

# The Great Excommunicator

(2002)

by Rev. Anthony Cekada

## **Bp. Kelly's communion rules divide families and violate canon law.**

YOUNG TRADITIONAL Catholics often worry about finding the right potential spouse — will I find a mate with whom I can share and practice my faith?

This worry is often compounded because of the divisions that exist among various traditional Catholic groups, a situation produced by the defection of the hierarchy at Vatican II, who otherwise would now be keeping order among faithful Catholics.

In Cincinnati where I now work, this difficulty is particularly acute due to the presence of a parish operated by Bishop Clarence Kelly's Society of St. Pius V (SSPV) and his Daughters of Mary.

His organization's policy is to refuse Holy Communion to people who assist at my Mass, and otherwise treat them as non-Catholics. Often there is a nasty public scene at their church when an SSPV priest grills a suspect communicant at the rail, and then passes him by if he gets the wrong answers.

(The most recent victim: a 90-year-old Cincinnati granny, visiting an SSPV church in Cleveland.)

The local SSPV school principal even exacts a written oath from parents that they and their children will not receive sacraments at my church.

You can imagine the difficulties that ensue, then, when a young man from the SSPV parish, say, takes an interest in a young lady from mine, and marriage looms.

The SSPV clergy pressure the young man and his family to get the young woman to "convert" — formally renounce any connection with me and agree to raise any children in "their" church.

The reason SSPV gives for this policy is that I and the various clergy with whom I work are somehow non-Catholic, excommunicated, or tainted, due to associations (no matter how remote) with persons or groups SSPV finds objectionable: Abp. P.M. Ngô-dinh-Thuc, the Mount St. Michael's priests (CMRI) and others.

Lay people sometimes find this grim picture convincing — traditional Catholics tend to be pessimists, after all — or at least unsettling enough so that they go along with the SSPV policy.

But the "policy" of a particular organization should not be the ultimate norm of action for anyone.

As traditional Catholics, the question must always be: "What norms does *the Church* lay down?"

The answer to this question is found in her Code of Canon Law (a body of 2414 individual laws, supplemented by some other legislation), as explained by "canonists" (legal experts), theologians and popes.

Here we discover that a Catholic has a *right* to receive the Eucharist, the priest has an *obligation* to give Communion to a Catholic, and that the priest may refuse someone the Eucharist only if that person is *forbidden by law* to receive it.

And the law defines precisely what makes someone “forbidden by law” to receive Holy Communion.

This I will outline in detail below.

I will also list the various reasons SSPV has given over the years for refusing my parishioners Communion. I will show in each instance that SSPV has either *invented* a crime or principle not found in canon law, or *misinterpreted* some principle that is.

In order to reassure the skeptical reader from an SSPV chapel that I have not somehow misinterpreted church laws myself, I will provide free of charge to anyone who writes me photocopies of the documentation I quote below, with all quoted passages underlined.

I encourage young people with friends in SSPV chapels to circulate this article and the accompanying documentation. So too, families that have been torn asunder by SSPV’s policies

The law of the Catholic Church, you will see, is a good deal more merciful and forgiving than SSPV would have you believe.

## The Right to Receive Communion

**QUESTION:** *Is SSPV permitted by church law to refuse Communion to my parishioners?*

### 1. You have a *right* to Communion unless forbidden by law.

- *Church Law:* “Every baptized person not forbidden by law may and *must* be admitted to Holy Communion.” (Canon 853)
- *Explanation:* “Every baptized person is by *divine right* entitled to receive Holy Communion, because baptism bestowed this right upon him... All are called by Christ to His banquet, and therefore the priests are in duty bound to offer every opportunity to the faithful for receiving Communion and to lay aside unreasonable and Jansenistic scruples.” **Canonist** C. Augustine, *Commentary on the New Code of Canon Law*, 1921, 4:225.

*Application:* My parishioners may and must be admitted to Communion, unless they are forbidden by law. The law quoted favors their right to receive, unless otherwise proven, and this right is one of *divine law*.

An SSPV priest in turn, is *in duty bound* to give them Communion. If he intends to refuse them Communion, he must demonstrate that some church law forbids them to receive. The burden of proving the unworthiness of my parishioners falls on SSPV.

### 2. The law bars the “publicly unworthy” from Communion.

- *Church Law:* “The Holy Eucharist may not be given to such as are *publicly unworthy*, e.g., the excommunicated, interdicted and notoriously infamous, unless they have given signs of repentance and amendment and have repaired the scandal publicly given.” **Canon 855.1.**

*Application:* An SSPV priest must demonstrate that my parishioners are “publicly unworthy.” This he may do by demonstrating that they are “excommunicated, interdicted, or notoriously infamous,” or that they fall into some other category that the law says renders them “publicly unworthy.”

### 3. Are my parishioners “publicly unworthy” under church law due to:

A. *Excommunication?* The 1917 Code of Canon Law lists 44 offenses for which Catholics incur automatic excommunication. See list, **Canonist** Ayrinhac, *Penal Legislation in the New Code of Canon Law*, 1936, 326-329.

SSPV must identify specifically: (1) Which of the 44 offenses my parishioners committed. (2) When and how they committed it.

B. *Interdict?* The 1917 Code of Canon Law lists 4 offenses for which Catholics incur automatic interdict. See Ayrinhac, 329-30.

SSPV must identify specifically: (1) Which of the 4 offenses my parishioners committed. (2) When and how they committed it.

C. *“Notorious Infamy”?* The 1917 Code of Canon Law lists 7 offenses for which Catholics incur automatic “infamy of law.” **Canonist** Ayrinhac, 121. N.B., “infamy of fact” can only be declared by their diocesan bishop.

