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SACRED SECRETS ENABLING CHILD SEX ABUSE

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In this Article, we examine the harm caused by the clergy-penitent privilege. In doing so, we are not “religion bashers,” nor are we interested in castigating either the institution of religion or people of faith. That is neither interesting nor constructive. What does serve as our primary focal point is an inquiry into the privilege through the lens of enabling harm. In doing so, we do not minimize the importance of confession but suggest inquiring whether the privilege is appropriate when the penitent confesses either to a past or future crime.

The age-old adage says there are three things not to discuss in polite company: sex, religion, and politics. We ignore that advice, for in this Article, we directly confront two of the three: religion and sex. The order of the two words is relevant, for we make the argument that one of the principle tenets of two faiths – the Catholic Church and the Church of Jesus Christ of Latter-day Saints – enables sexual attacks on vulnerable children. While that is, we are convinced, not the desired goal of a critical aspect of both faiths, it is a reality. Perhaps it is an uncomfortable reality; nevertheless, it is an issue that demands addressing.

For that reason, we propose measures to alleviate the risks faced by victims and potential victims. In that sense, this Article is admittedly victim centric. The reason for that must be stated upfront: even a casual glance at the daily new

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confirms concerns regarding the risks posed by the clergy-penitent privilege. In a nutshell: what a clergy hears in confession cannot be shared, regardless of whether the penitent's confession references a past crime or the intention to commit a future crime.

We argue the clergy-penitent privilege has the unintended consequence of enabling harm in general, child sex abuse in specific. In making this argument, we do not intend to disrespect faith or people of faith. We do, however, posit that an important aspect of the two religions we address – the Catholic Church and the Church of Jesus Christ of Latter-day Saints – endangers vulnerable members of their respective communities. We choose to focus on the Catholic Church and the Church of Jesus Christ of Latter-day Saints because the prohibition on violating the privilege is most clearly articulated, and implemented, in these two faiths.

“In 2013, a former Boise, Idaho, police officer turned himself in for abusing children, something he had reported to 15 members of the Mormon church, none of whom notified authorities. But prosecutors declined to file charges against the church because of Idaho’s clergy-penitent privilege law.”¹

“We might think we’re protecting the reputation of a religious community we love. Really, we’re just signaling to everyone out there that we don’t take abuse seriously.”²

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1. Jason Dearen & Michael Rezendes, *Churches Defend Clergy Loophole in Child Sex Abuse Reporting*, U.S. News (Sept. 28, 2022, 12:05 PM), <https://www.usnews.com/news/politics/articles/2022-09-28/churches-defend-clergy-loophole-in-child-sex-abuse-reporting>.

2. Kristy Burmeister, *5 Ways You Might Be Enabling Abuse in the Church*, PATHEOS (Aug. 2, 2018, 6:28 PM), <https://www.patheos.com/blogs/waystationinthewilderness/2018/08/5-ways-you-might-be-enabling-abuse-in-the-church/>.

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I. INTRODUCTION

MJ was only five years old when her father, Paul Douglas Adams, confessed to his bishop that he sexually abused her.³ The father, a member of the Church of Jesus Christ of Latter-day Saints (hereinafter the “Church of Jesus Christ”),⁴ was at a counseling session with his bishop when he admitted his addiction to pornography and the sexual exploitation of his daughter.⁵ Following the Church of Jesus Christ’s protocol, the bishop contacted the Church’s abuse helpline.⁶ The Church notified the bishop that he could do “absolutely nothing” to disclose the conversation, as it was considered privileged communication protected by Arizona’s clergy-penitent privilege.⁷ As a result, Adams continued to rape MJ for “as many as seven years,” and later, began sexually abusing her infant sister.⁸

Throughout the years of sexual abuse, Adams’s bishop at the Church of Jesus Christ continued counseling him.⁹ In search of more guidance, the bishop told a second bishop, who also kept the matter confidential.¹⁰ During this time, the Church

3. See Dearen & Rezendes, *supra* note 1; Michael Rezendes, *7 Years of Sex Abuse: How Mormon Leaders Learned Arizona Man was Abusing his Kids and Let it Continue*, AZCENTRAL (Aug. 4, 2022, 8:45 AM), <https://www.azcentral.com/story/news/local/arizona/2022/08/04/mormon-church-sexual-abuse-help-line-paul-adams/10234183002/> [hereinafter *7 Years of Sex Abuse*].

4. We have shortened the name “The Church of Jesus Christ of Latter-day Saints” to the “Church of Jesus Christ,” as encouraged by the Church. See *Style Guide – The Name of the Church*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://newsroom.churchofjesuschrist.org/style-guide/#:~:text=In%20the%20first%20reference%2C%20the,is%20also%20accurate%20and%20encouraged> (last visited Sept. 25, 2023).

5. See *7 Years of Sex Abuse*, *supra* note 3.

6. Telephone Interview with Kirton McConkie (Jan. 8, 2024).

7. See *7 Years of Sex Abuse*, *supra* note 3.

8. *Id.*; see also Michael Rezendes, *Judge Limits Clergy ‘Privilege’ Defense in Arizona LDS Sex Abuse Case*, THE SALT LAKE TRIBUNE (Aug. 18, 2022, 3:43 PM), <https://www.sltrib.com/religion/2022/08/18/judge-limits-clergy-privilege/#:~:text=%7C%20Aug.%E2%80%9Cclergy%2Dpenitent%20privilege.%E2%80%9D>.

9. See *7 Years of Sex Abuse*, *supra* note 3 (discussing how the bishop brought Adams’s wife into the counseling sessions “in hopes she would do something to protect the children.”).

10. *Id.*

of Jesus Christ “excommunicated”¹¹ Adams.¹² Although the records from the excommunication hearing remain confidential, other members of the Church of Jesus Christ, including a church official serving as a clerk, knew of the abuse through the hearing but did not report it to state authorities.¹³

The Adams sisters continued suffering through the abuse until, finally, the Department of Homeland Security arrested Adams in 2017.¹⁴ Because Adams had posted videos of the abuse online, bragging about his “perfect lifestyle” in which he could have “sex with his daughters whenever he pleased,” law enforcement officials in New Zealand came across the videos and notified the U.S. Department of Homeland Security of the abuse.¹⁵ Adams committed suicide before his trial could begin, while his wife was found guilty for failing to report child abuse and served two-and-a-half years in state prison.¹⁶ The Adams children have attempted to file suit against a former Utah-state legislator and the Church’s abuse help-line law firm, Kirton McConkie, for conspiring with the Church of Jesus Christ and failing to report the abuse, thereby enabling it to go on for years.¹⁷ Although the Church had knowledge of only one child being abused at the time, the lawsuit involved all the Adams’ children.¹⁸

In this Article, we also address the clergy-penitent privilege in the Catholic Church. We do so because of the extraordinary importance the Church attaches to the privilege, which is deeply rooted in Church theology. Given the absoluteness of the privilege, a Catholic priest who violates confidentiality in the context of the

11. While the Church of Jesus Christ used the term “excommunication” at the time of Adams’s membership withdrawal, the Church of Jesus Christ has replaced the term “excommunication” with “withdrawal of membership.” See Sydney Walker, *Why Some Words and Phrases are no Longer Used in the Church’s General Handbook*, THE CHURCH NEWS (Sept. 29, 2021, 9:50 AM), <https://www.thechurchnews.com/2021/9/29/23216849/general-handbook-terms-no-longer-used/>.

12. See Michael Rezendes, *Judge Limits Privilege Defense in Bisbee Mormon Sex Abuse Case*, AZCENTRAL (Aug. 19, 2022, 3:58 PM), <https://www.azcentral.com/story/news/local/arizona/2022/08/19/judge-limits-privilege-defense-paul-adams-sex-abuse-case-church-jesus-christ-latter-day-saints/7847578001/>.

13. *Id.*

14. See *7 Years of Sex Abuse*, *supra* note 3.

15. *Id.*

16. *Id.*

17. See Michael Rezendes & Jason Dearen, *Lawsuit in Arizona says Utah Firm and Lawmaker Helped Mormons Hide Abuse*, PBS NEWS (Oct. 12, 2022, 4:35 PM), <https://www.pbs.org/news-hour/nation/lawsuit-in-arizona-says-utah-firm-and-lawmaker-helped-mormons-hide-abuse> [hereinafter *Utah Firm and Lawmaker Helped Mormons Hide Abuse*]; see also Lyda Longa, *Attorney Sues Mormon Church, Others in Horrific Child Abuse Case*, HERALD REV. (Dec. 24, 2023), https://www.myheraldreview.com/news/bisbee/attorney-sues-mormon-church-others-in-horrific-child-abuse-case/article_6d70f0aa-38cf-11eb-b39a-b737843b46d2.html.

18. See *Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

confessional is considered to commit the “greatest ecclesiastical crime.”¹⁹ After a priest commits such a ‘crime’, the Catholic Church defrocks the priest and no longer allows him to hear confession or continue his priestly duties.²⁰ While the severity of that sanction is not a matter for debate, what must be asked is whether the absolute ban withstands scrutiny predicated on the consequences of the privilege.

Similarly, the Arizona case illustrates the harm that results when abuse goes unreported under the protection of privilege. In focusing on the harm resulting from the privilege, our primary goal is to recommend a legislative proposal whereby the privilege can be modified to protect vulnerable individuals, primarily children. We understand that this theory may cause anger, if not offense, for those identified with either faith. Perhaps people of faith belonging to other religions will be similarly dismayed by our proposal. While we respect and understand such reactions, we believe that limiting privilege is justified, thereby outweighing the traditional way in which privilege is understood.

In asking this question, we have interacted with a broad range of individuals, including subject-matter experts and people of faith. In some instances, an individual was both an expert and a person of faith. While the trigger for our undertaking was the Arizona case, we came to learn that examples of harm are not limited to that tragic matter. It would, accordingly, be incorrect to view this case as an outlier or ‘one-off.’

As we came to learn, the privilege, notwithstanding its sanctity, is not cost-free. While doctrine is dogmatic regarding the privilege, we believe that core belief must be re-examined given the harm it causes. It is irrelevant that harm is an unintended consequence; the critical reality is that harm is caused. For that reason, there is a need for balancing doctrine with the consequences of rigid adherence to beliefs and practices. If the practice enables harm, then moderating its application would represent a means to protect those most at risk from rigid doctrine.

Enablers are essential to perpetrators as they provide protection, whereby the primary actor can act with impunity and immunity. The term “enabler” has generally been associated with individuals who “enable” harm by failing to act on behalf of vulnerable individuals when a risk is known and preventable.²¹ Examples include “enablers” at Michigan State University and USA Gymnastics who facilitated Larry

19. See Jack Jenkins, *Unholy Secrets: The Legal Loophole That Allows Clergy to Hide Child Sexual Abuse*, THINKPROGRESS (Aug. 8, 2016, 9:29 AM), <https://archive.thinkprogress.org/unholy-secrets-the-legal-loophole-that-allows-clergy-to-hide-child-sexual-abuse-9a689909eb5/>.

20. See Thomas P. Doyle, *Revelation of Confessional Matter with Permission*, <http://archives.weirdload.com/docs/doyle-revelation-conf.pdf> (last visited Sept. 25, 2023).

21. Amos N. Guiora et al., *Holding Enablers of Child Sexual Abuse Accountable: The Case of Jeremy Bell*, 59 CRIM. L. BULLETIN ART. 1, 4 (2023) [hereinafter *Holding Enablers Accountable*].

Nasser;²² Dr. Richard Strauss at The Ohio State University;²³ Dr. Robert Anderson at the University of Michigan;²⁴ abusive priests in the Catholic Church;²⁵ and Coach Jerry Sandusky at Penn State University.²⁶

These are but examples of a seemingly endless litany of individuals who chose to protect the institution directly and the perpetrator indirectly, while contributing to the harm of thousands.²⁷ We are confronted daily with similar stories of individuals making such decisions, notwithstanding their ability to prevent harm to present and future victims-survivors alike.²⁸

In the Arizona case, the decision to prevent the bishop from reporting what he learned in the confessional directly led to additional harm to young, vulnerable children.²⁹ That result was both predictable and preventable; to expect any other result would be unreasonable given the documented rates of recidivism and the unlimited access to young bodies the privilege grants a predator who has confessed past or future sin.³⁰ The combination of known risk-preventable harm is the essence of the enabling culture that has been widely documented. Without those who made the decision to protect the institution-predator, the unlimited reach of predators would be significantly limited.

That same analysis applies to the determined decision to protect the privilege. While church doctrine is sacred for members of a faith, the question is whether a principle should continue to take precedence over an individual. The question is not posed abstractly but rather concretely with recognition that limiting the privilege

22. See generally AMOS N. GUIORA, *ARMIES OF ENABLERS: SURVIVOR STORIES OF COMPLICITY AND BETRAYAL IN SEXUAL ASSAULTS* (2020) [hereinafter *ARMIES OF ENABLERS*].

23. *Id.* at 92–96.

