VOS ESTIS LUX MUNDI: TOO FAR OR NOT FAR ENOUGH?

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In the light of the abuse crisis in the Roman Catholic Church, several inquiries have given recommendations on what should be done in the future, to ensure that such crimes are dealt with both civilly and canonically. In 2017, the Royal Commission of Australia produced a number of specific points to be addressed. Two years later, Pope Francis introduced guidelines to be observed universally whenever cases are reported, and these addressed many of the Commission's recommendations. A question remains as to whether these have gone too far or far enough.

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The apostolic letter, *Vos Estis Lux Mundi* ('You are the Light of the World') issued by Pope Francis in 2019, was an attempt to address the global scandal of sexual abuse within the Roman Catholic Church.[1] The document itself augments what was already in the 1983 Code of Canon Law, while also taking into account issues that had come to the fore in the public domain through the testimony of survivors, and various inquiries held in a number of countries. This article considers whether the provisions of Francis's letter go far enough by considering the types of abuse that have been reported, what was already in canon law to deal with it (and why it may not have been effective), and what the report of the Royal Commission of Australia has recommended.[2] The discussion will then look at the text of *Vos*

[1] Pope Francis, *Vos Estis Lux Mundi*, 2019, <www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html>, accessed 10 November 2019.

[2] Though there have been a number of investigations in countries such as Ireland, Scotland, Austria, Germany, the Netherlands and the USA, the Royal Commission into Institutional Responses into Child Sexual Abuse (2017) provided very specific recommendations to the Catholic Church on what action should be taken. The report is available online, <file:///C:/Users/user/Desktop/VOS%20ESTIS/final_report_-_preface_and_executive_summary.pdf>, accessed 31 January 2020.

Estis Lux Mundi itself, noting the positive aspects, but also pointing out some potential issues in its implementation.

WORLDWIDE ABUSE

The website, BishopAccountability.org, gives an indication of the world-wide scale of the abuse problem. Though the website itself is careful to indicate that it is reporting allegations rather than criminal convictions, there are various other sources which corroborate the scale of the problem. The website indicates that the issue covers all continents, and that there are different aspects to the issue of 'abuse'. While the physical sexual abuse of minors has received most publicity, seminarians and young priests[3], sisters in religious congregations[4], and vulnerable adults have themselves been the target of sexual predators.[5]

However, the abuse crisis relates to more than physical acts of various levels of intrusiveness and severity. The growth and prevalence of internet activity since the creation of the World Wide Web by Tim Berners-Lee in 1990 has opened up another channel of exploitative and immoral activity, that of downloading, possessing or distributing indecent images of children.[6] The explosion of the number of websites featuring such material has led to various studies being done on its prevalence[7] and initiatives taken to combat the sexual exploitation of children.[8] Indeed, the recognition that this problem extends to members of the clergy is evidenced in its inclusion in various safeguarding documents issued by Bishops'

[3] Two of the most prominent clergymen to be accused in recent years are Keith O'Brien, former Cardinal Archbishop of the Archdiocese of Edinburgh and St Andrews, and Mr Theodore McCarrick, former Cardinal Archbishop of Washington DC.

[4] See 'Pope admits clerical abuse of nuns, including sexual slavery', BBC News, 6 February 2019. This was not news in the sense that in 1994 Sr Maura O'Donohue, who had worked in Africa compiled a report detailing such abuse, not only in Africa, but also in the United States, India, Ireland and Italy. See P McGarry, 'The Irish woman who exposed abuse of nuns by priests 25 years ago', *Irish Times,* 10 February 2019, <https://www.irishtimes.com/news/social-affairs/religion-and-beliefs/the-irish-woman-who-exposed-abuse-of-nuns-by-priests-25-years-ago-1.3788555>, accessed 19 January 2020.

[5] This raises a question about the definition of 'vulnerable adult', which will be discussed later.

[6] See J-C Larchet, *The New Media Epidemic: The Undermining of Society, Family, and Our Own Soul* (Jordanville, NY, 2019), p 57.

[7] For example, see ECPAT International, *Trends in Online Child Sexual Abuse Material*, Bangkok, <www.ecpat/wp-content/uploads/2018/07/ECPAT>, accessed 19 January 2020.

