

The Secret of the Confession: A Thing of the Past?

Massimo Introvigne

Center for Studies on New Religions, Torino, Italy

maxintrovigne@gmail.com

ABSTRACT: The article, an extended review of the book edited by Mark Hill and A. Keith Thompson *Religious Confession and Evidential Privilege in the 21st Century*, discusses the laws and draft laws in the United States, Ireland, Australia, and other countries that have introduced, or would introduce, exceptions to the legal protection of the secret of the Catholic confession and similar practices in other religions, compelling priests and ministers to report to the authorities cases of child sexual abuse learned in a confessional context. I argue that statutes protecting the confessional privilege based on the special treatment of “national” churches will probably not survive the attacks based on the pedophile priests crisis, perhaps with the exception of Italy, where the Concordat with the state has not been signed by the Italian Catholic Church but is an international treaty with a sovereign foreign state, the Vatican. However, a broader protection of the confessional privilege, based on general principles of religious liberty and extended to all religions, including new religions such as Scientology, will probably continue to be affirmed by courts in most democratic countries.

KEYWORDS: Religious Confession, Confessional Privilege, Secret of the Confession, Religious Confession and Sexual Abuse, A. Keith Thompson, Mark Hill.

Confession Under Attack

Religious Confession and Evidential Privilege in the 21st Century (Hill and Thompson 2021: references without indication of the source in this article are to the Hill and Thompson book), edited by Mark Hill, a distinguished British barrister, and A. Keith Thompson, professor and associate dean at the University of Notre Dame Australia School of Law, with a foreword by former Archbishop of Canterbury Rowan Williams, may well be one of the most important books on religion of 2022 (the year when it has been in fact released, although it bears a copyright date 2021). This paper is both an extended review of the book and a

discussion of its subject matter, i.e., the secret of confession and the confessional privilege.

The book originated from the claim, which followed horrific cases of sexual abuse perpetrated by Catholic priests and ministers of other religions, that laws protecting the confidentiality of Christian confession and similar practices in other religions should be eliminated or restricted in their scope. What Rowan Williams calls a “troubling legal attack” against a long-enshrined legal principle (9) is based on the idea that religions have protected sexual abusers by hiding behind the seal of confession. Religionists have countered, as Williams writes, that

the “seal” of confession is not—as some critics would argue—a form of malign secrecy but an assurance that all kinds of destructive and damaging behaviour can be spoken out, named and acknowledged for what they are (8).

If courts of law would not recognize that confessions made to a religious minister are confidential, in the end they would not be made at all.

The book examines the situation, and the controversies, in six different countries: Australia, the United Kingdom, Ireland, Italy, Norway, and Sweden. It could have been expanded with other countries such as France, where similar problems have been discussed (see Introvigne 2021, 2022) after a 2021 report commissioned by the Catholic Church on sexual abuse of minors perpetrated by Catholic priests (CIASE 2021) suggested that the number of cases might have been much higher than it was previously believed. Collective books, however, have limits, and this is already a 300-page volume. I will also limit my discussion here to the countries mentioned in the Hill-Thompson study.

Australia

Australia is one of the countries where the problem was first raised, with the unsuccessful 2003 attempt by controversial Senator Nick Xenophon, who crusaded against both the Catholic Church and the “cults,” to compel religious ministers in South Australia to disclose the content of confessions in cases involving child sexual abuse.

The 2017 report of the Royal Commission into Institutional Responses to Child Abuse recommended that Australian state and territorial governments

eliminate the confessional privilege in cases of child sexual abuse (Royal Commission into Institutional Responses to Child Sexual Abuse 2017). Most Australian states and territories followed the recommendation, creating a conflict with the Catholic Church, which immediately answered that priests would go to jail rather than violate the sacred obligation connected with the confession. Those who would obey the Australian laws would be excommunicated, the Australian bishops said.

As Robert Netanek and Patrick Parkinson explain in their chapter, in 2020 some Australian Catholic Bishops, following a suggestion by the Royal Commission itself, tried to find a solution where the religious confession privilege would be maintained but priests would be instructed to withhold absolution until penitents who had confessed sins of child abuse had reported themselves to the authorities. However, the Bishops wrote to the Vatican, whose Apostolic Penitentiary, competent on the matter of confession, answered that “absolution cannot be made conditional on future actions in the external forum” (89).

