Southern Cross University
ePublications@SCU

School of Law and Justice

1999

Mad mothers, over-zealous therapists and the paedophile inquiry

Nicole Rogers
Southern Cross University

Publication details

Rogers, N 1999, 'Mad mothers, over-zealous therapists and the paedophile inquiry', *Southern Cross University Law Review*, vol. 3, pp. 115-135.

ePublications@SCU is an electronic repository administered by Southern Cross University Library. Its goal is to capture and preserve the intellectual output of Southern Cross University authors and researchers, and to increase visibility and impact through open access to researchers around the world. For further information please contact epubs@scu.edu.au.

Mad Mothers, Over- Zealous Therapists and the Paedophile Inquiry

Nicole Rogers*

The author examines the appearance of central tenets of the child sexual abuse backlash movement in the 1997 NSW Royal Commission Report on its Paedophile Inquiry. The image of the family unfairly persecuted by the government, the role played by overzealous welfare workers in unjustified investigations, and the connection between "mad mothers" and the manufacture of false allegations are all themes which have been developed by the backlash movement. A close analysis of the Report of the Wood Royal Commission reveals the extent to which backlash ideology was accepted by the Commission. If, as appears to be the case, the Report is representative of the dominant legal discourse in this area, this study should raise questions about the influence of backlash ideology on law and policy. Child sexual abuse, with its predominance of male offenders, is linked to the construction of masculinity in our society. These particular backlash stereotypes divert attention away from this issue and focus instead on the role of women in "creating" the phenomenon of child sexual abuse through their unbalanced, mad, unreasonable and illogical behaviour.

Introduction

It is my argument that child sexual abuse is an area of contested discourses. While the dominant discourse was that of the child as victim of adult predators, recently there has emerged what has been termed "backlash" discourse. In this, the adult perpetrator is depicted as "victim". The offenders in the backlash discourse are interfering government employees and welfare workers, and mad or malicious mothers.

In this article, I argue that child sexual abuse backlash mythology influenced the approach of the New South Wales Royal Commission in its recent Paedophile Inquiry. The Commission incorporated backlash stereotypes into its Report, and deliberately avoided areas which are problematic due to backlash sentiment. This is a troubling indication of the extent to which the themes and stereotypes which distinguish

* Lecturer in Law, Southern Cross University.

Copyright of Full Text rests with the original owner and, except as permitted under the Copyright Act 1968, copying this copyright materialis prohibited without the permission of the owner or agent or by way of a licence from Copyright Agency Limited. For information about such licences, contact the Copyright Agency Limited on (02) 93947600 (ph) or (02) 93947601 (fax)

the child sexual abuse backlash movement have achieved popular acceptance in the dominant legal discourse.

Foremost amongst the backlash stereotypes are those of the mad mother and the (generally female) over-zealous welfare worker. Child sexual abuse, with its predominance of male offenders, should raise questions about the construction of masculinity in our society. These particular backlash stereotypes divert attention away from this issue and focus instead on the role of women in "creating" the phenomenon of child sexual abuse through their unbalanced, mad, unreasonable and illogical behaviour.

The Backlash and its Ideology

There are a number of "norms" or tenets which typify the backlash movement, as, indeed, there exists a set of norms which distinguishes the child protection movement.[1] These norms or tenets are reproduced in the popular media, in academic literature and debate, and in what has been described as "entrepreneurial literature"[2] to varying degrees, depending on the paradigm within which the author is working.

According to Kate Sinclair, the focus of the backlash movement is the abuse of children by the child protection system, and the dynamics by which professionals wrongly intervene and falsely accuse adults.[3] The backlash movement changes the discourse of child protection so that in the site of the "victim" is the falsely accused adult, instead of the abused child. The child protection professional, rather than the alleged offender, is responsible for any harm done to the child.[4] The prevalence of child sexual abuse is described as "a bureaucratic artefact rather than an objective reality".[5]

---

1 Sinclair, K, "Responding To Abuse: A Matter of Perspective" (1995) 7(2) *Current Issues in Criminal Justice* 153, p 159.

2 New South Wales Child Protection Council, *Ritualistic Child Abuse*. A report on the seminar presented by Professor Roland Summit for the New South Wales Child Protection Council, Sydney, 19 September 1994, p 22. An example given by Professor Summit is the journal *Issues in Child Abuse Accusations*.

3 Sinclair, above n 1, p 159.

4 id, pp 171- 172.

5 Harding, R W, "Victimisation, Moral Panics and the Distortion of Criminal Justice Policy: A Review Essay of Ezzat Fattah's Towards a Critical Victimology" (1994) 6(1) *Current Issues in Criminal Justice* 27, p

Investigations into allegations of child sexual abuse are commonly portrayed as witch-hunts.

Backlash imagery is seductive because it does not challenge and confront established social norms; it appeals to a "common sense" approach. By contrast, the child protection movement is endeavouring to establish that the bizarre, the fantastic and the illogical are true.[6] The child protection movement points to the myth of the "happy family" and the reality of high levels of incest and other sexual abuse of children in the "normal" home.

