

taking a step backwards. The removal of difference in fact creates a problem, not a solution<sup>31</sup>.

Church teaching asserts that the sexual differences of male and female are an essential element of the marital covenant. This is founded on the revealed nature of marriage in Sacred Scripture. Humankind is created in the image of God and created for rightly ordered relationships with God and their spouse<sup>32</sup>. The marker of authenticity for these relationships is fruitfulness and openness to new life. Dr David Delany in a recent article in the *Homiletic and Pastoral Review*<sup>33</sup> argues that the majority of Christians no longer understand or subscribe to marriage as revealed in Scripture. He proposes a new evangelisation of the message to address the confusion about man and woman in our society.

If men and women are to understand themselves and each other, acknowledgement of the created order must be the key. As Delany puts it 'Humanity's complementary imaging of God is directly tied to man's capacity for procreative fruitfulness'. He goes on to explain how our understanding of the 'processions' of the Blessed Trinity further reveals the self-gift to the other intrinsic to marriage. Pope Francis says the same in *Amoris Laetitia*.

The word of God tells us that the family is entrusted to a man, a woman, and their children, so that they may become a communion of persons in the image of the union of the Father, the Son, and the Holy Spirit. Begetting and raising children, for its part, mirrors God's creative work<sup>34</sup>.

While the Church teaches marriage consent to be an act of the intellect (knowing) and will (intending) post-modern society seems convinced that emotions and feelings are its basis. This is a recipe for an increased incidence of nullity cases grounded in error determining the will<sup>35</sup>.

<sup>31</sup> Pope Francis, General Audience 15 April 2015.

<sup>32</sup> Genesis 1:27-28

<sup>33</sup> David H Delany PhD <http://www.hprweb.com/2016/06/the-trinity-sexual-complementarity-and-authentic-marriage/>

<sup>34</sup> *Amoris Laetitia* n.29

<sup>35</sup> Canon 1099

## Excommunication: A Red Card in the Catholic Church

Brendan Daly\*

The penalty of excommunication has been newsworthy in recent times. In 2014, Pope Francis said members of the mafia were excommunicated: "Those who follow this evil path in life, such as members of the mafia, are not in communion with God: they are excommunicated."<sup>1</sup>

In 1988 Archbishop Marcel Lefebvre was excommunicated along with four bishops he ordained without a pontifical mandate.<sup>2</sup> Pope Benedict XVI said "they were excommunicated because they had received episcopal ordination without a papal mandate,"<sup>3</sup> an automatic or *latae sententiae* excommunication. The excommunication was lifted in 2009.<sup>4</sup>

The most common offence incurring the penalty of excommunication is the crime of abortion.<sup>5</sup> It also affects collaborators.<sup>6</sup> Sister Margaret McBride RSM was a member of an ethics committee that approved an abortion at a Catholic hospital in Phoenix. She was excommunicated on May 19, 2010 and the excommunication was lifted 8 December 2011.<sup>7</sup>

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<sup>1</sup> Pope Francis, *homily*, Calabria, 21 June 2014, [http://w2.vatican.va/content/francesco/en/homilies/2014/documents/papa-francesco\\_20140621\\_cassano-omelia.html](http://w2.vatican.va/content/francesco/en/homilies/2014/documents/papa-francesco_20140621_cassano-omelia.html)

<sup>2</sup> Documents in *CLD*, vol. 8, 793-809.

<sup>3</sup> *Light of the World: the Pope, the Church, and the signs of the times*, Pope Benedict XVI: A conversation with Peter Seewald, M. Miller & A. Walker, (trans.), San Francisco, Ignatius Press, 2010, 121.

<sup>4</sup> Congregation for Bishops, decree, "Decretum remissionis poenae excommunicationis latae sententiae Episcopis Fraternitatis Sacerdotalis Sancti Pii X irrogatae," 21 January 2009, in *Communicationes* 41(2009) 94-95; Pope Benedict XVI explained his actions in "A Word of Clarification for Peace within the Church," *L' Osservatore Romano*, English ed., no. 42/11, 18 March 2009, 3-4. The Pope said that if he had known about Bishop Richard Williamson's views on the holocaust he would not have lifted the excommunications.

<sup>5</sup> Canon 1398. A person who actually procures an abortion incurs a *latae sententiae* excommunication.

<sup>6</sup> Canon 1329 §2. In the case of a *latae sententiae* penalty attached to an offence, accomplices, even though not mentioned in the law or precept, incur the same penalty if, without their assistance, the crime would not have been committed, and if the penalty is of such a nature as to be able to affect them; otherwise, they can be punished with *ferendae sententiae* penalties.

<sup>7</sup> Sister was at St. Joseph's Hospital and rebuked over abortion to save woman," in *Arizona Public*, 19 May 2010; <http://www.azcentral.com/news/articles/2010/05/15/20100515phoenix-catholic-nun-abortion.html>. *America*, 14 December 2011, <http://americamagazine.org/content/all-things/mcbride-un-excommunicated>, accessed 1 August 2015.

Sometimes excommunications occur for other offences. Father Greg Reynolds of Melbourne was excommunicated on 31 May 2013, because he continued celebrating the Eucharist when not permitted to do so and advocated the ordination of women and same sex marriage.<sup>8</sup>

### Scriptural basis for excommunication

Jesus Christ conferred on his Church the right to excommunicate members of the faithful for persevering in grave sin:

If another member of the church sins against you, go and point out the fault when the two of you are alone. If the member listens to you, you have regained that one. But if you are not listened to, take one or two others along with you, so that every word may be confirmed by the evidence of two or three witnesses. If the member refuses to listen to them, tell it to the church; and if the offender refuses to listen even to the church, let such a one be to you as a Gentile and a tax-collector. Truly I tell you, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.<sup>9</sup>

This text presents a procedure for the correction of Christians. First there is a reprimand aimed at reforming the offender. If they do not reform, the community issues an official rebuke. If they refuse to listen to the community they are to be treated as tax collectors. The community is then relieved of its responsibility towards them because they have shown that they have obstinately persisted in a grave fault.

Saint Paul heard of a notorious case of sexual immorality in the Corinthian community. Incest was illegal in Roman law, but Saint Paul exhorted the Corinthian church to use its own judicial discipline and excommunicate the incestuous man:<sup>10</sup>

It is actually reported that there is sexual immorality among you, and of a kind that is not found even among pagans; for a man is living with his father's wife. And you are arrogant! Should you not rather have mourned, so that he who has done this would have been removed from among you?

