Final Submission (Submission IV)
A RESPONSE TO ISSUES PAPER 11

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To what extent have any of the following issues contributed to the occurrence of child sexual abuse in Catholic institutions or affected the institutional response to this abuse? The Royal Commission has identified these issues through case studies, submissions, private sessions, and a review of literature regarding child sexual abuse in Catholic institutions.

Catholic theology and doctrine insofar as it is relevant to the institutional response to child sexual abuse

In an earlier submission (Submission II) I identified as a fundamental contributor to the flourishing of clerical pedophilia in the church the pre-Vatican II conception of itself as a ‘perfect society’. There I argued that this conception of church led to its expression in a structure which claimed to be divine in origin and authority, and necessary to one’s eternal salvation. A crucial part of that structure was the priesthood of Holy Orders, an essential function of which was the policing of conformity to the commandments of God and church through the sacrament of Penance (Confession). Here I want to argue that the understanding of the priesthood of Holy Orders is one of the elements of the old ‘perfect society’ paradigm of church which has continued to resist supersession by the ‘servant church’ paradigm of Vatican II and by doing so has contributed significantly to the protection of pedophile priests from the sanctions they deserve.

The question of whether paedophile priests should be restored to ministry has exercised scholarly minds. In an earlier communication I provided the Royal Commission with an exchange on this subject between professor Germain Grisez, an eminent moral theologian, and Cardinal Avery Dulles SJ who has since died (Dulles 2005; Grisez 2005). In an earlier article Dulles had criticized the proposal before the American bishops to impose a mandatory penalty of laicization on all convicted paedophile priests. Dulles’s argument was that mandatory penalties like this one were unjust because, by not allowing the circumstances of each case to be taken into account in determining the penalty, there was a significant risk that the punishment might be disproportionate to the crime. Grisez replied that Dulles’s argument assumed falsely that ‘some instances of clerical sexual wrongdoing involving a minor do not warrant permanent exclusion from ministry’ (Grisez 2005, p. 27). Grisez went on to support this claim by contending inter alia that the bishops’ previous practice of judging these offences on a case by case basis had resulted in some offenders re-offending. The practice had therefore failed in one of its principal aims of protecting minors from abuse by clergy. Dulles’s response, however, goes beyond considerations of justice according to the principle of ‘proportionality’ and seeks a basis for special treatment of offending priests in the nature of priesthood itself.
Dulles writes: 'In an age when priesthood is easily regarded as just another profession, the Church should make every effort to treat her priests with the reverence their indelible consecration deserves' (Dulles 2005, p. 36). Priests, simply because they are priests, according to Dulles, deserve special consideration when it comes to the administration of justice in their regard. This entitlement springs from the 'indelible' character that, according to Catholic theology, the sacrament of Holy Orders conveys upon them, making them a priest forever even if they are juridically laicized by the processes of canon law. To Grzesz’s objection that no guarantee can be given that an offender shown mercy will not re-offend, Dulles replies with a quotation from the address of Pope John Paul II to the American cardinals on April 23, 2002: "We cannot forget the power of Christian conversion, that radical decision to turn away from sin and back to God, which reaches to the depths of a person's soul and can work extraordinary change" (Dulles 2005, p. 35). It is hard to avoid the conclusion that Pope John Paul II and Dulles are asserting the superiority of the power of 'Christian conversion' to that of the causes of paedophilia. This assertion seems to fly in the face of professional psychiatric opinion about the treatability of those causes.

In his evidence to this Commission, Dr. Peter Evans, a psychiatrist experienced in the treatment of paedophile priests, testified that only certain categories of paedophilia were treatable. The treatable categories, he said, were 'soft-core paedophiles' who fell into two groups. The first group consisted of those who used trusting relationships with families to find opportunities of doing things like fondling the genitals of children, but immediately felt guilt about it and were willing to accept treatment for the condition and restriction of their faculties. With restrictions such as prohibition on contact with children, they could be safely returned to ministry. The second group consisted of homosexuals who discovered their homosexuality and in the absence of disciplinary restraints expressed it in an irrational way — usually in sexual relationships with adolescents. This group, according to Dr. Evans, needed to seek more rational ways of dealing with their homosexuality, ways not available in the celibate ministry. But 'hard-core paedophiles', Dr. Evans testified, are 'almost impossible' to treat because of a personality disorder with 'serious anti-social features' including a lack of 'empathy' which rendered them 'unable to perceive the effect of their behaviour on other people and they had really no insight into the nature of their behaviour' (Transcript p. C16167, lines 1-7). This hard-core group, according to Dr. Evans, 'needed to be in jail' and, on release, restrained by the chemical suppression of their sexual desires. Dr. Evans also testified that this account of paedophilia 'was an orthodox one within psychiatry'. In contrast to the above assertion of Pope John Paul II and cardinal Dulles, orthodox psychiatric opinion holds that only one category of paedophile priests can be safely returned to ministry, and then only with faculty restrictions prohibiting all contact with children. But cardinal Dulles is unwilling to accept even this restriction on paedophile priests readmitted to ministry: 'But I deny that such virtual imprisonment is a necessary and fitting penalty for all gravely imputable acts of sexual misconduct with minors' (Dulles 2005, p. 35). The need to protect priests from removal from the office, to which the sacramental character of priesthood commissions them, in the opinion of the cardinal, outweighs the need to protect children from priests who have betrayed that office by becoming paedophiles.

This priority is emphasised by the cardinal himself when he contrasts the priesthood with 'just any other profession' in the quotation above. A member of any other profession convicted of paedophilia would not deserve the same respect as the priest in the determination of his punishment because of the 'indelible character of [the priest's] consecration'. But the leniency claimed for the paedophile priest by Dulles is, on the evidence of orthodox modern psychiatry, a facilitation of that priest's indulgence of his pathology against children, and of his continuing sin against his own office. To disagree with Dulles on this issue is not to deny the 'indelible character' of the sacrament of Holy Orders but to reject the status and effects that Dulles wants to attribute to
that character.

Properly conceived, priesthood is not a rank of superiority over the rest of the church community, but a ministry of service within the community. The latter theology of priesthood was recognised by Vatican II as its authentic original definition, a definition which was emphatically insisted upon by the Popes who presided over the Council (Pope John XXIII and Pope Paul VI) when they signed themselves on the documents of Vatican II as ‘the servant of the servants of God’. The ‘indelible character’ of the sacrament of Holy Orders marks out the priest as one commissioned to the service of the fellow members of his community, service after the authoritative example of Jesus who, in washing the feet of the apostles at the Last Supper, assumed the role of the lowest rank of slave in the society of the day. That ‘indelible character’ is perverted when it is used as a justification for assigning to its bearer rank and privilege above those of the other members of the community. When this happens, a theology of priesthood is distorted into an idolatry.

One might object that, if my account of Vatican II’s teaching on the nature of priesthood and of church, upon which it depends, were true, priesthood would have been reformed in accordance with that teaching in the fifty odd years that have elapsed since then. My response is that the embrace of this teaching and its implementation take courage as well as understanding. To shift the focus of one’s faith from doctrinal propositions supposedly authoritatively interpreted by bearers of that ‘indelible character’ to collective discernment of the call of the living God expressed in historical events (the Signs of the Times) entails a great risk. The certainty promised by the former focus is forsaken in the latter where one must trust that the living God is present in the events of human life and in His community’s efforts at discerning their meaning. Acceptance of the latter understanding of the nature of the Christian faith entails a corresponding reinterpretation of the role and authority of the priest, particularly of the higher ranks: the bishops headed by the bishop of Rome. Instead of being the privileged receivers and interpreters of divinely revealed truths, the latter become the leaders of the entire community in its task of discerning the call of God in the events of its day. To the extent that it excludes the contribution of the rest of the community from this process of discernment, this hierarchy cuts itself off from the source of God’s communication with the church. The temptation to so cut itself off, and to trust in worldly structures like authority structures and infallible doctrines, is ever present. Moreover, a sacralisation of those structures and doctrines as divinely mandated encourages an inordinate attachment to them and a corresponding resistance to alternative theological paradigms and thus to the fruit of the reflections of the believing community on its own experience of the signs of its times.

