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# **A**n exploration of theologico-political issues relating to the phenomenon of institutional church sexual abuse of children, and its application to the implementation of restorative practices in this area

Una exploración de temas teológico-políticos relacionados con el fenómeno del abuso sexual de niños en la iglesia institucional y su aplicación a la implementación de prácticas restaurativas en esta área

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## **ABSTRACT**

Institutional church child sexual abuse of children raises issues of public policy, particularly that of the remediation of harm done.

This study explores a number of problems related to remediation. These largely arise from the construction of the relationship between Church and State.

The study draws on political, ethical and theological perspectives on the position of Christian churches in society, particularly the Roman Catholic Church. It will attempt to draw out fresh insights on how governments and churches should address the issue of remediation of harm.

My intention is to support the contention that secular ethics and Christian values require direct a restorative approach involving independently facilitated engagement between victim-survivors and institutions, and that this is now more important than restorative practices between victim-survivors and the index offender.

## **Resumen**

El abuso sexual infantil institucional en la iglesia plantea problemas de política pública, en particular la reparación de daños causados.

Este estudio explora una serie de problemas relacionados con la reparación. Estos surgen en gran medida de la construcción de la relación entre Iglesia y Estado.

El estudio se basa en perspectivas políticas, éticas y teológicas sobre la posición de las iglesias cristianas en la sociedad, particularmente la Iglesia Católica Romana. Su finalidad es aportar nuevas visiones sobre cómo los gobiernos y las iglesias deben abordar la cuestión de la reparación del daño.



Mi intención es sostener que la ética secular y los valores cristianos requieren adoptar un enfoque restaurativo que implique un compromiso facilitado de forma independiente entre las víctimas-sobrevivientes y las instituciones, y que esto ahora es más importante que las prácticas restaurativas entre las víctimas-sobrevivientes y el delincuente.

## 1. Introduction<sup>1</sup>

### Aims of the Paper

This paper seeks to develop the case for practices underpinned by restorative justice and peacemaking principles to the phenomenon of institutional child sexual abuse.

*Prima facie* there is little argument that restorative justice should have a place in this setting. In practice, however, the application is fraught with difficulties. These problems are of several kinds, and the main task of this paper is to identify and explore them.

Furthermore, even if there is a strong objective case for the application of restorative justice, one of the challenges will be to make the case in such a way that it can be heard and embraced by Christian churches.

### Preliminary Reflections

Mediators, dispute resolution and restorative practitioners rarely, if ever, obtain the engagement of parties by blaming them, even when there is a clear case against them, as when a criminal case has been determined. There are advocates a-plenty to be employed in the task of blame. A more difficult objective is to understand without collusion, and, as the Narrative Theorists in mediation advise, to listen out for the alternative story (Winslade and Monk, 2000). Mediators and restorativists will achieve nothing if they cannot empathise without collusion from a standpoint of critical understanding. Thus we need the art of rhetoric to sell the findings of theology and moral philosophy.

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1 This paper was originally presented as an invited paper at the workshop of the International Institute for the Sociology of Law on 'Sexual abuse in the church and other institutional settings', Oñati, Spain 10 – 11.04.2014. It has been revised in the light of subsequent developments. The paper is dedicated to the memory of Prof. Antonio Beristain, priest, eminent scholar of restorative justice, supporter of victims of crime, and a man of the Basque country.



## The Argument

This term is used in an earlier historical sense of ‘a planned structure’ for this paper.

First, we need to develop critical understanding of the current state of affairs. We need to both understand the situation we are in, and how we got into it.

Second, we need to apply the theory of restorative justice to the abuse phenomenon, and then,

Third, we must work out how to engage the churches in restorative work.

In practice, attention will be devoted to the Roman Catholic Church (hereinafter ‘The Church’), because (1) it is, in some respects, the most complex of the religious institutions (faiths, denominations) involved; and (2) much of what applies to its case is generalisable to other churches and institutions. It also has more easily recognised international profile. However, much of my focus on the Church will relate to Australia.

## 2. Approach And Method

### Approach

This study falls under the head of a number of disciplines. Perhaps the most representative of these is that of pastoral theology. Pastoral theology has been characterized as ‘the place where religious belief, tradition and practice meets contemporary questions and actions to engage in a transforming dialogue which has substantial practical implications’ (Pattison, 2000). However, it also draws on other disciplines, especially history and ethics. It also touches upon legal theory and moral theology.

### Method

The primary method is one of ethnographic interaction with a number of key texts that are binding upon and representative of the teaching, law and practice of the Roman Catholic Church. Thus there is an identification of issues and themes and an analysis of these as they appear in the key texts.

Critical Understanding of the Abuse Phenomenon in the Context of Institutional Life



## What is the Problem?

At the outset, it is important to acknowledge the overwhelming numbers of victims, and the profundity of their injuries and suffering. We have to give back recognition to those victims as having suffered physical, moral and spiritual injury (Mackay, 2013a). However, the purpose of this paper is not to explore the enormity of this phenomenon. We need to recognise the systematic misuse of authority and power, but again, that is not the focus of this paper. Rather, we have to explore some of the complexities of how the Church's systems work both internally and in relation to external society in order to help us to understand and make sense of what has happened. We need to address some of the minefields or complexities we face when trying to make sense of and respond to the abuse.

These complexities may be described as either structural (societal/organisational) or dynamic (human processes). However, as in Quantum Mechanics, where light can equally be described in terms of particles or waves, social phenomena may with equally validity be examined using very different conceptual frameworks.

### Developing Critical Understanding – (Structural)

#### *The status of the Roman Catholic Church*

##### *Status as a State<sup>2</sup>*

In a previous work the author noted that there were additional levels of complexity surrounding sexual abuse within the Church. One of these is that there is a fourth dimension of law, that is, Canon Law. (See below.) He also noted that the Church is a nation state. The implications of this were not drawn out in that paper (Mackay, 2013a). However, it is a significant factor in how the Church deals with sexual abuse.

The complexity is that the Church operates both within and outside secular State jurisdictions in a matter that would be seen by many as being within the jurisdiction of secular states. In this respect, the Church operates in some respects more like a multi-national corporation than as a Nation State. This gives rise to potential contradictions. On the one hand, the Holy See will not surrender correspondence about how it handled the abuse phenomenon to the United

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2 In this paper, 'State' will normally refer to a sovereign nation state. The Holy See/Vatican is also a State, but is not referred to as such elsewhere in the paper to preserve the distinction between secular authorities and the Church. In two cases, 'State' will refer to New South Wales and Victoria, a constituent States of the federal Commonwealth of Australia.



Nations Committee on the Rights of the Child, arguing that local churches are independent of Rome and are subject to local secular law. On the other hand, local prelates have been bound by a particular papal decree, *Crimen Sollicitationis*, requiring papal secrecy, that overrode duties of disclosure to secular authorities. The penalty for breach of this decree was automatic excommunication (Tapsell, 2014). Over time, this requirement has been loosened, but only to the extent that the Church will disclose when and where the law of the state requires this. In March 2019, Pope Francis enacted a law that made it compulsory that allegations of sexual abuse of minors known to church officials must be reported to the church authorities, although the wording of the law is imprecise on this. The law did not extend to a requirement to make amends to the victim or to a general obligation to report to the civil police authority of the state in which the offence occurred (Holy See, 2019; The Independent Newspaper (Batchelor, 2019).

However, in a recent development, Pope Francis has decided by Rescript to abolish the pontifical secret in cases of the sexual abuse of minors, of sexual violence and child pornography. This means that any reporting, testimony and documents produced in canonical trials related to such cases of sexual abuse – those kept in Vatican Dicastery archives as well as those found in diocesan archives – which until now were subject to the pontifical secret, can now be handed over when requested to lawful authorities in their respective countries. This is a sign of openness, transparency, and the willingness to collaborate with the civil authorities. (Holy See, 2019b, December). In particular, the Rescript provides that

- Office confidentiality shall not prevent the fulfilment of the obligations laid down in all places by civil laws, including any reporting obligations, and the execution of enforceable requests of civil judicial authorities.
- The person who files the report, the person who alleges to have been harmed and the witnesses shall not be bound by any obligation of silence with regard to matters involving the case. (Zenit Staff/Pope and Holy See. (2019, December)

Despite these limitations, the Church is a signatory to international treaties and conventions, and has thus been required to report to the United Nations Committee on the Rights of the Child. There is therefore a degree of accountability to the international community. UN Committee's 'Concluding observations on the second periodic report of the Holy See' (UN Committee on the Rights of the Child, 2014), has drawn attention to the dual nature of the Church's ontology:

The Committee is aware of the dual nature of the Holy See's ratification of the Convention on the Rights of the Child as the Government of the Vatican City State and also as a sovereign subject of international law having an original, non-derived legal personality independent of any territorial autho-



riety or jurisdiction. While fully aware that bishops and major superiors of religious institutes do not act as representatives or delegates of the Roman Pontiff, the Committee notes that subordinates in Catholic religious orders are bound by obedience to the Pope, in accordance with Canons 331 and 590 of the Code of canon Law. The Committee therefore reminds the Holy See that in ratifying the Convention, it made a commitment to implement it not only within the territory of Vatican City State, but also, as the supreme power of the Catholic Church, worldwide through individuals and institutions under its authority (p. 2).

### *Status as corporation within other nation states*

In current times, many states of European or of post-colonial origin<sup>3</sup> are constituted with a separation between themselves and the Christian churches. There are instances of national churches, for instance in Scandinavia and the United Kingdom. However, even if a church does not enjoy a privileged position in the constitutional arrangements of a state, there are other ways in which the relationship can be strong. Thus, even if churches are not established, they may exercise influence and power in ways that are sanctioned by legislation, policy, and political practice.

