Thirty years ago today, Archbishop Marcel Lefebvre, together with Bishop Antonio de Castro Mayer, consecrated four priests of the Society of St. Pius X as bishops of the Catholic Church. He conveyed to them the fullness of the sacramental priesthood but specifically made clear that he did not confer a governing jurisdiction since he acted to preserve the priesthood, but not in a way that usurped the legitimate authority of the Supreme Pontiff. The reactions were swift and dramatic. Thirty years later, we can consider these events in light of perennial Catholic principles.

Were the Consecrations Licit?

Anniversaries of historic events are an important opportunity to pause and consider the commemorated event in light of larger historical implications. The consecration of bishops by Archbishop Marcel Lefebvre on June 30, 1988 is one of the most historic events of the last thirty years, if not the last half century. The act instantly became, and has remained, a lightning rod for all of the theological, liturgical, doctrinal and political crises coursing through the veins of the Mystical Body of Christ. We will consider the consecrations and their aftermath from one of the many possible perspectives—what it shows about the radical transformation of our society's understanding of law. I will not be presenting a detailed legal argument demonstrating how the purported punishment meted out by the Vatican in response to the consecrations was void under the 1917 and 1983 Code of Canon Law. Abler jurists than I have already thoroughly proven this point for those whose mind remains open to reason. We will consider it from a more general perspective and come to appreciate why it is so hard for many people to even follow the legal argument. The entire concept of human law, ecclesiastical and secular, held by most people today is revolutionary and accounts for the legal arguments falling on deaf ears.

Catholic Principles: All Laws are Subject to "Higher Law"

The Catholic understanding of law that dominated the Western world for approximately a millennium and a half differs radically from the concept of law that emerged around the time of the Enlightenment. In fact, the Catholic understanding, albeit a less precise articulation of it, traces its origins to the pre-Christian ancient world. [1] God created not only the visible, tangible universe; He also created law. The eternal law, which is the rational plan of God for the universe, is the first created law. As one medieval commentator expressed it, "God is Himself law and therefore law is dear to Him." [2] God did not create an unruly cosmos but one permeated with this eternal law which directs all of creation to its appointed end. The summit of visible creation is Man. He is graced with a nature that reflects the Divine Nature itself. Man is therefore called to participate in the eternal law and thus participate in God's governance of creation. Not only does God entrust Man with the

Copyright © catholicfamilynews.com. All rights reserved.

task of naming visible creatures, he is called to participate in the formation and promulgation of the laws by which Man himself will be ruled and guided to his due end. Just as a name brings greater specificity to an entity, so too does Man's participation in law involve the task of particularizing the precepts of the eternal law.

Through his intellect, the point of contact with the eternal law, Man has the ability to come to know the most general legal principles, the precepts of natural law. These precepts command and forbid actions which conform to and obstruct, respectively, the attainment of Man's natural and supernatural ends. Yet, these precepts are framed in general and universal terms. As a result of the Fall, Man's participation in this process is afflicted by the wounds of sin and thus God promulgated an additional law, the divine law, to aid Man in his acquisition of knowledge of the primary precepts of law. The Decalogue is the prime example of the divine law which did not alter the moral status of the operations specified in its ten precepts but which merely provided revealed knowledge of these precepts. Thus, revelation and reason together provide Man with a means of knowing the fundamental precepts of the law which rules the universe.

Yet, the precepts of natural and divine law remain general in their formulation. They require further specification to be useful in guiding particular human action. It is to this task that Man has received a Divine call to participate. Ecclesiastical and secular authorities are commissioned by God to determine more particular principles and precepts of the divine and natural law to guide with greater specificity human action.

In this context, the formulation, execution, and adjudication of ecclesiastical and secular laws is not a mere task of bureaucratic technicians. Laws are not an invention of Man serving mere pragmatic ends of coordination of group activities. Making, executing, and adjudicating laws are parts of a sacred duty. For centuries, popes, kings, princes, manorial lords, and city mayors understood their obligations as such. As parents participate in the creative work of God by bringing new human persons into being, so too do lawmakers participate in God's legal creative work by bringing new laws into being. As the physical creative power must be used within due bounds, so also this participation in legal creation must be constrained within due bounds.