An understanding of church on which eternal salvation for all depends upon the preservation of its doctrines, and of the authority structure on which they depend, will necessarily defend to the death the priesthood on which it is all based. Thus, the defence of individual paedophile priests will also be the defence of the priesthood as a whole, for it is the indelible character of the priesthood itself which underpins this authoritative function and thus demands respect. Cardinal Pell’s repeated assertions (Bolt 2016) that he was defending the church as well as trying to protect children is consistent with this understanding of church and priesthood. In an article published in a right wing Catholic magazine, Cardinal Pell boasted of a number of policies he had implemented in the Archdioceses of Melbourne and Sydney. In the course of this address he caricatured thus the position of those critical of his understanding of priesthood:

In Sydney I managed to achieve a situation where all the major appointments have gone to people who are genuinely and deeply committed to the full Catholic program. This is so important because you do not want people in leadership positions who can undermine what you are doing, for example,
people in the liturgy who don’t believe in priests or in the sacrifice of the ministerial priesthood (Pell 2011).

It has always been a part of Catholic theology that the sacraments are expressions of the power entrusted to the whole church, and those of the individuals administering them only insofar as they are ministers authorised by the church. The division of the sacraments themselves, and the allocation of the functions of administering them to local communities of the faithful, is in theory a matter of contingent decision of the church according to the needs of the time and place. In practice, as I have noted in an earlier submission (submission III), the allocation of authority to preside over the celebration of the Eucharist has varied over time:

La Chiesa Cristiana è iniziata come movimento di communità di base composto di persone semplici che vivendo insieme attribuivano a qualcuno il compito di svolgere una determinata funzione o ministero (The Christian church began as a movement of basic communities composed of simple people who, living together, allotted to particular individuals the tasks of performing certain functions or ministries (Molari 2014, p. 38).

In the above quotation from his address, cardinal Pell wants to deny that this part of traditional Catholic theology can be interpreted to mean that the church’s present practice of reserving authority to celebrate the Eucharist to an ordained priest is only a contingent one which can therefore be changed to meet new circumstances of Christian communities. The cardinal tries to buttress that argument by defining the Eucharist as a ‘ministerial sacrifice’. Traditionally, the function of priests in all religions has been to offer sacrifice and, since one of the theologies of the Eucharist has understood it on the model of a sacrifice, the inference he invites is that it thus requires a priest to perform it. For Pell to accept the contingency of the priesthood as we know it is to consent to the destruction of the church: ‘There can be no church without priests ...’ (Pell 2011). The resistance of Dulles and Pell to secular challenges to the office of priesthood, challenges like those perceived to be posed by the Royal Commission in its efforts to protect children from paedophile priests, is best explained by their belief that the survival of the church depends upon the survival of that office as they understand it. Cardinal Pell’s repeated assertion that in his response to the paedophilia crisis he was concerned to defend the church as well as to protect children is also consistent with the perception of himself as the de facto leader of the ‘traditionalist’ church which clings to this theology of priesthood: if the leader of that vision of church falls, there is a real danger that the vision itself will fall with him. There is, in other words, the suspicion of a Nixonian imperative in the vigour of his self-defence: something akin in ecclesiastical terms to the ‘protection of the Presidency’. It might be objected that to regard the present form of the priesthood as contingent is to deny the ‘indelible character’ of the sacrament of Holy Orders. However, this need not be the case. Worshipping communities will always need to be organised in some way, and that way will usually need to include authorisation of certain members to lead the celebration of the Eucharist. That authorisation, whatever form it takes, will thus be the conferral of the sacrament of Holy Orders and thus of the ‘indelible character’ of that sacrament. The fact that it is conferred on people previously long excluded from it – married men, women, workers in the various occupations and professions – and that their ministry is possibly temporary and part time in many cases will not change the fact that they are ordained priests. For the foreseeable future it will probably only be in exceptional cases that communities will conduct the Eucharist in virtue of their powers as a local church, without the services of an ordained priest.
This importance of the 'indelible character' character of priesthood should not, in other words, be exaggerated. As well the contingency of its form over the course of the church's history, it also needs to be remembered that the sacrament of Baptism confers a much more important priesthood, with its own indelible character, than the priesthood of Holy Orders. For Baptism constitutes the recipient as a member of the community gathered by the Holy Spirit, and thus enables that recipient to participate in the community's entire life including the Eucharist. By comparison, the sacrament of Holy Orders - even from a traditional theological perspective - authorises the recipient only to exercise a particular role within the baptised community. In this sense the priesthood of Holy Orders is only auxiliary to the priesthood of Baptism. To say this is not to demean the role actually played by priests in the church today. The life of the church is still heavily dependent on their ministry, and most of them contribute mightily to that life. The argument is simply intended to show that an institution that confers an absolute status on the office of priesthood thus binds itself to the defence of that office in a way that must compromise its commitment to protecting its flock from priests who betray that office. The conferral of this absolute status on the 'indelible character' of Holy Orders relativises the status of the commission to serve the flock, the very purpose for which the priesthood was instituted. If the problem of priestly paedophilia is to be adequately addressed, I submit that offending priests need to be dealt with according to their commitment to this service rather than to the 'indelible character' of their ordination. In other words where there is ground for doubting the capacity of the relevant priest to re-embrace that commitment and to remain faithful to it, that ground should trump the claim of the 'indelible character' of the sacrament in deciding whether he be re-admitted to the ministry.

The Catholic Church's structure and governance, including the role of the Vatican

The doctrines on the nature of church and priesthood, discussed under the previous heading, of course have direct consequences for the structure and governance of the Catholic church. And this structure, and its forms of governance, have in turn created some of the conditions necessary for paedophilia among the clergy to flourish, and to be improperly and inadequately responded to. When the leadership structure of the church became modelled on that of the Roman Empire in the post-Constantinian period, it ran the inherent risk of becoming a hierarchy of dominance rather than of service to the believing community. Over the course of the church's history it has of course succeeded in many ways in fulfilling its mission of service to its members and to the wider world. However, its long embeddedness in the institutions of the Roman Empire has also resulted in the hardening of the authority structure modelled on that of the Empire, and in the development of theological rationalisations of that structure. To the office of bishop, the church came to apply the offices of Christ: priest, prophet and king. Vatican II taught that these offices applied to all the faithful, not only the hierarchy, and that these offices were offices of service not of dominance. In the governance of the church, however, whether in matters of discipline or doctrine, decision making power was, and remains, reserved to the bishops, and ultimately, to the Vatican.

Nowhere is this hoarding of power to the hierarchy so tragically plain as in the church's response to the paedophilia crisis. The kind of consultation with the membership over this response that would have been demanded in any other institution not only was not undertaken by the bishops, but was apparently even forbidden by the Vatican. The evidence to the Commission of bishop Hilton Deacon was that Archbishop Little instructed him, as Vicar General of the Archdiocese of Melbourne, to refer

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1 For a summary of this doctrine see the Catechism of the Catholic Church, paragraph 4 at http://www.vatican.va/archive/ENG0015/__P2A.HTM
all matters of priestly pedophilia to him, and other former bishops of that Archdiocese testified that Little never consulted with them on any such cases. Bishop Mulkearns of Ballarat diocese simply advised his committee of Consultants [each diocese is required by canon law to have such a committee for consultation on a limited range of matters] of the need to move Gerard Ridsdale to another parish. On this evidence, even the structures for consultation mandated by canon law were sidelined in the development of the church’s response to the paedophilia crisis. And if the diocesan bishop thought permanent removal of the offender from the priesthood was warranted, he had no power to execute that removal himself but instead was required by canon law to refer the case to the Vatican. As several bishops testified, such cases entailed protracted legal processes and were rarely successful.

