

Arriving at the Juridic Status of the Priestly Fraternity of Saint Pius X

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ABBREVIATIONS

AAS	<i>Acta Apostolicae Sedis</i> , Rome, 1909-
<i>Abbott</i>	ABBOTT, W., (gen. ed.), <i>The Documents of Vatican II</i> , 1966.
c. or cc.	A canon or canons of the 1983 Code of Canon Law: <i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabeticum auctus</i> , or of the CCEO or of the CIC/17.
<i>Exegetical Comm</i>	MARZOA, A., J. MIRA, R RODRIGUEZ-OCANA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law</i> , 8 vols.
CDF	The Congregation for the Doctrine of the Faith.
CCEO	<i>Codex canonum ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione auctus.</i>
CCLA	E. CAPARROS et al. (eds.), <i>Code of Canon Law Annotated.</i>
CIC/17	<i>Codex iuris canonici Pii X Pontificis Maximi iussu digestus.</i>
CLD	BOUSCAREN, T. and J. O'CONNOR <i>Canon Law Digest</i> , 13 vols.
<i>CLSA Comm1</i>	CORIDEN, J., T.J. GREEN and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary.</i>
<i>CLSA Comm2</i>	BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law.</i>
<i>CLSGBI</i>	The Canon Law Society of Great Britain and Ireland.
DAVIES, <i>Apologia, Part I</i>	DAVIES, M., <i>Apologia pro Marcel Lefebvre Part I 1905-1976</i> , Kansas City, MO, Angelus Press, 1979.
DAVIES, <i>Apologia, Part II</i>	DAVIES, M., <i>Apologia pro Marcel Lefebvre Part II 1977-1979</i> , Kansas City, MO, Angelus Press, 1983.

DAVIES, *Apologia, Part III*

DAVIES, M., *Apologia pro Marcel Lefebvre Part III 1979-1982*, Kansas City, MO, Angelus Press, 1988.

Ecumenical Directory/67

SECRETARIATUS AD CHRISTIANORUM UNITATEM FOVENDAM, *Directory for the Application of the Decisions of the Second Ecumenical Council of the Vatican Concerning Ecumenical Matters*, 14 May 1967.

Ecumenical Directory/93

SECRETARIATUS AD CHRISTIANORUM UNITATEM FOVENDAM, *Directory for the Application of the Principles and Norms of Ecumenism*, 25 March 1993.

G&S

SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*.

LAISNEY, *Archbishop Lefebvre*

LAISNEY, F. (ed.), *Archbishop Lefebvre and the Vatican 1987-1988*, Kansas City, MO, Angelus Press, 1988.

LG

SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*.

PETERS, *Remission*

PETERS, E., "Benedict XVI's Remission of the Lefebvrite Excommunications: An Analysis and Alternative Explanation," in *CLSGBI Newsletter*, 172 (2012) 8-29.

RENKEN, *Penal Law*

RENKEN, J. A., *The Penal Law of the Roman Catholic Church: Commentary on Canons 1311-1399 and 1717-1731 and Other Sources of Penal Law*, Ottawa, University of St. Paul, 2015.

SHEEHY, *The Canon Law*

G. SHEEHY, R. BROWN, et al., eds., *The Canon Law Letter & Spirit, A Practical Guide to the Code of Canon Law*, prepared by The Canon Law Society of Great Britain and Ireland, Collegeville, The Liturgical Press, 1995.

SSPX

The Priestly Society of Saint Pius X.

GENERAL INTRODUCTION

The *Fraternitas Sacerdotalis Sancti Pii X* (The “Priestly Fraternity” or “Society” of Saint Pius X, or the SSPX), was founded by the French Latin Archbishop Marcel Lefebvre, erected by the Bishop of Lausanne-Geneva and Fribourg on 01 November 1970, suppressed by the Holy See in 1975 and has since had no canonical status. On 23 July 1976, Lefebvre incurred the penalty of *suspensio a divinis* as a consequence of schism in the form of disregarding the suppression, persistent public contumacy and ordaining priests without dimissorial letters. The suspension extended to those ordained by Lefebvre thereafter. On 30 June 1988, a twofold excommunication *latae sententiae* was declared as a more severe consequence of ongoing schism in the form of persistent contumacy and for consecrating four bishops without papal mandate. These penalties were incurred by Lefebvre, the illicitly consecrated bishops and the co-consecrator. Lefebvre died 25 March 1991; leadership of the SSPX has continued under its clergy. The excommunications were lifted 21 January 2009 while the suppression and suspension endure. Efforts to regularize the SSPX have been ongoing since 1975.

Lefebvre’s canonical advisors persuaded him that “the entire legal process taken against the Fraternity has been so irregular that it could not be considered as having been legally suppressed.”¹ The questions are therefore raised: Were the penal juridic acts licit? If so, what is the consequent status of the SSPX? Has the SSPX become a Church *sui iuris* or erected as a species of Particular Church? Has it become a non-Catholic Christian Church in the manner of the Orthodox or another Christian Ecclesial Community such as a Protestant or Evangelical denomination? In order to examine these questions, the essential facts will be presented, applicable laws from the germane sources considered and conclusions drawn therefrom.

¹ DAVIES, *Apologia, Part I*, 202.

CHAPTER 1: FINDINGS OF FACT

1.1 Development of the SSPX

After a sterling career as a member of the Holy Ghost Fathers, particularly on mission in Africa, Mgr. Marcel Lefebvre was installed for a brief period as bishop of the small diocese of Tulle in his French homeland.² On 07 August 1962 upon election as Superior General of the Holy Ghost Fathers, Lefebvre resigned from the See of Tulle. Declining to implement some reforms demanded by the Fathers following the Second Vatican Council, to which he contributed and at which he participated valuably and vociferously, he resigned from leadership in 1968 and retired.³

1.1.1 Founding and Expansion

Soon thereafter, Lefebvre was approached by French seminarians disillusioned by the lack of discipline and traditional studies in their seminary. Upon consideration, Lefebvre agreed to assist them.⁴ In June of 1969, Bishop François Charrière of the Diocese of Lausanne-Geneva and Fribourg, Switzerland, allowed the establishment of a seminary which opened on 07 October 1970 in Écône. On 01 November 1970, Charrier approved the proposed statutes and canonically erected the SSPX⁵ as a Pious Union⁶ for a period of six years *ad experimentum*. The decree recognizes the

² Cf. M. LEFEBVRE, “Address at the International Seminary of Saint Pius X,” Écône, Switzerland, 29 November 1975, English translation in Davies, *Apologia, Part I*, 30.

³ Cf. *Ibid.*, 32.

⁴ Cf. DAVIES, *Apologia, Part I*, 12.

⁵ DAVIES, *Apologia, Part I*, 12. An English translation of the Charrière’s Decree of Erection can be found in Appendix V of DAVIES, *Apologia, Part I*, B. CATHEY, “The Legal Background of the Erection and Alleged Suppression of the Society of St. Pius X,” 443-444.

⁶ There is some argument about this classification and whether Charrière intended *pia unio* as stated or rather *pia domus*, which would have corresponded to the approved statutes of the SSPX. (E.g., the interesting evaluation of the matter in John S. DALY, *Michael Davies – An Evaluation, New Edition*, Saint-Sauver de Meilhan, France, Tradibooks, 1989, 311-315, and an entirely different point of view from Boyd A. CATHEY, “The Legal Background to the Erection and Alleged Suppression of the Society of Saint Pius X,” in Davies, *Apologia, Part I, Appendix V*, 443-450.) Regardless, when Mamie later decided to suppress the SSPX, he appealed to the Dicastery with the competence to suppress any such organization which then authorized Mamie himself to declare the suppression.

“principal goal” of the society as “the formation of holy priests.”⁷ On 18 February 1971, Cardinal John Wright, Prefect of the Sacred Congregation for the Clergy, responded to Charrière’s notification of the erection of the SSPX with enthusiasm.⁸ The SSPX met with success and quickly expanded to include houses of formation “in a number of other countries, one of them at Albano, near Rome.” Ostensibly, all progressed with the necessary canonical authorizations.⁹

Rome sent two Apostolic Visitors who thoroughly examined the SSPX beginning 11 November 1974.¹⁰ Their conclusions were favorable.¹¹ Yet, members of the SSPX were scandalized by some statements by the Visitors. As well, Lefebvre did not receive a promised report following the visit. On 21 November 1974 Lefebvre reacted making what would become known as his *Declaration*.¹² It was published 21 December in the French magazine, *Itinéraires*. In order to grasp Lefebvre’s mindset, it is necessary to be familiar with certain aspects of this *Declaration*. To wit:

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

The New Mass is in line with the new catechism, the new priesthood, new seminaries, new universities and the charismatic or Pentecostal church, all of which are in opposition to orthodoxy and to the age-old magisterium.

This reform, since it has issued from Liberalism and from Modernism, is entirely corrupt. It comes from heresy and results in heresy, even if all its acts are not formally heretical. It is thus impossible for any faithful Catholic who is aware of these things to adopt this reform or to submit to it in any way at all. To endure our salvation, the only attitude of fidelity to the Church and to Catholic doctrine, is a categorical refusal to accept the reform.

⁷ Cf. Francois LAISNEY, 12.

⁸ Cf. DAVIES, *Apologia, Part I*, 444, 445.

⁹ Cf. *Ibid.*, 19.

¹⁰ Cf. §21 at http://archives.sspcx.org/SSPX_FAQs/a_short_history_of_the_sspcx-part-1.htm (12 February 2018).

¹¹ Cf. *Ibid.*, 47.

¹² LAISNEY, *Archbishop Lefebvre*, 8-10.

It is for this reason that, without any rebellion, bitterness or resentment, we pursue our work for the formation of priests under the star of the age-old magisterium, in the conviction that we can thus do no greater service to the holy Catholic Church, to the Sovereign Pontiff and to future generations.¹³

Lefebvre offered his view of a crisis following the reforms of Vatican II and his solution: reject the reform and the magisterium which presented it in favor of formation in a pre-Conciliar manner to produce “a true ordination to the Priesthood, to say the true Sacrifice of Calvary, the Sacrifice of the Mass, and to give you the true Sacraments, true doctrine,¹⁴ the true catechism.”¹⁵

1.1.2 Suppression

Displeased with Lefebvre and his *Declaration*, Bishop Pierre Mamie, successor to Charrière, sought to withdraw the approval of the SSPX. On 24 January 1975, Mamie requested Cardinal Arturo Tabera, Prefect of the Sacred Congregation for Religious, the competent dicastery, to suppress the SSPX.¹⁶

In meantime, on 25 January 1975, Lefebvre was invited by a Commission of Cardinals created *ad hoc* comprising Cardinals Tabera, Wright and Gabriel-Marie Garrone, Prefect of the Congregation for Catholic Education, for discussions on 13 February and 03 March 1975.¹⁷ Interest focused upon Lefebvre’s *Declaration* with little mention of the results of the 1974 Visitation. The promise that Lefebvre would be afforded a recording or transcript of the discussions was reneged.¹⁸

On 25 April 1975, Tabera responded to Mamie’s 24 January letter, stating:

¹³ Cf. M. LEFEBVRE, *Declaration*, 21 November 1974, in *La Documentation catholique*, 72 (1975), 544-545, English translation in LAISNEY, *Archbishop Lefebvre*, 8-10, here 8-9.

