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# CONFIDENTIALITY OBLIGATION OF CLERGY FROM THE PERSPECTIVE OF ROMAN CATHOLIC PRIESTS

*Anthony Cardinal Bevilacqua\**

## I. INTRODUCTION

I am responding to the hypothetical from the perspective of the ethical obligations of the priest. First, however, it is necessary to clarify the dimensions of the hypothetical. We are told that Jones, although attending services regularly with his family as a child and teenager, "hadn't attended religious services in a long time, either in prison or out." While we presume for purposes of the hypothetical that Jones entered a Catholic church, we are not told whether he himself was a Catholic; significant, since only baptized Catholics can participate in the Sacrament of Penance of which sacramental confession is a necessary part.<sup>1</sup> For our discussion, it will be assumed that in fact Jones was a baptized Roman Catholic.

The hypothetical states that upon seeing the priest, Jones "started to weep and told the entire story of his involvement in the bank robbery and killing, as well as his meeting with the public defender, Hopewell." However it is not clearly stated whether Jones actually went to confess to the priest.<sup>2</sup> For our discussion, it will be assumed

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\* Archbishop of Philadelphia.

1. The doctrine of the Roman Catholic Church provides that Penance or Reconciliation is one of the seven sacraments instituted by Jesus Christ.

2. A sacramental confession is defined as a true and sincere confession made to a priest for the purpose of obtaining sacramental absolution or forgiveness. Not every communication made to a priest is protected by the seal of confession. Merely asking advice or counsel of a priest without the intention of receiving absolution would not constitute a sacramental confession. However, even here there can be a duty of confidentiality for the priest, although not, strictly speaking, the obligation which arises from the sacramental seal of confession. It is also important to keep in mind that the question of when a sacramental confession begins and ends is not always a simple or clear-cut matter and while advice sought from a priest apart from sacramental confession would not be covered by the sacramental seal, advice sought during confession would be. Likewise, confessional matter may not always be limited to communications made within the "confessional booth."

that in fact Jones did go to confess to the priest. In that case, even if the priest deferred or refused absolution contingent upon Jones's notification of the authorities that in fact, he was the perpetrator of the crime, the confession would still be considered sacramental, thereby binding the priest to observe the strict silence of the sacramental seal of confession.<sup>3</sup>

Finally, for the purpose of a fuller discussion, it will be assumed that not only did Jones make a sacramental confession but that he also subsequently decided to ask the priest to speak with the authorities. Further assumed is that Jones then advised the priest that he was releasing him from the seal of confession in order that the priest might freely speak to the authorities about the confessional matter.

## II. THE SACRAMENTAL SEAL OF CONFESSION

In light of the clarified and expanded hypothetical, it is worthwhile to look at how the Roman Catholic Church defines the sacramental seal of confession. There are many sources for the Church's teaching on the seal, with deep historical roots<sup>4</sup> in the theology, canon law, pastoral practice, and tradition of the Church.<sup>5</sup>

Canon 983, section 1, of the 1983 *Code of Canon Law*,<sup>6</sup> the body of church law under which the Roman Catholic Church presently operates, provides: "The sacramental seal is inviolable; therefore, it is a crime for a confessor in any way to betray a penitent by word or

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3. A priest confessor cannot repudiate the obligation of the seal by stating that he is unwilling to act sacramentally, provided that the penitent actually confesses with a view to obtaining absolution. Similarly, if a confession were interrupted before absolution were conferred, or if absolution were denied or postponed, the priest would still be bound by the obligation of the seal. See 3 HENRY DAVIS, *MORAL AND PASTORAL THEOLOGY* 317-18 (8th ed. 1959).

4. In 1215 A.D. the Fourth Lateran Council defined the secrecy of confession as the universal law of the Church. Prior to this, local churches had already been following this practice for centuries and the Lateran Council only codified what had been the Church's longstanding teaching and practice.

5. In fact the Church makes the claim that her teaching on the seal of confession is based not only on church law, or even upon natural law alone, but upon divine law. Incident to her teaching that the Sacrament of Penance was divinely instituted by Christ, the Church views the seal of confession as an indispensable condition for the reception of this sacrament.