[8] See, for example, Commission of the European Community, *Report based on Article 12 of the Council Framework Decision of 22 December 2003 on Combatting the Sexual Exploitation of Children and Child Pornography*, Brussels, 2007, <https://ec.europa.eu/anti-trafficking/sites>, accessed 19 January 2020.

Conferences[9], and not least because of a number of convictions of priests for this crime, even up to the present day.

Such abuse was further compounded in the way that reports of abuse were dealt with. In 2002, the Boston Globe exposed the extent of the cover up of crimes by priests in the Archdiocese of Boston. Not only were the crimes kept secret and not reported to civil authorities, but priests were often moved around parishes, giving them the opportunity to re-offend.[10] Subsequent investigations into child sexual abuse in other parts of the world revealed similar failures. The report into the Irish diocese of Raphoe noted that the judgement of successive bishops was often clouded where too much emphasis was placed on the situation, needs, and presumed right to ministry of the accused priest, where presenting problems such as alcohol abuse were seen to mitigate the actual offence.[11] The report dealing with the diocese of Ferns noted that between 1960-1980 the bishop at the time treated child sexual abuse by priests as a moral problem, though the report suggests that the bishop's response reflected the growing understanding by the medical profession and society in general of the nature of child sexual abuse and the harm it did.[12] The Murphy Report, dealing with the Archdiocese of Dublin, notes that the preoccupation in dealing with cases of abuse up until the mid-1990's was maintaining secrecy, avoiding scandal, and protecting institutional reputation and assets.[13] And in England and Wales, the wide-ranging Institutional Inquiry into Child Sexual Abuse (IICSA) noted similar failures in reporting[14], but also when cases were dealt

[9] See United States Conference of Catholic Bishops*, Pledge to Heal: Charter for the Protection of Children and Young People*, June 2018 (revised), <www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf>, accessed 19 January 2020.

[10] The report was later made into a film, 'Spotlight', in 2015. The subsequent scandal after the 2002 report saw more victims coming forward, and the resignation of Cardinal Law.

[11] National Board for Safeguarding Children in the Catholic Church, *Review of Safeguarding Practice in the Diocese of Raphoe*, August 2010, available on <https://www/donegaldaily.com/2011/11/30/raphoe-abuse-reort-in-full>, accessed 22 January 2020.

[12] F Murphy, H Buckley, and L Joyce, *The Ferns Report*, presented by the Ferns Inquiry to the Minister for Health and Children, Dublin, Government Publications, 2005, <http://www.bishop-accountability.org/ferns>, accessed 31 January 2020, Executive Summary, p 1.

[13] Department of Justice and Equality, *Report by Commission of Investigation into the Catholic Archdiocese of Dublin,* 29 November 2009, <http://www.bishop-accountability.org/reports/_2009_11_26_Murphy_Report/ > accessed 22 January 2020. Further references are abbreviated to 'The Murphy Report'.

[14] IICSA, *The Roman Catholic Church Case Study: Archdiocese of Birmingham Investigation Report*, 20 June 2019, < https://www.icsa.org.uk/document/roman-catholic-church-archdiocese-of-birmingham-case-study-investigation-report>, accessed 22 January 2020. This report noted the failure to report abuse cases to the police prior to 2001, with the default position being to take no action or move a priest to another parish, together with a culture of secrecy and protection of the institution (Section E2: Conclusions, points 4 and 6). The same issues were noted in case studies related to the schools operated by the English Benedictine Congregation. See the *Ampleforth and Downside Investigation Report,* August 2019, <https:/www.icsa.org.uk/key-documents/6583/view/ampleforth-downside-investigation-report-august-2018-pdf> , accessed 22 January 2020.

with after measures were put in place, there were deficiencies in case management and the recording of actions.[15]

What we have seen, therefore, is that the concept of 'abuse' is multi-faceted, involving not only the physical sexual abuse of children, but also their abuse through the proliferation of child abusive imagery. Sexual abuse cases have also involved adults, both men and women, deemed to be 'vulnerable'. Finally, this abuse has been compounded (and may also be said to be a form of abuse) by the way in which such cases have been handled when reported. This raises the question of what provisions were already in the 1983 Code of Canon Law, and why they were not implemented effectively in these cases.

WHAT WAS ALREADY IN CANON LAW?

