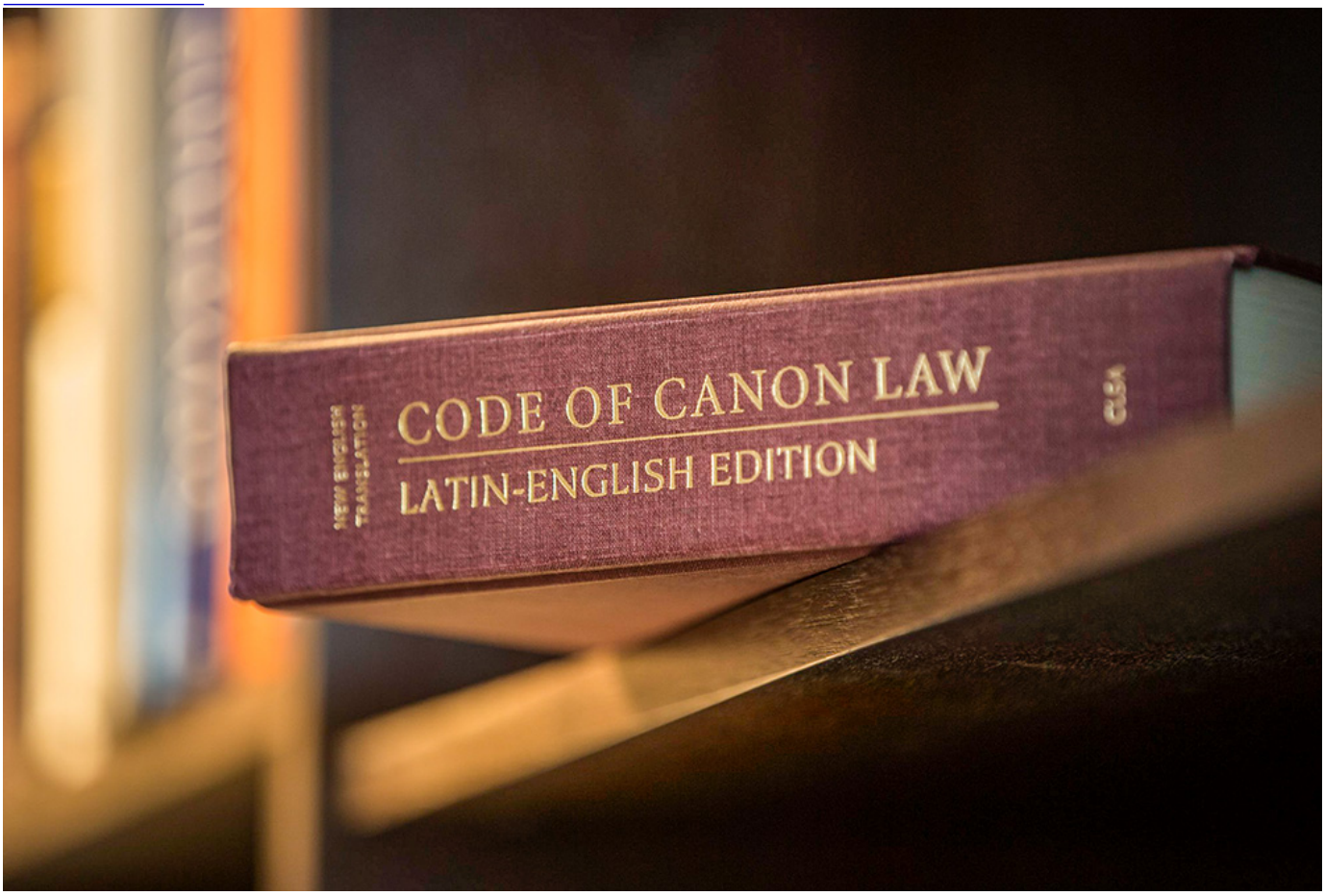
Opinion
Guest Voices



A Latin-English edition of the Code of Canon Law is pictured on a bookshelf. (CNS/Nancy Phelan Wiechec)



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As a canonist, I am often asked what changes are needed in canon law to address sexual abuse in the church. My usual response is that this is asking the wrong question, or, to paraphrase the famous aphorism, "Culture eats canon law for breakfast." The real question is: How can we work to affect changes in the culture of the church, which will ideally be codified in the church's law as standard expectations and practice?

For adult victims of sexual misconduct in the church, canon law is finally catching up to a culture that no longer tolerates sexual harassment or its cover-up. Helping all Catholics understand this shift in culture, and the changes in canon law, will ensure a safer environment for everyone.

When it comes to functioning legal systems, canon law is unique in that it governs a community that essentially voluntarily chooses to be bound by it. Canon law specifies canonical crimes, called delicts, with corresponding penalties that can be imposed on offenders by ecclesiastical authority after a formal process. But that system lacks coercive power other than the church's moral authority to call the offender to reform the behavior — which is why acceptance of the standards of the law as a cultural value in the community it governs is essential for its effectiveness.

When we see changes made in canon law, it often signals a long-awaited standardization of an expectation or practice that is already in place in much of the church.

