

What the Clergy Abuse Crisis Has Taught Us

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From every tragedy there is something to be learned. The Catholic Church's struggle with sexual abuse of children by members of its clergy is no different. But the lesson is one for the entire country, not just the church. Although there were inklings of the church's clerical abuse problem before 2002, when The Boston Globe began publishing its Pulitzer Prize-winning reports, it was only then that the general public became aware of the scope of the problem.

Two forces worked together to increase the problem: (1) the church shuttled abusing priests among parishes and dioceses with no notice to families and the laity; and (2) the victims of abuse were incapable of coming forward until they had reached a psychologically safe place, often well into adulthood.

The church's actions were indefensible, but its behavior was not unique. Since 2002, one church group after another has been publicly identified with cases of abuse, and victims have come forward from the Jehovah's Witnesses, Southern Baptists, Mormons and Jewish denominations. Sexual abuse by members of the clergy—and coverups by religious institutions—are nondenominational.

And the victims' actions were typical of all victims of sexual abuse of children. It takes a certain amount of maturity and perspective to understand what was done to them. Most have to become adults before they can apprehend that their childhood was stolen from them.

The numbers alone are chilling. Nationally, authorities receive reports of child sexual abuse incidents less than 20 percent of the time, with approximately 25 percent of abused girls and 17 percent of boys reporting. As a society, we have plainly failed to offer adequate refuge or justice for these most vulnerable victims.

It was only when the victims turned to the law that we learned that our society has been cheating abuse victims out of any meaningful justice.

Coming Forward

The problem of limited reporting, which resulted in too little justice, was simple to identify, and it transcended the church's story. Statutes of limitations for sexual abuse of children are so short in most states (sometimes only two years from the date of the assault) that victims of such sexual abuse rarely are able to prosecute or sue for the harm done to them.

It was also a psychological reality that the vast majority could not come forward soon enough. Consequently, the laws weighed heavily in favor of the perpetrators and against the child victims. The system was badly flawed, even corrupt.

In recent years, Americans have been focusing on the recidivism of pedophiles. The resulting reforms have been manifold: the introduction of so-called Megan's laws publicly identifying convicted sex offenders, the creation of databases of perpetrators of child abuse, the extension of prison sentences and even the introduction of the death penalty in some states. But these reforms did not fix the primary problem to which the church's scandal pointed—the unfairness of the statutes of limitations for the sexual abuse of children.

Reforming Statutes of Limitation

Because our laws have failed so miserably, reform of statutes of limitations is needed for all victims, past and present. Although the revelations about the Catholic Church were a catalyst, the law needs to be changed across the board—without reference to this or any other church, or to any particular secular organization.

The solution needs no task force or further study. It is clear: statutes of limitations for sexual abuse of children need to be abolished, as the federal government, Maine, Alaska and Idaho have already done. Murder has no statute of limitations because the victim can never speak for himself or herself. Child abuse, as we have learned, is little different. It involves a heinous crime, a powerless and vulnerable victim incapable of speaking for himself or herself and the murder of the victim's very childhood and soul.

But abolition of the statutes of limitations regarding sexual abuse of children is helpful only for recent or future victims. For those victims for whose abuse the statutes of limitations have expired, for whom the law was so inadequate, there

must be another fix if there is to be any chance for justice. That fix is “window” legislation, which has already been passed in California and is currently under consideration in about a dozen other states.

The window works as follows: for one or two years, the state legislature suspends the civil statute of limitations on sexual abuse of children, opening the door of justice to victims from the past to sue those who caused them harm. It is straightforward and simple justice.

California tried to create a window for both criminal prosecution and civil lawsuits, but the United States Supreme Court held in a 5-to-4 decision that it was a violation of the Constitution’s prohibition of *ex post facto* laws to suspend the criminal statutes of limitations. As a result, the only way for people who are already victims to obtain any justice, in the wake of our collective failure to protect them, is through a civil litigation window.

Civil Litigation

Civil litigation through such a window is the only way we as a society will learn the monstrous secrets still withheld by so many—perhaps every religious organization, every perpetrator of incest and every adult or organization whose members have sexually assaulted a child or made such an assault possible. Without the due process of the legal system, those secrets will remain buried, perpetrators will remain free to continue molesting (as we have learned from the anti-recidivism movement), and children will be at serious risk. It takes the law to force these secrets into the sunlight.

