TRANSITIONAL JUSTICE AND THE LEGACY OF CHILD SEXUAL ABUSE IN THE CATHOLIC CHURCH

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I. INTRODUCTION

In 1998, John Geoghan, a Massachusetts priest, was defrocked—stripped of any rights to perform as an ordained priest—for molesting children.¹ Four years later, the Archbishop of Boston, Bernard Law, arguably one of the most influential people in the state, resigned from his position upon revelations that he knew of Geoghan’s actions and yet chose to send him to other parishes where he would still be in an environment with minors.² In other parishes around and outside the United States, similar scenarios were, and had been, occurring for years: priests using their positions in order to engage in sexual acts with minors.³ When survivors began to speak up, they and their families were often offered “hush money” in order to prevent a scandal.⁴ Although the sexual abuse crisis came to the forefront in 2002 due to the investigative journalist team at the Boston Globe, reports of the sexual abuse of children by members of the clergy had been

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³ See, e.g., Database of Publicly Accused Priests in the United States, BISHOPACCOUNTABILITY.ORG, http://bishop-accountability.org/priestdb/PriestDBbydiocese.html (last visited Nov. 5, 2017) (click on the hyperlink for each state name to see the priests accused of sexual abuse who are currently working in the diocese).
surfing since the 1950s. In the fifteen years since the story broke, the Catholic Church has pursued various avenues to address the legacy of sexual abuse by members of the clergy. From transferring priests to other parishes, therapy, and out-of-court settlements with the families of victims, the Catholic Church’s response has largely focused on the Church itself, while the victims are swept under the rug.

Although the legacy of the sexual abuse of minors was not confined to one country in particular and the perpetrators were not state actors, analyzing the Church’s response through the lens of transitional justice, a field that examines States’ responses to human rights abuses by a former regime, highlights the gaps in accountability. Transitional justice is not, admittedly, a perfect lens through which to examine the Church’s reaction to an epidemic of abuse, given that the Church is not a State (though it wields power worldwide). Nevertheless, it can be helpful in highlighting accountability gaps in the Church’s response to the sexual abuse crisis.

Transitional justice came about largely in response to the human rights abuses carried out by authoritarian regimes in South America in the 1970s and 1980s. Since then, transitional justice has come to include the myriad responses a government employs in its efforts to seek justice and peace for victims of a prior regime. Yet, assessing the Church’s reaction to the legacy of the sexual abuse of minors through the lens of transitional justice is not as revolutionary as it seems. As the Church tries to redefine itself as an institution that will not tolerate sexual abuse, it is finding itself in a moment of change. Thinking of the legacy of abuse in the Catholic Church in terms of transitional justice can frame its

5 See Karen J. Terry et al., The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950–2010 6, 8 Fig. 1.1 (2011).
6 See id. at 10, 75, 80.
7 Cf. id. at 10, 76.
response in a way that makes it easier to see the gaps in accountability and justice.\textsuperscript{12}

This article argues that, for all its efforts at addressing the sexual assault of minors by priests, the Church has failed the survivors it created. By focusing so much on cleaning its own house, the Church has neglected to address the needs of the victims.\textsuperscript{13} Efforts at accountability that are survivor-focused, such as truth commissions, can help establish a record and acknowledge survivors’ suffering.\textsuperscript{14} Unfortunately, an analysis of the Church’s approach to the epidemic of the sexual abuse of minors by priests reveals that, while the Church has made many changes to address this issue internally, its handling of the survivors and their experience has fallen short.\textsuperscript{15} Nearly all of its initiatives focus on the Church and its personnel, not on those who were on the receiving end of priestly abuse.\textsuperscript{16} Although the Church has set up a commission and the pope has promoted the establishment of a tribunal to try bishops who covered up the abuse,\textsuperscript{17} by and large survivors have been left out of the conversation.

Part I of this article endeavors to relate the scope of the sexual abuse of minors by members of the clergy.\textsuperscript{18} Understanding that many victims choose not to report their experience and that others may come forward years after the harm occurred,\textsuperscript{19} it is, nonetheless, important to try to get a sense of who the survivors and perpetrators are and how the abuse went unnoticed for so long. Over 10,000 people reported being a victim of sexual abuse by a member of the clergy, yet the official commissioned reports say very little about them.\textsuperscript{20}
Part II examines the Church’s response to the revelations of sexual misconduct by priests perpetrated on minors. The efforts to prevent discovery of the epidemic of abuse and to hush survivors led to the reassignment of suspected priests to other dioceses.\textsuperscript{21} Civil and informal monetary settlements likewise kept the misconduct out of the public eye by silencing survivors with money.\textsuperscript{22} Yet, there were also efforts at real accountability, such as the defrocking of priests, widespread reform in the Church pertaining to the safety of minors, the creation of a commission to advise the pontiff on this issue, and a bishops’ tribunal that has yet to be realized.\textsuperscript{23}