Such a hoarding of power presumes in the holder a wisdom that in most cases he will not have. Bishops are not experts in psychosexual matters, nor in caring for the needs of traumatized children. The preoccupation of bishops like Mulkearns in Australia, and of Cardinal Dulles in the USA, with the returning of offending priests to the ministry rather than with protecting children from further threats from them demonstrates the narrow institutional focus of the concern engendered by such hoarding of power. It is very difficult to believe that a broad consultation process including lay men and women on such matters would have retained such a narrow focus.

This problem of the hoarding of power to the hierarchy, and its implied presumption of superior wisdom in a matter where they lacked obvious competence, was also exemplified in the crisis of the 1960s over the teaching on artificial birth control. On that occasion, even though the then Pope, Paul VI, had appointed an advisory commission that included lay people, in making his final decision he rejected the recommendation of the majority of the commission and accepted that of a minority. This minority consisted of three conservative, celibate theologians. It is universally recognised among commentators on this crisis that many Catholics either continued to practise their faith while contravening this teaching in their married lives, or left the church, often never to return.

The church’s own teaching proclaims that the laity have a role in the carrying out of the offices of ‘priest, prophet and king’ but the governance practices of the church continue to prevent them from exercising that role even in matters in which they are more obviously competent than the hierarchy.

This hoarding of power on the part of the hierarchy reaches its zenith in the CENTRALIZATION OF POWER IN THE VATICAN. If the universal character of the church demands some central authority, that authority, according to its own tradition (Lumen Gentium 22, 23), must be collegial, not monarchical. The establishment of a regular Synod of Bishops since Vatican II, and periodic convocations of national assemblies of bishops in Rome, are attempts at giving expression to the collegiality of the church’s bishops mandated by Vatican II in recognition of the church’s tradition on the nature of the episcopacy. However, such expressions of this tradition have too often been subverted by powerful factions in Rome and elsewhere to silence debate among the bishops and to impose rules and disciplines upon them. Nowhere was such subversion of the principle and practice of collegiality more clearly expressed than in the Vatican authorities’ conduct of the 1998 Synod of Oceania. William Morris, one of the participants in this Synod, and then bishop of Toowoomba (Qld), commented:

As history has shown, the Australian bishops were ambushed. There had been for some time correspondence between a number of disaffected Catholic bodies who were not happy with the direction the Church was taking in Australia. It was believed that members from these conservative bodies had obtained meetings with a number of Roman Dicasteries expressing their opinions and giving a lopsided view of the vast majority of the Catholic population in Australia. Unfortunately, they
were believed and the so-called fraternal exchange of views and proposals was really a witch-hunt (Morris 2014, p. 19).

Moreover, the church must practise its own principle of subsidiarity: decisions must be made at the lowest level of authority possible, given the nature of the relevant decision. Again the Synod of Oceania, which was combined with the Australian bishops' ad limina visit to the Pope, the periodic accounting that every bishop is bound by canon law to render to him, shows how this principle can be subverted by Vatican authority. About this visit, Bishop Morris writes:

Our ad limina visit was drawn to a conclusion on 14 December 1998 with a meeting with Pope John Paul II who delivered his final remarks to us flowing out of the Statement of Conclusions [to the Synod]. This was not a happy ending to our Roman visit. ... The disappointment we were experiencing was in many ways similar to the disappointment our community was feeling at home as they wondered what this might imply for them and for the whole of Australia. To them there seemed no recognition of Vatican II's emphasis on collegiality and subsidiarity, nor of the emphasis that Vatican II had placed on the Church as the People of God and on appreciation of the faith of the whole people (sensus fidel) (Morris 2014, p. 23 notes omitted).

If the Vatican had applied the principle of subsidiarity it preaches to national and local churches, the Australian church would have been freed of the 'moral paralysis' that, according to Melbourne Archbishop Dennis Hart, prevented it from responding effectively to the paedophilia crisis. A case can be made for requiring the laws governing permanent removal from ministry to be the same for the whole church, always providing that those laws are collegially determined. However, the 'moral paralysis' of the hierarchy in the Australian case shows that the authority to apply those laws to the offending priest must rest with the national church. For a governance practice which produces 'moral paralysis' in an institution is a paradigm case of dysfunctionality.

A major contributing factor to this dysfunctionality is the excessive dependence of the church's system of governance in matters of both doctrine and discipline upon the obedience of inferiors to superiors. In the case of priests and religious this obedience is required by a vow. In the case of the laity obedience to the church's major doctrines is a condition of salvation, and obedience to moral doctrines is policed in the confessional. Both clergy and laity are urged to see the will of the relevant superior as in some measure reflecting the will of God. For a believer the whole purpose of the Christian life is to seek and do the will of God, so this argument for obedience is a compelling one. Moreover, since submitting to the will of God, however it is conceived, involves considerable restraint of one's own will, the disciplinary value of obedience in developing one's commitment to the Christian life is obvious. And in times when the first religious Orders - within which the vow of obedience was first instituted - were founded, many members would have been uneducated and much more dependent than today's religious on their leaders for guidance in all things. However, it is clear that the will of a superior could always differ from the will of God. It is also clear that today both clerics and lay people are educated and thus much more capable of judging issues and making their own decisions about the will of God for them than might have been the case in the past. But the church has not adapted its forms of governance sufficiently to take account of these changes. Fearing the erosion of hierarchical authority, it has persisted in its reliance on the obedience of both clergy and laity to the will of those claiming, if not superior wisdom, at least more privileged access to the will of God. The effect of shutting out the lower ranks from the institution's decision making processes, or at least limiting their say in them, is to induce the kind of 'moral paralysis' avowed by Archbishop Hart in the most serious matters, and a common attitude in the laity of 'why bother trying to influence decisions if the clergy are going to make them anyway?'. This attitude is reinforced when the clergy, often unwittingly, take it for granted that they can step in and take
control at any moment in the relevant decision making process. Reliance upon obedience in the
governance of the institution discourages creative initiative and encourages moral and practical
apathy, and sometimes even blind trust in institutional authority and its practices. Sound
governance in the church today requires real power sharing by all members.

All leadership structures need to be representative, and none more so than the central structures.
The day has long passed when a major world institution can credibly and justly exclude married
people and women from its governance structures. To exclude such categories of people is to
contribute to conditions conducive to the flourishing of pedophilia by perpetuating a hierarchical
caste marked by celibacy. While a virtue and a gift in itself, celibacy, when made compulsory,
nenecessarily denies ministers of the Word and Sacrament the support of intimate relationships,
and also offers a haven to those wishing to hide, or to avoid confronting, homosexuality or deviant
sexualities.