The most common objection to the window and lengthy statutes of limitations is that evidence will be stale, creating a risk of a miscarriage of justice. Such statutes are most important in cases involving property or business interests, where stability and predictability of ownership are crucial to a stable economy. In contrast, the heinous nature of a personal crime—like murder—often argues against the efficiency and docket-control principles that support a statute of limitations. Anyone who has watched the television show “Cold Case” has seen these principles in action. In those situations, justice—even when delayed—is more valuable to society than mere efficiency. That value is multiplied in the context of sexual abuse of children, where the perpetrator is likely to have many victims over a long period of time. Whenever a perpetrator and his or her enablers are stopped and publicly identified, there is a strong likelihood that future crimes will be prevented.

The window does not alter any of the other rules that ensure a fair trial, including the burdens of proof, rules of evidence and the application of particular privileges. As in all other cases, the older the case, the more difficult the victim’s task. But these concerns are overblown in many employment cases, because the evidence is pristinely preserved in the employment histories of the pedophiles involved. Indeed, strenuous objections in church circles to the window arise in no small part, I think, because of fears that revelations that will occur when the church is forced to open confidential archives that still may hide the identities of sexual predators.

The most specious legal objection to the window legislation is that it is “targeting the Catholic Church.” Nothing is further from the truth. While it is true that the Catholic Church’s problems revealed deficiencies in the legal system, there is not a single state proposal that singles out the church. All organizations and individuals responsible for the prevalence of sexual abuse of children are being “targeted.” This includes, as we have come to learn, a host of religious organizations, secular organizations and family members. The trigger for the reform may well be the enormity of the church’s problems, but the reason for the reform is that the shortness of the time periods allowed by statutes of limitations for sexual abuse of children have been a general blockade to justice and truth.

The Colorado Case

The following may well sound harsh, but it is unfortunately true: The primary barriers to legislative reform to aid victims of sexual abuse as children in the United States are the state Catholic conferences, which lobby state governments.

Most maneuvering by church officials on the state level to prevent window legislation occurs behind closed doors (often before victims even broach the topic), but a public battle occurred in Colorado. Senator Joan Fitzgerald, president of the Colorado Senate, and Representative Gwyn Green introduced legislation in each house addressing the statute of limitations. Fitzgerald (a lifelong Catholic) was staunchly behind window legislation, while Green’s bill would have abolished the statute of limitations for sexual abuse of children. Both were deeply upset to learn how many child abuse claims were prematurely shortened by unfair statutes of limitations. Both bills applied to all private entities.

The Archdiocese of Denver hired an expensive public relations firm and initiated a vigorous attack in the media and from the pulpit. The diocese’s public relations firm charged that the bills were “anti-Catholic” and intended to “bankrupt” the church. Following Masses, Catholic parishioners were handed preprinted cards to be signed and sent to state lawmakers. The public relations campaign “proved” the anti-Catholic bias by pointing out that the bills applied only to private entities.

Archbishop Charles Chaput of Denver and his supporters pointed vigorously at the public school system as exempt from the bills. Notwithstanding the fact that private and public entities are almost always addressed in separate legislation, the archbishop scored with his tactics and succeeded in pulling all but two Republicans away from the bills.

The archdiocese did not inform Catholics that public schools had been under a state mandate to report child abuse since at least the early 1980's, while the church had not been required to report until the late 1990's. Moreover, public schools are required to make public any materials relating to child abuse by one of their employees. As Representative Green pointed out recently, archdiocesan representatives made it clear that the church would never agree to divulge any files involving its priests or the abuse of children. The archdiocese opposed the window. It knew from other archdioceses that litigation was the only weapon that could force its secrets into the open.

Catholic conferences in each state often tell the press, laity and politicians that window legislation will "bankrupt" the church, that parishes and schools will be closed and services cut. But Cardinal Sean O'Malley, O.F.M.Cap., recently disclosed that the settlements in the Archdiocese of Boston came largely from insurance payouts and the sale of nonreligious property. He emphasized that the decline in services in Boston is attributable to the faithful's rebellion against the hierarchy, resulting in their decreased giving, not to payments made by the archdiocese to the victims.

Children an Absolute Priority

Voice of the Faithful recently approved a platform in full support of the window. The time has come for all lay people to demand justice for the victims of their own institution and to make it plain to the hierarchy that as a society we must make children an absolute priority. That means that legislators must amend the statutes of limitations, even if it means additional liability for the church. (The same goes for the many other institutions with the same problem, of which there are plenty.)

The most positive and proactive move Catholics disgusted with the scandal of sexual abuse by members of the clergy can make right now is to let elected representatives know that children must be a top priority, that the laws on the books in most states are inadequate to protect children and that they are far more likely to vote for a representative actively working for the victims of childhood sexual abuse, not for the perpetrators. Silence perpetuates a system that favors abusers and their enablers over abused children.

The sexual abuse crisis in the Catholic Church has the potential to be positively transformative for the United States. We may well be able to move closer to Jesus' command to protect the children from harm—but only if we act on the lessons learned.

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