

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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¹ See CNN, *Priest in Sex Abuse Scandal Killed in Prison*, CNN.COM (Aug. 23, 2003), <http://www.cnn.com/2003/US/08/23/geoghan/>.

² See Rev. Raymond C. O’Brien, *Clergy, Sex and the American Way*, 31 PEPP. L. REV. 363, 373, 374 (2004). Law died on December 20, 2017 in Rome. One member of the Spotlight team stated that Law was “one of the greatest enablers of sexual abuse in the history of the world.” Amy B. Wang, *Bernard Law and the Civil Rights Legacy He Squandered by Covering up Clergy Sex Abuse*, WASH. POST. (Dec. 20, 2017), https://www.washingtonpost.com/news/retropolis/wp/2017/12/20/bernard-law-and-the-civil-rights-legacy-he-squandered-by-covering-up-clergy-sex-abuse/?utm_term=.5971381c05d3.

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).

⁴ See Michelle Boorstein & Julie Zauzmer, *“Payout Chart” For Molestation: Secret Archive Held Chilling Details of Clergy Abuse*, WASH. POST (Mar. 3, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/03/abuse-survivor-advocates-see-hope-in-spotlight-and-in-new-report-alleging-widespread-cover-up/?utm_term=.f7ef8e6598d1.

surfacing since the 1950s.⁵ 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.⁶ 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.⁷

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,⁸ 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).⁹ 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.¹⁰ 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.¹¹ 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.

⁸ James Gallen, *Jesus Wept: The Roman Catholic Church, Child Sexual Abuse and Transitional Justice*, 10 INT'L J. TRANSITIONAL J., Mar. 8, 2016, at 334, 336.

⁹ The Church is headquartered in Vatican City/Holy See. Though not a country, the Holy See has observer status at the United Nations and largely functions as a country. See generally CIA, *Government: Holy See (Vatican City)*, WORLD FACTBOOK, (Sept. 6, 2017), <https://www.cia.gov/library/publications/the-world-factbook/geos/vt.html> (last visited Nov. 5, 2017).

¹⁰ See Elizabeth B. Ludwin King, *A Conflict of Interests: Privacy, Truth, and Compulsory DNA Testing for Argentina's Children of the Disappeared*, 44 CORNELL INT'L L.J. 535, 556 (2011).

¹¹ See, Richard J. Goldstone, *Peace Versus Justice*, Address at the Law School of the Univ. of Las Vegas, Oct. 15, 2005, in 6 NEV. L.J. 421, 421, 422–23 (2006).

response in a way that makes it easier to see the gaps in accountability and justice.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.¹³ Efforts at accountability that are survivor-focused, such as truth commissions, can help establish a record and acknowledge survivors' suffering.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.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.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,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.¹⁸ Understanding that many victims choose not to report their experience and that others may come forward years after the harm occurred,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.²⁰

¹² The sexual molestation of children by members of the clergy is widespread, reaching over thirty countries. This article, however, focuses almost exclusively on the epidemic of sexual abuse by priests in the United States. For more on the global situation, see CHILD RTS INT'L NETWORK, CHILD SEXUAL ABUSE AND THE HOLY SEE: THE NEED FOR JUSTICE, ACCOUNTABILITY AND REFORM 5, 9 (2014).

¹³ See Gallen, *supra* note 8, at 349. The terms "victim" and "survivor" are used interchangeably in this article.

¹⁴ See *id.* at 339.

¹⁵ See *id.* at 342, 349.

¹⁶ See *id.* at 342.

¹⁷ See Adrian Walker, *Keeping the Spotlight on the Catholic Church*, BOS. GLOBE (Nov. 2, 2015), <https://www.bostonglobe.com/metro/2015/11/02/the-clergy-abuse-scandal-changed-catholic-church-but-has-church-changed-enough/RQidk9tC28Nk7jyprisGQO/story.html>.

¹⁸ This article focuses primarily on the Catholic sexual abuse crisis in the United States. For a perspective that includes Ireland and Australia, see Gallen, *supra* note 8, at 334.

¹⁹ See Walker, *supra* note 17.

²⁰ See JOHN JAY COLL. OF CRIMINAL JUSTICE, THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002, 10 (2004) [hereinafter NATURE AND SCOPE]. A follow-up report was released in 2011 and looks at the

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.²¹ Civil and informal monetary settlements likewise kept the misconduct out of the public eye by silencing survivors with money.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.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.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.

causes and contexts of the abuse crisis. See TERRY ET AL., *supra* note 5, at 6–7, 8.

