

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

Information for Panel Discussion on structure, governance and culture

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Note: In this document, the witness attempts to discuss applied church governance and its organisational structuring. She makes no attempt to discuss church governance from the discipline or perspective of a canon lawyer.

1. Lack of a comprehensive intellectual framework to understand the Catholic church's organisational framework

In Australia, many nonprofit organisations – education, health and welfare – have their origins in a particular church or religious denomination and remain part of that particular church or denominational structure. Religion is a major motivator of nonprofit activity. While many church organisations were formed to serve their own membership they have become an important part of the wider society, both in the services they provide and their relationship to government and other nonprofit organisations. They are regulated and subsidised, often quite heavily, by government. In some industries, for example health, they compete with commercial providers whilst entitled to their benevolent, and consequently tax-exempt, status.

Curiously, little scholarly attention has been devoted to the large denominational churches nor the human services they sponsor. Most of the work that has been done focuses on church history, the sociology of belief or the social and political impact of religious movements. The majority of research by academic institutions which are conducted by religious bodies have been marginally better, however, their prime area of research activity has been focused on theological issues. Very little attention has been given to the organisational dimensions of churches and other religious bodies in academic settings.

Without a comprehensive intellectual framework it is difficult to bring an objective critique to the issues and dilemmas that confront religious organisations in an increasingly complex environment. And subsequently, identify solutions which both address external expectations, systems of accountability and standards while still preserving the core elements of the sponsoring religious organisation. Some of those issues and dilemmas which have faced the leaders of Catholic church organisations are and have been:

- To what extent should hiring and promotion practices be premised on religious values or denominational membership rather than on the professional expertise of the applicant?
- How can the “decoupling” of religious rituals, artefacts and founding myths from daily practice be avoided?

- If financial constraints prevent the delivery of the organisation's services to those most in greatest need, has its religious mission been fatally compromised?
- How can competing professional and religious standards of "welfare" vs. "charity" (in social service organisations) or of "orthodoxy" vs. "academic freedom" (in schools, colleges and universities) be reconciled?
- What are the implications of religious sponsorship for Catholic church human service organisations? For boards and sponsoring groups?

Religious nonprofits, and indeed those of the Catholic church, have always claimed to operate out of a different, "higher" set of values. Their hiring and promotion criteria, their daily decision-making, and, indeed, their final *raison d'être* are said to flow, not from efficiency, but from their underlying religious mission.

2. A System Based on Religious Authority

Like any large, old continuous organisation the Catholic church has a complex network of roles and differential status, regulations and variety of cultures that shape the way the various formal relationships work. The actual working of governance or the way in which formal authority is exercised in the Catholic church is quite complex.

Authority to govern within the Catholic church, called apostolic authority, is understood to be derived directly from its founder, Jesus Christ. Acceptance of the reality of apostolic authority is a central tenant of the Catholic church and the willingness of its members to accept this tenant is based on faith. Catholic teaching believes:

...that the Pope and bishops receive their authority ultimately from Christ, that their ordination has conferred on them a special grace of the Holy Spirit for their ministry, and that its purpose is to promote the good order and holiness of the church (Sullivan 1997:21).

For the purpose of this paper, it is important to note the church structure called the Public Juridic Person (PJP). A Public Juridic Person is a legal entity under canon law that allows the church's mission to function in the name of the church. Traditionally, religious institutes, dioceses and some lay associations are PJPs.

3. The Hierarchical Nature of church Authority

It is popularly thought that all apostolic authority resides exclusively in the Pope, who delegates it to other bishops. In fact, theologically the authority rests with the entire group of bishops in union with the Pope. Neither the Pope, nor any individual bishop, nor small group of bishops could claim to possess the fullness of apostolic authority, apart from the entire group of bishops. While the relationship between the Pope and the bishops is collegial, the church has also an hierarchical and primal nature (Stagaman, 1994; Buckley,

1998). This dualism can give rise to conflict and tension. Such conflicts have been part of the discourse of the church for centuries (McBrien, 1980:830).

The tension inevitably arises from the difference in focus of the roles of Pope and bishop. A bishop in an individual diocese exercises his judgement according to his knowledge and insights as to what is best for the local church. Hopefully, this is in consultation with those baptised Catholics who belong to his diocese. The Pope exercises his leadership over about 214,000 dioceses. He is expected to implement what he believes to be essential and/or important for the unity of all the dioceses. The primatial nature of the role of the Papacy is intended to ensure the unity of the church. The tension between the local and the universal church (including the over 64,000 religious institutes) is exacerbated by the increasing diversity within the local church and the constant need to reformulate what unity within diversity actually means. Hasenhuttl (1962:17) points out that it does not matter whether authority is exercised in a democratic or dictatorial manner, it is still embedded in a structure of domination within the Catholic church in which all attempts to promote collegiality stop with official authority.