¹⁴ Lefebvre took great exception to *Lumen gentium* 25, particularly §3 regarding the infallible proclamation by bishops regarding faith and morals. Cf. DAVIES, *Apologia, Part III*, 77 and 87-88.

¹⁵ LAISNEY, *Archbishop Lefebvre*, 120.

¹⁶ DAVIES, *Apologia, Part I*, 51. Cf. also §4 at http://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_profile_en.html (12 February 2018).

¹⁷ DAVIES, *Apologia, Part I*, 45.

¹⁸ Cf. DAVIES, *Apologia, Part I*, 47-48.

In that which concerns the competence of this Sacred Congregation, Your Excellency knows that it has the necessary authority to withdraw the acts and concessions granted by your predecessor. Nevertheless, granted the conclusions reached by the special *ad hoc* commission of cardinals, [this] Sacred Congregation not only expresses its full accord with the suppression of the Priestly Society of St. Pius X, erected by your predecessor, but invites you to proceed at once to this sad yet necessary step.¹⁹

On 06 May 1975, Mamie suppressed the SSPX, effective immediately.²⁰ On the same day, the commission of cardinals issued a letter to Lefebvre detailing motivation for the suppression. These unanimous conclusions of the Commission of Cardinals were, in part:

... given to the Pope together with the complete dossier of the affair so that he could judge for himself. It is with the entire approval of His holiness that we communicate the following decisions to you: [...]

2) Once it is suppressed, the Society “no longer having a juridical basis, its foundations, and notably the Seminary in Ecône, lose by the same act the right to existence.”

3) It is obvious – we are invited to notify it clearly – “that no support whatsoever can be given to Mgr. Lefebvre as long as the ideas contained in the [Declaration] of 21 November continue to be the basis for his work.”²¹

On 21 May 1975, Lefebvre lodged recourse to the Apostolic Signatura.²² On 10 June 1975, it was “rejected on the grounds that the condemnation of the three Cardinals had been approved *in forma specifica* by the pope and that therefore no appeal was admissible.”²³ On 31 May 1975, Tabera assured Mamie that he had acted within his authority when suppressing the SSPX.²⁴

¹⁹ SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, “Letter to Mgr. Mamie Concerning the Suppression of the SSPX, 25 April 1975,” in *La Documentation Catholique*, 72 (1975), 613-614. English translation may be accessed at <http://sspx.ca/en/legal-existence-sspx> (12 February 2018).

²⁰ P. MAMIE, “Letter to Mgr. Lefebvre Communicating His Decision to Suppress the SSPX,” in *La Documentation Catholique*, 72 (1975), 615, col. 1, English translation in Davies, *Apologia, Part I*, 51 and 52.

²¹ “Special *ad hoc* Commission of Cardinals, letter to Mgr. Lefebvre 6 May 1975,” in *La Documentation Catholique*, 6 juillet 1975, 614, cols. 1-2, English translation in Davies, *Apologia, Part I*, 57-59.

²² Cf. DAVIES, *Apologia, Part I*, 73.

²³ *Ibid.*, 106.

²⁴ Cf. *Ibid.*, 103. Complete letter printed in *La Documentation Catholique*, 72 (1975), 615, col. 2.

Lefebvre requested of Paul VI that his case be referred to the CDF.²⁵ On 29 June 1975, Paul VI responded expressing grief and sorrow over Lefebvre's behavior. The Pope confirmed his role in the conclusions of the three Cardinals, stating, "We made all and each of them Ours, and We personally ordered that they be immediately put into force."²⁶

The works of the SSPX continued as Lefebvre prepared a second attempt at appeal.²⁷ On 29 June 1975, he ordained priests. "The necessary legal procedure for their incardination in the dioceses of bishops sympathetic to Archbishop Lefebvre had already been completed."²⁸ In July of 1975, Lefebvre's second attempt at recourse was rejected. With no further options for recourse, the SSPX ceased to exist canonically from this point in time.²⁹

1.2 *Suspensio a divinis* of Mgr. Lefebvre

Upon suppression, the SSPX should have disbanded. Instead, Mgr. Lefebvre chose to disregard the juridic effects of suppression, continue the works of the SSPX and allow its expansion. The Holy See was left with no option but to take public juridic action.

Lefebvre scheduled presbyteral ordinations for 29 June 1976. On 25 June, Cardinal Giovanni Benelli, Substitute for General Affairs of the Secretary of State, wrote to Lefebvre *de mandato speciali* of Paul VI, stating, "[...Y]ou are to abstain, now, from conferring any order." Benelli threatened Lefebvre with suspension from exercise of Orders (*CIC/17* c. 2374 [c. 1383]) suspension *ab ordinem collatione* (*CIC/17* c. 2373, 1°, 3° [c. 1383]) as well as possible irregularity

²⁵ Cf. DAVIES, *Apologia, Part I*, 104.

²⁶ Cf. *Ibid.*, 112-113.

²⁷ *CIC/17* c. 2287 (c. 1353) provides for suspensive recourse in the case of a penalty. Though Lefebvre's administrative recourse had been rejected, he continued with another attempt at recourse. His canonists may have argued that the execution of the penalty remained suspended. In retrospect, they likely attributed little efficacy to the penalty.

²⁸ DAVIES, *Apologia, Part I*, 129.

²⁹ *Ibid.*, 130. Though the suppression was effective 06 May 1975, the date of July 1975 is an allowance for the canonical provisions regarding the suspensive effect of recourse.

of the candidates (*CIC/17* c. 985, 7° [c. 1041]) if he proceeded.³⁰ Lefebvre chose to follow dubious canonical advice and paid no heed to the warning.³¹

On 29 July 1976, Lefebvre proceeded with the ordinations. On 01 July 1976, the Holy See's Press Bureau declared that the threatened canonical consequences for the ordinations had been incurred. On 22 July 1976, the Congregation for Bishops notified Lefebvre of the suspension, effective immediately.³² The SSPX reports that the undeterred Lefebvre scoffed at the suspension, quipping that it "forbids him to celebrate the New Mass."³³

On 11 October 1976, Paul VI expressed outrage to Lefebvre for disregarding the suspension in violation of his direct order.³⁴ The Pope rejected Lefebvre's requests, demanded Lefebvre's adherence to Vatican II,³⁵ refused to reverse the suppression³⁶ and requested all SSPX properties be surrendered to the Holy See.³⁷ On 29 October 1976, Paul VI expressed his exasperation with Lefebvre again, stating, "Can you have decided to attach no importance to the word of the Pope?"³⁸ He observed "new initiatives which lead to a deepening of the ditch you are digging: the ordination on 31 October, your book,³⁹ your declarations, your many journeys on which you take no account

³⁰ Cf. *Ibid.*, 199-200.

³¹ DAVIES, *Ibid.*, 202.

³² Cf. *Ibid.*, 235-236.

³³ Cf. §25 at http://archives.sspix.org/SSPX_FAQs/a_short_history_of_the_sspix-part-1.htm (12 February 2018).

³⁴ Cf. DAVIES, *Apologia, Part I*, 303-343.

³⁵ *Ibid.*, 334-335.

³⁶ *Ibid.*, 337.

³⁷ Cf. *Ibid.*, 341.

³⁸ *Ibid.*, 349.

³⁹ Most likely a reference to *J'accuse le Concile!*, Martigny, Editions Saint-Gabriel, 1976, reprinted as *I Accuse the Council*, Kansas City, MO, Angelus Press, 1998.

of local bishops.” Paul VI concluded with solemn insistence that Lefebvre “change the attitude which sets [him] in opposition to the Church....”⁴⁰

The following 15 June 1977, Archbishop Josef Stimpfle of Augsburg urged Lefebvre to postpone that year’s ordinations. Lefebvre countered with three conditions to be met by 22 June in order to postpone the ordinations,⁴¹ including restoration of the canonical status of the SSPX.⁴² On 20 June 1977, the Pope called Lefebvre’s conditions “truly unacceptable to Us.”⁴³

On 29 June, Lefebvre proceeded with the scheduled ordinations; the event was well-publicized.⁴⁴ On 30 June, the Vatican responded that Lefebvre had acted “in defiance of his suspension *a divinis*,” and begged him to refrain from disobedience and “making the final break.”⁴⁵

1.3 Resolution and Denunciation

Following this, Lefebvre’s 21 May 1975 request to be judged by the CDF was reviewed and granted.⁴⁶ The CDF conducted an examination beginning in January of 1978, in large part through written correspondence.⁴⁷ On 30 November 1978, Šeper invited Lefebvre to a conference to conclude the examination;⁴⁸ Lefebvre accepted.⁴⁹ Šeper informed Lefebvre that the rules for

⁴⁰ Cf. DAVIES, *Apologia, Part I*, 349-350.

⁴¹ Cf. DAVIES, *Apologia, Part II*, 48-49.

⁴² Cf. *Ibid.*, 52.

⁴³ *Ibid.*, 52.

⁴⁴ DAVIES, *Apologia, Part II*, 61. Lefebvre proceeded with his annual priestly ordinations thereafter. In 1978, they were preceded by an admonition by Šeper not to proceed (cf. DAVIES, *Apologia, Part II*, 201-203); in 1979 with a stronger admonition (cf. DAVIES, *Apologia, Part II*, 305-306 and 309); cf. also DAVIES, *Apologia, Part III*, 409.

⁴⁵ DAVIES, *Apologia, Part II*, 70.

⁴⁶ Cf. *Ibid.*, 101.

⁴⁷ Cf. *Ibid.*, 269.

⁴⁸ *Ibid.*, 269.

⁴⁹ Cf. *Ibid.*, 270-271.

Doctrinal Examination in the CDF⁵⁰ do not allow the person being heard to bring assistance.⁵¹ The purpose was “to provide full information for those who have to judge and decide” rather than concluding with judgment or decision.⁵² The conference was held 11-12 January 1979.

