

# THE SMITH LECTURE 2013

## 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 lecture 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, 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 which 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 which are still being worked out.

In this lecture, I will not for one moment deny that there have been serious moral failures, and it is likely that these are to be found in all churches over the years. I have played a small part in exposing some of those failures, in challenging wrongdoing, and seeking to promote higher standards of child protection in church communities.<sup>1</sup> I offer no defence for the failure of the churches, except to say that if the churches are particularly in the firing line now – and they are – it should be noted that it was so often the churches that were involved in caring for those that no-one else cared for. It was the churches that ran orphanages and children's homes, that established boarding schools at a low cost to give educational opportunities to children from the country. It is churches which have been at the forefront of community life from one end of Australia to another, providing Sunday Schools, youth clubs and holiday camps. The moral failures of the churches ought to be assessed against the background of that enormous contribution to the care of children over the last century and more.

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<sup>1</sup> I have been involved with issues of child sexual abuse in the churches since about the mid-1990s. My book, *Child Sexual Abuse and the Churches*, was first published in 1997.

So yes, there have been serious moral failures – undoubtedly so; but that is a story that has already been told, albeit in piecemeal fashion through a vast number of media stories both in Australia and abroad. To tell that story would not be to repeat anything that is new or surprising. No, the purpose of this lecture is to try to aid in understanding, to tell something of the story, as I see it, of *why* these failures occurred and thereby to help explain the factors which will allow us to protect children better in the future.

## I The Extent of Child Sexual Abuse

### Sexual abuse in the community

A starting point in talking about sexual abuse in church settings is to understand the horrifying levels of child sexual abuse within the community – at least in the past. The most reliable indications of the extent of sexual abuse in our society come from general community surveys of adults who have been asked about their experiences as children. Necessarily this means that they are describing the extent of sexual abuse many years ago. The community surveys in Australia have produced varying estimates of the extent of sexual abuse, depending on how the survey defined sexual abuse, the age limit taken, the way the survey was conducted and many other factors. A common pattern is that the more in-depth the interview is, the higher the rates of sexual abuse which are revealed.

In defining sexual abuse for the purposes of such surveys, it is important to distinguish between sexual abuse and childhood sexual exploration. A common way of defining sexual abuse for the purposes of these surveys therefore is to define it as sexual contact involving an adult or a minor who is at least five years older, whether the child was a "willing" participant in the activity or not.

#### *a) Girls*

Almost all surveys have indicated that the sexual abuse of girls is very common. One of the most well-known surveys of sexual abuse in childhood was the landmark research conducted by David Finkelhor in the United States towards the end of the 1970s (Finkelhor, 1979). Finkelhor interviewed about 800 students about their experiences of sexual molestation as children. He defined sexual abuse as occurring where the sexual incident involved a child under 13 and a perpetrator who was at least five years older, and where the young person was 13-16 years old and the other person was at least 10 years older.

Finkelhor asked questions about all forms of sexual experience in childhood including situations where men exposed themselves to them, or made sexual advances which the child rejected. He found that 19% of the women reported some such experience where the perpetrator was an adult or a much older adolescent. When Ronald and Juliette Goldman conducted a similar survey of nearly 1000 students in Australia in the second half of the 1980s, they discovered even higher rates

of abuse (Goldman and Goldman, 1988). Nearly 28% of the women responding to the survey reported some sort of abusive sexual experience before the age of 16.

<b>SEXUAL ABUSE OF GIRLS: AUSTRALIA</b>	
Child under 13, partner over 18	14.8%
Child under 13, partner under 19 but at least 5 years older	8.3%
Child 13-16, partner at least 10 years older	4.5%
Total:	27.6%
Source: Goldman and Goldman, 1988. Sample 603 females.	

Although these were both surveys of college students, the results are broadly consistent with surveys which have been conducted of the general population in the US and elsewhere. In a major study of 930 women in San Francisco with whom in-depth interviews were conducted, Diana Russell found that 28% of all women reported some kind of experience of sexual exploitation or abuse before the age of 14, and 38% by the age of 18 (Russell, 1983). This included unwanted sexual contact involving other children of the same age.

Australian data is not dissimilar. Jillian Fleming interviewed 710 women who were randomly selected from Australian federal electoral rolls. Twenty percent had experienced child sexual abuse. In this study, child sexual abuse was defined as all experiences of sexual contact occurring before the age of 12 with a person five or more years older, irrespective of consent, and all experiences of sexual contact occurring between age 12 and 16 years with a person five or more years older that were not wanted or were distressing. 10% of women who reported childhood sexual abuse had experienced vaginal or anal penetration - that is, about 2% of the female population.

*b) Boys*

Fewer boys are abused than girls. David Finkelhor's survey of students in the United States, and Ronald and Juliette Goldman's similar survey of students in Australia, both found that 9% of boys had been sexually abused in childhood, a significant proportion of them being sexually abused by adolescents at least five years older. Other surveys have reported figures as high as 16% (Finkelhor, Hotaling, Lewis and Smith, 1990). Although boys are abused less frequently than girls, a greater percentage of boys experience ongoing molestation. The Goldmans' survey in Australia, for example, found that 48% of the boys reported that their abuse lasted more than a week, in contrast to 28% of the girls.

