

Confession of Sin and Commission of Crime: Conflict Between Canon Law and Civil Law and the Dilemma of Catholic Priests

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Abstract

This paper examines the tension between Church law codified as canon law and civil law as it relates to the seal of confession as practiced in the Catholic Church. Under what conditions should the seal be broken? Or should it never be broken? Are there exceptions to this rule? Or should there be exceptions? Although this paper justifies why the seal of confession is inviolable under Church law, some civil law jurisdictions do not consider it so; hence they consider it as a qualified but not an absolute privilege which presupposes that a priest can be compelled in certain situations to disclose or give evidence in a court of law in respect of the contents of confession which come to his knowledge, thereby betraying the sacred trust that exists between him and the penitent. Despite the inviolability of the seal, this paper concludes by urging the Church to create exceptions to so as to bring it in tandem with the realities of time and tide.

Key Words and Phrases: Seal of Confession, Canon Law or Church Law, Civil Law, Sin and Crime, Absolute Immunity, Absolute Privilege, Absolute Privilege, and Qualified Privilege

1. Introduction

One of the most important sacraments in the Catholic Church is the sacrament of penance or reconciliation, popularly known to the lay faithful and others as confession. It is a rite where the penitent discloses his sins to the priest in strict confidentiality for the absolution of the sins he so confessed and for the purpose of his reconciliation with God. This secret or confidentiality pact is sacred; and tagged under the Code of Canon Law as “the seal of confession”, or “the confessional seal”, or “the seal of the confessional”, or “the sacramental seal”. The implication is that under no circumstances whatsoever should a priest disclose the contents of any confession made to him by a penitent even if there is disclosure of the commission of a crime or intention to commit a crime against the State.

Under civil law, the priest enjoys only qualified privilege of confidentiality between himself and a penitent in respect of confession. In other words, the privilege is not absolute. Therefore, where a penitent discloses to a priest during confession that he had committed a crime, or that he will commit a crime, the priest has a duty and obligation to the State to disclose that fact. If he refuses, he may be guilty of accessory before, which is a crime against the State. The priest is then caught in the cross-fire of this conflict: his priestly allegiance to the Catholic Code of Canon Law and his duty and obligation to the State under its civil law, especially the penal laws.

2. Confession of Sin and Canon Law

The Code of Canon Law is the principal legislative document of the Latin Catholic Church (Can. 1). The Latin Church is simply that vast portion of the Catholic body which obeys the Latin patriarch and submits to the Pope, not only in papal, but also in patriarchal matters. This appellation is used, first, because the official language of the Church is Latin; and, second, to distinguish it from the Eastern Churches or patriarchates, whether Catholic or Schismatic. Presently, the Latin patriarchate often referred to as the Roman Catholic Church is the largest in the world. The Catholic community in Nigeria belongs to the Latin Church. In promulgating the Code of Canon Law, Pope John Paul II clearly spells out in his Apostolic Constitution the widespread applicability of the Law to the Church and all are bound to abide by it (Given at Rome, in the Vatican, on the 25th day of January 1983).

Human beings generally are weak and fallible; and because of this, they are prone to commit sins either by commission or omission. The Holy Bible graphically captures the frailty of man and his susceptibility to commit sins in Rom 3:2, thus: "For all have sinned and fall short of the glory of God"; and in Ps 130: "If You O Lord should mark our guilt, who will survive?".

Sin, by its nature, breaks the link of friendship that binds human beings to God through baptism (Flannery, p. 42). Jesus Christ has reconciled God and men through the mystery of his death and resurrection (cf. Rom 5:10). This ministry of reconciliation was committed to the Church by Jesus, himself (cf. 2 Cor 5:8); and the Church has executed the commissioning by bearing the glad tidings of salvation to men by baptizing them in water and Holy Spirit (cf. Matt. 28:19). For this reason, Jesus instituted a special sacrament for the remission of sins committed after baptism. This is the sacrament of penance. In instituting the sacrament, it was recorded in John 20:21-23 thus: and he said to them again, 'Peace be with you'. 'As the Father sent me, so am I sending you'. After saying this, he breathed on them and said: 'Receive the Holy Spirit. If you forgive anyone's sins, they are forgiven; if you retain anyone's sins, they are retained'.

Since then, the Church has celebrated this age-long sacrament through the ages in varying ways, but always retaining the essential elements.

The sacrament of penance is administered by the priests of the Church (Can. 965). 'Priests' here include the Roman Pontiff (the Pope), Cardinals, Bishops and the various Reverend Fathers of the various parishes in their Dioceses conferred with such faculty by their local ordinary, the Bishop (Cans. 967 and 969). To be competent to administer the sacrament for the valid absolution of sins, the priest must have, in addition to the power of orders, the faculty of exercising it for the faithful to whom he imparts absolution (Can. 966, par. 1); and a priest can be given this faculty either by the law itself or by a grant made by the competent authority (Can. 966, par. 2). When a priest hears a confession, he is referred to as 'the confessor', while the lay faithful is referred to as 'the penitent'.

