



Universiteit
Leiden
The Netherlands

Masterscriptie N.M. van Zanen: The confessional seal in the 21st century

Zanen, Natascha van

Citation

Zanen, N. van. (2023). *Masterscriptie N.M. van Zanen: The confessional seal in the 21st century*.

Version: Not Applicable (or Unknown)

License: [License to inclusion and publication of a Bachelor or Master Thesis, 2023](#)

Downloaded from: <https://hdl.handle.net/1887/3657027>

Note: To cite this publication please use the final published version (if applicable).

The confessional seal in the 21st century

Would it be beneficial to revoke the secular protection of the confessional seal at this point in time?

Natascha van Zanen

s0701912

MA Thesis Religious Studies

Supervisor and first reader:

Second reader:

Wordcount: 17521

Table of contents

<i>Chapter 1: Introduction</i>	Page 2
1.1 Introducing the topic	Page 2
1.2 Introducing the research questions	Page 2
<i>Chapter 2: What is the Sacrament of Penance and Reconciliation, and what challenges does this pose in a secular legal system</i>	Page 3
2.1 What is the confessional seal?	Page 3
2.2 Legal Framework	Page 6
2.3 Child abuse within the Roman Catholic Church	
<i>Chapter 3: Why is the secular protection of the confessional seal being called into question in the 21st century?</i>	Page 11
3.1 History and Politics	Page 11
3.2 Authority	Page 14
3.3 The Rise of Distrust	Page 19
3.4 Conclusion	Page 20
<i>Chapter 4: What are the consequences of the secular protection on the confessional seal?</i>	Page 21
4.1 Scenario 1	Page 21
4.2 Scenario 2	Page 22
4.3 Conclusion	Page 24
<i>Chapter 5: Conclusion</i>	Page 24
Sources	Page 26

Chapter 1: Introduction

1.1 Introducing the topic

In recent years, the confessional seal, or more precisely, its protection under secular law, became a topic for debate. In Australia, this protection has been revoked when specific circumstances apply¹, and in Ireland a similar law has been proposed². In the Netherlands, which will be our area of focus, it is not yet a topic for debate in the political arena. Academic discourse has however been started up by Roman Catholic priest and canonical law specialist Ad van der Helm³. He puts forward the argument that public support for the protection of the confessional seal under freedom of religion laws is waning, because it is perceived as counterproductive to the prosecution and subsequent prevention of child abuse. Van der Helm seeks to find a balance between the interests of the state (in particular the judicial system) and the church, by pointing out various types of confidentiality found in both Catholicism and other religions, and the possibility of providing priests with a way of disclosing information about child abuse, without breaking the confessional seal. What this would look like, does not become clear.

1.2 Introducing the research questions

Secularization and the child abuse within the Roman Catholic Church make for logical reasons to call the special position of the Roman Catholic Church in particular, but also religion in general, into question. What does raise a question, is the timing. Secularization took hold over half a century ago and the prevalence of child abuse has been known for decades as well. Why then, do questions about the place of the confessional seal only gain traction now? And more importantly:

Would it be beneficial to revoke the protection of the confessional seal at this point in time?

In order to answer this question, we will first look at some definitions. Chapter 2 will address what the confessional seal is exactly, as well as a brief look at the legal framework it operates within. The exact impact of secular protection for the confessional seal, depends on the culture it operates within. One could imagine its role being vastly different in a country with a Catholic majority and a high level of religiosity, versus a secular society, where Catholics are a minority. To avoid cultural differences requesting far too many factors to be taken into account, we will focus on the Netherlands. Since the protection of children against abuse is often cited as an argument against protecting the confessional seal, this chapter will also provide a brief overview of child abuse within the Roman Catholic Church, in order to give some understanding of what is being referred to. Therefore, in Chapter 2 we look into the question: *What is the Sacrament of Penance and Reconciliation, and what challenges does this pose in a secular legal system.*

Chapter 3 answers the question: *Why is the secular protection of the confessional seal being called into question in the 21st century?*

In a society where Catholics have been a minority, albeit a larger one, for centuries, and being 'Catholic on paper' is far more common than practicing the faith to the full extent, confessing ones sins to a priest is no longer the common practice it once was. While the 'social bubble' has become a buzzword, very few people live in a strictly Catholic one, with even the more conservative believers normally having regular contact with non-Catholics and identifying with more in-groups than just

¹ Sainsbury, M.(2020). *Australian Archbishop rejects breaking seal of confession for abusers*. Catholic News Service, 16 January 2020. Consulted on 5 April 2021.

² Daly, G.(2017). *Confessional seal threats would be unconstitutional here – expert*. The Irish Catholic, 17 August 2017. Consulted on 5 April 2021.

³ Van der Helm, A.(2020). *Biechtgeheim in de verdrukking?* Tijdschrift voor Religie, Recht en Beleid, 2, pp 57 – 68.

their church. As a result, it could be argued the confessional seal is no longer important enough to have an academic or political debate about. After all, most children have the ability to seek help from secular sources, such as a teacher, a neighbour, or a coach, and very few paedophiles using the confessional booth as a place to unburden themselves to begin with⁴. On top of that, we live in an era where human rights are sometimes called ‘the new religion’, so breaching the freedom of religion should be a big deal. It is therefore interesting to look at reasons why this discussion is being had currently, as opposed to fifty years ago.

In the fourth chapter we will address the practical effects of granting the confessional seal secular protection, and answer two questions. The first one is: *What are the effects of secular protection for the confessional seal on the religious individual?*

We will look into the psychological effects of the act of confession on a Catholic, as well as the practical consequences this has on the community they are a part of, and the dilemma a priest is faced with, if secular laws and church law require opposing actions.

The second question will be: *In what way would revoking the special position of the confessional seal aid in the protection of children?*

This question will address the, mostly legal, consequences of being able to use the information disclosed to a priest in a judicial context. Such a question is necessary to ask, in order to properly take into account the proportionality and thus whether or not imposing a limitation on the freedom of religion could be justified, both legally and ethically.

A concluding fifth chapter will take the current political and societal landscape into account, using this as a backdrop for a potential decision on the fate of the exceptional position of the confessional seal in a secular judicial system and society, in order to conclude whether it would be wise to revoke this special position.

Chapter 2: What is the Sacrament of Penance and Reconciliation and what challenges does it pose in a secular legal system?

To be able to discuss the various aspects of the secular protection of the confessional seal, it is necessary to have a clear understanding of the framework in which it is positioned. In this chapter, we will discuss what exactly is the confessional seal (2.1), what laws apply to its position in the Netherlands (2.2) and finally, what is being referred to when the child abuse in the Roman Catholic Church is brought up as an argument against the confessional seal (2.3).

2.1 What is the confessional seal?

This question can be taken to mean two different things, both of which shall be addressed. First, it needs to be clear when the communication with a priest can be considered a confession, in the religious sense, and as a result is subject to all rules and regulations the Church has put upon this act. The alternative being, besides just regular communication, confidentiality. This has a certain level of protection under secular law, which is the same for priests (and priest-like figures), as well as certain other professions, but is not as absolute as the *sigillum*. Confession is also referred to as the ‘Sacrament of Penance and Reconciliation’, while the confessional seal is the same thing as *sigillum*.

Next, the meaning of the confessional seal is more than just semantics. Confession also has a religious meaning, and in order to understand why there is opposition against simply categorizing every interaction of some gravity with a priest as confidential, it is necessary to place the practice in a Catholic context.

⁴ Sainsbury, M.(2020). *Australian Archbishop rejects breaking seal of confession for abusers*. Catholic News Service, 16 January 2020. Consulted on 5 April 2021.

2.1.1 Confession vs. confidentiality

We will start off by defining what is meant by the term “*confessional seal*”, also known as “*sigillum*”. There is a narrow definition, put forward by Moriarty⁵:

- A sin needs to be confessed during the conversation. This can be a sin committed by the confessor⁶, or one they merely know about.
- The goal of the conversation has to be gaining absolution⁷.

Due to a court case concerning communication between a priest and his suicidal friend⁸, Flemish bishops came up with a broader definition of what confession entails, explains Ad van der Helm, a Roman Catholic priest⁹:

- Believable account of a sin committed
- Genuine remorse
- The acceptance of penance¹⁰ and absolution¹¹

In practice, the difference between these definitions would not be as great as it seems in theory. It is difficult to determine whether remorse is genuine, and credibility is highly subjective. The main difference would be that Moriarty does not require the confessor to accept the penance put forward by the priest, in order to have their words protected under the confessional seal, while the Flemish bishops do. This penance is usually to be done after the confessor has left the confessional booth (or any other location the confession took place), so the priest can not be certain whether the confessor followed their instructions or not, making it safer to assume the conversation to be a confession, unless the confessor rejects the penance outright.

Of course, most communications between parishioners and priest (including other religious workers) are not confessions, but can still require a level of confidentiality. Criminal law specialist Van Kempen explains this applies to all communication where one could reasonably expect the contents to remain confidential¹². However, as Bannier (lawyer and professor at the University of Amsterdam) put forward, this confidentiality is relative, even in the eyes of the Church¹³. In practice,

⁵ Moriarty, R.T.(1998). *Violation of the Confessional Seal and Associated Penalties*. Jurist 58(1), pp. 152 – 170.

⁶ A confessor can be both the person confessing, and the priest hearing the confession. We will refer to the person confessing as ‘the confessor’ and the person hearing the confession as the priest, to avoid confusion.

⁷ Absolution, in Catholic tradition, means ‘forgiveness from God’, as opposed to being forgiven by the fellow human being that you wronged. Absolution is given by God, the priest is simply the vessel that passes it on.

⁸ De Jaegere, A.(2020). *Veroordeling van priester voor schuldig verzuim na zelfdoding vriend in beroep bevestigd*. VRT NWS, 22 September 2020. Consulted on: 17 April 2021.

⁹ Van der Helm, A.(2020). *Biechtgeheim in de verdrukking?* Tijdschrift voor Religie, Recht en Beleid, 2, pp 57 – 68.

¹⁰ Punishment, which can take the shape of prayer, or something secular, such as righting your wrongs, accepting secular, legal consequences, and so on.

¹¹ Forgiving a sin in the name of God

¹² Van Kempen, P.H.(2011). *Religie in het Wetboek van Strafrecht*. In: Broeksteeg, H. & Terlouw, A.(red.). Overheid, recht en religie. Deventer: Kluwer, p187.

¹³ Bannier, F.A.W., Duijst, W.L.J.M., Fanoy, N.A.M.E.C., Meijers, A.P.H. & Tempelaar, J.M.(2008). *Beroepsgeheim en verschoningsrecht. Handboek voor de advocaat, medisch hulpverlener, notaris en geestelijke*. Den Haag: SDu, p 182.

six guidelines, very similar to those honoured in professions that require confidentiality between practitioner and client, are to be kept in mind when deciding whether or not to disclose information gathered in such interactions¹⁴¹⁵:

- Every reasonable method to gain permission to reveal the secret has been employed.
- Not revealing the secret would be at great expense of a third party.
- The person tasked with upholding confidentiality could reasonably object to this for ethical reasons.
- The problem at hand can only be solved by revealing the secret.
- There must be near certainty that revealing the secret will prevent more harm than it does.
- Only those parts that are strictly necessary to reveal, are exempt from confidentiality.

2.1.2 Confession in a Catholic context

In order to see why Catholics put enough value on the *sigillum* to insist on its secular protection under freedom of religion, it is necessary to know what its meaning is within Catholicism. We will first look at the way the confessional seal is rooted in the scripture. Next we will look into its history and we will conclude by laying out the function confession has within the Catholic faith.