One of the paradoxes of the current situation is that, in at least one nation state, Australia, the Church is both a major provider of educational, welfare and health services; but, because of trust legislation passed in the State of its favour in New South Wales, it has been effectively unaccountable in the secular courts of the country. The Church thereby has enjoyed power, as a recipient of considerable public funds; influence, as a provider of education at primary, secondary and tertiary levels; as well as ‘the influence of the pulpit’, alongside a countervailing balance of a degree of immunity for its operations. In this particular instance, it might be argued that the State had failed in its duty to the people in allowing one corporation to acquire such a level of privilege (private law) for itself. The immunity that the Church enjoyed through what was called the ‘Ellis Defence’, whereby there was no legal entity that a victim could sue, has now been overturned, in Victoria with the Legal Identity of Defendants (Organisational Child Abuse) Act 2018 (Vic) (McCaffrey, 2018) and in New South Wales by the Civil Liability Amendment (Organisational Child Abuse Liability) Act 2018 (NSW) (Slattery, 2019).

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3 ‘Western’ does not quite capture the inclusion of New World states established by European colonisers, Central and Eastern European states, as well as Western European states. Of course, this categorisation does not imply the exclusion of development of a multi-cultural ethos within these states.



### *Superiority of the Church over civil powers*

One of the shadowy ways in which the abuse phenomenon has played out is a lurking belief in the minds of Western clerics in some churches that the Church is superior to Caesar. However, the idea that the Church is not accountable to the State (Caesar), and that the Church is superior to Caesar even in temporal matters, is an ideological position which does not reach back to the earliest period of Christianity. It is not found in Orthodoxy, particularly during the period of the Eastern Roman Empire and in its successor state, the Ottoman Empire. In the Eastern Roman Empire, the appointment of the Patriarch of Constantinople was confirmed by the emperor, and under the Ottomans, appointments of the Patriarch and bishops had to be confirmed by the Sultan (Runciman, 1968). The Emperor Constantine summoned the Council of Nicaea (AD 325). The supremacy of the Church was proposed in the West only after the collapse of the western half of the Roman Empire. William of Ockham, the great fourteenth century English Franciscan philosopher, argued strongly against this arrogation of papal power (William of Ockham, 1992 (c. 1340)). In practice, secular princes in the Middle Ages attempted, and often succeeded, in controlling the Western Church through securing the power to appoint bishops, and by imposing a feudal relationship with its attendant obligations upon church institutions such as religious houses and dioceses<sup>4</sup>. Prelates were powerful secular lords who administered royal law. They were often recruited as royal officials, so the state had a legitimate interest in the appointment of bishops. On the other hand, members of the clergy obtained immunity from prosecution in the civil courts, being triable only in church courts. However, it must also be acknowledged that this was not the only skewing of access to justice in the medieval world. Such privilege no longer obtains.

### *'The political community and the Church'<sup>5</sup>*

In the Catholic Catechism (Holy See, 1999) the Church asserts that 'only the divinely revealed religion has clearly recognized man's origin and destiny in God, the Creator and Redeemer' (# 2244)<sup>6</sup>. The Church asserts that political communities that do not recognise this, and 'do not admit that one can defend an objective criterion of good and evil ... arrogate to themselves an explicit or implicit totalitarian power over man and his destiny, as history shows'<sup>7</sup>. Un-

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4 For instance, see Bloch (1962).

5 The sub-title is that used in the Catholic Catechism (Holy See/Vatican City, 1999) hereinafter referred to as *The Catechism*.

6 Referring to the number of the paragraph of *The Catechism*.

7 Ibid, quoting Wojtyła, K.J. (Pope John Paul II) *Centesimus Annus*.



fortunately, this suggests that any liberal secular democracy could be seen as proto-totalitarian. To counter such difficulties, the Church may only use means ‘which are in accord with the Gospel and the welfare of all men according to the diversity of times and circumstances’ (ibid # 2246)<sup>8</sup>. However, there is a contradiction here, because, if the Gospels, and more generally the New Testament, are to be taken as a benchmark, there can be no basis for removing the Church from the jurisdiction of Caesar in criminal matters.

*The relationship between Church and State, the purpose of law and submission to civil authority (a scriptural perspective)*<sup>9</sup>

The synoptic gospels each record the famous injunction to ‘give back to Caesar what belongs to Caesar – and to God what belongs to God’ (*Matthew*, 22: 21). See also *Mark*, 12: 17, and *Luke*, 20: 25). This injunction arose from the question of paying tribute. However, it must also relate to the general question of how a Christian and the Church should address obedience to both God’s commands and the legitimate demands of civil authorities.

Paul in *Romans* 13 states: ‘You must all obey the governing authorities’ (ibid, v 1). The civil authorities were appointed by God, and resistance to authority is rebellion against God’s decision and is subject to punishment (ibid, v 2). Christians are subject to the civil law: ‘If you break the law, you may well have fear: the bearing of the sword has its significance’. The authorities are there to carry out God’s revenge by punishing wrongdoers (ibid, v 4); ‘You must obey, therefore, not only because you are afraid of being punished, but also for conscience’s sake’ (ibid, v 5).

Peter (1 *Peter*, 2: 13 – 16) enjoins Christians,

[F]or the sake of the Lord, accept the authority of every social institution: the emperor as the supreme authority, and the governors as commissioned by him to punish criminals and praise good citizenship. God wants you to be good citizens, so as to silence what fools are saying in their ignorance.

Paul writes to Titus (*Titus*: 3.1) to instruct the Cretans that they should be ‘subject to rulers and authorities, to be obedient...’

It follows that if the state defines a wrongful act as an offence, a Christian and the Church in general is bound to submit to and co-operate with the state’s authority.

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8 Quoting *Gaudium et Spes*, 76 para 5 (Holy See, 1965).

9 This section is taken and adapted from Mackay (2010).





Paul is clear about the scope of the civil law in the *First Letter to Timothy*. Laws are for criminals, including those who are immoral with women and boys (*1 Timothy*, 1: 10). (One may reasonably infer that girls are to be included in this categorisation.) In modern times many states and some Christians have decided not to consider what Paul has deemed sexual immorality between adults as criminal, but the sexual abuse of minors still falls under the scope of civil laws, which Christians and the churches are scripturally bound to obey.

On the question of the Church having higher authority for its actions, it might be suggested that the text, ‘We must obey God rather than any human authority’ (*Acts* 5: 29), provides comfort for those who would place the Church’s activities beyond the purview of the state. However, the apostles’ answer to the Jewish council’s accusation, that they had broken an injunction not to teach in the name of Jesus, can only be read in relation to evangelism and preaching the Gospel.

#### The role of Canon Law

As shown below, Canon Law is a further dimension in the legal matrix that affects the way in which the abuse phenomenon is handled. Daly provides a brief overview of the way in which Canon Law operates in this field (Daly, 2009). Unfortunately, Daly makes no reference to the secrecy imposed by the papacy on matters of child sexual abuse. However, the Code of Canon Law is easily consulted in its generality.

#### *Dealing with delict*

Canon Law is unambiguous in the condemnation of child sexual abuse:

A Clerk who in another way has committed an offense [sic] against the Sixth Commandment of the Decalogue, if the delict were committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.

(Code of Canon Law VI, II, Title V Can. 1395)

Whilst one might disagree with the emphasis in the way the penalty is hedged with qualification, there is no scope for casuistry as to its reference to the nature of the offence. As Haile stated (2012), for the Church: ‘The Sixth Commandment “you shall not commit adultery” pertains not only to sexual infidelity but encompasses the whole of human sexuality. Nevertheless, there are difficulties.



### *Sequestration of the case from secular jurisdiction*

As noticed by Mackay above (2013a), the phenomenon of abuse encounters the complexity of coming under the jurisdiction not only of secular law, but also of Canon Law. This raises a number of difficulties.

In order that the Church can deal with a complaint it has to apply its own disciplinary structure. However, in this case the Holy See issued an edict, requiring an oath to obey a rule of papal secrecy in cases of child sexual abuse that was widely interpreted as requiring clergy not to report cases of sexual abuse to secular authorities (Holy See, 2001). This placed clergy in a serious moral and legal dilemma. Furthermore, when victims have been required to sign confidentiality clauses in relation to private settlements this has undermined the legitimate authority of secular governments.

If a Canon Law trial does go ahead, it requires victims to have to give evidence in more than one arena if the matter is also prosecuted in the secular courts. Restorativists will recognise this as a form of secondary victimization.

### *Limitations of effectiveness and credibility of Canon Law processes*

The disciplinary processes in these cases involve either a full trial process or administrative action. This leads to further difficulties. If the matter is dealt with by trial, there is a high burden of proof. It is an open question whether courts under canon law have sufficient forensic facilities available to them to deal with cases of sexual assault. It must also be asked whether those acting as judges have the range of judicial experience of secular judges in the criminal jurisdiction. Third, Canon Law does not provide for vicarious liability for the victim's benefit. All the sanctions consequent on trial are directed towards the discipline of the individual offender. If the case is dealt with by administrative action under Canon Law, a priest who is removed may not be punished at all, and may be eligible for a pension. On the other hand, it must be allowed that between 2011 and 2012 almost 400 priests were laicized over abuse claims under the pontificate of Benedict XVI (Gagliaducci, 2017). Unfortunately it is not clear what other sanctions were imposed upon these priests.

However, Peters (1991) argues that

Gross violations of canon law, if proven, can leave Church leaders liable to making restitution to those who may have been harmed by their actions—and they can become subject themselves to ecclesiastical sanctions.

Canon Law states:

Can. 1389 §1. A person who abuses an ecclesiastical power or function is to be punished according to the gravity of the act or omission, not excluding privation of office, unless a law or precept has already established the penalty for this abuse.



§2. A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty. (Holy See, Code of Canon Law)

Nevertheless, it is difficult to ascertain how this liability is to be translated into the duty of restitution on the face of the text.

Under the trial system, only about 20% of canon lawyers are lay people. The majority are either priests or members of religious institutes (orders) (Peters, 2013). How many of these will be women? Under administrative action, the removal of a clergyman is the decision of the local bishop, who may not be a canon lawyer. This lays the Canon Law system open to the imputation of structural and gender bias when faced by allegations made by members of the laity about delicts committed by other members of the clergy.

### *Canon Law and the Laity*

One of the difficulties in dealing with child sexual abuse in the Church is that it has no political structure that can require the authorities to amend their policies and practices in the face of demands from clergy, religious or laity.