In his chapter, A. Keith Thompson notes that the present situation of the religious confession privilege in Australia is not totally clear, as the new statutes that followed the Royal Commission’s report contrast with other norms that have not been abrogated. Thompson reports that statutes protecting the privilege were introduced in Australia and New Zealand since the 19th century, following controversial cases where the public opinion largely sided with the priests, while the Royal Commission’s position was “an under-theorised reaction to a moral panic” (58). His criticism of the Commission and of the new statutes is based on four arguments.

First, as Jeremy Bentham (1748–1832), the English philosopher who was no friend of religion nor of the Catholic Church, famously argued in the early 19th century, “the moment the constabulary were known to have harvested their very first confessional secret, the well of such secrets would dry up” (45). Criminals would not confess their sins to priests and ministers if they knew that what they confess would be reported to the police.

Second, in practice very few perpetrators and victims confess sexual abuse incidents to priests and pastors, and when they do it they try to be vague on details, so that a hypothetical report by the minister would be of little use to the authorities.

Third, mandatory report of information ministers have learned *outside* confession, which the Catholic Church and other Christian denominations do not oppose, is the real key to improve the protection of children, as the experience of several Australian states demonstrate.

Fourth, the Commission's argument that abrogating the religious confession privilege would not violate Article 18 of the International Covenant on Civil and Political Rights on freedom of religion or belief, because that provision allows for "restriction" justified by "public order" and "public morals," is faulty and based on a "misinterpretation" of the article (60). In fact, not all restrictions are justified, the sphere of conscience (in this case, of the priests and ministers) should remain inviolable, and the Commission did not prove that the same results cannot be achieved without gravely violating religious liberty.

The Royal Commission, argue Netanek and Parkinson, also made factual mistakes—as it did, as Holly Folk demonstrated, about the Jehovah's Witnesses (Folk 2021). It did not believe the Catholic bishops' argument that confessions almost never include material that would be useful to the police to prevent further child abuse and identify the perpetrators.

The Commission relied on two main sources. The first was the claim by Australian defrocked priest Michael Joseph McArdle, which the Commission quoted from the book of British anti-Catholic journalist John Cornwell, *The Dark Box* (Cornwell 2014), that he had told other priests of his abuses some 1,500 times in confession. However, the Commission failed to consider that the judges of his case regarded McArdle as a pathological liar, and he tried to use the story of the alleged confessions to divert blame from himself to the Catholic Church.

The second source was a qualitative analysis of nine priests guilty of sexual abuse who accepted to talk to her by Irish psychologist Marie Keenan. The Commission relied on Keenan's finding that eight of the nine priests disclosed their abuse in confession. However, Keenan also reported that they did so without disclosing details that might have led to identifying themselves or the victims (Keenan 2012, 163–64). Perhaps some members of the Commission were not aware that in Ireland and other countries, including Australia, in many Catholic churches penitents may go to confession hiding behind a grille. Those who do not want to be identified can also seek confession far away from where they live, a common practice among Catholics.

In 2019 a report of the Justice and Community Safety Directorate of the Australian Capital Territory had advised against eliminating the confession privilege by arguing that, if they knew that they may be reported to the police by the priest, perpetrators “will probably avoid confession altogether; or alternatively, they may exploit the potential under the rite of confession prevalent in Australia to confess anonymously and non-specifically” (104).

Netanek’s and Parkinson’s conclusion is that the new laws against the confession privilege would not save a single child from abuse, although they do create a dangerous precedent that threatens religious liberty in general.

Italy

The Hill-Thompson book also examines several countries of Europe. Marco Ferrante discusses the very special situation of Italy, where not only the secrecy of confession is protected but the case law maintains that breaching the confidentiality of the Catholic confession is in itself a crime under Article 622 of the Criminal Code, which protects the “professional secret” in general.

Very wisely, the Italian Catholic Church never became part of the Concordat of 1929, revised and re-signed in 1984, which as a consequence is an international treaty between two sovereign states, Italy and the Vatican, as such largely subtracted from the jurisdiction of the Italian courts.

The Concordat has a broad protection of the confidentiality of Catholic confession, but similar provisions are included in agreements with the Jewish Communities and the small Italian Lutheran Church. Courts have ruled that the privilege extends indeed to ministers of all denominations.

