



The FURROW

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In his article, “Catholics and Abortion Law”,¹ Fr Michael C. McGuckian, S.J., claims that any Catholic politician who supports “an overly permissive abortion law” may be making “a terrible mistake”, but “they are not necessarily guilty of formal co-operation with the act of abortion itself”. He distinguishes between a politician who believes that abortion is morally justified and one who does not “share the intention” of the act of abortion but only permits it. The latter may be guilty of a serious error in judgement but is not guilty of formal co-operation and therefore should not be “excommunicated”.² Instead of “excommunicating” them, bishops should work closely with them to get them to change their minds. He concludes that “Catholic politicians who actively support abortion laws, can certainly be criticized, on legal and moral grounds, but they should not be excommunicated, for they are not guilty of formal cooperation in the act of abortion,”³ and respectfully asks for a revision of the Church’s authoritative teaching as found in *Evangelium Vitae* 73 and clarified by the 2004 Letter of the Prefect of the CDF, Cardinal Ratzinger, to the American Bishops in response to their request for clarification.⁴

The bulk of Fr McGuckian’s article is a moving presentation of the tragic so-called “X-case”, which, he says, caused him

1 In *The Furrow*, 73/1 (2022), 29-39.

2 Ibid., 37. Fr McGuckian does not say that the politician who believes that abortion is morally justified should be denied Holy Communion, but perhaps he implies it or takes it for granted, since it is clearly formal cooperation.

3 Ibid.

4 “Abortion and euthanasia are thus crimes which no human law can claim to legitimize. [...] In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never licit to obey it, or to ‘take part in a propaganda campaign in favour of such a law, or to vote for it’ (CDF Declaration on Procured Abortion, 1974).” The same text (EV 73) mentions that it is licit for legislators to vote for legislation aimed at *reducing the harm*. I am relying on Fr McGuckian’s account of Cardinal Ratzinger’s letter.

D. Vincent Twomey SVD is Emeritus Professor of Moral Theology, Pontifical University, Maynooth. Address: Divine Word Missionaries, Donamon, Co. Roscommon F42 YE13.

to change his mind about the Eight Amendment that he had supported. It was the case of the young girl, pregnant after being raped and displaying suicidal ideation, who intended travelling to the UK to have an abortion. The case culminated in the Supreme Court, where the majority interpreted the Eight Amendment as implying a right to an abortion, if there was a real and substantial risk to the mother's life, including by suicide. He is convinced that "certain extenuating circumstances can render it *inappropriate to punish* a woman who obtains an objectively unjustified abortion".⁵ One's sympathies are indeed with the young victim of rape. But does that justify a Catholic politician's voting for the widespread provision of abortion "services" in Ireland? Should he or she be "excommunicated" because they so voted? Well, yes and no.

The first thing to be noted is that Fr McGuckian confuses the issue by describing the denial of access to Holy Communion to pro-abortion-rights politicians in the USA as an "excommunication policy". Excommunication is a juridical act, the effects of which include, but are more extensive than, being denied the reception of the Eucharist.⁶ The relevant Canon on excommunication linked to abortion (#1398) says nothing about those who legislate for abortion.

However, according to Canon 915, anyone who "obstinately persists in manifest grave sin" should be denied Holy Communion. Can voting in parliament for abortion or euthanasia be described as obstinately persisting in manifest grave sin – understanding "manifest" here to mean publicly manifest – and so move a bishop or priest to deny the parliamentarian concerned Holy Communion (as Cardinal Ratzinger clarified in his letter) after having made every effort to meet the person, inform him or her of the Church's teaching and warn him or her "that he [or she] will otherwise be denied the Eucharist"?⁷

Fr McGuckian clearly says: No. He bases his claim on the distinction between a law that "condones" or "approves" an immoral act and one that simply "permits" it. That distinction he claims, following Catherine Kaveny,⁸ was made by St Thomas in *STh* I-II, q. 93, a.3 ad 3: "... human law is said to permit certain things, not as approving them but as being unable to direct them." What Thomas seems to have meant in the context

5 Ibid., 37, emphasis in text. Here I leave aside what is meant by an "objectively justified abortion". Presumably this strange formulation refers to the application of the principle of double-effect in certain procedures to save the life of the mother at the unintended cost of losing the baby. To call it abortion is misleading, since abortion is defined by the intentional termination of a pregnancy.

