

Child Sexual Abuse and the Churches: A Story of Moral Failure?

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Introduction

Some people may be puzzled, even angered, that the title to this article ends in a question mark. Surely we already know that the story of child sexual abuse in churches is a story of shocking moral failure. Story after story has appeared in the media in Australia in recent years of terrible sexual exploitation of children — and if that were not bad enough, reports of the cover-up of those crimes by superiors in the Church who, for whatever reason, chose not to involve the police or to act protectively towards children. These are not just Australian stories. In the Catholic Church at least, these patterns have been replicated in many countries across the western world, and it is perhaps just a matter of time before stories emerge from other countries that reveal the same patterns.

In the court of public opinion, then, the judgment has already been delivered. It is only the consequences of that judgment that are still being worked out.

Much of that condemnation is justified. The story is, however, a more complex one than is often portrayed. There have been genuine efforts at reform and reparation, as well as flagrant breaches of trust. Rather than going over the well-travelled ground of repeating the Church's many failures, the purpose of this article is to try to provide a more nuanced picture, and to aid in understanding *why* these failures occurred and thereby help explain the factors that will allow us to protect children better in the future.

The extent of child sexual abuse in church settings

Churches are as vulnerable to the problem of sexual abuse as any other group in society. Indeed, they may even be more vulnerable, because of the extent to which the church is involved in work with children and young people. In Australia at least, it is likely that churches are among the largest organised providers of activities for children outside of school hours. In addition, there are a large number of Christian schools and welfare services for vulnerable children. The church is therefore a community that is likely to attract people with a strong sexual interest in children (Sullivan and Beech 2004).¹

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¹ Sullivan and Beech's (2004) study of professional/institutional perpetrators cited by Richards (2011:7) indicated that '15% of the "professional perpetrators" chose their occupation (eg clergy, teaching, child care) exclusively so that they could sexually abuse children and a further 41.5% admitted this was part of their motivation'.

Child sexual abuse in the Catholic Church

Almost all of the research on child sexual abuse in churches has focused on abuse by priests and members of religious orders in the Catholic Church (Dale and Alpert 2007; Falkenhain et al 1999; Farrell and Taylor 2000; Haywood et al 1996a and 1996b; Isely et al 2008; Jenkins 1996; John Jay College 2004; Langevin, Curnoe and Bain 2000; Rossetti 1995; Smith, Rengifo and Vollman 2008; Terry 2008; Terry and Ackerman 2008). The most comprehensive account of child sexual abuse in the United States (US) Catholic Church has come from the John Jay College of Criminal Justice. It found that 4% of all priests who had served in the US from 1950 to 2002 had allegations of child sexual abuse made against them (John Jay College 2004:4; Terry 2008). Most victims were male and older in age compared with victims in the general population (Terry and Ackerman 2008).

Some evidence in Australia appears to indicate a higher level of offending than this. In his submission to the Victorian Parliament's *Inquiry into the Handling of Child Abuse by Religious and Other Organisations*, Professor Cahill (2012a:15) identified 378 priests who graduated from a particular seminary in Melbourne and who were ordained between 1940 and 1966. Of these, 14 (3.7%) were convicted of sex offences against children and after their deaths, another four were acknowledged by church authorities to have abused children. That is, 18 priests or 4.76% of the 378 who were ordained between those years were clearly identified as having sexually abused children. Taking a later cohort of seminarians, four (5.41%) of the 74 priests who were ordained between 1968 and 1971 from that seminary had been convicted of sex offences against children. Another 20 had resigned from the priesthood, so as a proportion of those priests ordained in that three-year period who had long-term careers in the priesthood, the percentage is rather higher (Cahill 2012a:15).

Some evidence emerging from the Australian Government's Royal Commission into Institutional Responses to Child Sexual Abuse indicates that the incidence of reported child sexual abuse among members of religious orders is much higher than for diocesan priests. Diocesan priests are parish priests ministering to local congregations who have the authority to celebrate the Mass, hear confessions and administer the other sacraments of the Church. Typically, they live in a house within the parish. Diocesan priests are under the authority of the bishop of the diocese. Religious orders are communities of nuns or religious brothers that live together, having taken vows of poverty. Members of religious orders are known as 'religious'. Their ministry is not typically to local congregations of believers, but in running schools, children's homes, hospitals, facilities for the disabled, hospices for the dying, programs for vulnerable young people and other such services. Members of religious orders are under the authority of the leadership of the order. Some members of religious orders are also priests and so may fulfil the role of a priest in a local parish.

Data obtained by the Royal Commission, albeit incomplete, indicated that the Catholic Church authorities with the largest number of complaints brought under the Church's protocol, *Towards Healing*, were the Christian Brothers, the Marist Brothers and the De La Salle Brothers. The most common positions held by the Church personnel and employees subject to a *Towards Healing* complaint at the time of the alleged incident were religious brother (43% of all complaints), diocesan priest (21%) and religious priest (14%). That is, 57% of all complaints were against priests and brothers of religious orders. Over 60% of all *Towards Healing* complaints detailed the incident location as a school/college or orphanage (Furness 2013:15 [56]).

Is this level of offending higher than for men in the general population?

There is no reliable baseline data on levels of offending in the general population in Australia. Marshall's study in England found some indication of population-wide conviction rates (Marshall 1997). One in 150 men over the age of 20 had a conviction for a sexual offence against a minor. Lifetime propensity figures will, of course, be higher than those derived from a snapshot of the adult male population at a given moment in time. Based on his data of various cohorts of these men, Marshall (1997) estimates that between 1% and 2% of the male population would be expected to be convicted of some form of sexual offence over their lifetime (including sex offences against adults). If those figures are similar for Australia, then Cahill's (2012a:15) research outlined above would indicate that the rate of convictions for Catholic priests who studied at the seminary in Melbourne is much higher than in the general population.

