



si si no no

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

September 2000 No. 39

The 1988 Consecrations

This issue of the *Angelus* English-Language edition of *SISINONO* is the fifth and final 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 *SISINONO* of [July](#) and [September](#) of 1999, we discussed the *theological* aspects. Starting with the [November](#) 1999 we discussed 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 5

The Specifics Of The “Murray Thesis”

Rancor towards Archbishop Lefebvre continues despite the passing of over a decade since his actions. It has fomented unfounded accusations against the Society of Saint Pius X.

It would be illusory to expect anything different in the actual climate of decadence of the Church and of once-Catholic societies. Nevertheless, an exception was had with the "Murray Thesis" sanctioned by the Pontifical Gregorian University [see *The Angelus* English-Language Edition of *SISINONO*, Jan. 2000, #36 - Ed.] which does justice to the distorted charges against the Society. We will attempt to analyze the essential nucleus of it, just as it appeared in the summary of *The Latin Mass* magazine (see "Gaps in the New Code?," Feb. 1995).

An unauthorized consecration of a bishop cannot be described as an intrinsically evil act, nor would it necessarily be described as tending to the harm of souls, apart from a consideration of particular circumstances, which define more specifically the nature of the act. In our case, the direct violation of the Holy Father's express will that the consecrations not occur gives this act of consecration a particular objective character (prescinding here from subjective considerations on the part of Archbishop Lefebvre, who also legally condition the nature of the act in question, as we shall see), *i.e.*, that of disobedience of a schismatic nature, as stated by the Supreme Authority in the Church. A truly schismatic act always has the character of an act harmful to souls.

Therefore, Archbishop Lefebvre could not simply claim *prima facie* that §4 exempts him from the penalty. A prior question needs to be addressed, though: Can he legally claim that a state of necessity existed at the time? Does the law grant him that faculty?¹

Therefore, we are not in the presence of an "intrinsically evil" act and not even one "harmful to souls" unless it is proven that this act, in that it was carried out against the express will of the pope, presents a "particular objective character," that is, of a "schismatic nature." But Fr. Murray recalls that, for the purpose of a correct juridical evaluation of the act, the "nature of the act in question" does not arise only from the judgment which the *Holy See* has given to it, it arises also from the evaluation which *the author* has given to it. In our case, this was Archbishop Lefebvre, who always invoked the existence of a grave state of necessity in order to justify it. The view expressed here by Fr. Murray seems absolutely correct, according to the law, because, for the 1983 *Code of Canon Law* the juridical relevance of the act in question depends essentially on the valuation which the acting subject (Archbishop Lefebvre) has given to it, much more than on the valuation of the authority (the *Holy See*).

But when do you have a "state of necessity"? A state of necessity results, recalls Fr. Murray, every time that there is "a conflict between a subjective right and a canonical norm." But this "conflict" must not be seen only in the case of "ordinary" or "common" necessity, that is, when there is danger of "losing a good which is not indispensable to existence." The state of necessity is also that in which one is constrained "to act against that which is prescribed in order to avoid the danger of an evil ensuing from the fulfillment of this disposition."² A state of necessity exists, not only when, by obeying the norm, one risks losing a good, but also when one risks incurring an evil. In each case, a state of necessity always implies disobedience to a norm and therefore to the will of the legislator, which can be that already embodied in the norm of the *Code of Canon Law*, or which is manifested in the form of an individual precept toward those who feel themselves to be constrained to transgress it.

We must examine the criterion necessary to establish the actual existence of the state of necessity. What needs to be done, from the juridical point of view, is to analyze the relationship between the necessity invoked by Archbishop Lefebvre and Canon 1323.7° of the 1983 *Code*, which dictates that he is not subject to any penalty who has violated the law or the precept, while considering as present, without fault on his part, any of the circumstances provided for in Numbers 4° and 5° of the same canon, or in the cases of superior or irresistible force, among which is the circumstance of necessity, and legitimate defense [see *The Angelus* English-Language Edition of *SISINONO*, Jan. 2000, #35 - Ed.]

Canon 1323.7° contemplates the possibility of an error on the part of the subject who invokes necessity, but of an error without fault, a blameless error. In this case also, the subject must not be considered culpable, and is exempt from the penalty.

