

Breaking the Seal: Child Abuse and the Confessional in Australia

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The only surprise was that it did not come sooner. Australia's Royal Commission into Institutional Responses to Child Sexual Abuse has gotten on with the gruesome task of making 85 recommended changes to the law that will provide some measure of future protection for victims of child abuse.

The notable words that should be highlighted and even shouted from every pulpit are those that insist that “no excuse, protection nor privilege” will cover priests who fail to inform the authorities on instances of such violations, even if obtained in the sacred confines of the confession.

“We are satisfied that confession is a forum where Catholic children have disclosed their sexual abuse and where clergy have disclosed their abusive behaviour in order to deal with their own guilt.”

The report acknowledges an orthodox dilemma arising in other professions where confidentiality exists alongside the assessment of breach.

“We acknowledge that if this recommendation is implemented then clergy hearing confession may have to decide between complying with the civil law obligation to report and complying with a duty in their role as a confessor.”

The historical precedent marshalled in favour of the law of the seal of confession is hefty. As Gratian noted in his 1151 compilation of principles of Church law, including various council edicts, *Deponatur sacerdos qui peccata penitentis publicare presumit* (roughly, “Let the priest who dares to make known the sins of his penitent be deposed”). Those breaching this would be duly subjected to opprobrium and a lengthy period of disgrace. Among other additional notes come the stern words of Canon 21 of the Fourth Lateran Council (1215), which insist on secrecy and punishment of perpetual penitence should that injunction be violated.

These musty injunctions explain, in part, the militant reaction by Australia's clergy to the Royal Commission's note on the subject of the seal. Melbourne **Archbishop Denis Hart**, as president of the Australian Catholic Bishops Conference, felt that the confessional was sacred and irreducible, an immutable institution.

How Hart went about his case was bound to jar the defenders of secular, temporal justice.

“Confession in the Catholic Church is a spiritual encounter with God through the priest.”[1]

To override that particular “spiritual encounter” would be a grave breach of freedom of religion, notwithstanding its harm to children. The confession was a fundamental canon in that regard, “recognised in the law of Australia and many other countries.”

Nor did progressive priests, known for their flag waving for various social causes in Australia, disagree with Hart. **Frank Brennan SJ** was certainly in agreement, showing a lack of comprehension about how disturbing the seal was merely analogous to the necessary reporting obligations other professions might have when being informed of an abuse. The seal of confession remained sacrosanct and exceptional.

A questioning Brennan wondered whether the confession had necessarily aided a culture of abuse and its corollary, the all-smothering cover-up.

“I don’t think it has, and that’s why I will continue to honour the seal of the confessional.”[2]

Other reasons had less than sufficient ballast. One considered the fact that pursuing such laws would drive the offender away. Penitents would be reluctant to come forth.

“Common sense tells me that a sex abuser would be even less likely to present for confession if he knew that the confessional seal did not apply.”

Another was frequency – the sacrament of confession was rarely used by Catholics these days, which meant that it could go on undisturbed. Over the course of 32 years, reflected Brennan, not a single person had “confessed the sin of child sexual abuse to me.” Personal experience, it seemed, took the precedence over institutional realities.

Hart furthered his own interpretation of institutional reality: the Catholic Church had been given a dusting reform, and such laws were needlessly intrusive. Nothing of the order of child abuse on that scale, he claimed “would ever happen” today. It was adequate, claimed Hart, to persuade a penitent to tell another individual or body outside the profession. To that voice could also be added Brennan’s.

An old, stubborn defiance against the state, that all-secular nasty beast that jostled with Papal power for centuries, seemed to resurface. A mandatory reporting rule to report abuse was far less important than the seal of confession, the breaking of which would be tantamount to spitting in the face of the divine.

While the mandatory reporting requirements would merely bring the clergy in line with other relationships of a fiduciary nature, traditional reservations about such rules remain. Would it, for instance, do less for the victims than intended?

People With Disability Australia, for instance, suggest a consensual element to the disclosure, though this, in a seedy sort of way, sounds much like the rape victim’s lament on not reporting a crime out of fear. Consent, it would seem to follow, would be indispensable for exposing the offence, an unfortunate weakening of any reporting requirement.

Care Leavers Australasia Network offers a necessary demurral.

“Unfortunately, sometimes the only way to ensure the right thing is done is through the threat of a penalty of punishment.”[3]

The state and the Catholic Church (for some, the only Church), have renewed an ancient battle, with the divine enlisted as alibi and sacred protector. The priests, as they have done before, will be its militant vanguard. As with any political struggle, the victims risk being forgotten – again.

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Notes

[1] <https://www.theguardian.com/australia-news/2017/aug/15/melbourne-archbishop-says-hed-rather-go-to-jail-than-report-child-abuse-heard-in-confession>

[2] <http://www.smh.com.au/comment/frank-brennan-why-i-will-break-the-law-rather-than-the-seal-of-confession-20170814-gxw7it.html>

[3] <http://www.abc.net.au/news/2017-08-14/royal-commission-into-child-sexual-abuse-recommendations/8804040>

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