Child sexual abuse in other churches

It is clear from all the evidence that sex offenders are found in all denominations and in people of many different theological persuasions (Goodwin 1992; Heggen 1993; John Jay College 2011:21; Keenan 2012; Parkinson 1997). However, there is almost no research evidence concerning child sexual abuse by priests or ministers in faith communities other than the Catholic Church. What little evidence there is suggests that rates of abuse are much lower in other faith communities (Keenan 2012:11). A study of child sexual abuse in the Anglican Church of Australia ('the Anglican Church study') would appear to be the only substantial and systematic study of the issue in a Protestant denomination (Parkinson, Oates and Jayakody 2009, 2010, 2012). It was based on church files of all allegations made since 1990 of child sexual abuse by ministers, youth workers or other pastoral staff other than in school settings.

Twenty of 23 dioceses across Australia took part in the study. Three rural dioceses with comparatively small numbers of clergy declined to participate. Accused persons were categorised as either clergy, candidates for clergy, pastoral employees or volunteers. Pastoral employees or volunteers were defined as church workers who had a pastoral role within the church, paid or unpaid; for example, a youth group leader or Sunday school teacher. A complainant was defined as a person under 18 at the time of the alleged sexual abuse.

There were 191 cases of reported child sexual abuse made by 180 complainants against 135 individuals. Twenty-seven of those 135 had more than one complaint made against them. Seventy-eight (58%) of the alleged offenders were clergy. Most non-clergy were youth workers, half being leaders of church youth groups or organisations. Of the 44 cases that were known to go to court, 53% resulted in a conviction (Parkinson, Oates and Jayakody 2010).

The study was unable to say exactly what proportion of Anglican clergy had been accused of child sexual abuse for two reasons. First, this was not a complete census of complaints reported since 1990 because three dioceses did not participate, and in Adelaide only about 75% of files could be analysed due to the staffing constraints in the Anglican Church's Professional Standards Office at that time. Nonetheless, the study covers the great majority of the known cases that were within scope in the dioceses that participated in the study. Second, no records are available of the total number of clergy working in parishes in Australia over the 40 or more years of incidents for which data was collected. A rough estimate suggests that the 78 clergy who were accused of sexual abuse over the period of

this study represent a very small percentage of Anglican clergy in Australia — well below 1% (Parkinson, Oates and Jayakody 2012).²

Comparisons: The Catholic Church and other churches

Those figures suggest that rates of reported child sexual abuse by priests and religious brothers in the Catholic Church are many times higher than for clergy and paid pastoral staff (such as youth workers) in other denominations. Evidence given by Victoria Police (2012) to the Victorian parliamentary inquiry also indicates a substantially higher incidence of child sexual abuse in the Catholic Church compared with other faith communities. The Police identified all criminal convictions for sexual abuse of minors in Victoria between January 1956 and June 2012 involving members of religious organisations. Of the victims, 370 were abused in the Catholic Church, compared with 37 in the Anglican Church, 36 in the Salvation Army, and 18 involving Judaism.³ The figure for the number of victims in the Catholic Church was exactly 10 times as high as in the Anglican Church. This is only partially explained by the greater size of the Catholic Church in Melbourne.⁴ The Catholic Church, however, also used to run schools and children's homes in which priests and brothers worked. There is not the same tradition in Protestant denominations of clergy or other people called to religious vocations running schools and children's homes. Such institutions tend to be run by lay people. For these reasons, Catholic priests and religious brothers have had a much greater opportunity for abuse than their counterparts in other denominations.

On the other hand, Anglican churches, like other Protestant churches, would also have many paid youth workers and volunteers running children's programs. When all explanations have been offered, the rate of convictions of Catholic Church personnel does seem to be strikingly out of proportion with the size of this faith community compared with other faith communities.

The reported number of child sexual abuse allegations revealed by the Anglican and Catholic Archdioceses of Melbourne also confirms the disproportionate number of complaints in the two churches. Since 1996, under the Catholic Church's procedures for complaints against priests and religious, there were complaints of abuse relating to 331 children; 310 complaints were substantiated (Catholic Church in Victoria 2012). Since 1990 in the Anglican Diocese of Melbourne, complaints of abuse against 44 children were recorded in the Parkinson, Oates and Jayakody (2009) study.

Gender and age of victims

Most victims are boys

The John Jay College (2004:6) study of child sexual abuse in the US Catholic Church found that 81% of the victims of abuse were male. This is the opposite of patterns seen in the general population, where approximately three times as many females are abused as males,

² This estimate is based on Australian Bureau of Statistics (2008) figures that listed 8,267 state suburbs in 2006 and on the assumption that typically there is an Anglican parish in every large suburb or town (and often more than one, in more populated areas).

³ The uncertainty in the Police figures concerns how they defined the abuse as relating to Church personnel. The question of definition is particularly important in seeking to understand the figures concerning the Salvation Army, which does not have a structure that is directly equivalent to the ordained clergy of other denominations.

⁴ The Catholic Archdiocese of Melbourne lists 287 parishes on its website. The Anglican Diocese of Melbourne contains 203 parishes covering greater Melbourne and Geelong (Anglican Diocese of Melbourne 2012:4 [18]). That is, the Anglican Church is about 70% of the size of the Catholic Church in the two Archdioceses as counted by number of parishes.

and more often by family members (Andrews, Gould and Corry 2002; Cappelleri, Eckenrode and Powers 1993).

Recent evidence from Australia points to the same pattern. Victoria Police (2012) reported that 87% of the 370 victims of abuse in the Catholic Church, for which criminal convictions had been recorded since 1956, were male. A similar pattern was found in the Anglican Church study (Parkinson, Oates and Jayakody 2009, 2012). Three-quarters of complainants who alleged sexual abuse were male. This is despite significant differences in the nature of clergy vocations (ie requirement of singleness or celibacy) and in the patterns of ministry involving children (eg in the Catholic tradition, priests may have opportunities to abuse children who act as servers, while servers are less common in the Anglican Church in Australia).

