

CHAPTER II

Response to an Attack

A Debunking of Father Achacoso's Fraudulent *Response to a Response*

On September 29, 1995, Father Jaime B. Achacoso published an article entitled *A Response to a Response, Dismantling Father Paul L. Kramer's Defence of the Society of St. Pius X*. The article displays a systematic and subtle distortion of facts I presented as well as an equally systematic falsification of the arguments I presented in my *Response to the Catholic Bishops Conference of the Philippines (CBCP)*.

A Case of Deception and Falsification

The deception begins on page one where Fr. Achacoso says, “the aforementioned ‘advisory to the clergy’ ... is non-existent.” When I referred to the “Advisory to clergy and laity” in my *Response to CBCP*, I was referring specifically to the re-issuing of the CBCP “Admonition” of 1992, as reported in the *Manila Bulletin* on Sunday, June 25, 1995. The report quoted the CBCP secretary general, Bishop Nestor Cariño, who stated that the admonition was reiterated “for the proper guidance of the faithful.”

Since I am not bound by the requirements of procedural law in a document that is not intended to be used in the courtroom, I did not see any need to refer to the original date of issue (18 Nov. 1992), nor did I refer to its proper title (*Admonition*), but I used the name by which the *Manila Bulletin* referred to it. While such may not be an acceptable practice in court, it is certainly acceptable in ordinary parlance and by no means beyond the pale of responsible journalism.

Fr. Achacoso seems to think it irresponsible that I do not adhere to the strict requirements of courtroom procedure even outside the court, and he therefore dismisses my article as irresponsible.

There appears, however, to be a malicious ulterior motive behind Fr. Achacoso's brazenly stated falsehood that the June 24, 1995 statement is "non-existent". He goes on to say that, "this *faux pas*, in a rebuttal which purports to question the acts of the CBCP, should be enough to simply disregard the whole paper as irresponsible." Clearly, Fr. Achacoso does not want the reader to examine my article carefully but to simply dismiss it as irresponsible, because a careful examination of both papers will reveal that Fr. Achacoso has systematically falsified and misrepresented all of my arguments.

Whenever Fr. Achacoso summarises my arguments, he cleverly conceals or changes altogether the basic principle upon which each of my arguments is founded. In this manner he fabricates a distorted caricature of each argument, and then he proceeds to attack the caricature — he refutes the counterfeit argument of his own making which he fraudulently attributes to me. Thus, when Fr. Achacoso says, "His (Fr. Kramer's) argument on this point (the alleged excommunication of Archbishop Lefebvre), can be outlined as follows", he then presents his own counterfeit summary of my argument:

a) Canon Law states that a person who violates a law or precept, acting "out of necessity or out of serious inconvenience, unless the act is intrinsically evil or verges on harm to souls" is "not subject to penalties" (cf. c. 1323, 4^o).

b) Even "if the offence was intrinsically evil or verged on harm to souls", a person who violates a law or precept "forced through necessity or serious inconvenience ... is not exempt from a penalty but the penalty set by law or precept must be tempered or a penance substituted in its place" (cf. c. 1324, §1, 5^o).

c) "What is certain is that Archbishop Lefebvre really believed that there did exist a true grave necessity to consecrate the bishops even without papal mandate".

d) Therefore, “if the Holy See really wanted to excommunicate Archbishop Lefebvre, it would have been necessary to proceed *sententia ferenda* after due process.”

The argument that I really presented in my article is as follows:

Canon 1324 §3 states that, “an accused is not bound by an automatic penalty (*latæ sententiæ*) in the presence of any of the circumstances enumerated in §1”. One of those circumstances is the violation of a law or precept “by one who erroneously yet culpably thought one of the circumstances in can. 1323 4^o and 5^o was verified”. Canon 1323 4^o refers to “a person who acted ... out of necessity or serious inconvenience unless the act is intrinsically evil or verges on harm to souls”. **It is, therefore, clearly set forth in the Law of the Church that one who even erroneously yet culpably thought that he was acting out of necessity does not incur any automatic penalty.**

*It is not the scope of this study to determine whether Archbishop Lefebvre et al. were correct in their judgement that the episcopal consecrations were necessary or not necessary: whether their judgements were erroneous and culpable, erroneous but not culpable, or neither erroneous nor culpable. What is certain is that Archbishop Lefebvre really believed that there did exist a truly grave necessity to consecrate the bishops even without papal mandate. His belief that there truly existed a case of necessity was set forth, as Mons. Lefebvre himself explained, in “an admirable study done by Professor Georg May, President of the Seminary of Canon Law in the University of Mainz in Germany, who marvellously explains why we are in a case of necessity ...” Canon 1323 clearly states that those acting “out of necessity” are “not subject to penalties”, i.e. not subject to any penalty, and canon 1324, §3 states that “one is not bound by an automatic (*latæ sententiæ*) penalty” ... “who erroneously yet culpably thought” (1324 §1, 8^o) ... that he was acting “out of necessity or out of grave inconvenience ...” (1323 4^o) Therefore the Law of the Church makes it indisputably clear that right or wrong, Archbishop*

Lefebvre and the four bishops consecrated by him did not incur any automatic (*latae sententiae*) penalty.

Father Achacoso begins his fraudulent outline of my argument with a citation of Canon 1323, 4^o: "... a person who violates a law or precept acting 'out of necessity or serious inconvenience ...' is 'not subject to penalties'." An argument founded on this clause of Canon 1323 is clearly an argument that justifies one who was acting out of necessity. Hence, Fr. Achacoso responds by stating his position that **"There was no objectively grave necessity for Archbishop Lefebvre to consecrate bishops without papal mandate."**

It is important to bear in mind that **nowhere in my argument did I claim that an objective state of necessity really existed**, but I did in fact state that **"Archbishop Lefebvre really believed that there did exist a truly grave necessity to consecrate the bishops even without papal mandate."** My argument that Mons. Lefebvre did not incur any *latae sententiae* penalty is founded on Canons 1324 §3; 1324 §1, 8^o; 1323 4^o. These canons clearly state that *one who even erroneously and culpably thought that he was acting out of necessity is not bound by any automatic penalty*.