### SEXUAL ABUSE OF BOYS: AUSTRALIA

Child under 13, partner over 18	3.1%
Child under 13, partner under 19 but at least 5 years older	5.4%
Child 13-16, partner at least 10 years older	0.5%
Total:	9%

Source: Goldman and Goldman, 1988. Sample 388 males.

Thus, based on these figures, it is a reasonable estimate to say that in the quite recent past at least, 1 in 4 girls and 1 in 10 boys have experienced some form of sexual abuse before the age of 16. These are truly shocking figures. If the figures were one-twentieth of this, child sexual abuse would still be an enormous social problem and a major issue for law enforcement authorities. There has been a lot of child sexual abuse in church settings, and in the Catholic Church in particular, but this is far from being a problem only in faith communities. Some years from now, when the Royal Commission has completed its work, it will have examined only a small fraction of the amount of sexual exploitation of children that has occurred in Australia in recent years. That is depressing; but it is also realistic.

#### **Child sexual abuse in church settings**

The tendency of men (and in a few cases women), to sexually abuse children crosses all sectors of the population and includes people with a great variety of beliefs – and no belief. It is not surprising then, that churches have a problem with child sexual abuse. It would be surprising if they did not. 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. There are Sunday Schools, youth groups, church affiliated boys and girls' associations, holiday clubs, church camps and other such activities. In addition, there are a large number of Christian schools. The church is therefore a community which is likely to attract people with a strong sexual interest in children. In Australia at least, it is likely that churches are the largest organised providers of activities for children outside of school hours. The Catholic Church, in particular, has also been very involved in caring for children in institutional settings such as boarding schools and children's homes.

##### *a) 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 (Rossetti, 1990, 1995; Sipe, 1995; Haywood et al, 1996a and 1996b; Jenkins, 1996; Falkenhain et al, 1999; Farrell & Taylor, 2000; Langevin et al., 2000; John Jay College, 2004; Frawley-O'Dea, 2004; Dale & Alpert, 2007; Smith, Rengifo & Vollman 2008; Terry, 2008; Terry and Ackerman, 2008; Isely et al, 2008). The most

comprehensive account of child sexual abuse in the 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; Terry, 2008). Most victims were male and older in age compared to victims in the general population (Terry and Ackerman, 2008).

Some evidence in Australia appears to indicate a higher level of offending than this. Prof. Des Cahill 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 to have abused children. That is, 18 priests or 4.8% of the total who were ordained between those years, sexually abused children. Taking a later cohort of seminarians, the 74 priests who were ordained between 1968 and 1971 from that seminary, 4 (5.4%) had been convicted of sex offences against children. Another 20 had resigned the priesthood, and so as a proportion of those priests ordained in that period who had long-term careers in the priesthood, the percentage is rather higher (Cahill, 2012a).

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. Peter 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 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 estimates that between 1% and 2% of the male population would be expected to be convicted for some form of sexual offence over their lifetime (including sex offences against adults). If those figures are similar for Australia, then Prof. Cahill's research 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 (3.7% of those ordained between 1940 and 1966 and 5.4% of those ordained between 1968 and 1971).

#### *b) Child sexual abuse in other churches*

While it is clear from all the evidence that sex offenders are found in all denominations and in people of many different theological persuasions (Parkinson, 1997; John Jay College, 2011, p.21; Keenan 2012, p.3), there is almost no research evidence concerning child sexual abuse by priests or ministers in faith communities other than the Catholic Church. Some limited evidence has come from two leading insurers of Protestant Churches in the United States. They indicated that they received around 260 reports per year of alleged abuse of minors by clergy, church staff or volunteers. These insurance companies cover not only churches but also religious schools, camps and other Christian organisations (French, 2007). The information is nonetheless very limited. Nothing is known about the circumstances of these allegations, and the extent of connection to a

church activity. It is also not known how many such reports were substantiated in one way or another.

What little evidence there is suggests that rates of abuse are much lower in other faith communities than in the Catholic Church (Keenan, 2012, p.11). Our own study of child sexual abuse in the Anglican Church of Australia would appear to be the only substantial and systematic study of the issue in a Protestant faith community (Parkinson et al, 2009, 2010, 2012). The study was based on church files of all allegations of child sexual abuse by ministers, youth workers or other pastoral staff other than in school settings in which the allegation has been made since 1990. Twenty dioceses took part in the study. Three rural dioceses declined to participate, all of them with comparatively small numbers of clergy.

Accused persons were categorised in the survey 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 less than 18 years of age at the time of the alleged sexual abuse.

There were 191 cases of reported child sexual abuse made by 180 complainants against 135 individuals. Fifty-eight percent of the alleged offenders were clergy. Most non-clergy were youth workers, half being leaders of church youth groups or organizations. Of the 44 cases that were known to go to court, 53% resulted in a conviction (Parkinson et al., 2010).

