

THE DIVINE SILENCE AND THE POWER OF A PR[E]YER: A  
CALL FOR CHANGE IN THE PROSECUTION OF PREDATOR  
PRIESTS AND THE HIERARCHY THAT PROTECTS THEM

*Katherine V. Peters<sup>1</sup>*

ABSTRACT

The Roman Catholic Church has made headlines in the last several months for widespread sexual abuse of children by priests. Victims continue to come forward decades after suffering from heinous and unconscionable acts committed by priests. The pattern of abuse remains unchanged nearly two decades after the *Boston Globe* released a series of explosive reports exposing the conduct of priests and the cover-up by the Church. Abusive priests are identified long after criminal statutes of limitation have expired, and priests can no longer face prosecution. The Catholic Church is governed by a system of laws that encourage pontifical secrecy and require concealing records from public view. This system creates conflict with the criminal justice system and ultimately obstructs justice. We should amend our laws so that predator priests cannot escape prosecution for the crimes they

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<sup>1</sup> J.D. Candidate, 2019, Texas Tech University School of Law; B.S., 2016, Clemson University. I would like to express my utmost gratitude to Professor Vaughn James for his time and invaluable wisdom throughout this process. I would like to thank the entire staff of the Rutgers Journal of Law and Religion for their efforts in preparing my work for publication, and for fulfilling one of my law school dreams. Thank you, Mom, for your endless encouragement, and Jason, for being my light.

commit against children. The criminal justice system must pierce through the shield of pontifical secrecy and impose laws that protect children from sex abuse and hold abusers accountable.

## I. INTRODUCTION

In August of 2018, the Attorney General of Pennsylvania released a chilling grand jury report. The report detailed the horrific acts of hundreds of priests in various Roman Catholic dioceses across the state and the unimaginable abuses suffered by thousands of child victims; each of the nearly one thousand pages is more sickening than the last. Though devastating, the details of the crimes committed against these children are anything but new.

In 2002, the *Boston Globe* broke the story of a widespread cover-up of sexual abuse in the Roman Catholic Archdiocese of Boston.<sup>2</sup> In the years since, several abuse scandals have rocked the Catholic Church, resulting in civil settlements amounting to more than four billion dollars to date.<sup>3</sup> Perhaps most problematic in the

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<sup>2</sup> Walter V. Robinson, *Scores of priests involved in sex abuse cases: Settlements kept scope of issue out of public eye*, BOSTON GLOBE, (Jan. 31, 2002), <https://www.bostonglobe.com/news/special-reports/2002/01/31/scores-priests-involved-sex-abuse-cases/kmRm7JtqBdEZ8UF0ucR16L/story.html>.

<sup>3</sup> Tom Gjelten, *The Clergy Abuse Crisis Has Cost the Catholic Church \$3 Billion*, NPR (Aug. 18, 2018, 5:00 A.M.), <https://www.npr.org/2018/08/18/639698062/the-clergy-abuse-crisis-has-cost-the-catholic-church-3-billion>.

scandal, is the infrequency in which formal charges are brought against offending priests.<sup>4</sup> Most reports of abuse come decades after a victim is first attacked, long after the limitations period for criminal sanctions has passed.<sup>5</sup> The church often becomes aware of the abuse before the victim's parents ever do, at a time when limitations have not yet expired, and priests could be held criminally liable for their actions.<sup>6</sup> Despite a recurring theme of a systematic cover up of sexual abuse by priests, only one higher official in the church hierarchy has ever been criminally charged for his involvement in the proliferation of abuse.<sup>7</sup> Criminal statutes of limitation should be eliminated in all states for the crime of sexual abuse of children, and as further deterrent, high ranking officials within the church should be held criminally liable for the roles they play in concealing the abuse.

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<sup>4</sup> Karen J. Terry, Margaret Leland Smith, Katarina Schuth, James R. Kelly, Brenda Vollman & Christina Massey, *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*, at 76 (2011).

<sup>5</sup> James Wilson Harshaw III, *Not Enough Time?: The Constitutionality of Short Statutes of Limitations for Civil Child Sexual Abuse Litigation*, 50 OHIO ST. L.J. 753, 756-57 (1989). (A child is more likely to suffer PTSD when a sexual abuser is trusted adult. The abuse "twists the child's perception of normality in relationships" and causes damage to the child's psyche and ability to perceive right and wrong, making it difficult to take appropriate, timely legal action.)

<sup>6</sup> *Commonwealth of Pennsylvania*: Report I of the 40<sup>th</sup> Statewide Investigating Grand Jury, at 5 (July 27, 2018) [hereinafter *Grand Jury Report*].

<sup>7</sup> Jon Hurdle & Erik Eckholm, *Cardinal's Aide is Found Guilty in Abuse Case*, N.Y. TIMES (June 22, 2012), <https://www.nytimes.com/2012/06/23/us/philadelphias-msgr-william-j-lynn-is-convicted-of-allowing-abuse.html>. ("Monsignor William J. Lynn became the first senior official of the Roman Catholic Church in the United States convicted of covering up sexual abuse by priests under his supervision").

This paper will discuss the sexual abuse of children in the Roman Catholic Church and will suggest feasible methods to stop it. The paper is divided into four parts. Part II will detail the background of child abuse by Roman Catholic clergy, focusing on the scandal in Boston in 2002 and the more recent scandal in Pennsylvania. This Part will then discuss the applicable sections of the Canon Law and the history of civil settlement by the Roman Catholic Church in child sexual abuse cases. Part III will present arguments for eliminating criminal statutes of limitations and holding high-ranking officials liable for the acts perpetuated against the child victims. Part IV, the Conclusion, will summarize the arguments and convince the reader of the necessity for change.

## II. BACKGROUND

While abuse by priests against children has been perpetrated across the world for decades, there have been several highly-publicized scandals in the United States. Abuse of any kind, either publicly known or transpiring in secret, is revolting. The discussion of the following epidemic is not intended to diminish the accounts of victims elsewhere, but merely to highlight the widespread abuse that took places in the Diocese of Boston and in Pennsylvania and the subsequent imposition, if any, of criminal

liability on the state level. The discussion continues with the background of the Canon Law and the manner by which the Church handles abuse claims.