The first place to look for the root of the *sigillum* tradition, is in the Bible. Whether it is mentioned at all, is debated, with Catholics arguing that John 20:23¹⁶, and the related Matthew 16:19 and 18:18¹⁷ states the need for confession. While it does make note of the apostles, and thus, one could argue, priests, can forgive sins with some consequence, it does not mention anything about secrecy, a confession being a prerequisite for atonement, and so on. Nevertheless, the importance of the *sigillum* for the Catholic faith can not be denied. It is the sacrament of penance, one of the seven sacraments, described in detail in the catechism¹⁸, the *Codex Iuris*¹⁹ is very clear on the severity of it, and there was the fairly recent *sacramentorum sanctitatis tutela*²⁰.

Dutch Protestantism is largely based on the theology proposed by John Calvin. One of the major points he had against the Roman Catholic approach to getting into Heaven, was the indulgence, where one could simply pay a fine to be forgiven. Since Protestants usually do not hear confession (some do), it is commonly thought Calvin opposed the *sigillum* as well. After all, this is often portrayed as getting a free pass out of hell, by simply telling what you have done that would get you there, repeating a few prayers, and be done with it, without any earthly consequences. This is not the case in reality. Calvin had no issue with the practice, Dr. Speelman from the Theological University Kampen²¹ says²². On the contrary, he was as much in favour of it as the Catholics were²³. Confession, however, looked very little like it does now. For example, confession was not always

¹⁴ Schenderling, J.(2008). *Beroepsethiek voor pastores*, Budel: Damon, pp.161.

¹⁵ Bannier, F.A.W., Duijst, W.L.J.M., Fanoy, N.A.M.E.C., Meijers, A.P.H. & Tempelaar, J.M.(2008). *Beroepsgeheim en verschoningsrecht. Handboek voor de advocaat, medisch hulpverlener, notaris en geestelijke*. Den Haag: SDU, p 182 – 183.

¹⁶ "If you forgive anyone his sins, they are forgiven; if you do not forgive them, they are not forgiven."

¹⁷ *Studiebijbel. De Nieuwe Bijbelvertaling met uitleg, achtergronden en illustraties*. Haarlem: Nederlands Bijbelgenootschap, pp. 1940, 1791 and 1794.

¹⁸ Secretariaat Rooms-Katholiek Kerkgenootschap(1995). *Katechismus van de Katholieke Kerk*. Brussel: Licap, pp. 316 – 331.

¹⁹ *Important part of church law, see Chapter 2.2.*

²⁰ *A motu proprio* (unsolicited letter, written by the Pope), dated 30 April 2001, by Pope John Paul II.

²¹ *The Theological University Kampen is a Dutch reformed theological university.*

²² Speelman, H.A.(2010). *Biechten bij Calvijn. Over het geheim van heilig communiceren*. Heereveen: Uitgeverij Groen, p.95.

²³ Speelman, H.A.(2010). *Biechten bij Calvijn. Over het geheim van heilig communiceren*. Heereveen: Uitgeverij Groen, p.131.

private, and it was not meant to help the confessor, but rather to track down heresy in a community and prevent it from spreading²⁴. That did not have to be as sinister as it sounds, especially when keeping the time period in mind. It could be as simple as a priest paying extra attention to a certain subject during the sermon, or would make sure to explain the evils of certain acts to his parish²⁵.

To this day, the Sacrament of Penance and Reconciliation is presented, many Catholics would say misrepresented, as an easy way out of consequences. While Catholics believe in virtue and sin, and that after death, one will be punished or rewarded, depending on how one lived (although views on how this is determined vary strongly), there is a way to sin and still get to Heaven: you simply confess each time, say a few prayers and the slate is wiped clean again. As we have discussed, this is not the case. A priest can put conditions on forgiveness, and those can be secular in nature. It is easy to brush aside the entire sacrament, when one sees it as a way to be absolved from wrong doings, without suffering negative consequences or making reparations. However, in order to fully understand why Catholics are, overall, very firm on keeping the confession, including the confessional seal, one must consider the benefits. While a priest can preach about the correct behaviour during Mass, or in other, more general, communication, it will be more effective when done one on one. In that scenario, all circumstances of said individual can be taken into account, generalisations are more easily avoided, and misunderstanding is less likely, according to Nelson²⁶. Confession, in this light, is not only about forgiveness, but also about helping the confessor better themselves. This can only be achieved, if the confessor dares to be completely truthful about their 'sin' and their motivation for committing it in the first place. Forgiveness plays a part in that. It is easier to better yourself, if you feel leaving the 'old self' behind is a possibility. For example: if one wants to lose weight, it is beneficial to forgive oneself for eating a chocolate bar in one sitting, and taking steps to avoid doing it again, than it would be to decide you 'sinned' against your diet, so you might as well have the ice-cream too. Similarly, if I have sinned and will go to Hell for that regardless of what I do next, I have no reason to abstain from further bad behaviour, since the damage is already done. It is no longer useful to deny myself earthly pleasures, regardless of the cost to others, as the future reward is already out of reach. Considering this, confession can help the confessor by relieving them of feelings of guilt. Even if one does not believe the confessor deserves to have that weight lifted of them, one should still consider how this could contribute to preventing undesirable behaviour in the future. For example, once the 'sinner' has stolen, they are a thief. Stealing more is then expected, and can't since they are a thief already, doing so does not make a big difference in how one sees themselves. This is an example of the self-fulfilling prophecy (see chapter 4.1)²⁷. Absolution would relieve the person of their 'thief-status', thereby making stealing something that would cost the person harm to their self-image again, just as it was before they stole for the first time. Even if the 'sin' is in fact a crime, one could argue that, since the mere word of the priest is not enough for a conviction (see 2.2.2), and prison sentences tend to end eventually, it could be beneficial to society to avoid more victims, or prolonged victimization.

2.2 Legal framework

²⁴ Speelman, H.A.(2010). *Biechten bij Calvijn. Over het geheim van heilig communiceren*. Heereveen: Uitgeverij Groen, pp. 134 – 135.

²⁵ Hofman, E.(2017). *Vermanen, vergeven en verzwijgen. Het mysterie van de biecht in de achttiende en negentiende eeuwse Zuidelijke Nederlanden*. Tijd-Schrift, 7(2), pp. 34 – 55.

²⁶ Nelson, J.M.(2009). *Psychology, religion and spirituality*. Berlin: Springer Science & Business Media, p 482 – 483.

²⁷ Lilly, J.R., Cullen, F.T. & Ball, R.A.(2011). *Criminological Theory. Context and Consequences, 5th Edition*. Los Angeles: Sage Publications, pp. 145 – 147.

There are various legal aspects to the peculiar position of the confessional seal within a secular context. We will first explore church law on the subject of confession, and particularly the confessional seal, in order to understand what it would mean for a priest, both as a Catholic and an individual, to break the *sigillum*. Next, we will look into Dutch law regarding the witness in court proceedings, as this is what would change, if the confessional seal would no longer be protected under secular law. Lastly, we will address the freedom of religion and its limitations, as described by the Dutch constitution and relevant treaties.

These various aspects matter, because, as long as more than half of the House of Representatives²⁸ and the Senate²⁹ are in favour, laws can be changed, and the interpretation of laws can evolve, based on case law and whether judges decide enough has changed to justify a new interpretation of the law. The separation of church and states prevents the state from being able to influence church law, nor can the Roman Catholic Church (or any other religious institution) have a say in the Dutch law or justice system. This means Catholics in general, but priests in particular, could find themselves in a position where they can not abide by all laws that apply to them. In order to prevent the introduction of laws that limit certain rights, the Constitution serves as a restraining order against the government, allowing certain freedoms. However, the Constitution can be changed as well, the procedure is just more difficult and requires a broader support for the changes. A Dutch judge is not allowed to overrule a law³⁰, based on the fact it is unconstitutional, which is where international law, in the shape of treaties come in. Dutch judges are allowed to ignore laws that are not compliant with a treaty, and the treaties can not be changed the same way the law, including the Constitution can. In some cases, an international court has jurisdiction to rule on the matter as well. This can not be enforced, but in most cases, countries comply with the ruling, even if it is just for diplomatic reasons. Therefore, we must look at all these aspects of the legal framework in order to fully understand the place of the confessional seal in the Dutch legal system.

2.2.1 Sigillum in the Codex Iuris

The Roman Catholic Church has its own set of laws, that only apply to members of the Church, and most of them are specifically meant for the clergy. The *Codex Iuris Canonici* is one of these sets of laws. The confessional seal is part of this code³¹. It is very clear on what will happen if the confessional seal is broken, by either a priest, an interpreter or anyone who was present for any reason (with the exception of the confessor): this person will be excommunicated in case of a direct violation, and a lighter punishment will follow for indirect violation, depending on the level of carelessness. There are no exceptions. Excommunication, in Catholicism, holds a lot of weight. It means one is no longer considered to be a part of the Church. For a priest, that means a loss of their livelihood and home, since both are provided by the Church. This, however, is just in this life. No longer being considered a Catholic would also mean no longer being allowed to receive the sacraments. Confession is the process of receiving the sacrament of penance, thereby being absolved from your sins, restoring your relationship with God and thus being able to gain access to Heaven after death. To someone religious enough to give up on many earthly pleasures in order to be ordained as a priest, this would be a particularly heavy burden.

A direct violation is what is asked of a priest when he is required to tell the police or the court what was said during confession. This also applies, when the third party was already aware of the

²⁸ Called 'Tweede Kamer' in the Netherlands

²⁹ Known as 'Eerste Kamer' in the Netherlands

³⁰ Art. 120 of the Dutch Constitution

³¹ Codex Iuris Canonici 938 and 1388.

'sin'³². As a result, excommunication would follow, whether the priest would tell the police or court information that would be new to them, merely confirms something that was already beyond the point of reasonable doubt, or anything in between.

An indirect violation is when the priest reveals the contents of a confession, or the identity of the confessor, by accident. It is not necessary for the third party to be able to link the confession to the confessor³³. The level of carelessness plays an important role in how severe the punishment will be. However, simply taking the risk that any part of what is confessed and/or the identity of the confessor will become known by, or even confirmed to, a third party, is enough to constitute an indirect violation. This is very far reaching. Taking any sort of action based on knowledge gained in confession is prohibited³⁴. While certain circumstances can allow for a milder punishment, there must always be a punishment, concludes Huysmans, professor Catholic theology at Amsterdam University³⁵. An example of this would be to fire a parishioner from a role that gives them access to the donations, only for it to become clear that an issue with disappearing money is suddenly resolved. Or, something that used to be common practice but is now not as widely accepted, if the priest hears a confession related to adultery, and brings up this topic in sermon the following Sunday. In order for punishment to follow, someone must notice and report it, the certainty of which is not a given, and decreases when the violation is less obvious, or less severe.

2.2.2 The priest as a witness

In the Netherlands, the protection of children has become a much greater priority in the last decade. Policy advisor Rudy Bonnet states that while there is no mandatory reporting, professionals who work with children are expected to follow a certain protocol when they suspect child abuse or neglect, whether that includes sexual abuse or not³⁶. Examples of such professionals include teachers and doctors. One could argue a priest would count as a professional working with children. Since one could also point out priests do not usually have any training that would allow them to pick up on behavioural patterns are discrepancies between an injury and the explanation, this is a debate within itself. Since the professionals that do fall into this category tend to gather information through observation, or possibly a child telling them about the abuse, this can not be compared to the *sigillum*, it would be confidential at most (in the case of the doctor, should the child in question be their patient).

This means that a more likely point for a priest to enter the investigation, is when an initial report has already been made, either being heard as a witness by the police, or called as a witness for the trial itself. During the police interview, there is no legal obligation to disclose any information (whether you have an ethical obligation to do so could be a different matter), or even to agree to have a conversation at all. A priest can, at this stage, simply not call the police officer back and not get into any trouble with the law, secular or otherwise. This changes once the case gets to the trial. If one is called as a witness in a court case, one is required to appear in court³⁷. If you then do not attend on your own account, the judge is able to order the police to pick you up and bring you to the courthouse³⁸. Once there, the most usual procedure is for the witness to be placed under oath³⁹.

