



“Pro-Choice” Catholic Politicians and the Law

By Charles M. Wilson

Like any loving parent, Holy Mother Church reserves the right to discipline her errant children, both for their own good and for the good of the community. This principle is reflected in canon 1311 of the 1983 Code of Canon Law now in force: *The Church has the innate and proper right to coerce offending members of the Christian faithful with penal sanctions.*

Penalties in General

Unfortunately, the 1983 Code does not tell us precisely what a penal sanction is. In accord with standard practice, we can look to the previous (1917) Code for a definition, which is found in c. 2215: *An ecclesiastical penalty is the deprivation by the legitimate authority of some good for the correction of a delinquent or the punishment of an offense* (unofficial translation). The 1983 Code (c. 221, §§ 2 and 3) has added safeguards to insure that the faithful can be judged only by precepts of the law applied with equity and that penalties can be inflicted only by due process.

Contrary to what Catholics seem to assume, excommunication is not the only penal sanction that can be inflicted on members of the laity. In fact, there are a number of options available. The first thing that we should consider is that canonical penalties fall into two broad classifications, medicinal and expiatory. As the name implies, the former are intended to restore the offender to full communion. The only medicinal penalties are excommunication, interdict and suspension, the last of which can affect only clerics. Expiatory penalties are intended to repair damage done to the community and can include deprivation of office, power, function, right, privilege, faculty, favor, title or insignia (c. 1336, §1, 3^o). These prohibitions can be in force perpetually, for a certain time or for an indeterminate time. Also, their scope can be limited to or outside of a certain place.

Canonical penalties can be incurred in two ways. Some offenses, such as heresy, apostasy and actually procuring an abortion, are considered so serious that a Catholic who commits such a crime incurs automatic (*latae sententiae*) excommunication. For all other offenses, the penalty must be imposed either by judicial or administrative process.

Besides medicinal and expiatory penalties, the law provides for penal remedies, i.e., warning or rebuke, and penances. The sad fact is that the use of any means to correct offenders and to repair the damage they have caused is, for all practical purposes, non-existent.

The Gravity of Abortion

God, the Lord of life, has entrusted to men the noble mission of safeguarding life, and men must carry it out in a manner worthy of themselves. Life must be protected with the utmost care from the moment of conception: abortion and infanticide are abominable crimes.

Second Vatican Council,
Gaudium et spes, No. 51

Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable. Direct abortion, that is to say, abortion willed either as an end or a means, is gravely contrary to the moral law.

Catechism of the Catholic Church,
No. 2271

A person who procures a completed abortion incurs a latae sententiae excommunication

Canon 1398, CIC 1983



Canon 1398 essentially repeats the text of c. 2350, §1 of the 1917 Code. In view of the constant teaching of the Church as cited above, this is not surprising. Even homicide does not result in *latae sententiae* excommunication, unless the victim is the Roman Pontiff (c. 1370).

However, the question is not whether a particular politician has procured or cooperated in procuring a completed abortion. As far as I know, none has. The question is whether the cumulative effect of his or her words and deeds constitutes the denial of the Church’s teaching on this very grave matter.

“Pro-Choice” Catholic Politicians

It is an indescribable atrocity that the secular laws in the United States, Canada and much of Europe no longer protect the lives of unborn humans. Catholics should be in the front ranks of the struggle to protect innocent and helpless lives. Although there are many Catholic heroes in the pro-life

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movement, we have witnessed the terrible scandal of Catholic politicians giving witness not to the teaching of their Church but to political expediency. The scandal has been compounded by the near total lack of intervention by ecclesiastical authorities.

Many good and faithful Catholics have become increasingly frustrated as they see Catholics running for public office, wrapping themselves in the mantle of the Church to garner votes while refusing to give witness to her teachings on the sanctity of human life. It is perfectly understandable that they have called for the excommunication of pro-abortion Catholics running for or holding elective office. In addressing the scandal caused and damage done to the community by “pro-choice” Catholic politicians, however, we must first recognize the difference between the moral order and the legal order. Then we must understand that advocating any canonical penalty and actually bringing it about are two different things.

Most “pro-choice” Catholics are clever enough to avoid an offense that would result in automatic excommunication. If they were going to be called to account, a penal process would be necessary and we should remember that Catholics accused of violating Church law have rights just as do those accused of violating state or federal law. Although the presumption of innocence is not expressed as clearly in canon law as it is in American law, there are additional factors explicitly stated in the Code that reduce or eliminate accountability. The upshot is that imposing a penalty is very difficult in canon law; but this does not excuse ecclesiastical authorities from their responsibilities to deal with violators.