Archbishop Lefebvre really believed that he was acting out of necessity. If he was indeed correct in his belief that it was really necessary to consecrate the bishops, then he would not be subject to any penalty whatever (cf. can. 1323, 4^o). If he was in error and even if he was culpably in error in believing that it was necessary to consecrate bishops without a mandate from the Pope, then he still would not incur any automatic (*latae sententiae*) penalty (cf. can. 1324 § 3).

Archbishop Lefebvre expressed his belief that there was truly a case of necessity in his sermon of June 30, 1988, in which he cited "an admirable study done by Professor Georg May ... who marvelously explains why we are in a state of necessity." Fr. Achacoso claims that "*Kramer* cites 'an admirable study done by Professor Georg May' ... but fails to quote him or give the exact source", but in reality it was not I but Archbishop Lefebvre who not only cited Professor May's study, but distributed the full text of that study among the faithful who attended the Mass on that day.

Negotiations With Rome and the Question of ‘grave necessity’

In his extremely one-sided and selective presentation of the facts of the case, Fr. Achacoso attempts to convince his readers that “the Protocol of 5 May 1988 showed how sincere the Holy See was in accommodating all the legitimate desires of the Society. Thus,” he concludes, “the so-called ‘grave necessity’ could only have been due to the refusal of Lefebvre and the society to submit to the papal mandate.”

It was, in fact, the *insincerity* of the Holy See which provoked Mons. Lefebvre to break off with the negotiations. In the above-mentioned sermon of June 30, 1988, Mons. Lefebvre asks, “And why, Archbishop, have you stopped these discussions which seemed to have had a certain degree of success?” His reply: “Well, precisely because, at the same time that I gave my signature to the Protocol, the envoy of Cardinal Ratzinger gave me a note in which I was asked to beg pardon for my errors.”

Just when the negotiations were at the point of being successfully concluded, an agreement having been reached and the protocol already signed, then suddenly new conditions are added: Mons. Lefebvre must ask pardon for the *error of adhering to tradition*. But the Catholic faith requires that we hold fast to tradition. Pope Benedict XV taught in *Ad Beatissimi Apostolorum*: “Let there be no innovation; keep to what has been handed down.” Pope St. Stephen I (254-257) taught: “Let them innovate in nothing but keep the traditions.” Pope St. Pius X in *Pascendi*, citing the authority of an ecumenical council, taught: “For Catholics nothing will remove the authority of the Second Council of Nicea, where it condemns those ‘*who dare after the impious fashion of heretics, to deride ecclesiastical traditions, to invent novelties of some kind, or to endeavour by malice or craft to overthrow any one of the legitimate traditions of the Catholic Church*’.”

The *Tridentine Profession of Faith* specifically binds us to the “received and approved rites of the Catholic Church”, and *Quo Primum* specifies that the Tridentine Mass is the received and approved

rite of the Roman Church and irrevocably decrees perpetual adherence to that rite.³⁵ The proposition that “the received and approved rites of the Catholic Church customarily used in the solemn administration of the sacraments may be despised, or may be freely omitted by the ministers without sin, *or may be changed into other new rites by any church pastor whosoever*” has been solemnly and infallibly anathematised by the Council of Trent.³⁶ It follows therefore that if Archbishop Lefebvre had asked pardon for the *error* of rejecting the “New Rite of Mass”³⁷ and adhering to the traditional and customary rite, *that act would have been tantamount to a denial of the Catholic Faith*. Therefore Archbishop Lefebvre wrote to the Pope in his letter of 2 June 1988:

It is to keep the Faith of our Baptism intact that we have had to resist the spirit of Vatican II and the reforms inspired by it.

The *false ecumenism which is at the origin of all the Council's innovations in the liturgy*, in the new relationship between the Church and the world, in the conception of the Church itself, is leading the Church to its ruin and Catholics to apostasy.

Being radically opposed to this destruction of our Faith and determined to remain within the traditional doctrine and discipline of the Church, especially as far as the formation of priests and the religious life is concerned, *we find ourselves in the absolute necessity* of having ecclesiastical authorities who embrace our concerns and will help us *to protect ourselves against the spirit of Vatican II* and the spirit of Assisi.

That is why we are asking for several bishops chosen from within Catholic Tradition, and for a majority of the members on the projected Roman Commission for Tradition, in order to protect ourselves from 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.* That is why we shall give ourselves the means to carry out the work which Providence has entrusted to us ...

It is absolutely clear from what is stated in the letter that Mons. Lefebvre considered any compromise with the post-conciliar reforms to be morally wrong because those reforms compromise the Faith. The Holy See made it clear by its actions that no nomination or papal mandate would be forthcoming so long as Lefebvre maintained that position. Mons. Lefebvre refused to compromise with the reform, and therefore he declared, in his statement of March 29, 1988, “Now our disobedience is motivated by the need to keep the Catholic Faith.” Thus it is luminously clear that Archbishop Lefebvre’s dissent and disobedience was motivated by the dictates of his conscience and the sincere belief that there truly existed a case of necessity in the Church. Lefebvre’s disobedience was not motivated by a schismatic intention to break with the Church, but rather out of a determination “*to remain within the traditional doctrine and discipline of the Church,*” and to remedy a grave state of necessity in the Church. It is therefore quite obvious that Mons. Lefebvre did not act out of a schismatic contempt for papal authority, and it is equally clear that Lefebvre’s belief that his violation of can. 1382 was justified by a state of necessity exempted him from any automatic (*latae sententiae*) penalty (cf. can. 1324 §3; 1324 §1, 8^o).

Father Achacoso chooses to ignore these facts with a deafening silence, and limits himself to the hypocritical and defamatory remark that “*Lefebvre wanted to consecrate to the episcopate the persons of his choice at the time of his choice,* regardless of what the Holy See disposed,” and expresses his agreement with the position that “the so-called *case of necessity* has been intentionally fabricated by Mons. Lefebvre in order to maintain an attitude of division within the Catholic Church”. Thus, Fr. Achacoso displays contempt and intolerance toward those who for reasons of conscience refuse to accept the post-conciliar reforms.