Issues related to the individual leadership of Catholic institutions
Given the inordinate degree of power they exercise within the church, Popes have to accept
considerable responsibility for the inadequacy of its response to the paedophilia crisis. However, the
degree to which the individual characteristics of Popes contributed to their handling the crisis is hard
to know without the benefit of a more intimate personal knowledge of each of them. It is mildly
surprising, but also clear, that neither Pope John Paul II nor Benedict XVI felt the same pressure as
bishops in their own countries to give priority in their concerns to the plight of the victims of
paedophilia over that of the priestly perpetrators. While there is no doubt that both Popes
acknowledged the seriousness of the offence and its effects on victims, as Cardinal Dulles stresses,
Pope John Paul II was insistent that justice should also be done to the offending priests. John Paul II
was also noted for being a disciplinarian – a characteristic that would have encouraged him in his
conviction that these offences were moral failures on the part of the individual priest who was thus
amenable to ‘Christian conversion’ (see quotation of John Paul II by Dulles above). I also suspect that
both these Popes saw the pressure from those in the church in general and in the hierarchy in
particular to ease restrictions on the laicisation of offending priests as efforts on the part of
‘progressives’ and ‘conservatives’ over this and other crises facing the church clearly influenced the
decision of Pope Benedict XVI to resign from office. These Popes must bear responsibility as
individuals for their failure to assess correctly the significance of the paedophilia crisis, and to
prioritise correctly in their responses to it the claims of victims and offenders.

Having said that, however, Popes above all members of the church are victims of its history in that
for centuries the papacy has been actively promoted within the church at large as a cult. The Pope
sits at the apex of the priestly, hierarchical pyramid that has long defined the church, almost to the
exclusion of the laity. Despite the monarchical character of this office implied by its location at the
 apex of the hierarchical pyramid, like all monarchs the Pope is dependent upon, and vulnerable to,
conflicting influences from his council of advisors and officials: his curia and their bureaucrats. Pope
Benedict XVI himself denounced the degree of corruption that had infected these groups, and Pope
Francis has set in motion initiatives to root it out. Individuals within these bodies must also bear
considerable responsibility for the failure of their masters to assess, and respond appropriately to,
the paedophilia crisis.

Diocesan bishops and their auxiliaries were clearly victims of the iron grip of Rome upon their
powers to govern their own dioceses. Canon law made it difficult enough to suspend offending
priests, and even to place precautionary limitations upon their faculties or their access to young
people. That law made it nigh on impossible for bishops to remove offending priests from the priesthood permanently. It must also be observed that too many bishops were raised to that office because of their demonstrated loyalty to the view of the church that said this was the right mode of governance for the church. Like the vow of obedience of priests to their bishops, this commitment of loyalty of bishops to the Pope formed an essential part of the culture that imposed the ‘moral paralysis’ upon local bishops that prevented their acting against offending priests when occasion demanded it. But, as with Popes, bishops also must bear some individual responsibility for the quality of their responses to this crisis.

When I entered the seminary in 1962, Archbishop Daniel Mannix was still at least nominally in charge of the Archdiocese of Melbourne. In practice, the general administration of the Archdiocese was in the hands of two Monsignors (both later bishops): Arthur Fox and Lawrence Moran. I do not know what the Archbishop’s attitude towards paedophile priests was, nor whether he had an established policy or practice for dealing with them or any victims. I do know that there were offenders operating during his reign in the Archdiocese. All of the priests, who, I know, were offending at this time, went on to commit grievous crimes against children over long periods of time. Two were charged in the 1990s and later, and the third died without ever facing any accounting. It is difficult to judge the levels of individual responsibility of these three authority figures without a more detailed knowledge of the information they had, and their responses to it. However, at least one general observation can be made.

The governance of the Archdiocese at this time was in a parlous state. Archbishop Mannix was already in his 90s, and no longer in charge of the day to day affairs of the Archdiocese. Although he had a Co-adjutor (Archbishop with right of succession), Archbishop Justin Simonds, Mannix limited his status, as Simonds used put it, to being ‘the parish priest of West Melbourne’. Mannix continued to offer leadership on what he took to be a moral issue of his time, namely, the menace of atheistic Communism and the duty of his flock to resist its influence in the life of their society. However, his inability because of his age to offer leadership in other areas of church life meant that there was a vacuum in those areas, and no doubt his unwillingness to relinquish power prevented the formation of any policy or properly considered modes of responding to issues like priestly paedophilia.

When Mannix died in 1963, he was succeeded by his long time Co-adjutor, Archbishop Simonds. By this time, however, Simonds was advanced in age, losing his sight, and generally poor in health. He died in 1966 while I was still a student at Propaganda College in Rome. I am unaware therefore of how he dealt with cases of priestly paedophilia though I feel sure he must have been confronted with some. Simonds was succeeded by Archbishop James Knox in 1967, to whom the task fell of leading the Melbourne church in the implementation of the reforms of Vatican II. He had a zeal for doing this, but, not being a theologian and having until then served first as a Vatican bureaucrat and then as a Vatican diplomat, he was not endowed with a deep understanding of the teachings of Vatican II. Rather he was careful to ensure that the parish and diocesan councils mandated by Vatican II made it clear in their constitutions that the parish priest in case of the former and the bishop in the case of the latter had the right of veto over all matters coming before these bodies. He was a very loyal servant of the Pope, and strong guardian of hierarchical authority. This is not to say that he was a hard or authoritarian man; on the contrary, at a personal level Knox was a warm and compassionate person, and humble in the exercise of his own authority. Although he ordained me
and was my Archbishop for the four years of my priestly ministry, I am not aware of any cases of priestly paedophilia that came before him during those years. I am therefore unable to say what his attitude was towards this issue, or whether he had policies and practices for dealing with it. Certainly, no such policies or practices were drawn to the attention of the clergy at large during those years. Indeed, it was during the reign of Knox’s successor that the priestly paedophilia crisis began to emerge as a public issue.

Cardinal Knox was succeeded as Archbishop of Melbourne in 1974 by auxiliary bishop Frank Little. Little had done his philosophy studies in the provincial seminary, Corpus Christi College, Werribee, but had been sent to Rome in 1947 to do his theology. He remained there after ordination in 1950 to complete a doctorate. His Roman background groomed him for a period of service to the Apostolic Nuncio to Australia, a period which interrupted his service to the Archdiocese of Melbourne. Though well enough qualified in theology to understand much of the mandate of Vatican II, Little was a very cautious man. REDACTED

When Archbishop Little requested that a Co-adjutor be appointed because of his failing health in the mid-1990s, he was told that he could either persevere on his own or resign from office. He chose the latter option and in 1996 his auxiliary bishop, George Pell, was appointed as his successor. George Pell and I had been contemporaries in the seminary – he was two years ahead of me both in Werribee and in Rome. During that time and indeed into my years in the ministry, we were quite good friends. Although he had been exposed to the same theological influences as me and our contemporaries in Rome, and indeed had frequently mimicked for our amusement the antics of a conservative professor of systematic theology, George Pell’s venture into the waters of progressive theology ended when he came under certain influences at Oxford where he completed his postgraduate studies. I think he was probably under the influence also of conservative groups in the Australian church for at least some of his time in his studies, and certainly after his return to Australia. This influence was manifested to me personally after my own ordination when I was serving on the editorial committee of a religious education publication designed for use at years 7 and 8 level. Although contact between priests of different dioceses was infrequent, such contact did take place from time to time in seminars on issues like religious education. George on one occasion expressed to me serious misgivings about the lack of ‘doctrinal content’ in some of the publications in use in those days. He expressed gratitude for what he regarded as the more substantial content of
the particular publication I worked on, but he was clearly in sympathy with the campaign then being conducted by the National Civic Council, then led by B.A. Santamaria, against reforms of religious education that Santamaria condemned as reflections of a wider departure from doctrinal orthodoxy flourishing in the post-Vatican II church. This conflict between the right wing of the church, led by Santamaria, and the promoters of religious education reform became known as the ‘catechetical wars’. In time George became a fervent admirer of Santamaria, a champion of the restoration of ‘doctrinal content’ to religious education materials and an avowed subscriber to conservative ideology in both church and secular affairs. He thus set both the direction of his leadership of his dioceses and his personal style in its exercise, a direction and style that have had grave consequences for the unity of the church and for his response to the paedophilia crisis.

