

## Why excommunication?

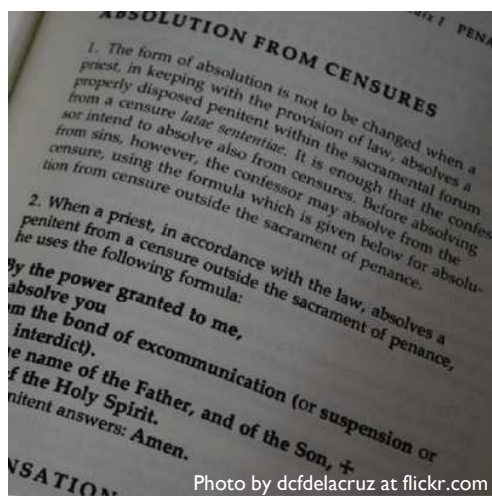
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‘The remission of the excommunication has the same aim as that of the punishment: namely, to invite the four Bishops once more to return.’ Helen Costigane SHCJ explains the historical practice of and reasoning behind excommunication, in light of Pope Benedict’s recent letter to Catholic Bishops regarding the Lefebvrist bishops and unity within the Church.

The lifting of the penalty of excommunication on Bishop Richard Williamson and three other bishops consecrated by Archbishop Lefebvre was intended to be, in Pope Benedict’s own words, a ‘discreet gesture of mercy towards four bishops ordained validly but not legitimately’; not, as it was interpreted by some, as ‘the repudiation of reconciliation between Christians and Jews’.<sup>1</sup> In a letter to the Bishops of the Catholic Church, the Pope goes on to discuss why the excommunication came about and what it was intended to achieve. It seems timely, then, to review the Church’s position on excommunication, the thinking behind it, and what it is intended to accomplish.

### History

The early Church used social and religious exclusion as its chief sanction for actions that particularly concerned them, for example: heresy, schism, apostasy, issues of internal governance, murder and sexual (mis)conduct. The biblical basis for this lies in the Gospel of Matthew<sup>2</sup>, but it was not a question of permanent exclusion, rather it went hand-in-hand with the idea of reintegration and reacceptance. Social exclusion was meant to be ‘therapeutic’<sup>3</sup>; it was the stubbornness of the sinner that was the real barrier to salvation. There were, from the very beginnings of the practice, different types of excommunications – exclusion from the community, from communal worship, or from the Eucharist<sup>4</sup> – designed both to punish and to rehabilitate the offender. ‘Anathema’,



though not differentiated from ‘excommunication’ in the first five centuries, was distinguished from it in the sixth century as the most serious form of separation from the Church.<sup>5</sup> In the twelfth century, exploring the rhetorical distinction between ‘anathema’ and ‘excommunication’ in the earlier canons, Gratian used the former ‘to designate the full social and religious exclusion traditionally associated with excommunication’, and the latter ‘to mean mere exclusion from the Eucharist and the other sacraments’.<sup>6</sup>

There were many lesser alternatives to public penance, such as Masses, prayers, almsgiving; but those guilty of grave and notorious sins (idolatry, murder and adultery) were given public penance. Those guilty became part of an Order of Penitents and assigned seven weeks of fasting; like the catechumens they were barred from the Eucharist but not from other prayers, and at Easter were received back into the fold by the bishops’ imposition of hands. It was a rite ‘designed to maintain the purity of the early church community through exclusion of those who had violated ecclesiastical precepts and also to deter others from committing similar offences. Public shame was thus integral to public penance’.<sup>7</sup> Although this was not excommunication in the proper sense – it was exclusion from the sacraments rather than the community – excommunication in the sense of expulsion from civil society was also a last resort for notorious, contumacious offenders who refused to reform.

The practice of private confession spread from the late seventh century, with priests prescribing penances according to published tariffs. By the ninth century, there were two distinct forms of penance: public and solemn penitence for grave and scandalous sins, and sacramental, private penance for hidden grave sins – *si publice peccaverint, publice peniteant. Si occulte peccaverint, occulte peniteant.*

Actions anathematised over the years included trading in ecclesiastical offices<sup>8</sup>, removing offerings from the altars of churches<sup>9</sup>, harming what belongs to the Church (persons and possessions)<sup>10</sup>, laying violent hands on clerics or monks<sup>11</sup>, or using the ‘murderous art of crossbowmen and archers’ against Christians<sup>12</sup>. A variety of ‘anathemas’ were issued at the Council of Trent (1545-1563) in response to teachings of the reformers on God, faith and reason, and the sacraments<sup>13</sup>, and more again at the First Vatican Council (1869-1870) over the issue of the pope as Peter’s successor and visible head of the Church, and over the definition of papal infallibility.<sup>14</sup>