³² Moriarty, R.T.(1998). *Violation of the Confessional Seal and Associated Penalties*. Jurist 58(1), pp. 152 – 170.

³³ Moriarty, R.T.(1998). *Violation of the Confessional Seal and Associated Penalties*. Jurist 58(1), pp. 152 – 170.

³⁴ Codex Iuri Canonici 984

³⁵ Huysmans, R.G.W.(2005). *Kerkelijk strafrecht. Sancties in de kerk*. Leuven: Peeters, p. 305 – 306.

³⁶ Bonnet, R.(2013). *De Kleine Gids Kindermishandeling. Achtergronden, Signaleren en Meldcode*. Deventer: Kluwer, p. 39.

³⁷ Art. 213 Sv. lid 1

³⁸ Art. 213 Sv. lid 2

³⁹ Art. 216a Sv.

Should you be caught in a lie, this can result in a prison sentence of up to six years, or nine, if the lie was at the expense of the suspect⁴⁰.

There are a few exceptions to this rule. A priest who is unwilling to testify would most likely rely on art. 218 Sv., which grants the right not to testify, based on one's professional relationship with the suspect, or having learned the information in a professional capacity that requires a level of confidentiality. This applies to what judge and criminal law lecturer Wilma Duijst calls the 'classic quartet', namely the lawyer, the doctor, the notary and the cleric⁴¹. The clergy being part of this quartet is based on tradition, rather than law, which means this could change, as attitude towards the value of confidentiality within a religion changes⁴². It also only covers regular confidentiality, and the rules that apply to that, rather than the more extreme version that is the *sigillum*.

Anything a priest could declare on the witness stand, with the exception of matters that do not relate to any form of confidentiality to begin with⁴³, would be considered 'hear-say'⁴⁴. In 1926 the 'Hoge Raad'⁴⁵ decided this was permissible as evidence, under certain circumstances⁴⁶. For example, if a woman has been found dead, and she has told her neighbour all about her husband's drunken rages, this would be permissible in court. It is not considered to be as reliable as physical evidence, or a witness able to relay what they have observed themselves. To use the same example, the neighbour's testimony would hold more weight if it contained a description of actually having seen the husband beat his wife, or having heard them argue the night she died. These, however, are circumstances that would not open the priest up to sanctions from the church, as none of this has to do with the confessional seal. As a result, all evidence a priest could give during a trial, that would cause him to break canonical law, would not be particularly strong. Further evidence, such as statements from direct witnesses and/or physical evidence would be needed to come to a conviction. The only situation in which the priest's testimony would be of value for the criminal case, is when an investigation has been started, and the priest has heard something in confession that could give the police new information or confirm a suspicion they have.

2.2.3 Constitution and treaties

Freedom of religion in the Netherlands is protected under article 6 of the Constitution. This article covers freedom of religion and comes in two parts. The first declares that everyone is free to practice their religion, within the constraints of the law. The second half limits the government's freedom to pass laws in this regard: freedom of religion, if practiced in a public place, can only be limited in order to prevent disorder and negative public health outcomes. Who decides when these conditions apply, is somewhat vague. Minutes on the debate regarding this constitutional right reveal that freedom of conscience is not taken into consideration⁴⁷. At first glance, none of this relates to the confessional seal. Confession is traditionally heard in a designated booth, that is situated inside a

⁴⁰ Art. 207 Sr.

⁴¹ Bannier, F.A.W., Duijst, W.L.M.J., Fanoy, N.A.M.E.C., Meijers, A.P.H. & Tempelaar, J.M. (2008). *Beroepsgeheim en Verschoningsrecht. Handboek voor de Advocaat, Medisch Hulpverlener, Notaris en Geestelijke*. Den Haag: Sdu Uitgevers, p 12.

⁴² Bannier, F.A.W., Duijst, W.L.M.J., Fanoy, N.A.M.E.C., Meijers, A.P.H. & Tempelaar, J.M. (2008). *Beroepsgeheim en Verschoningsrecht. Handboek voor de Advocaat, Medisch Hulpverlener, Notaris en Geestelijke*. Den Haag: Sdu Uitgevers, p 171.

⁴³ *Such as, but not limited to, having seen the actual crime take place, or being able to confirm an alibi.*

⁴⁴ 'Hear-say' in judicial terms means that the witness has heard someone (usually the suspect or the victim) mention something that can put the physical evidence in a different light, or put forward another possibility, without having witnessed what is claimed themselves.

⁴⁵ *Highest court in the Netherlands.*

⁴⁶ HR 20 december 1926, NJ 1927, 85, De Auditur-arrest

⁴⁷ Kamerstukken II 1975/76, 13872, 3, p32

church, so limitations do not apply. This would mean a judge is not qualified to rule against the freedom of a priest to uphold the confessional seal for religious reasons. However, confession can be heard everywhere⁴⁸, so that leaves the question what is considered a 'public place', as mentioned in the constitution. In 1940, a judge determined that any place not traditionally tied to religion can be viewed as such⁴⁹. A judge is not to take theological dogma into account, which means that no judge is allowed to get into the question whether confession is actually necessary in Catholicism, nor whether all proper formalities were performed. As long as the religious practice is associated with the religion and what is questioned in court appears to be that religious practice, the judge will treat it as such. This means all laws and further regulations concerning religious practices apply⁵⁰⁵¹.

In theory, it would be possible to change the constitution and either allow for further limitations on the freedom of religion, or abolish it altogether. The Netherlands are, however, party to various treaties. The *European Convention for the Protection of Human Rights and Fundamental Freedoms* is one that covers freedom of religion, in art. 9. So does the United Nation's *Universal Declaration of Human Rights*⁵². Both provide every citizen of a state that ratified the treaty freedom of conscience, something the Dutch constitution does not do⁵³. Freedom of religion and freedom of conscience overlap, but there is a slight difference. Freedom of conscience includes moral convictions that are not rooted in a religious system. This could, for example, mean that a vegetarian who is on unemployment benefits could not be required to accept a job at a butcher's, even if their vegetarianism is not related to a higher being or an organized social structure and they would have their benefits cut for not accepting a job at most other places of work. Freedom of religion, on the other hand, does cover the right to act upon your convictions, much like freedom of conscience does, but also allows you to do things like take part in rituals, or practice certain customs, that are tied to your religion, but not necessarily to its understanding of good and evil. For example, if a certain religion would include the belief that blue windowsills keep out bad spirits, its followers would, under most circumstances, be allowed to paint theirs blue. Something that would not be allowed if it you simply like the colour, nor would purple paint enjoy the same special treatment.

Beforementioned treaties have, as a result, a broader definition of 'Freedom of Religion', but at the same time, they allow for more reasons to infringe on this, than the Dutch Constitution does.

2.3 Child abuse within the Roman Catholic Church

Since the detection and prevention of child abuse is often one of the main arguments for ending secular recognition of the *sigillum*, we should have a clear idea of what this term refers to. For Dutch-specific numbers and statistics, we will rely on the findings of the Deetman committee, a committee formed in 2010, with the sole purpose of investigating the scale of child abuse within the Roman Catholic Church, including factors that aided the perpetrators in hiding their crimes⁵⁴⁵⁵. This committee was named for its head, former teacher and Minister of Education Wim Deetman, who is

⁴⁸ Codex Iuris Canonici 964

⁴⁹ RB. Groningen, 21 februari 1940, NJ1941/33

⁵⁰ Bovend'Eert, P.P.T., Broeksteeg, J.L.W., Bunschoten, D.E., Fleuren, J.W.A. & Hoogers, H.G.(2018). *Grondwet en Statuut. Tekst & Commentaar*. Deventer: Wolters Kluwer, p 25.

⁵¹ Kamerstukken II 1987 – 1988 19427, 8, p9

⁵² Art. 18, Universal Declaration of Human Rights.

⁵³ Post, H.A.(2010). *Gelijkheid als nieuwe religie. Een studie over het spanningsveld tussen godsdienstvrijheid en gelijkheid*. Nijmegen: Wolf Legal Publishers, pp. 66 – 67.

⁵⁴ Deetman, W.(2012). *Seksueel misbruik van minderjarigen in de rooms-katholieke kerk: rapport van de commissie onderzoek*. Amsterdam: Balans.

⁵⁵ Deetman, W.(2013). *Seksueel misbruik van, en geweld tegen meisjes in de Rooms-Katholieke Kerk*. Amsterdam: Balans.

a member of CDA, the largest Dutch political party with a Christian identity⁵⁶. Once this has been established, we will look into the response from the Roman Catholic Church, as this played a large role in the shaping of public opinion, which will, in turn, shape the political response.

2.3.1 Numbers in the Netherlands

In the Netherlands, between 10.000 and 20.000 cases of abuse have been reported, 1.000 of which were 'severe'⁵⁷. The cases could be traced back to approximately 800 people employed by the Roman Catholic Church at the time of the abuse. All reported cases happened between 1945 and 1985, with a vast majority having taken place in the 1950's, 1960's and 1970's. The victims were between the ages of four and sixteen years old. Most of them were institutionalised at the time of the abuse. On average, 9,7% of minors had been 'sexually approached' by an adult who was not a blood relative. Among institutionalised minors, this was 21,2%. There was no difference between institutions with a Roman Catholic Identity and those with another ideology, or a secular foundation. This put another investigation into motion, covering child abuse among children in the custody of the state, led by former Attorney-General H.W. Samson-Geerlings. Their findings support the earlier conclusion⁵⁸.

2.3.2 The response of the Roman Catholic Church

The Roman Catholic Church had a response of denial and 'saving face', rather than one of protecting the children and preventing further cases⁵⁹. Its inefficiency might be a reason for the scale of the outrage and calls for an end to the sanctity of the confessional seal.

Canon law allows the Roman Catholic Church to punish its followers, particularly those who are ordained. A layperson can, for example, be excommunicated, and not much more, but a priest, monk or nun can face more severe sanctions. Sexual abuse of children was named as a reason for such sanctions early on⁶⁰. Canon law offered some general guidelines, and in 1922 the *Crimen Sollicitationes* was introduced (revised in 1962), to offer more specific guidance. While this was enforced at first, at the peak of the child abuse, it was no longer in regular use. This may be the result of the Church's desire to deal with child abuse themselves, rather than involve secular law enforcement. If a complaint was filed, the *Crimen Sollicitationes* required a hearing, in which the accused, the victim and the witnesses were sworn to secrecy on a level that equals the confessional seal. In practice this meant that, if the Church chose not to impose a sanction, the victim could not report the crime to the police, without facing excommunication. As a result of this policy, as well as a lack of means to properly investigate, most cases were never reported to secular authorities⁶¹. The need to act on accusations of child abuse was also put forward by Pope John Paul II, in his *Sacramentorum sanctitatis tutela*, in 2001⁶².

The sincerity of these statements is being called into question for two reasons. The Church has

⁵⁶ CDA, or Christen Democratisch Appèl, is the result of a fusion of Catholic and Protestant political parties, in a bid to stem the tide of depillarization and its negative effect on the position of Christian identifying parties.

⁵⁷ By 'severe' the committee meant penetration took place and the abuse legally qualifies as rape, rather than sexual assault or another lesser charge.

⁵⁸ Bonnet, R.(2013). *De Kleine Gids Kindermishandeling. Achtergronden, Signaleren en Meldcode*. Deventer: Kluwer, p. 53 – 55.

⁵⁹ Deetman, W.(2012). *Seksueel misbruik van minderjarigen in de rooms-katholieke kerk: rapport van de commissie onderzoek*. Amsterdam: Balans.