Fr. Murray examines the position of Archbishop Lefebvre in the light of Canon 1323.7° because the existence of the state of necessity is contested by the Holy See, which charges that the "necessity" was artificially created by the Archbishop. Was this state invoked following a diligent judgment on the part of Archbishop Lefebvre (Canon 1323.7°) or a negligent one (Canon 1324.8°)? The opinion reached must be formed by means of an analysis totally in accord with the express norms and with the principles of canon law. The logical progression followed by Fr. Murray appears to us to be the following: 1) Archbishop Lefebvre invoked Canon 1323.4° which concedes the exemption from penalty to whomever acted having been constrained by grave fear, even if the fear was only relative, or through necessity, *etc.*, provided that the act not be intrinsically evil (*i.e.*, lying, sweating falsely, *etc.*) or harmful to souls; 2) the Supreme Authority, on the contrary, has conferred on this act a "particular objective character," that of "a disobedience of a schismatic nature"; 3) a schismatic act is always "harmful to souls"; 4) if the act is "harmful to souls" then number 4 of Canon 1323 [invoked by the Archbishop] does not apply, because in this case one is not totally exempt from penalty, even though having the right to attenuating circumstances.³

The evaluation of the conduct of Archbishop Lefebvre must therefore be twofold, because it is a question of seeing whether 1) his conduct essentially falls into the subject matter of Canon 1323.7° according to which an error without fault is admitted as a cause exempting from penalty, or 2) it falls into the subject matter of Canon 1324.8°, which concedes minus attenuating circumstances sufficient to exclude *latee sententiae* excommunication. Fr. Murray says:

Culpability is not a question of moral fault nor even of malice, but of an imprudent attitude deriving from the lack of diligence. According to Fr. Murray, it is sufficient that this fault not be "grave."⁴

Was Archbishop Lefebvre gravely culpable of a fault for thinking that there was a state of necessity authorizing him to perform the episcopal consecrations? If culpability is defined as the "omission of due diligence" (Canon 1321.82), it would be hard to claim that Archbishop Lefebvre acted without some measure of due diligence in studying his decision to perform the episcopal consecrations based on what he claimed was a necessity of acting for the benefit of the Church.

His judgment was proclaimed to be faulty by the Holy See, but does that determination in itself mean that he was gravely culpable - in the sense of forming a judgment in a negligent way - for continuing to hold his judgment? It would seem not.⁵

"It would seem not," because, as Fr. Murray points out, the law in force obliges one to here consider the situation also (and especially) from the point of view of the acting subject:

The issue here is not simply the actual state of things as understood by the Holy See, but rather also the subjective appreciation of the person who violated the law. If he exercised due diligence, and indeed thought there was a state of necessity involving the securing of the good of the Church, then [Archbishop Lefebvre] would seem to be exempted from a penalty for the episcopal consecrations, according to Number 8 of Canon 1323.

Who is to judge if Archbishop Lefebvre exercised due diligence in thinking about and forming a judgment on this matter? Since it involves a question of the internal forum, *i.e.*, his thoughts, then we have to leave that judgment to his conscience as manifested by his statements...[I]t would seem that the presentation of credible evidence that he acted with due diligence...would exclude both the presumption of culpability, and the moreover, culpability itself.⁶

The Murray Thesis maintains that in the case of the consecrations of Ecône, one can apply Canon 1323.7°, which excludes from all penalty one who has *only believed* himself to be obliged to act in the state of necessity, provided that there was not a grave lack of diligence on his part. But the declarations of Archbishop Lefebvre do not allow the possibility of maintaining that there was a lack of that kind. His behavior proves this also, given that he consulted at successive stages with different persons on the matter [see *Archbishop Lefebvre and the Vatican* available from Angelus Press. Price: \$12.45].

At this point, from a consideration of general character, it could be asked: if the subject exercised due diligence, where is the error in the evaluation? Doesn't that diligence exclude it? In truth, Canon 1323.7° does not explicitly mention error, but denotes a subjective judgment which may or may not correspond to the facts.