“Pro-Choice” v. Pro-Abortion

It must, in any case, be clearly understood that whatever may be laid down by civil law in this matter, man can never obey a law which is in itself immoral, and such is the case of a law which would admit in principle the liceity of abortion. Nor can he take part in a propaganda campaign in favor of such a law, or vote for it. Moreover, he may not collaborate in its application.

Sacred Congregation for the Doctrine of the Faith, Declaration on Procured Abortion, November 18, 1974

No Catholic can responsibly take a “pro-choice” stand when the “choice” in questions involves the taking of innocent human life.

Resolution on Abortion, National Conference of Catholic Bishops, November 1989

Each and every thing which is proposed definitively by the magisterium of the Church concerning the doctrine of faith and morals, that is, each and every thing which is required to safeguard reverently and to expound faithfully the same deposit of faith, is also to be firmly embraced and retained; therefore, one who rejects those propositions which are to be held definitively is opposed to the doctrine of the Catholic Church.

Canon 750, §2, CIC 1983

Few Catholic politicians have dared manifestly and expressly to deny the Church’s teaching on the immorality of abortion. This would be out of the question because it is not necessary and could result in the loss of Catholic votes. Instead, in many cases they proclaim their personal adherence to the Church’s teaching while stating that they cannot use the law to impose it on others nor to deny women the freedom to choose death for their unborn children.

Aside from its intrinsically erroneous application to abortion, this so-called “pro-choice” justification has been invoked in reference to no other controversial subject. No one has proposed that one who, for example, opposes reasonable steps to protect the environment or to protect against the effects of religious and racial bigotry should be free to endanger the environment or to violate civil rights while hiding behind the facade of “pro-choice.”

Thirteen years ago the U.S. bishops portrayed use of this ploy as irresponsible. It was true then and it remains so today, but there has been one very important change in the landscape. In 1989 c. 750, §2 did not exist. Pope John Paul II added it to the Code in 1998. At the same time, he also added a clause to c. 1371, 1^o, which states that a person who obstinately rejects the doctrine mentioned in c. 750, §2 and who does not retract after a warning is subject to a just penalty.

The Responsibilities of Catholics Who Hold Public Office

§1. Since, like all the Christian faithful, lay persons are designated by God for the apostolate through baptism and confirmation, they are bound by the general obligation and possess the right as individuals, or joined in associations, to work so that the divine message of salvation is made known and accepted by all persons everywhere in the world. This obligation is even more compelling in those circumstances in which only through them can people hear the gospel and know Christ.

§2. According to each one’s own condition, they are also bound by a particular duty to imbue and perfect the order of temporal affairs with the spirit of the gospel and thus to give witness to Christ, especially in carrying out these same affairs and in exercising secular functions.

Canon 225, CIC 1983

This canon, like many others in the Code, has its roots in the teaching of the Second Vatican Council (*Apostolicam Actuositatem*, No. 2). Of particular significance here are the opening words of the second paragraph. All members of the lay faithful are called to this mission. “The one who cleans the streets is under the same obligation to witness to the faith as the one who heals the sick.” (Commentary by Diane L. Barr in the New Commentary on the Code of Canon Law, Canon Law Society of America, 2000, p. 293.) Nonetheless, those members of the lay faithful who hold public office or who have achieved prominence in the professions have a special responsibility because their words and deeds receive greater public notice and are generally given higher credibility than are given to the words and deeds of those who clean streets.

One illustration of this reality is the composition of the National Review Board, which was recently created to assist the Church in the United States in dealing with the sexual abuse of minors by clerics. In this time of crisis, the Church herself turned not to ordinary people such as street cleaners, police officers or factory workers. The thirteen members of the Board consist of the governor of a state, two sitting judges, a former Member of Congress and Presidential Chief of Staff, three lawyers including the dean of a law school, a university president, a physician, a psychologist, the former director of a state Catholic conference, a retired publishing executive and an industrialist.