3. The Seal of Confession

When a person unburdens his soul and confesses his sins to a priest in the sacrament of penance, a very sacred trust is created. The priest must maintain absolute secrecy about everything that the person confesses. This is the reason why in some jurisdictions, confessionals are developed with screens to protect the anonymity of the penitent. The confessional seal is inviolable and absolute. Under the Code of Canon Law: 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. The interpreter, if there is one, and all others who in any way have knowledge of sins from confession are also obliged to observe secrecy (Can. 983, par. 1 and 2).

The burden placed on the priest is so heavy that he is absolutely prohibited from disclosing confessions made to him to the detriment of the penitent even in the face of death or any danger to his person, or for the benefit of external governance (Cans. 984, par 1 and 2).

A priest or interpreter or any other person (including the penitent) who in any way has knowledge of the sins from confession that violates this seal faces severe canonical punishments as the Canon stipulates, thus:

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.

Interpreters and the others mentioned in Can. 983.2 who violate the secret are to be punished with just penalty, not excluding excommunication (Can. 1388, par. 1 and 2).

Lucie-Smith (2014), a Catholic Priest comments and contributes further, thus:

A priest, therefore, cannot break the seal to save his own life, to protect his good name, or to refute a false accusation, to save the life of another, to aid the course of justice (like reporting a crime), or to avert public calamity. He cannot be compelled by law to disclose a person's confession or be bound by any oath he takes, e.g. as a witness in a court trial. A priest cannot reveal the contents of a confession either directly, by repeating the substance of what has been said, or indirectly, by some sign, suggestion, or action. A Decree from the Holy Office (Nov. 18, 1682) mandated that confessors are forbidden, even where there would be no revelation direct or indirect, to make any use of knowledge obtained in the confession that would "displease" the penitent or reveal his identity.

It seems a heavier burden and punishments are placed on the priest more than the interpreter and others who have knowledge of the confession of sins. The only acceptable exception would appear to be when the penitent, himself, waives the confidentiality and suggests to the priest to disclose the contents of the confession. This is most likely in a face-to-face confession. Even at that, this exception is subject to arguments and debates; and therefore complicated. This is because the Code of Canon Law says nothing about whether or not a penitent can free a priest from the seal of confession. When the Code is silent, the practice is that canonists and commentators resort to writings and opinions of scholars on the particular subject for solution (Reese, 2015).

A review of the literature on this issue shows that while a few theologians and canonists would maintain that the penitent cannot free the confessor from the obligation of the seal of confession, the majority of theological and canonical opinion holds that the penitent can free the confessor (Reese, 2015). The view of the majority is that this is traceable to the 13th century after the Fourth Lateran Council forbade the breaking of the seal of confession in 1215. Almost immediately after the Council, theologians and canonist raised questions about the ability of penitents to waive this right. It was concluded that they could waive their right to privacy; and Canon Law never contradicted this position. Also, it was further argued that Canon 983 uses the phrase "betray in any way a penitent"; that a penitent would not be betrayed if he or she gives permission to the priest to disclose; and that, in any case, that portion of Canon Law only bounds the priest and not the penitent (Reese, 2015).

The minority view, on the other hand, argues that the seal of confession is not just for the penitent *qua* penitent alone, but also to the Catholic community; and

therefore the penitent on his own cannot waive it. Scholars here maintain that scandal may arise if other lay faithful misunderstand and think the seal has been broken and made open; and this will breach the private and intimate confidentiality of confession. There is also the danger that penitents may be coerced by civil authority into granting the permission, especially in court cases or trials (Reese, 2015).

In any case and event, the priest is still not compellable under canon law to disclose the contents of a confession even if the penitent permits him to do so. This way, the seal of confession remains intact; and the minority view may prevail over the majority view at the end of the day (Reese, 2015).

The Church and some commentators have given some reasons to justify the seal of confession. Lucie-Smith (2014), opines that: "The seal of confession is absolutely sacrosanct, and I, as well as every Catholic priest known to me, would be happy to go to jail rather than break it. Moreover, this is something that everyone should support, not just Catholics."

Firstly, the duty and responsibility of the Church is to save souls. The essence of confession is to win souls. Therefore, the penitent must be absolutely sure of the confidentiality of the contents of his confession to the priest for the remission and absolution of his sins. If priests were allowed to reveal the contents of confession, who will go to confession? The Church strives to maintain the absolute freedom of its faithful, under any circumstance, to seek God's mercy without fear or intimidation (see in: <http://www.patheos.com>).

Secondly, there are certain things that are intrinsically private and must be shared privately. For instance, the proponents of this make an analogy with phone hacking. To them, although phone hacking is illegal, not many have any problem with it. Thus, if the contents of phones are private as guaranteed by civil law, how much more so should be the contents of confession? (see: <http://www.patheos.com>). Besides, the 1999 Constitution of the Federal Republic of Nigeria, guarantees and protects the right to privacy as a fundamental right. It states thus:

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected (Section 37 of the Constitution). Although section 45(1) of the Constitution provides that a law may be enacted which may derogate on, or whittle down the right to privacy, among others, it will be a matter of legal debate whether such law, even if enacted, will derogate on, or break the seal of confession between a priest and a penitent.

