

**A CANONICAL HISTORY OF THE LEFEBVRITE SCHISM**

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## ABSTRACT

An in-depth look at the legal creation of the Society of St. Pius the Tenth. Was the Society canonically established as it claims? As what, exactly, was the Society established; a Priestly Fraternity, or, something else?

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## INTRODUCTION

On June 15, 1988, having recently broken off negotiations with the Vatican, Archbishop Marcel Lefebvre stood before a press conference gathered at the international seminary he had founded in Ecône, Switzerland. The purpose of the press conference, Archbishop Lefebvre stated, was to publicly introduce four priests of the Priestly Society of Saint Pius X,<sup>1</sup> a society of priests he had previously founded in reaction to the various reforms brought about after the Second Vatican Council. Notwithstanding the Holy Father's objections, Archbishop Lefebvre announced that these four priests were candidates whom he intended to consecrate to the episcopacy come June 30, 1988.<sup>2</sup>

Upon hearing about Archbishop Lefebvre's public announcement, Cardinal Gantin, Prefect for the Congregation of Bishops, issued a formal monition to Lefebvre against the latter's intention to consecrate bishops without papal mandate. Cardinal Gantin warned Archbishop Lefebvre that to proceed in the illicit consecration of bishops would be interpreted by the Vatican as an act of schism.<sup>3</sup> This canonical warning was followed up on the eve of the episcopal consecrations with a telegram sent by the Vatican, in which Cardinal Ratzinger urged Archbishop Lefebvre not to proceed with his intended episcopal consecrations, asking him to come to Rome instead and resume negotiations.<sup>4</sup> Nevertheless, Lefebvre would ignore both the canonical warning and the telegram, and as one former SSPX priest describes what unfolded, "the Archbishop consummated the rupture by the illegal ordination of four bishops at Ecône on June 30, 1988, in the presence of an unusually immense throng of the faithful. He was assisted in the act by His Excellency Antonio de Castro Mayer, retired bishop of Campos, Brazil."<sup>5</sup>

Defiant in their belief that the Second Vatican Council had undermined the Church during the post-conciliar era, Archbishop Lefebvre and his followers had come to believe that a grave crisis infected the Church which necessitated the illicit consecration of bishops. Among those Lefebvrites who were present for the episcopal consecrations, the belief in an impending ecclesiastical apocalypse being averted through Lefebvre's actions is encapsulated in the following excerpt taken from Bishop de Castro Mayer's public declaration during the Mass of Consecration:

"This is the situation in which we find ourselves. We live in an unprecedented crisis in the Church, a crisis which touches it in its essence, in its substance even, which is the Holy Sacrifice of the Mass and the Catholic priesthood, the two mysteries essentially united, because without the holy priesthood there is no Holy Sacrifice of the Mass, and by consequence, no form of public worship whatsoever...

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<sup>1</sup> The Priestly Society of Saint Pius X (=SSPX).

<sup>2</sup> F. SCHMIDBERGER, SSPX, *The Episcopal Consecrations of 30 June 1988*, London, Society of St. Pius X, 1989, p. 37.

<sup>3</sup> CONGREGATIONIS PRO EPISCOPIS, Monitum d.no Marcello Lefebvre, Prot. N. 514/17, 17 June 1988, trans. in *L'Osservatore Romano* (=OR), English edition, No. 26, 27 June 1988, p. 2.

<sup>4</sup> J. CARDINAL RATZINGER, "Telegram to Monsignor Lefebvre," 29 June 1988, in *The Pope Speaks*, 33 (1988), p. 203.

<sup>5</sup> D. OPPENHEIMER, FSSP, *Ecclesia Dei Adflicta: Towards a Deepened Understanding of the Liturgical Value of the Motu Proprio of 2 July 1988*, Rome, Pontifical University of Saint Thomas, Faculty of Theology, 1999, p. 80.

“Because of this, since the conservation of the priesthood and of the Holy Mass is at stake, and in spite of the requests and the pressure brought to bear by many, I am here to accomplish my duty: to make a public profession of Faith.”<sup>6</sup>

Thus the Holy Father was faced with an obstinate refusal on the part of Archbishop Lefebvre and the SSPX to submit to his pontifical authority and to the reforms of the Second Vatican Council. This refusal culminated in the illicit consecration of four priests from the SSPX to the episcopacy. On July 2, 1988, Pope John Paul II made the difficult decision of declaring Archbishop Lefebvre, the four bishops illicitly consecrated by him, and those who adhere to Lefebvre’s movement to be in schism. Furthermore, he legislated various options to provide for the needs of the faithful who wished to preserve the pre-conciliar liturgical usage in communion with the Roman Pontiff.<sup>7</sup>

Subsequent to this tragic schism of 1988, many controversies have arisen within the tridentinist movement surrounding the necessity of Archbishop Lefebvre’s illicit episcopal consecrations, as well as the validity of his excommunication. Many of the arguments put forward by both sides of the debate claim a foundation in canon law, based upon multiple historical interpretations of what transpired. Therefore, the purpose of the present paper is twofold. First, it seeks to present a canonical history of the Lefebvrite schism by highlighting the major events leading up to Lefebvre’s illicit episcopal consecrations in 1988, along with the declaration of his excommunication.

Secondly, this paper seeks to identify the main arguments put forward by the Lefebvrite movement in defense of Lefebvre’s various actions, and examine these arguments in light of canonical jurisprudence and tradition. In presenting this paper, it is the author’s sincere wish that he may contribute to the following hope expressed by Cardinal Ratzinger: “If we manage to show and live the totality of Catholicism in these respects, we may well hope that the schism of Mgr. Lefebvre will not last long.”<sup>8</sup>

Finally, where various compilations and translations of the relevant texts are available, wherever possible, the present author has attempted to quote versions of the source material presented from within the Lefebvrite movement in order to reduce potential objections that may arise from Archbishop Lefebvre’s proponents.

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<sup>6</sup> A. DE CASTRO MAYER, “Declaration,” 30 June 1988, in *Is Tradition Excommunicated? Where is Catholicism Today?*, Kansas City, KS, The Angelus Press, 1993, pp. 95-96.

<sup>7</sup> JOHN PAUL II, *Motu proprio Ecclesia Dei adflicta*, 2 July 1988, in *Acta Apostolica Sedis* (=AAS), 80 (1988), pp. 1495-1497, trans. in *Origins*, (4 August 1988), pp. 149-152.

<sup>8</sup> J. CARDINAL RATZINGER, *Speech to the Bishops of Chile*, 13 July 1988, trans. in *Canonical Proposal of the Priestly Fraternity of Saint Peter*, Scranton, Privately Published, 1993, p. 64.

## I – HISTORY OF THE LEFEBVRITE MOVEMENT BEFORE 1988

Within the history of the Catholic Church, schisms seldom appear suddenly; more often than not they arise over time. The Lefebvre schism is no different in this regard; it was the culmination of a growing separation between Rome and Ecône. Yet because this schism is still relatively recent when compared to most other major schisms which have wounded the Church during her nearly two-thousand-year existence, much of the history of this schism still remains clouded with emotion and confusion. Therefore, the first part of this paper seeks to propose a historical outline of the main canonical events leading up to Archbishop Lefebvre's episcopal consecrations without papal mandate, which would result in his subsequent excommunication.

### 1.1. The Canonical Establishment *ad Experimentum* of the SSPX

“An eminent prelate of the Roman Church, Marcel Lefebvre had been Superior General of the Missionary Holy Ghost Fathers and Metropolitan Archbishop of Dakar, Africa, with many dioceses under his authority.”<sup>9</sup> Under the pontificate of Pius XII, Archbishop Lefebvre was named the Apostolic Delegate for French-speaking Africa,<sup>10</sup> and in 1959, “Pope John XXIII named him to the Coetus Internationalis Patrum, the central preparatory committee charged with drawing up the schema for the Second Vatican Council.”<sup>11</sup> The son of the alleged stigmatic Gabrielle Lefebvre (née Watine),<sup>12</sup> the Catholic Faith always played a central role in Marcel Lefebvre's life. Therefore it would come as no surprise that Lefebvre pursued an active role at the Second Vatican Council, often being identified by various participants and observers as a cornerstone of the ultra-conservative camp.<sup>13</sup>

In October of 1970, having received permission from Bishop Nestor Adam of Sion, Switzerland, Archbishop Lefebvre undertook to found a religious institute with a central house of studies in Ecône, Switzerland.<sup>14</sup> As Fr. Oppenheimer explains, “He [Archbishop Lefebvre] did this at the instigation of a number of young seminarians who had sought him out for an authentic priestly formation during that time of confusion in the Church.”<sup>15</sup> It is important to note that Archbishop Lefebvre's followers have always maintained that Lefebvre never sought to recruit them, but rather that they approached him after the Second Vatican Council. Regardless of how factually correct this claim is, it served as an early foundation of Archbishop Lefebvre's mystique among his followers, which at the time of the episcopal consecrations in 1988 would allow him to convince many of them that a sufficient state of emergency existed within the Church to disregard the lack of papal mandate. Thus it was in light of the above historical background that Archbishop Lefebvre's

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<sup>9</sup> D. OPPENHEIMER, *Ecclesia Dei Adflicta*, p. 76.

<sup>10</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre: Part 1* (1905-1976), Kansas City, KS, The Angelus Press, 1992, p. 4.

<sup>11</sup> D. OPPENHEIMER, *Ecclesia Dei Adflicta*, p. 77.

<sup>12</sup> LE CROM, *Une Mère de Famille*, Paris, 1948, trans. *Mother of a Family: The Life of Madame Gabrielle Lefebvre 1880-1938*, Kansas City, KS, Angelus Press, 1994, p. 14.

<sup>13</sup> D. OPPENHEIMER, *Ecclesia Dei Adflicta*, p. 77. In addition to the above, Fr. Oppenheimer cites the following quotation from “On File”, *Origins*, (18 June 1976), p. 3, “He [Pope Paul VI] criticized both ultra-conservative and ultra-progressives. The Pope singled out for rebuke Archbishop Marcel Lefebvre...”

<sup>14</sup> B.A. CATHEY, “The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X,” in M. DAVIES, *Apologia Pro Marcel Lefebvre*, Appendix V, p. 443.

