

A Public Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse

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ANALYSIS OF CAUSES AND RECOMMENDATIONS ABOUT REMEDIES

Introduction

There have always been tensions between church and state but few issues, in western countries at least, have stretched them to the limits they have reached today more than the issue of child abuse by the clergy. It would have been unthinkable even 20 years ago that a country as Catholic as Ireland would remove the legal protection of the 'seal of confession', and yet the clerical paedophilia crisis has led to that. Although the Irish government may not have had this in mind when it removed this protection, there are those who, like some politicians in Australia, see secularism as an ideology¹. This view leads them to advocate the reduction of the status of religion and its institutions in societies like ours to that of private organisations, which, as such, could lay claim to no such legal protections. While I think this view is ultimately mistaken, I believe it is an understandable reaction to the model of church which gave rise to the abuse itself and to the church's disastrous response to it. Because I think the term 'culture' can be construed so narrowly as to exclude or occlude theoretical conceptions of church, I am heading the next section 'models' of church². However, it will be clear from what I go on to say about causes, and how they might be remedied, that I am covering what is connoted by 'culture' in this context as well.

Models of church

1. The 'perfect society model'

Clerical abuse of children, and its concealment, were enabled to flourish until recent decades in the Catholic church because of its authoritarian structure. That structure was based on a conception of itself in juridical rather than theological terms as a 'perfect society', one which lacked no essential institution to be a society. On this conception secular states were also 'perfect societies' but they were inferior to the church because the church's foundation and mission was divine³. For this reason the church could legitimately call upon the secular state for support in its mission. This

¹ I refer to the comments of Senator Nick Xenophon as a conspicuous example of this attitude: The laws of the land should always trump religious practices'. (Reported in the Age online on July 22, 2011)
: <http://www.theage.com.au/national/priests-cant-hide-abuse-20110721-1hqyg.html#ixzz2tXJvqB2p>

² Theoretical models are, by definition, attempts at reducing the realities they describe to more intelligible forms. Those realities will thus transcend the intelligibility provided by any individual model, and more than one model will be needed to render in any way intelligible an entity that believers define as a 'mystery'. There have been in fact several attempts at constructing theoretical models of the church over time, the best known of which in the post-Vatican II period is (Dulles 1974). Dulles proposes five detailed models of the church, all of which shed some light on the way it has dealt with the paedophilia crisis. However, my analysis is better served by contrasting two broader understandings of the church that for convenience's sake I have called 'models'. A more extensive analysis of the malaise that gave rise to this crisis can be found in a recent journal article by Chris Geraghty (Geraghty 2015); see also the other essays in this issue by Michael Kelly SJ, and Frank Brennan SJ.

³ Wikipedia has a very good entry on the concept of 'societas perfecta':
http://en.wikipedia.org/wiki/Societas_Perfecta

understanding of itself required the church firstly to rule the faithful in the name of God, and secondly to do so independently of the authority of the state at least in matters concerning its mission. The first requirement helps explain the factors facilitating the rise of paedophilia while the second helps explain its presumption of the right to deal with it 'in-house' according to its own law.

The first requirement of this model: to rule the faithful in the name of God

Before the Second Vatican Council (Vatican II), which began in 1962 and ended in 1965, the Catholic church presented itself to its people and to the world as the institution 'outside which there was no salvation' (*extra ecclesiam nulla salus*)⁴. Acceptance of its teaching in both faith and morals was essential to one's eternal salvation. Success in winning and enforcing such acceptance depended, the church believed, upon clear and unambiguous teaching and strong hierarchical proclamation and policing of that teaching. The moral teaching given most prominence in the twentieth century and earlier was that concerning sexual morality, any offence against which was a mortal sin. Death in a state of mortal sin, as the name implies, meant eternal damnation. The determination of the church's teaching in the light of divine revelation and tradition was the virtually exclusive task of the celibate hierarchy headed by the Pope. Its proclamation was the task of the bishops and priests, and its policing⁵ the task particularly of the priests, also celibates⁶. Since mortal sin could only be absolved by confessing it to a priest⁷, the dependence of the faithful on this authoritarian structure of the church for their very salvation was total.