There was already much in the 1983 Code of Canon Law which addressed such activities. In terms of expectations, clerics are obliged to observe 'perfect and perpetual continence' and are 'bound to celibacy.[16] However, celibacy is more than being continent (or abstaining from sexual relations), simply remaining unmarried, or avoiding exclusive one-to-one relationships. It is described as 'the religious practice of non-marriage or the choice of a commitment to the single life for specifically religious reasons'.[17] For the Roman Catholic priesthood, clerical celibacy is an obligation (with the exception of former married Anglican priests who have been ordained in the Roman Catholic Church). For diocesan clergy this involves making a promise to remain celibate, and for priests in religious orders this involves the taking of a vow. This difference, however, is not significant in terms of the obligations undertaken or the challenges involved in living as a celibate. Canon 1389 is also relevant in that it mentions sanctions for someone 'who abuses ecclesiastical power or an office'**.** As one commentary notes 'all power in the Church….is to be exercised for the good of the faithful', but a strict interpretation of the text (in accordance with canon 18) requires that 'there must be a deliberate misuse of one's authority or position which results in injustice or injury to others'.[18]

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[15] *The Roman Catholic Church Case Study: Archdiocese of Birmingham Investigation Report,* Section E2: Conclusion, point 16.
[16] *Code of Canon Law 1983* Canon 277 §1.
[17] D Goergen, 'Celibacy', *The New Dictionary of Theology* (Dublin, 1987), pp 174-177, p 174.
[18] Canon Law Society of Great Britain and Ireland, *The Code of Canon Law, Letter and Spirit*, (London,1995), p 800.

Therefore, 'sexual misconduct' has two aspects, the violation of clerical celibacy and the intentional misuse of power and abuse of ministry.[19]

In terms of dealing with a perpetrator, several reports on the failure of the Church to deal adequately with the question of child sexual abuse by clergy noted that the Code of Canon Law 1983 in fact contained detailed regulations for legal proceedings to be initiated.[20] Canon 1717 states that a major superior (an ordinary of a diocese, or superior general or a provincial superior of a religious congregation) is to enquire carefully about the facts and circumstances, and about the imputability of the offence, when he receives report about an offence which has at least a semblance of truth (§1). Care, however, is to be taken that the investigation does not call into question anyone's good name (§2). After this preliminary enquiry, the major superior is to decide on various courses of action – imposing or declaring a penalty, initiating a judicial process, or to proceed by means of an extra-judicial decree.

However, there appear to have been two major issues which meant that the provisions above were not adequately implemented, if at all. An instruction, *Crimen sollicitationis,* first issued in 1922 and reissued in 1962, established a procedure for canonical cases where priests were accused of abusing the confessional to proposition penitents sexually. The contents of the document were not limited to cases involving solicitation. There were norms to deal with four distinct crimes (classed as *de crimine pessimo* – 'the worst crime': (i) solicitation for sex in the forum of sacramental confession; (ii) homosexual sex; (iii) sexual abuse of minors, male or female; (iv) bestiality or sex with animals. A major feature of the document was its emphasis on the inviolable observation of confidentiality for all those taking part in the process and all who had knowledge by reason of office.[21] Unfortunately, because this document was not widely distributed, virtually no one knew about it or used it.[22] The document came under investigation when it was reported in the media in 2003, by which time it has been superseded by another document, *Sacramentorum sanctitatis tutela* (2001). The media alleged that, being covered by pontifical secrecy, the document was intended to cover up cases of sexual

[19] One of the most recent cases is that of Jean Vanier, founder of the L'Arche community who instigated sexual relations with women, usually in the context of giving spiritual guidance. *See Summary Report from L'Arche International*, 22 February 2020, <https://www.larche.org.uk>, accessed 16 March 2020.
[20] For example, see The Murphy Report, chapter 4.
[21] The document is now available online. See Sacred Congregation of the Holy Office, *Instruction on the Matter of Proceeding in cases involving the crime of solicitation,* 1962, paragraph 11, <www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html>, accessed 30 January 2020.

