

SCANDAL IN CANON LAW

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♦ St. Thomas (II-II:43:1) - scandal is a word or action evil in itself, which occasions another's spiritual ruin. It is a word or action, that is either an external act—for an internal act can have no influence on the conduct of another—or the omission of an external act, because to omit what one should do is equivalent to doing what is forbidden; it must be evil in itself, or in appearance

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♦ **Catechism of the Catholic Church defines sin as: 1849...an offense against reason, truth, and right conscience; it is failure in genuine love for God and neighbour caused by a perverse attachment to certain goods. It wounds the nature of man and injures human solidarity. It has been defined as “an utterance, a deed, or a desire contrary to the eternal law.”**

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♦ **Catechism of the Catholic Church 2284**

♦ **Scandal is an attitude or behavior which leads another to do evil. The person who gives scandal becomes his neighbor's tempter. He damages virtue and integrity; he may even draw his brother into spiritual death. Scandal is a grave offense if by deed or omission another is deliberately led into a grave offense.**

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♦ **Scandal by a Person in Authority**

- ♦ When the scandal is given by a person in authority, the scandal, according to the Catechism of the Catholic Church is so much worse.
- ♦ Elements of scandal in the negative sense are: 1) acts or omissions that harmfully affect the Christian community; 2) the passive failure to act by ecclesiastical authority; and 3) the threat to and undermining of essential values of the community
- ♦ leaders create scandal when they allow a culture of clericalism to develop and exist:

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♦ **1983 code**

- ♦ 277 §2; 326; 695; 703; 933; 990; 1132; 1184; 1211; 1311; 1318; 1324 §3; 1328 §2; 1335; 1339 §2; 1341; 1343; 1344 1° 2° 3°; 1345; 1347; 1349; 1352; 1357 §2; 1361§3; 1364§2; 1378§2; 1394§1; 1395§1; 1455§3; 1560§2; 1722; 1727§2;
- ♦ “Scandal” is included in twenty-four canons of the present code of canon law, thirteen of them in Book VI on “Penal Sanctions in the Church.” More detailed prescriptions for “scandal” were made in nine canons in the 2021 revisions of penal law.

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♦ The 1983 Code avoided all the detailed prohibitions of the 1917 Code and simply required clerics to avoid all those things that were unbecoming to their state so that they should always conduct themselves in a way to maintain the respect of the community at large. The code stated that clerics were to avoid giving scandal (c. 277) and acknowledged that “scandal” could be given by uncompleted offences in c. 1328 §2). Scandal given by clergy and religious is particularly grave when they perpetrate sexual abuse especially of minors but is also given by violations of canons 1394 and 1395.

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- ♦ Revision of penal law in 2021 included adding §2) to canon 1311 with “repair of scandal” being a purpose of penal law’
- ♦ a lesser penalty was prescribed for attempted but not completed crimes if scandal resulted in canon 1328:
- ♦ §2. ...However, if scandal or other serious harm or danger has resulted, the perpetrator, even though spontaneously desisting, may be punished by a just penalty, but of a lesser kind than that determined for the completed crime. (Can. 1328)

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- ◆ **A. Brown**, in a sentence concerning a priest soliciting homosexual sex, dated January 5, 2000, explained the impact of “scandal” on a penalty for an attempted crime:
- ◆ **The important change is that the present law prescribes a lesser penalty for such situation (penance or penal remedies) but only when the perpetrator has spontaneously desisted from the crime before it was completed. Unless there was scandal involved or grave harm or danger resulted from the attempted crime, then there is apparently no punishment to be given. On the other hand, if there was scandal, grave harm, or danger as a result of the attempted crime, the determination of the punishment is left to the Judge’s discretion.**
- ◆ **An example would be a cleric arranging to meet a 14-year-old at a park but gets arrested by the police before the meeting happens.**

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- ◆ **Religious institutes act officially on behalf of the Church. Members of religious institutes can be dismissed for causing “grave scandal arising from the culpable behavior of the member”:**
- ◆ **A member can be dismissed for other causes, provided they are grave, external, imputable and juridically proven. Among such causes are: habitual neglect of the obligations of consecrated life; repeated violation of the sacred bonds; obstinate disobedience to the lawful orders of Superiors in grave matters; grave scandal arising from the culpable behaviour of the member; obstinate attachment to, or diffusion of, teachings condemned by the magisterium of the Church; public adherence to materialistic or atheistic ideologies; the unlawful absence mentioned in Can. 665 §2, if it extends for a period of six months; other reasons of similar gravity which are perhaps defined in the institute’s own law. (Can. 696 §1)**

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- ◆ However, if the scandal is grave, the local superior can immediately expel a member from the religious house:
- ◆ In a case of grave external scandal, or of extremely grave and imminent harm to the institute, a member can be expelled forthwith from the house by the major Superior. If there is danger in delay, this can be done by the local Superior with the consent of his or her council. The major Superior, if need be, is to introduce a process of dismissal in accordance with the norms of law, or refer the matter to the Apostolic See. (Can. 703)