<sup>15</sup> D. OPPENHEIMER, *Ecclesia Dei Adflicta*, p. 77.

followers claim to have obtained permission from François Charrière, the diocesan bishop of Lausanne, Geneva, and Fribourg to found the SSPX as a priestly society “of common life without vows,”<sup>16</sup> in accordance with canons<sup>17</sup> 673-674, and 488: °3, °4, of the Pio-Benedictine Code in force at the time of the establishment of their seminary and priestly society.<sup>18</sup>

That the SSPX was canonically constituted according to the Pio-Benedictine Code is generally accepted, however, some ambiguity exists as to the object of their establishment. For if one looks at the decree canonically establishing the SSPX, one sees that Bishop Charrière is cautious in his approval of the SSPX, decreeing as follows:

1. The “International Priestly Society of St. Pius X” is erected in our diocese as a “Pia Unio” (Pious Union).
2. The seat of the Society is fixed as the Maison Saint Pie X (St. Pius X House), 50, rue de la Vignettaz, in our episcopal city of Fribourg.
3. We approve and confirm the Statutes, here joined, of the Society for a period of six years *ad experimentum*, which will be able to be renewed for a similar period by tacit approval; after which, the Society can be erected definitely in our diocese by the competent Roman Congregation.<sup>19</sup>

Beginning with the second article of the decree establishing the SSPX, its intention is fairly self-explanatory. Bishop Charrière establishes the SSPX’s headquarters at a fixed address within the territorial boundaries of his diocese. Thus, there is little ambiguity in the second article in need of explanation.

Similarly, most of the third article in the aforementioned decree establishing the SSPX is easily understandable. By establishing the SSPX *ad experimentum* for a period of six years simply means that the SSPX is being established on an experimental basis for the duration of six years. Once the duration of the experimental period is completed, their renewal may be approved tacitly for a similar period of time, at which point the SSPX may seek permission from the competent Curial Congregation to be erected definitively in the diocese of Lausanne, Geneva, and Fribourg. Again, these canonical precautions taken by Bishop Charrière are clear as to both their intent and purpose.

Nevertheless, a canonical ambiguity remains in the third article as to the intention of Bishop Charrière in establishing the SSPX, for the decree states: “We approve and confirm the Statutes, here joined, of the Society...” In looking at the first article, it is obvious that Bishop Charrière is

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<sup>16</sup> *Statutes of the Society of St. Pius X*, No. 1, in B.A. CATHEY, “The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X,” p. 443.

<sup>17</sup> *Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione Emi Petri Card. Gasparri et indice analytico-alphabetico auctus* (=CIC/1917), Rome, Typis polyglottis Vaticanus, 1917, xlv, 852 p. C.A. BACHOFEN, OSB, *A Commentary on the New Code of Canon Law*, 4th ed., vols 1-8, St. Louis, B. Herder Book Co., 1929 (all references to canons of CIC/1917 will be styled c\*. for canon and cc\*. for canons, followed by the canon number[s]).

<sup>18</sup> B.A. CATHEY, “The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X,” p. 443.

<sup>19</sup> F. CHARRIÈRE, Decree *Establishing the International Priestly Society of St. Pius X*, 1 November 1970, photographically reproduced in M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 102-103, trans. in B.A. CATHEY, “The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X,” p. 444.

referring to the SSPX, which he erects as a pious union. Yet SSPX supporters specifically claim that the SSPX's statutes stated the SSPX was founded as a priestly society "of common life without vows,"<sup>20</sup> in accordance with c\*. 673-674, and 488: '3, '4. Thus a canonical ambiguity exists within the decree establishing the SSPX, which the SSPX's supporters have been forced to admit in the following commentary upon the decree:

"The Bishop's use of the expression 'pia unio' here is a little confusing. A 'pia unio,' as [cc\*.] 707-708 make clear, is not normally a moral person. It means a lay association. A religious 'society of common life,' as the approved statutes of the Society of St. Pius X specify it is, described in [c\*.] 673, is really very much like a religious institute but without public vows. It is possible that Bishop Charrière intended here 'pia domus' since it is quite normal to erect a 'pia domus' as the first step towards a new religious institute."<sup>21</sup>

To briefly explain this controversy, the SSPX claim according to their constitutions that they were erected in accordance with the norms of c\*. 673, which in Latin uses the word *societas* to describe "a society of men or women who lead a community life after the manner of religious under the government of superiors and according to approved constitutions, but without the three usual vows of religious life."<sup>22</sup> Such a society would differ from a pia unio, the word used by Bishop Charrière in his decree establishing the SSPX. Therefore, it would appear that the SSPX was established in accordance with the definition of a pious union of the faithful provided by c\*. 707 §1,<sup>23</sup> which Fr. Charles Augustine translates as follows: "Associations of the faithful founded to further some piety or charity, are known as pious organizations."<sup>24</sup>

Although the issue of inscription arising from this ambiguity would cause some difficulty between the SSPX and the relevant ecclesiastical authorities, the two main differences that came to light were juridical status and the right of suppression - the second of which will be addressed in the following chapter. With regards to juridical status, as Woywod notes in his commentary on c\*. 708, "for the erection of pious unions the approval of the Ordinary suffices...though they are not legal persons."<sup>25</sup> Hence, even though the approval of the diocesan bishop was required to formally erect the SSPX, as a pious union it would not be considered a juridical person within the Catholic Church.

This apparent ambiguity arising from the decree erecting the SSPX would be further compounded in a letter to Archbishop Lefebvre from Cardinal Wright, Prefect of the Sacred Congregation for the Clergy. Cardinal Wright congratulated Archbishop Lefebvre on the founding of his new Associatio, taking pains only to refer to the SSPX as a *Fraternitae Sacerdotalis* in brackets.<sup>26</sup> And thus in utilizing the word "association" which is more in keeping with c\*. 707, it

<sup>20</sup> *Statutes of the Society of St. Pius X*, No. 1, p.443.

<sup>21</sup> B.A. CATHEY, "The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X," p. 444.

<sup>22</sup> S. WOYWOD, OFM, *A Practical Commentary on the Code of Canon Law*, 4th ed., vol. 1, New York, NY, Joseph F. Wagner (Inc.), 1932, par. 578.

<sup>23</sup> "*Associationes fidelum quae ad exercitium alicuius operis pietatis aut caritatis erectae sunt, nomine veniunt piarum unionum;...*"

<sup>24</sup> C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 3, p. 448.

<sup>25</sup> S. WOYWOD, *A Practical Commentary*, par. 600.

<sup>26</sup> SACRA CONGREGATIO PRO CLERICIS, Prot N. 133515/L, 18 Feb. 1971, photographically reproduced in M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 102-103.

would appear that Cardinal Wright recognized the canonical erection of the SSPX as merely that of a pious association of the faithful.

## 1.2. The Canonical Suppression of the SSPX

Like the years immediately following any Ecumenical Council in the history of the Church, the period after the Second Vatican Council would prove tumultuous within the Church. Nevertheless, the SSPX and their seminary began to draw both vocations and international attention. Unfortunately, this attention would lead to both its suppression and the suspension *a divinis* of Archbishop Lefebvre.

In the following passage, Archbishop Lefebvre documents the growth of the SSPX during the years immediately following its erection, as well as his interpretation regarding the subsequent problems that arose between the Vatican and the SSPX:

“From year to year the number of seminarians increased; in 1970 there were eleven entrants and in 1974, forty. The innovators became increasingly worried. It was obvious that if we were training seminarians it was to ordain them, and that the future priests would be faithful to the Mass of the Church, the Mass of Tradition, the Mass of all time.”<sup>27</sup>

Part of the above sentiment expressed by Archbishop Lefebvre is also shared by many of his former followers who reconciled with the Church during the aftermath of the illicit episcopal consecrations of 1988. As Fr. Daniel Oppenheimer, one such former SSPX priest, notes his licentiate thesis:

“By 1976, [Lefebvre’s] society had come under open attack, particularly by certain members of the French episcopacy. Central to the complaint was the continued use of the old Roman liturgy in his canonically approved seminary now located at Ecône, Switzerland. That this same seminary was bulging at the seams with clean-cut young Frenchmen wearing cassocks, when the seminaries in France were depleted of all but a few seminarians now sporting blue-jeans and long hair in the anti-clerical mode of the day, did not help the widening gulf between the two sides.”<sup>28</sup>

That an acrimonious situation between the SSPX and the rest of the Church had arisen during this time is a fact substantiated by subsequent events. That this situation was partially attributable to a great turmoil disrupting more established seminaries at the time is noted by Cardinal Ratzinger in his following reflection upon what lead many priests and seminarians to follow Archbishop Lefebvre: “Others still would like to collaborate fully in the normal pastoral activity of the Church. Nevertheless, they have let themselves be driven to their choice by the unsatisfactory situation that has arisen in the seminaries in many countries.”<sup>29</sup>

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<sup>27</sup> M. LEFEBVRE, SSPX, *An Open Letter to Confused Catholics*, trans. SSPX - GREAT BRITAIN, Kansas, KS, Angelus Press, 1992, p. 140.

<sup>28</sup> D. OPPENHEIMER, *Ecclesia Dei Adflicta*, p. 78.

<sup>29</sup> J. CARDINAL RATZINGER and VITTORIO MESSORI, *The Ratzinger Report: An Exclusive Interview on the State of the Church*, trans. S. ATTANASIO and G. HARRISON, San Francisco, CA, Ignatius Press, 1985, p. 33.

In response to the growing tension between Archbishop Lefebvre and various European bishops, a Commission of Cardinals was convoked by Pope Paul VI to examine the Lefebvre situation. This Commission arranged an apostolic visitation to the SSPX seminary for November of 1974.<sup>30</sup> Archbishop Lefebvre would question the orthodoxy of some of the comments expressed by the apostolic visitors, comments which would act as the catalyst for a public declaration that has since become famous within tridentinist circles.<sup>31</sup> This statement would prove problematical to the Holy See, particularly the second and third paragraphs in which Archbishop Lefebvre challenges the authenticity of both the current papacy and the Second Vatican Council:

“Because of this adherence [to Eternal Rome] we refuse and have always refused to follow the Rome of neo-Modernist and neo-Protestant tendencies such as were clearly manifested during the Second Vatican Council, and after the Council in all the resulting reforms.

“All these reforms have indeed contributed and still contribute to the demolition of the Church, to the ruin of the priesthood, to the destruction of the Holy Sacrifice of the Mass and the Sacraments, to the disappearance of the religious life, and to naturalistic and Teilhardian teaching in universities, seminaries and catechetics, a teaching born of Liberalism and Protestantism many times condemned by the solemn Magisterium of the Church. No authority, even the very highest in the hierarchy, can constrain us to abandon or diminish our Catholic Faith such as it has been clearly expressed and professed by the Church’s Magisterium for nineteen centuries.”<sup>32</sup>

To preserve the liturgy and discipline of the pre-conciliar era was one matter, however, to impugn in the name of the pre-conciliar Magisterium the validity of the post-conciliar reforms, while questioning the authority of the post-conciliar Church hierarchy was quite another issue entirely - one which could not but bring negative canonical repercussions upon both Archbishop Lefebvre and the SSPX. In light of Archbishop Lefebvre’s public declaration and the growing threat it posed to the good order of the local Church, Bishop Mamie, having succeeded Bishop Charrière as Bishop of Lausanne, Geneva, and Fribourg, was forced to take disciplinary action against Archbishop Lefebvre and the SSPX.<sup>33</sup>

On January 24th, 1975, Bishop Mamie wrote to the Sacred Congregation for Religious insisting that “having made a careful study of Mgr. Lefebvre’s declaration, he considered it a sad but urgent necessity to withdraw the approval given by his predecessor to the Society of St. Pius X.”<sup>34</sup> Bishop Mamie received a reply dated the following April 25th, in which Cardinal Tabera, acting as Prefect for the Sacred Congregation for Religious, urged Bishop Mamie to withdraw his canonical approval from the SSPX immediately.<sup>35</sup> In a letter addressed to Archbishop Lefebvre on May 6th, 1975, Bishop Mamie would inform him “that after long months of prayer and reflection he had

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<sup>30</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 36-37.

