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# Catholic Church Responses to Clergy-Child Sexual Abuse and Mandatory Reporting Exemptions in Victoria, Australia: A Discursive Critique

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### Abstract

This article presents empirical findings from a critical discourse analysis of institutional responses by the Catholic Church to clergy-child sexual abuse in Victoria, Australia. A sample of 28 documents, comprising 1,394 pages, is analysed in the context of the 2012-2013 Victorian Inquiry into the Handling of Child Abuse by Religious and Other Organisations. Sykes and Matza's (1957) and Cohen's (1993) techniques of, respectively, neutralisation and denial are used to reveal the Catholic Church's Janus-faced responses to clergy-child sexual abuse and mandatory reporting requirements. Paradoxical tensions are observed between Catholic Canonical law and clerical practices, and the extent of compliance with secular law and referral of allegations to authorities. Concerns centre on Church secrecy, clerical defences of the confessional in justification of inaction, and the Melbourne Response compensation scheme. Our research findings underscore the need for greater Church transparency and accountability; we advocate for mandatory reporting law reform and institutional reform, including adjustments to the confessional ritual.

### Keywords

Catholic Church; child sexual abuse; neutralisation.

### Introduction

In Australia, issues of clergy-child sexual abuse and mandatory reporting remain a salient issue, with the Royal Commission into Institutional Responses to Child Abuse ongoing at the time of writing (see Commonwealth of Australia 2014a, 2014b; Matthews 2014). The scope of this article is bounded by a focus on the Roman Catholic Church in the jurisdiction of Victoria, Australia. The research presented here comprises a discursive examination of the perspectives of prominent Catholic Church representatives and institutional responses to clergy-child sexual abuse in the recent Victorian Inquiry into the Handling of Child Abuse by Religious and Other

Organisations (referred to here as the 'Victorian Inquiry'; referenced as Family and Community Development Committee (FCDC) 2013a, 2013b).

The first section of this article introduces the study with an overview of the topical contributions of scholarship within the field to date, followed by an overview of research design, language, and theory. Our empirical analysis is framed through the lens of two seminal theories, namely Sykes and Matza's (1957) techniques of neutralisation, complemented by Stan Cohen's (1993) theorisation of techniques of control and denial. Subsequent sections of this article critique two contrasting 'faces' or forms of institutional responses which emerge from Catholic discourses. Critical discourse analysis of a sample of transcripts, submissions and reports from the Victorian Inquiry reveals significant issues inherent in Catholic clerical cultures, including issues of Church secrecy and concessions from senior representatives that some of their actions served 'the direct objective of concealing wrongdoing' (FCDC 2013a: xxvi). Institutional features such as the confessional and the Church's defence of confessional privilege and priest exemption from mandatory reporting of child abuse in Victoria are discussed. Our final section critiques 'The Melbourne Response' investigation and compensation scheme, demonstrating its encapsulation of our 'Janus-faced' thesis, centring on its failure to report, as well as instances of implicit discouragement of victims to self-report allegations of child sexual abuse to Victoria Police. The article concludes with calls for and suggestions of legislative and institutional reforms, so as to improve responses for victims as exigent matters of access to justice.

### **Clergy-child sexual abuse**

Scholarly inquiry into clergy-child sexual abuse has grown considerably since the late twentieth century consequent to the normalisation of 'clerical collar crime' exposés (Doyle 2003; Spraitz, Bowen and Bowers 2014). Such exposés instigated a plethora of psychological, legal and sociological scholarship, providing key insights into the contributing factors and possible solutions to clergy-child sexual abuse (see Death 2013; Frawley-O'Dea 2007; Isely 1997; Keenan 2012). Systematic inquiries of a similar nature have been undertaken by government agencies within numerous jurisdictions around the world (see John Jay College 2011; Ryan 2009).

The reoccurrence of findings of institutional secrecy from Church leadership in re-locating offenders and coercing victims into silence as well as cases of prolific abuse amongst collectives of priests considered within these inquiries are crucial in demonstrating the falsity of a reliance upon the 'rotten apples' defence by religious institutions (Death 2013; Terry 2008). They discredit simplistic explanations of abuse as a by-product of enforced celibacy amongst priests.

In recognising instances of clergy-child sexual abuse across different cultures, scholars have looked to institutional cultures and practices to explain the prevalence of sexual criminality, such as clericalism, indoctrinated church allegiance, and inadequate seminary preparation (Doyle 2003; Keenan 2012; Terry 2008). The gravity and impact of these crimes on victims, families and religious communities are increasingly well documented in the findings produced by the aforementioned inquiries, as well as the extant criminological literature (see Daly 2014; Parkinson 2014; Salter 2013). This article responds to the call for further investigation into institutional structures which serve as enablers of clergy-child sexual abuse within the Catholic Church (Death 2013; Keenan 2012).