24. *Id.* at 65–69.

25. *Id.* at 72–73.

26. *Id.*

27. It is for this reason that, in separate undertakings, recommendations have been put forth towards criminalizing enablers. See Amos N. Guiora, *Failing to Protect the Vulnerable: The Dangers of Institutional Complicity and Enablers*, UTAH L. SCHOLARSHIP (2021) [hereinafter *Failing to Protect the Vulnerable*].

28. See, e.g., *Bellwood Antis School District Athletic Director and Wrestling Coach Charged with Endangering Students, Covering Up Sexual Abuse at School*, PA. ATT'Y GEN. MICHELLE A. HENRY: PRESS RELEASE (Jan. 11, 2024), <https://www.attorneygeneral.gov/taking-action/bellwood-antis-school-district-athletic-director-and-wrestling-coach-charged-with-endangering-students-covering-up-sexual-abuse-at-school/>.

29. See *7 Years of Sex Abuse*, *supra* note 3.

30. See Stephanie Smith, *Sex Offenders, Recidivism, and the Church*, Religion News Serv. (July 25, 2014), <https://religionnews.com/2014/07/25/sex-offenders-recidivism-church/> (finding that offenders are drawn to churches because of the access to children).

violates established doctrine at the core of religious belief and institutions for millions of believers.

However, as we argue in this Article, there are larger interests at stake that demand our attention. The fact that harm may befall a vulnerable child must give pause even to those wedded to religious doctrine and orthodoxy.

That, more than anything, is the reality as the privilege is currently understood and practiced. While proponents of an absolutist approach to the privilege point to its historical underpinnings and importance to the confessing penitent, the voices of the abused are equally important, demanding our attention. Perhaps, we must prioritize their call for help or, at the very least, re-structure the privilege so that equal weight is given to two powerful competing interests.

The instinctual phrase, “that’s the way it is,” must be re-examined as it is an open question whether it stands rigorous scrutiny when considered from an enabling perspective after a penitent has harmed the vulnerable. To address this issue, the Article is structured as follows: Section I: The Historical Background of the Clergy-Penitent Privilege; Section II: The Clergy-Penitent Privilege in the Law; Section III: What is Enabling?; Section IV: What is Institutional Complicity?; Section V: The Clergy-Penitent Privilege as an Enabler of Child Sex Abuse; Section VI: Legislative Proposals; Section VII: Moving Forward.

II. THE HISTORICAL BACKGROUND OF THE CLERGY-PENITENT PRIVILEGE

A. *The Catholic Church*

In the Catholic Church, the practice of confessing one’s sins is attributable to the New Testament of the Bible in which Jesus Christ teaches his Apostles to “Receive the Holy Spirit. If you forgive anyone’s sins, their sins are forgiven; if you do not forgive them, they are not forgiven.”³¹ In the beginning of the Catholic Church’s history, confessions and penance were public events, at least in regard to four particular sins: murder, blasphemy, adultery, and fornication.³² This shameful and often embarrassing practice led the Church to amend its confessional procedures and

31. *John* 20:22-23 (New International Version). It is important to note that confession is also mentioned in other parts of the New Testament. See Karlo Broussard, *A Biblical Case for Confession*, CATH. ANSWERS (June 30, 2021), <https://www.catholic.com/magazine/print-edition/a-biblical-case-for-confession>.

32. See Mike Aquilina, *A Hushed History of Catholic Confessions*, ANGELUS (May 15, 2019), <https://angelusnews.com/voices/a-hushed-history-of-catholic-confessions/>; see also *Confession of Sins*, NEW WORLD ENCYCLOPEDIA, https://www.newworldencyclopedia.org/entry/Confession_of_Sins.

make the confessional a private event in the presence of a priest.³³ The role of the priest is to listen to the confession and determine whether to grant the penitent absolution.³⁴ Initially, absolution was granted only once during a person's lifetime to "prevent abuse of the sacrament" and ensure that the penitent would not commit the same sin and seek absolution for it every time.³⁵ In absolving an individual of their sins, the priest acts as a representative of the Trinity and grants absolution in God's name.³⁶

Church doctrine requires Catholics to go to confession at least once a year if they are aware they have committed a "serious sin."³⁷ Serious sins, also known as "mortal sins", are sins that are committed "in full knowledge of its gravity and with the full consent of the sinner's will."³⁸ These sins cover a wide range of actions, from masturbation and rape to suicide and abortion.³⁹ If an individual fails to confess to a mortal sin, that individual is not allowed to partake in Holy Communion.⁴⁰ More importantly, an individual who fails to repent for such a sin before death is considered to go to hell upon death.⁴¹ In contrast, venial sins are considered to be "less serious" than mortal sins.⁴² Examples of such sins include hatred of one's

33. See Aquilina, *supra* note 32; see also *Confession of Sins*, *supra* note 32; DYAN ELLIOTT, *THE CORRUPTER OF BOYS: SODOMY, SCANDAL, AND THE MEDIEVAL CLERGY* 26 (Ruth Mazo Karras & Edward Peters eds., 2020).

34. See Brendan Daly, *Seal of Confession: A Strict Obligation for Priests*, 90 *THE AUSTL CATH. REC.* 174, 180 (2013) ("Priests can delay or even deny absolution . . .").

35. See Chris Antenucci, *A History of the Use of the Sacrament of Reconciliation in the Early Church*, MEDIUM (Mar. 27, 2018), <https://medium.com/@chrisantenucci/a-history-of-the-sacrament-of-reconciliation-in-the-early-church-8d0eaf275faf> (noting "absolution after confession was only given once during a person's life . . . to prevent the abuse of the sacrament" and ensure that people were truly repentant).

36. See Genevieve Netherton, *Why Do Catholics Confess To A Priest?*, GOOD CATH. (Feb. 8, 2022), <https://www.goodcatholic.com/why-do-catholics-confess-to-a-priest/>.

37. See Jim Blackburn, *What is the Requirement Regarding Yearly Confession?*, CATH. ANSWERS, <https://www.catholic.com/qa/what-is-the-requirement-regarding-yearly-confession> (citing 1983 CODE C. 1457, § 1) (last visited Sept. 20, 2023).

38. *Mortal Sin*, BRITANNICA, <https://www.britannica.com/topic/cardinal-sin> (last visited Sept. 20, 2023).

39. See *id.*

40. See *The 'Who Can Receive Holy Communion?' Ultimate Explainer*, THE PILLAR (May 20, 2022, 4:00 PM), <https://www.pillarcatholic.com/p/the-who-can-receive-holy-communion> (citing 1983 CODE C. 1457, § 1, "[a]nyone who is aware of having committed a mortal sin must not receive Holy Communion, even if he experiences deep contrition, without having first received sacramental absolution, unless he has a grave reason for receiving Communion and there is no possibility of going to confession").

41. *Id.*

42. See Jim Blackburn, *What Are Some Examples of Venial Sins?*, CATH. ANSWERS, <https://www.catholic.com/qa/what-are-some-examples-of-venial-sins> (last visited Sept. 20, 2023).

neighbor or abusive language (to a certain extent).⁴³ The Catholic Church “strongly recommend[s]” people to confess these smaller every-day sins.⁴⁴

The clergy-penitent privilege, otherwise known as the seal of confession in the Catholic Church, stems back to the Fourth Lateran Council in 1215.⁴⁵ Canon 21 specifically addresses the privilege and the duty of the priest:

Let him take the utmost care, however, not to betray the sinner at all by word or sign or in any other way. If the priest needs wise advice, let him seek it cautiously without any mention of the person concerned. For if anyone presumes to reveal a sin disclosed to him in confession, we decree that he is not only to be deposed from his priestly office but also to be confined to a strict monastery to do perpetual penance.⁴⁶

There are two ways for a priest to violate the seal of confession: indirect violations and direct violations.⁴⁷ Specifically, an indirect violation occurs when a priest reveals the confession by “words, gestures, deeds, or omission of the confessor.”⁴⁸ On the other hand, a direct violation involves a priest openly sharing the penitent’s confession with others.⁴⁹ Canon 983 § 1 states, “The sacramental seal is inviolable; therefore it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason.”⁵⁰ If a priest is to violate the seal of confidentiality, directly or indirectly, for any reason, the priest “would not be allowed to act as a priest” and “would be charged with a canonical crime.”⁵¹

The only time a priest may reveal any information bound by the seal of confession is when the penitent grants express permission for the priest to do so.⁵² Further, the priest cannot be coerced into sharing any information learned in the confessional.⁵³ The privilege within the Catholic Church is characterized by some as

43. *Id.*

44. *See Should We Confess Venial Sin?*, CATH. ANSWERS, <https://www.catholic.com/qa/should-we-confess-venial-sin> (last visited Sept. 20, 2023).

45. *See* Daly, *supra* note 34, at 174.

46. *Id.* (citing G. ALBERIGO ET AL., *DECREES OF ECUMENICAL COUNCILS* 245 (Norman P. Tanner ed., 1990)).

47. *Id.* at 176.

48. *Id.*

49. *Id.*

50. *Id.* at 175 (noting that interpreters present at a confession are also bound by the seal of confession) (quoting 1983 CODE C. 983, § 1).

51. *See* Jenkins, *supra* note 19 (“It’s the greatest ecclesiastical crime [the priest] could commit.”).

52. *See* Doyle, *supra* note 20.

53. *Id.*

“absolute” for these reasons.⁵⁴ Most canonists agree that the goal of the privilege is to protect the penitent, whether it be from reputational or legal harm.⁵⁵

As illustrated, the practice of confession has been deeply rooted within the Catholic Church for centuries, and it is not likely to change in the foreseeable future. In 2019, Pope Francis stated, “The sacramental seal is indispensable and no human power has jurisdiction over it, nor can lay any claim to it.”⁵⁶ The Pope’s statement suggests that if a law requires the revelation of certain confessions to authorities, the laws of the Catholic Church should prevail over the laws of secondary institutions.

Although the Catholic Church continues to recommend people to attend confessions on a regular basis, a study in 2012 indicated that the “number of Catholics going to confession each month dropped from 38% to 17% in the past 10 years.”⁵⁷ However, some argue that a properly understood confession has the power of relieving one to their guilt, something that clinical psychology is often unable to do.⁵⁸ In other words, confession “frees the patient from guilt”⁵⁹ and moves the penitent closer to God.

B. *The Church of Jesus Christ*

The Church of Jesus Christ, like the Catholic Church, maintains the belief that “all are sinners.”⁶⁰ Because of this predicament, repentance is “one of the first principles of the gospel” and has been an integral part of the religion since its leader, Joseph Smith, founded the religion in 1830.⁶¹ The Church of Jesus Christ attributes

54. See F. Robert Radel II & Andrew A. Labbe, *The Clergy-Penitent Privilege: An Overview*, 64 FED’N DEF. & CORP. COUNS. Q. 385, 395 (2015).

55. See Jenkins, *supra* note 19.

56. See Cassidy Vavra, *Vatican, Pope Francis Say Seal of Confession Must Always Be Upheld as Lawmakers Try to Mandate Priests Report Sex Abuse Revealed in Confession*, NY DAILY NEWS (July 2, 2019, 4:17 PM.), <https://www.nydailynews.com/2019/07/02/vatican-pope-francis-say-seal-of-confession-must-always-be-upheld-as-lawmakers-try-to-mandate-priests-report-sex-abuse-revealed-in-confession/>.

57. Amber Martinez-Pilkington, *Shame and Guilt: The Psychology of Sacramental Confession*, 35 HUMANISTIC PSYCH. 203, 204 (2007); For more statistics on confession participation, see *Participation in Catholic Rights and Observances*, PEW RSCH. CTR. (Sept. 2, 2015), <https://www.pewresearch.org/religion/2015/09/02/chapter-2-participation-in-catholic-rites-and-observances/>.

58. Martinez-Pilkington, *supra* note 57, at 204.

59. *Id.* at 212 (quoting P.C. Vitz & P. Mango, *Kernbergian Psychodynamics and Religious Aspects of the Forgiveness Process*, 25 J. PSYCH. & THEOLOGY 72, 77 (1997)).

60. See Edward L. Kimball, *Confession in LDS Doctrine and Practice*, 36 BYU STUD. Q. 7, 7 (1996) (citing *Romans* 3:23 and *Galatians* 3:22).