**A. The Sexual Abuse of Children in Boston**

In 1999, a Boston grand jury indicted Rev. Fr. John Geoghan on two charges of rape of a child.<sup>8</sup> The indictments alleged that the defendant committed unnatural sexual intercourse and abuse on the victim.<sup>9</sup> The victim was just 9 years old when he became acquainted with then Fr. Geoghan.<sup>10</sup> Geoghan frequently took the victim on outings which included trips for ice cream and swimming. He visited the victim's home at bedtime to tuck him in, and then spent additional time in the bedroom with the lights out.<sup>11</sup> Before long, Fr. Geoghan was performing sexual acts on the victim. After the victim began exhibiting inappropriate sexual behavior by performing oral sex on his younger brother, his

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<sup>8</sup> *Com. v. Geoghan*, 14 Mass. L. Rptr 331 (Mass. Super. Mar. 7, 2002) (both indictments allege the defendant committed unnatural sexual intercourse and abuse on victim in violation of G.L. c.265 sec. 23).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 332.

<sup>11</sup> *Id.*

mother began taking the victim to see a psychologist.<sup>12</sup> Nearly two years after the abuse began, the victim reported the abuse to his mother. She related the information to the District Attorney's Office. It was not until 1999 that the District Attorney decided to prosecute Defendant Geoghan.<sup>13</sup> The grand jury returned two indictments against Geoghan on December 2, 1999, nearly fifteen years after he had begun sexually abusing the victim.<sup>14</sup> Geoghan moved to dismiss the indictments on the basis that they were time barred by the statute of limitations. Massachusetts Superior Court – Suffolk County agreed.<sup>15</sup>

Prior to a 1985 amendment, the limitations statute for all sexual offenses committed in Massachusetts was six years from the date the crime was committed.<sup>16</sup> In 1985, the limitations period was expanded to ten years from the date of commission. The legislature further amended the statute in 1988 to provide that in the event the victim of the crime was under sixteen years of age at the time of the attack, the period of limitations would be tolled until the victim reached the age of sixteen or the violation was reported to law enforcement, whichever occurred earlier.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 334.

<sup>14</sup> *Geoghan*, 14 Mass. L. Rptr 331 at 334.

<sup>15</sup> *Id.* at 339.

<sup>16</sup> *Id.* at 336.

Under the 1988 amendment, the District Attorney would have had ten years from the time the victim turned sixteen to commence prosecution. This would have resulted in an expiry of the limitations period in the year 2000. However, the victim first reported the crimes to the police in 1986, at which time the authorities decided not to prosecute. Also, the victim's report came before he turned sixteen; accordingly, the statute of limitations expired ten years after that date – that is, in 1996. Faced with this set of facts, the Massachusetts court granted the defendant's motion to dismiss the indictments.

In 2002, the *Boston Globe* spotlight team exposed a widespread sex scandal within the Roman Catholic Archdiocese of Boston. The team reported for over a year, detailing the allegations, the priests involved, and the process by which the hierarchy of the Boston Archdiocese moved priests from parish to parish for treatment of the priest's "illnesses." In a series of over 300 newspaper articles, the *Globe* reported that church officials knew about the abuse but had failed to remove the abusive priests from their jobs. The *Globe* further unveiled that the Archdiocese of Boston had secretly settled cases in which at least seventy priests had been accused of sexual abuse. The meritorious work done by the Boston Globe reporters in uncovering the scandal won a

Pulitzer Prize in 2003, and was the subject of the 2015 Oscar-winning film *Spotlight*. Despite the widespread awareness and recognition garnered by the film, the abuse of children by priests continues.

**B. The Sexual Abuse of Children in Pennsylvania**

More recently, the 40<sup>th</sup> Statewide Investigating Grand Jury in Pennsylvania spent two years investigating six of the eight Roman Catholic Archdioceses in the state. In August of 2018, the Office of the Attorney General of the Commonwealth of Pennsylvania released a scathing redacted version of the grand jury's report. The report uncovers decades of abuse and a pattern of concealing misconduct within the hierarchy of church officials. The report, nearly one thousand pages in length, details the salacious conduct of more than three hundred priests and identifies over one thousand victims from church records. The last five hundred pages of the report lists an appendix of offenders and a summary of their crimes and victims. The jury claims that the actual number of victims may well be into the thousands.

According to the grand jury, the dioceses engaged in a series of practices aimed at concealing the truth. These often included disregarding victims, even in the face of multiple reports

of abuse.<sup>17</sup> In the Diocese of Allentown, evidence showed that priests engaged in sexual contact with minors, including grooming and fondling of genitals and/or intimate body parts as well as penetration of the vagina, mouth, or anus. The report identified thirty-one offenders within the diocese. Among those offenders was Father Francis J. Fromholzer.

Fr. Fromholzer served as a priest in a number of parishes over a period of more than forty years. Of note, while serving as a religion teacher at the Allentown Central Catholic High School, Fromholzer sexually abused several of his students.<sup>18</sup> One of his victims, 14 years old at the time of the abuse and now 68 years old, broke years of silence in her testimony before the grand jury. She told the grand jury about failing two of her favorite classes after reporting to the principal that Fromholzer had touched her under her clothes.<sup>19</sup> The victim testified about being haunted for life and her two marriages ending in divorce.<sup>20</sup> To the victim, the abuse she endured was “always there. You can’t get rid of it.”<sup>21</sup> Internal church records show the Diocese was aware of Fromholzer’s

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<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* at 20.

<sup>19</sup> *Com. v. Geoghan*, 14 Mass. L. Rptr 331 (Mass. Super. Mar. 7, 2002).

<sup>20</sup> *Id.* at 23.

