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Sanguinis
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‘Usque ad Sanguinis Effusionem’: The Historical and Theological Foundations of the Inviolability of the Seal of Confession

Errol Xavier Lobo

The confessional seal of the Catholic tradition has always had something of an enigmatic quality, making it ready material for the numerous books and movies that have had their premises entirely based on it. In recent years, however, it has come under increasing scrutiny for more serious reasons; significant among them, the role it might have played in instances of sexual abuse of minors within the Catholic Church and the manifest institutional failure to address these crimes. The question of the extent to which civil legislation might impinge upon the confessional seal, moreover, is now a matter of considerable controversy within several secular societies. These discussions – not always conducted without acrimony and confusion – have led to deeply polarising positions on the confessional seal. For many, it symbolises everything that is wrong about the institutional Catholic Church, attesting to the structures of secrecy and power that led to problems in the first place. For others, that the confessional seal is sacrosanct is a matter of fundamental Church teaching and its defence is “a necessary testimony,” even “*usque ad sanguinis effusionem*.”¹ This paper concerns itself with the historical and theological foundations of the latter: how, and to what extent, is the inviolability of the confessional seal rooted in the very nature of the Sacrament of

1. “To the shedding of [one’s] blood”– as stated in The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary on the Importance of the Internal Forum and the Inviolability of the Sacramental Seal,” (Vatican City: Vatican, 2019). For an example of a public claim of the inviolability of the confessional seal being “a matter of fundamental Church teaching,” see Timothy Costelloe, “Pastoral Letter to the Catholic Community of the Archdiocese of Perth,” (Perth: Archdiocese of Perth, 2020). These documents lack page and paragraph numbers, and are thus cited as such throughout.

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Reconciliation as understood by the Catholic Church? To that end, it *first* surveys the history of the seal within the Catholic tradition, gleaning from it the theological foundations that underpin the gradual development in the Church's understanding of the nature and extent of the seal. It *then* explores, in some detail, these fundamental theological reasons that support the Church's present understanding of the sacramental seal as utterly indispensable.

THE HISTORY OF THE SEAL

In pursuing the history of the confessional seal, we are undoubtedly plagued by not only its own slow and complicated emergence but also the vicissitudes of the Sacrament of Reconciliation and evolving notions of sin in the Christian tradition.² We look in vain if we seek to find in the Scriptures anything that resembles contemporary practice of the Sacrament; nor is there any direct scriptural evidence that Christ commanded his followers to observe norms of absolute secrecy concerning the sins of others. Yet, the Scriptures do provide the theological foundations that underpin the Church's ministry of reconciliation and significantly, the origins of the practice of confession of sins.³ For present purposes, it suffices to note that this practice of confessing and forgiving sins, in accord with the vision of the New Testament, is remarkably well attested throughout the Church's history and goes back to the very beginnings of the Church's existence.⁴ The crux of the matter, then, is the extent to which some notion of secrecy – however vague – has accompanied this practice through the ages as well as the rationale for that secrecy at various stages in the Church's history. The *raison d'être* of the sacramental seal, after all, is a matter distinct from canonical legislations that enforce it.⁵ Thus, even though the phrase “seal of confession” does not appear until the fourth century in the East and in the eleventh century in the West, and canonical legislation concerning the sacramental seal in the West does not appear until the Fourth Lateran Council (1217 CE), that the Church possessed some consciousness of the *theology*

2. See, *inter alia*, Joseph Martos, *Doors to the Sacred: A Historical Introduction to Sacraments in the Catholic Church* (Missouri: Liguori, 2014), 317–69.
3. Cf. Mk 2:1–12; Mt 3:6, 9:1–8, 16:18–19, 18:15–20; Lk 5:20, 7:48, 17:3–4; Jn 20:19–23; Acts 24:16; Eph 4:31–32; Jas 5:16; 1 Jn 1:9. For a brief treatment of the scriptural foundations, see David M. Coffey, *The Sacrament of Reconciliation*, ed. John D. Laurance, *Lex Orandi Series*, (Collegeville: Liturgical Press, 2001), 32–41.
4. The terms “confessing” and “forgiving” are to be understood in the broad sense, as in Martos, *Doors to the Sacred*, 320–24.
5. Cf. Anthony Fisher, “Safeguarding the Seal of Confession,” *Australasian Catholic Record* 95, no. 2 (2018): 133–34.

of the seal should not be prematurely ruled out.⁶ Rather, it is to this gradually emerging and slowly refined theological consciousness that we must first turn.

