



si si no no

"But to your speech, 'Yes, yes,' 'No, no', and whatever is beyond these comes from the evil one. (Mt. 5:37)"

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The 1988 Consecrations

This issue of the *Angelus* English-Language edition of *SISISNONO* is the second installment of the second half of a double study regarding the "state of necessity" invoked by Archbishop Lefebvre to justify his consecration of four bishops on June 30, 1988. In our issues of *SISISNONO* of [July](#) and [September](#) of 1999, we discussed the *theological* aspects. Starting with the [November](#) 1999 we are discussing the *canonical* aspects. These remarks are for those who admit the existence of an extraordinary crisis in the Catholic Church but do not know how to justify the extraordinary action of Archbishop Lefebvre on June 30, 1988 when lacking permission from Pope John Paul II, he transmitted the power of episcopal orders to members of the Fraternity founded by him.

CANONICAL STUDY – PART 2

II. A CONTESTED EXCOMMUNICATION

A. The Facts and Some Solid Points

1. The Facts

In his "Thesis for a Licentiate" in Canon Law which was argued and approved with the highest grade (July, 1995) at the Pontifical Gregorian University, Rev. Fr. Gerard Murray, an American priest who has no connection with the Society of Saint Pius X, held that the excommunication *latae sententiae*, declared at the time against Archbishop Lefebvre, Bishop of Castro Mayer, and the four bishops consecrated by Archbishop Lefebvre without pontifical mandate, is not valid according to strict canonical law - nor is the connected accusation of schism valid in the formal sense. As of yet, his thesis for the licentiate has not been published, but a summary of it and an interview with its author is available in the American magazine, *The Latin Mass*.^{[1](#)}

Two facts must be mentioned: *1)* Fr. Murray made a partial retraction of his own thesis (Summer, 1996); and *2)* the Pontifical Council for the Interpretation of Legislative Texts has published its opinion that the excommunications were justified. Though the council is entrusted with interpreting the laws of the Church, it is not a font of law *itself* and its opinion, in this case, was anonymous. The "Murray Thesis" is not even considered for, it said, "It is impossible to evaluate the Murray Thesis because it has not been published and the two articles [of the magazine- *Ed.*] which appeared about it are confused."^{[2](#)}

Could it be that the thesis is contrary to the public policy of the Gregorian University? Since it has never been made available in the original, we are forced to discuss the arguments based on what appears in the magazine articles, despite the fact that the pontifical council asserts they are "confused." Without a doubt, a scholarly analysis would have considered the thesis of Fr. Murray, but the council's denial has silenced its viewpoint. On the other hand, Fr. Murray published his retraction one year *before* the appearance of the opinion attributed to the Pontifical Council. Why on earth would this council have to say anything regarding arguments already formally, even if partially, retracted by their author?¹ - Retracted, by the way, even before a wider public with authoritative knowledge had been able to read it.

2. Solid Points

1. Whatever may be the changes of opinion of Fr. Murray about his own work and the motives for not publishing it, the fact remains that the thesis had been approved with the highest grade by the professors of the Gregorian University, conferring on this work exceptional value. This approval must be held in due regard.^{[3](#)}

2. The extract of the "Murray Thesis" which appeared in *The Latin Mass* is sufficient to understand, namely, that the American priest, with *Code of Canon Law* in hand, denies - or if you prefer, places into doubt - the validity of the excommunication *ipso iure* applied to Archbishop Lefebvre because he acted in a state of necessity without bringing into being any schism. According to Fr. Murray, it is necessary to recognize that, on the basis of the canon law in force, the excommunication of Archbishop Lefebvre is substantially invalid and the schism does not exist. It is thesis undoubtedly courageous and above all founded on law, even if we may not agree with the hypothesis of Fr. Murray that Archbishop Lefebvre was able to have been mistaken in good faith about the existence of the state of necessity which authorized him to proceed with the consecrations. In any case, the partial retraction of Fr. Murray concerns only the admissibility of the state of necessity, not the existence of a schism in the formal sense.

