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The Catholic Church and the Clergy Abuse Scandal: Act Three

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While the country's attention is fixated on the war in Iraq, Act Three of the Catholic Church scandal is now in progress. It is far more complicated than the scandal's prior phases, but for the victims it is the most important.

Sadly, it is marked by the Church's resistance to the reforms initiated in Act Two. The resistance is cloaked in various theories of the First Amendment.

The Church Scandal: Act One

Before analyzing Act Three, it's important to put it in the context of what has occurred so far.

Act One of the Catholic Church's clergy abuse scandal was dominated by the theme of shock. Enterprising Boston Globe reporters revealed an institution steeped in sin. Their articles - for which they recently won the Pulitzer Prize - revealed that priests had sexually abused children for decades.

Meanwhile, higher-ups, after learning of the abuse, merely shuffled those known pedophiles around to be put in contact with other children. Their cover-up made the Watergate players look like rank amateurs. And when the scandal was first revealed, it seemed there was not a remorseful bishop or Pope to be found.

The Church Scandal: Act Two

Then there was Act Two - in which public shock turned to frantic, highly visible action. Newspapers that would not previously have dreamed of reporting anything negative about the Catholic Church, now suddenly followed the Globe's lead, and started to offer negative reports on a daily basis. One revelation after another cast the Church in a bad light.

Survivors banded together, held prayer vigils in front of cathedrals,

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and established a national presence. The Voice of the Faithful, the first sign of possible schism within the Church itself, appeared. There was a shared sense among both the faithful and the general public that this must never happen again.

Meanwhile, the Church itself was mired in internal disagreement. First, the bishops met in Dallas and declared their intent to fully cooperate with the authorities in investigating clergy abuse charges. But then Rome told them they should only do so when state law required it. As a result, the Bishops met once again in Washington, DC. to establish the new rule of "tell only when told by law to tell."

Soon the Church was not only in disarray, but also in court. Abuse victims sued the Boston archdiocese, and under the stern gaze of Judge Sweeney, the archdiocese was forced to disclose reams of records. Prosecutors who previously would not have investigated sexual abuse claims against the Church, suddenly began investigations, called grand juries, and even subpoenaed bishops.

Legislative proposals to prevent a similar scandal in the future were floated. Mandatory clergy reporting of child abuse was one. Extensions on the statutes of limitations - so that abuse victims could sue despite the fact that years had passed - were contemplated. Some states like California and Connecticut quickly amended their laws to make it easier for victims to sue.

Against this backdrop, Act Three began.

Invoking the So-called Church Autonomy Doctrine to Resist Discovery

Los Angeles Cardinal Roger Mahoney previously had pledged full cooperation with the courts on clergy abuse matters. But now he has turned instead to the so-called church autonomy doctrine, in an effort to avoid discovery in clergy abuse litigation.

I say "so-called" because the Supreme Court has never identified such a doctrine. Rather, some attorneys representing religious organizations have tried to create such a doctrine by stringing together dicta - that is, language that does not determine the outcome of a case, and thus has no legal force - from various cases. Based on this language - and not on actual outcomes in the Court's cases - proponents of the doctrine claim that it keeps the government, including the courts and the legislatures, from interfering with a church's inviolable sphere of activity. Mahoney is claiming that his oversight of priests falls within those parameters.

There was a conscious push to get the courts to accept such a doctrine a few years before the clergy abuse scandal. Then for a year or so, the effort seemed to abate. Arguing for church autonomy when autonomy had harmed so many children so seriously seemed not a very politic move. Now the effort has revived, and the Church itself has joined the bandwagon.

The alleged church autonomy doctrine is an interesting turn on the near-dead notion of the separation of church and state. True constitutional separation of church and state aims to do just that -

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separate the church from an intermeddling government (and the government from church control). But the Church and other proponents of the church autonomy doctrine are invoking a very different version of the separation of church and state - one that would separate the church from the rule of law, saying that it need not comply with the same laws everyone else in society obeys-- regardless of the sound public policy behind the law.

In other words, the word "autonomy" is not used by proponents of the doctrine to mean "individual free will" - the right of the church and of religious persons to exercise their religion without government interference. Instead, it is used in the sense of individual shareholders' immunity from liability - the right to participate in bad acts, and not be liable. That makes sense for shareholders, and is a key component of the idea of the corporate form. It does not make sense for a church that is supposed to be a beacon of morality and ethics.

Mahoney is trying to use the so-called church autonomy doctrine in court to keep certain documents otherwise relevant to the scandal from being revealed. He also seeks to use the same doctrine to maintain Church control over the handling of priests - despite the fact that the Church's prior exercise of such control has been disastrous, with the Church knowingly permitting its pedophile priests to victimize successive children.

In sum, the so-called church autonomy doctrine is not really a legal doctrine at all, at least as far as the U.S. Constitution and Supreme Court are concerned. Rather, it is an insidious theory that invites religious licentiousness rather than civic responsibility.