[22] See The Murphy Report, chapter 4, section 4.24.

abuse.[23] Canon lawyers maintained that the document imposed secrecy only on canonical procedures, and did not prohibit anyone from reporting criminal abuse cases to the statutory authorities. [24] Whatever the case, there is no doubt that these laws mandating secrecy exacerbated the sexual abuse scandal.[25]

A second issue relates to the definition of 'paedophilia' and the canonical concept of 'imputability'. *The Diagnostic and Statistical Manual of Mental Disorders* (DSM) of the American Psychiatric Association, which has undergone a number of revisions since it was first published in 1952, provides criteria for a range of psychiatric disorders[26] as does the *International Statistical Classification of Diseases and Related Health Problems*, maintained by the World Health Organisation.[27] Both provide criteria for a range of psychiatric disorders, among the listing of which is 'paedophilia', and both report that the fantasies, sexual urges, or behaviours associated with this disorder cause clinically significant distress or impairment in social, occupational, or other areas of functioning'.[28] When this 'medical model' of paedophilia is allied with the canonical concept of 'imputability' (canon 1321), where it can be extinguished if a person habitually lacks the use of reason (canon 1322) and does not function 'freely and deliberately'[29], or diminished if there are factors affecting knowledge or freedom such as drunkenness or mental disturbance, it is perhaps not altogether surprising that it was treated as an illness (and/or a moral failure) rather than a crime, with abusers being sent for therapeutic intervention.[30]

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[23] In fact, the 'pontifical secret' referred to the responsibility of confidentiality and was not a commitment to keeping things secret. Unfortunately, unhealthy secrecy became the norm in such matters rather than the positive values of confidentiality and discretion.

[24] See J Allen, *All the Pope's Men*,: *The Inside Story of How the Vatican Really Thinks*, (New York, 2004), p 282.

[25] See N Cafardi, 'The Scandal of Secrecy', *Commonweal,* 13 August 2008, <https://www.commonwealmagazine.org/scandal-secrecy>, accessed 30 January 2019.

[26] DSM-II was published in 1968; DSM-III in 1980, with a revision in 1987; DSM-IV in 1994, and revised in 2000; DMM-5 is the most recent edition, published in 2013.

[27] First used in 1949, the eleventh edition comes into effect in 2022.

[28] DSM IV, p 571.

[29] Canon Law Society of America, *New Commentary on the Code of Canon Law*, (New York, 2000), pp 1541-1542.

[30] In The Murphy Report it was noted that paedophilia could be made an actual defence to a claim of child sexual abuse just as insanity would be a defence in the law of the state (chapter 4, section 4.59, p. 72). It was further noted that the penal process was set aside in favour of a purely 'pastoral' approach (section 4.90, p. 79). In testimony to the Scottish Child Abuse Inquiry, Monsignor Peter Smith noted that it had been believed that child sexual abuse was a moral issue that could be sorted out by therapy (SCAI, TRN.001.001.3805, 8 June 2015, p 30).

WHAT WAS ASKED FOR

In the various inquiries held in different countries a number of conclusions were drawn and recommendations made in the light of the issues mentioned above. This section, though, looks at those of the Royal Commission of Australia in 2017 because they are particularly clear, focussed, and specific.

Recommendation 16.9 addressed the issue of child sexual abuse itself and outlined suggestions to the Australian Catholic Bishops Conference, that they request the Holy See to create new canons in the 1983 Code of Canon Law specifically relating to this crime. The first of these was that all delicts relating to child sexual abuse should be articulated as canonical crimes against the child, not as moral failings or as breaches of the 'special obligation' of clerics and religious to observe celibacy. It might be argued that it would be have been better to have put 'not *only* as moral failings' since sexual abuse is both a crime *and* a sin. Nevertheless, it gives more than a nod to the fact that sexual abuse in a Church setting may be committed by a lay person not bound to celibacy, and it could have been argued that it weakens the link between 'celibacy' and 'child sexual abuse', save for the Commission's recommendation (16.18) that the Australian Bishops should request of the Holy See to consider introducing voluntary celibacy for diocesan clergy.

A second suggested change was that all delicts relating to child sexual abuse should apply to any person holding a 'dignity, office or responsibility in the Church' regardless of whether they are ordained or not ordained. As Rik Torfs notes, at the time when the Code was promulgated in 1983, 'lay people were less active in the Church, certainly on a professional basis, than they are today'.[31] This recommendation reflects changes since then in that such offices and responsibilities, not only include priests or male and female members of Religious Congregations, but also lay people whose work might range from giving spiritual direction or acting as parish catechists and directors of religious formation, to individuals or teams in parishes visiting prisons and hospitals, care facilities, or people in their own homes.