⁶⁰ Dale, K.A.(2007). *Hiding behind the Cloth; child sexual abuse in the Catholic Church*. Journal of Child Sexual Abuse, 16(3), pp. 59 – 74.

⁶¹ Letter Pope Benedict XVI – *Aan de Katholieken van Ierland. Over de gevallen van seksueel misbruik van kinderen*. 19 March 2010.

⁶² A *motu proprio* (unsolicited letter, written by the Pope), dated 30 April 2001, by Pope John Paul II.

proven to be highly ineffective in taking action against child predators, there is little room for compensation for the victim and the emphasis is on the spiritual journey to self-betterment for the abuser⁶³. Also, at a UN conference that covered the issue of child safety in the Roman Catholic Church, a statement was read by Archbishop Silvano Tomasi⁶⁴. This advocated for crimes taking place on the soil of a country, being the responsibility of law enforcement in that country. This is the opposite of the policy the *Crimen Sollicitationes* put forward.

Chapter 3: Why is the secular protection of the confessional seal being called into question in the 21st century?

This chapter covers the question why the secular protection of the confessional seal has become a topic of debate in the 21st century, even though the abuse that appears to have caused the disapproval of this practice took place much earlier. In order to do so, there will first be a brief overview of the position of religion in Dutch society. Next, we will look at the changing attitude towards authority, which may offer an explanation for the recent change in attitude towards the *sigillum*. Lastly, we will consider the role of changing in-groups as a possible reason for the belated response to the confessional seal as a potential threat to children.

3.1 History and politics

In this paragraph, the focus is on Dutch history, to explore the position of Catholics as a larger minority, as well as the changing role of religion. Once this has been established, attention will shift to current political dynamics, and what this means for the position of Dutch Catholics in general, and the confessional seal in particular, should the academic debate grow into a political one, like it did in Australia, Ireland and California.

3.1.1 Pillarization in Dutch society

There were more reasons for the Dutch to want their independence from Spain, but gaining religious freedom was one of them. Dutch Protestants were violently oppressed by Spanish Catholics and their sympathisers, so it comes as no surprise that, once independence was gained, the Protestant majority in the Netherlands held feelings of hostility towards the Catholics that shared their new-formed country⁶⁵.

These hostile attitudes toward each other came under pressure with the rise of Liberals and Socialists as a political force⁶⁶, professor in Empirical and Practical Religious Studies at Raboud University, Sophie van Bijsterveld explains. Cooperation between both religion was most important in de so-called '*Schoolstrijd*', where Christian politicians wished for schools with a religious identity to receive the same monetary support from the state as secular schools, something Liberals and Socialists opposed. In the beginning of the 20th century, the idea of general suffrage gained popularity, and slowly but steadily started to include more and more groups of people. The inclusion of the poor in the vote was expected to lead to a rise in support for the Socialists. However, it turned out most people voted in accordance to their religious beliefs, rather than socio-economic

⁶³ Robertson, G.(2010). *The Case of the Pope. Vatican Accountability for Human Rights Abuse*. London: Penguin Books Ltd., pp. 117 – 120.

⁶⁴ Wright, S.A. & Palmer, S.J.(2016). *Storming Zion, Government Raids on Religious Communities*. Oxford: Oxford University Press, p. 232.

⁶⁵ Lenarduzzi, C.(2019). *Katholiek in de Republiek: de belevingswereld van een religieuze minderheid 1570 – 1750*. Nijmegen: Uitgeverij Vantilt.

⁶⁶ Van Bijsterveld, S.(2013). *Een vergeten episode uit de Schoolstrijd: de ontdekking van 'openbaar' en 'bijzonder' onderwijs*. Tijdschrift voor Religie, Recht en Beleid, 4, pp. 16 – 32.

position⁶⁷. This attitude led to religion not only being the framework for one's spiritual life, education and political choices, but created so called pillars. These pillars were societies within society, and determined which media you consumed, which sports clubs you could join, sometimes even where you could work or live⁶⁹. There were four pillars, Protestant, Catholic, Socialist and Liberal, although some argue the Liberals were not a pillar, since they opposed the system of pillarization.

In the 1960's, or possibly already in the 1950's, the processes of depillarisation and secularisation took hold⁷¹. Religion diminished in importance in daily life, and lost its spot as a defining aspect of the identity of large portions of the population⁷². This is a trend that further developed until today. In 1960, around 80% of the population considered themselves to be Christians (either Protestant or Catholic), while in 2019 only 46% self-identifies as religious (any religion)⁷³.

3.1.2 Polarisation in Dutch Society

This new social order, where religion was no longer a defining factor, is reflected in politics, is argued in the work of economist Thomas Piketty⁷⁴. Many confessional parties disappeared, in the sense that some of them opted for a fusion into one, larger, confessional party, representing different denominations, while others evolved into secular parties instead. This has left the Netherlands with political parties on the left and right, with few that can be considered to position themselves in the political centre.

It would seem logical for conservatives who champion a Judeo-Christian society, as described by Topolsky, a political philosopher from Radboud University⁷⁵, to fight tooth and nail for religious freedom. After all, how Judeo-Christian can a society be, if one of the faiths that belongs in that category can no longer freely exercise one of her core components? Right wing politicians, especially those who use this type of language, are often accused of being racist and Islamophobic. Regardless of whether or not they are, this label is one most seek to avoid. Calling for allowances to be made for Catholics, while also calling for restrictions to be imposed on freely practicing Islam, makes it difficult to convince the general public one does not discriminate.

In addition, the right prides themselves on being all about law and order: less rights for the perpetrator, even when he or she is still only a suspect, and longer sentences⁷⁶. To then argue that in

⁶⁷ Van Kessel, A.C.M.W.(2018). *Katholieken en de Pacificatie van 1917. Machtsverschuivingen ten tijde van een strijd om beginselen*. Jaarboek voor de geschiedenis van het Nederlands protestantisme na 1800, 26, pp. 25 – 48.

⁶⁸ Van der Veer, P.(2018). *Christelijke politiek en het kiesrechtvraagstuk: De invloed van christelijke politieke partijen in Nederland en België op de uitbreiding van het kiesrecht in de periode 1880 – 1918*. Universiteit Utrecht.

⁶⁹ Righthart, H.(1986). *De katholieke zuil in Europa. Een vergelijkend onderzoek naar het ontstaan van verzuiling onder katholieken in Oostenrijk, Zwitserland, België en Nederland*. Amsterdam: Boom, pp. 273 – 274.

⁷⁰ Ysseldyk, R., Matheson, K. & Anisman, H.(2010). *Religiosity as Identity: Toward and Understanding of Religion from a Social Identity Perspective*. *Personality and Social Psychology Review*, 14(1), pp 60 – 71.

⁷¹ Van Rossem, M.(2012). *Nederland volgens Maarten van Rossem*. Amsterdam: Nieuw Amsterdam Uitgevers, pp. 59 – 60

⁷² Dekker, P. & Ester, P.(1996). *Depillarization, Deconfessionalization, and De-Ideologization: Empirical Trends in Dutch Society 1958 – 1992*. *Review of Religious Research*, 37(4), pp. 325 – 341.

⁷³ People under the age of 15 were not taken into account in this survey, performed by CBS.

⁷⁴ Durrer de la Sota, C., Gethin, A. & Martínez-Toledano, C.(2021). *Veranderingen in de partijstelsels en de structuur van de politieke scheidslijnen in België, Nederland, Zwitserland en Oostenrijk, 1967 – 2019*. In: *Ongelijkheid en ons stemgedrag*. Amsterdam: De Geus, pp. 255 – 262.

⁷⁵ Topolski, A.(2020). *The dangerous discourse of the 'Judeo-Christian' myth: masking race-religion constellation in Europe*. *Patterns of Prejudice*, 54(1-2), pp. 71 – 90.

⁷⁶ Lilly, J.R., Cullen, F.T. & Ball, R.A.(2011). *Criminological Theory. Context and Consequences, 5th Edition*. Los Angeles: Sage Publications, pp. 304 – 305.

one particular case there ought to be an exception for witnesses, even though their evidence would only be hearsay, would be at odds with general policies, particularly when it pertains to child abuse.

Populists, while not exclusive to the political right, are a larger force on this side of the political spectrum. According to Emeritus Professor in Politics from the University of Bath, Roger Eatwell, and Professor of Politics at the University of Kent, Matthew Goodwin, populists feel strongly about democracy, and believe in an elite that serves something, or someone, other than who they should, namely the people⁷⁷. Priests are not elected democratically, and they literally serve God. God, whether believed to be a real being or a social construct, can easily be considered the kind of entity a certain elite has a loyalty to, at the expense of 'the people'.

Equality is a particular favourite in social justice circles, which could be viewed as the populist left. You must never discriminate⁷⁸, yet, paradoxically enough, freedom of religion, in many cases, requires you to do just that. For example, if you require students to take off caps, hats, hoods, and so on in class, while allowing a hijab, turban or kippah, one is already treating students differently, based on whether or not they self-identify as belonging to a religion that requires such outward symbolism, not to mention the extent to which one takes their claim seriously⁷⁹.

Religion is often linked to conservatism, in spite of there being organised left wing Christians⁸⁰. The Christian left is far less vocal than their right wing counterparts⁸¹, perhaps because the left supports causes that are controversial within religious circles, such as legal abortions, and equal rights for gay couples. The practices one might enjoy, as a form of bonding with fellow Christians, such as praying, may not be appreciated by fellow leftist, as they would be on the right, which puts progressive Christians in a position where they aren't vocal about their religion among their political peers, and are not vocal about their political leanings, in a religious setting. This makes it easy for Christians, who are not viewed as an oppressed minority in social justice circles, but rather as the group currently in power, oppressing minorities themselves, to be painted as the out-group. The fact that quite a few battles are fought against Christian-identifying institutions^{82,83}, solidifies this out-group status. Since there is enough to fight for in the in-group⁸⁴, it is highly unlikely left wing politicians or groups will take up the cause for protecting the confessional seal.

That leaves politicians from confessional parties. As of 2021, these are the beforementioned CDA, the smaller SGP and CU, and the youngest part, the Muslim NIDA. While the CDA has substantial power, SGP and CU do not, and NIDA is not Christian, even though they may join forces to

⁷⁷ Eatwell, R. & Goodwin, M.(2018). *National Populism . The Revolt Against Liberal Democracy*. Milton Keynes: Pinguin Random House UK, pp 54 – 57.

⁷⁸ Post, H.A..(2010). *Gelijkheid als nieuwe religie. Een studie over het spanningsveld tussen godsdienstvrijheid en gelijkheid*. Nijmegen: Wolf Legal Publishers, pp. 7 – 8.

⁷⁹ *This example could lead to the example where one student is forced not to wear their cap, another is allowed a hijab, and a third arrives in class with a colander, raising the question whether the latter ought to be taken seriously as a token of their beliefs, or be banned as either a meaningless type of headwear, or a provocation towards the students who wear outward signs of their religion, regarding this as a core part of what it means to have that religion.*

⁸⁰ Hall, C.F.(1997). *The Christian Left: Who are they and how are they different from the Christian Right?* Review of Religious Research, 39(1), pp. 27 – 45.

⁸¹ Wirpsa, Leslie (1996). *Christian Left organizes to oppose religious right*. National Catholic Reporter, 32(18), p.3

⁸² Post, H.A.(2011). *Godsdienstvrijheid aan banden. Een essay over het probleem van de godsdienst in het publieke domein*. Nijmegen: Wolf Legal Publishers, p. 135 – 142.

⁸³ Post, H.A.(2011). *Godsdienstvrijheid aan banden. Een essay over het probleem van de godsdienst in het publieke domein*. Nijmegen: Wolf Legal Publishers, p. 153 – 159.