We were unable to say exactly what proportion of Anglican clergy has 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 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. Secondly, 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. Given, however, that there is typically an Anglican parish in every large suburb or town (and often more than one, in more populated areas), and that the Australian Bureau of Statistics (2011) listed 8,267 state suburbs in 2006, it is reasonable to conclude 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. Even taking a conservative estimate of 10,000 clergy serving in parishes over the 40 year period for which incidents of child sexual abuse were reported, and taking into account that this was not a complete census, the proportion of clergy accused of sexual abuse appears to be well below 1% (Parkinson et al, 2012). However, it must be emphasised that our findings represent no more than a rough estimate.

### *c) Comparisons*

Those figures suggest what all other experience suggests, that rates of reported child sexual abuse by priests and religious in the Catholic Church are many times higher than for clergy and paid pastoral staff such as youth workers, in other denominations. The statistics from the Victoria Police (2012) giving evidence to the Parliamentary Inquiry, also provide some evidence of the 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. 370 were victims of abuse in the Catholic Church. There were 37 victims in the Anglican Church; 36 in relation to the Salvation Army; and 18 involving Judaism. 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 equivalent to the ordained clergy of other denominations.

The figure for the number of victims in the Catholic Church was exactly 10 times that in the Anglican Church. This is only partially explained by the greater size of the Catholic Church in Melbourne. 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 Victoria, 2012). 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. In addition to parish ministries, the Catholic Church also ran schools and children's homes in which priests and brothers worked, and this would add significantly to the tally of sexual abuse incidents which might involve members of religious organisations. 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 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. 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.

A further indication is given by a comparison between the reported number of allegations revealed by the Anglican and Catholic Archdioceses of Melbourne respectively. The Catholic Church has recorded complaints of abuse against 331 children since 1996, dealt with under its complaints procedures against priests and religious (Catholic Church in Victoria, 2012). 310 complaints were substantiated. In the Anglican study, we recorded complaints of abuse against 44 children in the Anglican Diocese of Melbourne since 1990 that fell within the scope of the research.

## Gender and age of victims

### *a) Most victims are boys*

The John Jay College 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 (Andrews, Gould, & Corry, 2002; Cappelleri, Eckendrode, & Powers, 1993). While many female victims of abuse in the general population are molested by fathers, stepfathers or other male relatives, girls represent the majority of victims in the general population even if one excludes intrafamilial sexual abuse.

The gender pattern of victimisation by priests may be observed in other studies (e.g. Sipe, 1995). Recent evidence from Australia also points to the same pattern. Victoria Police (2012), giving evidence to the Parliamentary Inquiry in that State, reported that of 370 victims of abuse in the Catholic Church for which criminal convictions had been recorded since 1956, 87% of victims were male.

Lest it be thought that these patterns are unique to the Catholic Church, we found a similar pattern in our Anglican Church study. Three-quarters of complainants who alleged sexual abuse were male.

It may at first seem surprising that the gender of complainants in the Anglican Church study was so similar to the pattern of abuse found in the Roman Catholic Church. There are significant differences in the nature of clergy vocations (i.e., requirement of singleness or celibacy). There are also differences in patterns of ministry involving children. For example, 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 to be alone with adolescent boys or to have the opportunity to form unsupervised friendships with them, than with girls. Parents were likely to be concerned by too close a friendship between a 30-40 year old man and a teenage girl; but they would have had no such concerns if the priest took an interest in their troubled teenage son. This is not the only explanation however; as will be discussed later in this paper, there may be cultural reasons also why boys were more likely to be preferred as victims.

### *b) Most victims are adolescents*

The John Jay study reported that 85% of the complainants were between 11-17 years of age. In the Anglican Church study we found a similar pattern. A large majority of complainants were

between the ages of 10 to 15 at the time of the alleged first abuse. 50.6% of complainants were under 14 at the time of the alleged first abuse, but only 11% were under 10.

This also is likely to be a matter of opportunity. Most sex offenders who abuse children and 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.

## **II. Responding to Victims of Sexual Abuse**

How well have churches addressed the problem of child sexual abuse? As I have indicated, the popular view would be that the handling of child sexual abuse cases in the past has been appalling. Mostly, this is based upon the recurring stories of cover-up and malfeasance in the Catholic Church. However, it is important to emphasise that no church or other community organisation with a significant work amongst children is free from reproach. In Australia, for example, there have been three inquiries established by the Anglican Church into its past failings in dealing appropriately with child sexual abuse cases (Kohl & Crowley 1998; O'Callaghan & Briggs, 2003; Olsson, & Chung, 2004).

The publicly known incidents of serious mishandling of alleged child sexual abuse in other denominations are few and far between. For the most part, these would have been dealt with by ministers and pastors of local congregations, since the majority of the other church groupings in Australia are characterised by local congregational autonomy and a weak central governance structure for the denomination. Indeed, in churches with a charismatic or Pentecostal heritage, church groupings are little more than the sum of the affiliated independent churches which have joined together. No doubt, however, the intense forensic scrutiny of the Royal Commission will bring to light significant failures in these churches as well, as will be true of schools, youth organisations such as scouts, and state child welfare departments.