The greater abuse of boys than girls in both the US Catholic Church and the Anglican Church of Australia is likely to reflect the fact that priests, ministers and youth leaders have a much greater opportunity to abuse boys than girls, given the patterns of their ministry. In the past, at least, it has been more common for priests and religious brothers to be alone with adolescent boys or to have the opportunity to form unsupervised friendships with them, than with girls.

Most victims are pre-adolescents or adolescents

The John Jay College (2004:6) study reported that 78% of the complainants were between 11–17 years of age. Parkinson, Oates and Jayakody (2012) found a similar pattern in the Anglican Church study. A large majority of complainants were aged 10–15 years at the time of the alleged first abuse; 51% were under 14 years at the time of the alleged first abuse, but only 11% were under 10 years.

Again this is likely to be a matter of opportunity (Wortley and Smallbone 2006). Most sex offenders who abuse children or young people do so after forming relationships with them through natural points of contact, and gaining the opportunity to be alone with them. In local churches, such opportunities may arise from activities such as taking young people home after youth group, conducting individual sessions to prepare a young person for confirmation or believer's baptism, and being alone with young people in residential summer camps. Youth workers also have other points of contact with young people outside of structured activities, providing opportunities to be alone with them without other adults being suspicious or concerned.

Responding to victims of sexual abuse

How well have churches addressed the problem of child sexual abuse? While by far the most criticism is directed at the Catholic Church, it is important to emphasise that no church or other organisation with significant work among children is free from reproach (Parkinson 1997). In Australia, for example, there have been inquiries established by the Anglican Church into its past failings in dealing appropriately with child sexual abuse cases (Kohl and Crowley 1998; O'Callaghan and Briggs 2003; Olsson and Chung 2004). The impulse to keep criminal behaviour secret, and to avoid scandal, was by no means limited to one Church or faith community.

The Wood Royal Commission (Royal Commission into the New South Wales Police Service 1997) did much to challenge these practices in churches, as in other institutions in society. For this and other reasons, child protection practices began to improve significantly

after about the mid-1990s. In the last 15 years, the landscape had been transformed and most denominations have well-designed child protection policies together with staff and training programs to implement them. The quality of implementation varies, as it does in other areas of society, but is strongly improved compared with 15 years ago.

While no church or institution is beyond reproach, it would be inaccurate to suggest that in some way the problem of child sexual abuse was evenly distributed across the churches or that they all handled cases badly. The reality — that there were particular issues in the Catholic Church and still are — needs to be confronted. Its history is unique, and sadly one of especially egregious failure in this area.

Key issues facing the Catholic Church

There are two main issues that need to be confronted by the Catholic Church. The first is why rates of child sexual abuse seem to be so high, proportionate to other institutions and faith communities. The second is why there have been so many scandals about the way matters have been handled.

Sexual abuse and mandatory celibacy

Mandatory celibacy is the most obvious characteristic that differentiates Catholic clergy from other clergy or the general population. Is there a connection between celibacy and the sexual abuse of children?

The Catholic Church has been reluctant to accept any such connection. The issue of celibacy was considered in *Towards Understanding*, a discussion paper prepared for Catholic Church leaders in Australia and published in 1999. The authors noted that there is no evidence of a causal link between lack of sexual outlet and sexual abuse. Furthermore, celibacy itself cannot explain choice of partner or form of sexual expression. They raised the issue whether sexual dysfunction might be a reason why people decide to enter into a religious vocation involving celibacy. Finally, they observed that an active and satisfying sexual life is not a guarantee against abusive behaviour (*Towards Understanding* 1999:52–3).

A further study by the John Jay College (2011) sought to argue that there was no connection with celibacy, based on the available empirical evidence. That research team noted that the pattern of complaints indicated a concentration of allegations coming to light concerning abuse in the 1960s and 1970s with a decline from the mid-1980s. They pointed out that given celibacy was a constant throughout this period, it cannot explain the differences in reported abuse from different decades, and cannot therefore be treated as a causal factor. Rather, they pointed to societal factors, observing that the increase in child sexual abuse in the 1960s and 1970s is consistent with increases in drug use, crime, premarital sexual behaviour and divorce.

There are problems with this argument, however. First, it may confuse the incidence of child sexual abuse with the incidence of its disclosure. Second, it may confuse propensity with opportunity. The propensity to abuse children may be constant while the opportunity to do so diminishes.

The levels of disclosure are influenced first by the passage of time and second, by media publicity, as well as other factors (Pipe et al 2007). Few victims of sexual abuse by clergy report it at the time, or even during childhood. The Anglican Church study found that, on average, it took men 25 years to report their childhood abuse, and 18 years for women to do so (Parkinson, Oates and Jayakody 2010). Likely reasons for delay in reporting included threats made at the time, and lack of family support for the complainants, particularly boys

(Pipe et al 2007). The John Jay College (2004) study also found long intervals between incidence and disclosure. If that level of delay is replicated for victims of abuse in recent years, then it might be expected that children who were abused in the late 1980s may not disclose this until the next few years. It is therefore premature to suggest that a diminution of complaints relating to abuse since the 1980s indicates a real decline in incidence.

Account must also be taken of media reporting of child sexual abuse in the Church as a major factor in encouraging victims to come forward. That is, the pattern of disclosure is not consistent year after year. In the Anglican Church study, disclosure was closely related to two periods when there was a major public discussion of child sexual abuse within the Anglican Church. The great majority of complaints made to the Anglican Church of Australia were made from 2001 onwards. Complaints of abuse peaked in 2002–2004, following a well-publicised controversy in 2002–2003 concerning the way sexual abuse complaints were dealt with under the leadership of a former Anglican Archbishop, the Right Reverend Peter Hollingworth, who later became the Governor-General of Australia.⁵ There was also a subsequent inquiry into the handling of such cases in Adelaide, which reported in 2004. Such highly publicised events seem to have generated a raft of new complaints from victims who had previously remained silent or whose complaints had been ignored.

