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Michael J. Mazza

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MICHAEL J. MAZZA*

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Introduction

The practice of making public the names of clerics “credibly accused” of sexual abuse of minors began some twenty years ago in the United States, just months after a series of explosive stories in *The Boston Globe* helped fuel a firestorm of criticism of the Church.¹ This strategy was not widely adopted at first, but became more widespread after the so-called “summer of shame” in 2018, in the wake of the flood of news stories about the Pennsylvania Grand Jury report and revelations concerning then-Cardinal Theodore McCarrick.² Defenders of the practice frequently refer to the concept of transparency when publishing lists, even when those whose

* Independent civil and canon lawyer, Milwaukee, WI.

1. Michael Rezendes, “Church allowed abuse by priest for years,” *The Boston Globe*, January 6, 2002: <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>. See also Jon Henley, “How the Boston Globe exposed the abuse scandal that rocked the Catholic church,” *The Guardian*, April 21, 2010: <https://www.theguardian.com/world/2010/apr/21/boston-globe-abuse-scandal-catholic>.

2. The first such list was posted by the Diocese of Tucson on June 21, 2002. See The Roman Catholic Diocese of Tucson, “News Release,” Bishop Accountability, June 21, 2002: http://bishopaccountability.org/az_tucson/2002_06_21_Moreno_and_Kicanas_News_Release.htm. Since then, more than 159 dioceses and 29 religious order provinces have released lists of accused clerics, with varying degrees of completeness and with different kinds of disclaimers. See “Lists of Accused Priests Released by Dioceses and Religious Institutes,” Bishop Accountability, accessed November 5, 2022, https://www.bishop-accountability.org/AtAGlance/bishops_lists.htm.

names appear have merely been accused of misconduct before any civil or canonical process has been conducted.³

Some apologists of this approach position the issue of whether and when to publish lists of the “credibly accused” as a balance between “privacy” and “transparency.”⁴ In essence, this line of argumentation suggests that there is a limit on the expectation of privacy under certain circumstances, and that in light of canons 220⁵ and 223 §2,⁶ clerics should understand that while their right to privacy is certainly important, the need of the community for “transparency” is even more important, insofar as the publishing of lists of those “credibly accused” advances the common good. A similar argument can be made with respect to the good of one’s reputation: while the right to a good name exists in theory, the thinking goes, the reality of today’s environment calls for a reassessment of the extent of that right in light of the goods of “transparency and accountability.”⁷

This article examines these positions in light of the well-established theological and canonical tradition in favor of the juridical good of *bona fama*. This right was explicitly recognized in canon 220 of the 1983 code after having been featured repeatedly in the teachings of twentieth century

3. See, e.g., Kevin J. Jones, “For transparency, San Bernardino diocese lists priests credibly accused of sex abuse,” Catholic News Agency, October 9, 2018: <https://www.catholicnewsagency.com/news/39596/for-transparency-san-bernardino-diocese-lists-priests-credibly-accused-of-sex-abuse>; “About the List,” Diocese of San Bernardino, accessed November 5, 2022, <https://www.sbdiocese.org/documents/latestnews/about-the-list.pdf> (noting that credibility determinations were made upon “the recommendation of the Diocesan Review Board” or, regarding older cases, “from facts uncovered by diocesan personnel at the time, the priest’s own admission or from police or legal documents”); “List of clergy credibly accused of sexual abuse of minor or young person is released,” Archdiocese of Indianapolis, December 18, 2018: <https://www.archindy.org/criterion/local/2018/10-12/abuse.html> (explaining that the publication of the list was being made “in the spirit of further accountability and transparency,” and containing, inter alia, names of priests who had died before an abuse claim against them was ever made).

4. See Diane L. Barr, “Transparency vs. Privacy? Civil and Canonical Issues Regarding Releasing Lists of ‘Credibly Accused’ Clerics,” *CLSA Proceedings* 83 (2022) 38–51.

5. Canon 220 of the 1983 Code of Canon Law provides: “Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare.”

6. The second paragraph of canon 223 reads thus: “Ecclesiasticae auctoritati competit, intuitu boni communis, exercitium iurium, quae christifidelibus sunt propria, moderari.”

7. See, e.g., Michael A. Saltarelli, “Update on sexual abuse of minors by priests,” letter to the people of the Diocese of Wilmington, Delaware, *The Dialog*, November 16, 2006; full text available at Bishop Accountability, accessed November 5, 2022, https://www.bishop-accountability.org/de_wilmington/2006_11_16_Dialog_accused_priests.pdf.

popes and in the documents of the Second Vatican Council. Several recent Vatican statements have directly touched the matter of publishing names of accused persons. In light of the unfortunate reality of false accusations and the widespread uncertainty around the meaning of the key term "credibility," it is evident that not only are important issues at stake when lists are published, but that greater clarity is needed regarding the scope of the right to reputation in an age of transparency.

1. Reputation and Transparency

Perhaps at no point in human history has the right to reputation been so fragile. The advent of the internet has led to a revolutionary increase in the speed and spread of human communication, and the remarkable capacity for the capture and retention of data has most definitely changed the way human beings communicate with one another.⁸ Researchers have found that technologies such as emailing and texting, so fundamentally different than face-to-face interpersonal communication, can hamper authentic communication, even emboldening some to express sentiments via technology that they might never otherwise express face to face.⁹ The explosion of social media¹⁰ platforms has made it possible for people to communicate in ways never before imaginable, in both a positive and a negative sense. Popular sites such as Facebook, with nearly 2 billion daily users worldwide (approximately 196 million of whom live in North America),¹¹ and Twitter, with

8. As of January 2021, there were an estimated 4.66 billion active internet users worldwide, or 59.5% of the global population. See "Worldwide digital population July 2022," Statista, September 20, 2022: <https://www.statista.com/statistics/617136/digital-population-worldwide>.

9. Kim Schneiderman, "The Trouble with Texting," *Psychology Today*, January 21, 2013: <https://www.psychologytoday.com/us/blog/the-novel-perspective/201301/the-trouble-texting>; quoting UCLA professor Albert Mehrabian for the proposition that 58% of human communication is through body language, 35% through vocal tone, pitch, and emphasis, and only 7% through the actual content of the message.

10. The term "social media" describes interactive websites where users can post comments, photos, or other content to communicate with other users. See "social media," *Dictionary.com*, accessed November 7, 2022, <https://www.dictionary.com/browse/social-media>. As of 2020, an estimated 3.6 billion people worldwide were users of social media. See S. Dixon, "Number of global social network users 2018–2027," Statista, September 16, 2022: <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users>.

11. Andrew Hutchinson, "Facebook Posts Steady Results in Q3, with More Users and Stable Revenue, Despite ATT Impacts," *SocialMediaToday*, October 25, 2021: <https://www.socialmediatoday.com/news/facebook-posts-steady-results-in-q3-with-more-users-and-stable-revenue-de/608863>.

approximately 211 million daily active users worldwide (37 million in the US),¹² have had to grapple with problems created by their platforms, including cyber-bullying, misinformation, selective censorship, and defamation.¹³ Such new technologies make the possibility of reputational damage to individuals and groups not only more likely, but also more lasting.¹⁴

The risks of reputational harm appear to be particularly high for Catholic clergy in the United States, given that in the wake of the clerical sex abuse scandals, the Catholic Church in the United States was hit especially hard. The essential prophetic voice and catechetical work of the Church suffered enormously, having been crippled by an understandable and profound crisis of credibility.¹⁵ Billions of dollars that could have been devoted to the works of charity and evangelization were instead paid to plaintiffs and the many lawyers involved.¹⁶ In light of these facts, it seems more accu-

12. Andrew Hutchinson, "Twitter Rises to 211 Million Active Users, Though Longer Term Growth Targets Looking Harder to Reach," *SocialMediaToday*, October 26, 2021: <https://www.socialmediatoday.com/news/twitter-rises-to-211-million-active-users-though-longer-term-growth-target/608958>.

13. See Nicole Pelletier, "The Emoji That Cost \$20,000: Triggering Liability for Defamation on Social Media," *Washington University Journal of Law & Policy* 52 (2016) 227–254; Dan Milmo and David Pegg, "Facebook admits site appears hardwired for misinformation, memo reveals," *The Guardian*, October 25, 2021: <https://www.theguardian.com/technology/2021/oct/25/facebook-admits-site-appears-hardwired-misinformation-memo-reveals>.

14. See, e.g., Daniel J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet* (New Haven, CT: Yale University Press, 2007) 189–190; Hadley M. Dreibelbis, "Social Media Defamation: A New Legal Frontier amid the Internet Wild West," *Duke Journal of Constitutional Law & Public Policy* 16/1 (2021) 245–278.

15. See, e.g., Francis, "Letter of the Holy Father Pope Francis to the US Bishops of the United States of America," United States Conference of Catholic Bishops, January 1, 2019: <https://www.usccb.org/about/leadership/holy-see/francis/upload/francis-lettera-washington-traduzione-inglese-20190103.pdf>: "In recent years, the Church in the United States has been shaken by various scandals that have gravely affected its credibility. . . . The Church's credibility has been seriously undercut and diminished by these sins and crimes, but even more by the efforts made to deny or conceal them." See also Gregory Smith, "Just one-third of U.S. Catholics agree with their Church that Eucharist is body, blood of Christ," *Pew Research Center*, August 5, 2019: <https://www.pewresearch.org/fact-tank/2019/08/05/transubstantiation-eucharist-u-s-catholics>; Ralph Martin, *A Church in Crisis: Pathways Forward* (Steubenville, OH: Emmaus Road, 2020).