### **The study: Research methods, language and theoretical lenses**

This study is compelled by an intrigue to investigate and better understand two particular issues, which form the basis of the research question:

In the context of the Catholic Church in Victoria, have the ritual of the confessional, clergy exemption from mandatory reporting of known cases of

clergy-child sexual abuse, and the Melbourne Response acted as enablers of institutional inaction and secrecy about this crime?

Motivation to pursue this line of inquiry was sparked by the realisation that, with few exceptions, empirical and theoretical criminological scholarship in this area remains limited. Cornwell (2014), Daly (2014), Keenan (2012), and Spraitz, Bowen and Bowers (2014) are among the few academic authors to use criminological theories and concepts to theorise Church cultures and responses to clergy-child abuse, and highlight the confessional as one of the apparatuses which may enable inaction and concealment of abuse.

The Victorian Inquiry into the Handling of Child Abuse by Religious and Other Organisations commenced in April 2012 and concluded in November 2013 (FCDC 2013a, 2013b), with a Victorian Government (2014) response to its findings released in May the following year. Research design and data analysis was conducted by the first author between June and October 2014. The Victorian Inquiry was chosen as the most recent example of a completed inquiry of this kind available in Australia at the time.

The rationale for focussed research on the Catholic Church is twofold. In most common law countries, including Australia, priests possess an exemption from conferring information of known crimes if that knowledge was acquired through the Catholic ritual of confession, a legal exemption known as the 'priest-penitent privilege' (Hogan 1951; Keenan 2012). This privilege, though broad in its wording within the *Evidence Act 2008* (Vic) as if to apply to any minister of religion, in practice is primarily applied to the Catholic ritual of the Sacrament of Penance and Reconciliation (Confession) within case law, as opposed to confidential conversations between Protestant Christian ministers and church members (Hogan 1951). The Catholic Church was selected because, relative to other Christian denominations, 'the majority of evidence' within the Inquiry concerned clergy-child sexual abuse within the Catholic Church, providing sufficient scope for a focussed investigation of the denomination (FCDC 2013a: xxvii).

Purposive sampling was used to bind the scope of the sample. Table 1 lists the research sample of 28 documents, with a total of 1,394 pages, sourced from the Victorian Inquiry website and related sources. The documents entail a combination of written submissions, oral testimonies, reports, and newspaper articles drawn from key stakeholders in the Victorian context.

Critical discourse analysis was used to examine the documents in the sample, with attention given to the way in which text was conveyed and utilised (discursive practice) to capitalise positive self-image through the utilisation of power and ideology, and minimise images of negativity (van Dijk 2006). A 'structural coding strategy' (see Saldaña 2009) was used to synthesise and categorise the data into columns organised by catchwords or phrases, which are presented in Table 2. The coding scheme was partly adopted and adapted from critical discourse analysis categories assembled by van Dijk (2006). There is insufficient space in this article to relay the extent to which each coding category features in the sample: instead, those which most closely align with the research question and which feature most commonly in the data are discussed.

As exemplified by some of the coding categories in Table 2, the works of Sykes and Matza (1957) and Cohen (1993) form the theoretical lenses which inform this study. Five techniques of neutralisation formulated by Sykes and Matza (1957) are central themes here: denial of responsibility; denial of injury; denial of the victim(s); condemnation of the condemners; and appeal to higher loyalties. Cohen (1993) adds three techniques of control and denial: denial of the past; literal denial; and implicatory denial. This theoretical elaboration is of importance in its application of neutralisation theory to organisations and institutions.

**Table 1: The research sample**

<i>Actor/author</i>	<i>Abridged document title</i>	<i>Pages</i>
<b>Archbishop Hart of the Archdiocese of Melbourne</b>	Inquiry Hearing Transcript 20 May 2013 (Hart 2013a); Law Reform Proposals of the Victorian Church (Hart 2013b);	53 6
	Right of Reply 3 Attachment 1: Recommendations in <i>Facing the Truth</i> (Hart 2013c);	1
	Media Release 25 November 2012 (Hart 2012).	2
	Inquiry Submission (Pell 2013a); Inquiry Statement (Pell 2013b); Appendix 1: Sexual Abuse Response of Sydney (Pell 2013c); Inquiry Hearing Transcript 27 May 2013 (Pell 2013d); Appendix 4 Police Media Release 1996 (Pell 2013e).	15 6 16 58 1
<b>Cardinal Pell</b>	<i>Facing the Truth</i> (Catholic Church in Victoria 2012);	155
	Supplementary Submission 2 (Catholic Church in Victoria 2013);	22
<b>The Catholic Church in Victoria en masse</b>	In ABC Interview by Palmer 2012 'Bishop Geoffrey Robinson says George Pell must no longer speak for Catholic Church' (Colvin 2012); Robinson (2012) 'On breaking the seal of confession'.	2 2
<b>GJ Robinson: retired Australian Catholic bishop</b>	Inquiry Submission (Cahill 2012).	46
<b>Professor Cahill: ex-Catholic priest</b>	Inquiry Submission (Catholics for Renewal 2012); Appendix (Catholics for Renewal 2013a); Inquiry Hearing Transcript 23 January 2013 (Catholics for Renewal 2013b).	38 7 17
<b>Catholics for Renewal: layperson Church reform body</b>	Inquiry Submission (Child Wise 2013a); Inquiry Hearing Transcript 5 April 2013 (Child Wise 2013b).	25 14
<b>Child Wise: child safe organisation</b>	Inquiry Submission 2012 (Bravehearts 2012).	31
<b>Bravehearts: child safe organisation</b>	Inquiry Hearing Transcript 5 April 2013	11
<b>Commission for Children and Young People</b>	<i>Betrayal of Trust</i> Volume I 2013; <i>Betrayal of Trust</i> Volume II 2013.	272 476
<b>The Inquiry Report by the Family and Community Development Committee</b>	Inquiry Response (Victorian Government 2014).	9
<b>Victorian Government</b>	Inquiry Submission (Victoria Police 2014).	18
<b>Victoria Police</b>	Inquiry Submission (Law Institute of Victoria 2012); Supplementary Submission (Law Institute of Victoria 2013).	45 34
<b>Law Institute of Victoria</b>	'Napthine government fails to act on child sex abuse' (Keon-Cohen and Poznanski 2014).	2
<b>Media opinion: Keon-Cohen and Poznanski</b>		