SSPV must identify specifically: (1) Which of the 7 offenses my parishioners committed. (2) When and how they committed it.

D. *Another church law?* I am not aware of such a law.

If an SSPV priest maintains that some other such law applies, he must identify specifically: (1) The date the law was promulgated. (2) The paragraphs setting defining the offense and imposing the prohibition of communion. (3) When and how my parishioners committed the offense.

E. *Being Public and Notorious Sinners?* “Public and notorious sinners must not be admitted to Holy Communion...” These are defined as sinners who “(a) if they have been declared such by an ecclesiastical judge, or (b) if they have publicly confessed their crimes, or as we say, ‘pleaded guilty,’ or (c) if they have committed in word or deed *a crime* that still lasts and is known to the public as not atoned for and therefore is a source of scandal.” **Pope** Benedict XIV, in Augustine.

SSPV must identify specifically: (1) The species of the sin my parishioners committed. (2) When and how they committed it. (3) How it lasts and is still known to the public.

### 4. Summary and Conclusion:

“Every baptized person not forbidden by law may and *must* be admitted to Holy Communion.”

My parishioners must be admitted unless forbidden by law. Church law favors their right to receive. If SSPV intends to refuse them, it must prove that some church law forbids them to receive.

Church law bars the “publicly unworthy” from Communion. One becomes “publicly unworthy” under the law through: (1) excommunication, (2) interdict, (3) notorious infamy, (4) an offense against some other law resulting in prohibition of Communion, or (5) being a public and notorious sinner.

Church law sets forth in detail how each of these is incurred. An SSPV priest who intends to refuse communion to my parishioners, must specify: (1) The offense committed. (2) The law it violated. (3) When it was committed.

No SSPV priest has ever done so, despite my repeated public requests. SSPV cannot do so.

The conclusion is clear: SSPV is *not* permitted by church law to refuse communion to my parishioners. Accordingly, its members are *obliged* by Canon 853 to give my parishioners Communion.

We now pass on to various charges and objections.

## **Non-Catholics or Schismatics?**

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion because Abp. Thuc or CMRI members or Bp. Dolan, etc. were/are “non-Catholics,” or “schismatics.”*

### **1. Definition of a “member of the Catholic Church.”**

- *Papal Teaching:* “In the Church they alone are to be counted as members who have received the baptism of regeneration and profess the true faith, who, moreover, have not had the misfortune to separate themselves from the assembly of the Body, or been excommunicated by the legitimate authority by reason of very grave faults.” **Pope Pius XII, *Mystici Corporis*, Pontifical Teachings 1022.**

If SSPV maintains that Abp. Thuc, or CMRI members or Bp. Dolan, or I, etc. were “non-Catholics,” it must demonstrate that such a person was/is no longer a “member of the Catholic Church” under Pius XII’s definition. SSPV must show that such a person has either:

- (1) Separated himself from the “assembly of the Body” (schism), or
- (2) Been excommunicated by legitimate authority.

We begin with the more serious charge that such persons were/are “non-Catholics” because they were/are “schismatics.”

### **2. Definition of “Schismatic.”**

- *Church Law:* “If one, after the reception of baptism, while retaining the name of Christian, pertinaciously... refuses submission to the Supreme Pontiff or rejects communion with the members of the Church subject to the latter, he is a schismatic.” **Canon 1325.2.**

Church law does not contain another definition. This is the one SSPV must follow.

### **3. If an SSPV priest calls a baptized Catholic a “schismatic,” he must therefore identify when and how that person:**

- (1) Refused to be subject to the Roman Pontiff; OR
- (2) Rejected communion with the members of the Church subject to him, AND
- (3) Did so “pertinaciously” (“which presupposes bad faith, such that the schismatic knowingly and willing tears asunder

the unity of the Church.”: **Canonist** Coronata, *Institutiones Juris Canonici*, 4:1858)

**4. The SSPV priest must identify this occasion for each of the following:**

- *Abp. Thuc*: When did he “refuse subjection to the Roman Pontiff” or “reject Communion with members of the Church subject to the Roman Pontiff”? Was it “pertinacious,” presupposing bad faith, “knowingly, willingly” tearing asunder the unity of the Church?
- *Any CMRI member he claims is a “schismatic”*: Ditto: When? How?
- *Bishop Dolan*: Ditto again: When? How?
- *Me? Any of my parishioners*: Ditto again: When? How?
- *Your girlfriend or boyfriend*: Ditto again: When? How?

**5. If an SSPV priest cannot do so, he certainly cannot claim that any of the above were/are “schismatics.”**

**6. Summary and Conclusion.**

Pius XII teaches that a baptized person who professes the true faith is a member of the Catholic Church unless he is separated from it by excommunication or schism.

Church law gives a precise definition for the term “schismatic.” Anyone SSPV calls a schismatic must meet the criteria in this definition.

It cannot demonstrate that Abp. Thuc, CMRI members, Bp. Dolan, my parishioners, or your girlfriend fall under these criteria. SSPV cannot claim that such were/are “non-Catholics” or “schismatics.”

Therefore, SSPV may *not* refuse them Communion on these grounds.

**Contagious Excommunication?**

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion because Abp. Thuc, Bps. Carmona, Pivarunas, Dolan, etc. were/are “excommunicated.”*

**1. Identify the Excommunication Abp. Thuc Incurred:**

A. *The Code of Canon Law*? It lists 44 offenses. See **Canonist** Ayrinhac.

SSPV must identify specifically: (1) Which of the 44 offenses Abp. Thuc committed. (2) When and how he committed it.

