

Keeping the record straight on Benedict and the crisis

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Intense scrutiny is being devoted these days to Pope Benedict XVI's history on the sex abuse crisis. Revelations from Germany have put his five years as a diocesan bishop under a spotlight, and a piece on Thursday in *The New York Times*, on the case of Fr. Lawrence Murphy of Milwaukee, also called into question his Vatican years as prefect of the Congregation for the Doctrine of the Faith.

Despite complaints in some quarters that all this is about wounding the pope and/or the church, raising these questions is entirely legitimate. Anyone involved in church leadership at the most senior levels for as long as Benedict XVI inevitably bears some responsibility for the present mess. My newspaper, the *National Catholic Reporter*, today called editorially for full disclosure [1] about the pope's record, and it now seems abundantly clear that only such transparency can resolve the hard questions facing Benedict.

Yet as always, the first casualty of any crisis is perspective. There are at least three aspects of Benedict's record on the sexual abuse crisis which are being misconstrued, or at least sloppily characterized, in today's discussion. Bringing clarity to these points is not a matter of excusing the pope, but rather of trying to understand accurately how we got where we are.

The following, therefore, are three footnotes to understanding Benedict's record on the sexual abuse crisis.

1. Not the 'Point Man'

First, some media reports have suggested that then-Cardinal Joseph Ratzinger presided over the Vatican office with responsibility for the sex abuse crisis for almost a quarter-century, from 1981 until his election to the papacy in April 2005, and therefore that he's responsible for whatever the Vatican did or didn't do during that entire stretch of time. That's not correct.

In truth, Ratzinger did not have any direct responsibility for managing the overall Vatican response to the crisis until 2001, four years before he became pope.

Bishops were not required to send cases of priests accused of sexual abuse to the Congregation for the Doctrine of the Faith until 2001, when they were directed to do so by Pope John Paul II's *motu proprio* titled *Sacramentorum sanctitatis tutela*. Prior to that, most cases involving sex abuse never got to Rome. In the rare instance when a bishop wanted to laicize an abuser priest against his will, the canonical process involved would be handled by one of the Vatican courts, not by Ratzinger's office.

Prior to 2001, the Congregation for the Doctrine of the Faith got involved only in the exceedingly rare instances when the sex abuse occurred in the context of the confessional, since a canonical tribunal within the congregation handled cases involving abuse of the sacrament of penance. That, for example, is how the case of Fr. Marcial Maciel Degollado, the founder of the Legionaries of Christ, ended up in the congregation, and it's also why officials in the Milwaukee archdiocese directed the case of Fr. Lawrence Murphy there.

One certainly can question how Ratzinger's office handled those exceptional cases, and the record seems painfully slow and ambivalent in comparison with how similar accusations would be dealt with today. Moreover, Ratzinger was a senior Vatican official from 1981 forward, and therefore he shares in the corporate failure in Rome to appreciate the magnitude of the crisis until terribly late in the game.

To suggest, however, that Ratzinger was the Vatican's "point man" on sex abuse for almost twenty-five years, and to fault him for the mishandling of every case that arose between 1981 and 2001, is misleading. Prior to 2001, Ratzinger had nothing personally to do with the vast majority of sex abuse cases, even the small percentage which wound up in Rome.

2. The 2001 letter

In some reporting and commentary, a May 2001 letter from Ratzinger to the bishops of the world, titled *De delictis gravioribus*, is being touted as a "smoking gun" proving that Ratzinger attempted to thwart reporting priestly sex abuse to the police or other civil authorities by ordering the bishops to keep it secret.

That letter indicates that certain grave crimes, including the sexual abuse of a minor, are to be referred to the Congregation for the Doctrine of the Faith, and that they are "subject to the pontifical secret." The Vatican insists, however, that this secrecy applied only to the church's internal disciplinary procedures, and was not intended to prevent anyone from also reporting these cases to the police or other civil authorities. Technically they're correct, since nowhere in the 2001 letter is there any prohibition on reporting sex abuse to police or civil prosecutors.

In reality, few bishops needed a legal edict from Rome ordering them not to talk publicly about sexual abuse. That was simply the culture of the church at the time, which makes the hunt for a "smoking gun" something of a red herring right out of the gate. Fixing a culture -- one in which the Vatican, to be sure, was as complicit as anyone else, but one which was widespread and deeply rooted well beyond Rome -- is never as simple as abrogating one law and issuing another.