Source: For access to these texts, see Family and Community Development Committee (2013c).

The techniques of neutralisation have recently been employed in a similar study by Spraitz, Bowen and Bowers (2014) to analyse how Catholic Church leaders responded to sexual abuse in one diocese in the United States. Their empirical analysis of over 4,000 pages of documentation found that these critical theories are relevant in explaining how some diocesan personnel justified fellow priests' abusive behaviours, denied injury and responsibility, and that 'some were very forthright in covering up these crimes' (Spraitz, Bowen and Bowers 2014: 1). This coincides with the findings of others that some actors in the Church have been found to manipulate evidence and records, signifying what we believe is a Janus-faced approach within Church operations (FCDC 2013a; Frawley-O'Dea 2007).

**Table 2: Coding categories and definitions**

<i>Code name</i>	<i>Definition</i>
<b>Affirmation</b>	Where one actor praises another or his deeds or statements.
<b>Apologies</b>	The utilisation of apologies within a text.
<b>Authority</b>	The use of texts, statistics, and titles to strengthen or validate argument. In addition, the construing of statements in an authoritative manner to validate argument.
<b>Confessional</b>	The invoking of, or reference to, the confessional, its privilege at law, or the seal of the confessional. In addition, the flagging of material which omits reference to the confessional.
<b>Contradiction</b>	Where a statement contradicts previous testimony or statements of the individual or institution.
<b>Denial</b>	The ways in which institutions deny accountability for actions and omissions conducted, or failed to be conducted by, the institution and its agents (Cohen 1993): (i) Denial of the past (manipulation of records or the public's consciousness to re-write history); (ii) Literal denial (removal of evidence pertaining to a particular event and the intentional negligence towards uncovering and publicising truthful information, and open denial by agents or representatives); (iii) Implicatory denial (denial of that pertaining to the moral or psychological implications of an act/or occurrence through the reconstruction of facts and meanings).
<b>Emotionality</b>	The use of emotive language for a particular effect.
<b>Empathy</b>	The presence of empathy within a text.
<b>Factualisation</b>	The process through which statements are represented as facts without citation or evidentiary support.
<b>Forgiveness</b>	The presence of forgiveness, especially on the part of victims, within a text.
<b>Hyperbole</b>	The exaggeration of meaning through literary devices.
<b>Illustration</b>	Use of an illustration to substantiate argument.
<b>Justice Imagery</b>	The use of language to promote commitments to justice, or incite an emotive response to the distribution of justice or legal ideology (democracy etc.), or an absence and/or failure of justice for a particular effect.
<b>Lexicalisation</b>	The composition of text to negatively portray a specific group or subject matter, in particular, to distance one group or claim from another.
<b>Morality</b>	The citing of morals to enforce argument.
<b>Neutralisation</b>	(i) Denial of responsibility; (ii) Denial of injury; (iii) Denial of victim; (iv) Condemnation of the condemners; (v) Appeal to higher loyalties.
<b>Obfuscation</b>	Where text is presented to provide an outward manifestation of a particular meaning, answer, or action, whilst in actuality, failing to address the question, or substantiate claims made.
<b>Omission</b>	The failure of submissions to address areas of concern to the abuse crisis within the Church as highlighted by criminological research.
<b>Personalisation</b>	The use of personal perspectives or inclusive language to strengthen argument.
<b>Promises</b>	The making of a pledge of some description, for a particular effect.
<b>Repetition</b>	The reoccurrence of statements to instigate a particular effect.
<b>Self-promotion</b>	The execution of language to instigate praise towards the actor/institution, or their actions and statements.

