



IMC Leeds 2019

Panel - *Deformis Formositas ac Formosa Deformitas*.
Materializing Ugliness and Deformity in the Middle Ages'



Beinecke, MS 229, f. 257v

Hidden disability?

The Canon Law's Category of
the *Defectus Corporis*, Scandal
and Pontifical Grace



Ninon Dubourg

Ninondubourg.com



@NinonDubourg

Chantilly, Musée Condé, MS 0858 (0487), f. 1

Introduction

Scandal => highly ambiguous: no established theory nor treaty.

=> trouble for the social order: violation of the law.

=> marker used by the Church to control the clergy discipline and to delimit a public space.

=> appears as soon as something does not seem *right* (against canon law).

Scandal & body defects => justification and effect caused by disability.

=> markers used by the papal chancery to materializes disability and include or exclude a disabled cleric.

I. Defectus corporis and scandal: social theory of canon law

A. *scandalum and exemplum: a social theory*

B. *Integritas and Irregularitas: canon law*

II. Papal dispensation letters: how to hide the Truth

A. *Pardoning disability*

B. *Hiding disability*

I. *Defectus corporis* and scandal: social theory of canon law

A. Scandalum *and* exemplum: A social theory

Bodily and morality defects constitute irregularities of equal importance with similar consequences, while forming distinct legal categories (*defectus corporis* and *infamis*).

Apostolic constitutions, book 6, chapter 23, n° 5:

It is ordered that will be contemplated nor the vices of the body but the religion and the life of the applicant, in order to elect only suitable people in the priesthood.

Decretum Gratiani, distinction 49:

All people with a weakness of the body or a distinguishing spirit is incompatible [with the priesthood (regimen?)] even with the best of intentions.

Humbert de Romans, *Opera De vita regulari*, tome 2, 406:

No one can have numerous or apparent corporal deformities nor bodily vices. A priest with it will be remove from the priesthood as write in Leviticus, 21-17.

I. *Defectus corporis* and scandal: social theory of canon law

A. Scandalum *and* exemplum: A social theory

Canon law enlighten the physical perfection embodied by the clerics to ensure the Church's holiness, highlighting the link between *scandalum* and *exemplum*.

Rufinus, *Summa Decretorum*, D.55:

Anyone who is voluntarily mutilated of any member can not be promoted; if he is promoted, he will cease [to exercise] his office altogether.

Robert Grosseteste, *Templum Dei*, p. 8:

Scandal: this is injury or destruction of the [good] name of another.

I. *Defectus corporis* and scandal: social theory of canon law

B. *Integritas* and *Irregularitas*: canon law

The disciplinary control of the Popes permit them to assess all aspects of the cleric's disability and to allow them to frame his exclusion or inclusion of the clergy, especially thanks to the irregularity that the body defect entails.

Thomas Aquinas, *Commentary on the Sentences Book IV*, distinction 25, question 2: *Someone becomes unsuitable for the reception of holy orders either because of an impediment (defectus) to the act or because of an impediment to the person's prominence (claritas) [...] this integrity (integritas) is required from the necessity of precept, not as necessary to the sacrament.*

Apostolic constitutions, canon 47:

The deaf-mute (surdus) or the blind (caecus) will not become bishop; not that it is polluted (pollutus), but so that the affairs of the Church do not suffer (impediantur).

I. *Defectus corporis* and scandal: social theory of canon law

B. *Integritas* and *Irregularitas*: canon law

An a unable cleric, if he is incapable to administer his church and parish, can cause a scandal among his parishioners because of his irregularity (total or partial).

Decretum Gratiani, distinction 55:

Someone with a body vice will be prohibited from the sacred office.

Decretals of Gregory IX, book I, title 20:

On the ordination or not of someone with a bodily vice.

Hostiensis, *Summa aurea*, book I, title 20:

Debilitas [...] is when someone has all his members, but they are useless. *Deformitas* [...] is when someone has a stain in his eye, is humpbacked, is crooked, has six fingers on one hand or anything else that is unnatural (*contra natura*). *Impotentia* [...] is when someone is mutilated.

I. *Defectus corporis* and scandal: social theory of canon law

B. *Integritas* and *Irregularitas*: canon law

A disabled cleric who continues to perform his duties is declared irregular, and, then, can be a source of scandal if he persists in his error.

Decretum Gratiani, distinctio 7, chapter 2:

The priest will not be a cause of scandal to the faithful and will not be a cause of the discredit of the Church.

Decretals of Gregory IX, book III, title 6, canon 2:

On someone that can not celebrate the Mass without scandal.

Raymond of Penafort, *Summa de jure canonico*, book II, title 21:

Orders can not be promoted to someone whose deformity (deformitas) is scandalous or whose weakness (debilitas) might be dangerous for the administration of the sacraments.

II. Papal dispensation letters: how to hide the Truth

A. Pardoning disability

The Church can pardon disability, if the cleric's impairment is imperceptible enough and allow him to perform his duty in spite of his bodily defect.