Fr. Gerald Murray's Thesis on the Lefebvre Case

Fr. Achacoso's claim, that "the presence of grave necessity, as a ground of diminished imputability, is a matter for the competent authority to evaluate", while true in itself is scurrilously applied to the present case. I did not base my argument on the contention that an objectively grave necessity verified itself as a ground for diminished imputability (can. 1324 §1, 5^o) as Fr. Achacoso fraudulently maintains. Nowhere in my entire article did I make any direct quotation or citation of can. 1324 §1, 5^o, yet Fr. Achacoso, apparently not without malice, has fraudulently inserted this clause into the argument that he falsely attributes to me. My claim that "the Law of the Church makes it indisputably clear that right or wrong, Archbishop Lefebvre and the four bishops consecrated by him did not incur any automatic (*latae sententiae*) penalty" is founded on canons 1323, 4^o, and 1324 §3.

Concerning these canons and their applicability to the Lefebvre case, Fr. Gerald Murray observes:

This canon [1324] offers to Archbishop Lefebvre and to the bishops consecrated by him perhaps the strongest argument that they are not excommunicated. Number 8 of paragraph 1, like number 7 of Canon 1323, refers to the thoughts of the person who committed the offence. The legal value given to an individual's subjective estimation of the existence of a state of necessity by the CIC seemingly renders the incurring of a *latae sententiae* impossible in the case of a person who violated a law or precept, either culpably or not, and without malice, while thinking that the state of necessity required or simply permitted him to violate the law or precept.

As to whether Archbishop Lefebvre acted from juridical malice, we can ask: Does the deliberate violation of some law, based on the previously alleged applicability of a provision of another law exempting one from a penalty for such violation, change the nature of the violation into a merely apparent violation? ...

In other words, if Law A allows one to violate Law B in certain circumstances with impunity, is a violation of Law B in those circumstances really a violation? It would seem not, since an act cannot be authorised and not punishable, and yet be prohibited at the same time. If there is no prohibition, then there can be no violation. Law B falls, Law A prevails, the act regulated by Law B is not subject to a prohibition or a penalty; hence its completion involves no deliberate violation and therefore malice is not involved.

Furthermore, if the judgement of the applicability of Law A is not legally reserved to a superior, but is rather left up to the individual judgement of the person who violates Law B, then his appeal to Law A is not illegitimate and cannot simply be gainsaid by the superior. The Code has given the person in question the capacity, if not the right, to judge the circumstances, and then mitigates or exempts him from the penalty attached to a violation of Law B based on the legal qualification of his subjective appeal to, for instance, necessity.

If this supposition is correct, then Archbishop Lefebvre cannot be alleged to have acted with malice. It can be plausibly maintained that his intent was not to violate a law, but rather to act, with legal sanction, in a way that would, according to his judgement, secure the good of the Church, by means of a necessary transgression of Canon 1382, in the extraordinary circumstances he alleged to exist in the life of the Church. This intent to obtain the good of the Church by means of disobeying in this particular instance, but not rejecting, the authority of the Supreme Pontiff and the submission due to him would also exclude any direct intent to commit a schismatic act.

If Archbishop Lefebvre thought even culpably, that he needed to act because of the necessity of the Church, he is furthermore not subject to a *latae sententiae* excommunication according to Canon 1324, §3. And as we saw, the CIC does not presume malice, but rather imputability (can. 1321, §3). This presumption of imputability falls “if it ap-

pears otherwise.” Such an “appearance,” indicating at least a possible lack of imputability, can reasonably be asserted to exist in this case.

Hence it would seem incumbent upon the competent authority first to establish Archbishop Lefebvre’s imputability, and then his malice in performing the episcopal consecrations before declaring that the law has been violated in such a way as to incur a *latae sententiae* penalty. Whereas these two facts have not been established with juridical certainty, then there exists a well founded argument to reasonably contest the validity of the declaration of the *latae sententiae* excommunications against Archbishop Lefebvre and the other bishops involved.

The examination of the circumstances in which Archbishop Lefebvre performed the episcopal consecrations in the light of Canons 1321, 1323 and 1324 raises at the very least a significant doubt, if not a reasonably held certainty, against the validity of the declaration of excommunication pronounced by the Congregation for Bishops. The administrative declaration of the Holy See appears to have failed to take into proper account the revised penal law of the CIC, especially as regards the mitigation and exemption from *latae sententiae* penalties. Juridical malice has been presumed on the part of Archbishop Lefebvre and the bishops consecrated by him. Subjective convictions on their part as to an alleged state of necessity are simply dismissed in an unsigned communiqué (see *L’Osservatore Romano* 154, No. 38.874 [30 Giugno - 1 Luglio 1988], p.4.), whereas the CIC stipulates that holding and acting upon such a conviction, even erroneously, in effect prevents one from incurring a *latae sententiae* penalty.

The work that I have quoted at length is a Canon Law thesis³⁸ that earned Fr. Gerald Murray a J.C.L. from the Gregorian University *Summa Cum Laude*. Like Fr. Murray, I have quoted the same provisions of cann. 1323 and 1324 against the *latae sententiae* excommunication which the Congregation for Bishops declared against

Archbishop Lefebvre. The Canon Law faculty of the Gregorian University thought that the argument based on cann. 1323 and 1324 to be sufficiently well founded to award Fr. Murray a licentiate in Canon Law with highest honours, but when I cite the very same provisions of these canons in a simpler but substantially similar argument, Fr. Achacoso dismisses the argument as “without juridical foundation”.

Count Capponi, recently retired Professor of Canon Law at the University of Florence, has also made a similar observation:

But I would also argue that the excommunication *may* not in fact be valid, because the allowances for extenuating circumstances in the new code are such that Archbishop Lefebvre would have got easily away without being excommunicated. He could have argued state of necessity, he could have argued a host of extenuating circumstances.