61. *Id.*; see also *History of The Church of Jesus Christ of Latter-day Saints*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://newsroom.churchofjesuschrist.org/article/history-of-the->

the practice of confession and repentance to the New Testament of the Bible.⁶² Although confession is not a “mechanical requirement” within the Church, confession does result in reconciliation with God, and therefore, it is highly encouraged by the Church.⁶³ Because scripture remains silent to the question of who and what to confess to, the Church of Jesus Christ allows a penitent to confess to God (in prayer), individuals they have hurt, and their ward bishop.⁶⁴ The process of confession in the Church of Jesus Christ is usually considered to be more informal than in the Catholic Church.⁶⁵

A member of the Church of Jesus Christ must “confess to God all failings, admit to other individuals the ways in which the member’s conduct has injured them, and reveal spontaneously or disclose voluntarily to the bishop anything that might justify Church discipline.”⁶⁶ The category of sins that may require Church discipline includes “any sexual relations outside marriage, involvement with abortions, . . . and any deliberate and major offense against the law.”⁶⁷ However, confession is not limited to these “serious” sins, and confession is encouraged even if one contemplates wrongdoing but has yet to commit the wrongdoing.⁶⁸ Unlike the power of priests in the Catholic Church to absolve sins, stake presidents and bishops do not have the power to do so.⁶⁹ Instead, the bishop’s role within the context of confession is to help the individual turn away from sin and toward God.⁷⁰

The privilege within the Church of Jesus Christ is “more of a matter of Church policy and practice than of doctrine”⁷¹ Although the bishop is required to maintain strict confidentiality, a bishop is expected to comply with the law of a state if

church-of-jesus-christ-of-latter-day-saints (last visited Sept. 28, 2023) (providing a history of the Church of Jesus Christ).

62. Kimball, *supra* note 60, at 7 (“By this ye may know if a man repenteth of his sins—behold, he will confess them and forsake them”) (quoting *Doctrine and Covenants* 58:43).

63. *Id.* (discussing how confession, unlike baptism, “is not a mechanical requirement, nor is it an ordinance . . .”).

64. *Id.* at 8.

65. *See id.* at 11 (“Unlike the Catholic tradition of making confession in a confessional booth and using formulaic words, the LDS tradition is wholly informal and face-to-face with the bishop. The confession is conducted in a private setting so that discussion can be confidential.”).

66. *Id.* at 13.

67. *Id.* at 14.

68. *Id.*

69. *Id.* at 19-21 (discussing how the Church of Jesus Christ holds that the power to absolve sins pertains specifically to apostles).

70. *See* C. Scott Grow, *Why and What Do I Need to Confess to My Bishop?*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (Oct. 2013), <https://www.churchofjesuschrist.org/study/new-era/2013/10/why-and-what-do-i-need-to-confess-to-my-bishop?lang=eng>.

71. Kimball, *supra* note 60, at 21.

it requires disclosure of, for example, child sex abuse.⁷² Compliance with the law would require a bishop to disclose instances of child sex abuse learned within the context of the confessional if the state requires disclosure and does not afford a privilege.⁷³

Bishops are allowed to disclose information without first consulting with the church helpline if, and only if, the disclosure is necessary to prevent life-threatening harm or serious injury and there is not enough time to seek guidance from the helpline.⁷⁴ However, when it comes to child sex abuse, bishops must first seek counsel from the Church's helpline to determine if they are required to report the abuse to abide by state law.⁷⁵

In contrast to the practice of confession in the Catholic Church,⁷⁶ the Church of Jesus Christ can excommunicate or withdraw one's membership for breaking "the promises they have made to God through baptism or other promises they have made in the temple . . ." upon learning about this information *from* confession.⁷⁷ A bishop can take the information learned from the penitent's confession and relay that information to the high council or counselors to determine whether the penitent's membership needs to be withdrawn.⁷⁸ There are three primary purposes for the practice of membership withdrawal: (1) to help protect others, (2) help a person access the redeeming power of Jesus Christ through repentance, and (3) protect the integrity of the Church.⁷⁹

Membership withdrawal can be thought of as a "private" trial of an individual and church leaders.⁸⁰ This trial generally consists of twelve members of the Stake

72. See *id.* at 21-23; see also *Repentance and Church Membership Councils*, in *General Handbook: Serving in The Church of Jesus Christ of Latter-day Saints*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, [hereinafter *General Handbook*] <https://www.churchofjesuschrist.org/study/manual/general-handbook/32-repentance-and-membership-councils?lang=eng> (last visited July 21, 2024) (discussing the confidentiality requirement imposed on bishops, stake presidents, and their counselors by Rule 32.4.4).

73. *General Handbook*, *supra* note 72.

74. *Id.*

75. *Id.* (noting reporting procedures in Rule 32.4.5).

76. It is important to note that although the Catholic Church also has the process of excommunication for serious sins, information learned within the bounds of confession remains confidential at all times and cannot be shared with anyone else, even for the purpose of excommunication. See Charles Grondin, *Why and How One Is Excommunicated*, CATH. ANSWERS, <https://www.catholic.com/qa/why-and-how-one-is-excommunicated> (last visited Sept. 27, 2023).

77. Jim Harmer, *Mormon Excommunication: How It Works, and Why It's Done.*, PURPOSE IN CHRIST (August 20, 2017), <https://purposeinchrist.com/mormon-excommunication/>.

78. Kimball, *supra* note 60, at 32.

79. See *General Handbook*, *supra* note 72 (discussing purposes in Rule 32.2).

80. Harmer, *supra* note 77.

High Council, with six “assigned to represent the member in question while the other six are asked to represent the Church as a whole to ‘prevent insult or injustice.’”⁸¹ After deliberating and praying for guidance on the decision that should be made, the member is informed of the Church’s decision.⁸² An individual who has their membership withdrawn is allowed to attend Church meetings but cannot participate in certain activities.⁸³

Membership withdrawal within the Church of Jesus Christ is a restriction that is “ecclesiastical, not civil or criminal . . . [it] affect[s] only a person’s standing in the Church.”⁸⁴ Therefore, the membership withdrawal proceedings generally remain confidential unless the Church needs to prevent others “from being harmed through misinformation.”⁸⁵

Unlike the general passive role of the Catholic priest during confession, the Church of Jesus Christ bishops partake in a more active role of counseling and interviewing.⁸⁶ During confession, bishops generally ask follow-up questions to ensure that the penitent is truly repentant.⁸⁷ Recently, the Church of Jesus Christ has been under public pressure to create more boundaries for the questions that bishops may ask individuals, particularly children, within the context of the confessional.⁸⁸

The Church of Jesus Christ allows certain exceptions to the privilege to stand.⁸⁹ In contrast to the strict seal of confession embedded within the Catholic Church, the Church of Jesus Christ allows bishops to share information learned from the confessional for purposes of determining membership withdrawal or compliance with

81. See Keith L. Brown, *Excommunication in Mormonism*, MORMON BELIEFS, https://mormonbeliefs.org/mormon_beliefs/mormon-beliefs-culture/excommunication-in-mormonism/ (last visited Sept. 28, 2023).

82. *Id.*

83. *Id.*

84. *General Handbook*, *supra* note 72.

85. See *Church Discipline: What is Church Discipline?*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (July 12, 2022), <https://news-ca.churchofjesuschrist.org/article/church-discipline>.

86. See *General Handbook*, *supra* note 72 (discussing counseling and informal membership restrictions in Rule 32.8).

87. *Id.*

88. See Sam Young, *29 Questions*, TOCUBIT IS INVISIBLE’S CUBIT (Mar. 24, 2019), <https://invisiblecubit.com/2018/08/08/29-questions/> (noting how some questions asked by bishops included “Do you masturbate?,” “How many fingers do you use?,” “Have you tasted your own ejaculate?,” and others). For more information on sexually explicit questions asked by bishops and survivor statements, see *Did You Know?*, PROTECT LDS CHILDREN, <https://protectldschildren.org/> (last visited Sept. 3, 2024).

89. *General Handbook*, *supra* note 72 (discussing Rule 32.4.5).

state law.⁹⁰ Complying with state law precedes maintaining confidentiality in the context of the confessional.⁹¹

III. THE CLERGY-PENITENT PRIVILEGE IN THE LAW

A. *The Clergy-Penitent Privilege and State Reporting Requirements*

U.S. laws have a set of privileges protected by the shield of confidentiality according to the rules of evidence.⁹² These privileges prevent an individual from disclosing information or providing evidence in a judicial proceeding.⁹³ There are nine rules defined as “specific nonconstitutional privileges” that the federal courts must recognize.⁹⁴ Those nine privileges include “required reports, lawyer-client, psychotherapist-patient, husband-wife, communications to clergymen, political vote, trade secrets, secrets of state and other official information, and identity of informer.”⁹⁵ Some argue that the clergy-penitent privilege is “entitled to greater deference than other privileges, such as the attorney-client privilege or the psychotherapist-patient privilege,” noting that these two privileges “are subject to various exceptions, while the clergy-penitent privilege is generally deemed ‘absolute.’”⁹⁶

As noted, in states that protect the clergy-penitent privilege and do not grant an exception regarding mandatory reporting, the clergy is protected for failure to report to law enforcement the abuse they learned in the confession.⁹⁷

Currently, all fifty states and the District of Columbia have a clergy-penitent privilege codified in their law.⁹⁸ Of those fifty states, only seven states deny the

90. See Aquilina, *supra* note 32; see also *General Handbook*, *supra* note 72 (discussing confidentiality requirement in Rule 32.4.4).

91. See *General Handbook*, *supra* note 72 (stating the Church’s policy to obey the law in Rule 32.4.5).

92. FED. R. EVID. 501.

93. See *Privilege*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/privilege> (last visited Sept. 3, 2024).

94. H.R. REP. NO. 93-650.

95. *Id.*

96. See Radell II & Labbe *supra* note 54, at 395; see generally Lynn McLain, *Privileges: Spousal, Attorney-Client, and Priest-Penitent*, UNIV. BALTIMORE SCH. OF L. (Feb. 26, 2004), http://scholarworks.law.ubalt.edu/all_fac/901; see also Shawn P. Bailey, Comment, *How Secrets are Kept: Viewing the Current Clergy-Penitent Privilege Through a Comparison with the Attorney-Client Privilege*, 2002 BYU L. REV. 489, 491 (2002) (“Drawing a comparison between the clergy-penitent and attorney-client privileges, this Comment will demonstrate that[,] if anything, the clergy-penitent privilege merits more protection from abrogation than the attorney-client privilege.”); Ronald J. Colombo, *Forgive Us Our Sins: The Inadequacies of the Clergy-Penitent Privilege*, 73 NYU L. REV. 225, 228–49 (1998).

97. See Radell II & Labbe, *supra* note 54, at 395–96.

98. See John R. Vile, *Priest-Penitent Privilege*, FREESPEECHCENTER (July 2, 2024), <https://firstamendment.mtsu.edu/article/priest-penitent-privilege/>. For specific statutes granting the clergy-

clergy-penitent privilege in cases of suspected child abuse or neglect, while ten states and the District of Columbia do not address the question of whether the privilege shields clergy from mandatory reporting.⁹⁹