²¹ See Thomas P. Doyle & Stephen C. Rubino, *Catholic Clergy Sexual Abuse Meets the Civil Law*, 31 FORDHAM URB. L.J. 549, 587 (2004).

²² See O'Brien, *supra* note 2, 399–400, 405.

²³ See David Gibson, *10 Years After Catholic Sex Abuse Reforms, What's Changed?*, WASH. POST (June 6, 2012), https://www.washingtonpost.com/national/on-faith/10-years-after-catholic-sex-abuse-reforms-whats-changed/2012/06/06/gJQAQMjOJV_story.html?utm_term=.eef080d5ebf8; Abby Ohlheiser, *The Vatican Defrocked 848 Priests for Child Abuse in the Past 10 Years*, ATLANTIC (May 6, 2014), <https://www.theatlantic.com/international/archive/2014/05/the-vatican-defrocked-848-priests-for-child-abuse-in-the-past-10-years/361821>; Elisabetta Povoledo et al., *Pope Setting up Commission on the Sexual Abuse of Children by Priests*, N.Y. TIMES (Dec. 5, 2013), <http://www.nytimes.com/2013/12/06/world/europe/pope-setting-up-commission-on-clerical-child-abuse.html?mcubz=0>; Walker, *supra* note 17.

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

²⁵ See Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOS. GLOBE, (Jan. 6, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>; see also *Spotlight: Clergy Abuse Crisis*, BOS. GLOBE, <http://www.bostonglobe.com/metro/specials/clergy> (last visited Nov. 6, 2017) (providing a collection of all Boston Globe reporting on sexual abuse in the Catholic Church).

²⁶ CHILD RTS INT’L NETWORK, *supra* note 12, at 9.

²⁷ Timothy D. Lytton, *Sex Priests and Secret Codes: The Catholic Church’s 2,000-Year Paper Trail of Sexual Abuse by Thomas P. Doyle et al.*, 22 J. LAW AND RELIGION, no. 2, 2006/2007, at 616 (reviewing THOMAS P. DOYLE ET AL., *SEX, PRIESTS, AND SECRET CODES: THE CATHOLIC CHURCH’S 2,000-YEAR PAPER TRAIL OF SEXUAL ABUSE* (2006)).

²⁸ *Id.*

²⁹ The USCCB is an assembly of the Catholic hierarchy. See *About USCCB*, U.S. CONF. OF CATH. BISHOPS, <http://www.usccb.org/about/index.cfm> (last visited Nov. 6, 2017).

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

³¹ Beth Wilbourn, *Suffer the Children: Catholic Church Liability for the Sexual Abuse Acts of Priests*, 15 REV. LITIG. 251, 251–52 (1996).

³² *Id.* at 252.

³³ Timothy Lytton, *Clergy Sexual Abuse Litigation: The Policymaking Role of Tort Law*, 39 CONN. L. REV. 809, 816 (2007).

³⁴ *Id.*

³⁵ See Elizabeth Mehren, *Three Years Ago, Frank Fitzpatrick Says He Realized He Had Been Raped by His Priest as A Child*, L.A. TIMES (June 7, 1992), http://articles.latimes.com/1992-06-07/news/vw-334_1_sexual-abuse.

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.*

⁴³ Law was then transferred to Rome. Stephanie Kirchgaessner & Amanda Holpuch, *How Cardinal Disgraced in Boston Child Abuse Scandal Found a Vatican Haven*, GUARDIAN (Nov. 6, 2015), <https://www.theguardian.com/world/2015/nov/06/cardinal-bernard-law-disgraced-boston-child-abuse-scandal-vatican-haven-spotlight>.

⁴⁴ See *A History of Secrecy, Coverups in Boston Archdiocese*, BOS. GLOBE (Oct. 13, 2015), <https://www.bostonglobe.com/news/special-reports/2015/10/13/bcom-spotlight/H1GowF3c56Yq7n68ONhJcK/story.html>.

⁴⁵ See Rezendes, *supra* note 25.

⁴⁶ Kevin Rothstein, *Geoghan Settlement is Off*, PATRIOT LEDGER (May 4, 2002), <https://advance.lexis.com/api/permalink/fc788d0c-a7fe-4b20-b747-553863f7234d/?context=1000516>.

