ON BEING POPE MATERIALLY

SECOND PART: EXPLANATION OF THE THESIS

FIRST SECTION

RECAPITULATION OF THE PRECEDING ARTICLE

In the preceding article we saw the distinction made by theologians between *formal* and *material* succession. Formal succession is to succeed to an apostolic see with apostolic authority; material succession is merely a bare possession of the see, that is, without authority. Likewise we saw that it is necessary that the Catholic Church have an apostolic continuity which is both formal and material, in order that it adequately retain apostolicity. Apostolic authority can only be received in a subject who legitimately retains apostolic authority. Furthermore the Church, in order that it be both one and unique, must enjoy not only a formal unity, i.e., in those things which pertain to doctrine and to the divine mission received from Christ, but must also enjoy a material unity, in order that it be a single moral body, one and unique, from the time of St. Peter all the way to the second coming of Our Lord Jesus Christ. This material unity requires that there be an uninterrupted line of successors legally designated to receive the supreme authority. Therefore in order that the apostolicity and unity of the Church be preserved, it is necessary that the material continuum of successors never be broken, that is, the succession of those who legitimately and legally, through legal designation, possess sees of authority.

It is necessary to distinguish, therefore, between material apostolic succession which is *legitimate* and *legal,* and that which is *illegitimate* and *illegal.* The former is obtained by a legal designation by him who has the right of designation; the latter is obtained only by intruding, as, for example, in the case of schismatics who, having repudiated the authority of the Roman Pontiff, occupy episcopal sees in a totally illegitimate manner. They indeed succeed to certain apostolic sees, but illegitimately and illegally, and as such cannot receive authority.

Having said these things, I propose the schema of apostolic succession:

In the present article, I intend to demonstrate the thesis that the "popes" during and after the Second Vatican Council are not popes formally but only materially. For this purpose it is necessary, since the distinction between formal and material succession has now been pointed out, to treat of certain prefatory ideas: (1) authority taken in the concrete sense; (2) the formal part of authority; (3) the material part of authority; (4) the conjunction of these things; (5) the possibility of

separating them; (6) the causes which prohibit their conjunction. When this investigation is finished, I shall propose the theses and respond to the objections.

SECOND SECTION

PREFATORY NOTIONS

I. CONCERNING AUTHORITY TAKEN CONCRETELY, I.E., CONCERNING A POPE OR KING.

1. **Authority is able to be taken either in its formal concept or concretely.** Lest the terms be confused, one must first distinguish between authority considered in itself, for example, the very civil or papal power, and authority considered in the concrete, for example, a king or pope.

2. **Authority taken concretely consists in a composite which arises from the conjunction of two parts, namely matter and form, by analogy to a substantial thing.** Prime matter is the prime subject of each thing, out of which, when it is in it, it becomes something and not by accident. Substantial form is primary act constituting an unum per se together with prime matter, or that by which something is constituted in a certain mode of being. The material cause is that from which something is made. The formal cause is that which determines matter and in a determined way perfects it. Accidental form is analogous to substantial form inasmuch as the substance in which the accident inheres becomes material with regard to accidental form which perfects it. Substantial form gives *esse simpliciter;* accidental form however, does not give esse *simpliciter*, but *esse tale.*

In order that the compositum (in this case the king or pope) be produced, it is necessary that the form be received in matter that is apt and disposed to receiving the form. The reason is that the parts cannot be joined together and form a compositum, unless they should have a proportion between them. St. Thomas says: "There is due proportion of matter to form in two ways: through a natural order of matter to form, and by the removal of an impediment."

Wherefore it is evident that authority taken concretely (e.g., king or pope) is constituted of matter, which is a man, and the form which consists in the faculty of legislating by which someone is constituted the superior of subjects. But not just any man is disposed to receive such an accidental form, but only he who has all the required perfections to receive the accidental form of authority. If the natural order of the matter to the form should be lacking, or if there should be an impediment, the matter and the form cannot be joined.

For example, a child or insane person, although he be a man and therefore disposed by natural order to authority, is not disposed to receiving authority because of an impediment, because he needs an intellectual disposition for the purpose of promoting the common good. Similarly he who is not a citizen of a certain country cannot be its head, because it is impossible that he who is not a member of the body be its head. Similarly if a lay person or a mere priest elected to the papacy should refuse episcopal consecration, he cannot receive authority, since he lacks the necessary perfection for the purpose of promoting the common good of the Church.

Therefore it is clear that certain dispositions or accidental forms which perfect the man are necessary in order that a man become the proximate matter for the purpose of receiving accidental form.

