothers, are now explicitly to be punished under canon law for various offenses related to sexual abuse. For example, canon 1333 previously stipulated that the punishment of suspension “can affect only clerics”. That provision is removed from the revised text, meaning that those lay men and women who hold ecclesiastical offices can now be subjected to the

⁴⁰ Condon and Flynn, “The Church’s new Penal Canon Law,” 36.

same penalties as clerics in relation to their offices, and, at least implicitly, expect the same stability in office as a cleric accused but not yet found guilty of misconduct.

Conversely, the law previously defined as a crime the use of physical violence against the pope, bishops, and clerics in hatred of the faith. But the revised canon 1370 is now broadened to include any member “of Christ’s faithful out of contempt for the faith, or the Church, or ecclesiastical authority or the ministry”. This would seem to cover physical assaults carried out against lay men and women during an ecclesial office or ministry.

9.0 The Power of Remorse

The Church believes strongly in man’s ransom and redemption, even after he has done wrong. Little wonder much emphasis is placed on the pastoral character of punishment, and its nature as a coercive legal instrument necessary for the protection of ecclesiastical discipline in a just order.⁴¹ Put differently, a primary goal of the canonical penal system, as we have mentioned, is precisely to concern itself with the conversion and eternal salvation of the offender (cf. cc. 1341, 1752), that is, the one who has broken the law, thus creating a serious injury above all to his own human dignity and then to the entire community.

It is, however, also necessary that the offender demonstrates remorse and conversion. The Code maintains that the ordinary must refrain from imposing penalty when the offender has shown sufficient level of remorse (c. 1335, § 2). According to c. 1347, § 1 “*A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt and has been allowed suitable time to do so. § 2: The offender is said to have purged the contempt if he or she has truly repented of the offence and has made suitable reparation for the scandal and harm, or at least seriously promised to make it*”⁴² (see also c. 1358 §1). **However, once the contempt has been purged, the remission cannot be**

⁴¹ D’Auria, “La pastoraltà,” 3; Domingo, “Penal Law in the Roman Catholic Church,” 172.

⁴² Emphasis is ours.

refused, without prejudice to the provision of can. 1361, §4.⁴³ Obstinacy, or what the Code calls ‘contumacy’ is a ‘cancer’ that ravages those who have failed to understand the dynamics of the Church’s legal system.

The revised Book VI of the Code of Canon Law has been greeted by many as laudable. Many criticisms, however, have also trailed its publication. Some critics maintain that the preference for pastoral approach, steeped in compassionate *caritas* towards the offender and all focused on the inviolability and intangibility of the right of defence of the accused, ... on the one hand, the obtuse and oblivious approach to the retributive function – albeit well understood and purged of all vindictive mechanism – of punishment on the other, undermines the Church’s legal system.⁴⁴ In the opinion of B. Boni, the scourge of so-called paedophilia, for instance, that has engulfed and still plagues the Church certainly would not have occurred in such impressive proportions if the ordinaries had diligently and fully performed their painful but inevitable punitive task.⁴⁵

10.0 Conclusion

It is precisely the urgency of the task that the Church feels and has always felt in the time of human history that leads her to understand more and more how the juridical instrument, which can also endow the Church with a coercive force, is a valid, perhaps indispensable, help in fulfilling her mission among men. The Church has the obligation to protect the rights of each faithful, promote and protect the common good as an indispensable condition for the integral development of the human and Christian person. Within this context the penal discipline has its place. It is, thus, not without reason that the name of the apostolic constitution, with which the new Book VI is promulgated is *Pascite Gregem Dei ...* (“Shepherd God’s flock”) taken from 1 *Pet* 5:2.

⁴³ Emphasis is ours.

⁴⁴ Boni, “Il Libro VI,” 9.

⁴⁵ Boni, “Il Libro VI,” 10-11.