Backlash ideology thrives in a climate in which allegations of child sexual abuse are greeted with disbelief. The so-called protective adult will "leap to denial in order to preserve personal security and faith in a just and fair society."[7]

Three images - the family under threat, the over-zealous therapist hell-bent on uncovering child sexual abuse, and the mad or malicious mother who colludes with the therapist in the manufacturing of false allegations - are central to backlash mythology.

(i) The Family under Threat

This component of backlash mythology, the threatened family, rests on the assumption that any family is vulnerable to intervention from the so-called child sexual abuse industry.[8] Articles and other literature portray the abuse and victimisation of families by the child protection movement. Zealots in the child sexual abuse industry, it is maintained, "argue for and are getting the break-up of families on allegation alone."[9] One poignant piece of backlash literature describes, in a series of anecdotal interviews, the unjust persecution of families by the State. According to this account,

---

34.

6 Sinclair, above n 1, p 170-171.

7 Summit, R C, "The Specific Vulnerability of Children" in Oates, R K (ed), *Understanding and Managing Child Sexual Abuse* Harcourt Brace Javanovich, Sydney (1990), p 67.

8 See Hechler, D, *The Battle and the Backlash. The Child Sexual Abuse War* (1988) DC Heath and Co, (Lexington, Massachusetts), p 63.

9 Goode, M. "The Politics of Child Sexual Abuse and the Role of the Criminal Law" (1989) 13(1) *Criminal Law Journal* 31, p 45.

children are removed from families for indefinite periods on the basis of contradictory, bizarre and inadequate evidence.[10]

The backlash image of the family under threat challenges the assumption of the child protection movement that families *need* to be targeted by the State due to the high incidence of familial sexual abuse, and the extreme vulnerability of children to abuse by family members. However, as Sinclair explains, this backlash image holds a certain fascination for the wider community, in which anti-government sentiments and pro-family sentiments are well-entrenched. Beliefs around the sanctity of the family are "consistent with historically respected social norms"[11] and backlash targets - State-run organisations and their over-zealous employees - are not popular with the public. The backlash image of the family, in particular the father as head of the family, unfairly pursued and destroyed due to State interference has an enduring appeal.

(ii) The over-zealous therapist

A central figure in backlash mythology is the over-zealous therapist. According to backlash mythology, false allegations of child sexual abuse are generated by this figure, who, fuelled by missionary zeal, or, even more deplorably, by mercenary motives,[12] manipulates or coerces children into telling falsehoods. The tools of the over-zealous therapist include leading questions, anatomically correct dolls, persuasion and false promises. A series of interviews with the over-zealous therapist "contaminates" the child's evidence irrevocably. The child is also contaminated; the over-zealous therapist, in implanting often horrific tales of sexual abuse in the child's mind, has "invented a new kind of child abuse".[13] A leading backlash spokesperson has described the effects of one investigation on the alleged victims as "worse than if they had been abused."[14] In a similar vein, a journalist has asked:

---

10 Eberle, P and Eberle, S, *The Politics of Child Abuse*, Lyle Stuart Inc, Secaucus, New Jersey, 1986.

11 Sinclair, above n 1, p 166.

12 See Hechler, above n 8, p 121; according to Hechler, backlash proponents argue that mental health professionals have a financial interest in maintaining the present climate of hysteria.

13 Goode, above n 9, p 46.

14 See interview with Ralph Underwager, in Crisp, L, "When a child's word is the only evidence: Interview with Ralph Underwager, Expert Witness"

"Compared to the abuses of a child-protection movement gone mad, could incest be any worse?"[15]

The backlash movement, in assigning a role of such significance to the therapist, assumes that children are suggestible, and thus susceptible to "memory contamination".[16] According to the backlash movement, the over-zealous therapists and their supporters cling obstinately to the opposing view that children do not lie.[17] Despite much research on this topic, it is unclear to what extent children are suggestible.

The stereotype of the over-zealous therapist appears to hold a particular appeal for those who work within the legal paradigm. The over-zealous therapist is portrayed from a particular legal perspective as a threat to "broad and timeless principles of justice",[18] such as the presumption of innocence and the requirement that guilt be proved beyond reasonable doubt.[19] According to this perspective, the over-zealous therapist is driven by ideology. The bias and preconceptions of these experts,[20] their "partial and predetermined view",[21] are deplored. These so-called zealots are not "value neutral";[22] they must be "neutralised".[23]

Behind these criticisms is the concern that the over-zealous therapist challenges the perceived objectivity, impartiality and neutrality of the legal process. There is no apparent recognition of the inbuilt bias of the legal system; the peculiar blindness of the legal profession to its own entrenched values is manifested here. For more than two decades, feminist legal

---

The Bulletin, 12 December 1989, p 140: and Suzanne Hatty's discussion of this comment in "Of Nightmares and Sexual Monsters: Struggles Around Child Abuse in Australia" (1991) 14(3) *International Journal of Law and Psychiatry* 255, p 264-265.