All of these mechanisms of accountability and efforts to shield perpetrators from facing justice, examined further in Part III, can be analyzed through the lens of transitional justice. How a State, or, in this case, an institution, does or does not address a legacy of human rights abuses can provide clues that shine light on the strength of that entity’s commitment to justice. Using a transitional justice framework can also highlight the successful efforts to obtain justice for survivors, as well as areas that still need to be addressed.\textsuperscript{24}

Finally, this Article concludes with recommendations on how the Church can best move forward and address, in a comprehensive and survivor-centered way, the harrowing legacy of the sexual abuse of minors by Church clergy. Mechanisms through which the survivors can tell their stories, provide input on the rewriting of Church policies and procedures regarding the sexual abuse of minors, and just a general inclusion of the victims in the narrative can all go far toward acknowledging their experiences and strengthening the Church in the years to come.


\textsuperscript{22} See O’Brien, supra note 2, 399–400, 405.


\textsuperscript{24} See Gallen, supra note 8, at 349.
II. THE SIZE AND SCALE OF THE ABUSE

Although it was the Boston Globe investigative team in 2002 that broke story of the abuse and cover up by the Church,25 “alarm bells had been sounding” for years.26 As early as the 1950s, bishops began referring greater numbers of priests to treatment for the sexual abuse of minors.27 Then, in 1967, the National Association for Pastoral Renewal held a conference at the University of Notre Dame on the problem of sexual abuse by clergy.28 The seventies saw the United States Conference of Catholic Bishops (“USCCB”)29 establish the first program designed to treat priests suffering from psychosexual disorders, including those involving the sexual abuse of minors.30 On a global level, between 1983 and 1987, the Vatican Embassy reported more than 200 cases of abuse of minors by priests;31 by 1992, the number was up to 400.32 Three particular cases of sexual molestation are illustrative of the size and scale of the crisis. First, in 1992, sixty-eight survivors of sexual abuse lodged claims against Father James Porter of Fall River, Massachusetts, eventually settling with the Church.33 The Porter case is particularly notable because it is estimated that he molested 100-200 minors.34 In Massachusetts alone, there are known to have been more than fifty victims in seven years.35 The Porter case received widespread media attention, and led to more


28 Id.


30 See id., Lytton, supra note 27, at 616.


32 Id. at 252.


34 Id.

revelations as survivors became emboldened and started to come forward.36

Then, in the summer of 1983, allegations came to light that Father Gilbert Gauthe from Lafayette, Louisiana “had sexually abused dozens of children.”37 These were the first claims of clergy sexual misconduct to catch the eye of the country, in part because one of the plaintiffs refused the hush money offered by the Church and instead went to court, ultimately settling for one million dollars.38 The accusations eventually got the bishops talking about how to address the problem of abuse by members of the clergy for the first time.39

Finally, in 2002, the Boston Globe broke the case of Father John Geoghan.40 All told, two hundred victims alleged sexual misconduct that occurred during a span of thirty-three years;41 estimates of the total number of survivors are as high as eight hundred.42 Not only was the number of potential survivors staggering, but the cover-up that prevented these claims from being made public was as well. The efforts to conceal the story involved six bishops and caused Cardinal Bernard Law, then the Archbishop of Boston, to resign from his post.43 Moreover, Church documents showed that the Church knew about the abuse, but did not report it to the authorities.44 On the contrary, the Church hierarchy transferred Geoghan to posts where he would still have contact with minors.45 Geoghan was eventually tried, convicted, and sentenced to nine to ten years for molesting one child.46 One Boston Globe article asks, “[w]hy did it take a succession of three cardinals and many bishops 34 years to place children out of Geoghan’s reach?”47

36 See Lytton, supra note 33, at 816.
37 Id. at 815.
38 See id. at 815–16.
39 Id. at 816.
40 See Rezendes, supra note 25.
41 Lytton, supra note 33, at 817.
42 Id.
45 See Rezendes, supra note 25.
47 Rezendes, supra note 25.
This condensed history of the sexual assault of minors by members of the clergy confirms that what the Boston Globe team reported was news, only in the sense that the revelations and widespread nature of the problem were new while the actions were not. Indeed, it is nearly impossible to find a country with a significant Catholic presence that has not experienced serious allegations of the sexual abuse of minors by clergy. In order to gain as comprehensive a picture of this epidemic as possible, it is important to examine both its breadth and depth, especially in terms of survivors and perpetrators.