What makes the church different from civil structures is that its most basic understanding of authority is not juridical but theological. Authority in the church is first and foremost a power that derives from a relationship with God (Thiel, 1995:55). Relating the degrees of authority with the ultimate “goodness” of God inevitably links understandings of goodness both with formal authority roles in the church and by default with the person occupying that role.

Authority, in this religious context, is given to an individual or a group, not as a result of any special competence but in virtue of the prescribed roles. Hasenhuttl (1962:16) says that the leading roles in this structure are played by those who are regarded as

...a guarantee of the relative permanence of the whole behaviour pattern. The delegation or relative rights of roles are confirmed by the authority of the leading roles, which rely for their force on a formalised set of gradations which is accepted as real.

Over the last twenty years there have been numerous conflicts throughout the world between members of religious institutes, some clergy and the hierarchical structure of the church. These disputes have included the silencing of individuals from teaching or publishing in matters of theology; the intervention of Roman authority into governance matters of religious institutes and the removal of bishops and members of the clergy or religious institute from elected or public office. A distinguishing feature of these disputes has been the lack of due process and transparency.

Many of these disputes illustrate the tensions and conflicts which can arise in an organisation which relies so heavily on the personal commitment of its members and a complex structure to control and regulate that commitment.

For centuries in the Catholic church clergy, members of religious institutes and the laity have...

...sought to dedicate their lives to the salvation of their ever souls and to the salvation of others by blending an intense pursuit of personal holiness with a highly active apostolic service. (Ebaugh, 1993:18)

Within the “intense pursuit of personal holiness” it is inevitable that such complex organisational arrangements can inhibit individual “pursuit”. Conversely, some of those who exercise authority in this structure may believe they are the guardians of that structure and substitutes for God whom the structure represents.

Discussing such authority figures Stagaman (1999:28) says:

Authority figures become substitutes for God, believed to possess authority directly from God with no reference to community purposes and values and responsible to no one in the exercise of that authority.

4. Religious Institutes – Structurally Dependent with Relative Autonomy

For most of its history, the work of the church has been shared by priests and groups of men and women (clerical religious, brothers, sisters) who belong to religious institutes. These women and men come together to live a communal life which usually reflects the vision of the person who founded the institute. Religious institutes are regulated by the same system of law as ordained ministers, called the Code of Canon Law, which is the compilation of the laws of the Catholic church. Some leaders of religious institutes may be accountable directly to the Pope (in which case they are called a Pontifical Institute); others may be accountable to a diocesan bishop (these are called a Diocesan Institute). This means that the episcopal structure of the church may have varying levels of control over different religious institutes.

One of the offices within the Roman Curia, the Congregation for Institutes of Consecrated Life and for Societies of Apostolic Life, is responsible for, and coordinates religious institutes of, both men and women. This office of the church approves the constitutions of each religious institute and legislates, in an ongoing way, what is and what is not permitted. Through this means religious institutes exist and are legitimated within the broader system of the Catholic church.

Most religious institutes in modern times arose in a particular point in history in response to particular social needs. Wittberg (1994) explains that the earliest form of ordered communal living in the church occurred as early as 200AD. However, she points out that almost eighty percent of today’s religious institutes began in the nineteenth century and orientated around a specific work which the church called an apostolate. The vast majority were involved in teaching in schools with the remainder working in hospitals or welfare services.

In order to commence an apostolate in a local area, the leader of the religious institute must obtain approval from the diocesan bishop. While technically each religious institute is administratively independent of the episcopal structure of the church in terms of its finances, apostolate, living conditions and day-to-day operations, its actual autonomy may be relative to its geographical proximity to the position (Pope or bishop) to whom the institute is directly accountable.

Some religious institutes exist internationally and, therefore, a local grouping, usually called a Province, may lose some administrative independence because of the need to conform to policies and procedures determined internationally. It is recognised that international religious institutes have greater access to resources and the ability to mobilise these resources for their apostolates and to affect the internal politics of the church.

This section shows that religious institutes are structurally dependent on the episcopal structure of the church but are able to exercise a degree of autonomy relative to their formal definition within that structure and their geographical location.

