

WHAT'S WRONG WITH THE CHILD VICTIMS ACT

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Under current New York State law, victims of child sexual abuse must press charges against the institution where the offense took place by age 21; they have until 23 to file charges against the attacker. The Child Victims Act would allow victims to sue until they turn 50, and would allow criminal charges to be filed until they turn 28. This is a positive step that most applaud.

However, the provision in the Child Victims Act that allows a one-year window to bring suit—for offenses extending back decades—is simply wrongheaded. It not only would make it extremely difficult to render a just decision, it would place in jeopardy the rights of the accused.

To be sure, everyone wants justice for victims, but it can never come at the expense of justice for the accused. Here are two recent cases that were investigated in New York that make this point.

Just before Christmas, KIPP Academy, a prominent charter school network, detailed accusations of sexual misconduct made by two students against two New York City teachers. The accusations extended back more than a decade. KIPP did the right thing by hiring a distinguished law firm, Debevoise & Plimpton, to probe these cases and offer a conclusion.

Both of the women accusers refused to cooperate with the lawyers. Moreover, the investigation found that no adult at KIPP knew anything about the allegations when the abuse took place. But they did find some students who claimed to have known about the abuse. Those accounts, however, were riddled with inconsistencies.

Even more damaging to the accusers was the finding that there was no evidence to support their claim that they told others about what had allegedly happened. "Each of the individuals alleged to have known about the abuse when it occurred denied having such knowledge."

The headline of this story in the *New York Times* accurately sums up the problem with investigations of old cases of sexual abuse. "School's Report on Sexual Abuse Shows Difficulty of Substantiating Claims."¹

In early December, a letter was sent to the New York City Ballet and its school accusing Peter Martins, the long-time chief of both entities, of sexual harassment and physical abuse. The accuser refused to give his name. Martins denied the charges, and an investigation was launched. Under considerable pressure, he resigned, even though the investigation was not finished.

Two months later, in February, the investigation turned up nothing. The conclusion was straightforward: "Ultimately the investigation did not corroborate the allegations of harassment or violence both made in the anonymous letter and reported in the media regarding Mr. Martins." The headline in the *New York Times* story read, "Inquiry into Ex-City Ballet Chief Ends in a Cloud."²

These two examples (many more could be given) show the danger that awaits a look-back provision. When accusations are made about offenses dating back many years ago, it puts the due process rights of the accused in jeopardy, and may irreparably damage the reputation of the innocent (or those for whom no corroboration can be marshaled). Just ask the teachers at KIPP or Peter Martins.

Catholic Church

The Catholic Church has had its share of sexual abuse problems, even if the enormity of it has been greatly exaggerated. For example, between 1950 and 2002, 4 percent of the clergy had an allegation made against him, though almost half that number was found to be unsubstantiated, meaning "an allegation that was proven to be untruthful or fabricated." Also, a small minority of priests, 3.5 percent, accounted for 26 percent of the victims.³

The vast majority of those offenses took place between 1965 and 1985, the time of the sexual revolution. Since that time, matters have changed dramatically, thanks to a plethora of steps taken to curb abuse.

Over the last ten years, the average number of credible accusations made in the previous year against over 52,000 priests and deacons was 7.1. The most recent year for which data are available found that there were two credible abuse accusations made, nationwide, between July 1, 2015 and June 30, 2016. Translated, that means that .004 percent of the clergy had a credible accusation made against him.⁴

As a sociologist who has published in international journals on this subject, I came to the conclusion that "we know of no other institution in the United States, secular or religious, which has a better record than the Catholic Church does today when it comes to the sexual abuse of minors by adult employees."⁵ Here is what others have said.

Thomas Plante is a psychologist at Santa Clara University who has studied this issue for years.

- "The crisis in the Catholic Church has led to a decade of research, policies, and procedures to keep children safe within the Church. Much can be learned from this decade of crisis and other organizations can take a page from the Church playbook to help keep children safe within their organizations."⁶

David Gibson is an award-winning journalist who is the director of the Center on Religion and Culture at Fordham University.

- "Whatever its past record, the Catholic Church in the U.S. has made unparalleled strides in educating their flock about child sexual abuse and ensuring that children are safe in Catholic communities."⁷

Francesco C. Cesareo is president of Assumption College and chairman of the U.S. bishops' National Review Board (on the sexual abuse of minors).

- "If society takes an honest look at what the church has done in the last 10 years and the seriousness with which the bishops have taken this issue, they have to acknowledge the Catholic Church is the only institution that has such a clear mechanism to protect children and to deal with the whole sexual abuse issue."⁸

What are those mechanisms?