penitent privilege, see ALA. CODE § 12-21-166 (1979); ALASKA COMM. R. EVID. 506; ARIZ. REV. STAT. ANN. § 12-2233 (2023); ARK. R. EVID. 505; CAL. EVID. CODE § 1034 (West, Westlaw through 2024 Regular Session); COLO. REV. STAT. ANN. § 13-90-107(1)(C) (West, Westlaw through the Second Regular and Extraordinary Sessions of the 74th General Assembly (2024)); CONN. GEN. STAT. ANN. § 52-146b (West, Westlaw through 2024 Regular Session and the 2024 Special June Session); DEL. R. EVID. 505; D.C. CODE § 14-309 (2006); FLA. STAT. ANN. § 90.505 (West, Westlaw through 2024 Regular Session); GA. CODE ANN. § 24-5-502 (West, Westlaw through 2024 Regular Session); HAW. REV. STAT. ANN. § 626-1, Rule 506 (West, Westlaw through 2024 Regular and First Special Session, pending text revision by the revisor of statutes); I.R.E. 505; 735 ILL. COMP. STAT. ANN. 5/8-803 (1982); IND. CODE ANN. § 34-46-3-1(3) (West, Westlaw through 2024 Second Regular Session of the General Assembly); IOWA CODE ANN. § 622.10 (West 2024); KAN. STAT. ANN. § 60-429 (West, Westlaw through laws enacted during the 2024 Regular and First Special Sessions of the Kansas Legislature); LA. CODE EVID. ANN. art. 511; ME. R. EVID. 505; MD. CODE ANN., CTS. & JUD. PROC. § 9-111 (West, Westlaw through legislation from the 2024 Regular General Assembly); MASS. GEN. LAWS ANN. ch. 233, § 20A (West, Westlaw through Chapter 139 of the 2nd Annual Session); MICH. COMP. LAWS ANN. § 767.5(a)(2) (West, Westlaw through Act No. 166 of the 2024 Regular Session); MINN. STAT. ANN. § 595.02(1)(c) (West, Westlaw through legislation from the 2024 Regular Session); MISS. R. EVID. 505; MO. ANN. STAT. § 491.060(4) (West, Westlaw through 2024 Second Regular Session of the 102nd General Assembly); MONT. CODE ANN. § 26-1-804 (West, Westlaw through the 2023 Session of the Montana Legislature); NEB. REV. STAT. ANN. § 27-506 (West, Westlaw through 2nd Regular Session and the end of the 1st Special Session of the 108th Legislature); NEV. REV. STAT. ANN. § 49.255 (West, Westlaw through legislation of the 82nd Regular Session (2023) Chapters 1 to 535 (End) and the 35th Special Session (2023) Chapter 1 (End) including all technical corrections received by the Legislative Counsel Bureau.); N.H. REV. STAT. ANN. § 516:35 (West, Westlaw through Chapter 381 (End) of the 2024 Reg. Sess.); N.J. R. EVID. 511; N.M. R. EVID. 11-506; N.Y. C.P.L.R. LAW § 4505 (McKinney 1965, Westlaw through L.2024, chapters 1 to 601); N.C. GEN. STAT. ANN. § 8-53.2 (West, Westlaw through S.L. 2024-56 of the 2024 Regular Session of the General Assembly); N.D. R. EVID. 505; OHIO REV. CODE ANN. § 2317.02 (West, Westlaw through Files 56 and 58 of the 135th General Assembly (2023-2024)); OKLA. STAT. ANN. tit. 12, § 2505 (West, Westlaw through legislation of the Second Regular Session of the 59th Legislature (2024)); OR. REV. STAT. ANN. § 40.260 (West, Westlaw through laws of the 2024 Regular Session of the 82nd Legislative Assembly); 42 PA. STAT. AND CONS. STAT. ANN. § 5943 (West, Westlaw through Act 151 of the 2024 Regular Session); 9 R.I. GEN. LAWS ANN. § 9-17-23 (West, Westlaw through Chapter 457 of the 2024 Regular Session); S.C. CODE ANN. § 19-11-90 (West, Westlaw through 2024 Act No. 225); S.D. CODIFIED LAWS § 19-19-505 (West, Westlaw through 2024 Regular Session, 2024 General Election, Ex. Ord. 24-1, and Supreme Court Rule 24-11); TENN. CODE ANN. § 24-1-206 (West, Westlaw through 2024 Regular Session of the 113th Tennessee General Assembly); TX R. EVID. 505; UTAH R. EVID. 503; VT. R. EVID. 505; VA. CODE ANN. § 8.01-400 (West, Westlaw through 2024 Regular Session and 2024 Special Session); WASH. CONST. art. I, § 11 (West, Westlaw through Amendment 88); W. VA. CODE ANN. § 57-3-9 (West, Westlaw through 2024 Regular Session, First Extraordinary Session and Second Extraordinary Session); WIS. STAT. ANN. § 905.06 (West, Westlaw through 2023 Act 272); WYO. STAT. ANN. § 1-12-101(a)(ii) (2011).

99. See CHILD WELFARE INFO. GATEWAY, U.S. DEP'T OF HEALTH AND HUM. SERV., CLERGY AS MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT I (2023) (noting that other states do not enumerate clergy as mandated reporters but may include them with the "any person" designation). For exact mandatory reporting requirements in each state, see *Mandatory Reporting Laws by State 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/mandatory-reporting-laws-by-state> (last visited Oct. 10, 2024).

According to the U.S. Department of Health and Human Services, as of 2019, all fifty states have some form of mandatory reporting laws for suspected child abuse and neglect.¹⁰⁰ Mandatory reporting laws require “institutional actors to report harm to an individual when it is shared with them.”¹⁰¹ Failing to report the harm is not a matter of discretion and may be punished with criminal ramifications.¹⁰² Of the 50 states that have mandatory reporting laws, approximately 29 states include clergy as mandatory reporters “mandated by law to report known or suspected instances of child abuse or neglect.”¹⁰³ However, within the context of confessional, the mandatory reporting requirement only applies to the states that deny the privilege in cases of suspected child abuse.¹⁰⁴

The Children’s Bureau has published a table summarizing the mandatory reporting requirements for clergy:¹⁰⁵

	Privilege granted but limited to the context of confessions	Privilege denied in cases of suspected child abuse	Privilege not addressed in the reporting laws
Clergy enumerated as mandated reporters	Alabama, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina,	Guam, New Hampshire, West Virginia	Connecticut, Mississippi

100. CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH AND HUM. SERV., MANDATORY REPORTING OF CHILD ABUSE AND NEGLECT 1 (2023).

101. See *Holding Enablers Accountable*, *supra* note 21.

102. *Id.*

103. See CLERGY AS MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, *supra* note 99, at 2; see also *Mandatory Reporting Laws by State 2024*, *supra* note 99.

104. See CLERGY AS MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, *supra* note 99, at 1-2; see also *Mandatory Reporting Laws by State 2024*, *supra* note 99.

105. CLERGY AS MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, *supra* note 99, at 3; *Mandatory Reporting Laws by State 2024*, *supra* note 99.

	Vermont, Virginia, Wisconsin		
Clergy not enumerated as mandated reporters but may be included with “any person” designation	Delaware, Florida, Idaho, Kentucky, Maryland, Utah, Wyoming	North Carolina, Oklahoma, Rhode Island, Texas, Tennessee, U.S. Virgin Islands	Indiana, Nebraska, New Jersey, Puerto Rico
Neither clergy nor “any person” enumerated as mandated reporters	Washington	N/A	American Samoa, District of Columbia, Iowa, Kansas, New York, Northern Mariana Islands, South Dakota, Virgin Islands

B. Court Rulings on Child Sex Abuse Cases and the Privilege

In recent years, courts have grappled with the issue of reconciling mandatory reporting laws with the clergy-penitent privilege.¹⁰⁶ As this section indicates, courts are generally more likely to affirm the privilege, even in situations where it is not entirely clear whether the statement was made in a confessional. The following section will analyze case law relevant to the clergy-penitent privilege.

In 2008, Rebecca Mayeux, at the age of 14, contacted Father Jeff Bayhi – a priest in the Diocese of Baton Rouge, Louisiana – to report in confession that Father Charlet—a 64-year-old parishioner—had sexually abused her for several years.¹⁰⁷ Rebecca confessed the abuse to Father Bayhi on three separate occasions, stating that Charlet had “inappropriately touched her, kissed her, and told her that ‘he wanted to make love to her.’”¹⁰⁸ After her confessions, Father Bayhi told Rebecca to

106. See generally Julie Love Taylor, *Parents of Minor Child v. Charlet: A Threat to the Sanctity of Catholic Confession?*, LA L. REV. (Oct. 22, 2014); see also *Radel II & Labbe*, *supra* note 54, at 391.

107. See Taylor, *supra* note 106.

108. See Taylor, *supra* note 106; see also Jenkins, *supra* note 19, at 391.

“[s]weep it under the floor and get rid of it.”¹⁰⁹ “Rebecca continued to suffer at the hands of the abuser because Father Bayhi did not report the abuse to the authorities nor her parents.”¹¹⁰

After Rebecca finally informed her parents of the abuse, the family filed a lawsuit in 2009 that implicated both Father Bayhi and the Diocese of Baton Rouge.¹¹¹ They claimed that Father Bayhi had failed to inform authorities of the abuse, as members of the clergy were listed as mandatory reporters in the state of Louisiana.¹¹² The case went all the way to the Louisiana Supreme Court, which ruled that the privilege belonged to the penitent, not the priest;¹¹³ “[t]hus, the court determined that the penitent was free to testify as to her own confession.”¹¹⁴ However, upon remand to the district court, the district court granted the Church’s request to declare Louisiana’s mandatory reporting statute unconstitutional.¹¹⁵ The Louisiana Supreme Court struck down the district court’s decision.¹¹⁶ The entire matter was dismissed in 2019 without a trial or further decision.¹¹⁷ This case illustrates the difficulty courts have had reconciling mandatory reporting statutes with the clergy-penitent privilege, as the case continued to bounce around from the district court to the supreme court for clarity.¹¹⁸

The California Court of Appeals has taken a step further in determining that the state’s clergy-penitent privilege does not apply to certain subpoenaed documents.¹¹⁹ In *Roman Cath. Archbishop of L.A. v. Super. Ct.*, two priests sexually assaulted children while they worked for the Roman Catholic Archbishop of Los Angeles.¹²⁰ The court of appeals stated, “[w]hile it is true the right to religious freedom holds a special place in our history and culture, there also must be an accommodation by religious believers and institutions to the rules of civil society, particularly when the state’s compelling interest in protecting children is in question.”¹²¹ The Court

109. See Taylor, *supra* note 106; see also Jenkins, *supra* note 19, at 391.

110. See Taylor, *supra* note 106.

111. *Id.*

112. *Id.*

113. See *Parents of Minor Child v. Charlet*, 135 So. 3d 1177, 1180 (La. 2014).

114. *Radel II & Labbe*, *supra* note 54, at 392; see also *Parents of Minor Child v. Charlet*, 135 So. 3d at 1180.

115. See *Mayeux v. Charlet*, 203 So. 3d 1030, 1040 (La. 2016).

116. *Id.*

117. See *generally* Plaintiffs’ Motion to Dismiss with Prejudice, *Mayeux v. Charlet*, No. C-58006624 (La. Dist. Ct. Sep. 18, 2019).

118. See *Mayeux*, 203 So.3d at 1032-34.

119. See *Roman Cath. Archbishop of L.A. v. Super. Ct.*, 32 Cal. Rptr. 3d 209, 227-29, 441-42 (Ct. App. 2005).

120. *Id.* at 424.

121. *Id.*

also noted that “[t]he Los Angeles County Grand Jury subpoenaed various documents from the Archdiocese which purportedly would allow the grand jury to determine whether to indict the Priests”.¹²²

The diocese argued that the clergy-penitent privilege applies to the documents because they constituted “privileged penitential communications within the meaning of Evidence Code section 1032 because they were generated in the course of the formation of clergy process during the Archdiocese’s interventions to help troubled priests.”¹²³ The court, however, refused to accept the argument on the grounds that the communications were not “made in confidence, in the presence of no third person so far as the penitent is aware”¹²⁴ Because the information contained within the documents were shared with third parties, the court held that the clergy-penitent privilege did not apply to the subpoenaed documents.¹²⁵

In Utah, however, the Utah Supreme Court expanded the clergy-penitent privilege by applying it to any communications that are “made in confidence for the purpose of seeking or receiving religious guidance, admonishment, or advice,” including documents.¹²⁶ Here, Michelle Scott filed a complaint against her adoptive father, Steven Hammock, alleging that he physically and sexually abused her for more than ten years, with the abuse beginning when she was five years old.¹²⁷ While criminal charges were pending against Hammock, he had three conversations with his Church of Jesus Christ bishop.¹²⁸ One of the conversations “took place in the bishop’s church office with no one else present” while the other two conversations took place in Hammock’s home with his wife, who “was present during one of the communications.”¹²⁹ Scott also “subpoenaed documents from the [Church of Jesus Christ] relating to Hammock’s excommunication proceeding and communications referring to the abuse of [the] children” between Hammock and his bishop.¹³⁰ The

122. *Id.* at 425.

123. *Id.* at 440.

124. *See id.* at 444-45 (“The record demonstrates the participants in the Archdiocese’s troubled-priest interventions knew any communications likely were to be shared with more than one person. According to the Archdiocese’s declared policy, priests experiencing psychological and sexual problems were encouraged to discuss those problems with the archbishop and the Vicar for Clergy. Furthermore, the subpoenaed documents themselves amply demonstrate that communications to and from the individual priests were routinely shared”).

125. *Id.* at 445-46.

126. *Scott v. Hammock*, 870 P.2d 947, 956 (Utah 1994).

127. *Id.* at 949.

128. *Id.*

129. *Id.*

130. *Id.*

Utah Supreme Court applied the clergy-penitent privilege to all the conversations – including the one where Hammock’s wife was present during the confession.¹³¹

Meanwhile, in Arizona, the children of Paul Adams filed a motion challenging the constitutionality of the three Arizona statutes that established the clergy-penitent privilege.¹³² The Church of Jesus Christ utilized these three statutes to argue that Adams’ bishop had not acted unlawfully by failing to report the child abuse.¹³³ The Adams children argued that the existence of these statutes violated five constitutional provisions addressing religion—two regarding the United States Constitution and three regarding the Arizona Constitution.¹³⁴ They asserted that the “compelling state interest in protecting children outweigh[ed] the narrow infringement upon the religious rights of the clergy.”¹³⁵

The motion claimed that the statutes “undeniably foster[ed] and advance[d] religion” rather than maintain neutrality and general applicability.¹³⁶ The statutes directly conflict with the general mandatory reporting requirement, which specifies that “any person” must report child abuse if they have such knowledge.¹³⁷ Further, the statutes favor religions that recognize and utilize confidential communications such as confession, granting them an exception to the rule of law and hindering the functions of law enforcement and the judiciary.¹³⁸

The Cochise County Superior Court for the State of Arizona denied the motion for ruling on unconstitutionality in July of 2023.¹³⁹ The court addressed each constitutional provision cited by the Adams children and determined that the clergy-penitent exemption was constitutional.¹⁴⁰ In reference to the Establishment Clause of the First Amendment, the court stated that because the privilege is deeply rooted in our nation’s history, it does not violate the Establishment Clause.¹⁴¹ Further,

131. *Id.* at 956.