15 Quoted in Summit, R C, "The Dark Tunnels of McMartin" (1994) 21(4) *The Journal of Psychohistory* 397, p 415.

16 Goode, above n 9, p 37.

17 id, p 35-36.

18 Harding, above n 5, p 35.

19 See Goode, above n 9, p 39, 44; Walsh, G, "Re-establishing balance in the criminal justice system", *Law Society Journal* (1991) 29(6) July 70, p 78.

20 Goode, above n 9, p 45.

21 Walsh, above n 19, p 78.

22 Goode, above n 9, p 41.

23 id, p 47.

scholars and others have provided an "overwhelming and damning indictment of the law's partiality and limited vision."[24] Yet the concept of an impartial and value-free legal process is still found in contemporary legal discourse.

Generally there is a clear tension between the legal and welfare approaches to the problem of child sexual abuse. As one writer has observed, lawyers are frustrated with the apparent disdain of welfare workers for evidentiary requirements and basic principles of criminal justice. On the other hand, welfare workers see lawyers as preoccupied with technicalities at the expense of the child's welfare.[25] Two welfare workers have pointed out that "leading questions may sometimes be necessary in order to enable frightened young children to respond to and talk about particular subjects."[26] It is not uncommon for articles in which lawyers express backlash sentiments to be followed by an indignant response from welfare workers.[27] Given these professional differences, it is hardly surprising that the backlash stereotype of the over-zealous therapist is accepted by many lawyers.

(iii) Mad[28] and malicious mothers

Another key figure in backlash mythology is the hysterical, paranoid mother. This figure colludes with the over-zealous therapist in contaminating evidence, in corrupting young minds, and in contributing to the persecution of the falsely accused. Malicious mothers tend to be held responsible for false allegations of child sexual abuse in the context of

---

24 Graycar, R, "Legal Categories and Women's Work: Explorations for a Cross-Doctrinal Feminist Jurisprudence" (1994) 7(1) *Canadian Journal of Women and Law* 34, p 36.

25 Neville Turner, J, "The Unthinkable Reality. Sexual Abuse of Children", *Law Institute Journal* (1994) 68(5) May 356.

26 Quoted in Hechler, above n 8, p 171.

27 See Wilson, P, "False Complaints by Children of Sexual Abuse" (1986) 11(2) *Legal Service Bulletin* 80, followed by Horsky, M, Powell A and Swinfield, P, "Child Sexual Assault: Responding to the issue of false complaints" (1986) 11(4) *Legal Service Bulletin* 169, and by Wilson, P, "A Response" (1986) 11(4) *Legal Service Bulletin* 171; see also the following sequence: Glezer, R, "False allegations of child sexual abuse", *Law Institute Journal* (1988) 62(3) 164, followed by Macvean, A, Skoufis, B and Galvao, M, "Child Sexual Abuse: The Rejoinder", *Law Institute Journal* (1988) 62(10) 927 and by Glezer, R, "Reply to Rejoinder", *Law Institute Journal* (1988) 62(10) 929.

28 I have adopted Suzanne Hatty's use of the term "mad" mothers in this context. See Hatty, above n 14.

custody or access disputes. Mad mothers are more likely to appear in the context of allegations of child sexual abuse in day care. Backlash spokesperson Ralph Underwager maintains that a "common experience" with day care cases is "the development of an accusation starting with a disturbed and troubled person."[29]

Mad mothers are implicated in the most infamous of the day care cases in the United States, the McMartin pre-school case, and in the most notorious of the investigations in New South Wales, the Seabeach Kindergarten or "Mr Bubbles" case. In the McMartin pre-school case, the first mother to contact the police about her suspicions has been described as schizophrenic and as an alcoholic, claims bolstered by her death in 1986 of an alcoholic-related illness.[30] It is equally plausible that any mental illness and alcoholism were caused by, rather than the cause of, her belief that her son had been sexually abused at pre-school.[31] It is also significant that, as Professor Summit points out, the sort of parent who is most likely to resist the social pressures towards denial and to distrust conventional interpretations of signs of child sexual abuse is the "unsocialized outsider", easily labelled as "mad" or, at best, "eccentric".[32]

Another mad mother appears in a piece of backlash journalism on the "Mr Bubbles" case.[33] According to the journalists, the first mother to contact the police in that case was "psychotic", "with a mental disorder". They referred to a psychiatric report which they described, inaccurately, as dating from before the allegations. The Press Council upheld a complaint against the *Sydney Morning Herald*, noting that the error in date "was central to the idea of doubt and mismanagement of prosecution being developed in the article."[34] Significantly for the mythology of the mad mother, the error also, as Suzanne Hatty points out, reinforced "the

---

29 Crisp, above n 14, p 144.

30 See Lotto, D, "On Witches and Witch Hunts: Ritual and Satanic Cult Abuse" (1994) 21(4) *The Journal of Psychohistory* 373, p 379.