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.⁴⁸ 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.⁴⁹ 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.⁵⁰ 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.⁵¹ 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.⁵²

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.⁵³ 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.⁵⁴ 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).

⁴⁹ See CHILD RTS INT'L NETWORK, *supra* note 12, at 9. One indication of the continuing and international scope of the Catholic sex abuse crisis is in Australia, where 4,440 people have claimed to be victims of clergy abuse between 1980 and 2015. *Child Abuse: 7% of Australian Catholic Priests Alleged to be Involved*, BBC NEWS (Feb. 6, 2017), <http://www.bbc.com/news/world-australia-38877158>. A commission looking into the epidemic estimates that seven percent of Australian Catholic priests abused children between 1950 and 2010. *Id.*

⁵⁰ See TERRY ET AL., *supra* note 5, at 2, 7; NATURE AND SCOPE, *supra* note 20, at 3.

⁵¹ See *id.*

⁵² See generally, CHILD RTS INT'L NETWORK, *supra* note 12, at 5; Comm. on the Rts. of the Child, Convention on the Rights of the Child, *Concluding Observations on the Second Periodic Report of the Holy See*, ¶¶ 43–44, U.N. Doc. CRC/C/VAT/CO/2 (Feb. 25, 2014) [hereinafter CRC Report]. CRIN is an advocacy, policy, and research organization that supports the work of the CRC. *Information About CRIN*, CHILD RTS INT'L NETWORK, <https://www.crin.org/en/ho/me/about> (last visited Nov. 7, 2017).

⁵³ See NATURE AND SCOPE, *supra* note 20, at 84.

⁵⁴ See CHILD RTS INT'L NETWORK, *supra* note 12, at 13.

experienced the abuse.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 2012,⁵⁶ though an estimate by insurance experts puts the figure much higher, at 100,000.⁵⁷ Of those who were abused, four out of five were males, and the majority were post-pubescent.⁵⁸ Unfortunately, these meager statistics are the only ones available about the survivors.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.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.⁶¹ Most information about the sex abuse epidemic focuses on the alleged perpetrators, while the survivors are largely ignored.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.⁶³ A total of 4,392 priests were accused of sexual misconduct with a minor between 1950 and 2002.⁶⁴ 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.⁶⁵

⁵⁵ Cf. Rachel Zoll, *The Clergy Sex Abuse Scandal in the US Catholic Church*, EUREKA TIMES-STANDARD (Sept. 26, 2015), <http://www.times-standard.com/general-news/20150926/the-clergy-sex-abuse-scandal-in-the-us-catholic-church> (detailing the lengthy history).

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.

⁵⁷ George Joseph, *US Catholic Church Has Spent Millions Fighting Clergy Sex Abuse Accountability*, THE GUARDIAN (May 12, 2016), <https://www.theguardian.com/us-news/2016/may/12/catholic-church-fights-clergy-child-sex-abuse-measures>.

⁵⁸ See NATURE AND SCOPE, *supra* note 20, at 68.

⁵⁹ See, e.g., *id.*

⁶⁰ TERRY ET AL., *supra* note 5, at 4.

⁶¹ See NATURE AND SCOPE, *supra* note 20, at 26.

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.

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

⁶⁴ See NATURE AND SCOPE, *supra* note 20, at 26; TERRY ET AL., *supra* note 5, at 8.

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

⁶⁶ Scott Malone, *Audit of U.S. Catholic Church Shows Sharp Spike in Sex Abuse Reports*, REUTERS (May 20, 2016), <http://www.reuters.com/article/us-usa-church-sexcrimes-idUSKCN0YB2LG>.

⁶⁷ See Julie Zauzmer, *In 'Groundbreaking' Case, Franciscan Friars Charged With Allowing Abuse of At Least 80 Kids*, WASH. POST (Mar. 15, 2016), https://www.washingtonpost.com/news/acts-of-faith/wp/2016/03/15/in-groundbreaking-case-franciscan-friars-charged-with-allowing-abuse-of-at-least-80-kids/?utm_term=.90d06a9163a9.

