

Nicholas P. Cafardi, canon lawyer and a professor of civil law at Duquesne, and one of the first members of the U.S. bishops' National Review Board for the Protection of Children and Young People, responds to "Church Office Failed to Act on Abuse" and the canonical issues it raises.

The NYT, the CDF & church law—a canonist responds.

Article by **Grant Gallicho**

July 7, 2010

[\[Crimen Sollicitationis\]](#)

<http://www.commonwealmagazine.org/blog/?p=8980>

It is rare when issues of canon law make the front page of the New York Times and even more rare when the secular media gets their canonical issues right. But the Times story of July 2, 2010, "Church Office Failed to Act on Abuse Scandal," did just that. As the Times reported, it truly was a failure in the church's canon-law system that exacerbated, if it did not help to cause, the clergy child sexual-abuse crisis in the United States.

When the crisis first broke in the mid-1980s, U.S. canon lawyers (me among them) thought that the new Code of Canon Law, promulgated in 1983, limited the canonical prosecutions of priests who had sexually abused minors to crimes that were reported within five years of their occurrence. The new canon 1362 said that the statute of limitations on such crimes was five years after their commission.

The problem with that statute, of course, is that it takes children much longer than five years to come to terms with an instance of abuse and begin to tell people about it. The literature suggests that the average time for a child to figure out exactly what was done to them, how wrong it was, that it was not their fault, and that they have nothing to fear from telling people about it, is about twenty years. So a five-year statute on child sexual-abuse crimes is unrealistic to begin with.

The U.S. bishops knew that they had a problem with that short statute, and in the late '80s they began to beg the Vatican for a longer one. Those discussions unfolded over several years. Only in 1994 did the Vatican agree to a new statute of limitations for the United States: ten years after the victim turned eighteen, thus enabling the prosecution of many more crimes.

But lurking in the unreferenced and uncatalogued canonical database (yes, canon law is much more difficult to research than civil law because it lacks many of the organizational databases that civil lawyers have at their disposal) was a document that could have easily solved the statute of limitations problem. It was called "Crimen Sollicitationis" or "The Crime of Solicitation," and, while it dealt primarily with the canonical crime of priests soliciting sex in the confessional, it also dealt with the "worst crime," a euphemism for, among other things, the sexual abuse of a child by a cleric.

That document, which gave jurisdiction over such crimes to the Holy Office, now the Congregation for the Doctrine of the Faith (CDF), was first published in 1922

and again in 1962—but it was published only in the loosest sense. It never appeared in the Acts of the Apostolic See or in *L'Osservatore Romano*, or any other place where a canon lawyer would go looking for the law. The fact that the Holy Office had jurisdiction over those crimes was very important, because crimes in the Holy Office's jurisdiction are unprescribable, that is, they have no statute of limitations. Yet that jurisdiction was also unknown!

When the document finally came to light, many canon lawyers thought it was irrelevant because the 1983 Code had so re-ordered that area of the law that "Crimen Sollicitationis" had been impliedly overruled in favor of the new five-year statute of canon 1362. After all, if "Crimen Sollicitationis" was still in effect, what was the purpose of all that dithering between the U.S. bishops and the Vatican from 1988 to 1994 to get a longer statute of limitations for priests who had sexually abused children? If "Crimen" still applied, all the Vatican had to do was pull the document out of a drawer and tell the U.S. bishops to use it, since crimes reserved to the Holy Office, now CDF, have no statute of limitation.

Imagine U.S. canonists' surprise when, in a May 2001 letter accompanying Pope John Paul II's *motu proprio* "On Safeguarding the Sanctity of the Sacraments," Cardinal Ratzinger, then prefect of CDF, referred to "Crimen Sollicitationis" as being "hucusque vigens"—Latin for "in effect until now"—that is, in effect until May 2001, and therefore not overruled by the 1983 Code of Canon Law. Yet, if "Crimen" was in effect until 2001, why did no one at the Vatican say so before and spare the U.S. bishops all that grief asking for a longer statute?

It is unfair to lay this *contretemps* at the current pope's door. He is a theologian, not a canon lawyer, and, like other laymen (nonprofessionals) in the field of canon law, he has to rely on what the experts tell him. But whoever inserted the phrase "hucusque vigens" in Ratzinger's 2001 letter and whoever his Vatican canonist colleagues are, they have a lot of explaining to do.

Nicholas P. Cafardi