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TRUTH, JUSTICE, AND RECONCILIATION IN THE WAKE OF CLERIC SEXUAL ABUSE IN AMERICA

It is essential that we, as a Church, be able to acknowledge and condemn, with sorrow and shame, the atrocities perpetrated by consecrated persons, clerics, and all those entrusted with the mission of watching over and caring for those most vulnerable. Let us beg forgiveness for our own sins and the sins of others.

-Pope Francis, 2018¹

Abstract

Recent revelations of Roman Catholic cleric² sexual abuse in America between the 1950's and 2000's have similar patterns to other offender groups regarding onset, career duration, and recidivism.³ As a source of future abuser-perpetrators, "previously abused clerics as well as clerics who exhibited an early onset of abuse were more likely to accumulate police investigations."⁴

Annotasiya

Amerikadakı 1950-2000 illəri arasında Roma Katolik ruhanilərinin cinsi istismarı ilə bağlı son açıqlamalar cinayət başlama, karyera müddəti və residiivizmlə əlaqədar digər cinayətkar qruplara bənzər nümunələrə malikdir. Gələcək sui-istifadə edənlərin mənbəyi olaraq "əvvəlcədən sui-istifadə edən din adamları, habelə sui-istifadənin erkən başlanğıcını nümayiş etdirən ruhanilər polis araşdırmalarını daha çox toplamışdılar."

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¹ Pope Francis Condemns Child Sex Abuse and Church Cover-Ups (2018), <https://www.bbc.com/news/world-us-canada-45249109> (last visited 26 Jul. 2019)

² "Cleric", Catholic Encyclopedia, <http://www.newadvent.org/cathen/04049b.htm>, (last visited 26 Jul. 2019).

³ Alex Piquero, Uncollaring the Criminal – Understanding Criminal Careers of Criminal Clerics, 35 Criminal Justice and Behavior 583, 583 (2008). Available at: https://www.researchgate.net/publication/240281552_Uncollaring_the_CriminalUnderstanding_Criminal_Careers_of_Criminal_Clerics

⁴ *Id.*, 583.

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Introduction

This article will first outline a history of the systemic problems of Roman Catholic cleric sexual abuse from 1950 through contemporary times in the U.S. Stemming from the revelations of, and investigations regarding such abuses, the article then surveys some of the most notable past and ongoing civil and criminal prosecutions of Roman Catholic sexual abuse cases. Following that, contemporary theories of criminal liability will be examined as an alternative to – rather than an adjunct with – civil tort lawsuits given their inadequacy to deter future abuse. In particular, the challenges and opportunities will be reviewed to using state and federal Racketeer Influenced and Corrupt Organizations (RICO) Act⁵ prosecutions for extended criminal penalties and a civil cause of action for acts performed by both clerics and Church decision-makers acting as part of an ongoing criminal organization. Finally, as an element of restorative justice, focusing on the rehabilitation of offenders through reconciliation with victims and the community at large, this article will suggest how forums for listening and sharing, through stories and prayer, will allow dioceses to support healing and reconciliation in the light of the Gospel, yet concurrent with and as an adjunct to legal proceedings.⁶

I. A History of Cleric Sexual Abuse – 1950’s Through 2000’s

Clergy sexual abuse has been “well documented from the earliest years of the Catholic Church [but] the present era is unique.”⁷ It would well exceed the scope of this article to trace the civil and canonical approaches to clergy sexual abuse prior to the 20th Century, let alone outside the U.S. The preeminent international leader in educating for justice, John Jay College of Criminal Justice, conducted the landmark studies on cleric sexual abuse at the request of the U.S. Conference of Catholic Bishops (USCCB) National Review Board under the 2002 Charter for the Protection of Children and Young People.

⁵ 18 U.S.C. §§ 1961–1968 (1990), <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-96>

⁶ See, e.g., Truth and Reconciliation Commission, Roman Catholic Diocese of Saskatoon, <https://rcdos.ca/office-social-justice/truth-and-reconciliation-commission> (2018), (last visited 26 Jul. 2019).

⁷ Rev. Thomas Doyle, A Very Short History Of Clergy Sexual Abuse in the Catholic Church (2018), <https://www.crusadeagainstclergyabuse.com/htm/AShortHistory.htm> (last visited 26 Jul. 2019).

The 2004 John Jay report entitled *The Nature and Scope of Sexual Abuse of Minors By Catholic Priests and Deacons in the United States 1950-2002*⁸ was followed by a 2011 report on *The Causes and Context of Sexual Abuse of Minors by Catholic Priests in the United States, 1950-2010*,⁹ and two additional supplementary reports.¹⁰

The 2004 Report indicated that some 10,667 allegations had been made against 4,392 priests in the U.S., and that 17.2% of the victims had siblings who were also allegedly abused.¹¹ This number constituted approximately 4% of the 110,000 priests who had served during the period covered by the survey (1950–2002), but the John Jay researchers conceded “the percentage of all priests with allegations of sexual abuse is difficult to derive because there is no definitive number of priests who were active between the years of 1950 and 2002.”¹² The report found that, over the 52-year period covered by the study, “the problem was indeed widespread and affected more than 95 percent of the dioceses and approximately 60 percent of religious communities.”¹³ While it is impossible to know the total numbers of sexual offenses in the studied period, the incidence of reported offenses “follow[ed] a regular curve, rising steadily from 1950 to its height in the mid-1970s and then steadily decreases until the end of the study period.”¹⁴

While the 2004 Report delved deeply into offense characteristics of victim demographics, the specific acts committed and loci of the crimes committed, 2011 Report noted there was no single “cause of sexual abuse of minors by Catholic priests was identified as a result of their research”:

[C]ultural changes in the 1960s and 1970s manifested in increased levels of deviant behavior in the general society and also among priests of the Catholic Church in the United States. Organizational, psychological, and situational factors contributed to the vulnerability of individual priests in this period of normative change [with an ...] increase in incidence until the late 1970s and the sharp decline by 1985. Although no specific institutional cause for the increase in incidence was found, factors specific to the Catholic Church contributed to the decline in the mid-1980s. Analyses of the development and influence of seminary education throughout the historical period is consistent with the continued suppression of abuse behavior in the twenty-first century. The priests who engaged in abuse of minors were not

⁸ John Jay College of Criminal Justice, *The Nature and Scope of Sexual Abuse of Minors By Catholic Priests and Deacons in the United States 1950-2000*, Report (2004).