In the 1983 Code of Canon Law, a delict is committed against the sixth commandment if the minor is under the age of 16. This age was raised to 18 by Pope John Paul II in *Sacramentorum Sanctitatis Tutela* in 2001. There is no mention of pornography in either of

[31] R Torfs, 'Canon Law and the Recommendations of the Royal Commission', in *Canon Law Society of Great Britain and Ireland Newsletter*, April 2019, 15-39, 22.

these and it is not until revised norms are issued in 2010 by Pope Benedict XVI, *Normae de gravioribus delictis*, that there is inclusion of a delict relating to the acquisition, possession, or distribution of pornographic images of minors. Given that the age limit for minors in this category is specified as 14, one interpretation is that somehow pornography is not as damaging to a minor as is physical sexual acts. In what appears to be an acknowledgement that both delicts are as damaging as each other, the Royal Commission made a recommendation that this age be raised also to 18, now given effect – perhaps rather late in the day - in *Vos Estis Lux Mundi*.

In relation to the question of 'imputability' and the use of a 'medical model' in terms of paedophilia, the Commission in its report urged the Bishops' Conference to ensure that the 'pastoral approach' was not an essential precondition to the commencement of canonical action relating to an allegation of child sexual abuse.[32] Moreover, it urged the bishops to petition the Holy See to amend the imputability test in canon law so that a diagnosis of paedophilia was not relevant in the case of a civil prosecution or a canonical trial.[33] In other words, the Commission were urging that any child sexual abuse is a criminal offence, and that a diagnosis of 'paedophilia' could not be used as a defence, in the first instance at least.

In relation to the issue of 'secrecy', the Commission called on the bishops to ask the Holy See to amend canon law so that the 'pontifical secret' would no longer apply to any aspect of allegations or canonical disciplinary processes relating to child sexual abuse.[34] However, there was also a call for less secrecy, and more transparency, in relation to governance and processes generally. Recommendation 16.7 called for a review of the governance and management structures of dioceses and parishes. Specific issues to be considered included transparency, accountability, consultation, and the participation of lay men and women.[35] Further, there was a call for the publication of selection criteria for bishops and a more transparent process in their appointment, which should have the direct participation of lay people.[36] Finally, in terms of processes, it was recommended to the Australian bishops that they request the Holy See to introduce measures to ensure that Vatican Congregations and

[32] Recommendation 16.11.
[33] Recommendation 16.13.
[34] Recommendation 16.10.
[35] Recommendation 16.7
[36] Recommendation 16.8

canonical appeal courts always publish decisions in disciplinary matters relating to child sexual abuse.

One issue that was not mentioned in the Royal Commission's recommendations was that of the issue of the abuse of vulnerable adults. This is perhaps unsurprising given the Commission's remit of focussing on children. Nevertheless, given that the issue of 'vulnerability' has come to the fore in recent years, this is an area that needs to be addressed adequately by the Church. The next section considers how the present Pope has responded to these particular challenges, and whether there remain some problematic areas.

VOS ESTIS LUX MUNDI

With the opening words 'you are the light of the world', the letter of 7 May 2019 is addressed to every believer who is called to be 'a shining example of virtue, integrity and holiness'. Addressing the issue of 'the crimes of sexual abuse', the letter notes that 'a continuous and profound conversion of hearts is needed, attested by concrete and effective actions that involve everyone in the Church'. While 'personal sanctity' and 'moral commitment' are mentioned, the document is clear that sexual abuse is a 'crime', and not simply a moral failing. In this sense, it follows the recommendation of the Royal Commission. However, the scope of application of the norms applies 'to reports concerning clerics or members of Institutes of Consecrated Life or Societies of Apostolic Life' and, while it does not explicitly say so, an observation might be made that, given this, sexual abuse is also (and still seen) as the breach of the obligations of celibacy. Also, given that the introduction mentions 'all those who, in various ways, assume ministries in the Church….or are called to serve the Christian People', it is surprising then that the document does not appear to consider lay people who may hold some ecclesiastical office or who are active within the Church.