In view of the special status of the Concordat with the Catholic Church, and of constitutional principles mandating that the same privileges should be granted to all religions, it may be unlikely that cases of sexual abuse by priests and ministers, which have also been reported in Italy, would determine a change in the existing protection of the confessional secret.

England and Wales

In England and Wales the Canon Law of the established Church of England is part of civil law. The Church of England allows for the possibility of private confession, although it is not frequent. Since 1603, its secrecy has been protected, with the exception of crimes so serious, including high treason, that not disclosing them might lead to the death penalty. Since there is no death penalty in England any longer, this exception is now of no effect.

Recently, Mark Hill and Christopher Grout write in the book, because of the controversy on child sexual abuse, the Church of England has adopted the solution the Catholic Church refused in Australia, instructing ministers to withhold absolution unless perpetrators promise to report themselves to the authorities. It has also explained that a common conversation between a minister and a parishioner is not a confession, and is not protected by the confessional privilege.

The two authors report a disagreement between themselves on whether the protection granted to Church of England pastors extends to ministers of other religions. The authors agree that in the British system it is still true that “a priest of the Church of England is in a very different position from a priest of the Roman Catholic Church” (162) or a minister of any other religion.

In a famous case of 1860, a Catholic priest was convicted for contempt of court after he had invoked the privilege of confession not to disclose from whom he had received a stolen watch. Today, Hill believes that as a signatory of the European Convention on Human Rights, Britain should extend the confessional privilege to all religions, although Grout disagrees.

Norway and Sweden

In Norway and Sweden the national Lutheran churches both retain auricular confession as a possibility, as did Martin Luther (1483–1546) himself, although it is not mandatory and, as in the Church of England, is not frequent. In Norway, but not in Sweden, Lutheran laypersons may also hear confessions, rather than pastors only.

When confession occurs, ecclesiastical law mandates that what the penitent told should not be disclosed to anybody, including secular authorities. In Norway, this was also a provision of the Criminal Code until 2021, although according to the chapter in the Hill-Thompson book written by Andreas Heriksen Aarflot it was unclear whether the same rules applied also to laypersons who heard confessions or to pastors only.

There were, however, exceptions as the protection of confession did not apply in cases of very serious crimes, such as homicide, rape, or high treason, and the Norwegian Church itself in 2019 stated that in cases of sexual abuse the duty of confidentiality relating to confession is not unconditional and pastors should respect “current [state] regulations.”

In Sweden, breaching the seal of the Lutheran confessional was a capital offence until 1889. The Church of Sweden was disestablished in 2000, with the consequence that pastors who breach the duty of confidentiality with respect to confessions are now punished by the church but not by the state.

Even after the child abuse scandals, the Church of Sweden maintains that priests should not report to the authorities the content of confession, although they should report information obtained outside of the confessional context. Since confession is rare, courts of law in Sweden, as in Norway, did not have the opportunity so far to test how the internal rules of the Church interact with the mandatory report provisions of the state.

Ireland

Ireland is one of the countries where child abuse scandals involving the Catholic clergy have deeply transformed the religious landscape. Even before independence, some local judges had recognized the inviolability of Catholic confession. After independence, the matter became political, as stating emphatically that the Catholic confession was protected meant for some judges expressing their repudiation of the British past and their persuasion that Ireland was now a Catholic country.

As Stephen Farrell explains in his chapter of the Hill-Thompson book, Irish judges were less keen to extend the protection to other religions. One example is the 2001 *Johnson* case, where a judge ruled that auditing in the Church of

Scientology was not protected, based on the quite Catholic argument that there was no evidence that Scientology taught that breaching the confidentiality of auditing would “lead to some kind of eternal punishment” (207).

All this changed with the pedophile priests crisis. In 2015, the Children First Act became “the first instance of the Irish legislature directly legislating in a way that precludes a priest from relying in any way on the seal of the confession,” although it was limited to instances of child sexual abuse (215–16). The Catholic Church reacted by informing the government that priests would not comply with the provision, regardless of the consequences.

Farrell speculates on possible defenses priests may have based on other laws, and consequences for other religions, although at the time of his writing there were not yet cases decided by Irish courts on the basis of the 2015 law. What was clear was that “the ongoing reception of the seal of the confession by Irish civil law is now more precarious than at any point since independence” (217).

