Abortion: sin or crime?

Abortion is not only a sin; it is also a crime as Canon Law describes it. The paper deals with the issue of abortion from the Canon Law’s perspective. Not every sin of abortion is at the same time a crime in the legal sense. The paper discusses what the circumstances are to turn the sin of abortion into the crime of abortion. The censure of excommunication is imposed on the individuals who are guilty of the crime of abortion. If there is no crime, there is no excommunication which is attached to the crime of abortion. There are many mitigating circumstances that lessen the responsibility of the individuals who take part in the action of abortion, therefore, many abortion cases are not legal crimes, hence do not impose the censure of excommunication onto the individuals involved.

Introduction

Is there any connection between moral theology and Canon Law? Do those two things have something in common or they are in conflict? When we take a deeper look at the question we arrive to a positive answer. There are tight connections between these two subjects.

Canon Law is closely related to moral theology; however, it differs from the latter in that it is not directly concerned with the acts prescribed or forbidden by the external law, but only with the rectitude of human acts in the light of the last end of man. In contrast, Canon Law deals with the external laws relating to the good order of society rather than the workings of the individual conscience.

Actually, moral theology is necessary for Church law. Legislative enactments within the Church community are based on its moral teaching. They give expression to it, and they are intended to sustain and support it in the life of the community.¹

At one point in history (4th –16th centuries), Church law had to bear and fulfill additional function. The law of the Church was employed to serve certain civil functions. Certain matters, such as disputed marriages, the protection of the poor, and the punishment of certain crimes were adjudicated in Church courts.² It is clear that this function of the Church at that time was not appropriate to its purpose, but we can understand it, because at that time there was a close union between the secular and the spiritual authorities.

Now we have a different situation. Law within the Church community has returned to its authentic function – witnessing to moral teaching and engendering a Christian ethos for the lives of believing people.³

In speaking about interrelations between
Canon Law and moral theology, let us take a particular example – the issue of abortion. This entire paper I will dedicate to discussion of the moral aspects of Canon 1398, which deals with abortion. My purpose will be to find out when excommunication applies, or when it is only a sin, but not a crime. In this paper, there are two major parts – personal responsibility for procuring abortion and responsibility of those who cooperate in this crime. First, I will look at the text of the canon. I will discus when there is sin and when sin becomes a crime. I will explain important terms. I will describe the necessary components that turn sin into the crime. There will be a sub-chapter about conditions that do not incur the crime. Then I will discuss the legal situation of those who cooperate in the crime of abortion.

1. Personal responsibility for procuring abortion

Both moral theology and Canon Law speak about two kinds of agents regarding abortion. First of all, there is the person – the woman, on whom the abortion is performed. Then there are others, who help, encourage and actually use the effective means that make the abortion possible. Those agents are called cooperators. In this paper I will talk about those two kinds of agents separately. This first part of the paper is dedicated to looking at the legal and moral status of the person on whom an abortion is performed. First of all, let us look at the canon and see what it says about the issue of abortion.

The text of the Canon 1398 states: “A person who procures a completed abortion incurs a latae sententiae excommunication.”

The text of the canon looks very clear, but it is wider and more complicated than it appears. When we look at the text, we can immediately think that the Church excommunicates people who have procured a successful abortion. In fact, in probably the majority of cases, mitigating circumstances prevent the censure of excommunication from being incurred. The tragedy of abortion involves distinct and separate questions regarding the personal responsibility of one who procures a successful abortion. Those questions are: has a sin been committed? And, has a crime been committed?

Canon Law views abortion as a crime. Crime according to Canon Law is an external violation of a Church law or precept that has been formally established by an ecclesiastical authority, which has legislative power.

Moral theology views abortion as a sin. A sin is a purposeful and deliberate offense against the will of God; an utterance, a deed or a willfully–entertained desire contrary to God’s law. Objectively, abortion is a mortal sin, gravely contrary to the moral law.