<sup>31</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 36-37.

<sup>32</sup> M. LEFEBVRE, “La Déclaration du 21 novembre 1974,” 21 November 1974, *Itinéraires*, n. 195, trans. in *The Collected Works of His Excellency Archbishop Marcel Lefebvre*, vol. 1, Dickinson, Texas, The Angelus Press, 1985, p.34.

<sup>33</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 43.

<sup>34</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 43.

<sup>35</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 51.

reached the sad but necessary decision that he must withdraw all the acts and concessions granted by his predecessor to the Society of St. Pius X.”<sup>36</sup>

Here is where the previous ambiguity over the SSPX’s canonical status once again becomes an issue. With regards to the canonical suppression of a pious union or association of the faithful, for a serious reason c\*. 699 permits the local Ordinary to “suppress not only those associations which were erected by himself or his predecessors, but also associations erected with the consent of the local Ordinary by religious in virtue of an Apostolic indult.”<sup>37</sup> Therefore, even without consulting and obtaining approval from the Sacred Congregation for Religious, as the local Ordinary of the diocese in which the SSPX was erected, and given Lefebvre’s public declaration calling into question the catholicity of the Second Vatican Council, Bishop Mamie was acting well within his canonical capacity in suppressing the SSPX.

Yet in maintaining that the SSPX was canonically erected as a society of clerics without public vows, Archbishop Lefebvre would call into question the validity of Bishop Mamie’s canonical suppression of the SSPX, arguing that “if a succeeding bishop wishes to suppress an association or fraternity, he cannot do so without recourse to Rome.”<sup>38</sup> Lefebvre’s argument would be in accord with c\*. 493, which as Fr. Woywod clearly explains as follows in his commentary on the Pio-Benedictine Code: “Any religious organization, even a diocesan congregation, which has been legally established, cannot be dissolved, though it should consist of but one house, except by the Holy See...”<sup>39</sup> Therefore, Lefebvre would always argue that the canonical suppression was invalid as having come from the local Ordinary and not the Holy See, and hence the SSPX “is consequently recognized by Rome in a perfectly legal manner.”<sup>40</sup>

Yet regardless of whether the SSPX was canonically erected as a pious association of the faithful in accordance with c\*. 708, or whether it was erected as a society of common life without vows in accordance with c\* 673, would prove moot to all but Lefebvre’s followers. For on the same day that Bishop Mamie suppressed the SSPX, Archbishop Lefebvre received a decision from the Commission of Cardinals which had been convoked by Pope Paul VI to investigate both Lefebvre and the SSPX. Composed of Cardinal Garrone, Prefect of the Sacred Congregation for Catholic Education, as well as the aforementioned Cardinals Wright and Tabera acting on behalf of their respective congregations, the Commission was troubled by Lefebvre’s controversial November declaration, and had personally met with Lefebvre the previous February 13th in an unsuccessful attempt to have Lefebvre retract his declaration.<sup>41</sup>

Within the text of their decision, the following conclusions were drawn and the subsequent course of action taken:

Now such a Declaration appears unacceptable to us on all points. It is impossible to reconcile most of the affirmations contained in the document with authentic fidelity to the Church, to the one who is responsible for Her, and to the Council in which the mind and

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<sup>36</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 51.

<sup>37</sup> S. WOYWOD, *A Practical Commentary*, par. 594.

<sup>38</sup> M. LEFEBVRE, *An Open Letter to Confused Catholics*, p. 138.

<sup>39</sup> S. WOYWOD, *A Practical Commentary*, par. 372.

<sup>40</sup> M. LEFEBVRE, *An Open Letter to Confused Catholics*, pp. 138-139.

<sup>41</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 47.

will of the Church were expressed. It is inadmissible that every individual should be invited to submit papal directives to his own private judgment and decide for himself whether to accept or reject them...

It is with the entire approval of His Holiness [Paul VI] that we communicate the following decisions to you:

- 1) "A letter will be dispatched to Mgr. Mamie according him the right to withdraw the approval which his predecessor gave to the Fraternity and to its statutes." This has been done in a letter from His Excellency Cardinal Tabera, Prefect of the Congregation for Religious.
- 2) Once it is suppressed, the Society "no longer having a juridical basis, its foundations, and notably the Seminary at Ecône, lose by the same act the right to existence."
- 3) It is obvious - we are invited to notify it clearly – "that no support whatsoever can be given to Mgr. Lefebvre as long as the ideas contained in the Manifesto of 21 November continue to be the basis for his work."<sup>42</sup>

From the above decision of the Commission of Cardinals, it is clear that the Holy See was concerned with Archbishop Lefebvre's public declaration stating his refusal to submit to the reforms of the Second Vatican Council, as well as the various disciplinary reforms brought about by Pope Paul VI, and thus certain disciplinary measures were necessary in order to correct the situation. Regardless of whether the SSPX had been erected as a pious union of the faithful or as a society of common life without public vows, the Commission of Cardinals had delegated Bishop Mamie the right to withdraw canonical approval from the SSPX and its statutes - a canonical right which Bishop Mamie would nevertheless possess by virtue of the law itself if, as the decree of canonical erection states, the SSPX had merely been established as a pious union of the faithful.

However, in light of Archbishop Lefebvre's argument that the SSPX was canonically erected as a society of common life without vows, and thus could only be suppressed by the Holy See, the Holy See clearly delegated this canonical right to Bishop Mamie. Moreover, as the SSPX was only erected *ad experimentum* for a period of six years, the SSPX's canonical erection was in no way perpetual, and therefore even if the delegation of the right of suppression to Bishop Mamie had been invalid, Archbishop Lefebvre still could not reasonably presume either the Holy See's or the local Ordinary's tacit approval at the completion of the six-year period. Therefore, one cannot but conclude that the SSPX, regardless of their initial juridical status, were validly suppressed in accordance with canon law.

Similarly, the Commission also suppressed the seminary of the SSPX. This is an interesting fact in itself, because while the initial decree of erection approved a "seat of the Society"<sup>43</sup> at a fixed address, it has never been clear from any of the documents presented by the SSPX that their seminary had been canonically erected. However, given the apostolic visitation to the seminary which preceded Archbishop Lefebvre's Declaration, and given the Commission's decision explicitly

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<sup>42</sup> SACRA CONGREGAZIONE PER L'EDUCAZIONE CATTOLICA, Prot. N. 70/72, 6 May 1975, *Itinéraires*, n. 195, trans. in trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 57-59.

<sup>43</sup> F. CHARRIÈRE, *Decree Establishing the SSPX*, p.444.

stating that the seminary is to be suppressed, the present author will concede the possibility that the SSPX seminary had been erected in accordance with canon law. Nevertheless, upon suppression of the SSPX, the Commission decreed that the SSPX were no longer with any juridical basis, and hence their foundation and seminary were also extinguished. Therefore, Bishop Mamie was delegated the authority to suppress not only the SSPX, but their various foundations as well, including their seminary.

Nevertheless, Archbishop Lefebvre might question whether the decision was an act of the Commission, or whether “the entire approval of His Holiness” noted in the decision meant that it had been rendered *in forma specifica*. And thus, in a letter to Cardinal Staffa and the Supreme Tribunal of the Apostolic Signatura, Archbishop Lefebvre attempted recourse against the decision of the Commission of Cardinals, stating the following grounds:

Against the form in which the decisions were taken expressed in the letter of the 6 May 1975 as well by His Excellency Monseigneur Mamie, Bishop of Fribourg, as by the three Cardinals who signed the letter addressed to me from Rome... This form of procedure is contrary to Canon 493 of the Codex Juris Canonici.

Against the competence of the Commission of Cardinals which condemns me on a matter of faith, because of my Declaration which appeared in the review *Itinéraires* and which I wrote on 21 November 1974. I demand to be judged by the only Tribunal competent in these matters, the Sacred Congregation for the Doctrine of the Faith.

Against the sentence pronounced by Monseigneur Mamie and approved by the Cardinals of the Commission: in fact, my Declaration, if it deserves condemnation, should condemn me personally and not destroy my Fraternity, nor the Seminary, nor the houses that have been erected...<sup>44</sup>

As is clearly visible from the content of Archbishop Lefebvre’s appeal, he neither accepted the decision of the Commission of Cardinals, nor the actions of Bishop Mamie in suppressing the SSPX. Archbishop Lefebvre presented his arguments to the Apostolic Signatura based upon three grounds.

- First of all, he claimed proper procedure was not followed in suppressing the SSPX and their seminary.
- Secondly, he claimed that the Commission of Cardinals was not competent to judge his declaration, rather this was the competency of the Sacred Congregation for the Doctrine of the Faith.
- And thirdly, he claimed that the declaration was his alone, and neither the SSPX nor their seminary should be suppressed as a result of his personal declaration.

Whether or not the normal canonical procedure had been meticulously followed would soon become irrelevant, for on June 10, 1975 the Apostolic Signatura rejected Archbishop Lefebvre’s appeal on the grounds that the Holy Father had approved the decision of the Commission of

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<sup>44</sup> M. LEFEBVRE, “La Lettre au cardinal Staffa,” 21 May 1975, *Itinéraires*, n. 195, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 73-74.

Cardinals *in forma specifica*.<sup>45</sup> This would be confirmed by Pope Paul VI personally in a letter to Archbishop Lefebvre in which the Holy Father stated: “Finally, the conclusions which [the Commission of Cardinals] proposed to Us, We made all and each of them Ours, and We personally ordered that they be immediately put into force.”<sup>46</sup> Hence, no further recourse was possible for Archbishop Lefebvre, for under c\*. 1880, “there is no appeal: (1) from the sentence of the Supreme Pontiff himself or from the *Signatura Apostolica*...”<sup>47</sup> Consequently, the SSPX and their seminary were unquestionably suppressed as a juridical person within the Church.