The document establishes the content of potential canonical crimes. The offences listed are delicts against the sixth commandment of the Decalogue, outlined as consisting of: (i) forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts; (ii) performing sexual acts with a minor or a vulnerable person; (iii) the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions. For the purposes of these norms, 'minors' are defined as 'any person under the age of eighteen (thereby reflecting the wish of the Royal Commission), or

who is considered by law to be the equivalent of a minor. The definition of 'child pornography' is rather more fulsome than that of the Royal Commission, describing it as 'any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes'.

The emphatic reminder at the beginning of the document, that it is the responsibility of bishops, as the successors of the apostles, for concrete and effective actions and the adoption of universal procedures, is then followed by a reference to civil and canonical investigations. Bishops, among others, are not to interfere in these, either by action or omission, where an allegation has been made against a cleric or a member of a religious congregation.[37] Notwithstanding canon 22 of the 1983 Code of Canon Law, Pope Francis makes it clear that compliance with civil law is obligatory and non-negotiable.[38] Additionally, the document imposes a canonical obligation on priests and religious to report abuse, and that episcopal conferences should establish a reporting mechanism that can be used by anyone. Further, the document emphasises the care due to victims, that whistleblowers should not be punished, and establishes timetables and deadlines for each stage of the process.

MINDING THE GAP: THE QUESTION OF VULNERABILITY

Vos Estis Lux Mundi defines a 'vulnerable person' as one who is 'in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence'. Although this is an expansion on the definition in the 1983 Code of Canon Law which defines a vulnerable person as one 'habitually lacking the use of reason' (canon 99), a question arises as to whether this is a wide enough definition. 'Vulnerability' in health and social care terms is variously defined but will include those adults who have care and support needs, who are experiencing or are at risk of abuse or neglect and who, as a result of having such needs are unable to protect themselves from either the risk or experience of abuse or neglect.[39] Adults

[37] These are listed in article 6 of the document and include cardinals, bishops, patriarchs, papal legates, clerics who have been the pastoral heads of Personal Ordinariates or Personal Prelatures, and supreme moderators of Institutes of Consecrated Life and Societies of Apostolic Life, as well as autonomous monasteries.
[38] Canon 22: 'When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, insofar as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law'.
[39] See, for example, the *Care Act 2014* (England), <www.legislation.gov.uk/ukpga/2014/23/contents/enacted>, accessed 16 March 2020; *Adult Support and Protection (Scotland) Act 2007*, <www.legislation.gov.uk/asp/2007/10/contents> , accessed 17 March 2020;

in such positions of vulnerability may include those with dementia or learning disabilities, or those suffering from mental ill-health or substance misuse. Abuse of such vulnerable adults may include violence, neglect, or exploitation (including financial).

At the same time, it can be argued that not all adults who have been, or might be, victims of abuse or inappropriate behaviour, are vulnerable under this definition. Many of the people who have claimed or suffered abuse (both inside and outside of the Church) were capable adults made vulnerable because of their situation, often because they worked for them or afraid that their careers would be affected.[40] In terms of the Church, the claims of the abuse of sisters by clergy, of seminarians by their formators, and of young priests by bishops, suggests it can be argued that not all adults who have been victims of abuse or inappropriate behaviour are 'vulnerable' in what has been the accepted sense previously.

While *Vox Estis Lux Mundi* makes a nod to canon 1389, it makes explicit some of the content of that abuse which is not in the original canon, that of *forcing* someone to perform or submit to sexual acts. However, it is the idea of 'force' which is particularly interesting, and how this is interpreted. The document mentions 'violence or threat or through abuse of authority' on the part of the perpetrator, but this suggests that the potential victim is in a situation of vulnerability because of certain circumstances. This could mean forced sexual activity to avoid even greater physical or psychological violence, threat (such as exclusion from a seminary or a convent), or through intimidation because of the office held by the perpetrator. It can also be due to the desire on the part of a person in formation (the early stages of training for priesthood or life as a Religious sister or brother), or in any pastoral relationship, to please the person who has more power. Such an imbalance of this power relationship can lead to manipulation and exploitation of goodwill and trust.