Pontifical institution must use its power of grace to adapt to the capacities of each one at the moment of his request.

=> Pontifical letters: registers hold by the Vatican Secret Archives.

=> Question the attribution of the sacraments, and the access to the major orders, that concentrates all the fears of the Church concerning the scandal.

II. Papal dispensation letters: how to hide the Truth

A. Pardoning disability

RV 287, f. 111 V – Gregory XI on June 16, 1376 to Thomas, Patriarch of Grado, about Sylvester Valani de Tervisis, Augustinian professor

Once, when Sylvester was young and almost a priest in a matter of days, he was invited by his superior to celebrate the holy mass. However, this decision was very dangerous and show how ignorant of the laws he and his superior are, because when he was about twenty years, Sylvester self mutilated a piece of his index of the left hand, to the point that he is disqualified (inhabilis) from celebrating masses and serving in the divine office [...] You ask in your petition that we commit ourselves and order with apostolic writings to dispense Sylvester if the detailed information is found to be true, and if Sylvester is capable to consecrate and to break the host, and if his deformity do not generate a scandal in the people. So, we dispense Sylvester so he can celebrate freely and lawfully the mass and others divine offices with our special apostolic grace.

II. Papal dispensation letters: how to hide the Truth

A. Pardoning disability

Thomas Aquinas, *Summa Theologiae Tertia Pars* 60-90, question 82:

Weakness or sickness contracted by a priest after his ordination does not deprive him of his orders; but hinders him from exercising them, as to the consecration of the Eucharist: sometimes by making it impossible to exercise them, as, for example, if he lose his sight, or his fingers, or the use of speech; and sometimes on account of danger, as in the case of one suffering from epilepsy, or indeed any disease of the mind; and sometimes, on account of loathsomeness, as is evident in the case of a leper, who ought not to celebrate in public: he can, however, say mass privately, unless the leprosy has gone so far that it has rendered him incapable owing to the wasting away of his limbs.

II. Papal dispensation letters: how to hide the Truth

A. Pardoning disability

=> it is necessary that his disability is not “too notorious”, “too important” or “too visible” in the eyes of the pontifical institution in order to avoid scandal.

RV 25, f. 237 V – Alexander IV to the cardinal priest of Santa Sabina of Rome, named Hugo of San Caro on January 18, 1260:

*Hugo, present in the court, suffers from a defectus luminis, since he has a disease in his left eye, **not that such huge or such great that he can generate a scandal** but enough to prevent his election as a minister in his order nor promoted in the priesthood because, but he will be allowed to have a administrative work of prior in his order.*

II. Papal dispensation letters: how to hide the Truth

A. Pardoning disability

Rufinus, *Summa decretorum*, distiction 55:

*We believe that if a hand or foot is lost or so damaged that the cleric **could not celebrate the mass without great deformity or detriment to his office**, he must cease from celebrating the mass. Regarding the face, if one loses an eye, he will administer the office he took up, but if his nose along with the upper lip is cut off, I think that he should never serve at the altar because of his extreme deformity.*

Jean de Bourg, *Pupilla Oculi*, « On the Age and Quality of Those to be Ordained »

*Those who castrate themselves for the sake of continence and who think they are making themselves a gift to the Lord, should be barred from ordination and, if ordained, deposed. The same applies to one **who loses an entire limb or a large enough part of one that he is unable to carry out the office of his order or gives rise to scandal.***

II. Papal dispensation letters: how to hide the Truth

B. Hiding disability

If the pontifical institution is sure that the disability will cause a scandal, she is willing to hide the truth from the Christians and to lie to them thanks to the pontifical favors.

Decretales of Gregory IX, book III, title 6, canon 2:

Scandalum: many things are left behind because of scandal.

Decretales of Gregory IX, Homilia in Ezekielem VII, 4-5:

If the scandal comes from the truth, it is better to leave the scandal behind than to leave aside the truth.

II. Papal dispensation letters: how to hide the Truth

B. Hiding disability

The canonists distinguish the occult (secret) defect (*membra occulta*) and the obvious defect (*membra evidentialia*).

RS 39, f. 93 V – Petition send to Urban V in 1362 by an unknown priest rector:

*You tell us that this priest was caught in the house of a widow he is supposed to have know carnally, not in action, but at a late hour, by some of his enemies and the parents of the said widow, **his testicles were mutilated**. This is why you ask us to compassionately **dispense the priest of the inability** (inhabilitas) he contracts because otherwise he will be forced to beg to live and that will be even a bigger infamy. Fiat si sit occultum (**allowed if it remain a secrecy**).*

II. Papal dispensation letters: how to hide the Truth

B. Hiding disability

RV 37, f. 84 – Gregory X, May 27, 1273 to Johannes, abbot of Ham:

*You write us that, once you were defending the right of your monastery against some enemies [...] **a part of your right hand was mutilated**. You ask us to use our authority to conceive that you can stay the abbot of your community, because it is not your fault but your mission as abbot to protect the property of your monastery. However you will abstain from the celebration of the mass: **because of your deformity, if it happened as you said in your letter, you can not celebrate without causing a serious scandal.***

Decretales of Gregory IX, book I, title 9 – *De renunciatione*:

*Debilis, ignarus, male conscius, irregularis, **quem mala plebs odit, dans scandala, cedere possit.***

Hidden disability?