132. *See* First Amended Motion for Ruling on Constitutionality of Certain Statutes and Notice of Claim of Unconstitutionality Under A.R.S. § 12-1841 at 1-2, *Doe I v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, (Ariz. Super. Ct. May 5, 2023) (No. CV202000599).

133. *See id.* at 2-3.

134. *Id.* at 2.

135. *Id.* at 4 (quoting Caroline Donze, *Breaking the Seal of Confession: Examining the Constitutionality of the Clergy-Penitent Privilege in Mandatory Reporting Law*, 78 LA. L. REV. 267, 310 (2017)).

136. *Id.* at 7.

137. *Id.* (quoting ARIZ REV. STAT. ANN. § 13-3260(A)).

138. *See id.* at 8.

139. *See* Under Advisement Ruling Plaintiff’s Motion for Ruling on Constitutionality of Certain Statutes and Notice of Claim of Unconstitutionality Under ARS §12-1841, *supra* note 132, at 1.

140. *Id.* at 5.

141. *Id.* at 2–3.

because the privilege does not specifically apply to a single church but rather to all clergy, the court found the statutes to be general to a given class.¹⁴² Finally, the court stated, “[t]he fact that the Legislature created the clergy-penitent exceptions is sufficient for this Court to find that the exceptions are not ‘inconsistent with the peace and safety of the state.’”¹⁴³ The court left it up to the state legislature to enact change in law if they deemed it necessary.¹⁴⁴ In response to the Superior Court’s decision, the Adams children filed a petition for special action to the Arizona Court of Appeals, but that, too, was dismissed by the court.¹⁴⁵

Courts continue to struggle with the scope of the clergy-penitent privilege. Specifically, courts have a difficult time answering pertinent questions on the boundaries of the privilege.¹⁴⁶ The differing State laws have not created a clear answer to our posed questions: Who does the privilege belong to, the priest or the penitent? Are there exceptions to the privilege when an individual’s life is in danger? What are ways to reconcile mandatory reporting requirements with the privilege? Does the privilege apply to documents?

IV. WHAT IS ENABLING?

An enabler is “[a]n individual who knows, or should know, that another individual has been harmed and makes the decision to not act to either minimize harm to that individual and/or to other potential victims.”¹⁴⁷ An enabler differs from the bystander because “[t]he enabler . . . is not present when the harm is caused but fails to act when information regarding harm is brought to their attention.”¹⁴⁸ The enabler is aware of the abuse or misconduct and has the power to act, but only has the duty to inform first responders, law enforcement officials, etc.¹⁴⁹ That decision demands to be understood as criminal, given its direct impact on vulnerable individuals harmed by perpetrators.¹⁵⁰

142. *Id.* at 4.

143. *Id.* at 3.

144. *Id.* at 3, 4.

145. See Petition for Special Action, *Doe I v. Hon. Timothy B. Dickerson*, No. CV202000599 (Ariz. Ct. App. Oct. 23, 2023); see also Howard Fischer, *Judge Tosses Out Bid by Family Sexual Abuse Survivors to Sue Church for Failing to Report to Police*, ARIZ. CAP. TIMES (Nov. 8, 2023), <https://azcapitoltimes.com/news/2023/11/08/judge-tosses-out-bid-by-family-sexual-abuse-survivors-to-sue-church-for-failing-to-report-to-police/> (stating that the court found that the Church of Jesus Christ and its clergy handled the matter consistent with Arizona law).

146. Colombo, *supra* note 96, at 231-32.

147. *Failing to Protect the Vulnerable*, *supra* note 27, at 11.

148. *Id.*

149. *Id.*

150. *Id.* at 15.

Enabling can be understood as protecting the perpetrator who feels emboldened to act with impunity and immunity—confident that his/her actions will not be reported to law enforcement or relevant disciplinary authorities.¹⁵¹ The wide latitude enablers provide perpetrators amplifies the vulnerability of the at-risk individual, for not only are they harmed by the physical (or emotional) actions of the perpetrator but also by the individual who was positioned to protect them but failed to do so.¹⁵² Interactions with survivors shed light on a painful reality: while the harm caused by the perpetrator was harmful, the realization that those positioned to protect them (enablers) chose not to do so was even more harmful.¹⁵³ That is a theme consistently expressed by survivors.¹⁵⁴

It is what Tiffany Thomas-Lopez—sexually violated “by Larry Nassar over 150 times while she was a student-athlete at Michigan State University” (“MSU”)—described as, “they super fucked me” when referencing Nassar’s enablers.¹⁵⁵ In the same vein, Thomas-Lopez referred to enablers as “armies” in describing what she encountered whilst assaulted by Nassar.¹⁵⁶ Nassar assaulted Matti Larson 750 times while she was competing as an elite gymnast for USA Gymnastics (“USAG”).¹⁵⁷ In Mattie’s words, “[h]ow the fuck did they let a minor be alone in a hotel room with an adult?” in referencing how Nassar had unfettered access to the athletes under the guise of medical treatment.¹⁵⁸

The enablers who protected Nassar were individuals acting at their own behest, not directed by superior authorities, making decisions for which they bear individual responsibility.¹⁵⁹ While they may have believed they were protecting MSU and USAG, there is no evidence they were ordered to do so.¹⁶⁰ That applies to enablers at The Ohio State University (“OSU”), University of Michigan (“UM”), Penn State, and the Catholic Church.¹⁶¹

151. *Id.* at 5, 10.

152. *Id.* at 4.

153. *Id.*

154. *Id.* at 24.

155. *Holding Enablers Accountable*, *supra* note 21, at 27.

156. *ARMIES OF ENABLERS*, *supra* note 22, at 66.

157. *Failing to Protect the Vulnerable*, *supra* note 27, at 5.

158. *Holding Enablers Accountable*, *supra* note 21, at 27.

159. See generally Nicole Chavez, *What Others Knew: Culture of Denial Protected Nassar for Years*, CNN (Jan. 25, 2018, 11:21 AM), <https://www.cnn.com/2018/01/23/us/nassar-sexual-abuse-who-knew/index.html>.

160. *Id.*

161. See *Failing to Protect the Vulnerable*, *supra* note 27, at 3; see also Billy Witz, *Ohio State Pays \$41 Million to Settle Claims From Doctor’s Abuse*, N.Y. TIMES (May 8, 2020), <https://www.nytimes.com/2020/05/08/sports/ohio-state-strauss-settlement.html>; Lindsay Gibbs, *It’s not just Larry*

One of us (Guiora) has documented the enabling at these institutions and has not found any indication that those who enabled Richard Strauss (OSU), Bob Anderson (UM), Jerry Sandusky (Pennsylvania State University, “PSU”), or abusive priests were acting in concert with the relevant institution or in conjunction with other individuals.¹⁶²

When Lemke’s coach, Kathie Klages, threatened to withdraw her scholarship if she were to file a complaint against Nassar with law enforcement, Klages was, purportedly, acting on her own.¹⁶³ Thomas-Lopez’s trainer and coach manipulated her off the softball team.¹⁶⁴ That, however, is very different from what Adams’ children faced after he confessed to the bishop.¹⁶⁵

The paradigm we are exploring, rather than focusing on the individual enabler whose actions were essential to the criminal actions of the perpetrator, examines enabling based on religious doctrine and the conduct it demands. Accordingly, our examination extends beyond the acts of an individual protecting another individual. The enabling that directly contributed to Adams’s continued criminal behavior is based on a strict reading of religious doctrine and the way it is practiced.¹⁶⁶ In that sense, it is more layered.

The enabling examined within the context of the Catholic Church is doctrine-predicated. However, the enabling examined within the Church of Jesus Christ occurred on two distinct levels—doctrine-predicated and individual; the former reflecting adherence to religious principles that endanger the vulnerable, and the latter reflecting individual decisions that have similar consequences. As the Arizona case makes clear, the combination is tragic from the perspective of the impacted

Nassar: Michigan State University has a problem with rape culture, THINK PROGRESS (Aug. 27, 2019, 8:31 AM), <https://archive.thinkprogress.org/years-after-larry-nassar-michigan-state-universitys-rape-culture-persists-d3c62ed1f567/>; Bill Chappell, *Penn State Abuse Scandal: A Guide And Timeline*, NPR, (June 21, 2012, 6:01 PM), <https://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>; Michelle Boorstein, *Scandals, Compensation Programs Lead Catholic Clergy Sex Abuse Complaints to Quadruple in 2019*, THE WASHINGTON POST (June 26, 2020), <https://www.washingtonpost.com/religion/2020/06/26/scandals-compensation-programs-lead-catholic-clergy-sex-abuse-complaints-quadruple-2019/>.

162. *Failing to Protect the Vulnerable*, *supra* note 27, at 6.

163. *Ex-gymnast: Michigan State Coach Pressured Me to Stay Silent about Nassar Allegations*, ABC NEWS (Jan. 26, 2018, 9:09 PM), <https://abcnews.go.com/US/gymnast-michigan-state-coach-pressured-stay-silent-nassar/story?id=52634815>.

164. *Former Michigan State University Softball Player Says She Gave Up the Sport She Loved in the Wake of Larry Nassar’s Sexual Assaults*, ABC NEWS (Jan. 26, 2018, 3:54 PM), <https://abcnews.go.com/Sports/michigan-state-university-softball-player-gave-sport-loved/story?id=52605169>.

165. *See 7 Years of Sex Abuse*, *supra* note 3.

166. *See Dearen & Rezendes*, *supra* note 1.

individual.¹⁶⁷ While there is no intention to minimize the importance and value of religious practices, there is a need to examine the harm they cause. That similarly applies to individuals whose decision-making, in the spirit of the relevant religious practice, enables the harm.

There is no basis for assuming enablers intend for harm to result; however, intentions notwithstanding, that is the direct result. As discussed in Section I, the privilege of confession in Catholicism is different than in the Church of Jesus Christ. In the former, it is rigid and devoid of nuance; in the latter, as we have learned, the privilege is seemingly subject to interpretation by individual bishops and stake presidents.¹⁶⁸

The complicating factor in assessing the enabling question in the Church of Jesus Christ is the role assigned to the help-line and perhaps more importantly, the law firm that represents the Church. While the bishop received Adams' confession, the law firm advised the bishop not to report Adams' crimes and communicated it through the helpline.¹⁶⁹ The law firm was acting in its capacity as counsel for the Church of Jesus Christ, and the helpline was the conduit for the firm's decision to discourage the bishop from reporting the crime to law enforcement.¹⁷⁰

While the firm's advice was communicated to the bishop, we have learned during our research, that the lack of consistent application of doctrine—which admittedly surprised us—grants bishops wide latitude in their application of religious teachings.¹⁷¹

Distinct from the Catholic Church's thousand-year-old, well-established hierarchy, the Church of Jesus Christ is a more linear, flat-line structure, seemingly tolerant of flexibility in the interpretation of Church doctrine.¹⁷² While it was the individuals who made the decision not to report, the rationale reflected dedication to religious doctrine.¹⁷³ Based on our wide-ranging interactions, that is seemingly the most compelling reason for the decisions made.

167. See *supra* notes 132-145 and accompanying text.

168. See discussion *supra* Sections I.A, I.B.

169. *Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

170. See *id.*

171. See CHARLES R. HARRELL, *THIS IS MY DOCTRINE: THE DEVELOPMENT OF MORMON THEOLOGY* 373-397 (Greg Kofford Books ed., 2011) (explaining that Mormon doctrine is an abstract concept); see also Lavina Fielding Anderson, *The LDS Intellectual Community and Church Leadership: A Contemporary Chronology*, 26 *DIALOGUE: J. MORMON THOUGHT* 7, 23 (1993) (detailing the extent to which Mormon doctrine has been altered over time).

172. See *supra* notes 61-77 and accompanying text.

173. See *Should We Confess Venial Sin?*, *supra* note 44; General Handbook, *supra* note 72.

While there is no doubt that harm to vulnerable individuals was not the intention, that is—tragically—the consequence. It is clear to us religious institutions in good faith believe confidentiality does “more good than harm”; however, as we have learned that is not cost free, notwithstanding the importance attached to it. It has been suggested, and understandably so, that the guarantee of absolute confidentiality of confession can be justified as the only means for church members to share their misdeeds. However, notwithstanding the importance of confession and the guarantee of confidentiality—which we understand—we cannot ignore the unintended consequences of continued harm to the vulnerable individual.

V. WHAT IS INSTITUTIONAL COMPLICITY

A. *The Essence of Institutional Complicity and Its Costs*

In examining the question of the impact of the clergy-penitent privilege, there is an additional issue that demands our attention. As we have come to see, the decision to protect the privilege, regardless of the tragic consequences, also protects the institution. In abandoning the victim and shielding the predator, whether from a past, present, or future harm – the institution is also protecting itself. That is the essence of institutional complicity, which occurs when an individual, acting on behalf of an institution, turns a blind eye to abuse out of a sense of duty to the institution.¹⁷⁴ The combination of the clergy-penitent privilege and institutional complicity significantly endangers the individual the penitent has confessed to having harmed, is presently harming, or intends to harm.