A similar pattern is evident in the Catholic Church in the US. Reports in the *Boston Globe* newspaper in 2002 were the catalyst for a ‘torrent’ of reports — nearly 3,000 in that year alone (Smith, Rengifo and Vollman 2008). This indicates the very powerful impact that media attention to the issue of child sexual abuse has in generating complaints about abuse. It may be that media attention gives ‘permission’ to victims to report, out of a recognition that they are not alone and will not be stigmatised.

It follows that the explanation for fewer reports relating to events prior to the 1960s and 1970s may be due to lack of a cultural context in which complainants would be encouraged to come forward. Of course, some complainants who were abused in earlier years will have come forward in times of high publicity, but perhaps not as many as younger people who were at a time of their lives when they felt able to confront the demons of their past. A certain proportion of those who were abused in earlier times may also have passed away, whether through suicide, natural causes, accident or war, by the time that the media focus on the issue occurred in the early years of this century.

So the incidence of child sexual abuse needs to be distinguished from its disclosure — the first is not coextensive with the second. Furthermore, propensity is not coextensive with opportunity. It may well be that the incidence of child sexual abuse has declined in recent years, consistently with international trends, with no change in propensity. This is because propensity is only one of the preconditions for sexual abuse to occur (Finkelhor 1984). There is also the need for opportunity. As awareness of the problem of child sexual abuse has developed, so the opportunity for abuse has declined and the risk of disclosure leading to penal consequences has increased. In my view, there is likely to be a significant decline in incidence in churches in Australia over the last 15–20 years, but this is because of the effectiveness of child protection policies and educational programs. Even if there is a similar

⁵ The handling of child sexual abuse allegations attracted considerable national attention. In June 2002, while Peter Hollingworth was serving as Governor-General, a Board of Inquiry was established into complaints about his handling of cases brought to his attention during his time of office as Archbishop of Brisbane. He was accused of failing to respond to complaints of abuse and covering up cases. There was also a public furore concerning public statements he made about these issues as Governor-General when responding to these criticisms (Blake 2006; O’Callaghan and Briggs 2003:5). The Board of Inquiry reported in April 2003 (O’Callaghan and Briggs 2003). Hollingworth subsequently resigned as Governor-General.

decline in complaints of abuse within the Catholic Church, that says nothing about celibacy as a causal factor in relation to past child sexual abuse.

Cahill (2012b) offered these observations in his evidence to the Victorian parliamentary inquiry:

So it is important to ask: why has there been a decline in clerical child sex abuse since the 1980s? ... To me there are eight reasons for the decline: the social visibility given to the issue since about 1983; the better child protection mechanisms that we have in place; the greater vigilance of Catholic parents and church workers; the lessening number of priests over the past four decades; the resignation of many priests from the clerical life; the almost total collapse of the altar boy system; the closure of almost all Catholic boarding schools; and the lessened interaction of Catholic priests with their Catholic schools.

To this might be added that in recent years in Australia the number of religious brothers teaching in all schools, boarding and day schools, has declined as the religious communities have aged and not been replaced by younger members. Furthermore, residential children's homes and facilities for troubled youth, once quite common, have all but disappeared.

For these reasons, the patterns of complaints, relating mainly to incidents in the 1960s and 1970s through to the mid-1980s, ought not to be seen as providing much evidence about whether celibacy is a contributing factor in the Catholic sexual abuse crisis. It may just be that men inclined to sexually abuse children have had much less opportunity in recent years.

The sexual abuse of children can only be explained to some extent by paedophilic attraction to children (an intense sexual attraction to prepubescent children). There is now considerable evidence that at least some sex offending against children reflects broader antisocial and criminal tendencies (Parkinson et al 2004) and that there is not a clear differentiation between those who sexually assault children and those who sexually assault adults (Abel et al 1988; Weinrott and Saylor 1991).

There is no one psychological profile for a person who sexually abuses children. Indeed, any profiling of child molesters to show how they differ from the rest of the population has very limited explanatory power (Wortley and Smallbone 2006). As Smallbone put it in his evidence to the parliamentary inquiry in Victoria (Smallbone 2012:4): 'I am more struck by the ordinariness of these people than I am by some defining feature in terms of their mental health or psychopathology'.

This suggests that sexual offending against children is a multifaceted problem and that, among that heterogeneous group of men who sexually abuse children, there are numerous different aetiologies of offending. One of the unanswered questions about sex offending by clergy is how much of it is situational, rather than the outworking of an abnormal sexual deviation. No doubt some offending priests and members of religious orders have been paedophiles; but this is likely to explain only a proportion of sex offending against children by priests and religious brothers. The loneliness and difficulty of a celibate life with all the demands of the priesthood may lead other men to seek out teenagers to meet their needs without them being paedophiles. Indeed, sexual attraction to post-pubescent teenagers may be, biologically speaking, within the boundaries of normal sexuality.

Some priest-offenders rationalise their abusive behaviour on the basis that sexual activity with boys is not a breach of their vow of celibacy whereas sexual relations with a woman would be (Lothstein 2004). Different levels of sexual contact falling short of intercourse may also be excused in this way (Ormerod and Ormerod 1995:25). Some support for this thesis emerges from the survey conducted as part of the research for *Towards Understanding*, the discussion paper on sexual abuse in the Roman Catholic Church in

Australia. Respondents noted that offenders within the Church dissociated their abusive behaviour from their commitment to celibacy. Indeed, a high number of respondents described offenders they knew as having a strong commitment to celibacy (Towards Understanding 1999:44).

