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Breaking the seal of the confessional a red herring that will not save one child

Forcing priests to betray their vows and the penitent achieves nothing

FRANK BRENNAN



I was accurately quoted in *The Australian* (“Catholic Row over probe into confession”, Wednesday) saying, “If a law is introduced to say that a priest should reveal a confession, I’m one of those priests who will disobey the law.” Being also a lawyer, let me explain.

Like most Australians, I have been appalled and distressed by the revelations before the Royal Commission into Institutional Responses to Child Sexual Abuse.

I hope this five-year royal commission is able to provide solutions so that institutions are made safe places for children. I am one of those Catholics who has been rocked by the disproportionate number of victims whose assailants have been members of my church in positions of trust. Of course, the Catholic Church ran more schools and orphanages than most other organisations. But that provides no excuse or justification for what went on. Nor does it provide a complete explanation for the horrific statistics.

It’s now clear that before 1996, most institutions, including churches, police forces and state child welfare agencies, were insufficiently attentive to the signs of predatory behaviour by pedophiles. Before 1996, the Catholic Church was a closed, hierarchical,

opaque organisation administered by bishops who were more like feudal princes than modern accountable managers. The clericalist mindset of a celibate male clergy compounded the vulnerability of children preyed on by church personnel.

Understandably, the royal commission wants to recommend procedures and safeguards for all institutions that deal with children. If the commission’s recommendations are accepted by governments and legislated by parliaments, these institutions will have to comply or accept the legal consequences. Given the separation of church and state, the royal commission is not in a position to prescribe changes to church teaching, discipline or structures. But it is in a position to prescribe minimum standards of accountability, transparency and training.

I have no doubt abuse would have been less prevalent in the Catholic Church if some of the bishops were married with their own children or if some of the bishops were women. The state is not in a position to direct that priesthood and elevation to the episcopacy be available to married men and women. I am one of those Catholics who thinks the church would be the better for

such changes, but most bishops presently think the church would no longer be “Catholic” if such changes were made.

The state is in a position to direct that an organisation headed by a celibate male priesthood have in place structures and procedures that ensure those men are sufficiently accountable and transparent in their care for children. Fortunately, with the shortage of priests, there are now more lay people within the church in positions of authority.

But our bishops still have a long way to go in moving beyond the clericalist mindset that “Father knows best”.

Understandably the royal commission is wanting to look into any distinctively Catholic practice or structure to assess whether it has contributed to the likelihood of increased child sexual abuse — either because it compounds the likelihood of a person offending or, more probably, because it compounds the likelihood of those in authority not taking appropriate corrective action when abuse is first reported or suspected.

One distinctively Catholic practice is personal confession in which an individual confesses to God their sins and seeks forgiveness in the presence of and at the



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hands of a priest. Some groups and individuals are proposing to the royal commission that the seal of the confessional no longer be inviolable. They point to legislative changes in Ireland that require a priest to report to police what he learns in the confessional if the confessed sin is child sexual abuse.

Catholic priests are bound by the church's code of canon law, which provides: "The sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason. A confessor is prohibited completely from using knowledge acquired from confession to the detriment of the penitent even when any danger of revelation is excluded."

The inviolability of the confessional was last comprehensively considered in 2012 by the Protecting Victoria's Vulnerable Children Inquiry which was chaired by retired Supreme Court judge Philip Cummins. That inquiry recommended that "an exemption for information received during the rite of confession should be made". The report noted "a statutory exemption to the reporting duty should be provided in relation to information received during a religious confession. In Victoria, information revealed during religious confessions is considered privileged when admitting evidence before courts."

Ted Baillieu, then Victorian premier, ruled out changes to the seal of the confessional. He said members of the inquiry "all concluded that the sanctity of the confessional should remain. I think that's a powerful argument."

I am convinced the seal of the confessional is a red herring when it comes to protecting vulnerable children. I have been a priest for 31 years. I help out in a Canberra parish where mass attendance is still high. But I can count on the fingers of two hands the number of parishioners who present for confession on any Saturday evening before mass. In 31 years, I have not had one single person confess to

pedophilia, whether in an institution or within their own family. Pedophiles tend to be secretive and manipulative. They don't come to confession. I am not aware of the royal commission having heard evidence of pedophiles regularly confessing their egregious sins and being left undetected.

If the law were changed to mandate reporting of pedophilia confessed to a priest in the sacrament, the only effect would be to ensure that no pedophile ever approached the confessional. The suggested legal change would be counter-productive.