⁸⁴ Salmela, M. & Van Scheve, C.(2018). *Emotional Dynamics of Right- and Left-wing Political Populism*. Humanity and Society, 42(4), pp. 434 – 454.

set a precedent that could benefit them. Within the confessional parties, only a minority of politicians is Catholic and it is difficult to predict whether or not their Protestant colleagues will join them in their argument for protecting the *sigillum*, or will oppose the preferential treatment of Catholics as well.

3.2 Authority

In spite of a growing distrust towards traditional authority figures, people are still group-minded and each group has their leaders. Yet within society, various groups have leaders who oppose one another on moral grounds, both religiously and secular based. In this paragraph we will look through the lens of social psychologist Jonathan Haidt's theory on morality, to see what are the grounds for granting someone authority and how this causes different groups, to draw different conclusions. Next, we will look at the dynamic between religion and group-thinking. Finally, we will explore some of the critiques on Haidt's theory.

3.2.1 Haidt's theory

Haidt's distinguishes five different foundations for moral authority⁸⁵:

- Care: being sensitive to signs of suffering and need.
- Fairness: being a good partner for collaboration.
- Loyalty: being an active member of the in-group.
- Authority: behaving in accordance to ones rank or status.
- Sanctity: being respectful of in-group symbolism.

The political left relies mostly on Care and Fairness to gain support for leadership, while the right uses all five foundations. This allows right wing leaders to foster a stronger connection with their followers, allowing a greater power imbalance to still be acceptable to said followers, making it easier for leaders on the right to govern, both in a political sense, and in non-elected capacities.

This does not necessarily mean one side of the political spectrum has a better moral compass, or is better at rationally reaching a conclusion on what is just. Oftentimes, we have an emotional intuition on right and wrong, and will rationalize why our intuition is the only correct conclusion after we decided where we stand⁸⁶.

3.2.2 Religion and groupthinking

To Haidt, religion serves a purpose, namely that religious people are under constant supervision from a higher power that will pass judgement on them⁸⁷. At least, this would be the belief of a religious person. By 'religion' Haidt means Durkheim's definition of religion: *a unified system of beliefs and practices to sacred things, that is to say, things set apart and forbidden – beliefs and practices which unite into one single into one single moral community called a Church, all those who adhere to them*. Since it this judgement is passed down from what they perceive to be the highest moral authority, it is not possible to appeal, negotiate, or even protest the fairness of the judgement. The only thing to do, is to act in a way you believe will make the judgement turn out in your favour. If you believe

⁸⁵ Haidt, J.(2012). *The righteous mind. Why good people are divided by politics and religion*. London: Penguin Books, pp. 178 – 179.

⁸⁶ Haidt, J.(2012). *The righteous mind. Why good people are divided by politics and religion*. London: Penguin Books, p. 55.

⁸⁷ Haidt, J.(2012). *The righteous mind. Why good people are divided by politics and religion*. London: Penguin Books, pp. 296 – 300.

other people, including those with secular authority, do as well, you are more likely to trust they act in good faith at all times. Religion, therefore, serves to build trust within a society⁸⁸. Ara Norenzayan, Professor of Psychology at the University of British Columbia, explains this phenomenon in more detail in his book *Big Gods*⁸⁹: At the dawn of humanity, we lived in tribes made up of our own kin. Betraying another individual, would therefore be bad for your own family, and you would live out your life among these people, so a bad reputation would stick with you. Once communities grew bigger, the family aspect became less prevalent, but one would still either know the person they were dealing with, providing knowledge of their prior behaviour and plenty of opportunity to retaliate if they did you wrong. Once communities grew even bigger, and a level of trust was needed between complete strangers, who may never meet again afterwards, became needed, religion came in. In particular the 'Big God'. A 'Big God' is an all seeing, all knowing being, who cares a great deal about morality, and will see to it that rewards and punishments are doled out accordingly. As a result, you can trust someone to do the right thing, just as long as you are aware they believe in a Big God, which is the case for the Abrahamic religions. The more this belief shows, through behaviours that would be harmful to the person, if they did not believe there was a good reason for them, the more likely it is that this person actually believes in a god that knows when they are being deceptive and will punish them for it. This results in a greater level of confidence that they will not lie, steal, or betray.

Before secularisation, the norm was to be religious. When you met a new person, it was safe to assume they believed in a Big God, so even if you strongly preferred someone who believed in yours, even a person of a different faith would still be adhering to the principle of an all knowing god being able to bring down their wrath when you step out of line. One would come across expressions of religion regularly, which served as reminders of this. In a secular society, the default is not to be religious, or to not take your religion as seriously. Therefore, when you meet someone new, the assumption is that they will be atheist, until you are told otherwise. Even then, it is now more difficult to notice this person making sacrifices for their religion. The other person may not be fully aware what this should look like, has no way to test if the other person is truthful, and may not believe in godly interference when the new person turns out to be deceitful themselves. This results in the disappearance of implied trust, replacing it with distrust. This was combatted by the welfare state. The government would take care of you, if something were to happen, and would also protect you against bad people. If one were reminded of this often, the state was able to take the place of religion as a fertile ground for trust among members of society.

In an ever internationalising world, the suspicion that not all members of a community prioritize this community over another (for example their country of origin), and the dismantling of the welfare state, in favour of a participation society, broke down this alternative. It is no surprise that distrust towards other people became a more normalized attitude. Since it is people who are voted into office and who are entrusted with making the right calls in anything from banking to public health, this distrust extends to organizations with any level of authority.

As discussed, religion, particularly the way it is lived, provides believers with a sense of belonging to a certain group.

It would be safe to say a pillar could be considered to be an in-group, and depillarization leading to the disappearance of these traditional in-groups, either through their dwindling numbers making it impossible for them to cover enough aspects of life to prevent the need to membership of an entirely different in-group. The American anthropologist Benedict Anderson theorized that

⁸⁸ Graham, J. & Haidt, J.(2010). *Beyond Beliefs: Religions Bind Individuals Into Moral Communities*. *Personality and Social Psychology Review*, 14(1), pp. 140 – 150.

⁸⁹ Norenzayan, A.(2013). *Big Gods. How Religion Transformed Cooperation and Conflict*. Princeton, New Jersey: Princeton University Press.

nationalism is a form of in-group building, and came up with five 'rules' for forming an in-group⁹⁰, by which is meant a group one feels a connection to, to the extent of feeling a personal connection with other members, in spite of not personally knowing each other member, including those one still feels this connection to:

- Everyone is an equal part of the group, a theoretical notion that surpasses all differences and inequalities that very much exist in real life.
- Language, because the stories that make up the collective memory and collective identity are told in a language all members of the group can understand, but outsiders usually can not
- Limits, meaning physical limits to the area the group considers to be their home. These will usually be manmade borders.
- In order to be able to be part of a group and experience this as something meaningful, there must be others, who do not belong to the group. The more of a threat this 'other' poses (real or imagined), the stronger the feelings of belonging.
- The common feature replaces the group-feelings from the past, where this was based on religion, or your allegiance to a certain royal family.

It is argued that these 'rules' do not only apply to nationalism, but rather form an explanation on how other groups, from political movements, to the LGBTQ+ community, form. While the language and limits might seem out of place in this context, it could be argued that the limits are manmade definitions of what it means to be part of the in-group (such as what one should believe to truly be part of a political movement, or the recent discussion on who is allowed to call themselves 'trans') and the language being certain words, phrases and symbols used particularly by the in-group, making it more difficult for the uninitiated to follow conversation or pick up on deeper meaning.

Vassilis Saroglou, Professor of Psychology at the University of Louvain, theorizes that religion offers the fulfilment of certain human needs, through bonding, belonging, believing and behaving⁹¹. Belonging being the sense of being a part of, and being accepted by, a group of people one feels connected to. Believing covering the premises one must accept as true to be part of the in-group, behaving being the actions one takes based of both the ideas on right and wrong, and what is socially acceptable within the group. Bonding means the connection that is fostered through going through shared experiences, especially those not shared by members of the out-group.

The religious in-group, in mid-20th century Dutch society formalized in the Catholic and Protestant pillars, much more than secular ones, had a lot of rules, governing many aspects of life, ranging from food, to relationships, to fashion. Through this, trust is gained. After all, we trust people who genuinely believe they are being watched and judged at all times more⁹². However, it is all too easy for so called free riders to pick up on this, consciously or subconsciously, and claim to firmly hold that belief, without actually behaving accordingly. Therefore, this function of religion works best, if the believer is required, for religious reasons, to do certain things that would be disadvantageous to them, if it was not for the strong conviction this behaviour will pay off in other ways⁹³. It is even better if such behaviours are visible to outsiders, making it harder to fake them. For example, if a religion forbids the consumption of meat, it is one thing to have a vegetarian meal in front of a believer you are trying to convince of your in-group membership. It is another if you must

⁹⁰ Anderson, B.(1983). *Imagined Communities*. Londen: Verso.

⁹¹ Saroglou, V.(2011). *Believing, Bonding, Behaving and Belonging. The Big Four of Religious Dimensions and Cultural Variation*. *Journal of Cross-Cultural Psychology*, 42(8), pp. 1320 – 1340.

⁹² Norenzayan, A.(2013). *Big Gods. How Religion Transformed Cooperation and Conflict*. Princeton: Princeton University Press, pp 19 – 23.

⁹³ Norenzayan, A.(2013). *Big Gods. How Religion Transformed Cooperation and Conflict*. Princeton: Princeton University Press, pp 95 – 98.

be mindful to never be seen buying or consuming meat, likely resulting in your inability to eat non-vegetarian food at all, if you live in proximity to people from your supposed in-group or their associates.

Those who follow many rules, particularly rules that are inconvenient, are more easily accepted as members of the in-group, because they are perceived to be more genuine⁹⁴. At the same time, this makes it highly likely for any member of such a group, to violate one of their rules. Confession offers Catholics a way of dealing with this. Through taking part in this ritual, they can reaffirm their Catholic identity (as this behaviour is highly unusual in other pillars), gain forgiveness and can bond over it with other members of the in-group as everybody has taken part in this ritual at some point.

The in-group/out-group structure could lead to the fear that openly acknowledging problem within the in-group, particularly if the source lays with those in positions of leadership, would give the out-group the ammunition needed to attack you. In a society where in-groups are strongly connected to political power, and there are out-groups that could gain this political power if your in-group got a bad reputation or shrunk in size. In the Netherlands we saw a divide between religious pillars and secular ones, in particular on the issue of education. Since this debate has recently been reignited, it would not come as a surprise if 1960's Christians were concerned about such issues in a way that influenced their choices in regards to injustices within the in-group, in a utilitarian way⁹⁵.

One possible reason for the child abuse within the Roman Catholic Church (and thereby the criticism of the Church that come from it) has remained hidden for a prolonged period of time, is the belief in what is known as 'rape myths'. Rape myths are narratives used to rationalize rape, particularly why someone fell victim to it. This is oftentimes used to create a sense of security, as it implies that there are certain actions one can take, in order to be protected. These narratives are used by victims and non-victims alike and hinder the actual prevention of rape. Because the ideas they spread are untrue and often blame the victim, they are a hinderance in actually combatting sex crimes. If these ideas are debunked, and people have access to information explaining that these beliefs are not in line with reality, it becomes more likely that victims come forward, as they no longer believe it was their own fault⁹⁶. This effect would be even stronger if the victim were to talk to a community that has also been exposed to information that shows the previous ideas about rape and sexual abuse to be untrue. With the rise of the internet, such information has become far easier to access for a far larger amount of people, making it likely that victims of abuse, as well as those around them, who may have suspected something, will learn about it.

Another thing the Internet offers, is anonymity, making it safer to tell ones story⁹⁷⁹⁸, thereby making it more likely for people to come across narratives of child abuse. If they themselves were victims, the knowledge they were not alone could be an encouragement to tell their own stories, but

⁹⁴ Norenzayan, A.(2013). *Big Gods. How Religion Transformed Cooperation and Conflict*. Princeton: Princeton University Press, pp 19 – 23.

