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THE CANONICAL TRADITION VALUING THE RIGHT TO REPUTATION[1]

LA TRADICIÓN CANÓNICA QUE AVALA EL DERECHO A LA BUENA FAMA

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RESUMEN

El derecho a la buena fama es un derecho humano fundamental, natural, que se menciona específicamente en el canon 220 del Código de 1983. En el entorno actual, sin embargo, este derecho se ha olvidado con frecuencia. El clero católico, en particular, ha visto conculcado su derecho a la reputación por parte de fuerzas tanto dentro como fuera de la Iglesia. Este artículo muestra que el respeto por el bien de la buena fama es fundamental para cualquier comunidad verdaderamente humana. Tomando nota de la impresionante tradición canónica que apoya firmemente el bien jurídico de la buena fama, este

1 Author can be reached through his website: http://www.canonicaladvocacy.com This article has been derived from a portion of the author's JCD thesis.

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artículo demuestra cómo el bien de la buena fama se convirtió en parte del testimonio vivido de la Iglesia primitiva y se desarrolló a lo largo del tiempo. La tradición canónica se incorporó al primer intento de codificación de la Iglesia en 1917; la reforma de ese Código después del Concilio Vaticano II reflejó claramente el desarrollo de la enseñanza magisterial del siglo XX sobre el bien de la reputación.

Palabras clave: difamación, buen nombre, can. 220.

ABSTRACT

The right to a good name is a fundamental, natural human right that is mentioned specifically in canon 220 of the 1983 Code. In the present environment, however, this right has been frequently forgotten. Catholic clergy, in particular, have seen their right to reputation overlooked by forces both within and outside the Church. This article shows that respect for the good of *bona fama* is fundamental to any truly human community. Noting the impressive canonical tradition strongly in support of the juridical good of *bona fama*, this article demonstrates how the good of *bona fama* became part of the lived testimony of the early Church and developed over time. The canonical tradition was incorporated into the Church's first attempt at codification in 1917; the reform of that Code after Vatican II clearly reflected the developments in 20th century magisterial teaching on the good of reputation.

Keywords: defamation, good name, can. 220.

The right to a good name is a fundamental, natural human right that is mentioned specifically in canon 220 of the 1983 Code of Canon Law. Yet in these days of virtually instantaneous and global communication, in which ideas, opinions, and stories can be distributed quickly to a worldwide audience, how does one defend the right to one's reputation? Might it be argued that such a right effectively no longer exists, given the realities of the modern world, the ubiquity of the internet, and the seeming permanence of the information contained therein?

In response to these questions, this article contends that the good of *bona fama* is intricately connected to human dignity, a fact which has been manifested in a wide variety of cultures throughout history. Indeed, respect for the right to *bona fama* is fundamental to any truly human community. Despite many challenges posed by modern life, then, the right to

reputation must be valued, fought for, and vindicated. And nowhere is this task more important than within the Catholic Church, which is still reeling from the fallout over clerical sexual abuse scandals in many countries. In recent years, the pendulum appears to have swung from one extreme to the other with respect to the manner in which those who exercise authority in the Church have acted. In other words, if for years the cries of many victims of real abuse were ignored, we are now experiencing a situation in which a single allegation can destroy the life of the person accused, especially if news of the accusation is released prematurely to a hostile media, voraciously waiting for the next whiff of scandal.

Beyond that, in recent years we have seen certain Church leaders go to extraordinary lengths to apologize for past acts of abuse and cover-up. Whether in public ecclesiastical reactions to reports authored by civil authorities (such as the infamous Pennsylvania Grand Jury Report in August 2018)[2] or reports directly authorized by national hierarchies (including, most notably, the one commissioned in 2018 by the French bishops),[3] such reports have raised concerns. Are such public «mea culpas» really effective tools for communicating an authentic sense of shame for past conduct? Or are they merely «virtue-signalling» marketing techniques crafted by public relations firms that essentially defame hundreds, if not thousands, of priests and bishops who are no longer around to defend themselves?

This article concentrates on the impressive canonical tradition strongly in support of the juridical good of *bona fama*. This good, clearly embraced within the pages of Sacred Scripture, became part of the lived testimony of the early Church and developed over time. The centuries-long canonical tradition was incorporated into the Church's first attempt at codification in the Pio-Benedictine Code of 1917[4]; the reform of that Code after Vatican II resulting in the 1983 Code clearly reflected the

2 See, e.g., Bishop Kevin C. RHODES, Statement on Pennsylvania Grand Jury Report (Aug. 14, 2018), available at https://diocesefwsb.org/statement-on-pennsylvania-grand-jury-report (accessed Sep. 14, 2022). See also Peter STEINFELS, The PA Grand-Jury Report: Not What It Seems: It's Inaccurate, Unfair & Misleading, in: Commonweal (Jan. 25, 2019), 13-26 [online] [ref. Sep. 14, 2022]: https://www.commonwealmagazine.org/pa-grand-jury-report-not-what-it-seems

3 Père Michel VIOT; Yohan PICQUART, Le rapport Sauvé: une manipulation? Versailles: Via Romana, 2022.

4 See, e.g., CIC 17, c. 2355.

developments in 20th century magisterial teaching on the good of reputation.

1. THE MEANING OF *BONA FAMA*

The notion of a «good name» is a phrase commonly used in English as a synonym for both «reputation» and «good reputation»[5]. The Latin phrase *bona fama* is employed in canon 220 of the 1983 Code of Canon Law, which is generally translated as «good reputation»[6]. Support for this general proposition is also offered by the 20th century canonist Pio Ciprotti, who published in 1937 his monograph *De iniuria ac diffamatione in iure poenali canonico*. Ciprotti's work contains a masterful collection and summary of sources dating from Roman law through the *Decretum* and the 1917 Code regarding *bona fama*. Early in the text, Ciprotti cites the definition of *bona fama* given by the 16th century Spanish Jesuit Luis de Molina as a «good opinion about someone regarding a given value»[7]. The enduring truth of this simple observation will become even more evident throughout this article.

To give but one historical example, we turn to the *Siete Partidas* of King Alfonso X of Castile from 13th century Spain. Drawing heavily upon Roman legal sources, categories, and concepts, the work defines *fama* as «the good state of a man who lives justly according to law and good customs, having no defect or mark», and defamation as an «attack made against the reputation (*contra la fama*) of a person, called in Latin

5 Van Vechten VEEDER, The History and Theory of the Law of Defamation, Part I, in: Columbia Law Review 3/8 (1903) 546-73, 547-51.

6 CIC 83, c. 220, in: Code of Canon Law Annotated: Latin-English Edition (Montréal: Wilson and Lafleur, 2004). The official Latin version of this canon 220 reads as follows: "*Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare*." The English translation cited reads: "No one may unlawfully harm the good reputation which a person enjoys or violate the right of every person to protect his or her privacy".

7 Pio CIPROTTI, *De iniuria ac diffamatione in iure poenali canonico*, Rome: Pontificium Instituti Utriusque Iuris, 1937, 14. Ciprotti's original text refers to "*bona de aliquo existimatio, quoad aliquod eius bonum*". (The English translations of Ciprotti's as yet untranslated Latin text are my own.) De Lugo's formulation of *fama* is similar: *Fama est multorum existimatio de vita, et moribus alterius*". Joannis De LUGO, *Disputationes Scholasticae et Morales*, book 6, disp. 14, sec. 1, n. 1, Paris: Ludovicum Vivès, 1869.

infamia»[8]. The Castilian code went so far as to draw an explicit connection between the loss of someone's *fama* and the loss of his very life: «As the wise men who made the ancient laws said, there are two misdeeds which are like equals: to kill a man or to accuse him of wrongdoing (*enfamarlo de mal*), because after a man is made infamous, even if there is no guilt, he is dead to the good and honor of this world. And, his defamation (*enfamamiento*) may be such that death would be better to him than life»[9].

2. TYPES OF *INIURIAE*

Concern for the *bona fama* of men appointed to offices within the ecclesial community did not end with St. Paul's injunction to Timothy to take good care before he ordained anyone, lest the Church's own reputation suffer[10]. Throughout the Patristic and Scholastic periods, there was a continuing respect for the value of *bona fama*, particularly in matters involving positions within church leadership[11].

Before exploring these issues, however, key terms must be clarified, given that jurists, theologians, and moralists of the period tended to use similar terms in a variety of ways[12]. When St. Thomas Aquinas distinguished in his *Summa* between the various types of *iniuriae*, for instance, he noted that harming a person's good name falls, on the moral spectrum,

8 Siete Partidas, 7.6.2, in: Francisco Gago JOVER, ed., The Text and Concordance of "Las Siete Partidas de Alfonso X", Based on the Edition of the Real Academia de la Historia, 1807 (Spanish Legal Texts, Digital Library of Old Spanish Texts, Hispanic Seminary of Medieval Studies, 2013). Online at http://www.hispanicseminary.org/t&c/lex/index-en.htm (accessed Sep. 14, 2022). The original text appears to read as follows: "Fama es el buen estado del hombre que vive derechamente según ley y bonas costumbres, no [tenendo] en ni mancilla ni mal estanca. Et disfamamiento (difamación) como profanarimento (profanación) que es fecho contra la fama del hombre, aquel dice en latín infamia" [online] [ref. Sep. 14, 2022]: http://bdh-rd.bne.es/viewer.vm?id= 0000008374&page=848.

9 Siete Partidas, 2.13.4. The original text appears to read as follows: "Qua segun dixeron los sabios que hicieron las leyes antiguas, [hay] dos fechorías son como iguales: matar a hombre o enfamarle de mal, porque el hombre después que infamado, maguer no haya culpa muerto es quanto al bien y el honor deste mundo. Y demas tal podria seer el enfamamiento que mejor le sería la muerte que la vida" [online] [ref. Sep. 14, 2022]: http://bdh-rd.bne.es/viewer.vm?id=0000008374&page=265.

10 1 Tim. 5:22.

11 See, e.g., AMBROSE, *De officiis*, ed. and trans. Ivor J. DAVIDSON, Oxford: Oxford University Press, 2001, I.247.

12 Antonio MARONGIU, Diffamazione e Ingiuria: Diritto intermedio, in: Enciclopedia del diritto, vol. 12, Milan: Giuffrè, 1964, 477.

somewhere just below killing him outright and somewhere just above stealing his earthly possessions[13]. Beyond that, however, Aquinas describes five types of «extrajudicial injuries inflicted by words»: (1) *contumelia*, (2) *detractio*, (3) *susurratio*, (4) *derisio*, and (5) *maledictio*[14]. The actual judicial impact of these sins varies greatly; the following description simply provides a better understanding of the concrete good that the right of *bona fama* protects.

Contumelia (translated as «reviling»), means directly dishonoring a person in word or deed. This can include such things as *convicium* («taunting») or *improperium* («railing» or «upbraiding»), and thus it may include some hint of guilt. St. Thomas gives the example of someone taunting a blind man for his handicap (*convicium*); this is different than scornfully calling attention to some embarrassing fact, such as having asked for financial assistance (*improperium*), and this in turn is distinct from directly calling someone a thief («*contumelia*»)[15]. An important element in this type of injury is that it is done in the presence of the person injured; frequently, the common term «insult» is used to describe such a contumacious act[16].