Thirdly, the State has the right to know many things, but it has no jurisdiction over matters of conscience. Since confession is a matter of conscience, every Catholic has the right to approach his priest in absolute confidence and discuss the state of his soul; and the State has no right whatsoever to pry into this conversation. This is more so because the powers and rights of the State in a non-totalitarian and democratic society as ours is limited. The conscience of an individual human person is sovereign and absolute subject only to God and not any secular or man-made authority. Any government or authority violating such a conscience should totally be unacceptable. Good people or priests have, here, a genuine reason to sacrifice their lives in the face of demands, threats or any violence from evil powers, governments or authorities (Lucie-Smith, 2014).

Fourthly, the seal of confession is not a contract between the priest and the penitent, but created and built on sacred trust (Lucie-Smith, <http://www.patheos.com>). Each priest realizes that he is the ordained mediator of a very sacred and precious sacrament. He knows that in the confessional, the penitent speaks not so much to him, but to God through him. Therefore, humbled by this position, the priest knows that whatever is said or disclosed in confession must remain a secret at all cost. (Saunders, <http://catholiceducation.org>).

Fifthly, the priest is not an extension of the long arm of the law. Hard as it may seem, even criminals need to have someone to whom they can speak and whom they can trust absolutely. Criminals also have rights; and, for sure, the right to privacy is one of them. Therefore, if someone confesses to the priest about the commission of a crime, such must not be disclosed to the civil authority. The best the priest can do in the circumstance is to urge the criminal to give himself up to the police, but the priest must leave him to do so freely. The priest must not betray the trust or coerce or harass the penitent to do so (Lucie-Smith, <http://www.patheos.com>). This justification is akin to what is obtainable in the Nigerian criminal justice system where a Judge is bound to enter a plea of 'not guilty' to an accused person standing trial for a capital offence punishable by death even if the accused person confesses to the commission of the crime or pleads guilty in an open court and before the judge (See section 187(2) of the Criminal Procedure Code Law applicable to the Northern States of Nigeria, and section 218 of the Criminal Procedure Act applicable to the Southern States of Nigeria). The burden of proof beyond reasonable doubt placed on the prosecution will never be shifted in this circumstance; and it must go ahead to prove the guilt of the accused person accordingly. In the case of *Toby v. The State*, Uwaifo, JSC (2001, p. 23) has this to say:

Obviously section 218 of the CPA is not applicable to a capital offence.

In other words, if a person charged with murder pleads guilty to it, a plea of not guilty is recorded by the court on his behalf. Section 187(2) of the CPC directly provides for this as follows: "If the accused pleads guilty the plea shall be recorded and he may in the discretion of the court be convicted thereon, unless the offence charged is punishable with death, when the presiding Judge shall enter a plea of not guilty on behalf of the accused." It is, however, well known that by convention, although there is no equivalent of the above provision in the CPA, plea of guilty is never recorded for an accused in a murder case even when he so pleads in error. A plea of not guilty is recorded on his behalf (see *R. v. Kofi Mansu* (1947) 12 WACA 113).

4. Civil Law and Commission of Crime

In Nigeria, the phrase "civil law" may be defined in both narrow and wider sense. In its narrow sense, it means that aspect of law that comprises of private or personal rights in contradistinction, or as opposed to the aspect that comprises of criminal, constitutional, administrative or public law (Garner, p. 239). The difference between civil law and criminal law is aptly captured thus:

The difference between civil law and criminal law turns on the difference between two different objects which the law seeks to pursue: redress or punishment. The object of civil law is the redress of wrong by compelling compensation or restitution: the wrong doer is not punished; he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss. On the other hand, in the case of crimes, the main object of the law is to punish the wrong doer; to give him and others a strong inducement not to commit the same or similar crimes, to refrain from if possible, and perhaps to satisfy the public sense that wrong doing ought to meet with retribution (Geldart, p. 146).

In its wider sense, it (civil law) means the entire body of laws in a State, as opposed to religious laws or codes, or moral norms or precepts; and it includes private/personal laws/rights, criminal law, constitutional law, administrative law, other public laws, customary law, common law and principles of equity. This means that any law which is not ecclesiastical or religious, or based on morality can be tagged as "civil law" in Nigeria. Therefore, the Code of Canon Law, for instance, is not a civil law in this sense. This paper makes reference to civil law in its wider sense.

A crime is an offence or harm against the State which is treated as a subject of criminal proceedings; and it is punishable (Garner, p. 377). It is one of the branches of public law. "State" here means a component part of an indivisible

country, nation or federation, for instance Kaduna State; or the country itself, for instance Nigeria. What constitutes a crime or offence is usually codified in a written law, usually the penal laws. Section 36 (12) of the Constitution of the Federal Republic of Nigeria provides that:

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

The import of the above constitutional provision is that the responsibility to enact penal laws and impose punishments thereof is that of the State under its legal system and jurisprudence and not in any way that of any ecclesiastical or religious body like the Catholic Church or any other church. Because of this, we have many penal laws at the Federal and State levels dealing with various offences or crimes in Nigeria. Therefore, the Catholic Church and other churches are subject to civil law and jurisdiction of the State and all its constituted authorities.