<sup>21</sup> *Id.*

conduct, but regarded the victim's complaints as false.<sup>22</sup> Records further show that the diocese and its attorney actively engaged in exchanging information meant to damage the reputation of the victims and their families and discredit their allegations.<sup>23</sup>

Father Edward Graff served approximately thirty-five years in the Diocese of Allentown and another ten years out of state in other parishes for a total of forty-five years as a priest.<sup>24</sup> Fr. Graff was relocated several times, placed on sick leave, and underwent psychological evaluations for the "difficulties" he experienced as a priest.<sup>25</sup> Internal records and letters exchanged between the dioceses where Graff was assigned refer to the acts committed by Graff as "difficulties," minimizing his sexual abuse of children to terms such as "boundary issues" or "inappropriate contact."<sup>26</sup> Graff was transferred from the Diocese of Allentown to Santa Fe, New Mexico for treatment of a "chemical dependency" and of undefined "serious" conduct.<sup>27</sup> Correspondence between the

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 25.

<sup>24</sup> *Com. v. Geoghan*, 14 Mass. L. Rptr 331 (Mass. Super. Mar. 7, 2002).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

dioceses cites Graff's problematic chemical dependency, but lacks discussion of any of the behaviors reported by his victims.<sup>28</sup>

In 2002, Graff was arrested for sexually abusing a fifteen-year-old boy.<sup>29</sup> The victim stated that he watched pornographic movies with Graff and Graff performed oral sex on him.<sup>30</sup> Graff died in a prison incident prior to his criminal trial.<sup>31</sup> After his death, several victims of Graff's abuse came forward to detail the abuse they had suffered. In 2003, one victim wrote a statement that included a conversation he had with Graff questioning him about the abuse.<sup>32</sup> Graff told the victim it was okay because he was "an instrument of God."<sup>33</sup> One victim, whose family testified before the grand jury, overdosed on the painkillers he took to treat a back injury he sustained after a violent attack by Graff. The victim was more than physically damaged by the gruesome conduct of the former priest. In a letter to the diocese prior to his suicide, the victim says in part: "Father Graff did more than rape me. He

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<sup>28</sup> *Id.* at 31 (referencing "Letter to Father Graff" "Letter to Archbishop Sanchez," and "Letter to Father Martinez").

<sup>29</sup> *Id.* at 44.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 45.

<sup>33</sup> *Id.*

killed my potential and in doing so, killed the man I should have become.”<sup>34</sup> The diocese paid for the victim’s funeral in 2015.<sup>35</sup>

Over a period of decades, more than three thousand children in the state of Pennsylvania were groped, manipulated with pornography, and raped.<sup>36</sup> The grand jury ultimately concluded the children’s cries for help were “brushed aside, in every part of the state, by church leaders who preferred to protect the abusers and their institution above all.”<sup>37</sup> Of the thirty-one priests named in the report, authorities have filed criminal charges against only two.<sup>38</sup> The statute of limitations has expired on all potential criminal causes of action against the other twenty-nine priests.

### **C. The Canon Law on Sexual Abuse of Children by Priests**

Within the Roman Catholic Church, the Canon Law is the system of laws and legal principles made and enforced by the Church’s hierarchical authorities to regulate its external organization and government, and to order and direct the

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<sup>34</sup> *Id.* at 46.

<sup>35</sup> *Com. v. Geoghan*, 14 Mass. L. Rptr 331 (Mass. Super. Mar. 7, 2002).

<sup>36</sup> *Id.* at 1.

<sup>37</sup> *Id.*

<sup>38</sup> Daniel Burke & Susannah Cullinane, *Report details sexual abuse by more than 300 priests in Pennsylvania’s Catholic Church*, CNN, (Aug. 15, 2018, 8:40 P.M.) <https://www.cnn.com/2018/08/14/us/pennsylvania-catholic-church-grand-jury/index.html>.

activities of Catholics toward the mission of the Church.<sup>39</sup> Roman Catholics maintain that the Code dates back to the First Council of Nicea held in 325.<sup>40</sup> Alas, despite the power of the Church and its insistence on creating a specific format for the way its members should live their lives, the Code was not often followed. Powerful and wealthy individuals often simply did not abide by the rules and were allowed to approach family life and marriage how they saw fit.<sup>41</sup> Over the centuries, the Church made several changes to the Canon Law, culminating in the promulgation of the 1917 Code of Canon Law (also known as the Pio-Benedictine Code), the first official comprehensive codification of Roman Catholic canon law, by Pope Benedict XV on May 27, 1917.<sup>42</sup>

In 1959, following cultural changes that had arisen since the promulgation of the 1917 Code, Pope John XXIII announced the calling of the Second Vatican Council, or Vatican II.<sup>43</sup> The Council was assembled to settle doctrinal issues that had not been addressed in the last 100 years, and the Council was charged with laying a new foundation for the church, as practices had

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<sup>39</sup> Matthew Ramstein, *A Manual of Canon Law*, 3 (1948).

<sup>40</sup> *First Council of Nicea (A.D. 325)*, NEW ADVENT, <http://www.newadvent.org/fathers/3801.htm>.

<sup>41</sup> Merry E. Wiesner-Hanks, GENDER IN HISTORY: GLOBAL PERSPECTIVES 37 (2011).

<sup>42</sup> A. De Meester, *Juris Canonici et Juris Canonico-Civilis Compendium: Noa Editio, Ad Normam Codicis Juris Canonici – Tomus Primus*, 52 (1921).

<sup>43</sup> Jordan G. Teicher, *Why Is Vatican II So Important?*, NPR (Oct. 10, 2012, 4:15 P.M.), <https://www.npr.org/2012/10/10/162573716/why-is-vatican-ii-so-important>.

undergone significant change since the promulgation of the 1917 Code of Canon Law.<sup>44</sup> The Council's work advanced the Roman Catholic Church into the modern realm and led to the formulation of the 1983 Code of Canon Law.<sup>45</sup> The new Code was to serve the larger purpose of balancing the law and spirit of modern day by reflecting the theology of Vatican II.<sup>46</sup> The Code of 1983 also more specifically addressed the process for dealing with cases of sexual abuse of minors by members of the clergy.<sup>47</sup>

Although the modified provisions of the Code were intended to address the increased reports of sexual abuse from the 1970's through the 1980's, trends suggest that the focus of the canonical approach during this time shifted from punishment to the rehabilitation of the priest through therapy.<sup>48</sup> The Church emphasized a psychological approach, believing that a sexual predator could be reformed with proper treatment.<sup>49</sup> Perhaps appropriate for one-time offenders, this approach proved to be ineffective in cases of serial sexual abusers who were bounced from

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> John J. Cuglin, *The Clergy Sexual Abuse Crisis and the Spirit of Canon Law*, 44 B.C. L. REV. 977, 982 (2003).