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Realizing this can be deflating, especially for those who are used to a common law model, in which laws are enforced by the authorities and can coerce certain behaviors. Even with this reality, enacting real change in the church is possible, even if the arduous spade work of calling the church as a whole to continuing conversion remains.

Nobody needs convincing that abuse should not happen. Rather, where hearts, minds, systems and culture in the church needs conversion is the recognition that abuse occurs; that anyone can be vulnerable to experiencing abuse depending on the circumstances; that the hierarchical structure of the church creates a systemic

vulnerability to abuse due to its inherent power differentials; and that abuse naturally drives a shame-induced human inclination to keep abuse silent and hidden.

Something that victim-survivors have taught us is that abuse thrives on silence. We've seen the power of victim-survivors sharing their stories over the decades, and how it helped mobilize the development of new systems and standards that are now codified in the universal law.

Only by exposing abuse and bringing it to light can perpetrators and enablers be held accountable. Our systems and culture must provide means of safe reporting, immediate care and accompaniment for those bringing reports of abuse forward, and appropriate forms of disclosure that drive accountability while still respecting the privacy of those who have been harmed.

> Enacting real change in the church is possible, even if the arduous spade work of calling the church as a whole to continuing conversion remains.
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In recent years, there has been a surge of interest in the new forms of reporting and accountability measures in the church, especially when it comes to reports involving bishops and others in positions of ecclesial authority, as well as abuse of adults, which has resulted in several changes to canon law in a relatively brief period of time.

Much of that is due to the response of Pope Francis to the Pennsylvania Grand Jury Report and then the fallout from revelations about the abuse committed by former Cardinal Theodore McCarrick. An investigation into McCarrick revealed that some church leaders knew of McCarrick's actions, but because they did not involve a minor, they did not take action.

Sexual abuse of minors and forcible sexual assault have been recognized as canonical crimes since the earliest centuries of the church. But coercive sexual abuse or harassment of adults, committed by a hierarchical superior (such as by a bishop toward a seminarian), has not until recent years been recognized as a similar offense, punishable as a crime in the canonical system.

The events of 2018 prompted Francis to call a summit at the Vatican in February 2019 of heads of episcopal conferences and major superiors of religious orders. While much of the meeting was about protecting minors from abuse, participants and observers raised questions about the abuse of adult persons who are vulnerable in some way, such as seminarians who are sexually abused by a priest, bishop or cardinal who is in a position of authority over them. The cultural reform appeared in a tangible way. Representatives of the community generally agreed that it was time for canon law to catch up.



Pope Francis and church leaders from around the world attend a penitential liturgy during a global summit on child protection and abuse in the church at the Vatican Feb. 23, 2019. (CNS/Vatican Media)

Shortly after the Vatican summit meeting in 2019, Pope Francis issued the groundbreaking legislation *Vos Estis Lux Mundi*. The document instituted a global mandatory reporting requirement within the church for sexual abuse of minors and vulnerable adults, as well as reports of failures by church authority to address these reports appropriately. It set forth a process and structure for making those reports,

and standards for investigating reports that are made.

Vos Estis made a lot of headway for enhancing the system of accountability by offering a means to review and investigate the action (or inaction) by authorities at the highest levels of the church, with regard to protecting the most vulnerable from sexual abuse.

Sexual abuse of "vulnerable adults" as defined in *Vos Estis* ("any person 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") by clergy and most persons in consecrated life now triggers the processes and protections of *Vos Estis*, but it remains an open jurisprudential question as to whether this definition applies to adults who suffer unwanted and coercive sexual contact from a hierarchical superior. Helpfully, in December 2021, Francis promulgated the long-awaited revisions to the penal law of the church, which now identifies as a crime sexual assault of an adult person (vulnerable or otherwise), committed by abuse of authority (revised Canon 1395.3).

It is a common canonical quagmire that a person experiences harm or abuse by a minister or person in a position of authority in the church, but the actions do not constitute a crime under the legislation in place at the time, or the criminal offense cannot be prosecuted as such because prescription (i.e., statute of limitations) has passed.

> Canon law will never prevent church authority from doing the right thing.
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These types of canonical difficulties are not uncommon, but that hardly means that there are no other remedies available. In these cases where canon law does not provide a direct instruction on how to proceed (no legal system could offer this for all situations), it is important to note that canon law does not prevent church authority from handling the issue. Quite the opposite, it mandates them to do so.

There are places in the church where we see the basic system augmented by local developments and solutions that fill the gap. Lay-led review boards, victim advocates, independent ombudspersons, whistleblower protections, public reports on how abuse cases are handled, safe environment training, codes of conduct:

These are all being implemented in dioceses throughout the world. They arose out of the cultural shift in putting victims at the center, and acknowledging that their unique needs require unique solutions.

Even when the technicalities of an actionable delict might not be present, the harm that occurred still is. Canon law will never prevent church authority from doing the right thing. Whatever limitations are presented by the rules, structures and processes defined by canon law, these can never be used as a legitimate excuse for failing to protect the dignity of persons, repair harm, and otherwise serve the Gospel.

Canon law is the juridic expression of the values of the community that is the church. When canon law develops and changes, we can see this as a positive indicator of a shift in culture or community values in the church.

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