### **Factors in the failure to protect children**

Those failures are for many reasons, and similar factors may have affected poor handling of sexual abuse cases in non-religious organisations that worked with children as well. One of the issues that hindered the proper protection of children was denial. It didn't happen because it doesn't happen. One girl, as a young teenager, tried to tell her Anglican minister that she was being abused by her father, a churchwarden of the church. He replied that "things like that don't happen in families like yours." Another girl told her mother about her abuse by a minister. The mother replied "how dare

you say that about a minister” and punished the girl severely (Parkinson, 1997). In the churches, as in other areas of society, the fate of so many children who disclosed sexual abuse is that they simply haven’t been believed. The uncorroborated statements of a child were not readily believed in the courts either, if an adult contradicted the account. Indeed, the common law treated the evidence of children with considerable suspicion on the basis of judges' perceptions of children's immaturity, tendency to inhabit make-believe worlds, suggestibility, poorer memory and other such factors (Spencer & Flin, 1993, chapter 11).

Another issue was naivety. Churches have sometimes shown an astonishing naivety about the capacity of child molesters to reoffend. Church leaders were misled in the past into believing that sex offending is a short-term aberration, or a forgivable lapse into temptation, rather than a most serious long-term problem in the lives of offenders. Because these men did not appear to be criminals in other respects, there was a strong tendency to minimise the nature of the offence and to accept the offender’s assurance that this was a momentary lapse of judgment of an otherwise godly man. It is because of this that so often, ministers and priests who abused children were sent off for a period of rest and meditation or “counselling”, and then returned without much more, to another position of pastoral ministry.

The sentiment was sometimes heard that if we have forgiven a repentant offender (to the extent that it is the church’s place to forgive) therefore we should trust him again in pastoral ministry. This ignores the deeply ingrained and habitual nature of much sex offending against children, with some offenders, particularly those who abuse boys, having very large numbers of victims (Weinrott & Saylor, 1991). Forgiveness is about the past. Trust is about the future. Where there is a history of offending behaviour, even if it was apparently a long time ago, and the person believes genuinely that he has put his past behind him, then he should not be placed in a position of responsibility which involves extensive contact with children. The risk of reoffending is too great. The truly repentant offender will realise that.

A third issue was victim-blaming. One young woman plucked up the courage to tell the elders of her evangelical church about the sexual abuse she had experienced at the hands of a relative ever since she was a young child. It was abuse which she felt entirely powerless to stop. Indeed, for years she prayed to God that this man would die since she could see no other way in which the sexual abuse would come to an end. In turning to her church leaders, she was uttering a cry for help. In the meeting with the minister and the elders, she was questioned at great length about her sexual involvement with this man. They could not understand how she continued to participate in it as a young adult when he was not actually coercing her. Still less could they understand why she had told no-one. They asked her whether she enjoyed it and whether she was paid for her sexual favours. That night she was expelled from the church for sexual perversion and the other members of the church were forbidden from having any contact with her. Years later she would run into

people from her old church who still remembered her as someone who was blacklisted by the elders (Parkinson, 1997).

A fourth issue was accepting the offender's own minimisation. It is characteristic of many sex offenders against children that they minimise and excuse their offending behaviour. An inexperienced counsellor may well accept the offender's own account of the extent of his offending, and his excuses for so doing, without question. This can lead to a serious underestimation of the seriousness and extent of the problem.

There were also cases in the protestant churches, as well as the Catholic Church, of offenders being allowed to move from one parish to another, to go overseas when complaints of abuse were made, or to resign quietly from the denomination, but leaving other communities at risk. 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 fifteen years, the landscape had been transformed and most churches 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 it is very much better than fifteen years ago. In all the churches that I have been a part of in the last fifteen years, I can say that child protection is taken very seriously, and training is mandatory before volunteers are allowed to work with children.

In defence of the churches, one of the problems in dealing with the allegations of child sexual abuse against ministers was - and remains - the very high standard of proof needed to force someone out of the Church through disciplinary action if that action is challenged in court. The law does not require the allegation to be proven beyond reasonable doubt, but the standard of proof comes close to this in cases in which the allegations are grave and the consequences of an adverse findings serious (*Briginshaw v Briginshaw* (1938) 60 CLR 336; *Rejcek v McElroy* (1965) 112 CLR 517, 521; *Bannister v Walton* (1993) 30 NSWLR 699). The case law on disciplinary action against members of professions such as doctors, lawyers and clergy indicates that the courts will require exacting standards of procedural fairness and insist on proper protection of the rights of the accused. The balance in the legal system between the protection of the accused and the protection of children is not an easy one to find; but there is little doubt as to where the law currently places its priorities; and that makes the risk of litigation by alleged offenders a problematic one for church leaders desiring to put the protection of children first. It may well be that in some cases accepting a quiet resignation was seen to be the wiser course than risking a protracted disciplinary process and challenges through the courts, in cases where the victim would not make a complaint to the police or the police had not been successful in bringing the case forward for prosecution.