II. Authority Taken Formally

3. Theologians and philosophers commonly define authority from the notion of law. The common definition of law is therefore the *faculty of legislating.* He who enjoys authority has the right of obliging subjects to do or to avoid something. Therefore the notion of authority must be taken from the notion of law, inasmuch as the faculty takes its specification from its act and object.

4. Notion of law according to St. Thomas. Law is defined by St. Thomas as *an order of reason for the common good, promulgated by him who has care of the community.*

> The law belongs to that which is a principle of human acts, because it is their rule and measure. Now just as reason is a principle of human acts, so in reason itself there is something which is the principle with respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. — Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness, as stated above. Consequently the law must needs regard principally the relation to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. Wherefore the Philosopher, in the above definition of legal matters mentions both happiness and the body politic: for he says that we call those legal matter *just, which are adapted to produce and preserve happiness and its parts for the body politic:* since the state is a perfect community, as he says in *Polit.* i. 1.

> Now in every genus, that which belongs to it chiefly is the principle of the other, and the others belong to that genus in subordination to that thing: thus fire, which is chief among hot things, is the cause of heat in mixed bodies, and these are said to be hot inasmuch as they have a share of fire. Consequently since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save insofar as it regards the common good.
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> The end of law is the common good.
>
> Law is ordained to the common good.
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> On the other hand, laws may be unjust in two ways: first, be being contrary to human good...and these are acts of violence more than laws....Laws may be unjust in another way by being contrary to the divine good.

Therefore according to Saint Thomas and the scholastics in general, law has an essential order to the common good, in such a way that if their order ceases, the obliging force of law would also cease, as well as the very name of law.

5. Definition of authority. *Authority is a moral faculty in that person, whether individual or collective, who has care of the community, of making, promulgating and executing particular ordinances which are either necessary or useful for the purpose of promoting the common good.* This definition agrees with the definitions of nearly all scholastics. Zigliara defines authority in this way: *the power or the faculty or the right of governing the republic.* Billot: *we call political power that by which a people is ruled for the purpose of tranquillity and order.* Meyer: *the right of directing the civil society toward its end.* Liberatore: *the right of governing the republic.* Taparelli: *I call authority a right to make obligatory that which is only good.* Schiffini: *The right of obliging the members of a state for the purpose of pursuing the end of the same.* Cathrein: *the right of obliging the members of society in order that they cooperate for the common good by their acts.*

From what has been said, it follows that authority thus defined must be placed in the genus of an operative faculty. Therefore inasmuch as it is a faculty, it takes its species from its proper act and formal object. The primary and formal object, however, of the faculty of authority is the making, promulgation and execution of laws. The formal object of law, however, is the promotion of the common good. It follows that he who enjoys authority must have the habitual intention of promoting the common good, as otherwise he cannot have authority. He

must have a habitual intention, because, by its very nature, civil or ecclesiastical authority is a permanent faculty, and not merely transitory or *per modum actus,* which is found, for example, in a priest without habitual jurisdiction, but who absolves a dying person. The intention of promoting the common good, furthermore, must be objective and not merely subjective. In other words, it is not sufficient that he who holds authority intend in his will the common good of the community, but rather the good which he intends must be the true and objective common good. The reason is that law is defined as an *order of reason for the common good.* Therefore in order that the will of the superior oblige in conscience, it is necessary that he *objectively* intend the common good. Otherwise the definition of law is not fulfilled. For which reason a law which contradicts a superior law does not oblige in conscience; it is an evil law, which all must resist, and in such a case the superior has neither the authority nor the right to make such a law.

6. Authority is essentially ordered to the common good. In founding a society, men come together for the purpose of doing one thing in common. This "one thing to be done" is nothing else than the common good of society. And because the good is one, it is natural and therefore necessary that the multitude of men who join themselves into one society designate one person — whether physical or moral — who has care of the whole community in order that he lead the whole community to its proper ends which is the common good.

Royal power — and therefore the king — are defined by the faculty of making a law, which in turn is defined by its order to the common good. Authority, therefore, is essentially ordered to the common good by means of the law, the making of which is the formal object of authority.

7. All authority comes from God. All authority is founded in the authority of God, in the very Providence of God, by which he orders and promotes all things to their ends infallibly. This faculty of making law in the king is a mere participation in the very Providence of God and in the eternal law by which all things are ruled.

The making of law by the king is a mere participation in the very divine action of the making of the eternal law, from which human law derives its power of obliging. The obedience which is given and which is owed to human law is indirectly an obedience to God Himself from whom the law receives its power of obliging. The primary foundation, therefore, of the relation *king–subject* is the very Providence of God to which all obedience is owed inasmuch as He is the Creator and Supreme Good and Ultimate End of all creatures.