Unfortunately, that “degree of autonomy” enabled religious institutes to develop in solos with little interaction between the various groups of institutes. Prior to the Vatican Council 11, most religious institutes existed in isolation from each other. Their methods of formation of their members was closed which further exacerbated their inability to develop a comprehensive understanding of the world in which they were living and did not always provide new members with the tools they would need to provide professional, caring service in the institute’s works to which they would be sent.

5. Lay Associations and Organisations – A Laity Means to Structural Identity

Lay Associations or Modern Associations of the Christian Faithful trace their origins to societies officially sanctioned in Roman law during the first to third century AD. “These groups generally consisted of poor people bonded together to provide mutual assistance in time of need – especially proper funeral rites and burial” (Amos, 1986:8). They provided the newly emerging and unrecognised church with a societal position which was not readily available to it. However, there is no evidence that the hierarchical church actually approved of these groupings who were acting on its behalf.

It was only when some of these groups began helping at the church’s liturgical rituals in the fourth century that these groups came directly under the church’s supervision. Over the centuries their purpose grew to include works of charity such as giving arms to the poor and visiting the sick.

It was not until the ninth and tenth centuries that lay associations were founded without the intervention of hierarchical authority. The church was then faced with the complex dilemma of determining their relationship to that authority.

During the twelfth and thirteenth centuries lay associations grew in number and purpose. The particular works of charity, which were developed in this period, exist to the present day.

...giving alms to the poor, founding and staffing hospitals for the sick, visiting and ministering to prisoners, soliciting alms for building and repairing churches, providing dowries for poor women, and caring for orphans and widows. (Amos, 1986:12)

The administration of these new tasks meant that these associations had to develop a juridical form within the church so that they could begin owning and administering their own property. The Council of Trent (1545-1563) initiated the first universal legislation on these associations. Despite these restrictions, lay associations continued to flourish and multiply during the sixteenth and seventeenth century. Their growth was hindered during the eighteenth century by negative forces which were affecting the wider church. A revival of lay associations occurred in the nineteenth century which paralleled the growth in apostolic religious institutes.

An example of how complex church governance can become is the formation of the Society of St Vincent de Paul in 1833. Unlike other lay associations, the Society of St Vincent de Paul, despite its success and recognition by the hierarchical church, neither sought nor received any formal approbation by the hierarchical church; it remains a purely lay enterprise. Hence the Society of St Vincent de Paul does not require ecclesiastical approval to establish structural units or “conferences” but the bishop is to exercise “vigilance over them” in areas of faith and morals while those same bishops “have a duty to favour and promote it”. Such an ambiguous identity can also mean that the organisation can claim its relationship to the Catholic church when it is in its best interest to do so while distancing itself from the church when appropriate.

6. Ministerial Public Juridic Persons

For the last 40 years the human service organisations of the church have been increasingly dependent on the participation of lay professionals at both the management and governance level. Traditionally, these organisations have been owned, governed and managed by religious institutes and dioceses. However, society’s expectation with regard to these services has become more diverse and complex. Also over those 40 years, most religious institutes have instituted the civil incorporation their health, welfare and educational organisations. These civil legal arrangements have been done in such a way to preserve the church’s requirements in canon law.

For some years, the leaders of religious institutes have been exploring creative ways to maximise the potential of the laity to move into the governance of their human service organisations in a more significant way. Hence, the development of a new form of church governance – the Ministerial Public Juridic Person. The significance of this new form of

church organisations is that potentially, all levels of governance that are required by both canon and civil law, can be occupied by lay people.

It is significant to note that few Bishops in Australia have civically incorporated their diocesan human service organisations nor have they formed Ministerial PJPs for these works.

7. The Construction of Meaning

While the church's organisations were subject to the social and political realities which have shaped other educational, health and welfare services in Australia, the activity of organising these services was bounded by a world view and system of education, language, symbols, rituals, and ceremonies which both created and recreated a system of meaning which gave these Catholic organisations a particular identity.

The embeddedness also reproduced a symbolic system which bounded the activities of organising the services as well as the identity of the members of sponsoring groups who owned, managed and worked for these organisations.

The construction of meaning within such a comprehensive system has been a significant aspect of the Catholic church throughout its long history. During its 180 years in this country the nature, size, complexity and types of services offered by these church human service organisations have altered considerably. For the first 135 years they existed with a particular church identity which gave rise to organisational forms which were characterised by uniformity and universality in philosophy and management structures. The process of managing these CHSOs supported both the organisation and the wider Catholic church. Because these organisations were embedded in the wider organisational framework of the Catholic church they reproduced the hierarchical structure of the church in their process of institutionalisation. This embeddedness also reproduced a symbolic system which bounded the activities of organising the services as well as the identity of the members of sponsoring groups who owned, managed and worked for these organisations.