31 See Summit, above n 15, p 398-399.

32 id, p 412.

33 Hills, B and Hole, J, "Mr Bubbles. Where the witch-hunt went wrong" *Sydney Morning Herald*, 13 January 1990, p 57, 60.

34 Quoted in Bowman, D, "Pride wrestles with Truth: The Fourth Estate" *Australian Society*, 9(8) August 1990, p 12.

connection between 'maternal madness' and false allegations of child abuse."[35]

The backlash image of the mad mother surfaces in academic literature. One example is a study of "fictitious" allegations by two psychiatrists. The authors concede that they lacked "an absolutely reliable test" for determining whether allegations were in fact fictitious, and, indeed, some of their conclusions suggest that backlash mythology influenced their so-called "clinical decision as to the validity of the allegation."[36] According to the authors, all of the "fictitious" allegations which were made by a child and an adult occurred in the context of a custody or visitation dispute. All of the adults were mothers and all were "hysterical or paranoid".[37] Furthermore, in all cases, "the mother-child relationship was unusually intense and enmeshed."[38]

It would appear from the same study that if mothers are not mad, then quite possibly they are paranoid. The authors state that a past history of victimisation in an adult "should raise concern in an evaluator's mind."[39] David Finkelhor and his colleagues, in a study on sexual abuse in day care, observed that the discovery that a mother had been sexually observed herself created speculation in those seeking alternative explanations for the allegations as to whether her "hysteria" about abuse may have been behind her child's disclosure.[40] This reasoning inevitably surfaces in backlash journalism. In a recent article on sexual abuse in day care, the journalist insinuates that a mother's "vague but distinctly uncomfortable feelings of having been sexually abused as a child" were somehow implicated in her son's disclosures.[41] Revealingly,

---

35 Hatty, above n 14, p 264.

36 Jones, D and McGraw, J M, "Reliable and Fictitious Accounts of Sexual Abuse to Children" (1987) 2 (1) *Journal of Interpersonal Violence* 27 at 31.

37 id, p 37.

38 id, p 38.

39 id, p 42.

40 Finkelhor, D, Williams, LM with Burns, N, *Nursery Crimes. Sexual Abuse in Day Care* (1988) Sage Publications (Newbury Park), p 81.

41 Leser, D, "A question of trust" *Sydney Morning Herald- Good Weekend*, 11 October 1997 20, p 22.

the journalist describes the mother rather than the child as the accuser.[42]

The malicious mother, who brainwashes her child into making allegations of child sexual abuse about her former partner in an attempt to deny him custody or access, is also part of backlash mythology. This stereotype is so well accepted that frequently assertions about malicious allegations are made without any evidence being supplied other than the anecdotal.[43] Often such assertions are supported only by misleading references to other pieces of backlash literature.[44] According to the backlash movement, the consequence of the "malicious allegations" is that parents are "unreasonably and unfairly deprived of a proper and beneficial relationship with their children."[45]

The mad or malicious mother can be seen as the contemporary version of historical depictions of women who made complaints about sexual abuse. Within the legal system, female rape victims were traditionally considered to be hysterical or fanciful. Juries were in effect warned that the uncorroborated evidence of women and children was not necessarily reliable.[46] Within the welfare paradigm, the figure of the mad or malicious mother also has well-established antecedents. Generally, in the welfare approach, the focus is on the behaviour and attributes of mothers even when they are not abusive. Presumptions of psychiatric instability or mental illness are linked to the possibility of false accusations of child abuse.[47] Despite feminist attacks on the "classic collusive triangle" model of incest in the 1980s,[48] mother blame is still part of the knee-jerk response of a majority of welfare workers in the area of incest.[49]

---

42 id, p 23.

43 See the opening paragraph of Roberts, G, "Child Sexual Abuse and Justice" *The Bulletin*, 6 December 1994 28.

44 See, for example, Glezer, above n 27, p 164.

45 id, p 165.

46 See Scutt, J A, "Confronting Precedent and Prejudices. Child Sexual Abuse in the Courts" in Oates, above n 7, p 319.

47 Hatty, above n 14, p 266.

48 Scott, D, "The Social Construction of Child Sexual Abuse: Debates about Definitions and the Politics of Prevalence" (1995) 2(2) *Psychiatry, Psychology and the Law* 117, p 118.

49 Breckenridge, J, and Berren, R, "Dealing with mother-blame. Workers'

The Royal Commission Report on its Paedophile Inquiry

The first calls for an inquiry to look at the issue of paedophilia in New South Wales were heard after the "debacle" of the "Mr Bubbles" investigation in 1989 "left a number of persons seriously traumatised and questioning of the justice system."[50] The Wood Royal Commission eventually assumed this role. The Commission began hearing evidence in relation to paedophilia on 18 March 1996 and handed down its Report on the Paedophile Inquiry on 26 August 1997.