B. *Holy Office Decree (1951)*? When the Communists took over China in the 1940s, they imprisoned Catholic bishops and clergy faithful to the pope. Bishops and clergy willing to renounce papal authority were allowed to form the “Chinese Catholic Patriotic Association,” which then elected priests to head the dioceses vacated by the imprisoned bishops. These priests then received episcopal consecration from the bishops of the Patriotic Association.

In 1951, therefore, the Vatican Holy Office issued a new law imposing automatic excommunication for “The Consecration of a Bishop without Canonical Appointment.”

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1. “quae malam fidem supponit et qua schismaticus sciens volens unitatem Ecclesiae dilaniat.”

The term “canonical appointment” (in Latin *provisio* or *institutio canonica*) is a technical term which refers not to the reception of the sacrament of episcopal consecration, but to the obtaining of jurisdictional power as head of a diocese.

I have discussed this decree in “Pius XII, Excommunication, and Traditional Catholic Bishops,” which is available at [www.traditionalmass.org](http://www.traditionalmass.org).

In response to SSPV’s rather fantastic charge that Abp. Thuc somehow incurred excommunication under this decree:

(1) The automatic excommunication applies only to the case of a bishop illicitly consecrated as an *ordinary over a diocese*:

“From the purpose intended by the Holy Office, the decree appears to cover only those who are consecrated as *residential bishops*, for this is the actual case which the Holy See wishes to condemn.” **Canonist** Regatillo, *Institutiones Iuris Canonici*, 1956, 2:1031, trans. in Cekada, “Pius XII, Excommunication & Traditional Catholic Bishops”.

(2) Laws such as this that enact a penalty must be interpreted in a *narrow* sense:

“In penalties the more benign interpretation should be followed.” **Canon** 2219.1.

“The words of the law must be taken in their proper sense indeed, but not extended beyond this.” **Canonist** Ayrinhac, *Penal Legislation*, 39.

(3) SSPV must demonstrate that Abp. Thuc consecrated someone as the residential bishop for a diocese without the appointment by the Holy See.

Who? When? Bp. Guérard? Bp. Carmona?

C. *Ad Apostolorum Principis* (1958), para. 48? This lengthy Epistle of Pius XII was likewise directed against the problem of the Patriotic Association’s illicit installation of schismatic bishops to head vacant dioceses in China.

SSPV’s argument here is that ¶48 of the document punished consecrations in general that were done “rashly” or “irresponsibly.” Abp. Thuc did consecrations “rashly” or “irresponsibly.” Therefore, Abp. Thuc is excommunicated by it.

In response:

(1) The Latin term is *ex arbitrio*. This does not mean “rashly-on-a-stupid-irresponsible-impulse” but “on his own authority” (*Cassells New Latin Dictionary*, 55) — which was the crime of the Chinese clergy appointing the stooge diocesan heads.

(2) The Epistle does not establish some *new* grounds for excommunication (for “impulsive” bishops?), but merely refers in ¶48 to the applicability of the 1951 Decree.

(3) Pius XII condemns as “contrary to law and right” consecrations of the kind described in preceding paragraph (¶47), wherein those with “no authority whatsoever”

a. “Render void the canonical appointment [*institutio canonica*]” made by a pope.

b. “Claim the right of nominating *bishops*” for some group of priests or laymen. (“Bishop” in the Code, means an *Ordinary*, unless otherwise specified.)

c. Confer consecration without “the mandate of the Apostolic See.”

**2. Even if Abp. Thuc had personally incurred excommunication, it would *not* be incurred by clergy who derive their orders from him.**

A. Penalties aren't "contagious." "It is not permitted to extend penalties from person to person or from case to case, even though the reason is the same or even stronger." **Canon 2219.3.**

B. *Receiving orders from an excommunicate incurs only suspension.* (Prohibition from licitly exercising orders.) Those who presume to receive orders from one who is excommunicated, or suspended, or interdicted, *after a declaratory sentence has been passed upon him*, or from a *notorious* apostate, heretic, or schismatic, *ipso facto* incur a *suspension a divinis* reserved to the Holy See; one who in good faith is ordained by any such person is forbidden to exercise the orders so received until he shall be dispensed." **Canon 2372.**

C. *This suspension would not even apply anyway*, because:

(1) No one in authority issued a declaratory sentence upon Abp. Thuc, Bps. Carmona, Pivarunas, etc. declaring them excommunicated, suspended or interdicted.

(2) Thuc, etc. were/are not "notorious apostates, heretics, schismatics."

(If an SSPV priest claims otherwise he must prove his claim with the definitions of those terms in canon 1325.)

(3) "Presumes" is technical term stipulating that bad faith must be present for a penalty to apply.

**3. And in any case, a Catholic may receive sacraments from an excommunicated priest anyway:**

*"Except as provided in §3, the faithful can for any just cause ask for sacraments or sacramentals of one who is excommunicated, especially if there is no one else to give them; and in such cases the excommunicated person so asked may administer them, and is not obliged to ask the reason for the request."* **Canon 2261.2.**

**4. Summary and Conclusion:**

Abp. Thuc did *not* incur excommunication under the Code of Canon Law, the 1951 Holy Office decree or *Apostolorum Principis*.

An excommunication is not "contagious" anyway, and wouldn't pass along to clergy deriving their orders from him. Even if it *did*, Canon 2261 *permits* Catholics to receive sacraments from an excommunicated clergyman.

Therefore: SSPV may *not* refuse communion to my parishioners on the grounds that Abp. Thuc, Bps. Carmona, Pivarunas, Dolan, etc. were/are "excommunicated."

**The Sin of Scandal?**

**OBJECTION:** *My parishioners are "forbidden by law" to receive communion because of the sin of "scandal."*

2. "But from an excommunicated *vitandus* or one against whom there is a declaratory or condemnatory sentence, the faithful may only in danger of death ask for sacramental absolution according to canons 882 2252, and also for other sacraments and sacramentals in case there is no one else to administer them." (Canon 2261.3) This refers to those who have been condemned by name by the pope or by an ecclesiastical judge.