You can't have your cake and eat it. Rome wanted a lenient code, they filled the code with extenuating circumstances so that practically no penalty applies, but they have to pay the consequences. They can't go back to the 1917 code to punish Lefebvre when he committed his crime after 1983.³⁹

The Declaration of Excommunication

Fr. Achacoso's observation that there is “no foundation” for my contention that “the charge of schism would certainly never have withstood the thorough investigation that due process demands” is absolute nonsense. He falsely attributes to me an “erroneous notion regarding the imposition of penalties in the Church”. This erroneous attribution follows from the totally unfounded and gratuitous assumption that my position is founded on a notion of “separation of powers in the Church.” Nevertheless, it needs to be pointed out here that while there is indeed no separation of powers in the Church, there does exist in the Roman Curia a well-defined division of delegated papal authority in its various institutions and dicasteries. Canon 360 states: “The Supreme Pontiff usually conducts the business of the Universal Church by means of the Roman Curia, which fulfils its duty in his name and by his authority ... it consists of the

Secretariat of State or the Papal Secretariat, the Council for the Public Affairs of the Church, congregations, tribunals and other institutions, *whose structure and competency are defined by special law.*”

Traditionally the ordinary power to inflict penal sanctions on bishops has resided within the competency of the Holy Office (renamed as the Sacred Congregation for the Doctrine of the Faith), not the Consistorial Council (renamed the Sacred Congregation for Bishops). Therefore, it is not really so obvious, as Fr. Achacoso maintains, that “the competent Church authority — in this case (is) the Sacred Congregation for Bishops”. The lack of competency becomes particularly evident in the text of the declaration of excommunication of July 1, 1988, which states: “Monsignor Marcel Lefebvre ... 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 thereby incurred the penalty envisaged by can. 1364 par. 1 ...” Canon 1364 §1 states that “an apostate from the faith, a heretic or a schismatic incurs automatic (*latae sententiae*) excommunication ...”. Clearly the competency for a declaration of this nature resides within the jurisdiction of the Sacred Congregation for the Doctrine of the Faith. This is the reason why I stated in my *Response*:

The competent dicastery to deal with the question of schism is the Holy Office, and therefore the aforementioned decree of Cardinal Gantin violates can. 31. If the same decree is to be considered a legislative act, a “general decree” described in canon 29, then it is in clear violation of canon 30 which states that “Persons who possess only executive power are not able to issue the general decrees mentioned in can. 29, unless in particular cases such power has expressly been granted to them by a competent legislator in accord with the norm of law ...”

Fr. Achacoso claims that the Congregation for Bishops was “acting with the authority of the Holy Father”, but that would only be true if the decree in question had been issued within the ordinary competency of the said Congregation as defined in special law, or if

in this particular case Pope John Paul II had expressly delegated such power to the Congregation for Bishops to be exercised according to the conditions stated in the act of the grant. There is, however, no phrase to be found in the decree in question which mentions previous consultation with, explicit approval of, or mandate from the Supreme Pontiff as one would usually find in a document of this nature. I stated in my *Response* the reason why it appears that the Holy Father did not grant the necessary jurisdiction to Cardinal Gantin's congregation:

If the Pope had authorised the Gantin decree, it would be considered a papal act and there would therefore be "neither appeal nor recourse" (can. 333) against it. The clause referring to the "priests and faithful" incurring the "very grave penalty of excommunication" has been overturned by the competent dicastery of the Apostolic See, namely, The Sacred Congregation for the Doctrine of the Faith. Hence, the decree was lacking in the necessary papal authorisation and jurisdiction which the Law of the Church (cann. 29, 30, 31) requires.

A False Notion of Schism

The ultimate reason why the charge of schism would never have withstood the thorough investigation that due process demands has nothing whatever to do with the way that penalties are imposed in the Church. A thorough investigation would have shown that the charge is not only unfounded, but is rooted in a false notion of schism.

Schism is defined in Canon 751 as the "refusal of submission to the Roman Pontiff or of communion with the members of the Church subject to him". The commentary on the Code of Canon Law, published by the Canon Law Society of America, explains that Schism is not merely a "simple refusal of subjection to the papal authority or of communion with the members of the Church, the revised canon speaks of a rejection (*detrectatio*) an adamant refusal to submit to the Pope or to remain in communion ..."

For one to be considered a schismatic, Cappello explains, "it is necessary that the one who withdraws from obedience or falls away

from Catholic communion does so in a manner that is voluntary and pertinacious or *formal*, and hence gravely culpable ... (and) therefore *whatever excuses from grave sin such as ignorance or good faith, also excuses from the crime of schism and as a consequence, from censure.*"⁴⁰

The Church does not consider all refusal of submission to be schismatic: the Canon Law Commentary of Wernz-Vidal explains, "*Finally one cannot consider as schismatics those who refuse to obey the Roman Pontiff because they would hold his person suspect ...*"⁴¹ From these premises it follows that those who profess their submission to the Roman Pontiff but, *for reasons of conscience, refuse obedience* in order to adhere to the traditions to which the Catholic conscience is bound *are not considered by the Church to be schismatics merely because they refuse to obey rulings that they consider suspect. Such a refusal to obey is not an adamant rejection of the pope's authority nor is it a refusal to be subject to the pontiff:* it is material disobedience without formal contempt either imperfect or perfect — *a refusal to obey certain laws and precepts for reasons of conscience.*

Archbishop Lefebvre (and the Society of St. Pius X which he founded) repeatedly professed his submission to the Roman Pontiff, and his willingness to obey laws and precepts that he in conscience considered to be legitimate and in conformity with Catholic tradition. In his sermon at the Mass of episcopal consecration (June 30, 1988), Mons. Lefebvre declared: "There is no question of us separating ourselves from Rome ... nor of establishing a sort of parallel church. ... It is out of the question for us to do such things. Far from us be this miserable thought to separate ourselves from Rome."

What we saw in Lefebvre, and now see in his followers is not an adamant refusal to submit to authority or a rejection of papal authority, but a refusal to accept those innovations and reforms that violate their conscience. Lefebvre summed up this attitude in his own words: "For our salvation, categorical refusal of the reform is the sole attitude of loyalty to the Church and to Catholic doctrine." It is not the Pope's authority that Lefebvre rejected, but only the conciliar

doctrines and post-conciliar reforms that offended his conscience. The motive for Lefebvre's disobedience was not to deny the Pope's authority or to break with Rome, but rather, Lefebvre explained, "It is in order to manifest our attachment to the Eternal Rome, to the Pope, and to all those who have preceded these last popes who, unfortunately since the Second Vatican Council, have thought it their duty to adhere to grievous errors which are demolishing the Church and the Catholic Priesthood."