6. 1983 CODE c.983, § 1, *reprinted in* CODE OF CANON LAW, at 361 (Canon Law Society of America trans., 1983).

in any other manner or for any reason."<sup>7</sup> Perhaps a simpler way of stating the obligation is to say that the seal of confession obligates the priest to keep secret whatever has been revealed in sacramental confession.<sup>8</sup>

More precisely,

[T]he seal of confession or the sacramental seal in the strictest meaning of the term, obligates the priest to both maintain silence concerning everything disclosed by a penitent in confession with a view to absolution, and to refrain from all extra-sacramental use of such matter without the permission of the penitent, when this disclosure or use would betray the penitent, or at least arouse suspicion in others with respect to the confessional matter of that penitent.<sup>9</sup>

Treating the nature of the sacramental seal itself, the *Dictionnaire De Droit Canonique* more colorfully states:

The secret of the confession is justly called the *sigillum sacramentale* since the lips of the priest are sealed in an inviolable manner . . . . The secret is imposed by virtue of religion because of respect for the sacrament itself, and because indiscretions would render it odious, and by virtue of justice. That which the priest learns in the confessional, he knows uniquely as the representative of God, and not at all through human knowledge or communication; he should completely detach himself from (such knowledge); it is as if he knows nothing. It is necessary that the faithful have the

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7. *Id.* Similarly, Canon 984 provides: "Even if every danger of revelation is excluded, a confessor is absolutely forbidden to use knowledge acquired from confession when it might harm the penitent." 1983 CODE c.984, § 1, *reprinted in* CODE OF CANON LAW, *supra* note 6, at 363. Further, Canon 1388 provides that a priest directly violating the seal of confession incurs an automatic penalty of excommunication—the most severe penalty in church law—which can only be lifted by the Apostolic See, the highest authority of the Church. 1983 CODE c.1388, *reprinted in* CODE OF CANON LAW, *supra* note 6, at 499.

8. 5 ST. THOMAS AQUINAS, SUMMA THEOLOGIAE, Supp., Q. 11, art. 3 (Billuart P. Faucher ed., 1948); *see also* BERTRAND KURTSCHIED, A HISTORY OF THE SEAL OF CONFESSION 1 (F.A. Marks trans., 1927) (noting the obligation to keep secret that which is revealed in confession is well understood).

9. DAVIS, *supra* note 3, at 316; *see also* 1983 CODE c.984, § 1, *reprinted in* CODE OF CANON LAW, *supra* note 6, at 363 (stating that even in cases in which there is no danger of revelation, a confessor is forbidden to use knowledge acquired from confession when it might harm the penitent).

most absolute confidence in the perfect discretion of confessors. Also the secret is more rigid than any other and never permits the least exception.<sup>10</sup>

In addition to the above definitions, some canonists have further distinguished the nature of the sacramental seal by teaching that it can be more exactly defined in both a strict and a wide sense. In the strict sense, as we have already seen, any revelation by the priest that could expose the identity of the penitent, or at least expose the penitent to the suspicion of others, is forbidden. In the wide sense, any revelation is forbidden that could render sacramental confession itself burdensome or odious either to an individual penitent or to penitents in general.<sup>11</sup> This distinction is crucial for understanding the Church's teaching because it highlights the twofold purpose of the sacramental seal of confession.

An obvious purpose of the sacramental seal is the good of the penitent, an implicit contract of silence between confessor and penitent not to expose the reputation of the penitent to detraction through the revelation of occult sins based upon the virtue of justice. The other, more fundamental, purpose of the sacramental seal is the protection of the Sacrament of Penance itself. While the seriousness of the obligation of protecting the privacy of the penitent cannot be diminished or underestimated, the obligation of religion, or the reverence due to the Sacrament of Penance, is by far a graver obligation, notwithstanding the seriousness of the obligation of justice towards the penitent. This is so because of the overriding value of protecting the ability of individuals to freely confess occult sins to a priest. Were the Sacrament rendered difficult or odious to the faithful they would be deterred from approaching it, thereby undermining the Sacrament itself to the great spiritual harm of the faithful, as well as to the entire Church. For this reason, the Church

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10. Emile Jombart, *Le Secret*, in 4 *DICTIONAIRE DE DROIT CANONIQUE* 41 (Raoul Naz ed., 1957). Consider also the treatment of the sacramental seal in the Catechism of the Catholic Church, number 1467:

Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives. This secret, which admits of no exceptions, is called the "sacramental seal," because what the penitent has made known to the priest remains "sealed by the sacrament."