In its Report, the Commission painstakingly emphasised the extent of child sexual abuse in our society, and the inadequacies in the institutional responses to this problem.[51] The main focus of the Report was on these institutional inadequacies and on the general lack of interagency co-operation. Lengthy chapters were devoted to each government department with responsibilities in the area of child sexual abuse, and to the justice system and relevant legal framework. Most of the recommendations were concerned with institutional and legal change.

The Royal Commission stressed that paedophiles are not instantly recognisable; the paedophile can "present in almost any guise".[52] Some of the more detailed case studies focused on the activities of prominent and successful figures. The Commission pointed out that, in fact, frequently paedophiles have a reputation for community service in relation to the interests of children.[53] The Commission's conscientious attempts to dispel the time-honoured myth that a paedophile is a "dirty old man in a raincoat"[54] can be contrasted with its acceptance of other, more insidious stereotypes developed by the backlash movement.

---

responses to incest and child sexual abuse" in Breckenridge, J, and Carmody, M, *Crimes of Violence. Australian responses to rape and child sexual assault* (1992) Allen and Unwin (Sydney), p 98, 106.

50 Royal Commission into the New South Wales Police Service, *Final Report. Volume IV: The Paedophile Inquiry*, (1997), p 782.

51 id, p 562.

52 id, p 561.

53 Royal Commission into the New South Wales Police Service, *Final Report. Volume V: The Paedophile Inquiry*, 1997, p 1060.

54 Royal Commission into the New South Wales Police Service, above n 50, p 616.

Backlash ideology is reflected in the Report notwithstanding the Commission's attempts at objectivity. The Report opened with an acknowledgment of the strong emotions which the subject of child sexual abuse generates, and then continued: "Care must be taken not to allow this outrage to cloud an objective approach to a very real and a very difficult problem."[55] The Commission's preference for an objective approach was apparent throughout the Report. The main difference between an investigative approach, and a therapeutic approach, according to the Commission, is that the former is objective and the latter subjective.[56] The proper approach to investigations of satanic ritual abuse is to proceed with an "open mind", to exercise "professional detachment", and to remain "vigilant as to possible alternative explanations".[57] Therapists should remain "neutral".[58]

Within the legal paradigm, there is a myth of neutrality which conceals the subjective nature of legal decision-making.[59] In maintaining a so-called "objective" position, the Commission failed to acknowledge the underlying values and beliefs which influenced its conclusions. These conclusions, some justified only by appeals to "common sense"[60] or to what is "sensible",[61] cannot be described as truly objective or neutral. In particular, the influence of backlash ideology can be found in parts of the Report.

(i) The Family under Threat

Child sexual abuse within the family does not receive much attention in the Royal Commission's Report. Of the many case studies which appear in the Report, only three deal with familial sexual abuse.[62] The Royal Commission consistently

---

55 id, p 561.
56 id, p 659.
57 id, p 683.
58 id, p 687.
59 See Sexton, M and Maher, L W, *The Legal Mystique: The Role of Lawyers in Australian Society* (1982), p 2-4, and Davies, M, *Asking the Law Question*, The Law Book Company Limited, North Ryde, 1994.
60 See, for example, Royal Commission into the New South Wales Police Service, above n 50, p 671.
61 See, for example, id, p 683, 688.
62 id, p 879-881, 881-882 and 882-883.

maintained, both during the hearings and in the Report, that its focus would be on extrafamilial abuse.[63] The decision to concentrate on extrafamilial abuse was presented in the Report as a "consequence" of the discovery that "the incidence of extrafamilial sexual abuse had been seriously underestimated, and was not as well understood or policed as familial sexual abuse."[64] According to the Report, "it became apparent that it would need to explore this area in some depth";[65] the use of such terminology presents the decision to focus on extrafamilial abuse as objective, almost inevitable, dictated by external circumstances rather than by discretionary factors.

Statistical evidence alone does not explain why the Commission directed its attention to extrafamilial sexual abuse. The statistics which, according to the Report, "challenged popular beliefs about the incidence of abuse",[66] revealed that reports of extrafamilial sexual abuse were slightly more common than reports of familial sexual abuse, but there was no significant disparity between the figures. Given that the statistics were based on reported cases, and that the Commission itself recognised that "reporting of child sexual abuse falls far short of the true incidence of such abuse",[67] these statistics did not necessarily present an accurate picture of the prevalence of either type of abuse. In the Commission's words, "statistics of convictions and reported abuse need to be treated with caution."[68] Where, then, is the evidence to support the Commission's assertion that the incidence of extrafamilial sexual abuse had been seriously underestimated?

Nor did the Commission elaborate on the other factor which supposedly explains the focus on extrafamilial abuse, namely, that extrafamilial abuse is "not as well understood or policed" as familial sexual abuse. The reader might well wonder whether the area of familial sexual abuse is comparatively "well understood and policed", and, if so, whether this justified the Commission's decision not to focus on the area.

---

63 id, p 581-583.
64 id, p 581.
65 ibid.
66 id, p 617.
67 id, p 608.
68 id, p 616.