An absolutely certain state of necessity was the one which *today* is recognized as having been present in the Church at the time of the Arian crisis, when heresy had corrupted the faith of a substantial part of the hierarchy. This is an uncontested fact. Equally certain was the state of necessity of the Church at the time of its public persecution, for example in Protestant England or in revolutionary France. It is so in the case of supplied jurisdiction for the salvation of the soul of one dying. A state of necessity implied by the crisis of faith, and therefore of the Church, will, however, be denied by those whose faith is no longer solid because they have been seduced by heresy. And so today, many admit the crisis of faith and of the Church, but almost no one dares to draw the necessary conclusion, namely, that souls find themselves in the state of necessity. This means that whoever, as Archbishop Lefebvre and Bishop de Castro Mayer, has proclaimed the state of necessity of souls, finds himself part of a small minority, and his judgment appears only his own, even if objectively based on the actual state of affairs. But this judgment, even if considered erroneous by the majority (therein is included the formally legitimate authority), is nevertheless safeguarded by the 1983 *Code*, provided it is a matter of a *diligent* judgment. This latter is not as such necessarily precise, because diligence shows the good faith of the subject, not the truth of his conviction. Naturally, the diligent judgment can be true, even if it can present the appearance of error when it is the judgment of an individual only of a minority against the huge majority. The diligent judgment receives complete protection from the 1983 *Code of Canon Law*, with exemption from penalty; a negligent judgment, invalidated by an error due to the subject's fault, receives a lesser protection, but nevertheless exemption from *latee sententiae* excommunication.

This last benefit is that contemplated in Canon 1324, §1.8°, upon which the Murray Thesis naturally rests. After concluding that Archbishop Lefebvre and the four bishops consecrated by him could not be penalized, in accordance with the provision of Canon 1323.7°, Fr. Murray says:

This canon [1324, §1.8°] 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 1983 *Code of Canon Law* seemingly renders the incurring of a *latee sententiae* penalty 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 a law or precept.⁶

This is therefore the conclusion of a general character, perfectly based on the positive law in force in the Church. Naturally, the subject must have acted without malice or deceit whatsoever. The negligent judgment about which Canon 1324, §1.8° speaks is almost always due to negligence, not to malice. The Holy See, however, as we know, has accused the Archbishop of bad faith and therefore of a malicious attitude. Here is Fr. Murray's reply:

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 authorized 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.⁷

The *first* argument of Fr. Murray in favor of the impossibility of accusing Archbishop Lefebvre of malice is based on the observation that the exempting causes (and attenuating circumstances) make the incurring of *latee sententiae* by the law dispositive, and admit the legitimacy and the doctrinal correctness of the action of the subject. Moreover, whoever violates the law on account of the state of necessity, is convinced of doing it for safeguarding a superior good; the purpose of his action is not to violate the law (something that he does unwillingly), but to protect this good, and such a purpose shows the absence of that which is commonly understood by *malice*.

The *second* argument is the following:

Furthermore, if the judgment of the applicability of law A is not legally reserved to a superior, but is rather left up to the individual judgment of the person who violates law B, then his appeal to law A [which exempts him from penalty - Ed.] is not illegitimate and cannot simply be gaisnied 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 plausibly be 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 judgment, secure the good of the Church, by means of a necessary transgression of Canon 1382 [already cited by us, which provides for *latee sententiae* excommunication for consecration without mandate - Ed.] 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 [insofar as the Holy Father - Ed.], 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 *latee sententiae* excommunication according to Canon 1324, §3. And as we saw, the code of Canon Law does not presume malice, but rather imputability (Canon 1321, §3). This presumption of imputability falls "if it appears otherwise" (*nisi aliquid appareat*). Such an "appearance," indicating at the least a possible lack of imputability, can reasonably be asserted to exist in this case.¹¹

