

Cremination in the 1983 Code of Canon Law

By Dorothea Ludwig-Wang, 20 October 2022

Canon 1176 §3 of the 1983 Code of Canon Law states that while the Church prefers that the bodies of the deceased be buried, cremation is not prohibited “unless it was chosen for reasons contrary to Christian doctrine.” In line with this statement, the Code declares that “those who chose the cremation of their bodies for reasons contrary to Christian faith” are to be denied ecclesiastical burial, unless they gave some sign of repentance before death (c. 1184 §1, 2°). These are the only two instances in which cremation is mentioned in the 1983 Code, and these two canons present a far more permissive view than the discipline of the 1917 Code, which codified centuries of common practice. Although there is no doctrinal problem here *per se*, this change in law presents a serious juridical issue that has the potential to undermine the principle that the Church ought not to intrude upon the internal forum.

Before turning to that problem, however, the question of why the Church has historically looked upon cremation with disfavor must be discussed. Cremation is not intrinsically evil or against the natural law or dogmatic teaching, given that the Church allows for it during times of genuine necessity, such as war or plague. Rather, the moral theologians McHugh and Callan give the following reasons for forbidding cremation:

...the tradition of the Old and New Testaments...and especially the example of Christ whose body was consigned to the tomb; the association of burial throughout the history of the Church with sacred rites and the doctrine of the future life, and the contrary association of cremation both in times past and today with paganism and despair; the sacred dignity of the human body...and the feeling of affection for parents, relatives, friends, which is outraged when their bodies are consigned to the furnace.¹

While cremation is not a doctrinal issue, it is contrary to the consistent and traditional practice of the Church. The catacombs, which date back to the age of the Apostles themselves, came to emphasize the dignity of the human body and influenced the development of saints’ cults and the veneration of relics. The Church’s funeral rites have always mentioned the immortality of the soul and the resurrection of the body; cremation certainly is not doctrinally opposed to these things, but it is not the best representation of them either. When the practice of boiling corpses arose at the end of the thirteenth century to more easily transport the bodies of those who had died abroad, “Pope Boniface VIII strictly forbade this abuse, which he styled abominable.”² When the freemasons and other enemies of the Church promoted cremation at the end of the nineteenth century, the Holy Office prohibited Catholics from enrolling in societies that promote

1 J. McHugh and C. Callan, *Moral Theology* (New York: Wagner, 1929), 2:2595b.

2 C. A. Bachofen, *A Commentary on the New Code of Canon Law, Volume VI* (St. Louis, MO and London: B. Herder, 1921), 101.

this practice under pain of incurring the same censures against freemasons and reiterated that one may not hand over one's own body or those of others for cremation.³

Given this sequence of events, there is no doubt that the practice of cremation in modern times is *objectively* associated with anti-Catholic ideologies, regardless of the *subjective* intent of the individual who chooses it. As such, the 1917 Code simply stated that those who hand over their bodies for cremation ought to be denied ecclesiastical funerals unless they demonstrated signs of repentance before death (c. 1240 §1, 5°), and no qualifications were made regarding the individual's intent. In 1963, however, Pope Paul VI began to reverse the Church's traditional discipline in *Piam et constantem*, stating that cremation is permitted when there are no anti-Christian reasons, and this formed the basis of the new canons 1176 and 1184. The new Code does not present a change in doctrine—as the question of cremation, in essence, is not a doctrinal issue at all—but a change in discipline which raises a serious juridical problem. In fact, this is really not about cremation at all, but about the proper relationship between the objective and subjective, the external and internal fora.

As noted earlier, there is an *objective* association between cremation and modern anti-Christian ideologies, regardless of the *subjective* intent of a specific person who chooses it. There is no doubt that some make this choice for hygienic or economic reasons, but this does not derogate from what recent history demonstrates, which is that the modern approval of cremation originated with anti-Christian ideologies. The current canonical practice of *not* denying Catholic funerals to those who chose cremation *unless* anti-Christian intent can be demonstrated shifts the criteria for denial from the objective to the subjective: instead of the externally demonstrable relationship between cremation and anti-Christian beliefs, the individual's personal reasons are considered first. If his intent is unknown, then it is presumed that he did *not* choose cremation for anti-Christian reasons, which constitutes an intrusion upon the internal forum.

In reality, the subjective is merely the application of objective principles, and the legal burden of proof should fall upon the one alleging that cremation was *not* performed for anti-Christian reasons. This is simply how canonical jurisprudence should work due to the principle *Ecclesia de occultis non iudicat*. One may argue that the Church would likewise be “judgmental” by essentially presuming—in the absence of any indication of intent—that an individual chose cremation for reasons contrary to the faith, but the fact is simply that decisions made in the external forum must be primarily based upon objective considerations, in this case the easily-provable association between cremation and anti-Catholic ideologies. The tendency to confuse the objective and subjective, as well as the external and internal fora, raises issues that extend far beyond cremation and opens the possibility of undermining canonical jurisprudence as a whole.

3 *Ibid.*