CATECHISM OF THE CATHOLIC CHURCH No. 1467, at 368 (1994) [hereinafter CATECHISM].

11. 2 FELIX M. CAPPELLO, *DE SACRAMENTIS* 566 (7th ed. 1962).

has always scrupulously protected confessional communications, treating them as the confidential relations of individuals with God, mediated through the priest in the Sacrament of Penance.

It could be argued that since the penitent can grant permission to a confessor to speak or reveal confessional matter, this would satisfy the good of the penitent or the requirement of justice. However, such an argument ignores the dual purpose of the sacramental seal and the priority of the good of the sacrament even over the good of the penitent. In fact, the good of religion prevails over the good of justice, and even in a case where the good of the penitent has been protected, it may still be necessary to preserve the seal for the good of the sacrament.<sup>12</sup> Finally, the obligation of the sacramental seal is considered to be so great that it perdures even after the death of the penitent, continuing to protect matter falling under the seal from revelation. The rationale given for this is the danger that if one exception were admitted to the secrecy of the confessional, the spiritual good would suffer grave harm because the faithful would fear to reveal their sins and would withdraw from the Sacrament of Penance. Once again it is clear that the spiritual good of the Christian community supersedes any exception, since, if it were possible to reveal matter after the death of a penitent, confession would become odious and the virtue of religion, the primary purpose for the obligation of the seal, would be violated.<sup>13</sup>

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12. Particularly from the perspective of the virtue of religion, the obligation of preserving the sacramental seal is considered so great that not even to procure a private good, or to avert harm, is it permitted to use sacramental knowledge when the danger of such revelation, or use of such knowledge, would injure the sacrament or harm the penitent. In fact, it is not uncommon for canonists and theologians to assert that not even to save the confessor's own life, or to save the state, or even to remedy the gravest spiritual necessity, is even the slightest disclosure of the secrets of the confessional permitted. See CASPAR E. SCHIELER, *THEORY AND PRACTICE OF THE CONFESSIONAL* 468 (1905). The pertinent Code of Canon Law reads:

The following are considered incapable [of testifying]: priests as regards everything which has become known to them by reason of sacramental confession, even if the penitent requests their manifestation [sic]; moreover, whatever has been heard by anyone or in any way on the occasion of confession cannot be accepted as even an indication of the truth.

1983 CODE c.1550, § 2, n.2, *reprinted in* CODE OF CANON LAW, *supra* note 6, at 557 (regarding the inability of a priest to be a witness in an ecclesiastical trial with respect to confessional matter, *even if the penitent gives him permission to do so*).

13. See CAPPELLO, *supra* note 11, at 568.

### III. THE PRIEST'S ETHICAL OBLIGATIONS

With this background in mind, it is now possible to address the question of the ethical obligations of the priest in the clarified and expanded hypothetical.

Presuming Jones made a sacramental confession, the priest really has no alternative under Church doctrine and law but to maintain complete silence about the confessional matter. Of course the priest could, and should, encourage Jones himself to make the true facts known to the authorities in order to prevent an innocent person from dying for the crime Jones committed. In fact, it is a virtual certainty that the priest should make Jones's absolution conditioned on his willingness to reveal the truth to the authorities since a penitent is required to evidence both contrition and a willingness to make reparation if possible for the sins the penitent has committed.<sup>14</sup> However, as previously noted, even if Jones were ultimately refused absolution for failure to fulfill the conditions of absolution, the priest would still not be free to reveal the confession.

More intriguing would be the situation in which Jones wishes to release the priest from confessional secrecy. Certainly in this case, there would be no betrayal of the penitent since the priest would be speaking with the permission of the penitent. However, the protection of the Sacrament of Penance, or the virtue of religion, must also be considered, keeping in mind that this is the primary purpose of the sacramental seal, with the protection of the privacy of the penitent, albeit extremely important, secondary to this fundamental purpose.