This cognitive distortion may well be an important factor in sex offending against boys. If priest offenders have a strong commitment to celibacy, then sexual relations with adult women or girls will not be permissible. If these men rationalise sexual contact with men or teenage boys as either not being a breach of their vow of celibacy at all, or a sexual peccadillo that may be both tolerated within the Church and forgiven by God, then they may well be as prone to situational same-sex activity as men in prison or in other confined, all-male environments. Teenage boys in children's homes and boarding schools, and boys in parish contexts with whom the priest or religious may find good enough reason to be alone, may disproportionately become victims because of their accessibility and vulnerability, not necessarily because priests or religious brothers have a paedophilic sexual attraction to boys of that age.

A culture of impunity

Another factor in the high rates of child sexual abuse by Catholic Church personnel may be that, in some places at least, offenders felt that there would be no repercussions: that children and parents would keep quiet, or be persuaded not to go to the police; that their superiors would not believe the word of a child against their word; that they would close ranks to protect one of their own; or that even if action were taken by the Church leadership, the worst that might happen was to be moved to another parish or, in the case of a member of a religious order, to be posted overseas.

Certainly, some accounts of child sexual abuse by Catholic clergy demonstrate the most brazen offending behaviour. For example, Chrissie Foster, in her book *Hell on the Way to Heaven* (Foster and Kennedy 2010), describes the extraordinary levels of offending by her parish priest against children in the primary school. The history of abuse by priests and brothers at St Alipius Parish School in Ballarat suggests a similar pattern of brazen offending by a group (Marr 2013). Some abusive priests took the fullest advantage of their power and status — an authority that went unquestioned.

People were concerned, but none, it seems, were able to stop these offenders in their tracks in the face of institutional resistance. They turned to the Church hierarchy, rather than the police and the state child protection department. That was to trust in the wrong authorities.

Poor handling of child sexual abuse cases

To some extent, the same patterns can be observed in all the churches when it comes to poor handling of child sexual abuse concerns. Children were not believed, while the word of a minister, priest or brother was hardly questioned. There was also naivety about the nature of offending and ignorance of the damage being done to children. In particular, many people were unaware in the 1980s and early 1990s of the devastating effects of child sexual abuse on boys. The focus of child protection work had, at that stage, been primarily on sexual abuse in family settings and with girl victims. The trail of devastation that we now understand arises from the sometimes very severe sexual abuse of boys, was barely in our cultural consciousness 40 years ago.

There are, however, specific features of the response of the Catholic Church in dealing with cases of child sexual abuse that need to be examined. There is a more nuanced and

complex story to be told than is typically the case in the media or in public discussion of these issues. The wholesale condemnation of the Catholic Church is unfair to the many decent people who have tried to make amends, to help victims and to put in place better processes for dealing with these issues. There has been a battle over these issues within the Catholic Church over the years, and the overall outcome of the struggle to address this issue has been fairly consistently towards greater honesty, compassion for victims, and appropriate dealings with offenders. Some Catholic Church leaders have shown enormous courage and integrity in leading change. Many others have come willingly, and motivated by the best intentions. Others have gone along with the flow. A minority have been resistant and, in their own dealings with victims, intransigent and obstructive. The issues about compensation and dealing with offenders are more complex than typically portrayed in the media.

Nonetheless, the improvements have been from a dreadful baseline, not only in terms of the sheer numbers of victims and offenders — that is a deeply troubling picture on its own — but also in the way that the Church handled many of these cases.

The line of argument that the Catholic Church across the world was not really aware of the problem of child sexual abuse before the late 1980s and 90s is a convenient fiction. This was, for example, a defence provided by the Church in Ireland and has echoes in Australia (Shanahan 2014:53). The response of the Catholic Church in Ireland has been the subject of intensive forensic investigation in a number of inquiries (Ryan Commission 2009 – ‘Ryan Report’; Murphy, Mangan and O’Neill 2009 – ‘Murphy Report’; Murphy, Mangan and O’Neill 2010 – ‘Cloyne Report’). The Murphy Report into the Archdiocese of Dublin summarised its findings on the history of cover-up as follows:

The volume of revelations of child sexual abuse by clergy over the past 35 years or so has been described by a Church source as a *‘tsunami’* of sexual abuse. He went on to describe the *‘tsunami’* as *‘an earthquake deep beneath the surface hidden from view’*. The clear implication of that statement is that the Church, in common with the general public, was somehow taken by surprise by the volume of the revelations. Officials of the Archdiocese of Dublin and other Church authorities have repeatedly claimed to have been, prior to the late 1990s, on ‘a learning curve’ in relation to the matter. Having completed its investigation, the Commission does not accept the truth of such claims and assertions. (Murphy Report 2009:3–4)

The Dublin Archdiocese’s pre-occupations in dealing with cases of child sexual abuse, at least until the mid-1990s, were the maintenance of secrecy, the avoidance of scandal, the protection of the reputation of the Church, and the preservation of its assets. All other considerations, including the welfare of children and justice for victims, were subordinated to these priorities.

The evidence is not yet in as to whether that damning judgment is also valid in Australia. The Church in Australia too has claimed to be on a learning curve, along with the rest of society (Catholic Church in Victoria 2012); but what has become clear through a variety of accounts over recent years is just how much the Church leadership, and in particular bishops or leaders of religious orders, did know about some of these offenders. For example, the records of the Christian Brothers document complaints of child sexual abuse against many members going back at least to 1919. Typically these were recorded as moral failures by the brothers concerned (*Case Study 11: Royal Commission into Institutional Responses to Child Sexual Abuse 2014*).

I have personally been shocked by some of these revelations. Why wasn’t more done? Why weren’t priests removed from their positions and reported to the police? Were there, in certain religious orders, paedophile rings that included leadership figures in the order who

helped to cover up the offending? How can we understand this extraordinary abandonment of ordinary civic responsibility and decency?