While no church or institution is beyond reproach, by any means, it would be inaccurate to suggest that in some way this problem of child sexual abuse was evenly distributed across the churches or that they all handled cases badly. The reality needs to be confronted that there were particular issues in the Catholic Church and still are. Its history is unique, and sadly one of especially egregious failure in this area. I will try to address these issues with humility and sensitivity, given that I am not a Catholic; but I have never identified as a “protestant” either. The old patterns of sectarianism in Australia - with Protestants hostile to Catholics, and vice versa - is another shameful aspect of (quite recent) Australian history. As a Christian within the evangelical tradition of faith, I have always sought to work with believers of all faith traditions. My personal history includes spending 9 months studying in Bratislava, Czechoslovakia in my early 20s during some of its darkest days under atheistic communism. There, the Catholic Church in particular was brutally suppressed. I saw at first hand in Bratislava the extraordinary courage and commitment of young Catholic students who met in secret groups to study the Bible and to pray - at great risk to themselves. Committed Christians of all hues united together, and worked together in the face of the common threat.

I have also worked closely with the Catholic Church in Australia on the problem of sexual abuse. There is a verse in the book of Proverbs (27:6): “Faithful are the wounds of a friend”. I regard myself as a friend of the Catholic Church. A retired Catholic Bishop wrote to me about a year ago that “if anyone in the Church starts treating you as an enemy, they have really lost their way”. Some leaders have; but I remain focused on wanting only to see the best for the Church, and to see it emerge from this crisis with the past atoned for and with a renewed commitment to the gospel of Christ. That is one possible future for the Church. The other is slow but sure decline and marginalisation. The future existence of the Catholic Church as a significant social force in this country is far from guaranteed.

### **The issues in the Catholic Church**

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

#### *a) 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, 52-53).

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 70s 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, arguing that the increase in child sexual abuse in the 1960s and 70s 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. Secondly, it may confuse propensity with opportunity. The propensity to abuse children may be constant while the opportunity to do so diminishes.

The incidence of abuse and its disclosure: All the evidence suggests that levels of disclosure are influenced first by the passage of time and secondly, by media publicity. Few victims of sexual abuse by clergy report it at the time, or even during childhood. In our Anglican Church study, we found that on average, it took men 25 years to report their childhood abuse, and 18 years for women to do so (Parkinson, Oates, & Jayakody, 2010). Likely reasons for delay in reporting included threats made at the time, and lack of family support for the complainant, particularly boys. The John Jay 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. In my view there is likely to be a significant decline in incidence both in America and Australia, but for other reasons (Finkelhor and Jones, 2004).

Account must 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 our 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. In 2002-03, a controversy concerning the way sexual abuse complaints were dealt with under the leadership of former Anglican Archbishop, the Right

Reverend Peter Hollingworth, 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. There was also a public furore concerning public statements he made about these issues as Governor-General when responding to these criticisms (O'Callaghan & Briggs, 2003, p.5; Blake, 2006). The Board of Inquiry reported in April 2003 (O'Callaghan & Briggs, 2003). Not long afterwards, Hollingworth resigned as Governor-General. There was also a subsequent inquiry into the handling of such cases in the Archdiocese of 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 may be seen in the Catholic Church in the United States. 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 & 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 recognition that they are not alone.

It follows that the explanation for fewer reports relating to events prior to the 1960s and 70s 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 the 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 co-extensive with the second.

Propensity and opportunity: Furthermore, propensity is not co-extensive 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, 2004, chapter 5). 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.

Prof. Des Cahill (2012b) offers these observations:

“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.

Paedophilia and other reasons for offending. While celibacy is an unlikely explanation for a paedophilic sexual orientation, many men who sexually abuse children do not fit the classic diagnosis of being paedophiles. For example, there is now considerable evidence that at least some sex offending against children reflects broader anti-social 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).

Furthermore, 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 Prof. Smallbone put it in his evidence to the Parliamentary inquiry in Victoria (Smallbone, 2012):

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 multi-faceted problem and that among that heterogeneous group of men who sexually abuse children, there are numerous different etiologies of offending. The leading American scholar, Prof. David Finkelhor, has commented, concerning the American conversation about clerical sexual abuse (Finkelhor, 2003, p.1226):

[T]he clergy abuse scandal reinforced and compounded many of the most insidious stereotypes about sexual abusers and child molesters. The offenders were routinely referred to as pedophiles, implying a sexual attraction to prepubertal children, a paraphilic disorder, a person with multiple victims, and a compulsion to offend. In fact, the majority of the priest offenders were not pedophiles.

One of the unanswered questions about sex offending by clergy is how much of it is situational, or influenced by the culture of a group, 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. 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 adult 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 & Ormerod 1995, p. 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, p. 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 which 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 of a paraphilic sexual attraction to boys of that age.

*b) 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 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 paedophile priests took the fullest advantage of their power and status – an authority which 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.

*c) Poor handling of child sexual abuse cases*

To some extent, the same patterns can be observed in the Catholic Church as in other churches when it comes to poor handling of child sexual abuse concerns. Children were not believed, while the word of a priest or brother was hardly questioned. Barry Coldrey, of the Christian Brothers, reports in his history of his Order in Western Australia that many allegations of sexual abuse did emerge at the time, and were looked into by leaders; but the investigation did not proceed beyond the alleged perpetrator's denial of the allegation. In one case, a leader in the Order in Melbourne wrote to a Brother in Western Australia, asking for his response to a boy's report that this Brother had interfered with him. The Brother responded in these terms:

“In answer to your letter referring to my behaviour towards a boy at ..., I am pleased to say that the accusation is completely untrue as far as I am concerned. I am deeply grateful for this opportunity to clear myself of any doubt in your eyes.”