⁹ John Jay College of Criminal Justice, *The Causes and Context of Sexual Abuse of Minors By Catholic Priests and Deacons in the United States 1950-2000*, 2011 (2011 Report).

¹⁰ *See, e.g.*, John Jay College of Criminal Justice, *Nature and Scope Study, Supplementary Report* (2006), and *see also* John Jay College of Criminal Justice, *Child Sexual Abuse: A Review of the Literature* (2004).

¹¹ *Supra* note 10, 4.

¹² *Id.*, 4.

¹³ *Id.*, 27.

¹⁴ *Id.*, 88.

found, on the basis of their developmental histories or their psychological characteristics, to be statistically distinguishable from other priests who did not have allegations of sexual abuse against minors.¹⁵

The inherent limitations of both reports, however was a focus on sexual abuse of minors, and not that of seminarians or the response of seminary leaders,¹⁶ and some critics have found fault with the studies' omissions and methodologies. For instance, Judith Reisman, Professor at Liberty University, and colleague co-authors Mary MacAlister, Cynthia Dunbar, and Alisa Jordheim, critiqued the John Jay studies; they concluded that five socio-historical phenomena were either ignored or glossed over by the drafters, each of which contributed to the creation of "an environment in which mass child sexual abuse could occur and flourish in the Church as in society at large" and was "critical to understanding "the causes and consequences of the global child sexual abuse pandemic of which priest abuse is but one component."¹⁷ Distinguishing between distinction between the expertise of criminologists who wrote the John Jay studies and psychologists, Dr. Richard Fitzgibbons and Dale O'Leary opined that

*Competent mental-health professionals should offer a second opinion about the causes of the crisis in regard to the psychological conflicts in the priests. Also, priests and seminarians with deep-seated homosexual tendencies have a serious responsibility to pursue appropriate treatment and spiritual direction in order to protect adolescent males, in particular, and the Church from further damage.*¹⁸

Having existed in the shadows of religious life and practices, light is being cast upon a "culture of predation" after recent revelations that ex-cardinal Theodore McCarrick "reportedly sexually preyed upon seminarians and young priests for decades without any impediment."¹⁹ Another key dynamic is understanding the "connection between priests who abuse minors and priests who are sexually active with adults."²⁰ Church analysts and seminarians interviewed by the National Catholic Register suggest that

¹⁵ *Supra* note 11, 2.

¹⁶ *See, e.g.*, Rev. Thomas Berg, Want to Address Priest Sexual Abuse? The Catholic Church Needs to Overhaul Its Seminaries (2018), <https://www.washingtonpost.com/religion/2018/10/18/want-address-priest-sex-abuse-catholic-church-needs-overhaul-its-seminaries/> (last visited 26 Jul. 2019).

¹⁷ Judith A. Reisman, Mary E. McAlister, Cynthia Dunbar and Alisa Jordheim, Dr. Kinsey, The Present Crisis in The Church, 38 (2018). Available at: http://www.drjudithreisman.com/archives/Inside_The_Vatican_2018-12.pdf

¹⁸ Richard Fitzgibbons and Dale O'Leary, Sexual Abuse of Minors by Catholic Clergy, The Linacre Quarterly, August 1, 2011, <https://journals.sagepub.com/doi/abs/10.1179/002436311803888276>.

¹⁹ Peter J. Smith, How a 'Culture of Predation' Puts Seminarians at Risk for Abuse (2018), <http://www.ncregister.com/daily-news/how-a-culture-of-predation-puts-seminarians-at-risk-for-abuse> (last visited 26 Jul. 2019).

²⁰ Rev. Thomas Berg, The Problem Of Sexually Active Priests (2018), <https://www.firstthings.com/web-exclusives/2018/07/the-problem-of-sexually-active-priests> (last visited 26 Jul. 2019).

double lives among the clergy and failures in celibacy formation are among key factors that make priests-to-be vulnerable, and that the focus on “child sexual abuse” may underplay the seriousness of the moral and legal crimes of sexual abuse of adults, and even more fundamentally evidence a “focus ... on the vulnerability of the adult rather than the status and actions of the abusive cleric” and the “power dynamics ... crucial to understanding this.”²¹ Criminology researchers Alex Piquero, Nicole Piquero, Karen Terry and Tasha Youstin attempted to categorize the criminal careers of criminal clerics, and concluded that

*[S]ome of the clerics’ criminal career parameters evince similar patterns to those from other offender samples, there are important differences with respect to onset, career duration, and recidivism. In addition, previously abused clerics as well as clerics who exhibited an early onset of abuse were more likely to accumulate police investigations, whereas married clerics were more likely than unmarried clerics to evince a higher number of police investigations.*²²

In summation, diverse expert and lay opinions exist regarding the circumstances of, and motivations for, clergy sexual abuse in general, but vulnerabilities and patterns of abuse which make prevention, detection, and remediation possible for lay-religious cooperation.

II. Contemporary Criminal Prosecutions of Cleric Sexual Abuse

While the scourge of cleric sexual abuse existed well before the late 20th Century,²³ one of the most notable, nationally publicized cases arose in 1985 when a pedophile Louisiana priest, Gilbert Gauthé, pleaded guilty to 11 counts of molestation of boys.²⁴ The plea was pursuant to Louisiana Statutes;²⁵ Gauthé had been indicted the previous October on 11 counts of aggravated crimes against nature, 11 counts of committing sexually immoral acts with minors, one count of aggravated rape (sodomizing a boy under the age of 12) and 11 counts of crimes of pornography involving juveniles.²⁶ Unfortunately, his career offender status had only just begun. He served less than 10 years in prison. At some point he was defrocked. There have been multiple civil suits and settlements involving Gauthé, including but not

²¹ *Ibid.*

²² Piquero, *supra* note 3, 597.

²³ *See, e.g.*, 2004 Report, *supra* note 10.

²⁴ Jon Nordheimer, Sex Charges Against Priest Embroil Louisiana Parents (1985), <https://www.nytimes.com/1985/06/20/us/sex-charges-against-priest-embroil-louisiana-parents.html> (last visited 26 Jul. 2019).