Is every sin of abortion a crime? No, not every sin of abortion is a crime. Although not every sin of abortion is a crime, every crime of abortion does presuppose the abortion in question to be a mortal sin. According to the principals of ecclesiastical penal law, there can be no crime and no consequential liability to penalties unless serious moral guilt is involved. Moral guilt is incurred when one has a bad intention, understands it and freely chooses to act. That is why every crime of abortion is considered a grave sin.

Since we know the distinction which moral theology and Canon Law makes about abortion, let us clear up some important terms related to this canon.
1.1 Important terms

Abortion

The penal law committee did not define abortion in the canon text, because presumably the Church’s teaching was well known. Traditionally abortion has been defined as the ejection of a live, immature or non-viable fetus from the mother’s womb. A related but technically different moral evil was feticide. Feticide is the killing of the fetus within the womb. Since the penal law must be strictly interpreted, most canonists have judged that abortion, but not technically feticide, however horrendous, was the delict which both codes (1917 and 1983) talk about.8

However, most abortions today occur by procedures involving killing the fetus in the womb, for example, suction, dilation and curettage, or the use of a prostaglandin drug often in connection with the RU 486 pill. Therefore, the Pope’s commission gave the canonical definition of an abortion. The May 23, 1988 authentic Code Commission interpretation broadened the canonical understanding of abortion to maximize the protection of the fetus. Abortion means not only the deliberate ejection of an immature fetus but also any intentional killing of the fetus through whatever means at any time after conception. I have to say here, that this interpretation is an extensive interpretation of the code. Therefore, according to Canon Law norms, this interpretation and understanding of abortion is operative only after the interpretation (May 23, 1988); it is not retroactive.9

Procure

Another important term we see in the canon is to procure (‘a person who procures… abortion’). Procure means to acquire, obtain, induce or cause directly and intentionally by means of physical or moral action. Consequently, a person who actively participates in the abortive act procures the abortion.10

Completed abortion

Censure of excommunication is incurred only if an abortion is successful or completed. Successful means the goal is attained, not simply desired, intended or attempted. Hence, while the desire or intention of an abortion would be gravely sinful, it does not constitute the crime of abortion.

It is important to point out that regardless of how malicious the intention to commit the crime might be, if the actual abortion does not occur the censure is not contracted. Persons would be guilty of grave sin for such desire, but that is not enough for a crime to take place.11 Canon Law says that there must be an external violation of penal law for a delict to occur.12

Latae Sententiae

After procuring an abortion, penalty comes latae sententiae. This Latin term is important and widely used in canon law. It means the penalty is incurred ipso facto, immediately and automatically, by the commission of the delict. In opposition to latae sententiae there is ferendae sententiae, which means a penalty is to be inflicted by the church court.13

This means that the penalty of excommunication comes to person immediately after the action of abortion. It does not matter if somebody knows about it or not, the penalty is incurred to the person because the crime is connected to the action, not to the decision of the court. Therefore there is no need for the penal sentence from Ecclesial court – a penalty comes immediately.
Excommunication

Excommunication is the one type of ecclesiastical penalty. It is a censure or so called ‘medicinal penalty.’ Censures have a special orientation or purpose — to break contumacy, or contempt of church authority, and to reintegrate the offender into the community. This censure is inflicted only for very serious crimes. Censures emphasize reforming the offender.\(^{14}\) Actually, excommunication is to be seen as medicinal penalty that is intended to foster repentance and reconciliation. Thus, excommunication may be applied only until the offender accepts God’s healing grace and repents, at which time the excommunication is to be lifted in the Sacrament of Reconciliation.

Can we say that all persons who procure a successful abortion in this strict legal sense are automatically excommunicated? Now let us look what it takes to be responsible for the crime of abortion which incurs the censure of excommunication.

1.2 Requirements for a crime of abortion to occur

The responsibility and penalty of abortion implies 1) intent and 2) deliberate use of 3) effective means.

Intention

First, abortion must be intended. It must be willed either as an end in itself, for example, simply to terminate the pregnancy, or as means to some other end, for example, to safeguard the health of the mother. Both of these examples are characterized as directly intended.