B. Precedents

Fr. Murray is not the first to maintain the invalidity of the unjust excommunication declared against Archbishop Lefebvre and the non-existence of the so-called "schism" imputed to him. We recall the reader to the canonical study of the German canonist, Rev. Fr. Rudolf Kaschewski, which appeared in *Is Tradition Excommunicated?* [available from Angelus Press. Price: \$7.95], on the aspect of the episcopal consecrations without papal permission.^{[4](#)} This study, published shortly before the episcopal consecration of Archbishop Lefebvre and by an author independent of the Society of Saint Pius X, demonstrates unequivocally that, on the basis of the *1983 Code of Canon Law*, the episcopal consecration without pontifical mandate cannot be punished with excommunication. In fact, the author writes at the conclusion of his essay:

Therefore, the widely spread opinion that the consecration of one or several bishops without papal mandate would cause an automatic excommunication and would lead to schism is false. Due to the very terms of the law itself, an excommunication for the aforementioned case could not be applied, neither automatically nor by sentence of a judge.^{[5](#)}

The article appearing in the original Italian *SISISNONO* of July 1988 (XIV) 13, titled "Neither Schismatics nor Excommunicated" [reprinted in *Is Tradition Excommunicated?*, pp.1-39] demonstrates how, in the case of the episcopal consecrations for the Society of Saint Pius X, all five of the conditions required for taking advantage of the law corresponding to the state of necessity had been realized. They are namely: *1)* the existence of the state of necessity; *2)* attempts having been made to remedy it with ordinary means; *3)* the "extraordinary" action not being based on an act intrinsically evil nor harmful to neighbor; *4)* having remained within the limits of the requirements actually imposed by the state of necessity; and *5)* never having put into question the power of the competent authority, the consent of which it would have been able to presume in all legitimacy in normal circumstances.^{[6](#)}

Though the Vatican officially denies its existence, a bleak picture of the real state of necessity in the present-day Catholic Church was painted by Joseph Cardinal Ratzinger in his speech to the Chilean Episcopal Conference (July 13, 1988) on the latest developments of the "Lefebvre case." The discourse, printed by the weekly *Il Sabato* of July 30, 1988, was reproduced by the Italian edition of *SISISNONO*, November 15, 1988, (XIV) 17, with the title, "Cardinal Ratzinger Demonstrates the State of Necessity in the Church."

The same Cardinal Ratzinger states in his discourse that Rome is not carrying out its necessary and indispensable functions and the bishops do not make use of or have made it utterly impossible to make use of that power which by divine right they possess in the Church for the eternal salvation of souls. It is the same Cardinal Ratzinger documenting that state and that law of necessity, to whom His Excellency Msgr. Lefebvre made his appeal when on June 30 he took advantage of a juridical competence outside of the ordinary.^{[7](#)}

The passage of the speech of the Cardinal to which reference is made is the following:

Criticism for the choices of the post-Conciliar period is not tolerated: but, where the ancient rules, or the great truths of the faith - for example the bodily virginity of Mary, the divinity of Jesus, the immortality of the soul, *etc.* - are at stake, we do not react at all or we do it with extreme moderation. I myself was able to see, when I was a professor, how the same bishop who before the Council had expelled an irreproachable professor for his somewhat uncouth speaking, was not able to remove, after the Council, a teacher who was openly denying some fundamental truth of the Faith. All this drives many people to wonder whether the Church of today is really that of yesterday, or if it has been changed into another without informing them....^{[8](#)}

We have to help us the essay "Neither Schismatics nor Excommunicated," the work of Fr. Kaschewski, Dr. Georg May's "The Disposition of Law in Case of Necessity Within the Church," [see both in *Is Tradition Excommunicated?*, pp.1-39; 111-113], the discourse of Cardinal Ratzinger, together with an article on the correct idea of tradition and with three appendices have finally been combined into one volume entitled *Is Tradition Excommunicated?* [available from Angelus Press. Price: \$7.95]. Nor can we forget the careful study of Fr. Gerard Mura, *Les sacres episcopales de 1988. Etude theologique*, which we mention in the competent synthesis published in French by the magazine *Sel de la Terre*, in four issues, in 1993 and 1994.^{[9](#)} The salient contribution of this study, which is built on a prevalently theological plane, is on the thesis that "the pontifical prohibition for the celebration of the consecrations ought to be maintained as null and not having happened" because "contrary to the common good of the Church, a factor for the defense of the faith; defense of the faith which, aware of the state of necessity in which the Church exists, was demanding the consecrations done by Archbishop Lefebvre.