### **The Catholic Church's Janus-faced approach to reporting and compliance**

The submissions of the Church to the Victorian Inquiry reveal a convoluted and contradictory attitude towards legislative compliance, a contrast particularly visible in discussions of mandatory reporting. We liken this standpoint to being 'Janus-faced', in reference to the two-headed gatekeeper deity of Ancient Rome. One 'face' of the Church, looking outwards towards the world, promises to 'continue to fulfil its obligations as they are defined in Australian society' (Pell 2013d: 29) and 'promptly and effectively deal with those who are guilty of abuse' through means of 'decisive action' (Catholic Church in Victoria 2012: 1). Instances of 'empathy' with victims were evident in the coding of this sample. However, this external 'face' of legislative compliance and culture change can be juxtaposed by the internal 'face' of the Church gazing within, imbued by a deep hesitation to prioritise secular law before Canon Law. Paradoxically, the incongruous Janus-faced responses can be observed within twenty-one pages of the same text (Catholic Church in Victoria 2012: 86-107).

One of the clearest examples of a Janus-faced response to emerge from this study is found in the justifications used in the Catholic Church's unrelenting defence of the 'priest-penitent privilege' and mandatory reporting exemptions at law. This privilege replicates the Church's confessional confidentiality doctrine, the 'confessional seal', which Keenan (2012) and Cornwell (2014) have identified as an enabler of clergy-child sexual abuse and its concealment within the Church. In Victoria, confessional privilege at law is maintained by s. 127 of the *Evidence Act 2008* (Vic), and priest exemption from mandatory reporting legislation is maintained in the *Children, Youth and Families Act 2005* (Vic). This issue of clerical exemption is further frustrated by the absence of criminal mandatory reporting requirements in Victoria under the *Crimes Act 1958* (Vic), that provision or 'misprision of felony' being withdrawn in 1981 (Catholic Church in Victoria 2012: 110). This is elaborated through an exposition of the Janus-faced response of the Catholic Church.

### **The Church's outward face: Demonstrations of legislative compliance and commitment**

Church documents examined in this study exhibit two contrasting responses. In some submissions to the Inquiry, Church discourses articulate the essentiality of clerical adherence to 'requirements of mandatory reporting and other relevant civil legislation' (Catholic Church in Victoria 2012: 86) in maintaining that '[t]he Church does not believe that Catholic priests, or any other individual associated with the Church, should be excused of heinous crimes' (Catholic Church in Victoria 2012: 6). In an Appendix to the Victorian Inquiry submission of Cardinal George Pell (2013c), the Sydney Archdiocese strongly echoes the Victorian stance in stating:

New South Wales [law] requires anyone who knows or believes that a serious crime has been committed and has information about it to report it to the police. 'Reportable conduct', including *allegations of sexual assault of children, must be reported also to the New South Wales Ombudsman, who monitors church investigations and outcomes* concerning people who are working with children. *The Archdiocese complies with all these obligations* by reporting to the appropriate government authority, either directly or through the Professional Standards Office [emphasis in original]. (Pell 2013c: 10)

Here the Catholic Church is portrayed in a positive light insofar as it demonstrates an understanding of, and compliance with, the state concurrent reporting system. The use of hyperbole in the deliberate emphasis of the key phrases in the text creates additional legitimation to this epistemic modality. The use of the word 'comply' following the use of authoritative language – 'requires', 'must', and 'all these' – in describing the reporting of information strengthens the representation of commitment by the Church (Machin and Mayr 2013: 187). A favourable image is effectively modelled through discursive emphasis of compliance. Such discourse is accompanied by further efforts to demonstrate that compliance

with government wishes has instigated a 'massive [clerical] cultural change' (Pell 2013d: 30) stemming from the 'great vigilance of the church' (Hart 2013a: 26).

In analysing Church texts, the majority of the discourse pertaining to the Church and the law of the state are organised beneath the coding category of 'self-promotion', and 'justice imagery'. This is consistent with van Dijk's (2006) conceptualisations of power, positive self-representation and minimising negative attributes. These categories also possess synergies with Cohen's (1993) theory of denial in understanding the operation of the confessional within the Church and its legislative freedoms within Victoria.

Such précis of denial are particularly present within the oral submissions of Catholic leaders, whose comments portray the clergy as 'good citizens' who comply with legislative obligations as 'it is paramount that the requirements of civil law be observed' (Pell 2013d: 26; Hart 2013a: 11). Significantly, this commitment is articulated by Cardinal Pell, the most senior Catholic cleric in Australia at the time, on four occasions throughout his oral examination (Pell 2013d: 26-55).

We have always complied with the law of the land, and we will comply with the law of the land in the future ... I repeat, whatever we are compelled to do, we will do. (Pell 2013d: 26)

Pell's sentiments highlight issues of ideological control and execution of power. Comments such as these seek to instil the perception that there has been, and will be, an unfailing commitment to the law by the Church ('we') and which, arguably, divert attention from historical cases of concealment by Church actors. This is in light of extensive media scrutiny for a failure to do so, which raises the question of whether these sentiments constitute what Cohen (1993) might conceptualise as an attempt to re-construct the past (denial of the past) and illustrate a new era of the Church.