Once the revelations of sexual abuse became public, the USCCB, a group composed of the members of the Catholic hierarchy, commissioned and funded the research and writing of two reports on the nature and scope as well as the causes and context of the crisis. Written by researchers at the John Jay College of Criminal Justice, the reports paint a bleak picture of the legacy of the sexual abuse of minors by members of the clergy. Independent reports by the United Nations Committee on the Rights of the Child and Child Rights International Network provide additional information, especially relevant to the global nature of the problem.

The number of people who are survivors of sexual abuse by a member of the Church clergy is impossible to know, due to the simple fact that child sexual abuse is frequently underreported, for various reasons. Some survivors do not report their abuse because the perpetrator tells them that they are the only victim, making them less likely to come forward. It is also not uncommon for survivors to wait to tell their story as adults, years after they

48 See A History of Secrecy, Coverups in Boston Archdiocese, supra note 44 (providing Boston Globe’s timeline of reports investigating sexual assault by clergy members).
50 See TERRY ET AL., supra note 5, at 2, 7; NATURE AND SCOPE, supra note 20, at 3.
51 See id.
53 See NATURE AND SCOPE, supra note 20, at 84.
experienced the abuse.\textsuperscript{55} Despite this lack of certainty and inability to capture comprehensive statistics, the Church’s records, combined with outside reports and other sources, can provide some useful data.

According to the USCCB, nearly 17,000 people have reported that they were abused as children by members of the Catholic clergy between 1950 and 2012,\textsuperscript{56} though an estimate by insurance experts puts the figure much higher, at 100,000.\textsuperscript{57} Of those who were abused, four out of five were males, and the majority were post-pubescent.\textsuperscript{58} Unfortunately, these meager statistics are the only ones available about the survivors.\textsuperscript{59} Indeed, the Causes and Context report notes that when there were allegations of abuse, the Church’s response focused on the priests and not the victims.\textsuperscript{60} This emphasis on the clergy is evident in the reports, both of which mention “incidents,” conveniently omitting any mention that there was another person involved.\textsuperscript{61} Most information about the sex abuse epidemic focuses on the alleged perpetrators, while the survivors are largely ignored.\textsuperscript{62}

Yet, the data on the priests accused of sexually molesting children is startling. Of all the priests in active service between 1950 and 2002, three to six percent allegedly engaged in sexual misconduct with children.\textsuperscript{63} A total of 4,392 priests were accused of sexual misconduct with a minor between 1950 and 2002.\textsuperscript{64} One quarter of the allegations were made within ten years of the incident; half were made between ten and thirty years after; and the remaining quarter of the allegations were made more than thirty years after the molestation occurred.\textsuperscript{65}


\textsuperscript{56} See Sarah Childress, What’s the State of the Church’s Child Abuse Crisis?, PBS.ORG (Feb. 25, 2014), http://www.pbs.org/wgbh/frontline/article/whats-the-state-of-the-churchs-child-abuse-crisis/. These statistics are not complete, however, as the data fails to include any allegations made in 2003, for an unknown reason. See id.; Zoll, supra note 55.


\textsuperscript{58} See NATURE AND SCOPE, supra note 20, at 68.

\textsuperscript{59} See, e.g., id.

\textsuperscript{60} TERRY ET AL., supra note 5, at 4.

\textsuperscript{61} See NATURE AND SCOPE, supra note 20, at 26.

\textsuperscript{62} The second USCCB-commissioned report all but admits this: “There is little evidence that diocesan leaders met directly with victims before 2002.” TERRY ET AL., supra note 5, at 4.

\textsuperscript{63} See NATURE AND SCOPE, supra note 20, at 26–27; TERRY ET AL., supra note 5, at 8.

\textsuperscript{64} See NATURE AND SCOPE, supra note 20, at 26; TERRY ET AL., supra note 5, at 8.

\textsuperscript{65} NATURE AND SCOPE, supra note 20, at 94.
The allegations of abuse did not stop after the crisis was revealed in 2002. In fact, a 2016 audit of reports of sexual abuse by clergy members revealed that in 2015, the number of new reports was up thirty-five percent.66 And in March 2016, three Franciscan friars were charged with enabling and covering up the sexual abuse of children in Pennsylvania.67 The investigation revealed that Brother Stephen Baker, now deceased, had sexually abused a minor, and that his superior ordered a psychological evaluation on Baker.68 The recommendation in the evaluation was to keep Baker away from environments where he might have one-on-one contact with children.69 Instead of heeding the advice in the evaluation, Baker’s superior, the Very Rev. Giles A. Schinelli, reassigned him to work at a high school, where he interacted with minors regularly and engaged in one-on-one contact.70 These charges, for covering up the abuse, rather than perpetrating it, are an acknowledgment that authorities are starting to take a closer look at those who turned a blind eye to the sexual abuse of minors. Prior to these charges, only a bishop in Missouri and a monsignor in Pennsylvania had been convicted of charges related to a cover-up (though the monsignor’s conviction has been overturned).71

