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Bishops Wring Their Hands at the Whirlwind of Hell

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(Photo credit: Cuomo and Dolan at Columbus Day Parade, 2018 / Shutterstock)

Several years ago, after a course I had taught on Church history, my students presented me with a gift. It was an eight-inch-tall action figure of Pope Innocent

III they had purchased from a novelty store in Frankenmuth, MI. A pope of the thirteenth century, Innocent III—besides approving the Rule of St. Francis—is known for calling the Albigensian crusade. This odd children’s plaything came with a short biography which included: “Action-figure’s Weapon of Choice: Excommunication.”

On January 22, appropriately and deliberately timed for the 46th anniversary of *Roe v. Wade*, the New York state legislature passed the “[Reproductive Health Act](#)” (RHA). It was immediately and happily signed into law by Catholic governor Andrew Cuomo. Abortion-on-demand was already permitted in the state through the sixth month of pregnancy, but the revision now permits the killing of the unborn through the ninth month, not only for the life, but even the health of the mother. The health of the mother doesn’t mean a serious threat to physical health. Consistent with *Roe*’s companion case *Doe v. Bolton*: “medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the wellbeing of the patient. All these factors may relate to health.” The new law is radical in that other health care professionals besides licensed physicians may perform abortions. Furthermore, protections are removed for unborn children killed by assault upon the mother or who are born alive. In short, the legislation does not recognize the unborn child as a person at any time during pregnancy.

On January 25, CNN reporter Daniel Burke posted to his Twitter account that he had asked Cardinal Timothy Dolan of the Archdiocese of New York “about calls for Gov. Cuomo to be excommunicated.” Through a spokesman, Dolan responded: “Excommunication should not be used as a weapon.” Dolan went on to explain why, despite the atrocity of a law that will send thousands of human beings to their deaths, no ecclesial penalties would be forthcoming. Apparently believing that excommunicating the governor of New York would be using such a penalty as a “weapon,” the Cardinal went on to say:

Too often, I fear those who call for someone's excommunication, do so out of anger or frustration.

Second, notable canon lawyers have said that, under canon law, excommunication is not an appropriate response to a politician who supports or votes for legislation advancing abortion.

Third, from a pastoral perspective, if a pastor—and a bishop is certainly a pastor of a diocese—knows of a grave situation involving a parishioner, it is his duty to address that issue personally and directly with the parishioner. That was the approach of Cardinal O'Connor and Cardinal Egan (both of whom I served), and it is Cardinal Dolan's approach as well.

Fourth, and finally, from a strategic perspective, I do not believe that excommunication would be effective as many politicians would welcome it as a sign of their refusal to be 'bullied by the Church,' thinking it would therefore give them a political advantage. (See, for example, the case of [Bishop Leo Maher and Lucy Killea](#).)

Many canonists, incredible as this may seem, do not believe that the Church law of excommunication, [Canon 1378](#), applies in the case of an Andrew Cuomo who politically facilitates abortion since such an offense is not among the enumerated criteria for such a penalty. This is the opinion of well-known canon lawyer Edward Peters who has a reputation for orthodoxy. Even so, a number of canonists, including Peters and the well-known New York priest Fr. Gerald Murray, believe that the bishops [can and must](#) impose some form of canonical penalty. Which one should be imposed will be discussed below. The key, however, to the inaction of the New York bishops may be found in their own response to the impending vote on the RHA. Posted on the home page of the archdiocesan website it states:

Words are insufficient to describe the profound sadness we feel at the contemplated passage of New York State's new proposed abortion policy. We mourn the unborn infants who will lose their lives, and the many mothers and fathers who will suffer remorse and heartbreak as a result.

The bishops further lament that the new law will expand abortion. They express concern that "New York law is moving in the wrong direction" and state further: "Our Governor and legislative leaders hail this new abortion law as progress. This is not progress." The bishops pledged to continue to provide help for pregnant women in need.