The direction Archbishop Pell set for his leadership of both the Melbourne and Sydney Archdioceses was conservative or ‘traditionalist’ in all respects. He hounded theologians and other specialists who did not follow the traditionalist line, he removed from their key positions priests and lay people who were not conservatives, especially the seminary staff. Under his leadership Catholic schools were required to teach from the Catechism of the Catholic Church, copies of which they had to purchase in large numbers. The promotion of the traditionalist vision of church - which had as its central focus the doctrines of which it was the divinely appointed teacher and interpreter - was extended by Pell to the church throughout the world. He became a significant influence on Popes John Paul II and Benedict XVI, and formed alliances with other conservative bishops throughout the world. Archbishop Pell himself attests these marks of his leadership in an address delivered to a conservative group in Cork, Ireland, in 2011 (Pell 2011).

The style of Archbishop Pell exacerbated the divisiveness of his actions as a leader. When his proposals for seminary reform were rejected by its staff en masse to the point where they offered their resignations, he ignored their arguments against the reforms and simply showed them the door. Instead of trying to unify by entering into dialogue with those who differed from him, Pell created division by moving them out of office. On the evidence of Bishop Geoffrey Robinson to this Commission, similar actions as Archbishop of Sydney alienated his priests in that diocese also. The ‘ambush’ met by the Australian bishops in the Synod of Oceania (referred to by Bishop William Morris above) was reportedly engineered in a large measure by Archbishop Pell. That belligerent and self-righteous unilateral style was clearly evident in his last minute decision to mount the so called Melbourne Response to the paedophilia crisis when he knew that Towards Healing, the national response of the other bishops and religious orders, was about to be launched.

The Melbourne Response was indeed a big improvement on the ‘moral paralysis’ that had marked Little’s reign in Melbourne, and no doubt Archbishop Pell deserves some credit for his courage in developing it. However, this response too bore the marks of Pell’s style. He presented it as a solution to a serious but passing problem caused by a few errant priests. It came across more as a measure to restore the image of the church than a recognition of the fact that the institutional church had become corrupt and dysfunctional. While it pretended to be pastoral in its concern for victims, it proved to be highly legalistic and bureaucratic, and victims seldom found in it the healing they sought. But, having gone out on his own with such a response, the Archbishop was compelled to defend it against its critics, and more importantly to defend the reputation of the church against the inference from the evidence of widespread priestly paedophilia that the institution was itself corrupt. It seems to me that, sadly, these imperatives to defend the scheme, and to defend the reputation of the Institution, infected Archbishop Pell’s personal response to victims. Unquestionably, it is difficult to respond adequately in personal encounters with people suffering
such grievous wounds. Sadly, in my judgment, he has remained trapped in the role of Warrior Defender of the institutional church since that time.

It is noteworthy that Archbishop Pell’s successors in both Melbourne and Sydney were men of a conservative bent, Archbishop Dennis Hart being in fact one of Pell’s class mates in Corpus Christi College, Werribee. There can be little doubt that their selection for these posts reflects the influence of Archbishop Pell. Though less militant in his style, Archbishop Hart maintained the traditionalist
regime established by his predecessor. In his approach to the paedophilia crisis, Archbishop Hart clearly felt for the victims but he met criticisms of the Melbourne Response and calls for its review with righteous indignation. It took the exposures of this Royal Commission to force the admission from him of previous failure to appreciate the extent of the problem and to initiate an official review of the Melbourne Response. He must bear responsibility for his stubbornness in the face of this criticism, and his transparency in the conduct of the eventual Donald review must remain in question given his failure so far to release its findings. Like his predecessor, he must also accept responsibility for treating dissent in these matters as disloyalty rather than signs of the need for collegial dialogue.

Canon Law

Since I am not a canon lawyer, I do not intend to say much under this heading. However, some things can and must be said. First of all, the 1983 code purported to be a revision in the light of the teachings of Vatican II. No doubt, this code reflects those teachings in many respects. However, its operation in relation to the clerical paedophilia crisis has projected more a pre-Vatican II church than a post-Vatican II one.

- Rather than protect young members of the faithful from the crimes of priests and religious, it has served the interests of the institution by largely shielding these priests and religious from the full force of secular laws against their crimes. By doing so, canon law has functioned more in accordance with the ‘perfect society’ understanding of the relationship between church and state than with the ‘servant’ understanding mandated by Vatican II.
- This protection of perpetrators is evident above all in the reservation of the power to permanently remove offending priests from the priesthood to Rome. The ‘collegiality’ mandated by Vatican II is violated by the subordination of the authority of local bishops, and national conferences of bishops, to the authority of Rome in the same way as it was before the council. If the church is unwilling to delegate to national bishops’ conferences the authority to laicise priests convicted of paedophilia in secular courts, I refer the Royal Commission here to my recommendation in my Submission II:

Recommendation 10.

That the Royal Commission recommend that the Australian government work for the establishment of an international Treaty with the Vatican, among the terms of which will be

1. that priests convicted of paedophilia in Australian jurisdictions shall, in all but the most exceptional cases, be expeditiously laicised upon appropriate documentation of the relevant cases; and
2. that all Australian dioceses shall constitute themselves as legal entities as to prevent them evading legal liability for the criminal behaviour of priests; and
3. that in return the federal and state governments of Australia agree to maintain the tax and rate exemption status of the church.

The scheme proposed in recommendation 9 (Submission II) may be sufficient for victims who want no more than what it offers in terms both of procedures for making claims and compensation and counselling offered. However, given the enormity of the crimes, and the hideous gravity of their effects, justice demands that the church be legally liable for civil damages as well.
Since exemption from taxes and rates is in part a concession on the part of the secular state to the religious nature of the church’s mission, it is only reasonable that the church concede legal liability in criminal cases such as clerical paedophilia in acknowledgement of the legitimacy of the function of the secular state.

Since the problems of laicisation of convicted paedophile priests, and acceptance of legal liability by the church, affect other countries besides Australia, the use of an international legal instrument like a treaty seems appropriate. Because a treaty would recognise the sovereignty of both the Vatican and any other signatory states, it would eliminate obstacles to the solution of both these problems arising from the competing claims of secular and church law. Clearly, the laicisation of paedophile priests is a matter for church law, but a matter in which the secular state in which the conviction has taken place also has a legitimate interest. A treaty agreeing to the procedure to be followed would be a means of satisfying the legitimate interests of both parties in such cases. A treaty agreeing that continued exemption from taxes and rates for the church be granted in return for the church constituting itself as an entity bearing legal liability in civil matters would avoid the need for imposition of secular supremacy by making laws to compel the church to so constitute itself. If such a treaty proved impossible for whatever reason, the secular state should, in my opinion, impose such a law.

The appointment and removal from office of bishops is still controlled by Rome, and that control can be arbitrary and authoritarian. The dismissal of bishop William Morris from the diocese of Toowoomba exemplifies these failures of collegiality, and exposes the vulnerability of Rome to factional influence on important matters including the response to the paedophilia crisis. Canon law needs to be revised to reflect more the demands of collegiality in relation to such matters, and to remove the unilateral powers of the Papacy.