On 16 October 1980, Lefebvre proposed a declaration to bring about reconciliation, attaching conditions to his signature.⁵³ On 20 October, Šeper reprimanded Lefebvre for his continued public defiance, called for “a clear expression of regret...”⁵⁴ and presented three points to which Lefebvre would need to submit, “dictated by [John Paul II] in person.”⁵⁵ Šeper expressed the Pope’s willingness to appoint a delegate to study with Lefebvre regularization of the SSPX. Acceptance would result in lifting the penalties incurred by Lefebvre and those he ordained since 1976.⁵⁶ On 04 April 1981, Lefebvre submitted a perfunctory attempt to fulfill the conditions.⁵⁷ Finding it unsatisfactory,⁵⁸ Šeper requested a reformulated response.⁵⁹

⁵⁰ Given the time that it took to begin the proceedings and their duration, it may be safe to assume that this was the “Ordinary Procedure” rather than an “Examination in Case of Urgency.” Article 18 of the updated “Regulations for Doctrinal Examination” now provides in the “Ordinary Procedure” for “a personal meeting with the author, assisted by his adviser (who takes an active part in the discussion) and delegates of the Congregation.” Articles 23-27, describing the “Examination in cases of Urgency,” do not make such a provision. Cf. CDF, “Regulations for Doctrinal Examination,” 29 June 1997, in CLSGBI, *Newsletter*, 4 (1997) 10-11.

⁵¹ DAVIES, *Apologia, Part II*, 271-272.

⁵² *Ibid.*, 278.

⁵³ Cf. DAVIES, *Apologia, Part III*, 249.

⁵⁴ *Ibid.*, 252-253.

⁵⁵ Cf. *Ibid.*, 245-255.

⁵⁶ Cf. *Ibid.*, 255. This statement indicates that the Holy See recognized as under censure all those ordained by Lefebvre following his 23 July 1976 suspension.

⁵⁷ *Ibid.*, 305.

⁵⁸ Cf. *Ibid.*, 333.

⁵⁹ Cf. *Ibid.*, 335.

On 07 April 1982, Cardinal Joseph Ratzinger, Šeper's successor as Prefect of the CDF, requested that Lefebvre express acceptance of the conditions requested of him previously.⁶⁰ On 21 July 1982, Lefebvre firmly reiterated his own position.⁶¹ On 29 October 1982, Ratzinger responded that the Holy Father "thought a short period of reflection would be necessary."⁶²

Nearly five years later on 28 July 1987, Ratzinger proposed a Cardinal Visitor be nominated swiftly "for the purpose of finding for the Society of St. Pius X a juridical status."⁶³ It was agreed that Cardinal Édouard Gagnon would visit Écône and the SSPX institutions thoroughly, which he did from 11 November to 07 December, 1987.⁶⁴

On 20 February 1988, Lefebvre again pressed the Pope for permission to consecrate bishops.⁶⁵ He informed Gagnon of his fear that dialogue may continue indefinitely, creating "a moral obligation to proceed with the Episcopal consecrations without the authorization of the Holy See..." and mentioned that he had not received a report of Gagnon's visit as he was promised.⁶⁶

On 18 March 1988, Ratzinger proposed to Lefebvre that a meeting be held between a pair of theologians and canonists, one of each selected by Lefebvre and by the Holy See, with a moderator selected by the Holy Father. Lefebvre accepted;⁶⁷ the meeting was held in Rome 12-15 April 1988. Discussions of jurisdiction and episcopal consecration ended on a very promising

⁶⁰ Cf. DAVIES, *Apologia, Part III*, 369-370

⁶¹ Cf. *Ibid.*, 425-427.

⁶² *Ibid.*, 445.

⁶³ LAISNEY, *Archbishop Lefebvre*, 24.

⁶⁴ *Ibid.*, 36.

⁶⁵ *Ibid.*, 42.

⁶⁶ *Ibid.*, 45.

⁶⁷ *Ibid.*, 47, 48.

note.⁶⁸ On 15 April 1988, Lefebvre stressed to Ratzinger his desire that more than one bishop be consecrated or at least that the number be raised within a year after consecrating the first.⁶⁹

A Protocol of Accord was drawn-up on 04 May 1988 based upon conclusions from new meetings,⁷⁰ fulfilling the stipulations of both sides. It was signed by Ratzinger and Lefebvre 05 May 1988.⁷¹ The same day, Lefebvre wrote in gratitude to John Paul II, a press release was given to Lefebvre announcing that full reconciliation was foreseeable “in the near future.”⁷² Lefebvre was provided with a draft letter of apology to the Holy Father which he chose not to send.⁷³

The next day, Lefebvre expressed to Ratzinger his misgivings with the Accord, citing its lack of a date for episcopal consecrations. Lefebvre reiterated that “the date of June 30 was clearly indicated in my previous letters as the latest possible.”⁷⁴ Ratzinger responded the same day indicating deferral of the press release and requesting that Lefebvre reconsider his position.⁷⁵

In an address on 10 May 1988, Lefebvre stated, “If there is no agreement with Rome, we shall just have to continue our work.”⁷⁶ To this end, on 20 May 1988, Lefebvre wrote to the Holy Father insisting upon the date of 30 June 1988 for episcopal consecrations “as the final date to bring about this succession.”⁷⁷

⁶⁸ Cf. LAISNEY, *Archbishop Lefebvre*, 61.

⁶⁹ *Ibid.*, 65.

⁷⁰ Cf. *Ibid.*, 73-77.

⁷¹ *Ibid.*, 71.

⁷² *Ibid.*, 80.

⁷³ *Ibid.*, 81, 82.

⁷⁴ *Ibid.*, 83.

⁷⁵ *Ibid.*, 86.

⁷⁶ DAVIES, *Apologia, Part III*, 87.

⁷⁷ LAISNEY, *Archbishop Lefebvre*, 97-98.

On 24 May 1988, Lefebvre insisted on consecrating a number of bishops...,⁷⁸ threatening Ratzinger: “Without an answer to this request, I shall proceed with the publication of the names of the candidates to the episcopacy whom I will consecrate on June 30 [1988]” with de Castro Mayer, Bishop Emeritus of Campos, as co-consecrator. Lefebvre cited his age and health as motivation.⁷⁹ On 27 May, Ratzinger ceded a date of 15 August for the consecrations, but without a number.⁸⁰

1.4 Excommunication and Remission

Not trusting the date would be honored, Lefebvre wrote to John Paul II on 02 June 1988, that it was “preferable to wait for times more propitious for the return of Rome to Tradition.” He reasoned “that the episcopal consecration is not contrary to the will of the Holy See, since it was granted for August 15.”⁸¹ The Pope responded on 09 June 1988: “It is with intense and profound affliction that I have read your letter dated June 2.” He continued, “With a paternal heart, but with all the gravity required by the present circumstances, I exhort you, Reverend Brother, not to embark upon a course which, if persisted in, cannot but appear as a schismatic act....”⁸²

On 17 June 1988, Cardinal Bernardin Gantin, Prefect of the Congregation for Bishops, delivered canonical warning to Lefebvre beseeching him not to proceed: “[...]if you should carry out your intention ... you yourself and also the bishops ordained by you shall incur *ipso facto* excommunication *latae sententiae* reserved to the Apostolic See in accordance with canon 1382.”⁸³

On 29 June, Ratzinger telegrammed Lefebvre beginning with the words, “For the love of Christ

⁷⁸ Ibid., 99.

⁷⁹ Ibid., 100.

⁸⁰ Cf. Ibid., 101-102.

⁸¹ Ibid., 108-109.

⁸² Ibid., 110.

⁸³ Ibid., 112.

and His Church, the Holy Father asks you with paternal firmness to leave today for Rome without proceeding to the episcopal consecrations on June 30 which you have announced.”⁸⁴

At the seminary in Écône on 30 June 1988, Lefebvre proceeded with the consecration of four bishops, none of whom had been appointed by the Holy Father nor determined suitable by the Holy See. When the Apostolic Mandate was requested to be seen as part of the ritual, the archpriest responded, “We have it. [...] We have this Mandate from the Roman Church....”⁸⁵ The next day, Gantin decreed that excommunication *latae sententiae* had been incurred by Lefebvre’s action and that de Castro Mayer incurred the same penalty as co-consecrator. The decree states that Lefebvre “performed a schismatical act by the episcopal consecration....”⁸⁶ It warns: “The priests and faithful are warned not to support the schism of Archbishop Lefebvre; otherwise they shall incur *ipso facto* the very grave penalty of excommunication.”⁸⁷

From the time the penalties of excommunication were imposed, Lefebvre continued in dialogue with the Holy See until his death on 25 March 1991. Leadership of the SSPX has continued under its clergy as have negotiations in starts and stops with no major juridic actions taking place for nearly twenty years.

Then, on 15 December 2008, SSPX Bishop Bernard Fellay wrote in the name of the four SSPX bishops to Cardinal Dario Castrillón Hoyos, President of the Pontifical Commission *Ecclesia Dei* requesting remission of the formally declared *latae sententiae* excommunication of 01 July

⁸⁴ Ibid., 115.

⁸⁵ Ibid., 123.

⁸⁶ CONGREGATION FOR BISHOPS, Decree declaring the excommunication *latae sententiae* of Mgr. Lefebvre and those he consecrated bishop, 1 July 1988, in Ochoa, *Leges Ecclesiae*, vol. 8, col. 11326. N. 5285, English Translation in *Canon Law Digest* 12, 804-805, here, §1.

⁸⁷ LAISNEY, *Archbishop Lefebvre*, 126.

1988.⁸⁸ On 21 January 2009, Cardinal Giovanni Battista Re, Prefect of the Congregation for Bishops, decreed remission of the excommunication: “I remit the penalty of excommunication *latae sententiae* incurred by [those consecrated 30 June 1988], and declared by this Congregation on 01 July 1988. At the same time I declare that, as of today's date, the Decree issued at that time no longer has juridical effect.”⁸⁹

“The decree of remission does not identify, in explicit terms at least, the original cause for the excommunication, which was twofold:⁹⁰ schism and unauthorized episcopal consecration. ⁹¹ The wording, however, is explicit in remitting the penalties of excommunication. The Decree does not alter the affects of the suppression of the SSPX or the suspension of the clergy.

⁸⁸ Cf. CONGREGATION FOR BISHOPS, Decree Remitting the Excommunication “*Latae sententiae*” of the Bishops of the Society of St. Pius X, 21 January 2009, §1, in *Communicationes*, 41 (2009), 94-95, English translation in *Origins*, 38 (2008-2009), 533-534.

⁸⁹ *Ibid.*, §5.

⁹⁰ C. GLENDINNING, “The Priestly Society of Saint Pius X: The Past, Present, and Possibilities for the Future,” in *Studia Canonica* 48 (2014), 335.

⁹¹ For a treatment of the two delicts presented in the excommunication by John Paul II and conjecture as to why they were not each addressed in its remission by Benedict XVI, see PETERS, *Remission*, 8-29, esp. 14-29.

CHAPTER 2: THE LAW

In order to deliberate the juridic actions identified in Chapter 1, a number of canons will be presented. The juridic notion of schism according to canon law and its affects vis-a-vis ecclesiastical communion in light of *Lumen gentium* will be considered. In order to explore the consequential status of the SSPX, the *CCEO* and *Ecumenical Directory* regarding the status of other Catholic and non-Catholic ecclesiastical bodies will be taken into account.