Such potential victims may be normal, capable, and confident adults, and not 'vulnerable' in the usual sense, but who were made vulnerable because of their situation. All this suggests that the category of 'vulnerable adult' needs to be expanded, either implicitly or explicitly, to reflect this idea of adults 'in situations of vulnerability'. In such circumstances, abuse

[40] Acknowledgement to Brendan Geary FSM who alerted me to this distinction. Following sexual abuse allegations against the American former film producer, Harvey Weinstein the #MeToo Movement began on social media in an attempt to demonstrate the widespread prevalence of sexual assault and harassment, especially in the workplace. As it went viral, there were a number of responses from female American celebrities, claiming harassment or sexual assault.

becomes possible because of a significant power imbalance where a person with more status and authority can exploit the situation in order to abuse. Moreover, expanding the definition in this way also to take in sexual acts with anyone to whose ministry a pastor has been entrusted, particularly (but not exclusively) if that person is recognised as a vulnerable adult in the wider sense.[41]

MINDING THE GAP: GRADATION OF CRIMES

However, the question of defining 'vulnerability' in a wider sense, coupled with the emphasis on a potential abuse of office, raises itself another issue. In a recent article, concern has been expressed regarding how the law as expressed in this document is to be applied, and whether there will be an escalating gradation of crimes with corresponding penalties.[42] The issue is illustrated by Grenz and Bell who identify three categories of possible offence. The first is the clerical 'lover' who falls in love with a member of his congregation, which is not necessarily problematic if handled maturely, though does become problematic if it progresses to sexual relations. A second category, described as 'the wanderer', is one who may transgress boundaries when faced with an overwhelming crisis or major life change. 'The predator', the third category, is the most dangerous of all as there is an element of pre-meditation and exploitation on his part, being 'manipulative, coercive, controlling, predatory and sometimes violent', and for such 'the ministry presents an ideal opportunity for access to possible victims of all ages'.[43]

Much will depend on how the phrase 'sexual acts' will be interpreted. Civil legislation resonates with the categories identified in *Vos Estis Lux Mundi* in terms of offences against children and abuse of office.[44] Nevertheless, the question is raised as to how widely the term 'abuse of authority' is interpreted, whether it applies to a member of the clergy just because they are in a position of authority, and the extent of the vulnerability in the alleged victim.

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[41] It would perhaps be pushing the boundaries of the category too far to suggest that any and all members of a parish community (or any other adult community in which a priest ministers) are 'vulnerable adults'. However, it is wise to recognize the imbalance of power when a priest is dealing with someone who may be particularly vulnerable because of bereavement, divorce, or any other kind of emotional distress, whether temporary or permanent.

[42] E Condon, 'Analysis: "*Vos Estis*" and "Vulnerability"', Catholic News Agency, 13 May 2019, <https://www.catholicnewsagency.com/news/analysis-vos-estis-and-vulnerability-39974>, accessed 29 January 2010.

[43] M. Fortune, *Is Nothing Sacred? When Sex Invades the Pastoral Relationship* (San Francisco, 1992), p 47.

[44] See the UK's Sexual Offences Act 2003, <www.legislation.gov.uk/ukpga/2003/42/contents>, accessed 3 March 2020.

This being the case, there needs to be careful examination of allegations made in terms of the action itself and the circumstances in which it was alleged to have taken place.

MINDING THE GAP: INVOLVEMENT IN THE PROCESS

The emphasis on the role of the bishops in safeguarding at the beginning of *Vos Estis Lux Mundi* is reflected in the concrete provisions for reporting. Article 3 states that a cleric or member of a religious institute who has knowledge of a delict is obliged to report it promptly to the local ordinary (though 'any person' may submit a report). In terms of secrecy, article 4 makes clear that this is not deemed to violate office confidentiality, nor is there an obligation for that person to keep silent regarding the contents of such a report. Article 5 deals with the care of those who are believed to be victims and includes various forms of support, with the added injunction that the good name, privacy, and confidentiality of date be protected. However, the document is not entirely clear as to whether this protection extends to the people who have been accused, though Article 12 (7) reminds us that the alleged perpetrator enjoys the presumption of innocence until found guilty. The rest of the document then deals with procedural norms involving bishops and their equivalents. If a report is made against a bishop of the Latin Church, the authority receiving the report transmits it to the Holy See and the metropolitan bishop of the ecclesiastical province where the person reported is domiciled.[45] The metropolitan requests from Rome that he be assigned to commence the investigation, though there is provision that someone other than the Metropolitan can be entrusted to carry out the investigation. Other qualified people may be involved, but only at the invitation of the metropolitan.