It is difficult, if not impossible, to envision circumstances in which the priest in the hypothetical could reveal confessional matter with respect to Jones without undermining the Sacrament of Penance and the faithful's ability to continue to approach that sacrament with absolute confidence of total confidentiality. One perhaps could posit situations where the number of people to whom the revelations were made were minimal, and under circumstances calculated to insure that few, if any, would learn that the information came from a confessional source. However, in reality, it is impossible in human affairs to guarantee that such safeguards, even if followed, would be successful.

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14. The Sacrament of Penance is an integral whole, consisting of three actions by the penitent and the priest's absolution. The penitent's acts are repentance, confession or disclosure of sins to the priest, and the intention to make reparation and do works of reparation. See *CATECHISM*, *supra* note 10, No. 1491, at 374.

Likewise, publicizing the fact that Jones had given the priest permission to speak would not in and of itself solve the problem. What of the individuals who, for whatever reason, do not hear the explanation that Jones has given permission to the priest to speak? What of those who do hear the explanation but begin to question if there may be other situations that might permit the priest to break confessional secrecy? And if there are, what are they, and where does even the Church herself draw the line about when the priest can and cannot reveal confessional matter? What if Jones regrets, or has second thoughts about having released the priest from confidentiality and retracts his permission?<sup>15</sup>

The inevitable uncertainties raised by these questions could only result in creating uncertainties in the minds of penitents, thereby undermining the sacrament itself and its unrestricted availability to penitents. Therefore, an argument that there might be some circumstances, however rare, in which a priest released from secrecy by a penitent could make a prudent decision to reveal confessional matter to others is speculative at best, and in my opinion, both misguided and unrealistic, however well intended.<sup>16</sup>

Certainly the fact situation of the hypothetical is a compelling one, but are there not many other equally, or even more compelling cases that could be envisioned, also leading to pressure for the priest to reveal confessional matter with the consent of the penitent? It becomes obvious that it is neither possible to guarantee that the faithful in general can be protected from misperceptions and misunderstandings concerning possible exceptions to confessional secrecy, nor could it be guaranteed that compelling situations arguing for exceptions could be limited to just a few. Even the possibility that

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15. From the Church's point of view, the penitent would always be able to revoke this permission. See 3 E.F. REGATILLO & M. ZALBA, *THEOLOGIAE MORALIS SUMMA* 365-66 (1954); see also CAPPELLO, *supra* note 11, at 603 (Even if a penitent freed a priest from the obligation of sacramental secrecy, the priest is never bound to use this faculty and the Church argues that no human authority is able to force the priest to make use of it.).

16. Consider recent remarks of Pope John Paul II contained in an address on the seal of confession given to the Apostolic Penitentiary, the department of the Holy See charged with regulating and protecting the inviolability of the Sacrament of Penance: "When our Lord Jesus Christ established that the believer was to confess his sins to the Church's minister, He thereby enjoined the absolute secrecy of the content of the confession with respect to any other human being, to any other earthly authority, in any situation." *Seal of Confession Must be Kept: Address of Pope John Paul II to the Apostolic Penitentiary, Confessors, and Priests and Seminarians* (Mar. 12, 1994), in *POPE SPEAKS*, Jan./Feb. 1995, at 13, 14 (1995) [hereinafter *Seal of Confession*].



there could be questions, confusion or doubts in the minds of those approaching the Sacrament of Penance is enough to undermine the sacrament itself, as well as free access to it, by individuals who in many cases, would not reveal certain information to anyone, but for the absolute guarantee that confidentiality is total and without exception.

A unique aspect of the protection of the confessional secret is the possibility of entanglement in thorny constitutional questions from the perspective of American civil law. While all fifty states have some form of clergy privilege statutes protecting confidential communications made to clergy in the course of their ministerial duties, these statutes vary widely in scope and nature.<sup>17</sup> Generally, they protect the minister from forced disclosure of confidential communications without the consent of the penitent.<sup>18</sup> A key point, however, is who actually possesses the privilege under the various statutes—the priest, the penitent, or both? Jurisdictions are divided on this point with some states placing the privilege primarily in the hands of the penitent alone, while other state statutes provide that clergy cannot be compelled to testify against their will.<sup>19</sup> In jurisdictions in which only the penitent is given the privilege, clergy have no right to claim the privilege on their own behalf if the penitent decides to waive the privilege. This is problematic since a Catholic priest would be bound by the doctrine and law of his church to preserve confessional secrecy despite the civil law of a particular jurisdiction which could be invoked to argue that he in fact has no such right under the civil law. Who prevails?