It appears that the practice of confessing and forgiving sins in the immediate centuries after Christ's death existed in the form of a system that comprised of public confession and public penance that preceded the penitent's restoration to the communion of the Church.⁷ It is not entirely clear whether these confessions were to specific representatives, to the relevant assemblies, or to the wider public. There is certainly evidence, as Bertrand Kurtscheid noted in his magisterial study, that at least some early Christians believed public humiliation to be "especially efficacious" for the forgiveness of sins.⁸ Irenaeus is generally taken as a representative of this view, envisioning a public confession of even "secret" sins.⁹ This view, however, was hardly determinative in the long run, and even as a general pattern of public penance for "public" sinners began to emerge, there were also voices in favour of confidentiality for "secret" sins by the fourth century CE. Augustine exhorted that secret sins be healed "in secret," and Gregory of Nyssa opined that secret theft could be reconciled by "secret confession."¹⁰ Although it is not entirely clear when, the office of priest-penitentiary was instituted in the East around this time to facilitate private confession of sins as well as restrict public confession of sins, since – as the historian Hermias Sozomen put it – it was onerous to admit one's sins "as in a theatre with the congregation of the Church as witness."¹¹ Ambrose mentions confessing privately to one person, while Syrian Church Father Aphraates instructs those hearing confessions not to expose those who confessed their sins to them.¹² The motivation for secrecy in these instances appears to be a vague concern for the interests of the penitent. That this is the case is clearer in the case of Basil the Great, who was concerned about protecting the penitent from any harm that might occur from the revelation of their sins to a third party, as in the instance of a woman whose husband might seek to kill her if he learnt of her adultery.¹³

6. Cf. Brendan Daly, "Seal of Confession: A Strict Obligation for Priests," *Australasian Catholic Record* 90, no. 1 (2013): 5.

7. Coffey, *Reconciliation*, 42–43.

8. Bertrand Kurtscheid, *A History of the Seal of Confession*, trans. F. Marks (St Louis: Herder, 1927), 283–84.

9. Kurtscheid, *History of the Seal*, 8.

10. For a list of relevant citations, see Daly, "Seal of Confession," 6.

11. Hermias Sozomen, *Patrologia Graeca*, 67:1459; Sozomen, *Ecclesiastical History*, 7:16. Cf. Coffey, *Reconciliation*, 43.

12. For a list of relevant citations, see Daly, "Seal of Confession," 6.

13. For a list of relevant citations, see Daly, "Seal of Confession," 6.

By the fifth century CE, the harshness of public penances, the social stigma that went with them, the restriction of such ecclesiastical reconciliation to once in a lifetime, and the rigorous demands placed on those who had been reconciled through such a process (especially in the West) had all contributed to a general decline of the practice of public penitence.¹⁴ Christians increasingly shared details of their spiritual lives with “guides” or “spiritual fathers,” even confessing their sins and shortcomings to obtain advice in attaining holiness. A clear attack on the practice of public confession of sins during this time is Pope Leo the Great’s papal decree in 459 CE when, in writing to the bishops of Campania, Samnium, and Picenum, he describes the admission of individual sins in open assemblies as an abuse that must be abrogated.¹⁵ Leo’s rationale in this regard is fascinating, to say the least. He asserts that it is sufficient for sins to be indicated privately to priests, that many would be too afraid to confess their sins in public for fear of being exposed, and that he is concerned to protect people from personal harm and public prosecution that might result from such revelations to third parties. Especially noteworthy is his concern that if people did not believe that their confessions would remain secret, they would not confess their sins at all and would thereby be cut off from “the salutary remedy of penance.”¹⁶ In subsequent centuries, “private” practice of penance was further popularised by Irish missionaries to continental Europe, carrying with it a tacit understanding of confidentiality on the part of “confessors.” The practice of public penitence was thus ultimately, and despite sporadic ecclesiastical disapproval, eclipsed by what had once begun “as an unofficial sacrament” and even “denounced as contrary to tradition.”¹⁷ Significant for purposes here, however, is – as Anthony Fisher notes – that “long before it was a matter of canonists, secret confession was recognised in the faith and pastoral practice of Christians.”¹⁸

The canonical legislations, dogmatic definitions, and the work of theologians (and, in some instances, civil laws) that followed suit attempted to codify and flesh out what was often vague and tacit in pastoral practice. As early as 554 CE, the Second Synod of Dwin threatened priests who revealed the confessions of penitents with deposition and formal excommunication.¹⁹ In the eighth century CE, Nicephorus legislated that “it is absolutely

14. Martos, *Doors to the Sacred*, 333–35.

15. A translation of the relevant passage may be found in Gregory Zubacz, *The Seal of Confession and Canadian Law* (Montreal: Wilson & Lafleur Ltee, 2009), 8.