Detractio («backbiting», which could also be translated as «detraction») involves «the blackening of another's good name by words uttered in secret»[17]. St. Thomas distinguishes reviling from backbiting by noting that the former takes place within the hearing of the person so insulted; the latter, meanwhile, takes place outside of his presence[18]. The 20th century Dominican moral theologian Dominic Prümmer, in the section of his *Manuale Theologiae Moralis* commenting on this part of St. Thomas' *Summa*, cites an old Latin verse illustrating the various ways reputational

13 Thomas AQUINAS, *Summa Theologiae*, II-II, q. 73, art. 3.

14 Id., *Summa Theologiae*, II-II, qq. 72-76.

15 Id., *Summa Theologiae*, II-II, q. 72, art. 1.

16 Eduardo SURGES, Defamation and Insult in Rotal Jurisprudence and Canonical Doctrine, JCD dissertation, Excerpta, Pontifical Gregorian University, 1963, 8.

17 AQUINAS, *Summa Theologiae*, II-II, q. 73, art. 1. The English translation used herein is that of the Fathers of the English Dominican Province, New York: Benziger, 1947.

18 Id., *Summa Theologiae*, II-II, q. 73, art. 4, reply to objection 1.

harms can be inflicted through backbiting: *Imponens, augens, manifestans, in mala vertens. Qui negat aut minuit, reticet laudatve remisse*[19].

«Detraction» is the term now employed by moralists to describe the disclosure of another's actual faults and failings to persons who were unaware of them, without an objectively valid reason[20]. The two different translations of the Latin word *detractio* must be distinguished so as to avoid confusion. Thomas' use of the term in the *Summa* is much broader than merely revealing another's sins unnecessarily; instead, it encompasses anything that «subtracts» (*detrahere*) from someone's good name, either directly or indirectly.

Susurratione (defined as «tale-bearing» or being «double-tongued») is closely related to back-biting, according to St. Thomas, but is slightly different. Both *detractio* and *susurratione* involve negative speech about another, but differ in their end; that is, while backbiting aims to blacken the good name of another, tale-bearing aims to «sever friendship»[21]. Quoting Aristotle, St. Thomas argues that because «no man can live without friends», tale-bearing is an even greater sin than back-biting, as it aims to deprive man not only of his good name, but also of the «disposition for friendship»[22]. A classic example of this kind of conduct can be seen in Shakespeare's play Othello, where the malevolent figure of Iago, through his scheming, attempts to drive a wedge between Othello, his wife Desdemona, and his friend Cassio.

Derisione («derision») is a special sin aimed at shaming the one who is derided. Thomas makes reference to Proverbs 15:15 in noting that because «a secure and calm conscience is a great good», someone who «disturbs another's conscience by confounding him [i.e., by deriding him] inflicts a special injury on him»[23]. Depending on the persons derided or mocked (e.g., God, or parents, or a good person) as well as on the intent (i.e., whether it is done only in jest or whether it is done in contempt of

19 Dominicus PRÜMMER, *Manuale Theologiae Moralis*, tom. 2, Freiburg: Herder, 1940, 171. The verse could be rendered as follows: "Attributing, augmenting, revealing, or interpreting badly/Who denies or diminishes, hides, or damns with faint praise" (my translation).

20 *Catechism of the Catholic Church*, n. 2477.

21 AQUINAS, *Summa Theologiae*, II-II, q. 74.

22 Id., *Summa Theologiae*, II-II, q. 74, art. 2.

23 Id., *Summa Theologiae*, II-II, q. 75, art. 1.

some person), Thomas notes that the moral significance of the act of derision may differ. The classic example of this, of course, is the derision and mockery Our Lord experienced during His Passion[24].

Maledictione («cursing»), given that its etymological origin is found in two Latin words *malum dicere*, might also be translated as «speaking ill» of someone. Specifically, it means uttering evil «against someone by way of command or desire». At times it can even be considered a just act, as when Old Testament prophets called down evil upon sinners or when the Church issues an anathema[25]. When not just, though, this type of sin is related to the first four in the sense that all five involve speaking evil. This is true although the mode of speaking is different in the first four; that is, «the reviler, the tale-bearer, the backbiter, and the derider» all speak evil by way of assertion; in the case of the «evil-speaker», however, the evil is spoken by way of either a command or a wish. In any event, cursing is a sin that is contrary to charity by «its very nature,» and can be either mortal or venial depending on the circumstances[26].

One final note before moving on from St. Thomas's treatment of these five injuries inflicted by words: his treatment of *calumnia* («calumny») appears in the section where he discusses false accusations of criminal activity[27]. He states that a calumniator is someone who falsely accuses another of a crime out of malice. This is different from when someone accuses another «because he believes too readily what he hears», which would be an instance of rashness, or because of an error for which the accuser is not to blame. From this discussion, it is clear that Thomas is using calumny in a technical, legal sense than the way in which it is used

24 Mt. 27:31, 41; Mk. 15:20, 31; Lk. 23:11.

25 AQUINAS, *Summa Theologiae*, II-II, q. 76, art. 3.

26 Ibíd. In present-day legal systems, the sin of cursing as described herein rarely, if ever, has juridical consequences. Whether a particular act of defamation has juridical consequences as well as moral ones is an intensive, fact-based question, applying equally to other forms of abuse of persons such as insults or battery. Canonical penal law does, of course, include sanctions for certain acts of both calumny and defamation. See c. 1390. As Pope Francis has pointed out, however, there is "no such thing as innocent slander," given that individual acts of slander "always move in the direction of crime". See Pope Francis, Morning Meditation in the Chapel of the *Domus Sanctae Marthae*, From gossip to love for others (*Dalle chiacchiere malevole all'amore verso il prossimo*), September 13, 2013, in: L'Osservatore Romano, weekly edition in English, 38 (Sep. 18, 2013). In the summary of the pope's remarks, the Italian word used for slander is *maldicenza*.

27 Id., *Summa Theologiae*, II-II, q. 68, art. 3

in the ambit of contemporary moral theology[28] or common speech, where it often means a false allegation of any sort.

When analyzing the terminology employed in the canonical literature, the technical distinctions between these types of *iniuriae* must be kept in mind. For example, *contumelia* and *detractio* must be properly understood. The first term refers generally to reviling insults of some kind, committed in the presence of the person insulted. The second term refers not merely to the sin of unnecessarily revealing the true but hidden faults of another, but anything that «lessens» a person's standing in the community. One of the meanings of *detrahere*, after all, is «to subtract from». Though this distinction was not always consistently observed throughout the Scholastic period, words such as *convicium* (or *convitium*) became linked with the concept of *detractio*, signifying conduct that tended to stain the opinion of another or lower in some way the value that others placed on a person because of some purported *defectus* or *culpa* on his part; i.e., some failure or fault[29].

3. The Canonical Tradition

a) *The* ius antiquum

In distilling, summarizing, and presenting the *ius antiquum*, Gratian's impressive accomplishment in the *Decretum* was already, in one sense, «born old». Yet it set the stage for the *ius novum* amidst the proliferation of papal legislation as part of the Gregorian Reform and the expansion of papal power[30]. Of the six works that were included in the *Corpus Iuris Canonici* approved by Pope Gregory XIII in 1580, none intended to set forth a formal definition of defamation, much less a comprehensive law of the subject[31]. While Gratian's texts did not articulate a specific right to *bona fama*; rather, he appears to have dealt with the topic indirectly, such as in connection with related concepts of calumny, sacrilege, or infamy.

28 See, e.g., Catechism of the Catholic Church, n. 2479.

29 Ibíd.

30 See Carlo FANTAPPIÈ, Storia del diritto canonico e delle istituzioni della Chiesa, Bologna: Mulino, 2011, 116-22.

31 R. H. HELMHOLZ, Select Cases on Defamation to 1600, London: Selden Society, 1985, xvi-xviii.

He did articulate general principles such as that a public accusation had to be based on the truth in order for it to be justifiable[32], and that those seeking to accuse clerics of crimes were required to be free of infamy themselves[33]. Nonetheless, Gratian provides no consistent picture of what constitutes the basic elements of defamation: some canons suggest that anyone could be found guilty of slander[34], while others suggest that only the clergy could so offend[35]. Various penalties, too, were offered: being «excluded from the kingdom of God» (as would be any murderer)[36], being subjected to a *lex talonis* type of punishment[37], or being flogged[38]. This last provision, attributed to Pope Adrian I (772-795), is the clearest example in Gratian's *Decretum* of a canonical provision on defamation. Yet the overall focus of this canon appears to be the notion that defamatory writings had to be proved more than the principle that the standard remedy for defamation was corporal punishment.

Similar conclusions apply with respect to the *Decretals*. Whereas St. Raymond of Penyafort often clarified or elaborated upon Gratian's work, nothing of the sort appears to have occurred regarding the law of defamation. No title on the subject occurs in the *Decretals*, and neither its author nor later canonists attempted to treat the matter explicitly. Rather, canonists generally relied on the broad concept of *iniuria* under Roman law; i.e., slander was considered to be just one of the many ways in which one could suffer an injury. Thus any abuse (*contumelia*) or insult (*convicium*) that was intended to harm the reputation of another gave rise to a remedy under the law. In this way, according to the *Decretals*, canon law had adopted the same substantive notion of what constituted compensable harm to reputation as did the civil law[39]. This meant, among other things, that under canon law the loss of a good name alone was considered a

32 See, e.g., C.5 q.6 c.1; C.5 q.6 c.2.
33 See, e.g., C.6 q.1 c.17.
34 C.5 q.6 c.7.
35 C.5 q.6 c.3.
36 C.6 q.1 c.16.
37 C.5 q.6 c.2.
38 C.5 q.1 c.1.
39 See, e.g., Gl. ord. ad X 2.1.6, s.v. actio intentetur: "... *Secundum leges vero actio proponenda est quia nemo sine actione experitur ... actio enim est ius prosequendi in iudicio quod sibi debetur sed secundum canones exponimus actionem, id est causam*". See also X.1.9.7; X.1.32.2.

serious loss, even if no direct economic damages resulted[40]. The *Glossa Ordinaria* of Bernard of Parma (c. 1200-1266), for instance, stated specifically that verbal injuries constituted as much an injury under the law as did actions[41]. To take one specific example - of particular interest to this study - a decretal from Pope Innocent III (1198-1216) provided that it was a crime for someone to accuse another of a crime and then refuse to prosecute the accused judicially; the penalty for such an act of infamy was the imposition of perpetual silence[42].

b) *The* ius novum

Subsequent canonists clarified the application of these substantive concepts as the *ius novum* continued to develop. The eminent 13th century canonist Hostiensis, for example, wrote that whoever harmed the reputation of another, by word or deed, was guilty of *iniuria*[43]. Similarly, the early 15th century Sicilian Benedictine canonist Panormitanus, when commenting on a text from the *Decretals* holding that words as well as physical deeds could cause actionable harms, noted that under canon law those who cause damage to reputation must make satisfaction, whether that damage is caused by fault or by negligence[44]. Then, citing both civil and canonical legal authorities, he concludes: «If I falsely impose insults on you outside of a court of justice, I am bound»[45]. Ciprotti, in his monograph, makes reference to the examples provided by Popes Clement III (1187-1191),[46] Innocent III (1198-1216),[47] Clement V (1305-1314)[48],

