

The Seal of Confession: civil law, church law and conscience

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The Royal Commission into Institutional Responses to Child Sexual Abuse has recommended that Australian governments introduce criminal mandatory reporting of child sexual abusers with a criminal offence of 'failure to report'. That offence would apply to any failure to report to police in circumstances where a person knew, suspected, or should have suspected that a person associated with their institution had sexually abused a child. The Royal Commission wanted to ensure that, wherever possible, known paedophiles are not left at large, free to sexually abuse children. The proposed law is focussed on likely continued offending and is intended to get paedophiles off the streets.

In April 2010 the Holy See made an exception in the application of the pontifical secret in cases of child sexual abuse, allowing bishops to report child sexual abuse by clergy to the civil authorities if they were subject to criminal mandatory reporting laws – a limited concession seen by many as no more than a means of avoiding the criminal indictment of bishops. The Commission has recommended that such laws be introduced throughout Australia and should include knowledge of paedophiles gained in confession. Criminal mandatory reporting laws in Australia applied only in NSW and Victoria at the time of the Royal Commission's report.

Governments now must decide whether to accept the Royal Commission's recommendation for criminal mandatory reporting. If governments legislate accordingly without exemptions, priests will be bound under civil law to report relevant knowledge, including from the confessional.

The response of some Catholic commentators has been a knee-jerk dismissal with little consideration of the serious issues addressed by the Royal Commission, despite the Church's stated commitment to the more effective protection of children. The reaction of some Church leaders to this and other findings of the Royal Commission seems to be, surprisingly, to play the victim rather than to offer a considered response to the grave findings of cover-ups and dysfunctional governance. This is a time for the Church to face the failings exposed by the Royal Commission and ensure effective renewal.

The Commission heard evidence of a number of instances where disclosures of child sexual abuse were made in confession, by both victims and perpetrators. The Commission found that confession is a forum where children have disclosed their sexual abuse, and where clergy have disclosed their abusive behaviour in order to deal with their own guilt. It also heard evidence that perpetrators who confessed to sexually abusing children went on to reoffend and seek forgiveness again.

Governments have a responsibility to act in the best interests of their society. This matter goes to the heart of church-state roles and relationships.

The arguments for exempting religious confessors from the obligation of reporting generally assume a strict interpretation of the Church's 'seal of confession'. They ignore or deny the harm to children that can arise from failure to report a paedophile who is at large. These arguments claim that the law would be ineffective because few paedophiles go to confession, their identity can be hidden from the confessor, and they might not confess if not protected by the seal. There is some inconsistency here as paedophile penitents could continue to confess by hiding their identity from the confessor. If these conjectural arguments are valid, the proposed law would be irrelevant to confessors and there would be no need to seek exemption.

On the other hand, the failure of any persons to report knowledge of paedophiles at large has shocking consequences and could implicate them morally in any further abuse of children. They would be accomplices after the fact. That was the situation when Church leaders covered up the abuse and protected priest paedophiles in the past.

Though few Catholics today use sacramental confession, the seal of confidentiality remains critical to its central purpose. The extent of the seal's coverage has been discussed by canonists and bishops before the Royal Commission; the literalists claimed that the seal forbids a confessor from disclosing any material arising in confession regardless of the circumstances and consequences, even if a child tells of being sexually abused, clearly not the sin of the child.

Some canonists differ, arguing that matter not related to sin by the penitent is not subject to the seal and could be reported or followed up in some manner, at least to ensure support for a child who has been abused. On the critical issue of a confessing paedophile, many have proposed that absolution could be made conditional on the penitent self-reporting. It is not just about absolving the paedophile of past sinful (and criminal) abuse but ensuring that any future abuse is minimised in every possible way, given the known high frequency of recidivism.

Regrettably the Catholic Church's leaders have to date shown little inclination to address the real concerns identified by the Royal Commission, or even to release the report on the Royal Commission's findings from their own Truth Justice and Healing Council. Bishops have not raised the possibility of conditional absolution or given any indication that they have referred these matters to the Holy See. Canon law can be amended, and the sacramental seal has already been subject to considerable debate and some variation in Church history.

Persons who sexually abuse children are a continuing risk to children. Mandatory criminal reporting is based on substantial evidence of past failures by institutional personnel to report abuse and abusers; the consequences were predators remaining at large, and more children being abused. All Australian governments are now supportive of mandatory reporting, but politicians are being pressured by church representatives claiming that any law which does not exempt matter learnt 'under the seal' would be an attack on religious freedom.

As the Commission noted, religious freedom cannot be absolute. No society should lightly exempt religions from laws made for the protection of vulnerable people. The International Covenant on Civil and Political Rights provides that religious freedom may be the subject of such limitations to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Of course, a religion might oppose and indeed defy a civil law as contrary to its religious belief. This has been the stuff of martyrdom where Christians have heroically refused to comply with laws opposed to their faith, but it would be dubious heroism for a priest to go to gaol knowing that he was protecting a paedophile still at large in the community. Such a confessor might also carry a heavy weight of conscience.

Most Australians would hope that any citizen would alert police to any knowledge of criminal plans to harm society, be it a terrorist plot to blow up the MCC on Grand Final day or, in the present case, imminent danger to children. The principle is the same.

Arguments for this exemption for confessors bound by the canonical seal implicitly assert the innate superiority of church law over civil law. Church leaders apparently see no need to review canon law in light of the Commission's evidence and conclusions, or even to consider adjusting current practice within canon law. Bishops could show their genuine concern, without impacting the seal of confession, by immediately mandating all confessors to refuse absolution to paedophiles unless and until they have reported themselves to the police.

Governments legislate for the good of society, for all citizens. They should not be thwarted by customs or laws of particular religions which could threaten the wellbeing of others, such as the protection of terrorists or paedophiles. Arguments that seek to exempt anyone from a civil law that mandates the reporting of a known continuing danger to children must be questioned. Jesus made no exemptions when he said it would be better to be drowned with a millstone tied to the neck rather than harm a child.

Peter Johnstone is an active committed Catholic, a member of Catholics for Renewal and Convener of the Australian Catholic Coalition for Church Reform. He believes that hype about the seal of confession is shielding more important questions of credibility. September 2018