²⁵ *See, e.g.*, Louisiana Laws Revised Statutes, 14 Criminal Law (2018). Available at: <https://law.justia.com/codes/louisiana/2017/code-revisedstatutes/title-14/>

²⁶ Jason Berry, The Tragedy of Gilbert Gauthé (1985), http://www.bishop-accountability.org/news/1985_05_23_Berry_TheTragedy.htm (last visited 26 Jul. 2019).

limited to him pleading no contest in 1997 to abuse of a 3-year-old boy in TX and was sentenced to 7 years' probation. He was charged also in 1997 of raping a girl in LA 20 years previously. He spent two years in a Lafayette LA jail but was released when those charges were dropped. As of 2008, Gauthé was living near Houston, TX. He was arrested in April 2008 for failing to register as a sex offender and served two years in county jail. He was released in April 23, 2010.²⁷

Beyond the criminal indictment, the Lafayette Diocese and a number of insurance companies paid out-of-court settlements of at least \$4.2 million to nine families of Gauthé's victims in Vermilion Parish, and eleven known additional suits had claims approaching \$114 million.²⁸

Aside from Gauthé's notorious actions, and accompanying media attention, a considerable series of books and articles on cleric sexual abuse were published during the 1990's,²⁹ with interest and even greater grist for such writings continuing today. But it was only in early 2002 that "a moral panic surfaced, alleging widespread child and youth sexual abuse by priests"³⁰ especially in the wake of a series of Pulitzer award-winning Spotlight investigative reports published by the Boston Globe³¹ leading to "national and international reaction and produc[ing] changes in the Roman Catholic Church."³² The Boston Globe published results of an investigation that led to the criminal prosecutions of five Roman Catholic priests under Massachusetts criminal law, potentially only addressing the tip of a crisis iceberg inasmuch as Cardinal Bernard Law at the time said he "cannot estimate" how many priests had molested children.³³ The Boston Globe also discovered that "[u]nder an extraordinary cloak of secrecy, the Archdiocese of Boston in the last 10 years has quietly settled child molestation claims against at least 70 priests."³⁴ Another accused priest who was involved in the Spotlight scandal also pleaded guilty. As a relevant aside to the impact of this journalism, the 2015 biographical drama film *Spotlight* won the Academy Award for Best Picture, along with Best Original Screenplay, from six total nominations.³⁵ In its continuing investigative journalism, the Boston

²⁷ Assignment record – Rev. Gilbert J. Gauthé (2017),

http://www.bishopaccountability.org/assign/Gauthé_Gilbert_J.htm (last visited 26 Jul. 2019).

²⁸ Berry, *supra* note 28.

²⁹ See, e.g., Stephen Rosetti, *Slayer of the Soul : Child Sexual Abuse and the Catholic Church*, (1990); Mark Laaser & Nancy Hopkins, *Restoring the Soul of a Church*, (1995).

³⁰ Sexual and Other Abuse by Religious Leaders: A "perfect panic" (2018), http://www.religioustolerance.org/clergy_sex.htm (last visited 26 Jul. 2019).

³¹ The 2003 Pulitzer Prize Winner in Public Service – The Boston Globe (2003), <https://www.pulitzer.org/winners/boston-globe-1>. (last visited 26 Jul. 2019).

³² *Ibid.*

³³ Scores of Priests Involved in Sex Abuse Cases – Settlements Kept Scope of Issue out of Public Eye (2002), <https://www.bostonglobe.com/news/special-reports/2002/01/31/scores-priests-involved-sex-abuse-cases/kmRm7JtqBdEZ8UF0ucR16L/story.html> (last visited 26 Jul. 2019).

³⁴ *Ibid.*

³⁵ *Spotlight* (2015), <https://www.imdb.com/title/tt1895587/awards>. (last visited 26 Jul. 2019).

Globe alleged that “[a]t least 271 clergy — a mix of permanent and visiting *priests*, pastors, chaplains, deacons, religious order clerics, and nuns — have been accused of sexual abuse in the Boston Archdiocese” as of 2015.³⁶

The Pittsburgh Post-Gazette, in comparing clergy sexual abuse cases in Kentucky and Pennsylvania, found that because Kentucky had no statute of limitations for prosecuting felonies; investigative reporter Peter Smith uncovered that

*Between 2003 and 2017, six Catholic priests from the Archdiocese of Louisville, Kentucky’s largest diocese, were convicted of sexual offenses against minors, which took place as many as four decades earlier. Two former lay teachers from Catholic schools were similarly convicted. Some victims were in their 50s by the time their cases went to trial.*³⁷

By contrast, in New York, the Syracuse diocese's list of abusive priests contains the names of "dozens" of people who, until recently, could no longer be prosecuted for sex crimes against children, according to Onondaga County District Attorney William Fitzpatrick, under the assumption that some of those cases might have had the statute of limitations run.³⁸ Nevertheless, the New York attorney general’s office has issued subpoenas to every Catholic diocese in the state to “embark on an expansive investigation of sex crimes committed and covered up by Catholic priests.”³⁹ This is all the more significant under the newly enacted New York Child Victims Act, effective August 14, 2019, such that the statute of limitations for criminal prosecution of a sexual offense committed against a child shall not begin to run until the child turns 23 years of age, and provides that a civil action for sexual offenses against children shall be brought before the child is 55 years old.⁴⁰

Aside from Kentucky and New York, a number of other states are actively investigating and in some cases prosecuting clergy sexual abuse at the time of this writing. Connecticut’s Bishop Frank Caggiano of Bridgeport was “the first bishop to raise the issue of clerical sex abuse during [October 2018’s]

³⁶ Database of Accused Clergy in Boston Archdiocese (2015),

<https://www3.bostonglobe.com/metro/2015/11/06/least-clergy-have-been-accused-child-sex-abuse-boston-archdiocese/5cKpjVOPhEh7IYnCwRqIJI/story.html?arc404=true> (last visited 26 Jul. 2019).

³⁷ Peter Smith, A Tale of Two States on Clergy Abuse Prosecutions, Pittsburgh Post-Gazette (2018), <https://www.post-gazette.com/news/faith-religion/2018/11/19/Pennsylvania-Kentucky-clergy-sex-abuse-prosecutions-statute-of-limitations/stories/201810120152> (last visited 26 Jul. 2019).

³⁸ New York Criminal Procedure Law § 30.10.