Deliberate use of means

The second element in procuring an abortion is deliberate and purposeful use of means. In addition to interiorly willing the abortion, the person must in his external actions designedly apply the cause of the abortion. There would be no crime if the cause were to be applied accidentally or unknowingly. For example, a woman may wish an abortion, but if an accidental fall causes it, it is not deliberate, and hence no crime is committed, despite the serious sin of interiorly willing the abortion.

Means must be efficacious

The third condition for crime to arise is that the means employed must be effective in themselves. This means that the abortion must actually result from the means used for this specific purpose. Therefore, if some other cause is really responsible for the abortion, there is no crime.\(^{15}\)

1.3 When a crime of abortion does not apply

Though abortion is a grave sin, not every action of abortion is a crime and therefore does not incur excommunication. Canon Law recognizes mitigating circumstances that remove or reduce responsibility. Let us look at these circumstances.

No crime at all

Canon 1323 speaks about the persons who are never subject to any penalty for procuring a successful abortion. They are:

- A person who habitually lacks the use of reason.
- A person who has not yet completed the sixteenth year of age.
• A person who without any fault was unaware of violating a law or precept of the Church (even though aware that abortion is a serious or mortal sin).
• A person who acted under compulsion by physical force or in a virtue of a mere accident, which could neither be foreseen nor prevented when foreseen.
• A person who acted out of grave fear, even if only relatively grave (grave fear is an internal response of a person to the credible threat of serious evil to be inflicted by another person).\(^\text{16}\)

**Crime is not automatic**

Canon 1324 talks about persons for whom the penalty should be lessened. These persons are not subject to an automatic penalty (*latae sententiae*) for procuring a successful abortion, although a penalty might be imposed as a result of a church process (*ferendae sententiae*). They are:

• A person with only imperfect use of reason
• A person who lacked the use of reason due to drunkenness, or another similar mental disturbance which was culpable.
• A person acting in the serious heat of passion which did not precede and impeded all deliberation of mind and consent of the will, as long as the passion itself had not been voluntarily stirred up or fostered.
• A minor who has completed the age of sixteen years but is not yet eighteen years of age.
• A person who was forced through great fear, even if only relatively grave.
• A person who without any fault was unaware that a penalty was attached to the law or precept.

We also have to know that canon 1398 is in the book of the code of sanctions. This canon is a penal law and, as such must be strictly construed. Canon 18 says: “Laws which establish a penalty... are subject to strict interpretation.” This means that the terms used in the canon are to be narrowly interpreted, understood in a restrictive sense, and not extended, extrapolated, or applied by analogy.\(^\text{17}\)

We discussed what it takes for a crime to occur in terms of personal and direct involvement in the action of an abortion. In the next part of the paper we will speak about the responsibility of other persons who take part or cooperate in the crime of abortion.

### 2. Cooperation in a crime of abortion

It is true that not only one person is responsible for the crime of abortion. When we have the case of abortion, we know that in many instances there are many people behind it, including parents of the aborted fetus, their families, doctors, nurses, etc. who all may be involved in the crime. Of course, the contribution every person makes toward the crime is different. What does Canon Law say about the responsibility of those who participate in the crime of abortion? Do they incur the *latae sententiae* excommunication provided by canon 1398?

To answer this question, in addition to canon 1398 we also have to look at the additional canon, which deals with accomplices. Paragraph 2 of canon 1329 is of our interest:

Accomplices who are not named in a law or precept incur a *latae sententiae* penalty attached to a delict if without their assistance the delict would not have been committed, and the penalty is of such a nature that can affect them; otherwise, they can be punished by *ferendae sententiae* penalties.

In order to have a better understanding of these two canons we have to look at the term ‘procure’ again. “Procurers are those who directly, deliberately and purposeful-
ly take part in the abortion, either by physical or moral action, e.g., by command, order or threat.”

We see that this canon applies only to those who directly participate in the abortive act; it does not apply to those who do not take part in direct participation.\(^{19}\)

There are two ways in which a person can directly participate in an act such as an abortion.