As a condemnation of the most permissive facilitation of abortion in America, it can only be described as *pathetic*. All they have said is how "sad" they are and how they "mourn" when what they need to express is absolute outrage which needs to be specifically directed at Cuomo and his co-conspirators. Instead of fury we have episcopal hand-wringing and barely anything more. The legally sanctioned slaughter of a completely helpless group of innocents is merely described by the bishops as "moving the state in the wrong direction." Such understated rhetoric simply does not match the urgency and tragedy of the impending slaughter. And absolutely missing are any consequences for those Catholic lawmakers who lobbied and voted for this law, and even celebrated its passage as when Cuomo directed state public monuments be illuminated in pink lights to, in his words, "celebrate this achievement and shine a bright light forward for the rest of the nation to follow."

Indeed, stronger language came from a layman, the New York archdiocesan public policy director Ed Mechmann, who called the vote "catastrophic," an "obscenity," and even referred to the bill as the "Guaranteed Dead Baby Act." Moreover, he wasn't afraid to name Cuomo, castigating the governor for the "insult" of his "celebratory mood." But Mechmann did not call for any canonical

penalties, perhaps because of constraints imposed by Dolan who clearly wants to avoid the topic.

To his credit, Bishop of Albany Edward B. Scharfenberger posted an open letter on January 22 addressed directly to Cuomo who is decried for signing the RHA. He even referred to Cuomo's RHA as the governor's "Death Star." Perhaps Albany's bishop is gearing up to impose canonical sanctions, but thus far he has not done so, nor indicated he will do so. Nonetheless, he did openly call Cuomo to take responsibility for his actions.

Yesterday, on January 28, Cardinal Dolan appeared on *Fox and Friends*. He severely criticized Cuomo and characterized the abortion law as "hideous." Moreover, Dolan admirably defended the Church's teaching that abortion is not even permitted to save the life of the mother as there can be no direct attack on the life of an innocent person even to save one's own. However, Dolan clearly stated there will be no excommunication and no public imposition of Canon 915, characterizing such measures as "counter-productive." He even provided the very peculiar justification that since Cuomo delights in his dissent from Church teaching "he's not going to be moved by this, so what's the use?"

While Dolan has declared there will be no excommunication, two bishops have openly voiced their support for the excommunication of Cuomo and politicians like him: Knoxville, Tennessee, Bishop Richard Stika and Tyler, Texas, Bishop Joseph Strickland. The latter stated: "The video of the 'celebration' of New York legislators as they condemned even full-term unborn children to Death by Choice is a scene from Hell. Woe to those who ignore the sanctity of life, they reap the whirlwind of Hell. Stand against this holocaust in every way you can."

Canonical Penalties for Abortion

Canon Law 1398 states: "A person who procures a completed abortion incurs a *latae sententiae* excommunication." The canon is typically applied to those who

know abortion is against the law of God but procure one anyway. Under these circumstances, they are automatically excommunicated. This means not only the woman but all those who directly aid her in obtaining the abortion. Many canonists, including Professor Peters, do not believe Canon 1398 applies to the public sin of Catholic politicians such as Cuomo since they are not *directly* procuring the death of a specific unborn child.

I know this seems ridiculous; while Cuomo may not be killing a specific baby himself, he has created the path by which many unborn babies will indeed be slaughtered. Nonetheless, if we accept the position that Canon 1398 does not apply, Canon 915 certainly does, and, dare we say, this is the “weapon” that the vast majority of bishops for the last 50 years have [scandalously left unsheathed](#). Canon 915 states: “Those who have been excommunicated or interdicted after the imposition or declaration of the penalty *and others obstinately persevering in manifest grave sin are not to be admitted to Holy Communion*” (emphasis added). The words “not to be admitted” are key. Some pro-abortion Catholic politicians have for decades promoted and facilitated the killing of the unborn contrary to God’s law. They certainly have demonstrated that they are “*obstinately persevering in manifest grave sin.*” This means that not only can they not present themselves for Holy Communion, but that administrators of the sacrament *must refuse* to give it to them.