Notwithstanding this, attention must be drawn to the omission of reference to the confessional and its concealment of information throughout Catholic texts in the sample. Within the oral transcripts of Catholic leaders in the sample, only once is it mentioned in relation to mandatory reporting, with reference for how it is a 'preferred' religious practice of the Church (Hart 2013a: 37). Interestingly, confessional privilege is not alluded to in the documents of the Sydney Archdiocese, nor an appeal to preserve the privilege at law. Arguably, the omission of the confessional privilege within the quotations above and the sample of Catholic texts raise questions about the positive portrayal of the Catholic Church and the extent to which it is illusory: that is, a means of maintaining the perception of Church control over information and actions of the clergy.

### **The Church's inward face: Denial and appeals to higher loyalties in privileging canon law and institutional compliance**

The second 'face' of the Catholic Church in Victoria is raised in response to the matters of confessional, mandatory reporting and institutional responses to victims. Data analysis identifies two forms of neutralisation: denial of responsibility (secular law); and appeals to higher loyalties (Canon Law).

#### *Denial of responsibility*

Within the Victorian Church submissions 'denial of responsibility' appears as a leitmotif throughout discussions of the absence of welfare and criminal mandatory reporting requirements in Victoria. It is contended by senior Church actors that there exists 'no obligation to report to police' at law (Pell 2013d: 36). As articulated within the Victorian supplement:

... the decision to report belongs to the victim. The law in Victoria does not require the reporting of criminal offences to the police. If a victim does not want to report the abuse to police, the Church has no right or obligation to do so. (Catholic Church in Victoria 2013: 6)

In the majority of its documentation, the Melbourne Archdiocese ratifies this inactivity in disburdening the primary abuse responsibility to the leader of Melbourne Response, 'Our situation is that all matters go to the Independent Commissioner' (Hart 2013a: 36). While the Melbourne Response is discussed in a later section, we contend that this constitutes a double denial of responsibility in that the Archbishop possesses sovereignty and responsibility within his diocese (Catholic Church in Victoria 2012: 7-9; Hart 2013a: 13; Pell 2013d: 35). The Independent Commissioner, though charged with the oversight and management of the allegations towards the Church, is not obligated under its term of reference to report any matters to police, despite Archbishop Hart commenting '[m]y wish would be that all matters be reported to the police' (Hart 2013a: 36). This inaction is particularly the case, the Church stresses, where the victim expresses unwillingness to have it reported (Catholic Church in Victoria 2012: 61-62).

The Church's recognition that some victims of sexual crimes may not wish to report their victimisation to authorities is neither erroneous nor inconsequential (Catholic Church in Victoria 2012; Porter 2003). It is entirely understandable that some victims may wish to avoid typically long and emotionally arduous processes of prosecution which require them to recall traumatic events in an adversarial criminal justice context (Balboni and Bishop 2010; Hopkins and Koss 2005; Parkinson 2003). However, differentiation is needed between instances where the Church does not report by request of the victim, and wider issues of recurrent failure to report due to reliance upon an absence of legislative compulsion. Though silence and inaction may be arguably justified within legislative technicalities and Church claims that it never relies on such gambits (Pell 2013d: 55), it must be noted that the Church, in addition to the comments highlighted earlier, acknowledges that victims are its 'first priority' and that it has a moral obligation to respond to their needs (Catholic Church in Victoria 2012: 116; Pell 2013c: 5, 2013d: 18). Paradoxical tensions emerge in what the Catholic Church in Victoria says and what it does in terms of its moral obligations and duty of care to victims, including vulnerable minors.

#### *Appeal to higher loyalties*

Church texts in this sample appeal to higher loyalties in claiming that legislators should not revoke the confessional privilege under the *Evidence Act (2008)* (Vic) or otherwise interfere with the 'sanctity of the confessional' through the creation of an offence for withholding information of crimes (Catholic Church in Victoria 2012: 114). Within Catholicism, confession is the ritual through which a member of the clergy forgives an individual of their professed sins within a private space, the confessional (Daly 2013). Confession is important in ensuring salvation in the Catholic ethos, as sin is believed to separate the individual from the love of God (Daly 2013).

It is contended that, within the confessional, the priest, in the eyes of the Catholic Church, is seen not as a confidante, but the vehicle through which confessions are made; the information is thus God's alone (Catholic Church in Victoria 2012: 106). The Catholic Church (2012: 106) reasons that '... it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion'. Theologians fear an absence of confessional confidentiality would deter Catholics partaking in the ritual, thus jeopardising, in the Catholic view, salvation (Catholic Church in Victoria 2012: 106; Doyle 2003). The legitimacy and seriousness of these overarching issues of faith and doctrine are not being challenged here. Rather, the relevant concern is their invocation by clerics in justification of inaction in instances of knowledge of the crime of child abuse.