40 HELMHOLZ, Select Cases, xxxviii.

41 Gl. ord. ad X 5.36.9 s.v. Ignorancia: "... *Et illud scias quod iniuria fit aut re aut verbis. Re, quotiens manus infertur; verbis, quotiens convicium dicitur".*

42 X.5.1.14: "*Dicens, se aliquem accusaturum coram iudice, ante inscriptionem potest sine poena desistere, et non accusare; sed ei desistenti silentium imponitur in perpetuum. Et secundum hoc summarium iste textus est notabilis".*

43 HOSTIENSIS, *Summa Aurea*, Venice: Candentis Salamandrae, 1620, lib. V, tit. *De iniuriis et damno dato*, no. 6: *Et quicumque causa minuendae opinionis alicuius aliquid fecerit, vel dixerit, iniuriarum tenetur.*

44 PANORMITANUS, *Commentaria In Quartum & Quintum Decretalium Librum* ad X.5.36.9, no. 1, Venice: 1571: *Nota primo ex textu quod ex sola culpa seu negligencia tenetur quis ad satisfactionem damni etiam de iure canonico.*

45 Ibíd., no. 5: *Si vero extra iudicium et tunc aut impingo falso tibi convitia et teneor.*

46 X.5.26.1: *Maledicens Papae puniendus est, ut alii deinceps deterreantur, et ipse arceatur.*

47 X.2.27.23: *Damnatus in actione iniuriarum infamis est, et per Papam potest famae restitui.*

48 Clem., 1.7.1 (*De privilegis et excessibus privilegiatorum*).

Pius V (1566-1572)[49], and Gregory XIII (1572-1585)[50], of the «severe chastisements» visited upon those who would cause such injury[51].

The 20th century legal scholar Antonio Marongiu credits the Italian jurist Bonifacius de Vitalinis (c. 1320-1389) as the first to examine specifically the crime of *iniuria*[52]. While not clearly distinguishing between insults and defamation, Vitalinis did categorize the act of *convicium* as requiring an *animus iniuriandi*, i.e., some kind of intent to cause offense or injury. His use of the term *dedecus* (meaning, for example, a disgrace, dishonor, shame, or blot) for the same conduct sheds light on how the concept of defaming someone was seen differently than merely insulting him[53]. This is not to imply that insults were a lesser sort of evil, but rather that the two evil acts were merely distinct from each other. On this question of animus, we note the contribution of the Italian jurist Angelo Gambiglioni (l'Aretino), teaching in Ferrara a century after Vitalinis. L'Aretino recommended that judges determine the nature of the relationship of the parties before deciding whether an offense had occurred; in other words, if someone such as a father or a teacher corrected a child or a student in a spirit of obligatory chastisement (*animo corrigendi*), there would be no *animus iniuriandi*[54]. Thus, we see another refinement to the understanding of the goods that were at stake with a defamatory act.

Further clarification and elaboration on such points arrived some three centuries later thanks to the scholarly work of the Roman jurist Prospero Farinaccius (1544-1618)[55]. Like earlier jurists, he reaffirmed the notion that an injurious act against someone's reputation required that the declarant harbor some intent to offend. He also differentiated between different grades of defamatory speech, held that those whose crimes were infamous could not claim to be defamed, and believed that reputational harm could result even from true statements (e.g., holding against someone with a handicap the fact of the handicap). Farinaccius

49 CIPROTTI, 21 (citing Pius V's constitution *Romani Pontificis* dated March 17, 1572).
50 Ibíd. (citing Gregory XIII's constitution *Ea est* dated September 1, 1572).
51 Ibíd.
52 Ibíd.
53 Bonifacii DE VITELINIS DE MANTUA, *Super maleficiis*, Venice: Filippo Penzi, 1518, 37.
54 MARONGIU, 477.
55 Prospero FARINACCIUS, *Praxis et Theoricae Criminalis Libri Duo*, q. 105, Lyons: Horace Cardon, 1616, 364-412.

even provided for a right to recover damages in the event of a harm to reputation, whether in the form of a formal repudiation of one's harmful words, or a reaffirmation of the honor of the offended person[56]. In this way Farinaccius anticipated several elements of the contemporary protections for *bona fama*.

Under classical canon law, certain wrongs were considered as inherently spiritual[57]. Private slander between laymen, that is to say, defamation that did not involve anyone in ecclesiastical authority or that did not amount to blasphemy, was generally considered to be a matter for the secular, not ecclesiastical, courts[58]. Several firmly established exceptions existed under canon law, however, to this otherwise generally applicable rule, as observed by Sinibaldo de' Fieschi (who eventually served as Pope Innocent IV from 1243-1254)[59], the aforementioned Panormitanus[60], and Joannes Andreae (c. 1270-1348). The latter summarized the two most significant exceptions to the general rule regarding forum: «A layman may not sue a layman before an ecclesiastical judge over a civil matter unless in default of secular justice or unless custom allows it»[61]. The first of these two exceptions illustrates the overarching desire of legal practitioners to «do justice» in the particular case[62]. The second exception is discussed in the comprehensive study of defamation cases in medieval England by R. H. Helmholz, who shows how, notwithstanding the general rule placing defamation cases in secular courts, church jurisdiction

56 MARONGIU, 478.

57 HOSTIENSIS, *Summa aurea* ad X.2.2.11 (*Ex tenore*), no. 3. See also William LYNDWOOD, *Provinciale (seu Constitutiones Angliae*), London: Franz Birckmann, 1525, book 3, tit. *De clericis non celidentibus*, no. 96.

58 HELMHOLZ, Select Cases, xviii. The evidence suggests that this practice would evolve, however, such that by the 14th and 15th centuries, many defamation cases were adjudicated by ecclesiastical courts, at least in England. Ibíd., lxii-lxiii. See also Samuel SPRING, Risks and Rights, New York: W. W. Norton, 1952, 44-45.

59 INNOCENT IV, *Apparatus in quinque libros decretalium* ad X.2.2.10, no. 3.

60 PANORMITANUS, *Commentaria Primae Partis in Secundum Decretalium Librum* ad X.2.2.10 (*Licet ex suscepto*), nos. 6-11, Venice: 1571: *Laicus laicum super re civili coram iudice ecclesiastico convenire non potest, nisi in defectum iustitiae saecularis vel nisi consuetudo id exposcat.*

61 Joannes ANDRAE, *Novella Commentaria* ad X.2.2.10 (*Licet ex suscepto*), no. 1: *Laicus laicum super re civili coram ecclesiastico iudice convenire non potest, nisi in defectum iustitie secularis, vel nisi consuetudo id habeat.*

62 See, e.g., HOSTIENSIS, *Decretalium Librum Commentaria* ad X.2.2.10, no. 9, Venice: Apud Iuntas, 1581: *Iste est ergo unus casus in quo iudex ecclesiasticus potest se intromittere de iurisdictione seculari, quando scilicet iudex secularis non invenitur.... Secundus cum secularis negligit iusticiam facere.*

was nevertheless frequently employed in England at that time, given the important role of custom in English civil and canonical law[63].

Another particularly noteworthy forum in which certain defamation cases could sometimes be heard - at least during this period in England's history - was described in a statute known as *De Scandalis Magnatum*[64]. Originally enacted in 1275, this statute provided that the king's council, meeting in a «starred chamber», would hear criminal cases involving alleged defamation of the king or select members of the aristocracy. Existing more as a mechanism to quell dissent and to prevent civil disturbance than to protect reputation, the *De Scandalis Magnatum* nevertheless set the stage for hundreds of years of the practice of criminal prosecution of defamation in England, where the cases were heard in the infamous «Star Chamber» in London, until it was abandoned in the early 18th century[65]. To this day, however rarely, defamation cases may be brought as criminal actions, a phenomenon which will be discussed in greater detail below.

c) *Defamation cases in England to 1600*

In 1222, the Archbishop of Canterbury Stephen Langton convoked the Council of Oxford to implement the decrees of the Fourth Lateran Council. The latter had taken place in Rome just seven years prior. Among the Oxford Council's other business was the promulgation of the influential constitution *Auctoritate dei patris*, so named from the incipit of the series of excommunications it imposed for certain conduct, including defamation. The constitution warned: «We excommunicate all those who, for the sake of hatred, profit, or favour, or for whatever other cause, maliciously impute a crime to any person who is not of ill fame among good and substantial persons, by reason of which purgation at least is awarded to him or he is harmed in some other manner»[66]. Read publicly - and repeatedly - in parish churches so as to apprise the faithful of its contents, *Auctoritate dei patris* became the foundation on which medieval

63 HELMHOLZ, *Select Cases*, xix.

64 VEEDER, 553-55.

65 Faretta v. California, 422 U.S. 806 (1975), 821: "[T]he Star Chamber has for centuries symbolized disregard of basic individual rights".

66 Martin BRETT (et al.), Councils & Synods with Other Documents relating to the English Church, vol. 1, Oxford: Clarendon Press, 1981, 107.

English law was practiced, especially with respect to defamation[67]. As a result, Helmholz's study of cases that took place during the time that the constitution was *in vigore* (at least until 1600, the terminal date of Helmholz's study) provides a helpful tool for understanding the application of the law of defamation in a particular context, and how the good of *bona fama* was protected in practice.

This review of the cases, as well as the texts of the *Decretals* themselves, show that when an action for defamation came before an ecclesiastical tribunal, there was a fairly good notion of what was to be expected of the parties to the process. First to be considered was the nature of the accusation itself; i.e., whether a specific crime had to be imputed or whether an allegation of mere bad conduct or defect would suffice to maintain a charge of defamation against the accuser. In other words, there was a significant difference under the law whether someone claiming to have been defamed had been called an «imbecile», a «thief», or whether he had been accused of a specific crime such as stealing a certain number of cows from the barn of a particular person. While the 14th century Italian canonist Baldus de Ubaldis had noted, in the *De Probationibus* section of his commentary on the *Decretals*, that *infamia* presupposed the commission of some delict[68], courts were not so fixated by technicalities that a certain formula had to be followed. For instance, an accusation that a monk «would not lie in his sheets tonight» or, about a woman, that «the man who married her would have many brothers» were understood to be thinly veiled charges of unchastity, and thus actionable[69].

Further evidence of contemporary legal practice on this point was provided by the 15th century English canonist William Lyndwood, author of the digest and commentary of canon law *Provinciale (seu Constitutiones Angliae*). Lyndwood recognizes a distinction between allegations of specific criminal conduct (e.g., theft, homicide, perjury) and merely personal «defects» such as illegitimacy and professional incompetence. The former was actionable; the latter were not. Lyndwood also observed that

67 HELMHOLZ, Select Cases, xiv-xv.

68 Baldus de UBALDIS, *In Decretalium volumen commentaria* ad X.2.19.11 (*Quoniam contra falsam*), no. 63: "*Tertium vocabulum est infamia, et ista proprie loquendo praesupponit certum delictum....*"

69 HELMHOLZ, *Select Cases*, xxviii (citing cases).

imputations did not necessarily have to belong to a specific type of criminal conduct in order to be actionable in ecclesiastical courts[70].

