

Wake Up: The real danger posed by the California confession bill

SB 360, a piece of proposed legislation currently making its way through the California state senate, should alarm not only every Catholic in the country, but indeed the adepts of any religion.

In California, as in almost every other state, clergy members (along with a variety of other professionals, including physicians, social workers, teachers, and therapists) are mandated reporters—which is to say, they are legally required to report any case of suspected child abuse or neglect to law enforcement. However, California clergy who come by this knowledge in the context of “penitential communication” are currently exempted from the requirement. SB 360 would remove the exemption.

Sen. Jerry Hill, the bill’s sponsor, characterized the scope and purpose of his legislation as follows: “The law should apply equally to all professionals who have been designated as mandated reporters of these crimes—with no exceptions, period. The exemption for clergy only protects the abuser and places children at further risk.”

I would like to make clear what the passage of this law would mean for Catholic priests in California.

Immediately, it would place them on the horns of a terrible dilemma. Since the canon law of the Church stipulates that the conscious violation of the seal of confession results in automatic excommunication, every priest, under this new law, would be threatened with prosecution and possible imprisonment on the one hand or formal exclusion from the body of Christ on the other. And does anyone doubt that, if

this law is enacted, attempts will be made to entrap priests, effectively placing them in this impossible position?

What I hope is clear—not only to Catholics, but to any American committed to the First Amendment—is that we are dealing here with an egregious violation of the principle of religious liberty. In its stipulation that Congress shall make no law respecting the establishment of religion, the first amendment holds off, if you will, the aggression of any religion toward the civil state. But in its further stipulation that Congress shall never legislate in such a way as to obviate the free exercise of religion, it blocks the state’s aggression toward religion. The framers of the Bill of Rights were legitimately alarmed at the prospect of the government meddling in the affairs of a religious community, monitoring its beliefs and policing its behavior. But such meddling and monitoring is precisely what SB 360 involves.

I realize that non-Catholics and nonbelievers might not appreciate how precious the sacrament of confession is to Catholics and why the seal of confession matters so profoundly. In my last year in the seminary, my classmates and I took a course in the theology and practice of the sacrament of reconciliation (to give it its proper title). Our professor said something that has stayed with me for the thirty-three years of my priesthood, burned into my mind and soul. He told us, “If someone asks, ‘Father, would you hear my confession?’, the answer is always yes. Even if hearing that confession puts your own life in danger, the answer is always yes.” And he went on, “If a person inquires about what was said during a confession, you should act as though the confession never even happened. And if doing so puts your own life in danger, you should still act as though the confession never happened.”

Why do we Catholics take this sacrament with such seriousness?

We do so because we believe that through this sacramental encounter, a sinner accesses the healing and forgiving grace of Christ. In the context of confession, the

priest, we hold, is operating in the very person of Christ, and therefore, the penitent is speaking to and hearing from the Lord himself. Thus, absolutely nothing ought to stand in the way of a sinner who seeks this font of grace. In light of these clarifications, one can understand the indispensable importance of the seal. If a penitent thought that the priest to whom he confessed were likely to share with others what was given in the most sacred confidence, he or she would be reluctant indeed ever to approach the sacrament of reconciliation. And this is why the Church has striven so strenuously to protect, at all costs, the integrity of confession.

And through the entire course of our country's history, the government has protected the right of the Catholic Church to determine its own sacramental practice and has never sought to compel the violation of the seal. Given this venerable tradition, grounded in the second clause of the First Amendment, an extraordinary burden of proof, it seems to me, lies with those who would seek to dispense with the exemption. But what is impossible to doubt is that religious liberty is indeed under grave threat, especially when we consider the slippery slope onto which SB 360 would invite us. Surely murder, theft, spousal abuse, child neglect, and rape are terrible crimes. Would the state determine that priests are obligated to report these offenses to the authorities, should they hear of them in the confessional?

For some time now, the public institutions of the Church have been under attack from the secular state. The government has been seeking to determine what is taught and practiced in Catholic schools and what is carried out in Catholic hospitals, even when these practices run counter to the Church's formal doctrine. But with SB 360, the secular authorities are reaching into the inner life of the Church, into its sacramental practice and discipline. Catholics should, of course, rise up in strenuous protest against this very aggressive incursion—but so should anyone who cares about the freedom of religion in our society.