The abuse was not, of course, limited to the United States. For example, in the mid-1990s, roughly forty clerics in Australia faced accusations of molestation.72 In other countries around the world, reports like the ones commissioned by the USCCB were likewise authorized, namely in Ireland, Belgium, Switzerland, Germany, and


69 Id.

70 Id.


72 CHILD RTS INT’L NETWORK, supra note 12, at 9.
the Netherlands. In all of these countries, as well as twenty-seven more, there have been allegations of priests abusing minors.

III. THE CHURCH RESPONDS

In 1985, Fathers Thomas Doyle and Michael Peterson, along with lawyer Ray Mouton, worked together to produce a confidential report analyzing the clergy sex abuse and the poor way the Church was handling it. Their document recommended, among other actions, reporting allegations and cooperating with the police. The document contains analysis of civil law, criminal law, canon law, and clinical and medical considerations, as well as a crisis plan to be studied in order to develop a comprehensive response to the legacy of sexual molestation of minors by priests. Instead, the Church decided not to implement guidelines in the report, paving the way for a long road of inaction and concealment.

The Church’s response to the sexual abuse of minors by the clergy has taken various forms throughout the years, but an overarching theme has been its “persistent failure” to reveal the extent of the problem. Its efforts have included the removal, transfer, or defrocking of accused priests; sanctions pursuant to criminal trials; reform of Church laws and policies; and compensation to survivors, via civil suits and out-of-court settlements. None of its responses, however, appear to have been motivated by a desire to right any

73 See id. at 10.
74 According to the title pages at the end of the movie Spotlight, there have been allegations of abuse of minors perpetrated by members of the clergy in the following countries: United States, Australia, Nigeria, Canada, Brazil, New Zealand, Peru, Argentina, Germany, Sierra Leone, Philippines, South Africa, Colombia, Chile, Venezuela, England, Ireland, Kenya, France, Mexico, Spain, Scotland, India, Poland, Croatia, Senegal, Austria, Northern Ireland, Dominican Republic, Tanzania, and Norway. See SPOTLIGHT (Open Road Films 2015). This number translates to over fifteen percent of all countries in the world.
76 See id. at Crim. Law Considerations sec. 1; Childress, supra note 56.
78 See MOUTON & DOYLE, supra note 75 at Significant Clinical/Medical Considerations.
79 See Childress, supra note 56.
80 Lytton, supra note 27, at 616.
wrongs. On the contrary, “the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above . . . child[ren]’s best interests.” As one activist stated, “[addressing the abuse crisis is] not something they innovated, they were forced into it.”

Initially, the Church sought to keep the allegations under wraps. In 2001, Cardinal Ratzinger, who would become pope in 2005, sent a letter to all bishops regarding the Church’s policy on the abuse of minors. As per this policy, the Church insisted on a code of silence for all of the members of the clergy regarding the abuse. A violation of the code could result in excommunication.

More troubling still is that this document required that victims also swear an “oath of secrecy,” thereby preventing them from coming forward and seeking help outside the Church. Ratzinger’s letter moreover included the assertion that the Church, as opposed to civil authorities, retained primary authority over the allegations and investigations. In addition, during this time—before the Boston Globe team made the allegations common knowledge—the Church also quietly transferred priests accused of abuse to other parishes.

Once the allegations were made public in 2002, the Church could no longer be passive. Hundreds of priests have been defrocked or demoted, including at least 848 since 2004, with nearly 400 stripped of their position in between 2011 and 2012.
Bishops, however, have fared better, facing little to no disciplinary action for their failure to intervene or for ignoring the behavior of predatory priests. The Pope proposed a tribunal to judge bishops who helped conceal the abuse and the abusers, yet the initiative has not gotten off the ground.

In the wake of the revelations of sexual violence, the Church also instituted several reforms and initiatives to protect children and to prevent further abuse. Some of these policies are quasi-legal in nature, while others are focused more on education and abuse prevention. Unfortunately, some of the positive effect of these reforms is tempered by the fact that they were all reactive, as opposed to proactive; the Church only acted when confronted with the public discovery of what it already knew was happening. Perhaps, if it had acted in a way that put the victims first, and not the clergy, the reaction to the Church’s response to the crisis would have been met with less criticism.