<sup>47</sup> *Id.*

<sup>48</sup> See D. Kelly Weisberg, *The "Discovery" of Sexual Abuse: Experts' Role in Legal Policy Formulation*, 18 UC. DAVIS L. REV. 1, 2-10 (1984) (discussing the shift from criminalization to the psychological approach with regard to pedophilia during the 1970s).

<sup>49</sup> *Id.*

parish to parish to receive treatment for their “ailments” while continuing to abuse the children they came in contact with.<sup>50</sup>

In the Roman Catholic Church, adultery is an offense under the sixth commandment of the Decalogue.<sup>51</sup> If a cleric commits an offense against the sixth commandment of the Decalogue by the use of force or threats or with a minor below the age of sixteen years, the Canon Law requires punishment of the cleric with just penalties.<sup>52</sup> The cleric may face a penal process for the delict so long as the process begins within five years of the date the delict was committed.<sup>53</sup> In other words, the Canon Law prescribes a five year limitations period for acts of adultery committed against minors.

In the event a cleric is found to have committed an offense against the sixth commandment with a minor, punishment requires just penalties that may include dismissal from the clerical state.<sup>54</sup> The harshest form of penalty imposed by the Vatican against a priest is the reduction of the priest to the lay state. There are no provisions in canon law that specify what is to be done if a bishop fails to investigate a case of suspected or actual

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<sup>50</sup> See generally, *Grand Jury Report*, *supra* note 42.

<sup>51</sup> “You shall not commit adultery.” Exodus 20 2-17, Deuteronomy 5:6-21.

<sup>52</sup> *Code of Cannon Law*, c. 1395, § 2.

<sup>53</sup> *Code of Cannon Law*, c. 1362, § 1.

<sup>54</sup> *Code of Cannon Law*, c. 1395, § 2.

child abuse.<sup>55</sup> The Catholic Church does not have a criminal justice system and unlike state and federal government, the Catholic Church does not have the capacity to send anyone to prison. The most severe penalty the Catholic Church can impose on a priest is reduction to the lay state.<sup>56</sup> It is problematic that the Catholic Church can hold secret the criminal conduct of its priests when the Church does not have a punitive system of laws in place like the states do to deter and condemn criminal behavior.

In 2014, the Holy See addressed the Catholic Church's sexual abuse scandal before the UN Committee on the Convention Against Torture.<sup>57</sup> Monsignor Tomasi, the Holy See's permanent observer to the United Nations, produced figures for the period beginning in 2004 and ending in 2013.<sup>58</sup> During the period, credible sexual abuse accusations against 3,420 priests were reported to the Vatican's Congregation for the Doctrine of Faith.<sup>59</sup> Of the 3,420 total reports, 848 pedophile priests were reduced to

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<sup>55</sup> Carolyn M. Warner, *Why it's so hard to hold priests accountable for sex abuse*, THE CONVERSATION (Aug. 27, 2018, 6:47 A.M.), <https://theconversation.com/why-its-so-hard-to-hold-priests-accountable-for-sex-abuse-101947>.

<sup>56</sup> *Code of Canon Law*, c. 1395 § 2.

<sup>57</sup> *Over 3000 paedophile priests punished since 2004, Vatican informs UN anti-torture committee*, VATICAN INSIDER (June 5, 2014), <https://www.lastampa.it/2014/05/06/vaticaninsider/over-paedophile-priests-punished-since-vatican-informs-un-antitorture-committee-tOqL4H4IYtELzDTWUfszM/pagina.html>.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

the lay state.<sup>60</sup> The remaining 2,572 pedophile priests received lighter punishments to include the imposition of a life of prayer and penitence, the enforcement of criminal measures or other disciplinary measures as provided by the canon law.<sup>61</sup>

#### D. The Financial State of Priest Abuse

The Roman Catholic Church has dealt with child abuse allegations for decades, usually doing so quietly, settling with victims and requiring their signatures on non-disclosure agreements to keep the public in a state of oblivion about the criminal acts of their beloved priests.<sup>62</sup> The Church has spent nearly \$4 billion to date settling cases of clergy abuse.<sup>63</sup> The largest settlements on record include a settlement for \$660 million by the Roman Catholic Archdiocese of Los Angeles in 2007,<sup>64</sup> a \$210 million settlement by the Archdiocese of St. Paul and Minneapolis in 2018,<sup>65</sup> and \$198.1 million by the Roman Catholic

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Robinson, *supra* note 1.

<sup>63</sup> Gjelten, *supra* note 2.

<sup>64</sup> Gillian Flaccus, *L.A. Archdiocese Agrees to \$600 Million Abuse Settlement*, WASHINGTON POST, (July 15, 2007) <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400968.html>.

<sup>65</sup> Steve Karnowski & Amy Forliti, *St. Paul archdiocese to pay \$210M to clergy abuse victims*, ASSOCIATED PRESS, (May 31, 2018) <https://www.apnews.com/d7eda6219fbb42cfb9571784bc76a794>.

Archdiocese of San Diego in 2007.<sup>66</sup> According to Bishop Accountability, a non-profit group dedicated to documenting the abuse crisis in the Roman Catholic Church, nineteen Catholic dioceses and religious orders in the United States have filed for bankruptcy protection during ongoing sexual abuse investigations.<sup>67</sup>

Another method of avoidance involves the shifting of assets to various funds and parishes to distort the perception of the total net worth of the diocese to an outsider. The grand jury in Philadelphia obtained a letter from secret church archives proving that the church, through its attorney, had plans to create a number of corporations in which to divert funds from the Erie Diocese.<sup>68</sup> This letter, exchanged in September of 1991, details a plan that is believed to have been used in more than one diocese across the country in the face of a potentially “large judgment” rendered against the diocese for its proliferation of the sexual abuse of children.<sup>69</sup> Most recently, in New Mexico, lawyers for the victims of sexual abuse by priests have raised concerns about

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<sup>66</sup> Peter Rowe, *Largest sexual abuse settlements by Roman Catholic institutions in the U.S.*, SAN DIEGO UNION TRIBUNE, (Sept. 10, 2017, 1:00 A.M.)