There is a prosaic answer — that, foolishly, bishops and leaders of religious orders thought it was better to protect the good name of the Church than to protect children; that the secrecy could be maintained; and that they would never have to answer to the police, the courts or public opinion for their wrongdoing. Yet even this answer does not seem quite sufficient.

There are two aspects of Catholic teaching that may help explain some of the behaviour of Catholic Church leaders which may otherwise seem inexplicable. The first is the place of Canon Law in the life and thought of the worldwide Catholic Church. The second is the culture of clericalism.

A law unto itself

There has long been a culture within Catholicism that in some way the Church is its own jurisdiction, its own legal system, and that the proper place for judging clergy is within the structures established by Canon Law. In this sense, the Church perceived it to be a law unto itself. Geoffrey Robertson QC observes (Robertson 2010:[54]):

What seems to have happened in the Catholic Church throughout the last century is that bishops were instructed by the Vatican to regard Canon Law as the only law applicable to priests accused of child sexual abuse, and priests were educated in seminaries to believe that they were subject to it, exclusively, when accused of sexual sins with parishioners.

Whatever the validity of that statement elsewhere, it must be said that Canon Law has quite a weak presence in the life of the Australian Catholic Church, and that there is not, in this country, the relevant infrastructure of Canon Law-trained judges and lawyers to establish the penal tribunals that the Law envisages. Nonetheless, at the level of culture and practice, it is likely that bishops and other leaders saw themselves as first bound to obey the Pope and Canon Law, and only secondarily as citizens of a country in which they had civic responsibilities and obligations. Canon Law provides that clergy or religious who abuse children under 18 are to be ‘punished with just penalties, not excluding dismissal from the clerical state’ (Canon 1395(2)). However, it is no part of canonical thinking that child sexual abuse is a crime that ought routinely to be reported to the police and dealt with by the criminal courts.

That is evidenced by the experience of the Irish bishops. In response to a growing crisis, they developed a new policy on handling abuse cases in 1996, which included mandatory reporting to the police of all credible reports of abuse. They were rebuked for so doing by the Vatican. On 31 January 1997, the Irish apostolic nuncio wrote to the Irish bishops, conveying the position of the Congregation for Clergy that the policy of mandatory reporting ‘gives rise to serious reservations of both a moral and a canonical nature’. The letter also instructed that the procedures established by the Code of Canon Law must be ‘meticulously followed’ (Storero 2011).

Yet Canon Law was almost useless as a means of dealing with complaints of child sexual abuse, even in cases where the victims would not go to the police. Originally, the limitation period on bringing penal proceedings under canon law was five years. In 2001, that was increased to 10 years, with time running from the victim’s 18th birthday. Nonetheless, that is often too short a period for complaints to come to light, given the pattern that so many victims of abuse only find themselves able to report it 20 years or more after the events. It was in 2010 that the period was extended to 20 years from the victim’s 18th birthday (*motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 as updated on 21 May 2010).

Instructions from the Vatican, issued in 2001, also required that cases that may be dealt with under Canon Law be referred to the Congregation for the Doctrine of the Faith ('CDF') in Rome. The CDF was given some discretion to depart from the prescribed limitation period. In 2011, the CDF issued a document to give guidance 'to assist episcopal conferences in developing guidelines for dealing with cases of sexual abuses by minors perpetrated by clerics'. That document, appropriately, required bishops and leaders to comply with the applicable civil laws of their countries concerning the mandatory reporting of crimes, and noted that child sexual abuse 'is not just a canonical delict but a crime prosecuted by civil law'. It also urged bishops to cooperate with the civil authorities in dealing with such crimes (CDF 2011). Yet, most of the document describes the canonical processes for dealing with complaints of child sexual abuse. There is no indication from the document that such cases ought to be dealt with by the police and criminal courts wherever possible, and only in the absence of a successful prosecution, by ecclesiastical law. The document reads as if the canon law is primary, and the civil law secondary, or at least that the duties of bishops are limited to obeying mandatory reporting laws and cooperating with the police, not that they should actually initiate police involvement.

The culture of clericalism

Another factor that may help explain some of the behaviour of Catholic Church leaders was the culture of clericalism. A 2011 CDF doctrinal document puts it succinctly: 'The bishop has a duty to treat all priests as father and brother' (CDF 2011). That was interpreted, in some quarters, as involving an obligation to protect priests and religious brothers from the criminal law. In 2001, Bishop Pierre Pican of Bayeux was given a three-month suspended prison sentence for not reporting Father René Bissey, who had been sentenced to 18 years in prison in 2000 for sex offences against children. Cardinal Castrillón Hoyos, the Prefect of the Congregation for the Clergy, wrote to the Bishop, congratulating him on not denouncing a priest to the civil authorities. He was said to have acted wisely in preferring to go to prison rather than denounce his priest-son. Cardinal Hoyos advanced a theological reason for this position. He explained that the relationship between priests and their bishop is not professional, but sacramental, and forges very special bonds of spiritual paternity. He drew the analogy with rules of law in various countries that excused one close relative from testifying against another.

The letter concluded that in order to 'encourage brothers in the episcopate in this delicate matter', a copy of the letter would be forwarded to all the conferences of bishops. The Cardinal said at a conference in 2010 that he wrote the letter after consulting Pope John Paul II and that it was the Pope who authorised him to send this letter to all the bishops. It appears that the bishop indicated at his trial that the admission of guilt by the priest had not been in the confessional (Heneghan 2010a, 2010b; Robertson 2010:[53]).

The combination of the Vatican's misguided belief that child sexual abuse cases ought to be dealt with by the Church through Canon Law, and its support for the culture of clericalism, established the conditions for the Church's handling of this immensely serious problem around the world. It made it very difficult for bishops who wanted to deal with things differently.