There is no doubt that investigating institutional and systemic inadequacies in the context of extrafamilial sexual abuse was a less daunting task than attempting to do so in the context of familial sexual abuse. The Commission's description of institutional incompetence and mishandling of investigations in the area of extrafamilial abuse did not evoke or confront the disturbing backlash image of the family threatened by the State. That image remains intact. In avoiding the subject of familial sexual abuse, it is possible that the Royal Commission was observing the "incest taboo", the effectiveness of which is "witnessed in the capacity to inhibit the public discussion and acknowledgment of the nature and extent of the problem."[69] The Commission was also, by implication, acknowledging the powerful hold on the popular psyche of a central backlash tenet.

Backlash mythology has caused the problematic area of familial sexual abuse to become even more problematic. According to backlash mythology, the family is threatened by State interference. Children and fathers are removed from families without justification. The Commission did nothing to dispel these images from the public consciousness. In fact, the Report reinforced the backlash message that the family is, or should be, sacrosanct. While the Report focused on institutional change, the family, that most fundamental of social institutions, was not scrutinised. The Commission did not discuss social attitudes on the role of the family, and on gendered relationships within the family. In particular, the Commission did not explore the connection between the social construction of gender, power and family and child sexual abuse.

The Commission's decision not to look at these pertinent but difficult issues was again a subjective decision. Even though the terms of reference for the Commission refer specifically to the role of institutions in dealing with child sexual abuse, issues to do with the prevalence of child sexual abuse were still directly relevant to the Commission's inquiry. The Commission itself acknowledged that the terms of reference extended, generally, to the protection of children from unlawful sexual abuse.[70] Furthermore, the Commission's

---

69 The "incest taboo" is discussed in Breckenridge and Berren, above n 49, p 97.

70 Royal Commission into the New South Wales Police Service, above n 50,

power to go outside the terms of reference was conceded in its discussion on child sexual abuse in the Churches, an area which was not encompassed within the terms of reference. The Commission justified its decision to investigate this "area of paedophile activity" on the grounds that unless it did so, "a substantial part of the problem involving the sexual abuse of children would be left unexamined, and a potential for ongoing abuse and harm, of a significant kind, would remain unchecked."[71]

The Royal Commission observed that one of the more disturbing aspects of incest is the belief on the part of fathers that they have a right to sexually abuse their own children,[72] but did not, in its recommendations, recognise the urgent need for a reassessment of power and gender relationships within the family and within society. The need for such a reassessment is emphasised by the New South Wales Child Protection Council in one of its fact sheets, in which it is asked "what it is about society or the way men are reared in our society, that makes child sexual assault largely a male crime".[73] In the fact sheet is set out a range of publications for future reading, all of which "look at various aspects of the upbringing of men and boys, and the influence this upbringing has on their sexuality, behaviour and attributes."[74] The Royal Commission endorsed existing educative and preventative strategies, including such fact sheets, and emphasised the need to continue current educative initiatives.[75] Yet there was no overt recognition by the Commission of the changes to fundamental social concepts and relationships which are required before the problem of child sexual abuse can be tackled effectively.

In failing to confront familial sexual abuse, in concentrating on institutional inadequacies rather than on the need for

---

p 571.

71 Royal Commission into the New South Wales Police Service, above n 53, p 991.

72 Royal Commission into the New South Wales Police Service, above n 50, p 628.

73 New South Wales Child Protection Council, "Child Sexual Assault: No Excuses, Never, Ever", Fact Sheet 7.

74 ibid.

75 Royal Commission into the New South Wales Police Service, above n 53, pp 1214-1218.

social reform, the Commission accepted and perpetuated the backlash image of the family.

(ii) The over-zealous therapist

The over-zealous therapist, that central backlash figure, appear frequently in the Royal Commission Report. The over-zealous therapist's perceived bias and failure to preserve a neutral stance, his/her role in "contaminating" the evidence of the suggestible child, and, in particular, his/her involvement in the phenomenon of recovered memories and in the emergence of allegations of satanic ritual abuse (SRA) were highlighted and criticised by the Royal Commission. In constant references to the over-zealous therapist, the Royal Commission again adopted and perpetuated backlash mythology.

It is clear that the Royal Commission addressed child sexual abuse from a legal rather than a welfare perspective. This is, for instance, apparent in the assumption that a neutral investigative approach is possible and optimal; in failing to adopt such an approach, the over-zealous therapist impedes the legal process in its pursuit of the truth. According to the Commission, a major obstacle to the investigation process is the contamination of evidence by welfare workers through "leading questions", "dubious techniques designed to assist memory recall", and the imparting of "their own beliefs, preconceptions and prejudices to the child."[76] The use of inappropriate interviewing procedures by the Department of Community Services constituted one of its "historical failures",[77] leading, for example, in one representative case study to a situation where "the true facts cannot now be determined".[78] The implication is that, without the intervention of the over-zealous therapist, the truth is attainable.

