



## **Backgrounder: The Seal of the Confessional and the Priest-Penitent Privilege**

Sin damages relationships. It is not just a matter of breaking a rule. Sins are injustices against self, family, community, and Church, as well as against God. The Sacrament of Reconciliation, sometimes called Confession or Penance, brings healing to these damaged relationships. The basic parts are simple and relatively well-known. The penitent searches her conscience to consider how she has sinned. She confesses her sins to a priest, and the priest tells the penitent what she must do as her penance. She makes an act of contrition—essentially expressing her sorrow for her sins, promising to do penance, and with the resolution to try not to sin again—and then the priest absolves her of her sin, acting in the person of Christ and in the name of the Church.

Different religions can have different versions of confession, because the practice addresses the natural, human need to express regret and make restitution for wrong-doing. In the Catholic Church, Confession is an especially important sacrament. Through this practice, sinners receive the mercy of God and grow in the life of grace. Some Catholics confess their sins regularly as part of the gradual process of growing in holiness. For others, this sacrament offers a way to return to the Lord after what may have been a prolonged period of absence from the life of the Church (although God's grace is never absent). No matter the circumstance, when people confess their sins to a priest, they are coming to Jesus to say, "I am sorry for what I have done. I want your grace to heal me and change me, so that I can follow you more closely." This is a sacred encounter between the penitent and the Lord who offers forgiveness and healing.

But what happens when a priest hearing a confession learns information that would be useful to civil authorities in resolving a crime?

The Code of Canon Law forbids priests from divulging information received in confession. The penalty for a priest who directly violates the seal of confession is excommunication.

Suppose a thief repented of his sin and confessed his robbery to his priest. Ought the priest be required to testify in court against the thief? Indeed, this very situation gave rise to an important religious liberty case in 1813, *People v. Phillips*, during the early days of the American republic.

For most of us, if we had knowledge related to a crime, we would be obligated to share that information with the proper authorities. If you are called upon to serve as a witness in a trial, you must speak forthrightly about what you know of the crime.

In New York, Fr. Anthony Kohlmann learned in the confessional the identity of two people who had stolen jewelry. Having made the return of the stolen goods a condition of penance, Fr. Kohlmann returned the jewelry to its rightful owner, and the robbery victim offered to withdraw his complaint. However, the thieves were later apprehended on other evidence, and as part of the trial, Fr. Kohlmann was called as a witness to share how he knew where the jewelry was. Fr. Kohlmann refused share this information, because he would not betray his priestly duty to maintain the seal of confession. While he would gladly testify had he come by the knowledge in some other way, to reveal a penitent's confession would be to violate his faith. He asked for an exemption.

Considered to be possibly the first court case on the right to free exercise of religion in America, *People v. Philips* presented issues that continue to arise today. For example, it was claimed that exempting Fr. Kohlmann from a general civic duty would be tantamount to giving Catholicism special privileges. In other words, some people claimed an exemption seemed to favor one religion. Also, then, as now, there was concern that granting religious exemptions could be detrimental to public order. Ultimately, though, the court recognized that the constitutionally protected free exercise of religion must mean that Fr. Kohlmann was exempt from the normal requirement to provide information gained in the confessional. It was a victory both for respect for the seal of confession and for religious exemptions.

This case hinged specifically on the question of exemptions to generally applicable laws. Since the *Philips* case, clergy-penitent privilege has become recognized as a basic right. Today, protecting clergy-penitent privilege is still important. The privilege is recognized as not only protecting the seal of confession for Catholics, but as protecting analogous practices for other faith groups. Essentially, it recognizes that the relationship between a penitent and his or her confessor is sacred, and the civil authorities ought not to intrude upon this sacred space.

Different states may protect the clergy-penitent privilege in different ways, depending on who is understood to hold the privilege. In many cases, both clergy and penitent hold the privilege, and so clergy cannot be compelled to testify even when the penitent waives the privilege.

There are understandable reasons that some governments would consider revoking this privilege. We might see why a priest should be exempt from sharing information about a robbery, but not when the crime is child abuse or sexual assault. Indeed, it is essential that the Church work with civil authorities to ensure that criminals are brought to justice and communities are kept safe. To that end, the USCCB's Charter for the Protection of Children and Young People, first adopted in 2002, requires dioceses to report an allegation of sexual abuse of a minor to civil authorities, with due regard for the seal of the confessional.

In this respect, there is also a common-sense reason to protect the seal of the confessional. If priests were required to report crimes heard during confessions, penitents would likely stop confessing them. The opportunity that the sacrament presents for healing—not just of the penitent's soul, but of the wounds that the penitent's sin has inflicted on others—would be lost. While a priest may not oblige a penitent to turn himself in as a condition for receiving absolution, priests can encourage the penitent to report crimes to the proper authorities.

The government has no right to encroach upon religious worship. Clergy-penitent privilege is simply the recognition of the proper relationship between church and state and the constitutionally protected right to free exercise of religion. As Catholics, we advocate for this protection, not only for ourselves, but for people of all faiths.