Whatever the status of the excommunication, it was seen as a severe penalty for conduct that caused ‘scandal’: an action that might undermine the beliefs of the faithful in some way. As noted above, such actions included ‘heresy’ and several individuals were excommunicated over the centuries, such as Marcion of Sinope (110-16), Jan Hus (1369-1415), and Girolamo Savonarola (1452-1498).<sup>15</sup> Kings and queens were excommunicated for their opposition to the pope of the time<sup>16</sup>, or for particular scandalous actions.<sup>17</sup> Excommunication was threatened for a variety of actions, and was incurred for things such as apostasy<sup>18</sup>, acting against the Church from the outside or within<sup>19</sup>, schism<sup>20</sup>, or actions contrary to Church teachings.<sup>21</sup> There were also a number of penalties for clerical sexual misconduct, ranging from the imposition of penances, censures and suspension, to excommunication and complete deprivation of office.<sup>22</sup>

### *Penal remedies in the 1917 Code of Canon Law*

What constitutes an offence necessitating some form of penitence (be it public penance or private) is spelled out in canon 2195, §1: ‘By the term delict in ecclesiastical law is understood an external and morally imputable violation of a law to which a canonical sanction, at least an indeterminate one, is

attached’. So there are four aspects here: (i) externality; (ii) moral imputability; (iii) violation of a law, and; (iv) that a penalty is attached. An ecclesiastical penalty is described as ‘the privation of some good [and is] inflicted by the legitimate authority for the correction of a delinquent or the punishment of a delict.’<sup>23</sup> ‘Some good’ here refers to a good of the Church – ‘the good of Faith, the good of the Sacraments, and the good of ecclesiastical governance ...[which]...are necessary for each member of the faithful is her or she is to walk the path of salvation’.<sup>24</sup>

The process to be followed in, and the aim of, administering penalties is outlined in canon 2214, which also states that bishops are to bear in mind the exhortation from the Council of Trent that they are ‘pastors and not prosecutors’. They are to strive:

...by exhortation and admonition, to deter them from what is unlawful, that they may not be obliged, should [their subjects] transgress, to coerce them by due punishments. In regard to those, however, who should happen to sin through frailty, that command of the Apostle is to be observed, [namely] that they reprove, entreat and rebuke them in all kindness and patience, since benevolence toward those to be corrected often effects more than severity, exhortation more than threat, and charity more than force. But if on account of the gravity of the offence there is need of the rod, then is rigour to be tempered with gentleness, judgement with mercy, and severity with clemency, that discipline, so salutary and necessary for the people, may be preserved without harshness and they who are chastised may be corrected, or, if they are unwilling to repent, that others may, by the wholesome example of their punishment, be deterred from vices’.<sup>25</sup>

So, in acknowledging that some wrongdoing results from weakness, the first recourse is not necessarily to the infliction of a penalty, but engagement with the offender in discussion. Even if the offence is grave enough to warrant punishment, this is not to be unrestrained but tempered, with the hope that the offender will amend his ways.

### *Penal remedies in the 1983 Code*

The 1983 Code of Canon Law reflects many of the insights of the Second Vatican Council, and particularly its emphasis on human dignity and rights.

The Code Revision Commission sought to limit penal law to the external forum, abolished a series of vindictive and expiatory penalties, gave greater emphasis to the principle of mercy, and emphasised pastoral considerations (such that punitive measures did not damage the wider interests of the faithful) in the administration of sanctions.

The Code gives the reasons for sanctions: reform of the offender, restoration of justice, and the reparation of scandal (canon 1341). Several means for achieving the objectives are outlined in canon 1341, apart from the ‘correction’ and ‘repute’ mentioned in canon 1339. There are other forms of pastoral solicitude which are not specifically named, but which McDonough suggests ‘could include education, exhortation, mutual agreements, or even penances as mentioned in canon 1340’.<sup>26</sup>

The Church’s *ius puniendi*, expressed in canon 1311<sup>27</sup>, has as its aim dealing with certain sins that are also exterior actions. These are designated crimes that are sanctionable in order to ‘redress the disorder caused by the offence’.<sup>28</sup> What constitutes ‘offence’ is outlined by Marzoa:

The inspiring principle of penal law must be shaped from the ultimate reasons for its existence. When determining what an offence is, one must think of conduct diametrically opposed to the Church’s sanctifying mission, the *salus animarum* [the good of souls]. Then one can clearly see a series of nuclei in the ecclesial common good, an environment that is required for carrying out the sanctifying mission. The nuclei that need this penal protection are sanctity and unity, governance and liberty, the sacraments, special obligations, human life and liberty... So, the legislator classifies as an offence any behaviour that he considers at a given time to be most intensely disturbing to these nuclei.<sup>29</sup>