Lefebvre refused submission to the non-infallible conciliar teachings and post-conciliar disciplinary rulings which he in conscience judged to be "grievous errors". He did not deny or question that the Pope possesses authority and he did not disobey out of contempt for that authority, he did not refuse submission to the Pope's authority, but *he refused submission to what he judged in conscience to be an illegitimate abuse of papal authority.*

I pointed out in my *Response* that what the Church considers to be a schismatic act is not pertinacious disobedience, but pertinacious refusal to be subject to the Roman Pontiff.⁴² Bouscaren and Ellis explain that "The refusal, even the pertinacious refusal to obey the Pope in a particular instance does not constitute schism."⁴³ Even Yves Congar, in the *Dictionnaire de Theologie Catholique*, says that "Schism and disobedience are often confused, every schism involves disobedience but not every act of disobedience is schismatic." A schismatic act is an act that rejects the authority or *imperium* of the Pope, whereas disobedience is a rejection only of that which has been commanded, as Cappello explains, citing the authority of Suarez and Wilmers: "disobedience regards the matter itself of the precept, but not the *imperium* or authority" of the Pope.⁴⁴ Father Matthæus Conte a Coronata explains that "simple disobedience to a precept from the Roman Pontiff is not sufficient for schism, but a refusal of subjection to the Roman Pontiff is required ... It is required for schism that obedience to the Roman Pontiff be denied to him as head of the Universal Church."⁴⁵ Merkelbach similarly explains that, "Schism is perfectly and completely understood to be that by which one refuses obedience to the Supreme Pontiff, but not simple disobe-

ence nor contempt of a particular law.”⁴⁶ Schismatics, therefore, according to Prümmer, are those who “pertinaciously refuse obedience to the Roman Pontiff *in so far as he is head of the Church*”, and hence, ***schismatic disobedience is an obstinate refusal to obey the Roman Pontiff with perfect formal contempt of his authority as supreme head of the Church.***

Congar, in the above-cited work, explains that “Schism would be ascertained *if the refusal to obey attacked, in the order received or the decision promulgated, the authority itself ...* when someone rejects a precept or judgement of the Pope given in the function of his office, *not recognising him as superior*, although he believes this.” Elaborating this point similarly, Conte a Coronata explains, “In order for disobedience to the Roman Pontiff to amount to the delict of schism ... such disobedience is required which is equivalent to a negation of the authority itself of the Roman Pontiff.”

Bouscaren and Ellis explain that “The act of Schism is found primarily in the intention of the accused person. The guilt of Schism properly so-called is incurred only when a baptised Catholic intends wilfully and intentionally to sever himself from the unity of the Church.”⁴⁷ This teaching is founded on the doctrine of St. Thomas Aquinas, who wrote: “Schismatics properly so called are those who wilfully and intentionally separate themselves from the unity of the Church.”⁴⁸ Merkelbach elaborates on this teaching explaining that schism, “is the voluntary separation of one who has retained the profession of faith from the unity of the Church, or the voluntary separation of a baptised person from the Catholic Church.”⁴⁹ Hence, Alphonse Borras explains that the delict “must be deliberate and voluntary, *and aims directly at the break.*”⁵⁰ Thus Cardinal Castillo Lara commented on the case of Archbishop Ngo Dinh Thuc who consecrated bishops in 1976 and 1983 without papal mandate: “Although the Archbishop was excommunicated, *he was not considered to have committed a schismatic act because there was no intention of a breach with the Church*”.

The same can certainly be said of Archbishop Lefebvre and the bishops he consecrated: ***They cannot be judged to have committed a***

schismatic act because there was no intention to break with the Church or to adamantly refuse submission to the Roman Pontiff.

The act of Schism is found primarily in the intention of the perpetrator to wilfully separate himself from the Church by rejecting the authority of the Pope. Bearing this in mind, one must consider again the observation of Fr. Murray:

It can be plausibly maintained that his intent was not to violate a law, but rather to act, with legal sanction, in a way that would, according to his judgement, secure the good of the Church, by means of a necessary transgression of Canon 1382, in the extraordinary circumstances he alleged to exist in the life of the Church. This intent to obtain the good of the Church by means of disobeying in this particular instance, but not rejecting, the authority of the Supreme Pontiff and the submission due to him would also exclude any direct intent to commit a schismatic act.

It was Archbishop Lefebvre's stated intention to secure the good of the Church by his act of disobedience, which he in conscience considered to be necessary in view of the grave doctrinal and disciplinary crisis in the Church. Disobedience committed in this context cannot be legitimately judged to be schismatic because neither is the act intrinsically schismatic nor is the motive schismatic, and therefore a circumstance that would alter the specific nature of the act from simple disobedience to schism is entirely lacking. This is why I wrote in my *Response* to the CBCP:

The critical phrase in *Ecclesia Dei* is the statement that the unauthorised episcopal consecration, while considered in itself is essentially an act of disobedience: "such disobedience ... which implies in practice the rejection of the Roman Primacy — constitutes a schismatic act". This proposition is not to be found in the traditional expressions of Catholic Moral Theology. It can be stated that such an act *usually* constitutes a schismatic act because it is usually done by schismatics, i.e. those who reject the primacy of the pope. It cannot be legitimately maintained that such disobedience *always* implies a rejection of the Roman pri-

macy, since, as Oratorian canonist T.C.G. Glover explains, “A mere act of disobedience to a superior does not imply denial that the superior holds office or has authority.”... The act of unauthorised episcopal consecration does not imply a practical rejection of the Roman primacy unless there is present a circumstance which alters the specific nature of the act from disobedience to schism. The circumstance mentioned by the Pope, namely, the flouting of a formal canonical warning, does not alter the specific nature of the offence, but only increases its gravity, since the essence of the disobedient act remains strictly a rejection of the *res ipsa praecepta*, i.e. mere disobedience to the precept: no matter how obstinate the disobedience and notwithstanding the number and solemnity of the warnings or precepts. In the absence of circumstances that alter the specific nature of the act, such disobedience never implies in practice a denial of the Roman primacy because such disobedience does not constitute a formal act whereby such an offender would “pertinaciously refuse obedience to the Roman Pontiff *in so far as he is head of the Church.*”

The *Conciliar Church* seems to have departed from the clear notion of what constitutes a schismatic act. Traditional Catholic Moral Theology holds that an act that is not schismatic *per se* does not become schismatic unless there is a circumstance that alters the species of the act. Rather than specify such a circumstance, which is difficult to establish juridically, Pope John Paul II simply avoided this difficulty in *Ecclesia Dei* by setting forth a doctrinal principle in a statement, which, as I have already pointed out in my *Response*, “does not cite any doctrinal source,” and is “*contrary to the traditional moral teaching of the Church.*” The doctrine that “such disobedience (the consecration of bishops without papal mandate) ... which implies in practice the rejection of the Roman Primacy — constitutes a schismatic act”⁵¹ is false — it is an erroneous proposition. *Such* disobedience does not always and everywhere imply a rejection of the Roman Primacy and therefore it cannot be specifically maintained that *such* disobedience in practice constitutes a schismatic act.