That aside, here's the key point about Ratzinger's 2001 letter: Far from being seen as part of the problem, at the time it was widely hailed as a watershed moment towards a solution. It marked recognition in Rome, really for the first time, of how serious the problem of sex abuse really is, and it committed the Vatican to getting directly involved. Prior to that 2001 *motu proprio* and Ratzinger's letter, it wasn't clear that anyone in Rome acknowledged responsibility for managing the crisis; from that moment forward, the Congregation for the Doctrine of the Faith would play the lead role.

Beginning in 2001, Ratzinger was forced to review all the files on every priest credibly accused of sexual abuse anywhere in the world, giving him a sense of the contours of the problem that virtually no one else in the Catholic church can claim. In a recent article, I outlined the "conversion experience" Ratzinger and his staff went through after 2001. Beforehand, he came off as just another Roman cardinal in denial; after his experience of reviewing the files, he began to talk openly about the "filth" in the church, and his staff became far more energetic about prosecuting abusers.

For those who have followed the church's response to the crisis, Ratzinger's 2001 letter is therefore seen as a long overdue assumption of responsibility by the Vatican, and the beginning of a far more aggressive response. Whether that response is sufficient is, of course, a matter for fair debate, but to construe Ratzinger's 2001 letter as no more than the last gasp of old attempts at denial and cover-up misreads the record.

3. Canonical Trials

Ratzinger's top deputy at the Congregation for the Doctrine of the Faith on sex abuse cases, Maltese Monsignor Charles Scicluna, recently gave an interview to an Italian Catholic paper in which he said that of the more than 3,000 cases eventually referred to Rome, only 20 percent were subjected to a full canonical trial. In some reporting, including the Thursday piece in *The New York Times*, this figure has been cited as evidence of Vatican "inaction."

Once again, however, those who have followed the story closely have almost exactly the opposite impression.

Back in June 2002, when the American bishops first proposed a set of new canonical norms to Rome, the heart of which was the "one strike and you're out" policy, they initially wanted to avoid canonical trials altogether. Instead, they wanted to rely on a bishop's administrative power to permanently remove a priest from ministry. That's because their experience of Roman tribunals over the years was that they were often slow, cumbersome, and the outcome was rarely certain.

Most famously, bishops and experts would point to the case of Fr. Anthony Cipolla in Pittsburgh, during the time that Donald Wuerl, now the Archbishop of Washington, was the local bishop. Wuerl had removed Cipolla from ministry in 1988 following allegations of sexual abuse. Cipolla appealed to Rome, where the Apostolic Signatura, in effect the Vatican's supreme court, ordered him reinstated. Wuerl then took the case to Rome himself, and eventually prevailed. The experience left many American bishops, however, with the impression that lengthy canonical trials were not the way to handle these cases.

When the new American norms reached Rome, they ran into opposition precisely on the grounds that everyone deserves their day in court -- another instance, in the eyes of critics, of the Vatican being more concerned about the rights of abuser priests than victims. A special commission of American bishops and senior Vatican officials brokered a compromise, in which the Congregation for the Doctrine of the Faith would sort through the cases one-by-one and decide which ones would be sent back for full trials.

The fear at the time was that the congregation would insist on trials in almost every case, thereby dragging out the administration of justice, and closure for the victims, almost indefinitely. In the end, however, only 20 percent were sent back for trials, while for the bulk of the cases, 60 percent, bishops were authorized to take immediate administrative action, because the proof was held to be overwhelming.

The fact that only 20 percent of the cases were subjected to full canonical trial has been hailed as a belated grasp in Rome of the need for swift and sure justice, and a victory for the more aggressive American approach to the crisis. It should be noted, too, that bypassing trials has been roundly criticized by some canon lawyers and Vatican officials as a betrayal of the due process safeguards in church law.

Hence to describe that 20 percent figure as a sign of "inaction" cannot help but seem, to anyone who's been paying attention, rather ironic. In truth, handling 60 percent of the cases through the stroke of a bishop's pen has, up to now, more often been cited as evidence of exaggerated and draconian action by Ratzinger and his deputies.

Obviously, none of this is to suggest that Benedict's handling of the crisis -- in Munich, at the Congregation for the Doctrine of the Faith, or as pope -- is somehow exemplary. An accounting needs to be offered if this pope, and the church he leads, hopes to move forward. For that analysis to be constructive, however, as opposed to fueling polarization and confusion, it's important to keep the record straight.