

Bishop Geoffrey Robinson



St Joseph's Presbytery

126 Liverpool Road

ENFIELD NSW 2136

Telephone: (02) 9747 6446

17th October 2011

Archbishop P Wilson

GPO Box 1364

ADELAIDE SA 5001

Dear Phillip,

Thank you for the invitation to study the proposed revision of Book VI and offer my reactions.

The *Praenotanda* are essential to an understanding of this document, so one of the best ways I can help the Australian bishops is by providing a (somewhat literal) translation of these preliminary remarks. I have omitted only the last, more technical, parts.

PRELIMINARY REMARKS

In more recent years the conviction has grown of the need to strengthen the force and effectiveness of the canonical penal system. Within the more general field of taking care that the norms of the Church retain their force with the passage of time and respond appropriately to the changing needs of the ecclesial society throughout the entire world, it became clear that the penal norms of the Code of Canon Law promulgated in 1983 raised various questions, and indeed of diverse kinds, and these questions argued that the adjusting of the norms to present circumstances should be carefully considered.

Indeed, rapid changes in society and in customs among people appear to require an appropriate adaptation of the penal norms in force in the Church.

Furthermore, the juridical experience of the Church in recent decades brings to light the fact that Pastors have used the canonical penal system too rarely (*nimia parcitate*) in carrying out their duty of governance, not really, alas, because the faithful substantially observe the prescripts of law, but rather because of two fundamental reasons: firstly because of a false manner of understanding the role of penal sanctions in the Church, as though it were contrary to the overriding needs of charity; then – this must also be confessed – because of a number of defects in the current system of canonical penalties.

1. SOME REASONS PERSUADING A REVISION

The opinion according to which the application of a penal system cannot be reconciled with the charity required of pastoral action is an error rather widely spread in the present circumstances of the Church. Indeed, from a wider point of view, the error concerns the whole juridical aspect of the Church, and this is a defect of proper formation. Such a way of thinking leads to a living together with customs contrary to discipline, when a remedy cannot be found through exhortations and persuasions. This state of affairs frequently brings with it the danger that, with the passage of time, such ways of acting become entrenched, solutions become more difficult, and in many cases scandal and confusion arise among the faithful. All of these considerations plainly show how erroneous is that idea which is found at the root of such a way of acting in a number of Pastors. They also demonstrate in what way and by what force charity requires that Pastors should have recourse to the use of the penal system, keeping in mind the three ends which make it necessary in ecclesial society – that the needs of justice be restored, that the offender be corrected, and that scandals be prevented. In such a way of acting a prejudice hostile to law is manifestly apparent, and this prejudice has, alas, invaded the society of the Church as well and impeded the idea that submission to the law be considered as the only way of avoiding free choice, abuse of authority and defence of the weak. Furthermore, negligence in having recourse to the penal system frequently indicates an omission on the part of Pastors of the obligation of watching over the Church (*invigilandi*).

At the same time, in addition to these causes, the limited use of the canonical penal discipline reflects limits intrinsic to the system.

The reasons given also show the goals we have sought to achieve in preparing the revision of Book VI:

1) In the first place we have sought to develop a penal system that will be an instrument of government that Pastors may have in their hands in carrying out their duties of governance over the People of God. Recourse to the penal system is, indeed, a necessity

In addition to the matters contained in the *Praenotanda*, I notice also that in quite a number of places the text has restored provisions from the 1917 Code that were deliberately omitted from the 1983 Code.

I acknowledge that in a number of places there is a tidying up of concepts and of logic, and I find this aspect welcome.

It is obvious that the authors of this document are not happy with the fact that bishops have made infrequent use of penalties in the last thirty years, and are determined that they should use them more. The major decision the Australia bishops have to make is, therefore, whether they wish to go down this path.

Yes, of course it is not good that people should do whatever they like. On the other hand, is this really the way to solve the Church's problems? Do bishops want to be put in the position of having to inflict penalties, even when they consider it pastorally inadvisable. There will be plenty of people in the community bringing cases to the attention of the bishop and demanding that he inflict penalties.

Inevitably the document would find its way into the media, so we have to ask whether this is the image of the Church we wish to project. How will the Catholic people themselves react to this initiative? At a time when the Church's image is at rock bottom because of abuse and cover up, is a stressing of penalties for many different offences the way to restore its image? Is it good that this is the only part of the 1983 Code that is being revised?

The only particular area I wish to comment on is that concerning sexual abuse.

I firstly acknowledge the progress that has been made in raising the age from sixteen to eighteen (1395 #2), in placing those "with an imperfect use of reason" together with minors (#2), in including child pornography (#3), and in extending the penalties to all other persons who have an office in the Church (#4).

Despite these advances, I still have serious problems. This draft document follows the 1983 code in putting abuse under the heading of "Offences against special obligations". The other obligations under this title all concern clerics or religious (not engaging in trade and commerce, not marrying, clerics living in concubinage or some other external violation of the sixth commandment, the obligation of residence), and so are "special" to priests and religious. But can.1395 #2 deals with sexual sins committed "by force, or by threats, or in public, or with a minor", and these are in no way "special" to priests or religious, but bind every single person, so this paragraph does not belong under this heading. It would be better placed in the following title concerning "Offences against human life and liberty" (perhaps reworded as "Offences against human life, liberty and dignity")

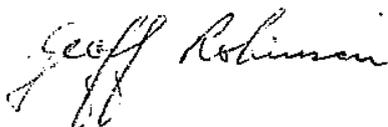
My second problem with this paragraph follows from the first. The paragraph begins, "A cleric who has offended in other ways against the sixth commandment of the Decalogue"....

This reflects the long-standing attitude of the Church that sexual abuse is first and foremost a sexual sin, when surely it is first and foremost a crime against the minor. I suggest that God is offended far less by the sexual sin in and of itself, and far more by the profound and life-long harm done to the innocent minor. It was this attitude of seeing it primarily as a sexual sin that contributed to the poor response to abuse, e.g. the practice of moving an offending cleric from one parish to another. For this reason, too, it should be under the following title concerning offences against human beings, and be there presented in terms of the harm caused rather than simply as a sexual sin.

Finally, the Church has had a double problem: the abuse and the poor response to abuse. While there are penalties for perpetrators of sexual abuse, there are none for anyone who has contributed to the poor response, e.g. non-cooperation with civil authorities, or a bishop who seeks to cover up the offence, or a priest who is told a story of abuse but does nothing to hand it on to higher authority or tries to dissuade a victim from doing so. To insist on coercion in many other fields, but omit it in the area of cover up of abuse would surely be counter-productive.

I hope these comments are of some assistance to you.

With every good wish,

A handwritten signature in cursive script that reads "Geoff Robinson". The signature is written in dark ink and is positioned below the typed text of the letter.