Clericalism

‘Clericalism’, as I understand it, refers to the entrenched domination of decision making within the church by the clergy, and the assumption of undue status that goes with such domination. Clericalism extends to the role of priests as well as to that of the bishops. Clericalism is a perversion of the theory and practice of the role of the priest. Vatican II reminded the church that its authentic tradition defined the role of priests, including bishops, as servants of the People of God. The emergence of the church from its status as a persecuted minority to that of official religion of the Roman Empire in the post-Constantinian period made it easy for the hierarchy to slip from a role of service to one of dominance over the flock, and even over secular society. The authoritarian modes of secular rule over the centuries of history also encouraged imitation by the church. Attacks upon its authority of various kinds also aided the development of theologies of priesthood which emphasised strongly its hierarchical structure. Such attacks by several European nations in the 19th century led to a fierce defence of that structure by Vatican I which culminated in the definition of Papal Infallibility. The church in which the instances of priestly paedophilia under the scrutiny of this Royal Commission arose was for the most part this hierarchically dominated institution. There the Pope was perceived as having a privileged communication with God, the bishops were his fellow
successors of the Apostles, and the priests shared with them the ‘indelible character’ of the sacrament of Holy Orders. The practical effect of this structure and theology was that the laity in the parishes saw the church as consisting in the hierarchy: in the popular parlance of the pre-Vatican II era, the laity placed their clergy on pedestals meaning that the clergy were held to be closer to God than themselves. Add to this status mandatory celibacy and you have an ideal set of conditions for the flourishing of paedophilia.

Firstly, the priest is one against whom the lay person has little or no power. It is difficult therefore to resist his advances or to do anything about them after an assault. Secondly, the priest has prestige. His integrity is hard to question, as is his wisdom. Attention from the priest is flattering. He, above all persons, is to be trusted. Thirdly, his priestly character qualifies him to hear your confession: you lay bare your soul to him so he can police your path towards salvation and away from damnation. Regular confession is a condition of your salvation. Fourthly, as a priest he is celibate, in the popular perception, not because he has any doubts about his sexuality or any deviant tendencies that he wants to hide from, but because he has chosen to devote himself to a life supposedly closer to God. Fifthly, all these attributes give him easy entrée to your home and family, your school and your recreational clubs around the parish. Sixthly, as a priest he is likely even to have a degree of protection from the police. The latter may be Catholics in many cases who will protect their own from trouble. Or they might well doubt the word of children making allegations of paedophilia against priests merely because they find it unthinkable that a priest could do such things (Archbishop Hart testified that the church also for a long time had this reaction). Or they may have formed a more sinister kind of brotherhood to protect clergy from prosecution, as was shown by the evidence presented to this Commission in relation to the Day case in Mildura.

Today priests are fewer in number and many more responsibilities previously exercised by them or by religious have passed to the laity. Moreover, many remaining priests repudiate the pedestal status stemming from a distorted theology of priesthood and instead embrace the theology of priestly service. However, these priests can be at odds with bishops who want also to retain the power in church affairs that flowed from the older theology of priesthood. Among these bishops and those priests who sympathise with them, there remains even today a softer clericalism. Unlike the Anglican church, for example, whose constitution divides power in their synods (supreme level of authority) between the Houses of the Laity, the Clergy and the Bishops, the Catholic church has no binding distributions of power between these sections of its membership. As long as the structure, governance and underpinning theology of the Catholic church preserves the conditions that favour the flourishing of priestly paedophilia, one must conclude that the danger of further outbreaks will remain.

Compulsory celibacy
Under this heading I begin by recalling the Recommendation I made on the subject in my Submission II:

Recommendation 3.

Given that all paedophile priests (save any offenders from the Oriental branches of the Catholic church; I am aware of none) are vowed to celibacy, that the church be asked to urgently review whether celibacy should remain a condition of admission to the priesthood.

I am not suggesting here that compulsory celibacy is a direct cause of paedophilia. Rather I believe that the requirement enables some candidates for the priesthood to avoid coming to terms with their own sexuality at all, and for those entering the seminary straight from
school it at least delays their coming to terms with their sexuality. For a few the vow of celibacy provides a convenient disguise for their paedophilic tendencies and intentions. Because it provides powerful witness to the transcendent dimension of life that Christians call the Kingdom of God, voluntary celibacy must always have a place in Christian life. That witness is severely eroded however when celibacy is compulsory. Indeed, by making it compulsory, the church exposes its own motives for doing so to doubt. Historically, the introduction of the compulsion was associated with certain considerations that do not sit well with gospel values. Among these dubious considerations is a perception of sexual relationships as somehow impeding holiness, as interfering with one’s relationship with God because, in a misunderstanding of the scriptural terms, sex is seen to be of the ‘flesh’ rather than of the ‘spirit’. A second dubious concern was the protection of church property from alienation to the offspring of clergy (in S80 A.D. Pope Pelagius II was prepared to tolerate married clergy provided that no such alienation of church property resulted). As well as dubious motivations, the compulsion also has effects which are difficult to reconcile with the gospel. For example, it establishes the clergy as a caste within the church – something which is alien to the calling of the diocesan priest who is called from among his fellows to serve them in the things of God. When the entire caste of the clergy (with the exception of the small number of married priests of the Eastern Rites of the Catholic Church) are compulsorily deprived over a period of centuries of the experience of healthy, holy sexual relationships, it is very difficult to see how the members of that caste can avoid distorted views of such relationships and of sexuality generally.

As well as depriving priests of the enriching and enlightening experience of healthy and holy sexual relationships, I am now even more convinced that the function of compulsory celibacy in the church is to perpetuate the separation of a priestly caste from the laity. It is thus fundamentally a power struggle within a human institution, and the compulsion of celibacy operates as a weapon in the hands of those who dominate power at present. A side effect of the use of this compulsion as a weapon in this struggle is its favour of the conditions for priestly paedophilia to flourish: denial of opportunities to confront and express rationally one’s own sexuality, provision of a hiding place for those wishing to avoid such confrontation such as rationalisations in religious terms of deviant inclinations, providing membership of a caste enjoying the benefits of ‘clericalism’ listed above.

Selection, screening, training and ongoing formation of candidates for the priesthood and religious life

It can no longer be assumed, as it was in my time in the seminary and the priesthood, that, if a person was devoted to his prayers and other duties, his call to celibacy and the sexual integration of his personality could be taken for granted. The requirement that candidates no longer be accepted straight from secondary school is a good one. I have argued that they should indeed be married people of both sexes. If they are unmarried, psychological scrutiny should be done to ensure as far as possible that they have confronted their own sexuality, and are thus making a mature, informed commitment to a life of celibacy. Their motives must be scrutinized to ensure that this commitment is driven by the desire to bear witness to the Kingdom of God, and not some more worldly motive, far less some misguided religious perception of the things ‘of the flesh’ as evil. Candidates, and priests after Ordination, must feel they can discuss their difficulties with this commitment safely with appropriately qualified superiors and advisors. Acknowledgment of the current priestly paedophilia crisis should be open, and the boundaries laid down in response to it made clear and fully discussed. Observance of these boundaries must become as habitual as the observance of the
rule of not entering the rooms of fellow seminarians was in my time in Werribee. Rules, in other words, are learnt not only from classes but also from practice.

Support for and supervision of working priests and religious
In my time in the priesthood support for priests was ad hoc and haphazard. It was typically a troubleshooting function exercised by an auxiliary bishop. I note with satisfaction that today the Melbourne Archdiocese, and possibly others as well, has appointed a priest whose task is to look after the welfare of his fellow priests. The celibate life is a lonely life, and companions at work and home are determined by the parish to which one is appointed. You just had to get on with your parish priest and any assistant priests as best you could. In some cases luck favoured you, and you got on well with them. In others, life could be extremely difficult. As a busy priest, you could have difficulty just for lack of time in seeking support from those closest to you when you needed it.

Today that difficulty could be even greater given that most parishes have no more than one priest. The compulsion of celibacy becomes even harder to defend in these circumstances, and the pressures on the priest so compelled increased through the lack of any kind of supporting relationship. The danger of boundary crossing or, in some cases, aberration must therefore be increased in these circumstances.

The operation of the sacrament of confession
Since I have discussed this key issue at considerable length in my Submission II, I think it better to refer Commissioners to that discussion rather than try to summarise it here.