**Co–authors**

The first way to participate is to be co-authors of the delict or co–principals along with those who actually bring about or perform the abortion. The 1917 Code described this category of participation in the crime as including those who contribute to the criminal act both intentionally and physically.\(^{20}\) This formulation in the 1983 code is not explicitly retained in reference to *latae sententiae* censure, but such persons could be considered full cooperators and included within the definition of ‘procurers’\(^{21}\).

**Accomplices**

A second type of participator is to be an accomplice. Accomplices are principal or necessary collaborators without whose help the offense could not have been accomplished.

In the 1917 code, canon 2209, §3 named the principal accomplices as those who order the action, who persuade others to go through with it, or are necessary cooperators. The 1983 code (canon 1329, §2) simplifies the matter by coalescing the categories into one. The meaning is basically the same, but the present canon is even clearer: accomplices who incur the same *latae sententiae* penalty as the principal authors are only those without whose efforts the delict would not have been carried out.\(^{22}\) Only those people who intentionally and physically participate in the specific action or procedure, which precisely effects the abortion, get excommunicated. Persons, who prepare or sell drugs, sterilize the instruments, or counsel the abortion do actions that do not constitute the procedure, which effects the abortion. Their actions are preparatory and facilitating acts. Therefore they do not get excommunicated.\(^{23}\)

**Conclusion**

We have discussed the issue of an abortion in the light of Canon Law. Canon Law tells us that not every case of an abortion incurs a censure of excommunication. The excommunication for abortion is incurred only if a person acts intentionally, freely and knowingly in terms of not only moral theology but also of knowledge of Canon Law about the crime and censure attached. There are many mitigating circumstances about the personal attitude toward the crime of an abortion. These circumstances are discussed in general norms of penal law. Main reasons for excommunication not to incur are: ignorance of the church law with penalty attached, age, which is also important characteristic, as is grave fear, and other things. If all those Canon Law requirements are not met, we are dealing with a sin, but not with a crime in the terms of Canon Law. Of course not every action of abortion is a sin. Moral theology presents requirements that must be met, if we are to talk about the sin of a person involved in the action of abortion. The action, (abortion) must be known as bad (not in accord with God’s will) and it must be freely willed. These two generally expressed features are primarily what turn the action of abortion into a personal sin. But if we are talking about the abortion in the terms of Canon Law, the act of abortion must meet Canon Law requirements in order to be con-
sidered a crime. However, if the require-
ments are not met, then there is no crime,
and therefore there is no excommunication
involved, which is attached to the crime.

In the case of cooperation in the crime
only, those are excommunicated without
whose help and actions the delict would not
have been accomplished.

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ABORTAS: NUODĖMĖ AR NUSIKALTIMAS?

S ant r a u k a


Žmogus būna moraliai pakaitinamas, kai turi blogą intenciją, supranta, kas daroma, ir laisvai pasirenka veikti. Aborto nuodėmė tampama nusikaltimu, kai žmogus žino kanonines normas, apibrėžiančias aborto nusikaltimą ir už jį skirtą ekскомunikavimą cenžūrą, tačiau vis tiek laisvai pasirenka tokią nuodėmingą veikimą. Kanonų teisė taip pat numato švelninančias aplinkybes, kai žmogus negali būti kaltinamas nusikaltimu arba, kai baudėje už nusikaltimą nėra automatiška (taikoma iš karto po nusikaltimo įvykdyto). Pavyzdžiui, nevisiškai protiškai įgalus žmogus arba žmogus, neturintis šešioliškų metų amžiaus arba nežinantis, kai savo veikimu laužo bažnytinį įstatymą, nors ir padarytų abortą, bet nepadarytų teisinio nusikaltimo, už kurį ekskomunikuojama. Todėl norint suprasti, ar žmogus, dalyvavęs darant abortą, ir teisėkai nusikaltuo už sitraukė ekскомuniką, reikia išsiųsinti, ar tas žmogus žinojo kanonines normas dėl aborto nusikaltimo ir ar jas netaisyklinio atsakomybę mažinantičios kanonis normalios normos.