### **1. What the sin of scandal is *not*.**

In common speech, “scandal” means shock or bewilderment people experience as a *result* of some violation of propriety or common standards: “Oprah Flips Out after Twinkie Binge,” etc.

### **2. What the sin of scandal *is*:**

- *Definition*: “Some word or deed (whether of omission or commission) that (1) is itself evil, or (2) has the appearance of evil, AND (3) provides an occasion of sin for another.” **Theologian** Prümmer, *Moral Theology*, 230.

*Comment*: For someone to commit the sin of scandal, his word or deed must in the first place either: (1) *be evil*, or (2) *have the appearance of evil*.

### **3. What “evil deed,” real or apparent, did my parishioners commit that renders them “forbidden by law” to receive communion?**

A. *Crime against church law*? If so, is it punishable by automatic excommunication, interdict, or notorious infamy? Point it out, then.

B. *A public sin*? Provide the commandment number, and species of sin, please.

C. *Reception of sacraments from a “schismatic”*? False charge already refuted. Who is the “schismatic”? How does he fit the definition in canon 1325?

D. *Reception of sacraments from “excommunicated” cleric*? False charge of excommunication already refuted. Canon 2261 permits reception from excommunicated minister anyway.

### **3. Without a specific evil deed, real or apparent, there is only the “taking of passive scandal.”**

- *Definition*: Passive scandal is taken when it results not from an evil action but from a *good action* which is *accepted by another as an occasion of sin* either through: (1) *Ignorance* (scandal of the weak), OR (2) *Malice* (pharisaic scandal). See **Theologian** Prümmer.

### **5. The “scandal” taken by others at my parishioners’ reception of the sacraments at St. Gertrude’s, accordingly, is “passive scandal” only, arising from:**

A. *Ignorance*. Lay people affiliated with SSPV have been *indoctrinated* with distortions of church law to view my parishioners’ act as evil. This is *scandal of the weak*.

B. *Malice*. The SSPV clergy *cannot identify the laws or commandment* against which my parishioners have committed their crimes or sins. The SSPV clergy nevertheless persist in maintaining that “scandal” is present. Their scandal, then, is *pharisaic scandal*.

### **6. There is no obligation to avoid giving others an occasion to take pharisaic scandal.**



- *Explanation:* “This follows from the fact that pharisaic scandal is caused by the malice of the person taking scandal.” **Theologian** Prümmer.

## 7. Summary and Conclusion:

For a true sin of scandal to occur, my parishioners would need to have committed some evil or apparently evil act in the first place. SSPV cannot identify the law or commandment they have violated. The “scandal” that SSPV clergy takes is therefore only pharisaic.

Therefore: SSPV may *not* refuse communion to my parishioners on the grounds that they have committed the sin of “scandal.”

## Ordination of Unworthy Men?

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion because Abp. Thuc conferred orders on some unworthy men.*

### 1. General principle on ordaining unworthy men.

- *Church Law* “A minister who dares [*ausus fuerit*] to administer sacraments to persons who are forbidden either by divine or ecclesiastical law to receive them, shall be *suspended* from the administration of the sacraments for a time to be *determined in the prudent discretion of the Ordinary*, and shall be punished by other penalties according to the gravity of the fault, without prejudice to the special penalties provided by law against certain crimes of this class.” **Canon 2364.**

### 2. Points to note:

A. “Dares [*ausus fuerit*] to administer...” “If the law contains the words: *praesumpserit, ausus fuerit, scienter, studiose, temerarie, consulto egerit*, or other similar expressions which require full knowledge and deliberation, any diminution of imputability on the part of either the intellect or the will exempts from penalties *latae sententiae*.” **Canon 2229.2.** “In this last case, even affected ignorance of fact probably excuses.” **Canonist** Bouscaren, *Canon Law: Text & Commentary*, 1957, 853.

To incur the penalty, Abp. Thuc would need to have had *full knowledge* that the ordinand was unworthy and done it anyway. This has not been proven.

B. *The Penalty:* Not excommunication, but only *suspension* (prohibition from exercising orders). Is not even automatic. Must be imposed by a superior with ordinary jurisdiction. Other ordinands couldn’t “catch” it and pass it along anyway.

### 3. Summary and Conclusion:

This charge is merely an attempt at guilt by association.

Catholics do not become “forbidden by law” from receiving Communion if they have received sacraments from other clergy who somewhere, somehow, in their line of apostolic succession descend from a bishop who “could have” been subject to suspension for having ordained someone unworthy, *if* that bishop had had full knowledge of the ordinand’s unworthiness, and *if* that bishop’s own Ordinary had imposed a sentence on him.

If SSPV has a law saying otherwise, let them provide the reference.

Therefore: SSPV may *not* refuse communion to my parishioners on the grounds that Abp. Thuc conferred orders on some unworthy men.

## Cooperation with Crimes?

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion because by receiving sacraments from clergy who trace apostolic succession to Abp. Thuc, they become “cooperators” with his “evil deeds,” “crimes,” etc.*

### 1. Accusations Refuted Above:

That Abp. Thuc was non-Catholic, schismatic, excommunicated, guilty of crimes, etc.

### 2. Even if Abp. Thuc *had* been guilty of a criminal action, receiving orders from him did *not* constitute cooperating in a criminal action, even if one *approved* of his crimes.