The use of secrecy, including the practice of mental reservation
In constructing my response to this issue I am drawing on the teaching of the Catholic Church on it as expressed in the relevant paragraphs of one of the standard pre-Vatican II manuals of moral theology (Aertnys & Damen 1965a, 1965b), copies of which I have translated from the Latin and provided to the Royal Commission earlier.

When the issue of ‘mental reservation’ or ‘mental restriction’, as Aertnys-Damen term it, was first raised with me by a Commissioner, I thought it likely that most clergy would have remembered reference to it in their theological studies, but would have found it difficult to understand and ‘Jesuitical’ in its content. Indeed, I thought most would have forgotten that content very shortly after studying it, and regarded it as irrelevant to their pastoral practice. However, I think it is possible, and even probable, that at least some clerical witnesses before the Commission sought advice not only from civil lawyers but also from canon lawyers and moral theologians regarding their rights and duties before a secular tribunal like this Royal Commission. Many of these witnesses would have studied this concept in the pre-Vatican II era, and probably retain as their reference book on matters such as ‘mental restrictions’ moral theology manuals similar to Aertnys-Damen that they had used during those studies. If they had relied on these manuals without consulting more up to date works on moral theology or canon law in researching this concept and its implications for their rights and duties before the Commission, they might have reached the following conclusions.

Firstly, the doctrine of the ‘mental restriction’ could never justify their telling an outright lie because lying is by its very nature, on this moral theory, morally wrong. According to this manual, a ‘purely mental restriction’ is never lawful because ‘when words contain nothing, either in themselves or in the context in which they are spoken, by which they reveal outwardly what is in the mind, they are at variance with what is in the mind, and are consequently lies’ (Aertnys & Damen 1965a, para. 998).

Secondly, this doctrine might, however, permit them to conceal certain truths by means of a ‘mental restriction’ which is not ‘pure’ but equivocal in the sense that the words uttered about the relevant
truths, though they may not be understood by the hearer in the sense meant by the speaker, are nonetheless capable of being so understood and are not at variance with the sense meant by the speaker. The conditions under which such a 'mental restriction' may be lawful are that the restriction (and its equivocal expression) 'is done for a just cause, and no obligation on other grounds to disclose the 'pure' truth applies' (Aertmys & Damen 1965a, 998:II).

Thus a priest or a bishop, called before the Commission and asked whether he had knowledge of paedophile acts by another priest, might see himself as justified in using a mental restriction in his response to this question on a number of grounds.

First, if the knowledge was obtained by the confession of such sins to the witness, the witness would feel bound by the 'seal of confession'. The witness in this case might apply to himself such interpretations of this obligation as Aertmys-Damen's:

Thus a Confessor can affirm, even with an oath, that he has no knowledge of a sin heard in Confession, intending by that affirmation that he has no such knowledge as a man, because he has the knowledge rather as a minister of Christ; or he may affirm that he has no such knowledge as communicable knowledge, knowledge gained as a Confessor not being of this kind; and this [response] is possible, even if the other person asks whether he heard of it [the relevant sin] as a minister of Christ; because the Confessor must always be taken to be responding as a man, it not being possible for him to respond as a minister of Christ [his knowledge as a minister of Christ is always sealed from interrogation] (Aertmys & Damen 1965a, 999).

The Judge, according to Aertmys-Damen, may have legitimate jurisdiction over the witness but only 'as a man', never as 'a minister of Christ'.

Second, a priest relying on the pre-1983 Code of canon law might argue that he was entrusted with such knowledge outside the confessional but in his capacity as a priest, and is thus entitled to invoke a mental restriction before a secular tribunal like the Royal Commission on the ground, asserted in that Code and summarised by Aertmys-Damen (Preamble to N. 151, note 1; see translation submitted by me earlier), that 'The Church itself, being of a higher order than civil society, is in a word subject to no civil laws, and that not only in spiritual matters but also in temporal matters...'. However, this argument would be unreliable because, as I point out in my insertion in the translation of this passage, the canon from the new code seems to renounce this claim: 'Can. 22: Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise'.

Third, a priest might argue that the knowledge he has of acts of paedophilia, or of a bishop's reasons for having to move some priest, was confided as a professional secret, and therefore that, being obliged to keep that secret, he was entitled to invoke a mental restriction when questioned about it. Such a secret would be, in the terms used by Aertmys-Damen, an 'entrusted secret' which arises from the nature of the professional office rather than from a promise, bind in justice as a matter of natural law, the common good of any society being dependent upon respect for such secrets. As the following quotation from the same source indicates, a priest may legitimately invoke a mental restriction in these circumstances provided that no obligation to disclose it arises from another source:

Hence one is bound by an entrusted secret even although s/he may be under legitimate interrogation by a Judge or Superior, and s/he can reply that s/he has no knowledge of the relevant matter, intending by that denial 'knowledge which can be disclosed'; for neither a Judge nor a Superior can set aside natural law, according to which an entrusted secret must be kept, unless the content can be discovered in some other way, or a just cause for disclosing it applies, as will be set out below (n. 970, lib. 4, n. 49, 248, 268; Aquinas, Summa Theologica, II-II, q. 1, ad 2. Cf. also below n. 1235. III) (Aertmys & Damen 1965a, 1003).
However, in the case of priests entrusted with knowledge, as a professional secret\(^2\), either of acts of priestly paedophilia or of a bishop’s reasons for having to move some priest, these authors list among their excusing causes for divulging professional secrets a cause that seems applicable to these cases. Number 3 in this list reads:

a grave common harm or a harm to some other innocent person, even to the entruster himself/herself, for the sake of an entrusted secret; for then the order of charity demands that it be revealed, even if it had been made under oath; or even what public opinion might perceive as a grave harm to the community, for its welfare is of no less concern than that of other innocents (Aertnys & Damen 1965a, 1003, 3).

Because a ‘grave common harm’, and certainly the public perception of such a harm, would almost certainly be caused by the invocation of a mental restriction in these circumstances by a priest under interrogation by a body like this Royal Commission, charity, according to Aertnys-Damen, would here override justice and demand disclosure of this secret.

If I have covered fully the range of grounds upon which priests under interrogation by authorities like this Royal Commission might plausibly invoke the doctrine of the ‘mental restriction’, none of those grounds would seem to me in the final analysis to suffice for a valid invocation of this restriction. This is not to say, however, that ignorance or misunderstanding of the doctrine might not lead some to invoke it invalidly.

**Individual psycho-sexual factors**

Since I have no expertise in these matters, I can say very little about them. However, it is clear that expertise in them has developed in recent decades in the fields of psychology and psychiatry. In addressing the causes and treatment of paedophilia, therefore, it is of the highest importance that the light of these forms of expertise be brought to bear upon the practices of institutions like the Catholic church, particularly, on practices concerning their recruitment, training and professional support of their clergy and other personnel. Even in a church reformed to the point of authorizing married lay people to preside over the Eucharist, it seems to me it would still be important to screen them for, and support them in, their psycho-sexual development. Children, after all, are more likely to be molested in the home than by clergy.

**Factors operating in society as a whole.**

Again, I have no particular expertise in this area, so my remarks will be limited. However, I can say this much. Firstly, the increased permissiveness of western societies in relation to sexual matters has, I believe, relaxed the social controls on deviant as well as non-deviant sexual behaviours. This is not to say that society has now reached the point of saying that deviant behaviours are right but rather that it no longer attributes the same degree of opprobrium as it once did to sexual indulgence in general. Thus, the deterrent effect of the fear of such opprobrium has been reduced.