### 1.3. The Suspension *Ab Ordinum Collatione* of Archbishop Lefebvre

During the following year, Archbishop Lefebvre would simply ignore the canonical suppression of both the SSPX and their seminary, choosing to believe that Pope Paul VI was being mismanaged by his Curia, and thus was not really aware of what was taking place in the broader context of the Church.<sup>48</sup> Such a mindset could only foreshadow future controversy between Archbishop and the Vatican; for as Fr. Hans Urs von Balthasar notes in his modern apology of the Petrine office, “in most instances, complaints do not begin with charges against the pope’s person but against his retinue: it is the cardinals, the curia who are all at fault. Ever since the curia was established, complaints have not ceased.”<sup>49</sup> And with such a mindset becoming apparent in Archbishop Lefebvre, he would proceed with a course of action which would lead to his suspension *ab ordinum collatione*, and subsequently his suspension *a divinis*.

As the summer of 1976 approached, Archbishop Lefebvre’s initial class of SSPX seminarians were preparing to graduate, and thus their ordination would become an issue given the SSPX’s canonical suppression nearly a year previous. With little hesitation regarding the fact that the SSPX no longer existed canonically within the Church as a juridical person, Archbishop Lefebvre simply announced his intention to ordain his seminarians and incardinate them into the SSPX. Lefebvre and his followers argued that “despite the letter from Pope Paul dated 29 June 1975, the entire legal process taken against the [SSPX] had been so irregular that it could not be considered as having been legally suppressed.”<sup>50</sup>

Against Lefebvre’s intention, substituting on behalf of the Vatican Secretariat of State, Mgr. Benelli sent Mgr. Amborio Marchioni, the Papal Nuncio at Berne, the following instruction:

“You should, at the same time, inform Mgr. Marcel Lefebvre that, *de mandato speciali Summa Pontificis*, in the present circumstances and according to the prescriptions of [c\*.] 2373,

<sup>45</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 106.

<sup>46</sup> PAUL VI, “Lettre de S. S. Le Pape Paul VI a Mgr. Lefebvre,” 29 June 1975, *La Documentation Catholique*, n. 1689, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 113.

<sup>47</sup> S. WOYWOD, *A Practical Commentary*, vol. 2, par. 1802.

<sup>48</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 196.

<sup>49</sup> H.U. VON BALTHASAR, *The Office of Peter and the Structure of the Church*, trans. A. EMERY, San Francisco, CA, Ignatius Press, 1986, p. 65.

<sup>50</sup> M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 202.

1°, of the Code of Canon Law, he must strictly abstain from conferring orders from the moment he receives the present injunction.”<sup>51</sup>

Under the Pio-Benedictine Code, c\*. 955 requires that every candidate to sacred orders be ordained “by his own proper bishop or with legitimate dimissorial letters received from him.”<sup>52</sup> C\*. 2373, 1° legislates that those who ordain the subject of another Ordinary in violation of the precept of c\*. 955, are automatically suspended *ab ordinum collatione*, or “from the conferring of orders for one year reserved to the Apostolic See.”<sup>53</sup> Because the suspension is reserved to the Apostolic See, if a bishop is judged to have violated the precept of c\*. 955 because of a just cause or through a legitimate misunderstanding, the Holy See can lift the suspension against him. Part of the intention here is to allow both a bishop and the Holy See canonical equity in certain exceptional situations that are unforeseen by the legislator.

However, Archbishop Lefebvre received his warning *de mandato speciali Summa Pontificis*, or from the special mandate of the Supreme Pontiff. Hence, Lefebvre could reasonably presume that the Apostolic See had foreseen his situation, and did not approve of the circumstances in which he found himself as sufficient cause to violate c\*. 955. Therefore, should Archbishop Lefebvre personally proceed with the ordination of his seminarians, in accordance with c\*. 2373, 1° he would automatically be suspended from conferring orders for a period of one year. Whether or not Lefebvre subjectively believed the pope had suppressed his society was now irrelevant in light of the objective juridical facts. Archbishop Lefebvre knew that the will of the Roman Pontiff forbade him from proceeding with the ordinations, and thus he knew how the highest authority in the Church would interpret the law as it applied to his situation.

Yet in response to the canonical warning he had received, Archbishop Lefebvre wrote the following in a public letter addressed to the Holy Father:

“Will Your Holiness please fully understand the sorrow which grips me, and my stupefaction, on the one side at hearing the paternal appeals Your Holiness addresses to me, and on the other the cruelty of the blows which do not cease striking us, the latest of them striking worst of all my dear Seminarians and their families on the eve of their priesthood for which they have been preparing for five or six years.”<sup>54</sup>

While Archbishop Lefebvre might have found such a prohibition harsh given the proximity of the date scheduled for the ordination of his seminarians, his apologists must take into account the fact that the SSPX and their seminary had been canonically suppressed for approximately a year at the time. Although Lefebvre appears to put forward the argument he has an obligation in justice to ordain his seminarians to the priesthood, c\*. 970 permits the proper bishop or the competent major religious superior to deny his clerics ordination to major orders for any canonical reason, even an occult one, even without canonical procedure.<sup>55</sup> Whereas the SSPX would claim that in accordance with his right as the competent major religious superior, Archbishop Lefebvre had determined to

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<sup>51</sup> SECRETARIAT OF STATE, Prot. N. 307, 554, 12 June 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 194.

<sup>52</sup> S. WOYWOD, *A Practical Commentary*, vol. 1, par. 888.

<sup>53</sup> S. WOYWOD, *A Practical Commentary*, vol. 2, par. 2229.

<sup>54</sup> M. LEFEBVRE, “Letter to Pope Paul VI,” 22 June 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 196.

<sup>55</sup> S. WOYWOD, *A Practical Commentary*, vol. 1, par. 909.

proceed with the ordination of SSPX seminarians, this argument is subject to several canonical weaknesses.

First of all, the above argument put forward by the SSPX ignores the fact the SSPX had not been founded as a religious order, but a pious association of the faithful - the latter of which enjoys no juridical personality. Secondly, the SSPX argument also ignores the fact that even supposing the SSPX had at one time enjoyed juridical personality according to their statutes, as an *ad experimentum* society without common vows of diocesan right, upon receiving major orders its clerics would be incardinated into a diocese rather than into the SSPX, and thus the competent authority with regards to ordination and incardination remained the diocesan bishop. As was clearly pointed out to Archbishop Lefebvre by the Vatican Secretariat of State, the seminarians were not Lefebvre's subjects in this matter, but those of another Ordinary.

Thirdly, as previously mentioned, having been canonically suppressed as a juridical person the SSPX and their seminary could no longer claim to have any juridical status. This canonical suppression had taken place, *in forma specifica*, approximately a year before the scheduled ordinations which led to Archbishop Lefebvre's suspension *ab ordinum collatione*. That Lefebvre and his seminarians chose to ignore the fact the SSPX and its seminary had been suppressed is their prerogative, however, in so doing they forfeited any canonical right to expect ordination from the Church, for the Church can no longer assume that the seminarians met the canonical qualifications necessary for the licit reception of major orders.

Finally, even if the aforementioned arguments were moot, and Archbishop Lefebvre was the major superior of a legitimate religious order with juridical personality, in accordance with c\*. 218, by divine positive law the Roman Pontiff retains ordinary supreme power and universal jurisdiction over the discipline and government of the Church. As Woywod explains in his commentary on this canon, "This power is episcopal, ordinary and immediate, and extends over each and every church, and over each and every pastor as well as over the faithful, and is independent of all human authority."<sup>56</sup> Therefore, Archbishop Lefebvre's authority as major superior of the SSPX would have been superseded by the authority of the Roman Pontiff in light of the latter's supreme and universal jurisdiction.

Nevertheless, as Woywod explains in his commentary on c\*. 970, a cleric who has been prohibited by his ordinary from receiving major orders would normally have the right of recourse to the Holy See.<sup>57</sup> However, recourse would be improbable in the case of the SSPX as the instruction prohibiting Lefebvre from ordaining his seminarians had initially come from the Holy See, *de mandato speciali Summi Pontificis*. The mind of the Supreme Pontiff in this regard was confirmed in a second letter from the Secretariat of State, in which Mgr. Benelli directly responds to Archbishop Lefebvre's aforementioned letter to Pope Paul VI. In his response on behalf of Holy Father, Mgr. Benelli states:

"The Holy Father has received your letter of 22 June. He desires me to inform you of his mind on this subject... The Holy Father charges me this very day to confirm the measure of which you have been informed in his name, *de mandato speciali*: you are to abstain,

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<sup>56</sup> S. WOYWOD, *A Practical Commentary*, par. 171.

<sup>57</sup> S. WOYWOD, *A Practical Commentary*, par. 909.

now, from conferring any order. Do not use as a pretext the confused state of the seminarians who were to be ordained: this is just the opportunity to explain to them and to their families that you cannot ordain them to the service of the Church against the will of the supreme Pastor of the Church. There is nothing desperate in their case: if they have good will and are seriously prepared for a presbyteral ministry in genuine fidelity to the Conciliar Church... Those responsible will find the best solution for them, but they must begin with an act of obedience to the Church.”<sup>58</sup>

Mgr. Benelli would conclude his letter in repeating the canonical penalties both Archbishop Lefebvre and his candidates to holy orders would incur if Lefebvre proceeded with his intended ordinations. Nevertheless, what is extremely clear is that the mind of the supreme legislator had been clearly stated to Lefebvre and his seminarians. In light of c\*. 17 which states that laws are authoritatively interpreted by the legislator and his successors, it is important to keep in mind that while Lefebvre’s interpretation of the canons differed from that of the Holy Father, as universal legislator the Roman Pontiff’s interpretation not only prevails, but it has the same force as the law itself.<sup>59</sup> And in the case of the second warning to Lefebvre, like the first one, Mgr. Benelli issued it not upon his personal authority as substitute of the Secretary of State, but *de mandato speciali* Pope Paul VI. Hence, Archbishop Lefebvre’s warning had come from the special mandate of the Roman Pontiff himself. In short, Lefebvre’s canonical obligation at this point in time was not to interpret canon law to his own end, but to submit in obedience to the will of the Roman Pontiff.

Yet despite his canonical obligation, on June 29th, 1976, Archbishop Lefebvre chose to proceed with the ordination of his seminarians to the priesthood, attempting to justify his act of disobedience during the following homily:

“I myself shall probably be struck by suspension. These young priests will be struck an irregularity which in theory should prevent them from saying Holy Mass. It is possible. Well, I appeal to Saint Pius V - Saint Pius V, who in his Bull<sup>60</sup> said that, in perpetuity, no priest could incur a censure, whatever it might be, in perpetuity, for saying this [Tridentine] Mass. And consequently, this censure, this excommunication, if there was one, these censures, are absolutely invalid, contrary to that which Saint Pius V established in perpetuity in his Bull: that never in any age could one inflict a censure on a priest who says this Mass.”<sup>61</sup>

Without straying into the liturgical debate between Archbishop Lefebvre and Pope Paul VI, which is beyond the intended scope of the present paper, the following two fallacies immediately become apparent in Lefebvre’s justification of his act of disobedience. First, in appealing to the papal authority of St. Pius V and *Quo Primum Tempore*, Lefebvre again neglects c\*. 17. For although Pius V promulgated *Quo Primum Tempore* as supreme legislator, the authority to interpret the legislative and disciplinary elements of this Papal Bull rested with Pope Paul VI who is Pius V’s lawful successor as universal legislator, and not Archbishop Lefebvre. Therefore, Lefebvre’s appeal

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<sup>58</sup> SECRETARIAT OF STATE, “Letter from Mgr. Benelli to Mgr. Lefebvre,” 25 June 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 197-199.