In wading into these waters, would not the courts enter into questions that would enmesh them in the theology, doctrine, law and religious practice of a particular religion—namely, the Roman Catholic Church? It is hard to envision a civil court wanting to entangle itself in these matters, and disturbing to contemplate that any would attempt to do so.

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17. JOHN C. BUSH & WILLIAM HAROLD TIEMANN, *THE RIGHT TO SILENCE: PRIVILEGED CLERGY COMMUNICATION AND THE LAW* 223 (1989); Donna Krier Ioppolo, *Statutes and Court Decisions of the Fifty States*, in *CONFIDENTIALITY IN THE UNITED STATES: A LEGAL AND CANONICAL STUDY* 49, 73-74 (1988); Michael Clay Smith, *The Pastor on the Witness Stand: Toward a Religious Privilege in the Courts*, 29 *CATH. LAW.* 1, 19-21 (1984).

18. See Donna Krier Ioppolo, *Civil Law and Confidentiality*, in *CONFIDENTIALITY IN THE UNITED STATES: A LEGAL AND CANONICAL STUDY* 30, 31 (1988).

19. *Id.*

Even more fundamental questions arise with respect to the First Amendment constitutional protection of the freedom to practice religion. There are many, this author included, who believe that requiring a priest to testify regarding confessional matter would be an unconstitutional restriction on the freedom to practice religion. With respect to the ability of American Roman Catholic citizens to freely practice their faith, attempts to compel clergy to violate confessional secrecy would pose devastating effects on freedom of religious practice. Such attempts would strike at the core of Roman Catholic religious teaching, law, and practice regarding the Sacrament of Penance and the absolute inviolability of the sacramental seal of confession. Placing a priest in a situation in which he must decide between obeying the teaching, law, and practice of his church or the possible testifying requirements of the civil law places both priests and laity in an untenable position, *vis à vis*, freedom to believe and practice their faith. In reality, a priest would have no viable choice but to refuse to disclose confessional matter rather than violate the centuries old teaching, law and practice of the Roman Catholic Church, as well as his own conscience. The specter of clergy being subjected to civil and/or criminal penalties, including possible imprisonment, for refusing to violate religious confidence, is an idea foreign and repulsive to individuals in a society professing to protect the freedom to practice religion.

From the perspective of Roman Catholic laity, any movement towards compelling a priest to reveal confessional secrets in some instances, also poses a threat to the freedom of religious practice. The confidence with which communicants freely approach their ministers with confidential spiritual matters would be undermined. They would have uncertainties and anxieties concerning whether clergy are, or will be, required to reveal confidential spiritual communications in other matters in addition to the one for which they may presently be asked to do so. One wonders what other perceived compelling circumstances or social needs would inevitably be invoked for further erosion of the clergy/penitent privilege that has traditionally been respected in American civil law.

Crucial to an understanding of the effect of the relaxation of confessional secrecy in particular cases on the freedom to practice religion is the longstanding teaching of the Church that the primary purpose of the sacramental seal of confession is the protection of religion itself, with the privacy of the individual penitent secondary to this. Unfortunately, civil legislation providing that only the penitent

is the holder of the privilege is flawed because it is centered entirely on this secondary purpose, to the exclusion of the more profound purpose of religious confidentiality—the protection of religion itself, as well as its practice. In concentrating on this secondary purpose alone, it would otherwise be understandable that courts, legislators, and others might sometimes feel the need to make some exceptions to the civil protection of confidential communications to professionals<sup>20</sup>—facilely, but mistakenly, including religious ministers in that category along with other professionals such as attorneys and doctors—in the interest of promoting what might be perceived to be the greater good in particular cases. However, such an approach ignores the religious dimension and its implications both in terms of belief and practice for spiritual confidences shared between a communicant and a religious professional. In the case of Roman Catholic doctrine,<sup>21</sup> there is a clear and profound distinction between the professional secret, for which exceptions can be made under certain conditions,<sup>22</sup> and the sacramental secret for which no excep-