This relation *king–subject* comes from God, and not from the community. Nevertheless, it requires that the community designate legally, i.e., in the name of the whole community, someone to receive the royal power.

8. Royal power produces mutual relations. The power of making law, which is an active potency, is that by which someone is constituted a king. Likewise the obligation of obeying the law is that by which someone is constituted a subject. The king or possessor of royal power is related to the whole community as the promoter of the common good. The whole community is in turn related to the promoter of the common good as the promoted to good. The king has the right of making law because God infuses in him the right of promoting the community to the common good. The subjects have the obligation of obeying because God infuses in them the duty of obeying the legislator. Therefore the foundation of the relation *king–subject* is primarily the very Omnipotence and Providence of God, and secondarily, the infusion of royal power into the king and the corresponding duty into the subjects. He therefore becomes king who (1) receives the legal designation from the whole community to promote the common good, and (2) receives an infusion of authority from God.

Since, therefore, society generates the king, inasmuch as it designates someone to promote the common good of the whole community, two mutual relations are effected, just as in natural generation: on the one hand a king is generated who is constituted king by the relation of authority towards his subjects, and on the other hand subjects are generated who are constituted as subjects by their relation of subjection to the king. Because the king is generated only in order to the common good, it follows that the relations of authority and of subjection endure only inasmuch as the order to the common good endures, so that, if you take away the order to the common good, you take away the relation.

9. Conditions for receiving royal authority. Let us recall the saying of St. Thomas concerning the necessity of proportion between matter and form, which must be formed into one composite: "*Due proportion of matter to form happens in two ways, namely by the natural order of matter to form, and by the removal of an impediment.*" Royal power, therefore, cannot be received, even in him who has a legal designation, unless there is a natural order of matter to form, and impediment is absent. Some disproportion is not able to be removed, namely that which arises from physical impediments, but some is able to be removed, namely that which arises from moral impediments. Through disproportion of physical order, therefore, insane people and women are not able to accept papal authority because they are physically impeded from receiving the power. In these cases, there is a permanent disproportion, and they are not even capable of a valid designation. Through an impediment of the moral order, however, they cannot receive papal power who posit a certain moral obstacle, both *voluntary* and *removable,* for example, the refusal of episcopal consecration, or the intention of teaching errors or of promulgating harmful general disciplines, or the refusal of baptism in the case of the election of a catechumen (for example, St. Ambrose, elected to the episcopal see of Milan). These

are capable of a valid designation because the impediment is removable, but the authority cannot be infused by God until the impediment is removed. The reason is that they are not capable of promoting the common good to the extent that they do not remove the obstacle. And because the impediment is moral and voluntary, the obstacle is reduced to an absence *of the intention of promoting the common good.* God, therefore, who is Subsistent Good, is not able to infuse power in him who posits a voluntary impediment toward the promotion of the common good.

10. Review. Authority taken concretely consists in the conjunction of two parts, namely matter and form, by analogy to a substantial thing. The material part of authority is the legal designation of some man by the whole community to receive royal power. The formal part of authority consists in the faculty of making law. The faculty or right is essentially ordered to the common good, by means of the law, by which it is measured as its formal object in such a way that, if you take away the order to the common good, you take away the faculty.

All authority comes from God, whose Omnipotence and Providence are the primary foundation of the relation *king–subject.* Authority is infused immediately by God into him who possesses legal designation provided that there be present a natural order to receiving the form and that impediment be absent. The condition, therefore, of accepting the form of authority from God, and indeed a condition *sine qua non*, is the intention of promoting the common good in him who is designated to receive the care of the whole community.

III. Authority Taken Materially, or the Legal Designation to Receive Royal Power

11. **Who legitimately rules, and who illegitimately?** Authority inasmuch as it is a power or active faculty is a predicamental accident which cannot exist unless it is received in a subject. But in what subject? In other words, the question now is: who legitimately rules, and who illegitimately rules?

The response is that he legitimately rules who is legitimately elected by society to receive authority and who does not have an impediment to receive the authority. He rules illegitimately who, illegitimately, that is, without a legal designation, has taken on authority, or if he should be validly designated, has an impediment to receiving authority.

In civil society, the selection of the subject of authority pertains, according to the common opinion, to the whole community. According to the Thomists in general, the whole community has the right of instituting or electing the form of government, as well as the subject who shall receive the authority, but the community does not transfer, as others have said, notably Suarez, the very authority itself. The community merely proposes a subject of authority; God, however, gives authority. The conjunction of the two makes authority in the concrete, or a king.