For though absent in body, I am present in spirit; and as if present I have already pronounced judgement in the name of the Lord Jesus on the man who has done such a thing. When you are assembled, and my spirit is present with the power of our Lord Jesus, you are to hand this man over to Satan for the destruction of the flesh, so that his spirit may be saved on the day of the Lord.<sup>11</sup>

<sup>8</sup> "Pope Francis excommunicates pro-gay marriage priest. He's not the liberal the media wants," in *The Telegraph*, 23 September 2013, [www.telegraph.co.uk](http://www.telegraph.co.uk), accessed 1 August 2015.

<sup>9</sup> Mt. 18: 15-18. All scripture quotations New Revised Standard Version (NRSV).

<sup>10</sup> Craig Keener, *1-2 Corinthians*, The New Cambridge Bible Commentary, New York, Cambridge University Press, 2005, 48.

<sup>11</sup> 1 Cor. 5:1-5.

The community had been negligent in overlooking and tacitly condoning the crime. This laxity was to their discredit. Saint Paul angrily invites the community to adopt a position in the name of the Lord. "Handing him over to Satan" has an educative value. This capital sin requires expulsion from the community so the obstinate sinner can find the grace of conversion, and the purity of the community can be protected.<sup>12</sup>

The use of the word *anathema* signified the seriousness of an offence and expressed the judgment of God. Possibly it is a traditional formula for expulsion from the community and represents the beginning of a system of penal law. Gradually the church developed more sanctions and procedures.

Saint Paul told the Thessalonians: "Take note of those who do not obey what we say in this letter; have nothing to do with them, so that they may be ashamed. Do not regard them as enemies, but warn them as believers."<sup>13</sup> Titus was told "after a first and second admonition, to have nothing more to do with those who cause divisions."<sup>14</sup>

Saint Paul intended to exclude grave, public sinners from the Christian community. He tells Timothy "among them are Hymenaeus and Alexander, whom I have turned over to Satan, so that they may learn not to blaspheme."<sup>15</sup> The expression "to turn over to Satan" at the very least designates some kind of excommunication for Hymenaeus and Alexander. Since they have been excluded from the Christian community, in effect they belong to the kingdom of Satan. An excommunication is simply a generic concept of separation of the offender from the community.

The church is the sacrament of salvation for the baptised and should visibly manifest itself. The presence of a grave sinner raised questions about the authenticity of their conversion and the creditability of the Church. Their sin was both an offence to God and the Church.

### Penal Discipline in the First Centuries

It has been a constant doctrine of the Church that a person in a state of grave sin should abstain from receiving communion. Saint Cyprian was angry about those who violated the body and blood of Christ before having received Penance.<sup>16</sup> Many early documents demonstrate penal discipline: The Didache; Clement of Rome wrote to the Corinthians reprimanding sinners;<sup>17</sup> The Shepherd of Hermas alluded to this practice

<sup>12</sup> cf. 2 Cor. 2:6.

<sup>13</sup> 2 Thessalonians 3:14-15

<sup>14</sup> Titus 3:10.

<sup>15</sup> 1 Tim 1:20.

<sup>16</sup> Cyprian, *de lapsis*, 15, 16, *PL*, 4, 479; *de oratione dominica*, c. 8, *PL*, 4, 531: "hunc autem panem dari nobis quotidie postulamus, ne qui in Christo sumus et eucharisticam quotidie ad cibum salutis accipimus, intercedente aliquot graviori delicto, dum anseri et non communicantes a caelesti pane prohibemur, a Christi corpore separeremur."

<sup>17</sup> Alphonse Borras, *L'Excommunication dans le nouveau code de droit canonique*, Paris, Desclée, 1987, 230.

of giving reprimands;<sup>18</sup> Irenaeus of Lyon (late second century), in *Adversus Haereses*, gave the example of gnostic Cerdon who was separated from the community and became a penitent.<sup>19</sup>

### Penitential System of Public Penance

From the 4<sup>th</sup> century, there was an organised, penitential discipline for grave sinners (e.g. murderers, adulterers). Grave sinners confessed their sins to the bishop or someone delegated by him. The bishop then assigned the sinners to the order of Penitents, and imposed a penance to be performed over a significant period of time. Sinners demonstrated their desire for conversion by penances including pilgrimages, fasting and caring for the needy. Penitents wore penitential garments and were dismissed after the liturgy of the word at the Eucharist as catechumens were. At the conclusion of their time of penance, penitents were readmitted to the community in a liturgical ceremony.

The Council of Elvira (304) was the first council to use the term *anathema*.<sup>20</sup> Anathema literally means 'set apart,' or cut off. Generally it was associated with heresy. The Edict of Milan (313) said a bishop could relegate a sinner into the Order of Penitents known as the "*conversi*." The Council of Nicea (325) declared *anathema* all those who denied the divinity of Christ.<sup>21</sup> Those who had lapsed from the faith without persecution were to spend twelve years as public penitents before they might be readmitted to the sacraments – and then of course only if a sincere conversion was demonstrated by perseverance in a reformed life:

Concerning those who have fallen without compulsion, without the spoiling of their property, without danger or the like, as happened during the tyranny of Licinius, the Synod declares that, though they have deserved no clemency, they shall be dealt with mercifully. As many as were communicants, if they heartily repent, shall pass three years among the hearers; for seven years they shall be prostrators; and for two years they shall communicate with the people in prayers, but without oblation.<sup>22</sup>

Penitential discipline was very strict in the early Church. Saints like Augustine delayed receiving baptism till later in life and the sacrament of Penance was only received once in a lifetime. So the majority of Christians delayed receiving Penance

<sup>18</sup> Ibid.

<sup>19</sup> Irenaeus of Lyon, *Adversus Haereses* 1, 13, 7, quoted in Borras, 235.

<sup>20</sup> Canon 53 in Karl Hefele, *A History of the Councils from the Original Documents*, Edinburgh, T & T Clark, 1883, vol.1, 159: "One excommunicated by a bishop can only be restored by the bishop who condemned him. Another bishop receiving him into communion, unless the first bishop acts at the same time, or approves of the reconciliation, must answer for it before his brethren, that is to say, before the provincial synod, and must run the danger of being deprived of his office."

<sup>21</sup> Ibid., 445-446.

<sup>22</sup> The Council of Nicea, canon 11, in Norman Tanner, *Decrees of the Ecumenical Councils*, London, Sheed and Ward, 1990, vol. 1, 11.

until they were in danger of death.<sup>23</sup> Becoming a monk became a substitute for public penance and gradually in the monasteries a system of private penance developed.

### Growth of Penalties

The system of the Order of Penitents had dealt effectively with grave sinners who impacted on the Christian community. With the gradual demise of the penitential system, there was an increasing need for the Church community to impose penalties for grave offences.