⁶⁸ See Peter Smith, *Franciscan Leaders Charged in Abuse Case: Grand Jury Says They Failed to Prevent Child Molestations, Covered Up*, PITTSBURGH POST-GAZETTE (Mar. 16, 2016), <http://www.post-gazette.com/news/state/2016/03/15/Attorney-general-Kane-criminal-charges-involving-Franciscan-religious-order-in-central-Pennsylvania/stories/201603150134>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Jeremy Roebuck, *Court Stands By Decision Overturning Cleric's Conviction*, PHILLY.COM (Feb. 11, 2016), http://www.philly.com/philly/news/20160211_Court_stands_by_decision_overturning_cleric_s_conviction.html; Michelle Boorstein & Abby Ohlheiser, *Vatican Accepts Resignation of U.S. Bishop Convicted of Sex Abuse Coverup*, WASH. POST (Apr. 21, 2015), https://www.washingtonpost.com/news/acts-of-faith/wp/2015/04/21/vatican-accepts-resignation-of-kansas-bishop-convicted-of-sex-abuse-coverup-but-remained-in-office/?utm_term=.65d3dc8069c4.

⁷² CHILD RTS INT'L NETWORK, *supra* note 12, at 9.

the Netherlands.⁷³ In all of these countries, as well as twenty-seven more,⁷⁴ 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.⁷⁵ Their document recommended, among other actions, reporting allegations and cooperating with the police.⁷⁶ The document contains analysis of civil law, criminal law, canon law,⁷⁷ 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.⁷⁸ Instead, the Church decided not to implement guidelines in the report, paving the way for a long road of inaction and concealment.⁷⁹

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.⁸⁰ 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.⁸¹ 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.

⁷⁵ See F. RAY MOUTON & REV. THOMAS P. DOYLE, THE PROBLEM OF SEXUAL MOLESTATION BY ROMAN CATHOLIC CLERGY: MEETING THE PROBLEM IN A COMPREHENSIVE AND RESPONSIBLE MANNER (Jan. 1985), http://www.bishop-accountability.org/reports/1985_06_09_Doyle_Manual/.

⁷⁶ See *id.* at Crim. Law Considerations sec. 1; Childress, *supra* note 56.

⁷⁷ See generally MOUTON & DOYLE, *supra* note 75 at *Significant Crim. and Civil Law Considerations*. For more on canon law, see Rev. John J. Coughlin, *The Clergy Sexual Abuse Crisis and the Spirit of Canon Law*, 44 B.C.L. REV 977, 978 (2003).

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.

⁸¹ *Pope Declares 'Zero Tolerance' for Sexual Abuse in Catholic Church*, GUARDIAN (Jan. 2, 2017), <https://www.theguardian.com/world/2017/jan/03/pope-declares-zero-tolerance-for-sexual-abuse-in-catholic-church>.

wrongs.⁸² 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.”⁸³ As one activist stated, “[addressing the abuse crisis is] not something they innovated, they were forced into it.”⁸⁴

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.⁸⁵ As per this policy, the Church insisted on a code of silence for all of the members of the clergy regarding the abuse.⁸⁶ A violation of the code could result in excommunication.⁸⁷ More troubling still is that this document required that victims also swear an “oath of secrecy,”⁸⁸ 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.⁸⁹ 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.⁹⁰

Once the allegations were made public in 2002,⁹¹ the Church could no longer be passive. Hundreds of priests have been defrocked or demoted, including at least 848 since 2004,⁹² with nearly 400 stripped of their position in between 2011 and 2012

⁸² See, e.g., Lytton, *supra* note 27, at 615, 616.

⁸³ CRC Report, *supra* note 52, ¶ 29.

⁸⁴ Michelle Boorstein, ‘Spotlight’ Portrayal of Sex Abuse Scandal is Making the Catholic Church Uncomfortable All Over Again, WASH. POST (Nov. 9, 2015), https://www.washingtonpost.com/news/acts-of-faith/wp/2015/11/09/spotlight-portrayal-of-sex-abuse-scandal-is-making-the-catholic-church-uncomfortable-all-over-again/?utm_term=.0fd50d104fd7.

⁸⁵ See Letter from Cardinal Joseph Ratzinger to Bishops of the entire Catholic Church and other Ordinaries and Hierarchs having an interest, Congregation for the Doctrine of Faith Letter Regarding the More Serious Offenses (May 18, 2001) (available at <http://www.bishop-accountability.org/resources/resource-files/churchdocs/EpistulaEnglish.htm>).