<sup>59</sup> S. WOYWOD, *A Practical Commentary*, par. 15.

<sup>60</sup> cf. PIUS V, Bull *Quo Primum Tempore*, 14 July 1570, trans. in M. DAVIES, *Pope Paul's New Mass*, Kansas City, KS, The Angelus Press, 1992, pp. 531-534.

<sup>61</sup> M. LEFEBVRE, Sermon, 29 June 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 213.

to the legislative authority of Pius V to justify his act of disobedience to Paul VI cannot be canonically sustained in light of c\*. 17.

Next, regardless of whether *Quo Primum Tempore* was perpetual or whether it had been abrogated was secondary at the moment. For Archbishop Lefebvre was not directly threatened with suspension *ab ordinum collatione* for celebrating Mass according to the Tridentine missal, but for ordaining seminarians to major orders without dimissorial letters from their proper Ordinary. Furthermore, Lefebvre was doing so against the express will of Roman Pontiff, who in light of c\*. 218 retains universal ordinary power. Therefore, even supposing *Quo Primum Tempore* gave Lefebvre canonical permission to continue celebrating Mass according the Tridentine liturgical usage, *Quo Primum Tempore* does not authorize a bishop to illicitly ordain seminarians to major orders against the express will of the Roman Pontiff, not even if one's intention in so doing is to provide for the celebration of the Tridentine liturgical usage. Thus the arguments put forward by Lefebvre based upon *Quo Primum Tempore* are not canonically applicable to the situation in which Lefebvre found himself.

In light of Lefebvre's act of disobedience in proceeding with the illicit ordination of his seminarians to major orders, Fr. Romeo Panciroli, acting as spokesman for the Press Bureau of the Holy See, declared the following day that: "Mgr. Lefebvre has automatically incurred suspension for a year from the conferring of orders, a suspension reserved to the Apostolic See."<sup>62</sup> In addition, the Holy See announced that censures would be imposed upon those who had illicitly received ordination from Lefebvre, stating that "those who have been ordained are ipso facto suspended from the order received, and, if they were exercise it, they would be in an irregular and criminal situation."<sup>63</sup> Thus Lefebvre had incurred suspension *ab ordinum collatione* for his role in ordaining seminarians to major orders, having been forbidden from doing so *de mandato speciali Summi Pontificis*. These censures would soon be confirmed by Cardinal Baggio, the Prefect of the Sacred Congregation for Bishops.<sup>64</sup>

#### 1.4. The Suspension *A Divinis* of Archbishop Lefebvre

After the illicit ordination of seminarians to major orders, the censures imposed upon Archbishop Lefebvre would not end with suspension *ab ordinum collatione*. For at the same press conference confirming Lefebvre's suspension *ab ordinum collatione*, Fr. Panciroli also announced the following:

"The Holy See is examining the special case of formal disobedience of Mgr. Lefebvre to the instructions of the Holy Father who, by the documents of 12 and 25 June 1976, expressly forbade him to proceed with the ordinations."<sup>65</sup>

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<sup>62</sup> R. PANCIROLI, Press Conference, 1 July 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 215.

<sup>63</sup> R. PANCIROLI, Press Conference, p. 216.

<sup>64</sup> SACRED CONGREGATION FOR BISHOPS, Monition Prot. N. 514/76, 6 July 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, pp. 225-226.

<sup>65</sup> R. PANCIROLI, Press Conference, p. 216.

In announcing the examination of a case of formal disobedience against Archbishop Lefebvre, it becomes obvious that the Holy See was concerned about the direction Lefebvre was leading the SSPX. In less than a week after being suspended *ab ordinum collatione*, Lefebvre received a formal canonical warning from Cardinal Baggio, the Prefect of Sacred Congregation of Bishops. After restating the actions which led to Lefebvre's suspension *ab ordinum collatione*, Cardinal Baggio warns as follows within the monition:

“If, however, the invitation [to repair the scandal caused by the illicit ordinations] were to prove vain, and if a proof of recognition of error did not arrive at this Congregation within ten days of your receipt of my letter, you must know that, basing itself on a special mandate of the Sovereign Pontiff, it will be the duty of this Congregation to proceed against you by inflicting the necessary penalties, in conformity with [c\*.] 2331, para. 1.”<sup>66</sup>

On July 11, 1976, Archbishop Lefebvre received the monition, signing “a certificate of reception as evidence of this fact.”<sup>67</sup> In accordance with c\*. 2331 §1, because of his act of disobedience to the Roman Pontiff, Archbishop Lefebvre was now receiving a formal canonical warning that he would have further censures imposed upon him unless he took immediate steps to repair the scandal he had caused. As Woywod explains in his commentary on c\*. 2331 §1, “Persons who stubbornly refuse to obey the legitimate precepts or prohibitions of the Roman Pontiff or their proper Ordinary shall be punished with appropriate penalties, not excluding censures, in proportion to the gravity of their guilt.”<sup>68</sup>

While Lefebvre and his followers would apply many of their previous canonical arguments in questioning the validity of the monition as well as the ensuing suspension *a divinis*, having previously refuted these same arguments, the present author will not repeat his rebuttals a second time. It is sufficient to mention that Lefebvre was not deterred from his course of disobedience by the threat of further censures; he had begun to solidify in his rejection of the Second Vatican Council which he believed to be destroying the Church, as noted in his following response to Paul VI regarding the monition:

“Let Your Holiness abandon that ill-omened undertaking of compromise with the ideas of modern man, an undertaking which originates in a secret understanding between high dignitaries in the Church and those of Masonic lodges, since before the Council... To persevere in that direction is to pursue the destruction of the Church. Your Holiness will easily understand that we cannot collaborate in so calamitous a purpose, which we should do were we to close our seminaries.”<sup>69</sup>

Needless to say, this was neither the retraction nor the act of obedience from Lefebvre that the Holy See had hoped for as a result of the monition. At best, Archbishop Lefebvre now accused Pope Paul VI of unintentionally collaborating with freemasonry in order to destroy the Church. It was also evident that Lefebvre would not submit to the authority of the Roman Pontiff. In light of

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<sup>66</sup> SACRED CONGREGATION FOR BISHOPS, Prot. N. 514/76, p. 226.

<sup>67</sup> SACRED CONGREGATION FOR BISHOPS, Notification of Suspension *a Divinis*, Prot. N. 514/76, 22 July 1976, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 235.

<sup>68</sup> S. WOYWOD, *A Practical Commentary*, vol. 2, par. 2184.

<sup>69</sup> M. LEFEBVRE, “Lettre de Mgr. Lefebvre a Paul VI” 17 June 1976, *La Documentation Catholique*, n. 1705, trans. in M. DAVIES, *Apologia Pro Marcel Lefebvre*, p. 234.

Lefebvre's obstinacy, the Sacred Congregation for Bishops further imposed the sanction of suspension *a divinis* upon Lefebvre on July 22, 1976, within the following notification:

"The Holy Father has informed me that he has received from you a letter dated 17 July. In his eyes, it could not unhappily be considered satisfactory - on the contrary. I may even tell you that he is very distressed by the attitude to him shown in that document... In consequence the Sovereign Pontiff Paul VI, on 22 July 1976, in conformity with [c\*.] 2227, in virtue of which the penalties that can be applied to a bishop are expressly reserved to him, has inflicted on you suspension *a divinis* provided for in [c\*.] 2279, §2, 2°, and has ordered that it take immediate effect."<sup>70</sup>

Having found both Lefebvre's behavior and his refusal to repair the scandal he had caused unacceptable, the Holy Father suspended Lefebvre *a divinis* according to the norms of cc\*. 2227 and 2279 §2, 2°. As Woywod explains, "Suspension *a divinis* forbids the exercise of every act of the power of orders which one obtained either by sacred orders or by privilege."<sup>71</sup> Thus Lefebvre was now forbidden by the Holy See from the exercise of holy orders, a prohibition reserved to the Holy Father personally. In other words, his suspension was now perpetual until its absolution, and applicable to more than simply the ordination of seminarians to major orders.

Therefore, one must conclude that the main SSPX arguments against both the validity and liceity of their canonical suppression, as well as the arguments they propose against the validity and liceity of the censures incurred by Archbishop Lefebvre, cannot be sustained in light of the canonical jurisprudence in force during the period of time in which these actions occurred.

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<sup>70</sup> SACRED CONGREGATION FOR BISHOPS, Notification of Suspension, pp.235-236.

<sup>71</sup> S. WOYWOD, *A Practical Commentary*, vol. 2, par. 2121.

## II – THE SCHISM AND EXCOMMUNICATION OF ARCHBISHOP LEFEBVRE

While some correspondence between Archbishop Lefebvre and the Holy See continued in the years after his suspension *a divinis*, there would be little notable canonical development until May 5, 1988, when Archbishop Lefebvre and Cardinal Ratzinger signed a protocol agreement regularizing the situation of the SSPX. Unfortunately, less than two months after signing the protocol agreement, Lefebvre would retract his signature and proceed to consecrate bishops against the express mandate of the Roman Pontiff. The Holy See would respond by declaring Lefebvre excommunicated, resulting in the present schism between Rome and the SSPX. The purpose of the second chapter is again twofold. First, the author wishes to provide a canonical outline of the events which lead to the excommunication of Lefebvre. Secondly, the author wishes to address the main canonical arguments put forward by the Lefebvrite movement in their attempt to justify Lefebvre's illicit episcopal consecrations.

### 2.1. From the Protocol Agreement to the Excommunication

After intense negotiation, on May 5, 1988 Archbishop Lefebvre and Cardinal Ratzinger were able to sign a protocol agreement between the Holy See and the SSPX.<sup>72</sup> The protocol's main purpose was to regularize the SSPX as a clerical society of apostolic life of pontifical right, remove all censures against the clergy and laity within the Lefebvrite movement, and provide for their future pastoral care. Within the broad scope of the protocol, Lefebvre agreed to recognize the authenticity of the Second Vatican Council and the reformed Roman liturgy of Paul VI, while the groundwork was laid for the future of the tridentinist movement.