The appeal to higher loyalties is distinctive in the denunciation of any laws of the state as the primary allegiance of the clergy is to the Vatican and Canonical obligations:

Any legislative amendment that purported to require priests to violate the sacramental seal of confession will be ineffective as *priests will simply be unable and unwilling to comply ... Canonical obligations override* inconsistent obligations purportedly imposed by *civil law* [emphasis in original]. (Catholic Church in Victoria 2012: 107)

The Church invokes its hierarchical power and appeals to higher loyalties on the grounds that Canon Law operates concurrently to Australian law; and as federal law overrides concurrent state law, so too must precedence, it is argued, be granted to Canon Law by clerics. This is salient given assurances by the Church, within the same document, of an agreement to report knowledge of child abuse in accordance with the law: 'If Parliament should so legislate, the Church will comply' (Catholic Church in Victoria 2012: 114).

The Church (2013: 14) dismisses the need to reform the confessional, raising the perspective that 'paedophile priests' do not undertake confession in holding to a belief that 'they are not doing wrong', and thus such an occurrence is an 'unlikely situation'; further implying obtaining identifiable information of sexual offenders would be 'extremely unlikely'. This sits in tension with Keenan's (2012) Irish research conducted with clerics convicted of child sexual offences, most of whom stated that they routinely confessed their crimes as 'sins' to other priests, confident that this would be protected by the seal of the confessional. In an Australian case, convicted sex offender Father McArdle confessed to 30 different priests over the period of 25 years that he sexually assaulted children approximately 1,400 times (Cornwell 2014: 189; Keon-Cohen and Poznanski 2014). Australian child protection scholar Freda Briggs has drawn attention to instances of Catholic priests, in Victoria and elsewhere in Australia, routinely refusing to report knowledge of child sexual abuse by fellow priests because of the confessional seal, with one Victorian priest offender stating he confessed to other priests 200 times (Hawkins and Briggs 1997; Shepherd 2012). Thus, some clerical offenders *do* confess their sexual crimes to other priests, and this knowledge was not reported to authorities due to the confessional seal. Yet the need for reform in relation to the confessional is diminished in institutional discourses in that it is seen by senior Catholic actors to be used purely for its doctrinal purpose, while attention is distracted from its use by 'rotten apples' in the priesthood, as this is considered a rarity.

These denials of responsibility and appeals to higher loyalties demonstrate the contrasting Janus-faced responses of the Catholic Church. Our analysis, and that of others, suggests that the Church is willing to comply with authorities conditionally, while prioritising its own interests and hegemony.

#### *Institutional compliance and the costs of breaching confessional privilege*

Institutional compliance in maintaining the confessional seal is rendered iron-clad through a set of punitive sanctions against its breach. Canon Law provides that a priest in breach of confessional confidentiality will receive severe penalty and, in the situation of divulging *direct* information from the confessional – for example, 'John Doe abused a child' – he will be subject to '*latae sententiae* [automatic] excommunication reserved to the Apostolic See' (Catholic Church in Victoria 2012: 106), which is 'the most extreme [ecclesiastical] penalty available' (Catholic Church in Victoria 2012: 106). The severity of this sanction means that clerics in this position would lose their position, their entire livelihood, their accommodation and vehicle (Hart 2013a: 5; Keenan 2012). Additionally, they would be forbidden to be present within Catholic communion and access the sacraments (including confession), which are essential to Catholic spirituality.

The severity of the sanction of excommunication, alongside anecdotal arguments that an absence of confidentiality would erode confidence in the confessional, are contributing factors to a shroud of secrecy within the Church in relation to child sexual abuse (Keenan 2012). This position is supported by research data demonstrating that all Catholic actors, including ex-Catholic priests, in this sample endorsed the preservation of the sacramental seal for one of the two reasons (Cahill 2012: 19; Hart 2013a: 37; Pell 2013d: 10; Robinson 2012). Further issues of silence and concealment are illuminated in critical reflection on the 'Melbourne Response' scheme.

### **The Melbourne Response**

Established in 1996, 'The Melbourne Response' is the Melbourne Archdiocese's compensation scheme for victims of clerical abuse. It operates alongside the national compensation scheme 'Towards Healing' for all other Catholic dioceses in Australia (Catholic Church in Victoria 2012: 53).

The Response is described as an independent third-party operating in conjunction with the Melbourne Archdiocese to investigate complaints against Archdiocesan agents and facilitate compensation in a three-tiered system chaired by the Independent Commissioner (hereafter 'the Commissioner') (Catholic Church in Victoria 2012: 52-54). Complaints are made to, and investigated by, the Commissioner, a senior legal practitioner, who determines whether complaints provide sufficient grounds for progression to psychological examination, through Carelink, for the purpose of advising the Compensation Panel (Family and Community Development Committee 2013b: 615). The Compensation Panel comprises a solicitor, a layperson and a psychiatrist, and is overseen by a senior barrister. It determines the *ex gratia* compensation to be provided to victims and forms the final stage of the compensatory process (Catholic Church in Victoria 2012: 56-57). Compensation recipients are required to sign a deed of release, thereby preventing future civil claims to be filed against the Church, to receive a maximum figure of \$75,000 (Catholic Church in Victoria 2012: 57-58). The Church emphasises that the Response was 'the first Diocesan protocol of its kind established anywhere in the world', and is justified in matching the figure awarded through the Victorian Victims of Crime Compensation scheme (hereafter the 'Victim Scheme'), and surpassing that offered under the Defence Abuse Reparation Scheme (hereafter the 'Defence Scheme') (Catholic Church in Victoria 2012: 52; Hart 2013a: 22; Pell 2013a: 5).