Although the laity are permitted to form associations, the governing structures and officials of the Church, whilst being bound to listen, are not required to establish organic structures that include the voice of the people of God. This is strange, because both Canon Law<sup>(#204)</sup> and the *Magisterium* (the teachings of the Popes) (Bergoglio, 2014) speak of the Church being constituted by the whole people of God. This opens up a major theme for this study. (See below.) However, the immediate implication is that the clergy represent a closed system that is constitutionally impervious to external influence even of its most devoted adherents.

### The Church and moral theology

The key source for this area is *The Catechism*. The main problem with *The Catechism* is that there is no acknowledgement of the concept of moral and spiritual injury. It takes close reading to be able to construe an internal case for Restorative Justice.

### *Sexual abuse, reparation, solidarity and justice*

#### *Reparation*

Despite Peters' assertion above, it is not clear from *The Catechism* that sexual abuse attracts restitution. Restitution is not referred to, and reparation is only



mentioned in relation to offences under the Seventh Commandment (concerning respect for persons and their goods) adumbrating the duty to make reparation for stolen goods under the commutative principle (## 2411, 2412, 2454), and under the Eighth Commandment, in relation to offences against truth and justice including damage to reputation (## 2487, 2509). Paragraph 2407 does speak in general about

‘the practice of the virtue of *justice*, to preserve our neighbour’s rights and render him what is his due; and the practice of *solidarity*, in accordance with the golden rule and in keeping with the generosity of the Lord ...’

However, its reference is only to ‘economic matters’.

### *Solidarity*

The references to *solidarity* are more promising. Paragraph 1940 specifies that *solidarity* ‘presupposes the effort for a more just social order where tensions are better able to be reduced and conflicts more readily settled by negotiation’. Furthermore, # 1948 states, ‘Solidarity is an eminently Christian virtue. It practises the sharing of spiritual goods even more than material ones.’ Perhaps from this, the seeds of a restorative approach may be nurtured.

### *Justice*

The sections on *Justice* are also encouraging. Paragraph 1807 states

Justice is the moral virtue that consists in the constant and firm will to give their due to God and neighbor. Justice toward God is called the “virtue of religion.” Justice toward men disposes one to respect the rights of each and to establish in human relationships the harmony that promotes equity with regard to persons and to the common good. The just man, often mentioned in the Sacred Scriptures, is distinguished by habitual right thinking and the uprightness of his conduct toward his neighbor. “You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor.”

Paragraph 2304 makes a connection with a Peacemaking Theory of Restorative Justice

Respect for and development of human life require peace. Peace is not merely the absence of war, and it is not limited to maintaining a balance of powers between adversaries. Peace cannot be attained on earth without safeguarding the goods of persons, free communication among men, respect for the dignity of persons and peoples, and the assiduous practice of fraternity. Peace is “the tranquillity of order.” Peace is the work of justice and the effect of charity.



Who are the People of God?

What does it mean that the Church is the whole People of God?

The statement opens up two major theological issues. These are:

- The relationship of the Church to the Kingdom of God; and whether the Church is constituted by a potentially false visible manifestation and an invisible true entity; and,
- The ways in which the People of God relate to each other and conduct their business as the 'Body of Christ'

### *Church and Kingdom*

MacCulloch (2010) makes the point that there is more than one Christianity. Not a plethora of churches, denominations and sects, but different versions of the Christian faith. There are a number of suppressed Christianities.

This leads to an important question: Are there different 'Peoples of God'? This problem even emerges during the lifetime of Jesus, when he acknowledges someone who was not one of his followers healing people in his name (*Mark*, 9: 38). Those who were not against him are with him.

Augustine of Hippo (1972/early 5<sup>th</sup> Century) wrote that there are some who are members of the Earthly City who are destined to be members of the Heavenly Kingdom (alternatively, 'The City of God/The Heavenly City'), and some members of the Heavenly City who are destined not to be. This is consistent with the parable of the wheat and the tares whereby the true believers will only be revealed at the end of time (*Matthew*, 3).

Jesus himself has a rather challenging view of the Kingdom: it belongs to children (*Mark*, 10: 14). This has a serious implication for the responsibility of church leaders. There is much scriptural discourse about disciples having to become like children and the need to be reborn as spiritual beings. Even if we apply that to adult spiritual novices as it were, the pastor still has a duty of care.

If the Kingdom belongs to children (those in fact most vulnerable and liable to abuse), how is it to be governed? Surely, this at least implies on their behalf. What greater derogation from that is their actual exploitation and spiritual harm? Those who exploit them cannot be part of the Kingdom; they are to be cast out both from the Church and the Kingdom. Those who protect abusers may also be seen to be stumbling blocks to children who have been abused and thus have no place in Church or Kingdom.



Oscar Romero (1980), the Chilean Archbishop assassinated or martyred for his support for the poor said,

[T]he world that the church ought to serve is, for us, the world of the poor.

And later,

Real persecution has been directed against the poor, the body of Christ in history today.

I am the shepherd who, with his people has begun to learn a beautiful truth: our Christian faith requires that we submerge ourselves in the world.

The world that the Church must serve is the world of the poor, and the poor are the ones who decide what it means for the church to really live in the world.

And further,

The poor are the body of Christ today. Through them he lives on in history.

So the 'true' Church and the Kingdom may not be what the churches claim them to be.

#### *Relations between members of the Body of Christ*

Jesus is pretty unsympathetic to those of his followers who would lord it over others (*Mark*, 10: 41 – 45). The church is to be a community of mutual service.

St. Paul writes (*Romans*, 4 – 8)

<sup>4</sup>For as in one body we have many members, and not all the members have the same function, <sup>5</sup>so we, who are many, are one body in Christ, and individually we are members one of another. <sup>6</sup>We have gifts that differ according to the grace given to us: prophecy, in proportion to faith; ministry, in ministering; the teacher, in teaching; <sup>8</sup>the exhorter, in exhortation; the giver, in generosity; the leader, in diligence; the compassionate, in cheerfulness.

However, when it comes to major decision-making all members must be involved. The critical text here is *Acts*, 15. After a debate in which both Peter and Paul have spoken, the leader of the mother church of Jerusalem, Jesus's brother James, not one of the Twelve Apostles, tells the community to listen to him, and then states his policy decision (*ibid*, 13 and 19). However, this is followed by a statement that 'the apostles and the elders, with the consent of the whole church, decided' whom to choose to carry out the stated policy (*ibid*, 22). This is not a wholly democratic community, but one which nevertheless requires open discussion and community consent. Even in the *Rule of Saint*



*Benedict for Monasteries*, which places so much emphasis on obedience, in major matters all members of the community must be consulted (Benedict of Nursia, 1969/c.516, chapter 3).

So answering the question ‘Who are the People of God?’ from scriptural and ancient historical perspectives reveals a set of expectations and understandings which are at variance with the ethos of several contemporary churches. In particular, it challenges the Roman Canon Law assumption that only clerics and those in regular orders have standing in the government of the Church.

#### Developing Critical Understanding – (Dynamic)

The dynamic analysis of the abuse phenomenon reveals themes of a rather more socio-political nature. Thus, a number of questions have been raised about whether certain elements of religious life have played a part in the aetiology of the abuse phenomenon.

#### Celibacy

Some have argued that clerical celibacy has contributed to the extent of the phenomenon, and yet, abuse has been found in all the churches and in secular institutions and families. However, celibacy may have played a part in exacerbating the potential for abuse, particularly when seminarists were recruited at a very immature age, or where their aptitude for the celibate life has not been sufficiently assessed.

#### Lack of gender equality and democratic processes in church government

Some have argued that the imperialist and gender-biased governance of the Church plays a part in the phenomenon. It may be the case that the lack of women in positions of authority is a significant factor. The ethical argument is not contested here. However, the point is made cautiously because comparison with other churches may not be definitive of the issue. Thus women tended not to have yet acquired positions of authority they now have in some protestant churches during the historical apogee of the abuse phenomenon. However, democratic or synodical (mixed clerical and lay) governance structures have not prevented serious persistent and endemic abuse, especially in the Anglican Communion.

#### Historicity

##### *A novel phenomenon?*

The suggestion that the phenomenon is relatively new has been shown to be incorrect, if not disingenuous (MacCulloch, 2013). The statement by Benedict



XVI that the phenomenon was a mystery is itself somewhat mystifying. There has been concern about child sex abuse from the fourth century, and was specifically condemned by St. Peter Damien in the eleventh century (Doyle, 2004). References to continuous historical penalisation of child sex abuse is recorded by Daly (2009) and Doyle (2004). It is inconceivable that the Roman church was unaware of a continuous history of abuse (MacCulloch, 2013). Liebreich (2004) provides a full account of a child sexual abuse scandal that engulfed the Piarist Order in the seventeenth century right in the heart of the Italian church.

### *Anachronistic judgements*

Despite the clarity of the point above, there is a more complex issue attending it.

Churches have blamed the permissive culture of the 1970s for a corruption of morals that affected the clergy. There may be some truth in this, but it is no plausible plea of mitigation in the face of civil laws and scriptural injunctions. It is nevertheless true that in the 1970s an organisation like the Paedophile Information Exchange was able to develop some traction within the British liberal establishment, receiving invitations to address students on academic programs (including the social work course the author attended). They had a clear message that sexual relations between adult and children were not only normal, but that children liked sexual activity (Wikipedia, 2019).

As shown above, there has never been a time in the history of Christianity when sexual activity with children was legitimised (although marriages could be engaged in below our current age of consent). However, the opinions about what to do about it may have changed. We now ask why it is that church authorities did not report matters to the police in the 1970s and 1980s and beyond. The laws were clear. The scriptures were clear both about the spiritual evil of abuse and the requirements to submit to Caesar in secular matters. However, in addition to papal prohibition on reporting, this period coincided with the heyday of the therapeutic, treatment, or rehabilitative model of justice. There was a strongly held opinion within the liberal criminological and penological community at this time that punishment was an intrinsic evil and that prison should be avoided, if not abolished. Child abusers would go to gaol and would most likely be destroyed by the experience. Treatment was a better option. This may well have been the advice received by many liberal minded Catholic prelates.

Nor, perhaps, was there sufficient contemporary understanding of the characteristics of child abusers, particularly their deviousness and pertinacity. Senior clergy clearly believed that sexual abuse may have been in the category of misdemeanour and was likely to be singular behaviour rather than habitual or cumulative in seriousness. They also appear to have believed that it was easily dealt with.