Besides the regularization of chapels affiliated with the SSPX and permission to continue using the liturgical missal of 1962, the Holy See agreed to name a candidate from among the ranks of the SSPX presbyters whom Archbishop Lefebvre would be permitted to consecrate to the episcopacy. The particular text within the protocol agreement translates as follows:

5.2. But, for practical and psychological reasons, the consecration of a member of the [SSPX] as a bishop seems useful. This is why, in the context of the doctrinal and canonical solution of reconciliation, we suggest to the Holy Father that he name a bishop chosen from among the members of the [SSPX], presented by Archbishop Lefebvre. In consequence of the principle indicated above (5.1), this bishop as a rule is not the Superior General of the Society.<sup>73</sup> But it seems opportune that he be a member of the Roman commission.<sup>74</sup>

In short, the new bishop would provide for the ordination of SSPX clergy and the confirmation of tridentinist laity according to the 1962 liturgical usage. Additionally, the Holy See agreed to establish a Roman commission composed of members named from both the Holy See and

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<sup>72</sup> J. CARDINAL RATZINGER and M. LEFEBVRE, *The Protocol Agreement of the Vatican And Archbishop Lefebvre*, trans. in *Origins*, (8 September 1988), pp. 211-212.

<sup>73</sup> It is common knowledge within the Lefebvrite movement that Archbishop Lefebvre always forbade the possibility of an SSPX bishop being elected Superior General of the SSPX, as such an act would imply the claim of episcopal jurisdiction. As a historical aside, this prohibition was abolished by the SSPX within a few years of Lefebvre's death with the election of SSPX Bishop Bernard Fellay as their present General Superior.

<sup>74</sup> J. CARDINAL RATZINGER and M. LEFEBVRE, *Protocol Agreement*, p. 212.

the SSPX, of which the SSPX bishop would be a member *ex officio*. The main purpose of the Roman Commission would be to resolve future questions arising between the Holy See and the SSPX.

Yet if the Holy See thought that most problems between the Church and the SSPX had been resolved, new problems began to surface almost immediately over the consecration of bishops. The Holy See had agreed to consecrate a bishop for the SSPX, fixing the date for August 15, 1988.<sup>75</sup> In a letter to Cardinal Ratzinger dated May 24, 1988, Lefebvre began to waiver from the protocol agreement, stating:

“Upon reflection, it appears clear that the goal of these dialogues is to reabsorb us within the Conciliar Church, the only Church to which you make allusion during these meetings... Therefore, with much regret we feel obliged to ask that, before the date of June 1st, you indicated clearly to us what the intentions of the Holy See are on these two points: consecration of three bishops asked for June 30th, and a majority of members from Tradition in the Roman Commission... Without an answer to this request, I shall proceed with the publication of the names of the candidates to the episcopacy whom I will consecrate on June 30th with the collaboration of His Excellency Bishop de Castro Mayer.”<sup>76</sup>

In effect, three main problems arise out of Lefebvre’s letter. First, it would appear that Lefebvre and the SSPX had adopted an attitude of schism, in not wishing to be part of the “[Post-] Conciliar Church.” In light of his suspicion, Lefebvre now requested that a majority of the members on the Roman Commission be named from his movement, rather than two of the five as outlined in the protocol agreement.<sup>77</sup> Perhaps some arrangement would have been possible with regards to the Roman Commission, however, it was Lefebvre’s second demand which proved more problematical for the Holy See. No longer satisfied with a single bishop to be consecrated on August 15th of the same year, Lefebvre now threatened to proceed illicitly if Rome would not meet his demand of more bishops at a sooner date.

In response to Lefebvre’s new demands, Cardinal Ratzinger wrote Lefebvre on May 30, 1988, clearly stating the Holy See’s position as follows:

“Concerning the first point, the Holy Father deems it proper to adhere to the principles fixed in point II/2 of the Protocol which you accepted. This Commission is an organism of the Holy See in the service of the [SSPX] and the diverse instances which will have to be handled to establish and consolidate the work of reconciliation. Moreover, it is not the Commission, but the Holy Father who in the final analysis will make the decisions; thus the question of a majority does not arise; the interests of the Society are guaranteed by its representation within the Commission, and the fears which you have expressed are groundless, since the choice of members will be done by the Holy Father himself... Regarding the second point, the Holy Father confirms what I had already indicated to you on his behalf, namely that he is disposed to appoint a member of the [SSPX] as a bishop (in

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<sup>75</sup> *30 Days*, July 1988, p. 13-14, as quoted from F. LAISNEY, editor, *Archbishop Lefebvre and the Vatican: 1987-1988*, Dickinson, TX, Angelus Press, 1989, p. 114.

<sup>76</sup> M. LEFEBVRE, “Letter to Cardinal Ratzinger,” 24 May 1988, trans. in F. LAISNEY, *Archbishop Lefebvre and the Vatican*, p. 115.

<sup>77</sup> J. CARDINAL RATZINGER and M. LEFEBVRE, *Protocol Agreement*, p. 211.

the sense of point II/5.2 of the Protocol), and to accelerate the usual process of nomination, so that the consecration could take place on the closing of the Marian Year, this coming August 15.”<sup>78</sup>

Essentially, Cardinal Ratzinger was outlining the position of the Holy See as to what was agreed upon with regards to the Roman Commission and the consecration of bishops. On the topic of the Roman Commission, Lefebvre was being called to honor his signature, firmly reminded that his rights would be safeguarded by the representation of the SSPX on this commission, however, the final authority must lay with the Roman Pontiff. With regards to the consecration of bishops, both the Holy See and the SSPX agreed within the protocol agreement to the consecration of a single bishop, for which the Holy See had set a specific date. Hence, the position of the Holy See with regards to these issues was clearly articulated by Cardinal Ratzinger both in the protocol agreement and in his subsequent correspondence with Lefebvre.

Nevertheless, rather than bring Lefebvre into obedience and thus reconcile the SSPX with the Holy See, the negative response to Lefebvre’s requests would serve as the basis for his first canonical argument in support of his illicit consecration of bishops. In a letter to the Holy Father dated June 2, 1988, Lefebvre writes:

“That is why we are asking for several bishops chosen from within the Catholic Tradition, and for a majority of the members on the projected Roman Commission for Tradition, in order to protect ourselves against all compromise... Given the refusal to consider our requests, and it being evident that the purpose of this reconciliation is not at all the same in the eyes of the Holy See as it is in our eyes, we believe it preferable to wait for times more propitious for the return of Rome to Tradition... we shall give ourselves the means to carry on the work which Providence has entrusted to us, being assured by His Eminence Cardinal Ratzinger’s letter of May 30th, that the episcopal consecration is not contrary to the will of the Holy See, since it was granted for August 15th.”<sup>79</sup>

While the above quotation from Lefebvre reveals the spirit of schism which had begun to overtake the SSPX, a more immediate canonical issue arises, namely whether or not Lefebvre truly had the mandate from the Holy See to proceed with the episcopal consecrations of four bishops on June 30, 1988. For as canon 1013 clearly states, “no bishop is permitted to consecrate anyone as Bishop, unless it is first established that a pontifical mandate has been issued.”<sup>80</sup> With Cardinal Ratzinger’s letter of May 30, Lefebvre would maintain that he had the necessary pontifical mandate to proceed with the episcopal consecrations of June 30, 1988.

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<sup>78</sup> J. CARDINAL RATZINGER, “Letter to Archbishop Lefebvre,” 30 May 1988, trans. in F. LAISNEY, *Archbishop Lefebvre and the Vatican*, pp. 116-117.

<sup>79</sup> M. LEFEBVRE, “Letter to Pope John Paul II,” 2 June 1988, trans. in *The Pope Speaks*, 33 (1988), p. 203.

<sup>80</sup> *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana (=CIC), 1983, xxx, 317 p. British Commonwealth version of English-language translation: *The Code of Canon Law*, new rev. English translation prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND and THE CANADIAN CANON LAW SOCIETY, London, HarperCollins, 1997, xvi, 508 p. (all references to canons of the CIC will be styled c. for canon and cc. for canons, followed by the canon number[s]).

In light of the present canonical jurisprudence of the Catholic Church, Lefebvre's assertion of a mandate is at best tenuous. While "Archbishop Lefebvre does not say here that the Holy See agrees with all the particular circumstances of the consecrations, merely to its principle,"<sup>81</sup> the particulars vis-à-vis the episcopal consecrations disputed by Lefebvre are serious enough that they cannot be divorced from the agreement in principle with the Holy See. For as c. 17 dictates as follows:

"Ecclesiastical laws are to be understood according to the proper meaning of the words considered in their text and context. If the meaning remains doubtful or obscure, there must be recourse to parallel places, if there be any, to the purpose and circumstances of the law, and to the mind of the legislator."

One cannot dispute that the Holy See had accepted Cardinal Ratzinger's recommendation permitting Lefebvre be permitted to consecrate a single bishop from among the SSPX. However, the Holy See clearly intended to permit the provision of a bishop within the context of a protocol agreement which would reconcile the SSPX to the Holy See. Whereas the context within which Lefebvre now claimed the mandate to proceed with the consecration of multiple bishops is one of prolonged irregularity. Thus both the meaning and the context of the mandate to consecrate a bishop is abundantly clear within the protocol agreement, and neither accords with Lefebvre's interpretation.

Nevertheless, this raises a second problem with regards to Lefebvre's claim of a papal mandate for his episcopal consecrations, that of the mind of the Roman Pontiff with regards to the particulars in mandating for the provision of an SSPX bishop. The mind of the Holy Father, as clearly indicated within the protocol agreement, and subsequently confirmed by Cardinal Ratzinger in his letter to Lefebvre, was that Lefebvre be permitted to consecrate a single bishop to be named by the Holy See from among the members of the SSPX. The Holy See later provided a specific date for the episcopal consecration, that of August 15, 1988. Yet from this permission, Lefebvre now claimed a mandate in principle to consecrate at an earlier date multiple bishops of his choosing - which is clearly contrary to the mind of the Holy See in allowing for the provision of a single SSPX bishop. Hence, Lefebvre cannot claim adherence to the mandate of the Holy Father in proceeding with multiple episcopal consecrations at a date of his own choosing.

However, even if the SSPX were to argue neither the context nor the mind of the Holy Father was clear within the protocol agreement, and thus c. 17 is inapplicable to the situation - an argument which would seem hypothetical at best given the fact that in his letters to Cardinal Ratzinger and the Holy Father, Lefebvre admits both the mind and context of the Holy See in mandating for the provision of an SSPX bishop within the protocol agreement - the obligation still exists on the part of Lefebvre not to simply interpret a broad mandate in principle from the Holy See. Rather, having sought recourse to the Holy See as to the interpretation of the clause which provides for the consecration of a bishop, Lefebvre was obliged to abide by the response given to him by Cardinal Ratzinger. For in accordance with c. 16 §1, "Laws are authentically interpreted by the legislator and by that person to whom the legislator entrusts the power of authentic interpretation."

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<sup>81</sup> F. LAISNEY, *Archbishop Lefebvre and the Vatican*, p. 127.