After addressing the issue of the nature of the claim of defamation, a second question arises: i.e., whether and to what extent the truth of a given accusation functioned as a defense to the charge of defamation. While canonists held that even a true accusation could be made maliciously - and thus be actionable - they also considered that in an important matter involving the community, notice of criminal conduct might have been motivated by a concern for the public good rather than by malice[71]. Behind this distinction is the difference some canonists made between the revelation of one's personal defect - which, though true, should not be anyone else's business - and allegations of criminal conduct, typically made formally before a judge, for the protection of the common good. Only the latter could be justified by the public's need to know. Thus, as a technical matter, truth could operate as a defense only when one had formally accused another of a crime in a judicial setting. The inference created by the accusation in a formal setting was that the disclosure served the public good[72].

Helmholz's study led him to conclude that as a practical matter, whether truth was actually employed as a defense in a given case depended to a great degree on the particular circumstances, especially as they revealed the subjective intent of the speaker[73]. In this way, he observed, there was significant harmony between the teaching of theologians such as St. Thomas Aquinas and the practice of the classical canonists, i.e., whether a statement about another amounted to the sin of reviling or the crime of defamation hinged largely on «the intention of the utterer»[74]. Other fact patterns illustrate occasions when what would otherwise be considered defamation could be either excused or partially mitigated: injurious words spoken in a moment of anger (rather than with

70 Ibíd., xxvi, xxx.

71 Ibíd., xxx-xxxi.

72 Ibíd., xxxi. See, e.g., PANORMITANUS, *Commentaria* ad X.5.36.9, no. 5: "*Si in libello dico te latronem vel adulterum et probo non teneor, idem si repellam te a testimonio quia hoc facio authoritate iuris et non animo iniuriando....*"

73 HELMHOLZ, *Select Cases*, xxxi.

74 AQUINAS, *Summa*, II-II, q. 72, art. 2, reply to objection 3.

deliberate malice aforethought), when the speaker had been provoked, or some other good reason for the revelation of the negative report[75].

With respect to injury of those persons whose reputations had already been stained, there appears to have been, at least in medieval England, no fixed and clear practice[76]. England's most prominent canonist of the time, William Lyndwood, criticized a reading of the law that would leave unpunished those who would spread the ill fame of another unjustifiably, and then claim in defense that the person criticized did not have a good reputation in the first place. Reliance on such an argument could lead to the absurd. Suppose, for example, that Tizio defames Caio in a moment of passion, claiming that he bore him no malice aforethought. Then Tizio, after having cooled down, continues circulating negative reports about Caio, claiming that Caio no longer has any «good reputation» to destroy anyway. To answer such problems, Lyndwood offered interpretations of the law that as a practical matter strictly limited such a defense to defamatory speech. Yet despite his authority and breadth of experience in ecclesiastical courts, Lyndwood provided no definitive evidence as to what exactly happened, leaving the clear implication that actual practice varied[77].

As was noted earlier, under canon law the loss of a good name was understood to be a serious loss, irrespective of any other damage caused. Nevertheless, Helmholz's review of English court records showed that some form of harm was very commonly alleged, even if only in general terms. Examples included plaintiffs claiming that, as a result of defamatory words, they had lost out on an advantageous marriage, had been arrested, or, in the case of one unfortunate wife, that she had been cast out of her marital bed because of rumored adulterous conduct[78].

Another general principle of canon law was that someone who had defamed another had to make amends to the person injured, although the specific means depended on the discretion of the judge and the will of the litigants. Money damages could suffice; in other cases, an order

75 HELMHOLZ, Select Cases, xxxii-xxxiii.
76 Ibíd., xxxv.
77 HELMHOLZ, Select Cases, xxxv.
78 Ibíd., xxxviii.

requiring the author of the defamation to be silent was imposed. In some cases the remedies were combined; that is, a defendant was obliged to swear publicly that he would not repeat the defamatory words, and that oath was, on occasion, backed by a guarantee to pay a financial penalty should the oath be violated[79]. In one case from 1417, the defendant was ordered to pay a penalty of twenty shillings should he ever repeat his scandalous behavior: one-third to the victim of the defamation, one-third to the parish church, and the final third to the prior of the place where the case had been heard[80]. Costs, i.e., those expenses related to the bringing of the suit, could be awarded to the winning party, given that canon law differentiated between damages and costs[81]. Non-pecuniary damages might also be awarded, and records from ecclesiastical courts in England contain references to «spiritual» penalties such as public penances and public apologies[82]. In one case from York, the losing party was required to take part in the parish procession, wearing penitential garb, and «at the time of the High Mass, the parishioners being present, [to] say in a loud and intelligible voice that he had erred in his words, which were uttered from false information of others, and [to] humbly ask pardon» of the person who had been defamed[83].

Helmholz's research led him to conclude that most defamation cases from the period under study did not end in a formal sentence and penance. Instead, it appears that the majority of disputes ended in some sort of settlement, often indicated by the entry «*pax*» or «*sub spe concordie*» written in the relevant case record[84]. In this way, the canonical courts demonstrated their commitment to protecting *bona fama* by trying to punish unjust violations and also to remedy the harmful effects of defamation. Then, as now, the primary concern of someone whose good reputation had been damaged was not so much financial in nature as it was the restoration of the good opinion of his community. As Helmholz observes,

79 Richard H. HELMHOLZ, Canonical Defamation in Medieval England, in: American Journal of Legal History 15 (1971) 266.

80 Ibíd. (citing Canterbury, Act book Y.1.3, f. 200v).

81 HELMHOLZ, Select Cases, xxxix.

82 Ibíd., xl.

83 HELMHOLZ, Canonical Defamation, 267 (citing Act book 0/2, 50 (1442)) "... *quod veniret tempore alte misse ad pulpetum et Ibíd.em publice peteret misericordiam a dicto domino Johanne et quod protulisset huiusmodi verba ex mala voluntate et non ex bono zelo, sed iracundia motus fuisset*".

84 Ibíd., 267.

while money damages may be a common tool employed in modern society, «as a tool to restore a man's reputation, they are a blunt instrument indeed»[85].

d) *The* Purgatio Canonica

The phenomenon of *purgatio canonica* merits mention here, as it relates directly to the prosecution of causes of action for defamation during the Middle Ages[86]. Its underlying principles are contained in the Fifth Book of the *Decretals*[87]. The procedure essentially was designed to expose accusations, allowing those claiming to have been defamed to confront rumors by «ventilating» them in an ecclesiastical forum[88]. A canonical purgation could begin only if the question of one's *fama* was both public and known to «trustworthy people»; in other words, a matter of private opinion or risible scuttlebutt was insufficient to summon the machinery of the ecclesiastical judicial power[89]. Canonists such as Panormitanus and Hostiensis wrestled with the dilemma of whether, as a requirement for a purgation process, the infamy had to originate within the community of good and respectable people - «*apud bonos et graves*» - or whether it simply had to reach such a group; i.e., as when a rumor that had begun among the derelict or malicious eventually reached the more responsible and upright members of a community. With a view to addressing the harm that scandal can cause to individuals and to communities, the tendency was to err on the side of making the purgation process readily available, no matter where the report of infamy had begun[90].

Once the requirement of sufficiently public infamy was satisfied, a proclamation was made, either in court or in the parish church of the accused. This provided an opportunity for anyone who wished to try to prove the truth of the accusation. If no one came forward, the defamed

85 Ibíd., 266.

86 See also Antonia FIORI, Il giuramento di innocenza nel processo canonico medievale: Storia e disciplina della "*purgatio canonica*", Frankfurt: Vittorio Klostermann, 2013.

87 X.5.34.1-16.

88 HELMHOLZ, Select Cases, xxxvii.

89 Ibíd., xxiii.

90 Frank J. RODIMER, The Canonical Effects of Infamy of Fact: A Historical Synopsis and a Commentary, JCD dissertation, Catholic University of America, 1954, 21-22.

person was permitted to «purge» himself of the crime via an oath, often made in front of the relics of a saint[91], and along with those others of good repute (*compurgatores*) who vouched for him[92]. If an accuser did come forward, objecting to the purgation and offering evidence of the wrongdoing, then the judge determined the accused's guilt or innocence in a sort of «wager of law»[93]. If the judicial process did not result in a finding of guilt - and standards of proof for conviction were relatively high - the accused could not be punished per se, though he could still be subjected to a purgation as a way of being restored to his good fame[94]. Pope Innocent IV had written of this procedure, commenting that if, in a given process, the evidence did not prove the charge, that nevertheless «purgation should be imposed if any suspicion of crime remains from the proofs»[95]. Similarly, in a letter penned to Justin, the Pretor of Sicily and dated July 5, 592, Pope St. Gregory the Great praised Leo, the bishop of Catania, for having undergone purgation, even after the bishop had been found innocent of the reported conduct. In so purging himself, the pope said, the bishop had directly confronted the «sinister rumor» and thus had preserved his reputation[96].

In sum, then, purgation was a type of proof of innocence, applicable where actual proof of guilt had failed but had still been of sufficient strength to arouse public suspicion. Canon law recognized it as an attempt to strike a balance between wrongful accusations and letting the guilty go free. Upon successfully completing the required purgation, the person defamed was entitled to a public declaration of innocence, and

91 See ST. GREGORY THE GREAT, *Gregorius Iustino Praetori*, tom. 1, lib. 2, ep. 30, in: P. EWALD and L. HARTMANN (ed.), *Monumenta Germaniae Historica, Gregorii Papae Registri Epistolarum*, Berlin: Weidmannsche, 1891, 126-27; *Gregorius Castorio Notario Nostro Ravennae*, tom. 2, pars 1, lib. 9, ep. 178, in: L. HARTMANN (ed.), *Monumenta Germaniae Historica, Gregorii Papae Registri Epistolarum*, Berlin: Weidmannsche, 1893, 173; *Gregorius Brunigildae Reginae Francorum*, tom. 2, pars 2, lib. 13, ep. 7, in: Ibíd., 372. Gratian included legislation to this effect in the *Decretum* in C.2 q.5 c.7-8.

92 RODIMER, 21.

93 HELMHOLZ, Select Cases, xxxvii; RODIMER, 22.

94 HELMHOLZ, Select Cases, xxiii. See also PANORMITANUS, *Commentaria* ad X.5.1.19, no. 2: "*Nota quod licet per inquisitionem nihil sit probatum contra infamatum, tamen simpliciter non absolvitur reus, sed indicitur sibi purgatio propter infamiam.*"

95 INNOCENT IV, *Apparatus in quinque libros decretalium*, Frankfurt: Moenum, 1570, ad 5.1.20, no. 1: "*Si ex probationibus remansit aliqua suspicio criminis.*"

96 ST. GREGORY THE GREAT, "Gregorius Iustino Praetori," tom. 1, lib. 2, ep. 30, in *Monumenta Germaniae Historica, Gregorii Papae Registri Epistolarum*, ed. P. EWALD and L. HARTMANN, Berlin: Weidmannsche, 1891, 126-27.

thus he was restored to his *bona fama*. Thus were accomplished two specific goals of the canonical system. First, that the flames of public rumor be extinguished with the cool water of judicial process. Second, that the reputations of those in the community whose *bona fama* had been attacked could be protected.

