

Arrest and tax those who would cover-up child abuse

By Max Wallace

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The phenomenon of child abuse by priests and other religious became a public issue on a grand scale in the early 1990s. It is the tip of the iceberg of child sexual abuse which is widespread in society, much of it occurring in families, often committed by parents against their own and other children.

Wherever it occurs it should of course be subject to immediate action by police and other authorities. Abusers should be arrested, charged and dealt with by the law.

What makes abuse in institutions particularly reprehensible is that these institutions, be they government run or charitable religious bodies, are, or were, set up to care for the welfare or education of children. Religious institutions are premised on the caring maxims of mostly Christian organisations who claim for themselves a Biblical moral basis for their caring.

It is common knowledge much sexual abuse has occurred at the hands of priests, and in some cases, nuns, within particular parishes. Typically, children are groomed by an abusing priest. In some cases, the scale of the abuse over decades has run into the hundreds of abused children.

It has been reported many times that the church hierarchy's response to information about abusing priests is to move them sideways to another parish where they continue to abuse. In some instances, from the original information to the final arrest of an abuser, two decades or more have passed and very many individual lives have been ruined.

Since the early 1990s when revelations of abuse by the religious has become well-known, there has not been a single case of a bishop who knowingly moved an abusing priest, being himself arrested and facing punishment for covering-up the crimes of the abusing priest. Indeed, as noted, the abusers have usually gone on to commit more abuse, compounding their crimes, which could have been prevented had the bishop, or someone of similar authority, acted.

There are two issues that need addressing here. Why no bishop or similar has been arrested for cover-ups, and why their institutions should not be subject to sanction i.e. loss of their tax-exempt status when they have been involved in gross violation of the principle of charity through which they receive their tax-exempt status.

On the ABC's Q&A program on 4 October 2010 Geoffrey Robertson was asked by audience member, Stephanie Seaton, "Geoffrey, people and organisations can be prosecuted for knowingly withholding information from police and/or hindering criminal investigations. How is it the Catholic Church manages to avoid prosecution for hiding clergy who are alleged to have been abusing children?"

Robertson's replied: "The Catholic Church avoids prosecution because it deals with this matter under canon law." Robertson's answer was correct but not to the point of the question. He did not explain that criminal law concerning these matters is so pathetically weak that it allows bishops and others to commit what should be offences with impunity. He did not explain that canon law comes into play by default. Imagine offences committed by Muslims being quarantined for adjudication by sharia law in

our legal system. There have been outcries at the suggestion. But this, it seems, is the status of Catholic canon law in our system.

Journalist Peter Ellingsen described a case study of this situation in his 4 May 2002 report in *The Age*, "Speak No Evil." He described a meeting between two Catholic laymen, Bryan Cosgriff and Brendan Murphy, with the archbishop of Melbourne, Sir Frank Little (now deceased) in 1978.

Cosgriff, a magistrate, and Murphy, a barrister, who later became a QC, told Archbishop Little that Father Wilfred "Billy" Baker had been molesting the son of a parishioner for a year. Ellingsen reported that Archbishop Little firstly, and amazingly, asked these elevated members of the legal profession whether they knew the meaning of the word "defamation", refusing to accept the allegation he was hearing from them.

Subsequently, Baker was shifted to another parish. He offended again. It was not until 1999 that Baker pleaded guilty to 16 charges of indecent assault of boys aged 10-12 years: "evidence was heard in the County Court that Baker was transferred from one suburb to another after the archbishop was made aware of the allegations against him in 1978."

In a case like this, a bishop should be arrested, charged and face gaol. Until that happens government and the law is sending a signal to bishops and others in similar positions of authority, be they religious or secular, that to conceal a crime in order to protect the reputation of the charitable institution is perfectly acceptable.

The phrase that immediately springs to mind is that bishops and others in these situations are "perverting the course of justice". But this crime does not adequately cover the situation. Perverting the course of justice entails only

- intimidating a case witness or juror;
- threatening a judge;
- disposing of, or fabricating, evidence.

Another possibility is "accessory after the fact." This crime involves a person who has knowledge of a particular offence having been committed, harbouring or giving aid to the person who has committed the offence. But an abuser would have to be convicted first, and his protector would have to have some intention to allow his abuse to continue. So that approach does not work either.

The only recourse in law as it stands is mandatory reporting requirements for suspected cases of child abuse. Guess what? It is only in South Australia, thanks to Senator Xenophon, that ministers of religion and employees or volunteers in religious organisations are required to report abuse - but disclosures of abuse made within the confessional are *excepted*. The Northern Territory goes further: it mandates every citizen to report abuse.

So why haven't other states and the ACT legislated to follow South Australia's lead? If ever there was an example of politicians' fear of religious backlash, this is it. The welfare of abused children is sacrificed on the altar of political expediency.

Then there is the question of whether a charitable institution should lose its tax-exempt status when it is discovered their personnel have been involved in a criminal cover-up. The question arose at this year's Senate inquiry into whether the law defining charity should be amended to recognise that if a charitable institution does something that was not a benefit to the public, it should lose its tax-exempt status.