Those offences – crimes – are serious sins which place in jeopardy not just the offender’s salvation but also that of other members of community. For the restoration of the offence, more is needed beyond personal repentance and the reformation of the offender. As canon 1341 notes, it is necessary that the scandal be sufficiently repaired and justice restored. Pope John Paul II made clear, in his 1979 address to the Roman Rota, that penalties are a means of fostering and repairing communion.<sup>30</sup>

## Marcel Lefebvre and episcopal ordination

Marcel-Francois Lefebvre (1905-1991) was a French archbishop who had been an Apostolic Delegate for West Africa and Superior General of the Holy Ghost Fathers, but is remembered chiefly for his hostility to the changes within the Church associated with the Second Vatican Council. Most widely known for his support of the Tridentine liturgy and his opposition to liturgical changes, he also rejected developments in collegiality, religious liberty and ecumenism.<sup>31</sup> With the permission of the Bishop of Fribourg for the establishment of a ‘pious union’ for a provisional period of six years, Lefebvre set up the Society of St Pius X, a society of priests without vows, in 1970. In 1975, the new Bishop of Fribourg expressed his wish to withdraw its status and subsequently put his intention into effect. Though this course of action was upheld by Pope Paul VI, Lefebvre continued his work, and in 1976 went ahead with planned priestly ordinations without the approval of the local bishop and despite being forbidden to by Rome. Though suspended by Rome from exercising priestly office, he continued to do so.

His gradual separation from papal jurisdiction culminated in his consecration of four bishops (among whom was Richard Williamson) without a pontifical mandate on 30 June 1988. This was also in defiance of a warning from Cardinal Gantin, the then Prefect of the Congregation of Bishops, that they would be excommunicated. On 1 July 1988, Gantin declared the excommunication to have been incurred, and stated that the consecrations were a schismatic act, also incurring a penalty. The root of the schism was ‘the withdrawal of submission to the Supreme Pontiff...’ (canon 751).

## Reconciliation

In his letter of 10 March 2009, Pope Benedict notes that there is a danger of schism when an Episcopal ordination is performed without a papal mandate ‘since it jeopardises the unity of the College of Bishops with the Pope’. Affirming that the aim of excommunication – the Church’s most severe punishment – is to call individuals to repentance and return, the Pope remarks that this goal has not been attained even after twenty years since the illicit ordinations. Therefore ‘the remission of the

excommunication has the same aim as that of the punishment: namely, to invite the four Bishops once more to return'. This became possible 'once the interested parties had expressed their recognition *in principle* of the Pope and his authority as Pastor, *albeit with some reservations* in the area of obedience to his doctrinal authority and to the authority of the Council' [emphasis added]. What is clear from this is that there are still some areas of concern, yet, even with what might be described as 'imperfect contrition' on the part of the schismatic bishops, the Pope has invoked the principles of mercy, gentleness and charity, enunciated by the Council of Trent, so that the process of repentance and reintegration may be continued.

What is clear, though, is that there is no intention (at least for the present) to grant canonical status to the Society of St Pius X, as there are still doctrinal questions that need to be clarified. This means that Richard Williamson, though freed from the ecclesiastical penalty, can live as a Catholic lay man, but may not exercise legitimately any ministry in the Church or speak in the name of the Church. Given

that Williamson and his views on the Holocaust are repugnant to those within the Church and in civil society, it is clearly a sensible move that he keep a low profile for the foreseeable future.

### Conclusion

Excommunication, then, is seen as a last resort, and only for the most serious offences. Consecrating bishops without a pontifical mandate is one of these since it threatens the unity and good governance of the Church. As we have seen, it is not meant to exclude the offender permanently, but give that person cause to reflect on the seriousness of their action so that they can repent and be restored to full communion. Nevertheless, the removal of the penalty can in no way be seen as an endorsement of Richardson's views, either on the Second Vatican Council or on the Holocaust.

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<sup>1</sup> 'Letter from His Holiness Pope Benedict XVI addressed to the Bishops of the Catholic Church concerning the remission of the excommunication of the four Bishops consecrated by Archbishop Lefebvre', 12 March 2009, [http://www.vatican.va/holy\\_father/benedict\\_xvi/letters/2009/documents/hf\\_ben-xvi\\_let\\_20090310\\_remissione-scomunica\\_en.html](http://www.vatican.va/holy_father/benedict_xvi/letters/2009/documents/hf_ben-xvi_let_20090310_remissione-scomunica_en.html)

<sup>2</sup> Matthew 18: 15-19. See also 1 Cor 5: 6-11, 2 Thess 3:10, and Heb 3:10 as other examples of disciplinary exclusion identified by Elisabeth Vodola (*Excommunication in the Middle Ages*, Berkeley, University of California Press, 1986), p. 6, nn. 25, 29, 30.