6 Cf. Can. 1331.

7 Quoted by McGuckian, op. cit., 31.

8 Two articles by Catherine Kaveny are quoted, *ibid.*, 37.

is that, though certain acts are contrary to the eternal moral law, human positive law “is unable to direct” them (i.e., not to so act), as Thomas clarifies. What is meant by being “unable to direct” is the practical inability to formulate appropriate legislation for objectively immoral behaviour. The classic case is adultery. Did St Thomas imply that it would be morally upright for a politician to approve (by either proposing or voting for) laws that don’t just permit but actively facilitate and *regulate* for the actual provision of abortion and euthanasia? In fact, he expressly says the very opposite in the same response (and it is quoted by Fr McGuckian): “It would be different were human law to approve what the eternal law condemns”. And that is precisely what the repeal of the Eight Amendment did. For the legislators in the Oireachtas at least, repeal was linked to the promised introduction of legislation that was framed so as to provide for one of the most permissive abortion regimes in the world. The legislation thus “condones and approves” abortion. Over 12,000 innocent babies have lost their lives under this law.

Despite this, Fr McGuckian claims that politicians who support such pro-abortion laws can be criticized on legal or moral grounds but not denied Holy Communion. The reason, he claims, is that such approval of laws regulating the provision of abortion (practically on demand) is not formal cooperation in evil. That seems to be an unacceptably narrow understanding of what constitutes formal cooperation. Moral theologians distinguish between formal and material cooperation. The morality of the material cooperation depends on the degrees of cooperation and other moral duties. And here, one must distinguish between mediate and immediate cooperation.⁹ Mediate cooperation may be justified in certain circumstances if there is sufficient reason. Immediate material cooperation, i.e., any contribution to the performance of an intrinsically evil act, such as abortion or euthanasia, which is necessary for its actualization, is the equivalent of formal cooperation and never licit. Legislation to regulate the provision of abortion falls into that category. Catholic politicians who vote for such legislation are thus guilty of a *manifestly* grave sin (manifest, since voting is a public act) and, if they obstinately refuse to change their publicly declared policy, then it follows that they should be refused Holy Communion after every effort to persuade them otherwise fails. Nothing less than their eternal salvation is at stake.

9 See, for example, Benedict M. Ashley, Jean Deblois, Kevin O'Rourke, *Health Care Ethics. A Catholic Analysis, Fifth Edition* (Washington, D.C.: Georgetown University Press, 2006), 55-57.

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By its very nature, legislation is there to protect the rights of the innocent, maintain order and to punish wrongdoing. Society's laws also have an important pedagogical role in promoting the values that society needs to flourish.¹⁰ Legislation to allow and support what is intrinsically evil, such as euthanasia or abortion, signals to the population at large that such acts are morally neutral, if not morally positive, and so encourages their practice. In other words, legislation that allows or promotes evil acts removes from weak human beings that societal support they need to discourage them from giving into the temptation to opt for such a radical but harmful solution to their existential predicament.

The existence of legislation permitting abortion gradually changes the mores of a society. And so, it is not surprising that, after years of permissive legislation in Europe regulating the "service" of abortion, the European Parliament would approve the "Matić Resolution" on June 25, 2021, with 378 votes in favour, 255 against, and 42 abstentions. It declared abortion to be a "fundamental human right" (All Irish MEPs voted for the Report.) President Macron has recently called for the legal recognition of such a "right" in the EU Charter of Fundamental Rights.

In theological terms, legislating for intrinsically evil acts is also a form of giving scandal, namely encouraging others to sin (cf. Mt 18:6f.) and so endangering the eternal salvation of others. It is the seriousness of the sin of abortion or euthanasia that obliges bishops and priests to refuse Holy Communion to Catholic politicians who legislate or vote for the provision of abortion "services" or euthanasia. The aim of such a denial is twofold: to move the politician to repent of his own wrongdoing, and to help undo the public approval for the wrongness of intrinsically evil acts that have become part of positive legislation and so part of medical practice. bishops are primarily responsible for the salvation of souls, which is also the primary objective of Canon Law. They have a sacred duty not to remain silent.

10 This classical understanding of law tends to be ignored where the approach to law is positivist, but in practice it is evident.