The book of the American Catholic lawyer, Charles P. Nemeth, *The Case of Archbishop Marcel Lefebvre: Trial by Canon Law* [Angelus Press, Kansas City, 1994. Price: \$9.95], must be mentioned. It presents a strictly juridical analysis which denies the validity of the excommunication and of the accusation of schism, reaching the same conclusion as Fr. Kaschewski.^{[10](#)}

We have wished to mention these precedents also in order to draw attention to the fact that Fr. Murray concludes to a point substantially similar to Fr. Kaschewski's. It can be said, in fact, that Fr. Murray applies them to a concrete case. In our mind this shows that the tone of the norms of the *Code of Canon Law* is clear enough to have *de facto* permitted the establishment of opinions that are "on the same beam." As laid down by strict law, the excommunication could not be declared nor could the censured act be maintained as schismatic.

III. JURIDICAL TERMS CONCERNING THE QUESTION

A. Excommunication

Let us consider the strictly juridical terms concerning the question so the reader is able to get the clearest picture possible.

Archbishop Lefebvre has been condemned for having consecrated four bishops without papal mandate. On this argument let us follow the commentary of Fr. Kaschewski:

1. Episcopal consecration occupies the highest place in the hierarchy of consecrations: "...The bishop enjoys two powers: 1) the power of Order (in which is included the power to consecrate priests and bishops); and 2) the power of Jurisdiction, which he cannot exercise if he is not in possession of a diocese. The episcopal power is a power of divine right which confers on the bishop a proper authority and assures him of a juridical-constitutional autonomy which not even the pope can suppress or modify.^{[11](#)}

This autonomy which the bishop enjoys depends on the nature of his power, which springs directly from Our Lord because bishops are the successors of the Apostles and hence to enjoy that power which was conferred personally by Christ.

The autonomy of the episcopal power, nevertheless, does not mean independence. The submission of bishops to the authority of the Pope was affirmed in a very clear manner by the *1917 Code of Canon Law* (Canon 329,§1):

Bishops are the successors of the Apostles and through divine institution are at the head of the local church, which they govern with ordinary power under the authority of the Roman Pontiff.^{[12](#)}

In the *1983 Code of Canon Law*, as a consequence of the democratic applications that Vatican II wished to exercise in the Church, the principle of submission to the pope, even if present, is stated in an ambiguous manner (e.g., in Canon 375,§1). Yet, while maintaining a millenary practice (from Gregory VII on), even the *1983 Code of Canon Law* affirms that it is forbidden to consecrate a bishop without episcopal mandate, that is, without the previous authorization of the pope. And in fact the text of Prof. Kaschewski continues thus:

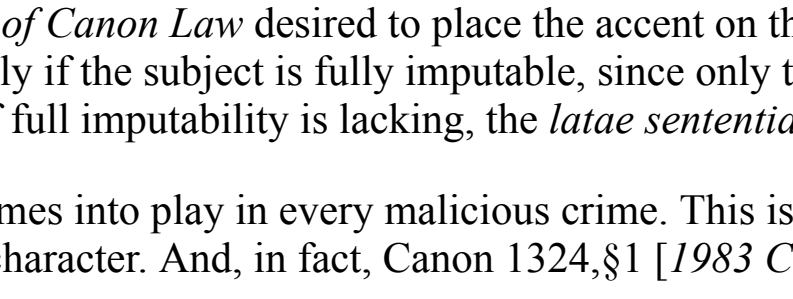
2. It is licit for no one to consecrate a bishop without Pontifical mandate (*1983 Code of Canon Law*, Canon 1013). He who acts contrary to this canon incurs excommunication *latae sententiae* reserved to the Apostolic See (*1983 Code of Canon Law*, Canon 1382). One incurs *latae sententiae* excommunication *ipso facto* [by the fact itself], that is, at the very moment the offense is committed, and it is not necessary that the penalty be inflicted through a decree. For the illicit consecration of a bishop the [*1917 Code of Canon Law*] threatened only suspension [See *1917 Code of Canon Law*, Canon 2370, "They are suspended by the law itself until the Apostolic See shall have dispensed them." - *Ed.*]. Only with the decree of the Holy Office (August 9, 1951), in consequence of the tragic turn of events of the Church in the Chinese Communist Republic [where bishops of the Chinese "Patriotic Church" were being appointed by the governing communists - *Ed.*], was the penalty of *ipso facto* excommunication introduced, reserved to the Holy See *specialissimo modo* [in a most special manner-*Ed.*]^{[13](#)}