³⁹ Julie Zauzmer and Michelle Boorstein, New York Attorney General’s Office Has Issued Subpoenas to Every Catholic Diocese in the State (2018), <https://www.washingtonpost.com/news/faith-religion/wp/2018/11/19/Pennsylvania-Kentucky-clergy-sex-abuse-prosecutions-statute-of-limitations/stories/201810120152> (last visited 26 Jul. 2019).

⁴⁰ New York State Senate, Senate Bill S2440. Available at: <https://www.nysenate.gov/legislation/bills/2019/S2440>

Vatican summit on young people.”⁴¹ Three months into a state investigation of child sexual abuse by Roman Catholic clergy, Illinois Attorney General Lisa Madigan in November 2018 said that the number of violators “is more extensive than the Church previously has disclosed to the public.”⁴² In August 2018, Missouri Attorney General Josh Hawley launched “an investigation into sex crimes within the Roman Catholic Church, adding that the Archdiocese of St. Louis had offered to open its files to his office;” thereafter St. Louis Archbishop Robert Carlson promised Hawley’s office would have “unfettered” access to archdiocese records.⁴³ Some 33 priests and religious brothers would be identified with credible allegations of sexual abuse in the Diocese of Jefferson City, MO, for which Bishop W Shawn McKnight would apologize including for “the incomplete transparency we have lived under by not making all their names public.”⁴⁴ Nebraska’s Attorney General requesting Nebraska’s bishops for records of allegations and investigations dating back to January 1, 1978, covering reports of sexual exploitation, including child pornography. The New Mexico Attorney General’s Office is “seeking all documents related to potential abuse by priests and other clergy from all Catholic dioceses – Santa Fe, Gallup and Las Cruces – in New Mexico.”⁴⁵ New Jersey Attorney General Gurbir Grewal established a task force in September 2018 to begin a similar investigation into the state’s four dioceses,⁴⁶ with the first priest arrested and charged with multiple counts of sexual assault of a child in January 2019.⁴⁷ The Archdiocese of Oklahoma City planned to review the files of every priest who had served since 1960 for “credible allegations of child sexual abuse (that) were reported, substantiated, prosecuted or admitted to,”

⁴¹ Crux Staff, *Bridgeport Prelate Says Accountability Key for Bishops’ Fall Summit* (2018), <https://cruxnow.com/synod-of-bishops-on-youth/2018/10/23/bridgeport-prelate-says-accountability-key-for-bishops-fall-summit/> (last visited 26 Jul. 2019).

⁴² Chuck Goudie, Barb Markoff, Christine Tressel and Ross Weidner, *AG Madigan: There Are More Abusive Priests Than Dioceses Disclosed* (2018), <https://abc7chicago.com/ag-madigan-there-are-more-abusive-priests-than-dioceses-disclosed/4788991/> (last visited 26 Jul. 2019).

⁴³ Jack Suntrup and Nassim Benchaabane, *Missouri Attorney General Josh Hawley Launches Investigation into Clergy Sex Crimes* (2018), https://www.stltoday.com/news/local/crime-and-courts/missouri-attorney-general-josh-hawley-launches-investigation-into-clergy-sex/article_55724a79-aa4f-5cc3-b4f8-67e6d7b03c1f.html (last visited 26 Jul. 2019).

⁴⁴ Diana Stancy Correll, *33 Priests, Religious Brothers Identified in Missouri Diocese Sex Abuse Investigation* (2018), <https://www.washingtonexaminer.com/news/33-priests-religious-brothers-identified-in-missouri-diocese-sex-abuse-investigation> (last visited 26 Jul. 2019).

⁴⁵ Angela Kocherga, *Ag Seeks Records On Potential Abuse From All Dioceses In State*, *Albuquerque Journal* (2018), <https://www.abqjournal.com/1217199/nmag-requests-documents-on-potential-abuse-from-all-nm-dioceses.html> (last visited 26 Jul. 2019).

⁴⁶ Office of the Attorney General, *AG Grewal Establishes Task Force to Investigate Allegations of Sexual Abuse by Clergy in Catholic Dioceses of New Jersey* (2018), <https://nj.gov/oag/newsreleases18/pr20180906a.html> (last visited 26 Jul. 2019).

⁴⁷ Joseph De Avila, *First Priest Arrested in New Jersey Sex-Abuse Investigation* (2019), <https://www.wsj.com/articles/first-priest-arrested-in-new-jersey-sex-abuse-investigation-11547771360> (last visited 26 Jul. 2019).

its leaders announced in late August.⁴⁸ In Wyoming, the Cheyenne Police department said it has “reopened an investigation into sex abuse allegations against an unnamed church official, stemming from his time in the diocese from the 1970s through the 1990s.”⁴⁹ Most recently in March 2019, the West Virginia Attorney General filed a civil lawsuit against the state’s Wheeling-Charleston Diocese and retired bishop Michael J. Bransfield alleging that “they knowingly employed pedophiles and failed to conduct adequate background checks on those working at the diocese’s schools and camps.”⁵⁰

The most notorious ongoing investigation of late was marked by a recently released Pennsylvania Grand Jury report;⁵¹ the 1,400-page document, compiled over two years, implicated 300 priests in the sex abuse of over 1,000 minors across six of the state’s eight dioceses (Philadelphia and Altoona–Johnstown, were the subject of previous investigations).⁵² That Pennsylvania grand jury recommended eliminating the statute of limitations entirely for future cases.⁵³ Already netting a guilty plea post Grand Jury report, “David Poulson, who was a priest in Pennsylvania’s Diocese of Erie for four decades until this year, pleaded guilty in a court in Brookville to corruption of minors⁵⁴ and endangering the welfare of children,⁵⁵ both third-degree felonies,” according to Attorney General Josh Shapiro’s office.⁵⁶ Specifically, “Poulson assaulted one boy multiple times and attempted to sexually assault another boy,” Shapiro said in the release.⁵⁷

Since the Gauthe case of the mid-1980s, the sophistication of investigation, and vigor in prosecution have both increased, and the public has become

⁴⁸ Pilar Melendez, *The 10 States Actually Investigating Clergy Sexual Abuse After Pennsylvania’s Horrifying Report* (2018), <https://www.thedailybeast.com/the-10-states-actually-investigating-clergy-sexual-abuse-after-pennsylvanias-horrifying-report> (last visited 26 Jul. 2019).