16. Cf. Zubacz, *Seal of Confession*, 8.

17. Martos, *Doors to the Sacred*, 340.

18. Fisher, “Seal of Confession,” 133.

19. Daly, “Seal of Confession,” 7.

forbidden for a mediator to say or in any way manifest those things that belong to confession” and Charlemagne made violation of the secrecy of confession a civil crime.²⁰ The Gratian *Decretum* of 1151 CE was equally clear: the priest is not to “make known the sins of the penitent.”²¹ Violations of the confessional secrecy in this period, moreover, were serious offences meriting serious punishments: those who were found guilty were often deposed of priestly office, formally excommunicated, or at least punished with lifelong exiles and monastic penances. The Fourth Lateran Council of 1215 CE, the first Ecumenical Council to address the issue, followed Gratian in its own decree *Omnis utriusque sexus* and thus not only taught the doctrine of the confessional seal but also established severe punishments for its violations.²² Two critical matters, however, were largely left unattended in such decrees. *First*—in a way typical of legal codes – they offered no explication of the theological or ecclesiological significance of this secrecy. Was the confessional seal, then, of the very logic of the sacrament (even, *de jure divino*) and thus enshrined within ecclesiastical law, or was it merely, so to speak, established by the Church by her own authority? *Second*, they showed little concern for clarifying the extent of the confessional seal. Did it cover only the sins of the penitent, or everything revealed during the sacramental encounter? Was it utterly inviolable, or did it admit of some exceptions?

Unsurprisingly, responses to these questions in the ensuing period manifested the already variegated motivations for confessional secrecy. Pope Innocent III believed that the confessional seal derived from the very logic of the sacrament. The priest had no “human” knowledge since everything that had been learnt during the sacramental encounter was learnt *in foro Dei* as God’s representative.²³ Thomas Aquinas influentially argued that the sacrament of Penance, like other sacraments, signifies what takes place “inwardly.”²⁴ The penitent’s “submission” to the minister is a sign of the penitent’s inward submission to God, and since God does not reveal what has been confessed to God in the sacrament, neither should the minister.²⁵ Aquinas also believed that any information the priest gains through the sacramental encounter, he

20. Daly, “Seal of Confession,” 7.

21. “*Deponatur sacerdos qui peccata penitentis publicare praesumit.*” Cf. Daly, “Seal of Confession,” 7.

22. On the influence of Gratian on Lateran IV, see Atria A. Larson, “Lateran IV’s Decree on Confession, Gratian’s *De Penitentia*, Confession to One’s *Sacerdos Proprius*: A Re-Evaluation of *Omnis Utriusque* in its Canonistic Context,” *Catholic Historical Review* 104, no. 3 (2018): 415–37, <https://doi.org/10.1353/cat.2018.0041>.

23. Daly, “Seal of Confession,” 8.

24. Thomas Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1.

25. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1.

gains *non ut homo, sed ut Deus* [not as man, but as God], even to the extent that he, in good conscience, could say that he “does not know” what he knows only as God’s minister.²⁶ For Aquinas, moreover, confessional secrecy is “essential” to the sacrament and “follows” from the sacrament itself.²⁷ And he – like Leo the Great had once asserted – recognised that it plays a part in attracting penitents to the sacrament. He notes that people are more willing to confess their sins “with greater simplicity” if they are assured that their sins will never be divulged.²⁸ Without this assurance, human frailty impedes them from availing the salutary effects of the sacrament. The seal thus safeguards not only temporal goods (such as the penitent’s safety and reputation) but also the supernatural good of the faithful. Aquinas, in fact, repeatedly warns against the possibility of giving “scandal” in this regard and urges caution when the minister learns something both outside and through the sacrament.²⁹

That the confessional seal belonged to the very logic of the sacrament, in fact, became *the* Catholic view in subsequent centuries, and was repeatedly affirmed or at least assumed by theologians and canonists – even when they disagreed about other matters, such as the nature of confessional knowledge.³⁰ The Church was thus thought to only be safeguarding what was essential to the sacrament with “all her moral and legal might” through ecclesiastical legislations, not establishing something new on her own authority.³¹ The question of the *extent* of the seal, however, remained a more controversial one, thrown further into light by the recent exchange between Ian Waters and Anthony Fisher.³² Does the confessional seal cover only the sins that the penitent confesses (the narrow view supported by Waters), or does it include other matters that might arise during the sacramental encounter (the broader view supported by Fisher)? And is it utterly sacrosanct, so that not even the penitent might release the confessor from the seal, or are their limits to its application? Aquinas evidently took the broader view, arguing that the seal of confession

26. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1.

27. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1, 4.

28. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1.

29. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.2–4.

30. For instance, Duns Scotus disagreed with Aquinas that the priest knows the sins of the penitent “as God” and not “as man.” Scotus distinguished between receiving the confession *in persona Dei*—which the priest did not do – and *in persona propria* – which the priest did do. For him, since the priest acts as a man with God’s authority, rather than as one with God’s identity, the priest did in fact possess confessional knowledge as man.

