



COLLEGE OF ARTS AND SCIENCES
DEPARTMENT OF RELIGION

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Good morning and thank you for giving me the opportunity to speak to you about S. 16 which proposes to eliminate the exemption for members of the clergy as mandatory reporters in 33 VSA4913.

I am speaking this morning from location of Religious Studies. My discipline is concerned primarily with the way that phenomena we call religions work in society. In other words, we don't speak from a particular religious community and sectarian position, but seek to understand what religions do, how people live within the statements, practices and institutions the generally comprise the things we call religions. One of the things that we spend a lot of time doing, esp in classes, is interrogating the meaning of the word religion. It is a particularly interesting and vexing term because on the surface its meaning is clear, but it doesn't take long to understand that groups of people – religious actors, religious institutions, governments, academics, media, everyday people – define religion in different ways. Some of these differences are large, some are quite small, but it has an impact on shaping what we consider religion, and how we interrogate it.

My primary expertise is in the religions of Asia. I conduct research among Buddhist monastic communities in China and Thailand, examining the education and training of monks, their self-understandings as both religious actors and citizens and their entanglements with legal pluralism – that is how they are governed by both religious and secular legal systems. These issues shift into my teaching where I often teach about religious disciplines, religions and law, religion and nationalism in the US as well as in Asia. Religious freedom is a discourse/practice that I have had to think about a good deal within the last decade.

In considering the clerical exemption in 33 VSA 4913, there are two global points I would like you to take away: one about the diversity of religious practices/communities; two about the challenge of specificity.

First, and I think most importantly, I want you to understand that religious communities and practices are incredibly diverse. I am sure that you understand this generally, but it is really a point that cannot be emphasized enough. We see an attempt to recognize this diversity in the definition of members of the clergy in 33vsa 4912.8.

(8) “Member of the clergy” means a priest, rabbi, clergy member, ordained or licensed minister, leader of any church or religious body, accredited Christian Science practitioner, or person performing official duties on behalf of a church or religious body that are recognized as the duties of a priest, rabbi, clergy, nun, brother, ordained or licensed minister, leader of any church or religious body, or accredited Christian Science practitioner.

The language here is broad and seeks to be inclusive, though it misses some important categories such as imams, and there are also squishy categories in the definition such as “religious body.” [what counts as a religious body can be difficult to define with certainty if we don't agree on what constitutes “religion”] However, in thinking about the diversity of religious communities and

practice, our language often lets us down. When we speak of religion, or Christianity, we often have a specific religious community/tradition that shapes the statements or models we create. That is, one religion/sect/etc is the “normal” one, the model for all others. In US history, this has often been protestant forms of Christianity. The aspects of religious life that are “normal” for mainline Protestants become part of what is the norm for society and religious aspects of this become invisible and made secular (non-religious). [led to significant anti-catholic bias within American history].

We see a concrete example of what I am talking about in clerical exemption of 33 VSA 4913. While the language here is general and generic, I suspect that the model behind it is that of the confessional of the Catholic Church. In other words, it normalizes as generic and general, a practice that is actual specific to one form of religion. Does this mean that the exemption, unintentionally creates an establishment issue? I don’t want to make a claim here without greater consideration, but I think that this resonates with other unintentional establishment clause cases that I have read about.

When Senator Hashim reached out to my department to invite someone to come speak today, he asked me to speak generally about confidentiality and religious specialists. Given the context of this particular proposed amendment to the law, I understood him to be asking me to talk about how religious specialists or leaders – the folks that 33 VSA 4912.8 defines so laboriously – handle specific pastoral moments. When a religious specialist hears something that is troubling, such as the report of abuse, what are they supposed to do about? Is keeping confidence a core part of what religious communities do, or is it more common to share that information? Is it mandated by religious law?