Catholics would never have had reason to confess so often if they had not been taught to believe that *any* offence against sexual morality was a mortal sin. No priest would have had access to young people making such confessions if this moral teaching had been less strict and his role as confessor not conceived as that of a moral policeman. I do not intend to expose here the theological errors underpinning this conception of church and morality. Suffice it to say that Vatican II repudiated the juridical model of church and drastically revised the basis of its moral teaching⁸. The fact that many of the abuses against children took place after Vatican II shows that reform of the church according to the council's mandate was too slow. It surprised me to learn how narrow a range of people Archbishop Pell consulted in setting up the *Melbourne Response*⁹. I find it hard to believe that a fully

⁴ The doctrine originated with St. Cyprian of Carthage in the 3rd century A.D. but it has formed part of Catholic tradition since then until Vatican II.

⁵ The term 'policing' is not too strong here. The head of the Holy Office up to and including the period of Vatican II described himself upon his retirement as "a policeman who guarded traditional doctrine and theology." (Associated Press (January 8, 1968). "Vatican's Most Conservative Cardinal Quits". The Bodesto Bee. Reported by Wikipedia https://en.wikipedia.org/wiki/Alfredo_Ottaviani#cite_note-Bee-9)

⁶ The law of priestly celibacy is a law of the Latin or Western Rite of the Church. Priests in the Eastern Rites may marry, provided that they do so before ordination. Married priests, however, may not become bishops in these rites.

⁷ It was theologically possible to obtain forgiveness by 'an act of perfect contrition' but this needed to be made 'with the intention of going to Confession' because 'Christ instituted the Sacrament of Penance as the means by which mortal sin, committed after Baptism, is forgiven' (Bishops 1939, p. 30 questions 13,14, 17). In their efforts to affirm the necessity of confession, teachers would often warn that in practice an act of perfect contrition was all but impossible.

⁸ Cardinal Joseph Ratzinger, later Pope Benedict XVI, contributed to a book on this repudiation: Joseph Ratzinger, "Necessita della missione della Chiesa nel mondo," in *La Fine della Chiesa come Societa Perfetta*, Verona: Mondadori, 1968, pp 69-70).

⁹ In the transcript of his evidence to the Victorian Parliamentary Inquiry, he responded as follows to the question 'who were his influencers?': '— Some of the people at the meeting. Certainly Ted Exell, the business manager, was a source of very good advice; Jim Gobbo was on our committee; Barry O'Callaghan; Joseph

representative diocesan council of the kind mandated by Vatican II could have approved a response that was so legalistic and bureaucratic. I also find it difficult to believe that such a diocesan council could have persisted in the assessment of the entire problem of clerical abuse as a passing aberration rather than as a symptom of a deep seated malaise in the structure, moral teaching and pastoral/sacramental practice of the church.

The second requirement of this model: that the church rule the faithful independently of the state

That the *Melbourne Response* was the result of such narrow consultation, and that it did persist in this inadequate assessment of the problem of priestly paedophilia is consistent with the second requirement of the juridical model of church. This model jealously guards the right of the church to govern itself according to its own laws. Because those laws are directed towards the guidance of the church's mission of bringing salvation to the world, and because the primary obstacle to salvation on this model is mortal sin¹⁰ on the part of the faithful, paedophilia (and other matters that secular society would see as primarily criminal matters) is seen as primarily a moral matter. While it carries sanctions for the culprit even in church law, this model's emphasis is on the eternal salvation of both victim and culprit. Of course, the church has in modern times acknowledged the authority of the secular state in criminal matters, but the hold of this juridical model of church on its thinking impedes the yielding up of its own regime of law in such matters. It still wants to deal with some vital aspects of the paedophilia problem 'in-house': assessment of claims and compensation, counselling of victims, and above all laicisation of priests. Moreover, it wants to continue to enjoy the immunities it retains against the demands of secular states, immunities like non-liability for civil damages, and exemption from taxes and rates.