2.1. *Communio*

Lumen gentium introduces the notion of *communio* to describe the association of the baptized with the Catholic Church.⁹² Explaining this, Bernal writes:

[...T]he juridical dimension of communion (or external communion) is materialized in the juridical relationships through which the faithful is actively present in the Church's juridical structure, specifically in the bonds of the profession of faith, the sacraments and the ecclesiastical system, (c. 205). In its juridical dimension, communion can be lost only through a constitutive act by the authorities, by virtue of which the faithful are deprived of the goods or rights that the Code lists in c. 1331 [the consequences of excommunication] and that are necessary and inseparable effects of excommunication as a canonical penalty.⁹³

John Paul II underscored the notion of communion when promulgating the 1983 *Code of Canon Law*: “Among the elements which characterize the true and genuine image of the Church, we should emphasize especially [...] the doctrine in which the Church is seen as a *communio* and which therefore determines the relations which should exist between the particular Churches and the universal Church, and between collegiality and the primacy...”⁹⁴

⁹² Cf. *LG*, esp. 13, §§2 and 3.

⁹³ J. BERNAL, “Offences and Punishments in General,” in *Exegetical Comm*, Volume IV/1, 326.

⁹⁴ JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, AAS, 75 [1983-II], viii-xiv, English Translation in *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999, xxx, §6.

2.1.1 *Plene in Communio*

Canon 205:⁹⁵ Those baptized are fully in the communion of the Catholic Church on this earth who are joined with Christ in its visible structure by the bonds of the profession of faith, the sacraments and ecclesiastical governance.

Every baptized individual is a member of the Christian Faithful. This presumed, c. 205 describes the externally verifiable bonds necessary for one to be *in full communion* with the Catholic Church. These are the profession of faith, the sacraments⁹⁶ and ecclesial governance, i.e., communion with the Supreme Pontiff and the bishops who in turn are in communion with him.

J. Fornés writes:

[...]it is to be kept in mind that it is not sufficient to refer exclusively to the bonds of charity which unite Christians, but also that the juridical aspects or imprint should also be taken into account, since [...] communion 'is not a vague affiliation, but rather, an organic reality, which requires a juridical form (LG, pen, 2).'⁹⁷

He continues:

Such bonds are synthesized in this canon into three aspects:

- a) The profession of faith, that is, adherence to a single *depositum fidei* as revealed in the sacred Scripture, transmitted by tradition, and as the magisterium of the Church proposes and interprets it."
- b) The unity among the sacraments, the first of which is baptism – the sacrament which is *ianua Ecclesiae* (cf. LG 14) – which is precisely that which grants the *condition of the faithful* (cf. 204). [...]
- c) Unity with the Pastors or hierarchical communion (the profession "of the ecclesiastical system)".⁹⁸

Canon 209 §1:⁹⁹ The Christian faithful, even in their own manner of acting, are always obliged to maintain communion with the Church.

Sustaining communion with the Church is a basic life-stance to be adopted by all Christian faithful, lay and cleric alike. Of this, A. McGrath writes, "In practice, this will mean making sure

⁹⁵ *CCEO*, c. 8; *LG*, 14.

⁹⁶ Because the clergy of the SSPX have valid orders, though some illicit, the Sacraments as bond between the SSPX and the remainder of the Catholic Church has not been a question and is therefore not treated herein.

⁹⁷ J. FORNÉS, "Christ's Faithful," in *Exegetical Comm*, Volume II/1, 21-22.

⁹⁸ *Ibid.*, 22-23.

⁹⁹ *CCEO* c. 12.

that the three bonds of communion [...] remain unbroken. The effort to maintain this communion is not to be restricted to any particular activity, e.g., purely religious activity, but is to be an integral part of the Christian's whole pattern of life."¹⁰⁰ This obligation is so grave that ecclesiastical law defines its antithesis, schism, as a delict with penalties that are commensurately grave.

Full communion with the Church is requisite in order for those with episcopal dignity to have membership in the College of Bishops. *LG* states: "Hence, one is constituted a member of the Episcopal body in virtue of sacramental consecration and hierarchical communion with the head and members of the body."¹⁰¹ [...] A person becomes a member of the College by virtue of Episcopal consecration and by hierarchical communion with the head of the College and with its members."¹⁰²

Canon 375, §2: Through episcopal consecration itself, bishops receive with the function of sanctifying also the functions of teaching and governing; by their nature, however, these can only be exercised in hierarchical communion with the head and members of the college.

By episcopal consecration, one receives the *functions* of the *tria munera*, but the power to *exercise* those functions is only present when one is in full communion with the pope and the bishops in communion with him. Therefore, if all requisites apart from the pontifical mandate are in place at the time of an episcopal consecration, the validity of the order is presumed but one is not constituted a member of the College of Bishops.

The Profession of Faith¹⁰³ comprises a combination of the Nicene-Constantinopolitan Creed as well as three articles developed by the CDF. Together, they form a declaration of assent to the

¹⁰⁰ A. McGRATH, "Book II: The People of God, Title I: The Obligations and Rights of All Christ's Faithful," in SHEEHY, *The Canon Law*, 119.

¹⁰¹ *LG*, 22, §2.

¹⁰² *LG*, Preliminary Note of Explanation, 2°.

¹⁰³ Cf. CDF, *Profession of Faith and Oath of Fidelity*, AAS 81 (1989), 104-106, English translation in *CCLA*, 647-648; cf. also c. 833.

ancient teaching of the Church, through Scripture, Sacred Tradition and magisterial teaching whether declared definitively or not.¹⁰⁴ This Profession of Faith “must be made by specific members of the faithful when they receive an office that is directly or indirectly related to deeper investigation into the truths of faith and morals, or is united to a particular power in the governance of the Church,”¹⁰⁵ such as bishops prior to taking canonical possession of office (c. 380; *CCEO* c. 187, §1) and those listed in c. 833.

Canon 752:¹⁰⁶ Although not an assent of faith, a religious submission of the intellect and will must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning faith or morals when they exercise the authentic magisterium, even if they do not intend to proclaim it by definitive act; therefore, the Christian faithful are to take care to avoid those things which do not agree with it.

With a serious religious respect, an *assensus fidei* as per *LG 25* the faithful are to embrace matters of faith and morals taught by ecclesiastical authority not definitively proclaimed and perhaps not intended to be.¹⁰⁷ This response by the believer is required due to the fact that the pope and the college of bishops in union with him retain the exercise of their authority to teach authentically, even when they teach nondefinitively.¹⁰⁸

F. Sullivan finds a discrepancy: *LG 25* calls for *obsequium religiosum* to be given to the *magisterial teaching authority*, emphasizing the disposition of the will, whereas c. 752 calls for this

¹⁰⁴ JOHN PAUL II, Apostolic Letter *Motu Proprio Ad tuendam fidem*, 18 May 1998, AAS 90 [1998], 457-461, §§1-3, English translation available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_1998_professio-fidei_en.html (12 February 2018).

¹⁰⁵ *Ibid.*, §1.

¹⁰⁶ *CCEO* c. 599.

¹⁰⁷ Cf. J. CORIDEN, “Book III: The Teaching Office of the Church [cc. 747-833], Introductory Canons,” in *CLSA Comm1*, 548, col. 2.

¹⁰⁸ Cf. J. CORIDEN, “Book III: The Teaching Function of the Church [cc. 747-833], Introductory Canons [cc. 747-755]” in *CLSA Comm2*, 917, col. 1.

assent of faith to be given to the *doctrine*, which emphasizes an act of the intellect.¹⁰⁹ His resolution is that c. 752 reflects an evolving interpretation of *LG* in that *obsequium* “is both of will and of intellect, and in that order. The immediate object of *obsequium* is the supreme teaching authority of the Pontiff; ‘acknowledging’ his authority is not merely an intellectual act: it is a readiness of will to submit to it. From this readiness of will follows the intellectual act of ‘adhering’ to the judgments made by him.”¹¹⁰

Sullivan argues that it is indefensible to justify non-assent to papal teaching simply because one is not convinced by the reasoning of said teaching. He writes:

This idea would empty *obsequium religiosum* of any real meaning, ignoring the capacity and obligation of the will to bring its influence to bear upon the mind to induce it to give its assent even though the reasons given do not fully convince it. My view is that the justification of non-assent requires more than the mere fact that I am not convinced by the arguments given for the teaching: it requires that, despite my best efforts to agree, positive reasons that make me doubt whether it is true remain so strong in my mind that I really am unable to give it my sincere assent.¹¹¹

Canon 754:¹¹² **All the Christian faithful are obliged to observe the constitutions and decrees which the legitimate authority of the Church issues in order to propose doctrine and to proscribe erroneous opinions, particularly those which the Roman Pontiff or the college of bishops puts forth.**

Constitutions and decrees are issued in order to propose doctrine and/or to counter error. The obligation to observe them is particularly binding upon those constitutions and decrees issuing from the Supreme Pontiff or the college of bishops in union with him.¹¹³ F. Morrissey concurs, stating, “[Canon 754] would also cover disciplinary matters. [...] Particular attention and respect

¹⁰⁹ Cf. F. SULLIVAN, “The Response to the non-Definitive Magisterium,” in *Studia Canonica* 23 (1989), 273.

¹¹⁰ *Ibid.*, 274.

¹¹¹ *Ibid.*, 275-276.

¹¹² *CCEO* c. 10.

¹¹³ Cf. J. CORIDEN, “Book III: The Teaching Function of the Church [cc. 747-833], Introductory Canons [cc. 747-755],” in *CLSA Comm2*, 918, col. 2-919, col. 1.

should be paid to documents issued by the Congregation for the Doctrine of the Faith and other dicasteries of the Holy See.”¹¹⁴

CCEO c. 27: A community of the Christian faithful, which is joined together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as *sui iuris* by the supreme authority of the Church, is called in this Code a Church *sui iuris*.

Unique to the East, this canon presents a number of factors which define a Church *sui iuris*. It is: A community of the Christian faithful, which is joined by a hierarchy according to Catholic ecclesiastical law, which is also either: *expressly* recognized as *sui iuris* by the supreme authority of the Church, or *tacitly* recognized as such by the supreme authority of the Church.

Churches *sui iuris* are entities erected and recognized as such *de iure*. All Churches *sui iuris* are *plene in communio* with all the externally verifiable marks as described in c. 205 and (CCEO, c. 8) and shared by each of the twenty-four Churches *sui iuris* which, together with the Latin Church, comprise the Catholic Church.

Canon 373: It is only for the supreme authority to erect particular Churches; those legitimately erected possess juridic personality by the law itself.