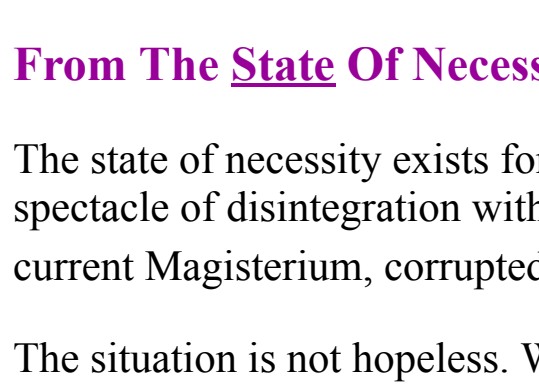
This point of the Murray Thesis is important. It points out how Canon 1321 of the 1983 *Code of Canon Law*, with regard to the infliction of a penalty, presumes "grave imputability through malice or through fault." The external violation of the law or of the precept must be referred to an imputable subject. Once the violation has occurred, "imputability is presumed, if it does not appear otherwise."¹² And in the case that interests us this "otherwise," which causes imputability to fail, did with reasonable probability appear, according to Fr. Murray. But why is this remark so important? - Because it reminds us that, through canon law, that which must be presumed, in the case of a violation of the law, is imputability, not malice: *malice must be demonstrated*. In the case of Archbishop Lefebvre, the Supreme Authority has proceeded in a way exactly opposite: *it has presumed malice*, without first making sure of the actual existence of imputability. But the latter was excluded or diminished on the bases of Canons 1323.7° and 1324.8° and therefore malice cannot be presumed! Therefore the Holy See has fallen into a true and proper error of law, such as to allow us to consider invalid the pronouncement of excommunication against Archbishop Lefebvre invalid. Fr. Murray continues:

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 *latee sententiae* penalty. Whereas these two facts [imputability and malice - Ed.] have not been established with juridical certainty, then there exists a well-founded argument to reasonably contest the validity of the declaration of the *latee sententiae* excommunications against Archbishop Lefebvre and the other bishops involved....

The administrative declaration of the Holy See appears to have failed to take into proper account the revised penal law of the *Code of Canon Law*, especially as regards the mitigation of and exemption from *latee 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 communication, whereas the *Code of Canon Law* stipulates that holding and acting upon such a conviction, even erroneously, in effect prevents one from incurring a *latee sententiae* penalty.¹⁰

Therefore, according to Fr. Murray, there has been here also a possible violation of Canon 220 of the *Code of Canon Law*, which safeguards the "good reputation" which one enjoys, because a person is branded as "schismatic," when there is on the contrary the well-founded reason to maintain that this person has not incurred the penalty. Such an action, an arbitrary attribution, "would be a violation of that person's fundamental right to his good reputation, which is guaranteed by the Code itself."¹¹

Essentially, this is the Murray Thesis, a thesis absolutely correct in point of law which spells out the illegality of the procedure followed. The partial retraction made of it afterwards by its author is incomprehensible to us.



Is Tradition Excommunicated?
Available from [Angelus Press](#).
Price: \$7.95

The Law Authorized By The State Of Necessity

State of Necessity in the Church After the Council

We must discuss the right which is born of the state of necessity. The state of necessity exempts us from imputability, but does it engender for us an actual right? Prof. May in *The Disposition of Law in Case of Necessity Within the Church* (see *The Angelus* English-Language of *SISINONO*, Jan. 2000, #36; also *Is Tradition Excommunicated?* available from Angelus Press. Price: \$7.95) draws attention to the fact that the 1983 *Code of Canon Law*

...does not say what is meant by this item [*i.e.*, "state of necessity" - Ed.], it leaves to jurisprudence and lawyers the task of giving it a precise meaning. But it is clear from the context that necessity is a state wherein goods necessary for life are put in danger in such a way that to come out of this state the violation of certain laws is inevitable.¹⁵

The "violation of certain laws" is not *free* in the case of necessity as in the case of one who commits a crime, but is "inevitable," because *imposed* by necessity.

The observance of the laws is clearly a good thing. Catholics know they must "serve the Commandments" not only in faith and morals, but even the norms of the positive law of the Church and of civil authority. Nevertheless, there are goods superior to observance itself, and these are "the goods necessary for life," whose value is primary and essential. When there is a danger these goods may be injured and their necessary possession impeded, then it is lawful to violate the established norm - for example, through an act of disobedience - to prevent that from happening.