Those who regard secularism as an ideology will simply reject out of hand this model of the church as a 'perfect society', and the entitlement claims based on it. But secularism need not be conceived as an ideology and is arguably misconceived as such¹¹. Confronted with the fact of increasing religious pluralism in post-Reformation Europe, western states sought to realise the French Revolution ideals or goals of 'liberty, equality and fraternity' by embracing the notion of secularism. At times secularism has been used, and continues to be used, as an ideology with the authority to limit the terms of participation by some groups in their societies. But eminent Canadian philosopher, Charles Taylor, argues that this ideological conception is in fact a misconception of the notion of secularism:

Now I believe that one of our basic difficulties in dealing with these problems is that we have the wrong model, which has a continuing hold on our minds. We think that secularism (or laicity) has to do with the relation of the state and religion; whereas in fact it has to do with the (correct) response of the democratic state to diversity. If we look at the three goals

Santamaria. At that stage Bob Santamaria was alive, and on a number of occasions I would ask Bob what he thought was a good [*sic*] — these are some of the people who advised me.'

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Transcripts/Catholic_Archdiocese_of_Sydney_27-May-13.pdf

¹⁰ According to a typical Catechism of the pre-Vatican II period, 'They who die in mortal sin go to Hell for all eternity' (Bishops 1939, p. 31 question 20).

¹¹ See in particular (Taylor 2011 Kindle edn-a) but also other essays in the same collection for a discussion of this by some of the world's foremost scholars on secularism.

[liberty, equality and fraternity], they have in common that they are concerned with 1. protecting people in their belonging to and/or practice of whatever outlook they choose or find themselves in; with 2. treating people equally whatever their choice; and 3. giving them all a hearing. There is no reason to single out religion, as against nonreligious, "secular" (in another widely used sense), or atheist viewpoints (Taylor 2011 Kindle edn-b, location 415).

The mere possibility that Taylor may be right in this view would render tendentious any out of hand dismissal of the church's status claims on the ground that they can have no standing in a secular society.

Moreover, imposition of remedial laws and policies based on this dismissal of the church's status claims would be denounced by many, including some supporters of drastic reform measures, as an authoritarian assertion of ideological secularism. The church could base resistance to otherwise justifiable reform measures on a legitimate objection to such an ideological imposition in a liberal society. A more promising challenge to this model and these entitlements is available in the church's own teaching. As Ratzinger's book cited above (note 8) confirms, Vatican II repudiated this juridical model of church and re-defined the church as the 'People of God' among whom the role of the hierarchy was not to dominate the laity but to serve them. Similarly, the mission of the church as a whole was not to demand its rights of secular societies but to serve them in their most fundamental needs, after the model of Jesus who washed the feet of the apostles and then laid down his life for them. Thus, when the church places protection of its institutional interests before the welfare of society, for example by resisting legal and policy measures to prevent clerical paedophilia, its resistance is discredited by its mandate to serve that society. Since this point is of fundamental importance in assessing what can be legitimately demanded of the church in this day and age, it is worth developing further.

2. The 'people of God'/Servant church model

The 'perfect society' model of the relationship between church and state supposed a distinction between the nature and missions of the two in terms of the realm of the 'spiritual' and the 'material'. Though present in history, the church was supposed to be concerned only with the salvation of souls, and to have a privileged line of communication with God for serving that purpose. Its mission was in that sense conceived in ahistorical terms. History was the realm of the state and the state was subject to the church only in matters that affected the execution of the latter's mission. By re-defining the church as the People of God, Vatican II repudiated this ahistorical conception of the church and its mission, renounced any privileged communication with God outside the events of history itself (in theological terms the historical events through which God communicates with the church and humankind are known as 'the signs of the times'), and presented its relationship with secular society as one of service rather than domination. The assessment of clerical paedophilia as primarily a moral failure, and its management as primarily a matter for the church, flows from this 'perfect society' conception of church. Since this conception has now been repudiated, logical consistency demands that the assessment of clerical paedophilia flowing from it be also repudiated. But it does not follow from these repudiations that the church is, or ought to be, simply ceding its former claims in a supposed ideological battle with the state, and retreating to the status of a private organisation within it. Rather the church is acknowledging that being the servant of society, as its revised definition of its own nature and mission requires, mandates it, among other things, to embrace and uphold the laws that any just society needs to protect its citizens from evils

such as paedophilia, most especially clerical paedophilia. To move beyond a mere notional assent to this revised definition of itself and its mission, the church must submit itself to the authority of the secular state sufficiently to enable the investigation and prosecution of these matters, and cooperate with it in devising policies to prevent their recurrence. The following are some of the practical consequences of this revised – servant – model of church in relation to the paedophilia crisis.