Similarly, despite the clarity of the laws and the spiritual injunctions, it does appear that churches and others may not have understood the implications and impact of abuse on those who experienced and suffered it. There may have been a critical lack of awareness of how people's development and capacity for happiness is affected by what they experience in childhood. Many in the churches may have been unsympathetic to the insights of psychoanalysis, which placed emphasis on sexuality and childhood development, which was otherwise beginning to inform understanding of childhood psychic trauma. Nevertheless, this lack of understanding or capacity to respond was not confined to the churches. A serious policy and practice response to crude physical abuse in the UK can only be traced to the late 1960s, and has never been fully successful. Can it be said that insights about the impact of sexual abuse were available to senior church officials at the time of the apogee of the phenomenon? This is an open question. So, without withholding the judgment that is appropriate to the times, we must be cautious about applying contemporary insights and judgements retrospectively.

How children have been perceived<sup>10</sup>

In the Roman Catholic Church, children were thought to have full rational and moral competence from the age of 8. That has long been the age of imputed criminal responsibility in the once Calvinist country of Scotland. There it is about to be raised to 12 years.

Despite baptism and the cleansing from 'Original Sin', children could be the sources of evil and temptation, including to clerics. Similarly, they might lie or be confused. A child might be the tool of Satan. There was no assumption, central to modern practice in child abuse investigation, that children should be believed, or at least accorded the presumption of innocence.

In *The Catechism* (Holy See, 1999), the category 'Children' is subsumed under that of 'Parents'. A child is a 'gift', not to be considered a 'piece of property'. A child has 'genuine rights' including 'the right to be respected as a person from the moment of his conception' (# 2378). However, in considering the duties of parents (##2221 – 2231) most of the emphasis is on Christian formation. There is nothing that allows for the child to be autonomous in seeking their own truth or a spiritual path that is outside the Roman Catholic Church, or to be supported in such a quest. Parents and children are under a degree

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10 I am grateful to Dr Jane Anderson of the University of Western Australia for her reflections on this topic. What is written here is stimulated by these, but does not necessarily represent them.



of pressure to conform to a particular pattern of behaviour. If a child were to challenge this conformism, or to raise questions that suggested that things were amiss, for instance that they had been abused, that would have raised, certainly in the past, not only a painful question of hurt and betrayal, but would have also presented an existential challenge to the whole edifice of the Roman Catholic manifestation of the Christian life. They may even be seen as enemies. (See section below: *Acknowledging the Conflict*.)

On the question of the duties of children, *The Catechism* extends the principle of honouring parents to include, presumably later as adults: family elders, ancestors, teachers, employers and leaders of ‘their country and to those who administer or govern it’ (# 2199). The duties of children are derived from the principle of gratitude for the gift of life. This is extended:

For Christians a special gratitude is due to those from whom they have received the gift of faith, the grace of Baptism and life in the Church. These may include parents, grandparents, other members of the family, pastors, catechists, and other teachers or friends’ (# 2220).

This can easily be turned into a totalistic and unquestioning subordination.

Liberal Catholics such as Joan Chittister (2010) have suggested that the attitude of obedience is itself part of the problem. As a virtue, it is one of the foundations of the Benedictine order to which she belongs. But obedience in all matters pertains only to the regular religious life, not to all Christians, pace *The Catechism*. It may be legitimate for church leaders to require spiritual obedience, but not in such a way that defies the scriptural requirement to obey Caesar in matters of secular law. But, even so, obedience should not be blind and unthinking. Unquestioning obedience can lead to absurd spiritually and morally questionable outcomes.

For its part, the UN Committee on the Rights of the Child (2014) has expressed strong reservations about the Church’s approach to the best interests of children and their right for their views to be heard:

The Committee is concerned that children’s right to have their best interests taken into account as a primary consideration has been insufficiently addressed by the Holy See in legislative, administrative and judicial proceedings, as well as in policies, programmes and projects that are relevant to and which have an impact on children. The Committee is particularly concerned that in dealing with allegations of child sexual abuse, the Holy See has consistently placed the preservation of the reputation of the Church and the protection of the perpetrators above the child’s best interests, as observed by several national commissions of inquiry (p.5).

(and)



The Committee is concerned that the Holy See has a restrictive interpretation of children's right to express their views in all matters affecting them as well as their rights to freedom of expression, association and religion. The Committee is also concerned that the Holy See continues to view the rights enshrined in article 12 of the Convention as undermining the rights and duties of parents (p.6).

Forgiveness, correction, and holding disputes within the Christian community<sup>11</sup>

### *Forgiveness*

A key issue for victims and their families have been implicit and explicit expectations that the victim will forgive the offender, even the Church itself. Forgiveness is seen as a central requirement of Christians, embedded in its chief prayer.

Christians are required to forgive (*Matthew*, 6: 12; 18: 21-22; *Luke*, 11:3). They are not to judge others, if they do not wish to be judged themselves (*Matthew*, 7: 1-5). However, victims are afflicted. We should remember that the *Lord's Prayer* is addressed not to individuals but to the collective. Victims may not be able to forgive by themselves. They are caught in a 'time of trial' not of their own making.

How can the community of the Church expect victims to forgive if the Church itself is implicated in creating the time of trial and has not removed its afflicting conditions?<sup>12</sup>

Furthermore, apologies by the Church or its ministers must be unilateral and not conditional on receipt of forgiveness by the survivor.

### *Correction*

Church members are required to correct each other (*Matthew* 18: 15-18; *Luke* 17: 4). In *Matthew* a recalcitrant member of the community should be treated as a pagan or a tax-collector. Paul is more explicit. In *1 Corinthians* 5 (vv 1-2), he states that a committer of incest should have been expelled from the community. At verse 13, Paul quotes *Deuteronomy* 13: 6: 'You must drive out this evil-doer from among you' (ibid). The Church has authority to judge spiritual offences – binding in earth and in heaven (*Matthew*, 18: 18). Peter's challenge to Ananias and Sapphira has fatal consequences (*Acts* 5: 1-10); and his challenge to Simon the Magician is far from mild (ibid, 8: 18-24).

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11 This section is taken and adapted from Mackay (2010).

12 For a discourse on Affliction, see Weil, (1959).



### *Keeping cases away from civil magistrates*

Associated with forgiveness is the injunction that Christians should not take their disputes to the civil magistrates (Paul, *1 Corinthians*, 6). It might be suggested that this doctrine provides a cover for not reporting crimes by members of the church community to the civil authorities. However, the injunction refers to disputes in terms of 'settling differences', 'lawsuits' and 'complaints'. It is true that in classical Roman law the line between what was deemed to be a crime and what a civil dispute is different from that which obtains in contemporary legal systems. It is also true that criminal offences may entail a corresponding claim for damages in the civil courts. It may be competent to settle such claims without involving the civil courts. It may also be possible to use restorative justice procedures, involving the victim and the offender with the agreement of the criminal courts. However, there is nothing in *I Corinthians* 6 to justify the view that crimes can be settled as if they were civil cases and not drawn to the attention of the civil authorities. Furthermore, it would be an abuse of power to suggest to a victim of crime that they should not report an offence to the authorities.

Paradoxically, there are elements of this attitude of 'diversion' which overlap with the values of restorative justice. However, in the context of the abuse phenomenon, this approach can be oppressive and coercive.

### Power and the loss of spiritual authority

The abuse of power may or may not lead to its loss. That there has been such abuse is hardly in doubt, but loss of power is dependent on a range of other related and unrelated factors. Loss of authority is a different issue, for it only takes one person to withdraw allegiance on principled grounds for authority to be both materially and theoretically damaged. Power and authority are exercised both in the public (churches and wider society) and the private (intra-church) domains.

The injunction to forgive and to keep problems away from the eyes of the secular authorities is paralleled by the desire to reduce the potential for loss of power by exposure of wrongdoing. Scandal is a major fear of all the churches, notwithstanding Peter's injunction (above) that model citizenship is the best defence against scandal. Scandal invalidates authority, not only within the church, but also its collective capacity for public influence, some of which is directly political, but also manifested through other media of social and economic life, such as education, welfare and health services provided by churches, often with extensive public funding. The secular state and the wider community may come to resent and reject the involvement of church bodies in officially provided services, when they are not seen themselves to be proper custodians of public and private morality.



This public loss of authority is mirrored in the private spiritual sphere. The clergy and those in religious orders have enjoyed a privileged status as being held up to be in some ways closer to God, a view reinforced by the view that celibacy is a better way of life than marriage. Lay people have been effectively encouraged to see themselves as second class Catholics. This served as a brake on recognition of the injuries perpetrated on children, but once the scale of the issue emerged, the presumption of the superiority of the clerical and religious state becomes its own liability. The perception of hypocrisy is caustic to clerical authority. When the Church's established leaders patently lack credibility in the eyes of many faithful Catholics, where does spiritual authority lie? Of course, such a position has not been unknown in the history of the churches. The middle ages and the period of the Reformation provide ample examples of disrespect for the worldliness and immorality of church leaders. At one point in the fourteenth century, the authority of the papacy was so divided that there were three popes claiming supremacy.

Notwithstanding the failings of the clergy, churches have always claimed the efficacy of sacraments performed by unworthy priests. Sacramental validity and the monopoly of provision by the clergy has always been a bulwark of authority.

The laity, for its part, has not posed serious theological counter-claims to the spiritual hegemony of the clergy. Nevertheless, even the comparatively weak responses of the laity (in relation to impact on the power of the church elites) does not subtract from the substantive loss of authority of the clergy in the eyes of many lay people. The remediation of spiritual harm is the locus for a very telling area of loss of authority.

The infliction of spiritual injury requires spiritual amends. Those who caused the injury cannot be the justiciars of the process of remediation. This is the juridical corollary of the sociological observation that those charged with the responsibility of resolving the abuse phenomenon in the churches are from the same sub-culture as the perpetrators. We therefore face a strange situation in which the body that claims to have supreme spiritual authority is spiritually disqualified from taking charge of the process of spiritual restoration. The outcome is that the churches have to renounce jurisdiction in a spiritual matter. This would be a major act of humility and renunciation on the part of churches. It opens up the theological-political question: Who can and who will take up this role? For whoever does take it up must have some degree of independence of the institutions, but at the same time must have spiritual standing and understanding in the field. It brings into sharp relief the questions: Who are the People of God? And, How are they to be governed?