I was a priest in Kings Cross for many years. On one occasion a person came to confession and confessed to murder. I did not go to the police. I did not know who the confessing person behind the screen was. I did not know the identity of the victim. I did not know when the offence was committed. I did not know in which jurisdiction it was committed. I had no right to know and no duty to inquire. I had no idea whether the person had in fact committed a murder or some lesser offence. Imagine going up the road and reporting these details at the Kings Cross police station.

If a pedophile were to present at confession telling me that they had assaulted a child, I would stipulate as part of the penance that the person report the matter to police and take some steps to receive treatment and counselling. If they were unwilling to do so, I would deny absolution. But I would not breach the seal of the confessional.

Often when hearing a confession a priest will have no way of identifying a victim. He will have no idea of the date of any offence; it may have occurred decades ago. He will have no idea of where any offence was committed; it may have been Parramatta, but it may have been Paris or Paraturdoo.

If the only information available were from the confessional, chances are that it will be information that is useless to police or child protection. If confessional reporting were mandatory, chan-

ces are that the perpetrator would not come to confession. So even in brute consequentialist terms, there is no point in making confession reportable to the police. If it were mandatory for everyone to report, pedophiles and perpetrators of domestic violence would be left with no one to speak to.

Most, if not all priests, would prefer to go to jail than disclose material from confession that could "betray in any way a penitent in words or in any manner and for any reason", even if the penitent be a child molester, a murderer or a terrorist. And that's not because we don't feel compassion for children or other innocent people. We respect the sacrament where the penitent

and God relate in the presence of the priest.

Kids will be better protected in future if we put to one side the fuff about the seal of the confessional and address the real questions about uniform mandatory reporting and clear guidelines for reporting any suspected serious crime.

The difficult case for a confessor would be when the penitent expresses contrition for having taken action aimed at harming innocent people in the future, not when the penitent presents confessing past sins such as pedophilia.

Were a penitent to confess that he had planted a bomb that might harm the innocent in future, I would deny absolution unless the penitent undertook to disarm the bomb and I would do all in my power to report information to the police to save those lives in danger, but I would not disclose the identity of the penitent.

A priest should never be required to disclose anything heard under the seal of the confessional. The state has the same right to regulate matters for a priest outside the confessional as to regulate matters for all other citizens outside the confessional. Not one child will be saved by abolishing the seal of the confessional. With the seal intact, the occasional pedophile might find a listening ear to assist with the decision to



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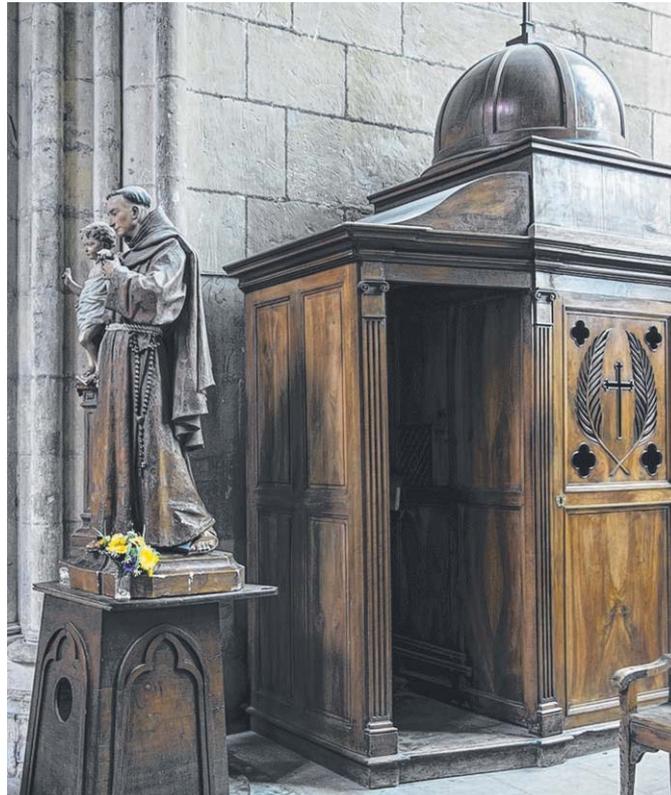


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turn himself in. With the seal breached by law, confession will be unavailable to careful serious offenders except at the hands of those priests who have declared that they will conscientiously refuse to comply with the law. The royal commission needs to focus on those changes that it can effect and that can make a real difference in protecting children.

Frank Brennan is a Jesuit priest and professor of law at Australian Catholic University.

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GETTY IMAGES

With the seal of confession intact, a pedophile may find a listening ear to assist with the decision to turn himself in