

# CARDINAL LAW AND CARDINAL SIN: AN ARGUMENT FOR APPLICATION OF R.I.C.O. TO THE CATHOLIC SEX ABUSE CASES

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## INTRODUCTION

In 2011, the Penn State sex abuse scandal involving assistant coach Jerry Sandusky and longtime head coach Joe Paterno raged through the media,<sup>2</sup> breathing new life into the debate on reporting requirements and the wider legal ramifications of sexual abuse. But for decades,<sup>3</sup> the same kinds of scandals have simmered in an avowedly less-public forum: behind the closed doors of the Catholic Church. Over the years, the Church has faced numerous scandals involving the sexual abuse of minors by Catholic clergy, and unlike the Penn State case, where Sandusky was prosecuted and convicted, many of the clergymen involved in those scandals escaped legal criminal penalties.<sup>4</sup> Take, for example, Cardinal

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2. The scandal broke in 2011 involving Jerry Sandusky, former assistant to Penn State head coach Joe Paterno, who was accused, and subsequently convicted, of abusing at least eight boys over fifteen years, using Penn State's facilities to do so. The late Joe Paterno was fired prior to his death on the grounds that he did not do enough when made aware of the allegations of Sandusky's abuse. Sandusky was convicted in June 2012 of forty-five of forty-eight counts of child sex abuse and sentenced to thirty to sixty years in prison. *Jerry Sandusky Regrets Showers with Boys at Penn State*, BBC NEWS (Nov. 15, 2011), <http://www.bbc.co.uk/news/world-us-canada-15730317>. See also *Jerry Sandusky Gets 30-60 Years for Molesting Boys*, PATRIOT-NEWS (Oct. 9, 2012, 11:16 AM), [www.pennlive.com/midstate/index.ssf/2012/10/jerry\\_sandusky\\_gets\\_30-60\\_year.html](http://www.pennlive.com/midstate/index.ssf/2012/10/jerry_sandusky_gets_30-60_year.html) (listing the crimes Sandusky committed and detailing the sentence he received).

3. The Catholic sex abuse scandals date back to the 1950s, with the worst scandals breaking in 2002. Aidan Lewis, *Looking Behind the Catholic Sex Abuse Scandal*, BBC NEWS (May 4, 2010, 9:09 AM), <http://news.bbc.co.uk/2/hi/europe/8654789.stm>.

4. See discussion *infra* Part II.A-B.

Bernard Law, the Archbishop emeritus of Boston,<sup>5</sup> Beginning in 2002,<sup>6</sup> it became increasingly clear that Cardinal Law was involved in an elaborate scheme to cover up the egregious sexual abuse committed by priests in his archdiocese.<sup>7</sup>

Embroided in the controversy, Cardinal Law resigned and went into exile in the Vatican.<sup>8</sup> But as ignominious as this exile was, the Commonwealth of Massachusetts did not charge Cardinal Law in connection with the sex abuse cases, chiefly because it had no mandatory reporting law at the time.<sup>9</sup> Still, there may have been other potential causes of action against Cardinal Law and the Archdiocese of Boston. In this note, I argue that the best among these potential actions is the Racketeer-Influenced and Corrupt Organizations Act, more commonly called R.I.C.O.

R.I.C.O. was initially drafted in the 1970s to combat organized crime, written with broad strokes to give prosecutors a Swiss Army knife of sorts to help them shut down Mob operations, leading some to decry it as over-inclusive or vague.<sup>10</sup> R.I.C.O. allows an individual—or more importantly, a group of individuals or entities—to be indicted if he or she has committed two of any thirty-five listed crimes within ten years of each other.<sup>11</sup> Importantly, the act offers a range of crimes under which individuals can be charged, making it widely applicable.<sup>12</sup> Moreover, as Congress intended R.I.C.O. to act as a catchall statute, it provides both extended criminal penalties and a civil cause of action for a wide va-

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5. *College of Cardinals Biographical Notes*, HOLY SEE PRESS OFFICE, [http://www.vatican.va/news\\_services/press/documentazione/documents/cardinali\\_biografie/cardinali\\_bio\\_law\\_bf\\_en.html](http://www.vatican.va/news_services/press/documentazione/documents/cardinali_biografie/cardinali_bio_law_bf_en.html) (last updated Nov. 22, 2011).

6. This is the year that *The Boston Globe* released its report on the incidents of sexual abuse by one priest in the Archdiocese of Boston. Michael Rezendes, *Church Allowed Abuse by Priest for Years*, BOSTON GLOBE (Jan. 6, 2002), [http://www.boston.com/globe/spotlight/abuse/stories/010602\\_geoghan.htm](http://www.boston.com/globe/spotlight/abuse/stories/010602_geoghan.htm). See also discussion *infra* Part II.A-B.

7. Dahlia Lithwick, *But Why Isn't Bernard Law in Jail? (Part 2)*, SLATE MAGAZINE (Dec. 19, 2002, 6:33 PM), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2002/12/but\\_why\\_isnt\\_bernard\\_law\\_in\\_jail\\_part\\_2.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2002/12/but_why_isnt_bernard_law_in_jail_part_2.html). See also discussion *infra* Part II.A-B.

8. Lithwick, *supra* note 7.

9. *Id.*

10. Lee Coppola & Nicholas DeMarco, *Civil RICO: How Ambiguity Allowed the Racketeer Influenced and Corrupt Organizations Act to Expand Beyond its Intended Purpose*, 38 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 241 (2012). See discussion *infra* Part III.A.

11. Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961-1968 (2006).

12. *Id.*

riety of crimes.<sup>13</sup> R.I.C.O.'s broad scope and broad remedial scheme give it applications in the Church sex abuse scandals.

This note will show that R.I.C.O. should have been used to prosecute the sexual misconduct of the Catholic sex abuse cases because R.I.C.O. provides both civil and criminal causes of action, and therefore, because of this dual nature, it affords restorative, rehabilitative, and retributive justice, unlike any other statute available for prosecution of these cases. Other notes involving a R.I.C.O. analysis of the Catholic sex abuse scandals have emphasized that the Church's and its officials' crimes fit within the statutory scheme of R.I.C.O., thereby making it applicable. This note, however, will focus on an analysis of the unique penalties R.I.C.O. affords and argue that it is because of these broad remedies that R.I.C.O. not only can but should be used to prosecute the Catholic sex abuse scandals.

This note examines R.I.C.O. and its dual civil/criminal nature, including its penalties, the advantages to using a statute that affords these different penalties, and why no other statute offers the same thing. To this end, the note is divided into four sections. In the first section, I will discuss the Catholic sex abuse scandals, describing what happened, who was involved, and when the incidents occurred, and explain what happened to the Church as a result and discuss instances where prosecution (or lack of prosecution) of the Catholic sex abuse scandals led to unsatisfactory results. I will also revisit the incidents involving Cardinal Law in this section to help illustrate my points. The second section will explore the R.I.C.O. statute and examine what R.I.C.O. does and why it was passed, focusing specifically on the remedies that the statute provides. The third section will focus on the three types of justice provided for in R.I.C.O., namely restorative, rehabilitative, and retributive, and define these terms and explain their purposes. The fourth and final section will set forth my analysis showing that R.I.C.O. provides for these three types of remedies and that it is therefore the best statute to use to prosecute the Catholic sex abuse scandals. I will consider R.I.C.O.'s broad remedial scheme, and show, in turn, how R.I.C.O. can help the Catholic Church, the victims, and the offenders.

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13. ORGANIZED CRIME AND RACKETEERING SECTION, U.S. DEP'T OF JUSTICE, CIVIL RICO: 18 U.S.C. §§ 1961-1968 (2006): A MANUAL FOR FED. ATTORNEYS 19 (2007), *available at* [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/civrico.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/civrico.pdf) [hereinafter MANUAL].

