John Salza, J.D. v. Robert Moynihan, Ph.D

During the past year, I have been an unsolicited beneficiary of the many email communiques of Dr. Bob Moynihan, Founder and Editor of *Inside the Vatican* magazine. Dr. Moynihan sends out regular emails explaining his personal views about current developments in the Church. In his recent Letter 21 entitled "*Can the Lefebvrian Split Be Healed? On What Terms*?," Dr. Moynihan repeatedly states that the Society of St. Pius X is in schism. In attempting to provide an update on the talks between Rome and "the followers of Archbishop Marcel Lefebvre" (which was actually no update at all because the talks are private and Moynihan admits he doesn't know "what is going on"), he writes:

"There has only been one official schism in the Roman Catholic Church since the Second Vatican Council. That occurred in 1988, when Archbishop Marcel Lefebvre consecrated four bishops against the express instructions of Pope John Paul II. That led to the excommunication of Lefebvre and those four bishops, and the schism of Lefebvre and his followers from Rome. Now 23 years have passed…Pope Benedict XVI has made it clear that he would like to heal this schism during his pontificate" (emphasis added).

As we will see, Dr. Moynihan not only does not know what is going on with the Society's talks with the Holy See, he also does not understand that the bishops and priests of the SSPX are members of the Catholic Church. While the SSPX's canonical status is irregular and thus their priests operate under supplied and not ordinary jurisdiction, the SSPX is not and never has been in schism (schismatics don't have "irregular" canonical situations because they are not subject to the Church's canon law at all). However, given the rash way in which the Holy See originally handled Archbishop Lefebvre's 1988 episcopal consecrations, we can understand why ignorant Catholics would hold this erroneous opinion. Let's take a brief look at the Church's law and the facts of the case to provide some clarity to the question.

The day after Archbishop Lefebvre consecrated the four bishops, Cardinal Gantin (not Pope John Paul II) declared on July 1, 1988 that the Archbishop had excommunicated himself by consecrating bishops without pontifical mandate in violation of canon 1382, and also referred to the consecration as a schismatic act under canon 1364.1. Although Pope John Paul II acknowledged the Gantin decree in his Motu Proprio *Ecclesia Dei Afflicta* (July 2, 1988), his Motu Proprio was not a papal decree of schism or even an authentic interpretation of the canon law addressing schism. And it couldn't have been, for under the pope's 1983 Code of Canon law, illicitly consecrating a bishop
is not a schismatic act
. Needless to say, the pope's punitive sanctions must be based on the current canon law of the Church as a matter of justice, upon which Catholics have a right to rely; otherwise, the punitive canons do not serve their purpose. Therefore, under the laws of the Church, neither Archbishop Lefebvre nor the bishops he consecrated was guilty of schism.

That is most likely why the Holy See gave Archbishop Lefebvre a canonical warning about excommunication and not schism before he consecrated the bishops. Dr. Moynihan should know the difference between disobedience and schism. A person's disobedience of a papal command does not give rise to schism; the person must actually deny the pope's authority to be guilty of the crime of schism, and this "refusal of submission" (under canon 751) must be interpreted in the strictest sense, in favor of the perpetrator. Even the liberal Fr. Yves Congar, a staunch critique of Archbishop Lefebvre, correctly explains that schism involves the refusal to accept the existence of the legitimate authority of the pope and not the refusal to accept a decision of that legitimate authority. Of course, Archbishop Lefebvre never denied Pope John Paul II's authority as the Vicar of Christ. In fact, he believed his actions to secure traditional priests were actually serving the pope and the Church at large.

In fact, the *Ecclesia Dei* commission has made it clear that the SSPX is *not* in schism. The commission declared that Catholics can fulfill their Sunday obligation by attending Masses

offered by SSPX priests – and this was
before
the excommunications were lifted! (see letter from Monsignor Perl dated September 27, 2002). If the priests of the SSPX were in schism, the
Ecclesia Dei
commission would not allow Catholics to assist at their Masses, since in doing so they would be allowing Catholics to worship outside the Church (and thus permitting them to break the Third Commandment). This proves that SSPX bishops and priests are not in fact in schism (for example, Catholics could not fulfill their Sunday obligation by attending liturgies offered by the schismatic priests of the Eastern Orthodox sects). The same commission has said that, so long as Catholics attend SSPX chapels out of their devotion to the Traditional Latin Mass (and not because they want to separate themselves from the Roman Pontiff – of course they don't!), such conduct is also not sinful.

The Holy See has stated that the SSPX situation is an internal matter of the Catholic Church and that the SSPX is not a counter-diocese or separate ecclesial structure. That the Church regards the SSPX situation as an "internal matter" also proves that SSPX bishops and priests are not in schism. Cardinal Castrillon Hoyos in five separate interviews has stated that the SSPX is not in formal schism (what Moynihan calls "official schism"), without any rebuke from the Holy See. The case of the Hawaii six also bears this out. Those excommunications would not have been lifted if the six Catholics were attending Masses offered by schismatic priests. And for those who insist that the SSPX priests are "suspended" (even though the Holy See has never issued a decree of suspension against them!), they would be admitting that SSPX priests are still subject to the Church's disciplinary laws. In such case, *the SSPX priests cannot be schismatics* who are outside the Church because, as previously stated, one cannot be outside the Church and still be subject to her canon law. This is a legal impossibility.