One of the Pope’s first actions was to amend Vatican law to indicate that sexual violence against minors is a crime. The Church also instituted a rule stipulating that all allegations be reported to the police, and that all allegations be forwarded to an internal review board that decides whether and how to sanction an abuser. According to training guidelines for new bishops, however, a bishop does not have a duty to report an allegation in the moment when he receives this information, although Cardinal Sean O’Malley of Boston, the president of the Pontifical Commission for the Protection of Minors, quickly countered that church officials “have a ‘moral and ethical responsibility’ to report.”

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93 See Childress, supra note 56.
94 See id.
96 See, e.g., TERRY ET AL., supra note 5, at 10.
97 See, e.g., Childress, supra note 56.
98 See id.
99 See id.
100 See id.
101 See id.
102 Kim Bellware, Vatican Has a Long Way to Go in Righting Clergy Sexual Abuse Issues, HUFFINGTON POST (Feb. 12, 2016), http://www.huffingtonpost.com/entry/catholic-bishops-child-abuse_us_56be33fe4b0b402455c0d8.
Another reform was the adoption of a rule that prevented abusive priests from joining the ministry, but the rule’s effect is offset by the fact that it was accompanied by a provision that raises the bar as to what constitutes a credible claim of abuse. On a positive note, however, in the wake of the revelations, the Church convened a commission to address the crisis, began requiring background checks for priests and employees, and started training teachers and volunteers to spot abuse.

Law enforcement and the criminal justice system also got involved in the Catholic sex abuse crisis. Between 1950 and 2002, a majority of the 384 priests who were charged with a crime was convicted. It is important to note, however, that most victims of sexual molestation by the Church will never file any kind of criminal complaint due to the statute of limitations for these crimes. Of course, there are survivors who do come forward, and whose testimony helps get convictions of priests who have sexually abused minors. Yet, the Church is still trying to make it difficult for survivors to come forward. While eight states have lifted the statute of limitations for abuse victims, a measure that will allow more victims to seek justice, many more states with similar legislation pending have had their proposed laws killed, due in part to bishops and their staff who find it unfair to allow people to come forward years after the abuse happened and memories have faded. Although the statute of limitations issue does have some merit and the risk of false allegations or allegations that cannot be substantiated is concerning, the Church’s “fight” over the statutes smacks of a desire to sweep as much under the rug as possible.

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104 Childress, supra note 56.
105 See Winfield, supra note 95.
107 Id.
108 See NATURE AND SCOPE, supra note 20, at 61.
109 Id. 252 priests were convicted (nearly sixty-six percent of those charged). Id.
113 Id.
114 See id.
115 Id.
While there are priests who have been convicted for the abuse of minors, bishops largely escaped liability for concealing what happened or failing to report it.\textsuperscript{116} It has only been recently that bishops are being held accountable for their role.\textsuperscript{117} For example, Monsignor William Lynn from the Archdiocese of Philadelphia was convicted of failing to protect minors from possible abuse.\textsuperscript{118} His response to allegations of sexual abuse was to transfer or reassign known abusers to other parishes.\textsuperscript{119} Monsignor Lynn was the first high-ranking official to be held accountable for his role in putting children at risk.\textsuperscript{120} To be sure, there have been others, but the level of accountability through the criminal justice system has fallen far short of what one might imagine for such a widespread epidemic.\textsuperscript{121}

In addition to the traditional criminal liability for the bishops, the Pope also approved the creation of a tribunal in June 2015 to try cases of bishops accused of covering up allegations of sexual abuse by priests.\textsuperscript{122} Although seemingly a good and necessary idea, the tribunal has yet to progress past the idea phase, and there has been scant information about this initiative since its announcement.\textsuperscript{123} The establishment of the tribunal—or at least the announcement of its possible future establishment—followed the launch of a Vatican Commission for the Protection of Minors.\textsuperscript{124} The Commission has an expansive mandate, which includes promoting “the protection of the dignity of minors and vulnerable adults, using the forms and methods, consonant with the nature of the Church, which [the commissioners] consider most appropriate.”\textsuperscript{125} Originally, the

\textsuperscript{116} See Zoll, supra note 55.
\textsuperscript{117} See, e.g., id.
\textsuperscript{118} CHILD RTS. INT’L NETWORK, supra note 12, at 14.
\textsuperscript{119} Id.
\textsuperscript{120} See, e.g., id.
\textsuperscript{121} In addition to Monsignor Lynn, Bishop Robert Finn of Kansas was also found guilty of shielding an abusive priest. Id.
\textsuperscript{123} Cf. Nicole Winfield, Pope Scraps Abuse Tribunal for Negligent Bishops, AP NEWS (June 4, 2016), https://apnews.com/9389bd5d697fe410aad34935c4aa9da9a (showing that the tribunal idea has since been abandoned); see Winfield, supra note 95.
Commission consisted of eighteen members, including two survivors. One of the survivors, however, a British lobbyist working to combat child sexual abuse, was given a leave of absence from his role on the Commission. It is as yet unclear if the member, Peter Saunders, was asked to leave due to his outspoken criticism of the Commission, or because of a putative conflict of interest created by his lobbyist work. Regardless of the reason, the Commission, and the as-of-now imaginary tribunal, have yet to leave a real mark with regard to the Church’s efforts to institute new policies and procedures and to make headway for the protection of minors from sexual abuse by members of the clergy.