The pursuit of the "truth", of uncontaminated evidence, was seen by the Royal Commission as the primary objective of any interview with a child; the welfare of the child was secondary. Again, this is characteristic of the legal approach to the

---

76 Royal Commission into the New South Wales Police Service, above n 50, p 611.

77 id, p 868.

78 id, p 881.

problem of child sexual abuse. In looking at the role of health workers, the Commission was at pains to emphasise the "particular dangers of the contamination of evidence" in the exercise of their therapeutic role. That role was less important than the legal investigation, in the Commission's view. The victim should be supported with therapeutic assistance, but this must be supplied "in a way which is consistent with maintaining the integrity of the investigations, and subsequent prosecution."[79]

It is in the context of recovered memories, and particularly in the "murky area"[80] of SRA, that the Commission drew most heavily on the stereotype of the over-zealous therapist. It is clear that the Commission adopted a sceptical stance on both recovered memories and SRA, despite the acknowledgment that "everything is possible, and minds must be kept open."[81] According to the Commission, the irrational and bizarre allegations which surface in the context of SRA (and frequently in the context of recovered memories) were, quite simply, not credible. The Commission constantly emphasises the need for objectivity, but its "common sense perspective" did not necessarily reflect a true objectivity. According to the Commission, from this perspective, "while it must be recognised that apparently respectable and successful members of the community do commit child sexual abuse, a quantum leap in credibility is required to suppose that they would do so in the bizarre, ritualistic way described, which includes the infliction of serious, even fatal injury and mutilation upon their own children."[82] It was less confronting, and less controversial, to adopt another explanation, that over-zealous therapists are largely responsible for recovered memories, and for allegations of SRA, and it is this explanation which the Commission undoubtedly preferred.

In the context of recovered memories, the Commission discussed the "likelihood of suggestion being introduced into the patient's recollection" by the therapist,[83] and suggested

---

79 Royal Commission into the New South Wales Police Service, above n 53, p 1157.

80 Spencer, J R and Flin, R, *The Evidence of Children: The Law and the Psychology* (2nd ed), Blackstone Press, London, 1993, p 313.

81 Royal Commission into the New South Wales Police Service, above n 50, p 685.

82 id, p 671.

83 id, p 655.

that "therapist/patient transference" and "iatrogenic (that is, medically induced) disorder" were alternative explanations for recovered memories.[84] The over-zealous therapist was also held responsible for allegations of SRA. According to the Royal Commission, some therapists were "driven by an almost religious fervour to stamp out child sexual abuse, or by a paranoia about SRA which lead them to a hypervigilant detection of past abuse in almost every person they treat."[85] In asserting that "the damage will have been done once the seeds of the idea have been implanted in the child's mind",[86] the Commission drew on imagery with sexual connotations and argued that these therapists are themselves guilty of a form of abuse. Not only are such therapists contaminating evidence and corrupting the child, but, in addition, by "over-zealously (proclaiming) the existence of SRA", it was possible that they were creating "a self-fulfilling prophecy".[87]

In the Commission's discussion of SRA, an investigation into allegations of SRA at a Sunday school was considered, and the role of a psychiatrist, Dr Anne Schlebaum, was criticised. In the Commission's account, Dr Schlebaum personified the over-zealous therapist. By contrast with other references in the Report to "experts" in the field of child sexual abuse,[88] Dr Schlebaum's expertise, "the extensive knowledge she claimed to possess of the subject",[89] was not assumed and accepted by the Commission. It was apparent that the Commission found some of her beliefs irrational, including her view that there are at least 50, 000 paedophiles in Sydney (2.5% - 4% of the male population) and her assertion that there had been a number of incidents of SRA in New South Wales, including two involving child sacrifice.[90] Excerpts from Dr Schlebaum's taped interviews with the children who made the allegations were set out in the Report,[91] and their inadequacies as investigative interviews highlighted. In particular, her use of persuasion and of leading questions, and the fact that she interviewed the children together and in the presence of their mother were

84 id, p 656.
85 id, p 673.
86 id, p 684.
87 id, p 686.
88 See, for example, id, p 622.
89 id, p 680.
90 ibid.
91 id, p 680-682.

considered by the Commission to be inappropriate.[92] It is obvious that Dr Schlebaum's belief that the allegations were true[93] was not shared by the Commission, which commented that the Office of the Director of Public Prosecutions' decision not to proceed with the prosecution was a sensible one, and stated that "there were other very real explanations for the children's disclosures."[94]

The over-zealous therapist, whether well-intentioned or not, is portrayed by the backlash movement as an obstacle to the proper progress of an investigation, as a fertile source of false allegations, and as a figure whose bias and lack of neutrality reduces his/her credibility. The Royal Commission was not immune to the power of this pervasive image. In holding the over-zealous therapist largely responsible for the most irrational, bizarre, problematic and confusing aspects of child sexual abuse, the Royal Commission reproduced this powerful backlash image.