16. See Tom Gjelten, "The Clergy Abuse Crisis Has Cost the Catholic Church \$3 Billion," *NPR*, August 18, 2018: <https://www.npr.org/2018/08/18/639698062/the-clergy-abuse-crisis-has-cost-the-catholic-church-3-billion>. Of the total damages, liability insurance companies covering ecclesial entities paid perhaps only one-third. See David A. Shaneyfelt and Joseph P. Maher, "Sacrificing Priests on the Altar of Insurance," *Homiletic and Pastoral Review*, February 24, 2015: <https://www.hprweb.com/2015/02/sacrificing-priests-on-the-altar-of-insurance>.

rate to focus our attention on how the oft-discussed value of "transparency" interacts with the juridical good of *bona fama* rather than the good of mere privacy. While the two goods of canon 220 are certainly related to each other, the good of reputation appears to be much more of a concern to those whose names have appeared on the published lists of "credibly accused" than does the individual cleric's interest in his right to privacy.¹⁷

Such a conclusion is supported by the chorus of contemporary observers who point out the Church's past inept efforts at stopping abuse, along with its reputation for covering up sinful or even criminal conduct. Based on these facts, their argument goes, it is at the very least understandable, and perhaps even praiseworthy, to "err" in the other direction by taking swift and drastic action against accused abusers. Operating on the principle that sunshine is the best disinfectant, appeals are often made today to the juridical goods of "transparency" and of the public's "right to know," even over and above an individual's right to *bona fama*. This position seems to be fully consistent with those who argue that the Church needs to re-establish its credibility with a sorely disillusioned public, even if that means running the risk that the rights of individuals might be harmed.¹⁸ In support of such a position, one author cites the second paragraph of canon 223, claiming that this provision "establishes the canonical authority of a bishop to limit the exercise of individual rights . . . in favor of the common good."¹⁹

Gianpaolo Montini, former Promoter of Justice at the Supreme Tribunal of the Apostolic Signatura, addressed the topic of "transparency" in a 2018 article in *Periodica*, discussing the correct interpretation and application of canon 223 §2.²⁰ Two years later, Montini published another *Periodica* article in which he discussed recent jurisprudence from the Apostolic Signatura on the proper understanding of this same canonical provision.²¹

17. For a discussion of the relationship between the two juridical goods mentioned in canon 220, i.e., good reputation and privacy, see Paterné Koyassambia-Kozondo, *Le bien juridique naturel de l'intimité personnelle dans l'Église*, Dissertationes: Series canonica 57 (Rome: Pontificia Università della Santa Croce, 2021).

18. See Barr, 45–46.

19. *Ibid.*, 43.

20. G. Paolo Montini, "La Chiesa tra l'impegno per la trasparenza e la tutela del segreto," *Periodica* 107 (2018) 537–543 (hereinafter, "Trasparenza").

21. G. Paolo Montini, "Il principio di proporzionalità nei provvedimenti di sospensione dall'esercizio del ministero sacerdotale secondo la giurisprudenza della Segnatura Apostolica," *Periodica* 109 (2020) 313–364 (hereinafter, "Proporzionalità").

Montini observes that “transparency” is a term that generally receives widespread sympathy in the current environment, while the concept of “secrecy” is widely rejected, not only in civil society but also within the Church. Montini emphasizes, however, that to the extent both terms flow from a profound respect for human dignity, there is no necessary or fundamental opposition between them (although he suggests that the word “privacy” might be a good alternative to both).²² Such a consideration of the nomenclature of different concepts is an important one, given the other juridical goods at stake in the wake of the abuse crisis. To this end, Montini refers to a December 2010 explanatory note from the Pontifical Council for Legislative Texts (PCLT) on the correct understanding of the second paragraph of canon 223; that is, the ability of ecclesiastical authority to direct (*moderari*) the exercise of individual rights.²³

Specifically disclaiming any character of an authentic interpretation—given that “it concerns only the correct application of the rule in question”²⁴—the note cites the text of the *Lex Ecclesiae fundamentalis* and the use of the verb *moderari* in other places of the code for the proposition that this provision of canon 223 §2 pertains to the power of ecclesiastical authority “to moderate the exercise of the rights of individuals, in the sense of regulating them with measures of a general nature in order to circumscribe their concrete exercise according to the requirements of the common good.” It is not, therefore, to be “invoked to limit the exercise of rights in individual cases, as for this purpose the canonical order provides for the need to follow other procedures, in the presence of specific requirements and with the concurrence of precise guarantees.”²⁵

It is within this context that the provisions of canon 223 regarding the “common good” are properly understood. In referencing the *bonum commune*, this canon provides that the Christian faithful must consider not only the common good, but also the rights of others and their own duties

22. Montini, “Trasparenza,” 538.

23. Pontifical Council for Legislative Texts, explanatory note, December 8, 2010: *Communicationes* 42 (2010) 280–281.

24. No official English translation of this explanatory note appears on the website of the (now) Dicastery for Legislative Texts. The translation from the Italian is my own.

25. On this point, see also Velasio De Paolis, “Incardinazioni anomale,” in *L'istituto dell'incardinazione: Natura e prospettive*, ed. Luis Navarro (Rome: Giuffrè, 2006) 367–377.

when exercising their rights. The second paragraph of canon 223²⁶—referencing the role of ecclesiastical authority in “directing” or “regulating” the exercise of those rights—is sometimes interpreted as giving broad discretion to bishops to *restrict* the exercise of rights, even of fundamental, natural human rights such as the right to *bona fama*.

In his 2020 article, calling the Signatura’s intervention on the matter both “timely and clear,”²⁷ Montini quotes from the definitive sentence of April 28, 2007 *coram* Grocholewski with regard to the undue invocation of canon 223 §2:

For this purpose these things must be carefully noted: (a) canon 223 is the concluding canon in the title “The obligations and rights of all the Christian faithful”; (b) the canons of this title (208–223) come from the schema of the *Lex Ecclesiae fundamentalis*; (c) the subject in that canon is the direction of those obligations and fundamental rights for the protection of the common good; (d) canon 223 proposes only a general principle, of which a more concrete determination is made properly through acts of legislative power, first and foremost in the other norms of the code itself; (e) bishops cannot derogate from them; otherwise, according to the principle of legality the door would be open to arbitrary acts of power. . . . In addition to this, the power to regulate the exercise of those obligations and rights cannot be equaled with the power of getting rid of the same exercise. . . . But if, nevertheless, from a certain analogy that principle is generally applicable with respect to the obligations and rights of clerics, it cannot however be cut off from the more concrete laws pertaining to matters that, in turn, must be applied as general norms, taking into account the individual circumstances of each concrete case.²⁸

26. “Ecclesiasticae auctoritati competit, intuitu boni communis, exercitium iurium, quae christifidelibus sunt propria, moderari.” The last word of this paragraph is translated into English both as “direct” (in the 1998 CLSA version) and as “regulate” (in the 2004 Wilson and Lafleur version).

27. Montini, “Proporzionalità,” 333.

28. *Ibid.*, 334, citing that sentence of the Supreme Tribunal of the Apostolic Signatura, *Revocationis facultatum*, prot. n. 37937/05 CA, April 28, 2007: *Ius Ecclesiae* 19 (2007) 619–620, no. 14, where it reads: “Ad rem haec sedulo notanda sunt: a) can. 223 concludit titulum ‘De omnium christifidelium obligationibus et iuribus’; b) canones huius tituli (208–223) proveniunt ex schemate Legis Ecclesiae Fundamentaliss; c) agitur in illo canone de moderamine illarum obligationum et iurium fundamentalium ad bonum commune tuendum; d) can. 223 tantum principium omnino generale proponit, cuius magis concreta determinatio proprie fit per actus potestatis legislativae, in primis et praeprimis in ceteris normis ipsius CIC; e) quibus Episcopi

In essence, the sentence points to the important position in which canon 223 is placed in the code; namely, the concluding canon in the title on the fundamental obligations and rights of all the Christian faithful, the canons of which emanate from the *Lex Ecclesiae fundamentalis*. As a result, the language contained therein concerning how fundamental rights can be moderated in view of the common good must not be interpreted too broadly, lest such language be used as an excuse to act in an arbitrary manner. The power to regulate, after all, is altogether different from the power to eliminate. Furthermore, the language of canon 223 is not some kind of talisman; merely invoking it does not permit one to legitimize unjust acts.

