

*Fr. Perozich comments —*

*As I grew older after ordination, I would preface comments with, “This is what I remember learning in the seminary,” to distinguish between that and what might actually have been taught.*

*Memory is not always accurate. What I have come to believe as true might have been tainted by hearing it wrong, studying it wrongly, or by a mingling of emotions and other experiences.*

*Many people read a chapter from church documents and apply their interpretation. In liturgical law for instance I remember being told that the law was to be interpreted through the mind of the legislator; of course the Holy Father has the ultimate word.*

*Dr. Peters clarifies some things on supposed automatic excommunication for women who have willingly procured abortion, and gives some background into his teaching.*

**MARCH 15, 2019**

**Be careful what you ask for: interim thoughts  
on recent claims that women  
face automatic  
excommunication for abortion**

Dr. Monica Miller **continues to insist** that Catholic women are liable to automatic excommunicated for abortion. I think this assertion is wrong and, in the detail necessary, I plan to respond to it. Meanwhile, though, I want to consider here a different question, namely, What if Miller is correct and potentially huge numbers of Catholic women around the world *are* excommunicated for having obtained an abortion?

While a range of reactions to such a prospect, from seeing it as proof of how dark are our days to muttering ‘Good riddance,

serves them right', seems possible, I want to suggest that Miller's position would, if canonically correct (it's not, but let's suppose), provide the basis for its own repudiation. Briefly, what Miller and some others do not appreciate is that, the *more* Catholics are excommunicated for any offense, the *less* likely the Church is to continue punishing them that way. This not mere academic speculation. It has happened before: the fact that great numbers of Catholics were committing an act punishable by automatic excommunication led the Church to admit the failure of a penal law approach to the problem and drop the excommunication for it. As usual, history illumines.

In 1884 the Third Council of Baltimore, in an attempt to stop Catholics from performing the then rare, but still evil, act of obtaining a divorce and attempting a civil marriage, enacted an automatic excommunication against such conduct (*Acta*, n. 124). Now, who knows, maybe the threat of automatic excommunication *did* dissuade some Catholics from divorcing and remarrying (*Deo gratias*). But with each passing decade the numbers of divorced-and-remarried Catholics continued to climb at rates nearly identical to those of the general population and, by the 1970s, literally millions of American Catholics were supposedly excommunicated.

Neither deterred from breaking the law nor spurred to seek forgiveness for having done so, many divorced and remarried Catholics instead boasted of their excommunication (I heard such claims myself), or, less confrontationally, they saw their excommunication as a excuse 'to pay no more attention to a Church that has already kicked me out'. In time it became obvious that the canonical sanction attached to divorce and remarriage, whatever feasibility it might have enjoyed in its early years, had not only failed in preventing Catholics from divorcing and remarrying on a massive scale, it had actually become, canonically and pastorally, a hindrance to their reconciliation.

In 1977 the US bishops approached the Holy See and asked Pope Paul VI's permission to abrogate the excommunication for divorce and remarriage. The pope consented, the Baltimore penal law was abrogated, and all of its excommunications were lifted (immediately per many but unquestionably within a couple years). CLD VIII: 1213-1214, and 1983 CIC 1313 § 2.

In dropping the excommunication for divorce and remarriage the Church did not, of course, change her teaching on the permanence of marriage nor did she recognize these second, pseudo-marriages; to this day, civilly divorced and remarried Catholics are prohibited holy Communion under the (non-penal) **Canon 915**. But, however irregular their situation, divorced and remarried Catholics no longer labor under the canonical and pastoral consequences of being automatically excommunicated for it and so their reconciliation with the Church, and with God, is thereby facilitated.

With the lesson of Baltimore in mind let's now consider automatic excommunication in general and as threatened for abortion.

Of the seven automatic excommunications left in codified canon law, five of them—desecration of the Eucharist (c.1367), physical attack on the pope (c. 1370), absolution of an accomplice (c. 1378), illicit consecration of a bishop (c. 1382), and violation of seal by a confessor (c. 1388)—affect, legally or practically, only a tiny percentage of the Catholic population. Likewise with the few extra-codical automatic excommunications such as for procedural misconduct in a papal conclave or the attempted ordination of females. See ap. con. *Universi dominici* (1996) and CDF *De delicto* (2008).