⁴⁹ Ray Sanchez, Rosa Flores, Meridith Edwards and Kevin Conlon, *Police Reopen Sex Abuse Investigation of Former Wyoming Bishop* (2018), <https://www.cnn.com/2018/08/23/us/wyoming-bishop-sex-abuse-investigation/index.html?no-st=1545200698> (last visited 26 Jul. 2019).

⁵⁰ *State of West Virginia ex. Rel Patrick Morresey v. Diocese of Wheeling-Charleston and Michael J. Bransfield* (2019), Circuit Court of Wood County, <https://ago.wv.gov/Documents/Diocese%20complaint.PDF>, *cited with authority in* Claire Hansen, *West Virginia Sues Catholic Church for Covering Up Sex Abuse* (2019), <https://www.usnews.com/news/national-news/articles/2019-03-19/west-virginia-sues-catholic-church-for-covering-up-sex-abuse> (last visited 26 Jul. 2019).

⁵¹ Office of the Attorney General, Commonwealth of Pennsylvania, *Pennsylvania Diocese Victims Report* (2018), <https://www.attorneygeneral.gov/report/> (last visited 26 Jul. 2019).

⁵² Tara Burton, *The Decades-Long Catholic Priest Child Sex Abuse Crisis* (2018), <https://www.vox.com/2018/9/4/17767744/catholic-child-clerical-sex-abuse-priest-pope-francis-crisis-explained> (last visited 26 Jul. 2019).

⁵³ Smith, *supra* note 39.

⁵⁴ Pennsylvania Statutes, 18 Pa.C.S.A. Crimes and Offenses § 6301. Available at: <https://codes.findlaw.com/pa/title-18-pacsa-crimes-and-offenses/pa-csa-sect-18-6301.html>

⁵⁵ Pennsylvania Statutes, 18 Pa.C.S.A. Crimes and Offenses § 4304. Available at: <https://codes.findlaw.com/pa/title-18-pacsa-crimes-and-offenses/pa-csa-sect-18-4304.html>.

⁵⁶ Sheena Jones and Jason Hanna, *Priest Accused of Child Sexual Abuse in Grand Jury Report Pleads Guilty to Felony Charges* (2018), <https://www-m.cnn.com/2018/10/17/us/pennsylvania-priest-guilty-plea/index.html?r=https%3A%2F%2Fwww.google.com%2F> (last visited 26 Jul. 2019).

⁵⁷ *Ibid.*

much more aware of such investigations and prosecutions in equal measures because of media attention and prosecutorial trial publicity, if not transparency of church officials and dioceses.

III. Prosecuting The Church as a Racketeer Influenced and Corrupt Organization?

Aside from victims pursuing civil suits and statute authorities undertaking criminal prosecutions against clergy under state civil and criminal statutes, another emergent remedy merits an in-depth discussion. The federal Racketeering Influenced and Corrupt Organizations (RICO) law, 18 U.S.C. §§ 1961–1968,⁵⁸ was passed in 1970 in what has been described as the "ultimate hit man" in mob prosecutions; prior to RICO, prosecutors could only try mob-related criminals individually. Given its present breadth, governmental and civil parties use RICO regarding prosecution of all individuals in a corrupt organization of both legal and illegal enterprises.⁵⁹ The statute requires proving that an "enterprise" engaged in a "pattern of racketeering activity" in violation of federal criminal laws over a substantial period.⁶⁰ In conjunction with federal fraud statutes, even business disputes may be styled as RICO cases, alleging crimes to engage in a "scheme or artifice to defraud."⁶¹

This is a significant remedy because unlike most criminal statutes, "RICO contains a civil component that allows it to be used to turn ordinary business disputes that would be filed in state courts into federal cases [and] proving a violation results in the award of triple damages plus attorney's fees, so plaintiffs have an incentive to look for ways to turn their grievances into a RICO suit."⁶²

Several authors have claimed that the federal RICO statutes are ill-equipped to reach the sexual misconduct of a clergyperson in regard to a parishioner or congregant, given the elements of proof required compared to the organizational hierarchy and composition of parishes, dioceses and archdioceses, and must include proof of an "enterprise," and predicate acts in a "pattern of racketeering activity."⁶³ One such critic found U.S. bankruptcy law more suitable for American dioceses, as "[u]nlike RICO, the point of bankruptcy law is not to destroy the organization filing for bankruptcy, but to allow for it to make a fresh start after paying its debts as

⁵⁸ *Supra* note 5.

⁵⁹ *Ibid.*

⁶⁰ Peter J. Henning, *RICO Lawsuits Are Tempting, But Tread Lightly* (2018), <https://www.nytimes.com/2018/01/16/business/dealbook/harvey-weinstein-rico.html> (last visited 26 Jul. 2019).

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *See, e.g.*, Bradley J.B. Toben and Chris Helge, *Sexual Misconduct of Clergypersons with Congregants or Parishioners – Civil and Criminal Liabilities and Responsibilities* (2011). Available at: <https://www.baylor.edu/content/services/document.php/132158.doc>

best it can.”⁶⁴

There is precedent, however that goes contrary to this criticism and supportive of applying RICO against American dioceses. Specifically, *Miskovsky v. State* was an Oklahoma case from 2001 for a state court RICO prosecution involving a distinctive set of facts involving racketeering by use of a law practice to engage in criminal sexual behavior.⁶⁵ This prosecution relied upon a parallel development to the Federal RICO statutes, beginning in 1972, with the enactment of RICO-based statutes by 33 states, the Commonwealth of Puerto Rico and the Territory of the United States Virgin Islands.⁶⁶ Ten states and the U.S Virgin Islands have RICO statutes that include sex crimes against children as predicate acts,⁶⁷ and eight states and the U.S Virgin Islands allow recovery and/or alternative bases for criminal fines for criminal based on personal injury.⁶⁸ The legal scholar Laura Russell has noted that, in pursuing liability for the Church and its decision-makers,

*For those states that do not have RICO statutes or those whose RICO statutes are inadequate, prosecutors could possibly utilize alternative theories of criminal liability, including reckless endangerment and hindering prosecution. Finally, prosecutors could rely on the master-servant relationship between the predatory priests and their bishop, cardinal, and/or archdiocese to pursue criminal charges against the employer or supervisor for the criminal acts committed by the predatory priests.*⁶⁹

One of the earliest attempts to apply the RICO statute to US. clergy abuse was the lawsuit against Cardinal Roger M. Mahony in 2002, with allegations that Mahony protected abusive priests as head of the archdiocese, a pattern of behavior that constitutes a criminal enterprise under California and U.S. Federal law.⁷⁰ According to documents released in 2013, “as part of a nearly \$650 million settlement the L.A. archdioceses paid to over 500 victims we learned that Mahony aided and abetted pedophile, child abusive priests for

⁶⁴ Cathleen Kaveny, *Not The Mafia – Why The Rico Does Not Apply to The Church* (2019), <https://www.commonwealmagazine.org/not-mafia> (last visited 26 Jul. 2019).