The community as such is not able to be the subject of authority; authority comes forth from God. The designation, however, of the subject of authority comes from the whole community, at least implicitly. Even in the case of hereditary monarchies, the people, at least implicitly must consent to the monarchical and hereditary system in order that the king legitimately accept authority.

These questions, however, concerning the constitution of the civil government does not pertain to us directly, because the constitution of the Church comes forth immutably from Christ Himself, nor does it depend in any way on the consent or approbation of the faithful. Furthermore the essential elements of the civil government arise from the natural law, namely the end of society, the form of government, the manner of selecting the subject of authority; the essential elements of the constitution of the Church are set down by divine disposition. Christ instituted the Church; He called the Apostles and established them in a hierarchy. He gave to the Church its end, as well as the supernatural means to attain this end. He instituted a monarchical form of government, in such a way that the constitution of the Church in no way comes forth from inferiors, but from the very authority of Christ. For not even the pope, who vicariously enjoys the authority of Christ, is able to change the divine constitution of the Church.

12. The matter of authority. From what has been said, the reader is easily able to see that authority taken concretely has both a formal part and a material part. The formal part of authority is the very moral faculty or right of making a law. In other words it is the papacy itself. The material or potential part of authority is the very man who receives this right of making a law. Authority in the concrete, namely the pope or king, arises out of the conjunction of these two elements. In order that some king or superior legitimately rule, it is necessary that he who receives the authority be designated legally to receive this power, that is, according to the norms set down either by the Church or by the civil government. Otherwise he who proclaims himself pope or king does not legitimately rule, but rules by violence, because the community is not bound to accept him who is not legally elected as the legitimate subject of authority. He who therefore through violence enters into the see of authority, does not truly receive authority, because he is not truly disposed to receiving the act or form of authority. Election or legal designation, even in the case of legitimate birth in a hereditary monarchy, perfects the subject so that he becomes the ultimate matter of authority, that is, it places him in the ultimate disposition of receiving the perfection of authority. It is analogous to natural generation, where the parents do not give the human form, that is the soul, but the ultimate disposition of the matter. God gives the soul, and the conjunction of matter and form make one thing *simpliciter*, namely a man. If, however, the matter is in some way indisposed, the form is not infused, and if it is infused for a time, the fetus dies, because the matter is not able to bear the soul because of an imperfection.

Likewise the act of authority is not able to be received except in a subject legally designated. In the civil government, because it depends on the natural law, it is easy that a certain king, who by violence has entered into the place of authority, can become the true and legitimate king because of an implicit approbation of the people. The same principle is not found in the Church, however, since the faithful do not possess by natural law the right of designating the subject of papal authority. It is necessary, therefore, that he who receives the papacy be designated according to the existing norms of the time of the vacancy of the see, that is, he must be designated by the electors who have the legal right to elect a pope.

13. The duration of designation to receive papal jurisdiction. The designation to office endures until (1) the death of the subject; (2) the voluntary refusal or resignation of the subject; (3) the removal of the designation from the subject by him who has the right to do so. There is no other way of losing the designation. Although there is no authority which is able to judge the pope, nevertheless the body of electors is able to take away from him the designation. For the designation comes from God only mediately, but immediately from the electors. For which reason, it is not beyond the rights of the electors of the pope to ascertain the fact of the loss of jurisdiction in an elected pope, or also his lack of disposition to receiving papal authority, for example, the electors must ascertain the death of the pope before they are able to proceed to the election of a new pope. Similarly, if the pope should fall into insanity, the electors would have to ascertain the insanity, and therefore the loss of the papal power, and having ascertained the fact, would be able to proceed to an election. Similarly if a lay person were elected, but refused episcopal consecration, the electors would have to ascertain his lack of disposition to receiving power, and, having ascertained this fact, would be able to proceed to an election. Likewise in the case of someone elected to the papacy, or even of him who has already accepted papal jurisdiction, if he should fall into heresy, or worse, if he should promulgate heresy and heretical and sacrilegious disciplines in the name of the Church, the electors would be able to and would have to ascertain this fact of lack of disposition of the elected person to receiving authority, or to retaining authority, and having ascertained this fact, proceed to a new election.

14. The duration of the right of designating. The duration of the right of designating is similar to the designation itself, that is, it is able to be lost only by death, renunciation, or legal removal. In the case of the electors of the pope, only he who has the right of nominating the electors (i.e., a pope at least materially) has the right of removing them legally. But how can a non-pope, or a pope merely materially remove or nominate legally electors of the Roman Pontiff? In other words, how can conclaves after Vatican II be considered legitimate, when the electors are themselves

heretics, stripped of jurisdiction, or named by heretics who are stripped of jurisdiction?