⁸⁶ See CRC Report, *supra* note 52, ¶ 43(d). Moreover, Ratzinger maintained that the Church should keep all evidence in cases confidential until ten years after the minor turned eighteen. Elias Groll, *The Skeletons in Benedict’s Closet*, FOREIGN POL’Y. (Feb 22, 2013), <http://foreignpolicy.com/2013/02/22/the-skeletons-in-benedicts-closet/>.

⁸⁷ See CRC Report, *supra* note 52, ¶ 43(d).

⁸⁸ Benjamin David Landry, Comment, *The Church Abuse Scandal: Prosecuting the Pop Before the International Criminal Court*, 12 CHI. J. INT’L L 341, 343 (2011).

⁸⁹ See Groll, *supra* note 86.

⁹⁰ See, e.g., CRC Report, *supra* note 52, ¶ 43(a).

⁹¹ See Boorstein, *supra* note 84.

⁹² See *How the Vatican Is Handling Sexual Abuse Cases*, WASH. POST, https://www.washingtonpost.com/world/europe/how-the-vatican-is-handling-sexual-abuse-cases/2015/03/15/111aaaa4-c9bc-11e4-bea5-b893e7ac3fb3_story.html?utm_term=.535b986b91dc (last visited Nov. 8, 2017). Note that the scope of this statistic is international. See *id.*

alone.⁹³ Bishops, however, have fared better, facing little to no disciplinary action for their failure to intervene or for ignoring the behavior of predatory priests.⁹⁴ 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.⁹⁵

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.⁹⁶ Some of these policies are quasi-legal in nature, while others are focused more on education and abuse prevention.⁹⁷ 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.⁹⁸ 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.⁹⁹ The Church also instituted a rule stipulating that all allegations be reported to the police,¹⁰⁰ and that all allegations be forwarded to an internal review board that decides whether and how to sanction an abuser.¹⁰¹ 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,¹⁰² 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."¹⁰³

⁹³ See Childress, *supra* note 56.

⁹⁴ *See id.*

⁹⁵ See Nicole Winfield, *Pope's Abuse Accountability Tribunal Going Nowhere Fast*, AP NEWS (Mar. 9, 2016), <https://apnews.com/fadb9846dc2b41a99df9a310471cf9c5/popes-abuse-accountability-tribunal-going-nowhere-fast>.

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_56bce39fe4b0b40245c5c0d8.

¹⁰³ Rosie Scammell, *Cardinal O'Malley: We Have a Moral and Ethical Responsibility to Report Abuse*, NAT'L CATH. REP. (Feb. 16, 2016), <https://www.ncronline.org/news/vatican/cardinal-omalley-we-have-moral-and-ethical-responsibility-report-abuse>.

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.¹⁰⁴ On a positive note, however, in the wake of the revelations, the Church convened a commission to address the crisis,¹⁰⁵ began requiring background checks for priests and employees,¹⁰⁶ and started training teachers and volunteers to spot abuse.¹⁰⁷

Law enforcement and the criminal justice system also got involved in the Catholic sex abuse crisis.¹⁰⁸ Between 1950 and 2002, a majority of the 384 priests who were charged with a crime was convicted.¹⁰⁹ 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.¹¹⁰ Of course, there are survivors who do come forward, and whose testimony helps get convictions of priests who have sexually abused minors.¹¹¹ Yet, the Church is still trying to make it difficult for survivors to come forward.¹¹² While eight states have lifted the statute of limitations for abuse victims,¹¹³ a measure that will allow more victims to seek justice, many more states with similar legislation pending have had their proposed laws killed,¹¹⁴ 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.¹¹⁵ 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.

¹⁰⁴ Childress, *supra* note 56.

¹⁰⁵ See Winfield, *supra* note 95.

¹⁰⁶ *Issues and Action: Child and Youth Protection 2016 Annual Report*, U.S. CONF. OF CATH. BISHOPS, <http://www.usccb.org/issues-and-action/child-and-youth-protection/> (last visited Nov. 8, 2017).

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.*

¹¹⁰ See CHILD RTS. INT'L NETWORK, *supra* note 12, at 13.

¹¹¹ See, e.g., J. David McSwane, *Catholic Priest Convicted of Molesting Boy, 14*, HERALD-TRIBUNE (Mar. 1, 2013), <http://www.heraldtribune.com/news/20130301/catholic-priest-convicted-of-molesting-boy-14>.