⁶⁵ *Miskovsky v. State*, 31 P.3d 1054, 1059 (Okla. Crim. App. 2001). Miskovsky, “an Oklahoma City lawyer, was charged with racketeering by using his law practice to engage in criminal sexual behavior with both adult female clients and children of clients from 1976 through 1996. He was also charged with attempting, through a former law partner, to get an important witness for the State to change her story before his trial in 1999.”

⁶⁶ John E. Floyd, *Introduction: RICO State by State: A Guide to Litigation Under the State Racketeering Statutes* (2017), <https://www.americanbar.org/groups/gpsolo/> (last visited 26 Jul. 2019).

⁶⁷ Laura Russell, *Pursuing Criminal Liability for the Church and Its Decision Makers for Their Role in Priest Sexual Abuse*, 81 Wash. U. L. Q. 885, 887 (2003).

⁶⁸ Those jurisdictions are Arizona, Florida, Idaho, Mississippi, Nevada, New Mexico, Ohio, Oklahoma, and the U.S. Virgin Islands. *Id.*, 887.

⁶⁹ *Supra* note 67, 888.

⁷⁰ Andrew Chicchillo, *Joseph Chicchillo vs. Archdiocese of Los Angeles, Complaint for Racketeering, Personal Injuries*, Superior Court of the State of California, Los Angeles County, Central District (2002). Available at: <https://www.bishop-accountability.org/resources/resource-files/courtdocs/CicchilloComplaint.pdf>

years.”⁷¹ On the day the first of more than 500 clergy abuse cases was scheduled for jury selection, the archdiocese and its insurers were set to pay an average of \$1.2 million to \$1.3 million per person.⁷²

In a subsequent, 2004 case, former seminarian Philip Hower filed a RICO suit against lawsuit against the Dioceses of Tucson, Harrisburg, Columbus, and others, as well as against a number of prominent bishops, including Keeler and Kicanas.⁷³ The litigant alleged that his ordination was blocked because he had blown the whistle on activities of certain corrupt clergy; the case settled with the defendants not admitting wrongdoing and the terms not disclosed (typical of a civil settlement).⁷⁴

As this article was being written, clergy sex abuse victims filed a bellwether pair of national lawsuits against the U.S. Catholic Church. The class action suit names the Holy See as the defendant in one suit, and the USCCB in the other.⁷⁵ As related by initial reports, the lawsuits filed November 12, 2018 in the District of Columbia demanded that the church produce the names of all accused sex offenders listed in the church’s secret archives nationwide, and also seek “financial damages for assault, gross negligence, emotional distress and wrongful death, for the families of those who committed suicide after being abused by a priest or other Catholic official.”⁷⁶ That, is, remedies sought are: actual, consequential, compensatory, economic, punitive and RICO treble damages, along with declaratory and injunctive relief and legal fees.⁷⁷ These suits accuse the Church of “cheating and defrauding Plaintiffs and Class members out of their childhood, youth, innocence, virginity, families, jobs, finances, assets — in short, their lives.”⁷⁸ There is no way to predict the outcome, although the journalist Tom Jackman notes “the Holy See has successfully avoided liability in the United States by claiming it did not have direct authority over priests,” but that may well be affected by a letter from the Congregation of Bishops in Rome to stop the U.S. bishops’ meeting at their national

⁷¹ Protesters Demand Criminal Investigation, Resignation of Ex-LA Archbishop Roger Mahony, (2018), <http://cbslocal.com/2018/09/17/protesters-demand-criminal-investigation-resignation-of-ex-la-archbishop-roger-mahony/> (last visited 26 Jul. 2019).

⁷² Gillian Flaccus, L.A. Archdiocese Agrees to \$600 Million Abuse Settlement (2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/14/AR2007071400968.html> (last visited 26 Jul. 2019).

⁷³ Matt Abbott, Settlement Reached in Church Rico Case (2005), http://www.bishop-accountability.org/news2005_07_12/2005_09_05_Abbott_SettlementReached.htm (last visited 26 Jul. 2019).

⁷⁴ *Ibid.*

⁷⁵ Tom Jackman, U.S. Catholic Church Hit with Two National Lawsuits by Sex-Abuse Victims, (2018), https://www.washingtonpost.com/crime-law/2018/11/15/us-catholic-church-hit-with-two-national-lawsuits-by-sex-abuse-victims/?utm_term=.d2cbd70e2574I (last visited 26 Jul. 2019).

⁷⁶ *Ibid.*

⁷⁷ Dave Sutor, Class Action Abuse Lawsuit Names Bishops and Vatican (2018), https://www.tribdem.com/pennsylvania/class-action-abuse-lawsuit-names-bishops-and-vatican/article_bbaa8382-e7bc-11e8-802e-cfd3415afe85.html (last visited 26 Jul. 2019).