The response is that authority (taken concretely) has a double end, of which one is the making of law, and other is of nominating subjects for the purpose of receiving authority. Just as authority itself has a "body" and "soul" or matter and form, of which the first is designation to receive jurisdiction, and the latter the jurisdiction itself, likewise the object of authority is twofold. The first and indeed the principal object or end of authority is to direct the community to good, by means of making laws, which pertains to the soul of authority. The second and indeed secondary (because it is ordered to the first) is to nominate subjects of authority, which pertains to the body of authority, in order that the community continue through time. For example if Saint Peter had ruled the Church, but had not provided for his legitimate succession, he would have seriously, even mortally harmed the good of the Church, because it not sufficient for a good government that someone merely make laws, but it is necessary that he supply a legitimate succession to sees of authority.

These two objects of authority are really distinct. The reason is that the act of designation to receive an office is not the making of a law. To designate someone to an office is merely to transfer a right or title. It does not regard the end of society. No obedience is owed to designation, as to law, but only recognition. But if the objects are really distinct, then the faculties which are order to the objects are also really distinct. Therefore the faculty of designating is really distinct from the faculty of making law. Therefore it is possible that even if someone did not enjoy the faculty of making law, that is, authority taken properly and formally, he would be able nevertheless to enjoy the faculty of designating, to the extent that he intends the objective good of legal succession to sees of authority. Furthermore, as has been said above, the faculty of designating comes from the Church; the faculty of making law comes from God. The Church is able to give the faculty of designating, and at the same time, however, God may not give the faculty of making law because of an impediment.

But the electors of the pope, even those who adhere to Vatican II, intend to designate someone legally to receive the papacy. Likewise Paul VI and John Paul II, although popes merely materially, intend to nominate subjects to have the faculty or right of designating a pope when they nominate cardinals. Therefore the conclaves, even those after the Second Vatican Council, intend the good of succession to the papal see objectively, and those who are elected to this see objectively intend the good of naming electors of the pope. This merely material continuity of authority is able to indefinitely continue, to the extent that the conclaves intend to elect a pope and that those elected intend to nominate electors.

Nor is designation rendered null because of the heresy either of the electors or of the person elected. The reason is that designation in itself does not regard the disposition or lack of disposition of the subject. The requirements of authority, that

is, of the right to make law, regard the disposition or lack of disposition of the subject. In other words, the matter becomes incapable of receiving authority because of the requirements of the form, that is, of authority, not however of the requirements of designation. For example, a lay person, who is elected to the papacy, must, in order that he validly receive the authority, have the intention of receiving episcopal consecration, and if this should be absent, he would remain validly designated, but incapable of accepting authority because of his indisposition with regard to the form, but not with regard to the designation. Such a person would be a pope materially until he would intend to receive episcopal consecration. The designation is valid; the requirement of authority renders the subject invalid until he becomes matter in the ultimate disposition to receive authority.

Therefore he who is designated to the papacy, even if he does not receive authority, because of an obstacle either of heresy or of refusal of episcopal consecration or for any other reason, nevertheless he is able to nominate others to receive authority, (e.g., bishops) and even electors of the pope, because all these acts pertain merely to the continuation of the material part of authority, and do not involve jurisdiction, because in nomination *no law is made.* Nomination or designation is merely a preparation, and remote indeed, for the making of law. To the extent that the designate to authority retains the intention of continuing the material part of the hierarchy, he validly accepts this non-legislative power. Likewise electors who are named by merely material popes make a legal designation when they elect someone for the purpose of receiving the papacy, because in this act no law is made, and therefore the electors need no jurisdiction, that is, no right of making law, but merely the right of active voice in order that they validly and legally designate.

An analogy is able to be taken from the human soul. The soul is ordered to acts specifically diverse, e.g., acts of the vegetative life, the sensitive life, and the rational life. It is possible, however, because of the inaptitude or indisposition of the matter, (for example, because of a serious wound to the head), that the soul posit only vegetative acts, in such a way that the body remains alive and in potency to superior acts, when the matter becomes disposed. If, however, the matter becomes completely indisposed, to sustaining life, even vegetative, death occurs. Likewise, analogically the Church is able to sustain a "vegetative life" of the hierarchy, and at the same time not sustain a "legislative life," or a life of pursuing the ends of the Church, (at least on the part of the hierarchy). This state of affairs comes forth not because of the defect of Christ, but because of the defect of men who are defectible, and who are designated to receive authority. It is permitted by Christ the Head of the Church, and is "wondrous in our eyes." However, all evil permitted by God leads to good.