From the perspective of restorative justice this is an astounding state of affairs. Restorative practitioners in this field will need a rare level of awareness,



maturity and expertise to deal with the range of physical, social, psychological, moral and spiritual injury that matches the range and depth of harms that victims have experienced. They will also require theological understanding. This leads us directly to the question of the application of restorative justice to the abuse phenomenon.

Applying the Theory of Restorative Justice to the Abuse Phenomenon

*Ethical Application of Concepts of Epistemological and Legitimation Crises*

Both MacIntyre and Habermas have drawn attention to the ways in which crisis affects our moral awareness and sense of the need to act otherwise. In a previous work (e.g. Mackay, 1998), the examples of MacIntyre’s conceptualisation of epistemological crisis (1998) and Habermas’ theory of legitimation crisis (1991) were used to show that restorative justice provides a means of crisis resolution and moving forward in the criminal / penal justice system.

How to deploy this approach is noted below in the section, Public Exhortation.

*Complexity of the Issues*

As has been noted before, working with the abuse phenomenon raises additional levels of complexity for restorative practitioners. These are set out simply in two tables. Table 1 refers to a threefold complexity of dealing with restorative justice issues in the Church. These relate to the level of harm experienced by victims, the number of parties involved in a restorative process, and the third relates to the additional complexity of the legal environment in which a restorative process would occur.

Table 1

<b>Additional levels of complexity in Restorative Practice with the abuse phenomenon</b>				
Aspect of harm	Conventional restorative practice environment			Institutional environment
<i>Level of injury</i>	material	psychological	social	spiritual / cultural
<i>Number of parties</i>	survivor/ person harmed	perpetrator	community	institution responsible
<i>Legal parameters</i>	criminal	administrative	civil	canon

The question of *level of harm* is dealt with below. In relation to the *number of parties*, a restorative process involving the church adds at least one other



party to the restorative agenda. Indeed, morally and possibly legally, the Church may be either a secondary perpetrator with reference to the damaging way in which the institution has responded to the victim, or in fact another primary perpetrator in relation to breaches of state or Canon laws by virtue of suppressing evidence or knowledge of the primary offence or offences.

In relation to *legal parameters*, it is clear that the involvement of the Church entails the addition of an additional legal jurisdiction to the environment of restorative practice. Usually, a restorative practitioner will only have to consider the framework of the State's criminal justice system, or the administrative legal framework of an educational authority, and possibly both. However, in the case of institutional abuse involving the Church, the presence of Canon Law exerts a powerful and binding influence upon both the primary abuser and the Church as a secondary perpetrator. It will also entail that the victim is affected in the way in which they can obtain amends. It will also affect the capacity of the restorative practitioner or mediator to engage the Church, both in respect of negotiating a contract to enable restorative or mediatory work to happen, but also how to handle individual cases.

In relation to the *level of harm*, restorative practice tends to address the first three levels of harm set out in Table 2. These relate to material, psychological and social types of injury. However, in cases involving the Church an additional level of spiritual injury is added. This fourth level does not appear in Honneth's typology, and is one that the author has introduced (Mackay, 2013a). It has application beyond the case of institutional abuse by the Church, and has application to other religious traditions and to destruction of indigenous cultures.



**Table 2**

<b>The spiritual level of harm incorporated into an expanded form from of Honneth's conception of moral injury as denial of recognition.<sup>13</sup></b>			
Level	Mode of Self-Relation	Level of Moral Injury	Examples of moral injury
1	Self-confidence	Damage to capacity to enjoy physical wellbeing. Destruction of confidence in the value we hold in each other's eyes	<ul style="list-style-type: none"> <li>• physical abuse</li> <li>• torture</li> <li>• rape                             <ul style="list-style-type: none"> <li>- sexual abuse</li> <li>- psychological and developmental harm</li> </ul> </li> </ul>
2	Self-respect	Disregard for the moral accountability of others. Damage to our self-respect acquired in seeing the value of our judgement recognised by others.	<ul style="list-style-type: none"> <li>• deceit</li> <li>• fraud</li> <li>• systematic discrimination against groups in legal system                             <ul style="list-style-type: none"> <li>- breach of trust</li> <li>- denial of accountability by the Church</li> </ul> </li> </ul>
3	Self-esteem	Humiliation and disregard of our capabilities. Harming the feeling of being socially significant within a concrete community.	<ul style="list-style-type: none"> <li>• not greeting</li> <li>• stigmatisation                             <ul style="list-style-type: none"> <li>- victims complaints not believed</li> <li>- blame for the offending</li> <li>- isolation/stigmatisation / scapegoating within community of the Church</li> <li>- not being heard</li> </ul> </li> </ul>
4	Self-realisation	Damage to capacity to regard oneself as a spiritual being with potential for development or realisation in the way a person's spirituality is expressed (enlightenment, redemption, salvation etc.) Damage to cultural identity	<ul style="list-style-type: none"> <li>• spiritual condemnation</li> <li>• undermining of conscience</li> <li>• destruction of a person's spiritual frame of reference</li> <li>• denial of right to free religious/spiritual life</li> <li>• abuse of spiritual authority</li> <li>• betrayal of spiritual trust</li> </ul>

These additional complexities alert us to the need for restorative practitioners and theorists to develop approaches to practice that can address this situation effectively. The statement of levels of moral and spiritual injury provides benchmarks for the evaluation of interventions.

<sup>13</sup> This framework was developed using the work of Honneth (1997) on the advice of Vicki Cowling OAM. See Mackay (2013).





## Recognising the Spiritual Roots of Restorative Justice

The literature of restorative justice theory has acknowledged the spiritual roots of the tradition. This includes both the development of practices and their link to repentance (Haley, 2001; Mackay, 2002; Stauffer, 2007).

### Restorative justice theory and the theology of repentance

This mode of thinking is also critical in theological accounts of what is happening in the churches. As well as acknowledging the general themes of repentance and making amends that permeate both the Tanakh and the Christian Scriptures, it is worth recognising the powerful statement of Guilt, Justification and Renewal in Bonhoeffer's *Ethics* (1995/1949). In particular, recognising that the harm that is done to the least is done to Christ, churches must acknowledge that they have incurred guilt towards Christ. In Bonhoeffer's terms, it is only by the grace of Christ that a church may recover. What has happened is not just a failure but an apostasy.

With this confession the entire guilt of the world falls upon the Church, upon the Christians, and since this guilt is not denied here, but is confessed, there arises the possibility of forgiveness (p.112).

One of the elements of guilt that stands most closely to our case is:

The Church confesses that she has witnessed the lawless application of brute force, the physical and spiritual suffering of countless innocent people, oppression, hatred and murder, and that she has not raised her voice on behalf of victims and has not found ways to hasten to their aid. She is guilty of the deaths of the weakest and most defenceless brothers of Jesus Christ (p.113).

In practice, the outgoing senior Church cleric in Australia has acknowledged to the Royal Commission that the Church's response to one victim in Australia was unchristian (nine.com.au, 2015), and that considerations of legal strategy had taken precedence over pastoral care (Murphy, 2014). These are significant admissions, and beg the question: How should these catastrophic spiritual failures be remediated?

Pragmatics: Should Secular Governments be Concerned with Developing Restorative Justice in this Field?

The Australian State of Victoria's Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations (Victoria, Parliament of, 2013) did not endorse restorative practices in its recommendations. At one level, Government should have no stake in a secular society in the survival and flourishing of any particular civil society organisation. However,



in Australia at least, the churches are not simply organs of civil society, they are partners with government in the delivery of key services, not least being the care of vulnerable children. Abuse that children suffered in the care of churches was often a result of their official secular status as being in need of care provided on behalf of government. Thus the injury sustained occurred on the watch of state authorities. Thus, one could argue, the states' failure as official guardian to inspect and audit the quality of care of children, and the failures of police authorities to deal with complaints of abuse effectively have not only contributed to the abuse, but have exacerbated it. To that extent, therefore, it is submitted that governments have a responsibility to contribute to restorative programs that may ease the suffering of victim- survivors.

### 3. Engaging the Churches in Restorative Practices

The Church's Attitude to Restorative Justice

*Does the Church understand Restorative Justice?*

The Church made some reference to restorative justice in its submission to the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (Australia, 2017). It submitted evidence concerning its *Towards Healing* program about its restorative justice initiative (Truth Justice and Healing Council, 2013). It is important to note differences between the Church's presentation of Restorative Justice, and the understanding of what Restorative Justice means, its principles and practice, as they are broadly accepted within the restorativist community.

There are a number of points that ought to be made:

1. The Church stated in its submission that *Towards Healing* 'draws upon the principles of restorative justice'. However, no documents relating to the process then available on the Catholic Bishops' website made any reference to Restorative Justice. It is noticeable that the text states, 'Some features of restorative justice programs include ...', thereby indicating that the list is not complete. There are three critical principles missing from the account from a restorative perspective.
2. The *first omission* was that *Towards Healing* process did not engage with the community in any way. The Church's submission suggested that the main focus of attention should be on the victim and the offender. It did not address the community context in which the



offending took place: the parishioners, the family, and other clergy. Engagement in the restorative process of all who have a stake in the harm done, including the community, has been mainstream to restorative theory and practice from before the time when *Towards Healing* was set up.

3. The *second omission* was that the Church did not see itself as engaging in dialogue as an involved institution. *Towards Healing* was concerned with amends, pastoral help and reconciliation of the victim with the Church. Although the Church did make public apology for shortcomings, it did not see dialogue with the victim as part of the restorative process. The Church did not recognise that it itself is a party in this issue.
4. The *third omission* is that the process does not have an independent facilitator. This is critical to the conduct of restorative processes, and especially where there is an imbalance of power between the parties.