In effect, whatever ambiguity remain after the signing of the protocol agreement as to the interpretation of the provision for the consecration of a bishop, was to be lawfully interpreted by the Holy See. Having been entrusted by Pope John Paul II with the authentic interpretation of the protocol agreement, once Cardinal Ratzinger reiterated the Holy See's position with regards to the consecration of a bishop, Lefebvre was obliged under c. 16 "1 to adhere to this interpretation. Therefore, Lefebvre's assumption of an agreement in principle for the episcopal consecrations of his own choosing is contrary to the canonical legislation in force at the time of the protocol agreement.

In light of the above application of general norms, Lefebvre's followers cannot sustain their argument in favor of validly possessing a mandate in principle from the Holy See to proceed with the consecration of bishops; for in ignoring the context and intention of the legislator with which the mandate was granted, as well as in unilaterally changing the particulars of the initial mandate against the express will of the legislator, Lefebvre acted against the express mandate of the Holy See in consecrating multiple bishops.

## **2.2. The Excommunication and Schism of Archbishop Lefebvre**

On June 9, 1988, Pope John Paul II replied to Lefebvre's letter of June 2, exhorting him not to proceed with the illicit consecration of bishops, and reiterating the position of the Holy See as follows:

"In the letter you sent me you appear to reject all that was agreed on in the previous conversations, since you clearly manifest your intention to 'provide the means yourself to continue your work,' particularly by proceeding shortly and without apostolic mandate to one or several episcopal ordinations, and this in flagrant contradiction not only with the norms of Canon Law, but also with the Protocol signed on May 5th and the directions relevant to this problem contained in the letter which Cardinal Ratzinger wrote to you on my instructions on May 30th."<sup>82</sup>

From the above letter Archbishop Lefebvre was clearly forewarned by the Holy Father that he lacked the necessary pontifical mandate to proceed with his episcopal consecrations, and in so doing he would violate both the norms of canon law as well as the Protocol agreement. Furthermore, the Holy Father confirmed that his mind in this matter had been clearly stated by Cardinal Ratzinger in his letter of May 30th.

This would not deter Lefebvre from proceeding with his press conference on June 15, 1988, in order to publicly announce the names of the four candidates he intended to consecrate to episcopacy on June 30, 1988. Having been forewarned by both Cardinal Ratzinger and the Holy Father that the mandate necessary to proceed with the episcopal consecrations was lacking, and in light of this press conference announcing the four candidates, on behalf of the Congregation for Bishops Cardinal Gantin issued the following monition on June 17, 1988:

"Since on June 15th, 1988 you stated that you intended to ordain four priests to the episcopate without having obtained the mandate of the Supreme Pontiff as required by

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<sup>82</sup> JOHN PAUL II, "Letter to Archbishop Lefebvre," 9 June 1988, trans. in *The Pope Speaks*, 33 (1988), pp. 204-205.

canon 1013 of the Code of Canon Law, I myself convey to you this public canonical warning, confirming that if you should carry out your intention as stated above, you yourself and also the bishops ordained by you shall incur *ipso facto* excommunication *latae sententiae* reserved to the Apostolic See in accordance with canon 1382.”<sup>83</sup>

The latter part of the monition simply reiterates what is legislated in c. 1382, in that without a pontifical mandate one who consecrates a bishop, as well as those who receive consecration, are automatically excommunicated by the law itself. Having incurred such an excommunication, it can only be lifted by the Apostolic See. However, the monition from the Congregation for Bishops did not deter Lefebvre, and on June 30, 1988, he followed through with his threat and consecrated four candidates from the SSPX to the episcopacy without papal mandate. A serious act of disobedience and violation of ecclesiastical law, Lefebvre had now consummated the growing SSPX schism from Rome, automatically incurring excommunication.

Subsequently, the automatic excommunication against Lefebvre was declared by Cardinal Gantin in a decree from the Congregation for Bishops dated July 1, 1988, the day after the illicit consecrations. Acting in his official capacity on behalf of the pope, Cardinal Gantin solemnly declares:

Monsignor Marcel Lefebvre, Archbishop-Bishop Emeritus of Tulle, notwithstanding the formal canonical warning of 17 June last and the repeated appeals to desist from his intention, has performed a schismatic act by the episcopal consecration of four priests, without pontifical mandate and contrary to the will of the Supreme Pontiff, and has therefore incurred the penalty envisaged by Canon 1364, paragraph 1, and canon 1382 of the Code of Canon Law... Having taken account of all the juridical effects, I declare that the above-mentioned Archbishop Lefebvre, and Bernard Fellay, Bernard Tissier de Mallerais, Richard Williamson and Alfonso de Galarreta have incurred *ipso facto* excommunication *latae sententiae* reserved to the Apostolic See.<sup>84</sup>

As is clearly visible from the decree of the Congregation for Bishops, having consecrated bishops without a valid pontifical mandate and against express wishes of the Holy See, Lefebvre automatically incurred excommunication reserved to the Apostolic See. Yet against this decree, Lefebvre’s apologists would argue “that the above decree is not the sentence of a judge, but rather a declaration that Canons 1364 and 1382 apply.”<sup>85</sup> That the excommunication is *latae sententiae* rather than *ferendae sententiae* is completely irrelevant in establishing the validity of Lefebvre’s excommunication. As c. 331 states, “by virtue of his office, [the Roman Pontiff] has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power.” With regards to c. 1382, the Roman Pontiff has utilized his supreme legislative power to establish by law a *latae sententiae* excommunication for those who consecrate a bishop without papal mandate. In accordance with c. 17, such an ecclesiastical law must be understood according to the

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<sup>83</sup> CONGREGATIONIS PRO EPISCOPIS, *Monitum d.no Marcello Lefebvre*, p. 2.

<sup>84</sup> CONGREGATION FOR BISHOPS, *Decree of Excommunication*, 1 July 1988, trans. in *The Pope Speaks*, 33 (1988), p. 205.

<sup>85</sup> F. LAISNEY, *Archbishop Lefebvre and the Vatican*, p. 144.

mind of the legislator, and in accordance with c. 16 §1, such a law is authentically interpreted by the legislator.

In the case of Archbishop Lefebvre, both the legislator's mind and interpretation regarding c. 1382 were clearly and personally communicated to Lefebvre by the Supreme Legislator previous to Lefebvre's violation of c. 1382. Furthermore, by the very fact Lefebvre proceeded publicly in his act of disobedience means his violation of c. 1013 was external, and hence c. 1321 §3 presumes his imputability in consecrating bishops without papal mandate. Therefore, neither his actions nor his imputability need be established in a judicial process.

With regards to the penalties imposed by c. 1364 §1, this norm establishes that "a schismatic incurs a *latae sententiae* excommunication, without prejudice to the provision of can. 194 §1, n. 2; a cleric, moreover, may be punished with the penalties mentioned in can. 1336 §1, nn. 1, 2 and 3." As far as the penalties outlined in c. 1336, these are additional expiatory penalties that may be imposed, and thus are not directly applicable to the present controversy as neither Lefebvre nor the bishops illicitly consecrated have seriously attempted to reconcile their schism. Therefore, c. 1336 will not be addressed in the present study. On the other hand, c. 194 §1, 2° provides that "one who has publicly defected from the Catholic faith or from communion with the Church" is "removed from ecclesiastical office by virtue of the law itself." However, c. 194 §2 legislates that the "removal mentioned in [c. 194 §1] nn. 2 and 3 can be insisted upon only if it is established by declaration of the competent authority."

As the penalties mentioned in c. 1364 §1 apply to Lefebvre, he incurred an additional *latae sententiae* excommunication for the offense of schism. C. 751 defines schism as "the withdrawal of submission to the Supreme Pontiff or from communion with the members of the Church subject to him." Lefebvre's act of consecrating bishops without papal mandate was a refusal of submission to the express will of the Supreme Pontiff. As the penalty for schism was declared by the competent authority in the form of the Holy See, by virtue of the law itself Lefebvre was automatically removed from all ecclesiastical office.<sup>86</sup>

Against the declaration of schism, however, Lefebvre's followers have argued that his consecration of bishops without papal mandate was not an act of withdrawal of submission to the Roman Pontiff or from the communion with the Church, but merely an act of disobedience. In citing one canonical study, Lefebvre's followers maintain that "schism, defined in Canon 751, means refusal of subjection to the Supreme Pontiff or refusal of communion with other members of the Church. A mere act of disobedience to a superior does not imply denial that the superior holds office or has authority."<sup>87</sup>

The above argument fails to take into account four variables relevant to Lefebvre's consecration of bishops against the express will of the Supreme Pontiff. First, c. 751 does not specify that one must deny the superior's possession of authority to incur schism, but rather that one must refuse to submit to this authority. Secondly, the superior to whom Lefebvre refused submission was the Supreme Pontiff who possesses full ordinary power and universal jurisdiction.

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<sup>86</sup> Given the canonical suppression of the SSPX in 1975, this argument would only be applicable insofar as the SSPX maintain that they continue to exist canonically within the Church as a society of common life without public vows.

<sup>87</sup> T.C.G. GLOVER, "Schism and Archbishop Lefebvre," in *Is Tradition Excommunicated?*, p. 99.

Thirdly, the consecration of bishops against the express will of the Supreme Pontiff is no mere act of disobedience, but an act which carries by virtue of the law the penalty of *latae sententiae* excommunication - penalties which, when Lefebvre made public his intention to consecrate bishops without papal mandate, were reiterated to him personally by no less than the Supreme Pontiff and two Cardinal Prefects of curial congregations. Finally, in light of Lefebvre's express intention in consecrating bishops without papal mandate, that of providing for the continuation of the SSPX until Rome adopts his position, Lefebvre was not carrying out an isolated act of disobedience, but rather he intended to perpetuate a situation of disobedience for a prolonged period of time. Hence, in light of the above variables, Lefebvre's act of consecrating bishops without papal mandate cannot reasonably be dismissed as a simple act of disobedience to a superior.

Therefore, an objective canonical analysis of Lefebvre's situation illustrates that he incurred a *latae sententiae* excommunication by virtue of the law both for the act of consecrating bishops without papal mandate, and for carrying out this act against the express will of the Supreme Pontiff as an act of schism. Thus the canonical arguments proposed by the Lefebvrite movement against the validity of the excommunications cannot be sustained in light of the Church's canonical jurisprudence.