Penalties were developed so a cleric<sup>24</sup> who was prohibited from functioning as a priest, could not attend the Eucharist and was separated from the communion of the faithful for a time,<sup>25</sup> e.g. Armentarius was illegitimately consecrated a bishop in 438. The Council of Riez in 439 declared the ordination void and then allowed Armentarius restricted faculties.<sup>26</sup>

### Gratian

"Excommunication" was a very general term during the first millennium of Christianity. Gratian (1140) distinguished two kinds of excommunication: 1) the excommunication that forbade access to the sacraments 2) the excommunication that separated one from the Body of Christ that is the Church.

An example of the more serious excommunication was that of Engeltrude: "Know that Engeltrude is not only under ban of excommunication, which separates her from the society of the brethren, but under anathema which separates from the Body of Christ which is the Church."<sup>27</sup>

However, over time the distinction between the two types of excommunication became blurred.

*Latae sententiae* penalties began in the fourth century and increased in their use over time so that they were frequently used in the 11<sup>th</sup> and 12<sup>th</sup> centuries. *Latae sententiae* penalties had been excessively used so Pope Innocent IV criticised their use at the Council of Lyons in 1245.<sup>28</sup>

<sup>23</sup> Borras, 24.

<sup>24</sup> Eligius Rainer, *Suspension of Clerics*, Canon Law Studies no. 111, Washington D.C., Catholic University of America, 1937, 7.

<sup>25</sup> F. Kober, *Die Suspension der Kirchendiener*, Tübingen, 1862, 15.

<sup>26</sup> Karl Hefele, *A History of the Councils from the Original Documents*, Edinburgh, T & T Clark, 1883, vol. 3, 158: canon 3 said he could receive the support of the Church "but must never offer the sacrifice in towns or in the absence of the bishop, or ordain any cleric, or, generally discharge any episcopal function in the church which is granted him. Only in his own church he may confirm the newly baptised."

<sup>27</sup> "Decree of Gratian" in Francis Hyland, *Excommunication: its nature, historical development and effects*, Washington D.C., Catholic University of America, 1928, Canon Law Studies 49, 24; Gratian, C. 13, C. III, q. 4, (translated in the Catholic Encyclopedia, I, 456).

<sup>28</sup> Borras, 52.

With the privatisation of penitential discipline, then there was an increase in the number of public excommunications for grave sinners. During the 12<sup>th</sup> century there was an increasing distinction made between the internal forum (eg. Sacrament of Penance) that was private and the external forum (eg. Criminal action) that was public.

From the 12<sup>th</sup> century, offenders had to be warned before being excommunicated. The Third Lateran Council (1179) decreed "that prelates should not pass sentence of suspension or excommunication without a previous canonical warning, unless the fault is such that by its nature it incurs the penalty of excommunication".<sup>29</sup> Pope Innocent III declared that excommunication was always to be considered a censure and therefore warning was always required before the penalty of excommunication was imposed.<sup>30</sup> Any person who repented and repaired the harm they had done had to be forgiven.

Different degrees of exclusion from the Church were developed. Pope Martin V in the constitution "*Ad vitanda*" 1418 distinguished between "*tolerati*" and "*vitandi*".<sup>31</sup> The "*tolerati*" had a minor excommunication and while they could not receive communion, they could attend Mass. Those who were excommunicated with the major excommunication "*vitandi*," were named and could not attend Mass.

### The Council of Trent

The Council of Trent considered the penalty of excommunication to be useful for the Church to maintain its values, but warned against its excessive use:

Although the sword of excommunication is the chief instrument of church discipline and of great effect in keeping the people to their duty, yet it is to be wielded with great reserve and caution, since experience teaches that if it is inflicted rashly or for trivial reasons, it is despised rather than feared and breeds disorder rather than salvation. Wherefore the excommunications imposed after repeated warnings to produce a disclosure (as it is called), or lost or alienated property, are never to be decreed except by a bishop, and then on no ordinary matter and only after such a case, which arouses his special concern, has been examined with great care and thoroughness; nor should he be persuaded to use excommunication by the authority of any secular person.<sup>32</sup>

Although the council warned against the excessive use of *latae sententiae* penalties like excommunication, ironically, their number increased.<sup>33</sup> Three hundred years

<sup>29</sup> Third Lateran Council, canon 6, in Tanner, vol. 1, 214.

<sup>30</sup> José Bernal, "Censures" in Ángel Marzoa, Jorge Miras, and Rafael Rodríguez-Ocaña (eds.), Ernest Caparros (Eng. ed.), *Exegetical Commentary on the Code of Canon Law* 5 Vols. Montreal, Wilson & Lafleur, 2004, IV/1, 325. [Hereafter *Exegetical Commentary*]

<sup>31</sup> Hyland, 42.

<sup>32</sup> Council of Trent, "Decree on General Reform," chapter 3, in Tanner, vol. 2, 785-786.

<sup>33</sup> Christopher Armstrong, *A Critical Appraisal of Latae Sententiae Penalties in the 1983 Code of Canon Law*, Canon Law Studies, no. 548, Washington D.C., Catholic University of America,

later, the Constitution *Apostolicae sedis* on 12 October 1869 reformed and reduced the number of *latae sententiae* penalties.<sup>34</sup>

### The 1917 code

In the 1917 Code canon 2257 defined excommunication:

§1. Excommunication is a censure by which one is excluded from the communion of the faithful with the effects that are enumerated in the canons that follow and that cannot be separated.

§2. Moreover, it is called anathema especially when it is inflicted with the formalities that are described in the Roman Pontifical.<sup>35</sup>

Excommunication is also called *anathema* in paragraph 2, a term often used in Council documents, especially when it is inflicted using the rite in the Roman Pontifical.

Excommunicated persons were divided into those with the more serious excommunication, who were banned or to be avoided (*vitandi*), and those to be tolerated (*tolerati*). Most excommunicated people were "*tolerati*".

### Excommunicated "*vitandi*" and "*tolerati*"

"*Vitandi*" were named and declared to have received the major excommunication by the Holy See in a public announcement and the decree or sentence expressly said that they were to be avoided. *Vitandi* had committed more serious crimes.<sup>36</sup> One who assaulted the pope was by that fact *vitandus* and did not have to be named.<sup>37</sup> Those with a major excommunication were to be avoided in both Church and civil matters. This was to pressure the person to reform.

Excommunicated people lacked the right to participate in worship.<sup>38</sup> An excommunicated person (*tolerati*) did not have to be ejected from the celebration, but

1996, 30.

<sup>34</sup> *Fontes*, vol. 3, 24-31.