Although the Church’s response can hardly be said to be survivor-focused, one avenue for victims has been to pursue civil claims for monetary damages or settle claims out of court. In fact, where there have been civil settlements for the abuse of a minor by a member of the clergy, the payouts to survivors and their families have been substantial. In fact, estimates of how much the Church has paid out in settlements to survivors go as high as $4 billion.

The Catholic Church certainly has been aware—for decades—of the problems of priests sexually assaulting children, and of bishops trying to sweep the allegations away by transferring priests to other parishes. One would think, then, that members of the Church hierarchy would respond in a thoughtful and searching way, instead of in a way that protected its people, preserved its institutional reputation, and allowed the abuse to continue: according to the Vatican, over 3,000 credible allegations of abuse were reported between 2004 and 2013.

127 See id.
128 See id.
131 See id.
132 See Boorstein, supra note 84. The Child Rights International Network estimates that the Church has paid out $3 billion in settlements. Child Rts. Int’l Network, supra note 12, at 13. Additionally, an economics study posits that the legacy of sexual abuse of minors by priests continues to cost the Church $2.36 billion every year in charitable giving. Boorstein, supra note 84.
133 See, e.g., TERRY ET AL., supra note 5, at 89; Boorstein, supra note 84.
134 See How the Vatican is Handling Sexual Abuse Cases, supra note 92. Note that this
Repeatedly that it will not tolerate sexual abuse and has expressed regret for the experiences of the survivors, its primary focus has so far been one of trying to save face. As the next section illustrates, of the wide range of mechanisms of accountability available in situations of institutional human rights abuses, the Church has chosen to implement or cooperate with ones that will be most likely to preserve its standing. The victims play a very minimal role, if any.

IV. THE CHURCH’S RESPONSE THROUGH THE LENS OF TRANSITIONAL JUSTICE

It may appear at first blush that the Church’s multi-faceted response to the scourge of sexual abuse against minors is adequate and appropriate. The Church has, in fact, taken several measures to address the legacy of the sexual abuse of children. On closer look, however, there are accountability gaps that require greater scrutiny, most prominently those relating to the victims.

Evaluating the Church’s response through the lens of transitional justice, a field that examines the myriad ways states reckon with large-scale human rights abuses, can highlight these gaps so steps can be taken to remedy the shortcomings in the Church’s response. Most glaringly, the near complete focus on preserving the reputation of the Church at the expense of the survivors underscores a missed opportunity for the Church to acknowledge and learn from those it hurt. Engaging with victims and making them the focus of any plan for accountability or reconciliation is in the Church’s best interests, despite its actions to the contrary.

Ivan Šimonović, the Assistant Secretary-General for Human Rights at the United Nations, offers a way to think about how attitudes about the human rights violations correlate to the responses to them, in this case how the Church is handling the sexual abuse of minors by members of the clergy. A state or institution that wants to forget the past and pardon any wrongdoers

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number reflects the number of credible cases worldwide. See id.


137 See Winters, supra note 124.

might prefer the use of amnesties, while the use of criminal trials is indicative of a desire to shed light on what happened and punish the guilty. If the goal is to leave the past behind and punish the blameworthy, then lustration—the removal of individuals from their post—or the use of substitute charges may be the chosen path. And when truth is paramount, even in the absence of punishment, then a truth commission can offer an opportunity for anyone involved in the situation, both perpetrator and survivor, to give her story.

In addition to these four mechanisms of accountability, there are other ways to address human rights abuses. Recognizing that survivors cannot always be made whole again, reparations can nonetheless help them recover some of what they lost. They can also function as an acknowledgement of collective responsibility. Moreover, acknowledging the shortcomings or weaknesses in an institution’s laws can lead to new initiatives designed to strengthen the rule of law. An analysis of some of the myriad forms justice can take provides an opportunity to assess the Church’s response to the epidemic of the sexual abuse of minors by Catholic clergy.