It is important not to truncate the vision of the common good, particularly with respect to *bona fama*.²⁹ It is well established that the *communio* refers not only to the communion of *saints*, but to the communion of *holy things* that are “made common” in the Church, including even natural human goods such as reputation.³⁰ As a result, an act of ecclesial injustice violative of such a good harms not only the particular good, but more broadly the Church’s *communio* itself.³¹ Fundamental individual rights such as the right to reputation play an essential role in the public order, and the lack of respect for them can tear away at the fabric of any society, whether civil or religious. It is not sufficient to argue that the right to one’s reputation is merely aspirational, something to be observed “whenever possible,” but something which must be sacrificed for the common good whenever necessary. Ronny Jenkins states it well: “The public good of the ecclesiastical society requires that the public have confidence that the legal system will not permit the unjust revelation of faults

non possunt derogare, secus actum esset de principio legalitatis et ianua pateret arbitrarie-tati. . . . Adde quod potestas moderandi exercitium illarum obligationum et iurium haud-quaquam aequari potest cum potestate idem exercitium tollendi. . . . Quod si, nihilominus, ex quadam analogia illud principium omnino generale obligationibus et iuribus clericorum applicetur, utcumque praescindi nequit a legibus magis concretis ad rem pertinentibus, quae sua vice utpote normae generales applicandae sunt ratione habita circumstantiarum singularium uniuscuiusque casus concreti.”

29. For a discussion of the common good from the perspective of juridical realism, see Petar Popović, “‘Bonum commune Ecclesiae’ and the Juridical Domain of Goods ‘Made Common’ in the Church,” *Ius Canonicum* 59 (2019) 697–730.

30. *Ibid.*, 713–716.

31. *Ibid.*, 723.

or even worse, the revelation of false accusations."³² Acts of defamation not only disturb the peace but weaken the bonds within the ecclesial community and thus damage its ability to achieve the purposes for which it was founded.

2. Conciliar Teachings

This balancing between juridical goods is nothing novel, even with respect to those that involve modern technologies. In the Second Vatican Council's decree on the media of social communications *Inter mirifica*, promulgated by Pope St. Paul VI on December 4, 1963, the Council Fathers specifically referenced man's general "right to information, in accord with the circumstances in each case, about matters concerning individuals or the community." It continues: "The proper exercise of this right demands, however, that the news itself that is communicated should always be true and complete, within the bounds of justice and charity. In addition, the manner in which the news is communicated should be proper and decent. This means that in both the search for news and in reporting it, there must be full respect for the laws of morality and for the legitimate rights and dignity of the individual. For not all knowledge is helpful, but 'it is charity that edifies.'"³³ With the last citation to 1 Corinthians 8:1, the directive is made clear: the "right to information," no matter how important, may not be exercised in isolation, as if other rights did not exist. This principle holds true not only for Catholics, but for all people everywhere.

What is also clear from conciliar teachings is that the right to *bona fama* is a basic human right. *Gaudium et spes*, for example, states that because of the "exalted dignity" ("eximiae dignitatis") proper to the human person, and his "universal and inviolable" ("universalia atque inviolabilia") rights and duties, all human beings must have available to them "everything that is necessary for the leading of a truly human life" ("quibus ad vitam vere humanam gerendam indiget").³⁴ What follows is a list very

32. Ronny E. Jenkins, "Defamation of Character in Canonical Doctrine and Jurisprudence," *Studia canonica* 36 (2002) 419–462, 435.

33. Second Vatican Council, decree *Inter mirifica*, December 4, 1963: AAS 56 (1964) 145–157, at no. 5; English translation accessed November 5, 2022, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19631204_inter-mirifica_en.html.

34. See Second Vatican Council, pastoral constitution *Gaudium et spes*, December 7, 1965: AAS 58 (1966) 1025–1115, at no. 26 (hereafter GS).

similar to what had been proposed by Pope Pius XII in his 1942 Christmas Eve radio message³⁵ and by Pope St. John XXIII in *Pacem in terris*³⁶—namely, “food, clothing, and shelter; the right to choose a state of life freely and to found a family, the right to education, to employment, to a good reputation (*ad bonam famam*), to respect, to appropriate information, to activity in accord with the upright norm of one’s own conscience, to protection of privacy and rightful freedom even in matters religious.”³⁷

Less than six years after the end of the Council, on the occasion of the Fifth World Communications Day, the Pontifical Council for Social Communications released a pastoral instruction entitled *Communio et progressio* which reiterated these points, noting that both Pope John XXIII and Pope Paul VI, along with the Second Vatican Council, “have all stressed this right to information which today is essential for the individual and for society in general.”³⁸ The document also stated that “the public be given free access both to the sources and channels of information and be allowed freely to express its own views. Freedom of opinion and the right to be informed go hand in hand.” Given the context, it is clear that the notion of “information”—as that term is used in these documents—is linked to those facts necessary to the public interest; in other words, the right to information is not an amorphous invitation to gather trivia, much less some kind of license to traffic in gossip.

As applied to the Church, the document calls for any Church-sponsored news to be “distinguished by integrity, truth, and openness.” Importantly, it also warns against a hyper-sensitivity to disclosure, even of a sensitive nature: “When ecclesiastical authorities are unwilling to give information or are unable to do so, then rumour is unloosed and rumour is not a bearer of the truth but carries dangerous half-truths. Secrecy should therefore be restricted to matters that involve the good name of individuals or that touch upon the rights of people whether singly or collectively.”³⁹

35. Pius XII, radio message *Con sempre nuova freschezza*, December 24, 1942: AAS 35 (1943) 9–24.

36. John XXIII, encyclical *Pacem in terris*, April 11, 1963: AAS 55 (1963) 257–304.

37. GS 26.

38. Pontifical Council for Social Communications, pastoral instruction *Communio et progressio*, May 23, 1971: AAS 63 (1971) 593–656, at no. 33. English translation accessed November 5, 2022, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_23051971_communio_en.html.

39. *Ibid.* 121.

These themes were subsequently and forcefully reaffirmed by the same Pontifical Council, the first time on the twentieth anniversary of *Communio et progressio* in 1992⁴⁰ and a second time in recognition of World Communications Day during the Jubilee Year of 2000.⁴¹ Stating that "it is necessary constantly to recall the importance of the fundamental right of dialogue and information within the Church," the first document rooted the practice of fostering this right to information in the nature of the Church itself: "Partly this is a matter of maintaining and enhancing the Church's credibility and effectiveness. But, more fundamentally, it is one of the ways of realizing in a concrete manner the Church's character as communion, rooted in and mirroring the intimate communion of the Trinity. Among the members of the community of persons who make up the Church, there is a radical equality in dignity and mission which arises from baptism and underlies hierarchical structure and diversity of office and function; and this equality necessarily will express itself in an honest and respectful sharing of information and opinions."⁴²

The second of the two documents, in a section dealing with "social communication that violates the good of the person," cautioned against the temptation to use media "to block community and injure the integral good of persons," whether by "alienating people or marginalizing and isolating them, fostering hostility and conflict, [or by] demonizing others."⁴³ Additionally, the document warned that religious entities in particular should avoid "using media as instruments for control and domination" and should guard against "practicing unnecessary secrecy and otherwise offending against truth."⁴⁴ It concluded thus:

The right of expression must be exercised with deference to revealed truth and the Church's teaching, and with respect for others' ecclesial rights (cf. Canon 212.1, .2, .3, Canon 220). Like other communities and

40. Pontifical Council for Social Communications, pastoral instruction *Aetatis novae*, February 22, 1992: AAS 84 (1992) 447–468.

41. Pontifical Council for Social Communications, "Ethics in Communications," The Holy See, June 2, 2000: https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20000530_ethics-communications_en.html.

42. *Aetatis novae* 10. English translation accessed November 5, 2022, http://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_22021992_aetatis_en.html.

43. "Ethics in Communication" 13.

44. *Ibid.* 18.

institutions, the Church sometimes needs—in fact, is sometimes obliged—to practice secrecy and confidentiality. But this should not be for the sake of manipulation and control. Within the communion of faith, “holders of office, who are invested with a sacred power, are, in fact, dedicated to promoting the interests of their brethren, so that all who belong to the People of God, and are consequently endowed with true Christian dignity, may through their free and well-ordered efforts toward a common good, attain to salvation” (*Lumen Gentium*, 18). Right practice in communication is one of the ways of realizing this vision.⁴⁵

These recent documents demonstrate not only that the balancing of rights with respect to goods related to communication are important for the life of the Church, but that the topic has not gone unnoticed in recent official ecclesial documents. Of course, the exercise of rights in deference to truth and with respect to the rights of others is important for any community, whether Catholic or not. The basic principle of commutative justice necessary for any human community requires that its members be made aware of those who would harm the common good. The early Christian writer Tertullian agreed, holding that it was a good thing for those who were found guilty of evil to be punished.⁴⁶

Beyond that bare minimum, however, there is also an obligation in justice to respect the reputation of one whose evil conduct is not generally known unless there is a good reason to reveal it. Thus the seventeenth century moral theologian Juan de Lugo, a Spanish Jesuit, taught that there is a twofold right to a good name: first, when a person is actually in possession of praiseworthy qualities, who has proved his virtue in action (e.g., when a priest has long exercised his office with integrity); and second, when the right to a good name is founded on apparent goodness; that is, when one is thought to be in possession of praiseworthy qualities even if the reality may be otherwise. In the second situation, de Lugo maintains that the right is conditional, and a proportionately grave reason will permit the manifestation of the truth to the contrary.⁴⁷ Regarding the gravity of the reason for the disclosure, the early eighteenth century French Dom-

45. *Ibid.* 26.

46. Tertullian, *De spectaculis* 19, in *Corpus Scriptorum Ecclesiasticorum Latinorum. Quinti septimi florentis: Tertulliani opera*, ed. Augustus Reifferscheid and George Wissowa (Vienna: F. Tempsky, 1890) 20:20: “Bonum est cum puniuntur nocentes.”