<sup>35</sup> All translations of the 1917 Code from Edward Peters, *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

<sup>36</sup> Canon 2258 §1. Some excommunicates are banned, others tolerated.

§2. No one is banned unless so named as an excommunicate by the Apostolic See, the excommunication is publicly announced, and it is expressly stated in the decree or sentence that he must be avoided with due regard for the prescription of canon 2343 §11°.

<sup>37</sup> Canon 2343 §1. Whoever lays violent hands on the person of the Roman Pontiff:

1° Contracts automatic excommunication most specially reserved to the Apostolic See; and is by that fact banned;

2° Is infamous by the law;

3° [If] a cleric, he shall be degraded.

<sup>38</sup> Canon 2262 §1. One excommunicated is not able to participate in the indulgences, suffrage, and other public prayers of the Church.

§2. Nevertheless, it is not prohibited:

1° For the faithful to pray privately for him;

a *vitandus* was to be ejected or the celebration was to be stopped, provided it did not cause grave inconvenience.<sup>39</sup>

Excommunicated people could not receive the sacraments. If there had been a declaratory or condemnatory sentence, the excommunicated person could not receive sacramentals such as the ashes on Ash Wednesday and could not receive an ecclesiastical burial.<sup>40</sup>

Excommunicated people could not celebrate or administer sacraments or sacramentals.<sup>41</sup> Canon 2261 §2 allowed a member of the faithful to request a sacrament or sacramental from an excommunicated priest for any just reason. This would include for their spiritual good, and the excommunicated priest could celebrate or administer it. However, if the excommunicated priest was *vitandus*, a person could ask for sacramental absolution and be anointed only in danger of death.<sup>42</sup>

The excommunicated person was forbidden to place acts of governance or jurisdiction, or to enjoy the fruit of privileges previously granted to him.<sup>43</sup> If he was a

2° For priests privately and avoiding scandal to apply Mass for him; but, if he is banned, only for his conversion.

<sup>39</sup> Canon 2259 §1. Anyone excommunicated lacks the right of assisting at divine offices, but not of [attending the] preaching of the word of God.

§2. If a tolerated [excommunicate] passively assists [at these], it is not necessary that he be expelled; if [he is] banned, he should be expelled or if he does not wish to be expelled, there should be a cessation of the [divine] offices, provided this can be done without grave inconvenience; but from active assistance that includes any participation in the celebration of divine offices, not only should one banned be repelled, but [so should] any [one excommunicated] after a declared or condemnatory sentence or who is otherwise notoriously excommunicated.

<sup>40</sup> Canon 2260 §1. Nor can one excommunicated receive the Sacraments; or, indeed, after a declaratory or condemnatory sentence, the Sacramentals.

§2. In what applies to ecclesiastical burial, the prescription of canon 1240§1 no 2 is observed. Canon 1240 §1. Unless they gave before death a sign of repentance, the following are deprived of ecclesiastical burial: 2.° Excommunicates or those under interdict after a condemnatory or declaratory sentence.

<sup>41</sup> Canon 2261 §1. One excommunicated is prohibited from confecting and administering licitly the Sacraments and Sacramentals, except for the exceptions that follow.

§2. The faithful, with due regard for the prescription of §3, can for any just cause seek the Sacraments and Sacramentals from one excommunicated, especially if other ministers are lacking, and then the one who is excommunicated and approached can administer these and is under no obligation of inquiring the reasons from the one requesting.

§3. But from a banned excommunicate and from others excommunicated after a condemnatory or declaratory sentence has come, only the faithful in danger of death can ask for sacramental absolution according to the norm of canons 882 and 2252 and even, if other ministers are lacking, other Sacraments and Sacramentals.

<sup>42</sup> Canon 882. In danger of death all priests and bishops, even those not approved for confessions, validly and licitly absolve all penitents whatsoever of all sins and censures whatsoever, no matter how reserved or notorious, even if there is present an approved priest, with due regards for the prescription of canons 884 and 2252.

<sup>43</sup> Canon 2263. One excommunicated is removed from legitimate ecclesiastical acts within his

parish priest he was not to administer parish goods. If he did so, the acts were valid but illicit. However, if there had been a condemnatory or declaratory sentence, these administrative acts would be invalid.<sup>44</sup> An excommunicated person, after a condemnatory or declaratory sentence was deprived of the fruits of an office, benefice or pension. One who was a *vitandus* was also deprived of the office, pension or position itself that they held in the church.<sup>45</sup> Nor could they obtain an office or position or be promoted to orders.<sup>46</sup>

Altogether, there were 40 *latae sententiae* excommunications,<sup>47</sup> 16 *latae sententiae* suspensions,<sup>48</sup> and 4 *latae sententiae* interdicts in the 1917 Code.<sup>49</sup>

### Process of Revision of the 1917 Code

The Synod of Bishops in 1967 enunciated ten principles for the revision of the Code of Canon Law.<sup>50</sup> Principle 2 stated that the Code would "incorporate all such norms

limits and in the places defined by law; nor can he act in ecclesiastical cases, except according to the norm of canon 1654; he is prohibited from conducting ecclesiastical offices or responsibilities, and from enjoying earlier concessions and privileges from the Church.

<sup>44</sup> Canon 2264. Acts of jurisdiction, whether for the external forum or the internal forum, placed by one excommunicated are illicit; and if a condemnatory or declaratory sentence has been laid down, they are also invalid with due regard for the prescription of canon 2261 §3; otherwise, they are valid, and, indeed, are even licit if they are sought by a member of the faithful according to the norm of the mentioned canon 2261 §2.

<sup>45</sup> Canon 2266. After a condemnatory or declaratory sentence, one excommunicated remains deprived of the fruits of the dignity, office, benefice, pension, and duty if had one in the Church; and a banned [excommunicate is deprived] of the dignity, office, benefice pension and duty itself.

Canon 2267. The faithful must avoid association in profane things with a banned excommunicate, unless it concerns a spouse, parents, children, householders, subjects, and so on, unless reasonable cause excuses.

<sup>46</sup> Canon 2265 §1. Anyone excommunicated:

1° is prohibited from the right of electing, presenting or appointing;

2° cannot obtain dignities, offices benefices, ecclesiastical pensions, or other duties in the Church;

3° cannot be promoted to orders.

§2. An act posited contrary to the prescription of §1 numbers 1 and 2, however, is not null, unless it was posited by a banned excommunicate or by another excommunicate after a condemnatory or declaratory sentence; but if this sentence has been given, the one excommunicated cannot validly pursue any pontifical favour, unless in the pontifical rescript mention is made of the excommunication.