A situation in which "the goods necessary to life" are put in danger is clearly an exceptional situation of necessity. The juridical significance of a situation of that kind is admitted by all the modern legal codes, especially with its importance from the standpoint of morality.¹⁶With regard to the Church, what form can it assume? Dr. May says:

In the Church, as in civil society, it is conceivable that there arrive a state of necessity or urgency which cannot be surmounted by the observance of positive law. Such a situation exists in the Church when the endurance, order, or activity of the Church are threatened or harmed in a considerable manner. This threat can bear principally on ecclesiastical teaching, the liturgy, and discipline.¹⁷

The "endurance, order, or activity of the Church" represent *per se* fundamental goods, because they are "necessary to life," that is, the supernatural life of the faithful, since without the Church there is no salvation. The good of souls demands that the Church be maintained according to its nature and the intention of its Founder. The most basic sign of this conservation will be its fidelity to the deposit of the Faith. The Church cannot be lost to the faithful for any reason. But this good is threatened in its three forms of existence [*i.e.*, "endurance, order, activity" - Ed.] when "teaching, liturgy, and ecclesiastical discipline" are corrupted.

In consequence of Vatican II these three forms of existence of the Church have entered into the most acute crisis, because *doctrine* has been attacked, on account of the heterodox conciliar notions; the *liturgy* has been revolutionized in an ecumenical and Protestant manner; *discipline* has been relaxed and adulterated by the democratization of hierarchy and the relationship between the hierarchy and the faithful.

This situation has produced from inside the Church and is allowed to persist by the Church's hierarchy. The danger to the goods of faith and salvation is caused either through that which the hierarchy does and wants to be done, or through that which the hierarchy does not do and does not want to be done. In the first case we have an unlawful use of authority, because it orders the observance of things contrary to the faith and to the salvation of souls, beginning with ecumenism and the secular form of freedom of conscience. In the second case (the cessation of authority) we have a culpable (and therefore morally illicit) omission of authority, which does not keep watch over the deposit of the Faith, but allows corruptions and errors to creep into doctrine, liturgy, and discipline. The corrective interventions of the Magisterium are in general limited to blatant excesses and only in a substantially feeble manner; they never give the impression that an effective change of course is sought. The only exception was the prohibition of the priesthood to women. The abeyance of authority persists because the authorities do not want to battle the revolution introduced by Vatican II, but merely to limit its excesses.

From The State Of Necessity Is Born The Law Of Necessity

The state of necessity exists for priests and the faithful knowing they must keep the Faith and secure the salvation of their soul. They suffer from All Time unlawful commands and the spectacle of disintegration within the Church. They cringe at seeing faith in contradiction to obedience, and obedience to the Magisterium of All Time in contradiction to the current Magisterium, corrupted in the faith, even if formally legitimate.¹⁸

The situation is not hopeless. When objectively existing, the state of necessity carries with it its own proper right, the right to act in order to protect the threatened vital good, even if for this purpose one has to violate some norms of the positive law in force. The action performed in the state of necessity is therefore the action of whoever has the right to act in that way, a right instituted by the necessity itself. And whoever acts by exercising a right is evidently not able to be imputable of a penalty. Hence the words of Prof. May: "A state of necessity justifies the law of necessity. The law of necessity in the Church is the sum total of juridical rules which apply in case of a menace to the perpetuity or activity of the Church."¹⁹

There are rules in force which are not expressly laid down by positive authority, but are imposed by the nature of things. The thing here is the situation that has come into being, which threatens "the perpetuity or the activity of the Church."

"Perpetuity" of the Church refers to the *spiritual* and *material* continuity of her doctrine which cannot be interrupted. It is spiritual on account of its content and quality; it is material on account of the activity of the Church, which can be materially interrupted in whole or in part by persecution. The spiritual continuity is the continuity of fidelity to dogma, guaranteed by the constant handing down of the Magisterium of the Church.

When errors are introduced into the doctrine itself and therefore into the teaching, then the perpetuity of the Church is endangered even if error is not in every specific act of the official Magisterium. On this account there has always been an objection to Vatican II in the name of fidelity to dogma. The number of objectors may be numerically small, but what matters is that it has maintained the continuity of Catholic doctrine. It is an indisputable fact that the marks of authentically Catholic doctrine are found integrally in the seminaries of the Society of Saint Pius X, and in a way as to be rendered practically inefficacious, in those of the official Church.²⁰

Application Of The Law Of Necessity To The Concrete Case

The persistent threat to the perpetuity of Catholic doctrine represented by a teaching imbued with error permits the application of the law of necessity. This justifies the Catholic who, by disobeying the commands of the authority infected by error, attends the seminaries, the churches, the catechism classes, *etc.*, of the Society of Saint Pius X which has as its proper object that of providing for the serious state of necessity that has been caused in the Church.

