

A WORLD-WIDE CRIMINAL CONSPIRACY ?

Neil Addison (*Barrister*) National Director Thomas More Legal Centre www.ThomasMoreLegal.org

1. It has been suggested in various [Newspaper Articles](#), Media interviews, [Blogs](#) etc that documents revealed during the Catholic Church child abuse scandal have implicated the Church in general and Pope Benedict in particular in a criminal conspiracy to facilitate child abuse or alternatively to obstruct justice by failing to report allegations of child abuse to public authorities.
2. In looking at these allegations I shall principally rely on broad legal principles drawing on examples within English Common or statute law and international law. Though every country has its own particular laws and legal system and the details differ from country to country it is the case that legal broad principles are generally the same across civilised legal systems. In addition by definition if something done by the Church could be held to constitute a crime within one country only by reason of the specific wording of the law of that country then by definition it can hardly constitute an international criminal conspiracy spread across several countries.
3. The Church Documents I shall deal with are "[Crimen Solicitonis](#)" issued to all Bishops of the Church in 1962 and "[De Delictis Gravioribus](#)" also issued to all Bishops of the Church in 2001 and signed by the then Cardinal Ratzinger; this document was accompanied by a covering letter [Sacramentorum Sanctitatis Tutela](#) signed by Pope John Paul II. I shall refer to these documents as the "1962 letter" and the "2001 letter". As a side point I note that the 2001 letter was published in the 2001 issue of the Vatican Year Book [Acta Apostolicae Sedis for 2001](#) which is a document that has always been publicly available and not secret, and the 2001 letter specifically refers to the 1961 letter

CONSPIRACY etc

4. In English Statute Law the crime of conspiracy requires two or more persons to agree to carry out a course of conduct which "will necessarily amount to or involve the commission of any offence" (Section 1(1) of the Criminal Law Act 1977) whilst the Common Law definition of conspiracy accepted by the US Supreme Court in *Iannelli v. United States*, 420 U.S. 770, 777 (1975), *United States v. Shabani*, 513 U.S. 10 (1994) involves "an agreement to commit an unlawful act" and s21 of the Canadian Criminal Code requires "an intention in common to carry out an unlawful purpose"

5. In his Guardian Article suggesting that the Pope should be arrested when he visits Britain Geoffrey Robinson QC accused the Pope and the Church of “aiding and abetting sex with minors.”. Under English Law “aiding and abetting” requires the accused person to perform “an act capable of encouraging or assisting the commission of an offence” either “intending” or “believing” that the act will “encourage or assist its commission” ([ss44 - 46 Serious Crime Act 2007](#)) similar provisions apply in the criminal laws of Canada Australia and the USA.
6. Therefore in order to have the basis for a criminal prosecution either of conspiracy or aiding and abetting it is necessary to prove that the defendant (in this case the Pope and/or other Church officials) did acts (actus reus) which helped sex offenders to commit their crimes and/or to evade justice and that the intention (mens rea) of the Church was to assist in the commission of those crimes or the evasion of justice. In order for there to be a conviction for criminal conspiracy or aiding and abetting, under English law, there must be a deliberate intention that a crime should be committed (*Callow v Tillstone (1900) 83 LT 411*) and my understanding of the law in USA Australia and Canada is that the principle is the same in those jurisdictions.
7. The importance of intention to assist in a breaking of the law (mens rea) was emphasised in the House of Lords case of [Gillick v West Norfolk and Wisbech Area Health Authority \[1986\] AC 112](#) where the House of Lords held that supplying contraceptive advice to under 16 year old girls did not constitute the criminal offence of aiding and abetting unlawful sexual intercourse even though (from a lay point of view) that would be the natural and inevitable consequence of the doctors actions
8. Therefore in order to prosecute the Pope or the Church on the basis of the 1962 or 2001 letters it is necessary to show that the intention behind the letters was to assist crime and careful reading of both letters show that they were in fact mainly aimed at dealing with acts which were not criminal

1962 & 2001 LETTERS

9. When examining the two letters it is important to bear in mind that they apply to the Church throughout the world and as such attempts to apply consistent internal Church rules to countries with a range of different legal rules and cultures. In the 2001 letter for example the age of a minor is set as up to 18 whilst across the world the legal age of consent for sexual intercourse can range from [13 in Spain or Nigeria to 18 in](#)

[Swaziland or Idaho](#); similarly whilst consensual homosexual sex between adults is now legal in most countries it is still illegal in many countries and indeed was illegal in England until 1967