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- ◆ The 1983 Code makes provision for funerals to be denied to people when scandal would be given to the faithful:
- ◆ §1. Church funerals are to be denied to the following, unless they gave some signs of repentance before death: 1/ notorious apostates, heretics and schismatics; 2/ those who for anti Christian motives chose that their bodies be cremated; 3/ other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful. §2. If any doubt occurs, the local Ordinary is to be consulted and his judgement followed. (Can. 1184)

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- ◆ **1339 . §5. If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into an offence, the Ordinary is also to subject the offender, over and above the penalties imposed according to the provision of the law or declared by sentence or decree, to a measure of vigilance determined by means of a singular decree. (Can. 1339)**
- ◆ **The addition of paragraphs 4 and 5 to the existing canon of the 1983 code that included provision to deal with behavior causing scandal means that a more detailed procedure is implemented including “warnings and corrections” as well as the issuing of a penal precept that “sets out exactly what is to be done or avoided.”**

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- ◆ **Obligatory Penal Process and Penalty to Repair Scandal**
- ◆ **The Ordinary must begin a judicial process, either judicial or extrajudicial if there is no other way to repair the scandal caused by a crime. (Can. 1341)**
- ◆ **:When a priest has been excommunicated, interdicted, or suspended, but the penalty has not been declared and is not notorious or well-known, the priest can celebrate a sacrament such as the sacrament of Penance. (Can. 1352 §2)**
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- ◆ **Excommunications for example for reserved sins such as the absolution of an accomplice (cc. 977, 1385) and the violation of the seal of confession (c. 1386).**
- ◆ **(Can. 1357 §1. ... a confessor can in the internal sacramental forum remit a latae sententiae censure of excommunication or interdict which has not been declared if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.**

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- ♦ canon 1394 makes provision for other penalties to be imposed, including dismissal from the clerical state or dismissal from the religious institute:
- ♦ Can. 1395 §1. A cleric living in concubinage, other than in the case mentioned in canon 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension.
- ♦ Can. 1399. Besides the cases prescribed in this or in other laws, the external violation of divine or canon law can be punished, and with a just penalty, only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired.

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- ♦ **Obligatory and Proportionate Penalties for Scandal**
- ♦ Even when there has been a judicial process, it may be necessary to impose expiatory penalties (c. 1336) such as removal from office to repair the scandal that has been caused.
- ♦ If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal. (Can. 1335 §1.)
- ♦ Penalties must be proportionate to the scandal caused and the gravity of the crime:
- ♦ If a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not however to impose graver penalties, unless the seriousness of the case really demands it. He may not impose penalties which are perpetual. (Can. 1349)

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♦ **Can. 1378 §2. A person who, through culpable negligence, unlawfully and with harm to another or scandal, performs or omits an act of ecclesiastical power or office or function, is to be punished according to the provision of can. 1336 §§2–4, without prejudice to the obligation of repairing the harm.**

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♦ **The Jurisprudence of the Signatura**

- ♦ **In 2002, Cardinal Pompedda of the Apostolic Signatura explained “scandal” in a decision in a penal case as follows:**
- ♦ **It is required that the majority of the people who are familiar with the person, his function, and his activity suffer a negative impression, that is, they are led in a certain measure to something wrong.**
- ♦ **‘scandal’, no differently than ‘persistence’, enters into the very circumscription of ‘another external sin against the sixth commandment of the Decalogue,’ which the first paragraph of c. 1395 also establishes to be a delict insofar as a cleric persists in it... to be not only a sin but also a delict, these two elements are simultaneously required, which are ‘persistence’ and ‘scandal’. (c. Jaeger 15 February 2024)**

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- ◆ **“as the jurisprudence of the Supreme Tribunal of the Apostolic Signatura roundly states, for the scandal mentioned in canon 1395 par 1 to exist “it is required that most people who know the person and his office and activity, suffer a negative impression, that is, are somehow led to evil.’ (coram Coccopalmerio sentence June 22, 2002, Prot. N 31290/00 CA, n. 8)**
- ◆ **For the crime of scandal his sexual activity cannot be only known by a few people.**

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◆ **Conclusion**

- ◆ **Perpetrators of crimes cause enormous harm to victims and to the whole Church by scandal.**
- ◆ **catastrophic results of scandals undermined the credibility of the Church and resulted in many people ceasing to practice the faith.**
- ◆ **clergy and laity feel shame and isolation from the coverups by church leaders that have resulted in a lack of confidence in the institutional Church.**
- ◆ **incalculable harm of sexual abuse and other crimes, requires appropriate penalties to restore justice and repair the scandal that has resulted.**

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