5. Sin and Crime

Crime is a legal concept. Sin is a moral or religious concept. Crime is defined, therefore, by civil codes. Sin is defined by God. Not all sins are crimes, and vice versa. Sin is a moral definition used by religions to describe a wide range of actions some of which may not be illegal under the civil laws and legal systems of most legal systems. The word crime describes actions that are illegal under a nation's civil laws and legal system. Since the two could be mutually exclusive, attempting to link the two terms in a conversation or in logical thought may not be a rational exercise. The two concepts overlap in many regards, but ultimately they have different foundational basis (see: <https://www.quora.com>).

While sin relates to the Church, crime relates to the State. This distinction is critical because the punishment for sin is with God while the State punishes for crime through penal and punitive sanctions which ranges from fine, forfeiture, prison term, and death sentence depending on the gravity of the offence and the law establishing it. Crime is an action that is against the civil law of the society. Sin is a violation of God's will or laws. Crime is identified by the government but sin is identified by God. The punishment for crime is meted out in this world but the punishment for sin is meted out after death in the hereafter. A crime may also be a sin, and a sin may also be a crime. Sin is a subjective term left to the conscience of the individual. Sin is a belief by religious people and ignored by others as a delusion (see: <https://www.quora.com>). Rogers poetically captures the difference between sin and crime as follows:

Sin and crime are, unfortunately, all around us and always with us. It's been that way since the dawn of time because human beings are, at their core, tainted by the Fall in the Garden of Eden. Remember The New England Primer? Maybe not, but you will remember "In Adam's fall we sinned all," a phrase used in the primer for teaching the alphabet letter "A." It's good theology.

However, though human beings are sinners by nature not all, thankfully, choose to sin to the extent of evil imagination. And, thankfully, when people do sin their sins are not always defined as crimes. I'm glad for this because otherwise I'd be in jail along with everyone else.

Crimes are actually certain acts (kinds of sin?), ones society or government if you prefer has defined as illegal. (Some acts defined as crime may not, from the point of view of Christian theology, really be sin, and some acts not defined as crimes are, from the point of view of Christian theology, indeed sins that perhaps should be considered crimes as well). So the point is: commit that particular sin and you'll not only transgress your moral code, you'll also be in violation of the law (Rogers, www.rexmrogers.com).

This, inevitably, leads us to the difference between Church law and civil law as they relate to confession of sins. There is an essential difference between Church law codified under the canon law and civil law in terms of the seal of confession. In the dispensation of the sacrament of penance, the penitent comes to the priest who has the faculty to hear his confession and confesses the sins. The penitent accuses himself of having committed sin and cannot be forgiven until this acknowledgement or self-accusation takes place. The priest then forgives and absolves the penitent in the name of Christ. This *actus judiciaris* is efficacious in that it takes away the sin and restores the individual to the state of grace, which was lost due to sin.

In the case of civil law, one is innocent until proven guilty. Thus, suspects are counselled to plead innocent even if they are guilty of the crime charged so as to technically place the burden of proving their guilt on the prosecution. But if an offender admits to being guilty, he is immediately convicted on the strength of the confession of guilt, except the offence is punishable with death in which case the judge must enter a plea of not guilty on behalf of the accused. The criminal is held liable and the judge sentences him for the crime so committed.

The essential difference between Church justice and civil justice is that in the former, the penitent admits guilt and is forgiven and restored through the

judicial act (*actus judiciaris*) of the priest. He cannot be acquitted without this initial self-accusation of guilt. Forgiveness is possible only when guilt is accepted. In the case of the civil justice, self-accusation of guilt imputes conviction and punishment, subject to the exception earlier mentioned. And herein lies the basic difference between divine justice and human justice. The former seeks to heal and restore, the latter imparts punishment. The former calls the offender a sinner in need of redemption, while the latter calls the offender a criminal fit only for jail depending on the gravity/severity of the crime. The former calls it sin, while the latter calls it crime. This essential understanding of divine and human justice finds expression in the seal of confession that protects the confidentiality of the penitent.

Confession of sins is to a large extent focused on sins committed and not really on future sins. The assumption is that one is sorry for the sins committed, expressed in a sincere sorrow for it having examined the conscience and seek redress through sacramental penance, either for fear of losing heaven and ending up in hell (life apart from God) or simple aversion of sin because of the motif of love of God (perfect contrition). A penitent who comes to share with a Priest a sin which he plans to commit in the future (very rare) is simply crying out for help. The priest has the duty or responsibility to talk to him/her through pastoral counselling for a change of heart, especially considering the moral and/or criminal implications.

6. Absolute and Qualified Privilege

Legally speaking, a 'privilege' is a special legal right, exemption or immunity granted by law, either statutory or at common law, to a person or class/group of persons; it is an exception to perform a duty (Garner, 1215).