The Church had suggested that it was willing to consider changes in its program, but did not mention the introduction of fully restorative principles and practices. Indeed restorative justice did not appear in their proposals for a way forward. More recently, a serious question was raised about the independence of facilitators within the Australian *Towards Healing* program (Guardian, the, 2014). It appeared that some facilitators of mediated agreements were not independently appointed. This would be contrary to the spirit, if not the actual requirements, of professional mediators in Australia and the UK to avoid the perception of bias. This provided further evidence that the Church needs to develop a better understanding of the principles governing practices they seek to employ to resolve the abuse phenomenon, including restorative justice.

It is worth stating that there is a need to establish how restorative principles and practice can be incorporated into any scheme (such as redress) for addressing the matters that the Royal Commission addressed.

#### The Church's level of support for Restorative Justice

It is an open question as to whether the Church would support restorative justice in this area as restorativists understand it. However, the Church has supported the use of restorative justice in criminal matters, and there is at least one instance of the Church engaging in a form of restorative practice.

The New Zealand Catholic Bishops Conference (1995) wholly endorsed the use of restorative justice in criminal matters. They wrote:



Restoration was the primary focus of biblical justice systems. Despite the widely popular misuse of the concept of *lex talionis*, the law of proportionality, as expressed in ‘an eye for an eye’, biblical tradition has a restorative focus. It was based on the need to seek **shalom**, the peace and well-being of the whole people. **Shalom** does not simply mean the absence of conflict. It means peace combined with justice and right relationships. The Law was there to seek, protect and promote **shalom**.

We can acknowledge that Pope Emeritus Benedict during his papacy recognised that it is necessary for the Church’s pastoral workers to ‘have the task of studying and recommending restorative justice as a means and a process for promoting reconciliation, justice and peace, and the return of victims and offenders to the community’ (Holy See, 2011)<sup>14</sup>.

Finally, we can record that *Healing Circles* developed at the Catholic Marquette University (Marquette University (2006) provided a limited model of restorative practice. In this model a number of parties, not necessarily directly known to each other, come together and share their experience of being involved with the issue of the abuse of power by people with power and authority in the Church. Their experience may be that of a victim; an official or worker who has been touched by the issue in their work, or an offender. Each was encouraged to share their experiences and to receive the experience of being heard and listened to. The Circle provided the participants with the further experience of being validated. This means that they can have the feeling that their statements of need, concern or remorse have been taken seriously by others within the community of the Church. This approach has a strong spiritual base.

The problem for restorativists is to translate the undeniable interest in restorative justice in some quarters of the Church into a reflexive application of the principle, and indeed injunction, to its own case.

#### *Low impact of restorative justice with the Church*

Thus far, restorative justice has made little impact on the quest to resolve the abuse phenomenon. There are several inter-locking factors that may contribute to this reluctance.

The first is the insight that restorative justice does not solely apply to the victim and the index offender. It relates in restorative theory to all those who are involved in the harmful event, including secondary perpetrators.



Second, involvement in restorative processes involves a degree of recognition that the institution has done harm, not in general terms through public statements of contrition, but in this case today, with this victim. Not only is this challenging, it could also raise issues about legal liability. Indeed, the impacts of the Church's responses to victims/survivors create a separate cause for restorative intervention.

Third, restorative practice in this area, as we have seen, does not simply relate to the remediation of physical, social and psychological injury. It also relates to spiritual injury. In such a case, the Church would have to submit to a third party in a process that will address its failings in a field in which it claims supreme, divine authority. How could the Church reconcile itself to this?

### Strategies for Restorativists and Mediators

Some might ask: Should restorativists care about the survival of the Church? Some will care and some will not, depending on their own beliefs. Individually, restorativists will have different views about the Church and the churches. Most Roman Catholics will be concerned about its survival, but not necessarily supporting survival in its current form. Other Christian restorativists may seek for transformation of the Church so that the People of God may flourish. It is probable that many secularists will have no decided view about the survival of the Church. Some would seek its demise. Our own positions as restorativists and mediators are significant here and will affect the way in which the restorativist agenda flourishes or does not succeed in this field. As restorativists and mediators, whatever our view of the Church, our aim must be to find competent and representative parties to negotiate an end to the conflict, any conflict. We need to look more closely at the field. This is not unlike mediation in a civil war, or an industrial dispute, where one of the headline parties is constituted by internally conflicted or amorphous entities. In this case, the objective is complicated by the lack of recognition of lay groups within the hierarchy. On the other hand, that could be an advantage.

As mediators we should have no interest in the question of how a party lives their life. Nevertheless as mediators and restorativists we are bound to uphold common morality and to work within the bounds of the law. We assess whether the party has the capacity to engage with mediation, and we have a responsibility to ensure that parties will not be harmed by involvement in a process which will perpetuate injury or abuse. It could be said that at this point, the Church is not in a position to engage in mediation in a way that will not perpetuate abuse, because it does not understand the need for taking responsibility and what that would entail. Whether this is or is not a fair judgement, it is clear that the Church is not yet ready to engage in restorative practices.



Unfortunately, the Church may see the offer in independent mediation and restorative practice as a threat. It may see restorativists as implicit enemies of the Church. What then are our strategic options?

#### Acknowledging the conflict

Maybe as restorativists we should acknowledge the attribution of enemy, even if the Church should love its enemies<sup>15</sup>.

An approach to developing a strategy for engagement of enemies arises from a source to which restorativists would not normally turn: the field of armed conflict (Mackay and Tatham, 2009). Their basic argument is that it is not enough to attempt to persuade potential enemies and allies by undermining their positions or converting them to our own (hearts and minds). Effective strategy is concerned with understanding the concerns and needs of the other. We need to affect the behaviour of the other. One might retort that this is the business of any mediator or negotiator. However, the Church has a tendency to cast outsider critics and internal dissidents in the role of enemy, often demonised. For instance, it has mobilised a communications strategy that says singling out the Church for criticism for the abuse phenomenon is a form of persecution and demonstrates prejudice against the Church. It is futile to attempt to counter the attribution with denial, because that merely reinforces the sense of the critic as enemy.

It seems both paradoxical and dangerous to represent oneself as a potential enemy to those whom one wishes to help. Yet it is perhaps more honest and effective to say that one accepts the attribution of enemy than to get caught up in mind-games about what it means to be a friend. Thus it may be relevant to acknowledge that restorative justice represents a threat to the Church in its own perception of itself.

In the foregoing we have explored why restorative justice may be seen to constitute a threat. Church officials are reeling from one horrible disclosure to another, one public forum to another, wherein its competence, good faith and integrity are called into question. They seek desperately to get a handle on

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15 '[Cardinal] Pell had told the [Royal] commission on Monday morning he believed the Australian arm of the church was ahead of many other countries in its moves to address the large number of claims of abuse. In contrast, he said the attitude of "some people in the Vatican" at the time was that claims of child abuse were "accusation by enemies of the church to make trouble ... and should be taken sceptically", with the "benefit of the doubt [given] [*sic*] to the defendant" (Davidson, 2014a). However, he also stated that he had pursued litigation to deter others from suing the Church, and because he 'viewed Ellis's claim as an "attack" on the trustees of the Catholic church by people who were not "entirely reasonable' (Davidson, 2014b).



the crisis in the face of predictions of total collapse of the institution, and mass defections of the laity. Against this they set the promise that the Holy Spirit will not desert the See of Saint Peter. All will be well in the end. This is just a phase through which the Church will pass, like the Reformation and the ancient persecutions. Yet, officials must be worried. They are accountable for the sheep that go missing on their shift. They believe they will be judged harshly if they are seen to have been a stumbling block to the 'little ones'. For this reason, toughing it out, is not really an option. They have already conceded much in general terms: general responsibility, willingness to be sued in the public courts, extensive laicisation of abusive clergy. They have not conceded the need to submit to external authority in the mediation of spiritual issues. Nor have they yet conceded the need to reconceptualise and reform relationships of authority within the Church itself. And yet, perhaps the assessment of the rigidity of the Church's position needs to be reassessed in the light of the removal of the restriction on reporting cases to civil authorities (Holy See, Press Office, 2019b, December; Zenit Staff/Pope and Holy See, 2019, December). This development may signal a softening of the defensive stance taken up hitherto by the Church. This in turn may enable restorativists to adopt a less combative role. It certainly offers the hope for opening up a space for dialogue to occur.

#### Responding to conflict with the attribution of being the enemy

The 'behavioural conflict' approach of Mackay and Tatham (2009) suggests that as restorativists we need new thinking in dealing with the Church. We need to analyse its strengths and weaknesses, whilst attempting to identify the needs of its leaders and of its members and victims. From day to day, senior officials want to keep their jobs and their public dignity as men (*sic*) of the cloth, although some female religious have been accused of abuse. Yet, the clergy class is not coterminous with the Church, and we must also assess whether the Church in its current form will survive. Are there other nodes of influence within the institution? There are plenty of voices within the Church who are calling for greater accountability of church leaders, for greater involvement of women and lay people generally in leadership. As mediators/facilitators<sup>16</sup> we need to have the right parties at the table to do our work, and we need to know who those will be. Ideally we should aim to help the Church to develop a common position at the negotiating table, but for all that it is an imperial institution, the Pope is not omnipotent, despite traditional claims for infallibility and the pre-eminence of the *Magisterium*. Should we be working with groups of laity rather than with bishops? Should we be working with survivor groups? This would also be seen

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16 Hereinafter, 'mediators' refers to both mediators and facilitators.



as a classic example of the ‘indirect approach’ strategy favoured in asymmetrical warfare, classically exemplified by T.E. Lawrence in the Arab Uprising in the First World War (Lawrence, 1935).

#### Private persuasion

The obvious strategy would be to approach the Church and offer to brief senior officials about what restorative justice and restorative practice would entail. This would open up a discussion about the Church’s expectations and fears. Restorativists could begin to build up a relationship and demonstrate the critical virtue of the mediator’s art, empathy, to help the Church to trust the mediator and to begin imagine a better future. We may try to motivate the Church with the vision of becoming a ‘Restorative Church’. To engage in private persuasion is to forgo public exhortation in the sense of public advocacy that states that the Church has done wrong and ought to participate in restorative practice because it is only way to put things right. However, some of the arguments to which restorativists may resort publicly (as listed below) can also be used privately.