31. Cf. The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary.”

32. Ian Waters, “The Seal of Confession,” *Australasian Catholic Record* 94, no. 3 (2017): 330–43; Fisher, “Seal of Confession,” 131–51.

“indirectly” covers other matters that might relate to the penitent’s sins.³³ So too did Alphonsus Liguori who believed that should a penitent confess someone else’s sins, those sins would be indeed covered by the seal.³⁴ Yet, Aquinas also thought that a confessor could use knowledge obtained through the sacrament to prevent a disaster so long as the confessional matter itself were kept secret, and even that the penitent could release the confessor from the seal in certain circumstances.³⁵ Robert Bellarmine permitted even more exceptions and argued that for certain sins such as heresy, the content of the confession could be revealed to the bishop so long as the penitent’s identity remained hidden.³⁶ Other theologians argued that the seal was not applicable when absolution was denied.³⁷ Duns Scotus, Durandus, and Gabriel Biel argued that the penitent lacks authority to release the confessor because the seal belongs to the Church, not individuals.³⁸ Of course, it was not only theologians who were interested in the extent and inviolability of the seal. King James I thought that the confessional seal should be broken if it prevented “a great crime” and even executed a priest for failing to report the so-called Gunpowder Plot of 1605 CE to authorities.³⁹ French jurist Denis Talon likewise argued that it should be broken to prevent the assassination of a ruler.⁴⁰

Such exceptions to the confessional seal were condemned by a decree from the Holy Office in 1682 CE; the rationale being, in part, that were the Church to acquiesce to any “exception” to the seal, it would open herself to pressure for other exceptions and undermine public confidence in the sacrament.⁴¹ The broader reading of Fourth Lateran Council’s *proditio peccatoris*, the betrayal of the penitent, thus prevailed in subsequent centuries, even as none of the subsequent ecumenical councils mentioned the confessional seal. An *Instruction on the Seal of Confession* from the Holy Office in 1915 CE notably lamented those who “are not ashamed rashly to speak, in private conversation or in public sermons, for the edification of their hearers, as they say, of matters which have been submitted to the power of the keys

33. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.2. For instance, Aquinas considered any information that would disclose the identity of the penitent to fall within the extent of the confessional seal.

34. Alphonsus Liguori, *De Sacramento Poenitentiae*, cap. 3, dub. 1, n. 641.

35. See, Daly, “Seal of Confession,” 10; Fisher, “Seal of Confession,” 134.

36. Daly, “Seal of Confession,” 9.

37. Anthony Gray, “Is the Seal of the Confessional Protected by the Constitutional or Common Law?,” *Monash University Law Review* 44, no. 1 (2018): 118.

38. Dexter S. Brewer, “The Right of a Penitent to Release the Confessor from the Seal: Considerations in Canon Law and American Law,” *Jurist* 54, no. 2 (1994): 430–31.

39. Gray, “Seal of the Confessional,” 118.

40. Gray, “Seal of the Confessional,” 118.

41. Daly, “Seal of Confession,” 10.

in sacramental confession” even though they were careful enough to avoid “substantial” violations of the seal.⁴² As Brian Lucas comments, the concern was apparently that *any* discussion linked to confessional matter could bring the sacrament into disrepute and undermine public confidence in the integrity of the seal.⁴³ The *Code of Canon Law* (1917), in calling the sacramental seal “inviolable,” continued the long-established tradition of understanding it to be broad-ranging and exceptionless.⁴⁴ So too did the revised *Rite of Penance* promulgated in 1974 CE after the Second Vatican Council that emphasised that any knowledge obtained by the priest through the sacramental encounter was gained only as God’s minister and that, as a result, the seal was to remain “absolutely inviolate.”⁴⁵ The *Code of Canon Law* (1983) distinguished between the seal of confession and confessional secrecy, but again insisted that the former constituted an absolute obligation.⁴⁶

The competence of the penitent to release the confessor from the sacramental seal, however, continued to remain unresolved.⁴⁷ Kurtscheid argues that even though the issue was not addressed by the Lateran Council of 1215 CE and subsequent ecclesiastical laws before the 1917 Code, canonists and theologians largely held that the penitent could release the confessor from the seal.⁴⁸ John Roos, in his doctoral dissertation, takes the same position vis-à-vis the 1917 Code.⁴⁹ In its commentary on Canon 983 of the 1983 Code, however, The Canon Law Society of Great Britain took the contrary position.⁵⁰ In its recent Note, the Apostolic Penitentiary – finally addressing the matter – asserts that the confessional seal “lies beyond the reach of the volition of the penitent who, once the sacrament has been celebrated, does not have the power to relieve the confessor of the obligation to secrecy, because this duty comes directly from God.”⁵¹ It represents the culmination of a long process towards understanding the confessional seal as being of the very essence of the Sacrament of Reconciliation and *de jure*

42. See especially Brian Lucas, “The Seal of the Confessional and a Conflict of Duty,” *Church, Communication and Culture* 6, no. 1 (2021): 109, <https://doi.org/10.1080/23753234.2021.1890164>.