47. See Joannis de Lugo, *Disputationes, scholasticae et morales* (Paris: Ludovicum Vivès, 1869) 200 and 213–214, book 6, disp. 14, sec. 5 and 7, nn. 59 and 97.

inican and moral theologian Charles-René Billuart opined that it would be inhuman to deprive another of his good name for the sake of some slight good.⁴⁸

Is “transparency” one of these “slight goods,” given the importance of one’s *bona fama* in the face of a mere *accusation* of misconduct? In his 2018 *Periodica* article on transparency, Montini addresses the topic of publishing lists of accused clerics by referring to a 2016 letter from the PCLT regarding the publication on the internet of the names of accused clerics.⁴⁹ In that letter (discussed in greater detail below), the PCLT had explained how canon 220’s “principle of a general character” reflected both the natural law and Church teaching on the sinfulness of slander and defamation, and that, as a consequence, any public revelation of information that could damage another’s good name had to be carefully weighed before it could be considered “legitimate.”

The necessary conclusion to Montini’s argument is that there must be a proper and just balance in the determination of rights, such that each really is granted that which is his due, no more and no less. Eduardo Baura notes in this vein that it is not accidental that the symbol for justice is a set of scales, and not a pendulum.⁵⁰ The more fundamental the right at issue, the more important it is to weigh carefully all of the competing considerations so that a truly just solution is achieved in the concrete case, even in the face of pressure applied by the media, insurance companies, or political forces.

With respect to *bona fama*, then, especially in the internet age and in the wake of the clerical sexual abuse crisis, the question must be asked: to what extent, if any, is this fundamental, natural human right being considered today, under both civil and canon law, particularly when it comes to the names of Catholic clergy who stand merely accused—in other words, *not convicted*—of sexual abuse?

48. Charles-René Billuart, *Summa Sancti Thomae*, lib. 6, diss. 15, art. 2 (Lyons: Pelagaud and Lesne, 1839) 357: “Foret enim injustum atque inhumanum pro levi utilitate prodigere famam proximi.”

49. PCLT, letter, prot. n. 15512/2016, September 15, 2016: *Eastern Legal Thought* 13 (2017) 13–16. No official English translation of this letter yet exists; the English translation is my own.

50. See Eduardo Baura, “L’attività sanzionatoria della Chiesa: note sull’operatività della finalità della pena,” *Ephemerides Iuris Canonici* 59 (2019) 609–627, at 619.

3. Civil and Canonical Doctrine on the Right to Reputation

On the question of the right to reputation generally, the question of whether truth is a defense is more nuanced than what popular opinion may suggest. For instance, one frequently hears that the “truth” of a statement is an affirmative defense to a claim of defamation under US law. Thus, one commentator remarks that there is an important distinction between saying that “‘we have received a credible accusation of child sexual abuse against Father Able’ and that ‘Father Able is a pedophile and an alcoholic.’ Language choice matters.”⁵¹ The implication, of course, is that the former statement, being “true,” is not nearly as problematic as the latter statement.

Dioceses or religious orders relying on such counsel might do well to reconsider. Employing the as-yet-undefined term “credible” in a public announcement simply assumes the “truth” of the most important part of the statement, which *by definition* is yet to be proven. Such circular reasoning is not likely to serve as a good defense when Father Able objects, on either moral or legal grounds. His reputation, after all, could well be permanently damaged by the first statement as much as by the second statement, assuming *arguendo* that he is not in fact guilty of having committed child sexual abuse. Furthermore, given the present litigious environment in the United States, it is reasonable to assume that these types of announcements are likely to encourage other claims against the same cleric, as well as negative media attention for the diocese or religious order.

Of particular note to canonists is the aforementioned letter of the PCLT on the subject of publishing lists of clerics accused of sexual abuse. The letter is “private” insofar as it applies established jurisprudence to a particular case. While not officially published by the PCLT itself, it was written in response to a request from a bishops’ conference for guidance on the specific question of how to balance the common good with the right to *bona fama*. Specifically, the letter addresses the consideration of internet postings in light of the reputational interests of clerics who had been condemned in a civil or ecclesiastical process of the abuse of minors. The letter bears the signature of Cardinal Coccopalmerio, the president of the dicastery charged by the Holy See with the proper interpretation

51. Barr, 41.

of existing canon law. It was published one year after its release in an academic journal and has been cited many times thereafter.⁵²

The letter begins by citing canon 220. The PCLT states that this canon had established "a principle of a general character" reflecting both the natural law and Church teaching on the sinfulness of slander and defamation. The letter then cites paragraphs 2477–2479 of the *Catechism of the Catholic Church*, which reflect traditional church teaching that the dissemination of even public, truthful information that nevertheless harms a person's good name without cause has long been viewed as the sin of detraction. The letter then offers some examples of occasions when making public someone's name has been considered legitimate, given "the greater good of persons or communities." Specifically, this "legitimate injury to the reputation of an offender" would include, for example, the publication of the name of a person who incurs a penalty *latae sententiae*. The letter also references the discussions held during the early 1970s regarding the *Lex Ecclesiae fundamentalis*, in which it was held to be a "legitimate" injury to reputation when publishing the name of a pastor who had been removed from office or upon the declaration of a heretic.⁵³ While acknowledging that the balancing of interests is a judgment that must be made in each particular case, and that as a result "the legitimacy of rendering the status of an offender public cannot be set forth in general terms," the letter states clearly that in the case of "deceased delinquents," there "cannot be a proportionate reason for the injury to reputation."

The practice of publishing lists was discussed at the February 2019 summit in Rome on "The Protection of Minors in the Church." One of the Reflection Points offered by the various commissions and episcopal conferences as "an aid to guide the reflection" at the meeting stated bluntly: "The right to defence: the principle of natural and canon law of presumption of innocence must be safeguarded until the guilt of the accused is proven. Therefore, it is necessary to prevent the lists of the

52. See, e.g., Montini, "Trasparenza," 537–543; *Roman Replies and CLSA Advisory Opinions 2017*, ed. Sharon A. Euart, John A. Alesandro, and Thomas J. Green (Alexandria, VA: Canon Law Society of America, 2017) 5–9; Paul Hoa Vu, *The Right to a Good Reputation and Privacy in the Church: History, Analysis, Proposed New Approach and Solutions for Can. 220* (Rome: Pontifical Lateran University, 2021) 233; Michael J. Mazza, *The Right of a Cleric to "Bona Fama"* (Rome: Pontificia Università della Santa Croce, 2022) 88.

53. It cites c. 20 in Pontifical Commission for the Revision of the Code of Canon Law, *Lex Ecclesiae fundamentalis, Coetus specialis studii*, Sessio VII, December 17–22, 1973, 40.

accused being published, even by the dioceses, before the preliminary investigation and the definitive condemnation.”⁵⁴

The Dicastery for the Doctrine of the Faith (DDF) has also weighed in on the subject of disclosure in connection with allegations of sexual abuse. In both its 2020 *Vademecum* and the revised and updated 2022 version, the DDF makes explicit reference to the good of *bona fama*, which might be jeopardized by “clamorous announcements.”⁵⁵ The *Vademecum* urges that “great caution should be exercised in providing information about the facts” where public statements “must be made.” Statements should be “brief and concise,” and should refrain “completely from any premature judgment about the guilt or innocence of the person accused (since this is to be established only by an eventual penal process aimed at verifying the basis of the accusation).”⁵⁶ The document warns: “Since, as stated above, in this phase the possible guilt of the accused person has yet to be established, all care should be taken to avoid—in public statements or private communication—any affirmation made in the name of the Church, the institute or society, or on one’s own behalf, that could constitute an anticipation of judgement on the merits of the facts.”⁵⁷

The *Vademecum* also references canon 1717 §2 of the 1983 code (and the corresponding canon in the *CCEO*, 1468 §2) as well as artt. 4 §2 and 5 §2 of *Vos estis lux mundi* in connection with the duty of those who carry out the preliminary investigation. The *Vademecum* states that there is an obligation to be “particularly careful to take every possible precaution” regarding the “good name of the persons involved (the accused, alleged victims, witnesses),” given that “the right to a good name is one of the rights of the faithful upheld by canons 220 *CIC* and 23 *CCEO*.”⁵⁸

54. “Meeting on ‘The Protection of Minors in the Church’ – Reflection points, 21.02.2019,” summary of bulletin, Holy See Press Office, February 21, 2019: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/02/21/190221f.html>, at no. 14.

55. Congregation for the Doctrine of the Faith, *Vademecum*, “On certain points of procedure in treating cases of sexual abuse of minors committed by clerics,” July 16, 2020. This *Vademecum* was updated in the summer of 2022. English from Dicastery for the Doctrine of the Faith, “Vademecum,” The Holy See, June 5, 2022: https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.o_en.html.

56. *Ibid.* 45.

57. *Ibid.* 46.

58. *Ibid.* 44.