20. For example, consider the rules of professional conduct for attorneys adopted by the Pennsylvania Supreme Court. PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT (1988). In general, Rules 1.6(a) and (d) preclude a lawyer from revealing confidential information during or after the representation of a client. *Id.* However, there are important exceptions. Rule 1.6(b) requires a lawyer to reveal information if necessary to comply with Rule 3.3, pertaining to candor toward a tribunal. *Id.* Rule 1.6(c) provides:

A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary: (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm or substantial injury to the financial interests or property of another; (2) to prevent or to rectify the consequences of a client's criminal or fraudulent act in the commission of which the lawyer's services are being or had been used; or (3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim or disciplinary proceeding against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

*Id.*

21. Although the doctrine of the Roman Catholic Church is frequently cited in this Essay, being both the particular denomination given in the hypothetical, as well as that of the writer, there is no intent to restrict the arguments made to that particular denomination alone. In fact, as is well known, most religions have a tradition of respecting spiritual communications between a communicant and a minister or rabbi, considering them to be a sacred trust on the part of the minister.

22. See CATECHISM, *supra* note 10, No. 2491, at 597.

*Professional secrets*—for example, those of political office holders, soldiers, physicians and lawyers—or confidential information given under the seal of secrecy must be kept, save in exceptional cases where keeping the secret is bound to cause very grave harm to the one who confided it, to the one who received it or to a third party, and where the very grave harm can be avoided

tion can be made.<sup>23</sup> By failing to adequately consider the twofold basis of religious confidences, courts, legislators and others run the risk of equating confidential communications between a communicant and a minister as merely another in a series of professional secrets. Such thinking totally ignores the religious dimension of these confidences, as well as poses a grave threat to the freedom of practice of religion.

It can readily be conceded that the priest in the hypothetical has an ethical obligation to do all within his power to persuade Jones to either speak to the authorities himself or to permit someone else, other than the priest, to do so on Jones's behalf in the interest of protecting Smith. Aside from potential First Amendment constitutional problems already referred to, the fact that there are at least several other individuals who could speak on Jones's behalf, without potential infringement upon their constitutional rights, makes any suggestion that the priest would have an ethical duty to go beyond the role of persuasion difficult, if not impossible, to sustain. The fact that there are alternative means to achieve the purpose of protecting Smith in a manner not destructive of the religious practice of the priest and the faithful in general argues strongly against the necessity or utility of encouraging the priest to entertain the idea of breaking confessional secrecy, even with the permission of Jones.

A very practical point to be considered in this discussion is the actual reaction of priests themselves to the suggestion that consideration be given to relaxation of confessional secrecy, albeit in particularly defined situations and with the consent of the penitent. While I cannot speak for all priests, I can state without hesitation that the prevailing, if not exclusive reaction, would be one of deep disturbance at even the suggestion of any relaxation of confessional secrecy, no matter what the circumstances, or how compelling the

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only by divulging the truth. Even if not confided under the seal of secrecy, private information prejudicial to another is not to be divulged without a grave and proportionate reason.

*Id.*

23. *See id.*, No. 1467, at 368.

Given the delicacy and greatness of this ministry and the respect due to persons, the Church declares that every priest who hears confessions is bound under very severe penalties to keep absolute secrecy regarding the sins that his penitents have confessed to him. He can make no use of knowledge that confession gives him about penitents' lives. This secret, which admits of no exceptions, is called the "sacramental seal," because what the penitent has made known to the priest remains "sealed" by the sacrament.