There are two major issues arising from these provisions. The first relates to the idea of bishops (or metropolitans) taking the lead in the processes. History has shown that not only did bishops fail to report abuse cases that came to their attention, but that they themselves were accused of perpetrating sexual abuse. This is not a phenomenon confined to a particular part of the world but involves countries in North and South America, Europe, Africa and with

[45] If it is a bishop of the Eastern Catholic Churches, reports are forwarded to the relevant patriarch, major archbishop or metropolitan. If it is against the metropolitan himself, the report is forwarded to the Holy See and the senior suffragan bishop in the archdiocese (and the equivalence in the Eastern Churches).

stories of the sexual abuse of religious sisters by bishops in India emerging more recently. Moreover, several of those accused were not only bishops, but metropolitans. [46] Further, there is the question of the dependence on bishops for the proper working of the process. The Murphy Report noted that, at the time of writing, the structures and procedure that had been set up were working well. However, their effectiveness was heavily dependent on two people, the archbishop at the time and the director of the Child Protection Service. Given this, the report recommended that 'institutional structures need to be sufficiently embedded to ensure that they survive uncommitted or ineffective personnel'.[47] More recently, the Independent Inquiry into Child Sexual Abuse (IICSA) observed that canon law gives the bishop autonomy over what happens within his diocese, and drew attention to the safeguarding document of the Scottish Bishops' Conference which begins with the affirmation that bishops have full executive, legislative, and judicial power in their territories 'by divine law'.[48] Episcopal Conferences are assemblies of bishops in a particular country or territory which exercise certain pastoral offices, but the power of the diocesan bishop generally remains intact, as these conferences exist by reason of ecclesiastical, not divine, law. This means that diocesan bishops have no real lateral or downward accountability, and this has implications for any Episcopal Conference seeking to develop a unified structure of safeguarding. [49]

Secondly, although the norms of *Vos Estis Lux Mundi* stipulate that qualified (lay) people may be appointed by metropolitans to assist in investigations, this is not mandatory. Further, there is no requirement that they be independent (for example, not employed by the diocese), nor is there any indication as to what qualifications such lay people may need. While the norms state that such advisors are to act impartially and be free from conflicts of interest[50], there is no mechanism embedded to ensure that this will be the case. Given that the Royal Commission of Australia called for lay participation in processes, and more transparency about those processes, the provisions here fall short of those recommendations. Moreover, those who have expressed concerns about the effect and impact of clericalism on the whole

[46] See BishopAccountability,org, Bishops Accused of Sexual Abuse and Misconduct: A Global Accounting, updated 3 January 2020, <www.bishop-accountability.org/bishop/accused/global-list-of-accused-bishops.htm>, accessed 31 January 2020.
[47] The Murphy Report, chapter 1, page 4.
[48] Bishops' Conference of Scotland, *In God's Image: Safeguarding in the Catholic Church in Scotland,* 2018, <https://www.bcos.org.uk/Portals/0/In%20Gods%20Image%20WEB.pdf> , accessed 31 January 2020.
[49] See *Code of Canon Law 1983*, canons 447-459.
[50] *Vos Estis Lux Mundi*, article 13, 'Involvement of qualified persons'.

sexual abuse crisis cannot fail to notice that the process introduced in these norms by Pope Francis can be carried out entirely by clerics.

CONCLUSION

This discussion began with the question as to whether *Vos Estis Lux Mund*i had gone far enough or too far. A review of the document against the background of the situation, canonical considerations, and recommendations from the Royal Commission of Australia, shows that a number of issues have been addressed. Nevertheless, some questions arise relating to definitions of 'vulnerability' and possible gradations of crime. However, the most significant aspect of the document is that there is no mandatory involvement of lay people in the processes outlined within it. While it is true that paid employees employed to deal with safeguarding measures in the Church could well be involved, it raises the question of whether they can be truly impartial. The ongoing independence of bishops secured in canon law, and the non-involvement of independent lay people in these new measures, do little to reassure those who believe that the Catholic Church is unable to govern itself effectively in relation to the issue of safeguarding.