There was also a provision for a counter-attack. If, for example, the judicial process demonstrated that the *infamia* was false, the one defamed could initiate a private action against his accuser, including those who may have tried to offer testimony during the canonical purgation proceedings. Helmholz offers an example involving a man named John Denys, who appeared before the Commissary court at Canterbury in 1422. Denys had been defamed of several crimes, including murder and forgery, and proclaimed himself ready to undergo canonical purgation. A man named Thomas Halle objected, claiming that at least the forgery charge was true. Halle was given an opportunity to prove this, but when he failed to prove the accusation, Denys brought an ordinary *causa diffamationis* against him[97].

e) *Defamation in the Post-Classical Canonical Period*

The immediate impact of the Council of Trent (1545-63) on the canon law of the Catholic Church was primarily in the area of sacramental law and church discipline. Pope Gregory XIII's official promulgation of the *Corpus Iuris Canonici* in 1582[98] signalled the end of the classical period of canon law[99]. Not long thereafter, a series of works by important canonists were published whose influence was felt worldwide. Of particular note was the novel way they organized their subjects. They arranged not according to the various historical collections, but according to topics, including those touching on the right to *bona fama*[100]. In particular, two Germans, Franciscan Johann Georg (Anacletus) Reiffenstuel (1641-1703) and the Jesuit Franz Xavier Schmalzgrueber (1663-1735),

97 HELMHOLZ, Select Cases, xxxvii (citing Denys c. Halle, Canterbury Act Book Y.1.3., fols, 209v, 218r).

98 See GREGORY XIII, *Cum pro munere* (July 1, 1580) and *Emendationem* (June 2, 1582).

99 Carlos J. ERRÁZURIZ, Corso Fondamentale sul Diritto nella Chiesa, vol. 1, Milan: Giuffrè Editore, 2009, 73.

100 Ibíd., 96.

assembled works that enjoyed widespread prestige and wielded enormous influence, even among the Roman Curia[101]. Reiffenstuel's *Jus Canonicum Universum*[102] was published in 1700, and Schmalzgrueber's similarly titled *Jus Ecclesiasticum Universum*[103] was released nearly two decades later, in 1719. Both devoted substantial attention to the issue of *bona fama*, albeit indirectly, insofar as they treated topics aimed at protecting the juridical good of one's reputation.

Reiffenstuel, for example, discusses *fama* at length in his section on testimony and witnesses. From the context it is clear he means by that term both, in a broad sense, the «common opinion of the people», and in a narrower sense, the reputation of an individual. With respect to the first sense, Reiffenstuel links the concept of *fama* with that of «*vox populi*,» employing the traditional definition of fama as the «*communis opinio voce manifestata, ex suspicione proveniens*»[104]. Given that his subject matter here is testimonial evidence, he is careful to distinguish *fama* from mere rumor, that «vain voice» («*vana vox*») of the common man which, given that it has no clear author or source, is to be considered untrustworthy[105]. In addition, he states, *fama* must generally be proven by the testimony of at least two reliable witnesses[106].

With respect to the second sense of the word *fama*, Reiffenstuel equates it with the concept of estimation (*existimatio*), i.e., the commonly held, positive opinion about someone's status as a morally upright and law-abiding individual. Reiffenstuel adds that, properly speaking, *fama* is not *fama* unless it is good; the word *infamia* is used to describe someone without a good reputation[107]. The audience for such an evaluation depends, Reiffenstuel notes, on the circumstances; i.e., the size and makeup of the person's community[108], the source and timing of the reports on

101 Ibíd.

102 Anacleti REIFFENSTUEL, *Jus Canonicum Universum*, 7 vols., Paris: Apud Ludovicum Vivès, 1870.

103 Francis SCHMALZGRUEBER, *Jus Ecclesiasticum Universum Brevi Methodo ad Discentium Utilitatem Explicatum Seu Lucubrationes Canonicae in Quinque Libros Decretalium Gregorii IX. Pontificis Maximi*, 13 vols., Rome: Ex Tipographia Rev. Cam. Apostolicae, 1843-45.

104 REIFFENSTUEL, lib. 3, tit. 20, sec. 12, no. 384.

105 Ibíd., no. 391.

106 Ibíd., no. 394.

107 Ibíd., no. 386.

108 Ibíd., no. 396.

the person's reputation[109], and anything else that touches upon the truth, the object of the judicial process.

On the specific question of how the value of one's *fama* is recognized and protected under the law, Reiffenstuel cites authorities for the proposition that because fame and honor are as valuable as life itself, they can be defended, even to the point of death. He adds a note of caution, however, saying that this ultimate defense is warranted only in the rarest of cases. Ordinarily, fame and honor can be preserved in some other, non-lethal, manner[110]. He revisits this same topic when discussing the status of those who would offer testimony in canonical trials; in speaking at length of infamy, i.e., the state of being deprived of one's *bona fama*, or at least having it diminished in some way, Reiffenstuel again equates *bona fama* with esteem (*existimatio*), that uninjured state of dignity, borne out by conformity with laws and good morals[111]. Infamy, he adds, being «equivalent to death» («*infamia aequiparatur morti*») renders one unfit to serve as a witness, among other things[112].

Touching an essential human good, Reiffenstuel observes, *infamia* is neither permanent nor immutable. For instance, for occult crimes, the performance of an adequate penance suffices to remove any state of *infamia iuris* that would otherwise be imposed if the offense were public. The rationale for this sanction, argues Reiffenstuel, is that the offender's public reputation has not been negatively affected. Accordingly, there is no justification for revealing a hidden fault that has since been rectified[113]. This rationale holds true even for those who go on to receive sacred orders; crimes that would otherwise render a man unfit for the sacred ministry (including even serious ones such as adultery and perjury), provided they are repented of sufficiently, do not render the offender permanently infamous[114]. How this provision, as shown by

109 Ibíd., no. 399.

110 REIFFENSTUEL, lib. 5, tit. 12, sec. 4, no. 143.

111 REIFFENSTUEL, lib. 2, tit. 20, sec. 2, no. 29: "*Infamia vi nominis idem est, ac privatio seu diminutio bonae famae. Et quia bona fama, sive 'Existimatio, est dignitatis illaesae status, legibus ac moribus comprobatus'*" (citing Fagnanus).

112 Ibíd., no. 30.

113 Ibíd., no. 39: *Infamia juris orta ex crimine occulto, tollitur per poenitentiam.*

114 Ibíd., no. 40: *Eaque peracta licet sacros ordines suscipere.... "clerici, qui per reatum adulterii, perjurii, homicidii, vel falsi testimonii, bonum conscientiae rectae perdiderunt, si talia crimina ordine judiciario comprobata, vel*

Reiffenstuel to be consistent with the canonical tradition, can be reconciled with the so-called «zero tolerance» policy now reigning in certain ecclesiastical circles, is a topic beyond the scope of this article - but an important one.

For his part, Schmalzgrueber, when describing the severe penalties for lawyers and judges who are guilty of the crime of falsity (including such things as beatings, imprisonment, and banishment)[115], notes that such an «outrageous and extremely grave» crime is especially odious, so much so that some commentators regarded it «more serious and detestable» than even homicide or sorcery[116]. Elsewhere he provides great detail on the crime of false accusation (*calumnia*), including the various ways it can be committed (i.e., by means of «*calumniando, praevaricando, et tergiversando*»). He goes on to discuss several procedural elements concerning trials for calumny, the types of evidence that were to be admitted, and the kinds of penalties that could be inflicted for this destructive crime[117].

Decades later, in 1746, the Italian Franciscan Lucius Ferraris (c. 1687 - c. 1763), in his encyclopedic *Prompta Bibliotheca Canonica, Iuridica, Moralis, Theologica*[118]*,* dealt with *fama* in some detail. Ferraris' influence spread as his work was re-edited and re-published frequently, even until the end of the nineteenth century[119]. The English priest Ethelred Taunton relied in large measure on Ferraris when writing his practical handbook on canon law for those in English-speaking countries in the early years of the 20th century. Taunton included a small section on crimes of falsehood and on the juridical good of *fama*[120].

Consistent with the tradition, Ferraris defines *fama* in general as whatever is said or published widely about someone, whether good or

alias notoria non fuerint, post peractam poenitentiam (excepto homicidio) non impediuntur sacros ordines recipere, aut in susceptis ministrare: haud obstante, quod ejusmodi crimina soleant inducere infamias juris (citations omitted).

115 SCHMALZGRUEBER, tom. 5, pars. 2, tit. 20, nos. 22-23.

116 Ibíd., no. 9: *Est crimen enorme, et gravissimum, adeo, ut illud homicidio, et veneficio gravius, et detestabilius esse quidam existiment.... Nullumque est crimen, quod ita vituperet famam, et statum hominis, sicut est crimen falsi, ex quo propterea perditur nobilitas, et nobilitas privilegium.*

117 SCHMALZGRUEBER, tom. 5, pars. 2, tit. 2, nos. 1-28.

118 Lucius FERRARIS, *Prompta Biblioteca Canonica, Juridica, Moralis, Theologica nec non Ascetica, Polemica, Rubricistica, Historica*, 8 vols., Paris: Apud Garnier Fratres, 1883.

119 ERRÁZURIZ, 96.

120 Ethelred TAUNTON, The Law of the Church: A Cyclopedia of Canon Law for English-Speaking Countries, London: Herder, 1906, 342-44.

bad[121]. He notes that *fama* is linked to good reputation, given that it is tied to the practice of virtue[122]. Citing St. Augustine, Ferraris distinguishes between one's own conscience and one's public reputation; trusting solely in the former and disregarding the latter is «inhuman» (*crudelis*) and thus stands in contradiction to the example of St. Paul, who had told the Christian community in Corinth that he would rather die than neglect his reputation, lest harm come to souls as a result of scandal[123]. Elsewhere in Scripture, Ferraris adds, *fama* is shown as a positive good that must be respected, treasured, and protected, citing the passages of Ecclesiasticus 41:15[124], Proverbs 15:30[125], and Proverbs 22:1[126] to support his point. The loss of *fama*, Ferraris notes, renders one infamous, and can be the result of self-inflicted damage to one's status as a result of immoral conduct[127].

