

Homily for the Red Mass
Diocese of Grand Rapids, Michigan
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“Carrying the Cross in a Litigious Culture”

Bishop Hurley, Honorable Judges, governmental and civic officials, esteemed colleagues of the legal profession, my dear brothers and sisters in Christ:

Jesus said to the crowd gathered around him, “This generation is an evil generation.” Jesus called the people of his time evil people because they sought a sign and failed to repent, despite having heard the preaching of Jonah and the wisdom of Solomon. How would Jesus assess the situation that we face in the world today? Jesus did not mince words and was not reticent to say what he thought and describe what he saw. What do we see as we look around us the world we live in? What do we say about what we see? Let me describe a few things that I see.

First item: As of July 30, 2007, Catholic Charities of the Archdiocese of Chicago had to end its foster care program, which, for almost 90 years, had been one of the largest agencies placing children with foster families because of abuse or neglect. Because of a \$12 million settlement of a lawsuit alleging negligent supervision by abusive foster-parents, our Catholic social service agency in Chicago can no longer get insurance for its foster care program.

Second item: A research study commissioned by the United States Conference of Catholic Bishops and conducted by the John Jay College of Criminal Justice, entitled, “The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States,” reported in 2004 that the amount of money paid to that date by the Church, as a result of allegations, to victims, for the treatment of priests and victims and for legal expenses reported in their surveys was \$472,000,000. Others have estimated the total costs to be more than twice that. The claims continue. Catholic dioceses in Tucson (Arizona), Portland (Oregon), Spokane (Washington), Davenport (Iowa) and San Diego (California), in recent years have filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code.

While the sexual abuse of minors is a sin that must be addressed by the Church and a crime that must be punished by the criminal justice system, I would suggest that the current approach of awarding large monetary damages to victims is not only contrary to the purposes of tort liability theory, but also place an excessive burden on the free exercise of religion for Catholics in the United States. If such purposes seek to punish wrongdoers and deter wrongful conduct, the settlement or award of civil damages is punishing the wrong people, namely, the average parishioner or donor whose financial contributions support the Church but who have no role in the supervision of clergy. Instead of supporting the parishes, religious and charitable works that these donors seek to support through their contributions, these monies are being diverted to pay claimants and their lawyers. Most of the bishops who were negligent in their supervision of clergy who offended

20, 30, 40 or even 50 years ago are long gone. Monetary damages taken from a not-for-profit entity do not punish the wrongdoers, but only serve to constrain the scope of the entity's charitable, religious and educational activities.

Years ago such charitable purposes were protected by the common law notion of charitable immunity. This concept recognized that charitable institutions receive donations to be held in trust and to be used for charitable purposes. The safeguards of charitable immunity began to erode in the middle of the twentieth century with the increasing sophistication of medical technology and the rise of medical malpractice claims against hospitals, most of which were not-for-profit institutions. Courts rightly determined that it would be contrary to justice and equity to use charitable immunity to protect the assets of multi-million dollar medical centers and deny damage awards to victims of medical malpractice.

However, in eliminating charitable immunity completely, the services provided by other types of charitable institutions, like Catholic Charities and other diocesan agencies, are also threatened with elimination. In claims and lawsuits involving dioceses, plaintiff's attempts to include parish properties and parish funds in the total assets of the diocese have left not only bishops and diocesan officials wondering about the status of parish assets, but parishioners themselves have begun to question the security of their donations being used for their intended charitable and religious purposes. The *Code of Canon Law* recognizes and protects this by declaring that parish assets are distinct from diocesan assets, and diocesan bishops are constrained by canon law from indiscriminately seizing parish assets for diocesan purposes. It is not yet certain that civil law will do the same, thus parishioners are rightly concerned about the ultimate destination of their donations. So how did we get to this point and what do we do about it?

There have been roughly three phases in our culture's handling of allegations of sexual misconduct with minors over the past half-century or so. Prior to 1960, sexual misconduct with minors was viewed primarily as a moral failure, for which penance, absolution and a firm purpose of amendment not to sin again were the prescribed remedies. From 1960 to roughly 1990, the approach was primarily therapeutic, for which treatment was the apparent solution, after which offenders were often deemed rehabilitated and recommended for return to ministry. Since 1990, the approach has been primarily litigious, seeking monetary settlements and damages for alleged wrongs. As a result of this highly litigious culture fostered under the color of law, an undue burden has been placed on our free exercise of religion guaranteed by the First Amendment of the United States Constitution. This burden needs to be lifted. While a full return to the complete charitable immunity of the past is neither likely nor desirable, the civil law of our land needs to reflect a more rational and reasonable balance between equitable remuneration for those who have been harmed by agents of charitable and religious institutions and protecting the charitable contributions that have been given in trust to be used for charitable and religious purposes.

I would suggest that Catholic lawyers, legislators and judges are in a unique position to help address this situation. However, we need to use not just our legal expertise to reform our legal system, but we must also use all of the tools of our

faith at our disposal. Jesus said, “You must be clever as snakes, but innocent as doves. Be on your guard with respect to others. They will hale you into court and flog you in their synagogues. You will be brought to trial before rulers and kings” (Matthew 10:17-18).

As such, we must recognize that the Church is under attack, and the law is being used as an instrument of attack on the Church. This was true from the earliest times when the earliest Christians were, in effect, outlaws in the Roman empire for refusing to worship the official state gods. They were put to death for disobeying this law. Similarly, King Henry VIII and his successors in England used the law to seize church property and kill those who did not accept his notion of the supremacy of the Crown over the Church.

Today in North America and elsewhere, the law is being used to undermine the charitable works and the religious freedom of the Church. This attack is particularly directed against bishops and priests, since the most effective way to scatter the flock is to attack the shepherd.

We must also use our religious discernment to recognize that the principal force behind these attacks is none other than the devil. This may seem like a rather antiquated and unsophisticated idea to say to a highly educated and intellectual group of people such as yourselves. But on November 15, 1972, Pope Paul the VI said, “What are the greatest needs of the Church today? Do not think that our answer is simplistic or superstitious and unreal: one of our greatest needs today is the defense from that evil that we call the devil.”

Having said that, we should not fear the devil, but defend ourselves with the spiritual instruments provided by Christ Himself. In our responsorial psalm from Psalm 98, we heard the assurance, “The LORD has made his salvation known: in the sight of the nations he has revealed his justice.” St. Teresa of Avila, whose feast day we celebrate today, reminds us that God is more powerful than the devil, and so we should not fear. She wrote in her autobiography, “If this Lord is powerful, as I see that He is and know that He is, and if the devils are His slaves (and there’s no doubt about this because it’s a matter of faith), what evil can they do to me since I am a servant of this Lord and King?”

Of course, Jesus taught His disciples that the way to the glory of His Kingdom is through the cross, and so we must be willing to carry the cross in this litigious culture. The spiritual weapons provided by God for this battle against the forces of evil are the words of Sacred Scripture, the gift of the Holy Spirit, the power of the name of Jesus, the protection of the Blessed Virgin Mary, the intercession of the angels and the saints, the sacraments and sacramentals, religious devotions such as the Rosary, fasting, almsgiving and prayer. Satan is our worst enemy, and he will remain so until the end of time. Our strength is the Cross of Christ, his blood, his wounds, and obedience to his words and to His Church. Through His Church we receive in this Eucharist Christ Himself, the conqueror of sin and death, the promise of our hope and our future glory.

May God give us this grace.