That is something that can only be affirmed in particular cases when such disobedience takes place in which circumstances are verified which accordingly manifest the schismatic intent to break with the Church or directly attack the authority of the Pope.

Pope John Paul II, unfortunately, did not limit himself to a mere statement of apparent fact by stating that “*this* act was schismatic because particular circumstances manifest that it constituted an implicit denial of the Roman Primacy”, but he premised the judgement on the erroneous principle that “*such* disobedience ... implies in practice the rejection of the Roman Primacy (and therefore) constitutes a schismatic act”, and hence, the Pope reasoned, *this* act was, therefore, a schismatic act. The proposition in question, therefore, is a much more serious matter than a possible error of fact concerning the Lefebvre case — it is a *doctrinal error* set forth in the form of a general principle expressed in a *non-infallible* manner in an official papal document.

Magisterial Infallibility

The *magisterium* of the Pope is *not infallible* unless there is verified: 1) that the Pope, in virtue of his office as supreme pastor and teacher of all the faithful, 2) proclaims with a definitive act, 3) that a doctrine of faith or morals, 4) is to be held as such (cf. can. 749 §1). Similarly, the *magisterium* of a council is not infallible unless the bishops: 1) gathered in an ecumenical council together with the Pope, 2) exercise their teaching office as teachers and judges of faith and morals, 3) declare that for the universal Church, 4) a doctrine of faith or morals must be definitively held (cf. can. 749 §2). It is possible for papal and conciliar teachings which do not meet the above-enumerated requirements to be erroneous, and therefore Fr. Diekamp explains in his *Theologiae Dogmaticae Manuale* that, “Non-infallible acts of the Magisterium of the Roman Pontiff do not demand an absolute and definitive subjection ... the obligation to adhere to them could begin to cease in the case (to be rarely found) when a man capable of judging the question, after a very diligent and painstaking analysis of all the reasons, arrived at the conviction that error was introduced into the decision.”⁵²

Whatever doctrines the Church or the Pope teach infallibly “must be believed with divine and Catholic faith” (cf. can. 749), and therefore Catholics are bound to adhere to such teachings with an *assent of faith*. The Pope, however, does not exercise the charism of infallibility when making ordinary pronouncements of his *authentic magisterium*. There is the presumption that the Pope is teaching the truth, and therefore “A religious respect of intellect and will, *even if not the assent of faith*, is to be paid to the teaching which the Supreme Pontiff or the college of bishops enunciate on faith or morals when they exercise the authentic magisterium even if they do not intend to proclaim it with a definitive act ...” (cf. can. 752). If, therefore, the Pope or even a council should exercise the *authentic magisterium* without making a definitive act, an assent of faith is not required, but only a “religious respect of intellect and will”. This “religious respect” is referred to in *Lumen Gentium* as a “loyal submission of the will and the intellect” that “must be given in a special way, to the authentic teaching authority of the Roman Pontiff ... in such a wise, indeed, that his supreme teaching authority be acknowledged with respect ...”.

The “religious respect” referred to in canon 752 is not an absolute moral obligation, as Pesch explains: “Since the referred to religious assent is not based upon a metaphysical certainty, but only upon a moral and ample one, it does not exclude all fear of error. That is why, as soon as sufficient motives of doubt arise, the assent is prudently suspended.”⁵³ Thus the moral obligation to maintain the ‘loyal submission of the will and the intellect’ can cease, as Merkelbach explains: “Where the Church does not teach with infallible authority, the proposed doctrine is not of itself irreformable, that is why, if *per accidens* in an hypothesis (albeit very rarely); after the most careful examination, there seems to be very grave reasons against the proposed teaching, it would be licit without temerity to suspend internal assent ...”⁵⁴

Fr. Achacoso points out that the “Holy Father categorically classifies it (the episcopal consecrations of June 30, 1988) as a schismatic act”, and he quotes the pope’s questionable proposition: ““Such disobedience — which implies in practice the rejection of the Roman Pri-

macy — constitutes a schismatic act’.” Fr. Achacoso errs, however, when he maintains that, “Even if ... the Pope did not use a solemn formula, the fact is such a formula is not necessary.” If what the Pope teaches is *in conformity with the traditional teaching of the magisterium*, then certainly no such solemn formula would be necessary to obligate the Catholic faithful to adhere to the papal teaching with a *religious assent*, or with an *assent of faith* if the doctrine can be shown to be an expression of the “*ordinary and universal magisterium*” (*can. 750*) of the Church. If, however, it can be shown that the Pope, in exercising his authentic magisterium, has given expression to a novel teaching that not only appears to be contrary to traditional Catholic moral doctrine but also does not have its origin in any authentic doctrinal source, then one can safely judge that the obligation to assent with a ‘loyal submission of the will and the intellect’ already has ceased. I pointed out in my *Response*, that in setting forth the proposition in question, the Pope “does not cite any doctrinal source,” and the proposition “appears ... to be *contrary to the traditional moral teaching of the Church.*”

When an Episcopal Consecration is an Act of Schism

Father Achacoso tries to make it appear that it is only “Father Kramer who makes a distinction between simple episcopal ordination (which *according to him* does not attempt against the unity of the Church) and the assigning of jurisdiction (which is what really attempts against ecclesial unity)”. In my *Response* to the CBCP, I cited several authorities:

- 1) Cardinal Castillo Lara, President of the Pontifical Commission for the Authentic Interpretation of Canon Law, who stated that “schism is a crime against the unity of the Church” whereas consecration of a bishop without pontifical mandate is “an offence against the exercise of a specific ministry” which is dealt with “in another section of the Code.”
- 2) Professor of Canon Law at the University of Florence,

Count Neri Capponi, who explains that in order to be guilty of a schismatic act, it is not enough that one merely consecrate a bishop without a papal mandate:

“He must do something more. For instance, had he set up a hierarchy of his own, it would have been a schismatic act. The fact is that Msgr. Lefebvre simply said: I’m creating bishops in order that my priestly association can continue. Therefore they have no jurisdiction. They do not take the place of other bishops. I’m not creating a parallel church. I’m simply giving the full sacrament of Orders to a certain number of people so that they can ordain others.”