Nothing more was done. If the alleged perpetrator denied the allegation, then it was the boy's word against the Brother's, and usually no further action resulted other than to give a warning to the Brother concerned (Coldrey, 1993, p.396-99).

There was also naivety about the nature of offending and ignorance of the damage being done to children. In particular, I doubt that many people were aware 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. When I was growing up in England in the 1960s, I attended a boarding school with a fine choir. Jokes about dodgy choirmasters and 'feeling up' boys abounded at that time. The folklore about abuse of boys at that time treated it as odd (but relatively harmless) behaviour by men who had sexual problems. The trail of devastation that we now understand arises from much sexual abuse of boys, was little in our cultural consciousness forty years ago.

Be that as it may, there are specific features of the response of the Catholic Church in dealing with cases of child sexual abuse which need to be examined. In so doing, it is right that I endeavour to tell a more nuanced and complex story than tends to be told in the media or in public discussion of these issues. The unerring condemnation of the Catholic Church as a whole 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. It is not true to say generally that Catholic Church leaders have been dragged kicking and screaming to address these issues. Some have shown enormous courage and integrity in leading change. Many other leaders have come willingly, and motivated by the best intentions. Others have gone along with the flow. A minority has been resistant and, in their own dealings with victims, intransigent and obstructive. The issues about compensation and dealing with offenders are more complex than are 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 stories are well-known now, and little is to be gained by repeating stories about the worst cases. Some of the accounts given by victims concerning their dealings with Catholic leaders in the past are hotly contested by those men today - men who remain in senior positions of leadership. It is not my place to enter into those allegations and denials, and still less to adjudicate upon them; save to say that the victims' stories in broad outline, if not in their specific details, are familiar to anyone who has read similar accounts from around the western world.

The response of the Catholic Church in Ireland has been the subject of intensive forensic investigation in a number of inquiries (Ryan Report, 2009; Murphy Report - Dublin, 2009; Murphy Report - Cloyne, 2010). The Murphy Report into the Archdiocese of Dublin (Murphy Report - Dublin, 2009, pp.3-4) 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.

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 relation to the Australian church; 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. 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 which 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; 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 to be quite sufficient - for the least educated of them in basic Christian theology ought to have understood that one day they will appear before a Judge who would know the most closely guarded secrets of their hearts, and would call them to account. They ought to have known also, that God is always on the side of the innocent and the vulnerable and has a special care and concern for children (Ps 127: 3-5; Ps 146:9; Matthew 18: 10; Mark 10: 13-15; Luke 17:2). Graphically Jesus said about children:

If anyone causes one of these little ones--those who believe in me--to stumble, it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea. (Matthew 18:6, NIV).

There are two aspects of Catholic teaching which may help explain (but not excuse) 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 international 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. 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.

In this sense, the Church perceived it to be a law unto itself. Geoffrey Robertson QC observes (Robertson, 2010, para [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 Canon 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 have civic responsibilities and obligations. The culture that child sexual abuse cases were to be dealt with internally by the Church was alive and well in Australia even if Canon Law itself was of more theoretical than practical relevance in most cases.

The culture that the Church should be a law unto itself is evidenced by the experience of the Irish bishops who tried to put their civic obligations first. 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 January 31<sup>st</sup> 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, 1997).

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 only 5 years. In 2001, that was increased to ten years, with time running from the victim’s 18<sup>th</sup> 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 twenty years or more after the events. It was only in 2010 that the period was extended to 20 years from the victim’s 18<sup>th</sup> 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 which 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. There were other deficiencies in the process which are well documented in chapter 4 of the Murphy Report (Murphy Report - Dublin, 2009).

Even 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. 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 encourage victims to go to the police or themselves initiate police involvement (Congregatio Pro Doctrina Fidei, 2011).

### **The culture of clericalism**

The culture which treated crimes against children as essentially a matter for canon law, unless the victim chose to go to the police, was one factor in the Catholic Church's handling of these cases, at least prior to the 1990s. Another was the culture of clericalism. The 2011 document puts it succinctly: "The bishop has a duty to treat all priests as father and brother" (Congregatio Pro Doctrina Fidei, 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 Fr René Bissey, who had been sentenced to 18 years in prison in 2000 for sex offences against children. It appears that the bishop indicated at his trial that the admission of guilt by the priest had not been in the confessional. 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 which 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. (Henaghan, 2010a, 2010b; Robertson, 2010, para [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, my understanding is that prior to 1996, many cases of child sexual abuse were dealt with quietly by a troubleshooting team that would meet with the alleged offender. Typically, if the accounts were credible or more or less admitted, the priest or brother would be persuaded to leave religious life or at least to withdraw from active ministry. Back then, compulsory laicisation 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. Years later, as the Four Corners program last year demonstrated, some of these men are still in the community and have not been brought to justice (Four Corners, 2012).

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.

*Towards Healing* has been much criticised, 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.