<sup>47</sup> Armstrong, 348-350. These *latae sententiae* excommunications included heresy, apostasy and schism canon 2314; violating the sacred species canon 2320; marriage before a non-Catholic minister or having children baptised or educated non-Catholics canons 2319; crime in a papal election canon 2330; abortion canon 2350.

<sup>48</sup> Armstrong, 351; including such things as hearing confessions without faculties and absolving from reserved sins canon 2366.

<sup>49</sup> Armstrong, 352; including giving an ecclesiastical burial to an excommunicated person canon 2339.

<sup>50</sup> General Assembly of the Synod of Bishops 4 October 1967: "Principia quae codicis iuris

as are necessary for making clear the provisions of the internal forum in so far as the salvation of souls demands."<sup>51</sup> Principle 9 stated: "It is generally agreed that penal laws be *ferendae sententiae*, inflicted only *in foro externo*, and remitted likewise only *in foro externo*."<sup>52</sup> Principle 3 stated:

the juridic ordering of the Church, with the laws and precepts, rights and duties, which flow from it, must be in accord with the supernatural end or purpose of the Church....Nor should the Code easily establish laws...that would impose ecclesiastical punishments upon members of the Church, unless the reason for such punishment or censure be a matter of grave importance and the punishment be necessary for the public good and Church discipline.<sup>53</sup>

As for penal laws *latae sententiae*, while the abolition of all of these has been proposed by not a few canonists, we suggest that they be reduced to the smallest possible number and concern only the gravest of crimes".<sup>54</sup>

The Commission for the Revision of the Code voted to keep some *latae sententiae* penalties in order to punish occult crimes which had to be punished to safeguard the supreme goal of the Church to save souls.<sup>55</sup>

### The 1983 Code

Unlike the 1917 Code, the 1983 Code did not give a definition of "excommunication" but left its meaning to doctrine and jurisprudence according to the principles<sup>56</sup> for the revision of the Code.<sup>57</sup> Instead the 1983 Code spells out the effects of an excommunication.

Canon 1331 §1. An excommunicated person is forbidden:

- 1° to have any ministerial part in the celebration of the Sacrifice of the Eucharist or in any other ceremonies of public worship;

canonici recognitionem dirigant" in Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Communicationes*, Romae, Libreria Editrice Vaticana, 1969, Vol. I, 77-85; English translation in R. Schoenbechler, "Principles which Govern the Revision of the Code of Canon Law," in J. Hite et al. eds, *Readings, Cases, Materials in Canon Law*, Collegeville: Liturgical Press, 1986, 70-78.

<sup>51</sup> Schoenbechler, 86.

<sup>52</sup> Schoenbechler, 92.

<sup>53</sup> Schoenbechler, 86.

<sup>54</sup> *Communicationes* 1 (1969), 84-85; cf. English Translation in Schoenbechler, 92.

<sup>55</sup> *Communicationes* 7 (1975), 171.

<sup>56</sup> Canon 19. If on a particular matter there is not an express provision of either universal or particular law, nor a custom, then, provided it is not a penal matter, the question is to be decided by taking into account laws enacted in similar matters, the general principles of law observed with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned authors.

<sup>57</sup> Cf. *Communicationes* 2(1970) 101; *Communicationes* 9(1977) 147-148; *Schema Documenti quo disciplina sanctionum seu poenarum in Ecclesia Latina denuo ordinatur*, Romae, Typis Polyglottis Vaticanis, 1973, 5-6.

- 2° to celebrate the sacraments or sacramentals and to receive the sacraments;
- 3° to exercise any ecclesiastical offices, ministries, functions or acts of governance.

§2. If the excommunication has been imposed or declared, the offender:

- 1° proposing to act in defiance of the provisions of §1 no. 1 is to be removed, or else the liturgical action is to be suspended, unless there is a grave reason to the contrary;
- 2° invalidly exercises any acts of governance which, in accordance with §1 no.3, are unlawful;
- 3° is forbidden to benefit from privileges already granted;
- 4° cannot validly assume any dignity, office or other function in the Church;
- 5° does not enjoy the benefits of any dignity, office, function or pension held in the Church.

### Imposition of excommunication

There is a Rule of Law - *odia restringi, et favores convenit ampliari* - it is fitting that odious things be restricted and favourable ones extended.<sup>58</sup> "Penal laws always limit rights, and in this sense are 'odious'".<sup>59</sup> Penalties are truly a last resort. Canon 18 required that "laws which prescribe a penalty, or restrict the free exercise of rights, or contain an exception to the law, are to be interpreted strictly."<sup>60</sup> A strict interpretation takes the narrowest interpretation of the words. The necessary removal of a cancerous womb of a pregnant woman is not an abortion encompassed by canon 1398.<sup>61</sup> A young woman pressured to have an abortion would not incur the excommunication. However, an authentic interpretation<sup>62</sup> by the legislator has the force of law and is not covered by canon 18. Therefore, the killing of a foetus by any method, incurs the excommunication of canon 1398.<sup>63</sup>

<sup>58</sup> See Albert Gauthier, *Roman Law and its Contribution to the Development of Canon Law*, Ottawa, Faculty of Canon Law St Paul University, 1996, 108. The Rules of Law (*Regulae iuris*) are from the *Liber Sextus* of Boniface VIII (1298).

<sup>59</sup> Javier Otaduy, "Ecclesiastical Laws" *Exegetical Commentary*, vol. 1, 339.

<sup>60</sup> Canon 18.

<sup>61</sup> Canon 1398. A person who actually procures an abortion incurs a *latae sententiae* excommunication.

<sup>62</sup> Canon 16 §1. Laws are authentically interpreted by the legislator and by that person to whom the legislator entrusts the power of authentic interpretation.

§2. An authentic interpretation which is presented by way of a law has the same force as the law itself, and must be promulgated. If it simply declares the sense of words which are certain in themselves, it has retroactive force. If it restricts or extends a law or explains a doubtful one, it is not retroactive.

§3. On the other hand, an interpretation by way of a court judgement or of an administrative act in a particular case, does not have the force of law. It binds only those persons and affects only those matters for which it was given.

<sup>63</sup> Pontifical Council for the Interpretation of Legislative Texts, authentic interpretation, 19 January 1988, in *AAS* 80 (1988) 1818; Otaduy, 341.