⁷⁸ Jackman, *supra* note 75.

conference in Baltimore to address the issue.⁷⁹ Nevertheless, the U.S. bishops continued to define their response to sexual abuse despite that call for delay.⁸⁰ Opining on the bishops' potential liability, Jackman quoted Mitchell A. Toups, one of the lead attorneys in the class-action case, saying "If that's not command responsibility, I don't know what is."⁸¹

Aside from these RICO actions, and nearly the same time, a Pittsburgh class action lawsuit was filed by Carlson Lynch of Pittsburgh, Berger Montague of Philadelphia and Nye Peabody of California for injunctive relief – "specifically, an admission that the Catholic Church covered up what was going on for years and the release of the records it has maintained."⁸² Reportage indicates

*The lawsuit was filed against all eight Roman Catholic dioceses in Pennsylvania: Allentown, Altoona-Johnstown, Erie, Greensburg, Harrisburg, Philadelphia, Pittsburgh and Scranton – along with each Diocese's bishops: Alfred Andrew Schert, Mark Leonard Bartchak, Lawrence T. Persico, Edward C. Malesic, Ronald William Gainer, Charles Joseph Chaput, David Zubik and Joseph Bambera, respectively.*⁸³

As another, innovative, alternative means of liability being pursued, lawyer Jeff Anderson in Minnesota filed a federal lawsuit on behalf of six sexual abuse survivors against the USCCB under the "maintenance of a public hazard" or nuisance doctrine.⁸⁴ This lawsuit also seeks injunctive relief, that being "disclosure of identity of all offenders and their histories known only to the Bishops who continue to keep this information secret."⁸⁵ At a press conference organized by Anderson, a "Minnesota survivor ... explain[ed] how the same legal theory was used to excavate information on known offenders, including the offender who sexually abused him, and how this excavation needs to happen across the country through this lawsuit."⁸⁶

⁷⁹ Jack Jenkins, Vatican Instructs U.S. Bishops to Halt Voting on Sex Abuse Measures (2018), <https://religionnews.com/2018/11/12/vatican-instructs-u-s-bishops-to-halt-voting-on-sex-abuse-measures/> (last visited 26 Jul. 2019). *See also* Doe v. Holy See, 557 F3d 1066 (9th Cir. 2009), ruling that the Holy See cannot be held liable because of no relationship of employment in the case.

⁸⁰ Thomas Reese, Bishops Continue to Define Response to Sex Abuse Despite Vatican Call for Delay (2018), <https://religionnews.com/2018/11/15/bishops-continue-to-define-response-to-sex-abuse-despite-vatican-call-for-delay/> (last visited 26 Jul. 2019).

⁸¹ Jackman, *supra* note 75.

⁸² Nicholas Malfitano, Pittsburgh Class Action Wants Catholic Church to Admit to Sexual Abuse Cover-Up (2018), <https://www.forbes.com/sites/legalnewsline/2018/10/30/pittsburgh-class-action-wants-catholic-church-to-admit-to-sexual-abuse-cover-up/#29ed46bed2bf> (last visited 26 Jul. 2019).

⁸³ *Ibid.*

⁸⁴ Jeff Anderson & Associates PA, U.S. Conference of Catholic Bishops Sued by 6 Sexual Abuse Survivors (2018), <https://www.andersonadvocates.com/Posts/News-or-Event/2321/US-Conference-of-Catholic-Bishops-Sued-By-6-Sexual-Abuse-Survivors---Baltimore-Press-Conference-Today.aspx> (last visited 26 Jul. 2019).

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

In sum, traditional individual prosecutions for crimes, RICO cases pursuing hierarchical, leadership liability, injunctive relief, and “public nuisance” cases are means by which clergy individually and collectively are being called to task and being held accountable for past abuses.

IV. Restorative Justice as Future Component of Remediating Cleric Sexual Abuse

The worldwide association for restorative practitioners, Restorative Practices International (RPI), defines restorative justice as an approach to problem solving that is based around three basic concepts:

That when crime (or wrongdoing) occurs, the focus is on the harm that has been done to people and relationships;

When harm has been done, it creates obligations and liabilities; and

The way forward involves wrongdoers, victims and the community in efforts to heal the harm and put things right.⁸⁷

The practice of restorative justice emerged in the late 1970’s and 1980’s in various countries as a way of dealing constructively with wrongdoing and violations of social trust.⁸⁸ In particular, restorative justice has been a part of so-called “restorative peacebuilding, and explores its implications for the work of the United Nations Peacebuilding Commission (Commission) and post-conflict societies.”

The Australian criminologist John Braithwaite defines restorative justice as

A process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm. With crime, restorative justice is about the idea that because crime hurts, justice should heal. It follows that conversations with those who have been hurt and with those who have inflicted the harm must be central to the process.⁸⁹

As early as 2000, the USCCB made a statement on Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and

⁸⁷ Restorative Practices International, What is Restorative Justice? (2018), <https://www.google.com/search?q=Zehr+Mika+restorative+Justice&ie=utf-8&oe=utf-8&client=firefox-b-1-ab> (last visited 26 Jul. 2019).

⁸⁸ Can Restorative Justice Help the Church Heal from Sex Abuse Scandals? (2018), https://www.americamagazine.org/faith/2018/12/06/can-restorative-justice-help-church-heal-sex-abuse-scandals?utm_source=Newsletters&utm_campaign=7715feadd2-DEC_10_ISSUE_NO_TRIAL_2018_12_14&utm_medium=email&utm_term=0_0fe8ed70be-7715feadd2-58767397 (last visited 26 Jul. 2019).

⁸⁹ John Braithwaite, *Restorative Justice and De-Professionalization*, 13 *The Good Society* 28, 28 (2004), http://johnbraithwaite.com/wp-content/uploads/2016/03/RJ_De-Professionalization_2004.pdf.

Criminal Justice.⁹⁰ In that statement, the USCCB sought to assess how the criminal justice system “can become less retributive and more restorative,” inasmuch as “[a] Catholic approach leads us to encourage models of restorative justice that seek to address crime in terms of the harm done to victims and communities, not simply as a violation of law.”⁹¹ The USCCB also “[e]ncourag[ed] innovative programs of restorative justice that provide the opportunity for mediation between victims and offenders and offer restitution for crimes committed.”⁹²

A notable innovator and champion for such restorative has been former Wisconsin Supreme Court Justice Janine P. Geske, an emeritus distinguished professor of law at Marquette University Law School, renowned for her expertise in alternative dispute resolution and restorative justice, and founder of the Restorative Justice Initiative (RJI) at Marquette.⁹³ She has run restorative justice programs in state prisons in Wisconsin, and brought about neighborhood healing through restorative justice.⁹⁴

As a progression of that work, Professor Geske adapted restorative justice practices to counteract the “ripple effect of the harm caused by the clergy abuse scandal” and “how we should explore utilizing restorative justice to address the damage of this scandal on Catholics and Catholic institutions.”⁹⁵ for use in the context of clerical sexual abuse. She has been integral to restorative practices in the Archdiocese of St. Paul and Minneapolis, under a \$210 million settlement reached in the bankruptcy of the St. Paul-Minneapolis Archdiocese, what attorneys for more than 400 survivors of clergy sexual abuse are calling the “largest settlement ever reached in a Catholic bankruptcy case.”⁹⁶ The settlement agreement required the archdiocese to hold a one-day conference on restorative justice and reconciliation within 18 months of the settling its bankruptcy;⁹⁷ in late April, 2018 Geske conducted two parish “healing circle” sessions.⁹⁸

⁹⁰ U.S. Conference of Catholic Bishops, *Responsibility, Rehabilitation, and Restoration: A Catholic Perspective on Crime and Criminal Justice* (2000), <http://www.usccb.org/issues-and-action/human-life-and-dignity/criminal-justice-restorative-justice/crime-and-criminal-justice.cfm> (last visited 26 Jul. 2019).