43. Lucas, “Seal of the Confessional,” 109.

44. Daly, “Seal of Confession,” 10–11.

45. Paul VI, *Ordo Paenitentiae*, 10d.

46. See treatments in Daly, “Seal of Confession,” 11–16; Robert T. Moriarty, “Violational of the Confessional Seal and the Associated Penalties,” *Jurist* 58, no. 1 (1998): 156–70.

47. For an overview of the history of the controversy, see Brewer, “Right of a Penitent,” 424–54.

48. Kurtscheid, *History of the Seal*, 291.

49. John Roos, *The Seal of Confession* (Washington: The Catholic University of America Press, 1960), 64.

50. See Lucas, “Seal of the Confessional,” 109.

51. The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary.”

divino, utterly inviolable, and concerning everything that the penitent has admitted during the sacramental encounter and thus known to the minister by virtue of it.

The Church's present understanding of the nature and extent of the confessional seal is thus the result of a long and complex journey; one that involves a gradual deepening of the theological foundations of the seal and its relationship to the Sacrament of Reconciliation itself. Yet, from this history, we might glean *two* distinct but interrelated aspects that sum up, as it were, the steady development of the Church's understanding towards the inviolable nature of the confessional seal: the *bonum paenitentis* [the good of the penitent] and the *bonum sacramenti* [the good of the sacrament].⁵² In understanding how the confessional seal safeguards these twin goods, we recognise how it functions not just negatively, by preventing confessional knowledge from being divulged outside the confessional, but also positively – and perhaps even more fundamentally – as something indispensable for the celebration of the sacrament and serving the ultimate good of human persons. What follows presents the theological foundations that underpin the Church's present understanding of the nature and extent of the confessional seal by exploring these *two* aspects in the light of the post-conciliar understanding of the Sacrament of Reconciliation.

THE SEAL AND THE BONUM PAENITENTIS

The history of the seal attests that, at one level, confessional secrecy relates to the *bonum paenitentis*. In fact, a concern to protect the penitent from adverse effects to their physical security and reputation, should knowledge of the sins be divulged, emerges early on. This, we might say, is the “natural law” foundation of the confessional seal, building upon the Church's understanding of “secrecy” and its relationship to the fundamental dignity of human persons. In this regard, Waters rightly notes how Catholic teaching has traditionally distinguished between different kinds of “secrets” even outside the confessional: “natural secrets,” whereby a person has a natural right to keep private one's family matters, health, personal experiences, and in a sense, one's sins; “committed secrets,” whereby one assures another that something discussed or discovered will not be divulged; and “entrusted secrets,” whereby one enters an implicit contract with a professional such as a psychologist or lawyer in exchange of a service rendered.⁵³ Of course, the right to secrecy is not absolute, and there may

52. These “goods” are identified in Moriarty, “Confessional Seal,” 154–55.

53. Waters, “Seal of Confession,” 332.

be legitimate exceptions that demand that such information be divulged for a greater good – an issue to which we will return soon. For the most part, however, human persons are entitled to avail of secrecy in ways that preserve their good reputation as well as their physical, material, and social rights. That persons have a right to such secrets is a matter of justice. It is also a matter of charity. Common good and solidarity among people can be promoted only when social life is built upon a proper sense and recognition of the inherent worth of every person that includes, among other things, a right to keep certain matters private.

The Church, therefore, insists that individual privacy and confidentiality be respected out of a common commitment, at all levels, to the dignity of human persons and the promotion of authentic fraternity. In fact, the recent Note from the Apostolic Penitentiary responds to the matter of civil legislations impinging upon the confessional seal precisely by situating such developments in civil societies within an even wider context.⁵⁴ It criticises “a certain ‘longing’ for information,” a search for “news” and “scandals” that takes on “the disturbing traits of morbidity,” even to the extent of disregarding the distinction between public and private spheres of human life. It even notes a disturbing “negative prejudice” regarding the Church’s defence of the confidentiality inherent to certain forums such as the Sacrament of Reconciliation. The suggestion is evidently that antipathy towards the confidential nature of sacramental knowledge is, in fact, only a symptom of an even wider disregard of the role of confidentiality vis-à-vis individual rights and fraternal charity in general.⁵⁵

The secrecy pertaining to the Sacrament of Reconciliation, then, must firstly be located within this broader sense of *bonum paenitentis*. It exists not only to prevent harm, but to promote good—both individual and common. While, on the one hand, those who approach the minister of the Sacrament of Reconciliation do so on the implicit terms of entrusted secrecy (thus making it a matter of justice that the secrecy be maintained), there is, on the other