Medicinal penalties aim to reform the offender. An offender has to be given an opportunity to reform and firstly must be warned.<sup>64</sup> The offender must commit a grave sin, so no one is to be punished for an offence "unless it is gravely imputable by reason of malice or of culpability".<sup>65</sup> Because of the seriousness of the penalty, it is to be imposed only "with the greatest moderation, and only for the more grave offences"<sup>66</sup> when the person deliberately violated the law with grave imputability.<sup>67</sup> A warning makes this certain. The excommunication can be imposed by a judicial sentence or by an administrative decree declaring the *latae sententiae* penalty.<sup>68</sup>

### *Latae sententiae* excommunication

A *latae sententiae* excommunication is imposed by the law itself. Edward Peters points out "For the valid declaration of a censure incurred automatically, no independent warning is required, nor, for the valid imposition of a censure threatened under penal precept, is an independent warning required."<sup>69</sup> The law provides the warning. The penalty is incurred by the mere commission of the offence. The declared excommunicated person cannot be appointed validly to any office or use any privileges. But the person still has a right to support according to canon 1350.<sup>70</sup>

The excommunicated person has an obligation to be restored to full communion.<sup>71</sup> "Automatic" is misleading. A *latae sententiae* (automatic) excommunication is not

<sup>64</sup> Canon 1347 §1. A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so.

§2. The offender is said to have purged the contempt if he or she has truly repented of the offence and has made, or at least seriously promised to make, appropriate reparation for the damage and scandal.

<sup>65</sup> Canon 1321 §1. No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability.

§2. A person who deliberately violated a law or precept is bound by the penalty prescribed in the law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§3. When there has been an external violation, imputability is presumed, unless it appears otherwise.

<sup>66</sup> Canon 1318.

<sup>67</sup> Borras, 34.

<sup>68</sup> Canons 1341, 1342; cf. Armstrong, 275.

<sup>69</sup> Velasio De Paolis, "The Application of Penalties" *Exegetical Commentary*, vol. IV/1, 383, the proposed requirement for an independent warning of the possibility that an automatic censure was going to be declared formally was dropped during the revision of penal canon law. See also Edward Peters, *Incrementa in Progressu 1983 Codicis Iuris Canonici*, Montreal, Wilson & Lafleur, 2005, 1168.

<sup>70</sup> Canon 1350 §1. In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support.

§2. If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible.

<sup>71</sup> Canon 209 §1. Christ's faithful are bound to preserve their communion with the Church at all

received like an instant fine for speeding in one's car. There needs to be a process to establish that the canonical penalty has been received. The penalty must be declared in some sense and it is not enough to write an article in a diocesan newspaper saying for example that any Catholic woman who has had an abortion is now excommunicated. A person's actions may be influenced by a variety of factors that limit imputability. It must be established that the circumstances mentioned in canons 1323<sup>72</sup> and 1324 do not apply in a particular case.<sup>73</sup> The Ordinary, if it is an administrative process, or the tribunal if it was a judicial process, must formally declare the penalty for it to be enforced in the external forum. There must be an examination of the factors to establish that the offender was at least 16 years old; was not ignorant of the penalty attached to the offence; was not forced or pressured into the crime; or had not lost the use of reason somehow. However, ignorance is no excuse for clergy and religious. The criminal act must be completed. An unsuccessful attempt to commit a crime does not incur a *latae sententiae* penalty, but only a completed crime.<sup>74</sup>

### Effects of excommunication

The effect of an excommunication depends on which excommunication has been incurred:

1. Undeclared *latae sententiae* excommunication
2. Declared *latae sententiae* or *ferendae sententiae* excommunication

times, even in their external actions.

§2. They are to carry out with great diligence their responsibilities towards both the universal Church and the particular Church to which they belong.

<sup>72</sup> Canon. 1323. The following are not subject to a penalty when they have violated a law or precept:

1° a person who has not yet completed the sixteenth year of age;

2° a person who without negligence was ignorant that he or she violated a law or precept; inadvertence and error are equivalent to ignorance;

3° a person who acted due to physical force or a chance occurrence which the person could not foresee or, if foreseen, avoid;

4° a person who acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience unless the act is intrinsically evil or tends to the harm of souls;

5° a person who acted with due moderation against an unjust aggressor for the sake of legitimate self-defence or defence of another; 6° a person who lacked the use of reason, without prejudice to the prescripts of canons 1324, §1, n. 2 and 1325; 7° a person who without negligence thought that one of the circumstances mentioned in nos. 4 or 5 was present.

<sup>73</sup> Cf. Edward Peters, "Canon 1324: Exemption from a Penalty," in Sharon Euart, John Alesandro, Paul Hartmann, (eds.), *Roman Replies and CLSA Advisory Opinions 2010*, Washington D.C., Canon Law Society of America, 2010, 169-174.

<sup>74</sup> Juan Arias, *Code of Canon Law Annotated*, Montreal, Wilson & LaFleur, 2004, 1033.

### Undeclared *latae sententiae*

When the person has been excommunicated with an undeclared *latae sententiae* excommunication, the penalty will not be publicly known. If it is not notorious, it is not publicly known.<sup>75</sup>

The excommunicated person, including lay celebrants, is forbidden to exercise ministry by celebrating the Eucharist or performing any other public worship such as weddings or funerals. In danger of death, the excommunicated cleric can and must provide the last rites and grant absolution in the sacrament of penance.<sup>76</sup>

When an excommunicated priest is asked for a sacrament by any member of the faithful for a just reason, he can celebrate the sacrament to avoid embarrassing himself or to reveal that he has been excommunicated.<sup>77</sup> An undeclared excommunication does not have to be observed. This is to protect the offender's reputation and to avoid giving grave scandal to the community.<sup>78</sup>

The excommunicated person can come to Mass, but may not receive the Eucharist or other sacraments, but can receive sacramentals including the ashes on Ash Wednesday.

The excommunicated person cannot exercise any official function, ministry or ecclesiastical office in the Church.<sup>79</sup> "Ministries" includes extraordinary ministers of Communion or taking communion to the sick. "Function" means any activity with a spiritual purpose that has a public dimension.<sup>80</sup> An act of governance is any act of judicial, executive or legislative power, e.g. a parish priest administering the goods of a parish.

### Declared *ferendae* or *latae sententiae* excommunications

When the excommunication is declared there are four aspects:

- 1) The offence has a public character;
- 2) The offence is legally notorious;
- 3) The offender has to observe all the effects in the external forum; and
- 4) The penal effects are aggravated by the declaration.<sup>81</sup>

When a person has a declared excommunication, the consequences are more severe: If possible the offender has to be removed from public worship; the offender

<sup>75</sup> Armstrong, 280.

<sup>76</sup> Canons 908 and 1352.

<sup>77</sup> Canons 1335 and 1352.

<sup>78</sup> Canon 1352 §2.

<sup>79</sup> Canon 145 §1. An ecclesiastical office is any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose.

<sup>80</sup> Bernal, 328.