At the national level, the United States Conference of Catholic Bishops has instituted a variety of measures to stem the sexual abuse of minors. They include a Safe Environment training program in the nearly 200 dioceses throughout the nation; millions have gone through the program. Background checks are routine for everyone, including volunteers. Intensive background screening, as well as psychological testing, of prospective seminarians has been implemented. And a Zero Tolerance policy has been in place for well over a decade.⁹

At the local level, the Archdiocese of New York has hired former law enforcement officers to do spot-checks of parishes and schools. It has conducted over 110,000 background checks on seminarians, deacons, religious, and priests. It has also launched the Independent Reconciliation and Compensation Program, an initiative to compensate eligible victims. This is an unprecedented outreach to victims.¹⁰

Public Schools

When the story on the scandal in the Catholic Church was unfolding in 2002, Diana Jean Schemo, a reporter for the *New York Times*, decided to see how the public schools were handling this problem nationwide.

"When teachers are accused of sexual abuse," she wrote, "educators and law enforcement authorities say, districts often rid themselves of the problem by agreeing to keep quiet if the teacher moves on, sometimes even offering them a financial settlement. The practice, called passing the trash, avoids the difficulties of criminal prosecution or protracted disciplinary proceedings."¹¹

In her piece, Schemo mentioned the work of Charol Shakeshaft, a professor who was just completing the most comprehensive study of the sexual abuse of minors in the United States. Her work would eventually be published by the U.S. Department of Education.

Shakeshaft found that in only one percent of the cases that she studied did superintendents take steps to see that the offending teachers did not continue teaching elsewhere. The majority of the cases were settled by accepting a teacher's resignation or retirement. Administrators knew for certain that 16 percent moved to other districts to teach.¹²

Unlike the Catholic Church, which keeps exhaustive records on this subject, there is no centralized databank in the U.S. that tracks teachers who sexually abuse minors. This is due to several reasons. Importantly, Shakeshaft found that the teacher unions have resisted all such efforts. Furthermore, "There is no research that documents teacher union attempts to identify predators among their members."¹³ This is certainly not true of the U.S. bishops—they have led the nation in insisting on measures to identify molesters.

In 2007, the Associated Press published the findings of an extensive report on this subject.¹⁴ In 2016, *USA Today* released another comprehensive report.¹⁵ They came to many of the same conclusions that Shakeshaft had first identified.

Both of the documents fingered three major problems: secrecy agreements that protect abusive teachers; inaction by state governments; and a lack of a national databank to identify and track abusive teachers.

Both investigative reports cited three major culprits: school and school district administrators who pursue settlements and secrecy agreements to avoid lawsuits; teacher unions that resist reform efforts; and state lawmakers reluctant to deal with the issue.

By contrast, there are no more secret agreements in the Catholic community. Both the dioceses and the Catholic schools refuse to make secret deals with accused teachers or staff members. Transparency is the rule in Catholic institutions—not the exception.

The *USA Today* report also tracked where public school teachers who lost their credentials found employment. They looked at ten different institutions and occupations, and at the top of the list was in another public school!¹⁶

Conditions in New York are no better. Shakeshaft, who taught at Hofstra University when she was doing her research, found that *none* of the abusers in New York whom she studied were reported to the authorities. Moreover, only *one percent* lost their license to teach. She also cited another study which concluded that in New York City, "60 percent of employees who were accused of sexual abuse were transferred to desk jobs at offices inside schools, and 40 percent of these teachers were repeat offenders."¹⁷

The data speak for themselves: The sexual abuse of minors is not a major issue for the Catholic Church today, but it is a major problem for the public schools. We need legislation that will fix this now—not grandstanding initiatives that seek to uncover what happened in the past.

Look-Back Provision

There are those who say the Catholic Church should not oppose the one-year window because states that have implemented such a policy have not hurt the Church in any substantial way. A recent editorial in the *New*

York Times, and a column in the *Times Union*, said exactly that.¹⁸ They are both wrong.

In 2002, the look-back provision in California cost the dioceses \$1.2 billion.¹⁹ In 2009, the same provision forced the Diocese of Wilmington, Delaware to file for bankruptcy.²⁰ In 2015, the window to bring old cases led the Archdiocese of St. Paul and Minneapolis to file for bankruptcy.²¹

Some will say that if Catholic institutions have been hit hard, it is only just. They were guilty, weren't they?