*Towards Healing* 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 it was its policy to encourage those who complained of criminal misconduct by clergy and religious to make a formal report to the police, and for the Church to cooperate with the police on such matters. However, it recognised that some victims do not want to go to the police, or do not feel able to do so, and it offered a way to make the history known and to gain some redress without going down the difficult path of litigation. In my experience of talking to a number of victims in the 1990s, issues of money and compensation were not foremost – or even on their agenda. Most of all they wanted the truth to be told, and some assurance that it would not happen in the future.

*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. Failures to implement it properly, and long delays in the process, were the main complaints. There were also complaints that what was intended as a pastoral process took on the character of just another negotiation between lawyers and insurers concerning appropriate levels of compensation, with the bishop or leader insensitive to the pastoral aspects of the process.

There have also been complaints in the media about the sometimes modest financial settlements. I understand and accept those criticisms. The level of compensation was a matter for the bishop or the leader of religious order concerned, after listening to the needs of the victim in a facilitated meeting, or as a consequence of negotiations between lawyers. It ought to be understood though, that *Towards Healing* was established as a kind of victims' compensation scheme, with a fairly low evidential bar for making claims and with no need to demonstrate the fault of the Church hierarchy. There was no 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* was not intended as 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. There is no cap on payments. Sometimes assistance is provided otherwise than through cash payments, particularly if the complainant has an addiction to drugs, alcohol or gambling.

The litigation option of course, is an alternative for people. Having said this, the obstacles to achieving this lie 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 an appropriate defendant who has 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] NSWCA 117). The Church did not need to plead these defences, based as they are upon historical accident. They create 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.<sup>2</sup> *Towards Healing* could do nothing more than establish a process. Whether or not complainants were satisfied with outcomes depended very much on their expectations, 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 dominated 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. Nonetheless, it is the 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 a criminal justice process. Some complainants may feel unable to do so. 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.

In any organisation there needs to be disciplinary processes which 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 DPP 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

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<sup>2</sup> Central to the complaints process is the role of the Director of Professional Standards. Following my review in 1999-2000, he or she has responsibility for the process, but the outcome of cases remains in the hands of the Bishop or leader. The Director's procedural role was as much independence as the Catholic Church's organisational structure permits. 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. The issues that need to be considered 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 which helps the victim along the path of putting what has happened behind them.

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.

*Towards Healing* was in its time a bold initiative, given the serious limitations of Canon Law and the attitudes in the Vatican. Eventually it came to be accepted in Rome as a valid process to follow. No other Church had, at that time, a similar scheme and most still do not. However, it is a voluntary scheme which depends upon the willingness of church leaders to abide by its letter, spirit and commitments. That is an inherent limitation. It is difficult to know how to replace it with something better unless the Church decides to abide by the determinations of a completely independent investigation process and an independent compensation panel with no cap on payouts. That is what the courts are for; but litigation remains a difficult option for victims, not least because of the issues of proof and responsibility.

### **Compensation**

The issues about liability and compensation are complex. Churches and other faith-based organisations should have no privileges nor special rights when it comes to liability under the civil law; but neither should they have less rights than any other organisation or citizen. If civil claims are brought, the case needs to be proven, and when the events occurred in secret a great many years ago, it can be challenging to prove one's case. There is also the question of who should be liable. Should churches and other institutions be vicariously liable for any wrongdoing of pastoral staff even when they had no idea about the abuse and acted swiftly to address the issue as soon as it came to light? Should vicarious liability also apply to volunteer helpers in church youth groups or summer camps?

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 if this pathway to reform were adopted. The questions include:

- a) *The act to which liability applies:* Is it just in relation to child sexual abuse, or child abuse, or all criminal wrongs, or all tortious acts?
- b) *The personnel in relation to whom it applies:* Does it apply only to employees (in which case it would exclude many members of religious orders who were not in an employment relationship within the institutions where they abused children), or does it apply to all those who held any position in the organisation whether as paid workers, volunteers or those following a religious calling? If its scope is to be broad, does it cover non-pastoral employees such as maintenance staff? What about contractors such as the electrician who comes on site (e.g to a school) to do repair work, and seeks to molest a child? What about

the parent or other volunteer who comes in to provide individual reading support for primary school children?

- c) *The organisations to which it applies:* Many organisations which provide, or have in the past provided, activities for children are in the most genuine way unincorporated associations – for example, community sports organisations which are little more than the aggregation of the individuals who happen to be involved at the time. Identifying who should be vicariously liable is highly problematic in these circumstances. Many congregationally-based churches are also unincorporated. The membership and number of attendees, is in a constant flux as people move in and out of an area, or choose to change church. Even if community groups are incorporated associations, the fear of litigation arising from the imposition of vicarious liability could drive many of them to dissolve.
- d) *The degree of connection to the institutional activity:* The boundary lines between institutional and private are sometimes hard to draw. If a priest sexually abuses his niece, is this attributable to the fact that he is a priest, or did the opportunity arise because he is an uncle? Does the piano teacher who plays in the music group at church and who arguably draws many of his private pupils as a consequence of his involvement in the congregation, have a sufficient connection with the local church for vicarious liability to attach if he abuses the children in his piano lessons? Probably not; but what if he is both a piano teacher and a leader in the youth group? Does it matter whether the abuse took place during piano lessons or after youth group? What if it occurred in both contexts at different times? Should the Church be responsible because one or two abusive events occurred after youth group when the primary connection between abuser and abused was through piano lessons?