Absolute privilege is that special legal right that immunizes a person from law suit no matter how wrong his action might be, and even though the act, deed or omission is done *mala fides*, or with improper motive and intention (Garner, 1215). Absolute privilege can be likened to absolute immunity. 'Immunity' is an exemption from a duty, liability, or service of process granted, especially, to certain categories of public office holders or public officials (Garner, 752). Absolute privilege is a complete exemption from civil and criminal liability enjoyed by these categories (Garner, 753). The President and Vice President of the Federal Republic of Nigeria, and the Governors and Deputy Governors of a States enjoy absolute and constitutional immunity or privilege from civil and criminal proceedings during their tenure of office (Section 308 of 1999 Nigerian Constitution). Judges of courts also enjoy same privilege (Ojeme, p. 701). In the same vein, no civil or criminal proceedings may be instituted against members of the Senate, House of Representatives, and House of Assembly of States in

respect of words spoken by them in their respective Chambers or any of their committees, or in any petition, bill, resolution, motion or question brought or introduced therein.

As parts of the trajectories of absolute immunity under international law, the President or Head of State of a country enjoys sovereign immunity; diplomats like High Commissioners and Ambassadors as representatives of their Presidents or Heads of States also enjoy diplomatic immunity from the local laws of their host countries.

More often, a thin line of difference is marked between absolute privilege and absolute immunity. While the former is usually employed to exempt a person from divulging communications made inter-parties or from testifying or giving evidence in court proceedings in respect thereof, the latter is employed to exempt the beneficiary from even appearing before the court in the first place. Contextually, therefore, absolute immunity is wide in scope than absolute privilege.

Qualified privilege, on the other hand, immunizes a person from a law suit only when the act, deed or omission that calls for the enjoyment of the privilege is properly exercised in the performance of a duty (Garner, 1215). It is an intermediary case between the total absence of privilege and the presence of absolute privilege (Heuston, p. 165). In the same vein, qualified privilege is akin to qualified immunity which is an exemption from civil and criminal liability for a public official who is performing a discretionary function and as long as the conduct does not violate clearly established constitutional or statutory rights (Garner, p. 753). Lawyer-client, doctor-patient, etc enjoy qualified privilege in their relationships. Whether a priest-penitent enjoy absolute or qualified privilege is the gist of this paper.

The chief difference between absolute privilege and qualified privilege is that while the former is sacrosanct and inviolate as long as it is conferred and inured on a person, the latter may be dispensed with in certain circumstances, either by operation of law or by the conferee himself.

7. The Contending Issues

Under canon law the seal of confession is absolute, while under civil law it is qualified. Two major problems may arise.

First, whether a priest can be compelled under civil law to disclose the contents of confession (or even counselling) made to him where the commission or intention, conspiracy or plan to commit a crime is involved.

The answer to this question is complicated, especially if the obligation of the priest under the seal of confession is juxtaposed with the biblical text where Jesus, the Founder of the Church, enjoined the Church thus: "Give to Caesar what belongs to Caesar and to God what belongs to God" (Matt. 22:21; Mk. 12:17). This parable is literally interpreted to mean that one should give to the secular government what belongs to it and to God what is His. In essence, respect for the secular government and its constituted authority is an integral obligation of the Church. Applying this biblical text, it would appear, *prima facie*, that the Priest has a duty or responsibility to both the government and the Church. Therefore, where a confession discloses the commission of a crime or an intention, conspiracy or plan to commit a crime, one can argue that a priest has a duty to disclose it to the government. However, this issue goes beyond this simplicity.

Agreed that civil law imposes a general duty to report the commission of a crime to the police or other appropriate authorities, a priest cannot still be compelled to break the seal of confession to disclose such crime. This is because, as we said earlier, civil law has no jurisdiction over a person's conscience; and priests are ready and prepared to pass through any ordeal, even to sacrifice their lives, to protect the seal of confession. Although I am not aware of any case in Nigeria, there are recorded cases in other jurisdictions where priests became the sacrificial lambs just to protect the seal. For instance, at the time of the Gunpowder Plot, Fr Henry Garnet was first tortured then executed for holding back information about the supposed plot that he had heard in confession. Father Garnet is not a canonised saint, though he was martyred, he was killed by a government that wanted to 'blacken' the reputation of the sacrament of confession (Lucie-Smith, 2014). The facts about the Gunpowder Plot remain murky, but it is clear that the government of the day saw the seal of confession as a threat to their control; and the same has also been the case under other totalitarian regimes. At that time, the privilege of the priests in respect of confession was not a front burner.

Another important issue is the status of the Code of Canon Law vis-a-vis the juridical status of the Vatican City State (VCS), the Holy See and the Church under international law. It is now a common fact that the Holy See represented by the Vatican City is a State recognized as such under international law. It therefore enjoys all the privileges, rights, immunities and honours of statehood; and, consequently, also shoulders all the corresponding responsibilities, duties and liabilities.