All particular laws must be particular determinations of the more general natural and divine law. Those making, executing, and interpreting law are bound to do so within the divine legal system. The laws they bring into being and cultivate must be children of the divine and natural law and must be written, understood, and enforced in a way that serves the ends, natural and supernatural, of Man specified in the eternal law.

Copyright © catholicfamilynews.com. All rights reserved.

The Importance of Equity: Saving Law when Particular Law Fails

Since the time of Aristotle, Western legal systems have recognized the concept of *equity*. Equity is the corrective to any results of particular law which fail to correspond to the divinely legislated ends contained in the eternal law. As St. Thomas Aquinas observed, the more a law is framed with particularity the more likely it is that it will fail. Since it would be impossible to specify all of the exceptions, variations and distinctions that will need to be involved in the application of a law to the multiplicity of contingent and varied circumstances, the best we can do is form laws that work for the majority of cases. The virtue of equity serves as the corrective for the minority of cases when the particular law would lead to an inequitable and unjust result—that is, a result not in harmony with eternal law. Equity is a necessary component of our human participation in God's legal system.

We can adapt an example used by St. Thomas to illustrate the Catholic sense of law. Assume there is a civil law requiring the return of a pledged piece of property within ten days of payment of the debt secured by such property. The pledged property is a gun. The owner of the gun has suffered a mental breakdown and while repaying the debt he states that as soon as he receives his gun back he is going to use it to kill himself and others. The holder of the gun should not shrug his shoulders and say, "The law is the law; I must return the gun within ten days." Under such circumstances, he is justified in disregarding the more particular law (requiring prompt return) in light of the higher good of preserving innocent life.

The Errors of the Modern World: Making Law a god

In contrast to this Catholic understanding of law, the Enlightenment philosophers and their legal heirs (i.e. legal positivists) devised a jurisprudence of men subject only to men. Law was whatever those in power deemed it to be. The creative power to bring law into being was no longer considered as a part of a vast cosmological legal system constrained by natural and divine law. Law could be whatever human authorities posited it to be, even if the particular laws or their application to particular contexts were unjust or immoral. Just as modern Man seeks to use his physical creative power as and when he desires, so too he demands to use his legal creative powers subject to no higher constraint. Those who make, execute, interpret and apply the law no longer see themselves as keepers of a sacred trust but as functionaries whose acts need only serve their own human ends. After centuries of bad philosophy, propaganda and totalitarian regimes, this revolutionary concept of law dominates the minds of most men. For Modern Man, the law is whatever the legal books say it is, regardless of the consequences. If you don't like the consequences or think they are unfair, change the law, but until then, the law is the law.

Copyright © catholicfamilynews.com. All rights reserved.

Applying the Principles to the 1988 Consecrations

Turning to the consecrations, we can understand why so many fail to see what should be obvious. The particular laws surrounding the elevation of a man to the episcopacy were instituted to make more particular Our Lord's divine law calling for the indefectibility of the apostolic mandate and the monarchical governance of the Church. The legal requirement for a specific papal mandate in order to consecrate a new bishop was instituted for the orderly and prudent transmission of apostolic succession to worthy successors united in the same Faith with the visible head of the Church. Archbishop Lefebvre never disputed the pope's authority to control the transmission of the episcopacy. Yet, in the period following Vatican II, the application of these laws was used not to further the divine plan and the supernatural end of Man contained in the eternal law. It was used, instead, to thwart these ends. The legal requirements created by human authorities were being used at the time of the 1988 consecrations to prevent the episcopal power from being placed into the hands of any priest faithful to Tradition without compromise. To obtain a mandate to consecrate, the candidate had to demonstrate acceptance of Vatican II and its errors. The enemies of Tradition needed only to wait for the death of the last faithful bishop to achieve their final conquest. They could use their legal power to assure themselves of victory. With the Archbishop coming every day closer to his particular judgment, their legal victory seemed assured, having stalled and delayed while waiting for the end to come. If anyone doubts that the Roman authorities were truly stonewalling, subsequent history has proved the Archbishop's claim true. The priests who left the Archbishop and accepted Rome's deal with a promised bishop from Tradition are still waiting for that bishop thirty years later.