10. More importantly the two letters only deal with the internal procedures to be adopted by the Church in deciding whether a Priest accused of acts (which might or might not be criminal in the country in which they occur) should be disciplined by the Church and possibly removed from the priesthood. Nowhere in the letters is there any instruction that the civil authorities (Police) should not be told about allegations of criminal behaviour.
11. There is, of course, the criticism that neither letter gives direct and clear instructions that the civil authorities must be informed however that ignores the fact, already mentioned, that many allegations may be criminal in one jurisdiction but not criminal in another and many of the acts mentioned in the 1962 and 2001 letters are not criminal in any jurisdiction. For example a Priest who has sex with a 14 year old girl in Spain does not commit a crime but would in England, a Priest who has an adulterous heterosexual relationship would not commit a crime in England but would commit a crime in Iran which could lead to him and the woman being stoned to death, similarly with homosexual behaviour by a Priest. All of those would be regarded by the Church as offences contrary to the two letters but would be regarded in entirely different lights by law enforcement officials in different countries.
12. It is also important to remember that the 1962 letter was issued **in 1962**, when consensual interracial sex was illegal in much of the United States as well as in South Africa, when Communism ruled much of the world and when a person who attended Church could lose their job if the Communist authorities became aware. 1962 was only 4 years before the start of the [Cultural Revolution](#) in China when Churches were attacked and Priests killed, only 6 years after the crushing of the [Hungarian uprising](#) and 6 years before the [crushing of the Prague Spring](#). In those circumstances it is hardly surprising if Church instructions did not require that all State authorities be automatically informed of any allegations made against a priest.
13. In addition it should be remembered that the 1962 letter was a reissue of an earlier letter issued in 1922 and that year must also be seen in its historical context. The Bolsheviks had just finalised their grip on power and [persecution of the Church](#) and Church authorities was intense. In [Mexico Anti-clerical violence](#) and state sanctioned murder of priests was beginning (dramatised in [The Power and the Glory](#) by Graham

Green)and China was in chaos being ruled either by Warlords or Japanese occupation. Once again it is unrealistic to expect that an instruction to the Church throughout the world would give instructions that in every country the civil authorities should automatically be informed that a criminal allegation had been made. After all how does a Bishop report a crime to the Police when being a Bishop is itself a crime ?

Criminal Conspiracy

14. Though the main attention on the 1962 letter has concentrated on the issue of Child Abuse any suggestion that it is intended to assist in a conspiracy of child abuse has to take account of the fact that the 1962 letter primarily deals with “Solicitation in the Confessional” which would not constitute a criminal offence in most legal systems. The letter then mentions in para 71 Homosexual relationships, and deals in para 73 with sexual relationships with minors or with animals and applies the same rules to those offences as it has applied to the (non criminal) practice of solicitation in the confessional.
15. Therefore if the 1962 letter is to be regarded as evidence of a criminal conspiracy that is inconsistent with the fact that its primary focus is on an activity which is not criminal because if the primary focus is on an activity which (though reprehensible) is legal then there is no evidence that the intention of the document or the drafters of the document was to aid unlawful acts.
16. This particular analysis is strengthened by the 2001 letter which besides the offences listed in the 1962 letter also deals with such non-criminal acts as “the taking or retaining for a sacrilegious purpose, or the throwing away of the consecrated species (Host)” (Art 2 1.1 “consecration for a sacrilegious purpose of one matter (ie bread or wine) without the other in a Eucharistic celebration “ Art 2.2. In simple terms it is impossible to establish a case of criminal conspiracy based on a document which is primarily focused on dealing with acts which are not in themselves criminal.

Secrecy

17. An important part of the allegations involving the 1962 and 2001 letters involve the “oath of Secrecy” required of those who give evidence or participate in one of the Churches own Courts dealing with allegations against a Priest. As a lawyer in the Anglo Saxon Common Law tradition I can understand that criticism however once again it is important to remember that both letters apply throughout the world and

therefore to countries with vastly different legal traditions. In Portugal for example Article 86 of the Portuguese penal code imposes "[Judicial Secrecy](#)" on all witnesses in a criminal investigation, a legal rule which seemed incomprehensible to the British Media during the [Madeleine McCann case](#)

18. Similarly in England prior to a trial there are extensive legal restrictions on what the media can report but no such restrictions apply in the United States
19. More pertinently perhaps it must be remembered that in general Church Tribunals have no legal standing within their individual countries and without a promise of secrecy it may be difficult if not impossible for them to operate. If, for example, a Priest was facing an allegation of sexual abuse which, for whatever reason, was not being prosecuted in the state courts then witnesses who gave evidence could potentially be sued by him for slander or, in some countries, possibly even prosecuted for criminal libel. In other jurisdictions the party making the complaint could possibly face execution (if the allegation related to an adulterous or homosexual relationship) or social ostracism. Requiring an oath of secrecy can therefore be justified as providing both witnesses and also the accused with some protection for their reputation and, in some countries, their personal safety.
20. In England Police Disciplinary Tribunals sit in secret ([Reg 32\(1\) Police \(Conduct\) Regulations 2008](#)). In [April 2010](#) it was discovered that 12 years previously a Police Constable had been convicted of assaulting a suspect but had not been dismissed, he subsequently went on to seriously assault a 19 year old female suspect. Though there was criticism of the Police there was no suggestion that the decision by the (secret) Disciplinary Tribunal was in any way illegal

Summary

21. Church authorities in individual countries can be criticised for responding inadequately to allegations of child abuse and those situations have to be dealt with country by country but the main allegation being made against the Church and the Pope is an allegation of criminal conduct and that allegation is not justified by any proper analysis of the facts, the evidence or the law.