## I. THE SCANDALS

Before exploring R.I.C.O.'s remedial scheme, it is necessary to give background information on the Catholic sex abuse scandals to place it within the context of R.I.C.O.. Therefore, this section will be broken down into three subsections: first, describing the incidents, detailing where they occurred and what the incidents entailed; next, discussing the incidents involving Cardinal Law in the Archdiocese of Boston specifically, using them to illustrate how any prosecution thus far has been largely unsatisfactory, and also describing the effects that the Catholic sex abuse scandals had on people generally, parishioners in particular, and the Catholic Church as a whole. Lastly, I will briefly explore other avenues of justice that prosecutors and the Church have pursued in the cases to date, showing how these have only given victims mediocre results and have done little or nothing to punish or rehabilitate offenders and the Church, and how a different approach, like the one afforded by R.I.C.O., is needed

### A. *The Incidents Generally*

The Catholic sex abuse cases were a series of sexual molestations<sup>14</sup> on children,<sup>15</sup> mostly male,<sup>16</sup> committed by members of the Catholic organization, primarily priests.<sup>17</sup> The abuse dates back to the 1950s,<sup>18</sup> but it was quickly swept under the rug then, with very few coming forward with allegations.<sup>19</sup> In 1985, the scandal again surfaced when Reverend Gilbert Gauthé of Louisiana admitted to

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14. These molestations range in severity, from verbal abuse to oral sex to coerced sex with others. JOHN JAY COLLEGE OF CRIMINAL JUSTICE, *THE NATURE AND SCOPE OF SEXUAL ABUSE OF MINORS BY CATHOLIC PRIESTS AND DEACONS IN THE UNITED STATES 1950-2002* 55 (2004), available at <http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/The-Nature-and-Scope-of-Sexual-Abuse-of-Minors-by-Catholic-Priests-and-Deacons-in-the-United-States-1950-2002.pdf>.

15. The John Jay Report has indicated that the people who were abused by priests during these scandals were between the ages of eight through fourteen. *Id.* at 69-70.

16. *Id.* at 69.

17. *Id.* at 36-39. The John Jay Report further indicates, "The majority of priests with allegations of abuse from 1950-2002 were ordained between the 1950s and 1970s." *Id.* at 39.

18. *Id.* at 29.

19. *See generally* JOHN JAY COLLEGE OF CRIMINAL JUSTICE, *supra* note 14, at 89-93 (describing the number of victims who reported the abuse and the time it took to report the incident after the abuse occurred).

sexually abusing thirty-seven children entrusted to his care.<sup>20</sup> However, the issue remained muffled through the 1980s and 1990s when silent settlements and good public relations hid the issue from public view.<sup>21</sup> In 2002, the problem of abuse in the Catholic Church exploded onto the national scene when *The Boston Globe* Investigative Team wrote a special report about the accusations against Boston-area priest Father John Geoghan, revealing hundreds of victims with stories and information that had been kept secret for years.<sup>22</sup> Once news of the shocking scandals hit, new reported cases poured in.<sup>23</sup>

The abuse occurred transnationally, including Ireland, Australia, the Netherlands, and Germany,<sup>24</sup> and recently, the international scandals have been gaining notoriety.<sup>25</sup> The focus, however, has mainly been on the United States, because these cases have received the most media coverage, sparked by the *Boston Globe* revelations in 2002.

Discovering that priests, men trusted within the Church, committed egregious acts of sexual misconduct was a big enough scandal in and of itself, but the bishops' practice of relocating abusive priests to different parishes aggravated the scandals.<sup>26</sup> It was revealed that many bishops were aware of the abuse and chose to

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20. John Nordheimer, *Sex Charges Against Priest Embroil Louisiana Parents*, N.Y. TIMES, June 20, 1985, <http://www.nytimes.com/1985/06/20/us/sex-charges-against-priest-embroil-louisiana-parents.html>.

21. Laurie Goodstein & Alessandra Stanley, *As Scandal Keeps Growing, Church and Its Faithful Reel*, N.Y. TIMES, Mar. 17, 2002, <http://www.nytimes.com/2002/03/17/us/as-scandal-keeps-growing-church-and-its-faithful-reel.html?pagewanted=1>. Despite the fact that victims were still coming forward, "insisting that confidentiality was necessary for the victims and the accused, church lawyers settled hundreds of lawsuits, paying victims anywhere from a few thousand dollars to millions each." *Id.*

22. Rezendes, *supra* note 6.

23. Goodstein & Stanley, *supra* note 21.

24. Rachel Donadio & Nicholas Kulish, *Vatican on Defense as Sex Scandals Build*, N.Y. TIMES, Mar. 9, 2010, [http://www.nytimes.com/2010/03/10/world/europe/10pope.html?\\_r=0](http://www.nytimes.com/2010/03/10/world/europe/10pope.html?_r=0).

25. *Id.* For example, in 2010 "a wave of church sexual abuse scandals emerged in Germany, Austria and the Netherlands . . . . The scandals, especially those in Germany, cut particularly close to [Pope] Benedict, who was archbishop of Munich from 1977 to 1982." *Id.*

26. See generally *Betrayal: The Crisis in the Catholic Church*, BOSTON GLOBE, <http://www.boston.com/globe/spotlight/abuse/betrayal/introduction.htm> (last visited Nov. 12, 2013) [hereinafter *Betrayal*] (describing the misdeeds that led to the Church crisis and the subsequent cover-ups made by Church officials who were aware of the abuse).

cover it up.<sup>27</sup> Instead of reporting abuse to the authorities or defrocking the priests, bishops merely removed abusive priests from the diocese where the abuse occurred, only to place them in another parish without warning to parishioners, thus “allowing [the priests] to start new lives in unsuspecting communities and continue working in Church ministries.”<sup>28</sup>

By covering up the scandals instead of reporting them, bishops were hoping to avoid legal prosecutions for their clergymen. In fact, there were nearly one hundred cases identified by an investigative team where priests attempted to evade legal convictions,<sup>29</sup> and “[a]bout thirty remain free in one country while facing ongoing

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27. *Id.*

28. *Report: Accused Priests Shuffled Worldwide*, ASSOCIATED PRESS (June 19, 2004, 3:39 PM), [http://usatoday30.usatoday.com/news/religion/2004-06-19-church-abuse\\_x.htm](http://usatoday30.usatoday.com/news/religion/2004-06-19-church-abuse_x.htm). See, e.g., **California**: Reverend Jeffrey Newell of the Archdiocese of Los Angeles was accused of child molestation in 1994, but despite promises made by Church officials that “the priest would never work around children again,” Reverend Newell not only remained a priest, but continued to serve and was merely moved to the Diocese of Tijuana, Mexico as of 2010. *Sex Abuse Victim Accuses Catholic Church of Fraud*, ASSOCIATED PRESS, (June 29, 2010, 2:20 PM), [http://usatoday30.usatoday.com/news/religion/2010-06-24-fraud23\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/religion/2010-06-24-fraud23_ST_N.htm); **Massachusetts**: Cardinal Bernard Law of Boston was aware of Reverend John Geoghan’s incidents of child molestation, but instead of turning him over to the authorities or defrocking him, Cardinal Law “approved his transfer to St. Julia’s parish in Weston” even though “one of Law’s bishops thought that the 1984 assignment of Geoghan to St. Julia’s was so risky[] [that] he wrote the Cardinal a letter in protest.” Rezendes, *supra* note 6. See discussion *infra* II.B. **Pennsylvania**: Cardinal Anthony Bevilacqua of Philadelphia, who passed away in January 2012, instructed Monsignor William Lynn to keep quiet the sexual misconduct of Reverend Edward V. Avery who, after being found out to have molested a child, was sent to a church psychiatric center for six months, but instead of keeping him away from children as ordered by the doctors, Msgr. Lynn “sent him to live in a parish rectory and did not warn Parish officials.” Jon Hurdle & Erik Eckholm, *Church Official in Philadelphia Gets Prison in Abuse Case*, N.Y. TIMES, July 24, 2012, <http://www.nytimes.com/2012/07/25/us/philadelphia-church-official-to-be-sentenced-in-abuse-case.html>; **Wisconsin**: Reverend Franklyn Becker had been accused of sexually abusing children, but instead of removing him, the Milwaukee Archdiocese moved him from parish to parish. In fact, Reverend Becker was sent to nine different parishes in a twenty-year span. Erin Drew Kent, *Priest Accused of Abuse Moved from Parish to Parish*, TMJ 4 NEWS (Milwaukee), <http://www.culteducation.com/reference/clergy/clergy809.html>. The cover-ups also occurred abroad. See, e.g., **Australia**: Reverend Frank Klep was a convicted child molester in Australia. Though there were pending charges on Reverend Klep in Australia, he was moved to Apia, Samoa, in the South Pacific, which has no extradition treaty with Australia, thereby keeping Reverend Klep’s crimes successfully under wraps. *Report: Accused Priests Shuffled Worldwide*, *supra* note 28.