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ Restorative Justice Initiative, Marquette University Law School (2018), <https://law.marquette.edu/community/restorative-justice-initiative>.

⁹⁴ See Janine P. Geske and India McCanse, “Neighborhoods Healed Through Restorative Justice”, Faculty Publications Paper 521 (2008), <http://scholarship.law.marquette.edu/facpub/521>.

⁹⁵ Janine P. Geske, *Restorative Justice and the Sexual Abuse Scandal in the Catholic Church*, 8 *Cardozo J. of Conflict Resolution* 651, 652 (2007). Available at: <https://cardozo.jcr.com/vol8no2/651-658.pdf>

⁹⁶ Brian Roewe, \$210 Million Settlement Announced in St. Paul-Minneapolis Archdiocese Bankruptcy Case (2018), <https://www.nronline.org/news/accountability/attorney-abuse-survivors-announces-st-paul-minneapolis-settlement> (last visited 26 Jul. 2019).

⁹⁷ *Ibid.*

⁹⁸ Maria Wiering, Parishes Explore Healing Circles’ Potential for Restorative Justice (2018), <http://thecatholicspirit.com/news/local-news/parishes-explore-healing-circles-potential-for-restorative-justice/> (last visited 26 Jul. 2019).

Rather than having such measures imposed by court order, the preferable approach to restorative justice would be for clergy leadership to assume responsibility in the face of terrible damage done to the church and proactively implement same.⁹⁹ As part of ongoing Marquette RJI efforts, Bishop Cupich has called such restorative justice a "much-needed effort to bring healing in what is a historically challenging but also decisive moment for our church."¹⁰⁰

Conclusion

Saint Pope John Paul II presciently opined in July 9, 2000 that:

*We are still a long way from the time when our conscience can be certain of having done everything possible to prevent crime and to control it effectively so that it no longer does harm and, at the same time, to offer to those who commit crimes a way of redeeming themselves and making a positive return to society. If all those in some way involved in the problem tried to ... develop this line of thought, perhaps humanity as a whole could take a great step forward in creating a more serene and peaceful society.*¹⁰¹

Notwithstanding this prescience, it is not entirely clear that "Pope John Paul understood the 'cancer' of clergy sexual abuse immediately," according to former Vatican spokesman Joaquín Navarro-Valls.¹⁰² Responding to questions at a briefing on John Paul II's time leading the Catholic church from 1978 to 2005; Navarro-Valls conceded: "I don't think anyone did."¹⁰³

Sexual predators knew, victims knew, but at various junctures the public and law enforcement investigators faced a nearly insurmountable challenge to transparency and accountability, especially in the United States regarding clergy sexual abuse. At the time of this writing, "facing aggressive investigations into sex abuse scandals, Catholic dioceses around the country are releasing their own list of accused priests,"¹⁰⁴ most notably a letter from

⁹⁹ Willy Thom, Church Culture Must Change After Sex Anuses Scandal (2011), <http://www.catholicnews.com/services/englishnews/2011/church-culture-must-change-after-sex-abuse-scandal-archbishop-says-cns-1101420.cfm> (last visited 26 Jul. 2019).

¹⁰⁰ *Ibid.*

¹⁰¹ U.S. Conference of Catholic Bishops, *supra* note 87.

¹⁰² Joshua McElwee, Vatican: John Paul II Took 'Immediate' Action on Sexual Abuse (2014), <https://www.ncronline.org/news/accountability/vatican-john-paul-ii-took-immediate-action-sexual-abuse> (last visited 26 Jul. 2019).

¹⁰³ *Ibid.*

¹⁰⁴ Campbell Robertson, List of Priests Accused of Sexual Abuse Are Spilling Out Across the Country (2018), https://www.nytimes.com/2018/12/14/us/catholic-priests-sexual-abuse-lists.html?ref=collection%2Ftimestopic%2FRoman%20Catholic%20Church%20Sex%20Abuse%20Cases&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection (last visited 26 Jul. 2019).

the Diocese of Syracuse accompanying a list of priests credibly accused of sexual abuse.¹⁰⁵

This article outlined the history of cleric sexual abuse from 1950 through contemporary times, and surveyed past civil and criminal prosecutions of Roman Catholic sexual abuse cases. Contemporary theories of criminal liability may be either an alternative to – or an adjunct with – civil tort lawsuits, and injunctive relief is increasingly sought to investigate as well as to deter future abuse. Time will tell the impact of ongoing state and federal RICO Act prosecutions not just on perpetrators but also clerics and Church decision-makers remaining in active ministry. Restorative justice, forums for listening and sharing, through stories and prayer, may well offer the most opportunity for fostering healing and reconciliation within the bounds of the law yet not directly involving courts or legal processes. Restorative justice strongly shines the light of the Gospel on this scourge, where agents of such justice are mindful of the words of the Apostle Paul, in his Second Epistle to the Corinthians that “[a]ll this is from God, who reconciled us to himself through Christ and gave us the ministry of *reconciliation*.” Remediative and restorative measures outside the courts must augment legal remedies within halls of justice for multifaceted and effective means to address the past and ongoing criminal and civil law and public health crises arising from cleric sexual abuse, and to help prevent future abuses from taking place.

¹⁰⁵ Roman Catholic Diocese of Syracuse (2018), <https://drive.google.com/file/d/15RgQYwK3eh2zYlcUrUAtfZT-Fn8QOAgU/view> (last visited 26 Jul. 2019).