The establishment of a compensatory and support scheme to victims of abuse represents a positive form of institutional redress (see Daly 2014). Recognition is due to the hundreds of clerics and affiliates of the Church who provide pastoral care, counselling, support, victim representation, and advocate change within the Church in efforts towards healing and reparation: for example, Catholics for Renewal and Father Bob Maguire.

Within the Melbourne Response scheme, action extends beyond monetary compensation to include actions such as the Archbishop offering victims a personal letter of apology, which can serve as a form of redress and validation. The Catholic Church of Victoria (2012: 59) states that these forms of redress have been well received: 'Victims have expressed their appreciation for the personal apology ... and the sense of closure it brings for them'. Findings within this study show that actions initiated through the Melbourne Response have yielded positive benefits for some victims. One victim described their liaisons with the Independent Commissioner as an intermediary who was 'kind and easy to talk to about this distressing subject' (Victim cited in FCDC 2013b: 409).

### *Conflicting faces of the Melbourne Response*

It must be recognised, however, that claims of comparability of the Melbourne Response to the Victim and Defence schemes are tenuous. The Victim Scheme is not one which stems from an

established legal duty of care as it provides assistance to victims of crime carried out by members of the public, whilst the Defence Scheme abets individuals who have suffered abuse from Australian Defence Force personnel (Defence Abuse Response Taskforce 2014).

Furthermore, the Melbourne Response, unlike the Defence Scheme, requires victims to sign a deed of release, a contractual provision extinguishing future civil actions (Catholic Church in Victoria 2012: 66). In contrast to the Defence Scheme, the Response's deed of release and the Churches 'lexicalisation' of it are coded as discursive strategies of 'authority', 'self-promotion' and 'obfuscation', as opposed to a 'sincere effort' (Hart 2013a: 30). For when contrasted to the Defence Scheme, if indeed a legitimate compensation process, for what other reason would civil actions be barred under the Response other than to minimise litigious costs? Furthermore, in 2015, the Royal Commission uncovered evidence that Catholic Church insurers started warning Bishops of financial liability from clergy-child sexual abuse compensation claims in 1988, and stockpiled funds to prepare for future allegations of clergy-child sexual abuse, though the Church has denied a link between the \$150 million fund and the Melbourne Response (Vedelago and Lee 2015).

Issues of 'obfuscation' and control further emerge in the Victorian Inquiry, in revelations that victims 'do not need to seek [legal] counsel' (in FCDC 2013b: 423), despite the Response requiring that they sign a legally binding deed of release, to limit their legal avenues of recourse. Extensive 'justice imagery' is invoked in the data, while key actors such as Mr Curtain QC, Chair of the Response's Compensation Panel at the time, simultaneously position the Response as outside of traditional criminal and civil justice processes:

Criticism is made of the absence of provision by the Church of legal support. In my opinion, this is to misunderstand the process. It is not adversary but conciliatory and victims do generally not perceive a need for legal representation. (Curtain in FCDC 2013b: 423)

Some victims spoke of feelings of inadequate support and lack of information on their rights and options. A number of victims stated that they agreed to the parameters of the Melbourne Response scheme because of personal financial difficulties and an inability to afford civil action (FCDC 2013b: 377). One victim articulated their perception of a lack of other options in making their decision:

We had to sign deeds of release ... we were virtually bankrupt, we had nothing. [If you were offered] a price that was equivalent to the deposit on a house and the only condition was to sign a piece of paper, what would you do? (in FCDC 2013b: 415)

Other victims stressed that they only entered into the Melbourne Response scheme consequent to an inability to proceed with previously engaged legal proceedings – 'they were going to make us go even more broke' – and being unaware of alternative means of recompense – 'I could not do anything else, because we had been fighting [legally] for so many years' (in FCDC 2013b: 425). From the perspective of some victims, it would seem that the Melbourne Response simultaneously served as an apparatus of control and suppression, to not only prevent but to conclude civil litigation from abuse victims.