29. *Report: Accused Priests Shuffled Worldwide*, *supra* note 28.

criminal inquiries, arrest warrants, or convictions in another.”<sup>30</sup> These priests remain in contact with children, shielded by the Catholic Church.<sup>31</sup>

The Catholic sex abuse scandals involved many levels of the Church’s hierarchy. Besides elaborate cover-up schemes by Church superiors, there were also strict orders from these superiors to keep quiet. Many clergy who were aware of abuse felt that they could not stand up to their superiors, because once the superior made a decision, it would stand. In fact, one priest stated, “[T]here were no heroes . . . . No one said to his bishop, ‘No, you can’t transfer this priest to another parish. If you do that, I resign. Get yourself another priest personnel director.’”<sup>32</sup> It seems that the entire hierarchy was knee-deep in the scandals.

### B. A Specific Example

The most glaring example of a nefarious cover-up involved Cardinal Bernard Law, then the Archbishop of Boston, who had been called “the most influential American Catholic prelate in the Vatican.”<sup>33</sup> Cardinal Law was exposed as having knowledge about the sexually abusive behavior of two of his priests. The biggest scandal involved Father John J. Geoghan, a priest in the Archdiocese of Boston who had “fondled or raped 130 boys during a 3 decade spree through a half dozen Greater Boston parishes. Almost always his victims were grammar school boys. One was four years old.”<sup>34</sup> Cardinal Law, however, did nothing to prevent the harm, and instead engaged in activities that covered up the harm.<sup>35</sup> In

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30. *Id.*

31. *Id.*

32. Cathy Lynn Grossman, *Philadelphia Trial Revives Catholic Church Sex-Abuse Crisis*, USA TODAY (June 7, 2012, 8:59 PM), <http://usatoday30.usatoday.com/news/religion/story/2012-06-05/philadelphia-priest-sex-abuse-case/55453208/1>. The priest who made this comment was Thomas Reese, a Jesuit priest, political scientist, and senior fellow at the Woodstock Theological Center at Georgetown University in Washington, D.C.

33. *Betrayal*, *supra* note 26.

34. Rezendes, *supra* note 6.

35. *Id.* Information regarding Cardinal Law’s awareness of the sexual misconduct and ensuing cover-ups is well-documented. *The Boston Globe* first discovered Cardinal Law’s involvement when the cardinal “used a routine court filing to make an extraordinary admission: seventeen years earlier he had given Rev. John Geoghan a plum job as parochial vicar of an affluent suburban parish, despite having been notified just two months previously that Geoghan was alleged to have molested seven boys.” *Betrayal*, *supra* note 26. Moreover, a *Slate* article said, “Law admitted in a deposition in the spring of 2001 that he was aware that

the words of *Slate* columnist Dahlia Lithwick, Cardinal Law “breezily reassigned clergy known for sexually abusing children to work with more children—conduct not all that distinguishable from leaving a loaded gun in a playground.”<sup>36</sup> Cardinal Law approved Father Geoghan’s reassignment from the parish where the abuse occurred to another parish, St. Julia’s parish in Weston.<sup>37</sup> The elaborate cover-up scheme began to crumble when five years after his transfer to Weston, Father Geoghan was forced to go on sick leave after he was accused of more sexual misconduct.<sup>38</sup> Apallingly, Cardinal Law allowed Father Geoghan to stay in Weston for more than eight years before removing him from ministry in 1998.<sup>39</sup>

Cardinal Law’s scandal only worsened. When the *Boston Globe* reported its findings in the news, in addition to information regarding Father Geoghan, there were also documents showing that Cardinal Law further knew of and ignored reports of child abuse by Father Paul Shanley, reassigning him to different parishes as well.<sup>40</sup> In 2002, Father Shanley was placed on trial for ten charges of child rape and six counts of indecent assault and battery. Cardinal Law had committed another cardinal sin.

There was public outrage when the scandals regarding Cardinal Law broke.<sup>41</sup> Many thought Cardinal Law should have gone to prison, but he received no criminal or civil penalties.<sup>42</sup> Cardinal Law did not even receive a slap on the wrist from the law. The public was stunned. Unfortunately, however, Cardinal Law could not be charged under Massachusetts’ law as it stood then.<sup>43</sup> Because Massachusetts had no mandatory reporting law, Cardinal Law was under no legal obligation to come forward with information regarding the sexual abuse of children by Father Geoghan or Father Shanley.<sup>44</sup> Though never charged legally, Cardinal Law

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Father Geoghan had raped at least seven boys in 1984, but still approved his transfer to a different parish.” Lithwick, *supra* note 7.

36. Lithwick, *supra* note 7.

37. Rezendes, *supra* note 6.

38. *Id.*

39. *Id.*

40. Lithwick, *supra* note 7.

41. *Id.*

42. *Id.*

43. Massachusetts’ law has since been reformed to include child endangerment statutes. The statutes were passed in the summer of 2002, but cannot be applied retroactively, thus Cardinal Law was never charged in connection with the scandals. *Id.*

44. *Id.*



resigned in December 2002 under mounting pressure.<sup>45</sup> Many were still displeased as it appeared that Cardinal Law was allowed to get away with more than just merely not reporting child abuse, a simple crime of omission. Instead, he was “affirmatively engaged in a pattern of shielding child rapists and recklessly allowing them unfettered access to yet more victims.”<sup>46</sup> Though he never abused children himself, the effects of what he did suggested that he was just as liable as those who did.

### C. *The Effects of the Catholic Sex Abuse Cases*

Not only were the scandals widespread, but so were its effects, reaching far beyond the Church. One commentator called the Catholic sex abuse cases “the kind of blow the Catholic Church hadn’t felt since Martin Luther nailed his 95 Theses to the door of the Castle Church in Wittenberg, Germany.”<sup>47</sup>

#### 1. The General Public

When the scandal broke, the American public was aghast. In 2002, eight out of ten Americans believed that “bishops who failed to act on abuse allegations should be prosecuted criminally.”<sup>48</sup> Moreover, after news of the sex scandals became public, “sixty-four percent of people believed that Catholic priests ‘frequently’ abused children.”<sup>49</sup> In general, there grew “a taint, a suspicion cast over anyone of the cloth, fueled by a daily headlines of a pedophilic priest and a collection of church leaders that did nothing of consequence to stop him.”<sup>50</sup>

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45. Lithwick, *supra* note 7.

46. *Id.*

47. Patrick Doyle, *Resurrection*, BOSTON MAGAZINE, Nov. 2012, available at <http://www.bostonmagazine.com/articles/2012/10/archdiocese-catholic-church-rebuild-after-scandal/>.

48. Lithwick, *supra* note 7. This statistic is according to a summer 2002 poll conducted by ABC News and Beliefnet.com six months after *The Boston Globe's* investigation hit the news.

49. Doyle, *supra* note 47.

50. *Id.* This was a quote from Brian McGrory, a writer for *The Boston Globe* near the time that the Cardinal Law incidents were released.

## 2. Catholics

For Catholics, the effects were even worse. In Boston alone, mass attendance fell by fourteen percent,<sup>51</sup> and the parishioners who did go to mass stopped contributing to the Church.<sup>52</sup> By the time of the Philadelphia trial of Monsignor William Lynn in the summer of 2012, many parishioners were exasperated. The Lynn trial was perhaps the last straw, and was “enough to make even the most devout, daily-mass-attending Catholics out there, throw up their hands and say, ‘Why can’t these guys get their act together?’”<sup>53</sup>

## 3. The Catholic Church

Besides donations, attendance, and overall morale being down, the Church was being scorned and criticized. Millions of dollars were being paid out in settlements to victims,<sup>54</sup> and more and more victims were coming forward each day.<sup>55</sup> Indeed, one of Boston’s archdiocese’s spokeswomen was receiving 300 phone calls a day, calling it a “public relations nightmare.”<sup>56</sup> The scandals were so bad for the Church’s reputation that when Archbishop Seán Patrick O’Malley took over the archdiocese of Boston after Cardinal Law’s resignation, he had the unenviable task of “rebuilding the archdiocese’s reputation from the ground up, finding and training a new generation of dedicated, intelligent, and trustworthy young men to minister to a traumatized flock.”<sup>57</sup> This would be no easy task.

### *D. Past Attempts at Justice*

There was an inequity between the severity of the scandals and the prosecution that ensued. Prosecution by both the Church internally and the state externally yielded unsatisfactory results.

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51. *Id.*

52. *Betrayal*, *supra* note 26.

53. Grossman, *supra* note 32. Thomas Plante, a University of Santa Clara psychology professor who serves on the National Review Board and has written essays about the lessons learned and unmet goals from the 2002 incidents, stated this.

54. Doyle, *supra* note 47.

55. *Id.*

56. *Id.*

57. *Id.*

Justice was weakly attempted for victims and generally not achieved.