The *1983 Code of Canon Law* does not give the definition of excommunication, which must be taken from the *1917 Code of Canon Law* (see Canon 2257ff.). It consists in the (external) "exclusion" from the "communion of the faithful." It belongs to that class of penalties called *censures* which are: excommunication, interdict, and suspension (*1917 Code of Canon Law*, Canon 2255,§1). Censures are "medicinal" penalties because they are meant to serve as a medicine for the one being disobedient so that he may be convinced of his error and make amends. At the moment in which the offender or "contumacious one" recedes from his disobedience, the penalty ought to be remitted for him.^{[14](#)} Medicinal penalties are distinguished from those called "vindictive" [a.k.a. "expiatory" in the *1983 Code of Canon Law* - *Ed.*] which have instead as their essential purpose not the correction of the offender, but the restoration of the violated juridical order.^{[15](#)}

The effects of excommunication are grave because it involves the prohibition of administering and receiving the sacraments. Yet, it is an administrative type of sanction that can be removed by the same authority that has inflicted it. Moreover,....

...the communion from which one is excluded is not that *internal* [communion], inhering in the soul and embracing the goods of the theological life, as grace and the virtues of faith, hope and charity - by nature invisible, but those *external* visible goods, entrusted to the Church and ordained to produce the internal spiritual goods or the other external goods that are inseparably connected to the internal goods (e.g., sacraments, sacrifice, ecclesiastical power, etc.). Radical or ontological communion, which makes us members [by means of baptism - *Ed.*] of the Mystical Body of Christ is not called into question by excommunication.^{[16](#)}

B. Unjust Excommunication



Rev. Fr. Gerald E. Murray

A species of excommunication used to exist and still does exist among the Jews^{[17](#)} and St. John tells us that those Jewish leaders, who were favorable to Jesus, did not dare to declare that He was the promised Messiah, for fear of being expelled from the synagogue, that is, of being formally excluded from the community of believers by decree of the proper authority.^{[18](#)}

The possibility exists therefore that excommunication may be inflicted unjustly. The "excommunications" which the unbelieving Pharisees and persecutors were threatening or preparing to inflict upon the disciples of Our Lord, are an example of *unjust* excommunication:

They will put you out of the synagogues: yea, the hour cometh, that whosoever killeth you, will think that he doth a service to God. And these things they will do to you; because they have not known the Father, nor me (Jn. 16.2,3).

Another well-known example is the excommunication inflicted by Pope Alexander VI on Savonarola.^{[19](#)}

C. Excommunication *Latae Sententiae* and *Ferendae Sententiae*

There are two types of excommunication: 1) *latae sententiae* is that excommunication where a sentence has been passed; and 2) *ferendae sententiae*, an excommunication where a sentence needs to be passed. These classifications give the two most general categories of the penal law of the Church, which find application even in the case of excommunication. A canonical penalty is called *latae sententiae* when "one incurs it by the very fact of having committed a crime."^{[20](#)} This means that the penalty inheres, so to speak, in the criminal deed, without having to wait for a judge or a priest to incur it by means of a sentence or a decree. On account of this it is said that excommunication *latae sententiae* is applied automatically. The application of the penalty therefore has only declarative value, because the decree or the sentence which contains it is limited to declaring the existence of it. This is so much the case that the juridical effects of the *latae sententiae* penalty are produced "from the moment in which the criminal deed was completed" (*1917 Code of Canon Law*; Canon 2232,§2) and not from the moment of the sentence or declaration.

The excommunication *ferendae sententiae* is, on the contrary, that which "must be inflicted by the judge or by the superior."^{[21](#)} "This occurs as a rule after a trial. In this case, the sentence or the decree are *constitutive* of the penalty: they are not limited to declaring the existence of a penalty that already inheres in a certain behavior; but they cause it to come into being, they constitute the term of the trial, which could, in fact, also be concluded with an absolution. Therefore, the juridical effects of the *ferendae sententiae* penalty are produced "from the moment of the sentence or decree," and not from the moment in which the deed was committed. No retroactivity exists here. In contrast to the situation in the *latae sententiae* penalty, in the former case of the *ferendae sententiae* penalty there cannot be a penalty without a trial and consequent sentence or decree. The difference is not small. The difference is so great that the *1917 Code of Canon Law* specifies that "the penalty must always be understood *ferendae sententiae*," unless it is explicitly affirmed that it must be understood as *latae sententiae*.^{[22](#)}