The one and only Catholic Church exists in and from Particular Churches. Particular Churches take a number of forms, the foremost of which is the diocese. Others likened to dioceses are territorial prelatures and abbasies, apostolic vicariates and prefectures, apostolic administrations erected in a stable manner,¹¹⁵ military ordinariates¹¹⁶ and Anglican ordinariates.¹¹⁷ Only the Supreme Pontiff establishes these entities.

¹¹⁴ F. MORRISEY, “Book III: The Teaching Office of the Church, Introduction,” in SHEEHY, *The Canon Law*, 419.

¹¹⁵ Cf. c. 368.

¹¹⁶ Cf. JOHN PAUL II, Apostolic Constitution *Spirituali militum curae*, 21 April 1986, AAS 78 (1986), 481-486, English translation in J. RENKEN, *Particular Churches and the Authority Established in Them: Commentary on Canons 368-430*, Ottawa, St. Paul University, 2011, 255-259.

¹¹⁷ Cf. BENEDICT XVI, Apostolic Constitution *Anglicanorum coetibus*, 04 November 2009, AAS 101 (2009) 985-990, English translation in *ibid.*, 311-315.

2.1.2 *Communio imperfecta*: Non-Catholic Christian Churches and Ecclesial Communities

The *communicatio in sacris* of c. 844 implies two categories of Christian faith communities: “Other non-Catholic Christian Churches” and “Ecclesial Communities.” Generally, “Other Churches” have Apostolic Succession and thus valid sacraments but a hierarchy not *plene in communio* with Catholic ecclesiastical governance. The primary examples are those who separated as a result of the great East-West Schism of 1054: the so-called Orthodox and those Churches judged by the Holy See to be in the same condition as they.¹¹⁸ “Ecclesial Communities” are share in Christian dignity through Baptism but are neither Orthodox nor in the same condition as they.¹¹⁹

The Second Vatican Council’s Decree on Ecumenism *Unitatis redintegratio* sets a new Catholic perspective toward non-Catholic Christians, stating that “the Catholic Church embraces upon them as brothers, with respect and affection.”¹²⁰ Yet while referring to non-Catholic Christians as brethren, such communities cannot be described as “sister Churches.” This would present an impression that “in fact the one Church of Christ does not exist, but may be re-established through the reconciliation”¹²¹ of these communities with Catholicism. This would be contrary to the notion of a singular *communio* as presented in *LG*.

From *Unitatis redintegratio* grew the so-called *Ecumenical Directory* of 4 May 1967. Regarding Orthodox Christians, it states, in part: “Those Eastern Christians who, in the absence of sufficient confessors of their own church, spontaneously desire to do so may go to a Catholic

¹¹⁸ Cf. F. MCMANUS, “Book IV: The Sanctifying Function of the Church [cc. 834-1253], Part I: The Sacraments [cc. 840-1165], Introductory Canons [cc. 840-848],” in *CLSA Comm2*, 1025, col. 2.

¹¹⁹ *Ibid.*, 1026, col. 2.

¹²⁰ SECOND VATICAN COUNCIL, Decree on Ecumenism *Unitatis Redintegratio*, 21 November 1964, 3, §1. In W. ABBOTT, (gen. ed.), *The Documents of Vatican II*, Piscataway, NJ, New Century Publishers, 1966, 345.

¹²¹ CDF, “Note on the Expression ‘Sister Churches,’” 30 June 2000, English translation in RENKEN, *Particular Churches and the Authority Established in Them, Commentary on Canons 368-430*, Ottawa, Faculty of Canon Law St. Paul University, 2011, 277-281, here 277, §2.

confessor. In similar circumstances a Catholic may approach a confessor of an Eastern Church which is separated from the Apostolic Roman See.”¹²²

Regarding non-Catholic Christian ecclesial communities it states, in part: “The Church can for adequate reasons allow access to those sacraments [Eucharist, Penance and Anointing of the Sick] to a separated brother [...] so long as he declares a faith in these sacraments in harmony with that of the [Catholic] Church, and is rightly disposed.”¹²³

It is clear that the formulation of c. 844, §§2-3 originates here. It is noteworthy that the exceptions granted by c. 844 appear exclusively within the context of Christian communities lacking full communion as defined by c. 205, (CCEO c. 8). In 1993, the *Directory for the Application of Principles and Norms on Ecumenism* was promulgated, replacing *Ecumenical Directory/67* and heartily reaffirming *communicatio in sacris* in corresponding terms.¹²⁴

2.2 Specific Juridic Acts

The facts demonstrate that three major juridic acts against the SSPX and/or Mgr. Lefebvre were enacted. These are the suppression of the SSPX, the suspension of Mgr. Lefebvre and others and finally the excommunication of Lefebvre and the four bishops he illicitly consecrated.

2.2.1 Suppression of a Religious Institute

Canon 120, §1:¹²⁵ A juridic person is perpetual by its nature; nevertheless, it is extinguished if it is legitimately suppressed by competent authority or has ceased to act for a hundred years.

Canon 584:¹²⁶ The suppression of an institute pertains only to the Apostolic See; a decision regarding the temporal goods of the institute is also reserved to the Apostolic See.

¹²² *Ecumenical Directory/67*, #46, 18, implicitly recognizing apostolic succession and validity of sacraments.

¹²³ *Ibid.*, #55, 19-20, implicitly recognizing that the denomination to which the individual belongs may *not* have valid sacraments, but that the individual may believe the sacraments of the Catholic Church are indeed valid.

¹²⁴ Cf. *Ecumenical Directory/93*, particularly articles 123, 129, §3, 130-133.

¹²⁵ CCEO cc. 925, 927, §1; CIC/17, 102, §1.

A juridic person is extinguished if legitimately suppressed by competent ecclesiastical authority. Suppression of a religious institute is specifically reserved to the Holy See regardless of the erecting authority, even if local.¹²⁷ Even prior to papal approval, every formally erected religious institute becomes part of the universal Church's patrimony.¹²⁸ Since it is a public juridic person, the temporal goods of the institute are ecclesiastical goods. "Just like suppression, the Apostolic See has exclusive power to dispose of the same (cf. c. 123)."¹²⁹

2.2.2 Schism, *Suspensio a divinis* and Related Penalties

Suspension was initially incurred by Lefebvre 23 July 1976 as a consequence of his persistent schismatic contumacy, culminating in the illicit ordination of priests 29 June 1976. This suspension was and continues to be imposed upon the priests and bishops ordained illicitly by Lefebvre since then and upon the priests ordained by the illicit bishops.

CIC/17 c. 2278:¹³⁰ §1: Suspension is a censure by which a cleric is prohibited from office or benefice or both.

§2, 2°: Suspension: From divine things [restricts one] from every act of the power of orders, whether one has obtained it from ordination or through privilege.

The effects of suspension are divisible¹³¹ and affect only clerics. The canon's open-ended nature allows its extent to be determined by the law or precept itself or by the one imposing the

¹²⁶ CCEO, cc. 438, §§1, 2, 4; 507, 556; CIC/17 cc. 493, 1501.

¹²⁷ T. RINCÓN-PÉREZ, "Institutes of Consecrated Life," in *Exegetical Comm*, Volume II/2, 1496. Cf. also G. LO CASTRO, "Juridical Persons," in *Exegetical Comm*, Volume I, 784 and the discussion of the fact that the power to suppress the juridic person is more restricted than the power to erect in cases of religious institutes.

¹²⁸ Cf. T. RINCÓN-PÉREZ, "Institutes of Consecrated Life," in *Exegetical Comm*, Volume II/2, 1496.

¹²⁹ *Ibid.*, 1497.

¹³⁰ Canon 1333; CCEO c. 1432.

¹³¹ Cf. RENKEN, *Penal Law*, 110-111.

penalty.¹³² The consequence of suspension in this case is that described in §1, 1° *supra*: prohibition by the Church from exercising the power of orders due to illicit ordination.¹³³

The law in effect at the time states in *CIC/17* c. 2283 that those things mentioned in *CIC/17* c. 2265 regarding excommunication also apply to suspension. That is, one is prohibited from electing, presenting or appointing; obtaining dignities, offices, benefices, ecclesiastical pension or other duties in the Church and from being promoted to Orders.

***CIC/17* c. 2373:¹³⁴ [The following] incur upon the fact suspension from the conferral of orders for one year reserved to the Apostolic See: 1°. Those who contrary to canon 955 ordain another's subject without dimissorial letters from his own Ordinary....**

***CIC/17* c. 2374:¹³⁵ Whoever approaches orders without dimissorial letters [...] is by that fact suspended from the order received....**

This penal sanction is connected to the action of a bishop who ordains contrary to *CIC/17* c. 955, §§1 and 2 (c. 1015), requiring a man to be ordained to the diaconate or presbyterate by his own proper bishop or with his permission in the form of dimissorial letter. When this takes place, both the ordaining bishop and the ordinand are in offense of ecclesiastical law. The illicitly ordaining bishop is prohibited from conferring that particular Order for a period of one year. The one receiving Orders from the offending bishop is suspended from that order, *ipso facto*.¹³⁶

Canon 751:¹³⁷ [...S]chism is the refusal of submission to the Supreme Pontiff or of communion with the members of the Church subject to him.

¹³² Cf. T. GREEN, "Book IV: Sanctions in the Church [cc. 1311-1399], Title IV: Penalties and Other Punishments [cc. 1331-134]," in *CLSA Comm2*, 1552, col. 1.

¹³³ Cf. PONTIFICAL COMMISSION *ECCLESIA DEI*, N. 117/95, 29 September 1995.

¹³⁴ *CCEO* c. 1459, §2 c. 1383.

¹³⁵ Canon 1383.

¹³⁶ Cf. RENKEN, *Penal Law*, 294-295.

¹³⁷ *CCEO* c. 1437, *CIC/17* c. 1325, §2.

Schism may be created in two ways: refusal of submission to the Supreme Pontiff and refusal of communion with the members of the Church subject to him. The term used for “refusal” in the current code is *detrectatio*, replacing *recusat* used in *CIC/171*, c. 325, §2. *Black’s Law Dictionary* defines the adjectival “recusant” as “Refusing to submit to an authority or comply with a command.”¹³⁸ Coriden states that the use of *detrectatio*, also a term for “refusal,” is a stronger, broader term “implying an adamant refusal and persistent rejection of communion.” The additional nuance of “adamant and persistent” provided by the term *detrectatio* now renders the definition of schism as something more than mere stubbornness or a transient position on submission to the Supreme Pontiff and/or communion with those subject to him. In a word, one must needs “work” to find one’s self in schism; it cannot be done accidentally nor can it be ephemeral.¹³⁹

E. Tejero writes, “Schism is a rupture of the juridical bond and charity that links the faithful to each other and to the Roman Pontiff, which occurs when one refuses to submit to the authority of the Pope as head of the universal Church or denies that one has religious communion with the members of the Church that are in union with the Pope.”¹⁴⁰ J. Renken differentiates between a denial of authority which constitutes schism and simple disobedience which does not.¹⁴¹ One could add that schism may be disobedience on account of the denial of authority. Morrisey agrees that simple disobedience does not *in se* constitute schism, stating: “There must be a real repudiation of his authority, not just a simple act of disobedience.”¹⁴²

¹³⁸ B.A. GARNER (ed.), *Black’s Law Dictionary, Tenth Edition*, St. Paul, MN, Thomson Reuters, 2014, 1467, col. 2.