Secondly, this permissiveness is an ambiguous phenomenon inasmuch as, while licensing greater sexual indulgence, it removes the guilt previously associated by so many with healthy sexual behaviour. The removal of such guilt was much needed within the Catholic church in particular but it could well have had the negative effect of encouraging a lax conscience among paedophile priests. Though far from necessary, this effect may nonetheless have encouraged in such priests rationalisations such as: ‘Well, paedophilia may be wrong but today we know that many people have sexual hang-ups, and for too long the church has made us feel excessively guilty about them. If this is my hang-up, then it’s just the way I am and I should not feel too guilty about it’. Such a

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\(^2\) Diocesan consultors would clearly fall into this category.
rationalisation would have been much more difficult in an age when priests fervently believed that all sexual transgressions were mortal sins.

To what extent has the occurrence of child sexual abuse in Catholic institutions been a result of the failings of the individuals who committed the abuse? To what extent have systemic institutional factors including structure, governance and culture contributed to the occurrence of child sexual abuse in Catholic institutions?

I have little doubt that the occurrence of child sexual abuse in Catholic institutions is due mainly to the psycho-sexual and moral defects of the individual perpetrators. After all, it was only a very small minority within these institutions who committed such offences. However, neither do I have much doubt that it was the structure, governance and culture of the Catholic church that created the conditions for such abuse to flourish in such a significant way within it. Since I have outlined under the relevant headings above and in earlier submissions my views on how these three factors have contributed to this abuse, I will not repeat myself here. I will simply stress my insistence that, unless the structure, governance and culture of the church is reformed in accordance with the teachings of Vatican II, some of the conditions that enabled child abuse to flourish will survive within the church. The leaders of the church must not be allowed, therefore, to hide behind the pathologies of the individual offenders. If the conditions enabling child abuse to flourish are to be eradicated from the church, those leaders must engage collegially with their communities in a root and branch reform of the church.

To what extent have any inadequacies in the institutional response to child sexual abuse in Catholic institutions been a result of the failings of responsible individuals? To what extent have systemic institutional factors including structure, governance and culture affected the institutional response to child sexual abuse by Catholic Church authorities?

I have given an indication under the relevant headings below of the responsibility I think Archbishops Knox, Little, Pell and Hart should bear for their roles in responding to this crisis. REDACTED

However, it is of much greater significance to observe the extent to which good men were able to be paralysed by these things. It is not drawing too long a bow to compare this paralysing effect with the effect of authoritarian political regimes on the moral behaviours of officials within them in the 20th century. Examples of such paralysis abound in Nazi Germany, Fascist Italy and the Communist Soviet Union. Obedience to canon law, and the directions of bishops and superiors parallel the obedience to
orders from commanding officers to guards in concentration camps, except that the sanctions applying to disobedience in the latter case were much more severe than those applying in the church. This state of ‘moral paralysis’ into which the church has allowed itself to fall is evidence of rule by ‘a spirit of slavery that returns you to fear...’, not of rule by ‘the Spirit of sonship, by whom we cry, “Abba! Father!”’ and by whose power we are ‘brought into the glorious freedom of the children of God’ (Rm. 8: 15, 21). ‘Moral paralysis’ in the face of evil is the antithesis of the state to which the church is called, according to St. Paul, yet it is the state of the church in the face of priestly paedophilia, according to the Archbishop of Melbourne, Dennis Hart.

To what extent are any factors that have contributed to the occurrence of child sexual abuse in Catholic institutions, or affected the institutional response to this abuse, unique to the Catholic Church? To what extent are any such factors common to other faith-based institutions or organisations providing services to children more broadly?

What is unique to the Catholic church is its concentration of decision making power in the hierarchy, and the enforcement of that power in its doctrinal system, mainly through the agency of its priests. The Catholic church is not unique among the Christian churches in having a hierarchical structure. The Orthodox churches all preserve that structure as do the Anglican church and some branches of the Lutheran church. The other Protestant churches also preserve some form of leadership by an authorised ministry. None of these churches, however, concentrates in any single bishop or leader the kind of authority that Catholics concentrate in the Pope, and few, if any of them, exclude the laity from power to the extent that the Catholic church does. While ministers of religion in general in Australia have enjoyed a degree of status and privilege as ministers, none of them have been accorded by their own communities the ‘pedestal’ status of the Catholic clergy, far less their definition by compulsory celibacy as a separate caste. The culture of the Catholic church, particularly of its Western branch, was characterised before Vatican II especially by a doctrinal rigidity founded on its understanding of its mission as the bearer of God’s salvation to the world, and an equally rigid discipline over its members in conforming to that mission. That discipline was enforced above all through the Sacrament of Penance which even today predominantly takes the form of personal confession of one’s sins to a priest. While the other Christian churches impose discipline in varying degrees, none of them does so to the same degree as the Catholic church. Under the relevant headings above, I have outlined how in my opinion this concentration of power in the hierarchy with its attendant reliance on a commitment of obedience on the part of inferiors, clericalism, compulsory celibacy for recruits to the priesthood – usually before they have had adequate opportunity to confront their own sexuality, and the access to children provided by their pedestal status in their communities have created the conditions for priestly paedophilia to flourish.

To what extent are there factors specific to particular dioceses or religious congregations which have contributed to the occurrence of child sexual abuse or affected the institutional response to this abuse by those dioceses or congregations?

Orders like the Christian Brothers have admitted factors peculiar to their congregations and I cannot add to what they have said about those congregations. However, I think some things are clear about
The current and future proposed approaches of Catholic Church authorities to:

a. responding to child and adult victims and survivors of child sexual abuse, including secondary victims
b. responding to individuals subject to allegations of child sexual abuse
c. the protection of children and the prevention of child sexual abuse.

The Statement of Commitment in the Submission from the Truth Justice and Healing Council to Issues Paper 2 of this Royal Commission is a frank and humble admission on the part of the church of its grievous failures in this matter. As such, it is a most welcome and very promising step towards the reforms needed to achieve the objectives stated or implied in a., b. and c. above. However, if those reforms are to be accomplished, the reforms of the root causes of the crisis in the structure, governance and culture of the church, I submit, will also have to be achieved. Improved protocols and codes of conduct are necessary, but if the underlying culture is not reformed the conditions which enabled priestly paedophilia to flourish in the first place will remain, and the inherent risk of further outbreaks will also remain.

Concluding Remarks

The clerical paedophilia problem has been assessed by bishop Pat Power as the gravest crisis to face the church since the Protestant Reformation (Zwartz June 13, 2012). The church, according to Archbishop of Melbourne Dennis Hart, has been gripped by a state of ‘moral paralysis’ in the face of the problem. In all my submissions I have argued that a crisis of such gravity, and the state of ‘moral paralysis’ that it reflects, are symptoms of a church trusting for its security in its worldly institutional structures instead of in its divinely mandated attention to ‘the signs of the times’. I have supported this contention by identifying the rigidities in the structure, governance and culture of the institution as well as some of the failings of individuals which have contributed to this straying from its mandate. I conclude by saying – in theological terms – that by this misplacing of its trust the church is cutting itself off from the Spirit which gives it life, for, according to the gospel, it is by serving the world’s poor and downtrodden, not its own worldly interests of institutional protection and preservation, that the church opens itself to that Spirit. In secular terms the church has fallen into crisis because it has put the protection of its own doctrines and institutional structures, and the status and wealth that accompany them, ahead of the service to the human communities – service that earned it such a valued place in those communities in the first place. This crisis is evidence that the church’s mission risks being perverted into the antithesis of what it ought to be: humble service
to the neediest in society, and thus witness to the divine presence it claims to recognise in human
life. If the church wants to avoid total decay as an institution and to restore itself to life, it has no
choice but to return to fidelity to this mission of service to the world which is the source of that life.

References


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