- *Principle:* “Approving a criminal action, sharing in the spoils, concealing the offender, and all such action performed after the crime is already consummated, may constitute new delinquencies in themselves if there are penalties enacted against them by law; but they do not constitute cooperation in the crime nor render one responsible for it, unless the support or encouragement had been promised *beforehand* and in that sense preceded the evil deed.” **Canonist** Ayrinhac, *Penal Legislation*, 19.

### III. Summary and Conclusion:

This charge is merely guilt by association again.

Catholics do not become “forbidden by law” from receiving Communion through “cooperation in crime” if they have received sacraments from other clergy who somewhere, somehow, in their line of apostolic succession descend from a bishop who committed or could have committed a crime.

If SSPV has a law saying otherwise, let them provide the reference.

Therefore: SSPV may *not* refuse communion to my parishioners on the grounds that by receiving sacraments from clergy who trace apostolic succession to Abp. Thuc, they become “cooperators” with his “evil deeds,” “crimes,” etc.

## Just Following a Safer Course?

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion on the grounds that SSPV is just following “the safer course.”*

### I. Principle on “the safer course”:

- *Moral theology:* “It does not consist in a course that is safer compared to another which is also safe, but rather a course that is safer *opposed* to another which is *not* safe. **For we are not bound to follow the safer course when another course is safe.**”<sup>3</sup> **Theologians** Aertnys-Damen, *Theol. Moralis*, 1958, 1:86.

### II. Who is *really* following “the safer course”?

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3. Etenim non accipit tutiorem partem comparative ad aliam, quae etiam tuta est, sed adversative ad aliam quae not est tuta: quia non adstringimur partem tutiorem sequi, quando altera est tuta.”

- The principles I have set forth above are “safe,” because they are employed in the Church’s canon law and the works of her moral theologians.

- I have amply demonstrated above that the accusations about Abp. Thuc, etc. which form the basis for denying communion to my parishioners, however, have *no objective basis* in Catholic canon law and moral theology.

- Such principles cannot be a “safer” course, or even a “safe” one, because they do *not* come from the authority of the Church, but rather contradict it.

- The truly “unsafe course” is that of SSPV: Invent your own rules, and refuse Catholics sacraments on the basis of them.

### **III. Conclusion:**

Therefore: SSPV may *not* refuse communion to my parishioners on the grounds that they are following “the safer course.” They are not.

## **Father is Following His Conscience?**

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion on the grounds that SSPV’s priests are “following their consciences.”*

### **I. What conscience is:**

- *Moral theology:* “Judgement or dictate of the practical intellect deciding from *general principles* the goodness or evil of some act which is to be done here and now or has been done in the past.” **Theologian** Prümmer, *Moral Theology*, 135.

### **II. Standard by which it judges:**

- *Moral theology:* “Conscience derives its judgement from general principles... Conscience does not pass judgement on the truths of faith and reason but decides whether the act to be done (or which has been done) *is in conformity with existing just law.*” *Ibid.*

### **III. The priest must conform his practical decisions with “existing just law” of the Church.**

### **IV. The “existing just law” of the Church prescribes:**

- *Church Law:* “Every baptized person not forbidden by law may and *must* be admitted to Holy Communion.” **Canon 853.**

### **V. SSPV cannot point to any church law under which my parishioners are “forbidden” to receive Communion.**

### **VI. Conclusion.**

- Therefore, SSPV members must conform their consciences to the “existing just law” and admit my parishioners to Communion.

## **Invalid Bishops?**

**OBJECTION:** *My parishioners are “forbidden by law” to receive communion because the episcopal consecrations Abp. Thuc performed in 1981 were “doubtful” or “invalid.”*

The central issue here is the validity of the two episcopal consecrations Abp. P.M. Ngô-dinh-Thuc conferred in 1981:

- Bishop M.L. Guérard des Lauriers OP, 7 May 1981 (from whom Bp. Sanborn derives his consecration).

- Bishop Moises Carmona Rivera, 17 October 1981 (from whom Bp. Dolan derives his consecration).

In 1983, when I was a member of SSPX, I wrote a lengthy article criticizing Abp. Thuc, his involvements, etc.

I did not, however, address the issue of validity of the consecrations he performed:

“Further research would be needed to ascertain what theologians and canonists consider sufficient evidence for validity in such a case.” *Roman Catholic* 5, (Jan. 1983), 8.

We began to investigate this issue in SSPV as a result of Fr. Donald Sanborn’s visit to Brazil, April 1985. The issue was the validity of Bps. Guérard and Carmona’s consecrations.

Two priests were chosen to research the question: Fr. Sanborn, who favored the validity of the consecrations and favored involvement, and I, who believed the consecrations were doubtful and opposed involvement.

The key issues we set out to research in 1985 were:

(1) *No certificates*: None appeared to have been issued. What to do? This was my and Fr. Kelly’s major objection.

(2) *Were “qualified witnesses” then required?* Fr. Kelly maintained one would need “evidence of use of correct matter and form,” otherwise an episcopal consecration would have to be regarded as “doubtful.”

(3) *Were there other special rules for attesting to the fact of an episcopal consecration?* Anything apart from the usual norms for ascertaining that a sacrament took place?

(4) *Abp. Thuc’s “Sacramental Intention”?* What assumptions did theologians, canonists, etc. require us to make?

My conclusions in 1988, based on the research I had done, were the following:

(1) *Certificate*: It is not required to assume a given rite took place and was valid. All traditionalist certificates are canonically “unofficial” anyway, because we aren’t canonical pastors.

(2) *Qualified Witnesses*. Nothing in canon law requires “qualified witnesses,” positive evidence of use of matter and form. The term “qualified witness,” in fact, has a special technical meaning in canon law referring to giving evidence in a ecclesiastical trial, and has nothing to do with ascertaining the *validity* of a sacrament.