There is one objection to approaching and conciliating with the Church as one party in the dispute. It is also essential to engage with survivors and victims on the question of whether Restorative Justice in any of its forms appears relevant and potentially helpful to them.

#### Public exhortation

If private persuasion fails, restorativists face a dilemma. If they wish to press the case for restorative practice in this area they become advocates, and the individual who acts in this way can no longer be perceived as a neutral, and indeed, as has been suggested, may be seen as as an enemy. For those who may have attempted to act privately this need to change strategy may be attended with feelings of frustration, and possibly feelings of rejection, loss and anger. These are dangers for practitioners.

Public exhortation may cover a number of issues such as those dealt with in this paper. It is inevitable that these topics relate to critical analysis of the Church as an institution and its relations with the secular world and its own members. It must also involve a deconstruction of the Church’s sense of its own authority and hegemony in spiritual matters. It will need to point up the nature of the harm done and how it can be rectified.

This is not the ideal way to make a case for restorativists. However, it is not clear how this can be avoided. It could be suggested that taking up this





role, certainly for Christians, is to take up the role of prophet, and it is possible to make a case for restorative justice within the tradition of prophesy and the discipline of theology. It is a path that is often troubled and dangerous for the prophetic theologian. The most powerful approach following this strategy is to appeal to the Christian scriptures, for the Church maintains that its values are founded on the Gospel. It is necessary to show that a restorative approach is more consistent with the Gospel than the Church's current practices. It is a role for challenge. MacIntyre's work (1998) on resolution of epistemological crises can be used effectively here.

Another approach to public exhortation is to refer to research about and the opinions of victim-survivors. Support for a restorative response to the abuse phenomenon must be sought out. Van Wormer and Burns (2004) and Anderson (2013) provide external support for the public case from a survivor perspective, but this approach can also be deployed in other strategies.

A third approach is to deploy the argument that restorative justice has strong Christian roots. (See above.)

A fourth approach is to bring to bear the conclusions of national, sub-national and international bodies that support the case for restorative practices. A particularly strong example of this is the United Nations Committee on the Rights of the Child 'Concluding observations on the second periodic report of the Holy See' (2014), which recommended that the Holy See should

Ensure that child victims and witnesses of crimes are provided with support for their physical and psychological rehabilitation and social reintegration and that such measures are not conditional on confidential settlement that would prevent children from reporting abuse to national law enforcement authorities; (p. 14)

[and]

Provide compensation to victims of sexual abuse committed by individuals and institutions under the authority of the Holy See without imposing any obligation of confidentiality or silence on the victims and establish a compensation scheme for victims in this respect. (p. 15)

Finally, one can engage with public debate about the resolution of the abuse phenomenon, for instance by giving evidence to public inquiries supportive of the use of restorative practices such as the Victorian Parliamentary Inquiry (Victoria, Parliament of, 2013; (Mackay, 2013b)) and the Australian Royal Commission into Institutional Child Sexual Abuse (Australia, 2017; Lambourne and Mackay, 2014; Mackay, 2015).



### Walk away and let justice run its course

Sometimes as mediators we have to walk away from conflicts. On the one hand we must not exacerbate the harm already done. On the other there are occasions when the public authorities have to take control and determine what needs to be done. To some extent, this is an appropriate strategy for restorativists. There is a test for not dealing with a case through the courts, all other issues and protocols having been taken into account:

1. There is no public interest issue at stake
2. There is no substantive dispute about the facts
3. There is no point of law to be resolved. (Mackay, 2019)

We might conclude that in the case of the abuse phenomenon, these tests are not met, and that cases should be dealt with formally. However, it is suggested that court settlements will not deal with the issue of spiritual harm and healing. Here one might argue in the public domain that restorative practices should be attached to judicial and quasi-judicial approaches to settlement.

### Asymmetrical engagement from the outside

Although the Church is organisationally monolithic, there are many entities within it that behave in autonomous ways. The laity itself does not appear to be well organized, but there may be bodies which have not been compromised by the abuse who are willing to engage with restorative practitioners to promote and participate in restorative programs. It is possible bodies that have been compromised may be willing to engage in restorative practices with external mediation.

A further avenue of intervention is to engage with survivor groups. This might serve both to be supportive to survivors seeking to obtain justice at spiritual and relational levels as well as a restitutory level. However, survivors may be wary of restorative justice on account of ways in which this has been presented by the Church (See the section 'Engaging the Churches in Restorative Practices' above.)

### Asymmetrical engagement from within

For those restorativists who are members of churches there is the option of promoting restorative practice from within. This is easier when church governance structures provide the opportunity for church members to have their views officially recognised, and where they can exercise influence to have restorative programs adopted. Here a full range of ethical and theological arguments can be developed.



The fruits of research

Were it possible to undertake any research in this area, the findings could be used to promote the generalisation of practice.

Researchers could go further by developing methodologies for comparative studies in different countries and with different denominations that can be used to explore restorative initiatives. This is the Holy Grail for restorative research which has thus far eluded us.

#### 4. Conclusion

This paper has the status of work in progress.

Some of the scriptural and theological material presented in the sections on developing critical understanding and application can be deployed in the practical work suggested in the section on engagement.

The paper has attempted to draw out as full as possible a range of substantive themes that have a bearing on both restorative practice and research. Of course it does not address methodological and protocol issues, nor does it address issues of engagement with survivors. These can be addressed when the opportunity for practice and research arises. The prime concern has been to study the themes and issues for the purpose of supporting restorative strategies for change within the Church.

It is hoped that this paper has succeeded in mapping out the contours of the land we must venture into to bring restorative justice to this troubled and troubling environment.

#### References

Anderson, J. (2013). 'Restorative justice beyond the Royal Commission'. *Eureka Street*. Vol 23, 24. [http://www.eurekastreet.com.au/article.aspx?aeid=38616#.UzC8H-A\\_020](http://www.eurekastreet.com.au/article.aspx?aeid=38616#.UzC8H-A_020).

Augustine of Hippo. (1972/early fifth century). *The City of God*. D. Knowles (Ed.), H. Bettenson (Trans.). London: Pelican.

Australia. (2017). *Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report*. 15.12.2017.

<https://www.childabuseroyalcommission.gov.au/final-report>



Batchelor, T. (2019, March 9). Pope Francis issues decree ordering all priests and nuns to report sex abuse and cover-ups to church. *The Independent Newspaper*.

[www.independent.co.uk/news/world/europe/pope-francis-sex-abuse-report-church-catholic-law-priests-nuns-cover-up-vatican-a8906271.html](http://www.independent.co.uk/news/world/europe/pope-francis-sex-abuse-report-church-catholic-law-priests-nuns-cover-up-vatican-a8906271.html)

Benedict of Nursia. (1969/c.516). *The Rule of Saint Benedict for Monasteries*. B.B. Bolton (Trans.). Ealing Abbey, UK: R.H. Jones Ltd.

Bergoglio, J.M. (Pope Francis). (2014). *Evangelii Gaudium*. London: Catholic Truth Society.

Bloch, M. (1962). *Feudal Society*. (2nd ed.), M.M. Postan (Trans.). London: Routledge and Kegan Paul.

Bonhoeffer, D. (1995/1949B). *Ethics*. N. Horton Smith (Trans.). New York: Simon and Shuster.

Chittister, J. (2010, March). Divided Loyalties, and incredible situation. National Catholic Reporter. 17.03.2010.

<https://www.ncronline.org/blogs/where-i-stand/divided-loyalties-incredible-situation>

Daly, B. (2009). 'Sexual Abuse and Canon Law'. *Compass*. 2009.

<http://compassreview.org/spring09/6.pdf>.

Davidson, H. (2014a, March,). George Pell denies being aware of details of John Ellis abuse case. *The Guardian Newspaper*. 24.03.2014.

<https://www.theguardian.com/world/2014/mar/24/george-pell-denies-being-aware-of-details-of-john-ellis-abuse-case>.

Davidson, H. (2014b, March, b). Pell: Vigorous defence against Ellis was to deter other claimants. *The Guardian Newspaper*. 26.03.2014

<https://www.theguardian.com/world/2014/mar/26/pell-vigorous-defence-against-ellis-was-to-deter-other-claimants>

Doyle, T.D. (2004). On Bishop Accountability: Affidavit in County of Wayne, State of North Carolina, USA. dated May 24, 2004.

[www.bishop-accountability.org/ia-davenport/archives/doyle.htm](http://www.bishop-accountability.org/ia-davenport/archives/doyle.htm).

Gagliarducci, A. (2119, March). Media vs. the Church: from Cardinal Barbarin to Cardinal Pell. *Monday Vatican*. 17 March 2017.



<http://www.mondayvatican.com/vatican/media-vs-the-church-from-cardinal-barbarin-to-cardinal-pell>.

Guardian Newspaper, the. (2014, January). Royal commission: church role as facilitator of healing is questioned. 22.01.2014.

<http://www.theguardian.com/world/2014/jan/22/royal-commission-church-role-as-facilitator-of-healing-is-questioned>

Habermas, J. (1991). *Communication and Evolution of Society*. T. McCarthy (Trans.). Cambridge UK: Polity.

Haile, B. (2012). Catechism Commentary on the Sixth Commandment. *Catholic Moral Theology*.

<http://catholicmoraltheology.com/catechism-commentary-the-sixth-commandment/>

Haley, M.L. (Ed.) (2001). *The Spiritual Roots of Restorative Justice*. NY: State University of New York Press.

Holy See. *Code of Canon Law*.

[http://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic\\_lib2-cann204-207\\_en.html](http://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib2-cann204-207_en.html).

Holy See. (1965). *Gaudium et Spes*. Pastoral Constitution on the Church in the Modern World. Vatican Archive.

[http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html)

Holy See. (1999). *The Catechism of the Catholic Church*. London: Bloomsbury. 1999.

Holy See. (2001). *Letter ... Regarding the more serious offenses*. Congregation for the Doctrine of the Faith. 18.05.2001. Published by Bishops Accountability at

<http://www.bishop-accountability.org/resources/resource-files/churchdocs/EpistulaEnglish.htm>.

