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Commentary

The barriers to a national inquiry into child sexual abuse in the United States

Marci A. Hamilton*

Fox Professor of Practice, University of Pennsylvania, CHILD, USA

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ABSTRACT

There is an often-overlooked but critical factor at the center of institutional child sexual abuse that must be acknowledged and addressed: adults tend to place the interest of institutions and other adults above the protection of children. As the Australian Royal Commission into Institutional Responses to Child Sexual Abuse has shown, this phenomenon is evident across institutional settings and any institutional reform aimed at improving child safety must therefore guard against this tendency if it is to be effective in protecting children. In the United States there are also other barriers to dealing with child sexual abuse in institutional contexts. State government responses to the challenges of child sexual abuse have varied. However, the federal government has been silent on the problem of religious institutional sexual abuse. This commentary considers how the politics of religious liberty in the United States inhibits action by protecting institutions that cover up child sexual abuse.

The features of institution-based child sexual abuse (CSA) repeat themselves to the point where it is possible to say there are shared characteristics across organizations, religious or otherwise: children are groomed in plain sight, adults intending to prey on them are trusted and sometimes promoted even after the disturbing facts are disclosed, the institution is treated as sacrosanct, and exposure of CSA by itself is rarely enough to catalyze meaningful change (Mathews, 2017; Palmer and Feldman, 2017). The rich set of offerings in this Special Issue anchored by the experience with the Australian Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) analyze the phenomenon from the perspective of organizational culture (Palmer and Feldman, 2017), institutional responses around the world (Wright, 2017), legal system issues (Cashmore, Taylor, & Parkinson, 2017; Earhart, Brubacher, Powell, Westera, & Goodman-Delahunty, 2017), and prevention (Mathews, 2017; Moore, 2017).

Moore's (2017) article is especially pertinent for this commentary. His thesis is that we have tended to analyze the problem of CSA from an adult perspective with a corresponding failure to consult children or take seriously the child's point of view. When asked about safety, children reveal important insights into how we should approach disclosure and prevention of CSA. In Moore's (2017) study, children thought their concerns were either ignored or trivialized; felt physically vulnerable, particularly when alone; believed adults manipulated them without respect for the truth; and wanted to be part of solutions developed to better protect them. Moore's article touches on the children's experience of a factor not addressed in this collection or elsewhere: *Adults tend to protect other adults and the reputation of institutions—even when it comes to an issue as serious as child sexual abuse.* The pattern of protecting institutional interests at the expense of children is difficult to fathom until one factors in this dynamic. There is a subtext in each institutional context: tread lightly where an adult's livelihood or reputation are threatened and discount children's voices and interests when they might harm the adult (Moore, 2017).

Research suggests that adults are self-interested and engage in forms of cost-benefit analysis when choosing to take altruistic

* Corresponding author.

E-mail address: marci@sas.upenn.edu.

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action (Hu, Li, Yin, Blue, Yu, & Zhou; Bode, Miller, O’Gorman, & Codling, 2015). There appears to be an internal assumption of adult privilege and credibility and a consistent disregarding of children’s needs, voices, and vulnerabilities. This adult-centered dynamic makes it more difficult to alter institutional culture than it might appear. It is not simply that the organization or the broader culture must adjust their policies, but rather reforms must guard against self-interest. So long as there is an unquestioned assumption that adults’ needs are superior to children’s, the way forward cannot be adequately child-protective. Therefore, the mission to improve children’s protection from CSA requires attention in three categories: the child, the adult, and the organization. Factors involving all three must be studied, adjusted, and in fact continually re-adjusted to achieve the goal of child protection. Thus, the project that the Royal Commission placed on the table is not simply about institutional and legal reform. It requires a thoroughgoing alteration in adult assumptions about childhood. At the same time, it needs children to communicate and be heard.

Beyond the deference to adult and institutional interests, the United States has faced additional barriers to the full investigation of child sexual abuse in the institutional context. The Australian Royal Commission (2017a) has been an extraordinary sight to behold for Americans. One distinguished institution after another has been publicly examined in relation to successive cover-ups, from Jewish to Catholic to Jehovah’s Witnesses, as well as secular organizations such as the YMCA, the Australian Defence Force, Scouts and schools (see *Royal Commission into Institutional Responses to Child Sexual Abuse*, 2017a, 2017b). Experts have testified and social scientists have issued a series of illuminating studies drawn from the vast amounts of data generated (Wright, Swain, & McPhillips, 2017). The timing could not be better as the world slowly awakens to the catastrophe of child sexual abuse across cultures and institutions, and the internet makes the Royal Commission’s work and findings accessible across the globe.