The inquiry was prompted by Senator Xenophon's concerns about the behaviour of members of the Church of Scientology. This church had lost its charitable status in Britain when their Charities Commission decided that the church did not provide a public benefit. The idea was that Australian law could be amended to bring the British idea into play here.

The Catholic Church realised that laws apply to all and that the significant amount of child abuse which has been proven to have occurred in its ranks could also fall under the category of not being a public benefit. Their institutions' tax-exempt status could be vulnerable.

On 29 June 2010 Father Brian Lucas, a lawyer, and now general-secretary of the Australian Catholic Bishops Conference, gave evidence on behalf of the church. On that day Senator Xenophon, also a lawyer, had his De Valera moment.

Eamon De Valera was the cerebral and very patriotic Catholic activist who fought for the liberation of Ireland from British rule. He subsequently became Ireland's second prime minister and first president. In 1921, unable to successfully counter Irish guerrilla warfare, the British decided to negotiate. The British Prime Minister, Lloyd George, then came face to face with de Valera. He described negotiations with De Valera as "trying to pick up mercury with a fork."

So it was for Senator Xenophon. He asked Brian Lucas "what happens in circumstances where there are allegations or evidence of child abuse, the hierarchy of the organisation becomes aware of that and they do not act appropriately - they either do not report it to the authorities which would be an offence in terms of the requirement to notify that in most states, or they actually cover it up?" (This question was not strictly accurate in terms of religious organisations as only SA and the NT have mandated reporting as noted above.)

He continued: "Do you think it is reasonable that in those circumstances the organisation should be held to account in the context of the public benefit test?"

Faced with this pointed question, Brian Lucas blunted it by changing the reference of the question from one about an organisation to a question about an individual. He said: "If we have got the leader of an organisation behaving badly, criminally, that leader ought to be prosecuted to the full extent of the law."

Senator Xenophon persisted: "That is not quite what I asked though."

Brian Lucas then used the tactic of high moral ground to continue to avoid the point of the original general question that organisations could be accountable for failure to act about child abuse. He said:

"I know, but that is the answer I am giving because that in fact is what needs to happen. The organisation itself need not necessarily have its charitable status put at risk because it has, at that particular time, a bad leader. If that bad leader, who has done whatever wicked thing is alleged the leader has done, needs to be replaced and needs to be prosecuted, that in itself ought not necessarily affect the charitable status of the organisation he has ineptly led."

(Note that Lucas conceded a bishop could be "bad" and his cover-up of abuse could be characterised as "wicked" and could be "prosecuted.")

Senator Xenophon continued to persist. He raised a hypothetical instance where it has been established there was a cover-up of abuse, the organisation had been warned that it must change its ways and report abuse but "the systems do not change for reporting and ensuring those responsible are brought to account, what would you then say in those circumstances that the public benefit of that organisation is compromised if they do not change their ways?"

Faced with this sharpened pointed question, Brian Lucas stuck his tactic of answering a general question with a specific response. He said: "the difficulty in answering your question is knowing who they 'they' are who have not changed their ways."

Senator Xenophon countered: "the 'they' would be those responsible at a senior level where the protocols and the processes of an organisation do not change to ensure that there is mandatory reporting, for instance, and that people are brought to account to the authorities. If a blind eye continues to be turned, would that compromise the whole issue of public benefit?"

Faced with the fact that he could no longer avoid Senator Xenophon's general question, Brian Lucas then came forth with a rhetorical flourish that would have done De Valera proud:

"Not necessarily, because you have to then draw the connection between the organisation itself, how big it is, who the other parties to the organisation are and what other people within the organisation can do to remedy the ineptitude of a particular group who have acted illegally. The connection between the inept, illegal, criminal, wicked activity of a leader, if such is the case, and the consequences for the organisation that they have ineptly led needs to be drawn more precisely, with respect."

At that point, Senator Xenophon gave up. He had done his best to get a straight answer, but it seems he recognised he was never going to get it.

It should be noted that *The Newcastle Herald* ("Claimed knowledge about pedophile priest") reported on 19 May 2010, a month before Brian Lucas gave evidence, that in October 1995 the church sought to secretly defrock a priest. It therefore conceded he was guilty of offences against children, but waited until 2005 before contacting police about the allegations about the priest "shortly before the priest died."

The Senate committee's report concluded that Australia should have a Charities Commission and that a new public benefit test should be introduced.

It is anybody's guess whether this will happen. But it needs to happen.

Furthermore, I suggest, amendments to the crime of "accessory after the fact", or the like, to bring offenders who knowingly move abusers sideways to protect them and their institutions, should indeed be "drawn more precisely". The price of not doing so is the continuing sexual and other abuses of children and others.

If there cannot be support for such amendments across party lines, it means Australia is truly under the thumb of churches and others with vested interests, and politicians' feigned concern for the welfare of children will continue to be a gross abuse of human rights.

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