With respect to evidentiary and procedural matters, Ferraris continues, *fama* is distinct from mere rumor; the former is what the majority holds, and has a readily identifiable source; the latter, however, is held only by a minority and emanates from an unknown author[128]. To prove a report, among other things, one must determine that it originates from persons who are serious, honorable, trustworthy, and disinterested[129], and not, for example, slanderers or the malevolent[130]. Eyewitness testimony is preferred to hearsay, as is testimony provided in *tempore non suspecto* rather than *in medio litis*. Reports that are uniform, constant, and

121 FERRARIS, 979, par. 2: *Fama dicitur quidquid de aliquo divulgatur, sive in bonam, sive in malam partem.*

122 Ibíd., 980, par. 7: *Fama proprie loquendo non dicitur nisi bona sit, quia Fama est argumentum virtuti*".

123 Ibíd., 980, par. 9: *Et hanc famam qui negligit, crudelis est ... ubi ex verbis Sancti Augustini sic expresse habetur: Duae sunt res, conscientia, et fama; conscientia necessaria est tibi, fama proximo; qui fidens conscientiae suae negligit famam suam, crudelis est ...* [citing 1 Cor. 9:15: *Bonum est enim mihi magis mori, quam ut gloriam meam quis evacuet.*]

124 *Curam habe de bono nomine, hoc enim magis permanebit tibi quam mille thesauri pretiosi et magni.* This same verse is identified in newer translations such as the New American Bible as Sirach 41:12: "Have respect for your name, for it will stand by you more than thousands of precious treasures".

125 *Fama bona impingnat ossa.*

126 *Melius est bonum nomen quam divitiae multae.*

127 FERRARIS, 980, par. 10: *Et haec mala fama, seu infamia, est, laesae dignitatis status, vita, et moribus reprobatus.*

128 Ibíd., 980-81, par. 11.

129 Ibíd., 981, par. 13: *Fama originem duxerit a personis gravibus, honestis, fide dignis, et non interessatis.*

130 Ibíd. *Super clamorem, et Famam ad aures Superioris pervenit, non quidem a malevolis et maledicis, sed a providis et honestis...*

consistent are more credible than those that are varied, inconstant, and inconsistent[131].

Nevertheless, Ferraris affirms that in a case involving a conflict between a good reputation and a bad reputation, the good reputation is always to be preferred (*semper est praeferenda bona*), even if the witnesses in favor of the good reputation are fewer than those in favor of the bad reputation[132]. Such a presumption in favor of *bona fama* is consistent with the related presumption of innocence. Further, if a case involves the public *fama* of a cleric accused of fornication, he must clear himself («*debet se purgare*»), or, if he is unwilling or unable to do so, he must be punished according to the law[133]. In such a case, however, unless the crime be notorious, a mere report of the crime is insufficient evidence for the cleric to be condemned[134]. Again, citing Rotal precedent, Ferraris states that a report cannot prevail over the truth, especially if the bad report has been produced through the untrustworthy voice of the crowd («*ex vana populi voce*»)[135].

4. Codification

a) *The 1917 Code of Canon Law*

In his work on the provisions of the 1917 Code regarding defamation, the Italian canonist Pio Ciprotti categorically states: «The Code of Canon Law could not pass over this delict in silence»[136]. He notes that regardless of the precise manner by which the juridical goods of honor and reputation are harmed (e.g., by an act of *calumnia, contumelia, iniuria*, et

131 Ibíd., 981-82, par. 14-16.

132 Ibíd., 982, par. 17: *In concursu tamen Famae bonae, et malae, semper est praeferenda bona, etiamsi testes deponentes de bona Fama essent pauciores.* In support of this proposition Ferraris cites a pair of Rotal decisions and the authorities referenced therein.

133 Ibíd., 986, par. 35: *Fama publica existente contra Clericum fornicarium, hic debet se purgare: quod si nolit se purgare, vel deficiat, puniendus est textu expresso....*

134 Ibíd., 986, par. 36: *Fama tamen sola, nisi sit de crimine ita notorio, ut nulla possit tergiversatione celari, non sufficit ad condemnandum*".

135 Ibíd., par. 37: *Fama non potest praevalere veritate* [...] *praecipue si agatur de Fama mala producta ex vana populi voce, quae non est attendenda.*

136 CIPROTTI, 23: *Codex Iuris Canonici non poterat silentio haec delicta praeterire.*

al.)[137], the stakes are quite high for the Church when it comes to reputational damage. This is especially true in light of the important role that clerics and religious play in the life of the ecclesial community and the mission of the Church[138]. Ciprotti points to penal canons such as canon 2344 (punishing injuries to the pope, the cardinals, and certain Curial officials that are inflicted by means of the spoken or written word), canon 2363 (excommunicating those who falsely accuse confessors of solicitation), and canon 2337 (punishing priests who impede the exercise of ecclesiastical jurisdiction by their preaching or writing) as evidence that the 1917 Code took seriously the duty to protect the reputation of its sacred ministers.

Concerning the canonical crime of defamation itself, the Pio-Benedictine Code of 1917 explicitly employs the term «*diffamatio*» only twice, in different forms, in canon 1938:

> §1 In causa iniuriarum aut diffamationis, ut actio criminalis instituatur, requiritur praevia denuntiatio aut querela partis laesae.
>
> §2 Sed si agatur de iniuria aut diffamatione gravi, clerico vel religioso, praesertim in dignitate constituto, illata, aut quam clericus vel religiosus alii intulerit, actio criminalis institui potest etiam ex officio.

The underlying good of *bona fama*, meanwhile, is referenced directly in canon 2355, the canon most closely linked to canon 220 of the 1983 Code:

> *Si quis non re, sed verbis vel scriptis vel alia quavis ratione iniuriam cuiquam irrogaverit vel eius bonam famam laeserit, non solum potest ad normam can. 1618, 1938 cogi ad debitam satisfactionem praestandam damnaque reparanda, sed praeterea congruis poenis ac poenitentiis puniri, non exclusa, si de clericis agatur et casus ferat, suspensione aut remotione ab officio et beneficio.*

This penal canon, appearing in Book V (*De Delictis et Poenis*) of the 1917 Code under Title XIV (*de delictis contra vitam, libertatem, proprietatem, bonam famam ac bonos mores*), is deeply rooted in the canonical tradition and

137 Ibíd., 16-17.
138 Ibíd., 23-25.

therefore does not represent any kind of radical break with the past. On the contrary, Gasparri and those who prepared this canon listed seven traditional sources for it. It acknowledges the reality of verbal harms (not just physical ones), that the offense can be committed by anyone and against anyone (not just clerics), and the variety of means by which a harm might be accomplished (words or writings or «any other manner»). The canon implicitly, though forcefully, recognizes the juridical good of a person's *bona fama* by attaching some kind of penalty to the delict (including, for clerics, the possibility of suspension or removal from office or benefice). Last, canon 2355 calls for satisfaction (including by means of «coercive» measures, if necessary) for the repair of any damage done to one's reputation.

In his text *A Practical Commentary on the Code of Canon Law*, the Franciscan canon and civil lawyer Stanislaus Woywod maintained that, under the 1917 Code, a criminal procedure should not be instituted in cases of the injuries or defamation treated in canon 2355, except upon a denunciation or complaint of the injured party. In other words, as such injuries are «ordinarily private affairs which do not impair the public welfare», the *promotor iustitiae* generally would not institute proceedings against the offender. If, however, some public good was at stake, a criminal action could be brought in the name of the public authority. Woywod also refers to canon 1938, which provided that if «a cleric or religious (especially an ecclesiastical dignitary) has been the victim or agent of an injury or grave defamation, the criminal action may be brought also ex officio»[139].

With respect to «legitimate» lesions on someone's reputation, other canons may have helped answer the question. Canon 1943, for example, illustrated a concern for the protection of one's «good name» in the context of an investigation of an accusation. Specifically, the investigation was to be conducted in secret and «be most cautiously conducted lest rumor of the delict get out or anyone's good name be called into question»[140]. When such an investigation led to a finding that a serious delict

139 Stanislaus WOYWOD, A Practical Commentary on the Code of Canon Law, vol. 2, New York: Joseph F. Wagner, Inc., 1941, 327.

140 Canon 1943 of the CIC 17 provides: *Inquisitio secreta semper esse debet, et cautissime ducenda, ne rumor delicti diffundatur, neve bonum cuiusquam nomen in discrimen vocetur*. The partial English translation cited here is

had been committed, the Code of 1917 prescribed a set of serious penalties, including the loss of one's good name. Canon 2359, for instance, provided that a member of the clergy who engaged in a delict against the sixth precept of the Decalogue with a minor below the age of sixteen, or who engaged in canonical crimes such as adultery, bestiality, sodomy, or incest, was to be suspended, «declared infamous», and deprived of office[141].

In the 1917 Code, the penalty of *infamia* was imposed as a means of defending the community from damage caused by the offender's conduct. The penalty also impressed upon the offender the seriousness of the matter, whose own conduct had resulted in the loss of his *bona fama*. The term *infamia* is specifically mentioned as a penalty for a variety of offenses (in addition to those sexual crimes listed in the aforementioned canon 2359); e.g., apostasy, heresy, and schism[142], profanation of the Eucharist[143], violation of the bodies or the graves of the dead[144], unjust physical violence against the pope, cardinals, or papal legates[145], dueling[146], and bigamy[147].

Beyond what has already been described, the Code of 1917 also reflected the long tradition in the Church of excluding the legally infamous from certain roles in the Church's ministry. For example, the infamous were considered irregular for Orders,[148] prohibited from acting as godparents[149], confirmation sponsors[150], or ecclesiastical judges (under pain of the nullity of any decisions)[151], and were prevented from not only the exercise of ecclesial offices and the reception of ecclesial benefices, but

from Edward N. PETERS, curator, The 1917 Pio-Benedictine Code of Canon Law, San Francisco: Ignatius Press, 2001, 630.

141 See CIC 17, c. 2359: The phrase regarding infamy in the Latin original reads as follows: "*infames declarentur*".

142 CIC 17, c. 2314 §1.

143 CIC 17, c. 2320.

144 CIC 17, c. 2328.

145 CIC 17, c. 2343 §§ 1,2.

146 CIC 17, c. 2351 §2.

147 CIC 17, c. 2356.

148 CIC 17, c. 984, 5°.

149 CIC 17, c. 766, 2°.

150 CIC 17, c. 796, 3°.

151 CIC 17, c. 1892, 1°.

even from performing ministerial actions at sacred functions[152]. Like all penalties of a technically vindictive nature, the remission of the punishment of *infamia* did not depend on the reformation of the offender, but rather on the discretion of the ecclesiastical authority charged with the care of the common good of the Church community. Thus, one sees in the 1917 Code certain provisions for the cessation of such a penalty, once it was determined that an injury had been expiated sufficiently. Generally, such remissions were reserved to the Apostolic See, although in practice very often the local Ordinary could legitimately exercise such power[153].

The provisions cited above show that while the Pio-Benedictine Code did not contain an exhaustive treatment of the topic, it did afford explicit protection for the good of *bona fama* in a manner consistent with the Church's juridical tradition. Cardinal Gasparri referenced both Gratian's *Decretum* and the *Liber Extra* in the penal provision that was canon 2355[154]. Gasparri also cites the *Liber Extra* as a font for the type of discretion called for in canon 1943[155].