¹¹² Editorial, *The Catholic Church's Defiance and Obstruction on Child Sex Abuse*, WASH. POST (Apr. 19, 2016), https://www.washingtonpost.com/opinions/defiance-and-obstruction-on-child-sex-abuse/2016/04/19/22efc3de-0351-11e6-9d36-33d198ea26c5_story.html?utm_term=.242e62405303.

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.¹¹⁶ It has only been recently that bishops are being held accountable for their role.¹¹⁷ For example, Monsignor William Lynn from the Archdiocese of Philadelphia was convicted of failing to protect minors from possible abuse.¹¹⁸ His response to allegations of sexual abuse was to transfer or reassign known abusers to other parishes.¹¹⁹ Monsignor Lynn was the first high-ranking official to be held accountable for his role in putting children at risk.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.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.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.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.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.”¹²⁵ Originally, the

¹¹⁶ See Zoll, *supra* note 55.

¹¹⁷ See, e.g., *id.*

¹¹⁸ CHILD RTS. INT’L NETWORK, *supra* note 12, at 14.

¹¹⁹ *Id.*

¹²⁰ See, e.g., *id.*

¹²¹ In addition to Monsignor Lynn, Bishop Robert Finn of Kansas was also found guilty of shielding an abusive priest. *Id.*

¹²² See Elisabetta Povoledo & Laurie Goodstein, *Pope Creates Tribunal for Bishop Negligence in Child Sexual Abuse Cases*, N.Y. TIMES (June 10, 2015), <https://www.nytimes.com/2015/06/11/world/europe/pope-creates-tribunal-for-bishop-negligence-in-child-sexual-abus-e-cases.html?mcubz=3>.

¹²³ Cf. Nicole Winfield, *Pope Scraps Abuse Tribunal for Negligent Bishops*, AP NEWS (June 4, 2016), <https://apnews.com/939f8d5d697e410aad34935c4aa9da9a> (showing that the tribunal idea has since been abandoned); see Winfield, *supra* note 95.

¹²⁴ Compare Michael Sean Winters, *The Vatican’s Commission on Child Protection*, NAT’L CATH. REP. (Mar. 25, 2014), <https://www.nronline.org/blogs/distinctly-catholic/vaticans-commission-child-protection>, with Winfield, *supra* note 95.

¹²⁵ Pietro Parolin, *Chirograph of his Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, HOLY SEE, (Apr. 21, 2015), http://w2.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html.

Commission consisted of eighteen members, including two survivors.¹²⁶ 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.¹²⁷ 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.¹²⁸ 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.¹²⁹

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.¹³⁰ 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.¹³¹ In fact, estimates of how much the Church has paid out in settlements to survivors go as high as \$4 billion.¹³²

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.¹³³ 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 2013.¹³⁴ Although the Church has stated

¹²⁶ See Paddy Agnew, *Outspoken Abuse Survivor Ejected from Vatican Commission*, IRISH TIMES (Feb. 7, 2016), <https://www.irishtimes.com/news/social-affairs/outspoken-abuse-survivor-or-ejected-from-vatican-commission-1.2525999>.

¹²⁷ See *id.*

¹²⁸ See *id.*

¹²⁹ See Alexandra Zavis, *Abuse Survivor Quits Pope's Child-Protection Panel, Citing Lack of Cooperation in the Vatican*, L.A. TIMES (Mar. 1, 2017), <http://www.latimes.com/world/la-fg-vatican-priest-abuse-20170301-story.html>.

¹³⁰ See CHILD RTS. INT'L NETWORK, *supra* note 12, at 13.

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,¹³⁵ 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.¹³⁶ 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.¹³⁷

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.¹³⁸ A state or institution that wants to forget the past and pardon any wrongdoers

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

¹³⁵ See Jamal Benomar, *Justice After Transitions*, 4 J. DEMOCRACY 3 (1993), in 1 TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 32 (Neil J. Kritz ed., 1995).

¹³⁶ See William Lobdell & Larry B. Stammer, *4% of U.S. Priests Since 1950 May Have Abused*, L.A. TIMES (Feb. 27, 2004), <http://articles.latimes.com/2004/feb/27/local/me-church27>.

¹³⁷ See Winters, *supra* note 124.

¹³⁸ See Ivan Šimonović, *Attitudes and Types of Reaction Toward Past War Crimes and Human Rights Abuses*, 29 YALE J. INT'L L. 343, 344 (2004).