I have a really unsatisfying answer – it depends. There is not a single answer in part because different religious communities have very different institutional structures. They have different pastoral practices and understandings, and they have different ways of intersecting with secular law. The confession is one form of course, and it is guided by canon law. If we consider another common form of Protestant Christianity, Presbyterians, they handle this very differently. For example a 2004 document from the PC USA: “Life Together in the Community of Faith: Standards of Ethical Conduct for Ordained Officers in the Presbyterian Church USA” has as one of his statements:

I will conduct my ministry so that nothing need be hidden from a governing body or colleagues in ministry. Therefore I will....respect the privacy of individuals and not divulge information obtained in confidence without express permission, unless an individual is a danger to self or others. (Standards of Ethical Conduct, Approved by the General Assembly of the PC USA 1998, published 2004, 2.6, p 9). This implies that when there is a concern with something like abuse, the denomination is saying we believe that we have a responsibility to share it. In other words, I believe we can say that most religious specialists when engaged in pastoral moments recognize the importance of confidentiality, however – and this is really important - the status of the confidentiality and therefore the responsibility of the hearer also varies widely. Religious communities do not agree with the status of these claims and so there is a danger – common to laws about religion – of unintentionally normalizing one type of practice or relationship, of privileging one form of religion over another. This is the unintentional establishment issue I referred to above.

The second point I want to make is about the language of the exemption. I understand that this language is attempting to be clear, but I am concerned that it fails in this. The first prong of the exemption test is that it be made to a member of the clergy in their role as a spiritual advisor. I spoke a moment ago about the problem of the meaning and referents of the word “religion,” and the same is true of words like sacred and spiritual. They seem to have clear meanings, but when we

look at them closely they can mean very different things depending on the context. This term “spiritual advisor” has a set of meanings that have to do with this history of Christianity, but it also has to do with “meaning-making” concerns of post-Cold War US. My students refer to themselves as “spiritual but not religious.” By this they often mean that they are on a meaning-making quest that has to do with the ultimate nature of the world, but it also means that my classes are themselves moments of “spiritual advising” for some students. Moreover, because there is latitude on what a “religious body” might be, something like a yoga teacher may be seen in some contexts as engaged as a “spiritual advisor.” I do not believe this was the intention of the bill’s authors, but this is the point. There is less clarity to the language here than is apparent. As a result, while this sentence seeks to define the location when the communication takes place, it is really an apparent clarity that is broken down by the diversity that I have been speaking about.

Second point has to do with the third prong of the exemption’s test: “(3) intended by the communicant to be an act of contrition or a matter of conscience.” Again this has to do with defining religion. A really common way of defining has to do with “belief”. In Religious Studies we have moved away from this because most of us do not have access to the internal thoughts of others, just their written and spoken statements, as well as observations of action. I worry that the language of this statement implies that religious specialists know what is happening in the heart of someone else. It may lead them to be misled – sincerely and unintentionally.

There are challenges here, and I recognize the challenge that you face in considering this change. There is the potential infringement on free exercise that has also been described here; but there is also what I would suggest is a concern with an establishment problem with the way that the exemption is currently written, normalizing Catholic confession and its status as a generic religious one. But there are two points to make – first, in our society, there is always the need to balance the rights, none of them are primary, and religious actors are also subject to secular legal constraints in a variety of ways. Religions do not sit outside the state, but within it. Second, this is not a light matter. It is not about robbery or fraud; it is about the abuse of children, and ending it. The state has decided that this is a serious matter, such that it compels a number of actors to engage in its reporting.

Religious institutions in the US and elsewhere have not been particularly effective at protecting victims of abuse. The Catholic Church, the Southern Baptist Convention, Zen and Tibetan monasteries in the US have been implicated in the last several decades (and more recently) both in instances of sexual abuse and their cover up. 33 VSA 4913 seeks to end sexual abuse of children by requiring certain groups of people to report it when they hear about it. The clerical exemption makes it easier for these institutions to not protect alleged victims.

I would urge you to move forward with S. 16 eliminating the clerical exemption.

Should you have any questions, do not hesitate to contact me (thomas.borchert@uvm.edu).

Yours,



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