

**THE SACRAMENT OF PENANCE OR RECONCILIATION
AND THE SEAL OF THE CONFESSIONAL
IN THE TEACHING & PRAXIS OF THE CATHOLIC CHURCH
[Ref para 2.4 of the Report]**

The sacrament of penance is one of the seven sacraments of the new covenant, instituted by Jesus Christ and entrusted to his Church; as such, it belongs to the Deposit of Faith, revealed in Sacred Scripture and the Apostolic Tradition and interpreted by the Magisterium, and is a ‘sign and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about’ (canon 840).

The sacrament, also known as the sacrament of reconciliation, conversion, forgiveness or confession,¹ is ‘the sole ordinary means by which a member of the faithful who is conscious of grave sin is reconciled with God and with the Church’,² because:

In the sacrament of penance the faithful who confess their sins to a lawful minister, are sorry for their sins and have a purpose of amendment, receive from God, through the absolution given by that minister, forgiveness of sins they have committed after Baptism, and at the same time they are reconciled with the Church, which by sinning they wounded.³

The confidentiality of the sacramental internal forum, i.e., the sacramental seal, is absolute. In accordance with the centennial tradition of the Church, the *Catechism of the Catholic Church* teaches that the sacramental seal of confession is inviolable:

The *secret of the sacrament of reconciliation* is sacred, and cannot be violated under any pretext.⁴

This is not based on the relationship between the confessor and the penitent, but flows from the very nature of the sacrament of penance itself:

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 secrecy,

¹ *Catechism of the Catholic Church*, revised English translation, London 1999, nn 1423-1424, p 320.

² Canon 960.

³ Canon 959.

⁴ *Catechism of the Catholic Church*, revised English translation, London 1999, n 2490, p 530.

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.⁵

The sacramental seal not only binds the confessor (cf. c 983, §1), but also binds any interpreter and any third party who for whatever reason overhears a confessor. Although it does not bind the penitent, the natural law and common decency prohibit him from discussing what the priest may have said, e.g., if to do so would harm the Church, the confessor or a third party.⁶

The sacrosanct nature of the sacramental seal is such that, in the words of canon 983, §1, the minister of the sacrament, i.e., the confessor, is absolutely prohibited from betraying the penitent in any way, directly or indirectly:

The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion.

This obligation binds the confessor whether absolution is given or not, and this point is of vital importance: if the confessor denies or defers absolution, and he may not deny or defer absolution if he ‘is in no doubt about the penitent’s disposition and the penitent asks for absolution’,⁷ he is still bound by the sacramental seal, as canon 984, §1 clarifies:

The confessor is wholly forbidden to use knowledge acquired in confession to the detriment of the penitent, even when all danger of disclosure is excluded.

The same discipline governs the sacramental seal in the Eastern Churches, although the terminology is slightly different, with the confessor being exhorted to be diligent in not betraying the penitent. We read in canon 733, §1 of the *Code of Canons of the Eastern Churches*:

The sacramental seal is inviolable; therefore, the confessor must diligently refrain either by word, sign or any other manner from betraying the penitent for any cause.

Any violation of the sacramental seal is grave, because such a violation would not only betray the penitent but could discredit the sacrament and compromise the

⁵ *Ibid.*, n 1467, p 330.

⁶ Cf. W. WOESTMAN, *Sacraments – Initiation, Penance, Anointing of the Sick*, Ottawa 2004³, p 275.

⁷ Canon 980.

salvation of souls.⁸ The confessor who breaks the sacramental seal is to be punished, with the gravity of the punishment depending on whether the violation was direct or indirect. In the words of canon 1388, §1:

A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the offence.

Similar provision is made for the Eastern Churches by canon 1456, §1 of the *CCEO*. Both direct and indirect violation of the sacramental seal are *graviora delicta*, reserved to the Congregation for the Doctrine of the Faith.⁹ While it may seem obvious that no confessor would want to break the sacramental seal, it does have to be acknowledged that a refusal to do so could bring him into conflict with the civil law, e.g., in a jurisdiction in which anyone receiving knowledge of certain criminal offences is obliged by civil law to report such matters to the statutory authorities.

In England, the Catholic Church does not enjoy the protection afforded by the canon of 1603, and Catholic canon law has not been part of statute law since the Reformation; consequently, there is no ‘priest-penitent privilege’, and even an appeal to article nine of the European Convention on Human Rights, as enshrined in the Human Rights Act 1998, may not necessarily afford a defence, as can be seen in the conflicting rights contained therein:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.¹⁰

It is easy to see how these two rights could conflict: a confessor’s ‘freedom of thought, conscience and religion’ to refuse to answer questions concerning the hearing of a confession could be subject in civil law to certain limitations. In the United States of America, such matters are dealt with at a state rather than a federal level:

⁸ Cf. QUADERNI DI DIRITTO ECCLESIALE, *Codice di diritto canonico commentato*, Milano 2004², pp 801-802.

⁹ Cf. W. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, Ottawa 2003², p 304.

¹⁰ *Human Rights Act 1988*, schedule 1, at:
<http://www.legislation.gov.uk/ukpga/1998/42/contents#sch1-pt1>, accessed on 1 February 2016.