Holy See. (2011). Post-Synodal Apostolic Exhortation *Africae Munus* of His Holiness Pope Benedict XVI to The Bishops, Clergy, Consecrated Persons and the Lay Faithful On The Church in Africa in Service to Reconciliation, Justice and Peace. Given At Ouidah, in Benin, on 19 November, in the Year 2011. Rome: Libreria Editrice Vaticana



[http://www.vatican.va/holy\\_father/benedict\\_xvi/apost\\_exhortations/documents/hf\\_ben-xvi\\_exh\\_20111119\\_africae-munus\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/apost_exhortations/documents/hf_ben-xvi_exh_20111119_africae-munus_en.html) (Section C. 'The good governance of states', para .83.

Holy See. (2019a). Law No. CCXCVII. *On the Protection of Minors and Vulnerable Persons*. 26 March 2019.

[http://www.vatican.va/resources/resources\\_protezioneminori-legge297\\_20190326\\_en.html](http://www.vatican.va/resources/resources_protezioneminori-legge297_20190326_en.html)

Holy See, Press Office. (2019b, December). 'Historic decision, fruit of the February summit - With the abolition of the pontifical secret for cases of sexual abuse against minors, Pope Francis continues on the path of transparency'. Comment by the editorial director, Andrea Tornielli, on the publication of the Rescript of the Holy Father on the Instruction on the Confidentiality of Legal Proceedings, 17.12.2019.

<http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217d.html>

Honneth, A. (1997). 'Recognition and Moral Theory'. *Social Research*, 64/1, 16-35.

Lambourne, W. and Mackay, R.E. (2014). Centre for Peace and Conflict Studies, University of Sydney and Edan Resolutions. Submission to *Royal Commission Into Institutional Responses To Child Sexual Abuse*, Issues Paper 6 - Redress Schemes. On a proposal for a restorative mediation redress scheme.

<http://www.childabuseroyalcommission.gov.au/getattachment/80916009-0cff-44e5-bbc8-9923f5c1985c/25-Centre-for-Peace-and-Conflict-Studies-Sydney-Un>

Lawrence, T.E. (1935). *The Seven Pillars of Wisdom- a triumph*. London: Jonathan Cape.

Liebreich, K. (2004). *Fallen Order*. London: Atlantic Books.

MacCulloch, D. (2010). *A History of Christianity*. London: Penguin.

MacCulloch, D. (2013). *Silence: A Christian History*. London: Allen Lane.

MacIntyre, A. (1998). *After Virtue- A study in moral theory*. London: Duckworth.

Mackay, A. and Tatham, S. (2009). Behavioural Conflict: From General to Strategic Corporal: Complexity, adaptation and Influence. *The Shrivenham Papers*, No 9, December 2009. Ministry of Defence. UK.

<https://smallwarsjournal.com/documents/mackaytatham.pdf>



Mackay, R. (1998). 'Restorative Justice: Natural Law, Community and Ideal Speech'. In A. J. Arnaud and P. Koller (Eds.), *Challenges to Law at the End of the 20<sup>th</sup> Century*. Vol. 2. *Law, Justice and Culture ARSP - Beiheft* (Proceedings of the 17<sup>th</sup> IVR World Congress on Legal and Social Philosophy, Bologna, 1995). Stuttgart: Franz Steiner Verlag, 99-110.

Mackay, R.E. (2002). 'Punishment, Guilt and Spirit in Restorative Justice - An Essay in Legal and Religious Anthropology'. In E. Weitekamp and H.-J. Kerner (Eds.), *Restorative Justice: theoretical foundations*, Cullompton, Willan Publishing

Mackay, R.E. (2010, March). Viewpoint: Christian social worker reflects on Church and child abuse. *Independent Catholic News*, 03.10.2010. <http://www.indcatholicnews.com/news.php?viewStory=16835>

Mackay, R.E. (2013). 'The nexus between restorative justice and rights'. In T. Gavrielides and V. Artinopoulou (Eds.), *Reconstructing Restorative Justice Philosophy - Greek philosophers and human rights*, Aldershot UK: Ashgate.

Mackay, R.E. (2013b). Submission 286 to the Victorian Parliamentary Inquiry into the handling of child abuse by religious and other non-government organizations. Report *Betrayal of Trust*. Melbourne: Parliament of Victoria. 2013. For submission see [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Submissions/Mackay\\_Robert.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Submissions/Mackay_Robert.pdf).

See at <http://law.marquette.edu>

Mackay, R.E. (2015). Response To Australian Royal Commission Consultation Paper on Redress Schemes (*Royal Commission Into Institutional Responses To Child Sexual Abuse*)

<http://www.childabuseroyalcommission.gov.au/getattachment/5431d53b-ac76-4b35-847d-4f517a7d9778/Robert-Mackay>

Mackay, R.E. (2019). Finding a normative place for a recast restorative principle of peacemaking: Peacemaking and conflict responses in a threefold typology of temporal focus, level of formality and locus of conflict - with an application to Shakespeare's *Romeo and Juliet*. In T. Gavrielides (Ed.), *Routledge International Handbook of Restorative Justice*. Abingdon Oxon: Routledge.

Marquette University. (2006) *Healing Circle*. Video. Law School/Restorative Justice Initiative. (November 2006)

<https://law-media.marquette.edu/Mediasite/Play/1abe8ac638d34bd-f8887f5eb97301adc1d>



McCaffrey, L. (2018). 'Ellis defence' no longer a barrier for survivors of institutional child abuse. Friday 29 June 2018 Advice Injury Lawyers.

<https://adviceinjurylawyers.com.au/2018/06/29/ellis-defence-sexual-abuse/>

Murphy, D. (2014, March). Cardinal George Pell regrets legal strategy used against victim John Ellis. *Sydney Morning Herald*. 27.03.2014.

<https://www.smh.com.au/national/cardinal-george-pell-regrets-legal-strategy-used-against-victim-john-ellis-20140326-35iv4.html>

New Zealand Catholic Bishops Conference. (1995). *Creating New Hearts: Moving From Retributive to Restorative Justice*. A Pastoral Letter to the Catholic People of New Zealand. Wednesday August 30, 1995 - Wellington

<https://waynenorthey.com/wp-content/uploads/2014/02/creating-new-hearts.pdf>

nine.com.au. (2015, February). Pell was un-Christian to victim: report. (11.02.2015) 9 News television program. <https://www.9news.com.au/national/pell-was-un-christian-to-victim-report/79b651ee-d1b2-47d9-9c07-e59b-2c594fa0>

O'Carroll, S. (2012, June). Clerical abuse 'remains a mystery', says Pope Benedict XVI. *thejournal.ie*. 17.06.2012.

<http://www.thejournal.ie/pope-vatican-abuse-mystery-credibility-benedict-iec-croke-park-490607-Jun2012/>.

Pattison, S. (2000). *A Critique of Pastoral Care*. (3<sup>rd</sup> ed.). London: SCM Press.

Peters, E. (1991, November). What canon lawyers are and aren't. *This Rock*.

November 1991, pp 19-22. Cited in [http://www.canonlaw.info/a\\_canonlawyersarearent.htm](http://www.canonlaw.info/a_canonlawyersarearent.htm)

Romero, O. (1980). Acceptance speech at the ceremony in Leuven, when he received the Nobel Prize for Peace. <https://www.kuleuven.be/up/documenten/teksten/o-romero-speech-1980.pdf>

Runciman, S. (1968). *The Great Church in Captivity*. Cambridge: Cambridge University Press.

Slattery, M. (2019). NSW reforms organisational liability for child abuse. *Carroll and O'Dea Lawyers*. Published on January 21, 2019.





[https://www.codea.com.au/publication/nsw-reforms-organisational-liability-for-child-abuse/?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](https://www.codea.com.au/publication/nsw-reforms-organisational-liability-for-child-abuse/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original)

Stauffer, C. (2007). Narrating the Spirit of Justice. *Acta Juridica*: 'Restorative Justice: Politics, Policies and Practice'. 193-208.

Tapsell, K. (2014) *Potiphar's Wife – The Vatican's Secret and Child Sexual Abuse*. Adelaide: ATF Press.

Truth Justice and Healing Council. (2013). (Representing the Roman Catholic Church in Australia, now defunct.) Submission to Royal Commission into Institutional Responses to Child Sexual Abuse. Issues Paper No. 2 Towards Healing. 30 September 2013.

United Nations Committee on the Rights of the Child. (2014) 'Concluding observations on the second periodic report of the Holy See'. Dated 25.02.2014.

[http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/VAT/CRC\\_C\\_VAT\\_CO\\_2\\_16302\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/VAT/CRC_C_VAT_CO_2_16302_E.pdf).

van Wormer, K. and Berns, L. (2004). 'The impact of Priest Sexual Abuse: Female Survivors' Narratives'. *AFFILIA*, 19(1), 53-67.

Victoria (State), Parliament of. (2013). *Betrayal of Trust*. Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-government Organisations. Melbourne: Parliament of Victoria.

Weil, S. (1959). The Love of God and Affliction, in *Waiting on God*. E. Crawford (Trans.). London: Fontana.

Wikipedia. (2019) Paedophile Information Exchange. 15 November 2019. [https://en.wikipedia.org/wiki/Paedophile\\_Information\\_Exchange](https://en.wikipedia.org/wiki/Paedophile_Information_Exchange).

William of Ockham. (1992 (c. 1340)). *Short Treatise on Tyrannical Government*. A.S. McGrade (Ed.), J. Kilcullen (Trans.). Cambridge: Cambridge University Press.

Winslade, J. and Monk, G. (2000). *Practicing Narrative Mediation*. San Francisco: Jossey-Bass/ Wiley.

Wojtyła, K.J. (Pope John Paul II). (1991). *Centesimus Annus*. Encyclical Letter.

[w2.vatican.va/.../en/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centesimus-annus.html](http://w2.vatican.va/.../en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html)



Zenit Staff/Pope and Holy See. (2019, December). Rescriptum of Pope Francis to Promulgate the Instruction on Confidentiality of Legal Proceedings - Next Step to Combat Clerical Sexual Abuse. 17.12 2019, 15:27. Zenit Staff/Pope & Holy See.

<https://zenit.org/articles/rescriptum-of-pope-francis-to-promulgate-the-instruction-on-confidentiality-of-legal-proceedings/>