- 3) Oratorian canonist, Father T.C.G. Glover, who explains “A mere act of disobedience to a superior does not imply denial that the superior holds office or has authority”, and therefore, the charge of schism “involves a large and unjustified mental leap.”
- 4) Father Patrick Valdrini, Dean of the Faculty of Canon Law of the *Institute Catholique* in Paris, who explains that:

“It is not the consecration of a bishop which creates the schism ... even if it is a grave *faux pas* against the discipline of the Church; what makes the schism a fact, is to give the bishop an apostolic mission ... For this usurpation of the powers of the Sovereign Pontiff proves that one has created a parallel Church.”

Fr. Achacoso states that, “The matter of the precept and the authority or imperium behind it can be identified with each other in certain cases.” The authorities that I have cited are all in agreement that such a case would indeed be verified if Lefebvre had attempted to assign jurisdiction or give an apostolic mission to the bishops he consecrated. That Lefebvre did not do because it was his stated intention *not* to create a parallel hierarchy. Lefebvre declared on June 30, 1988, “There is no question of us separating ourselves from Rome ... *nor of establishing a sort of parallel church ...*”, yet Fr. Achacoso presumes to state the brazen and utterly unfounded

falsehood that “the reason for the consecrations was precisely to establish a hierarchy”. In his *Letter to the Future Bishops* (29 August 1987), Mons. Lefebvre set forth his purpose for ordaining bishops:

The main purpose of my passing on the episcopacy is that the grace of priestly orders be continued, for the true Sacrifice of the Mass to be continued, and that the grace of the Sacrament of Confirmation be bestowed upon children and upon the faithful who will ask you for it. I beseech you to remain attached to the See of Peter, to the Roman Church, Mother and Mistress of all Churches, in the integral Catholic Faith, expressed in the various creeds of our Catholic Faith, in the Catechism of the Council of Trent, in conformity with what you were taught in your seminary. Remain faithful in the handing down of this Faith so that the Kingdom of Our Lord may come.

Did Archbishop Lefebvre Reject Papal Authority in June 1988?

Father Achacoso, displaying the irrational ravings of a fanatic, wildly charges that “Lefebvre explicitly stated his rejection of papal authority in his letter to Pope John Paul II, dated 2 June, 1988.” It was that very letter which sets forth Lefebvre’s motive for his disobedience: “*to keep the faith of our baptism*” and “*to remain within the traditional doctrine and discipline of the Church*”. The four quotations that Fr. Achacoso cites as evidence of “explicitly stated ... rejection of papal authority” contain **no explicit rejection of papal authority**.⁵⁵ Rome has for a long time already displayed the same kind of dishonesty towards Lefebvre and the Society he founded as that manifested in the article of Fr. Achacoso. Mons. Lefebvre wrote of his “statement of 21 November 1974, which ... ended with these words: ‘In doing so ... We are convinced of remaining loyal to the Catholic and Roman Church and to all the successors of Peter, and of being faithful dispensers of the Mysteries of Our Lord Jesus Christ.’ When publishing the text, the *L’Osservatore Romano* **omitted this paragraph**. For ten years and more our oppo-

nents have been set on casting us out of the Church's communion by presenting us as not accepting the Pope's authority ... ***I have not ceased repeating that if anyone separates himself from the Pope it will not be me.***"⁵⁶

Lefebvre rejected only the "spirit of Vatican II", i.e. the "false ecumenism which is at the origin of all the Council's innovations in the liturgy, in the new relationship between the Church and the world, in the conception of the Church itself, (which) is leading the Church to its ruin and Catholics to apostasy." In his statement of March 29, 1988, entitled *Can Obedience Oblige Us to Disobey*, Mons. Lefebvre explained what motivated his disobedience:

Human authorities, even those instituted by God, have no authority other than to attain the end apportioned them by God and not to turn away from it. When an authority uses power in opposition to the law for which this power was given it, such an authority has no right to be obeyed and one must disobey it.

This need to disobey is accepted with regard to a family father who would encourage his daughter to prostitute herself, with regard to the civil authority which would oblige doctors to perform abortions and kill innocent souls, yet people accept in every case the authority of the Pope, who is supposedly infallible in his government and in all words. Such an attitude betrays a sad ignorance of history and of the true nature of papal infallibility. ...

And here is what Pope Leo XIII said in his Encyclical *Libertas Praestantissimum*, June 20, 1888: "If, then, by anyone in authority, something be sanctioned out of conformity with the principles of right reason, and consequently hurtful to the commonwealth, such an enactment can have no binding force of law." And a little further on, he says: "But where the power to command is wanting, or when a law is enacted contrary to reason, or to the eternal law, or to some ordinance of God, obedience is unlawful, lest while obeying man, we become disobedient to God."

Now our disobedience is motivated by the need to keep the Catholic Faith. The orders being given us clearly express that they are being given us in order to oblige us to submit without reserve to the Second Vatican Council, to the post-conciliar reforms, and to the prescriptions of the Holy See, that is to say, to the orientations and acts which are undermining our Faith and destroying the Church. It is impossible for us to do this. To collaborate in the destruction of the Church, is to betray the Church and to betray Our Lord Jesus Christ.

Now all the theologians worthy of this name teach that if the pope, by his acts, destroys the Church, we cannot obey him (Vitoria: *Obras*, pp. 486-487; Suarez: *De Fide*, disp. X, sec. VI, no. 16; St. Robert Bellarmine: *de Rom. Pont.*, Book 2, Ch. 29; Cornelius a Lapide: ad Gal. 2, 11, etc.) and he must be respectfully rebuked.