(3) *Special Rules*. There are none for ascertaining the fact of an episcopal consecration.

(4) *Abp. Thuc’s “Sacramental Intention”?* No justification for attacking it exists under any accepted principle of canon law and moral theology.

I concluded that we are obliged to regard the consecrations as valid, and subsequently:

(1) *Wrote an article* (1991) presenting my research and conclusions (available at [www.traditionalmass.org](http://www.traditionalmass.org))

(2) *Discovered the certificate* Abp. Thuc issued for Bp. Carmona’s consecration.

In connection with the latter (also on the website) the following should be noted: Fr. Kelly used the absence of a certificate as *the* principal objection to impugn the validity of the Thuc consecrations. When I finally was able to find one in 1993, Fr. Kelly ignored it, and then shifted his principal objection to the consecration by attacking Abp. Thuc's "mental state."

## **1. Standard Procedure for Verifying Reception of a Sacrament:**

A. *What a priest will ascertain:*

(1) *Fact* that a ceremony occurred, via (a) certificate (the usual way) or (b) other reliable proof (a photo would do).

(2) *Minister who performed rite.* Was he a validly ordained Catholic priest? You ask the recipient or parents.

(3) *Rite used.* Was it the traditional or post-Vatican II rite? You ask the recipient or parents.

B. *What the priest concludes:*

Once a traditional Catholic priest ascertains in a given case (someone claiming a child was baptized, say) that a ceremony occurred, that another *validly ordained Catholic priest* performed it, and that the priest used a *traditional rite*, he treats it as *valid* with no further questions.

This is standard sacramental practice.

## **2. Application to the 1981 Thuc Consecrations:**

A. *What You Can Ascertain:*

(1) *Fact that the ceremonies occurred.* Established by:

a. *Consecration certificate* for Bp. Carmona, written by Thuc:

- i. By hand.
- ii. In Latin.
- iii. Dated October 18, 1981.
- iv. Signed by eyewitnesses.

b. *Published photos* of both Guérard's and Carmona's consecrations.

c. *Numerous articles*, and a Vatican "excommunication."

(2) *Minister who performed rite:* Abp. Thuc, a *validly-consecrated Catholic bishop*.

(3) *Rite Used: Rite of Episcopal Consecration, 1908 Roman Pontifical.* Established by:

a. *Captions published with photos of ceremony* stating that Abp. Thuc performed the consecrations according to *The Roman Pontifical* (1908 edition).<sup>4</sup>

b. An *interview* conducted under oath, with Dr. Kurt Hiller, who was present at both consecrations and who held the ritual book (*The Roman Pontifical*) for Abp. Thuc as he performed the rite of consecration.<sup>5</sup>

c. A sworn *affidavit* of Dr. Eberhard Heller, who was also present at both consecrations, attesting that Bps. Guérard, Carmona and Zamora were consecrated bishops by Abp. Thuc

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4. *Einsicht* 11 (March 1982), 14. For original text, see fn. in article on Website.

5. Clarence Kelly, et al., Interview with Dr. Kurt Hiller, Munich, February 1988, *passim*.

and that "The consecrations followed *The Roman Pontifical* (Rome: 1908)."<sup>6</sup>

d. Published *interview* with Bp. Guérard. Attests that Abp. Thuc consecrated him on 7 May 1981, that "the consecration was *valid*," that "the traditional rite was followed integrally (except for the reading of a Roman mandate)," and that "Abp. Thuc and I had the intention to do what the Church does."<sup>7</sup>

e. *Interview* with Bp. Guérard again affirming that he had been consecrated on 7 May 1981, and that the rite was followed integrally.<sup>8</sup>

B. *What you must conclude:*

Because (1) The ceremony of episcopal consecration *occurred* on two occasions, (2) a *validly-consecrated bishop* performed it each time, and (3) he used the *traditional Rite of Episcopal Consecration* each time.

Therefore, **both consecrations must be regarded as valid.**

**3. Thereafter, validity must be presumed and invalidity must be proven.**

A. *Generally in Canon Law:* This is "the queen of presumptions, which holds the act or contract as valid, until invalidity is proved." **Canonist** Wanenmaker, *Canonical Evidence in Marriage Cases*, (1935),408.

B. *For Ordinations:* "...an act, especially one as solemn as an ordination, must be regarded as valid, as long as invalidity would not be clearly demonstrated." **Canonist** Cardinal Gasparri, (also **compiler of the Code of Canon Law**), *Tractatus de Sacra Ordinatione* (1893), 1:970.<sup>9</sup>

C. *Correct Intention Presumed:* "This principle is affirmed as certain theological doctrine, taught by the Church, to deny which would be theologically rash... **The minister is presumed to intend what the rite means.**" **Theologian** Leeming, *Principles of Sacramental Theology*, (1956) 482.

**4. Defects which would invalidate an episcopal consecration:**

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6. Eberhard Heller, "Eidesstattliche Erklärung zu den Bischofsweihen von I.E. Mgr. M.L. Guérard des Lauriers, Mgr. Moises Carmona und Mgr. Adolfo Zamora," *Einsicht* 21 (July 1991), 47. "Um noch bestehende Zweifel an den von S.E. Mgr. Pierre Martin Ngo-dinh-Thuc gespendeten Bischofsweihen. die z.B. von bestimmten Personen und Gruppen in den U.S.A. geäußert werden, und weil seine Excellenz inzwischen verstorben ist, er sich also dazu selbst nicht mehr äußern kann, erkläre ich an Eides statt, da ich den betreffenden Konsekrationen durch Mgr. Ngo-dinh-Thuc persönlich beiwohnte: Ich bezeuge, daß S.E. Mgr. M.L. Guérard des Lauriers O.P. am 7.Mai 1981, I.E. Mgr. Moises Carmona und Mgr. Adolfo Zamora am 17 Oktober 1981 in Toulon/ Frankreich von S.E. Mgr. Pierre Martin Ngo-dinh-Thuc zu Bischöfen der hl. katholischen Kirche geweiht wurden. Die Konsekrationen erfolgten nach dem 'Pontificale Romanum' (Rom 1908). Mgr. Ngo-dinh-Thuc spendete die Weihen im Vollbesitz seiner geistigen Kräfte und in der Absicht, der Kirche aus ihrer Notsituation herauszuhelfen, die er in seiner 'Declaratio' über die Sedisvakanz vom 25. Februar 1982 präziserte. München, den 10. Juli 1991. E. Heller."