1. *Previous state prosecutions attempted*

Previous state prosecutions attempted have led to unsatisfactory results because many victims received reparation but not much more. Yet a “sorry” and some cash might not be enough for these victims who have experienced terrible and traumatic events. Many called for criminal convictions, but getting criminal convictions is difficult in many states, as most prosecutors “have a tough time finding a hook for criminal prosecutions.”<sup>58</sup> This was exemplified by the Cardinal Law scandal where, like many other states, Massachusetts had no child endangerment statutes.<sup>59</sup> Therefore, prosecutors have looked towards other statutes to bring down offenders, but these statutes are deficient for such a purpose.

One such avenue that some states have considered is prosecuting members of the Church hierarchy under reckless endangerment statutes.<sup>60</sup> These statutes could be used to prosecute individuals who “recklessly engage[] in conduct which creates a substantial risk of serious physical injury to another person.”<sup>61</sup> However, this avenue is not entirely viable, since “sexual abuse is unlikely to fall within statutory definitions of ‘serious physical injury.’”<sup>62</sup> Thus it does little to mitigate the scandals’ effects.

Another avenue of attempted prosecution has been under corporate vicarious criminal liability, which entails the Church being sued as a corporation, with the bishops being held liable for failure

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58. Lithwick, *supra* note 7.

59. *Id.* After the scandals broke, “[c]hild endangerment statutes were finally enacted in September in Massachusetts, but they cannot be applied retroactively.” *Id.*

60. Laura Russell, *Pursuing Criminal Liability for the Church and Its Decision Makers for Their Role in Priest Sexual Abuse*, 81 WASH. U. L. Q. 885, 902 (2003).

61. *Id.*

62. *Id.* For instance, a typical definition of the term is found in the District of Columbia Code: “‘Serious bodily injury’ means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” *Id.* at n.187 (quoting D.C. CODE ANN. § 22-3001(7)(2001)).

to stop wrongdoing by their employees, namely the priests.<sup>63</sup> Under these statutes, a bishop is liable because he “was in a position of authority to prevent the crime but didn’t.”<sup>64</sup> However, corporate vicarious criminal liability is based in state statute, not federal statute, and its remedy is only monetary, not jail time.<sup>65</sup> Because of this, it does little for the victims and effectively allows the offenders to remain free. Moreover, its effects are minuscule in terms of rehabilitating the Church’s image.

Obstruction of justice has been another statute under which prosecutors have attempted to hold Church officials liable.<sup>66</sup> This action is only viable, however, if the Church officials actually obstructed a criminal investigation, which is not always the case.<sup>67</sup> Additionally, the statute’s remedies are imprisonment and fines,<sup>68</sup> which may help bring justice for the offenders and victims, but again does little to help rehabilitate the Church’s image and parishioners’ faith in the Church.

Moreover, prosecutors have also tried to charge clergy for being an accessory after the fact to the abuse.<sup>69</sup> However, this track has proven generally unsuccessful because to be an accessory requires that the clergy member who knew of the abuse “intend[ed] for the abuse to occur; in other words, it’s not enough that Law knew his subordinates would molest again. It seems that not caring one way or another is insufficient.”<sup>70</sup> The strict language of this statute makes prosecuting Church officials under it difficult.

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63. Lithwick, *supra* note 7. Prosecution under these statutes is possible since “church dioceses are non-profit corporations with bishops and cardinals staffing upper-level management positions.” Russell, *supra* note 60, at 903-04.

64. Lithwick, *supra* note 7.

65. *Id.*

66. *Id.* Bishop Thomas O’Brien in Phoenix, Arizona faced obstruction charges because he told victims’ families not to approach the police, but the charges were dropped when he made a settlement with the prosecutor in which he “admitted that several times during his 22-year tenure he placed children in harm’s way by transferring priests who had been accused of sexual abuse to parishes, and that he never informed either the priests’ new superiors or parishioners.” David Gibson, *The Bishop and the Prosecutor*, N.Y. TIMES, June 7, 2003, <http://www.nytimes.com/2003/06/07/opinion/the-bishop-and-the-prosecutor.html>.

67. Lithwick, *supra* note 7. For example, Cardinal Law could not be prosecuted under this statute because the archdiocese of Boston did, in fact, turn over its documents. *Id.*

68. 18 U.S.C. § 1510(a) (2010).

69. Lithwick, *supra* note 7.

70. *Id.*

## 2. Previous Church efforts

Additionally, previous efforts by the Church to remedy the situation have been largely unsuccessful. When the scandals gained notoriety in 2002, American bishops called a conference to discuss the dire situation. At this conference, the bishops started a “zero tolerance” policy towards abusive clergy and put in place steps towards “report[ing] allegations of abuse to law enforcement authorities.”<sup>71</sup> The Vatican, however, “responded negatively to the bishops’ newfound intention to turn accused priests over to authorities.”<sup>72</sup> The Vatican maintained that they would refuse the bishops’ proposal because it would violate canon law.<sup>73</sup> But the Vatican measures are widely considered unsatisfactory, mainly because the Vatican insists on the primacy of canon law, and “concomitant[ly] refus[es] to adopt a policy that would require the Church to turn over suspected pedophiles to the police.”<sup>74</sup> As such, many are “circumspect” about the possibility of change.<sup>75</sup>

Thus, all of these potential routes to justice are severely lacking. R.I.C.O., however, offers a reasonable chance. Because of R.I.C.O.’s dual civil and criminal nature and broad remedial scheme, it helps all of those involved and affected by the Catholic sex abuse scandals, and thus should be utilized.

## II. THE RACKETEER INFLUENCED CORRUPT ORGANIZATIONS ACT (R.I.C.O.)

This section will address R.I.C.O.’s congressional intent, statutory elements, and remedies. I will also explain the different types of justice that derive from R.I.C.O.’s remedies. I further argue that R.I.C.O.’s statutory language is broad and thus *can* be used to prosecute offenders in the Catholic sex abuse cases. Further, R.I.C.O. *should* be used for prosecution in these scandals because of its broad remedial scheme, which affords numerous types of justice.

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71. Russell, *supra* note 60, at 892.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

### A. Congressional Intent

R.I.C.O. is a United States federal law enacted by Congress as part of Title IX of the Organized Crime Control Act of 1970.<sup>76</sup> Congress drafted the bill with vague, sweeping language, thus allowing broad application of the statute.<sup>77</sup> R.I.C.O. provides for both criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization.<sup>78</sup> R.I.C.O. specifically focuses on racketeering and allows for leaders of a syndicate to be tried for the crimes, which they ordered others to do or assist them in doing.<sup>79</sup> R.I.C.O. is such a useful tool for prosecutors because it has harsh penalty provisions for offenders and is generally easy to prove in court, because it focuses on patterns of behavior rather than criminal acts.<sup>80</sup> Originally drafted to combat organized crime, namely the mafia,<sup>81</sup> its application has since become more widespread, leading some commentators to argue that civil R.I.C.O. is being used beyond its intended scope.<sup>82</sup> However, one of the original drafters and lead scholars of the bill, G. Robert Blakely, stated that while the bill's intent was to combat organized crime, that was not its sole intent.<sup>83</sup> Blakely stated to *TIME*, “[W]e don’t want

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76. Racketeer Influenced and Corrupt Organizations, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as 18 U.S.C. §§ 1961-1968 (2006)).

77. See 18 U.S.C. §§ 1961-1968 (2006).

78. 18 U.S.C. §§ 1963-64 (2006). See also MANUAL at 1-3 (listing R.I.C.O.’s civil remedies and giving a general overview of the statute and who may initiate a R.I.C.O. suit).

79. See generally 18 U.S.C. §§ 1961-1968 (2006) (detailing the crimes that are indictable and their punishments). R.I.C.O. closed a loophole that previously allowed criminals, particularly mobsters, to receive less severe punishment because they were not the ones actually committing the crimes. See generally Racketeer Influenced and Corrupt Organizations, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as 18 U.S.C. §§ 1961-1968 (2006)) (detailing Congress’ purposes of enacting the statute).

80. Alain Sanders, *Law: Showdown at Gucci*, *TIME*, Aug. 21, 1989, at 48.

81. “Congress has found that organized crime, particularly La Cosa Nostra (LCN), had extensively infiltrated and exercised corrupt influence over numerous legitimate businesses and labor unions throughout the United States . . . .” MANUAL, *supra* note 13, at 16.