How was the right to *bona fama* protected in actual practice under the Code of 1917?[156] A survey of Rotal jurisprudence in the years just before the promulgation of the Code and continuing into the 1940s (specifically, between 1910-1944) reveals fewer than three dozen relevant cases, a number that is not insignificant but one that is by no means overwhelming[157]. In general, the cases contain few surprises, meaning that the venerable principles firmly established in the canonical tradition were applied to particular cases. In one case from 1933, a Fr. Salvino accused a fellow-priest, Fr. Crispino, of defamation before a diocesan tribunal. Fr. Crispino had told his parishioners that they were being turned against him through the machinations of Fr. Salvino. In ruling that no

152 CIC 17, c. 2294 §1.

153 CIC 17, c. 2295. See also Vincent A. TATARCZUK, Infamy of Law: A Historical Synopsis and a Commentary, JCD dissertation, Catholic University of American Press, 1954, 97-105.

154 See, e.g., D.46 c. 5; C.5 q.1 c.1,2; C.5 q.6 c.1-3, 7,8; C.6 q.1 c.17; C.11 q.1, c.18, 24; C.17 q.4 c.21; X.23, *De sententia et re iudicata*, II, 27.

155 See, e.g., X.24, *De accusationibus, inquisitionibus et denunciationibus.*

156 BENEDICT XV, Bull, *Providentissima Mater*, May 27, 1917, *AAS* 9 (1917) 5-456. The Pio-Benedictine Code had the force of law effective May 19, 1918, the feast of Pentecost.

157 SURGES, 73-74 (listing 31 Rotal cases from 1910-1944 pertinent to the topic of defamation). See also Carolus HOLBÖCK, *Tractatus De Jurisprudentia Sacrae Romanae Rotae*, Graz: Verlag Styria, 1957, 386-89 (listing 29 cases involving c. 2355 from 1909-46).

defamation occurred, the Rota pointed out that the particular parish considered it as a badge of honor to be resisting Fr. Crispino. Consequently, as no harm had been done to the reputation of Fr. Salvino, no defamation had occurred[158].

In other situations, the Rota ruled that defamation had occurred, even in the absence of words. One example involved two priests who were charged with circulating a photograph of another priest, causing the latter to suffer damage to his good name[159]. In two other cases, it was determined that damage had been inflicted on the good name of a priest: one who had been removed from office with the obligation of «making a retreat»[160], and the other (a vicar general) who had been dismissed by his bishop. In this second case, the Rota specifically noted that while the bishop had every right to remove his vicar general, he could not do so in a capricious way; rather, he must do so only for a grave and just cause and with the exercise of great caution[161]. Another Rotal decision went so far as to point out that damage to one's *bona fama* can occur through mere innuendo: «For even if rather than facts having been mentioned, doubts were insinuated about the virtue of the plaintiff, they were nevertheless of such a nature that from them the good reputation of the plaintiff would be necessarily damaged»[162].

When there is no good reputation to tarnish, however, there can be no defamation. Several cases stand for the proposition that divulging news of a crime to someone who already knew of the information being disclosed, there could be no defamation[163]. Thus, no defamation could occur if the allegedly damaging notice concerned a notorious crime,

158 *Coram* Parrillo, Apr. 4, 1933, in: RRDec 25 (1933) 186-204, 196-97, n. 14.

159 *Coram* Sebastianelli, July 29, 1915, in: RRDec 7 (1915) 347-56.

160 *Coram* Canestri, July 26, 1940, in: RRDec 32 (1940) 591 (citing the relevant language in the original French: *quelques mois de retraite dans une maison religieuse*).

161 *Coram* Heiner, June 19, 1911, in: RRDec 3 (1911) 274-92.

162 *Coram* Massimi, Nov. 14, 1935, in: RRDec 27 (1935) 602-09, 608, n. 11: *Etsi enim, potius quam facta referantur, insinuantur dubia de actoris honestate, talia tamen sunt dubia, ut inde eiusdem actoris bona fama graviter laesa necessario fuerit, etiam propter locum datum suspicionibus ex citatis geminorum nominibus.*

163 *Coram* Parrillo, Aug. 1, 1929, in: RRDec 21 (1929) 350-63, 359, n. 14; *Coram* Lega, Dec. 30, 1912, in: RRDec 4 (1912) 478-96, 490 (*Non enim censetur detrahere, seu famam laedere, qui recolit, refert, quae omnibus nota sunt*); *Coram* Solieri, July 30, 1924, in: RRDec 16 (1924) 294-303, 295-96, n. 3: *Item si de eo agatur, qui bonum nomen notorie amisit, et infamia iuris vel saltem facti laborat, hic de diffamatione quaeri non potest, cum bonum famae iam amiserit: in casu deest damnum.*

unless amends had already been made and the crime already forgotten[164]. In such a case, one could argue that a person's reputation had returned to a status quo ante, and that it was not only a sin against charity but also an act of injustice to violate his right to *bona fama* without cause[165]. Likewise, a delinquent who brags about his conduct cannot later claim to have been the victim of defamation concerning the same conduct, under the general principle that *consentienti non fit iniuria.*

b) *The Revision of the* Codex Iuris Canonici

The 1983 Code of Canon Law dedicates a specific canon, number 220, to the right of *bona fama*, citing as sources both Pope St. John XXIII's *Pacem in Terris* and the Second Vatican Council's Pastoral Constitution on the Church *Gaudium et Spes*. More broadly, however, the 1983 Code reflects the insights of the Second Vatican Council as a whole, a point made clear by Pope St. John Paul II when he called the 1983 Code «the last document of Vatican II»[166]. In addressing all the people of God in the Apostolic Constitution *Sacrae Disciplinae Leges* (25 January 1983), with which he promulgated the new Code, the pontiff drew strong links between the work of the Council and the new Code. He highlighted especially the authentic developments in ecclesiology that had been introduced by the Council and were captured by the new Code, and said that in some ways the new Code could be seen as an effort to «translate ... the conciliar ecclesiology into canonical language».

The nexus between the Council and the reform of the Code had been evident from the very beginning. Pope St. John XXIII's announcement on January 25, 1959 included not only the call for an ecumenical council, but expressed his desire for the reform of the Code of Canon Law as well. No sooner had the Council concluded than work began in earnest on the revision of the Code. As a foundation on which to base the work of revision, the 1967 Synod of Bishops, meeting in Rome from September 30 to October 4 that year, provided its famous list of ten

164 C*oram* Sincero, June 15, 1920, in: RRDec 12 (1920) 140-52.

165 See SURGES, 29-30.

166 JOHN PAUL II, Il Diritto Canonico inserisce il Concilio nella nostra vita, in: *Communicationes* 15/2 (1983) 128-129.

guideposts[167]. Three of the ten principles are particularly relevant to the issue of *bona fama*, touching as they do the rights of the faithful and on the exercise of authority in the Church as a service.

These principles are directly relevant to the recognition and protection of the right to *bona fama* contained in canon 220 of the 1983 Code. The first principle calls for the Code to «specify and preserve» those rights and duties that are particularly linked with the practice of Christian life in the ecclesial community. The Church has long been concerned about the reputation of its adherents - especially its sacred ministers - particularly because of its concern for the salvation of souls and its awareness of the harm that scandal can cause. The sixth principle is linked to the first; that is, it calls for the «definition and protection» of the rights of the faithful, particularly against the abuses of an exercise of power that is not performed as a «service» to the People of God. The orientation here is noteworthy; i.e., instead of the focus being on institutional efficiency, it is on the personal rights of the faithful. The seventh principle, meanwhile, continues on this theme, specifically calling for some kind of review of the acts of administrative power that could impinge the rights discussed above.

That *bona fama* was a subjective right particularly vulnerable to attack, and therefore especially in need of juridical protection, is not difficult to see. The period immediately following the Second Vatican Council was one of immense political unrest and cultural upheaval. The world had just witnessed some of the most violent decades ever in human history, and the very existence of individuals and of entire peoples had been threatened and attacked. Thus, the idea that basic human rights needed to be defended was apparent, as was the notion that the Catholic Church was the entity best positioned to articulate such teaching. Further, in light of the Council's renewed focus on the dignity of the human person, the radical equality of all believers, and on the role of each and every created individual in the mystery of God's salvific plan, it is not surprising that the Code emphasizes *bona fama* as one of the basic rights enjoyed by man.

167 SYNODUS EPISCOPORUM 1967, *Principia quae Codicis Iuris Canonici recognitionem dirigant*, 7 Octobris 1967, in *Communicationes* 1/2 (1969) 77-85. Pope St. John Paul II at least once referred to these principles as a sort of "decalogue." John Paul II, Address to the Roman Rota (Jan. 18, 1990), *AAS* 82 (1990) 872-77, 873.

The Code also pays special attention to the right and the duty of each person in the Church has in relation to such an important juridical good[168].

Reaffirming these core principles would prove prescient, as some appeared to anticipate. In 1973, in his first published book of homilies, St. Josemaría Escrivá captured not only some of the spirit of the times but also predicted some difficulties that were to come[169]. Recognizing the unfortunately common experience of those who «have served as a bull's-eye for the target-practice of those who specialize in gossip, defamation and calumny», Escrivá laments the state of those who «unjustly attack the integrity of others, for the slanderer destroys himself», as well as for all those who are falsely accused, who «do not know where to turn,» and who, «frightened, wonder if the whole thing is not a nightmare»[170]. He expresses concern for the tendency of the modern man who, intent on «mercilessly mocking» authentic Christian charity, seeks to tear down the character of others. He explains that there are those who, «with libelous intent», demand that followers of Christ prove that they are not motivated by ulterior motives, and that they are not secretly engaging in improper activity. Contrary to all justice, Christians are being forced to prove their own *bona fama*. Reacting to this strange phenomenon, Escrivá asks a simple question: «Now how do you prove that you are not a thief?»[171]

5. The Evidence from Modern Science

The previous sections of this article have discussed the strong juridical tradition in favor of the good of *bona fama*. Drawing inspiration from the classical juridical realism of Javier Hervada, which seeks to establish that the juridical goods at stake are actual goods that demand juridical

168 See, e.g., Piotr SKONIECZNY, La buona fama: Problematiche inerenti alla sua protezione in base al can. 220 del Codice di Diritto Canonico Latino, JCD dissertation, Pontifical University of St. Thomas Aquinas, 2010.

169 Josemaría ESCRIVÁ, Christ is Passing By, Chicago: Scepter Press, 1974.

170 Ibíd., 99.

171 Ibíd., 101-02.

protection, it seems appropriate to conclude this article with a reference to a unique and recent scientific study on the topic of reputation[172].

The use of scientific studies is not out of place in a work of canonical scholarship on *bona fama*. Because this study is rooted in the classical juridical realist approach, reliance on such studies is eminently reasonable[173]. As Pope Benedict XVI said in his 2012 Address to the Roman Rota, «to grasp the true meaning of the law one must always seize the very reality that is being disciplined»[174]. As we will see, part of «seizing reality» means paying attention to the demonstrable fact that a person's good name is a juridical good; without it, the exercise of the inherently social dimension of man becomes problematic, if not impossible. It is inseparably linked to one's very identity, and thus all others in the community have a duty not to appropriate it, to dispose of it, or to dismiss it. Having said this, one must remember that rights cannot be viewed in isolation; even a natural human right must be viewed in relation to the natural human rights of others: one who commits a violent crime, for example, has earned his (bad) reputation, and a community that values the lives of its members has every right to inform them of the potential risks posed by violent offenders.