One might argue that "transparency" is necessary today in order to counteract the secrecy of ages past, and that the publication of lists on diocesan web pages furthers the common good. Nevertheless, it is true that the common good can never be long maintained if the rights of its members are routinely and unfairly denied, given that repudiating the rights of individuals represents a direct attack on the common good itself.⁵⁹ According to both the venerable legal brocard "Odia restringi et favores convenit ampliari"—captured in the *Regulae iuris* of Pope Boniface VIII (RJ 15 in VI^o)—and canon 18 of the 1983 code, laws restricting rights are subject to a strict interpretation. Vague appeals to transparency that disregard an individual's natural right to *bona fama* or neglect his fundamental right to the presumption of innocence violate this basic principle and could, as a result, represent serious abuses of ecclesiastical power. This is especially important to consider when the real motivation for the publication of lists is *not* the protection of the common good but rather the avoidance of negative publicity from certain media outlets or the aversion to disputes with providers of liability insurance. Neither the media nor insurance companies share responsibility for the Church's salvific mission—a mission that necessarily trumps any concerns inimical to its purpose. As a result, the real motivation for the publication of lists might be a relevant fact to establish in the appropriate canonical proceeding: either in a penal trial for the abuse of power under canon 1378 or a contentious trial for reparation of damages under canon 128.

4. False Accusations

Scientific research from the field of criminal law indicates that the phenomenon of false accusations in general is not as rare as might be supposed. A 2017 study, for example, funded by the US Department of Justice, used DNA data from murder and sexual assault convictions in the state of Virginia from 1973–1987. The study's authors estimated a wrongful conviction rate for such crimes at 11.6%.⁶⁰ If the number is that high for

59. See R. Lucien Millette, "An Analysis of the Preliminary Investigation in Light of the Rights of the Accused," *The Jurist* 75 (2015) 109–195, 167. See also Matteo Visioli, "Confidenzialità e segreto pontificio," *Periodica* 109 (2020) 447–491. With respect to the publication of lists of clerics who have been merely accused of reserved delicts, Visioli asks whether there might also be a violation of the pontifical secret. *Ibid.*, 470–471.

60. Kelly Walsh, Jeanette Hussemann, Abigail Flynn, Jennifer Yahner, and Laura Golian, "Estimating the Prevalence of Wrongful Convictions," National Criminal Justice Reference

convictions, it is reasonable to assume that false *accusations* could be at least that high, at least for those kinds of crimes in which DNA evidence can play a uniquely determinative role.

Similar data have been reported with respect to accusations of child sexual abuse against priests and religious. Each year, the USCCB releases a report on the “Implementation of the Charter for the Protection of Children and Young People.” The percentage of new allegations received in a given year by dioceses and eparchies that were “unsubstantiated or determined to be false” averaged 11.7% for the years 2006–2011.⁶¹ To take one example, the report for 2018 shows that of the 840 new allegations received by dioceses and eparchies during the reporting period, 26% were unable to be proven, 9% were unsubstantiated, and 2% (18 allegations) were determined to be “obviously false.”⁶² According to the most recent annual report from the USCCB, a total of 2,930 individuals made 3,103 separate allegations of child sexual abuse by Catholic clergy in the 2020–2021 reporting year.⁶³ The vast majority of the 968 allegations deemed “credible” concerned the abuse of minor males⁶⁴ before the year 2000,⁶⁵ and over half of the total number of men accused (1,914) were already

Service (Washington, DC: Urban Institute, 2017), accessed November 5, 2022, <https://www.ojp.gov/pdffiles1/nij/grants/251115.pdf>.

61. USCCB, *2011 Annual Report: Findings and Recommendations*, April 2012: <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/2011-annual-report.pdf>, at 39.

62. USCCB, *2018 Annual Report: Findings and Recommendations*, June 2019: https://cdn.ymaws.com/usccb.site-ym.com/resource/group/1560f0d7-fee7-4aff-afd2-4cfo76a24943/resource_toolbox/audit/2018_cyp_annual_report_final.pdf, at 35.

63. USCCB, *2021 Annual Report: Findings and Recommendations*, May 2022: [https://www.usccb.org/resources/2021%20CYP%20Annual%20Report.PDF%20\(1\).pdf](https://www.usccb.org/resources/2021%20CYP%20Annual%20Report.PDF%20(1).pdf), at 23. The reporting period ran from July 1, 2020 to June 30, 2021 and included 192 dioceses and eparchies within the United States. Although both priests and deacons are considered “clergy” on account of their sacramental ordination, the number in the 2021 Annual Report of accused priests (1,707) dwarfs the number of accused deacons (23). *Ibid.*, 25. For that reason, among others, this article focuses largely on the plight of accused priests.

64. *Ibid.*, 36: “The gender of 81 of the 967 alleged victims [deemed “credible”] reported between July 1, 2020 and June 30, 2021 was not identified in the allegation (8 percent). Among those for whom the gender of the victim was reported, 82 percent were male and 18 percent were female.”

65. *Ibid.*, 37: “For 90 of the allegations (9 percent) deemed credible between July 1, 2020 and June 30, 2021, no time frame for the alleged abuse could be determined. Among those where a time frame could be determined, 52 percent of all new allegations were said to have occurred or began before 1975, 44 percent between 1975 and 1999, and 4 percent since 2000.”

dead (1,035) when the accusation was made.⁶⁶ Moreover, nearly 42% of the total allegations received were ultimately determined to be either "unsubstantiated" (113) or "unable to be proven" (1,176).⁶⁷

Another source distinguishing real from problematic claims is the website hosted by the Archdiocese of Boston, which began listing in August 2011 the names of clergy accused of sexual abuse of a child.⁶⁸ Cardinal Sean O'Malley explained his decision not to use the often employed but vague standard of "credible," given that the term "can have a variety of meanings," including anything from "'plausible' but not proven, to 'more likely than not' (the standard used in civil cases), to the high standard used for convictions in criminal and canonical cases ('beyond a reasonable doubt' / subject to 'moral certitude')." The cardinal also explained that over one-third of the names of clerics of the Boston Archdiocese who had been accused as of August 2011 of sexually abusing a minor were not being made public; just under 9% of them (22/250 = 8.8%) had been excluded because the accusations could not be substantiated. In addition, nearly a quarter of those accused (62/250 = 24.8%) were "deceased clergy as to whom canonical proceedings were never conducted or completed and who had not been publicly accused."

A few cases of manifestly false accusations against priests have garnered public attention.⁶⁹ In January 2016, for example, *Newsweek* reporter

66. *Ibid.*, 25 (1035/1914=54%).

67. *Ibid.*, 23: "Chart 1-2: Status of Allegations as of June 30, 2021."

68. "Cardinal's Decision Regarding the Archdiocese of Boston's Publication with Respect to its Clergy Accused of Sexual Abuse of a Child," Archdiocese of Boston, August 25, 2011: <https://www.bostoncatholic.org/protecting-children-word-welcome/cardinals-decision-regarding-archdiocese-bostons-publication-respect-its-clergy-accused-sexual>.

69. See, e.g., "Fr Kevin Reynolds, RTÉ defamation case settled," RTÉ, November 17, 2011: <https://www.rte.ie/news/2011/1117/308846-reynoldsk/> (reporting a settlement in favor of a priest defamed by Raidió Teilifís Éireann, Ireland's national public media company); ACI Prensa Editorial Staff, "El Papa pide perdón a sacerdotes españoles por una falsa denuncia de abusos sexuales," ACI Prensa, July 28, 2018: <https://www.aciprensa.com/noticias/el-papa-pide-perdon-a-sacerdotes-espanoles-por-una-falsa-denuncia-de-abusos-sexuales-19268> (noting Pope Francis' apology to Fr. Román Martínez and two other falsely accused Spanish priests after having made public his phone call with their accuser, which was widely interpreted as giving credence to the accusations that were later determined by a Spanish civil court to lack any basis); Beatriz Calderon and Francisco Hernández, "Hombre pide disculpas a sacerdote de Panchimalco per acusaciones falsas de abuso sexual," La Prensa Gráfica, October 8, 2019: <https://www.laprensagrafica.com/elsalvador/Hombre-pide-disculpas-a-sacerdote-de-Panchimalco-por-acusaciones-falsas-de-abuso-sexual-20191008-0454.html> (detailing an accuser's

Ralph Cipriano exposed the fraud perpetrated by a drug addict named Daniel Gallagher, whose testimony in a high-profile case from Philadelphia led not only to the conviction of two priests and one Catholic school teacher for sexual abuse, but also the conviction of Msgr. William Lynn, an official of the Archdiocese of Philadelphia, for endangering the welfare of a child by supposedly allowing the abuse. One of those accused was Fr. Charles Engelhardt, who refused to sign a plea deal on the eve of trial (that would have sentenced him only to community service) because, in the words of his provincial, “he would not perjure himself by pleading guilty to ‘make a deal,’ to admit to a crime that he did not commit.” Father Engelhardt was sentenced to six to twelve years in prison and immediately appealed but, as Cipriano reports, died two years into his sentence while handcuffed to a hospital bed, under armed guard, having been denied a potentially life-saving heart operation.⁷⁰

A decade earlier, in April 2005, the *Wall Street Journal* had featured a pair of articles by reporter Dorothy Rabinowitz, a Pulitzer Prize-winning columnist who exposed the astoundingly unfair case of Fr. Gordon MacRae in New Hampshire. Father MacRae was given a sixty-seven-year prison sentence for the sexual assault of a teenage boy. The case of Father MacRae is noteworthy for several reasons, including not only for the shocking lack of credibility of the government’s witness, Thomas Grover, and the allegations of serious misconduct by government officials involved in the case, but also because of the defendant’s persistent refusals to accept a deal (involving a one-to-two-year sentence) in exchange for a guilty plea. MacRae’s case stands as a stark example of how pre-trial public statements from his diocese prejudiced his cause, defamed him, and likely helped lead to his wrongful conviction.⁷¹

In addition to outright false accusations, other violations of the right of reputation have been reported by the media, both religious and secular.

admission of having falsely accused an El Salvadoran priest named Antonio Molino, but only after Molino had been involuntarily returned to the lay state in an expedited process).