First, a servant church cannot put its institutional interest in protecting its own reputation before the interests of victims and society in exposing these evil deeds, bringing their perpetrators to justice, responding to the needs of victims and cooperating in devising policies to prevent future offences. Preservation of honour, dignity and reputation is a worldly imperative; the gospel imperative is to follow Jesus on the way of the cross, that is, on the most ignominious way possible in his society, to the point of laying down his own life¹².

Second, a servant church is one that finds its security in its trust in the power of God, not in worldly wealth:

Do not be afraid, little flock, for your Father has been pleased to give you the kingdom. Sell your possessions and give to the poor. Provide purses for yourselves that will not wear out, a treasure in heaven that will never fail, where no thief comes near and no moth destroys. For where your treasure is, there your heart will be also (Luke 12:32-4).

If just compensation for victims entails selling the church's possessions, a servant church will do this willingly. The commitment of Jesus' followers to the care of the needy will be most convincingly demonstrated by the sale of assets like buildings, schools and hospitals and the giving of the proceeds to victims of paedophilia. Reluctance in doing this, however, will expose claims to this commitment as just so much rhetoric.

Third, a servant church relinquishes rather than clings to power. Jesus was stripped of all worldly power by the Jewish and Roman authorities of his day, both religious and secular. Followers of Jesus will be governed in their attitude to worldly power by Jesus' words: 'My kingdom is not of this world' (John 18:36). The only power Jesus had was that which he received from the Father, the power of love, love that was not withdrawn even when he was put to death. A church committed to a service of society that extends even to 'laying down its life' for its sake will not cling to the power to manage paedophile priests according to its own law. Such a church will recognise its own failures to manage these matters, and be humble enough to surrender to secular society the power it needs to ensure the protection of its vulnerable citizens. The church's protest here will be that any such surrender of power cannot extend to acquiescence in the removal of the protection of the 'seal of confession' in civil law. But even here I believe that an accommodation of church and state interests can be found within the servant church model, an accommodation that avoids the rival assertions of jurisdiction inherent in the 'perfect society' model of church.

The interest of the state is in having acts of paedophilia recognised as crimes, and ensuring that they are reported and prosecuted. The 'seal of confession' is sometimes perceived as ultimate confirmation that the church views such acts as primarily moral failings, and its primary duty as the moral healing of perpetrators confessing such acts. Thus, according to this perception, the 'seal of

¹² On the significance of Jesus' way of the cross see (Trainor 2014).

confession' frustrates the interests of the state in two ways. First, by binding the confessor to silence about the acts of paedophilia confessed, it prevents him from reporting the acts and from being a witness in any prosecution of them. Second, by binding the confessor to silence, it also grants the perpetrator the absolution s/he needs to assuage his/her conscience without the risk of disclosure of his/her crimes to the police.

This perception of the nature and effect of the 'seal of confession' is an oversimplification of the doctrine even in the terms of the 'perfect society' model of church. That model did not deny any legitimate authority to the state; on the contrary, it affirmed it (Aertnys & Damen 1965, vol. I, n.153). Moreover, before giving absolution, a confessor has always been required to have at least 'moral certitude' of the penitent's contrition and purpose of amendment before granting absolution (Aertnys & Damen 1965, n. 446, II). In cases where the confessor has reason to doubt the presence of these dispositions, he can grant *conditional* absolution (Aertnys & Damen 1965, n. 448, III). In the case of acts of paedophilia, presumably this teaching would always have authorised confessors to make disclosure to state authorities a condition of absolution: 'You are absolved only on the condition that you disclose these acts to the police; the words of absolution have no effect if you fail to make this disclosure'. It has to be admitted, however, that the 'perfect society' model of church would not have sensitised confessors to the need to consider the injury to victims and society in determining whether to withhold absolution or grant it only conditionally. Given the narrow focus of their concern upon the moral plight of their penitents, confessors may well have tended to treat recidivism as evidence of the general moral weakness – sinfulness – to which we are all prone rather than of an abuse of confession for the purpose of assuaging their sense of guilt for acts which they had no real intention of avoiding in future. But the servant model of church no longer permits this focus on the needs of the penitent to the detriment of the needs of the victims of paedophilia and of the wider society.