United States

The idea that the laws protecting the secret of confession and other similar religious practices should be abrogated or restricted in scope gained momentum in the United States as well after the scandals of pedophile clergy in the Catholic Church.

Gregory Zubacz, who is both an academic and a Catholic priest with an experience in the child protection committees that were instituted in response to the pedophilia scandals, discusses the American situation in the Thompson-Hill book. Zubacz notes that the protection of confessional privilege was introduced in the United States through civil law, starting from the famous New York *People v Phillips* 1813 case, where a Court of General Sessions allowed a priest who had returned stolen items on behalf of a penitent not to disclose the name of the person who had given him the goods during confession. Interestingly, already in 1813, the court relied on the constitutional principle of freedom of religion rather than on British precedents.

However, the *Phillips* decision was also based on the peculiarities of Catholic confession. In 1817, also in New York, in *People v. Smith* it was decided that a Protestant minister was not equally protected. This led the New York legislature

to pass in 1828 the first American law protecting the priest-penitent privilege for all religions. Between 1828 and 1991, all American states passed similar statutes, and none has been so far repealed. The Supreme Court, starting from the 1876 decision *Totten v. United States*, also upheld the principle that “the confidences of the confessional” are generally protected.

Several American decisions have mentioned the four criteria formulated in 1904 by the well-known American legal scholar John Henry Wigmore (1863–1943) that justify protection of the confessional secret. The parishioner should have made the communication to the minister with the understanding that it would be kept secret; the parties should have regarded confidentiality as essential; the community should regard the relationship “important enough to be ‘sedulously fostered;’” and “the injury caused by disclosing the communications would outweigh its evidentiary value in litigation” (235). However, the third criterium assumes the popularity of religion among the general public, which perhaps cannot be taken for granted today.

Zubacz then examines four cases decided between 2011 and 2018 on the basis of state law and involving child sexual abuse. In Louisiana and Florida, courts maintained that Catholic priests could refuse to disclose details about sexual abuse of children learned in the confessional. Courts in Tennessee and New Hampshire came to the opposite conclusion in two cases involving Baptist pastors. Starting from 2019, legislation making it mandatory for a minister to report to the authorities information about child sexual abuse obtained as part of a clergy-penitent relationship was introduced in both the House and Senate, where it failed almost immediately, and in several states. At the time of Zubacz’s writing, two states had passed laws abrogating or limiting the confessional privilege while in others similar legislation was hotly debated.

Zubacz expresses his concern for “a general erosion of American religious freedom” (221). He is well aware of the crimes perpetrated by pedophile priests, but believes that the child sexual abuse issue may be used as a picklock to destroy the confessional privilege and severely restrict religious liberty in other fields as well.

As a priest, he also complains that the legislation passed in some states and proposed in others would make him a police informant and “the instrument by which the state may work around the penitent’s constitutional right to silence” (240). It would also persuade many potential penitents not to go to confession at

all, “taking away their last and faint hope of the possibility of amending their lives... those who are denied confession will only become worse, sicker, and more diseased” (241).

Zubacz recalls the examples of those the Catholic Church has honored and sometimes canonized as saints for their willingness to suffer persecution and even death rather than revealing the secrets of the confession. They include John Nepomucene (1345–1393) in present-day Czech Republic in the 14th century and Mateo Correa Magallanes (1866–1927) during the Cristero rebellion in Mexico, both canonized; Felipe Císcar Puig (1868–1936) and Fernando Olmedo Reguera (1873–1936), martyrs of the confession in the Spanish Civil War; and Jan Kobyłowicz (d. 1873), who preferred to be deported to Siberia from Ukraine, then a part of the Russian Empire, having been sentenced for a murder he never committed, rather than disclosing what he knew about the case from the confessional.

Zubacz believes that the Supreme Court will eventually decide on the constitutionality of the anti-confession statutes. From his point of view as a Catholic priest, “it is a question of when, not if, the Barque of Peter collides with the dreadnought of the policy of the secular state in the darkness of the night. The Supreme Court will ultimately decide which one will sink” (247).