### 2.3 After the Schism and Excommunication of Lefebvre

On July 2, 1988, two days after Lefebvre's episcopal consecrations without papal mandate, the Pope John Paul II promulgated an apostolic letter *motu proprio* entitled *Ecclesia Dei adflicta* in which he sought to facilitate the reconciliation into the Church of Archbishop Lefebvre's former followers. In addressing Lefebvre's illicit episcopal consecrations, the Holy Father solemnly confirmed both the excommunication of Lefebvre and the existence of his schism as follows:

"In itself, this act was one of disobedience to the Roman Pontiff in a very grave matter and of supreme importance for the unity of the Church, such as is the ordination of bishops whereby the apostolic succession is sacramentally perpetuated. Hence such disobedience - which implies in practice the rejection of the Roman primacy - constitutes a schismatic act. In performing such an act, notwithstanding the formal canonical warning sent to them by the Cardinal Prefect of the Congregation for Bishops on 17 June last, Mons. Lefebvre and the priests Bernard Fellay, Bernard Tissier de Mallerais, Richard Williamson and Alphonso de Galarreta, have incurred the grave penalty of excommunication envisaged by ecclesiastical law."<sup>88</sup>

In light of the Holy Father's confirmation of Lefebvre's schismatic status, many traditionalists would respond positively to the Holy Father's invitation to reconcile their situation. In North America, the process of reconciliation had been facilitated even before the schism ensued, when on the tenth anniversary of Fr. Leonard Feeney's death one of the more sizable communities he had founded formally regularized their canonical situation with the Church.<sup>89</sup> Unlike Fr. Feeney who was reconciled with the Church under the pontificate of Paul VI in 1972,<sup>90</sup> and who remains a

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<sup>88</sup> JOHN PAUL II, *Motu proprio Ecclesia Dei adflicta*, p. 150.

<sup>89</sup> G. POTTER, *After the Boston Heresy Case*, Monrovia, CA, Catholic Treasures Books, 1995, p. 181.

<sup>90</sup> G. POTTER, *After the Boston Heresy Case*, p. 180.

popular folk hero among many traditionalists today, Lefebvre died under the censure of excommunication without having reconciled with the Church.

Yet in the period after Lefebvre's excommunication many of his followers still dispute, both in print and in public debate, the validity of his excommunication because they claim that in consecrating bishops without papal mandate, he was acting under the compulsion of grave fear in a state of emergency,<sup>91</sup> as provided for in cc. 1323, 4° and 1324 §1, 5°, 8°. The first canon cited by Lefebvre's apologists, c. 1323, 4°, states:

“No one is liable to a penalty who, when violating a law or precept:

4° acted under the compulsion of grave fear, even if only relative, or by reason of necessity or grave inconvenience, unless, however, the act is intrinsically evil or tends to be harmful to souls;”

Similarly, c. 1324 §1, 5°, 8° which is also cited by Lefebvre's apologists states:

“The perpetrator of a violation is not exempted from penalty, but the penalty prescribed in the law or precept must be diminished, or a penance substituted in its place, if the offense was committed by:

5° one who was compelled by grave fear, even if only relative, or by reason of necessity or grave inconvenience, if the act is intrinsically evil or tends to be harmful to souls;

8° one who erroneously, but culpably, thought that some one of the circumstances existed which are mentioned in can. 1323., nn. 4 or 5;”

There are two subtle differences between these two canons, the first being that in c. 1323, 4° the penalty is completely excused, whereas in c. 1324 §1, 5° the penalty is merely diminished. The second difference is that c. 1323, 4° does not apply if the violation which incurred the penalty is intrinsically evil or harmful to souls, whereas c. 1324 §1, 5° can still apply in such instances. C. 1324 §1, 8° applies to those who both erroneously and culpably thought that the circumstances outlined in 1324 §1, 5° were present. In light of these two canons, Lefebvre's apologists claim that because Lefebvre believed a state of necessity existed in the Church, regardless of whether such a state was justified or not, he acted under grave fear in illicitly consecrating bishops without papal mandate. Therefore, they maintain that irrespective of the Holy See's formal declaration to the contrary, Lefebvre did not incur the *latae sententiae* excommunications imposed by canons 1364 §1 and 1382.<sup>92</sup>

The Lefebvrite argument that Lefebvre acted under grave fear in order to resolve a state of necessity is problematical for many reasons. First of all, to reiterate the principle of c. 16 §1, laws are authentically interpreted by the legislator. In the case of Lefebvre, to sustain an argument based upon cc. 1323, 4° and 1324 §1, 5°, 8° his followers must maintain that the supreme legislator has inauthentically interpreted his own law, while Lefebvre somehow came across the authentic interpretation of what the Supreme Pontiff legislated. The contradictory nature of such a position

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<sup>91</sup> C.P. NEMETH, *The Case of Archbishop Marcel Lefebvre; Trial by Canon Law*, Kansas City, KS, Angelus Press, 1994, p. 92.

<sup>92</sup> C.P. NEMETH, *The Case of Archbishop Marcel Lefebvre*, p. 97.

has been noted by the Pontifical Commission for the Interpretation of Legislative Texts in the following statement:

“However, doubt cannot reasonably be cast upon the validity of the excommunication of the Bishops declared in the Motu Proprio [Ecclesia Dei] and the Decree [of excommunication against Lefebvre]. In particular it does not seem that one may be able to find, as far as the imputability of the penalty is concerned, any exempting or lessening circumstances (cf CIC, can 1323-1324). As far as the state of necessity in which Mons. Lefebvre thought to find himself, one must keep before one that such a state must be verified objectively, and there is never a necessity to ordain Bishops contrary to the will of the Roman Pontiff, Head of the College of Bishops. This would, in fact, imply the possibility of ‘serving’ the Church by means of an attempt against its unity in an area connected with the very foundations of this unity.”<sup>93</sup>

Therefore, one sees that a state of emergency cannot be invoked against the expressed judgment of the Holy Father, especially on such an important issue as the consecration of bishops. One also sees that the mind of the legislator does not favor the Lefebvrite argument. Therefore, on the basis of c. 16 §1, Lefebvre’s followers cannot sustain an argument in favor of the illicit consecration of bishops based upon cc. 1323, 4° and 1324 §1, 5°, 8°, for such an argument ignores the authentic interpretation of the supreme legislator regarding the content of his legislation.

Yet as most of Lefebvre’s followers reject the interpretation of the Supreme Pontiff with regards to the *latae sententiae* excommunication of Lefebvre, the situation must be examined in light of canonical tradition. For as c. 6 §2 dictates, “to the extent that the canons of this [1983] Code reproduce the former law, they are to be assessed in the light also of canonical tradition.” Under the pontificate of Pius XII, the Sacred Congregation of the Holy Office decreed that, “Episcopus, cuiusvis ritus vel dignitatis, aliquem, neque ab Apostolica Sede nominatum neque ab Eadem expresse confirmatum, consecraus in Episcopum, et qui consecrationem recipit, etsi metu gravi coacti ([c\*.] 2229 §3:3° [CIC/17]), incurrunt ipso facto in excommunicationem Apostolicae Sedi specialissimo modo reservatam.”<sup>94</sup> In short, the former law decrees that grave fear does not mitigate from the penalty of excommunication when one consecrates bishops without papal mandate - a fact which also refutes the Lefebvrite argument that the “1917 [Code of] Canon Law inflicted only a suspension” for the act of consecrating bishops without papal mandate.<sup>95</sup> Therefore, under pre-conciliar legislation the consecration of bishops without papal mandate, even when coerced by grave fear, did not mitigate one from incurring a *latae sententiae* excommunication.

When confronted with this decree from the Holy Office, however, Lefebvre’s apologists will argue that it was introduced within the context of the Chinese Patriotic Catholic Church.<sup>96</sup> Yet

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<sup>93</sup> PONTIFICIO CONSIGLIO PER L'INTERPRETATIONE DEI TESTI LEGISLATIVI, Nota *sulla scomunica per scisma in cui incorrono gli aderenti al movimento del Vescovo Marcel Lefebvre*, allegato al Prot. N. Protocol 5233/9624 August 1996, *Communicationes*, 29(2) [1997], trans. THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, forwarded by M. BROWN, <Michael@mbrown.demon.co.uk> “[ctnreg] Redemptorists,” distribution list <ctnreg@egroups.com> (16 March 1999).

<sup>94</sup> SUPREMA SACRA CONGREGATIO S. OFFICII, *Decretum de consecratione episcopi sine canonica provisione*, 9 April 1951, AAS, 43 [1951], p. 217-218.

<sup>95</sup> T.C.G. GLOVER, “Schism and Archbishop Lefebvre,” p. 104.

<sup>96</sup> T.C.G. GLOVER, “Schism and Archbishop Lefebvre,” p. 104.

while the situation in China may have been the catalyst for this decree, there is nothing within it to suggest that it merely binds the particular Church within China. Rather, having received universal promulgation, the text of the decree would suggest that it bound bishops universally.

Next, against the decree from the Holy Office, some of Lefebvre's followers have argued its possible suppression from c. 6 §1, 3° which states: "When this Code comes into force, the following are abrogated: 3° all penal laws enacted by the Apostolic See, whether universal or particular, unless they are resumed in this Code itself." For whereas the decree from the Holy Office specifically denies coercion from grave fear as a mitigating circumstance in the *latae sententiae* excommunication of those who consecrate bishops without papal mandate, c. 1382 is silent about coercion due to grave fear. Therefore, some of Lefebvre's apologists have argued a doubt of law vis-à-vis the applicability of the decree from the Holy Office, noting c. 14 which legislates that "laws, even invalidating and incapacitating ones, do not oblige when there is a doubt of law." However, such an argument is unsustainable in light of c. 21, which states that "in doubt, the revocation of a previous law is not presumed; rather, later laws are to be related to earlier ones and, as far as possible, harmonized with them." Hence, Lefebvre's apologists cannot reasonably presume that the previous legislation has been suppressed by c. 6 §1, 3° with regards to the mitigating circumstances of those who consecrate bishops without papal mandate under the coercion of grave fear.

In light of the above, Lefebvre's arguments in favor of the mitigation of his *latae sententiae* excommunication based upon cc. 1323, 4° and 1324 §1, 5°, 8° stands refuted within the broader context of canonical jurisprudence, and thus cannot reasonably be sustained in light of objective analysis of his situation after the episcopal consecrations without papal mandate.

## CONCLUSION

In concluding this canonical history of the schism and excommunication of Archbishop Lefebvre, one sees a schism which took place in various stages. With each passing stage, Lefebvre's followers have presented canonical arguments against the validity of censures incurred by Archbishop Lefebvre and the movement he founded. More often than not, these arguments have sought to isolate particular canons from the wider context of ecclesiastical law as a whole. However, when the canons cited by Lefebvre's apologists are interpreted according to the will of the legislator as well as the wider context of canonical jurisprudence, such arguments as proposed by the Lefebvrite movement are not sustainable. Therefore, one cannot but conclude that Lefebvre's act of consecrating bishops against the express will of the Supreme Pontiff was a schismatic act incurring the *latae sententiae* penalty of excommunication by virtue of the law itself.

In closing, as the bishop of Rome is the one to whom the Lefebvrite movement refuses submission, the present author would like to remind those who adhere to Lefebvre's schism of the following teaching imparted by Saint Paul in his Epistle to the Romans: "Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinances of God. And they that resist, purchase to themselves damnation."<sup>97</sup>

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<sup>97</sup> Romans 13:1-2

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