D. Imputability and *Latae Sententiae* Penalties

Every modern penal law takes into consideration the *subjective element* of the offense. In order that someone may be able to be considered punishable, it is not enough that he has committed the criminal act, but it is necessary that he be *imputable*, that is to say that the breaking of the law can be ascribed to him as an action of a subject capable of understanding and willpower. In other words, that the subject acted with a will freely directed to a determined end. On that there be full imputability, it is necessary that the subject has acted with the intention of offending [*animus laedendi*] or, as the Roman jurists used to say, "with an evil intent." In fact Canon 1321,§2 of the *1983 Code of Canon Law* says: "A person who has deliberately violated the law or precept is bound by the penalty prescribed in that law or precept...."

A weakened form of imputability is that which considers not the malice, but the fault, understood as the disposition of the subject who does not show the *animus laedendi*, but a simple "omission of due diligence." The distinction is clear from the second sentence of Canon 1321,§2 of the *1983 Code of Canon Law*, the first part of which we quoted above: "...If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise." In the case of a culpable violation of the norm, the punishability can be lessened.^{[23](#)}

In the law of the Church the subjective element has always enjoyed a particular importance. This is derived from the very character of the religious and moral conception that the Church has practiced, defended, and developed through its own juridical system.

In order that the subject be punishable he must be imputable. The *1983 Code of Canon Law* states:

No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability (Canon 1321,§1).^{[24](#)}

The full imputability of the penalty is valid, therefore, for whoever has *deliberately* violated the law with full consciousness and intention. For such a motive, the *1983 Code of Canon Law* demands that, in the case of *latae sententiae* penalties which, as we have defined them, are applied without a judgment, malice and full imputability are always presumed.

The condition of malice is required by Canon 1318 of the *1983 Code of Canon Law*, which says:

A legislator is not to threaten *latae sententiae* penalties, except perhaps for some outstanding and malicious offenses which may be more grave by reason of scandal or such that they cannot be effectively punished by *ferendae sententiae* penalties. He is not, however, to constitute censures, especially excommunication, except with the greatest moderation, and only for the most grave offenses.^{[25](#)}

The invitation of the *Code* to prudence and to caution in a matter so delicate is substantiated in the specification of three conditions necessary for the imposition of *latae sententiae* penalties: *1)* there must clearly be malice on the part of its author; *2)* the offense must provoke grave scandal among the faithful; *3)* the offense must not be punishable through *ferendae sententiae* penalties.^{[26](#)}

For the purposes of our discussion, it is of interest that the *Code of Canon Law* desired to place the accent on the presence of malice as a necessary requisite for the imposition of a *latae sententiae* penalty. But malice can be demonstrated only if the subject is fully imputable, since only to a fully imputable subject can the moral fault of having deliberately wished to violate the law be attributed. Therefore, if full imputability is lacking, the *latae sententiae* penalty of excommunication cannot be legally applied.

The requirement of full imputability of the offender naturally comes into play in every malicious crime. This is a general principle of every modern penal system. All the more is it valid for *latae sententiae* penalties, given their exceptional character. And, in fact, Canon 1324,§1 [*1983 Code of Canon Law*], in ascribing ten circumstances attenuating imputability, delineates in §3 of the same canon that in all ten cases "...the offender is not bound by a *latae sententiae* penalty."^{[27](#)}

E. Attenuating Circumstances and Exemptions

Attenuating circumstances do not eliminate imputability, but they do reduce it. They prevent the imputability from being characterized as "full." As a consequence of this, a mitigation or had the penalty already established or the substitution of it by other sanctions, for example penances. Penances are not technically penalties by definition, but replace or increase them [*1983 Code of Canon Law*; Canon 1324,§3). Canon 1324 states in §1:

The perpetrator of a violation is not exempted from the 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: 1° one who had only an imperfect use of reason;

The list of nine other attenuating circumstances follows the first listed in the above quote.^{[28](#)} Among these nine other attenuating circumstances two are of interest to us: Numbers 5 and 8. Number 5 considers the case of 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."^{[29](#)} The meaning of this part of Canon 1324 means that whoever has completed an action "intrinsically evil or tends to be harmful to souls," not deliberately, but only on account of having been forced or from grave fear, necessity, or grave inconvenience, is entitled to have taken these circumstances, which attenuate his imputability, taken into consideration. This requires that the penalty not be imposed in its fullness and/or it be substituted by another type of sanction, as for example, a penance.