<https://www.sandiegouniontribune.com/sd-me-settlements-20170831-story.html>.

<sup>67</sup> *Bankruptcy Protection in the Abuse Crisis*, BISHOPACCOUNTABILITY.ORG, <http://www.bishop-accountability.org/bankruptcy.htm>.

<sup>68</sup> *Grand Jury Report*, *supra* note 5, at 267. (Referencing the letter sent from John M. Quinn, attorney for the Erie Diocese to George S. Forde, Jr., attorney for the Scranton Diocese).

<sup>69</sup> *Id.* at 266.

measures taken by the Archdiocese of Santa Fe to separately incorporate each of its 90 parishes as nonprofit organizations.<sup>70</sup> In November of 2018, the Roman Catholic Archdiocese of Santa Fe announced plans to file for bankruptcy protection.<sup>71</sup> The move comes after the Pennsylvania grand jury report provided details about crimes that may have been committed against children upon transfer of certain priests from Pennsylvania to various parishes in New Mexico.<sup>72</sup>

### III. A FEASIBLE SOLUTION

Statutes of limitations are found and approved in all systems of enlightened jurisprudence.<sup>73</sup> Statutes of limitations afford plaintiffs what legislatures deem to be a reasonable time to present claims while protecting defendants and the courts from having to deal with cases in which the search for the truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of

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<sup>70</sup> Andrew Oxford, *Accusers: Archdiocese of Santa Fe is shielding assets with bankruptcy filing*, SANTA FE NEW MEXICAN (Nov. 30, 2018), [http://www.santafenewmexican.com/news/local\\_news/accusers-archdiocese-of-santa-fe-is-shielding-assets-with-bankruptcy/article\\_852744e1-fb1a-5371-b7cd-99f2dd8ae784.html](http://www.santafenewmexican.com/news/local_news/accusers-archdiocese-of-santa-fe-is-shielding-assets-with-bankruptcy/article_852744e1-fb1a-5371-b7cd-99f2dd8ae784.html).

<sup>71</sup> Alex Dobuzinskis, *Catholic archdiocese in New Mexico, facing abuse cases, to file for bankruptcy*, REUTERS (Nov. 29, 2018, 10:27 P.M.), <https://www.reuters.com/article/us-usa-abuse-new-mexico/catholic-archdiocese-in-new-mexico-facing-abuse-cases-to-file-for-bankruptcy-idUSKCN1NZ0DJ>.

<sup>72</sup> See generally, *Grand Jury Report*.

<sup>73</sup> *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

documents, or otherwise.<sup>74</sup> The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions.<sup>75</sup> In some cases, statutes of limitations may also have the effect of encouraging law enforcement officials to promptly investigate suspected criminal activity.<sup>76</sup> Limitations periods safeguard an accused from the potential abuses by law enforcement of willful failure to diligently investigate within a reasonable time after a crime occurs. The law estimates that a period of limitations serves the interests of everyone.

Federal law provides that, “except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found, or the information is instituted within five years next after such offense shall have been committed.”<sup>77</sup> Criminal statutes of limitation are a matter of legislative choice.<sup>78</sup> The primary consideration underlying such legislation is undoubtedly one of fairness to the

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<sup>74</sup> *U.S. v. Kubrick*, 444 U.S. 111 (1979).

<sup>75</sup> *Toussie v. United States*, 397 U.S. 112, 114 (1970).

<sup>76</sup> *Id.*

<sup>77</sup> 18 U.S.C.A. §3282 (2018).

<sup>78</sup> Alan L. Adlestein, *Conflict of the Criminal Statute of Limitations with Lesser Offenses at Trial*, 37 WM. & MARY L. REV. 199, 250-52 (1995) (stating that criminal statutes of limitations are flexible instruments of legislative policy and often reflect the social concerns of the particular time and locality).

defendant.<sup>79</sup> There comes a time when he ought to be secure in his reasonable expectation that he will not be haunted by long forgotten deeds.<sup>80</sup> Another factor may be an estimate of the effectiveness of the courts, and a desire to relieve them of the burden of adjudicating expired claims. While these factors may be common throughout the law of limitations, there are a variety of bases for a state legislature to consider in the adjustment of limitations periods for certain crimes and causes of action.<sup>81</sup>

There may be more effective safeguards available to protect against the dangers of stale evidence than arbitrarily fixed time periods in which crimes may be prosecuted.<sup>82</sup> All states should look to alternatives, beyond rigid limitations periods, to ensure the viability of claims brought by victims of child sexual abuse decades after the crimes occur. A state's interest in "safeguarding the physical and psychological well-being of a minor is a compelling one."<sup>83</sup> The prevention of sexual exploitation and abuse of children constitutes a significant government objective.<sup>84</sup> Though limitations periods are designed to protect the due process rights

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<sup>79</sup> *Developments in the Law: Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185 (1950).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 1186.

<sup>83</sup> *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982).

<sup>84</sup> *New York v. Ferber*, 458 U.S. 747, 756-57 (1982).

of an accused and prevent the presentation of stale claims, these periods of limitation in cases involving sexual abuse of children directly conflict with the government's interest in protecting child victims. Limitations periods in criminal cases of child sexual abuse are problematic in more ways than one.

Child victims are unlikely to report the crimes committed against them. Further, child victims are especially unlikely to make reports of crimes committed by the spiritual leader they have grown to trust. States, in amending their laws, should consider the extraordinary secrecy under which the Catholic Church conducts its internal affairs, the fear and confusion impressed upon victims who are preyed upon by spiritual leaders, and the frequency with which priests are accused and ultimately escape the sanctions of the justice system for their acts. Many states take into account the apprehension of child victims in reporting sexual abuse, and as such, prescribe limitation periods for sex crimes committed against adults but remove the limitations period entirely for sex crimes committed against children.<sup>85</sup> Although some states have recognized the important

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<sup>85</sup> *See generally*, Alaska Stat. § 12.10.010 (prescribing no limitations period for sexual abuse of a minor and a five year limitations period for other sexual offenses); Idaho Code § 19-401 (prescribing no limitations period for sexual abuse of a child and a five year limitations period for other sexual abuse); Miss. Code Ann. § 99-1-5 (prescribing no limitations period for sexual battery of a child, and

objective of protecting children and prosecuting offenders in child sexual abuse cases, not all states have.<sup>86</sup> States should universally eliminate their periods of limitation for offenses relating to the sexual abuse of children. An accused whose offenses have been proven beyond a reasonable doubt should serve the punishment that justice so requires, without regard to the length of time that has passed since commission of the offenses.