The logical succession, which justifies the coming into being and the exercise of the law of necessity, can be represented thus:

1) Theologically Pope Paul VI and of the Novus Ordo, requested by a commission of experts with the collaboration of Protestant heretics, is ambiguous and the rite of the double Puff, after having acceded to the conquests of the same heretics and even possibly of non-Christians.

2) As a consequence, this rite represents a grave danger to the Faith for everyone.

3) Catholics are obligated to attend this rite even though the Tridentine Rite has never been formally abrogated, just as they are obliged to accept all the decisions of Vatican II and to conform to its spirit, which is at the origin of the Mass of the "New Order."

4) Commands that require doing something that places the faith in danger are to be considered, essentially, morally illicit and juridically invalid, (even if formally valid) because emanating from a formally legitimate authority).

5) The faithful find themselves in a state of grave necessity, because the primary goods of the Faith and of the salvation of the soul are greatly threatened by the order to attend a rite per se dangerous to the Faith.

6) The faithful have the moral duty to defend the Faith, their own faith, and that of others, according to their capacities; this is a duty that is required of us by our Lord in the sacrament of Confirmation.

7) Besides this duty, right reason, supported by the customary practice of the Church, recognizes a true and proper right to act in order to defend the Faith, a right produced by the objectively existing state of necessity in which one may find themselves.

8) The need to safeguard the primary goods of the Faith, endangered by the commands of pastors themselves, authorizes the faithful to disobey the order of the official authority to attend the Mass of the Novus Ordo or the Tridentine Mass according to Indult.

9) Disobedience is legitimate because necessitated, because it is the exercise of that right which springs from necessity.

10) Insofar as it is legitimate, disobedience is not imputable and hence not punishable.

11) Insofar as it is legitimate, disobedience is not schismatic.

A Repugnant Compromise

It is necessary to disobey even the order to assist at the Tridentine Mass conceded by the Indult by exercising the right that necessity ascribes to us. The Indult of Pope John Paul II grants permission to celebrate the Tridentine Mass on condition of not adding the legitimizing and the doctrinal correctness of the Roman Missal promulgated in 1970 by Pope Paul VI.²¹ Refusing to go to the Indult Mass is not to deny the authority of the Pope; it is to legitimately disobey his command. "If you want to attend the Tridentine Mass, you must attend only that with the Indult granted by me", because he orders us to participate in a function in which the danger of losing the Faith is already present in the condition required.

The "Extraordinary Competence" Of The Clergy In The State Of Necessity

The teaching of the catechism and in seminaries, the ordination of priests, the consecration of bishops, *etc.*, are expressly allowed by the custom of the Church in cases of necessity or grave danger. They are manifestations of that "juridical competence" which the state of necessity ascribes to priests. With these acts the void created by the official authority is filled.

It is a matter of extraordinary competence, thanks to which a bishop is authorized to perform ordinations against the will of the pope, and the faithful to attend Mass in the Tridentine rite (not of the Indult of the Holy Father). The character of "extraordinary competence" in the case of the state of necessity means that one can act not only *in the absence* of a declared will on the part of the legitimate authority, but also *in the presence* of its will which forbids performing the act although authorized by the state of necessity. This is because it is a matter of an act "necessary and indispensable" for the salvation of souls. The authorization does not arise here from a norm of positive law, but *immediately* from the reality [*i.e.*, "the right springs from the fact" - Ed.] and indirectly from a claim superior to that of positive ecclesiastical law, that is, the claim represented by the will of our Lord and which we must qualify as normative. That right has, then, its ultimate foundation in the divine constitution of the Church itself.

However, the law of necessity must respect the "principle of proportionality." It can be resorted to "only when one has exhausted all possibilities of re-establishing a normal situation relying on positive law," and it must be exercised only in that measure "necessary for a restoration of functions in the Church."²² It has a sphere that is not obviously predetermined by the norms, but which must come about unobtainably from the nature of the thing, that is, from the necessity of the situation, without exceeding it. The respect on the part of Archbishop Lefebvre for the "principle of proportionality" and his scruple of always following the requirements and competencies of the law of necessity are demonstrable. When it is said, "Necessity knows no law," it does not justify any action whatever, but only that it forces one to ignore for a time the positive law in force. The rights devolving from the law of necessity are not general, but flow from a *specific* necessity; therefore that action it justifies must be proportionate to the exigencies of the situation.