Thus, only two automatic excommunications, abortion (c. 1398) and apostasy-heresy-schism (c. 1364), arise from acts that could be perpetrated by large numbers of Catholics. Of course, the crimes of apostasy-heresy-schism, though theoretically committable by large numbers of Catholics, would, if such

rebellion ever erupted to the point of involving millions of Catholics as is the case with abortion, provoke crises in the Church quite beyond canonical. The Church has not suffered that sort of catastrophe for some centuries.

But the crime of abortion differs markedly from these other excommunication situations especially when one looks at the canonical situation of the women obtaining abortions.

Around the world, Catholic women obtaining abortions *each day* number in the hundreds, perhaps in the thousands, and they certainly amount to many millions over recent decades. Those assuming, or insisting, that mothers obtaining abortions are automatically excommunicated are not talking, therefore, about punishing the occasional corrupt cleric who absolved his accomplice or some lunatic who lunged at the pope; instead they are talking about the excommunication of staggering numbers of Catholic women.

Moreover, the act of obtaining an abortion, gravely evil to be sure (CCC 2270-2271), is nevertheless not marked with the *anti-institutional* animus inherent in, say, a bishop consecrating other bishops without Roman authorization, nor is it driven by the conscious ecclesial contrariness associated with formally repudiating one's Christian identity (apostasy), contradicting divine revelation (heresy), or throwing off ecclesiastical jurisdiction (schism). Abortion, unlike all other excommunications (automatic or otherwise) in the 1983 Code, does *not* involve an attack on the Church's sacraments, identity, or governing authority. Notwithstanding that abortion is a grave moral offense on par with murder, euthanasia, sexual-slavery, drug-trafficking, blasphemy, and devil-worship, *only* abortion is punished with automatic excommunication. That anomaly alone should give pause to any one concerned for the right operation of justice in the Church.

Thus, if Miller is right in asserting that Catholic women obtaining abortions are (subject to a few exceptions she concedes)

automatically excommunicated for it, the Church would be faced with a failure of canon law global in scope, massive in numbers, and decades in the making; to a degree that would make the Baltimore excommunications seem like a misstep, the automatic excommunication asserted against women for abortion would manifest a juridic impotence that could only induce widespread contempt of law itself in the ecclesial community and complicate the reconciliation of those Catholic women who do, sooner or later, come to regret their abortion. Upon realizing the magnitude of such a canonical debacle, the Church would have no choice but to abrogate, or severely derogate from, Canon 1398.

*If* Miller is right. But, as I say (and tried to demonstrate **here**, but shall demonstrate in more detail elsewhere), she is not right.

Although Canon 1398 could be abrogated or at least derogated without doing damage to the Church's witness to the value of innocent human life, I do not think that the canon needs to be dropped or substantively changed to prevent millions of Catholics from (supposedly) ending up the morass of *latae sententiae* excommunication. Canon 1398 is soundly written (*pace* its automatic operation) and it can be effectively applied by persons charged with the implementation of law in the Church.

Canon 1398, properly understood, stands as a witness against the carnage unleashed on pre-born human beings in the wake of modern States' reprehensible abandonment of them. It provides a precedent for Roman canon law to imitate Eastern by making murder itself (notably euthanasia) an excommunicable offense (1990 CCEO 1450), albeit *ferendae sententiae*.

Canon 1398, properly understood, enables the canonical prosecution of abortionists and their accomplices toward excommunication. *Right. Now.*

Canon 1398, properly understood, enables the canonical prosecution of women procuring abortion toward sanctions *other than excommunication* (notably, interdict) in the highly unusual

case that such prosecution could be warranted because of other factors.

Finally, Canon 1398, properly understood, does *not* threaten automatic excommunication against women caught up in abortion, and therefore these women are free of the canonically and pastorally complicating implications of being automatically excommunicated. A point, I grant, disputed by Miller.

*From one of Dr. Ed Peter's JCD previous posts:*

Finally, may I remind folks, even those with impressive credentials in other ecclesiastical disciplines, that, while canon law is placed in the Church to serve the needs of all (**1983 CIC 1752**), **canonical argumentation is no place for amateurs.**