A. Mechanisms of Accountability

As stated previously, the Church’s first reaction to the knowledge that its priests were sexually abusing children was to try to keep the information from becoming public. Instead of disciplining priests or taking allegations to the police, the Church opted to transfer suspected priests to other parishes, even knowing that those priests could continue to interact with children. By turning a blind eye to what was happening, the clergy’s decisions to move priests to other posts undoubtedly resulted in the sexual abuse of

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139 See id. at 351.
140 Lustration is a process in which alleged or confirmed perpetrators are either removed from their positions or prevented from obtaining positions of authority. See PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 13 (2001). Lustration laws were common in Eastern Europe in the 1980s. See Roman David, Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989-2001), 28 L. & SOC. INQUIRY 387, 403 (2003).
144 See A History of Secrecy, Coverups in Boston Archdiocese, supra note 44.
145 See CRC Report, supra note 52, ¶ 43(a).
additional children. This policy, even if unstated, essentially gave amnesty to any priest who was reassigned within the Church instead of handing them over to the authorities. There was no real punishment and no acknowledgment that a crime had been committed; the past was forgotten and the perpetrator was pardoned.

Another approach the Church took to the sexual abuse crisis was the forced laicization, or defrocking, of priests deemed to have sexually molested minors. For example, Father Geoghan, the priest who reportedly sexually abused two hundred children, was defrocked in 1998 by Cardinal Bernard Law, the priest who helped cover up Geoghan’s crimes. In this sense they were punished because they were no longer able to act as priests, but there was still no accountability for the Church as a whole. As with the transfer of priests, the forced laicization was a way for the Church to try to conceal the past. The defrocking differs from the relocation of priests in the same way that lustration is distinct from amnesty: the former involves a punishment, while the latter does not.

Criminal and civil sanctions, another mechanism of accountability employed in transitional justice situations, function to establish the truth of the events that unfolded and can be accompanied by punishment. Although the Church did not initiate or encourage the use of the criminal justice system as a way to address the child sexual abuse crisis, through the judicial process those who had experienced the abuse were able to help set the record and to see the imposition of punishment. Moreover, civil

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146 See id.
147 See id. ¶ 43(c), (d), (e).
148 See id.
149 See, e.g., Janet I. Tu & Ray Rivera, Why Priests Forced to Resign Rarely Face Complete Ouster, SEATTLE TIMES (June 2, 2002), http://community.seattletimes.nwsource.com/archive/?date=20020602&slug=defrock02m.
151 See Rezendes, supra note 25; Editorial, A Stain on the Catholic Church, WASH. POST, July 3, 2017, at A18 (noting that the Pope continues to tolerate the Church’s lack of accountability by his silence).
152 See CRC Report, supra note 52, ¶ 43(c); Tu & Rivera, supra note 149.
settlements, through formal or informal procedures can function as an acknowledgment of collective guilt. The message from the employment of these mechanisms of accountability is that there can be no peace without justice.

Law reform can also be an effective tool for demonstrating a commitment to change and acknowledging the pitfalls in the system that allowed the human rights abuses to take place. The repeal, creation, or amendment of existing rules, admittedly not a traditional mechanism of accountability, demonstrates a commitment to preventing the re-creation of an environment that permits these abuses to occur. If the changes are substantial, the message is that “never again” is more than just a common refrain.

Finally, truth commissions provide an avenue through which the truth can be established and recognized, though frequently at the expense of any punishment. They typically involve a setting in which victims and sometimes perpetrators recount their individual story of what happened during the time in which the human rights abuses occurred. As such, truth commissions focus more on the survivors, who can be marginalized or left out completely of the employment of other mechanisms of justice.

All of these forms of accountability can function as a way to reunite a broken society, help heal wounds, and enable the institution to move forward in a productive and thoughtful manner. What will not help any situation, however, is an institution that ignores or just generally eschews any idea of justice for those who have been wronged and who have suffered. The Church has certainly responded to the epidemic of sexual molestation of minors by priests, but, as seen below, its efforts largely fall short in addressing the needs of the survivors.

155 See Gray, supra note 143, at 65.
156 See, e.g., id. at 76–77.
157 See Ernesto Sabato, Nunca Más (Never Again), NAT'L COMM. ON THE DISAPPEARANCE OF PERSONS, http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_002.htm (last visited Sep. 15, 2017) (explaining that the phrase “Nunca Más” or “Never Again” comes from the title of the Argentine truth commission report that was written after the end of the military dictatorship).
158 See William A. Schabas, Truth Commissions and Courts Working in Parallel: The Sierra Leone Experience, 98 AM. SOC'Y INT'L PROC 189, 189 (2004) (explaining that occasionally a truth commission and a tribunal will work together. The most well-known example is that of Sierra Leone).
159 See id. at 190.
160 See Mark Vasallo, supra note 141, at 159–60. Amnesties, lustrations, law reform, and, to an extent, trials all focus primarily on the perpetrators, often leaving survivors on the periphery, if included at all. See id. at 181.
161 See Gibson, supra note 23.
B. Evaluating the Church’s Response