“Every one to whom much is given, of him will much be required; and of him to whom men commit much they will demand more.” (Luke 13:48) The faithful naturally look to

Catholics who have achieved prominence to give good example. This is especially true of those who have been entrusted with public office. When Catholic holders of public office do not personally live by teachings of the Church and appear to do nothing more than give them mere lip service, the faithful may conclude that these teachings are optional and need not be taken seriously. When office holders and candidates are not corrected or called to account in any way by Church authorities this conclusion is reinforced, despite whatever public declarations to the contrary may be issued.

The Obligation of the Community

The community simply cannot afford to take no notice of those who reject sharing in the Church's mission or refuse the call to Christian witness in a significant way.

Commentary by Thomas J. Green in
The Code of Canon Law: A Text and Commentary,
Canon Law Society of America, 1985, p. 894.

All people, Catholics and non-Catholics alike, are called to seek the truth concerning God and His Church and, once they have come to know that truth, they have the right to embrace it and live by it (c. 748). Those who have been incorporated in Christ through baptism and are fully in the communion of the Catholic Church, joined in its visible structure by the bonds of the profession of faith, the sacraments and ecclesiastical governance (c. 205) possess additional rights and obligations. In fulfilling their obligations and exercising their rights in pursuit of the salvation of souls, the members of the Church Militant cooperate and support one another through prayer, work and sacrifice. If a member of the faithful should fail seriously in supporting the saving work of the Church, then other members of the community, recalling c. 212 and the spiritual works of mercy, have the right and the duty to seek the intervention of the competent ecclesiastical authority. This intervention, which may take the form of canonical sanctions, not only repairs the damage done to the community but benefits the offender by pointing him or her down the path of reconciliation.

As any parent knows well, proper discipline is motivated by love and must sometimes be reinforced by punishment. Otherwise, discipline would become pointless. Children who grow up without proper discipline often do harm to themselves as well as to the community. Thus, it is for good reason that the venerable metaphorical expression of the relationship of the Church to the faithful is that of a mother to her children. It is within this context that the infliction of penalties on those members of the faithful who manifestly reject the Church's teaching should be viewed.

Possible Sanctions

The correction of an offender usually begins with a complaint placed before the competent ordinary. Such a complaint is called a denunciation. The next step is a preliminary investigation of the evidence or allegations claiming the existence of a delict. This is done by the competent ordinary or someone delegated by him (c. 1717-1719). If it is determined that a penal process should be initiated, the choice must be made between an administrative and a judicial process. Also, as in the case of a "pro-choice" politician charged with violating c. 750, §2, a prior warning may be required.

One often hears of well-meaning Catholics who urge the excommunication of "pro-choice Catholic politicians," as if this were the only penalty to be had. In fact, many corrective measures are available. First, there are the medicinal censures of excommunication or interdict. Second, there are expiatory penalties. These include deprivation of a function, right, privilege, favor or title. Also, legislators can devise other expiatory penalties that particular circumstances might require. Finally, there are the penal remedies of warning or rebuke (c. 1339), private or public penance (c. 1340, §§1-2) or the combination of a penal remedy and a penance (c. 1340, §2).

Besides correcting the offender and repairing the damage caused by his or her actions, corrective action would also provide the Church with an opportunity to clarify and proclaim with greater force her teaching on the sanctity of human life, both to her own faithful and to the community at large.

The Challenge

The lay faithful have been assigned the task of imbuing and perfecting the temporal order with the spirit of the Gospel. There is no question that the temporal order will benefit greatly if the faithful diligently pursue and accomplish this mission. Judging by all appearances, however, much remains to be done and many observers have claimed that the faithful are losing ground. In other words, Catholics are adopting the values of the secular culture rather than the converse. The reasons for this sad state of affairs are too numerous and complex to discuss here. But it is hardly helpful when members of the faithful observe individuals holding or running for public office who claim to be Catholic while hedging their acceptance of the teaching of the Church in much the same way as they are accustomed to hedging on legislation that is beneficial to them but politically unpopular.

The law counsels restraint in the infliction of penalties and indeed c. 1341 urges that an administrative or judicial process should be initiated only as a last resort. Perhaps it could be argued that other means of pastoral solicitude could bring about a change in the hearts of "pro-choice" Catholic politicians. But as far as I am concerned, this is a vain hope. More stringent measures are needed.

The Foundation has just completed the preparation of a denunciation of one of the thousands of "pro-choice" Catholic politicians. We are ready to prepare more, but we will need the help of people on the local level who are willing to gather the evidence. Then, regardless of the strength of the denunciations, it is up to the bishops to act. Let us pray that they will be inspired to do so.