Archpriest Giorgio Morelli (1943–2021) of the Antiochian Orthodox Church, who was also an academic, sadly passed away while the Hill-Thompson book was being published. His contribution is more of a theological and pastoral nature. He describes confession in the Eastern Orthodox churches as part of a theology of healing, which has both a bodily and a spiritual dimension.

The Orthodox confession, he explains, is a form of spiritual healing, premised on the idea that a priest does not hear confessions as a human being but as “Christ’s instrument”: “the ‘eye,’ the ‘ear’ of the priest is dissolved in the sacramental mystery” (266).

For this reason, Morelli explains, the question of reporting to the authorities, or anybody else, what has been said in confession does not even arise in the Orthodox churches. “In the Orthodox Church, because a priest does not hear confessions personally as the penitent confesses to God, there is nothing that is reportable under mandatory reporting laws however they are formulated” (271).

On the other hand, conversations with parishioners outside of confession should be reported when the law mandates it. The Orthodox Church, Morelli writes, has also been hit by the plague of pedophilia, and “will do all it can morally, ethically and legally to stop abuse,” but “short of breaking the seal of confession” (272).

The final chapter of the Hill-Thompson book is also devoted to the United States and is by Eric Lieberman, a distinguished New York attorney. It is of special importance as the only chapter going beyond the case of Christian confessions—although most other authors also comment that the problem in a contemporary scenario of religious pluralism necessarily involves all religions.

Lieberman starts from the First Amendment to the United States Constitution, which both prohibits the establishment of a religion by the government, thus also prohibiting that confession as practiced by one church be more protected than similar practices in other religions, and protects the free exercise of religion from governmental interference. He comments that cases from other countries would have a limited impact in the United States, since “the Free Exercise Clause was an original American concept and invention unlike anything previously known” (282).

The First Amendment is also, Lieberman believes, one of the reasons new religions have been allowed to be born and flourish in the United States more than elsewhere. One such new religion is the Church of Scientology, the subject matter of Lieberman’s chapter. He notes that Scientology is not a mere footnote in the book, since it offers “a unique example of a modern expanding religion whose central practices rely upon highly confidential communications between parishioners and clergy. The structure of the confidential communications in Scientology carries out the principles and beliefs of the religion and its community. Indeed, the Scientology Church’s ability to practice its beliefs relies on the confidentiality of the communications between its parishioners and ministers” (282–83).

The core problem, which Scientology has of course in common with other religions, is that its confidential practices “do not fit traditional Christian patterns” (283), which admittedly the judges who created the American case law on the confessional privilege had in mind. The central practice of Scientology is “auditing,” where a trained minister (auditor) offers spiritual counseling to parishioners, aimed at helping them to overcome their problems and increase

their abilities. The parishioners are supposed to tell the auditor about their “withholds,” i.e., acts against themselves or others likely to damage their spiritual progress. This is a confessional practice that has hundreds of different specialized versions—for example, Scientology Marriage Counseling for marital problems—, and can only function if parishioners are “secure in their understanding that their communications will remain absolutely secure and will not be disclosed” (286). In fact, a parishioner may “disclose information of a highly personal and confidential nature. In other words, a parishioner may tell his [sic] minister secrets known to no other. Such information could reveal immoral or unethical acts, or fall within the full gambit of unwanted emotions, events, considerations and histories” (288). Hence, confidentiality is essential.

In this respect, the practice has analogies with Christian confession. However, unlike the latter, Scientology auditing requires that the auditor takes notes, which are kept in a special folder called “Precogn Folder” (indicating that the parishioner had to move to the more advanced spiritual state of “clear”) and maintained under lock and key under high security conditions. Since Scientology believes in reincarnation, when parishioners die their folders are stored for their “return in the next lifetime” (290). Also, auditors are supervised by Case Supervisors, who have no contacts with the audited parishioners but have access to their Preclear Folders where they place their written instructions intended for the auditors. Part of the ministerial team is also an Ethics Officer, who guides the parishioner to resolve ethical issues when needed.

Do these differences invalidate the application to Scientology auditing of the principles American courts have recognized as protecting Christian confession? To answer this question, according to Lieberman, two premises are needed. First, while most cases about the confessional privilege have been decided according to common law, the landmark 1959 decision *Mullen* by the District of Columbia Circuit “and its consequences inevitably mandate recognition of the privilege as constitutionally based” (294). To reason otherwise would imply that the privilege applies “only to certain denominations or practices and not to others” (295).