The furtherance of ends of the Church is accomplished by priests and by bishops who have not fallen into heresy, with a jurisdiction which is not habitual but merely transitory, when they posit sacramental acts.

15. The right of electing is not jurisdiction or authority. The right of electing the person to receive authority is not an authority or jurisdiction, because those who have this right, do not necessarily have the right of making a law. For example, citizens in a republic have the right of electing; nevertheless they are not able to make a law, but only nominate him who should receive the authority. The object of the right of electing is not the making of law, but merely the designation of the person. Therefore the right of electing endures to the same extent that the habitual intention of designating a person to receive authority endures, or until this right should be taken away by authority. The right of electing is ordered to an act specifically distinct from that to which jurisdiction or authority is ordered. Authority is ordered to making laws which are orders for promoting the proper ends of the very society. The right of electing, however, is not ordered directly to promoting the proper ends of society, but only to supplying an apt subject to receive this authority. The object of the one is *simpliciter* diverse from the other, and the right of electing in no way implies in its formal concept the possession of the right to make a law, just as election in itself does not imply in its formal concept the possession of authority. It is true in the concrete that these two things often coincide in the same person, for example, in a cardinal or in a pope. But not necessarily do these two accidents (either the right of electing and the right of making a law or election and the possession of authority) inhere in the same person, because the object of each is diverse. As has been said above, the object of the right of electing is the designation of the person who should receive authority, and the object of the right of making a law is the law itself, or the order of reason for the purpose of promoting the common good. The act or exercise of the right of electing is *election;* the act or exercise of the right to make a law is *legislation.*

Because these rights have objects which are *simpliciter* diverse, they are two moral faculties *simpliciter* diverse. This distinction solves the difficulty which is objected by many, that it is impossible that a conclave which is composed of heretical cardinals and therefore of those deprived of jurisdiction, should be capable of electing him who is ordered to receiving the fullness of jurisdiction.

16. The right of making a law comes immediately from God; the right of designating comes mediately only from God, but immediately from the Church. The right of making a law, i.e., the right of teaching, ruling, and sanctifying the Church comes from God. It is authority properly so-called, authority indeed of Christ, in which the pope participates vicariously. The right, however, of designating him who should receive authority comes mediately from God but immediately from the Church. It is clear: when the pope dies, the right of designating the successor does not die with him. The legal possessor of this right of designating is the body of electors or conclave. *For which reason, the conclave or the body of electors is able to communicate the right of designating even to a material pope, that is, to him who is*

designated for the papacy, but without papal authority, in such a way that this material pope can nominate others legally, and thus perpetually sustain the legal body of electors. In other words, all these things are in the *line of materiality.* This principle is extremely important because those who criticize the thesis do not understand how he who does not have papal authority can nominate cardinals or elector who are able to legally and legitimately elect him who ought to accept authority. They falsely think that the right of designating the electors is the right of legislating, and they compose those things which ought to be divided.

This right of designating, which is found in Paul VI or in John Paul II does not constitute them as popes, *because they lack authority or the right of making law.* Therefore they are not popes except materially. They can, nevertheless, designate electors and even bishops for the purpose of succeeding to sees of authority, and even validly change the rules of election, especially if these changes have been accepted by the conclave.

IV. The Conjunction of the Two Parts of Authority

17. *Vacantis Apostolicæ Sedis* of Pius XII. This document declares:

After the election has been done according to the canonical norms, and the Secretary of the Sacred College, the Prefect of the Apostolic Ceremonies, and two Master of Ceremonies have been summoned into the hall of the Conclave by the most recent Cardinal Dean, the consent of the elect is sought by the Cardinal Dean in the name of the entire Sacred College by these words: *Do you accept the canonically accomplished election of yourself to the papacy?* When this consent is given within the limit, whatever is necessary, to be determined by the prudent judgment of the Cardinals by a majority of votes, immediately the elect is the true pope, and he acquires in act the full and absolute jurisdiction over the whole world and may exercise it. (§ 100 & 101)

It is therefore clear that once the consent to the election is given, the elect becomes the pope. The conjunction, therefore, of the matter and the form of the papacy is immediate. How, therefore, can someone who has given his consent remain a pope only materially? Answer: because matter and form cannot be united *unless the matter has due proportion to the form,* which happens in two ways, *namely through the natural order of matter to form, and by the removal of any impediment.*

He therefore who has been legally elected to the papacy receives *whatever authority he is capable of,* i.e., to which he does not posit an impediment. Therefore it is possible that someone is capable of receiving the right of designating which regards

legitimate succession and the permanence of the corporeal life of the Church, but at the same time not accept authority properly so-called, that is, the right of making a law, which regards legislation and the government of the Church.