The weakness in this argument is that it assumes that all of these past look-back provisions were equally applied to all institutions. They were not. In almost every state that has either considered, or adopted, changes in the statute of limitations, the public schools have been exempt. Why do they get a pass? Because under the doctrine of sovereign immunity, they are not covered by such legislation.

Interestingly, in those instances where the public schools have been explicitly blanketed, as happened in Colorado in 2006 and New York in 2009, the pushback from public school administrators and unions was so strong that it killed the bills. They understood the implications of what happens when attempts to turn the clock back succeed.

Governor Andrew Cuomo's budget includes the Child Victims Act, and this time the public sector is not being given a pass. This is certainly an improvement, though there are important differences in how this is likely to play out if the measure is adopted.

Unlike the Catholic Church, the public schools have never faced a well-organized group of adversaries seeking to cash in on changes in the statute of limitations. There are many reasons for this, ranging from the alleged deep pockets of the Church to anti-Catholic bigotry. No matter, if a window is granted to pursue old cases of sexual abuse, it is highly

unlikely that the public schools will be targeted the way Catholic schools will be. That is simply a fact of life. It smacks of injustice.

Young people who are abused should have recourse to justice, and that is why extending the age they can sue to 50 makes sense. But it makes no sense to attempt to adjudicate cases that occurred as far back as the mid-20th century. Just as critical, some institutions would be more vulnerable than others—*even though their record may be empirically better than those less likely to be affected*—making this a travesty of justice.

Finally, we need to ask who stands to benefit the most if the look-back provision is adopted? Is it the adults who were victimized decades ago? Or is it the lawyers who are waiting in the dock to file suit against the Catholic Church?

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- ¹ Elizabeth Harris, "School's Report on Sexual Abuse Shows Difficulty of Substantiating Claims," *New York Times*, December 21, 2017, p. A28.
- ² Robin Pogrebin, "Inquiry into Ex-Ballet Chief Ends in a Cloud," *New York Times*, February 16, 2018, p. A27.
- ³ William O'Donohue, Olga Cirlugea, and Lorraine Benuto, "Some Key Misunderstandings Regarding the Child Sexual Abuse Scandal and the Catholic Church," www.catholicleague.org, April 27, 2012.
- ⁴ Bill Donohue, ".004% of Clergy Guilty of Abuse," *Catalyst* (monthly journal of the Catholic League), www.catholicleague.org, July-August 2017. The figures are derived from the annual report on this subject conducted for the bishops by a research institute at Georgetown University.
- ⁵ *Ibid.*
- ⁶ Thomas Plante, "Keeping Kids Safe from Institutional Child Sexual Abuse," www.psychologytoday.com, June 11, 2012.
- ⁷ David Gibson, "10 Years after Catholic Sex Abuse Reforms, What's Changed?," *Washington Post*, June 6, 2012.
- ⁸ Tanya Connor, "Church Has Led Way in Addressing Abuse of Minors, Says Board Member," www.catholicphilly.com, June 11, 2013.
- ⁹ "What Has the Church Done to Effectively Respond to Sexual Abuse by Church Personnel?," www.usccb.org, April 17, 2013.
- ¹⁰ *Report on Independent Reconciliation and Compensation Program*, www.archny.org, December 7, 2017.
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- ¹² *Ibid.*
- ¹³ Charol Shakeshaft, "Educator Sexual Misconduct: A Synthesis of Existing Literature," U.S. Department of Education, 2004.
- ¹⁴ "Sexual Misconduct Plagues US Schools: AP Finds 2,500 Teachers Punished in 5 Years," Associated Press, October 20, 2007.
- ¹⁵ "Teachers Who Sexually Abuse Students Still Find Classroom Jobs," *USA Today*, December 21, 2016.
- ¹⁶ *Ibid.*
- ¹⁷ Shakeshaft, "Educator Sexual Abuse," *Hofstra Horizons*, Spring 2003, p. 13.
- ¹⁸ "Albany, Pass the Child Victims Act," *New York Times*, January 12, 2018, p.A22. See also Brendan J. Lyons, "Victims Law Put On Path Toward Vote," *Times-Union*, February 27, 2018, p. A3.
- ¹⁹ "Abuse Victims Say New Attention Should Spur New York Reforms," www.apnews.com, November 17, 2017.
- ²⁰ "Delaware Diocese Files for Bankruptcy in Wake of Abuse Suits," *New York Times*, October 20, 2009, p. A14.
- ²¹ "Minnesota: Catholic Archdiocese Files for Bankruptcy," *New York Times*, January 17, 2015, p. A13.