The sponsors' influence on the organisations was all pervasive, irrespective of whether they made up the entire workforce or a significant part thereof. Membership within the sponsoring group was defined by the church's law, moral reputation, educational achievement, health (physical and emotional) and financial status. These conditions, together with a closed system of training, ensured a continuity of the sponsor's meaning system within a conservative and stable church. Many of the uniforming determinants of this total institutional settings were transferred to the human services whose sponsoring managers and many workers had experienced such a system of formation. These structural arrangements of church organisations remained without major alteration until the 1960s.

THE OBSERVATIONS OF THE WITNESS ON HOW THE POINTS RAISED IN THIS PAPER MAY RELATE TO THE INSTITUTIONAL ABUSE OF CHILDREN

1. The claim that the church operates out of a different, “higher” set of values to other organisations and entities has led to a societal expectation that these “higher” values would be practically demonstrated in the way the church care for the children in its organisations and institutions.

2. The witness observes that the lack of a comprehensive intellectual framework is the most pressing issue facing the church. Without such a framework, it is difficult to bring an objective critique to the issues and dilemmas that confront church organisations in an increasingly complex environment. It requires openness, organisational agility and creativity. Abilities not easily assembled in an organisation in which there is a paucity of available clergy to become bishops or celibate men wishing to embrace priesthood.

Interestingly, the church group that has been able to be open to the implication of their limitations and organisational fragility has been religious institutes. Over time, they have been able to develop creative responses to their challenges. This has meant they have had to learn how to be open to changes and become organisationally agile. The witness would believe this is because, at least:

- Structurally, religious institutes are relatively autonomous from the hierarchical church.
- The leadership group is elected, by a democratic process, for a limited time.
- The leadership group has become open to feedback on their performance.
- Members have been encouraged to undertake life-long learning and formation in both religious and secular areas.
- Religious institutes have been able to confront the reality of the sustainability of the group.
- Religious institutes have been able to confront their loss of identity in society and sponsorship of hospitals, schools and welfare organisations.
- Religious institutes have learnt, over time, how to work in a collegial and professional manner with lay people at governance and management levels. The emergence of the Ministerial PJPs is a clear outcome of this process.

The witness believes that these structural changes, particularly with regard to professional conduct should substantially reduce the potential for institutional abuse of children in the services offered by religious institutes or Ministerial PJPs.

3. In 2007, it was estimated that the Catholic human service organisations represented 20% of all nonprofit expenditure in Australia and one-third of nonprofit human service expenditure. Collectively, the annual turnover of these organisations was estimated to exceed \$5 billion. Of course, the vast majority of this money represented government funding for direct service delivery which could not be used for church “purposes”.

While many within the church like to quote these statistics as a sign of success, the underside is that such size, diversity and funding could only be achieved with strong institutional church relationships with political and business elites. These relationships could have led to a lack of accountability and transparency with regard to the institutional abuse of children because of the imbalance of power relationships between the abused and the church.

The witness notes in her work with church organisations in countries where the church is not the dominant religion nor the a significant provider of human services (New Zealand, UK, Thailand, Singapore, Myanmar, Guatemala) - the church is not perceived as having political or economic power. Therefore, there is more transparency in general operations relative to the culture of the country. However, in those countries which still deny the existence of institutional abuse of children (Parts of Europe, Africa, India and Asia) it is still possible for the church to have no transparency in these matters.

This has been a significant issue for religious institutes in Australia who are a sub-group of an international religious institute when the leaders of the international group are from countries which deny the existence of the institutional abuse of children. Many of the clerical institutes in Australia have found this a difficult situation to confront with their international leadership. It may also explain why it has been difficult for the whole institutional church to deal with this issue when there would be such opposition and denial from many bishops whose society denies the existence of the institutional abuse of children.

4. Section 6 of this paper provides one explanation of the process by which meaning was constructed in church organisations up to the 1960s. The way in which the processes were embedded in all aspects of the church together with the closed nature of this institutional setting illustrates how the institutional abuse of children in Catholic organisations could develop to the extent that it has. The majority of conditions underlying these processes no longer exist in construction of meaning in the church’s human services today and these conditions continue to decline.

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