The Royal Commission is linked with senior churchmen losing their positions and in some cases brought to court (Morris-Marr, 2017); it has forced yeshivas to improve their policies and admit to the harm done to children (Jacks, 2016; Wood, 2016); and it has resulted in some significant legal changes in some Australian states, though some areas have not seen much of a change as local politicians drag their feet in response to resistance from bishops and the Pope (Byrne, 2017; Tapsell, 2017). It is this last feature that is most in line with the government response to the child sexual abuse scandals in the United States.

1. The government responses to child sexual abuse in the United States

Like Australia, the United States is a government of two sovereigns. In the United States, the 50 states govern crimes within their jurisdiction, while the federal government governs crimes that cross state lines. Generally, it is difficult for either to operate in the other’s sphere of criminal law. There have been various state responses to the child sexual abuse crisis: (1) Delaware and Minnesota eliminated their criminal and civil statutes of limitations (SOLs) for child sexual abuse, and revived expired civil SOLs, which opened the door for hundreds of lawsuits and present and future prosecutors’ investigations (see *ChildUSA*, 2017a, 2017b); (2) state and local prosecutors in Pennsylvania have initiated the most grand jury reports of any state into child sexual abuse, but (3) many states have done nothing at all. (Hamilton, 2016a, 2016b).

In sharp contrast to the Australian Royal Commission and the Irish government studies and reports following the Commission to Inquire into Child Abuse (*Department of Health and Children*, 2009; see also *Department of Children and Youth Affairs*, 2011, 2017), the federal government of the United States has been silent on the religious institutional sexual abuse. The John Jay Study, for example, did not prompt a federal legislative response. Indeed, the Office of the President and Congress has not addressed clergy sexual abuse in any public forum. As other common law countries push forward to find the sources of institution-based child sexual abuse and look for solutions, this silence is both troubling and frustrating to advocates and survivors in the United States. The Catholic Whistleblowers, an organization of present and former priests and nuns dedicated to fighting child sexual abuse, along with 25 other organizations, sent a letter to President Barack Obama in 2015 asking him to initiate a national board like the Australian Royal Commission. The Administration did not take action.

2. The Politics of Religious Liberty in the United States

I have described the United States’ religious liberty law at length in my book, *God vs. the Gavel: The Perils of Extreme Religious Liberty* (Hamilton, 2014), and so will only summarize it here. In the United States, religious liberty has broken into two tracks since 1993. First, the Supreme Court has interpreted the Free Exercise Clause of the First Amendment to provide that it is unconstitutional to persecute religious believers and to target them for negative treatment. At the same time, believers, like everyone else, are required to abide by state and federal laws (Hamilton, 2014).

Second, religious entities lobbied Congress in the early 1990s to enact a statute that gives more protection to believers than the First Amendment does. They named the statute the Religious Freedom Restoration Act (RFRA), and it has provided what I argue is extreme protection for believers in a number of settings (Hamilton, 2014). RFRA was able to pass because members of Congress adopted a naive view of religious liberty. They assumed, it would appear, that the Coalition for the Free Exercise of Religion, a group of leading religious bodies, would not act to harm anyone. The reality of religiously motivated medical neglect of children, polygamous child marriage, and educational neglect were not discussed. Even more important for this commentary is that they did not anticipate that religious institutions would have covered up massive amounts of child sexual abuse by clergy and employees.

This attitude of American politicians to ‘see no evil’ when it comes to religion is coincident with what I argue are many lawmakers’ assumptions that religious believers vote in blocs according to their faith. What this means in practice, I suggest, is if a Catholic bishop makes a representation, they assume Catholics will agree. If an Orthodox Jewish rabbi makes a statement, they often assume Orthodox Jews will follow. These assumptions are questionable, but they have led many American politicians on the left and the right to defer to religious organizations, their leaders, and their lobbyists. Moreover, they have tended to abstain from public

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