A servant church, if it persists in the use of private confession as the usual form of the Sacrament of Penance, will respond to the sufferings of the victims and the wider society by imposing conditions upon its use to ensure that confession can no longer be used to protect paedophiles in any way. As I say in **Recommendation 4** below, the church should be asked to ban the practice of private confession, at least, for minors. This is a key recommendation because in so many cases initial entrapment – and indeed maintenance of control over the victim - has been through the confessional. Since the form of the sacrament of Penance has always been a matter of contingent pastoral practice and not of doctrine, there is no doctrinal reason why this recommendation should not be accepted by the church. The contingency of pastoral practice can be illustrated in several ways. First, the sacrament of Reconciliation has taken the form of private confession only since the 16th century Counter-Reformation when the emphasis shifted from sin, its confession and reconciliation to the community as a *public* matter to a *personal* one¹³. Secondly, in war time and other emergencies it has always been the practice of the church to offer general absolution without confession. Thirdly, among the post-Vatican II reforms has been the introduction of *three different Rites* of Reconciliation. The First Rite, in a modified form, remains a private confession. The Second Rite consists in a communal celebration of prayer and listening to readings from the Bible during the course of which participants are able to confess privately to priests and then join the rest of the

¹³ The Wikipedia entry on this topic is a good one and it includes references to very good sources: [https://en.wikipedia.org/wiki/Sacrament_of_Penance_\(Catholic_Church\)#cite_ref-29](https://en.wikipedia.org/wiki/Sacrament_of_Penance_(Catholic_Church)#cite_ref-29)

congregation for general absolution and a communal act of penance like some prayer or other. The Third Rite is also a communal celebration of a similar kind except that no private confession takes place, and absolution is pronounced on the whole congregation. While the use of the Third Rite flourished briefly after its introduction, its de facto replacement of the First Rite led the Vatican to forbid its use in normal parish circumstances: absolution without private confession afforded by the Third Rite abolished the policing role of the priest, a pastoral consequence of this Rite which proved unacceptable to the church hierarchy.

Since the late 1960s, the practice of confession has fallen into disuse for all but a minority of Catholics. Sadly, it is among the very young, and therefore the most vulnerable to entrapment by paedophiles, that it can still be enforced by the church. One of the defining functions of Catholic primary schools is to prepare students for Christian Initiation, i.e. to prepare them for the sacraments of Initiation: (they are required usually as a condition of enrolment in a Catholic school to have already received the first of these, namely, Baptism), Eucharist and Confirmation. An unfortunate historical tendency of the church to associate sin with the Eucharist led to the requirement that before receiving First Eucharist, students had to make their first confession. This remains the practice in the church to this day. Neither private confession nor any form of the sacrament of Reconciliation at all are theologically necessary conditions of admission to either the Eucharist or Confirmation. Thus, the only objection that the church could legitimately have to this recommendation would be on contingent pastoral grounds, e.g. that private confession provides greater opportunity than the other rites for individual spiritual guidance to the penitent. Such grounds, I submit, would pale into insignificance beside the dangers of entrapment by paedophiles demonstrated by recent inquiries.

But, it might be objected, these are theological issues and a judicial body like this Royal Commission is not qualified to judge them. I submit that, while the Royal Commission is not competent to sit in judgment on theological matters *per se*, it is competent to infer from these theological premises that the church's response to the paedophilia issue is inconsistent with its own account of its nature and mission. It is at least competent to judge that in its handling of the paedophilia problem the church has consistently placed the protection of its own reputation and wealth ahead of the welfare of victims and their families, behaviour that is inconsistent with its definition of itself as a servant church. It is also competent to call for legal and policy reforms designed to address the full gamut of problems associated with paedophilia that are consistent with the church's own account of its nature and mission. The onus of demonstrating any inconsistency in such matters would thus be upon the church. This appraisal of these models of church provides me with a basis for the recommendations that follow in the concluding section.

RECOMMENDATIONS

Recommendation 1.

Given the role played in crimes of paedophilia by the church's teaching that all sexual offences are mortally sinful, that the church should be asked to urgently review this teaching.

Recommendation 2.

Given that the clergy, the authorised interpreters of this teaching and its policing agents, are overwhelmingly male celibates, that the church be asked to urgently review whether that status distorts its understanding of human sexuality.