7. *Sodalitium* 4 (May 1987), 24. His emphasis. See article on web for text.

8. Joseph F. Collins, Notes of Interview with Guérard, La Charité (France), August 1987.

9. "...tum quia actus, praesertim adeo solemnus qualis est ordinatio, habendus est ut validus, donec invaliditas non evincatur."

- A. *Matter*: Consecrating bishop does not impose hands.
- B. *Form*: Consecrating bishop does not pronounce essential 16-word formula.
- C. *Intention Withheld*: Consecrating bishop internally withholds intention to make a bishop or “to do what the Church does” in performing the rite.
- D. *Intention Absent*: Consecrating bishop is not performing a human act because he lacks:

(1) Even merely *external attention*: He does not know that he is performing a sacramental act (an episcopal consecration). (No act of intellect.)

(2) Even *virtual intention*: His external action of performing a sacramental act (an episcopal consecration) has not been produced by any direct act of his will. (No act of will.)

- Example of no external attention or virtual intention: Performing a sacramental action while sleepwalking. No attention from intellect, no intention from will. No sacrament because not a human act.

- *Virtual intention* is the minimum “level” of intention required and sufficient for validity. It guarantees that a sacrament is valid, even if the priest or bishop is internally distracted before and during the entire sacramental rite.

- *Explanation*: “The common doctrine is this: Virtual intention is necessary and sufficient in the minister to confect the sacraments... Virtual intention, as we have already seen, is an actual intention itself which is operating along with distraction. **Such an intention is certainly present in someone who regularly performs sacramental actions**— for example, a priest who goes early to the church, puts on vestments, goes to the altar, celebrates Mass, and consecrates a host or hosts presented to him at it, **even though he does not think about the intention of consecrating.**” Canonist Coronata, *De Sacramentis: Tractatus Canonicus* 1943, 1:56.<sup>10</sup>

This minimum, obviously, is not very hard to meet.

**5. For the Thuc consecrations, there is no evidence of a defect in matter, form, or intention to “do what the Church does.”**

**6. “Mental State” Slander:**

A. *Photos of Ceremonies*: Look at the photos of the consecrations published in *Einsicht*. Does Abp. Thuc look like a dazed robot or a sleepwalker, who doesn’t know *where* he is or *what* he’s doing — the “mental state” one would have to prove he was in at the time of the consecrations if one claims they were doubtful or invalid?

Fr. Bruno Schaeffer’s Ordination: Is this also an automaton?

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10. “Unde doctrina communis est ad sacramenta conficienda in ministro eam requiri et sufficere intentione quam virtualem diximus; ... Virtualis enim intentio, ut iam vidimus, est intentio ipsa actualis quae cum distractione operatur. Talis intentio certe habetur in eo qui de more ponit actiones sacramentales., e.g. sacerdos qui mane adit Ecclesiam, paramenta sumit, ad altare progreditur, Missam celebrat et in ea consecrat hostiam aut hostias praesentatas, etsi nihil de intentione consecrandi cogitat.”

Abp. Thuc also gave a public conference in Mexico under the auspices of Trento the following year. Was this also an automaton, who didn't know where he was, or what he was doing?

B. *Certificate of Consecration for Bp. Carmona.* Look at the handwriting on the certificate reproduced in Chapter 1 of this book. It is firm and clear, and the document is in Latin.

We, Peter Martin Ngô-dinh-Thuc, Titular Archbishop of Bulla Regia, give notice of the following to all: on the 17th day of the month of October, in the year 1981, we conferred the episcopal rank of the Catholic Church on Father Moises Carmona Rivera, with all rights pertaining to said rank. Given on the 18th day of the month of October, in the year of Our Lord 1981. [signature] **+Peter Martin Ngô-dinh-Thuc** The eyewitnesses were: Doctor Kurt Hiller and Doctor Eberhard Heller. [signature] **Dr. Kurt Hiller** [signature] **Dr. E. Heller.**

Is this writing in Latin also the work of some confused sleepwalker in a miter, who the day before couldn't manage the tiny bit of awareness and intention that theologians say is "*necessary and sufficient*" to confer a valid sacrament?

C. *Other Documents Handwritten in Latin:* A few months after the consecration, one thanking Bp. Carmona for his New Year's greetings, and the following year, a document proclaiming vacancy of the Holy See. See *Einsicht*.

Again, the documents are in Latin, and the Archbishop's handwriting is firm and clear. Is this the work of a sleepwalker or an automaton? Cranking out documents in Latin?

**D. Conclusion:** Anyone capable of all this possessed the requisite "mental state" to confer a valid sacrament. A priest who says otherwise is either ignorant of the principles of sacramental theology or dishonest — because he knows better, but refuses to abandon a foolish position.

## 6. Summary and Conclusion:

A. *Standard procedure a priest uses to verify reception of sacrament:*

(1) He ascertains: (a) Fact that ceremony occurred (by certificate, or other proof). (b) The minister who performed rite — whether he was a validly ordained Catholic priest. (c) The rite used — was it the traditional rite?