At the present time, sixteen states have abrogated the clergy privilege for testimony in matters of child abuse. Seventeen states have included clergy among those required to report suspected child abuse or neglect to the authorities. It is not clear from the statutes whether mandatory reporting requirements will require testimony from the clergy in subsequent hearings on these matters. Some states which have made the clergy mandatory reporters, retain the privilege for some or all communications made to clergy. There are no reported cases on this somewhat confusing situation.¹¹

Hence, a confessor could be impugned for refusing to break the sacramental seal, whereas in others he would not. In Italy, the sacramental seal is protected by article 200 of the *Codice di procedura penale*.¹²

Furthermore, a confessor may not make use of any information acquired during a confession ‘to the detriment of the penitent, even when all danger of disclosure is avoided’ (c 984, §1), and no person in authority may use in any way, for the purpose of governance in the external forum, ‘knowledge about sins which has at any time come to him from the hearing of confession’ (c 984, §2).

Some authors allow for the penitent to give the confessor permission to speak about what was said in his confession, either to the penitent himself or to a third party.¹³ The danger inherent to a confessor speaking about a confession in such a way to a third party, even with permission having been freely given by the penitent, is that the faithful, each of whom is obliged ‘to confess, in kind and number, all grave sins committed after baptism, of which after careful examination of conscience he or she is aware, which have not yet been directly pardoned by the keys of the Church, and which have not been confessed in an individual confession’ (c 988 §1), may find it very difficult to confess their sins if they are not assured that the confessor will maintain the confidentiality pertaining to the inviolability of the sacramental seal.¹⁴

The principle which underlies these canons is that any information gained during the celebration of the sacrament of penance should, in so far as it is humanly possible,

¹¹ CANON LAW SOCIETY OF AMERICA, *Confidentiality in the United States*, Washington, DC, 1988, quoted in R. MALONE, ‘Confidentiality of Spiritual Direction’, in *Seminary Journal* 12 (2006), no 2, pp 89-93, p 92.

¹² Cf. QUADERNI DI DIRITTO ECCLESIALE, *Codice di diritto canonico commentato, op. cit.*, p 802.

¹³ Cf. W. WOESTMAN, *Sacraments – Initiation, Penance, Anointing of the Sick, op. cit.*, p 275. Cf. CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, *Canon Law The Letter and Spirit*, London 1995, n 1921, p 535, for a contrary view.

¹⁴ Cf. W. WOESTMAN, *Sacraments – Initiation, Penance, Anointing of the Sick, op. cit.*, pp 272-273; this seems to be consistent with the *Catechism of the Catholic Church*’s teaching that ‘what the penitent has made known to the priest remains “sealed” by the sacrament itself’, rather than by the penitent. Cf. *Catechism of the Catholic Church, op. cit.*, n 1467, p 330.

not only never be mentioned or acted upon – except, with the penitent’s permission, in a further colloquium between the same confessor and the same penitent – but should be regarded as never having been heard.¹⁵

The confidentiality of the sacramental internal forum also obliges any interpreter and all those who may, for whatever reason, have overheard a confession, e.g., by sitting in the vicinity of the confessional. We read in canon 983, §2:

An interpreter, if there is one, is also obliged to observe this secret, as are others who in any way whatever come to a knowledge of sins from a confession.

Again, this discipline obliges in the Eastern Churches, with the exact same form of words being found in canon 733, §2 of the *CCEO*. Canon 1388, §2 provides that interpreters and others who violate the seal are to be punished by the competent ecclesiastical authority:

Interpreters and the others mentioned in canon 938, §2, who violate the secret, are to be punished with a just penalty, not excluding excommunication.

Similar provision is made by canon 1456, §2 of the *CCEO* for the Eastern Churches. In its declaration *Sacra Congregatio* (23 March 1973),¹⁶ the Sacred Congregation for the Doctrine of the Faith decreed that anyone who obtained the contents of a confession and published or divulged them in any way was excommunicated *latae sententiae*. Following the promulgation of the current Code, which abrogated all penal laws enacted by the Apostolic See which were not resumed in that Code (cf. c 6, §1 3^o), the Congregation for the Doctrine Faith repeated the sanction in a decree dated 23 September 1988, prescribing that all who record or publish the content of a confession incurs excommunication *latae sententiae*; this too is a *delictus gravior* reserved to that Congregation.¹⁷

We can see from the canons of both Codes concerning the sacramental seal and the punishment incurred by those who violate it, together with the Congregation for the Doctrine of the Faith’s decree of 23rd September 1988, that there are no circumstances ever in which the confessor, an interpreter or anyone else, may ever break the sacramental seal, even when disclosure might seem advantageous, because to do so would be to contradict the salvation of souls – no penitent must ever be deterred from seeking absolution out of fear that his sins will be divulged in any circumstance.

¹⁵ Cf. *ibid.*, p 275, and CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, *Canon Law The Letter and Spirit*, *op. cit.*, n 1929, p 536.

¹⁶ Cf. AAS 65 (1973), p 678.

¹⁷ Cf. AAS 80 (1988), p 1367.

Thus, the confidentiality of the sacramental internal forum, i.e., the sacrament of penance, is inviolable, even if maintaining the sacramental seal would bring the confessor into conflict with the civil law in force in the jurisdiction in which he lives.¹⁸

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¹⁸ Canon 22 provides that the civil law currently in force 'is to be observed with the same effects as canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law'. If the civil law made provision for the breaking of the sacramental seal, this would be contrary to divine law, and therefore a confessor would be bound in conscience and by canon law not to act in accordance with that provision of the civil law.