It is luminously clear from what is stated above, that Mons. Lefebvre had no intention to reject the Pope's authority or break away from the Catholic Church. Hence, Count Capponi states in the above-cited interview, "No, he would *still* not be considered a schismatic. ... *Lefebvre* was not in schism."

The Current Status of the Society of St. Pius X

Rome has modified its untenable July 1988 position that the Society of St. Pius X is a schismatic church. In 1988, Pope John Paul II warned in *Ecclesia Dei*: "Everyone should be aware that formal adherence to the schism is a grave offence against God and carries the penalty of excommunication decreed by the Church's law." (Although the document did not even name the Society of St. Pius X as the schismatic group!) The *decree* of Cardinal Gantin (July 1, 1988), which likewise did not mention the Society of St. Pius X by name, cautioned: "The priests and faithful are warned not to *support* the *schism of Monsignor Lefebvre*, otherwise they shall incur *ipso facto* the very grave penalty of excommunication." On June 28, 1993, the ruling of the Sacred Congregation for the Doctrine of the Faith, com-

municated that the six individuals in question, *adherents and supporters of the Society of St. Pius X*, did **not** perform “schismatic acts in the strict sense as they do not constitute the offence of schism; and therefore the Congregation holds that the Decree of May 1, 1991, (the decree of excommunication) lacks foundation and hence validity.” Even more recently, Edward Cardinal Cassidy, President of the *Pontifical Council for the Promotion of Christian Unity*, in an official letter (Prot. N. 2336/94) dated May 3, 1994, declared: “I would point out at once that the Directory on Ecumenism is not concerned with the Society of St. Pius X. **The situation of the members of this Society is an internal matter of the Catholic Church. The Society is not another Church or Ecclesial Community** in the meaning used in the Directory.”

Local Church leaders seem to be unwilling to accept the fact, already officially recognised by Rome, that the Society of St. Pius X is **not** schismatic. In his circular of Nov. 15, 1995, Cardinal Sin stubbornly insists that groups such as the Society of St. Pius X, “are not in communion with the Church of Rome” and “their ministers are not Catholic priests.” Cardinal Sin even goes so far as to make the same reckless and libellous assertion about the “Order of Christ the King”, which was canonically established under Pope John Paul II and continues to enjoy the canonical recognition of the presently reigning pontiff in Rome. Archbishop Alberto J. Piamonte similarly has not modified his position that “Archbishop Lefebvre and his group, the St. Pius X Fraternity, is a schismatic group and have been formally excommunicated.”⁵⁷ There is not a single official document emanating from the Roman Curia that declares specifically and by name that the Society of St. Pius X has fallen into schism or that its members have incurred the penalty of excommunication: *Ecclesia Dei* and the *Decree* of Cardinal Gantin specify by name only the six individuals involved in the episcopal consecration as having incurred the penalty of excommunication, yet Archbishop Piamonte stubbornly persists in declaring this falsehood that the Society has been excommunicated for the offence of schism.

When Obedience Becomes a Sin

There is a time when obedience becomes a sin⁵⁸ — Pope Leo XIII (cited above) teaches, “when a law is enacted contrary to reason, or to the eternal law, or to some ordinance of God, obedience is unlawful, lest while obeying man, we become disobedient to God.” This means that sometimes we must even disobey the Pope, as St. Robert Bellarmine teaches: “Thus, as it is lawful to resist a Pontiff who attacks the body, so it is lawful to resist a Pontiff who attacks the soul ... especially if one who would strive to destroy the Church. I say that it is lawful to resist him in not doing what he orders, and putting obstacles to the execution of his will.”⁵⁹

“There is a time,” says St. Catherine of Siena, “when those who obey, obey to their own condemnation.” That time has come. Indeed, that time already came just as soon as the Conciliar Church departed from the apostolic teaching and tradition of the Eternal Rome of SS. Peter and Paul — but only a few understood this at the time. One who understood was the late Father Victor Mrosz of Krakow, Poland — a disciple of St. Maximilian Kolbe. Fr. Mrosz related to me that St. Maximilian had admonished him to remain always faithful to Tradition. “The devil,” St. Maximilian said, “has the Bible but he is in Hell. It is Tradition that will bring you to Heaven.” St. Maximilian revealed to Fr. Mrosz in 1939 the number of days remaining in his (Fr. Mrosz’s) life, and thus he knew since then on exactly which day in April 1992 he would be called to his eternal reward. St. Kolbe foretold that Fr. Mrosz would be an outcast in his later years, and the prophecy was fulfilled when Fr. Mrosz was expelled from the Franciscan order and eventually “excommunicated” for refusing to abandon the Tridentine Mass and adopt the *Novus Ordo*. Fr. Victor, however, recalled well the admonition that he had received from the Saint, never to abandon Tradition, and therefore he, in full tranquility of conscience, continued to publicly exercise his priestly ministry until the day he died, as chaplain to the Society of St. Pius X *Holy Rosary Chapel* in Buffalo, New York.

Another who understood was Mons. Lefebvre. He understood that the Conciliar Church is *not* Catholic — not Catholic because its

new doctrines and new liturgy are not Catholic. This is why Mons. Lefebvre disobeyed:

This is why we are convinced that, by the act of these consecrations today, we are obeying the call of these (pre-conciliar) Popes and as a consequence, the call of God ...

Thus we find ourselves in a case of necessity. We have done all we could, trying to help Rome to understand that they had to come back to the attitudes of the holy Pius XII and all his predecessors ... We have tried by all these talks, by all these means, to succeed in making Rome understand that, since the Council and since *aggiornamento*, this change which has occurred in the Church is not Catholic, it is not in conformity with the doctrine of all times. This ecumenism and all these errors, this collegiality — all this is contrary to the Faith of the Church, and it is in the process of destroying the Church ...

This is why we do this ceremony. Far be it from me to set myself up as pope! I am simply a bishop of the Catholic Church who is continuing to transmit Catholic doctrine ... it is in order to manifest our attachment to Rome that we are performing this ceremony ... It is in order to manifest our attachment to Eternal Rome, to the Pope, and to all those who have preceded these last Popes who, unfortunately, since the Second Vatican Council, have thought it their duty to adhere to grievous errors which are demolishing the Church and the Catholic Priesthood.