<sup>3</sup> Vodola, p. 7. The First Council of Lyons, 1245, stated that 'the aim of excommunication is healing and not death, correction and not destruction...' (canon 19).

<sup>4</sup> Vodola, p. 12.

<sup>5</sup> See 'Anathema' in *Our Sunday Visitor's Catholic Encyclopaedia*, ed. P. M. J. Stravinskias, (Huntingdon ID, Our Sunday Visitor, 1991, p. 67)

<sup>6</sup> Vodola, p. 29

<sup>7</sup> S. Hamilton, *The Practice of Penance 900-1050* (Royal Historical Society, 2001) p. 3.

<sup>8</sup> Second Council of Nicaea, 787, canon 5.

<sup>9</sup> First Council of the Lateran, 1123, canon 12.

<sup>10</sup> First Council of the Lateran, 1123, canon 20.

<sup>11</sup> Second Council of the Lateran, 1139, canon 15.

<sup>12</sup> Second Council of the Lateran, 1139, canon 29.

<sup>13</sup> Cf. Session 7, 3 March 1547, 'On the sacraments', Tanner pp. 684-686.

<sup>14</sup> See chapters 3, 4.

<sup>15</sup> There are many other notable examples: Martin Luther (1483-1546), Martin Bucer (1491-1551); Feliksa Kozłowska (1862-1921).

<sup>16</sup> Henry VIII of England (1491-1547), and his daughter Elizabeth I of England (1533-1603); Henry V, Holy Roman Emperor (1086-1125), Sverre of Norway (1145-102), Afonso II of Portugal (1185-1223); Louis IV, Holy Roman Emperor (1282-1347) were similarly censured.

<sup>17</sup> Philip I of France (1053-1108) was excommunicated after repudiating his first wife and marrying another; Henry II of England (1133-1189) was similarly censured because of the assassination of Thomas Becket (though there remains some dispute about whether he actually ordered it or not);

<sup>18</sup> Cf. Charles Chiniquy (1809-1899), a Canadian priest who converted to Presbyterianism and became fervently anti-Catholic.

<sup>19</sup> Cf. Juan Peron excommunicated in 1955 after signing a decree ordering the expulsion of Argentine bishops Manuel

Tato and Ramon Novoa; Michel Louis Guerard des Lauriers and others for being consecrated to the episcopacy without papal mandate by Pierre Martin Ngo Dinh Thuc.

<sup>20</sup> Cf. Sinead O'Connor in the 1990's for simulating being ordained by a schismatic church; Fano Ngcobo, a Catholic priest who was excommunicated in 2007 for starting his own church, the African Catholic Community.

<sup>21</sup> Richard Lugner, excommunicated over abortion clinic rental.

<sup>22</sup> Cf. canons 1378 §1; 1387; 1395 §1, §2.

<sup>23</sup> Canon 2215.

<sup>24</sup> V. de Paolis, 'Penal Sanctions, Penal Remedies and Penances in Canon Law', in *The Penal Process and the Protection of Rights in Canon Law*, P.M Dugan (ed), Montreal, Wilson & Lafleur, 2005, pp. 145-182, at p. 156.

<sup>25</sup> Canon 2214.

<sup>26</sup> E. McDonough, 'A *Novis Habitus Mentis* for Sanctions in the Church', *The Jurist*, 48, 1988, 727-746

<sup>27</sup> Canon 1311: 'The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences'.

<sup>28</sup> CCC, para. 2266.

<sup>29</sup> Marzoa, *Exegetical Commentary*, Vol IV/1, p. 211.

<sup>30</sup> 'In the context of a possible rupture of ecclesial communion and of the strict requirement that it be restored, along with the various preliminary institutes—such as *equity, tolerance, arbitration, conciliation, etc.*—procedural law is an action of the Church, a tool to surmount and resolve conflicts. Consequently, in the vision of a Church which protects the rights of the individual faithful, but likewise promotes and protects the common good as an indispensable condition for the integral development of the human and Christian person, she also positively includes penal discipline. Even the penalty that is threatened by ecclesiastical authority—although in reality it is simply a recognition of a situation in which the subject has put himself or herself—is seen as a means of fostering communion, that is, as a means of repairing those deficiencies in the individual good and the common good that have come to light in the anti-ecclesial, criminal, and scandalous behavior of the members of the People of God'. Pope John Paul II, address to Roman Rota, 17 February 1979, 4 pages, [www.vatican.va](http://www.vatican.va) (accessed 14 April 2008), p. 3 of 4.

<sup>31</sup> See Thomas J. Reese SJ, 'Archbishop Lefebvre: Moving Towards Schism?', *America*, 4 June 1988 <http://www.americamagazine.org/reese/america.a-lefev.htm>