Removal of the limitations period will serve the important function of protecting the health and well-being of children. States should not only remove the statute of limitations as it pertains to the commission of sexual crimes against children, but should also institute policies geared towards criminal prosecution of church officials in an effort to hold the hierarchy responsible for the abuses that they conceal. States should take an interest in prosecuting not only the offenders who prey upon children, but also those who were aware of the crimes at the time they were committed and either did not take action or actively worked to conceal the abuse.

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a two year period of limitations for other sexual offenses); N.Y. Crim. Pro. Law § 30.10 (prescribing no limitations period for course of sexual conduct against a child, and a five year limitations period for other felony sexual offenses).

<sup>86</sup> See generally, Ind. Code Ann. § 35-41-4-2 (West) (providing that a prosecution for child molestation is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one years of age); 42 Pa. Stat. and Cons. Stat. Ann. § 5552(c)(3) (providing that prosecution relating to sexual abuse of children may be commenced any time up until the date the minor reaches fifty years of age).

The canon law urges pontifical secrecy.<sup>87</sup> The products of an investigation into alleged abuse are to be kept in the secret archive if such records are not necessary for the penal process.<sup>88</sup> The penal process, under the canon law, is a procedure conducted in complete secrecy. Pontifical secrecy acts as an impediment to a civil or criminal investigation, because the church has a duty under the canon law to keep all products of an investigation in the secret church archives.<sup>89</sup> A governmental entity that undertakes an investigation of abuse following credible accusations will only end up operating with less than complete information, as the church who has been made aware of allegations and investigated the abusers retains a file containing such information. Eliminating the criminal statute of limitations will serve the purpose of balancing the needs of state law with the conflicting mandates of canon law. With more time to prosecute a predator priest, state officials will have more time to investigate, interview victims and witnesses, and may piece together enough information to obtain subpoenas of the secret records.

In Pennsylvania, where hundreds of victims went before the federal grand jury and testified about the abuses they suffered

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<sup>87</sup> *Code of Cannon Law*, c. § 1719; *Code of Cannon Law*, c. 1717 § 2.

<sup>88</sup> *Code of Cannon Law*, c. § 1719.

<sup>89</sup> *Id.*

several decades prior, subpoenas for church records have been issued to seven of the eight dioceses in the state.<sup>90</sup> Those subpoenas may not have been issued had the grand jury not spent years investigating the conduct of priests in the dioceses. Law enforcement should be entitled to more time to prosecute sexual offenses by priests as the canon law makes it difficult for the public to obtain information about reports of abuse.

The penalties for sin under the canon law are listed as follows: a prohibition or order concerning residence; privation of a power, office, function, right, privilege or title; a prohibition against the exercise of aforementioned duties either within or outside of a certain place; a penal transfer to another office; and dismissal from the clerical state.<sup>91</sup> Noticeably absent from the list of available penalties under the canon law is imprisonment. The Church may strip a priest of his title and otherwise defrock him, but the church has no power to send anyone to prison. A priest can spend years of his life preying on hundreds of children, and the harshest penalty he may face under the canon law is removal to the lay state. Dismissal of a priest from the clerical state and

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<sup>90</sup> *Feds subpoena Pennsylvania dioceses in Catholic clergy sex abuse investigation*, CBS NEWS, (Oct. 18, 2018, 8:09 P.M.) <https://www.cbsnews.com/news/pennsylvania-clergy-sex-abuse-catholic-church-federal-subpoenas-department-of-justice-2018-10-18/>.

<sup>91</sup> *Code of Cannon Law*, c. 1336 § 1.

paying millions of dollars in settlements to the victims of the abusive priest has been the practice of the Catholic Church for over two decades.<sup>92</sup> This practice may involve paying for victims to seek therapy to address the abuse they faced as children, but it does not do enough to condemn the sexual abuse of children by priests. The Church's practice of keeping internal matters private only promulgates the abuse. Further, the mandates of the Canon Law tend to keep the public in the dark about the identity of abusers.

In 1996, Congress mandated the registration of sex offenders.<sup>93</sup> This registration has not been extended to pedophile priests because these priests have not been brought before the criminal courts for trial. Accordingly, children are inadequately protected when a priest is dismissed from the clergy. Although the priest loses his rank and perhaps his ease of access to children, he returns to the lay state as an unconvicted and unregistered sex offender, who continues to enjoy the right to live across the street from any school of his choosing and prey on children. The Church's remedy of laicizing the predator priest does not do enough to protect children and the public at large.

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<sup>92</sup> See generally, Special Reports, *supra* note 21; Gjelten, *supra* note 2.

<sup>93</sup> H.R. Rep. No. 2137, 104<sup>th</sup> Congress, Second Session (2016).

Historically, the Church addresses credible allegations of sexual abuse by negotiating settlement agreements. It has poured \$4 billion into compensating victims and providing for their therapy.<sup>94</sup> The sum is staggering and only continues to grow as time passes and victims muster the courage to make reports to officials within the Church.<sup>95</sup> Where does the Catholic Church acquire the sort of funds necessary to make payouts? In some cases, the Church relies on Church insurance. Church insurance is provided by a few companies for sexual misconduct or sexual acts liability coverage.<sup>96</sup> The key purpose of church insurance for sexual misconduct is protection of the church.<sup>97</sup> Depending on the coverage limitations, a church can agree to settle an alleged case of abuse and the insurance provider will cover the cost of the settlement.<sup>98</sup> In some diocese, the insurance coverage is not enough for the massive payout that is promised.<sup>99</sup> The insurance

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<sup>94</sup> Gjelten, *supra* note 2. For an exhaustive list, see generally, NCR Staff, *Catholic dioceses and orders that filed for bankruptcy and other major settlements*, NATIONAL CATHOLIC REPORTER, (May 31, 2018) <https://www.ncronline.org/news/accountability/catholic-dioceses-and-orders-filed-bankruptcy-and-other-major-settlements>.