The VCS came into existence as a sovereign nation in 1929 with the signing of the Lateran Treaty between the Holy See and the Kingdom of Italy. The signing

effectively ended the “Roman Question,” the decades old tension between the Catholic Church and the nation of Italy. Prior to the treaty, the relationship between the Church and the country was governed by the Law of Papal Guarantees, an Italian law that allowed the Pope a certain amount of autonomy within the borders of Italy (Young S. and Shea A., p. 589).

The Code of Canon Law, on the other hand, is often referred to by its Latin name, *Codex Iuris Canonici*, is the codified representation of church theology in legal language. According to Pope John Paul II, the Code of Canon Law is “an expression of pontifical authority and therefore is invested with a primatial character.” He further stated that the Code is “the Church's principal legislative document founded on the juridical-legislative heritage of revelation and tradition; an indispensable instrument to ensure order both in individual and social life, and also in the Church's activity”. The Code of Canon Law is incorporated into the legal system of the VCS by the 1929 Law of the Sources of the Law, one of the six constitutional laws of 1929. It was reformed in 1983 by Pope John Paul II.

The point we are trying to make is that, since the Code of Canon Law is an integral part of the laws of the VCS and the Holy See (the components of which comprises of the Pope as the Head and Bishop of Rome, the various Dioceses throughout the world, and the Local Parishes under these Dioceses), it should be treated and applied with diplomatic respect under international law as a State law of the Holy See. Civil laws of other countries, including Nigeria, should recognise, accord respect and apply the Code of Canon Law and its provisions which include the seal of confession. The Code of Canon Law should also be recognized and treated as an international instrument applicable as such in all the countries where the Holy See has diplomatic relations with and has established Catholic Dioceses therein. It will be illogical and preposterous for a country to recognise and accept the Catholic Church and at the same time disregard the laws of the Church. The Code of Canon Law is part and parcel of the Catholic Church for ages. Therefore, it should be given its due respect, regard, recognition and applied by, and in any country where there are Catholic Churches because the Catholic Church is an integral and component part of the Holy See which is a State under international law.

There are still further contending issues and questions, for instance: Would a priest be guilty of breaking the seal of confession if there is no intention to betray the penitent in any way? We do not think so. It is common place these days to see priests, during homilies, using the experiences and lessons they obtain and learnt in confessionals to preach to the faithful without in any way giving the slightest clue as to the identities of the penitents, the locations and times of the confessions. Also, seminary professors and other lecturers/teachers may

provide their moral theology students with examples of concrete moral and ethical situations that they encounter in the course of hearing confessions without betraying the penitents. Therefore, to insist that the inviolability of the seal should still be extended to cover these scenarios is to take it to unnecessary extremes; and thereby denying the faithful the life and soul-touching experiences that may shape their spiritual well-being and, possibly, convert them to be better Catholics. Experiences and lessons learnt during confessions may, themselves, be teachers to the Church and the faithful.

The inviolability of the seal of confession is not without its negatives. An unrepentant and serial criminal may find anchorage in the penance and hide under the cover of the confessional seal to commit more crimes with the self-induced and self-soothing false impression that he will always come for confessions before any or different priests for the forgiveness of his sins after committing a crime and knowing that the priests are prohibited from reporting him to the police or other civil authorities. This way, crimes may go on unabated. Although this tendency may amount to a sin against the Holy Spirit, an unrepentant and serial criminal may care less. The consequence is that the sacrament of penance may be abused and reduced to a mere routine exercise of the Church.

It would be wrong, in our view, for a priest to keep quiet under the seal of confession and allow an unrepentant and serial criminal to continue committing crimes that he has foreknowledge of during counselling or confession. Agreed that the priest may withhold absolution until the criminal reports or give himself up to the police, that is not enough where the crime goes on unabatedly and uncontrollably by the criminal, especially where the crime is heinously and seriously detrimental to the society. The priest should give his obligation to the State primacy in this situation and, at least, give a tip or hint to the police or other civil authorities about the criminal and the crime. The Code of Canon Law should be lenient to the priest in this situation. This is more so, *a fortiori*, if the crime committed or to be committed is against the Church, the priest or any person very close and dear to him. We wonder what the reaction of the priest would be if a penitent confesses that he was the one that killed the priest's mother or father or sister or brother sometime in the past, or the person discloses during counselling that there is a plan to do so; or some persons intend to do so, or there is a plan to kill the priest's Local Ordinary, the Bishop or any other brother priest; or he was the one that actually killed a brother priest; or that he was the one that robbed the Church and the pastoral house a week before, or there is a plan to do so; or he was the one that sexually assaulted and raped the priest's sister sometime in the past, or there is a plan to do that; or the priest becomes aware during confession that there is a plan to kill him by some persons in the night etc.

The above scenarios may look hypothetical, but they may happen in real life; and therein lies the dilemma of the priest. His allegiance to the Church and Code of Canon Law is thus put to test against his self-interest or the interest of his family, or in some instances the interest of the Church herself, the same Church that prohibits him from breaking the seal of confession. What a dilemma!