In any event, the notion that false accusations could have a serious adverse effect on one's health is not mere conjecture. In addition to anecdotal media reports describing how the falsely accused suffer[175], a groundbreaking study in 2016 by the University of Oxford Centre for Criminology shed new light in this area[176]. First, the study represented a

172 See Javier HERVADA, Critical Introduction to Natural Right, 2nd ed. [trans. Mindy EMMONS, supervised by Carlos José ERRÁZURIZ and Petar POPOVIĆ], Montréal: Wilson and Lafleur, 2020, 54.

173 See, e.g., John P. BEAL, There Are More Things in Heaven and Earth Than Are Dealt with in Your Code: The Relevance of Social Science for Canon Law, in: The Jurist 77 (2021) 25-47 (applying the findings of social science to the evolution of diocesan organizations in the United States).

174 BENEDICT XVI, Address to the Roman Rota (Jan. 21, 2012), *AAS* 104 (2012) 103-07, 105. See also Eduardo BAURA, La realtà disciplinata quale criterio interpretativo giuridico della legge: Il discorso di Benedetto XVI alla Rota romana del 21 gennaio 2012, in: *Ius Ecclesiae* 24 (2012) 705-17.

175 See, e.g., John MONAGHAN, Nine priests have died by suicide after false claims of abuse, says cleric who was also wrongly accused, in: The Irish News (Sep. 29, 2017). See also Kassy DILLON, 35 Times Men Were Falsely Accused of Sexual Assault, in: The Daily Wire (Oct. 13, 2018).

176 Carolyn HOYLE, Naomi-Ellen SPEECHLEY, and Ros BURNETT, The Impact of Being Wrongly Accused of Abuse in Occupations of Trust: Victim's Voices, University of Oxford Centre for Criminology (May 2016).

rare, if not completely unique, «qualitative study of people's experiences of being falsely accused of child/adult abuse in occupational contexts», and thus «aims to give a voice to these other victims, by way of a content analysis of first person accounts»[177]. Second, with prevailing opinion tilted strongly in favor of victims - many of whom, the authors readily acknowledge, endured horrible suffering at the hands of people they were supposed to trust - the undeniable fact remains that there are cases of false accusations, either because the victim has misidentified the particular culprit or because the person lodging the accusation is guilty of a deliberate fraud. Thus, the Oxford study stands almost alone against the mainstream, and dares to ask whether, in an attempt «to bring to justice appalling cases of abuse, the pendulum may have swung too far in the opposite direction»[178].

The research focused on false allegations of sexual abuse by people engaged in «occupations of trust» and consisted of in-depth interviews of victims of false accusations and their families. Thirty cases were studied in which an individual was wrongly accused. All but one of the 30 parties accused was «legally innocent», in the sense that the accused was either found not guilty or the initial investigation was never concluded. In that lone case an accused was initially found guilty at trial but then subsequently exonerated[179]. The subjects were chosen so that the focus of the study - the phenomenon of being falsely accused and its consequences on mental health - could be observed.

The high price of «stigma and vilification», a topic directly relevant to the issue of the juridical good that is someone's good reputation, is discussed at length in the Oxford study[180]. The researchers observed that even when a reported accusation does not lead to a conviction, or is not even brought to trial, «accused individuals and their families do indeed suffer enormously from the stigma and revulsion associated with sexual abuse, from the deprivations during the investigation, and the lifelong suspicion (that they 'got away with it') that is likely to follow»[181]. In those

177 Ibíd., 20.
178 Ibíd.
179 Ibíd., 22-25.
180 Ibíd., 31-52.
181 Ibíd., 5.

situations, when the accusation does trigger a trial, a conviction, or even a prison sentence, the consequences are even more dire.

For example, the immediate consequences of becoming a suspect, according to the study, can entail «a series of shocking and frightening events», including early morning police raids, confiscation of personal property computers or documents, and arrests. Some subjected to raids died during or shortly thereafter. Even the period after a raid is «one of high anxiety, causing insomnia and panic attacks as the suspect envisions the terrifying consequences in the worst case scenario, including a prison sentence or having their children taken into care»[182]. The researchers reported that some of the effects observed in people who had suffered long periods of wrongful imprisonment were also reported by participants in the Oxford study (even though only one of them had actually been imprisoned), including depression, suicidal ideations, anxiety disorders, panic attacks, post-traumatic stress disorder, shock, insomnia, and physical harms consistent with severe mental stress[183].

Beyond these effects, however, the participants described the deep emotional scars from having had their reputations destroyed. Such wounds were even more painful because they appeared to be permanent, given the seemingly timeless and inexhaustible nature of internet search engines[184]. Many participants reported «extreme and permanent» changes to their character (e.g., becoming cynical, aggressive, selfish, or hostile) as a result of being defamed, along with suffering from a debilitating lack of self-confidence and profound social withdrawal and isolation[185]. A few admitted to having felt abandoned by God and, as a result, lost their faith[186]. Some of the accused even compared their experiences to death, or at least a death of the person they used to be[187].

Given the often-widespread media coverage of sexual abuse allegations, including the publication of the names and locations of people reported to be sex offenders on internet sites, the study pointed out the

182 Ibíd., 17.
183 Ibíd., 17-18, 35-40.
184 Ibíd., 32.
185 Ibíd., 32-35, 41-44.
186 Ibíd., 52.
187 Ibíd., 33.

fact that vigilantes will sometimes target those accused and subject them to various forms of harassment. Such persecution has sometimes resulted in the deaths of the accused, either at their own hand or from violent attacks by those who believe the person was a sex offender[188].

Other long-term consequences, the report stated, included such things as being suspended or terminated from one's job, having restrictions placed on contact with children, answering for the inevitable public record of the investigation, dealing with potential damage to personal and familial relationships, and, especially in cases involving the helping professions, facing the potential of never working again in one's field[189]. When judicial cases end with a guilty verdict, those who continue to assert their innocence frequently suffer even greater punishments, e.g., a loss of privileges or the chance for parole. The opportunity for successful appeals, the study notes, are «slim,» particularly when the allegations are years or decades old, despite the fact that «miscarriages of justice can and do occur in such cases»[190]. While the study was written with the British legal system in mind, there is little doubt that similar situations have arisen in other countries[191].

All these empirical findings regarding the terrible costs of the loss of one's reputation should not surprise those who are familiar with the Aristotelian-Thomistic ontological foundations on which much of western culture is based. The point remains that the phenomenologically observable natural tendencies that St. Thomas called «natural inclinations»[192] - a metaphysical, not a psychological concept - are ordered toward their own perfection. Thus, all of man's natural appetites (for food, for community, for self-preservation, etc.) operate by way of a tendency, similar to the way that animals act by instinct[193]. This has enormous consequences for the object of our study, particularly as it relates to empirical scientific findings about the good of *bona fama*.

188 Ibíd., 18-19.

189 Ibíd., 5, 26-30.

190 Ibíd., 5.

191 See, e.g., Dorothy RABINOWITZ, No Crueler Tyrannies: Accusation, False Witness, and Other Terrors of Our Times, New York: Free Press, 2003 (detailing miscarriages of justice in the US criminal justice system).

192 AQUINAS, *Summa Theologica*, I-II, q. 94, art. 2.

193 Ángel Rodríguez LUÑO, La difamación, Madrid: Ediciones Rialp, 2015, 31-32.

As Rodríguez Luño points out in his study on defamation, empiricists such as the 20th century German psychologist Philipp Lersch view these tendencies «as a psychological reflection of the vital law of communication between man and the world»[194]. Thus, man's tendency toward his «reputation» is called «the need of being esteemed by others»[195]. Stories exist, Lersch observes, about children who endure horrible abuse or abandonment and thereby suffer profound and even lifelong damage. Such stories manifest that it is through the experience of our first human community - i.e., the home - that we learn of our own dignity and begin to appreciate that of others. As we grow into maturity, another tendency - «the desire for self-esteem»[196] - appears, prompting us to recognize our proper autonomy and to take our own role in the human society. Here, too, we keep in mind examples of young adolescents - often fatherless[197] - who are not able to navigate this step of their development, and grow into physical adulthood with a wildly inflated view of themselves and without the capacity to balance a proper self-esteem with respect for the dignity and rights of others.

These considerations ultimately point to a simple and clear conclusion concerning the good of *bona fama*: the good of one's reputation is of vital importance for man as a social being. Through *bona fama* we derive understanding of our own dignity and by it we insert ourselves into the social fabric. Through it we begin to participate in that network of relationships that makes human life possible. Aristotle had famously described man as a «political animal»[198], meaning that man is by nature a social being, built for life in communion with others. The price of admission for participation in such a life requires the assumption of one's *bona fama*. The findings of the Oxford study reveal some of the terrible costs incurred by those who suffer the loss of one's good name through a false

194 Ibíd., 33.

195 Lersch speaks of "la necesidad de estimación." Phillipp LERSCH, La estructura de la personalidad, Barcelona: Scientia, 1966, 134-40.

196 Lersch speaks of "el deseo de autoestimación." LERSCH, 144-47. See also Annemaree CARROLL, et al., Loneliness, reputational orientations and positive mental well-being during adolescence, in: Child and Adolescent Health Yearbook 2015, Hauppauge, NY: Nova Science Publishers, 2016, 129-41.

197 See David BLANKENHORN, Fatherless America: Confronting Our Most Urgent Social Problem, New York: HarperCollins, 1996.

198 Aristotle, *Politics*, Book I.2.

accusation. The social withdrawal, isolation, and the despair that results from it all manifest how fundamentally important the good of one's reputation is in the first place. So closely tied to the value of one's very life, it cannot be taken unjustly without severe repercussions. The wisdom of the expression in Proverbs 22:1, quoted by St. Thomas Aquinas, still holds: «A good name is more desirable than great riches, and high esteem, than gold and silver»[199].

6. Conclusion

Unjust attacks on a juridical good as fundamental as *bona fama* are extremely damaging to any community, but especially so to the Catholic Church. The consistent canonical tradition in favor of strong protections against defamation -especially of its clergy- testifies to this. Recent scientific research provides empirical support for the proposition that *bona fama* is indeed an invaluable component of human life. Pressure imposed by public media outlets or by lawyers does not change this reality. All lawyers, especially canonists, ought to know this. It is for a good reason that the symbol of justice is a pair of scales, and not a pendulum[200].

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199 "*Melius est bonum nomen quam divitiae multae*."

200 See Pope FRANCIS, Address at the End of the Meeting on "The Protection of Minors in the Church," Feb. 24, 2019, *AAS* 111 (2019) 318-28, 323 (stating that "the time has come to find a correct equilibrium of all values in play," avoiding the "two extremes of 'justicialism' ("*giustizialismo*") provoked by guilt for past errors and media pressure, and a defensiveness ("*autodifesa*") that fails to confront the causes and effects of these grave crimes").

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