82. See, e.g., Michael Goldsmith & Mark Jay Linderman, *Civil RICO Reform: The Gatekeeper Concept*, 43 VAND. L. REV. 735 (1990) (arguing that civil RICO is being abused); Arthur Matthews, *Shifting the Burden of Losses in the Securities Markets: The Role of Civil RICO in Securities Litigation*, 65 NOTRE DAME L. REV. 896, 929 (1990) (maintaining that “the use of civil RICO [has] been pushed far beyond what Congress originally envisioned.”).

83. See generally Sanders, *supra* note 80 (stating that because of R.I.C.O.’s broad provisions, the statute has been “extended beyond its Mob-busting origins

one set of rules for people whose collars are blue or whose names end in vowels, and another set for those whose collars are white and have Ivy League diplomas.”<sup>84</sup> Additionally, R.I.C.O. contains a liberal construction clause, allowing the judiciary to interpret the statute in a liberal, far-reaching manner.<sup>85</sup> Within the law, Congress listed five primary purposes for passing R.I.C.O..<sup>86</sup> Significantly, Congress stated:

[O]rganized crime in the United States . . . annually drains billions of dollars from America’s economy . . . organized crime derives a major portion of its power through and obtained from . . . illegal endeavors . . . this money and power are increasingly used to infiltrate and corrupt legitimate businesses and labor unions and to subvert and corrupt our democratic processes . . . organized crime activities in the United States weaken the stability of the Nation’s economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens.<sup>87</sup>

The two senators who introduced the bill said that R.I.C.O. was necessary because previous laws used to combat organized crime “have been of little avail.”<sup>88</sup> R.I.C.O. proved to be a very powerful weapon against organized crime and “helped close gaping holes in states’ criminal law enforcement against organized crime.”<sup>89</sup>

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to become a powerful legal weapon against the upper reaches of white-collar crime.”).

84. *Id.*

85. Coppola & DeMarco, *supra* note 10, at 242-43. The clause states, “The provisions of this title shall be liberally construed to effectuate its remedial purposes.” Pub. L. No. 91-452, 84 Stat. 947.

86. Racketeer Influenced and Corrupt Organizations, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as 18 U.S.C. §§ 1961-1968 (2006)).

87. *Id.*

88. Coppola & DeMarco, *supra* note 10, at 247.

89. *Id.* at 248. Holes existed previously before R.I.C.O.’s enactment because under most state law, organized crime enterprises could only be prosecuted under a conspiracy theory, which generally required that the wrongdoer engage in a prohibited act as outlined by the law. But this gap permitted many enterprises’ “kingpins” to “avoid state prosecution by using caution and remaining behind the scenes.” *Id.* R.I.C.O. fixes this gap by eliminating the actus reus element of the crime—as long as the kingpin is involved at some level, he can be prosecuted under R.I.C.O. *Id.* See also Interview by Nicholas DeMarco with Louis Schulze

Though some legal scholars maintain that R.I.C.O. should be construed narrowly and kept limited to mafia-type organizations,<sup>90</sup> the Supreme Court of the United States has said otherwise. Though it took fifteen years<sup>91</sup> for the Court to address the congressional intent of R.I.C.O., when the Court did speak, it spoke loud and clear. In *Sedima S.P.R.L. v. Imrex Co., Inc.*,<sup>92</sup> the Court applied R.I.C.O. broadly, adopting an expansive interpretation of the statute.<sup>93</sup> Justice White, writing for the majority, declared:

RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, but also of its express admonition that RICO is to be liberally construed to effectuate its remedial purposes. The statute's 'remedial purposes' are nowhere more evident than in the provision of a private action for those injured by racketeering activity.<sup>94</sup>

Acknowledging that R.I.C.O. could, and was "evolving into something quite different from the original conception of its enactors,"<sup>95</sup> the Court nonetheless reiterated "[t]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth."<sup>96</sup> Still there was controversy surrounding R.I.C.O.'s intent even among the justices. In a dissenting opinion, Justice Powell argued that R.I.C.O. was enacted primarily to combat organized crime, and any other suits that could be brought under it was incidental.<sup>97</sup>

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Assoc. Professor of Law, New England Law, in Boston, MA (Jan. 20, 2012) (on file with the author).

90. See *supra* note 81.

91. R.I.C.O. was enacted in 1970, but it was not until 1985 in *Sedima, S.P.R.L. v. Imrex Co., Inc.* that the Court addressed R.I.C.O.'s purpose, scope, and legislative history. Coppola & DeMarco, *supra* note 10, at 248. See also PAUL A. BATISTA, CIVIL RICO PRACTICE MANUAL §2.05 (3d ed., 2011) (describing R.I.C.O.'s statutory background and delineating its judicial history regarding its interpretation).

92. 473 U.S. 479 (1985).

93. *Id.* at 497-98.

94. *Id.*

95. *Id.* at 500.

96. *Id.* at 499 (quoting *Haroco, Inc. v. American National Bank & Trust Co. of Chicago*, 747 F.2d 384, 398 (7th Cir. 1993)).

97. *Sedima*, 473 U.S. at 525 (Powell, J. dissenting). See also Coppola & DeMarco, *supra* note 10, at 250 (explaining Powell's dissent and its ramifications on R.I.C.O.'s expansive interpretation).



Subsequent cases would only muddy the water.<sup>98</sup> The last notable case where the Court analyzed R.I.C.O.'s reach was *Boyle v. United States*, in which the Court yet again adopted an expansive view, holding that "association-in-fact" did not require a dedicated structure.<sup>99</sup> Though its intent is contested, R.I.C.O.'s reach has nevertheless grown since its inception.

### B. Statutory Elements

In order to "seek the eradication of organized crime in the United States . . . and [] provid[e] enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime,"<sup>100</sup> R.I.C.O. lays out certain statutory elements necessary for a successful claim. Under § 1962, there are four prohibited activities: "investment of racketeering income, acquiring or maintaining an interest in or control of an enterprise, conducting or participating in the conduct of the affairs of the enterprise, and conspiring to violate any of these three prohibited activities."<sup>101</sup> There are two ways a plaintiff can initiate a R.I.C.O. action: "the Attorney General may institute proceedings" under § 1964(b), and "any person injured in his business or property by reason of a violation of section 1962 . . . may sue" under § 1964(c).<sup>102</sup> To be successful, a plaintiff must demonstrate that an "enterprise" has engaged in a "pattern of racketeering activity."<sup>103</sup> Under the statute, a pattern of racketeering activity requires "at least two acts of racketeering activity . . . the last of which occurred within ten years . . . after the commission of a prior act of racketeering activi-

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98. In *Holmes v. Security Investor Protection Corp.*, the Court restricted the civil provision of R.I.C.O. by holding that a plaintiff could only recover treble damages if proximate cause could be shown. 503 U.S. 258, 265-66 (1992). In *Cedric Kushner Promotions, Ltd. v. King*, the Court again broadened R.I.C.O.'s reach by holding that an individual who owns a corporation "is distinct from the corporation itself." 533 U.S. 158, 163 (2001). See also Coppola & DeMarco, *supra* note 10, at 252 (arguing that over the years, the Court has promulgated an expansionist view towards R.I.C.O., effectively broadening its reach).

99. 556 U.S. 938, 945-46 (2009). See also Coppola & DeMarco, *supra* note 10, at 252 (explaining the Court's holding in the case).

100. Racketeer Influenced and Corrupt Organizations, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified as 18 U.S.C. §§ 1961-1968 (2006)).

101. Andrew Kinworthy, *To Remedy or Not to Remedy: The Availability of Disgorgement Under Civil RICO*, 84 WASH. U. L. REV. 969, 973 (2006) (discussing R.I.C.O.'s requirements, particularly in the context of disgorgement).

102. 18 U.S.C. § 1964 (2006).