<sup>95</sup> See generally, *Id.*

<sup>96</sup> *Understanding Church Insurance: Liability Coverage*, AG FINANCIAL, <https://www.agfinancial.org/blog/bid87590understanding-church-insurance-liability-coverage/>.

<sup>97</sup> Michelle Tsai, *Insurance for Sex Abuse*, SLATE, (July 16, 2007, 6:43 P.M.) <https://slate.com/news-and-politics/2007/07/can-the-catholic-church-buy-insurance-for-sexual-abuse.html>.

<sup>98</sup> *Id.*

<sup>99</sup> *Coverage and Liability Issues in Sexual Misconduct Claims*, Munich Reinsurance America, Inc.,

provider may refuse to cover any portion of the settlement under the “intentional acts” exclusion, included in a policy to preclude a church from entitlement to any portion of their coverage amount should the provider find the behavior criminal and continual.<sup>100</sup>

In the Archdiocese of St. Paul and Minneapolis, the archdiocese is looking to individual parishes for voluntary contribution of funds toward the historic \$210 million settlement.<sup>101</sup> Church insurance covered the Archdiocese for \$170 million of the settlement, with the remaining \$40 million to come out of the church’s own funds.<sup>102</sup> These funds come in the form of loans or from donations made by parishioners; a fact infuriating to those who donate with the belief that donations go to further the greater good of the church.<sup>103</sup> The Archdiocese filed for bankruptcy in 2015, has already sold \$8.8 million in assets and is now looking

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[https://www.munichre.com/site/mram/get/documents\\_E1235435297/mram/assetpool.mr\\_america/PDFs/3\\_Publications/sexual\\_misconduct\\_claims.pdf](https://www.munichre.com/site/mram/get/documents_E1235435297/mram/assetpool.mr_america/PDFs/3_Publications/sexual_misconduct_claims.pdf).

<sup>100</sup> Caitlin Bronson, *Abuse charges jeopardize Catholic churches’ insurance coverage*, INSURANCE BUS. MAG., (June 26, 2015)

<https://www.insurancebusinessmag.com/us/news/breaking-news/abuse-charges-jeopardize-catholic-churches-insurance-coverage-23002.asp.x>.

<sup>101</sup> Tom Scheck, *Archdiocese needs \$40M for sex abuse settlement. Here’s where it’s looking*, MPR NEWS, (June 11, 2018)

<https://www.mprnews.org/story/2018/06/11/clergy-sex-abuse-settlement-minnesota-archdiocese-plan>.

<sup>102</sup> *Id.*

<sup>103</sup> James F. McCarty & Joel Rutchick, *Catholic Charities Seek Pledge from Pilla: Don’t Use Donations to Settle Sex Suits, Board Urges Bishop; Sex Scandal Roils Diocese Fund-Raisers; Catholic Charities Board Wants to Ensure Gifts Aren’t Used to Settle Suits*, PLAIN DEALER, Aug 2, 2002, at A1; Jay Tokasz, *As diocese prepares to pay victims, its primary source of money: parishioners*, BUFFALO NEWS (April 16, 2018) <https://buffalonews.com/2018/04/16/worshippers-donations-pay-for-buffalo-clergy-sex-abuse-settlements/>.

to budget cuts and contributions from individual parishes to make up the rest.<sup>104</sup> All this as restitution for years of sexual abuse perpetrated on more than 450 victims. The church uses its insurance coverage, sells a few buildings, uses energy-efficient bulbs and the business along with the abuse, continues.

In other cases, where the insurance is not enough to meet the needs of the settlement, the Church is forced to take out loans in order to compensate victims.<sup>105</sup> Of the 194 Catholic dioceses in the country, 45 dioceses bank with Allied Irish Bank.<sup>106</sup> Allied Irish Bank is seen as the banking arm of the Roman Catholic Church for the massive loans it has made to the Church.<sup>107</sup> While church records on internal financial matters are scarce (as is often the case with internal church records generally), reports suggest that more than \$400 million has been loaned from the bank to compensate victims in the United States.<sup>108</sup> The Vatican itself has not been financially responsible for the financing of settlement funds.<sup>109</sup> It is believed that a staggering half billion dollars was loaned out from Allied Irish Banks in Dublin with repayment

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<sup>104</sup> Scheck, *supra* note 115.

<sup>105</sup> John Lee & John Breslin, *Catholic Church Used \$400m in Irish Bank Loans to Pay U.S. Sexual Abuse Victims*, BishopAccountability.org (Aug. 21, 2011) [http://www.bishop-accountability.org/news2011/07\\_08/2011\\_08\\_21\\_Lee\\_CatholicChurch.htm](http://www.bishop-accountability.org/news2011/07_08/2011_08_21_Lee_CatholicChurch.htm).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

coming directly from the diocese who obtained the loan.<sup>110</sup> The Vatican has not funded settlements for victims.<sup>111</sup> This method of procuring settlement funds does not do enough to hold individual actors within the organization accountable for the abuse.

There is some concern that dioceses have become engaged in the process of diverting assets in the face of widespread abuse accusations against priests. In 2013, Dan Rather exposed a trend among nearly two dozen dioceses across the country of hiding assets by quietly forming separate parish corporations.<sup>112</sup> The scheme hits victims with a second loss as they not only deprived of the opportunity to pursue criminal actions against their offenders, but also may be pressured into settling for less than the amount they would ordinarily have been entitled to but for the fraudulent shielding of diocesan funds. Eliminating limitations will ensure justice is served. State and federal authorities will have the power to prosecute offenders and those church officials who prolonged the victims' suffering, and the Catholic Church will be unable to

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<sup>110</sup> John Lee & John Breslin, *Catholic Church Used \$400m in Irish Bank Loans to Pay U.S. Sexual Abuse Victims*, BishopAccountability.org (Aug. 21, 2011) [http://www.bishop-accountability.org/news2011/07\\_08/2011\\_08\\_21\\_Lee\\_CatholicChurch.htm](http://www.bishop-accountability.org/news2011/07_08/2011_08_21_Lee_CatholicChurch.htm).