54. The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary.”

55. This concern for confidentiality is taken up even more evocatively in Pope Francis’ *Fratelli Tutti*; a paragraph worth quoting in its entirety: “Oddly enough, while closed and intolerant attitudes towards others are on the rise, distances are otherwise shrinking or disappearing to the point that the right to privacy scarcely exists. Everything has become a kind of spectacle to be examined and inspected, and people’s lives are now under constant surveillance. Digital communication wants to bring everything out into the open; people’s lives are combed over, laid bare and banded about, often anonymously. Respect for others disintegrates, and even as we dismiss, ignore, or keep others distant, we can shamelessly peer into every detail of their lives.” Francis, “*Fratelli Tutti*,” (Vatican Website, October 3, 2020), sec. 42. https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_encyclica-fratelli-tutti.html.

hand, a secrecy owed the penitent because of the nature of what is disclosed during the sacramental encounter, something only fully appreciated in the light of the “demands” placed on penitents as laid down by *The Rite of Penance* (RP) of the post-conciliar Church.⁵⁶ What does the Church, through RP, ask of those who approach the Sacrament of Reconciliation? There is no doubt that penitents are expected to confess their sins and are obliged to confess their grave sins. Forgiveness of sins, after all, is the focus of the sacrament. Yet, RP envisions that the penitent will do nothing less than “open [their] heart to the minister of God.”⁵⁷ This is not an exhortation to make judgments about the sins one has committed, confessing only what ‘needs’ to be confessed to avoid ‘eternal damnation,’ but to draw one’s consciousness of all one’s sins into the light of God’s mercy and be completely open with one’s confessor about one’s reality before God. It is a vision reflecting the Church’s post-conciliar understanding of the Sacrament of Reconciliation as both a sacramental encounter in which the sinner receives “pardon and peace” and a part of an ongoing – indeed, lifelong – journey of conversion.⁵⁸

Coffey has perceptively observed the “personally demanding” nature of this vision. As he describes it, “What matters, as far as confession is concerned, is that the person be truly repentant, that they be sincere of heart, and that in their confession they do their human best (which is not necessarily an absolute best) to express whatever they find in their heart needing to be said on this occasion of grace.”⁵⁹ What is disclosed during sacramental confession, therefore, is understandably more than just sins as items put on a list. In “opening their heart” to the minister, penitents bring to the sacramental encounter everything that bears upon their consciences and what is known in their hearts as affecting their relationship with God and other people. The Sacrament of Reconciliation thus constitutes, in a particular and unique way, an entering into the mystery of another human being, one who places their confidence in the minister as a sacramental representative of Jesus Christ, the “friend of sinners” (cf. Mt 11:19). Pastoral experience only confirms that in the course of the Sacrament, all manner of things “tumble out,” even though sacramental confession is not, *per se*, spiritual direction or psychological counselling.⁶⁰ The knowledge

56. This discussion of the “greater demands” of RP is indebted to Coffey, *Reconciliation*, 100–07.

57. *The Rite of Penance*, trans. The International Committee on English in the Liturgy (Collegeville: Liturgical Press, 1975), sec. 6b.

58. Cf. The English translation of the prayer of Absolution, as found in *The Rite of Penance*, sec. 46.

59. Coffey, *Reconciliation*, 106.

60. Cf. Fisher, “Seal of Confession,” 134.

obtained by the minister concerning the penitent often includes a whole range of matters besides sins: an individual's innermost thoughts, feelings, and desires; their secrets, temptations, habits, and difficulties; their hopes and longings; matters that every person has a right to keep private. Such knowledge surely comes with an implicit expectation that disclosures made for the sake of spiritual counsel will remain confidential in their entirety. Regardless of whether individual matters might qualify as "sins – and it is not always easy to neatly separate "sins" from "other" matters – they are related to the *bonum paenitentis* that demands that they be treated with the confidentiality owed to human persons, and hence encompassed by the theology of the confessional seal.⁶¹

The *bonum paenitentis*, though, is not utterly sacrosanct, and no doubt there already exist legitimate exceptions that demand that entrusted information be divulged for a greater good.⁶² From a technical point of view, moreover, if the confessional seal simply came down to the *bonum paenitentis*, the penitent could release the confessor from the obligation of the seal.⁶³ It is therefore necessary to consider the second aspect that underpins the Church's theology of the inviolable nature of the confessional seal: the *bonum sacramenti*. As shall be seen, the *bonum sacramenti* takes precedence over the *bonum paenitentis* when the two aspects come into conflict.