70. Ralph Cipriano, “Catholic Guilt? The Lying, Scheming Altar Boy Behind a Lurid Rape Case,” *Newsweek*, January 20, 2016: <https://www.newsweek.com/2016/01/29/billy-doe-altar-boy-sends-four-men-prison-philadelphia-rape-case-417565.html>.

71. Dorothy Rabinowitz, “A Priest’s Story, Part One: The trial of Father Gordon MacRae,” *The Wall Street Journal*, April 27, 2005; idem, “A Priest’s Story, Part Two: The conviction of Father Gordon MacRae,” *The Wall Street Journal*, April 28, 2005; full text available at Bishop Accountability, accessed November 6, 2022, https://www.bishop-accountability.org/news/2005_04_27_Rabinowitz_APriests.htm.

In the wake of the infamous Pennsylvania Grand Jury Report in August 2018, Peter Steinfels, a former religion writer for *The New York Times*, wrote a lengthy article in January 2019 in *Commonweal* magazine.⁷² Steinfels rightly explains that under American law, grand juries are essentially just instruments of law enforcement, driven by state prosecutors and designed to determine whether criminal charges should be brought against a given defendant; they are not courts in which the normal rules of evidence and the rules of adversarial process apply. Furthermore, prosecutors who bring charges against the accused after the work of a grand jury is over are bound by the rules of ethics to refrain from making "extra-judicial comments that have a substantial likelihood of heightening public condemnation of the accused." None of these limitations prevented the following polemic contained in the introduction of the Grand Jury Report: "Priests were raping little boys and girls, and the men of God who were responsible for them not only did nothing; they hid it all." As Steinfels says in his *Commonweal* article, "This ugly, indiscriminate, and inflammatory charge, unsubstantiated by the report's own evidence, to say nothing of the evidence the report ignores, is truly unworthy of a judicial body responsible for impartial justice."⁷³

Steinfels goes on to document some of the spurious types of "evidence" the Grand Jury Report contains. One particularly egregious example he gives is the accusation against a Fr. Martin Fleming, born in 1869. In 2006, fifty-six years after his death in 1950, Father Fleming was accused by a seventy-two-year-old woman of having abused her when she was a six-year-old child in 1940, some *sixty-six* years earlier. The diocese receiving the accusation called the abuse an "abomination," eventually making public the name of the priest, sending it to each of the district attorney's offices within the diocese. Also included on the Grand Jury Report's list of "offenders" was a Fr. Richard Lynch, who died in 2000, years before a single accusation was made against him by a man of dubious credibility. Steinfels, pointing out that Father Lynch's name nevertheless still appeared on his diocese's public list of those "currently under investigation, [who] is presumed innocent unless proven otherwise," asks several fair questions: "Is Fr. Lynch, now dead for eighteen years, really 'currently under investi-

72. Peter Steinfels, "The PA Grand-Jury Report: Not What It Seems: It's Inaccurate, Unfair & Misleading," *Commonweal* (January 25, 2019) 13–26.

73. *Ibid.*, 26.

gation' but 'presumed innocent unless proven otherwise'? When will that investigation be completed? In what sense can he be 'presumed innocent' when included on a widely publicized list of priests and other church personnel 'credibly accused' of abusing or being threats to children? To say nothing of being listed as an 'offender' by a state grand jury?"⁷⁴

Steinfels also probes several examples of bias in the Grand Jury Report, especially the multiple aspersions on the actions and motivations of Bishop Donald Trautman of Erie. Steinfels wonders what a seventy-to-eighty-year scrutiny of another institution's response to sexual misconduct such as a public school or juvenile penal system might generate.⁷⁵

The events recounted in *Commonweal* have not escaped the notice of the secular press, even within the state of Pennsylvania itself. In 2019, for example, a series of news reports led the editorial board of a Pittsburgh newspaper to take a stand against what they saw as "the proverbial pendulum swinging too far." The editorial charged the "institutional Church" with victimizing its "foot soldiers of the faith—priests," all in the name of "zero tolerance" and "transparency." Recognizing the difficulty in finding public sympathy for priests in the current environment, the journalists nevertheless criticized the violation of human rights as well as civil rights, of "ancient norms of fairness for the sake of a PR bump."⁷⁶ The editors specifically pointed to one recent diocesan news release concerning a deceased bishop who was accused once, decades before, of "inappropriately touching" an adult woman. "It was the one and only accusation made against the bishop," the editorial reads, "who died six years ago." They also pointed to a different diocesan news release regarding a local elderly priest who, while he was a seminarian, did "something (we don't know what, except the news release noted it was not sexual in nature) that was 'inappropriate' with a minor." The editorial went on to say that the priest, admitting to the truth of the accusation, was "stripped of his right to celebrate the Mass (zero tolerance at work) and his name (and his shame) was released to the public in the interests of transparency."⁷⁷

74. *Ibid.*, 24.

75. *Ibid.*, 17, 20–21.

76. Editorial Board, "Due process for priests: Fairness has been sacrificed for appearances," *Pittsburgh Post-Gazette*, April 22, 2019: <https://www.post-gazette.com/opinion/editorials/2019/04/22/Due-process-priests-fairness-abuse-church-religion/stories/201904220017>.

77. *Ibid.*

In addition to false accusations and violations of the right to due process emanating from sources outside the Church, clerics today also face risks from sources within the ecclesial community. Such risks can come from policies and procedures that are constructed with goals other than the respect of the rights of the accused. As has been discussed, the publishing of lists of "credibly accused" clerics, arguably based on a desire to be transparent about risks posed to the community by sexual offenders, is fundamentally irreconcilable with a cleric's right to his good name if there is an absence of basic due process before an accused's name is posted on a website. Yet, as has been noted above, it appears that such lists are in use in many dioceses in the United States, with varying levels of disclosure concerning the presumption of innocence of those on the list, different definitions of key terms such as "credible," and various procedures for determining whether a given name ends up on the internet.

One example appeared in September 2019 on the website for the Diocese of Bridgeport, Connecticut, which published the names of two priests who had been "credibly accused of sexual abuse of a minor." One of those priests had died in 1989, thirty years before the date of the press release; the alleged conduct was said to have occurred more than *fifty* years earlier.⁷⁸ Quite obviously, the priest in question was never charged with any crime, much less given a fair trial, in either a canonical or a civil forum. Notwithstanding the letter published three years previously by the Pontifical Council for Legislative Texts, which specifically stated that the names of the dead should not be published, the priest's name was publicly and permanently branded as someone who had been "credibly accused" of having sexually abused a minor.

5. The Concept of "Credibility"

It is well known that the word "credibility" is not used in the Code of Canon Law, despite its frequent appearance in public announcements. The lack of a coherent definition of this important term is problematic. In the USCCB's 2016 Annual Report, for example, a definition of the word "credible" does not appear, despite the fact that it is used thirty-four times throughout the document. Neither is the word "credibility"

78. "Deceased Priests Added to List of Credibly Accused," Diocese of Bridgeport, September 7, 2019; <https://www.bridgeportdiocese.org/two-deceased-priests-added-to-list-of-credibly-accused/>.

defined, even though it is used on fourteen different occasions, including under what would seem to be a key heading: “Determination of Credibility.” The paragraph below the heading offers only this tautology: “Every diocese and eparchy follows a process to determine the credibility of any allegation of clergy sexual abuse, as set forth in canon law and the *Charter for the Protections of Children and Young People*.”⁷⁹ Earlier in the same report, the term “substantiated” is defined as describing “an allegation for which there is enough evidence to prove that the abuse occurred,”⁸⁰ though no explanation is given for whether there is any relation between “substantiated” and “credible.” In any event, the report goes on to state that reporting entities were asked to categorize new allegations that year into one of four categories: “unsubstantiated, obviously false, investigation ongoing, or unable to be proven.” The definition provided for “unsubstantiated” is as follows: “‘Unsubstantiated’ describes an allegation for which enough evidence exists to prove that the abuse did not occur.”⁸¹

Just one year later, the USCCB adopted a different definitional scheme, though not one marked with substantially more clarity. Still neglecting to bother to define the key term “credible,” beginning in 2017 the drafters of the USCCB annual report began using the following as the definition for the term “substantiated”: “‘Substantiated’ describes an allegation for which the diocese/eparchy has completed an investigation and the allegation has been deemed credible/true based upon the evidence gathered through the investigation.”⁸²

Such language raises several questions. Do the words “credible” and “true” now mean the same thing? Or do they represent different positions on a sliding scale? Has the word “credible” morphed from its etymological meaning, tied to being capable of belief, to being a synonym for “reality”? If so, how to respond to judges, lawyers, juries, and police officers who on a daily basis encounter numerous people who appear quite “credible” but who assert completely contradictory versions of events? And if

79. USCCB, *2016 Annual Report: Findings and Recommendations*, May 2017: <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/2016-Annual-Report.pdf>, at 38.