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.¹³⁹ 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.¹⁴⁰ 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.¹⁴¹

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.¹⁴² They can also function as an acknowledgement of collective responsibility.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵ 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

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).

¹⁴¹ See Mark Vasallo, Comment, *Truth and Reconciliation Commissions: General Considerations and a Critical Comparison of the Commissions of Chile and El Salvador*, 33 U. MIAMI INTER-AM. L. REV. 153, 155–56 (2002).

¹⁴² See Lisa J. Laplante, *Negotiating Reparation Rights: The Participatory and Symbolic Quotients*, 19 BUFF. HUM. RTS. L. REV. 217, 221–22 (2012).

¹⁴³ See David C. Gray, *Extraordinary Justice*, 62 ALA. L. REV. 55, 64–65 (2010).

¹⁴⁴ See A *History of Secrecy, Coverups in Boston Archdiocese*, *supra* note 44.

¹⁴⁵ See CRC Report, *supra* note 52, ¶ 43(a).

additional children.¹⁴⁶ 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.¹⁴⁷ There was no real punishment and no acknowledgment that a crime had been committed; the past was forgotten and the perpetrator was pardoned.¹⁴⁸

Another approach the Church took to the sexual abuse crisis was the forced laicization, or defrocking, of priests deemed to have sexually molested minors.¹⁴⁹ 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.¹⁵⁰ 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.¹⁵¹ As with the transfer of priests, the forced laicization was a way for the Church to try to conceal the past.¹⁵² 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.¹⁵³ 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.¹⁵⁴ Moreover, civil

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.nwsources.com/archive/?date=20020602&slug=defrock02m>.

¹⁵⁰ See Rezendes, *supra* note 25; Pam Belluck, *Judge Rules It Was Too Late to Charge Priest with Rapes*, N.Y. TIMES (Mar. 8, 2002), <http://www.nytimes.com/2002/03/08/us/judge-rules-it-was-too-late-to-charge-priest-with-rapes.html>.

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.

¹⁵³ See, e.g., Mac Daniel & Sacha Pfeiffer, *Next Trial Is Set for February*, BOS. GLOBE (Jan. 19, 2002), http://archive.boston.com/globe/spotlight/abuse/stories/011902_trial.htm.

¹⁵⁴ See Jay Lindsay, *Ex-Boston Priest Gets 9 To 10 Years: The Judge Said John Geoghan, Convicted of Groping a Boy and Accused by Others, "Hid Behind his Collar."*, PHILA. INQUIRER, Feb. 22, 2002, at A04.

settlements, through formal or informal procedures can function as an acknowledgment of collective guilt.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷

Finally, truth commissions provide an avenue through which the truth can be established and recognized, though frequently at the expense of any punishment.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰

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,¹⁶¹ 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/neveragain/neveragain_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)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.¹⁶³ Moreover, it began to cooperate more with the criminal and civil justice systems and paid out large sums to the victims.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 of 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.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.¹⁶⁶ With the initiation of criminal proceedings and the stalwart reporting of the Boston Globe, however, the crisis became public.¹⁶⁷ Even still, because the nature of the crimes committed generally leads to underreporting,¹⁶⁸ far fewer priests faced criminal charges than one might imagine. Even the civil and out-of-court settlements¹⁶⁹ kept the epidemic of sexual molestation by priests of minors under the radar.

¹⁶² See *id.*

¹⁶³ See UNITED STATES CONF. OF CATH. BISHOPS, CHARTER FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE, Arts. 2, 8 (available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-revised-2011.pdf>); see also Jason Horowitz & Laurie Goodstein, *Vatican Sex Abuse Scandal Reveals Blind Spot for Francis*, N.Y. TIMES (June 29, 2017), <https://www.nytimes.com/2017/06/29/world/europe/cardinal-pell-charges-australia.html?mcubz=1&module=ArrowsNav&contentCollection=Europe&action=keypress®ion=FixedLeft&pgtype=article> (explaining that the Church also established a tribunal, but it is, as of now, merely an idea).

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.

¹⁶⁵ See, e.g., *Across the Nation, Priest Sexual Abuse Cases Haunt Catholic Parishes*, USA TODAY (Aug. 23, 2017), <https://www.usatoday.com/story/news/2017/08/23/priest-sexual-abuse-cases-catholic-parishes-nationwide/569221001/>.

¹⁶⁶ See, e.g., Tu & Rivera, *supra* note 149.