⁹⁵ *In utilitarianism the costs and benefits of each choice are weighed by the sum of the good and bad they would bring to each individual involved. This means a lot of people could be required to give something up, to help a single person, as this persons suffering is greater than that of the others (after having given up this something) combined. This could happen if there are a great number of 'victims' in the situation, or if the injustice is particularly great. It could also mean that a great injustice is left to exist, as the inconvenience dealing with it would cost more (once you add up everybody's individual inconvenience) than the victim would be benefitted by addressing the issue, which would be more likely to happen if there were fewer victims, since this would add fewer 'points' to the scale from their side.*

⁹⁶ Suarez, E.(2010). *Stop Blaming the Victim: A Meta-Analysis on Rape Myths*. Journal of Interpersonal Violence, 25(11), pp. 2010 – 2035.

⁹⁷ Dietz-Uhler, B., Bishop-Clark, C. & Howard, E.(2005). *Formation and Adherence to a Self-Disclosure Norm in an Online Chat*. CyberPsychology & Behaviour, 8(2), pp. 114 – 120.

⁹⁸ Retelas, G.(2008). *Anonymity and Self Disclosure on Myspace*. Ann Arbor, ProQuest LLC, pp. 9 – 13.

even for those who were not victims themselves, being exposed to this information, from different sources, can help make it more believable than it coming from just one person, with all the other, highly similar, stories, remaining unknown to the listener⁹⁹.

One fear that could prevent a victim from speaking out, is the loss of the in-group through not being believed. In the case of abuse within the Church, the abuser was oftentimes someone the community looked up to, and who had God in their corner, being a representative of Him. The Internet offers a wide variety of possible in-groups to start belonging to, based on interests, experiences, and so on. It is no longer a necessity to live in close proximity to other in-group members in order to truly have a connection. While the loss of the original in-group is still traumatic, particularly if people who mean a lot to you, like family and friends, appear to side with the in-group that no longer views you as one of their own, the existence of easily accessible alternatives can help cushion the blow.

3.2.3 Responses to Haidt

While Haidt proposes that people, in particularly those with left wing political preferences, put less emphasis on authority, and thus it becomes much more difficult for (political) leaders to mobilize their 'flock', he does not offer an explanation for the growing following of alternative leaders. Certain movements, for example the environment protection movement, have found a face, in this case in Greta Thunberg, that is not necessarily elected in any official capacity. Yet people like this are looked at as the embodiment of what their followers deem to be moral and just and their word is often taken at face value. It may not be a matter of trust declining, but it could be a shift in loyalty and who we are willing to give trust to, that is changing and no longer fits the way power structures are traditionally shaped¹⁰⁰.

Neuroscientist and psychologist Joshua Greene argues people tend to have a natural distrust from those they perceive to be 'different', and do not have either a personal or professional relationship to¹⁰¹¹⁰². Our response is based in emotion, because it is difficult to rationalize the level of trust and obligation one experiences towards a stranger. Since our world is becoming increasingly bigger, both in terms of internationalisation, causing national governments to commit to treaties on various subjects, giving other countries a voice in one's own, and in terms of immigration and the visibility of minorities. In other words, migration has given us an 'other' whose 'otherness' is visible on the outside. Even if they belong to a certain in-group we deem ourselves to also be a member of, this membership will not be as easily spotted as ones outside appearance. Minorities of various nature are increasingly taking their place in the public eye, including politics and positions of power. It stands to reason that the 'otherness' one has to look through, in order to get to the similarities is an extra step not everyone is willing to take. This decreases trust in institutions where people deemed to be 'other', or whose presence in such roles is considered a modern phenomenon.

Haidt published his work on morality in 2012, meaning his research was done in the first term of Barack Obama's presidency. The way Obama's followers rallied behind him showed a far greater enthusiasm than was the case with other presidential candidates, which Haidt touches upon, but at

⁹⁹ Posey, C., Lowry, P.B., Roberts, T.L., Ellis, T.S. & Taylor, F.(2010). *Proposing the online community self-disclosure model: the case of working professionals in France and the U.K. who use online communities*. European Journal on Information Systems, 19(2), pp. 181 – 195.

¹⁰⁰ Blum, L.(2013). *Political Identity and moral education: A response to Jonathan Haidt's the Righteous Mind*. Journal of Moral Education, 42(3), pp. 298 – 315.

¹⁰¹ Greene, J.D.(2014). *Moral Tribes. Emotion, Reason and the Gap Between Us and Them*. New York: Penguin Books, p. 141.

¹⁰² Greene, J.D.(2014). *Moral Tribes. Emotion, Reason and the Gap Between Us and Them*. New York: Penguin Books, pp. 258 – 264.

the same time does not address possible influences other than Obama's use of morality, such as celebrity culture¹⁰³ and social media. Haidt could not possibly have foreseen what would happen mere years after his publication, namely the candidacy of Donald Trump. Trump most certainly made use of all five foundations for morality in his speeches, yet at the same time, called authority into question to an extent no other candidate did. Terms like 'fake news' and 'alternative facts' were introduced by his team during the candidacy and presidency. The attack on Capitol Hill and questioning of the legality of the election are not in line with the emphasis on authority conservatives supposedly have the advantage of having. It could be argued that Trump and his followers, who he was certainly effective at rallying behind a cause, may be on the political right, but are not traditional conservatives, a stance that a number of GOP politicians appear to share. It is possible something changed since 2012, that Haidt did could not have taken into account in his analysis.

3.3 The rise of distrust

While in the 1960's warnings were issued against the blind following of authority¹⁰⁴, the 21st century challenge is to deal with a level of distrust towards traditional authority that makes it increasingly difficult for such institutions to function properly¹⁰⁵. Authority, in this sense, being to govern, not just through sanction and incentives, but by relying on your 'subject's' willingness to obey, through feelings of responsibility and sense of obligation¹⁰⁶.

At first glance, the growing level of distrust in one another would be a logical by product of secularisation. If we trust genuinely religious people more, and it is now far more likely that the person in front of you, whether a peer or an authority figure, does not believe in the existence of an all-knowing, moral higher being, than the scenario that they do, it makes sense that we do not trust them as much as we used to. Norenzayan counters this assumption, although fully in line with his own theory, by explaining that the state can take the place of the god, as long as it is a well-functioning state that takes care of its citizens¹⁰⁷. A welfare state, in short.

The Netherlands used to be considered a welfare state, but is currently a participation society, with much more emphasis on personal responsibility (and thus individuality, as opposed to belonging to an in-group, namely 'the Dutch')¹⁰⁸. The alternative for religion has been replaced as well, and by a system that is not as well equipped at evoking a feeling of trust and belonging among the intended in-group members.

In explaining the rise of distrust, it would not be wise to ignore the rise of populism. This

¹⁰³ Obama had the public support of famous people with a lot of fans who would take their endorsement of anything seriously, namely American rapper Jay-Z and singer Beyoncé. Such celebrity endorsement was not a common way to campaign.

¹⁰⁴ Milgram, S.(1963). *Behavioral Study of obedience*. Journal of abnormal and social psychology, 67(4), pp. 371 – 378.

¹⁰⁵ Bruno, J.R.(2017). *Vigilance and Confidence: Jeremy Bentham, Publicity, and the Dialectic of Political Trust and Distrust*. The American Political Science Review, 111(2), pp. 295 – 307.

¹⁰⁶ Van der Toorn, J., Tyler, T.R. & Jost, J.T.(2011). *More than fair: Outcome dependence, system justification and the perceived legitimacy of authority figures*. Journal of Experimental Social Psychology, 47, pp. 127 – 138.

¹⁰⁷ Norenzayan, A.(2013). *Big Gods. How Religion Transformed Cooperation and Conflict*. Princeton: Princeton University Press, pp 174 – 175.

¹⁰⁸ Brok, E.(2016). *De responsabilisering van burgers van verzorgingsstaat tot participatiesamenleving: Discoursanalyse van troonredes en regeringsverklaringen sinds de jaren zestig*. Beleid en maatschappij, 43(4), pp. 5 – 27.

political movement, regardless of what side of the spectrum the populist falls on, has a few core beliefs¹⁰⁹:

- Democracy no longer works for Everyman and needs to be reformed.
- There are elites, which are hostile to Everyman, and are loyal to external forces (such as immigrants, multinationals, international organisations, and so on).
- These elites need to be replaced by a government that truly represents Everyman.

This fuels feeling of distrust towards authority, as it undermines the core principle of a democracy, namely that its members, through a periodical election, have the final word in what authority figures do and do not do. Once the ideas that such elections may be rigged, politicians purposely present incorrect information (not only about themselves, but about the issues they have a strong stance on, in order to justify their position and/or convince others of the existence/absence of a certain threat), those in power intently keeping 'the people' out of such jobs, and being loyal to something or someone not considered part of the in-group, takes hold, it is no wonder people do not trust in those who have power over them. Of course, this approach is not limited to elected officials, regardless of whether the populist believes this person to be elected in the democratic sense of the word or not. It also applies to those put in positions of power due to their expertise in a certain field, such as scientists, and people having been given a position of power by someone higher up in that power structure, without much transparency or means of subordinates to voice their concerns. The latter is the case within the Roman Catholic church.

While organised religion does not provide the extensive community anymore (both in number of participants, and the area's in life that can be enjoyed without interacting with out-groups), one might expect the distrust of organised religion and its leaders to decline. If having authority comes with distrust, weaning authority should lessen this response. On the other hand, during the era of secularisation, people turned their back on Catholic and Protestant churches alike, and it would make sense to hold and express a negative view of the community you left behind. If you view it as mostly positive, why would you have left? It could be argued that, in the 21st century, being part of organised religion is more of a choice than it ever was before. It is far less common to do so out of habit, or because it is expected within your community. At the same time, the right wing rhetoric about a Judeo-Christian society frames Christianity as an institution with a lot more power than it has in Dutch society as a whole. Perhaps the influence of right-wing Christians on American politics helps strengthen this idea. Therefore, Christianity can still be seen as powerful and potentially oppressive. This applies even more to the Catholic Church, due to its very visible internal hierarchy, that transcends national borders and operates on a global level.

At the same time, psychology has become more accepted as a science that can explain a number of things, rather than being limited to being concerned with people society deemed 'crazy'. A growing number of people visits a psychologist, we are far less likely to judge someone for it, and psychology is seen as a good, useful tool to understand and navigate the world. When it comes to religion, the field of psychology tended to focus firmly on the problems organised religious communities face¹¹⁰. Overall, religion was seen as a negative force¹¹¹. At the same time, religious communities self-identify in a very positive way, claiming they spread love, rather than prejudice¹¹². This causes a divide between an out-group that would prefer to see the end of religious

¹⁰⁹ Eatwell, R. & Goodwin, M.(2018). *National Populism . The Revolt Against Liberal Democracy*. Milton Keynes: Pinguin Random House UK, pp 54 – 57.

¹¹⁰ Nelson, J.M.(2009). *Psychology, religion and spirituality*. Berlin: Springer Science & Business Media, p 422.

¹¹¹ Nelson, J.M.(2009). *Psychology, religion and spirituality*. Berlin: Springer Science & Business Media, p 433.