The Archbishop understood that law is not a tool to be wielded to thwart the divine law. Equity corrects the law when the law would lead to results contrary to the purpose for the law. Equity required that he act consistently with the divine and natural law precepts requiring some part of the episcopacy to remain faithful to Tradition until the end of time, even in the absence of the mandate required by current ecclesiastical law. The divine and natural law through the virtue of equity compelled Archbishop Lefebvre to act pursuant to the distinction and exception provided in human ecclesiastical law by these higher laws. Yet, those who see law not primarily as God's creation and only secondarily as our participation, can only recognize a violation of the lower posited legal precepts. For these legal positivists, regardless of the consequences to eternal salvation, human law must be obeyed no matter how unjust and how inequitable. Rather than understanding law as dear to God, they regard particular law as a god.

The Archbishop publicly made clear his justified reliance on higher law, notwithstanding the lack of a papal mandate in the ceremony itself. The consecration ceremony begins with a

Copyright © catholicfamilynews.com. All rights reserved.

public reading of the pope's mandate to perform the consecrations. Bishop Bernard Tissier de Mallerais describes the dramatic moment in his biography of the Archbishop:

> "Do you have the Apostolic mandate?"
>
> "We have it."
>
> "Let it be read!"
>
> "We have the mandate of the Roman Church ever-faithful to the holy traditions received from the Apostles…"

Then, in a simple and lively style, Archbishop Lefebvre presented a beautiful explanation of the case of necessity in which he found himself, and of his duty to pass on the episcopacy:

> "…I am simply a bishop of the Catholic Church who is continuing to transmit Catholic doctrine. I think, and this will certainly not be too far off, that you will be able to engrave on my tombstone these words of St. Paul: "Tradidi quod et accepi—I have transmitted to you what I have received," nothing else…. It seems to me, my dear brethren, that I hear the voices of all these Popes—Gregory XVI, Pius IX, Leo XIII, St. Pius X, Benedict XV, Pius XI, Pius XII—telling us: "Please, we beseech you, what are you going to do with our teachings, with our preaching, with the Catholic Faith? Are you going to abandon it? Are you going to let it disappear from this earth? Please, please, continue to keep this treasure which we have given you. Do not abandon the faithful, do not abandon the Church. Continue the Church! Indeed, since the Council, what we formerly condemned the present Roman authorities have embraced and are professing."

The simplicity of the situation and the legality, under higher law, of the Archbishop's actions would have been obvious to anyone still in contact with this ancient understanding of law. Ironically, the pagans Aristotle and Cicero would have seen the justified position of the Archbishop more easily than Vatican and diocesan officials, modern canonists trained in a positivist jurisprudence, and most Catholics who have been malformed in the pews for years. In a certain sense, the new attitude towards law is merely another manifestation of modern Man's attempt to elevate himself to replace God. God's law must bend to human law. God's purpose must submit to human technicalities. A failure to see the legality of the consecrations is symptomatic of a culture that has become unhinged from the higher law

Copyright © catholicfamilynews.com. All rights reserved.

and sought to become a law unto itself. Yet, in the providence of God, Archbishop Lefebvre was granted the grace to see through ancient Catholic principles that his obligations under higher law held a superior claim. His obligation to hand on what he had received in the context of an unprecedented crisis of the episcopacy came directly from the divine and natural law.

Notes

[1] For example Cicero speaks of the eternal law in his *De Legibus* and natural law in both *De Legibus and De Inventione*.

[2] Author of *Sachsenspiegel* circa 1220 quoted in Harold J. Berman, Law and Revolution: The Formation of the Western Legal Tradition 521 (Harvard 1983).

Copyright © catholicfamilynews.com. All rights reserved.