The protection of the privilege, regardless of its historical and theological roots and rationale, leaves an individual in harm’s way. More than anything, the fate of Adams’s daughters is directly related to that.¹⁷⁵ While the children were harmed by their father, the insistence regarding the confession’s sanctity is but a manifestation of institutional complicity.¹⁷⁶ Protecting the privilege of the confession ensures sins committed by church members are not reported to the authorities.

The privilege is viewed as a mechanism to isolate the institution from the repercussions of the actions of a penitent of which institutional actors had

174. *Failing to Protect the Vulnerable*, *supra* note 27 and accompanying text.

175. *See Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

176. *See id.*

knowledge.¹⁷⁷ The confession is made to a faith leader authorized by the institution to receive the confession on its behalf, in accordance with established doctrine.¹⁷⁸

Without debating the sanctity of the confession, a topic beyond our scope, the more pressing inquiry is the institutionalized refusal to provide information to the authorities best positioned to protect a vulnerable individual. At its core, that is the most pressing consequence of institutional complicity in the confession paradigm. That, more than anything, is the primary lesson learned from the Adams case.¹⁷⁹ It is the reason we propose the recipient of the confession *must*—not *may*—waive the privilege if the information provided relates to sexual assault or abuse of a child, regardless of when it was committed or the number of times. That is the most effective manner to directly address the negative consequences of protecting the privilege which reflects institutional complicity and results in harm.¹⁸⁰

When examining institutional complicity in the context of the confession related to a crime, there are distinct actors: the penitent, the clergy, the institution, state authorities, and the past/present/future victim(s). The order in which the actors are referenced is deliberate, as the privilege protects the penitent and the institution the most and the vulnerable the least.¹⁸¹ In the name of protecting the institution, the law firm that represents the church advised the bishop who *knew* that a child was directly, assuredly, and consistently in harm's way.¹⁸²

177. See, e.g., Trent Horn, *Answering a Priest Who Opposes the Seal of Confession*, CATHOLIC ANSWERS (Apr. 26, 2023), <https://www.catholic.com/audio/cot/answering-a-priest-who-opposes-the-seal-of-confession> (arguing that a priest bears no responsibility for the actions of a sexual abuser who confesses his or her abuse even if the priest does not report the abuse).

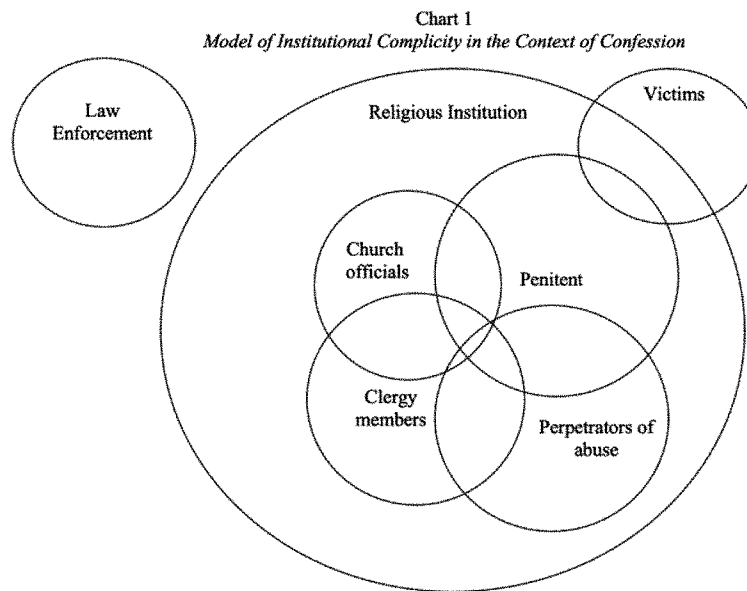
178. See Aquilina, *supra* note 32.

179. See *7 Years of Sex Abuse*, *supra* note 3.

180. See *Failing to Protect the Vulnerable*, *supra* note 27, at 2.

181. *Id.* at 18.

182. *Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.



Caption: The penitent is typically either the victim of abuse or the perpetrator. The perpetrator of abuse is typically a member of the church, if not a clergy member. In cases where the clergy-penitent privilege directly enables sexual abuse, the abuse is revealed by the penitent to a clergy member. The clergy member, in the Church of Jesus Christ, would call the church helpline. In the Catholic Church, the clergy member typically consults a higher church official about the abuse. In either case, the information stays within the control of the religious institution and affiliated organizations but is not reported to the proper law enforcement officials. The priority is to keep the information confidential which directly accentuates the harm to the victim(s), hence their placement on the outskirts of the religious circle.

The advice given to the bishop was not to report to the authorities what Adams had confessed.¹⁸³ This results in failing to report crimes committed against children.¹⁸⁴ The child, in this case, Adams's eldest daughter – and later, infant daughter – were abused by their father and abandoned by an institution that failed to see them as the individuals most in need of protection.¹⁸⁵

Such institutional complicity can also be seen through many cases of abuse in the Catholic Church.¹⁸⁶ In Sioux City, Iowa, Father Murphy abused then-eleven-year-old Timothy Lennon.¹⁸⁷ Prior to Lennon's abuse, Murphy had been transferred from a different parish following allegations of abuse.¹⁸⁸ Murphy abused Lennon

183. *Id.*

184. *See id.*

185. *See id.*

186. *See generally* Zoom Interview with Timothy Lennon, President Emeritus, and Survivors Network of those Abused by Priests (June 28, 2023 & Nov. 7, 2023) [hereinafter Zoom Interview with Timothy Lennon].

187. *Id.*; *see supra* Chart 1.

188. Zoom interview with Timothy Lennon, *supra* note 186.

for several months and was only stopped after another boy's parent reported him.¹⁸⁹ During his abuse of Lennon, Murphy forced Lennon to go to confession to confess his "sins" multiple times.¹⁹⁰ As a young boy, Lennon was unsure of what exactly he was meant to confess to during those sessions.¹⁹¹ He told at least two priests in confession, about Father Murphy's abuse.¹⁹² While it is unclear whether either of these two priests ever reported Murphy to higher church officials, it is certain that Lennon's abuse continued following these confessions.¹⁹³

While bishops in the Church of Jesus Christ receive little to no formal training,¹⁹⁴ priests in the Catholic Church dedicate their entire lives to the Catholic Church. As part of their training, they must first go to seminary for four years to study theology.¹⁹⁵ It is clear to Catholic priests from the beginning of their training that they cannot break the seal of confession under any circumstances.¹⁹⁶ In Lennon's case, the second priest who Lennon informed of the abuse actually confronted Father Murphy.¹⁹⁷ Although the priest was angered with the knowledge of the abuse, he knew that he could not report the crime.¹⁹⁸ Lennon believes that the privilege is an example of institutional complicity, but even more, it is an example of institutionalized complicity.¹⁹⁹

While the Church would rely on the privilege in defending its decision, it was complicit in the ensuing, and inevitable, harm. Notwithstanding the importance ascribed to theological values and principles, the needs of an individual, particularly, a vulnerable child, should be prioritized over doctrine. While church doctrine reflects core beliefs and values, serving as a "guide" for how its followers conduct their daily and spiritual lives, the absolutism that dictated the instructions given to the bishop reflects institutional complicity.²⁰⁰

Institutional complicity reflects placing the institution above all other considerations, notwithstanding the harm resulting from the decision.²⁰¹ Prioritizing the

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Zoom Interview with Sam Young, Founder, Protect LDS Children (Sept. 19, 2023).

195. 1983 CODE c. 235, §§ 1, 236; *see also How to Become a Priest*, BRESCIA UNIV. (Sept. 11, 2013), <https://www.brescia.edu/2013/09/how-to-become-a-priest/>.

196. Zoom Interview with Father Martin Diaz, Rector, Cathedral of the Madeleine (July 5, 2023).

197. *See* Zoom Interview with Timothy Lennon, *supra* note 186.

198. *Id.*

199. *Id.*

200. *See Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

201. *See Failing to Protect the Vulnerable*, *supra* note 27, at 2, 4.

institution over the individual results from a myriad of factors, some specific to a particular paradigm, others universal. Regardless of which model it is – universal or specific – the results are the same, resulting in individual harm. The protection of the institution, consequences notwithstanding, is seemingly a repetitive behavioral model that is, as we have come to see, instinctual and seemingly inevitable. The reasons for this vary as the rationalizations range from self-serving to sanctimonious. Regardless of the motivation, institutional complicity directly impacts those abandoned by the institution.²⁰²

The two charts below outline two separate instances of institutional complicity, the first in the Catholic Church and the second in the Church of Jesus Christ. The first follows the timeline of Father Murphy as he was moved from church to church following allegations of child sex abuse.²⁰³ It portrays the enabling that led to Murphy's abuse of Timothy Lennon.²⁰⁴ The second chart lays out the timeline of Adams's abuse of his daughters.²⁰⁵ Through each chart we aim to make clear how easily an abuser can be enabled as a result of the clergy-penitent privilege, in spite of the intentions of the religions. We feel it is important to illustrate how many people were aware of or involved in the web of complicity. Although the enabling in each instance occurred in different manners and likely for different reasons, the result was the same: children were harmed.

202. *See id.* at 4, 6, 34.

203. *See* Zoom Interview with Timothy Lennon, *supra* note 186; *see also infra* Charts 2 & 3.

204. *See infra* Chart 2.

205. *See generally* Cochise County Sheriff's Office Report for Incident 17-03768, Church of Jesus Christ of Latter-Day Saints v. Cardinal, 2022 WL 17727582 (Ariz. App. Div. 2, 2022) (No. 2 CA-SA 2022-0047); *see also* Dearen & Rezendes *supra* note 3; *infra* Chart 2.

Chart 2

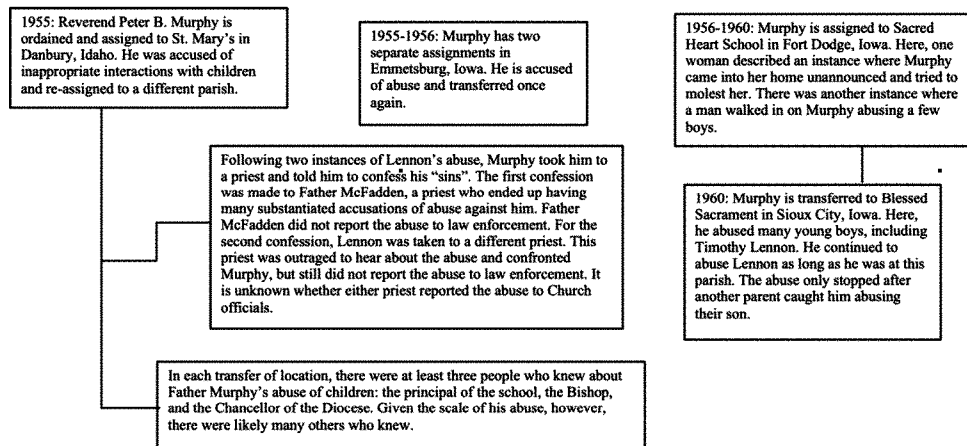
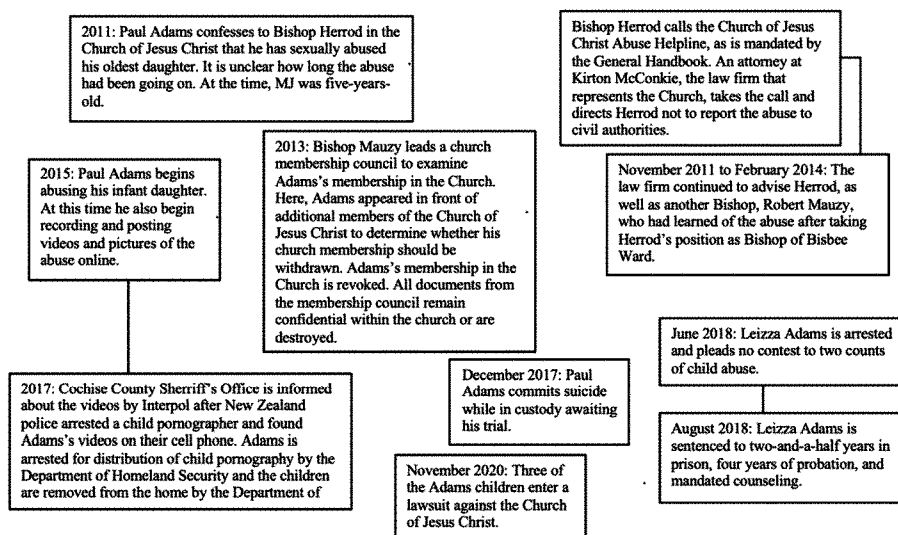
*Tracing the Abuse of Timothy Lennon by a Catholic Church Priest*²⁰⁶

Chart 3

*Tracing the Abuse of the Adams Children*²⁰⁷

206. See Zoom Interview with Timothy Lennon, *supra* note 186.

207. See generally Cochise County Sheriff's Office Report for Incident 17-03768, Church of Jesus Christ of Latter-Day Saints v. Cardinal, 2022 WL 17727582 (Ariz. App. Div. 2, 2022) (No. 2 CA-SA 2022-0047); see also *7 Years of Sex Abuse*, *supra* note 3.