<sup>81</sup> Borras, 102.

invalidly exercises the power of governance; the offender is forbidden to benefit from privileges already received.

An excommunicated priest with a declared excommunication invalidly officiates at marriages.<sup>82</sup>

### Specific crimes with the penalty of *latae sententiae* excommunication

There are seven *latae sententiae* excommunications in the 1983 Code:

- 1) Apostasy heresy and schism;<sup>83</sup>
- 2) Profanation of the sacred species;<sup>84</sup>
- 3) Solicitation or other crime in celebrating or receiving a sacrament;<sup>85</sup>
- 4) Consecration of a bishop without pontifical mandate;<sup>86</sup>
- 5) Violation of seal of confession;<sup>87</sup>
- 6) Violence against the pope;<sup>88</sup> and

<sup>82</sup> Canon 1109. Within the limits of their territory, the local Ordinary and the parish priest by virtue of their office validly assist at the marriages not only of their subjects, but also of non-subjects, provided one or other of the parties is of the Latin rite. They cannot assist if by sentence or decree they have been excommunicated, placed under interdict or suspended from office, or been declared to be such.

<sup>83</sup> Canon 1364 §1. An apostate from the faith, a heretic or a schismatic incurs a *latae sententiae* excommunication, without prejudice to the provision of Canon 194 §1 no 2; a cleric, moreover, may be punished with the penalties mentioned in Canon 1336 §1 numbers 1, 2 and 3.

§2 If a long-standing contempt or the gravity of scandal calls for it, other penalties may be added, not excluding dismissal from the clerical state

<sup>84</sup> Canon 1367. One who throws away the consecrated species or, for a sacrilegious purpose, takes them away or keeps them, incurs a *latae sententiae* excommunication reserved to the Apostolic See; a cleric, moreover, may be punished with some other penalty, not excluding dismissal from the clerical state.

<sup>85</sup> Canon 1378 §1. A priest who acts against the prescription of Canon 977 incurs a *latae sententiae* excommunication reserved to the Apostolic See.

§2. The following incur a *latae sententiae* interdict or, if a cleric, a *latae sententiae* suspension:

1° a person who, not being an ordained priest, attempts to celebrate Mass;

2° a person who, apart from the case mentioned in §1, though unable to give valid sacramental absolution, attempts to do so, or hears a sacramental confession;

3° In the cases mentioned in §2, other penalties, not excluding excommunication, can be added according to the gravity of the offence.

<sup>86</sup> Canon 1382. Both the Bishop who, without a pontifical mandate, consecrates a person a Bishop, and the one who receives the consecration from him, incur a *latae sententiae* excommunication reserved to the Apostolic See.

<sup>87</sup> Canon 1388 §1. A confessor who directly violates the sacramental seal incurs a *latae sententiae* excommunication reserved to the Apostolic See; he who does so only indirectly is to be punished according to the gravity of the offence.

§2 Interpreters and the others mentioned in Canon 983 §2, who violate the secret, are to be punished with a just penalty, not excluding excommunication.

<sup>88</sup> Canon 1370 §1. A person who uses physical force against the Roman Pontiff incurs a *latae sententiae* excommunication reserved to the Apostolic See; if the offender is a cleric, another penalty, not excluding dismissal from the clerical state, may be added according to the gravity of the crime.

7) Abortion.<sup>89</sup>**Removal of the penalty of excommunication**

Censures must be remitted when the offender has repented<sup>90</sup> and either made or promised to make reparation.<sup>91</sup> Penalties are normally to be remitted in the external forum by someone with the appropriate executive power of governance.<sup>92</sup>

- 1) If the Holy See reserves remission of the penalty to itself, only the Holy See is competent. There are five cases in the 1983 Code (canons 1367 desecration of the Eucharist, 1370 violence against the Pope, 1378 absolution of an accomplice or other sacramental crimes, 1382 consecration of a bishop without papal mandate, and 1388 seal of confession).
- 2) Ordinaries<sup>93</sup> of the place of trial, or where the excommunicated person is present.<sup>94</sup>

When the excommunication is declared but not reserved, consultation with the Ordinary who imposed it is required for the lawful remission of the penalty, but it is not a requirement for validity.<sup>95</sup> A not declared and not reserved excommunication can be remitted by an Ordinary for his subjects or for those present in his territory.<sup>96</sup>

<sup>89</sup> Canon 1398. A person who actually procures an abortion incurs a *latae sententiae* excommunication.

<sup>90</sup> Canon 1347 §2. The offender is said to have purged the contempt if he or she has truly repented of the offence and has made, or at least seriously promised to make, appropriate reparation for the damage and scandal.

<sup>91</sup> Canon 1358 §1. The remission of a censure cannot be granted except to an offender whose contempt has been purged in accordance with Can. 1347 §2. However, once the contempt has been purged, the remission cannot be refused.

§2. The one who remits a censure can make provision in accordance with Canon 1348, and can also impose a penance.

<sup>92</sup> Borrás, 131.

<sup>93</sup> Canon 134 §1. In law the term Ordinary means, apart from the Roman Pontiff, diocesan Bishops and all who, even for a time only, are set over a particular Church or a community equivalent to it in accordance with Can. 368, and those who in these have general ordinary executive power, that is, Vicars general and episcopal Vicars; likewise, for their own members, it means the major Superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power.

§2. The term local Ordinary means all those enumerated in §1, except Superiors of religious institutes and of societies of apostolic life.

§3. Whatever in the canons, in the context of executive power, is attributed to the diocesan Bishop, is understood to belong only to the diocesan Bishop and to those others in Can. 381 §2 who are equivalent to him, to the exclusion of the Vicar general and the episcopal Vicar except by special mandate.

<sup>94</sup> Canons 1354 §1; 1355; 1356.

<sup>95</sup> Borrás, 135.

<sup>96</sup> Canon 1355.

Similarly, if someone incurs an excommunication from a *latae sententiae* penal precept, remission is given by an Ordinary for his subjects or for those present in his territory.<sup>97</sup> Consultation with the ordinary who imposed the penal precept is for liceity and not for validity.<sup>98</sup>

**Remission in the internal forum**

Remission of a penalty in the internal forum is exceptional, because remission is normally in the external forum.<sup>99</sup> But "If the confessor is in no doubt about the penitent's disposition and the penitent asks for absolution, it is not to be denied or deferred."<sup>100</sup>

Excommunication can be remitted in the internal forum by:

- 1) All bishops during sacramental confession 1355 §2 when the offences are not reserved to the Holy See. This provision was an innovation introduced after the 1980 schema and the reasons for this are unclear.<sup>101</sup>
- 2) The Canon Penitentiary<sup>102</sup> can grant absolution in the sacramental forum for all non-declared and non-reserved *latae sententiae* censures such as excommunication.<sup>103</sup>
- 3) Any priest in the circumstances of danger of death,<sup>104</sup> with or without faculties. But if the penalty is reserved to the Holy See the excommunicated person who recovers must have recourse directly or through the priest.<sup>105</sup>
- 4) Chaplains in prisons, hospitals and at sea,<sup>106</sup> can absolve non-declared, not reserved *latae sententiae* excommunications without prejudice to canon 976.
- 5) Confessors<sup>107</sup> can remit non-declared *latae sententiae* excommunications if it is difficult for the person to remain under penalty.