The response of the Australian Catholic Church

It is in this context that the response of the Australian church leadership needs to be understood. The Catholic Church around the world is far from a monolithic institution with uniform policies and approaches to issues. In different countries and at different times, the

Catholic Bishops Conferences have sought to deal with the issue of clerical sexual abuse in ways that have involved more or less transparency and cooperation with civil authorities.

In Australia, prior to 1996, many cases of child sexual abuse in dioceses were dealt with quietly by a troubleshooting team that would meet with the alleged offender. Typically, if the accounts were credible or admitted, the priest would be persuaded to leave religious life or at least to withdraw from active ministry. Back then, compulsory laicisation (ie depriving a priest of clerical status) through the Canon Law processes would have been almost impossible. The bishop had few other options within the scope of Canon Law. The resignation strategy was a pragmatic solution, but it meant that these men did not face justice, and it left the general community exposed to risk.

A major change in approach occurred in 1996. In that year, the first version of a protocol, *Towards Healing*, was published by the Catholic Bishops Conference and leaders of religious orders (Towards Healing 1996). It applied to all dioceses except the Archdiocese of Melbourne, which established its own process, and to all religious orders except, at that time, the Jesuits.⁶ *Towards Healing* has been much criticised in the media, but it is important to recognise what a radical and proactive step it was at the time. Those involved in giving leadership to this were people of great integrity and commitment. Bishop Geoffrey Robinson, who had overall carriage, was determined to make a difference for victims. It took as its starting point the need for a compassionate and just response to victims of sexual abuse, many of whom had been abused many years ago. The process is aimed at responding to the needs of victims and could be understood as an alternative to litigation, as well as a pastoral response. The Church made it clear that its policy was to cooperate with the police on such matters and to encourage those who complained of criminal misconduct by clergy and religious to make a formal report to the police. However, it recognised that some victims do not want to go to the police, and it offered a way to make the history known and to gain some redress without going down the difficult path of litigation and the need to prove that the Church was in some way negligent or otherwise responsible for the behaviour of the offending priest or brother.

Towards Healing does not just apply to sexual abuse of children; not long after its introduction it was extended to complaints of physical or emotional maltreatment in children's homes and other such institutions. Physical and emotional abuse are defined by reference to the standards existing at the time. From the beginning, also, it applied to sexual exploitation of the pastoral relationship, involving consenting adult women or men. In such cases, there was no criminal wrong and a civil claim might be very difficult to sustain.

I have twice been involved in reviewing the process and while, on each occasion, numerous improvements were made, I did not find that people who made submissions or comments had much complaint about the process itself. It was the way in which it was implemented in practice that was the main source of complaints, and, in particular, the sometimes modest financial settlements. The evidence before the Royal Commission published so far clearly brings out some appalling failures of implementation (*Case Study 4: Royal Commission into Institutional Responses to Child Sexual Abuse 2013*). It needs to be understood, though, that *Towards Healing* was established as a no-fault victims' compensation scheme, not a means of gaining the kind of settlements that might be awarded if the plaintiff were successful in a lawsuit. In many cases, it is doubtful that the complainants could have satisfied the civil law's exacting standards of proof both as to the offences and the culpability of the Church leadership.

⁶ For the latest version see <<http://www.catholic.org.au/professional-standards/towards-healing>>.

The litigation option of course, remained an alternative. However, the obstacles to achieving this lay not only in such problems as the statute of limitations and the absence of vicarious liability for criminal misconduct, but also in the difficulties in some cases of finding a defendant who had assets. For historical reasons, Catholic dioceses are typically unincorporated associations and assets are tied up in property trusts. There are significant difficulties in suing the Church if the bishop or archbishop responsible has died and the issue of the correct defendant is taken (*The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis* (2007) 70 NSWLR 565). The Church did not need to plead these defences, based as they are upon the historical accident of the Church's governance structures and creating an unfair impediment to the proper resolution of cases through the civil justice system. Church leaders, like any others who run large organisations, do, of course rely upon legal advice; but ultimately they must make the ethical decisions about legal strategy.

The *Towards Healing* procedure, if implemented properly, follows a pathway from the receipt of the complaint, through an assessment process, to a process of facilitation in which the victim can meet with a bishop or leader of an order, or that person's representative. The facilitated meeting is to discuss the victim's needs arising out of the experience of abuse.

Central to the complaints process is the role of the Director of Professional Standards. One was appointed for each state. Following my review in 1999–2000, the Director is meant to have responsibility for the process of getting an assessment and organising a facilitation, but the outcome of cases remains in the hands of the bishop or leader. The Director is thus independent of any particular diocesan bishop or religious order,⁷ but the organisational structure of the Catholic Church did not allow for the possibility that there would be an independent arbiter of the outcome of a case.

If the truth of the complaint is accepted, whether following a formal assessment process or otherwise, then discussions are meant to occur about how the victims' needs can be met. This might be a formal process of negotiation between lawyers, or through a facilitated meeting with the bishop or other church leader. The issues at stake are much broader than issues of money. The recognition of what has happened by the Church authority, together with the provision of an apology, may be important elements of a resolution that helps victims along the path of putting what has happened behind them.

Towards Healing could do nothing more than establish a process. Whether or not complainants were satisfied with outcomes depended much on their expectations and on the attitude of the particular religious leader and the view taken by the insurance company (usually Catholic Church Insurances). No doubt some such leaders were motivated by a concern, above all else, to preserve the assets of the Church and to avoid scandal. However, it is important for fair and impartial observers to make room for the possibility that many church leaders were genuinely trying to make amends and often made payouts when there was no basis for legal liability. This is the untold story — and fairness demands that it be told.