But if the precedence set by Pope John Paul II was anything to go by, then a priest is hamstrung and therefore still duty-bound to strictly adhere to the confessional seal despite the above scenarios. Pope John Paul II was shot by Mehmet Ali Agca in 1981. The man came to him for confession and to this day, no one knows what transpired between them. That was personal to the Holy Father and will not change the standard or shift the goal post because the attack was on his person. Although it may be argued that Agca was convicted and had served his jail term before the confession, the gesture of the Holy Father was commendable and further reaffirmed that the seal of confession is the standard and cannot be watered down.

Can a priest be compelled to give evidence in court in respect to the contents of a confession? This issue is presently at the front burner in the United States of America (USA) (www.catholicherald.co.uk). A Louisiana Supreme Court has ruled that a priest may be compelled to testify as to what he heard in the confessional in 2008 concerning a sexual abuse case. The priest, Fr Jeff Bayhi, faces automatic excommunication if he breaks the seal of the confessional. But he could also face a jail term if he is found to be in contempt of the court should he refuse to testify because under Louisiana laws, the privilege of priest-penitent does not extend to confessionals in respect of sexual abuse against minors (www.catholicherald.co.uk).

In the case, a girl who was 14 in 2008 said she told her parish priest, Fr Bayhi, the parish priest of St John the Baptist Parish in Zachary, in the confessional that she was abused by a now-dead lay member of the parish. The girl's parents sued Fr Bayhi and the Diocese of Baton Rouge for failing to report the abuse. The parents won at the District Court level about compelling the priest to testify, but lost in Louisiana's First Circuit Court of Appeal. Thereafter, the State's highest court reversed and vacated the appellate court's decision and held that the priest was compellable to testify and remitted the case to the District Court (www.catholicherald.co.uk). Fr Bayhi, who, himself, is not willing to testify in the Court, said this:

As you know, one of the great sacraments of healing in the Church is the sacrament of reconciliation/confession. It has given hope and

comfort to all Catholics throughout the centuries and continues to do so today. The seal of confession is one that can never be broken. Through its use, the faithful must always be protected, so much so that as a priest I cannot even say someone has come to confession, let alone divulge the contents of what was revealed (www.catholicherald.co.uk).

On its part, the Diocese of Baton Rouge further reiterated the well-entrenched position of the Church as follows:

A foundational doctrine of the Roman Catholic Church for thousands of years mandates that the seal of confession is absolute and inviolable. Pursuant to his oath to the Church, a priest is compelled never to break that seal. Neither is a priest allowed to admit that someone went to confession to him. If necessary, the priest would have to suffer a finding of contempt in a civil court and suffer imprisonment rather than violate his sacred duty and violate the seal of Confession and his duty to the penitent.

This is not a grey area in the doctrines of the Roman Catholic Church. A priest/confessor who violates the seal of confession incurs an automatic excommunication reserved for forgiveness to the Apostolic See in Vatican City. In this case, the priest acted appropriately and would not testify about the alleged confessions. Church law does not allow either the plaintiff (penitent) or anyone else to waive the seal of Confession.

This matter cuts to the core of the Catholic faith, and for a civil court to inquire as to whether or not a factual situation establishes the sacrament of Confession is a clear and unfettered violation of the Establishment Clause of the constitution of the United States. This matter is of serious consequence to all religions, not just the Catholic faith. The statutes involved in this matter address 'sacred communications' which are confidential and are exempt from mandatory reporting. For a civil court to impinge upon the freedom of religion is a clear violation and the matter will be taken to the highest court in the land by the Church in order to protect its free exercise of religion (www.catholicherald.co.uk).

The position in Louisiana may not be the same in other States in the USA. Each State has its peculiar law governing this issue. However, whether the priest will be compelled by the District Court to testify or risk jail term if he refuses to do so, or whether he will testify and risk excommunication by the Church, further compounds the dilemma of a priest.

The compellability or otherwise of a priest to testify in court in respect to the contents of confession is a matter under the law of evidence; and it differs from country to country. The general rule of evidence is that a competent witness may not necessarily be a compellable witness. This means that the court cannot compel that witness to come and testify. Thus, where a witness enjoys absolute or qualified privilege, he will not be a compellable witness even if he is competent to do so; and his evidence will be inadmissible in court.

Under the common law of England, a distinction is made between a sacramental confession and a mere confession. Thus, sacramental confession is privileged and a priest is not a compellable witness to give evidence in court in respect of its contents. However, where a statute provides otherwise, the privilege may be denied because statute laws have primacy over common law (See: "*The Law of the Seal of Confession*", www.newadvent.org). The position is the same in Ireland and other former British Colonies like India and Nigeria (See: www.newadvent.org).

In the USA, States of Georgia, Louisiana, North Carolina, Pennsylvania, Tennessee, and Texas, for instance, have statutes protecting communications made to attorneys professionally and not protecting the priest-penitent. However, confession between the priest and penitent is privileged at common law. Again, the privilege is qualified and can be denied or waived by statute (www.newadvent.org).