80. *Ibid.*, 10.

81. *Ibid.*

82. USCCB, *2017 Annual Report: Findings and Recommendations*, May 2018: <https://www.usccb.org/issues-and-action/child-and-youth-protection/upload/2017-Report.pdf>, at 23.

"substantiated" is now equivalent to "true," but by definition has been limited to the "evidence gathered through the investigation," then what is to be gained by a subsequent canonical process, whether judicial or extra-judicial?

Given the high number of American dioceses employing at least some kind of published list of "credibly accused" clerics,⁸³ the malleability of the key term "credible" has become an enormous issue for the roughly 37,000 priests (and some 18,000 deacons) living and working nationwide. Many have given voice to the concern that the prospect of being accused, and then having one's name published on the internet *before any judicial process has occurred*, hangs like the proverbial sword of Damocles over their heads.⁸⁴ Of debatable utility are the boiler-plate disclaimers sometimes accompanying such lists. Such disclaimers frequently appear in small print, at the bottom of a posting, or in any event are given much less prominence than the announcement that the person named has been accused. An ambiguous phrase such as "this accusation presumes neither guilt nor innocence," however pleasing it may be to the eye of an insurance company lawyer, is exactly wrong: one *should* presume, and that presumption must be in favor of the *innocence* of the accused. Statements inviting "any other victims" to call the toll-free number of the diocesan abuse hotline can be viewed as similarly problematic, given that the existence of a criminal act inflicted upon a victim by a particular accused cleric has *yet to be established*. When lists bundle together names alphabetically, they can be inherently vexing: the name of a notorious incarcerated pedophile who has been found guilty of his crimes can appear next to the name of a man linked to a single "credible accusation." This is manifestly unfair, as a public criminal trial is a very different process than a canon 1717 preliminary investigation, and a determination made by a diocesan review board against a man who has not been able to exercise his right of defense is not nearly the same thing as a jury verdict. Yet for purposes of a list such as that of the Diocese of

83. A January 2020 study by ProPublica shows that 178 American dioceses and orders had employed a published list of credibly accused clergy. See Ellis Simani and Ken Schwencke, "Credibly Accused," ProPublica, January 28, 2020: <https://projects.propublica.org/credibly-accused/>.

84. See Brandon Vaidyanathan et al., "Well-being, Trust, and Policy in a Time of Crisis: Highlights from the National Study of Catholic Priests," The Catholic Project, October 2022: <https://catholicproject.catholic.edu/wp-content/uploads/2022/10/Catholic-Project-Final.pdf>.

Lansing or the Archdiocese of Los Angeles—to take but two examples—there is no obvious difference between the two.⁸⁵

6. Listing the Dead

Accusations against deceased clergy, though certainly not *ipso facto* false, are also extremely difficult to prove, and the right of defense is practically impossible to respect in such cases. Nevertheless, such accusations are not uncommon. During the USCCB's 2011 audit period alone, during which 683 adults came forward to report an allegation of child sexual abuse for the first time, over 45% of the clerics accused (253/558 = 45.3%) were already dead.⁸⁶ That extraordinarily high number does not appear to be an outlier; in the USCCB's 2017 report, an even higher percentage (268/583 = 46%) of the men accused were already dead at the time of the accusation.⁸⁷ As was stated above, the most recent USCCB annual report noted a similar percentage; that is, over half of the total number of men accused (1035/1914=54%) were already dead when the accusation was made.⁸⁸

Including the names of these priests on published lists of credibly accused was specifically condemned in the aforementioned 2016 PCLT letter on the grounds that there could be *no* proportionate reason for the injury to their reputation.⁸⁹ The reason for the reluctance to defame the dead should be clear: it runs completely counter to Catholic moral theology and to canonical praxis (assuming *arguendo*, once again, that the decedent was never found guilty after a civil or canonical process, but only accused). Juan De Lugo, for example, wrote that “a person, even after death, possesses a good name; and for that he is remembered by his

85. See “List of clergy with a credible allegation of sexual abuse of a minor, last updated October 18, 2022,” Diocese of Lansing, October 18, 2022: <https://www.dioceseoflansing.org/human-resources/list-clergy-credible-allegation-sexual-abuse-minor-last-updated-july-13-2020>. See also “Consolidated List of Persons Named in the Report to the People of God,” Archdiocese of Los Angeles, accessed November 6, 2022, <https://lacatholics.org/wp-content/uploads/2022/01/21Dec2021-Consolidated-List-to-the-Report-to-the-People-of-God-2.pdf>.

86. USCCB, *2011 Annual Report*, 4.

87. USCCB, *2017 Annual Report*, 26.

88. USCCB, *2021 Annual Report*, 25.

89. PCLT, letter, September 15, 2016: “In alcuni casi sarà legittima, perché c'è ragionevole rischio per altre persone, mentre non sarebbe affatto legittima detta pubblicità quando il rischio fosse da escludere ragionevolmente. Questo ultimo serve, completamente, nel caso dei delinquenti defunti: in questi casi non può esistere una ragione proporzionata per la lesione della fama” (emphasis added).

fellows according to the good name he acquired while alive. Many people have performed great deeds in order to be remembered well after their death."⁹⁰ Alphonsus Liguori concurred, noting that while defaming the dead is less grievous than defaming the living, it still can be mortally sinful, and still demands restitution.⁹¹ Billuart likewise affirmed that it is incorrect to argue that the living have no responsibility to protect the rights of the dead; on the contrary, it is because of the continued existence of the soul that the deceased still have a right to a good name and a right to other goods which can be possessed after death—for instance, his virtues. Someone who never existed obviously could not be defamed, but the same is not true of someone who once was living but who is now dead.⁹²

Similarly, the twentieth century Dominican moral theologian Dominic Prümmer argued in his *Manuale theologiae moralis* that because a man's immortal soul continues to live after his death, so does his right to *bona fama*.⁹³ Prümmer goes on to cite the example provided by Pope Leo XIII in his decision to open the Vatican Archives to historical researchers in an effort to improve the accuracy of the historical record, then subject to much manipulation by anti-Catholic political forces.⁹⁴ Prümmer posits that while it is certainly true that historical facts must be expounded according to the criterion of truth, when it comes to the writing of *recent* history, care must be taken so as to prevent any damage to the reputations of the recently deceased so that their surviving relations not be harmed.⁹⁵

Opinion in classical canon law was nearly unanimous in favor of the proposition that the dead continued to enjoy the right to reputation, given that they continued to live on in the memory of the living.⁹⁶ Recognizing this reality, the eighteenth century canonist Ferraris cites the historical example of a man executed for having defamed the memory of Pope

90. De Lugo, *Disputationes*, book 6, disp. 14, sec. 3, no. 44, 195.

91. Alphonsus Liguori, *Theologia moralis* (Paris: Apud Gauthier Fratrem, 1835), lib. 3, tract. 6, cap. 1, no. 978.

92. Billuart, 360.

93. Dominicus Prümmer, *Manuale theologiae moralis* (Freiburg: Herder, 1940) 2:170.

94. See Leo XIII, letter *Saepenumero considerantes*, August 18, 1883; in *Leonis XIII Pontificis Maximi acta* (Rome: Typographia Vaticana, 1884) 3:259–273; *ASS* 16 (1883–1884) 49–57.

95. Prümmer, 171.

96. Iosephus Farraher, "Detractio et ius in famam," *Periodica* 41 (1952) 5–35, at 30: "Fere unanimes sententia auctorum tenet mortuos retinere jus ad famam suam." See also Eduardo Surges, *Defamation and Insult in Rotal Jurisprudence and Canonical Doctrine* (Rome: Pontifical Gregorian University, 1963) 14 (listing authorities).

Clement VIII.⁹⁷ Significantly, under Roman law, heirs were allowed to bring defamation actions in order to protect the reputation of the decedent.⁹⁸ Pio Ciprotti cites a passage from the *Digest* in his magisterial work on defamation under canon law, explaining that while an action in response to an *iniuria* may not be brought in the name of the deceased person himself, such an action may certainly be brought by the deceased person's relatives, heirs, or other interested parties.⁹⁹ Ciprotti cites an effort during the process of composing the 1917 code in which the drafters specifically considered the possibility that a deceased person's reputation could be harmed—"in casu quo defuncti fama laesa fuerit"—but that the proposal was not ultimately adopted, evidently due to the fear that such a provision would make impossible the work of historians.¹⁰⁰ Despite such an impressive body of authority standing in direct opposition, the practice of posting the names of deceased clergy who stand merely accused of wrongdoing appears to be almost routine in the United States today. Whether this technique has had the desired effect of appearing to be transparent before the public is an open question.

7. Repairing Damage to Reputation

Gianfranco Ghirlanda, professor *emeritus* of canon law at the Pontifical Gregorian University, addressed the topic of defamation at a colloquium in 2001; his remarks were later published in *Periodica* under the title "Duties and Rights Implicated in Cases of Sexual Abuse Perpetrated by Clerics."¹⁰¹ Noting the risk of unjust accusations against priests, Ghirlanda points out that the inclusion of the qualifier "upright and responsible" ("provos et graves") before the word "parishioners" ("paroecianos") in canon 1741, 3^o is important. Otherwise, he says, it would be easy for calumnies to lead to priests losing their *bona fama* and therefore the esteem—before their bishop or superior as well as the people of God—needed for the exer-

97. Lucius Ferraris, *Prompta bibliotheca canonica, juridica, moralis, theologica nec non ascetica, polemica, rubricistica, historica*, 8 vols. (Paris: Apud Garnier Fratres, 1883) "Libellus famosus," no. 25.