¹⁶⁷ See Rezendes *supra* note 25.

¹⁶⁸ See NATURE AND SCOPE, *supra* note 20, at 5.

¹⁶⁹ See, e.g., Walter V. Robinson, *Scores of Priests Involved in Sex Abuse Cases*, BOS. GLOBE (Jan. 31, 2002), <http://www.bostonglobe.com/news/special-reports/2002/01/31/scores-priests-involved-sex-abuse-cases/kmRm7JtqBdEZ8UF0ucR16L/story.html>.

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.¹⁷⁰ 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.¹⁷¹ Because religion and the Church is still part of survivors' lives, an acknowledgement of what they went through could help them move on.¹⁷² In fact, Barbara Blaine, the founder of SNAP, the Survivors Network of those Abused by Priests,¹⁷³ 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.'"¹⁷⁴

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

¹⁷⁰ See TERRY ET AL., *supra* note 5, at 4.

¹⁷¹ See, e.g., Elisabetta Povoledo & Gaia Pianigiani, *Abuse Victim Quits Vatican Commission, Citing 'Resistance'*, N.Y. TIMES (Mar. 1, 2017), <https://www.nytimes.com/2017/03/01/world/europe/vatican-abuse-panel-marie-collins.html?mcubz=3>.

¹⁷² See PHILIP JENKINS, PEDOPHILES AND PRIESTS: ANATOMY OF A CONTEMPORARY CRISIS 136 (1996).

¹⁷³ See *History of SNAP*, SNAP, <http://www.snapnetwork.org/about> (last visited Nov. 11, 2017).

¹⁷⁴ See Leslie Wirpsa, *Blowing the Whistle on Sex Abuse Means New Career for Priest*, NAT'L CATH. REP. (Sept. 15, 1995), http://www.natcath.org/NCR_Online/archives2/1995c/091595/091595g.htm.

around the world in which there have been allegations of child sexual abuse by Catholic Church officials.¹⁷⁵ 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.¹⁷⁶ From Albany, New York¹⁷⁷ to Chimbote, Peru,¹⁷⁸ Ollur, India,¹⁷⁹ and Wollongong, Australia,¹⁸⁰ members of the clergy used their position to abuse children. The Church's response has varied through the years,¹⁸¹ and has included measures such as transferring accused priests to other parishes,¹⁸² settling cases privately outside of court,¹⁸³ adopting reforms to protect children,¹⁸⁴ and removing clergy from the priesthood,¹⁸⁵ among other efforts.¹⁸⁶ 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

¹⁷⁵ See Kathleen McPhillips, *Review: Spotlights Revealing Story of Child Abuse in My Home Town – and Maybe Yours*, BISHOPACCOUNTABILITY.ORG (Feb. 2, 2016), http://www.bishop-accountability.org/news2016/01_02/2016_02_02_Kathleen_Conversation_Review_Spotlight.htm; see also SPOTLIGHT (Open Road Films 2015) (covering the Boston Globe's exposé). *Spotlight* won the Academy Award for Best Picture of 2015. See Kenneth Turan, *Three Reasons Why 'Spotlight' Walked Away with the Oscar for Best Picture*, L.A. TIMES (Feb. 29, 2016), <http://www.latimes.com/entertainment/envelope/la-et-oscars-kenneth-turan-20160229-story.html>.

¹⁷⁶ See, e.g., McPhillips, *supra* note 175.

¹⁷⁷ See SPOTLIGHT (Open Road Films 2015) (including Albany, NY on the list of other cities 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.*

¹⁸¹ See Teresa Watanabe, *Sex Abuse by Clerics—a Crisis of Many Faiths*, L.A. TIMES (Mar. 25, 2002), <http://articles.latimes.com/2002/mar/25/news/mn-34656>.

¹⁸² See Stephen Kurkjian, *68 Victims Settle Porter Case with Catholic Church*, BOS. GLOBE (Dec. 4, 1992), http://archive.boston.com/globe/spotlight/abuse/archives/120492_porter.htm.

¹⁸³ See *id.*

¹⁸⁴ See Gibson, *supra* note 23.

¹⁸⁵ Michelle Boorstein & William Wan, *After Child Abuse Accusations, Catholic Priests Often Simply Vanish*, WASH. POST (Dec. 4, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/02/AR2010120206646.html>.

¹⁸⁶ See *id.*

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