If the penalty is reserved to the Holy See, the penitent is obliged to take recourse personally or through the confessor within one month of receiving absolution.<sup>108</sup> The

<sup>97</sup> Canon 1356 §1 and canon 1355.

<sup>98</sup> Armstrong, 309.

<sup>99</sup> Borrás, 135-136; Velasio De Paolis, *De Sanctionibus in Ecclesia: Ad notationes in Codicem: Liber VI*, Rome, Editrice Pontificia Università Gregoriana, 1986, 99-100.

<sup>100</sup> Canon 980.

<sup>101</sup> Thomas J. Green, "Sanctions in the Church," in James Coriden et. al. (eds). *The Code of Canon Law A Text and Commentary*, Mahwah, Paulist Press, 1985, 916. [Hereafter *The Code Text and Commentary*]

<sup>102</sup> Canon 508 §1.

<sup>103</sup> John A. Alesandro, "Chapter of Canons" *The Code Text and Commentary*, 409.

<sup>104</sup> Canon 976.

<sup>105</sup> Canon 1357 §3.

<sup>106</sup> Canon 566 §2.

<sup>107</sup> Canon 1357 §1.

<sup>108</sup> Canon 1357 §3.

excommunicated person needs to repair the scandal and damage.<sup>109</sup> If the person does not make recourse, then the penalty is reincurred in the opinion of Borras and Armstrong.<sup>110</sup> Since penalties should be remitted in the external forum, recourse is required if someone recovers from being in danger of death.<sup>111</sup> If the excommunication has been declared, recourse is still required in danger of death cases.

Excommunications reserved to the Holy See can be remitted by any priest in danger of death situations, or when it is difficult for the sinner to remain in that state.<sup>112</sup> When the penalty is reserved to the Holy See, recourse is always required if absolution was granted because it was hard for the person to remain in that state. If recourse is gravely inconvenient for more than a month, then this ecclesiastical law does not oblige.<sup>113</sup>

### Conclusion

Contrary to popular belief, the excommunicated person remains a member of the Church. An analogy is a player in a sports team, who after a warning and a yellow card, commits another bookable offence and is red-carded. The player is still a member of the team, but cannot play. "Excommunication"<sup>114</sup> means that the excommunicated person cannot celebrate or receive any sacraments. The excommunicated person does not stop being a Catholic, and is not expelled from the Church. "Excommunication is not so much an exclusion from the Church, as from the goods of the Church."<sup>115</sup> The person is still bound by all the laws of the Church,

<sup>109</sup> Canon 1358.

<sup>110</sup> Borras, 143; Armstrong, 303.

<sup>111</sup> Canon 1357 §3.

<sup>112</sup> Canon 1357§1. Without prejudice to the provisions of Canons 508 and 976, a confessor can in the internal sacramental forum remit a *latae sententiae* censure of excommunication or interdict which has not been declared, if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.

§2. In granting the remission, the confessor is to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse within one month to the competent Superior or to a priest having the requisite faculty, and to abide by his instructions. In the meantime, the confessor is to impose an appropriate penance and, to the extent demanded, to require reparation of scandal and damage. The recourse, however, may be made even through the confessor, without mention of a name.

§3. The same duty of recourse, when they have recovered, binds those who in accordance with Can. 976 have had remitted an imposed or declared censure or one reserved to the Apostolic See.

<sup>113</sup> Borras, 144-145; Armstrong, 321.

<sup>114</sup> Can. 1331 §1. An excommunicated person is forbidden:

1° to have any ministerial participation in celebrating the sacrifice of the Eucharist or any other ceremonies of worship whatsoever;  
2° to celebrate the sacraments or sacramentals and to receive the sacraments;  
3° to exercise any ecclesiastical offices, ministries, or functions whatsoever or to place acts of governance.

<sup>115</sup> Velasio De Paolis, "Penal Sanctions, Penal Remedies and penances in Canon Law," in Patricia

including going to mass on Sunday, but the person is not allowed to receive communion. If the excommunication is a declared *ferendae sententiae* or *latae sententiae* penalty, the excommunicated person is not to be allowed to participate actively in the Eucharist or in any public worship.<sup>116</sup> In practice, it is extremely rare for a lay person to receive an excommunication, especially a declared one. Therefore, in nearly every case, any priest can deal with the excommunicated person in the sacrament of Penance.

An excommunicated priest is not to celebrate any sacraments, exercise any function or carry out any work as an office holder such as a parish priest. An excommunicated priest could celebrate the Eucharist validly, but it is a highly illicit action. The excommunicated priest is not deprived of any offices, or ministries but may not exercise these ministries or place acts of governance. The excommunicated priest still has a right to the necessary means of support, but this does not mean a full salary or include, vehicle expenses, since he cannot perform official ministry.<sup>117</sup> In the rare case of a priest with a declared excommunication or suspension, any marriages he officiated at<sup>118</sup> and any acts of governance he attempted would be invalid.

Dugan, ed., *The Penal Process and the Protection of Rights in Canon Law*, Montreal, Wilson & Lafleur, 2005, 168.

<sup>116</sup> Canon 1331§2. If the excommunication has been imposed or declared, the offender:

1° who wishes to act against the prescript of §1, n. 1 must be prevented from doing so, or the liturgical action must be stopped unless a grave cause precludes this;  
2° invalidly places acts of governance which are illicit according to the norm of §1, n. 3;  
3° is forbidden to benefit from privileges previously granted;  
4° cannot acquire validly a dignity, office, or other function in the Church;  
5° does not appropriate the benefits of a dignity, office, any function, or pension, which the offender has in the Church.

<sup>117</sup> Canon 1350. §1. In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support.

§2. If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible.

<sup>118</sup> Canon 1109. Unless the local ordinary and pastor have been excommunicated, interdicted, or suspended from office or declared such through a sentence or decree, by virtue of their office and within the confines of their territory they assist validly at the marriages not only of their subjects but also of those who are not their subjects provided that one of them is of the Latin rite.

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