But as we saw above, the intention of promulgating errors or harmful disciplines posits an impediment in him who is elected to receive the form of authority, who, even if he should consent to the election, would remain an elect only until he should remove the impediment.

V. The Possibility of Separating Matter and Form of Authority

18. In beings *per accidens* matter and form are able to be separated. In beings *per se,* for example a man, it is impossible that the person survive if matter and form be separated. Matter is not able to exist *actu* without substantial form. In beings *per accidens,* that is in those which arise from a conjunction of an accidental form with a substance (which becomes analogically material with regard to the accident), matter and form are able to be separated without the corruption of the suppositum — for example, a *white man,* or *grammarian,* or a *musician.*

The pope, however, inasmuch as he is the pope, is a being *per accidens,* because he is an aggregation of many beings, namely of man on the one hand, and of many accidents on the other. Of these accidents some are merely dispositive, for example, sacerdotal ordination, episcopal consecration, etc. But one is formal, by which a certain man is denominated pope *simpliciter,* and this is the right of making a law, that is, authority or jurisdiction.

A man disposed to receiving authority is a substance which has all the necessary perfection for receiving the form of authority, of which the ultimate and indeed *sine qua non* is the legal designation to receive authority. Such a designated man is able to receive authority either immediately or after a certain time. If he does not accept the authority immediately, he remains the ultimate matter of authority, a man elected or designated, but he does not have jurisdiction; he does not have the right to make a law, or to direct the community toward its proper ends.

A notable example is the President of the United States of America. He is legally designated in the month of November, but he does not receive his authority before January 20th of the following year. Within this time between election and the acquisition of power, he is not the president, because he does not have power, but he is not *simpliciter* non-president, because he has a legal designation. He is president materially. If such an elected person should never come to Washington for the purpose of receiving power, he would remain the president materially until Congress should remove this designation from him.

It is difficult to conceive of the same state of affairs in the case of the Roman Pontiff, because custom and law set down that he should immediately receive papal jurisdiction in the very act of accepting the designation. It is indeed possible that a

certain man who is legally designated, and who has accepted the designation, does not receive, nevertheless, the jurisdiction inasmuch as he lacks a certain necessary disposition, e.g., the intention of receiving episcopal consecration, if he is not a bishop, or the use of reason, if he is mentally ill. In such a case, the elected man would have a designation to the papacy, but he would not be a true pope, but only a pope materially, until he should consent to an episcopal consecration or if the insanity should cease.

The designation to receive authority and the authority itself are therefore two accidents which are able to inhere in a subject, and because they pertain to the accidental order, are merely analogically material and formal respectively, with regard to the pope.

A man who has the first accident, that is, designation, by that very fact becomes the proximate matter of authority, or is authority (in the concrete sense) *materialiter.* Therefore a lay person who should be designated to the papacy, but who should refuse episcopal consecration, would be a pope materially until a conclave should take this designation away from him.

Because the designation to authority differs in a real way from the authority itself, the designation is able to exist in a certain subject without authority, as has been said above. By analogy parents produce the proximate matter for receiving a human form, but they do not themselves infuse that form. In a similar way, the electors provide the proximate matter of the papacy, or of some ruler of society, but they do not supply the authority. If the matter which is produced by the parents is in some way indisposed to receiving the human form, it does not become a man, but is expelled from the body of the woman. Similarly if the electors supply some matter of authority, which nevertheless is indisposed to receiving the authority, he does not become the pope, but he is expelled, that is, the electors take away from him the designation. Furthermore by analogy, just as a woman who does not expel an indisposed fetus, becomes sick with infection, so the Church or society which does not expel matter which is indisposed to authority, becomes infected with the disease of confusion, because of the absence of authority. Furthermore if the cause of indisposition to authority is the will to promote heresy, then the institutions of the Church smell of the putrefied decay of heresy, because of the *appearance* of authority in him who is elected.

VI. The Causes which Impede the Conjunction of the Matter and Form of Authority.

19. As we said above, the matter of authority, or the designated man, is not able to receive authority to which he is designated if he posits voluntary obstacles. What are these voluntary obstacles? The answer is: whatever impedes the designate from promoting, in a habitual manner, the common good.

The case of the Roman Pontiff is most particular, because the good which he must promote is much higher than the good of civil society. The good of the Church consists in the furtherance of the ends which Christ Himself imposed upon it, and continues to intend for it. These ends are three, corresponding to the three functions of Christ, namely, (1) to promulgate truth indefectibly and infallibly inasmuch as Christ is a Prophet; (2) to offer the true and unique sacrifice to the one and true God, and to administer true sacraments, inasmuch as Christ is the High Priest; (3) to indefectibly set down laws which infallibly lead to eternal life, inasmuch as Christ is King. Therefore he who has or who posits an impediment even to one of these three essential functions of Christ and the Church is not able to receive the authority of Christ or the Church, because authority, as we saw above, necessarily and essentially is ordered to the common good, to the furtherance of the proper ends of society.