¹³⁹ J. CORIDEN, “Book III: The Teaching Function of the Church [cc. 747-833] Introductory Canons [cc. 747-755],” in *CLSA Comm2*, 916, col. 1 and cf. col. 2.

¹⁴⁰ E. TEJERO, “The Teaching Office of the Church,” in *Exegetical Comm*, Volume III/I, 37.

¹⁴¹ Cf. Renken, *Penal Law*, 203, footnote 14.

¹⁴² F. MORRISEY, “Book III: The Teaching Office of the Church, Introduction,” in SHEEHY, *The Canon Law*, 418.

Schism is opposed to and ruptures communion. Therefore, it bears formidable consequences. J. Fornés writes:

Therefore, those who fall under any of these categories [heresy, apostasy schism] are not in full communion with the Church. As a matter of fact their status as faithful is affected: this involves those who are faithful (baptized) but who are not so in the full sense of the word, and, despite the fact that they continue to belong in some fashion to the Church, they are ‘separated’ from it. From a juridical point of view, these circumstances carry with them the suspension of specific ecclesial rights and obligations (the rights of the faithful or rights inherent to Christians) except for those which refer to reintegration into full ecclesial communion.”¹⁴³

Canon 1364, §1:¹⁴⁴ Without prejudice to the prescript of can. 194, §1, n. [...] a schismatic incurs a *latae sententiae* excommunication; in addition, a cleric can be punished with the penalties mentioned in can. 1336, §1, nn. 1-3.

§2:¹⁴⁵ If contumacy of long duration or the gravity of scandal demands it, other penalties can be added, including dismissal from the clerical state.

Severe penalties exist for those who create schism, even deprivation of ecclesiastical funeral (c. 1184, §1, 1°). While not technically a sanction, it is an administrative provision¹⁴⁶ making a poignant statement to the living as to the gravity of schism. The expiatory penalties of c. 1336, §1, nn. 1-3 may also be added if the perpetrator is a cleric. These include a prohibition from or an order to residence in a certain place or territory, privation of power, office, function, right, privilege, faculty, favor, title or insignia, a prohibition against exercising these in general or within or outside a certain place. Schism may also “lead to loss of ecclesiastical office (c. 194, §1, 2°), to dismissal from one’s religious community (c. 694, §1, 1°), to irregularity for receiving Holy Orders (c. 1041,

¹⁴³ J. FORNÉS, “Christ’s Faithful,” in *Exegetical Comm*, Volume II/1, 23-24.

¹⁴⁴ *CCEO* cc. 1436, §1, 1437, *CIC/17* c. 2314, §1.

¹⁴⁵ *CIC/17* c. 2314, §1, 2° and 3°.

¹⁴⁶ Cf. RENKEN, *Penal Law*, 206. Penal sanctions can only affect the living.

§2) or for exercising them (c. 1044, §1, 2°)...”¹⁴⁷ The law provides for the severest of penalties, removal from the clerical state, if the contumacy is particularly protracted or grave.

2.2.3 Episcopal Consecration, Excommunication and Remission

Canon 1382:¹⁴⁸ A bishop who consecrates someone a bishop without a pontifical mandate and the person who receives the consecration from him incur a *latae sententiae* excommunication reserved to the Apostolic See.

Application reaches beyond the canon’s text. On 6 June 2011, the Pontifical Council for Legislative Texts issued a *Declaration on the Proper Application of c. 1382*, stating that in addition to the one consecrating and the one being consecrated, “those who assume the task of so-called co-consecrators, that is, they impose their hands and recite the consecratory prayer in the ordination [...] are co-authors of the crime and therefore equally subject to criminal sanctions.”¹⁴⁹ Naturally, the status of each person involved in an Episcopal ordination without pontifical mandate must be considered individually.¹⁵⁰ Following an illicit episcopal ordination in China in 2016, it was announced that the ordained incurred excommunication *latae sententiae* according to c. 1382.¹⁵¹

J. Bernal remarks that declared excommunication by its nature is publicly known, adding “the aggravating factor that performing prohibited acts will cause even greater scandal. Therefore, it is understandable that the legal prohibitions in this case are more rigorous.”¹⁵² The consequences of a declared penalty are listed in c. 1331. The effects of excommunication are not divisible; all the

¹⁴⁷ J. CORIDEN, “Book III: The Teaching Function of the Church [cc. 747-833] Introductory Canons [cc. 747-755],” in *CLSA Comm2*, 915, col. 2.

¹⁴⁸ *CCEO* c. 1459, §1; *CIC/17* c. 2370.

¹⁴⁹ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Dichiarazione sulla retta applicazione del canone 1382 del Codice di diritto canonico (6 June 2011) in *Communicationes*, 43 (2011) 30-33, §3.

¹⁵⁰ RENKEN, *Penal Law*, 279-280.

¹⁵¹ See “China: ‘Clandestine’ bishop ordained without Pope’s consent,” at <http://www.lastampa.it/2016/10/10/vaticaninsider/eng/world-news/china-clandestine-bishop-ordained-without-popes-consent-bRZqqDgXCUHIEI1260SGIN/pagina.html> (12 February 2018).

¹⁵² J. BERNAL, “Offences and Punishments in General,” in *Exegetical Comm*, Volume IV/1, 326-327.

effects always affect every person under this form of censure.¹⁵³ Those who have incurred excommunication are forbidden to do fourteen things, such as:

1. To have any ministerial participation in celebrating the sacrifice of the Eucharist or any other ceremonies of worship whatsoever (c. 1331, §1, 1°, cf. c. 834) and must be prevented from doing so or the liturgical action must be stopped unless a grave cause precludes this (c. 1331, §2, 1°);
2. To celebrate the sacraments or sacramentals and to receive the sacraments; (c. 1331, §1, 2°), or to celebrate sacramentals (cf. c. 1166);
3. To exercise any ecclesiastical offices, ministries, or functions whatsoever or to place acts of governance validly (c. 1331, §1, 2°);¹⁵⁴

Canon 1318 states that excommunication is to be imposed “with the greatest moderation, and only for the more grave offenses.”¹⁵⁵ Interpreting its applicability is to be strict (c. 18).

Regarding the status of one illicitly consecrated to the episcopacy, J. Renken states:

In a notification issued on 12 March 1983 [... the CDF] stated that the ecclesiastical status of anyone ordained a bishop without the pontifical mandate remains as it had been before the illicit ordination, and that anyone subsequently ordained by one such illegitimately ordained bishop will also retain the ecclesial status which those other person had previously had in the Church.¹⁵⁶

Because the status of the one illicitly consecrated remains unchanged, he may not exercise the power or authority of a bishop. The Holy See has acted consistently, referring to an illicit episcopal ordination in China 24 November 2010 as “a painful wound upon ecclesial communion and a grave violation of Catholic discipline.” On 04 and 16 July 2011, the Holy See condemned two episcopal ordinations without papal mandate as illegitimate and illicit, stating that the bishops in question are not recognized and lack the authority to govern.¹⁵⁷

¹⁵³ Cf. RENKEN, *Penal Law*, 105.

¹⁵⁴ *Ibid.*, 107-108.

¹⁵⁵ Cf. J. BERNAL, “Offences and Punishments in General,” in *Exegetical Comm*, Volume IV/1, 329.

¹⁵⁶ RENKEN, *Penal Law*, 281.

¹⁵⁷ For examples, see “Statement of the Holy See: Episcopal Ordination in the Diocese of Leshan (Province of Sichuan, Mainland China) 04.07.2011,” at <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2011/07/04/0421/01055.html> (12 February 2018), and

CHAPTER 3: CONCLUSIONS OF LAW

The liceity of major juridic acts placed against the SSPX will be examined in light of the facts and law presented *supra*. The consequential status of the SSPX will be concluded.

3.1 Specific Juridic Acts

Three chief juridic acts placed against the SSPX are worthy of particular examination. Chronologically, they are: the suppression of the SSPX; the *suspensio a divinis* of Lefebvre and of those subsequently ordained by him; the excommunication of Lefebvre, the four bishops consecrated by him and the co-consecrator on 30 June 1988.

3.1.1 Suppression of the SSPX

According to the facts presented, Lefebvre and others were left feeling insulted by the two Apostolic Visitors in spite of their favorable observations. On 21 November 1974, Lefebvre reacted by expressing his distaste with and rejection of some elements of Vatican II, the magisterium enacting it and the reforms following it. His public *Declaration* crossed the line of distinction between a mere “lack of acceptance” to “rejection,” in contravention of cc. 752 and 754.

From the time of SS Peter and Paul (Galatians 2:11-21) to the present, debate has been vital to the Church which continues to assert “a just freedom of enquiry, of thought and of humble and courageous expression....” (GS, 62) and believes that “to search for the truth is everyone’s duty and right” (c. 748). At the same time, a balance must be found between obedience and the freedom of the faithful to express their needs (cf. 212). Clement I, the first Apostolic Father, reminds us: “Love is neither servile nor arrogant. It does not provoke schisms or form cliques, but always acts

“Dichiarazione della Santa Sede: Ordinazione episcopale nella diocesi di Shantou (Provincia di Guandong, Cina continentale) 16.07.2011” at <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2011/07/16/0438/01096.html#TESTO%20IN%20LINGUA%20INGLESE> (12 February 2018).

in harmony with others.”¹⁵⁸ For, the assertions in Lefebvre’s *Declaration* are not merely obscure opinions but are statements made by a prominent Archbishop rejecting both authentic Church teaching and the magisterium expressing that teaching. These statements were not made within a forum inviting legitimate intellectual debate but were published and disseminated causing confusion and even fomenting dissent in the minds and consciences of many. Of greater value than debate is the communion for which our Lord Himself prayed (John 17:21) and the Church’s charge to maintain it (c. 209). The faithful have a right to sound teaching in doctrinal communion with the Church particularly from a bishop who is entrusted with preaching the truth and protecting the faith (c. 386, [CIC/17 c. 336, §2, 1327, §1]). Thus, “sacred pastors have a specific responsibility to ensure the probity of that what is taught.”¹⁵⁹ Choosing which specific articles of the faith to accept or reject exposes the degree of one’s bond in the profession of faith.¹⁶⁰

As a consequence of Lefebvre’s threat to communion, an ad-hoc commission of cardinals was formed, questioning Lefebvre at length regarding the tenets of his *Declaration*. After being promised a recording or transcript of the meeting, the promise was reneged. At some point, this commission in consultation with Pope Paul VI concluded that the SSPX should and would be suppressed. In meantime, Mgr. Mamie, inheriting the position of host to the SSPX, determined that this potential source of division in the Church would not be allowed to thrive in his diocese. Due to

¹⁵⁸ “From a Letter to the Corinthians by Saint Clement I, pope,” in INTERNATIONAL COMMISSION ON ENGLISH IN THE LITURGY, *The Office of Readings According to the Roman Rite*, Boston, Daughters of St. Paul, 1983, 181.