¹¹² Nelson, J.M.(2009). *Psychology, religion and spirituality*. Berlin: Springer Science & Business Media, p 422 – 423.

communities, and looking upon this as being beneficial to members of said communities, rather than just a battle for power. That may or may not have played a role, but is not the sole driving factor for the belief the field of psychology held about religion. Self-preservation is a natural reaction, so if your in-group is faced with an out-group that wishes to dissolve it entirely, it is to be expected that one would want to portray the in-group in the most positive light possible. This means that known problems will have to be kept quiet, to avoid giving the out-group even stronger arguments against you. Speaking up about bad leaders, abuse of power, child abuse, and so on, will damage your standing in the in-group and diminish your sense of belonging. So, even though Catholics knew there were problems to be addressed¹¹³, this did not happen. The victims were, in a sense, martyrs in the battle to maintain the community, and expected to keep quiet. More recently, the field of psychology became more interested in the benefits of religion, softening their stance. This allows religious communities to meet them halfway, and acknowledge that there are systemic issues within their own communities. Now that the out-group has stopped pushing the idea that religion is all bad, religious communities do not have to see them as a threat to the extent the only defence is to argue everything is perfect. As a result, decades worth of abuse and trauma come out at once, highlighting the secretive nature Catholic communities used to have, and, as a result, will be suspected of still having. This is very fertile ground for distrust to grow on, regardless of how good or bad current leaders are.

3.4 Conclusion

The question we set out to answer in this chapter is: *Why is the secular protection of the confessional seal being called into question in the 21st century?*

While it does not seem strange that the abuse did not immediately come out, due to religion being an integral part of life that seeped into every aspect we would now consider to be a secular matter, one can wonder why it took several decades to become widely known and acknowledged, even though depillarization and secularisation strongly reduced the influence of religion far earlier on.

One possible reason for this could be the changing attitude towards authority. It is not just that many people no longer believe in the existence of a god, but there is a growing suspicion that those with a level of power are likely abusing it. Whether they actually are, is not relevant for this discussion. Limiting their power, by taking away privileges, is not an inconceivable step. This would include the privilege of not having to testify, which a priest can evoke, based upon his position within the Catholic Church alone. With a stronger emphasis on the need to prevent child abuse rising in the 21st century¹¹⁴, and religion being seen as a human right on one hand, but at the same time the reason many other human rights are being made more difficult to fully come to fruition, suspicion towards religion (and particularly religions that are not perceived to have a minority status and thus face oppression themselves) makes sense. Since right wing politicians are wary of being called racist, the right may not be very keen on making allowances for Christian clergy, as this could be used against them when an issue concerning Islam arises. Immigration from Muslim countries is not new, but Muslim communities became more visible in the 21st century, which may have led to more pushback from conservative groups, causing them to have a negative stance on religion in general, or any religion that is not their own.

Another reason might be that the Internet makes it easier for stories to be shared, encouraged

¹¹³ Nelson, J.M.(2009). *Psychology, religion and spirituality*. Berlin: Springer Science & Business Media, p 423.

¹¹⁴ *This happened before, for a short amount of time. However, the so called Bolderkar affaire, in 1988, where overzealousness caused innocent parents to be accused of child molestation, and young children being needlessly put through the trauma of being taken from their parents, authorities and society alike grew more skeptical of such accusations.*

by anonymity and no longer hindered by editors choosing what will and will not be published. Not only does the Internet offer anonymity, it also gives access to relevant information that makes it more likely for stories of abuse to be shared, and it allows for connections with others, without the need for proximity. This offers encouragement and an alternative in-group, in case your own does not believe you, or decides you yourself were to blame.

Chapter 4: What are the consequences of the secular protection of the confessional seal?

The confessional seal, also known as the Sacrament of Penance and Reconciliation¹¹⁵, is pivotal to the Roman Catholic faith. The seven sacraments, of which the Sacrament of Penance and Reconciliation is one, form the core of the religion. Even though it is not practiced nearly as much as it used to be, the *sigillum* being respected under all circumstances does have an effect on the priests on one hand, and the confessors¹¹⁶ on the other.

In order to answer this chapter's sub question, we will look at possible scenarios and examine what the consequences would be for Catholics (both clergy and laypeople), and how well this approach would work to aid in the protection of children. This will be the main aspect used to determine how useful abolishing secular protection of the confessional seal would be, because it is often cited as the reason this protection is a problem, and in some cases, the secular protection is only withdrawn for confessions that involve crimes against minors. The first scenario will explore the *status quo* in the Netherlands, in which secular protection of the *sigillum* is in place. In the second scenario, we will look at a situation in which this protection has been revoked.

4.1 Scenario 1

The current situation in the Netherlands allows for a priest to be exempt from testifying, should his testimony relate to something he has learned in confession. Chapter 2.2.2 details the Dutch legal system regarding the rights and duties of witnesses in a court case, including the exceptions to the mandatory testifying. We will therefore not repeat this legal framework here.

The *sigillum*, as it is understood today, focusses on repairing the bond between the sinner and God, against whom they have offended, explains Chu¹¹⁷. This is also the case if another person has been hurt by the sin. While it is believed that Christ took on all of our sins when he died on the cross, and the way to salvation is accepting this fact as truth¹¹⁸, the individual is required to initiate the reconciliation, by confessing the sin and accepting the penance the priest deems sufficient¹¹⁹. The sin is believed to harm the sinner, as it damaged their relationship with God and thereby their spiritual wellbeing. In secular circles this could be explained as the way your actions affect your self-esteem and, as a result, your mental health. By taking confession, the Sacrament of Penance and Reconciliation, the sinner takes the first step in healing themselves, through healing their relationship with God¹²⁰. This will lead to the betterment of the self. Of course, a sinner can repeat the same sin, as a form of relapse. But in order to be seen as sincere, which is seen as a requirement for the confession to take effect and actually make a difference in the sinners eligibility for Heaven, it is

¹¹⁵ Secretariaat Rooms-Katholiek Kerkgenootschap(1995). *Katechismus van de Katholieke Kerk*. Brussel: Licap, pp. 316 – 331.

¹¹⁶ The term 'confessor' can apply to both the person confessing, and the person hearing the confession. To avoid confusion, here it will strictly be used to refer to the person confessing their sins.

¹¹⁷ Chu, W.R.(2013). *A Sacrament in Crisis*. Cuadernos Doctorales De La Facultad De Teología (60), pp. 279 – 392.

¹¹⁸ This approach is known as 'laxity'.

¹¹⁹ This is called 'severity', the opposite of laxity.

¹²⁰ Chu, W.R.(2013). *A Sacrament in Crisis*. Cuadernos Doctorales De La Facultad De Teología (60), pp. 279 – 392.

frowned upon to simply commit a sin, ask for forgiveness, repeat the sin and ask again, according ¹²¹. The priest hearing confession is usually the parish priest, or someone one step higher in the clergy, if the sinner is ordained himself. Some say this is a necessity, but at the very least, it is common practice. Such behaviour would be noticed. Strictly speaking, each confession stands alone and the priest can not bring up earlier confessions, but this is sometimes done regardless. Canonical law is not as clear on whether an earlier confession can be revisited, as it is on keeping it between the priest and the confessor¹²². This causes the priest to function as a judge. Penance is a necessary step on the road to reconciliation, and the priest is the one dictating to the confessor what this penance is. Should the confessor not accept this, the priest can not grant absolution.

One could argue that, especially if the 'sin' has affected other people, or is even considered a crime, the 'sinner' should not get to move on spiritually. At least, not until whatever harm came to a third party has been undone. However, an individual being considered 'criminal', and being treated as just that¹²³, the individual is more likely to become 'criminal'. This does not mean the first accusation was false, as criminologist John Braithwaite explains¹²⁴. Being branded a criminal, however, does lower the threshold to offend again, as in the eyes of others, you are already bad, so there is little point in trying to do better. This is called the self-fulfilling prophecy.

The *Codex Iuri Canonici* is sometimes explained very rigidly, prohibiting a priest from doing anything at all in response to a confession, including mentioning the topic during Holy Mass or any materials that may periodically be provided to parishioners for study¹²⁵. Others, while agreeing that an indirect violation of the *sigillum* is indeed wrong, are of the opinion that such things are permitted, as long as the action is necessary to prevent (further) damage, makes it easier on the confessor to not repeat their sin, and the content of the confession can not reasonably be concluded from the action the priest takes in response. Under the latter interpretation of canonical law¹²⁶, the priest can take steps to prevent the confessor from repeating their sin, at least within the church. Depending on the issue, this may not be sufficient to stop it from happening again entirely, but it could be argued that it is better than the sin (or crime) not being known at all.

4.2 Scenario 2

In this scenario, what a priest learns in confession is treated no differently by the courts than information he has received in a regular conversation. This could mean that the information is considered to be confidential, in which case a priest has to abide by rules similar to those a doctor or a lawyer (and professions with similar relationships to clients) has to follow. In practice, this will not make a large enough difference to warrant three separate scenarios. Therefore, we will explore the version where anything you tell your priest is just as confidential as what you tell your neighbour,

¹²¹ Van der Helm, A.(2020). *Biechtgeheim in de verdrukking?* Tijdschrift voor Religie, Recht en Beleid, 2, pp 57 – 68.

¹²² Codex Iuri Canonici 984

¹²³ *Denying them the benefits of receiving the Sacrament of Penance and Reconciliation would count as treating them differently.*

¹²⁴ Lilly, J.R., Cullen, F.T. & Ball, R.A.(2011). *Criminological Theory. Context and Consequences, 5th Edition*. Los Angeles: Sage Publications, pp. 145 – 147.

¹²⁵ *This is not as common in the Roman Catholic Church, as it is among Protestants, but there are churches that have meetings similar to Sunday school, or a blog that invites readers to explore their thoughts on a certain topic or verse, and so on.*

¹²⁶ *This interpretation is in line with former uses of the confession, and in order for the priest to be charged with indirect violation of the sigillum, a complaint would need to be filed. Since this would remove any doubt about the contents of the confession, and it may be difficult to prove the priest did not plan on mentioning something, or making changes in his parish, etc., before the confession was heard, it is unlikely, albeit not impossible, to come to this.*

with the occasional sidenote, should the law on confidentiality change the outcome in any way.

Currently, there is discussion about whether something was an actual confession, rather than someone confiding in a person who just so happened to be a priest. With the secular protection of the confessional seal revoked, this no longer matters in the context of the Dutch legal system¹²⁷. At best, the interaction should be handled according to the guidelines regarding client confidentiality (see Chapter 2.1.1), but in many cases it will not be protected at all. This is relevant in two different sets of circumstances, namely reporting a crime, and testifying in either an ongoing investigation or a court case.

Anyone can report a (suspected) case of child abuse or child neglect. The Netherlands does not have a system with mandated reporters, although there are procedures in place that professionals such as teachers and doctors are meant to follow¹²⁸. Since they work closely with children and have the right knowledge to notice signs of abuse, more is expected of them in terms of (early) detection. Whether or not priests should be included in this category depends on how one views their positions. On one hand, they are in a position of trust in relation to other Catholics at least, and tend to know their parishioners, even though not as intimately as they would have in the pillarization-era. On the other hand, priests do not normally receive any training in child psychology or any other subject that could help them spot signs of abuse, or to be any better equipped to take action than a random member of the public.

Canonical law does not prevent a priest from reporting abuse, or any other crime, as long as the suspicion of abuse does not stem from what is heard in confession. In this, there is little difference between priests and everyone else. Very few cases come to light through the abuser confiding in someone, but rather, the victim telling a trusted adult, behavioural signs that something is amiss, bruises and other unexplained injuries, and so on. Consequently, the only scenario in which the priest is not allowed to report his suspicions, according to canonical law, is when he has been told under *sigillum*. It does not matter whether the abuser, the victim, or a witness told him. This is not a situation that would occur regularly¹²⁹.

However, not nearly every report of potential child abuse leads to a full investigation, especially if it is not the victim or their parents doing the reporting. On top of that, it is not illegal to refrain from reporting suspicions of child abuse. Besides, it would be incredibly difficult to determine who knew what, and when they knew it, especially since suspecting and knowing are not the same thing.