There are also significant questions about retrospectively seeking to impose vicarious liability on organisations, particularly if those organisations did not see the need for insurance for this form of liability based upon the law at that time. It will probably not be possible to impose vicarious liability retrospectively on unincorporated associations such as community groups, and there are compelling reasons not to do so.

The issues of compensation are complex ones with which the Royal Commission needs to grapple. The legal process itself is very far from perfect.

### **The offenders and cooperation with the police**

It is necessary, also, to say something about the extent to which the Catholic Church has sought to cooperate with the police and to encourage people to go to the police. This is one of the major issues which led to the establishment of the Royal Commission and is a matter which is being carefully scrutinised in both the Victorian and Newcastle inquiries.

I can say nothing, in this regard, about the Melbourne Response, which was severely criticised in evidence to the Victorian Parliamentary Inquiry by the Police (Victoria Police, 2012). That program had different origins to *Towards Healing* and the two should not be equated. What can be said is that prior to 1996, the pattern appears to have been that if anything was done at all by the Church hierarchy in response to complaints of sexual abuse (and the track record here is, to say the least, a mixed one) then the most likely outcome of a substantiated complaint would have been a quiet resignation from parish ministry or from the religious order. In *Towards Healing*, from 1996 onwards, the Church made a commitment to encourage victims to go to the police and pledged its full commitment to cooperation with law enforcement bodies. It also reminded church personnel of their duty to comply with mandatory reporting laws and indicated that nothing should be done to interfere with a police investigation.

Whether or not these commitments have been met in practice, and to what extent, is a matter for the various public inquiries to determine. One of the issues which needs to be examined is whether complainants were discouraged, in some cases, from going to the police, contrary to the clear requirements of *Towards Healing*. However, some of the media reporting concerning ‘secret deals’ between the Church and the police are widely off the mark. In NSW, the Church sought to develop a protocol with the police in an open and transparent way and at the highest levels, to ensure that there was proper cooperation in those cases where complainants did not want to go to the police. One aspect of that was that even if the complainant declined to go to the police and to make a statement, the name of the alleged offender would be given to the police by the Church. That policy was from 2010, formally included in the *Towards Healing* protocol.

Nonetheless, some old attitudes remain. In the very recent past, there have been leaders who were extravagant in their spending on legal representation to defend alleged offenders, while miserly in their willingness to compensate victims; those who still apparently fail to understand their civic obligations as citizens of Australia in terms of cooperation with the police; those whose greatest concern would appear to be to protect their organisation from scandal rather than the children in their care; those who would aspire to ‘tough out’ the various inquiries, mixing some candour with a lot of spin, rather than telling the unvarnished and uncomfortable truth. I have said something of my own experience with this in evidence to the Parliamentary Inquiry in Victoria (Parkinson, 2012, 2013). There remain a few rotten apples in the Church’s fruit bowl, and they have yet to be called to account.

### **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 lords and princes, or will they be servants? 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.

The management structure made sense in the middle ages, when the fastest mode of transport was a horse and authority even within countries, was highly decentralised. All that has changed now. To address these issues in future, the Church needs to find a way of throwing out its rotten apples, publicly rebuking or removing leaders from their positions if they have failed egregiously to do the right thing. It needs, in other words, to modernise and to create an authority structure with power to deal with the recalcitrant and the obstructive in its midst. I have no reason for confidence that this leadership will come from the Vatican or from the leaders of the worldwide religious orders, some of which are also based in Rome.

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. Perhaps in this, Joseph Ratzinger has set a fine example. The pathway to renewal may also lie in transferring much power and responsibility from the clergy and religious to the many eminent Catholic lay people, both men and women, who have not only had great success in their careers but are people of the highest integrity and deepest faith.

### **Finally**

The Smith lecture was established 12 years ago in honour of Bruce Smith, who worked tirelessly to address issues which represented impediments for people in believing in Christianity and following Christ.

There can be little doubt that the record of dealing with sexual abuse complaints in the past is one of those impediments to faith and a major stain on the reputation of churches. Yet even in this, there is a need to look into the mirror as a society. The financial fraud within parts of the union movement of which we have learned in recent months and years cannot be compared in seriousness to the sexual exploitation of children; yet some of the same issues may arise if a searing forensic examination were to be conducted of who knew or suspected what, and when, and why matters were not reported to the police. There are other such examples of closed organisations in which people have bonds of loyalty to one another and for whom it would go against the culture of the group or organisation for criminal misconduct to be exposed to the light of day.

And that perhaps brings us back to a foundational message of the Christian faith – that our tendency towards wrongdoing is deeply ingrained, that none of us could stand today before the Judge who knows all, and declare ourselves to be innocent. The Churches cannot ask for forgiveness without also accepting accountability – but that is true for all of us as well. And that takes us back to a trial that occurred 2000 years ago before Pontius Pilate, to an innocent man condemned to die in an appallingly cruel way, and to the meaning given ever since to that death by those of us who have found in it redemption, forgiveness, and a pathway to a relationship with God.

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