It may be technically true that bishops are not canonically required to publicly declare that Canon 915 applies to someone like Cuomo, but to not do so places both Cuomo and the Church in serious spiritual danger. And here is where the bishops have failed. Abortion is a grave injustice. Those who publicly promote it give scandal to the faithful as well as the advocacy of other social evils such as “gay marriage.” Add to this the profound spiritual damage caused to the soul of those who advocate these evils (which is why canonical penalties like excommunication are not merely “weapons.”) All of this requires that bishops publicly admonish the Cuomos, Pelosis, Durbins, Bidens, and Kerrys. Bishops in

dioceses where such politicians are likely to receive Communion need to implement the canon so that clergy and extra-ordinary ministers of Communion are authorized to withhold the sacrament from those who seriously, publicly wound Christ and his Church. Indeed, the language “are not to be admitted” is made up of words calling for action—words more directed to the Church than to the sinner, that call on the Church to do her duty in the face of grave spiritual scandal.

If there is “anger and frustration” from those calling for the excommunication of pro-abortion Catholic legislators it is because it is so horrifically obvious that no one can advocate, or indeed cause, the killing of the unborn and then receive the Eucharist. I have held in my own hands the broken bodies of the aborted unborn thrown in the trash and it is spiritually incongruous for someone to have voted for a law that caused their bodies to be broken and then, without repentance for such crimes, consume the broken Body of Christ. The bishops need to say so.

Peters Recommends an Alternative

However, as Professor Peters argues, canon law does provide a path to excommunication for Catholic politicians who advocate abortion, despite the supposed inapplicability of Canon 1398. The path is open to bishops by way of Canon 1369: “A person who in a public show or speech, in published writing, or in other uses of the instruments of social communication utters blasphemy, *gravely injures good morals*, expresses insults, or excites hatred or contempt against religion or the Church is to be punished with a just penalty” (emphasis added). In a [January 19 blog](#), Peters argued:

Canon 1369 authorizes a “just penalty” against those who violate its terms. That broad (but not unlimited) phrase “just penalty” allows for tailoring the canonical consequences in specific cases to the wide variety of fact patterns that could be addressed in its light, here, everything from Cuomo’s speeches and comments in support of this abortion law to his ordering a ghoulish light show in celebration of

its enactment. That said, while the notion of a “just penalty” is broad, there is some question as to whether it extends, at least immediately, to excommunication. Here is not the place to air that technical issue, but neither should its presence derail consideration of using Canon 1369 against Cuomo. Some justice is better than no justice and even if (I say, if) excommunication could not be imposed immediately on Cuomo, the Church could still impose some canonical sanctions for his conduct.

Peters also suggests that the bishops strengthen their position to impose a canonical penalty by first warning Catholic politicians they will be excommunicated should they offend against a specific precept under Canon 1369. The moment for such a warning is urgently upon them as New Mexico, Rhode island, and Vermont are poised to pass their version of the RHA.

However, for the moment Dolan and Bishop Scharfenberger have left these Catholic perpetrators of abortion free to act without suffering any canonical penalties thereby allowing the scandal of inaction to continue. The sexual abuse crisis falls to the clergy, but there has been Church-related abuse that falls to the laity—namely the 50-year-long scandal of Catholic politicians promoting abortion. The clergy scandal violates the sanctity of sex, the other scandal the sanctity of life. The latter is as terrible a scandal in the Church as the first. It’s time the bishops recognized it as such; we must insist that they do and that they employ the appropriate sanctions open to them.

Never again should there be another photo of Dolan chumming it up with Cuomo at some gala event. Dolan should follow the example of the second century bishop of Smyrna, St. Polycarp, who when the heretic Marcion ran into the bishop on a street in Rome said to the saint “Do you not recognize me, Polycarp?” to which the bishop exclaimed “Yes, I recognize you very well, you son of Satan!”

What we need, and what the Church has always needed, are bishops who are true action figures, able to face up to the forces of this Dark Age, unafraid to use the “weapons” at their disposal to protect the faith of believers, and willing to advance the Church’s social doctrine and call straying sheep back to the fold. But as night falls darkly on New York, the bishops wring their hands while pro-abortion Catholic politicians “reap the whirlwind of Hell.”