B. Banality of Evil

While Hannah Arendt's book, *Eichmann in Jerusalem: A Report on the Banality of Evil*²⁰⁸ in describing the role of Adolf Eichmann in the Holocaust, missed the mark regarding his responsibility, the phrase "banality of evil" is relevant when considering institutional complicity. There is no intent to draw parallels between Nazi leadership responsible for the murder of 6,000,000 Jews and church doctrine, its implantation, and consequences. Nevertheless, the impact on the vulnerable individual bears disturbing similarities, albeit profound differences.

Drawing on the Holocaust – particularly at a time when Holocaust denial is seemingly in vogue – is both controversial and appropriate. One of us (Guiora) is the only child of two Holocaust survivors. In referencing the Holocaust in the context of institutional complicity, the analogy is the price of obedience, complicity, and silence. That three-fold combination directly contributes to a culture where the needs of the organization are primary, with no room for questioning or doubt regarding the consequences of that damnable approach. That is very clear when considering the fate of Adams's children or Timothy Lennon.

A full appreciation of the "banality of evil" requires acknowledging that both cases were preventable, or at the very least mitigatable, if doctrine and protecting the institution had taken a back seat to what should have been the priority: the fate of children whose vulnerability was known to church officials. There can be no denying, nor has there been any effort to gainsay, what was clear regarding the danger under which the children lived. Nevertheless, in protecting the institution, church officials—in relying on doctrine—ignored harm.²⁰⁹

The individual and group lock-step protection of the institution, marching in unison, creates an insurmountable wall.²¹⁰ Blind loyalty, even when harm is evident, has resulted in terrible human tragedy throughout history. Distinct from Hitler whose Final Solution intended to destroy European Jewry,²¹¹ church leaders did not intend for the harm to occur. That is a significant, and obvious, distinction. However, though they did not wish harm on them, they did not report the abuse to state authorities to protect the children.²¹² The lack of intent must not be offered either

208. See generally HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* (Viking Press Inc. ed., 1964) (1963).

209. See *Should We Confess Venial Sin?*, *supra* note 44; General Handbook, *supra* note 72.

210. See *Failing to Protect the Vulnerable*, *supra* note 27, at 4.

211. See generally ARENDT, *supra* note 208.

212. See *7 Years of Sex Abuse*, *supra* note 3.

as mitigating their responsibility or a panacea regarding the consequences of the privilege.

VI. THE CLERGY-PENITENT PRIVILEGE AS AN ENABLER OF CHILD SEX ABUSE

While we understand and respect the importance of confession, we are deeply concerned regarding the unintended consequences of the privilege protecting the confession. We also understand the importance and rationale for the insistence on the privilege. That has been repeatedly emphasized by people of faith with whom we have spoken who argue the privilege is essential for penitent and institution alike; the former to ensure the ability to confess candidly, the latter to ensure it fulfills its duty and purpose.

Notwithstanding the arguments presented to us regarding the “need” for the privilege, the evidence we have examined suggests the privilege, regardless of its doctrinal basis, imposes significant costs, primarily with respect to the “subject” of the confession. As we have noted throughout the Article, our perspective is admittedly victim centric; the discussion in this Section reflects that approach.

In our interactions with people of faith, religious leaders, and scholars of religion, we have sought to better understand the essence of confession and its intended goal. While we understand the five steps for a good confession include: “[e]xamine your conscience, [b]e sincerely sorry for your sins, [c]onfess your sins to a priest, [r]esolve to amend your life, [a]fter your confession, do the penance the priest assigns,”²¹³ the larger question is *who* does the privilege protect. That is a critical inquiry; how it is resolved either protects victims of sexual crimes or the perpetrators. This must be understood as an “either-or” paradigm, where nuance is, ultimately, harmful to the victim.

We shared an earlier draft of this section with a faith leader (neither a Catholic priest nor Church of Jesus Christ bishop); in doing so, we requested both his articulation of the confession and commentary regarding what we wrote. In guaranteeing anonymity, we wanted to ensure the reader would have an objective (meaning from neither of the two faiths addressed in this Article) assessment. In that spirit, we share his response:

The confessional is a place where a person who feels burdened by the weight of sin comes to tell the truth of his/her sin (wrongdoing) . . . Only

213. Email from Anon., Faith Leader, to Diana Pogosyan, J.D. Candidate, Univ. of Utah S.J. Quinney Coll. L., (Dec. 15, 2023, 06:10 GMT) (on file with author).

by telling the truth can you begin the path to restoration. This is the theological explanation.

Absolution often requires penitent action – it is an ancient religious practice before there were secular law courts. Hence, the priest had immense power to forgive – but also to punish. Think of the witch trials, trials for heresy – throughout history those who confess still were punished.

Absolution might mean that God forgives you but it also probably meant that you had to face the consequences today . . . The priest does listen in confidence but it is NOT without judgement [sic] and it is not without punishment (retribution – your word). For minor things, the priest can assign acts of penance (might be prayers or an act of restitution – like going to the person wronged and asking for their forgiveness). For more (mortal) sins (murder or abuse) priests often direct the person to turn themselves in.

Furthermore, it is too simplistic, to write: [] the penitent is assured the only accountability is before the divine, devoid of actual, societal consequences. Accountability before the divine has never meant there are no societal consequences. In the Judeo-Christian tradition God demands societal justice! Priests and Bishops and pastors all support secular law.²¹⁴

We respectfully disagree with this important sentence: “Accountability before the divine has never meant there are no societal consequences.”²¹⁵ Our disagreement is predicated on the essence of the privilege; whether the absolute confidentiality guaranteed in the Catholic Church or the “wobble room” (for there is no better description) ascribed to the privilege in the Church of Jesus Christ. The Adams case highlights the tragic conclusion that the helpline/law firm directive to the bishop guaranteed Adams’s daughters would continue to be unprotected.²¹⁶

It is for that reason, as discussed in Section VI, that the privilege must be understood as protecting the institution-penitent while abandoning the vulnerable individual. We have repeatedly been told that a “must” report obligation, rather than a “may” report discretion-based approach, will discourage parishioners from coming to confession.²¹⁷ This argument has been made by Catholic priests and people of faith alike who were absolute in their convictions.²¹⁸ When discussing this with members of the Church of Jesus Christ, the response was less absolute, perhaps a reflection of two disparate, yet related, issues: the confession “process” is less

214. *Id.*

215. *Id.*

216. *7 Years of Sex Abuse, supra* note 3.

217. *See Jenkins, supra* note 19.

218. *Id.*

structured than in the Catholic Church, and the reliance on the helpline/law firm as final word.

This is distinct from the Catholic Church whereby the priest's role is specifically defined—perhaps limited is a more accurate word—to hearing the confession and then granting absolution.²¹⁹ To the best of our understanding, the helpline/law firm structure does not exist in the Catholic Church because the priest, as has been explained to us, is the intermediary-courier between the penitent and the divine.

As we have come to learn, issues germane to this Article are clearer in the Catholic Church than the Church of Jesus Christ. That is not intended as criticism of the latter. We have spoken to bishops, past and present, seeking to best understand how critical questions relevant to confession and the privilege are addressed. The manner of interaction between a bishop, the helpline, and the law firm representing the Church of Jesus Christ is a matter of interpretation depending, to a certain degree, with whom we have spoken. This lack of clarity is particularly important with respect to confession and the role of the faith leader who hears the confession.

More than anything, we have been struck by two powerful impressions: a lack of uniformity in how “problematic” confessions are “handled” and concern regarding the active engagement of a law firm representing the Church in determining whether the content of the confession may be reported to law enforcement. That, as we have come to learn, is one of the most important functions of the helpline. The direct role of the law firm in making such a decision suggests institutional interests outweigh the needs of the vulnerable individual. We have shared that impression, if not concern, with our interlocutors. In one of our interactions with a former bishop we used the phrase, “circling the wagons” in describing the role of the law firm in articulating church policy.

The former bishop suggested that there is, at the least, an unintended conflict of interest when the law firm that represents the institution clearly weighs in on ecclesiastical matters when the advice – whether legal or religious or a combination – directly harms the vulnerable while protecting the institution (the client), the penitent, and the confession.²²⁰ When examined from the perspective of conflict of interest, the former bishop suggested considering fiduciary duty obligations.²²¹ While those two suggestions resonate with our recommendation, the current “may report” standard, particularly when reflecting legal advice from the law firm that represents

219. NEW WORLD ENCYCLOPEDIA, *supra* note 32.

220. Zoom Interview with Sam Young, former Bishop (Sept. 22, 2023).

221. *Id.*

the Church of Jesus Christ, leaves little doubt as to how questions regarding the privilege will be resolved.

It is for that reason we advocate for legislation that imposes a “must” report to law enforcement obligation on a bishop or priest who has received a confession of sexual abuse/harm to a child. Otherwise, the vulnerable child will continue to be at risk. The difference between “may” report and “must” report is, from the perspective of the vulnerable child, essential to preventing future harm or, at the very least, directly contributing to an effort to minimize harm. There is, from a victim-centric perspective, nothing more important than protecting the vulnerable. That is society’s most basic duty; it is the primary obligation of the state, particularly when there is a clear and imminent danger to a vulnerable member of a community.

That, however, is clearly at odds with church doctrine. Herein lies the tension at the crux of the critical question: to whom is the duty owed? The “must” report, as we advocate, provides a clear answer: the child; the “may” report standard, while leaving wiggle room, does not offer the same degree of protection to a present victim, much less future victims. “May” report suggests a compromise between protecting the child and protecting the institution. Ultimately, such an approach leaves the discretion in the hands of church officials whose instinct, as we have come to see, is to protect the institution rather than the vulnerable.

While Adams’s confession was “used” against him within the parameters of the Church of Jesus Christ, no consequence was imposed by society.²²² The reason for that is clear: the law firm made the conscious decision to protect its client (the Church) and Adams.²²³ The continued harm to the child was all but inevitable as the confession could not be “used” beyond the narrow walls of the Church.²²⁴ The title of Amos Guiora’s book, *Armies of Enablers*,²²⁵ is appropriately applied to the insistence on the privilege; the decision conveyed to the bishop, which he accepted-adopted, ensured Adams’s daughter was confronted, like Nassar’s victims, by armies of enablers.

In understanding the intersection between the confession and privilege, the word “used” is of particular importance; while Adams was punished by the Church as it “used” the confession as justification, societal accountability predicated on his confession did not occur because that application of “use” was denied.²²⁶ In this context, the word “used” is intended in the spirit of the Miranda warning: “anything

222. *Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

223. *Id.*

224. *Id.*

225. See *ARMIES OF ENABLERS*, *supra* note 22.

226. See generally *Utah Firm and Lawmaker Helped Mormons Hide Abuse*, *supra* note 17.

said can and will be used against the individual in court.”²²⁷ However, distinct from the Miranda warning applicable to the criminal law process, the penitent is held accountable for the confession exclusively within the boundary of the Church.²²⁸ While that is, theologically, beneficial to the individual and the institution, it exacerbates the harm to the vulnerable who are unprotected given the privilege.

The dogmatic insistence on the religiously ordained privilege is, in its purest form, intended to offer spiritual refuge for the penitent.²²⁹ From the perspective of institution and penitent, that paradigm reflects an understanding of the need for a safe space for the confessor who has, by his/her actions, committed a transgression. In protecting the penitent, for that is the consequence of protecting the privilege, religious doctrine ensures the penitent, through the bishop or priest, is communicating exclusively with the divine.²³⁰

The doctrine of absolute privilege reflects a core belief that penitents will only confess with the understanding and confidence that the confession will never be “betrayed.”²³¹ The word betrayed is used deliberately; from their perspective, were the religious leader to report the confession, that would be tantamount to a betrayal of the sanctity of the absolute confidence the penitent placed in the religious leader.

Absent that confidence, according to proponents of the privilege, a penitent would not come to confession, and the path to absolution and redemption would be foreclosed to them.²³² More than that, were penitents to be concerned, uncertain is another word, whether their confession is protected, they would be less than forthcoming.²³³ From the penitent-institution perspective, this would be akin to depriving the confessor of a “safe” environment to confess their sins. Given the emphasis placed on confession as the mechanism for a penitent to cleanse their soul, mitigating the protection provided by the privilege would be at odds with its intended purpose from a theological and redemption-based perspective.