Pope Benedict XVI's explanation in his Motu Proprio *Summorum Pontificum* (2007) also clears the air that the SSPX is not in schism. Pope Benedict first explained that John Paul II's 1988 Motu Proprio was issued to bring the SSPX into "full unity" with Rome - not to declare they completely severed their unity with Rome, which is the case with a schismatic. (We note that canon law recognizes no such principle as "partial unity" or "partial communion"; these terms are unique to the ecumenical double-speak of the conciliar Church. One is either a member of the Body of Christ or completely severed from the Body as is the case with a schismatic). But Pope Benedict says the positive reason for his Motu Proprio, which updates
Ecclesia Dei
, is to come to "an interior reconciliation in the heart of the Church." Note that the pope says this reconciliation – which is between the SSPX and Rome – is an "interior" one that is taking place "in the heart of the Church," further demonstrating that the SSPX is inside the Church where the reconciliation is being pursued.

Pope Benedict has also made it clear that the SSPX is not in schism by vacating the excommunications declared under his predecessor. Schismatics remain excommunicated from the Church until they retract their errors, but Pope Benedict required no such retraction from the SSPX before nullifying the bishops' excommunications. This unprecedented action also indicates that the excommunications were not justified, and canon law supports that conclusion. As further explained below, canon law operates to mitigate or eliminate canonical penalties under certain circumstances. For example, canon 1323.4 provides that one is not liable to a penalty who, when violating a law, "acted coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience, unless the act is intrinsically evil or tends to the harm of souls."

As applied here, Archbishop Lefebvre made it clear in his sermon on June 30, 1988 that he believed he was acting "due to necessity" in consecrating the bishops to retain the traditional priesthood and Holy Mass which was all but abandoned by the bishops at that time. The archbishop was concerned about the Modernism that had ravaged the Church (remember these consecrations took place shortly after the scandalous Assisi prayer meeting) and was genuinely worried that, without traditional bishops, he would have orphaned his seminarians. When one reads his sermon, it is clear that the last thing the archbishop wanted to do was separate himself from Eternal Rome. Of course, the act of consecrating a bishop is not intrinsically evil, nor is it harmful to souls (especially when Archbishop Lefebvre wasn't purporting to grant the bishops jurisdiction or set up an ecclesial structure in opposition to the Church).

As we have said, the pope is the supreme legislator of the Church, and he obviously disagreed with Archbishop Lefebvre's "case of necessity." Nevertheless, canon law regards what is in the mind of the offender, not the pope. Canon 1323.7 says that no one is liable to a penalty who, when violating a law or precept, "without negligence thought that one of the circumstances mentioned (i.e., necessity) existed..." In other words, if Archbishop Lefebvre (not the pope) "thought, through no personal fault," that a "reason of necessity" existed to consecrate the four bishops, then he would not incur excommunication under canon 1382.

Can anyone credibly argue that Archbishop Lefebvre did not really think there was a "reason of necessity" or "grave inconvenience" which motivated his consecrations? I don't think so. Putting aside the issues of "traditionalism," I think any honest Catholic would conclude that the archbishop truly believed, "through no personal fault," that he had a case of necessity or grave inconvenience.

But even if one wants to accuse the archbishop of being culpably erroneous in his assessments, canon 1324.1 says that the penalty is diminished for one who “thought in culpable error that one of the circumstances [necessity] was present” (°8). Under canon 1324.3, where the penalty is diminished, “the accused is not bound by a *latae sententiae* penalty.” Thus, even if Archbishop Lefebvre was culpably wrong in his assessments, canon 1324 would diminish his canonical penalty to something
less
than excommunication. Archbishop Lefebvre knew canon law. He based his decision to consecrate the four bishops on this law providing for “reason of necessity” and “grave inconvenience.” If Catholics cannot rely upon canon law to govern their actions, then we have an absolute monarchy and not the Catholic Church.

Dr. Moynihan reveals his ignorance of these legal issues and does a grave disservice to the Church in accusing his fellow Catholics of being in “official schism” (Is there “unofficial” schism? Perhaps like “partial” communion?). Such a dismissive approach to the Society is often an excuse for an unwillingness or inability to substantively address the legitimate doctrinal issues that have been raised by the SSPX and entertained by the Holy See. Instead of showing us how the council’s teachings on religious liberty and non-Catholic religions can be reconciled with the teachings of the pre-conciliar Magisterium, Dr. Moynihan would rather alienate the SSPX and any other Catholic who would dare question Vatican II.

Gratefully, this is not the attitude of Pope Benedict XVI, who not only acknowledges that the Society is inside the Church, but also recognizes with the Society that the Church has suffered an attack on her theology, liturgy and discipline since the council. It is high time that Dr. Moynihan and his cohorts recognize that the crisis in the Church is not about “schism” or “full communion,” but about *the dogma of the Church*. This is precisely what Our Lady of Fatima revealed. In the end, Our Lady’s Immaculate Heart will triumph, and the Church’s dogma will be restored – without compromise.