Second, Lieberman argues that the elements making Scientology’s confessional practices different from Catholic confession are not unique. It is not true, in particular, that only in Scientology “confession” is not a one-on-one practice but involves more than two persons. As early as 1917, in *Reutkemeier v.*

Nolte, the Supreme Court of Iowa extended the confessional privilege to a “confession of sin” made by a Presbyterian woman to her pastor and three congregational elders. In 1994, the Supreme Court of Utah concluded that communications made to obtain ecclesiastical guidance to a Latter-day Saint bishop did not lose their privileged status because the bishop later transmitted them for review to a Stake (the equivalent of a diocese) High Council Court. Other decisions reached the same conclusion, with a federal appeals court stating in 1990 that excluding from privilege confidential communications that reached more than one minister of the same religious body would risk “restricting the privilege to Roman Catholic penitential communications” only, which would be constitutionally impermissible (301).

It is also the case, Lieberman notes, that a solid Supreme Court case law mandates that the state cannot interfere in how religious bodies decide to self-organize themselves. The conclusion is that it is “inconceivable under these cases for a United States court to order a minister to disclose a privileged communication contrary to the rules and governance of his [sic] church, even in the unlikely event that the parishioner attempts to waive the privilege” (305).

The case of a penitent, a murder suspect, who consented to the use in court of a confession made to a Catholic priest in jail and recorded without the priest’s knowledge, was decided by the U.S. Court of Appeal for the Ninth Circuit in 1997 in *Mockaitis v. Harderod*. The court concluded that, the penitent’s consent notwithstanding, the confession cannot be used as evidence, and any such use would violate the religious liberty of the priest and the Catholic Church. It is true that the case was decided under the Religious Freedom Restoration Act (RFRA), which was later declared unconstitutional as applied to the states, but Lieberman believes that the general principles affirmed by *Mockaitis* derive from the Constitution rather than from the RFRA, and their interpretation remains valid.

If confessional communications to ministers are protected without regard to the religion that received them, nor to how many ministers accessed them, or to whether they were written down and preserved or not, and on these matters religions are free to self-organize themselves as they deem fit, then the conclusion about Scientology is inescapable, Lieberman argues. “Scientology’s central practice of auditing meets all the necessary requirements for full protection in every state and in the federal courts under the constitutional standards” (307).

Auditing “ultimately employs more than one minister,” but “that characteristic is necessitated by the beliefs and structure of the religion, as in numerous denominations other than Scientology.” Just like a Catholic priest, “a Scientology auditor is prohibited as a matter of faith and doctrine from revealing what is said or written in an auditing session even if a congregant attempts to ‘waive’ his [sic] privilege contrary to his religious covenant never to do so.” Auditors should be protected just as Catholic priests are. “At the end of the day, all religions and faiths must be treated equally with recognition of the various forms and practices with which Americans practice their faith” (307).

Some Conclusions

The book edited by Hill and Thompson is the most comprehensive treatment to date of a crucial issue: whether the legal statutes protecting ministers of all religions from disclosing what they have learned from parishioners within the context of a clergy-penitent relationship will, and should, survive the present assault by those who want to abrogate them in the wake of the pedophile Catholic priests scandals.

I agree with Lieberman’s conclusion in the last chapter, that the central religious practice of Scientology (and presumably similar practices in other religions and movements too), will likely be granted by American courts the same protection they have offered to the Christian confession.

However, Liberman does not address the issue of the introduction of exceptions to the confessional privilege in cases of child sexual abuse that are now parts of the laws of Ireland and several Australian and American states and are being promoted elsewhere. While the protest against religious authorities who covered up cases of sexual abuse is understandable, I also agree with those who argue that these statutes open a breach in the wall protecting the confessional privilege, which may lead to other breaches until the wall will collapse altogether.

These issues, in fact, go beyond confession. As a sociologist, I am reminded of the famous 1906 article by Georg Simmel (1858–1918) (Simmel 1906), which included many useful observations but ultimately, perhaps because it was often misread, fueled a culture of mistrust and suspicion against all religious (and non-religious) organizations maintaining secrets.