¹⁵⁹ R. KASLYN. “Book II: The People of God [cc. 204-746], Part I: The Christian Faithful [cc. 204-329], Title I: The Obligations and Rights of All the Christian Faithful [cc. 208-223],” in *CLSA Comm2*, 275, col. 2.

¹⁶⁰ Cf. *Ibid.*, 274, col. 2.

the assertions found in Lefebvre's *Declaration*, never ostensibly retracted or moderated, Mamie had the requisite grave cause (*causa gravis*) to suppress the SSPX.¹⁶¹

Regardless of argument over the form in which the SSPX was erected, Mamie approached the authority competent (*CIC/17*, c. 102, §1 [c. 120, §1]) to suppress a religious institute (*CIC/17*, c. 493 [c. 584]) which was swiftly and enthusiastically granted. On 6 May 1975, Mamie suppressed the SSPX. An argument that Mamie did not have the competence to do so is dubious and supplanted by the facts that on 31 May 1975, Tabera assured Mamie that he had acted licitly and that the commission of cardinals issued Lefebvre on the same day a detailed letter of suppression, approved by Paul VI *in forma specifica*, precluding recourse of the decision. While it is unclear whether the action was administrative or judicial and whether or not Mgr. Lefebvre's right to defense was ensured, it is clear is that the Supreme Pontiff took the case to himself, as is entirely his right (c. 1405, §1, 4° [*CIC/17* c. 1557, §3]) There is no legal provision requiring a particular procedure to be followed when the pope elects to exercise his supreme authority in this way.

Lefebvre claimed that the events that led to the juridic suppression of the SSPX failed to take into account the good works of the SSPX as had been observed by the Apostolic Visitors. Priority instead was given to the content of the *Declaration* which appeared to have the endorsement of the members and associates of the SSPX. Fear that such vitriol would spread was well-founded, as it had already achieved publication and dissemination. In a matter of four weeks, the *mission to preserve tradition* had mutated into the *ideology of Traditionalism*. It is not unreasonable that both the local bishop and the Holy See did not want to have a hand in the spread of such a schismatic ideology and wished to disband the SSPX officially. However unclear the procedure used to arrive at the grave matter necessary for the suppression of a religious institute,

¹⁶¹ C. GLENDINNING, "The Priestly Society of St. Pius X: The Past, Present, and Possibilities for the Future, in *Studia Canonica* 48 (2014), 337.

the grave matter itself and the authority by which it was suppressed, i.e., the immediate authority of the Supreme Pontiff, are indisputable.

3.1.2 *Suspensio a divinis* and Related Penalties

In light of the facts presented, Lefebvre's behavior was that of refusal to submit to the Supreme Pontiff and refusal of communion with the members of the Church subject to him. There was open and public disobedience to the commands of the Pope himself and inciting others to disobedience (*CIC/17* c. 2331, §§1 and 2 [c. 1371, 2°]). By publicly rejecting the suppression of the SSPX, he rejected the word of the Pope, the competent Dicastery and the local bishop, thereby rupturing communion with each and with the persons in communion with them. The juridic term for this is "schism" (*CIC/17*, c. 1325, §2 [c. 751]).

Understanding that penalties are imposed as a last resort (*CIC/17* c. 2214, §2 [c. 1341]), Lefebvre received official warning of possible penalty and was given sufficient time to withdraw from contumacy (*CIC/17* c. 2233, §2 [c. 1347]). The law provides that Lefebvre's ordination of men to the presbyterate without dimissorial letters from their proper ordinaries *ipso facto* suspended him from the conferral of orders for one year, reserved to the Holy See (*CIC/17*, c. 2373) and suspended the ordinand from the order received (*CIC/17*, 2374).¹⁶² Since Lefebvre instead persisted in and even exacerbated contumacy, the way was open for the Holy Father to impose the determinate penalty¹⁶³ of excommunication *latae sententiae* (*CIC/17* c. 2314, §1, 1° [c. 1364]).

¹⁶² Because presbyteral ordinations were celebrated annually, it is possible that the penalty was incurred by Lefebvre but sometimes expired prior to the next ordinations, accomplishing nothing but a cat-and-mouse game for Lefebvre personally yet leaving those he ordained suspended from ministry, as the law does not provide a length of time in which suspension of the ordinand expires.

¹⁶³ Cf. RENKEN, *Penal Law*, 201.

On 22 July 1976, Paul VI, who alone had the right to impose such a penalty upon a bishop (*CIC/17*, c. 2227), chose to exercise great moderation (c. 1318) and imposed the lesser facultative penalty of *suspensio a divinis* (*CIC/17* cc. 2243, §2 and 2287 [c. 1353]), though the law has no such provision in the case of determinate penalties. *De iure*, penal decrees are suspended pending recourse (*CIC/17* c. 2287 [c. 1353]). It was not immediately clear to Msg. Lefebvre that the decision had been given *in forma specifica* so it was not unreasonable for him to lodge recourse with the Supreme Apostolic Tribunal of the Signatura.

At the same time, all the faithful have the right to approach the Sovereign Pontiff in any cause (*CIC/17*, c. 1569, §1 [c. 1417, §1]). While technically neither an appeal nor recourse, one may reasonably misinterpret this action as continuing suspensive effect. However, on 11 October 1976, Paul VI made it clear that he would not reverse the penal actions taken. From that point forward, there remained no way to excuse Lefebvre's refusal to observe the penalty. At the same time, the Pope requested that the properties of the SSPX be relinquished to the Holy See (*CIC/17* c. 493 [c. 584]). In another publically insubordinate act, Lefebvre did not comply.

The process was perhaps inelegant and Lefebvre's right to defense was to some degree thwarted by lack of promised information. Nonetheless, the facts clearly demonstrate that the Holy Father had taken the cause to himself and pronounced his decision *in forma specifica* definitively. There is no evidence to defend a notion that Paul VI's suspension of Lefebvre was illegitimate.

The penalty endures so long as contumacy continues¹⁶⁴ (*CIC/17* c. 2248, §1 [c. 1358, §1]); by all evidence, it does. In c. 1371, §1, which makes reference to the assent required by c. 752, the

¹⁶⁴ The penalty is suspended in danger of death (*CIC/17* c. 2261, §2 [c. 1335]).

law provides that if contumacy is persistent, the semi-determinate, facultative *ferendae sententiae* penalties from c. 1336, §1, 1-3° may be added.¹⁶⁵

The canons give wide latitude for determining culpability in the case of a schismatic act. The penalty may be mitigated or entirely vitiated (cc. 1323, 1324). Whether mitigation or vitiation is achieved is a matter of subjective judgment as a consequence of interpreting the canons in light of the facts and their circumstances. In this case, the Supreme Pontiff determined that the facts and circumstances were such that the act was indeed schismatic and performed in such a way as to hold the actor fully culpable and thus subject to the penalty.

That Lefebvre's contumacy continued despite repeated warning is well-established in the facts. For example, he continued annual ordinations and expanded the ministries of the SSPX. Preferring to continue negotiations, the Holy See chose to impose no additional penalties.

3.1.3 Excommunication

Genuine repudiation of papal authority and persistent contumacy existed antecedent to the consecrations and had been addressed earlier by the moderated penalty of *suspensio a divinis*. The Holy See had not taken further penal action against Lefebvre, even after his publicly defiant words, acts and failure to observe the suppression and *suspensio a divinis*. While the law provides under such circumstances that the guilty party be dismissed from the clerical state (c. 1364, §2),¹⁶⁶ once again, the mercy of the Sovereign Pontiff moderated the penalty in an effort to decapitate the SSPX without decapitating its head. Mgr. Lefebvre, in that sense, was given a great length of time and many opportunities to return to obedience. As an Archbishop, Lefebvre's disobedience was indeed of grave importance to the broader Church and thus his return to obedience an even greater desire.

¹⁶⁵ Cf. RENKEN, *Penal Law*, 201.

¹⁶⁶ Cf. PETERS, *Remission*, 22. Peters posits that the option of expelling a bishop from the clerical state was always available to Benedict, citing two cases in which this penalty was imposed due to persistent contumacy in schism.

The decree of excommunication presents a twofold motivation for imposition and its *de facto* declaration: schism (c. 751) as well as episcopal consecration without papal mandate (c. 1382) in contravention of c. 377, §1 and c. 378, §2 due to the fact that those illicitly consecrated were not appointed by the Supreme Pontiff or deemed suitable by the Holy See. The *latae sententiae* excommunication as penalty for schism is established *de iure* and demonstrated *supra*. The *latae sententiae* excommunication as penalty for episcopal consecration without papal mandate is established *de iure* according to c. 1382. This double *latae* results from two offenses: the state of schism was and continues to be manifest in the persistent contumacy through public rejection of the suppression of the SSPX, the *suspensio a divinis*, the authority of the Holy Father and the magisterial authority exercised by the Second Vatican Council; delicts unto themselves. This schismatic contumacy climaxed in the act of episcopal consecration without papal mandate; a delict unto itself. M. Daniel encapsulates what this act additionally represented, stating:

“Furthermore, it would seem that many who argue for the legitimacy of the consecrations [by Mgr. Lefebvre] base their arguments on the conviction that the Church as a whole (often called contemptuously ‘the Conciliar Church’), including Rome, has defected from the faith, to the extent that the only way of preserving the true faith was for Lefebvre to consecrate bishops without a pontifical mandate and against the express will of the Pope. Such a position [...] implies a rejection of the Church’s indefectibility.”¹⁶⁷

The legislator authentically interprets the law and there is no argument that Pope John Paul II was the legislator at the time the excommunication was declared. He made his interpretation within his legitimate authority. Therefore, there is no reasonable argument that the excommunication was somehow invalid simply because a different conclusion could have been drawn by someone else. The fact remains that the conclusion drawn by Supreme Authority had the force of law and all legitimacy behind it in a way that is most clear; clearer than a conclusion drawn by any lesser ecclesiastical authority. The Supreme Pontiff is the Supreme judge for the entire

¹⁶⁷ M. DANIEL, “Society of St. Pius X: A Reflection,” in *Australasian Catholic Record*, (2000) no. 4, 463.

Catholic world (c. 1442), there is no recourse against his decisions (c. 333, §3) and he is not judged (c. 1404). No one is required to like the decision, only to respect and accept it (c. 273).

