

## REVELATION OF CONFESSIONAL MATTER WITH PERMISSION

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The canon on the seal of the confessional is to be interpreted broadly. This means that a priest cannot disclose anything about a confession. The canon uses the words "*betray the penitent*". This means that the mere fact that a person went to confession much less what the person said, cannot be disclosed either directly or indirectly. It does not matter where the confession took place, i.e., in the confessional box in a church, in a parlor, out in the open. It also does not matter if other people happen to overhear the confession. The important value here is the identity of the penitent which must be protected.

The seal of the confessional did not come into being with the Code of 1917. It is an age-old legal and theological tradition in the Catholic Church. It has been mentioned many times over the centuries in official church documents.

A priest who violates the seal of the confessional is punished by an automatic excommunication, the absolution or removal of which is reserved to the Holy See. (canon 1388.1)

### Using Confessional Matter

The question of whether or not a priest can ever reveal information that is revealed to him in confession with the express permission of the penitent is referred to in canon 1757 of the Code of 1917 and in canon 1550, 2, 2 of the revised Code. These canons are virtually the same and refer to the acceptability of information from confession being offered by priests in ecclesiastical trials. The canon states:

*Priests in all things of which they gained knowledge from sacramental confession, even though they have been freed from the seal of confession (by the will of the penitent); even whatever has been heard by anyone and in any manner on the occasion of a confession, cannot be accepted even as an indication of the truth.*<sup>1</sup>

This canon refers to ecclesiastical trials only. It does not answer the broader question as to whether or not a priest can disclose information (with the penitent's permission) under other circumstances, such as in civil court procedures. The correct manner of searching for an answer to this question is to look to the writings of the theologians and the commentators or scholars of Canon Law. The Canon Law system does not utilize court cases or decisions as a means of interpretation although these are helpful if they exist.

### The Commentators

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<sup>1</sup> Code of Canon Law, 1983.

The question is taken up by Eduardus Regitillo, S.J. in Ius Sacramentarium<sup>2</sup> He asks the question if it is permissible to speak about what was heard in confession outside of the confession in question. The first part of the answer is thus:

*Licentia poenitentis ad loquendum de auditis in confessione? Extra confessionem id non licet, nisi de poenitentis licentia* (Outside of confession, it is not permitted unless with the permission of the penitent.)

Regatillo goes on to list the conditions required under which the penitent may grant the permission to the confessor. The permission must be:

- a) Expressed, either explicitly or implicitly by the penitent and cannot be presumed by the confessor
- b) It must be a completely free expression of permission by the penitent. There can be no force, fear or anything even remotely resembling any kind of coercion.
- c) It must not have been subsequently revoked by the penitent.

The question is taken up in some detail by Bertram Kurtscheid, O.F.M., in his historical study entitled The Seal of Confession (St. Louis: B. Herder, 1927). The author studied the canonical and theological commentators from the middle ages until the time of writing. At the outset he says that "*All admit that such an authorization can be given only by the penitent.*" (p. 285) Among other authors, Kurtscheid cites St. Thomas Aquinas, who held that the penitent could permit the confessor to use material he obtained in confession (Commentarium in Sententiae IV, d. 21, q. 3).

A number of canonists and theologians disagreed with the opinion of St. Thomas and held that even with the permission of the penitent, the confessor could not reveal matter heard in confession. Such is and always has been the case with disputed questions in Catholic Canon Law or theology. Unless an authentic interpretation from the Pope is available, and thus far none on this specific issue has been published, one must proceed on probable opinion. One considers the preponderance of evidence, and in doing so, both the quality and historic authenticity of the arguments as well as the number of arguments, is considered. In this case, Kurtscheid found that :

*...before the Code of Canon Law was published, the majority of canonists and theologians hold the penitent competent to release the confessor from the obligation of the sacramental seal.*<sup>3</sup>

He also cites a 15th century treatise on the seal which gave the conditions for releasing a confessor:

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<sup>2</sup> Ius Sacramentarium (vol. 1, Sal Terrae, Santander, 1945), n. 536, p. 301.

<sup>3</sup> The Seal of Confession (St. Louis: B. Herder, 1927), p. 291.

- a) the explicit permission of the penitent
- b) a good purpose
- c) the absence of scandal
- d) the absence of danger to the penitent <sup>4</sup>

At the conclusion of the section, Kurtscheid states that the majority of canonists after the middle ages held that the penitent could release a confessor from the obligation of the seal. He also states that the 1917 Code of Canon Law confirmed the majority opinion in canon 1757 which forbade a priest from using confessional matter in ecclesiastical trials even with permission.

*"This canon admits of the possibility of liberating a person from the obligation of the seal, namely, by the penitent himself."*<sup>5</sup>

#### The 1915 Instruction of the Holy Office

Mention was made in the first section of the instruction from the Holy Office, dated 9 June 1915. This is what is known as a "private" instruction in that it lacks the official approbation of the Pope. Nevertheless it is to be given great weight in interpreting the canon on the seal of the confessional.

The instruction was directed to all bishops and superiors of religious orders. It treated the issue of priests referring to matter learned in confession in a general way, without revealing the identity of the penitent. Reference is made in the document to private conversations, public conversations and even sermons in which a priest might refer to information he learned in the act of sacramental confession. It instructs bishops and superiors to see that

*...priests subject to them be taught never to dare mention anything which pertains to the matter of sacramental confession in any form or under any pretext, especially on the occasion of sacred missions or spiritual exercises, nor even incidentally, directly or indirectly, in public or private speech (excepting the case of necessary consultation to be made according to the rules laid down by approved authors)...*<sup>6</sup>

The document contains the qualifying statement in parentheses which alludes to those circumstances when a priest might discuss confessional matter with the express approval of the

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<sup>4</sup> Kurtscheid, p. 294.

<sup>5</sup> Ibid., pp. 299-300.

<sup>6</sup> Canon Law Digest, Vol. I, p. 414.

penitent.

### Conclusions

The prudent conclusion then, is that a penitent can release a confessor from the obligation of strict confidentiality concerning matters revealed in the act of sacramental confession. In doing so, a number of important factors must be carefully weighed:

- a) the purpose for releasing the confessor and learning of confessional matter: will it benefit the penitent and the community?
- b) will undue scandal be caused by the very act of releasing the confessor and/or by the matter that he will reveal?
- c) it is probably best that the penitent issue the release in writing with specific reference to the confession in question and the nature of the matter that can be revealed.

It can be safely said that a priest may reveal specific information which is told him in confession only with the express permission of the penitent. The priest himself cannot be coerced or forced in any way and may in fact, decide not to discuss confessional matter even with a release. The penitent himself may suggest that a priest reveal information, or may ask that the priest reveal information for some good reason. If the priest is to suggest that information revealed to him be discussed outside of confession, every care must be taken to avoid any kind of pressure, stress or appearance of coercion. If a penitent balks, even in the slightest, the matter should be dropped.