As Wouter Hanegraaff demonstrated in his *Esotericism and the Academy*, the suspicion against secrets is as old as Protestantism. Secrets, the early Protestants believed, were a feature of pagan religions, used to hide immorality, and they had passed into Roman Catholicism. Later, Enlightenment philosophers and Marxist ideologists saw the secret as something usually hiding anti-liberal or right-wing conspiracies against progress or socialism (Hanegraaff 2012).

American historian David Brion Davis (1927–2019), in a landmark article that he published in 1960, argued that this century-old distrust of the secret led American Protestant to a militant and sometimes violent opposition in the 19th century against three secrets they regarded as immoral and sinister. They were the secrets of the Masonic lodges, of the Catholic confession, and of the Mormon temple rituals (Davis 1960).

Later, more civility prevailed, and society seemed to accept from scholars that secret is intrinsic to spirituality, and religion cannot perform its role without the confidentiality of certain practices, which the laws should protect and guarantee as part of religious liberty. In the late 20th and 21st centuries, however, terrorist attacks perpetrated using or misusing the name of Islam, the pedophile priests crisis in the Catholic Church, and campaigns against “cults” revamped old theories that religious secrets are something sinister and hide illegal activities.

The Internet also created an illusion of total democratization and openness. Jesus said in *Matthew* 10:27 “What I tell you in the dark, speak in the daylight; what is whispered in your ear, proclaim from the roofs,” which was mistakenly interpreted to claim that in Christianity there should be no secrets. It seems that today the Internet is telling us “What was whispered in your ear, post on your blog or on Facebook immediately.”

Perhaps students should be taught courses using both the book by Hill and Thompson and David Ventimiglia’s 2019 textbook *Copyrighting God* (Ventimiglia 2019). The fashionable but false claim examined by Ventimiglia, that nothing published by a religion should be protected by copyright because religion should be free to be used and even misused by everybody, is based on the same rationale as the claim that nothing in a religion should be secret or confidential. Not coincidentally, Ventimiglia’s book also discusses anti-copyright claims used against the Church of Scientology, although I am not sure I agree with his conclusions.

My personal opinion about the confession controversy is that laws affording a special protection to the Catholic Church's sacrament of confession or its equivalents in certain Eastern Orthodox, Anglican, and Lutheran churches will probably not survive the pedophile clergy crisis, nor a Western world where, in one country after the other, active members of the traditional Christian churches are becoming part of a minority.

Italy may be a special case because, as mentioned earlier, the protection of confession is part of a Concordat it signed not with the Italian Catholic Church, but with the Vatican as a foreign state, making it an international treaty. Other limited geographical exceptions may also survive. In general, however, special laws protecting the confessional practice of a church because it used to include the majority of a country's population may become a thing of the past sooner than some religionists believe.

At the same time, both constitutional principles and international conventions about religious liberty will probably continue to be applied to recognize that religious practices for which an absolute confidentiality is essential, such as the Catholic or Eastern Orthodox confession or Scientology's auditing, should remain protected and survive what the co-editor of the book calls the "moral panic" about child sexual abuse (58).

The expression "moral panic" should be qualified, as both Thompson and the undersigned agree that child sexual abuse by members of the clergy is a horrific reality. The moral panic operates when legitimate concerns are misused to demolish one of the foundations of religious liberty, the confessional privilege.

Churches, on the other hand, can and should contribute to defusing the moral panic by addressing the sexual abuse issues with more honesty and transparency than some of them exhibited in the past. I believe they should also accept that old statutes singling out "national" denominations for special protection will disappear (almost) everywhere, and focus on advocating for religious liberty and a confessional privilege for all religions.

However, absolute transparency is a myth. As the Hill-Thompson book demonstrates, the confessional privilege does not protect only, and perhaps not even mostly, the religions and the ministers. It protects the sinners, i.e., all of us, who should not be deprived of the comforting certainty that there is a place in the world where we can talk freely and acknowledge our shortcomings and

wrongdoings, with confidence that what we say will not be reported to the police officer, the tax collector, or the prosecutor.

Without these safe havens, be they operated by the Catholic Church or the Armenian Orthodox Church or the Church of Scientology, not only will criminals lose what may well be their last opportunity to reform, but we will all lose one of the few opportunities remaining in this world to look safely and honestly at ourselves, our past mistakes, and our fears for the future.

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