3.2 Condition of the SSPX

The situation redounds to the notion of *communio* presented by Vatican II and developed thereafter. As presented in Chapter 2, *communio* is externally verified by agreement in doctrine, sacraments and ecclesiastical authority. All Christians are in some degree of communion due to baptism. Including the Latin Church, the twenty-five Churches *sui iuris* are in full communion and comprise the Catholic Church. The Orthodox Christian Churches are in partial communion, differing on matters of ecclesiastical authority. Other non-Catholic ecclesial communities, among them Protestant/Reform and Evangelical communities, vary widely in degree of communion.

3.2.1 The SSPX as a Church *sui iuris* or Particular Church

A Church *sui iuris* is described and defined by a number of verifiable external factors. To have such status, the community must be *expressly* or *tacitly* recognized as *sui iuris* by the supreme authority of the Church (*CCEO* c. 27). While such action is historically rare, the erection of a Church *sui iuris* is an executive act of the Holy Father. It does not happen as a mere matter of the passage of time, self-declaration or by any means *ipso facto* or *ipso iure*. For example, on 19 January 2015, the Holy Father decreed the erection of the Eritrean Metropolitan Church *sui iuris* and named its episcopal leadership. It was erected by decree which clearly states that the Church *sui iuris* is governed by *CCEO* cc. 155-173.¹⁶⁸ There is no evidence that the SSPX has been erected, defined or even described by competent authority as a Church *sui iuris* by competent

¹⁶⁸ “Erezione della Chiesa Metropolitana *sui iuris* eritrea e nomina del primo Metropolita” accessible in Italian at <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2015/01/19/0048/00098.html#Erezione%20della%20Chiesa%20Metropolitana%20sui%20iuris%20eritrea%20e%20nomina%20del%20primo%20Metropolita> (12 February 2018).

authority (*CCEO* c. 27) The SSPX is comprised entirely of clergy of the Latin Church and lacks any externally verifiable marks that would refute this.

Similarly there is no evidence that the SSPX has been erected by competent authority (c. 373) or defined as a Particular Church in any form recognized by the Holy See (c. 368). Such erection or recognition does not appear plausible under current ecclesiastical law.

This does not mean that being erected as another form of juridic person is not an option in a future that includes a regularized SSPX. This could conceivably take the form of a Society of Apostolic Life or Clerical Society of Apostolic Life (cc. 731-746) which would appear to be in keeping with the original organization and intention of the SSPX when it enjoyed legitimate juridic personality. Another viable option could be a Personal Prelature (cc. 294-297) in the manner of the prototype *Prelature of the Holy Cross and Opus Dei*, a structure which did not exist juridically until the 1983 *Code*. Paradoxically, the post-Vatican II reforms, so contested by the SSPX leadership, could be the very vehicle of their reconciliation and juridic regularity.

3.2.2 The SSPX as a Non-Catholic Christian Church or Ecclesial Community

Ecumenical Directory/67, *Ecumenical Directory/93* and c. 844 present norms of *communicatio in sacris* with non-Catholic Christian Churches and Ecclesial Communion who are not in full communion with the Church of Rome. It may seem intuitive that these norms could be applied to the ministers and faithful of the SSPX. A query in precisely this vein was submitted to the Pontifical Council for Promoting Christian Unity. The 03 May 1994 response from the dicastery states, in part: “I would point out at once that the Directory on Ecumenism is not concerned with the Society of Saint 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” [emphasis added].¹⁶⁹ This would appear to put the question to rest.

Though “a bishop is able to ordain men to the diaconate, priesthood and episcopate, [and] he thereby has the ability to set up his own ecclesial community,”¹⁷⁰ there is no evidence that the SSPX has attempted to form an ecclesial community unto itself apart from Catholicism or to erect a structure that claims to be parallel or equal to the Holy See. M. Daniel observes: “It would seem that on the whole, the four SSPX bishops have not set up rival jurisdiction: that is to say, they have not created dioceses for themselves, nor have they assumed all the prerogatives of a diocesan bishop. It would seem that they follow the directions of the Superior of the SSPX, who has not always been a bishop.”¹⁷¹

Nonetheless, there is cause for concern, as M. Daniel observes further:

[...O]ne can nevertheless see the beginnings of [the SSPX’s] abrogation of jurisdiction. Whilst Lefebvre himself never issued a marriage annulment, at least some of the SSPX bishops have done so. Only [a tribunal] properly constituted by a diocesan bishop or the Curia has the authority to issue annulments. Is this abrogation of powers of a diocesan Bishop the beginnings of a separate ecclesial community?¹⁷²

The assertion that only a tribunal or the Roman Curia may issue decrees of nullity in matrimonial cases may be arguable, but the fact remains that a bishop would have to understand himself as being a diocesan ordinary or similar in order to do so. Such actions by SSPX bishops and the mentality behind it highlight the need for ongoing negotiation with the goal of full communion before *communio* is further weakened.

¹⁶⁹ PONTIFICUM CONSILIUM AD CHRISTIANORUM UNITATEM FOVENDAM, Protocol number 2336/94/1, 3 May 1994, English translation in P. VERE, *Canon 844 §2 Can a Catholic Approach an SSPX Priest for the Sacraments*, Ottawa, St. Paul University, 1999, 18-19.

¹⁷⁰ M. DANIEL, “Society of St. Pius X: A Reflection,” in *Australasian Catholic Record*, [2000] no. 4, 461-462.

¹⁷¹ *Ibid.*, 463-464.

¹⁷² *Ibid.*, 465.

GENERAL CONCLUSION

Through equally licit acts, legitimate authority erected and suppressed the SSPX, suspended, excommunicated and ultimately lifted the excommunications imposed upon Lefebvre and others. To conclude otherwise would have to include a disingenuous reading of the facts and application of the law.

Application of the law supports the facts presented, that the SSPX is not:

1. A Church *sui iuris* or a Particular Church. The Supreme Authority of the Church has not decreed such an entity into being. There is no evidence that the clergy of the SSPX identify or intend to identify with any other custom, Rite or Church.

2. An Orthodox Church or a Church in similar condition to the Orthodox. The SSPX has not submitted to Orthodox hierarchy nor acquired membership in an Orthodox Synod. There is no evidence that the SSPX clergy have erected a hierarchical structure after the manner of the Orthodox, nor do they claim to be autocephalous.

3. A non-Catholic Protestant or Evangelical “denomination” or ecclesial community. The validity of Orders in the SSPX is undisputed. To wit: “There is no doubt about the validity of the ordination of the priests of the Society of St. Pius X.”¹⁷³ Their sacraments are therefore valid. The SSPX has made no statements contrary to Catholic dogma and have not claimed to establish an independent ecclesial community.

The Holy See has not recognized the SSPX or treated them as anything other than Catholic. In fact, the Holy See’s treatment demonstrates that the SSPX remain Catholic and are thus subject to the laws of the Church, rather than to any ecumenical or interecclesial rules or norms. The petition by the SSPX bishops to remit the excommunication demonstrates their own belief that they

¹⁷³ PONTIFICAL COMMISSION *ECCLESIA DEI*, Prot. No. 117/95, 29 September 1995.

are subject to the authority of the Holy See by recognizing that only the Holy See has the authority to remit the penalties. The response to remit the excommunications (but not the suspension) manifests acknowledgment by the Holy See that the SSPX is indeed part of the Latin Church and subject to the laws thereof; not some other entity to which ecclesiastical law does not apply (cf. c. 11).

At most, the clergy of the SSPX claim to be a Priestly Fraternity with the right to incardinate. While an illegitimate claim, it does not somehow transform to which religion they belong. “They are, however, suspended *a divinis*, that is prohibited by the Church from exercising their orders because of their illicit ordination.”¹⁷⁴ This means as well that the SSPX bishops do not have membership in the college of bishops because, having been consecrated illicitly, their status is that of presbyters not in full communion as expressed in *LG* and c. 205. Since the contumacy is unresolved and ongoing, the state of schism endures as does the suspension. As such, hierarchical communion with the head and members of the college of bishops is lacking and therefore power of governance is similarly lacking (c. 375, §2). In turn, the SSPX bishops lack the power to grant faculties making the validity of marriage and absolution by these *vagi* a matter of grave pastoral concern for the good of souls.

The juridic personality the SSPX gained upon its erection 01 November 1970 was lost on 06 May 1975 when it was suppressed. Consequently lacking juridic personality, the SSPX does not exist juridically and thus has no canonical status. Since a juridic person comes into existence either *de iure* or by decree of competent authority (c. 114), the mere fact that the SSPX has cohesion and self-declared leadership does not constitute them as a juridic person. As such, the SSPX is *de facto* an *organized* consortium of Catholics, but it is not *de iure* a Catholic *organization*.

¹⁷⁴ Ibid.

Lacking juridic personality, the SSPX has no authority of incardination and therefore no right to ordain without dimissorials. Their indisputably valid but illicit ordinations renders those ordained irregular, not incardinated and thus avoidably and inexcusably vagrant (c. 265).

The personal nature of the SSPX's motivation must be acknowledged. For many, it is a righteous cause justified by compelling emotional arguments. As it has been said, "[...C]ontrary to apostasy which is the result of an intellectual process, schism [...] is very often the result of an emotional decision."¹⁷⁵ The emotions associated with the juridic acts and decisions have often exacerbated tensions. On the other hand, emotion has also kept negotiation ongoing and underscores the deep personal investment of those involved and the importance they attach to their respective positions, lending additional gravity to the vitality of negotiations.

As per the judgment of the Holy Father and reiterated through numerous sources, the SSPX is in a state of effective schism. Nonetheless, they remain Catholic. The SSPX is not a sister Church to Catholicism since the SSPX is not some other Church; they are our Catholic brothers and sisters in need of prayerful, charitable and pastoral attention in order to make full their incomplete and tenuous communion. The supreme authority of the Church and the leadership of the SSPX have never challenged that "the situation of the members of this Society is an internal matter of the Catholic Church."¹⁷⁶ By no authority can an institution or an individual be decatholicated, for *semel catholicus, semper catholicus*.

¹⁷⁵ "[...C]ontrairement à l'apostasie qui est l'aboutissement d'une démarche intellectuelle, le schisme [...] est, bien souvent, le résultat d'une décision émotionnelle" (J. PELLETIER, "Le Phénomène des Abandons de l'Église par apostasie et par schisme," in *Studia Canonica*, 46 [2012], 360)

¹⁷⁶ PONTIFICUM CONSILIUM AD CHRISTIANORUM UNITATEM FOVENDAM, Protocol number 2336/94/1, 3 May 1994, English translation in P. VERE, *Canon 844 §2 Can a Catholic Approach an SSPX Priest for the Sacraments*, Ottawa, St. Paul University, 1999, 18-19.

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