THE SEAL AND THE *BONUM SACRAMENTI*

We only begin to appreciate the significance of the *bonum sacramenti*, however, if we recognise that the sacramental seal is more than just a professional secret (as in the cases of doctor-patient, lawyer-client, or counselling relationships). In Catholic teaching, the Sacrament of Reconciliation is a privileged encounter between the penitent and God.⁶⁴ To return to an earlier point, the

61. Lucas provides a helpful hypothetical scenario to illustrate the claim that it is not always easy or desirable to "split sins and non-sins" in the sacramental encounter. See Lucas, "Seal of the Confessional," 108; Brian Lucas, "The Sacrament of Reconciliation and Civil Law After the Royal Commission," *The Canonist* 11, no. 2 (2020): 281.

62. Indeed, in matters such as the sexual abuse of minors, few reasonable people would place the rights of the perpetrator (especially, the right to secrecy) over the rights of the victim.

63. Cf. Moriarty, "Confessional Seal," 155.

64. "It must be emphasized that nothing is more personal and intimate than this sacrament, in which the sinner stands alone before God with his sin, repentance and trust." John Paul II, "*Reconciliatio et Penitentia*," (Vatican Website, December 2, 1984), Post-Synodal Apostolic Exhortation, sec. 31. https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_02121984_reconciliatio-et-paenitentia.html.

penitent during the sacramental encounter “opens their heart” to God; the priest is only present as minister of the sacrament. He (the priest) ministers as the sacramental representative of Jesus Christ, the “friend of sinners” (cf. Mt 11:19). He acts with the authority entrusted to the Church and indeed *in persona Christi* as he welcomes the penitent, listens to them, and absolves them of their sins. The ‘I’ of the priest – in the celebration of any sacrament – is thus never his own, but Christ’s.⁶⁵ Any knowledge of what the penitent has revealed during the sacramental encounter is thus also not his own, but Christ’s.

To say that the priest acts sacramentally, of course, is not to say that he ceases to also act humanly or that the penitent does not encounter the human nature of the priest during the sacramental encounter. It does imply, however, that in the Catholic tradition, anything revealed by the penitent is revealed not to Fr. X or Fr. Y but to Christ, whom Fr. X or Fr. Y represents through his sacramental ministry. This is the understanding of every penitent who approaches the Sacrament of Reconciliation because it is the teaching of the Catholic Church. Fr. X and Fr. Y are simply not free to reveal anything learnt from the sacramental encounter because it is not theirs to reveal. It is only in this light that we can appreciate Aquinas’ teaching that what is known from the sacrament is known *non ut homo, sed ut Deus*, even to the extent that the priest, in good conscience, could say that he “does not know” what he knows only as God’s minister.⁶⁶ And it is only in this light that we can see why the seal binds the confessor even “interiorly,” as the Note from the Apostolic Penitentiary puts it.⁶⁷

The Sacrament of Reconciliation thus carries by its very logic – that is to say, the way the Catholic Church understands it theologically – the right of the penitent to know that what is revealed in the sacramental forum will never be disclosed in the human forum. And to emphasise it again, what is revealed is everything that the penitent finds in their heart needing to be said to God as they encounter God sacramentally through the mediation of the priest. Without this assurance, human fragility would simply get in the way and people would be deterred from approaching the Sacrament of Reconciliation. The slightest hint that what has been revealed to God alone could become known would, in fact, encroach upon the interior freedom of penitents in approaching the

65. Cf. The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary.”

66. Aquinas, *Summa Theologiae*, Suppl. IIIae, q.11 art.1.

67. The Apostolic Penitentiary of the Holy See, “Note of the Apostolic Penitentiary.”

It asserts that the priest is obliged to even suppress any involuntary recollection of what he has learnt through the sacrament and is absolutely forbidden from ever acting on confessional knowledge, even if the identity of the penitent remains concealed.

Sacrament of Reconciliation since it would be compromised by the fear, doubt, mistrust, and struggle which is natural to fragile human beings in such matters. And while God is, in no way, limited by the Sacraments, the Catholic tradition does recognise the irrevocable way in which God has bound himself to them, thus insisting that the Sacrament of Reconciliation constitutes the only ordinary way in which mortal sins are sacramentally forgiven and those cut off are restored to ecclesial communion.⁶⁸ To deprive penitents of the absolute interior freedom that comes from knowing that what they say will never be revealed in an extra-sacramental forum is thus to deter them from approaching the sacrament and thereby deprive them of the sole ordinary way of having their grave sins forgiven as well as put into risk their eternal salvation. To borrow some words from Pope Francis, the celebration of the sacraments in the Catholic tradition – the Sacrament of Reconciliation in this case – is, and must always be, not a prize for those with super-human courage or tremendous inner strength, but a powerful medicine for the weak.⁶⁹