The Canon Law's Category of the Defectus Corporis, Scandal and Pontifical Grace

Thank you for
your attention

Ninon Dubourg

Ninondubourg.com



@NinonDubourg



Bibliography

- Chiffolleau, J. "*Ecclesia de occultis non iudicat*. L'Eglise, le secret et l'occulte du XIIe au XVe siecle." *Micrologus. Nature, Sciences and Medieval Societies* XIII (2006): 359-481.
- Conde, P.-Y. "Le scandale canonique entre concept theologique et signe linguistique." *Revue de Droit Canonique* 50/2 (2000): 243-262.
- Courreges, H. de. "Les irregularites *pro defectus* et la reception des ordres sacres, quelle tradition?" *Revue de droit canonique* 62/1 (2012): 95-110.
- Demichelis, H. *Le scandale au XIVE et XVe siecles d'apres les chroniques contemporaines en latin et en francais*. Aix-Marseille, thesis, 2017.
- Douglas, M. *Purity and Danger: An Analysis of Concepts of Pollution and Taboo*. Londres: Routledge & Kegan Paul, 1966.
- Druwe, W. *Scandalum in the Early Bolognese Decretistic and in Papal Decretals (Ca. 1140-1234)*. Leuven: Peeters, 2018.
- Dubourg, N. "Clerical Leprosy and the Ecclesiastical Office: Dis/Ability and Canon Law." In *New Approaches to Disease, Disability, and Medicine in Medieval Europe*, ed. Erin Connelly et Stefanie Kunzel, 62-77. Oxford: Archaeopress, 2018.

Bibliography

Fossier, A. "Propter vitandum scandalum. Histoire d'une categorie juridique (XII^e-XV^e siecles)." *MEFRAM* 121-2 (2009): 317-348.

Fossier, A. "La contagion des peches (XI^e-XIII^e siecle). Aux origines canoniques du biopouvoir." *Traces. Revue de Sciences humaines* 21 (2011): 23-39.

Gillmann, F. "Zur Geschichte des Gebrauchs der Ausdrücke irregularis und Irregularitas." *Archiv für katholisches Kirchenrecht* 91 (1911): 49-86.

Helmholz, R. "Scandalum in the Medieval Canon Law and in the English Ecclesiastical Courts." *Zeitschrift Der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 127 (2010): 258-274.

Leveleux-Teixeira, C. "Le droit canonique medieval et l'horreur du scandale." *Cahiers de recherches medievales et humanistes* 25 (2013): 193-211.

Metzler, I. "Then and Now: Canon Law on Disabilities." In *Disabilities in Roman Antiquity*, ed. Christian Laes, 455-467. Leiden: Brill, 2013.

Montford, A. "Fit to Preach and Pray: Considerations of Occupational Health in the Mendicant Orders." In *The Use and Abuse of Time in Christian History*, ed. R. N. Swanson, 95-106. Woodbridge: Boydell & Brewer, 2002.

Bibliography

Newman-Stile, D. "Morality and Monstruous Disability in Topographia Hibernica." In *The Treatment of Disabled Persons in Medieval Europe*, ed Wendy J. Turner et Tory Vandeventer Pearman, 231-257. Lewiston: Edwin Mellen Press, 2010.

Nemo-Pekelman, C. "Scandale et verite dans la doctrine canonique medievale (XIIe-XIIIe siecles)." *Revue historique de droit francais et etranger* 85-4 (2007): 491-504.

Ostinelli, P. "I chierici e il "defectus corporis": Definizioni canonistiche, suppliche, dispense." In *Deformita fisica e identita della persona tra medioevo ed eta moderna*, ed. Gian Maria Varanini, 3-30. Florence: University of Zurich, 2015.

Parlopiano, B. "Propter Deformitatem: Towards a Concept of Disability in Medieval Canon Law." *Canadian Journal of Disability Studies* 4-3 (2015): 72-102.

Stiker, H-J. *Corps infirmes et societes*. Paris: Dunod, 2005.

Stohr, F. *Körperlich versehrte Geistliche im spatmittelalterlichen Deutschen Reich und Skandinavien*. Freiburg: Albert-Ludwigs-Universitat thesis, 2015.

Thery, J. "Atrocitas/enormitas. Pour une histoire de la categorie de « crime enorme » du Moyen Age à l'epoque moderne." *Clio@Themis. Revue electronique d'histoire du droit* 4, (2011).