103. 18 U.S.C. § 1962 (2006).

ty.”<sup>104</sup> A pattern of racketeering activity is determined by continuity.<sup>105</sup> There are two types of continuity: close-ended, “criminal activity that occurred over a substantial period of time” and open-ended, “criminal activity that is ongoing or likely to occur in the future.”<sup>106</sup> The term, “enterprise” entails, “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”<sup>107</sup>

Due to its broad language, R.I.C.O. can be used to prosecute offenders in Catholic sex abuse cases.<sup>108</sup> Most offenders involved in this type of case act “in an obscene matter,”<sup>109</sup> by either committing sexual abuse, or else knowingly and actively engaging in elaborate schemes to cover up the crimes.<sup>110</sup> Additionally, some priests obstructed justice and criminal investigations by not divulging information to the authorities.<sup>111</sup> Some examples of this include: “bribery and the use of mail and wires to defraud and keep victims from reporting crimes to the police.”<sup>112</sup> Additionally, many Church hierarchies engaged in “a conspiracy of silence to protect priests who abused children. They did this by failing to keep predator priests away from children, failing to report the abuse to authorities, and paying money to victims in order to keep the misconduct secret.”<sup>113</sup> Moreover, the Church fits within the statutory language

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104. 18 U.S.C. § 1961(5) (2006). *See also* Kinworthy, *supra* note 101, at 973 (defining what constitutes racketeering in accordance with the statute). Debate exists among courts over what constitutes a pattern. For a glimpse of the break in circuit courts’ decisions, *see* H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229 (1989) (outlining R.I.C.O.’s legislative history, in particular, any history related to the phrase “racketeering activity,” and listing cases in which the phrase has been previously examined).

105. Kinworthy, *supra* note 101, at 973.

106. *Id.*

107. 18 U.S.C. § 1961(4) (2006).

108. *See generally* Russell, *supra* note 61 (discussing how R.I.C.O.’s criminal penalties can be used to prosecute offenders in the scandals).

109. 18 U.S.C. § 1961(1)(A) (2006).

110. *See* discussion *supra* Part I.A-B.

111. *Id.*

112. Rod Dreher, *Mitered in the Mob? What RICO lawsuits could mean for the Catholic Church in the United States*, NAT’L REV. ONLINE (Mar. 28, 2002, 8:20 AM), <http://old.nationalreview.com/dreher/dreher032802.asp>. *See also* discussion *supra* Part I.A-B.

113. Nicholas R. Mancini, *Mobsters in the Monastery? Applicability of Civil RICO to the Clergy Sexual Misconduct Scandal and the Catholic Church*, 8 ROGER WILLIAMS U. L. REV. 193, 195 (2002) (discussing whether R.I.C.O. is a viable cause of action to the scandals).

of an “enterprise” because each diocese is a corporation in and of itself, and they arguably acted in concert to cover up these crimes.<sup>114</sup> R.I.C.O. could be used in this context because “it does not require a showing of any mens rea beyond that needed for predicate acts; it usually provides for stiffer penalties than would be available for the predicate act . . . and it allows prosecutors to present evidence regarding multiple criminal acts at one trial.”<sup>115</sup> Individuals abused by priests could also be viable plaintiffs to bring suit as long as they show some harm to property.<sup>116</sup> Although a R.I.C.O. prosecution of the Catholic sex abuse scandals would be successful under its statutory language, it should be applied on the basis of its broad remedial scheme.

### C. Remedies

Because R.I.C.O. offers both civil and criminal causes of action, “Congress seemingly empowered courts to enforce a wider range of penalties to deter and punish those using legitimate businesses to further criminal activities.”<sup>117</sup> Thus, various types of justice can be achieved because of the wide range of penalties that are available.

#### 1. Civil remedies

R.I.C.O.’s civil remedies are severe and more expansive than its criminal law remedies. That is because § 1964(a) “explicitly authorizes district courts to impose intrusive, structural reforms.”<sup>118</sup> Section 1964(a) lists R.I.C.O.’s remedies as:

Including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavors as the enterprise engaged in, the activities of which affect interstate or foreign

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114. 18 U.S.C. § 1961(4) (2006).

115. Glenn Beard, et al., *Racketeer Influenced and Corrupt Organizations*, 33 AM. CRIM. L. REV. 929, 931 (1996).

116. 18 U.S.C. § 1964(c) (2006).

117. Tricia Bozyk, *Disgorging American Business: An Examination of Overbroad Remedies in Civil RICO Cases*, 59 RUTGERS L. REV. 129, 136 (2006) (discussing R.I.C.O.’s civil and criminal penalties).

118. MANUAL, *supra* note 13, at 18.

commerce; ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.<sup>119</sup>

Though certain civil remedies are explicitly delineated under the statute, “the list is not exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provisions for the rights of innocent persons.”<sup>120</sup>

One of R.I.C.O.’s powerful civil remedies is an injunction, which is a “coercive remedy” in which the defendant is mandated to “refrain from doing specific acts.”<sup>121</sup> Other options include dissolution and divestiture, which “put an end to the [unlawful] combination or conspiracy.”<sup>122</sup> The most expansive civil remedy that R.I.C.O. offers is treble damages. Section 1964(c) states, “Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue . . . and shall recover threefold damages he sustains and the cost of the suit, including reasonable attorney’s fees.”<sup>123</sup> Though treble damages are normally sufficient, the court may additionally award punitive damages to “ensur[e] a full and complete recovery for the plaintiff.”<sup>124</sup>

In addition to broad civil remedies, R.I.C.O. also provides for a fee-shifting provision that only flows in one direction (to a successful plaintiff), thus making it especially plaintiff-friendly.<sup>125</sup> It is because of R.I.C.O.’s civil remedies that the statute is considered so comprehensive.

## 2. Criminal remedies

While less extensive than its civil remedies, R.I.C.O. also offers criminal remedies. R.I.C.O.’s criminal remedies are found in § 1963 and include: fines, imprisonment under twenty years, or

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119. 18 U.S.C. § 1964(a) (2006).

120. S. REP. NO. 91-617 at 81, 160 (1969), available at <https://bulk.resource.org/gao.gov/91-452/00004DB8.pdf>. See also MANUAL, *supra* note 13, at 19 (commenting on the Senate Committee Report regarding R.I.C.O.’s equitable relief as authorized under § 1964(a)).

121. MANUAL, *supra* note 13, at 21.

122. *Id.*

123. 18 U.S.C. § 1964(c) (2006).

124. Bozyk, *supra* note 117, at 139. But the court may not award additional punitive damages if “treble damages were included in the statute for punitive purposes” since double recovery is prohibited. *Id.*

125. Eric A. Inglis, *Attorney Fee Recovery in State and Federal Civil RICO Claims*, NEW JERSEY LAWYER MAGAZINE, February 2012, at 19.

both.<sup>126</sup> Furthermore, the statute requires offenders “to forfeit any of their ill-gotten gains to the U.S. government.”<sup>127</sup> Two types of property are subject to forfeiture: “real property, including things growing on, affixed to, and found in land; and tangible and intangible personal property, including rights, privileges, interests, claims, and securities.”<sup>128</sup> Moreover, pursuant to § 1963(d)(1), “the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section.”<sup>129</sup>

### III. TYPES OF JUSTICE FLOWING FROM R.I.C.O.’S REMEDIES

It is the combination of R.I.C.O.’s civil and criminal remedies, and the method in which they work in tandem with one another, that affords various types of justice to be achieved for all of those involved in the Catholic sex abuse scandals. The three types of justice that I will argue that R.I.C.O. provides are restorative, rehabilitative, and retributive. In this section, I will define each type of justice, list examples of how each type works, and describe the types of corrections programs that utilize them.

#### A. Restorative Justice

Restorative justice is a unique type of justice that differs from normal outcomes imposed by legal authority. In a typical case, the victim acts as a witness to the prosecution.<sup>130</sup> In the traditional criminal justice system, “victims, community members, even offenders, rarely participate in this process in any substantial way.”<sup>131</sup> Restorative justice, on the other hand, is a philosophy that

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126. 18 U.S.C. § 1963(a) (2006). Imprisonment could potentially be “for life if the violation is based on racketeering activity for which the maximum penalty includes life imprisonment.” *Id.*

127. E. Rich Hawkes II, *Once Whacked: The Survivability of Civil RICO Claims*, 2008 UTAH L. REV. 315, 317 (2008); *see also* 18 U.S.C. § 1963 (2006).

128. 18 U.S.C. § 1963(b)(1)-(2) (2006).

129. 18 U.S.C. § 1963(d)(1) (2006).

130. Mary Ellen Reimund, *The Law and Restorative Justice: Friend or Foe? A Systemic Look at the Legal Issues in Restorative Justice*, 53 DRAKE L. REV. 667, 668 (2005).

131. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 24 (2002). *See also* Reimund, *supra* note 130, at 668 (defining restorative justice and the programs that utilize it).

resolves criminal conflict by focusing on the victim of the crime.<sup>132</sup> Restorative justice “recognizes the needs of victims and focuses on holding offenders accountable to victims and the community.”<sup>133</sup> Typical examples of remedies under restorative justice include programs that involve victim-offender mediation, family group conferencing, sentencing circles, and reparative boards.<sup>134</sup>

Generally, restorative practices are used only for young offenders or those who have committed minor offenses.<sup>135</sup> The purpose behind a restorative justice program is to right a wrong.<sup>136</sup> However, instead of viewing the crime as a wrong committed against the state, restorative justice views the crime as a wrong committed against an individual.<sup>137</sup> Consequently, there is an “obligation to right the wrong and repair the damaged relationship.”<sup>138</sup> To do this, restorative justice seeks to involve multiple parties in the justice process, including the victims, offenders, and the community at large.<sup>139</sup>

Restorative justice can be achieved through two different approaches. The first approach involves an overhaul of the current criminal justice system.<sup>140</sup> The second and generally more practical approach includes programs that exist within the current criminal justice system.<sup>141</sup> Additionally, restorative justice programs can be grouped into two categories: programs that provide restorative processes, and programs that provide restorative outcomes.<sup>142</sup> Programs of the first type include Victim-Offender Mediation, family group conferencing, and sentencing circles.<sup>143</sup> Victim-Offender Me-

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132. Reimund, *supra* note 130, at 668.

133. *Id.*

134. *Id.*

135. *Id.* at 669. However, some maintain that “there is no reason why [restorative justice programs] need [to] be limited to young offenders or minor crimes.” Lode Walgrave, *Restoration in Youth Justice*, 31 CRIME & JUST. 543, 543 (2004).

136. ZEHR, *supra* note 131, at 19.

137. Reimund, *supra* note 130, at 669.

138. *Id.* at 670.

139. Reimund, *supra* note 130, at 669; *see also* ZEHR, *supra* note 131, at 25.

140. *See* John Braithwaite, *Restorative Justice: Assessing Optimistic & Pessimistic Accounts*, 25 CRIME & JUST. 1, 2 (1999) (maintaining that restorative justice requires “a very different way of thinking about traditional notions such as deterrence, rehabilitation, incapacitation, and crime prevention. It also means transformed foundations of criminal jurisprudence and of notions of freedom, democracy, and community”).

141. Reimund, *supra* note 130, at 671.

142. *Id.*

143. *Id.*

diation (VOM) is the most popular program.<sup>144</sup> VOM is also the longest-running program, and the most widely utilized.<sup>145</sup> VOM has been successful<sup>146</sup> mainly due to the manner in which the program is run. During VOM, victims get an opportunity to meet with offenders and discuss the crime and its impact.<sup>147</sup> The offender is then “able to explain what happened, take responsibility for his behavior, and make amends to both the victim and the community.”<sup>148</sup>

### B. *Rehabilitative Justice*

Whereas restorative justice focuses on the needs of the victims, rehabilitative justice focuses on “restoring an offender to useful citizenship.”<sup>149</sup> Rehabilitative justice programs include probation, conditional discharge, and supervision.<sup>150</sup> Of these options, probation is the most common, and usually includes some type of community service.<sup>151</sup> This helps the offender change his ways and assimilate back into society.

### C. *Retributive Justice*

Retributive justice is the final type of program that is used in the criminal justice system.<sup>152</sup> Retributivists believe that “the offender, due to his crime, owes a debt to society and that consequently, repayment is owed.”<sup>153</sup> Retribution relies on the notion that punishment for the offender is warranted “even when social

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144. *Id.* at 673.

145. *Id.* at 669.

146. One illustration of VOM’s success can be found in Milwaukee. The Milwaukee County District Attorney’s Office runs a VOM-type program, and after offenders participate in the program, only 8.8% of them were rearrested for a crime within a year, contrasted to 27.6% of nonparticipating offenders being rearrested for a crime within a year. Reimund, *supra* note 130, at 675. *See also* LEGISLATIVE AUDIT BUREAU, AN EVALUATION: RESTORATIVE JUSTICE PROGRAMS 9-10, 21 (2004), *available at* <http://legis.wisconsin.gov/lab/reports/04-6full.pdf> (commenting on the Milwaukee County Community Conferencing program).

147. Reimund, *supra* note 130, at 674.

148. *Id.*

149. ROBERT S. HUNTER, HON. MARK A. SCHUERING (RET.) & JOSHUA L. JONES, TRIAL HANDBOOK FOR ILLINOIS LAWYERS – CRIMINAL SENTENCING § 1:7 (9th ed. 2012).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

benefit will not be achieved.”<sup>154</sup> This is because “the injury caused by the criminal offense calls for a like infliction of injury on the criminal as a moral penalty.”<sup>155</sup>

#### IV. R.I.C.O. SHOULD BE USED TO PROSECUTE THE CATHOLIC SEX ABUSE SCANDALS BECAUSE IT PROVIDES FOR THREE TYPES OF JUSTICE

Since R.I.C.O. provides for three types of justice, it should be used to prosecute those involved with the Catholic sex abuse scandals. Due to the egregious nature of these scandals, heightened prosecution and extensive remedies are required. Because of its dual civil/criminal nature, R.I.C.O. is able to provide such broad remedies, and thus it should be utilized to achieve justice for all involved.

##### A. *How R.I.C.O. Affords Each of These Justices*

Although I believe that R.I.C.O. provides for three different types of justice, some commentators maintain, “[T]here is no genuine consensus as to whether the statute is penal or remedial in nature.”<sup>156</sup> Those who argue that the statute is remedial look to its liberal construction clause as well as its Congressional Statement of Findings and Purposes.<sup>157</sup> Those that believe that R.I.C.O. is punitive argue, “Congress implicitly designated Section 1964(c) as a punitive provision.”<sup>158</sup> Typically, these two categories have been thought to be mutually exclusive.<sup>159</sup> However, others view R.I.C.O. as both punitive and remedial. I believe that R.I.C.O. is restorative, rehabilitative, and retributive. R.I.C.O. is restorative in nature because of its civil remedies, including its award of treble damages. It is rehabilitative because it provides for probation for offenders through its criminal remedies. Additionally, it can act as an institutional reform and image makeover for the Church

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154. Michele Cotton, *Back with a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment*, 37 AM. CRIM. L. REV. 1313, 1316 (2000).

155. *Id.* at 1317.

156. David Kurzweil, *Criminal and Civil RICO: Traditional Canons of Statutory Interpretation and the Liberal Construction Clause*, 30 COLUM. J.L. & SOC. PROBS. 41, 52-53 (1996) (discussing the nature of R.I.C.O.’s penalties).

157. *Id.* at 53.

158. *Id.*

159. Bozyk, *supra* note 117, at n.91.



through its injunctive remedies, treble damages, divesture, and imprisonment. R.I.C.O. is punitive because of its criminal remedies, including jail time and fines and also because of its civil provision for treble damages.

### 1. How R.I.C.O. affords restorative justice for the victims

R.I.C.O. offers restorative justice to the victims of abuse. Previously, victims of abuse were not treated with concern, but were instead shamed by Church officials.<sup>160</sup> With little or no help from the law, victims were forced to either suffer in silence or accept settlements in exchange for their silence.<sup>161</sup> In addition, victims were further ignored because they accepted settlements before any type of suit was filed. Thus, there was “no public record of the crime committed by the abusing priests.”<sup>162</sup> This left the victims with little or no redress. R.I.C.O., however, allows for the victims of abuse to achieve restorative justice.

R.I.C.O. is restorative for three reasons: First, it focuses on the victim of the crime; second, it involves numerous parties in the process; and third, it helps right a wrong. It focuses on the victims of the crime by allowing them to file a private suit.<sup>163</sup> This is important because it allows a harmed individual to go to court and obtain a judgment. R.I.C.O. helps involve numerous parties in the process because it allows victims to confront the abuser and recognize the crime that has taken place. While R.I.C.O. does not specifically outline any type of VOM program, the statute in itself is cathartic and has VOM-type themes. Finally, R.I.C.O. helps right a wrong by providing not just monetary damages, but treble damages.<sup>164</sup> While financial settlements are not the only answer, they do help victims by making them whole again. Thus, R.I.C.O. provides restorative justice for victims.

### 2. How R.I.C.O. affords rehabilitative justice for the offenders and the Church

R.I.C.O.’s rehabilitative function serves two entities: the priest sexual offenders, and the Church, including its institutional work-

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160. *Id.* at 893.

161. *Id.* at 886.

162. *Betrayal*, *supra* note 26.

163. 18 U.S.C. § 1964(c) (2006).

164. *Id.*

ings and its image. R.I.C.O. is rehabilitative for priest offenders because it helps restore them to useful citizenship by providing for probation under its criminal remedies.<sup>165</sup> Probation assists the offender in getting acclimated back into society, and also forces them to recognize that they committed a wrong and must change their ways. R.I.C.O. is rehabilitative for the Church's institutional structure because it threatens divestiture if the Church refuses to change.

