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Governor Brown's Veto

Michael Sean Winters | Oct. 14, 2013 Distinctly Catholic

Governor Jerry Brown of California vetoed a bill that would have lifted the statute of limitations on charges related to the sexual abuse of children. This is a good thing, certainly, but more needs to be done.

Gov. Brown rightly noted that SB 131, as the bill was known, treated private and public institutions differently and that such a difference was fundamentally unjust and probably unconstitutional. It is not just that private institutions were singled out for disparate treatment. The law had the, presumably, unintended effect of denying redress to child victims who happened to have been abused in a public school as opposed to a parochial school. The proposed bill was unfair to victims, not just to private institutions.

It is doubtful the California legislature will re-draft the bill so that it includes public institutions, but logically, that would be one way to respond to the veto. After all, we now know that the crime of sex abuse is not like other crimes insofar as it often takes a victim years to admit what happened. I am deeply ambivalent about the current state of affairs which prevents a victim past the age of 26 from bringing suit. It is not hard for me to imagine someone who might require more time to wrestle with his or her internal wounds before summoning the courage to go public.

Gov. Brown, in his signing statement, noted that statutes of limitation also serve the ends of justice. Memories grow dull, witnesses die or move away, and institutions should be able to have some sense that what is past is truly past. But, the victimization of children is not ever really ?past? for the victims themselves. And, in opposing efforts to lift statutes of limitation in these matters, the U.S. bishops have not usually looked like champions of justice. They have looked like men eager to dodge a bullet.

In a statement issued after the veto, Bishop Gerald Wilkerson, auxiliary of Los Angeles and President of the California Catholic Conference, issued a statement that noted the strides the bishops have taken in the past ten years to confront the scourge of the sexual abuse of children. He stated:

The Church?s reaction has gone way beyond settling more than 1,000 cases and paying $1.2 billion in settlements. It?s changed how we operate as a church. Millions of children and tens of thousands of church workers have received ?Safe Environment? training to learn how to keep children safe and spot potential abuse. Hundreds of thousands of workers and volunteers have been fingerprinted and background checked to screen them for red flags in their background. We continue to provide counseling to anyone who comes forward and we actively work with law enforcement to report allegations immediately and suspend anybody, clergy or otherwise, suspected of abuse.

In the end, however, all we know for sure is that there can be no half-measures where victims are concerned and that the way SB 131 discriminated and treated victims unequally was impossible to morally or legally justify.

I would feel more certain about these statements if the Holy See had not promoted Bishop Robert Vasa to the Diocese of Santa Rosa. Previously, while serving as Bishop of Baker, Oregon, +Vasa was one of the few bishops who refused to comply with the audit of the diocese?s child protection efforts mandated by the Dallas Charter. As well, in other cities, Newark and St. Paul come to mind, it is doubtful that any public official would have the courage to stand up to public pressure and do what Gov. Brown did.

It is time for the Church to be more proactive, and frankly smarter, in its efforts to cope legally with the fallout from the clergy sex abuse crisis. In the mid-twentieth century, almost all states removed or greatly limited their laws governing charitable immunity. The legal doctrine of charitable immunity stated that non-profit organizations engaged in charity were free from tort claims. It is time to bring this legal doctrine back, but with some changes.

When a for-profit corporation is negligent and, for example, that negligence results in an oil spill, of course the legal system should permit those harmed by the oil spill to go after that corporation?s profits, not only for actual claims, but for punitive claims. Punitive awards send a powerful signal not only to the company being sued but to other similarly situated companies that they had best not be negligent and nothing captures the attention of the modern business corporation like an attack on their bottom line. But, who is harmed when charitable organizations must pay huge damages? If the Catholic Church must pay huge awards, how many schools and soup kitchens and hospitals and parishes must be closed? Who does that hurt?

Obviously, there must be a penalty to deter malfeasance by those who work at charitable organizations. Surely there is a way to craft a law that requires a non-profit corporation to sack all those who knew, or should have known, of the malfeasance in exchange for an exemption from punitive damages of a monetary nature. Of course, the Church has an obligation to pay actual damages to victims of clergy sex abuse no matter what the civil law says: If it takes someone until the age of fifty to come forward, we should still pay for their counseling and other costs related to the crime, whether it falls beyond the statute of limitations or not.

In 2002, the with the adoption of the Dallas Charter, the bishops of the United States sought to take strong, persistent action to root out clergy sex abuse. In most dioceses, those efforts have been far-reaching and successful. But, as we now know, other bishops dragged their feet, or flouted the requirements of the Dallas Charter. It remains a shocking thing that Bishop Robert Finn, already convicted in criminal court, is still the Bishop of Kansas City-St. Joseph. I hope the Holy See will enact measures to hold bishops accountable when they violate the rules they themselves adopted. But, I also hope that the USCCB will be more pro-active, and propose a revival of the idea of charitable immunity, combined with stiff penalties for those who govern charitable organizations and shirk their responsibility to protect children. This would go a long way to restoring their credibility and it would go along way towards making sure that justice is served.

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