(2) The priest then treats it as valid. There are no further questions.

B. *For the Thuc consecrations:*

(1) We can easily ascertain: (a) *Fact the ceremonies occurred:* Certificate handwritten by Abp. Thuc, photos, articles. (b) A real bishop. (c) *Rite used:* Traditional rite of episcopal consecration. (Affidavits, etc.)

(2) Conclusion: The consecrations were valid.

C. *Thereafter validity must be presumed, invalidity must be proven, based on what canonists teach regarding:* (1) General principles, (The "queen of presumptions"). (2) Ordinations. (3) Correct intention.



D. *Defects that invalidate sacraments:* (1) Matter. (2) Form. (3) Withholding intention. (4) Intention absent — you have no idea what you're doing, and make no act of will.

E. *For Thuc Consecrations:* No evidence of defect of matter, form, or intention to do what Church does.

F. *"Mental State" slander* — Abp. Thuc unable to form sacramental intention — is refuted by: (1) Photos. (2) Handwritten documents after consecration. (3) Especially the consecration certificate he wrote out in Latin the day after Bp. Carmona's consecration.

G. *Such attacks were dishonest all along.* And here we pass briefly from church law to a personal anecdote.

In my 1991 article, I recalled how at a September 1988 SSPV priests' meeting Fr. Sanborn had presented us with a report on the theological principles to be applied to the Thuc consecrations, and how I privately told Fr. Kelly later in the day that the report (especially a pronouncement from Pope Leo XIII) seemed to demolish all my objections and Fr. Kelly's as well.

Fr. Kelly replied: "We *can't* say the consecrations [of the Thuc bishops] are valid — or some of our priests will want to get involved with them."

This moment was one of those little revelations.

It convinced me that no matter *what* principles we would discover from church law, canonists, moralists, theologians and popes, Fr. Kelly would ignore it all and stick to some other agenda.

Fr. Kelly's objections, in other words, would *always* be intellectually dishonest — not even *Leo XIII* can move you from what you've already decided? Keep this in mind when Fr. Kelly's and SSPV's policies divide your family or break up your engagement.

H. *Only possible conclusion:* Like it or not, the principles of canon law and sacramental theology *oblige* you to regard Abp. Thuc's consecrations of Bps. Guérard and Carmona as valid, and to regard those who trace their apostolic succession to them as true bishops.

## **Final Objection: I Don't Feel Right**

**OBJECTION:** *I "don't feel right" about what you've said, this is all very complicated, I can't figure all this out, and I trust SSPV — so if their priests think your parishioners are "forbidden by law" to receive Communion, that's fine with me.*

### **REPLY FOR THE SSPV LAITY:**

You don't "feel right" because for over ten years SSPV has been feeding you Thuc/CMRI horror stories and bogus principles masquerading as canon law and moral theology.

I have systematically exposed these principles as false, offered you photocopies of the correct principles as they appear in canon law books, and put it all together for you.

My argument is based on *church law* — not emotion, phony guilt by association tactics and stubborn intellectual dishonesty.

SSPV, by refusing Communion to my parishioners, violates not only canon law, but also the *law of God*, which gives Catholics — your friends and relatives — the right to receive the Eucharist.

And *this* — not twenty-year-old horror stories about people you and I have never met — is the *real* evil you should worry about.

### Appendix: Consecration Certificate

*Handwritten certificate issued by Abp. Thuc for Bp. Carmona's consecration:*  
We, Peter Martin Ngô-dinh-Thuc, Titular Archbishop of Bulla Regia, give notice of the following to all: on the 17th day of the month of October, in the year 1981, we conferred the episcopal rank of the Catholic Church on Father Moises Carmona Rivera, with all rights pertaining to said rank. Given on the 18th day of the month of October, in the year of Our Lord 1981.

[signature] +**Peter Martin Ngô-dinh-Thuc**

The eyewitnesses were:

Doctor Kurt Hiller and Doctor Eberhard Heller.

[signature] **Dr. Kurt Hiller**

[signature] **Dr. E. Heller.**

Photocopy reproduced at: [www.traditionalmass.org](http://www.traditionalmass.org)

### Comment

As noted in the foregoing article, the principal objection Fr. Kelly offered against recognizing the validity of Abp. Thuc's consecrations was a supposed lack of "documentary proof" by means of a certificate of consecration.

Absent this, he assured us, one would be required to have "qualified witnesses" to attest that "matter and form were correctly applied."

The latter objection, we would later learn, was pure mumbo-jumbo. The term "qualified witness" had a special technical meaning in canon law referring to certain classes of church officials giving evidence in a ecclesiastical trial, and had nothing to do with ascertaining the *validity* of a sacrament.

The principal quote Fr. Kelly used to support his assertion (Jone, *Moral Theology*. 472), moreover, turned out be a mere *recommendation* that, in cases where *emergency baptism* was administered by a *layman* (a schismatic, heretic, Jew, pagan, midwife, catechist), someone be present to attest that the layman performed the baptism correctly. This was confirmed by consulting the passage in the longer Latin work by Jone (*Commentarium in C.J.C.*, 1954, 2:24) that was the source for the short English résumé on which Fr. Kelly was content to rely.

In any event, once the accompanying consecration certificate came to light — the "documentary proof" without which Fr. Kelly had earlier maintained one could not recognize the consecrations — he ignored it. Other SSPV members pooh-poohed its importance. ("A proof, perhaps, but not *the* proof," etc.)

But after Fr. Kelly's 1988 comment to me — "*We can't say that the consecrations are valid*" — this intellectually dishonest response was not a complete surprise.

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