But why doesn't the attenuating circumstances of Number 5 of Canon 1324 eliminate *all* imputability? - Because the action to which they have felt forced to perform was "intrinsically evil" or tending to be "harmful for souls." Given this nature of the act, it necessary that a form of sanction be maintained in view of the common good. **Among the penalties which cannot be maintained, however, is excommunication.**

In Number 8 of Canon 1324 on attenuating circumstances, there is considered, on the other hand, the case of one "who erroneously, but culpably, thought that some one of the circumstances existed which are mentioned in Canon 1323, Numbers 4 or 5."^{[30](#)} It reads:

No one is liable to a penalty who, when violating a law or precept acted only under 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; [or] acted, within the limits of due moderation, in lawful self-defense or defense of another against an unjust aggressor.

Besides these two circumstances, Canon 1323 of the *1983 Code of Canon Law* gives five other circumstances that *exempt* the agent from all imputability, rendering the application of the penalty *impossible*. The exemptions mentioned are those according to which the law has been violated through grave fear even if relative, necessity, and grave inconvenience when the act performed is not intrinsically evil or does not tend to be harmful to souls or has been performed through legitimate defense.^{[31](#)} Therefore, for that which regards the state of necessity [the category which is important for us to analyze - *Ed.*], when a norm has been violated with an act intrinsically evil or harmful for the salvation of souls, there is had a circumstance only attenuating, sufficient however for excluding the application of excommunication which ought to be substituted for by another penalty or by a penance. On the other hand, if the norm was violated with an act neither intrinsically evil nor harmful for souls, then imputability absolutely does not exist and neither can a penalty nor another form of sanction be inflicted. If the subject *erroneously thought* himself to be within the conditions given in Numbers 4 and 5 of Canon 1323 [*1983 Code of Canon Law*], namely of being forced to act in a state of necessity [or through grave fear, grave inconvenience, or legitimate defense - *Ed.*] without an action constituting something wicked in itself or harmful for the salvation of souls, then he has a claim on the attenuating circumstances. This means that even if the warrants excommunication, this *cannot* be declared because it must be substituted by another penalty or by a penance. When the error of judgment takes place *without fault* on the part of the acting subject, then, rather than laying claim to an attenuating circumstance, the subject has claim to an exempting circumstance:

No one is liable to a penalty who, when violating a law or precept thought, through no personal fault, that some one of the circumstances existed which are mentioned in Numbers 4 or 5 [*1983 Code of Canon Law*; Canon 1323, n.7].

Causidicus (edited by Rev. Fr. Kenneth Novak)

[This article continues in a second episode the canonical aspect of the double study will appear in the 1988 Episcopal Consecration of Archbishop Lefebvre. The *SISISNONO* issues of [July](#) and [September](#) 1999 deal with the *theological* episode. The third installment of the double study will appear in the March 2000 issue of *SISISNONO*. - *Ed.*]

1. See "Gaps in the New Code?" an interview with Fr. Gerald E. Murray followed by a detailed enough exposition of his thesis, "Schism, Excommunication, and The Society of St. Pius X" edited by Steven Terenzio on pp.50-55 respectively in *The Latin Mass* (Fall, 1995). For another interview with Fr. Murray see *30 Days*, n.4, April, 1995, pp.17-18.

2. *Mise au point* due to Convent Pontifical for the Interpretation des textes Legislatifs in *La documentation catholique*, 79 (1997), 2163, of July 6, 1997, pp.621-623. The retraction of Fr. Murray is found in *The Latin Mass* (Summer, 1996; pp.54-55). The *Mise au point* has been translated into Italian in *Il regno-Documenti*, n.17, 1977, pp.528-529. The *Letter to Friends and Benefactors*, #53 of the Society of Saint Pius X (Sept. 23, 1997) points out that the *Mise au point* and a simultaneous document from the Congregation of the Faith on the canonical situation of the "lefebvrists" were presented by Msgr. Brunner are in reality anonymous documents without date nor protocol number. For these reasons an obligatory value cannot be granted to them. These documents are evidence of the persistent hostility of the French and Swiss episcopates towards the Society of Saint Pius X.