The sacred relationship between penitent-priest/bishop is predicated on the confidence that the confession is heard without criminal judgment and without criminal retribution. This is distinct from confession before law enforcement, which implies guilt with consequences of accountability before a court of law. In

227. See *Miranda v. Arizona*, 384 U.S. 436, 469 (1966).

228. See *General Handbook*, *supra* note 72.

229. See *Dearen & Rezendes*, *supra* note 1.

230. *Id.*

231. See 1983 CODE c. 235 § 1.

232. See *Radel II & Labbe*, *supra* note 54, at 393-94.

233. *Id.*

protecting the confession, the essence of the privilege, the penitent assures the only accountability is before the divine, devoid of actual, societal consequences.²³⁴

This is understandable from a faith perspective, which is intent on creating a mechanism whereby the penitent can “come clean” without repercussion and the religious institution is protected and ostensibly off limits. The privilege, then, must be understood as protecting the penitent and institution alike; there is a confluence of interests tying the two together in a powerful symbiotic relationship. It is for that reason, as discussed in the Section below, that we argue for the proposed legislative change at the heart of this Article.

VII. LEGISLATIVE RECOMMENDATIONS

New Hampshire and West Virginia are among the states that explicitly deny the clergy-penitent privilege in the case of suspected child abuse in the context of confession.²³⁵ In New Hampshire, “[a] priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected *shall...*” (in other words, *must*) report the abuse to state authorities.²³⁶ Although New Hampshire does, as do all fifty states, have a clergy-penitent privilege,²³⁷ there is a carving within the privilege that does not apply to suspected child abuse or neglect.²³⁸ New Hampshire’s mandatory reporting law explains that failure to report child abuse or neglect cannot be protected by the clergy-penitent privilege, even in the context of confession.²³⁹ West Virginia has a similar exception to the privilege, as it clearly states that:

Any... member of the clergy... who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Human Resources.²⁴⁰

234. See *Mandatory Reporting Laws by State 2024*, *supra* note 99.

235. See CHILD WELFARE INFO. GATEWAY, *supra* note 99.

236. N.H. REV. STAT. ANN. § 169-C:29 (2022).

237. See N.H. R. EVID. 505.

238. CHILD WELFARE INFO. GATEWAY, *supra* note 100, at n.38.

239. See *Holding Enablers Accountable*, *supra* note 21, at 11.

240. W. VA. CODE ANN. § 49-2-803 (West, Westlaw through legislation of the 2024 Regular Session, First Extraordinary Session, and Second Extraordinary Session).

This requirement to report suspected child abuse or neglect applies within the context of the confessional as well as information learned outside the confessional.²⁴¹ It is exactly the type of legislation that would have saved the Adams children from abuse that spanned over seven years after the issue was brought up to the bishop during Adams's first confession. It is also the type of legislation that would spare individuals like Timothy Lennon from further abuse and allow appropriate action to be taken to reprimand the abuser and save the vulnerable child. The requirement to report within 24 hours leaves no ambiguity in the timing of the report and is crucial to ensure that vulnerable individuals are given aid as soon as possible.

From a certain standpoint, failing to provide an exception to the clergy-penitent privilege harms not only vulnerable children but also members of the clergy who want to report abuse but are not able to. It is likely that the bishop in the Adams case wanted to report the abuse to ensure the safety of the Adams children; however, the Church's helpline gave clear directions that the privilege protected the confession in Arizona.²⁴² Legislation requiring members of the clergy to report suspected child abuse would have created a duty to report abuse and prevented seven years of sexual abuse and rape.

The costs – both emotional and physical – of child abuse are immeasurable. Child abuse scars children and destroys families for generations.²⁴³ It also imposes long-term consequences for society, such as teen pregnancy, cost of mental health services, over-sexualized behavior in children, risk of sexually-transmitted diseases, and many, many more.²⁴⁴ Failing to report child abuse, within any context, enables the predator to continue harming vulnerable individuals.

For purposes of protecting vulnerable children, whose lives and well-being are in the hands of the state, it is crucial to require members of the clergy to report child abuse to state authorities. Conversations with people of faith who are in favor of protecting the privilege have shed light on a concern that if a member of the clergy is required to report suspected child abuse, individuals will stop confessing to the abuse of children.²⁴⁵ They argued that having a member of the clergy guide an individual through their confession is better than having no one know of the abuse in the first place.²⁴⁶ However, as the cases referenced in this Article suggest, there no

241. *See id.*

242. *See Utah Firm and Lawmaker Helped Mormons Hide Abuse, supra* note 17.

243. *See Child Sexual Abuse Facts & Resources*, CHILD.'S ASSESSMENT CTR., <https://cachouston.org/prevention/child-sexual-abuse-facts/> (last visited Jan. 2, 2024).

244. *Id.*

245. *See Radel II & Labbe, supra* note 54, at 393-94.

246. *Id.*

good results when a predator confesses child abuse to a bishop/priest who is unable or not required to report the abuse.

In the Adams case, Adams continued to abuse children after his confession and later guidance meetings with his bishop.²⁴⁷ Timothy Lennon's predator continued to abuse him after Timothy had confessed to the abuse, believing it was his fault the abuse had occurred.²⁴⁸ The appropriate action in each of these cases to prevent further abuse from occurring likely would have been to require the bishop or priest to report the abuse to the state.

The following paragraph includes legislation we believe will provide protection to vulnerable children and hold perpetrators of child abuse accountable in the eyes of the law:

If a member of the clergy learns of child abuse or neglect – whether currently ongoing or committed in the past, regardless of the present age of the victim and of the years since the abuse occurred – the clergy must report to the appropriate state authorities no later than 48 hours after suspecting or being notified of the abuse or if the penitent has indicated an intention to engage in future abuse. The clergy-penitent privilege does not protect a member of the clergy from failing to report in accordance with the state's mandatory reporting laws of suspected child abuse or neglect.

It may be argued that the parameters of this proposed legislation overstep the boundary and purpose of the confession, particularly by requiring clergy to report intent to engage in child abuse. However, we view each specification as a necessary level of protection for the child.

The language of the majority of state mandatory reporting laws indicate that adults must report if they “suspect” or have “reason to believe” that a child is in danger.²⁴⁹ This language suggests that certainty of abuse is not a requirement in many states. Further, a few states explicitly state that future or likely abuse must be reported as well.²⁵⁰ Requiring clergy members to report future abuse can help prevent a traumatic experience for a child and can assure that the clergy member is not solely responsible for preventing the abuse.

247. *7 Years of Sex Abuse*, *supra* note 3.

248. *See* Zoom Interview with Timothy Lennon, *supra* note 186.

249. *Mandatory Reporting Laws by State 2024*, WORLD POPULATION REV. (2024), <https://worldpopulationreview.com/state-rankings/mandatory-reporting-laws-by-state>.

250. *Id.*

VIII. MOVING FORWARD

We have, in the words of the great Beatles song, travelled a long and winding road in this Article. John Lennon and Paul McCartney's lyrics ring true in what we have discussed in the preceding pages:

The long and winding road
That leads to your door
Will never disappear,
I've seen that road before
It always leads me here, Lead me to your door
The wild and windy night
That the rain washed away
Has left a pool of tears
Crying for the day
Why leave me standing here?
Let me know the way
Many times I've been alone,
And many times I've cried
Anyway, you'll never know
The many ways I've tried
And still, they lead me back
To the long winding road
You left me standing here
A long, long time ago
Don't leave me waiting here
Lead me to your door
But still, they lead me back
To the long winding road
You left me standing here
A long, long time ago
Don't keep me waiting here
(Don't keep me waiting)
Lead me to your door
Yeah, yeah, yeah, yeah²⁵¹

The essence of the clergy-penitent privilege, undoubtedly unintended, enhances the vulnerability of the individual at the focus of the confession. When the penitent meets with the faith leader and shares their past, present, or future actions or intentions they are likely confident the content of the confession will be protected by the

251. THE BEATLES, *The Long and Winding Road*, on LET IT BE (Apple, EMI 1970).

privilege. This is the justification we have heard from people of faith regarding the need to protect the privilege.

We stated at the outset that our perspective is admittedly victim-centric; that reflects our core belief that failure to acknowledge the harm caused by the privilege inevitably ensures its protection. In adopting the victim-centric approach, we acknowledge that the consequences of imposing significant limits on the privilege goes to the core beliefs of the two faiths examined in the Article. Our recommendation that clergy *must* report a confession addressing sexual assault is based on our conviction that the privilege engenders harm. We understand this is at odds with how the confession-privilege intersection is traditionally understood and defended. Notwithstanding that argument, regardless of its historical context and basis, there is a larger issue that must be understood as more compelling and, clearly, far more urgent.

As we have learned, Bishop Herrod, the bishop who had initially learned of Adams's abuse, recognized the harm being done to MJ and stated, "I doubt [she] will ever do well," in a recorded interview with Homeland Security agents.²⁵² The bishop later said that he knew from the start that Leizza Adams, the wife of Paul Adams, was unlikely to stop her husband after he had called her into counseling sessions.²⁵³ "The bishop, who was also Leizza's personal physician, said she seemed 'pretty emotionally dead' when her husband recounted his abuse of their daughter."²⁵⁴

While writing this Article we interacted with a wide range of people; of the innumerable conversations and exchanges, amongst the poignant was an email we received from a faith leader who is also a scholar:

I hope you know I admire the work you're doing. I come from the perspective of an "insider" which allows me to see some things but can blind me to others. It is incredibly helpful to have individuals like you who are pushing on the system, trying to see if it really is oriented to help those who most need it. If in your findings you determine that things are being done incorrectly, to me, that's a good thing. Blind spots need to be checked.²⁵⁵

We include this not for purposes of "self-congratulations," but rather, to highlight the clear tension between traditionally accepted and understood practices and their

252. *7 Years of Sex Abuse*, *supra* note 3.

253. *Id.*

254. *Id.*

255. With the permission of the sender, we are sharing the text; we have decided to ensure anonymity; the full exchange is in our records as well as the sender's identity.

unintended harmful consequences. While the theme of tradition was at the core of the great musical, *Fiddler on the Roof*,²⁵⁶ there is clearly a price paid for blind, unquestioning, commitment to tradition, regardless of its history or basis.

The fundamental question is to whom a duty is owed; for state actors, the answer must be clear: to the vulnerable members of society, regardless of the consequences on other interests, tensions, beliefs, and, yes, traditions. The decision by the helpline, or at least as articulated by whoever spoke with the bishop, literally makes our case for us. It is a classic example of *res ipsa loquitur*.²⁵⁷

Is there a cost for our recommendation that clergy *must* report abuse to state authorities? As has been forcefully argued to us, the answer is unequivocally affirmative. We have faithfully shared with the reader those deep concerns, if not profound anxieties, were the confession not to benefit from the privilege as presently understood and practiced. While that concern is understandable from the perspective of the faith and its believers, there are more compelling rationalizations that justify adopting our recommendation.

In the context of compelling state interest analysis, the duty to protect must outweigh other explanations and arguments. A basic cost-benefit analysis, at the core of any question regarding competing rights, firmly weighs in favor of any effort that enhances the protection of the vulnerable. However, as we have come to learn, the opposition to our recommendation is significant, if not very significant. We acknowledge that and respect the faith-based argument.

However, viewing this question from the perspective of a five-year-old girl, it is frankly an obvious and ready solution. Absent this change, five-year-old children, whether in Arizona, Utah, or any other state that favors protecting the privilege rather than protecting the child, face exactly this:

The long and winding road
That leads to your door
Will never disappear,
I've seen that road before
It always leads me here,
Lead me to your door²⁵⁸

256. FIDDLER ON THE ROOF (Norman Jewison 1964).

257. *Res Ipsa Loquitur*, BLACK'S LAW DICTIONARY (12th ed. 2024).

258. THE BEATLES, *supra* note 251.

By adopting our recommendation, regardless of political and other pressures and challenges, legislators can take a firm stand on behalf of the vulnerable. That is the essence of the social contract Locke, Hobbes, and Rousseau wrote of,²⁵⁹ that is the primary duty society owes. Otherwise, this is exactly the fate that awaits victims of sexual abuse, known to clergy, barred from reporting to state authorities:

Has left a pool of tears,
Crying for the day²⁶⁰

That is a fate no child deserves. No tradition or faith can, or must, tolerate that. Failure to address this issue ensures the privilege continues to enable harm, whose egregiousness is magnified when the actor and victim are known to the clergy, who enable the penitent to hide behind the privilege.

The time to act is now, as the fate of another five-year-old child hangs in the balance, awaiting constructive action on their behalf by legislators, faith leaders, and the public.

259. *See generally* JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Peter Laslett ed., 1988); *See also* THOMAS HOBBS, *LEVIATHAN* (J.C.A. Gaskin ed., 2009); *See also* JEAN-JACQUES ROUSSEAU, *ROUSSEAU: THE SOCIAL CONTRACT AND OTHER LATER POLITICAL WRITINGS* (Victor Gourevitch ed., 2018).

260. THE BEATLES, *supra* note 251.