The actions the Church took once the revelations of the rampant sexual abuse of minors by members of the clergy became public (and unfortunately only when they became public)\(^\text{162}\) were by all means ambitious. The Church undertook reforms in its policies regarding the protection of children, its rules concerning priests accused of sexual molestation, and established a commission to provide guidance on how best to protect children.\(^\text{163}\) Moreover, it began to cooperate more with the criminal and civil justice systems and paid out large sums to the victims.\(^\text{164}\)

The preceding analysis of the Church’s response to the abuse in light of principles of transitional justice makes clear that its focus was on emerging from this crisis with the least amount of damage to the institution as possible. The transfer of priests suspected of sexually molesting children was done to keep them out of the spotlight.\(^\text{165}\) The forced laicization of the same priests, while punitive, was another way for the Church to take care of its “personnel problem,” without advertising what was going on behind the scenes.\(^\text{166}\) With the initiation of criminal proceedings and the stalwart reporting of the Boston Globe, however, the crisis became public.\(^\text{167}\) Even still, because the nature of the crimes committed generally leads to underreporting,\(^\text{168}\) far fewer priests faced criminal charges than one might imagine. Even the civil and out-of-court settlements\(^\text{169}\) kept the epidemic of sexual molestation by priests of minors under the radar.

\(^\text{162}\) See id.


\(^\text{164}\) See United States Conf. of Cath. Bishops, supra note 163, Art. 4; Rachel Zoll, Costs to Catholic Church in Sex Abuse Top $1 Billion, Phila. Inquirer, June 10, 2005, at A02.


\(^\text{166}\) See, e.g., Tu & Rivera, supra note 149.

\(^\text{167}\) See Rezendes supra note 25.

\(^\text{168}\) See Nature and Scope, supra note 20, at 5.

All of these mechanisms of accountability that the Church employed have one feature in common: they were employed to protect the Church as an institution as much as possible, and therefore largely ignored the survivors. If the Church really is committed to addressing the epidemic of sexual abuse perpetrated on minors by members of the clergy, it would be wise to redirect its efforts toward engaging with victims and ascertaining what corrective measures can help stop the sexual abuse and salve the wounds of those who have already been harmed.

One potent mechanism of accountability that the Church has not implemented is the establishment of a forum like a truth commission in which victims can tell share their experiences in a formal setting that then creates the narrative of what happened. Because religion and the Church is still part of survivors’ lives, an acknowledgement of what they went through could help them move on. In fact, Barbara Blaine, the founder of SNAP, the Survivors Network of those Abused by Priests, has said, regarding Father Thomas Doyle’s continued support of the survivors, “‘[his] response is nothing revolutionary’... ‘It’s just a simple acknowledgment and understanding of pain.’”

A truth commission, set up to hear testimony from survivors and those involved in the abuse and subsequent cover-up, would create a historical record that could stand up in the faces of those who would argue that the abuse did not occur or that it was not as widespread as was reported. Moreover, the collective nature of the narrative might embolden other victims to come forward to share their stories. The participation of priests at all levels, while not likely to happen, would further strengthen the power of the truth commission’s report.

V. CONCLUSION: MOVING FORWARD

At the end of the movie Spotlight, the title pages list the 206 cities
around the world in which there have been allegations of child sexual abuse by Catholic Church officials. Although the film focuses on the abuse and cover up in Boston, the ending pages highlight the widespread and global nature of the mistreatment of minors by priests and others connected to the Catholic Church. From Albany, New York to Chimbote, Peru, Ollur, India, and Wollongong, Australia, members of the clergy used their position to abuse children. The Church’s response has varied through the years, and has included measures such as transferring accused priests to other parishes, settling cases privately outside of court, adopting reforms to protect children, and removing clergy from the priesthood, among other efforts. What the Church’s response has omitted to do, however, is ask the victims what the Church can do for them—how they could participate in the reassembly of an institution committed to the prevention and protection of minors from sexual abuse by the clergy.

The Church’s chosen path on the issue of the sexual abuse of children has so far focused inward, as opposed to outward. With victims left out of the conversation, with little or no influence, the Church will be unable to make a lasting change that can improve the lives of the survivors and their families. Creating a space for victims to tell their stories, to start or continue down a path of healing, could in turn result in a stronger and more compassionate

176 See, e.g., Mcphillips, supra note 175.
177 See SPOTLIGHT (Open Road Films 2015) (including Albany, NY on the list of other cites where there have been allegations of child sexual abuse by Catholic Church officials).
178 See Mcphillips, supra note 175
179 See id.
180 See id.
183 See id.
184 See Gibson, supra note 23.
186 See id.
institution.