By Article 378 of the French Penal Code, doctors, surgeons, and other officers of health as well as apothecaries, mid-wives, and all other persons who, by their status or profession are the depositaries of secrets confided in them, are prohibited from revealing such secrets, except in cases in which the law obliges them to inform; and breach of this Article is punishable with imprisonment from one to six months, and with a fine of from 100 to 500 francs. Consequently, priests are not only absolutely exempted from any obligation ever to disclose a confession, but they are under a statutory obligation never to do so. Article 274 of the Penal Code of Egypt is in *pari materia* with Article 378 of the French Penal Code (www.newadvent.org).

Under Article 288 of the Italian Code of Civil Procedure, doctors, surgeons, etc., and every other person to whom by reason of his state, profession, or office a secret has been confided, may not be obliged to give evidence of such secret under pain of nullity (i.e., of his evidence), save in the cases in which the law expressly obliges them to give information of any matter to the public authority. There appears to be no such express obligation upon priests in the law (www.newadvent.org).

Under the German Code of Civil Procedure certain classes of persons are entitled to refuse to give evidence. The fourth class consists of "clergymen in respect of matters which have been confided to them in their exercise of the care of souls". Paragraph 350 of the Code provides that clergymen may not refuse to give evidence when they are released from the obligation of secrecy. Whether clergymen are effectually freed through the consent of the confidant or through permission of their superiors is to be decided according to the religious conceptions of the denomination to which the clergyman belongs. However, as we have said earlier, the Code of Canon Law does not expressly allow the release from the obligation to keep secret of anything communicated to a priest under the seal of confession (www.newadvent.org).

Although there is qualified privilege between communications or confessions from a penitent to a priest under common law applicable in Nigeria, there is no corresponding statutory provision to augment it. Under the Evidence Act, 2011, the categories of privilege communication and non-compellable witnesses are as follows: communication between husband and wife during the subsistence of marriage (Section 187); Justice, Judge, Grand Khadi, President of a Customary Court of Appeal, Magistrate and Police Officer or any other public officer acting in his judicial capacity or investigating or prosecuting a case (Section 188 and 189); evidence as to affairs of State (Section 190); confidential official communication of State (Section 191); communication made to a legal practitioner by a client (Section 192 and 195); and communication made in a document marked "without prejudice" (Section 196).

It would appear, therefore, that a priest in Nigeria does not enjoy any statutory or absolute privilege to protect him against breaking the seal of confession. The implication is that, a Catholic priest in Nigeria is under a duty to disclose the commission of a crime or an intention, plan or conspiracy to commit a crime where he has such knowledge from counselling or confession. This is so because none of the privilege communication under the Evidence Act is absolute; they are all qualified. *A fortiori*, the privilege which he enjoys under common law is also qualified and not absolute.

However, in view of the stronger reasons we have given earlier in support of, and as justification for the confessional seal and the widespread recognition accorded to it in other countries and jurisdictions, it will be difficult for the Nigerian legal system to jettison its applicability or close its eyes to it. We therefore enjoin Nigerian courts to draw inspiration or be persuaded by the experiences and judicial decisions of other countries and respect the seal. Besides, if necessary, the Nigerian priest would be ready and willing to suffer a finding of contempt in a civil or criminal court and suffer imprisonment or even

death a sentence (the supreme price) rather than violate his sacred duty to the Church and violate the seal of Confession in betrayal of the penitent. If priests are ready and willing to go to this extreme to appease God, the Church and their conscience, why would civil law impress on them to do otherwise? A law that cannot be practically implemented and unenforceable is as good as no law; it only exists in principle but not in practice.

Conclusion

The interface between the confession of sins and the commission of crime takes us to the wrestle between canon law and civil law. The two are supposed to harmoniously co-exist because they serve the same purpose, namely: to bring up a just and better people in a society. The seal of confession, although embedded and entrenched in deep Catholic tradition and dogma, needs to be better understood in this changing world of time and tide with new challenges. The major concern of the Church should be the faith of the faithful. The priest always prays during the Holy Mass immediately after the faithful say Our Lord's Prayer thus: "Lord Jesus Christ, you said to your apostles: I leave you peace, my peace I give you. Look not on our sins, but on the faith of your Church, and grant us the peace and unity of your kingdom where you live for ever and ever".

If the seal of confession is not achieving that purpose then its essence is nugatory. Crime, just like sin, destroys a society; and the Church has a duty to condemn and discourage both. It appears contradictory for the Church to condemn sins and at the same time conceal the commission of crimes or intention to commit them under the cover of the seal of confession. But the duties and responsibilities of priests as thought by the church must also be respected. Therefore, we must strike a balance. Despite the inviolability of the confessional seal and all the reasons we advance herein to justify it, exceptions can be created in some reasonable instances to make it a bit flexible and amenable to present realities for the common good. This way, necessary and expedient exceptions and allowances to the seal of secrecy may be made to balance and resolve the conflicting positions of canon law and civil law. For instance, allowance should be made for priests to report unrepentant and serial criminals to the police or other civil authorities; or where the crime committed is wholesomely heinous to the society; or where a priest is aware of a plan, conspiracy or intention to commit a crime through the process of counselling, etc. Until such reforms are made, the conflict between canon law and civil law will continue; and so also the dilemma of Catholic priests.

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