3. This has been emphasized by Fr. Michel Beaumont in the article "L'abbé Gerald Murray se fait taper sur les doigts," which appeared in an issue of *Fideltier* (1997), pp.41-46, strongly critical of the "retraction" of the American scholar: "But this is the explicit approval granted by the highest academic instance, the Pontifical Gregorian University of Rome, which confers on their work an exceptional value." [The *Mise au point* has also to be lessened in the light of its retraction otherwise we would have to say that the professors of the Gregorian must retract their scientific approval! (Fr. Albert O.P. "La these de l'abbé Murray" in *Le sel de la terre*, n.24, Spring 1998, pp.50-67).

4. See *Is Tradition Excommunicated?*, "The Episcopal Consecrations: A Canonical Study," pp.103-110. [Available from Angelus Press. Price: \$7.95].

5. *Is Tradition Excommunicated?* cit., p.110.

6. *SISISNONO*, *Ne schismatici ne excommunicati*; Albano 1997, p.28ff.

7. *SISISNONO*, October 1988 (XIV, 17,p.4).

8. *Op. cit.* p.1.

9. *Le sel de la terre* (1993) 4, pp.27-45; 5, pp.44-87; 7, pp.25-57; (1994) 8, pp.28-44. The original is in German: "Bischofsweihe durch Erzbischof Lefebvre. Theologische Untersuchung der Rechtmassigkeit" [The Episcopal Consecrations of Archbishop Lefebvre: A Theological Examination of their Legitimacy"], Zaitzkofen, 1992.

10. The book is interesting for its numerous comparisons between the *1917 Code of Canon Law* and the *1983 Code of Canon Law*. The *1917 Code of Canon Law* is also called the *Pian-Benedictine Code* because it was compiled through the initiative of Pope Pius X and promulgated under Pope Benedict XI (Sept. 15, 1917). The *1917 Code of Canon Law* is known for its conceptual and systematic vision.

11. Kaschewski, French translation in *La tradition excommuniée*, cit., pp.51-57, p.51.

12. "Episcopi sunt Apostolorum successores atque ex divina institutione peculiaribus ecclesiis praeficiuntur quas cum potestate ordinaria regunt sub auctoritate Romani Pontificis."

13. Kascewski, *op. cit.*, p.4; French translation cit., pp.51-52

14. See *Commento al Codice di Diritto Canonico* [a.k.a., *Commento*] edited by Msgr. Pio Vito Pinto, Urbaniana University Press, Rome, 1985, pp.771, 772; see Del Giudice *Istituzioni di diritto canonico*, 12th revised ed. in collaboration with G. Catalano, Milan, 1970, p.488ff.

15. See *Commento cit.* p.777; Del Giudice *op. cit.*, p.488 ff.

16. *Commento*, p.772.

17. See "Das Mossaich-Rabbinische Strafgesetze und Strafrechtliche Gerichts Verfahren ["The Mosaic-Rabbinical Penal Law and Penal Procedure"] edited by Head Rabbi Hirsch B. Fassel, Strass-Kanischa, 1870, reprinted ans., *Scientia*, Aalen, 1981, sec.II, §13, p.12.

18. Jn. 12:42-43. An Old Testament reference is found in Prov. 22:10: "Cast out the scoffer and contention shall go with him, and quarrels and reproaches shall cease."

19. See the biography of R. Ridolfi, *Vita di S. Girolamo Savonarola*, Firenze, 1974, 5th ed., pp.283ff

20. Canon 2217, §1, 2° [*1917 Code of Canon Law*]: "Poena dicitur...latae sententiae, si poena determinata ita sit addita legi vel praeepto ut incuratur ipso facto commissi delicti; ferendae sententiae, si a iudice vel superiore infligi debeat." The penalties *latae sententiae* and *ferendae sententiae* are considered also in the *1983 Code of Canon Law*, but for their definition it is necessary to go back to the former *1917 Code of Canon Law*. The "fixed" penalty is that established especially by a norm addressed to all [law] or individually specified persons [precept]: "Poena dicitur: Determinata ita in ipsa lege ver praeepto taxative statuta sit" [Canon 2217, cit.I, 1°].

21. Canon 2217,§2, 2°, *1917 Code of Canon Law*, cit.