Archbishop Lefebvre's rejection of the "secedeantist theory" finds its broadest juridical justification in a correct interpretation of the state of necessity: the competence that springs from it, however, inasmuch as it is proportioned to the effective necessity, is not such as to permit anyone to take advantage of it to declare the Papal Chair vacant.

The competence established by the state of necessity, since it concerns the safeguarding of specific and determined goods, is limited to conferring on the subject the right to point out those errors professed and put into practice by the hierarchy, errors which place those goods in danger, and to legitimately disobey explicit or implicit commands which are equally dangerous for the aforesaid goods.

Causidicus [heavily edited and abridged by Fr. Kenneth Novak]

[This article concludes the seven-part series on the 1988 Episcopal Consecrations of Archbishop Lefebvre. The *SISINONO* issues of July and September (1999) dealt with the *theological* aspect. The *SISINONO* issues of November (1999), January, March, and July (2000) dealt with the *canonical* aspect. - Ed.]

1. *The Latin Mass*, 1995, p.59. The literal title of the paper for the licentiate of Fr. Murray is: "The Canonical Status of the Lay Faithful Associated with the Late Archbishop Lefebvre and the Society of St. Pius X: Are They Excommunicated as Schismatics?" His reply is that they are not excommunicated nor schismatic. The faithful who attend the Masses celebrated by the priests of the Society do not perform any schismatic act, they do not participate in any schism (also because, as will be seen, for Fr. Murray, an act cannot speak of formal schism while the *latee sententiae* excommunication must be considered invalid). The Murray Thesis dedicates a detailed analysis to reject the hypothesis of schism for the faithful and the priests: cf. *The Latin Mass*, *op. cit.*, pp.55-58. The summary of the thesis, with ample extracts of the text, is from Steven Terenzio: *op. cit.*, pp.55-61. We limit ourselves here to taking into consideration that which seems to us the essential nucleus of the thesis.

2. *Op. cit.* p.59.

3. *Commentary on the New Code of Canon Law*, p.762.

4. *The Latin Mass*, *op. cit.*, p.61, footnote no.10.

5. *Ibid.* p.60

6. *Ibid.*

7. *Ibid.*

8. *Ibid.*

9. *Ibid.*

10. *Op cit.*, p.61.

11. *Ibid.*

12. *Cor Unim*, 1988, no.30.

13. *Ibid.*

14. *Op cit.* pp. 41-42.

15. Dr. Georg May, "The Disposition of Law in Case of Necessity Within the Church," *Is Tradition Excommunicated?*, Angelus Press, Kansas City, MO,p.111.

16. RudolfV.Jhering, *Lo scopo nel diritto* (1877 ess.), partial Italian draft of G. Losano, Turin, Italy, 1972, p.185.

17. Dr. Georg May, *Is Tradition Excommunicated?*, *op. cit.*, p.112. Also Dr. May in *Die Krise der Kirche ist eine Krise der Bischöfe* (Cardinal Seper), pp.119, *Una Voce Correspondenz*, 1987.

18. Dr. Georg May, "Neither Schismatic Nor Excommunicated," *Is Tradition Excommunicated?*, *op. cit.*, p.1-140.

19. Dr. Georg May, *Is Tradition Excommunicated?*, *op. cit.*, p.112.

20. "We do not follow Bishop de Castro Mayer or Archbishop Lefebvre as cult-leaders. We follow the Catholic Church. But these two confessors of the Faith have been the only bishops who have risen up against the auto-demolition of the Church. We do not disassociate ourselves from them. Just as in the 4th century, at the time of the Arian heresy, it was a mark of orthodoxy to be 'in communion with Athanasius' [and not with Pope Liberius - Ed.], in the same way being united to Archbishop Lefebvre and to Bishop de Castro Mayer is a sign of fidelity to the Church of All Time" (declaration of Fr. Thomas d' Aquin, Prior of the Monastery of Santa Cruz of Nova Friburgo, Brazil, in 1988, in the *B*