Resisting Statutory Reform from the Confessional

Moving east, Bishop Theodore McCarrick of Maryland has been busy resisting legislative reforms introduced by children's advocates. As I discussed in detail in [a previous column](#), he managed to kill a bill requiring clergy to report child abuse or neglect.

Others who take care of children - such as daycare providers and health care providers - routinely must report such abuse, for obvious reasons - the abuser won't report himself or herself, and other caretakers may be among the only other adults young children see. The Church, however, does not want to be treated the same way.

How did Bishop McCarrick defeat this commonsense bill? His strategy was to mobilize church members by distributing circulars at mass. The leaflets charged the legislature with destroying the confessional and fundamental religious liberty. It was an exaggeration, but it was very effective.

Meanwhile, Bishop McCarrick also managed to water down an extension of Maryland's parsimonious statute of limitations that now allows at least some past victims of abuse to sue despite the passage of years.

The Church's Success in Lobbying to Block Reform to Aid Abuse Victims

The legislative process is where the Church can be most effective. There, it can operate in the dark - behind closed doors. And there, it continues to hold extraordinary political power. Plainly, it is willing to wield that power to stop the reform process.

Religious organizations requesting favors from the legislature often can do so with no public scrutiny at all. As a rule, the press does a terrible job of covering pending legislation (unless the topic is taxes) and, to compound matters here, an equally bad job of covering political action by religious elites.

That's a shame, because the legislative process is only likely to work in the interest of the common good when the people are informed about pending bills and can then communicate their views before those bills become law. The press follows such bills, to be sure, but it hardly ever imparts its knowledge to the public. The end result is that little sunshine falls upon the process that occurs before a bill becomes law. Elites know what is happening, but those most affected by the law do not necessarily know. And the public can be left outraged by the passage of a bill they would have strenuously opposed, but is now a fait accompli.

The legislative process is best exploited by those with a unified message, an entrenched relationship with legislators, and a base that is capable of being mobilized on command. With these qualities, a minority of citizens can do very well in the legislative process, and the Catholic Church is no exception, as Bishop McCarrick has shown in Maryland.

In sharp contrast, another minority - those persons who were victimized by abuse by priests - has not yet been able to unite under a shared message, create the network of contacts necessary to change the course of legislation, or find the most effective means of mobilizing members to put pressure on the legislature at crucial moments. The result of the disparity is predictable: In legislatures, now that we have entered Act III, the Church tends to win, and victims tend to lose.

For victims, organization is the key. Even emotional and outspoken majorities - here, the millions who have been disgusted with the Church's actions and the hideous harm to so many children - are too disorganized to be a match for a presence as well-organized as that of the Church. The legislature is a battlefield and victims will have to adjust accordingly - turning their ragtag army into an effective fighting force.

The Church Has Brought In Legal Experts to Aid Its Resistance to Reform

Finally, after a brief silence, some legal experts have started to mobilize and to argue that the Church needs to be protected from reform. According to the *New York Times*, several such experts met at a Boston College Conference on the scandal last week. They included Dean John Garvey, Professor Douglas Laycock of the University of Texas, and the Church's legal counsel, Marc Chopko. Their discussion apparently centered on how the Church was being damaged by the scandal and the resulting reform movement.

According to the *Times*, some attendees criticized extending the statute of limitations, on the ground that since a victim is fully aware of the abuse while it is happening, the victim ought to be able to sue in a timely fashion. This argument, of course, ignores the lingering trauma of abuse, and persistent church efforts to silence victims and their families, which priests' position as religious leaders made all the more effective. It also ignores that these victims are children, who deserve special protection from harm.

Some attendees also criticized emerging legal reforms as being akin to what a tyrannical government would have imposed had the Church not acted. Again, however, most of the proposed laws are mere common sense - imposing on the Church the same laws others obey, or taking account of the effect of its decades-long cover-up in deterring victims from suing. Finally, at the conference, there were even intimations that some attendees believed that many alleged victims were not actually victims at all.

All of these points, of course, were wrapped in First Amendment verbiage, but they came down to hostility to much-needed reforms.

For those who had expected or hoped the Church would support the reforms that would make child sexual abuse by clergy members less likely in the future, many indications are to the contrary. There will be pitched battles in the legislature and in the courts, before any further reforms take hold.

The Church's actions suggest it will only be dragged kicking and screaming to reform it should have voluntarily embraced. Not only is its reluctance unethical, it's also unwise. As it struggles to resist reforms the public knows are crucial, it only alienates current and potential churchgoers.

In [my first column on the scandal](#), I urged the Church to focus on the children, to do whatever it could to protect them in the future, including backing legislative reform. It is tragic that the focus now is even further from the abused children--and what society and the Church permitted to happen to them--than it has been since the scandal began.

What Do You Think? [Message Boards](#)

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