

Thesis abstract

Judging the Church: legal systems and accountability for clerical sexual abuse of children

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This thesis considers lessons from different legal systems' approaches to holding Catholic dioceses accountable for child sexual abuse. Following a New Legal Realist approach, it provides an account of four legal systems, looking at how the theory, doctrine, procedure, and practicalities of different legal approaches shape legal systems' capacities to deliver justice. With a focus on legal systems relevant to the Diocese of Ballarat in Victoria, Australia, and the Diocese of Gallup in Arizona and New Mexico, in the United States, typologies of repressive, autonomous, and responsive law serve as frames to explore how the overall character of legal systems is shaped by their multiple aspects. This focus provides insight and context for why law matters, and points to why reform efforts that focus on changing doctrine alone may not bring the kinds of results likely to satisfy those seeking substantive justice.

Examining the multiple aspects of Catholic canon law and the common law of tort highlights how both fail to account for the realities of relationships between Church organisations and natural persons, as well as how both systems embed the interests of powerful institutions in fundamental theories underlying the systems' functions in society. The chapter on Catholic canon law considers contemporary views of canon

law provisions that relate to child sexual abuse alongside the historical development of canon law, showing how, despite changes to doctrine, the underlying theories and purposes of canon law embed the interests of the Church in ways that render it fundamentally repressive. Connecting this study to Nonet and Selznick's original framing of common law systems as the prototypical autonomous law systems, the thesis demonstrates how tort law, despite significant doctrinal and procedural reforms aimed at allowing more claims arising out of child sexual abuse to go forward, remains a fundamentally autonomous system in both the United States and Australia, often prioritising form over substance and failing to account for the impacts of inequality and domination on the capacity of victims to seek justice.

The thesis then provides accounts of two other legal systems, identifying them both as quasi, but not fully, responsive. The chapter on Chapter 11 bankruptcy proceedings highlights lessons from cases filed by the Diocese of Gallup and similar dioceses in the United States to consider how a purposive approach to dispute resolution can empower victims by giving them credible leverage to negotiate for their own interests. The chapter considering the Australian Royal Commission into Institutional Responses to Child Sexual

Abuse's investigations into events in Ballarat concludes that an approach that reflects an informed and sophisticated understanding of victims combined with procedure intentionally designed to work against existing forces of inequality and domination can provide real vindication, even without the authority to directly impose consequences. The thesis argues that truly responsive legal systems require: (1) embedded knowledge of social realities in multiple aspects of law, (2) a purposive approach, (3) procedural flexibility, (4) the deliberate and effective inclusion of impacted stakeholders in legal processes, and (5) a normative agenda of countering domination and accounting for social disparities. In identifying both bankruptcy and the Royal Commission as quasi-

responsive, having some but not all of these attributes, the thesis offers hope that more responsive legal systems are possible, even if piecemeal efforts to reform existing systems are unlikely to have the desired effects.

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