As mentioned earlier, the mere fact that a priest's only contribution to the investigation that is held back by the secular protection of the confessional seal, is what he has been told, does not keep him from being a useful witness. After all, hearsay evidence is allowed in court in the Netherlands¹³⁰. However, it will not lead to a conviction by itself. For that, things like physical evidence and statements from witnesses who observed the actual crime, or at least, behaviours relating to it, are a necessity for a conviction. This makes it so that the only case in which a priest breaking the confessional seal would make a difference, is if the other evidence is strong, but not conclusive, and the priest's statement is the tiny grain that tips the scale.

During a police investigation, nobody can be forced to testify, so a priest would be entirely free to refuse to cooperate in an investigation. One could argue the ethics of such a decision, but legally, he would be within his rights to do so. It is only when the case is heard by a judge that testifying

¹²⁷ *It still does in the context of church law.*

¹²⁸ Bonnet, R.(2013). *De Kleine Gids Kindermishandeling. Achtergronden, Signaleren en Meldcode*. Deventer: Kluwer, p. 39.

¹²⁹ Sainsbury, M.(2020). *Australian Archbishop rejects breaking seal of confession for abusers*. Catholic News Service, 16 January 2020. Consulted on 5 April 2021.

¹³⁰ HR 20 december 1926, NJ 1927, 85, De Audit-arrest

becomes mandatory.

On a final note, a priest can not testify to what he does not know. At the same time, he is obligated to hear confession, even if he has every reason to believe the contents are going to put him in an impossible position between secular and canonical law. He can not refuse to hear confession¹³¹, unless the request is unreasonable¹³². Of course, it is highly unlikely for a priest to know what the confessor is going to say beforehand, so deciding whether the request is reasonable based on that would not only be unethical, but also impossible. Being required to reveal what is said, whether that is when any secular law is broken, or just in certain cases, puts the priest at a constant risk of having to break a law themselves, their only choice being which one it will be, the secular or the canonical one. This could easily result in the discouraging of confession, in spite of the spiritual and/or psychological benefits it has for both the individual and the community they are a part of.

4.3 Conclusion

The result of revoking the secular protection of the confessional seal would be that less, not more, cases of child abuse will be prevented or ended swiftly.

Confession is a safe way of informing someone of your inner struggle to do what is right. If one did not recognize one's own actions (or desires) as wrong and a potential reason not to be let into Heaven, one would not feel the need to confess them. Doing so, can be a first step of making sure it will not happen (again). This is in part because the repentant believer must be sincere in their request for absolution, which means they can not repeat their sin over and over again and still expect forgiveness. Since one usually confesses to one's own parish priest, this pattern would quickly be picked up on. Secondly, if the 'sin' in question has to do with abusing children, the priest is allowed to require the confessor to contact the police, go to therapy, take themselves out of situations that would give them the opportunity to abuse a child, and so on, before granting absolution. Lastly, the priest hearing the confession is usually in charge of whatever religious context the confessor operates in and can introduce measures to protect the children, once he learns this is necessary. While this in itself does violate *Codex Iuris Canonici* 938 and 1388, this would be an indirect violation, which requires a milder punishment. In order for this to become a matter for the Roman Catholic Church's court, a complaint would have to be filed, otherwise, there would be no way of telling what inspired the priest to make his decisions. It is highly unlikely for a child predator to complain about their priest taking away their access to children based on the contents of their confession. This would be different if the priest recounted the confession verbatim to the police or judge.

Should that become a requirement, people will become far more careful about what they confess, resulting in the priests inability to steer them in the right direction, or to take action in order to protect his parishioners or subordinates. Of course, the desirable outcome would be for every child predator to be punished for their actions, but if they are already afraid enough for their souls to confess to a priest, it is likely that they are open to his instructions on what to do before they can be absolved, which might include reporting themselves to the police. Even if they choose not to, the priest can now take action to at least protect the children in his own parish, while otherwise, he would not have known they were at risk.

Chapter 5: Conclusion

With this, we can finally answer the question *Would it be beneficial to revoke the protection of the confessional seal at this point in time?*

It would not be beneficial to revoke the protection of the confessional seal at this point, at

¹³¹ Codex Iuris Canonici 843

¹³² Codex Iuris Canonici 986

least, not in the Netherlands.

The idea behind putting limits on religious freedom when it comes to the confessional seal is largely driven by the desire to keep children out of harm's way. Taking this into consideration, it would have made sense to put an end to the secular exception made for the *sigillum* in criminal justice cases, if this would have been done at the height of the child abuse within the Church, or perhaps even shortly after. At this time, half a century has passed. Many perpetrators are already dead and so are the priests who heard their confession, if they even did mention their crimes in the confession at all. If it was the *sigillum* that caused the silence on the abuse that went on, the Samson-Committee would not have found similar patterns in non-Catholic institutions as well¹³³.

Since the 1970's, there has been a shift both in how the Dutch experience their in-groups and out-groups, as well as the general attitude towards people and institutions entrusted with a level of power. It is becoming increasingly unlikely for someone, even a child from a religious family, to not have access to people from various in-groups, making it easier to ask someone who does not have any sort of relationship with an abusive individual (in any sense of the word) that is targeting you or others in one of your in-groups for help. Even if someone's social life revolves around a single institution, the internet offers resources that can help you. It has also become far more unlikely for people to blindly trust those with a position of authority, in fact, those in a position of power tend to be looked at with suspicion. Even if that does not happen to be the case within the in-group they have a position of leadership in, there is scrutiny from the out-group and the internet makes it easy for information to spread very quickly. Religion, and particularly the Catholic religion, does not play a huge role in Dutch politics either. There are a few confessional parties, but none of them exclusively Catholic. There is not a political powerhouse that needs to be taken down in order to protect the rights of others.

Even though the Sacrament of Penance and Reconciliation does not play as prominent a role in Catholic daily life as it once did, it is still something that is important within the religion. The dwindling number of people taking part in this practice, along with the usually benign nature of the sins confessed, makes it highly unlikely there are going to be many situations in which the confession will cover a sex crime, much less one against a minor. Even if it does, the perpetrator clearly knows they were wrong and fears for the consequences in the afterlife, otherwise, confession would not be a logical step. The priest is allowed to make absolution dependent on accepting the worldly consequences for one's actions, which could include reporting yourself to the police, or having a conversation about this with the priest, while not in confession, thereby absolving the priest from his duty to keep quiet. In fact, the option to speak openly, preferably before a crime has been committed, can be helpful in reminding the person with the criminal urges that they are still human and more than said urges, encouraging them to prevent themselves from doing any (more) harm. That is especially beneficial to society when such a dialogue takes place very early on and the *sigillum* could make this much easier to initiate.

Revoking the secular protection of the confessional seal would therefore be merely symbolical, and counterproductive. There are plenty of other options, if one is concerned about child safety, such as enforcing policies that every group of children needs to have two adults instead of one, or making a so called certificate of conduct mandatory, even in religious institutions.

¹³³ Bonnet, R.(2013). *De Kleine Gids Kinder mishandeling. Achtergronden, Signaleren en Meldcode*. Deventer: Kluwer, p. 53 – 55.

Sources

Literature:

Bannier, F.A.W., Duijst, W.L.J.M., Fanoy, N.A.M.E.C., Meijers, A.P.H. & Tempelaar, J.M.(2008). *Beroepsgeheim en verschoningsrecht. Handboek voor de advocaat, medisch hulpverlener, notaris en geestelijke*. Den Haag: SDu.

Bonnet, R.(2013). *De Kleine Gids Kindermishandeling. Achtergronden, Signaleren en Meldcode*. Deventer: Kluwer.

Bovend'Eert, P.P.T., Broeksteeg, J.L.W., Bunschoten, D.E., Fleuren, J.W.A. & Hoogers, H.G.(2018). *Grondwet en Statuut. Tekst & Commentaar*. Deventer: Wolters Kluwer.

Van Bijsterveld, S.(2013). *Een vergeten episode uit de Schoolstrijd: de ontdekking van 'openbaar' en 'bijzonder' onderwijs*. Tijdschrift voor Religie, Recht en Beleid, 4, pp. 16 – 32.

Dale, K.A.(2007). *Hiding behind the Cloth; child sexual abuse in the Catholic Church*. Journal of Child Sexual Abuse, 16(3), pp. 59 – 74.

Daly, G.(2017). Confessional seal threats would be unconstitutional here – expert. The Irish Catholic, 17 August 2017.

Deetman, W.(2012). *Seksueel misbruik van minderjarigen in de rooms-katholieke kerk: rapport van de commissie onderzoek*. Amsterdam: Balans.

Deetman, W.(2013). *Seksueel misbruik van, en geweld tegen meisjes in de Rooms-Katholieke Kerk*. Amsterdam: Balans.

Van Kempen, P.H.(2011). *Religie in het Wetboek van Strafrecht*. In: Broeksteeg, H. & Terlouw, A.(red.). Overheid, recht en religie. Deventer: Kluwer, p187.

Van der Helm, A.(2020). *Biechtgeheim in de verdrukking?* Tijdschrift voor Religie, Recht en Beleid, 2, pp 57 – 68.

Hofman, E.(2017). *Vermanen, vergeven en verzwijgen. Het mysterie van de biecht in de achttiende en negentiende eeuwse Zuidelijke Nederlanden*. Tijd-Schrift, 7(2), pp. 34 – 55.

Huysmans, R.G.W.(2005). *Kerkelijk strafrecht. Sancties in de kerk*. Leuven: Peeters.

De Jaegere, A.(2020). *Veroordeling van priester voor schuldig verzuim na zelfdoding vriend in beroep bevestigd*. VRT NWS, 22 September 2020.

Lenarduzzi, C.(2019). *Katholiek in de Republiek: de belevingswereld van een religieuze minderheid 1570 – 1750*. Nijmegen: Uitgeverij Vantilt.

Moriarty, R.T.(1998). *Violation of the Confessional Seal and Associated Penalties*. Jurist 58(1), pp. 152 – 170.

Post, H.A.(2010). *Gelijkheid als nieuwe religie. Een studie over het spanningsveld tussen godsdienstvrijheid en gelijkheid*. Nijmegen: Wolf Legal Publishers.

Robertson, G.(2010). *The Case of the Pope. Vatican Accountability for Human Rights Abuse*. London: Penguin Books Ltd.

Sainsbury, M.(2020). *Australian Archbishop rejects breaking seal of confession for abusers*. Catholic News Service, 16 January 2020.

Schenderling, J.(2008). *Beroepsethiek voor pastores*. Budel: Damon.

Secretariaat Rooms-Katholiek Kerkgenootschap(1995). *Katechismus van de Katholieke Kerk*. Brussel: Licap.

Speelman, H.A.(2010). *Biechten bij Calvijn. Over het geheim van heilig communiceren*. Heereveen: Uitgeverij Groen.

Studiebijbel. De Nieuwe Bijbelvertaling met uitleg, achtergronden en illustraties. Haarlem: Nederlands Bijbelgenootschap.

Wright, S.A. & Palmer, S.J.(2016). *Storming Zion, Government Raids on Religious Communities*. Oxford: Oxford University Press.

Laws, court cases and miscelleaneous:

Dutch Constitution, article 120

Art. 207 Sr.

Art. 213 Sv. lid 1

Art. 213 Sv. lid 2

Art. 216a Sv.

Art. 18, Universal Declaration of Human Rights.

Codex Iuris Canonici 964

Codex Iuris Canonici 938

Codex Iuris Canonici 984

Codex Iuris Canonici 1388

HR 20 december 1926, NJ 1927, 85, De Auditu-arrest

RB. Groningen, 21 februari 1940, NJ1941/33

Kamerstukken II 1975/76, 13872, 3, p32

Kamerstukken II 1987 – 1988 19427, 8, p9

Letter Pope Benedict XVI – *Aan de Katholieken van Ierland. Over de gevallen van seksueel misbruik van kinderen*. 19 March 2010.