(iii) Mad and malicious mothers

By contrast with the frequent appearances of the over-zealous therapist, the backlash image of the mad or malicious mother was not frequently invoked by the Royal Commission. The mad mother is most clearly seen in the Commission's discussion of the Task Force Disk investigation into allegations of SRA.[95] The evidence which was set out by the Commission suggested an unnatural preoccupation with satanic beliefs on the part of both parents. Furthermore, the parents' behaviour could easily be described as hysterical and paranoid.

In particular, the mother's behaviour evoked the backlash image of the mad mother. There was evidence that she had a fairly large collection of pornography.[96] She supposedly took her nephew to hospital, without his parents' knowledge or permission, to be examined for sexual abuse.[97] She made a "somewhat hysterical phone call" to another parent.[98] Most damning of all, both parents had "a history of difficulties in

92 id, p 680, 683.
93 id, p 680.
94 id, p 683.
95 id, p 675-684.
96 id, p 678.
97 id, p 679.
98 ibid.

coping with the children, had been under supervision and in receipt of assistance from FACS, and were users of drugs."[99] Parents of this calibre have little credibility in the legal system, especially when their claims are seemingly bizarre or irrational.

In its commentary on the investigation, the Royal Commission condoned the decision not to prosecute. The combination of mad mother and over-zealous therapist were enough to suggest hopeless contamination of evidence, and "other very real explanations" for the children's disclosures.[100] However the presence of factors which evoke these backlash figures does not necessarily indicate that the allegations were false. The Commission reached the intriguing conclusion that the investigation "was not a . . . waste of time and resources as it did incidentally unearth and lead to charges of unlawful sexual abuse by three persons who were unconnected with the central investigation."[101] One is left wondering about the circumstances in which these supposedly "unconnected" incidents of SRA were discovered, and whether, in fact, the original allegations were completely lacking in substance.

Mad mothers do not reappear in the Report although some of the mothers in the Seabeach Kindergarten case could be described as meddling and officious. Their role in contaminating the evidence of their children though leading questions and ill-advised networking was outlined by the Commission.[102] The dearth of mad, and of indeed malicious mothers might well suggest that this particular backlash imagery had little impact on the Royal Commission's inquiry. It is, however, probable that cases which involved mothers who met the description of mad or malicious were screened out by the Royal Commission at an early stage.

The Royal Commission stated that it was "sometimes clear from the outset, or after preliminary inquiry" that some allegations were the "result of an unbalanced mind or subclinical obsession" or "representative of a belief genuinely but quite mistakenly entertained." In those cases, "no further

---

99 ibid.
100 id, p 683.
101 id, p 684.
102 id, p 759, 760, 761, 762, 766, 767.

action was taken."[103] The figure of the mad mother might also be behind the Commission's acknowledgment that "malicious or untrue disclosures" can arise "in circumstances involving mental illness, morbid preoccupation with cults, or disordered thought processes affecting either a parent or child."[104] Furthermore, in elaborating on circumstances in which false allegations of SRA could arise, the Royal Commission stated that if children were subjected to "molestation, *psychological abuse*, or physical abuse at home" (my emphasis), their interest in sexual matters "may be fanned and distorted into bizarre dimensions."[105] Thus mad mothers, as abusive parents, are further implicated in the creation of false allegations.

These statements suggest that, to some degree, the Commission was influenced by the backlash image of the mad mother. It is interesting to speculate on the extent to which the apparent presence of a mad mother might have influenced the Commission's decision not to proceed with an investigation. Indeed, it is interesting to speculate generally on the influence of backlash mythology on decisions not to proceed with legal investigations into allegations of child sexual abuse.

Conclusion

Backlash mythology creates scapegoats - the interfering government employee, the over-zealous therapist, the mad mother - and blames them for the large number of allegations of child sexual abuse. Significantly, these figures are predominantly female, or, in the case of the government employee and welfare worker, often feminised. The use of scapegoats allows backlash proponents to ignore some of the more significant causal factors for child sexual abuse. These include socially-entrenched assumptions about gender, power, children and family.

If, as Kate Sinclair argues, it is in fact necessary to develop a "replacement discourse about abuse",[106] it must be recognised that the Royal Commission did little to achieve this. Despite its acknowledgment that "abuse continues to occur because

---

103 id, p 583.
104 id, p 610.
105 id, p 674.
106 Sinclair, above n 1, p 175.

the response has been one of denial and minimisation and concentration on stereotype",[107] the Commission can itself be criticised for its acceptance and incorporation of backlash tenets and stereotypes, and its focus on institutional reforms instead of on social change.

The wider implications of this conclusion are even more disturbing. The Royal Commission's Report arguably reflects the prevailing assumptions about child sexual abuse in the dominant legal discourse. It reinforces the power of that discourse to determine the "truth" through its legitimating techniques of objectivity and neutrality. The extent to which backlash themes, and, in particular, backlash stereotypes of interfering, over-zealous and/or hysterical and paranoid women, are appearing in government reports, inquiries, legal decisions and legal commentary on child sexual abuse deserves further research.

107 Royal Commission into the New South Wales Police Service, above n 50, p 634.