In their submission to the Inquiry, Victoria Police (2012) criticise the Melbourne Response and the Catholic Church in Victoria on a number of grounds, supporting the gravity of victims' claims. Concerns are expressed about the Response's 'appearance as a de facto substitute for criminal justice' (Victoria Police 2012: 4). Victoria Police also reveal the Independent Commissioner, a Queen's Counsel carrying authoritative expertise in law, duplicitously

'encouraged' victims to report allegations to police while discrediting those allegations as criminal conduct, stating to one victim:

... [w]ithout seeking to dissuade you from reporting the matter to the police ... I must say that the conduct you described would be unlikely to be held by a Court as criminal conduct. (in Victoria Police 2012: 13)

Victoria Police infer that the Commissioner and the Melbourne Response had been instrumental in the maintenance of Church secrecy and inaction:

As noted on its website, the Melbourne Response has made a number of *ex gratia* payments to victims. In spite of this, it *has not referred a single complaint* to Victoria Police [emphasis added]. (Victoria Police 2012: 4)

In essence, between the establishment of the Melbourne Response in 1996 and the Victorian Inquiry in 2012 – a period of sixteen years – the Commissioner has not made one report to police. Files acquired by the Inquiry identified that, of the 154 reviewed complaints of the 330 lodged with the Commissioner during that period, only 58 contained recommendations for victims to report to police (FCDC 2013b: 612). The Inquiry Committee noted that 'only recently' has the process encouraged individuals to seek legal counsel relating to the deed of release, superseding prior reliance on the counsel of the Commissioner (FCDC 2013b: 613).

The discourses surrounding the Melbourne Response and the deed of release reveal mixed perspectives. While a beneficial form of redress for some victims, the Victorian Inquiry found that a significant number of victims perceived the compensatory funds as 'hush money' (FCDC 2013a: 104). Denial of responsibility on the part of the Commissioner to report known cases of abuse led to interpretations of the actions of the Response as protecting Church finances. The Melbourne Response, operating in the vacuum of legislative requirements to compel Church actors to report situations of clergy-child sexual abuse, provides an avenue through which secrecy can proliferate within the Catholic Church. Significant questions remain about the extent of the scheme's independence and its consistency of compliance and collaboration with authorities.

## Conclusion

The issues raised in this study, and the wider issues which arise from clergy-child sexual abuse and institutional responses to it, are undoubtedly complex. As highlighted in the extensive findings of the Victorian Inquiry Committee in their 'Betrayal of Trust' final reports (FCDC 2013a, 2013b), there is no single solution to clergy-child sexual abuse. However, there are legitimate options for addressing issues of sexual abuse and cultural secrecy within religious organisations which have significant potential, some of which are canvassed here.

The findings of this study examine the ways in which the confessional, and priest exemption from mandatory reporting, can contribute to institutional silences and inaction within the Catholic Church in Victoria. The centrality of our discursive critique rests on the argument that the Church operates in a Janus-faced manner in its responses to the crime of clergy-child sexual abuse and the undertaking of positive Church reform. The Church shifts between a position of compliance and endorsement of the law, to a denial of responsibility to report to authorities and an appeal to higher loyalties when challenged on its stance towards confidentiality and collaboration with authorities. This seemingly sits in tension with its legitimacy and moral authority in claiming the centrality of victim interests.

One potential avenue for reform is that of legislative amendments. It is our argument, and also that of Victoria Police (2012: 11), Geary (2013: 4) and the Commissioner for Children and

Young People (2013) in Victoria, that mandatory criminal reporting law reform is needed in Victoria. Church leaders must fall within the rule of law, thereby addressing clerical practices alongside the operations of the Melbourne Response, and enforce the reporting of known criminal activity to police. Additionally, members of the clergy should, given their unique relationship of trust and time shared with children, be required to be included as mandatory reporters of child abuse and child wellbeing concerns under the *Children, Youth and Families Act 2005* (Vic), as required of teachers and others in the state. Responsibility to react to child sexual abuse can neither rest in the hands of leaders with conflicting allegiances nor with those of victims: it requires a broader societal response in ways that do not preclude civil or criminal legal action (Victoria Police 2012).

The matter of confessional privilege raises concerns. Evidently, though difficult to instigate, efforts towards reform necessitate collaboration and compliance on the part of the Church. In discussions of potential avenues for moving forward, it has been spoken of by Robinson (in Palmer 2012) and the Catholic Church in Victoria (2012) that priests could choose to withhold absolution and require any person making confessions of child abuse to relay that information to authorities, to receive absolution and forgiveness. In this way, Canon and civil law requirements may be harmonised without extensive interference in sacred ritual. This could also discourage, within case law, the over-utilisation of the application of the *Evidence Act 2008* (Vic) predominantly to Catholic clerics, as opposed to all ministers of religion as worded within the act, as a defence for silence and inaction. It is expected, however, that Catholic priests would likely maintain canonical allegiance.

In light of the findings presented here, there is a need for meaningful and in-depth joint consultations between parliamentary, criminal justice, welfare, victim advocates, and Church representatives on matters of *criminal* and *welfare* mandatory reporting and child sexual abuse to seek avenues for reform. We believe that exemption of Catholic priests from these requirements cannot be justified. Ultimately, it is our hope that the revelations of this study might offer impetus for positive reforms in Victoria and beyond, and underscore the relentless need for more creative and effective means by which victims of sexual abuse can acquire greater access to justice and recompense, through traditional or non-adversarial approaches.

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