<sup>111</sup> *Id.*

<sup>112</sup> Dan Rather, *Dan Rather Reports – Spiritually Bankrupt*, BishopAccountability.org (July 30, 2013), [http://www.bishop-accountability.org/news5/2013\\_07\\_30\\_Rather\\_Spiritually\\_Bankrupt.htm](http://www.bishop-accountability.org/news5/2013_07_30_Rather_Spiritually_Bankrupt.htm).

protect its reputation by concealing the abuse and the existence of funds available to make reparations.

A strong argument against the abolition of limitations periods for crimes of sexual abuse of children is that such abolition stands to violate the Due Process Clause of the Fourteenth Amendment.<sup>113</sup> Further, a lawsuit against officials within the church may offend the First Amendment's Free Speech and Establishment Clauses. A defendant's right to due process of the law precludes him from being subject to stale claims. The significant passage of time between the wrongful conduct and the time of filing of the suit prejudices the defendant as it increases the likelihood that the defendant will be left without the recourse of witnesses and evidence that may prove guilt or innocence.<sup>114</sup> The Supreme Court addressed this argument in 1945 when it held that statutes of limitation reflect public policy about the privilege to litigate.<sup>115</sup> A delay in prosecution of offenses does not immediately implicate due process concerns unless the delay "violates the fundamental conceptions of justice which lie at the

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<sup>113</sup> See generally, U.S. Const. amend. XIV ("nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws").

<sup>114</sup> *Order of R.R. Telegraphers v. Railway Express Agency, Inc.*, 321 U.S. 342, 349 (1944).

<sup>115</sup> *Chase Securities Corp. v. Donaldson*, 325 U.S. 314 (1945).

base of our civil and political institutions.”<sup>116</sup> This supports the idea that limitations are a matter of public policy and fairness, and balancing the two notions is at the heart of a due process implication. The courts will have to balance the defendant’s inability to access witnesses and records with the plaintiff’s inability to immediately prosecute as a result of secrecy and concealment of the crime over a period of decades.

Further, the church may argue that subjecting priests to the criminal justice system violates the Free Exercise Clause of the First Amendment. The Free Exercise Clause guarantees the right to believe and profess any religious doctrine a person desires.<sup>117</sup> The Free Exercise Clause prohibits the application of laws that discriminate against religious beliefs or prohibits conduct undertaken for religious reasons.<sup>118</sup> The Free Exercise Clause embraces the concepts of freedom to believe and freedom to act, and while the freedom to believe is absolute, the freedom to act remains subject to regulation of the law for the protection of society.<sup>119</sup> The First Amendment may protect an individual’s right to believe and practice religion as he wishes, but the government retains the right to step in and regulate any conduct that

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<sup>116</sup> *Mooney v. Holohan*, 294 U.S. 103, 112 (1935).

<sup>117</sup> *Emp. Div. v. Smith*, 494 U.S. 872, 877 (1990).

<sup>118</sup> *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 532 (1993).

<sup>119</sup> *Cantwell v. Connecticut*, 310 U.S. 396, 303-04 (1940).

otherwise affects society as long as government action is justified by a compelling interest.<sup>120</sup> As stated previously, the government has a compelling interest in the protection of society's children.<sup>121</sup> Government action against church officials who proliferate the abuses against children does not serve to substantially interfere with the practice of the Catholic faith. The government preserves the right to prosecute all sex offenders, regardless of the nature of the institutions in which the offenders are found.

#### IV. CONCLUSION

The widespread sexual abuse of children in the Catholic Church is devastating. Unfortunately, the statistics on abuse only continue to grow. Children abused by the priests who groomed them, who were trusted and welcomed into their homes, are speaking out decades later after years of confusion and torment.<sup>122</sup> Church leaders proliferated the abuse by transferring priests from parish to parish, hoping the "illness" the priests suffered from could be cured by therapeutic intervention and a change of scenery. The predatory behavior only continues in every parish the

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<sup>120</sup> *Malicki v. Doe*, 814 So.2d 347, 354 (Fla. 2002); See also *Sherbert v. Verner*, 374 U.S. 398 (1963) (discussing the Sherbert test used to balance the government's interest with the consequential burden on a religious practice).

<sup>121</sup> *Globe* at 607.

<sup>122</sup> Terry ET AL., *supra* note 3.

abusive priest is moved to, and hundreds more children become the subjects of inconceivable crimes. Delayed reports and repressed memories prevent many children from coming forward until much later in their adult lives.<sup>123</sup> The often-lengthy passage of time between the crime and reporting by the victim precludes criminal action against the predatory priest.<sup>124</sup>

States should work to counteract the Catholic Church's continuing effort to obstruct justice by removing limitations in all criminal cases involving child sexual abuse. Removal of the limitation period will serve justice for the victims and subject predators to the punishments they deserve. The institutions that protect predator priests can no longer hide behind bankruptcy as a means of avoiding civil sanction or rely on insurance to cover the cost of restitution. Individual dioceses cannot seek to rectify the conduct they kept secret for decades by taking out loans and obtaining church insurance. These methods do not go far enough to deter the salacious conduct of predator priests, particularly when the highest level of the institution, the Vatican, takes no hit from the financial strain imposed in individual dioceses.

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<sup>123</sup> *Id.*

<sup>124</sup> Harshaw III, *supra* note 4.

Our criminal justice system must take action to ensure justice is served. All states should eliminate limitation periods for sexual offenses committed against children so that offenders can be brought to justice. The states should have the authority to prosecute high-ranking individuals for their involvement in maintaining pontifical secrecy and protecting the predator priests. Our system must change. Decades of innocence has been stolen, and while the pain is enduring, victims will find solace in knowing their abusers can never offend again. Monetary settlements and the imposition of canon law punishments simply do not go far enough to serve the justice victims so deserve.

Society has no place for those who prey on children, especially those who use pontifical secrecy as a shield against the criminal justice system.