98. D. 47.10.1.4.

99. Pio Ciprotti, *De iniuria ac diffamazione in iure poenali canonico* (Rome: Pontificium Institutum Utriusque Iuris, 1937) 40–41.

100. *Ibid.*, 41 (citing a comment made by one of the drafters, in Italian, to the effect that "è necessaria una qualche limitazione, altrimenti la storia non si può fare").

101. Gianfranco Ghirlanda, "Doveri e diritti implicati nei casi di abusi sessuali perpetrati da chierici," *Periodica* 91 (2002) 29–48.

cise of their ministry.¹⁰² Ghirlanda also emphasizes the duty of bishops to protect the rights of their priests, according to canon 384. In other words, he says, *bona fama* is not only the *right* of a priest, but also his *duty vis-à-vis* the community. In addition, it is also the duty of the bishop: "To extirpate calumny is to extirpate evil present in the Christian community, if such calumny has arisen within it, or to defend the Christian community itself, inasmuch as it is the Christian community itself that is also greatly injured, especially if such calumnious defamation is aggravated by press campaigns or other means."¹⁰³ Ghirlanda points out that if a member of the faithful is responsible for such false accusations of slander or for any other injury to good reputation, canonical penalties would apply, as would an obligation to make reparation for the damage caused. He adds that if the author of the accusation is not subject to canon law on account of canon 11,¹⁰⁴ then proceedings may be instituted in the civil sphere.¹⁰⁵

One recent *Signatura* decision has been made available that confronts directly the question of how to repair damage done to reputation in a case involving a diocese making public an accusation of malfeasance against a priest.¹⁰⁶ A definitive decree of the College, issued on November 30, 2002 with Cardinal Schotte as *ponens*, confirmed a decree of the *Congresso* that had been issued in the same case some nine months earlier.¹⁰⁷ The case involved a priest who had been removed from ministry and who had made recourse against the decision, arguing, *inter alia*, that his reputation had been unfairly harmed by means of a notice that the archdiocese had circulated justifying the priest's immediate removal. Specifically, the notice

102. *Ibid.*, 32–33.

103. *Ibid.*, 34.

104. While an unjust deprivation of *bona fama* would violate the natural law, a canonical sanction would not apply to someone outside the Catholic communion, per c. 11.

105. Ghirlanda, 34.

106. Supreme Tribunal of the Apostolic Signatura, definitive decree of the College *c.* Schotte, *Amotionis et incardinationis; diffamationis; iurium oeconomicorum; damnorum*, prot. n. 31547/00 CA, November 30, 2002: in *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, trans. William Daniel (Montréal: Wilson and Lafleur, 2011) 340–355 (hereafter *Ministerium Iustitiae*). See also Supreme Tribunal of the Apostolic Signatura, definitive sentence *c.* Cacciavillan, *Amotionis ab officio Vice-Rectoris Seminarii*, prot. n. 37707/05 CA, November 14, 2007: in *L'attività della Santa Sede 2007* (Vatican City: Libreria Editrice Vaticana, 2008) 736.

107. See Supreme Tribunal of the Apostolic Signatura, decree of the *Congresso*, prot. n. 31547/00 CA, February 28, 2002: in *Ministerium Iustitiae*, 327–340.

stated that the action was being taken “for very serious reasons” (“ex gravissimis rationibus”).¹⁰⁸ The competent dicastery in the matter appeared to agree with the priest on this point, suggesting to the archbishop that the notice be modified so that no harm would come to the priest’s reputation. The Apostolic Signatura, in reviewing the administrative acts at issue, noted with approval that the archdiocese subsequently modified the notice, which in its revised form acknowledged that the “very serious causes did not pertain to matters which would affect [Father’s] good reputation or moral integrity.” The Signatura’s decision thus recognized, at least in the instant case, the power of a clarifying statement to help undue reputational damage caused by a poorly worded decree. Money damages for defamation were not at issue in the case.

In addition to this definitive decree, other recent examples of jurisprudence from the Apostolic Signatura illustrate cases in which the issue of damage to a priest’s *bona fama* by means of a public statement by his bishop was considered. For instance, in a definitive sentence from 2016, a diocesan bishop was found to have acted in a disproportionate manner in disciplining one of his priests. The Signatura indicated that its definitive sentence stating this fact should be published in some manner as a way to address some of the harm done to the priest’s good name.¹⁰⁹ In another definitive sentence issued some two years later, the Signatura effectively chided a bishop for not coming to the defense of one of his priests who had been unjustly accused. The sentence noted in particular that fear of negative public opinion (“opinionis publicae adversantis metus”) was not a fair and legitimate reason to continue to impose severe restrictions on a priest who had been the victim of calumnious accusations:

For public opinion can be easily manipulated, much less constitute sufficient proof of accusations (accusations, moreover, from which the Reverend X was absolved, both canonically and civilly). There also remains the question of the duty of the bishop towards a diocesan priest unjustly accused of serious crimes, as well as of the same bishop’s duty of forming the right consciences of the faithful towards an innocent priest who is unjustly accused (cf. can. 384), all the more so if a defamation campaign is being waged against the priest. Nor does it matter that the Curia

108. *Ibid.*, 329.

109. Supreme Tribunal of the Apostolic Signatura, definitive sentence *c. Stankiewicz*, *Exercitii sacri ministerii*, prot. n. 48503/13 CA, January 16, 2016: *Apollinaris* 92 (2019) 356–362.

did not publish the accusations: still less did the Reverend X, unjustly accused, publish them.¹¹⁰

While noting generally that public opinion can be easily manipulated and for that reason alone cannot constitute sufficient proof of accusations, the decision added that in the particular case before the tribunal, the priest had actually been exonerated both civilly and canonically of the crimes of which he had been accused. All the more reason, the *Signatura* suggests, for the bishop to have observed his duty to protect the rights of one of his priests under canon 384. The decision goes on to speak of the duty of a prelate to form properly the consciences of the faithful with respect to a falsely accused priest, especially if a tide of unfair public opinion is swelling against him. The decision was critical of the bishop’s efforts to ostracize the priest, given that such efforts served to exacerbate rather than to heal the harm done to the priest’s reputation.¹¹¹

Conclusion

This article critiques the practice of publishing lists of clerics “credibly accused” of sexual abuse, notwithstanding its current widespread use among dioceses and institutes of religious life in the United States. The author disagrees with the assumption that this practice is both a legitimate and effective means of re-establishing the damaged credibility of the Catholic hierarchy in this country. I have stated my objections to what I view to be the faulty legal principles on which this practice is based, given that publicizing the names of the merely accused in the name of transparency essentially violates the rights of the affected clerics to due process, the presumption of innocence, and to their good name. At a time in history when a person’s reputation is valued so cheaply by the public in general, I sug-

110. Supreme Tribunal of the Apostolic Signatura, definitive sentence *c. Versaldi, Exercitii ministerii*, prot. n. 50273/15 CA, November 29, 2017: in *Ius Canonicum* 60 (2020) 843–852, at 850: “Opinionem enim publicam facile quis moliri potest et eo minus opinio illa accusationum probationem sufficere potest (a quibus accusationibus ceterum Rev.dus X sive canonicè sive civiliter extra culpam positus est). Superest quoque interrogatio de officio Exc.mi Episcopi erga sacerdotem dioecesi adscriptum gravibus culpis iniuste accusatum necnon de eiusdem Exc.mi Praesulis officio rectae conscientiae fidelium efformandae erga innocentem sacerdotem iniuste accusatum (cfr. can. 384), eo magis si contra sacerdotem motus struatur famosus. Nec relevat quod Curia accusationes haud evulgaverit: eo minus Rev.dus X, iniustae accusatus, eisdem edidit.”

111. *Ibid.*, 851.

gest that Catholic jurists must do a good deal more to protect a juridical good as important as *bona fama*, particularly as that good pertains to individual members of the Catholic clergy. The disturbing reality of false accusations, the distressing imprecision over what is meant by a “credible accusation,” and the repeated violations of the right of the dead and defenseless to their good reputation are all strong indications to the legal community that better efforts are needed in order for us to live up to our call to help the Church be a *speculum iustitiae*.¹¹²

ABSTRACT

The practice of making the names of clerics “credibly accused” of sexual abuse of minors publicly accessible has become the norm in recent decades. This practice must be considered in light of conciliar teachings as well as civil and canonical doctrine on the right to a good reputation. It is essential to weigh carefully many factors when determining what is demanded by the need for transparency, especially such considerations as the right to a good reputation (bona fama), the definition of credibility, the utility of listing names of the deceased, and the necessity of repairing the reputation of those clerics who have been wrongfully accused. Ultimately, the practice of publicly listing the names of clerics who have been accused of abuse must be carefully weighed against the clerics’ legal and natural right to a good reputation.

112. See John Paul II, allocation to the Roman Rota, February 17, 1979: AAS 71 (1979) 422–427, stating at 423 that the Church herself is called to be a “mirror of justice.”