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 580 A.D. Pope Pelagius II was prepared to tolerate married clergy provided that no such alienation of church 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.

Recommendation 4.

Given the role of private confession (now known as the First Rite of Reconciliation) in entrapping, and maintaining control over, victims of paedophilia, that the church be asked to ban use of this Rite, at least, for minors.

It seems to me unnecessary and counter-productive to remove legal protection from the 'seal of confession'. Paedophiles would avoid confessing if it were removed. Some confessors would regard the removal as so illegitimate that they would defy it. These would become known to paedophiles who wanted to confess. Thus, detection of paedophilia by this means would likely fail. Moreover, many priests support very strongly reforms to protect children from paedophilia. The one reform that many would oppose to the death however would be removal of the protection of the seal of confession. A significant number of these would be encouraged by its removal to see the reform process as an effort to 'get at' the church when it is down. A successful reform process needs these priests (and lay people sympathetic to this position) as allies, not as enemies.

Recommendation 5.

That the church also be asked to ban the practice, still observed in some Catholic primary and secondary schools, of compelling students to attend any Rite of Reconciliation.

This practice, even when it does not involve private confession, is an act of policing in moral matters, and this is a component in entrapment as well as a contravention of the understanding of the sacrament as an encounter of love.

Recommendation 6.

Given the fall-off in the practice of private confession and the consequent diminution of the danger of entrapment through this forum, the enforcement and regular monitoring of other protocols governing working with children become a matter of priority in all church institutions.

It concerns me that in the Victorian Parliamentary Inquiry many of the responses to the question of whether such protocols were monitored were answered in the affirmative but these answers were supported by descriptions of the protocols themselves, and the in-service training processes for introducing them. Few if any procedures for registering observance or checking on their success or otherwise were mentioned.

Recommendation 7.

In the light of the comparatively high incidence of paedophilia among celibate priests, that the church be asked to render a comprehensive account of its protocols and processes for assessing the suitability of candidates for the priesthood and of its measures for supervision of them once ordained.

In recommendation 3 I have called for a review of the need for compulsory celibacy for priests. This recommendation assumes that celibacy will remain compulsory for a considerable period of time. Assuming this, the protection from paedophilia as well as the welfare of priests requires the use of the best available screening processes and the best possible supporting measures for candidates for the priesthood and ordained priests. I

suspect that support for ordained priests is still relatively ad hoc; it needs to be systematic and well resourced.

Recommendation 8.

That the Royal commission recommend the nation-wide introduction of mandatory reporting of paedophilia on the New South Wales model.

It troubles me that Archbishop Pell felt unable to intervene in the case of Fr. Peter Searson in Doveton parish (Melbourne) for a long period of time because he could not find sufficient evidence for doing so (Committee 2013, transcript of evidence). Could the Archbishop not have moved him to duties not involving contact with children as a precautionary measure given the magnitude of the possible harm to children if the accusations were true?

(This recommendation was made before the Victorian Government passed its Crimes Amendment (Protection of Children) Bill 2014 which made 'grooming' for sexual conduct, and failure by a person in authority to protect a child from possible sexual abuse, offences. This remedied the absence of compulsory reporting of sexual abuse by church authorities in this State. However, there is still a need for a national template for such legislation to ensure uniformity of protection measures across the nation.)

Recommendation 9.

That in place of existing 'in-house' structures for assessing complaints of paedophilia, determining compensation and for referring for counselling, a government body be established to take over those functions, this body to be funded, however, by a levy on religious and other non-government bodies. This body should be empowered to:

- 1. to receive complaints, assess them, refer them to police under the mandatory reporting model recommended above (recommendation 8), and refer victims for counselling and other services they may require as a result of their abuse;**
- 2. to determine compensation, if necessary through a separate arm of this same body.**

The church claims some credit for its efforts to address the paedophilia problem through the *Melbourne Response* and *Towards Healing*. This Royal Commission and similar inquiries at State level have exposed, however, how pathetically bureaucratic and heartless those efforts have been. If the compensation schemes forming part of those responses mark an early step in the right direction, the passage of time has shown them to be too little, too late. As in-house schemes they have lacked the independence that is indispensable to the credibility of any such scheme.

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 so 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 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.

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