To permit a single exception to the confessional seal, then, is to undermine the *bonum sacramenti* itself: the very integrity of the sacrament. The *bonum sacramenti*, after all, touches the very heart of the sacramentality of the Church and God's saving designs. The Church is herself the sacramental sign of salvation to the world. As Christ's Body, she continues across time and space every element that was central to Christ's mission through the sacramental economy.⁷⁰ And Reconciliation denotes the very essence of Christ's mission: "In Christ, God was reconciling the world to himself" (2 Cor 5:19). To compromise the confessional seal is thus to strike at the very nature of the Church; it is to prevent her from being all that she is by virtue of being the sacrament of the reconciling Christ in the world. Only in this light can we understand why the Church scrupulously defends the integrity of the confessional seal, seeing it as being of the very essence of the Sacrament of Reconciliation and *de jure divino*, utterly inviolable, and concerning everything that the penitent has admitted during the sacramental encounter and thus known to the minister by virtue of it. Not even the penitent thus has the right to release the confessor from the obligation of the seal and the *bonum sacramenti* takes precedence even over the *bonum paenitentis* if the two aspects ever come into conflict. The confessional seal does indeed exist as a

68. *The Rite of Penance*, sec. 31; John Paul II, "Reconciliatio et Penitentia," sec. 30.

69. Cf. Francis, "Evangelii Gaudium," (Vatican Website, November 24, 2013), Apostolic Exhortation, sec. 47. https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

70. On this point, see especially Coffey, *Reconciliation*, 34–41.

fundamental aspect of Church teaching, relating ineluctably to the Church's own sacramental nature and economy. Unsurprisingly, then, the Church does expect that confessors will witness to this truth as "a necessary testimony" even unto death – an element already contained within the Church's history.⁷¹

Finally, we might note – however briefly – that the *bonum paenitentis*, to the extent that it belongs to natural law, does not require any distinctively religious insight for it to be appreciated, and as noted previously, does legitimately admit of exceptions. Appreciating the *bonum sacramenti* and its exceptionless nature, however, presumes Christian faith and requires an assent to Catholic doctrine on the various matters that have been previously touched upon. The question of the extent to which civil legislation might impinge upon the confessional seal is fought on this latter battleground. The real issue, then, is not the extent to which non-believers share the Church's understanding of the nature and extent of the confessional seal, or even see the "*libertas Ecclesiae*" as coming from God and not individual States.⁷² In fact, many people do find elements of the *bonum sacramenti* "peculiar, laughable, or even pernicious," and would prefer some restrictions to the *libertas Ecclesiae* within secular societies.⁷³ The real issue is the right of citizens within avowedly secular societies to practice their fundamental religious beliefs in freedom of conscience and without political or legislative interference.⁷⁴ Exploring the historical and theological foundations of the confessional seal in the Catholic tradition has established this fact: the inviolability of the confessional seal is indeed a fundamental matter of belief for those who profess the Catholic faith. Civil legislations that impinge upon the integrity of the confessional seal, then, do constitute "a violation of the right of Catholics" to "practice their deeply held beliefs freely and without government intrusion" and must be recognised as such.⁷⁵

CONCLUSION

This paper has explored the historical and theological foundations of the confessional seal within the Catholic tradition. It has asked how, and to what extent, the inviolability of the confessional seal is rooted in the very nature of the Sacrament of Reconciliation as

71. The Apostolic Penitentiary of the Holy See, "Note of the Apostolic Penitentiary." On witnesses to the inviolability of the seal in the Church's history, see, *inter alia*, Fisher, "Seal of Confession," 139–40.

72. Cf. The Apostolic Penitentiary of the Holy See, "Note of the Apostolic Penitentiary."

73. Cf. Costelloe, "Pastoral Letter."

74. See especially Fisher, "Seal of Confession," 148–50.

75. Cf. Costelloe, "Pastoral Letter."

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understood by the Catholic Church. To that end, it first surveyed the history of the seal within the Catholic tradition, gleaning from it the theological foundations that underpin the gradual development in the Church's understanding of the nature and extent of the seal. It then explored, in some detail, these fundamental theological reasons that support the Church's present understanding of the sacramental seal as inviolate. It argued that the confessional seal does indeed exist as a fundamental aspect of Church teaching, safeguarding the twin goods of *bonum paenitentis* and *bonum sacramenti*, but also significantly relating to the Church's own sacramental nature and economy. And it is thus that the Church expects of confessors the defence of the confessional seal as "a necessary testimony," even "usque ad sanguinis effusionem."

Joy and Happiness. Joy and happiness are two different things, although they are obviously related. There are things in our lives we feel happy doing or experiencing. For example, watching a good movie makes us feel happy for the time we are watching it. Happiness is very much in the moment, and it can be good. But joy is a different thing. Joy is a deeper sense than happiness. We feel happy watching a film, but feel joy when we see a good friend whom we haven't seen for a while. Joy is different.

– IRISH JESUITS, *Sacred Space 2023*, (Dublin: Messenger Publications), 2022, p.246