*Id.* (citation omitted).

reason.<sup>24</sup> Concomitant to that reaction would be an outright and unflinching refusal, no matter what the consequences, to make the slightest concession on this point.<sup>25</sup>

Related to this is a further practical point. In numerous situations, confidential communications connected with religious or spiritual counselling often provide perhaps the only setting in which some individuals will make certain self revelations that they would make to no other person but a priest, minister, or rabbi. They do so precisely because they believe, and church and state have encouraged them to believe, that these communications are sacrosanct and inviolable. If this avenue is closed because individuals begin to have doubts or anxieties about confidential communications to religious ministers, would not perhaps the sole means of encouraging some individuals to accept self responsibility or to make reparation in given situations also be lost? This therapeutic effect of religious confidentiality and the practical good flowing therefrom would be destroyed, if erosions, even slight and made with the best of intentions for compelling cases, were made in confessional secrecy. Is it worth jeopardizing this value which benefits both individuals and society itself, for the perceived good of a particular situation, especially when there invariably are other means of securing information than through

24. Consider the remarks of a priest in a recent editorial in a periodical for clergy:

The faith and sorrow manifested by penitents make a deep impression on me and, I am confident, have the same effect on most confessors. After all, the confessor is a weak human being who is also a sinner and the penitents tell him things about their own lives and about the state of their soul that they tell to no other person—not a mother, not a father, not a spouse, not a lover. For the penitent is speaking to God through the ears and the mind and the soul of the ordained priest. Therefore, the most intimate thoughts and feelings of the confessing person are communicated to the priest in an atmosphere of utter candor and absolute trust, since the Catholic knows that the priest must sacrifice his life rather than reveal anything committed to him under the seal of confession.

This is one of the most serious obligations that the priest has. In fact, he cannot even discuss confessional matters with another priest, unless the penitent gives him permission to do so—and such permission is rarely asked for or given.

Rev. Kenneth Baker, S.J., *On Hearing Confessions*, HOMILETIC & PASTORAL REV., Aug./Sept. 1995, at 96, 96.

25. In relation to this point, consider the remarks of Pope John Paul II in an address regarding confessional secrecy in which he reminds penitents that a priest cannot break confessional silence and thereby use confessional information even to defend himself from false accusations by the penitent: “[L]et the faithful who approach the Sacrament of Penance consider that in accusing the priest confessor they are attacking a defenseless man: the divine institution and Church law bind him in fact to total silence *usque ad sanguinis effusionem* [even to the shedding of his blood].” *Seal of Confession*, *supra* note 16, at 15.

a source connected with religious confidentiality? Weighing the certain harm that would be done to religion in general, and its adherents in particular, against the speculative benefits of relaxing religious confidentiality in individual cases, it is difficult, if not impossible to answer this question in the affirmative.

#### IV. CONFESSION TODAY

In the final analysis, the age old commitment of the Roman Catholic Church to the inviolability of the confessional secret is no less firm today. If anything, it can be said that the commitment and resolve of the Church on this issue has grown stronger with the passage of time. From the Church's perspective, there can be no relaxation of vigilance on this fundamental point of doctrine despite sometimes compelling challenges to its applicability in particular cases within a pluralistic and secular society. In taking this stance, the Church is arguing for continued defense and civil protection of the human right, as well as the constitutional right, of American citizens to freely believe and practice their deeply held religious traditions. This is true even though in certain instances some might mistakenly conclude that the Church is being insensitive to the rights of particular individuals, or even worse, that the Church is mindlessly insisting on asserting privileges that no longer are relevant or applicable to contemporary moral and ethical dilemmas.

While the above noted strains of thought are often proffered without malice, and appear to be innocuous, they in fact pose a real and present threat to the constitutional rights of millions of American citizens. Such contemporary challenges also represent a point of view that is dangerous in its implications for present and future protection of religious freedom of belief and practice within the context of American legislation and jurisprudence. What may presently be viewed by some as useful and limited exceptions to the past pattern of respect for, and civil protection of, religious confidentiality for the purpose of addressing particular difficult cases or serious moral or social problems, in fact ignores the reality that the means proposed often would not serve the end intended. Even worse, such "exceptions" would do incalculable harm to the rights of many.

Experience and history teach that in many instances what is initiated as a limited exception to a past policy due to a pressing social need can in fact become the first step in the erosion and ultimate demise of the policy itself. In the case of the clergy privilege, this would have tragic consequences in the lives of individuals, as well

as in the social, political, and cultural life of our nation. This country has rightly prided itself from its earliest days for its respect for, and protection of, the human rights and freedoms of its citizens, including the right to freely practice the legitimate and recognized tenets of their religious traditions.