Towards Healing also made commitments about the discipline of offenders. *Towards Healing* is clear that victims should be strongly encouraged to go to the police and, where appropriate, assisted to do so. Nothing should be done to interfere with a police investigation and full cooperation with civil authorities is required. Nonetheless, it is the

⁷ Notwithstanding their acceptance of these changes to *Towards Healing* in 2000, certain religious orders appear to have continued to manage their own processes. The Marists, for example, had their own Director of Professional Standards who ran the process of dealing with complaints made directly to the Order (*Case Study 4: Royal Commission into Institutional Responses to Child Sexual Abuse 2013*).

experience of most professionals who work with victims of sexual assault that there can be a real reluctance to go to the police and to go through the criminal justice process. Whatever improvements there may have been in the criminal justice process for victims of sexual assault in the last few years, in popular understanding it remains a difficult, and perhaps traumatic, road.

Every organisation needs disciplinary processes that determine whether a person is fit to remain in that employment in a situation where the complainant has not gone to the police, the police have not pressed charges, the police do not consider there is enough evidence, or the Director of Public Prosecutions has dropped the case. Such alleged offenders cannot simply be left in ministry, and they certainly cannot be left with access to children. In 2000, the Church accepted my advice that the test for retention in ministry should be that laid down, in a different context, by the High Court in *M v M* (1988) 166 CLR 69 — that no person should be permitted to work in a position if the bishop or religious leader believes, on the basis of all the information available, that there is an unacceptable risk that children or young people may be abused.

Compensation

The issues about liability and compensation are complex. Churches and other faith-based organisations should have no privileges or special rights when it comes to liability under the civil law; but nor should they have lesser rights than any other organisation or citizen. If civil claims are brought, the case needs to be proven, and when the alleged events occurred in secret and many years ago, it can be challenging to prove one's case.

There is also the question of who should be liable. Should organisations now be made liable for the criminal activities of their employees that fall well outside the scope of their employment? The conversation we need to have as a society cannot just be one about the Catholic Church and nor can remedies be directed only to addressing the issues that the history of the Church's dealings have raised. Any change to the law would necessarily have to apply across the spectrum of institutional settings. Careful consideration would need to be given to the scope of any vicarious liability.

The Salesian issue

It is necessary, finally, to say something about my rift with the Catholic Church over *Towards Healing*. The conflicts arose because of my concern that elements within the Catholic Church were not adhering to the promises they made in *Towards Healing*. Eventually, in 2011, I felt I had no choice but to withdraw my support for this work and call for a public inquiry.

When I was asked to review *Towards Healing* in 2009, I came across some cases with one religious order, the Salesians of Don Bosco, which worried me deeply. These cases had all arisen since 1996 — that is, after *Towards Healing* was promulgated.

Towards Healing contains significant promises to the Australian people about how the Church will respond to sexual abuse, one such being that serious offenders — and, a fortiori, this included those who were found responsible for sexually abusing a child or young person — will not be given back the power they have abused. From the submissions given to me in the course of the review, I could see that there were priests who had never had that power taken away from them. Settlements had been made with victims, but in two cases they continued in ministry in Samoa. In a third case, a prominent leader of the Order concerned remained in Rome and was not ordered back to cooperate with a police investigation. The Australian Provincial at the time, Father Murdoch, certainly made strenuous efforts to bring

this man back, but the evidence I have seen suggests he was not supported by his superiors in Rome (Parkinson 2012).

For two years, I sought to have the Church to address these issues fully, preferably by a judicial inquiry. Indeed, I wrote a report based on documents that this religious Order made available to me. The report, which was intended to be made public, was never released. In my submission to the parliamentary inquiry in Victoria, I provided details of the unsuccessful efforts I made to hold the Church leadership accountable for the promises they had made to the Australian people in *Towards Healing* (Parkinson 2012). Eventually, I wrote to the Attorney-General for Victoria asking the Victorian Government to establish a formal inquiry into the Salesian cases. That was one of the many calls for such an inquiry that led eventually to its establishment of the *Inquiry into the Handling of Child Abuse by Religious and Other Organisations* by the Parliament of Victoria.

Following further revelations in July 2012 of failures to report known sex offenders to the police, I joined the calls for a Royal Commission and made it clear publicly that I no longer supported the work of the Catholic Church's National Committee for Professional Standards. The major issue, from my perspective, was not the failures in one religious order, but the apparent incapacity of the National Committee responsible for *Towards Healing* to bring that Order to account. There was also mounting evidence that this was not the only religious Order in which there were significant cultural issues concerning their willingness to deal appropriately with alleged sex offenders in their ranks. The lack of accountability goes back to fundamental deficiencies in the management structure of the worldwide Catholic Church, and a tendency to seek to deal with issues — if they are dealt with at all — behind closed doors with as little openness and transparency as possible.

The future of the Church

This is, then, the major challenge for the Catholic Church going into the future. Which culture will prevail: the culture of faith and commitment to the carpenter who walked the shores of Galilee and the streets of Jerusalem two thousand years ago, or the culture of corrupted power? Will Catholic Church leaders, into the future, be princes or servants, and how will they hold one another accountable? That is at the heart of the Church's governance problem. People think of it as a highly structured and hierarchical institution, but actually the opposite is the case. Each bishop is the prime authority in his diocese, subject to oversight from Rome. Each leader of a religious order is responsible for his or her members subject to direction from the worldwide leadership of the order, if there is one, and ultimately to the Vatican.

The management structure made some sense in the Middle Ages, when the fastest mode of transport was a horse, and authority even within nations, was highly decentralised. All that has changed dramatically. To address these issues, the Church needs to find a way of throwing out its rotten apples, of removing leaders who have failed egregiously to do the right thing. It needs, in other words, to modernise. In Australia at least, it may be that the crisis of confidence and trust will not pass until the present generation of leaders, who are tainted by their handling of matters earlier in their careers, have passed the baton on to a younger generation.

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