The Church has been criticized for not taking enough action against its own clergy in response to the scandals that have taken place.<sup>166</sup> Instead of launching its own investigations to deal with and correct the problems, the Church relied on canon law<sup>167</sup> to resolve the issue.<sup>168</sup> Canon law, however, has "largely inadequate remedies to stop the overarching problem of priest sex abuse."<sup>169</sup> "The Church did not have adequate procedures in place for the prevention of sexual abuse of minors."<sup>170</sup> Previously, there was no law that "provide[d] adequate motivation for the Church to change its practices."<sup>171</sup> R.I.C.O., however, mandates accountability through its divestiture provision, thus providing incentives for the Church to revise its procedures in dealing with crimes committed by priests. In this way, R.I.C.O. helps the Church rehabilitate its previously failed attempts at handling the problem. R.I.C.O. cures canonical law deficiencies by replacing it with federal law. This would allow the Church to be better equipped in preventing sexual abuse of minors. The Church could not, therefore, engage in elaborate cover-up schemes of sexual abuse. Under R.I.C.O., the Church is forced to confront the issues head-on, rather than taking part in illicit cover-ups and relocation of its offending priests. R.I.C.O. forces the Church to change its practices and rehabilitate the workings of the institution. Only R.I.C.O. is capable of providing this change because "scattershot local prosecutions cannot by

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165. 18 U.S.C. § 1963(a) (2006).

166. See discussion *supra* Part II.A-B.

167. Canon law is the set of laws adopted by the Church for regulation of the Church and its members. See *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics from the Congregation for the Doctrine of Faith* (May 3, 2011), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20110503\\_abuso-minori\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html).

168. Russell, *supra* note 60, at 895.

169. *Id.*

170. *Id.*

171. *Id.* at 896.

themselves bring the Church to full confrontation with its institutional problem” and “[a] federal RICO prosecution would force the Church to confront its problems more directly by forcing it to face a federal prosecution juggernaut.”<sup>172</sup>

R.I.C.O. would also help rehabilitate the Church’s image, which was hurt by the sex abuse scandals. Between its “public failure to alter the pattern of behavior of its priests or their supervisors,”<sup>173</sup> and the secret financial settlements it doled out,<sup>174</sup> the Church’s image was greatly damaged. R.I.C.O. helps rehabilitate its image because it forces the Church to take responsibility for the egregious acts committed by its clergy, and its failure to prosecute its own through treble damages and criminal remedies. Individuals in society would then view the Church in a better light. Thus, R.I.C.O. has rehabilitative qualities as well.

### 3. How R.I.C.O. affords retributive justice for the offenders

R.I.C.O. offers retributive justice because it provides for three types of punishment. First, R.I.C.O. punishes the Church by making it pay treble damages in a suit. Treble damages are punitive in nature because they extend beyond the normal amount required. Second, R.I.C.O. punishes offenders by making them face imprisonment for their crimes. R.I.C.O.’s criminal penalties force offenders to make repayments to society as a result of their crimes. It is punitive in the sense that it inflicts injury on the wrongdoer, making him pay for his crimes. Third, R.I.C.O. punishes through its use of fines, so the Church and its offenders are obligated to pay for the crimes they have committed. Therefore, R.I.C.O. provides for retributive justice.

#### *B. Why Achieving Various Types of Justice is Important*

Justice is important because it helps offenders to right a wrong—it implicates basic notions of fairness. Justice gives victims the hope of restoring themselves back to normal and teaches offenders responsibility for their actions. It also provides for the opportunity to heal and become whole again. Justice is therapeu-

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172. Marci Hamilton, *It’s Time for a R.I.C.O. Prosecution of the Catholic Church: Governor Keating’s Forced Resignation Shows the Church Will Not Reform Itself*, FINDLAW (June 19, 2003), <http://writ.news.findlaw.com/hamilton/20030619.html>.

173. Russell, *supra* note 60, at 886.

174. *Id.* at 890.

tic, and provides an opportunity to punish, forgive, and grow at the same time. It is necessary not just for those involved to be able to move on, but also for the members of society.

The importance of justice is well-documented. It spans multiple cultures and centuries. From ancient Greece, where Plato discusses it at length in his work *Republic*,<sup>175</sup> to current American society, where John Rawls states, “Justice is the first virtue of social institutions, as truth is of systems of thought.”<sup>176</sup> However, it is not just prevalent in sociopolitical and legal work. Concepts of justice have consumed scientific research, as well. Numerous collegiate studies have shown that “being treated fairly satisfies a basic need,”<sup>177</sup> and that humans instinctively want fairness and justice in nature.<sup>178</sup> It seems logical then, that justice is wanted in the context of the Catholic sex abuse scandals.

Justice is important for the victims of sexual abuse because of the harm that they suffer as a result. Justice for victims could help restore them and make them whole again. Justice would also be cathartic and would help them heal from the crimes that were committed against them.

Justice is equally important to those priests that committed the acts of sexual abuse. Justice would allow the clergy to recognize the seriousness of their crimes and the impact it had on their victims. It would also allow them the opportunity to take responsibility for their actions. While punishment is a key element of justice, so too is rehabilitation. It is important that the offenders be rehabilitated, as well as punished, because it would allow them the opportunity to once again be contributing members to society.

Finally, achieving justice is important for the Catholic Church on the whole, because it is important that they take responsibility for the crimes they committed and to move past them. It is also

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175. PLATO, *THE REPUBLIC* (Benjamin Jowett trans., New York: The Modern library, 1941).

176. JOHN RAWLS, *A THEORY OF JUSTICE* 3 (6th prtg. 2003).

177. In 2006, the University of California, Los Angeles conducted a study that concluded, “Fairness is activating the same part of the brain that responds to food in rats.” It would thus seem that fairness is hard-wired into the human brain. Stuart Wolpert, *Brain Reacts to Fairness as It Does to Money and Chocolate, Study Shows*, UCLA NEWSROOM (Apr. 21, 2008), [http://newsroom.ucla.edu/portal/ucla/brain-reacts-to-fairness-as-it-49042.aspx?link\\_page\\_rss=49042](http://newsroom.ucla.edu/portal/ucla/brain-reacts-to-fairness-as-it-49042.aspx?link_page_rss=49042).

178. A 2003 report conducted by Emory University helped to illustrate that justice is innate by using Capuchin monkeys to demonstrate that other animals besides humans are also adverse to inequity. Cameron Knauerhaze, *What Does Justice Mean to You?*, CRIME SURVIVORS (Mar. 26, 2014), <http://www.crimesurvivors.org/page/general/what-does-justice-mean-to-you/>.

important for the Church to rehabilitate its image. The crimes committed by these priests are not representative of the whole Catholic Community, and so the entire Church should not be condemned for these acts. Justice would force the Church to recognize that it mishandled the sex abuse scandals and would provide it an opportunity to make amends. It is also important for the Church to be punished so that it is aware of the severity of their crimes.

## VI. CONCLUSION

Justice is something that everyone deserves, and R.I.C.O. is the best way to achieve it within the context of the Catholic Church sex abuse scandals. R.I.C.O. is a very unique statute because it is broadly applicable and would fit well within the scope of these scandals. While many balk at the idea of applying R.I.C.O. outside of its intended scope of Mafia prosecution, nowhere in its legislative history does it state any specific limitations on R.I.C.O.. R.I.C.O. is distinctive because of its sweeping language and dual civil and criminal remedies, and so it should be used in the Catholic Church sex abuse scandals. R.I.C.O. not only provides desperately needed justice for victims, but also for the Catholic Church and the offending priests. Achieving three types of justice rather than just one is important because it helps all members who were involved in the scandals. R.I.C.O. helps achieve total equality in this way. It does not help one party while forgoing another. Its broad remedial scheme is exclusive and because of this, it should be used in the sex abuse scandals.

While some jurisdictions have undertaken R.I.C.O. prosecutions of abusive priests, others need to jump on the bandwagon. The victims of the sex abuse scandals will only be made whole when justice is completely served. Many jurisdictions have been unable to prosecute clergy because there are holes in the law. However, this should not be considered a valid excuse for allowing these crimes to take place. R.I.C.O.'s broad reach could help prosecutors across the nation bring justice to victims and should be utilized in these types of cases. Thus, the law should recognize the broad remedial scheme of R.I.C.O., and use it to indict the clergy involved in the Catholic sex abuse scandals to achieve justice for all.