

Sexual Abuse in Nonprofit Organizations

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Over the past year, we have learned that one of the world's largest charities—the Roman Catholic Church—turns a blind eye to sexual abuse. What makes the story particularly compelling is the response of the church hierarchy to reports of sexual misconduct: public denials, attacks on the victims, courtroom delays, withholding evidence, and an aggressive defense of known abusers. Yet the Catholic Church is far from the only charity that has responded to sexual abuse in this way; a survey of case law and news stories reveals a disturbing pattern of defensive evasion by nonprofit organizations, such as medical schools, universities, law schools and, of course, religious groups.

This paper will examine why it is that nonprofit organizations—and especially charities—persist in protecting sexual misconduct in spite of a stated commitment to social good. Part I will focus on the paradoxical nature of a nonprofit organization as a form beyond ownership, exchange and control. While traditional nonprofit scholarship has focused on the positive aspects of nonprofit association, the very dynamic that inspires altruism and innovation can also project the image of a realm beyond the law.

Part II examines the implications of this antinomian identity for sexual harassment jurisprudence. The irony of the nonprofit form is that by fostering an image of transcendence, it can mask patterns of abuse that would be more visible and less tolerated in a commercial enterprise. The distinct image of nonprofits can support standards for legal action that view a nonprofit as incapable of sexual misconduct; there is an interpretive link between the priest who views raping a nun as sacramental and a court that views the tenure process as beyond the scope of judicial review. Inasmuch as the image of a unity beyond all particulars comes to dominate the frame, the harm does not appear to exist.

Part III explores ways in which the nonprofit law school offers as of yet untapped potential to overcome the antinomian impulse within the nonprofit sector. The paper closes with a discussion of how law schools can also address a related antinomian impulse within the legal profession and governmental processes for implementing sexual harassment law, in which the very processes designed to protect victims of sexual abuse provide a shield to protect the perpetrators.