He who should therefore intend (1) to promulgate error, (2) to promulgate the use of false worship or the worship of a false God, or the non-use of the true worship, or (3) promulgate harmful laws, although he would be validly designated, is not able to receive authority. To intend such things is to intend the *overthrow of the Church, and its complete destruction.* For the Church is the *column of truth* by the institution of Christ, and he who intends to promulgate error in its name, either in speculative things or in practical things, perverts its nature. Christ is the principal head of the Church, and the authority of the pope is the authority of Christ. The intention, therefore, of promulgating error completely destroys the proportion between the authority of Christ and the designate.

The intention, however, of overthrowing the Church through the promulgation of error is not the only reason by which he is not able to receive papal authority. By the example that we cited above, Pius XII said that a lay person, who should be elected to the papacy, is not able to accept the election until he would consent to be ordained. The reason is evident: he who does not want to be a priest implicitly does not want, and therefore cannot accept sacerdotal authority. Nor can he be the image of Christ the supreme High Priest, and therefore he is not able to fulfill the essential function of the papacy. Likewise for the other functions: he who intends to promulgate a false doctrine cannot exercise the office of Christ as Supreme Truth; he who intends false worship, is not able to function in the office of Christ the High Priest; he who intends to promulgate harmful laws cannot function in the office of Christ the King. Just like Christ her Master, the Church must be to all men the *way, the truth and the life,* inasmuch as it *rules,* it *teaches* and *sanctifies,* and these *infallibly.* But if the authority of the Church promulgates error, then the Church can be neither way, nor truth, nor life to anyone.

APPENDIX: THE DISTINCTION BETWEEN A REAL FACT AND THE LEGAL RECOGNITION OF A REAL FACT

20. Before we can proceed to the thesis, it will be necessary to explain a distinction of great importance, that is, the distinction between a real fact and the legal recognition of a real fact.

Every society is a moral person, and by analogy to a physical person, a society has its intellect and its will. Therefore it is possible and it often happens that a fact is able to be true in the real order, and even most evident, but is not recognized as such by society. For example, someone is able to commit a murder, in front of many witnesses. Although the witnesses know that such man is a murderer, nevertheless, before the law, he is held as innocent until he should be condemned by a court of law. In other words, in the eyes of society, he is not a murderer until he is convicted, even if it is absolutely certain to the witnesses that he is a murderer, and in reality is a murderer. Another example: in matrimony a spouse simulates consent. Before God and in reality, there is not a bond of matrimony in this case; but before the Church, the marriage is valid until it can be proven that the consent was simulated. If the priest should discover, by the confession of a spouse, that the consent was simulated, he must forbid the spouses the use of matrimony, because before God the bond does not exist, although before the Church, the bond does exist until it shall be declared null by a legal declaration. Another example: a priest in his ordination secretly holds back his intention to receive the Sacrament of Orders. Legally, before the Church, he emerges from his ordination as a priest, even though before God and in reality he is not a priest. If afterwards he wishes to prove the nullity of the sacrament, he remains legally a priest, until the nullity is duly proved. Because of this distinction between a real fact and a legal fact, the Church — and every society — is distinguished from a mere mob.

Furthermore this distinction is confirmed in the case of Nestorius, with whom, once he pronounced his heresy in the cathedral in the year 428, the clergy and people broke communion with him and refused him obedience, who nevertheless persevered in the see as the legal designate until his legal deposition by the Council of Ephesus in the year 431. If legal recognition of his crime had not been necessary, then the Pope would have nominated another elect in his place before the judgment of the Council.

Our problem today — which is indeed horrendous — is that all the sees of authority, at least apparently, teach the errors of Vatican II as the magisterium, and all electors of the pope participate in the errors of Vatican II, in such a way that there is no one who, in a legal way, is able to recognize or ascertain the fact of error in the magisterium, and therefore the absence of authority in those who promulgate it. In this state of affairs, which never existed before in the history of the Church, the faithful must, on the one hand, defend themselves, just as the faithful of Constantinople had to defend themselves against Nestorius, refusing communion with the promulgators of error, and refusing to recognize their possession of authority, but on the other hand, they must observe the legal quality of the Church,

whereby someone perseveres in his see or function until it should be taken away from him by law.

For which reasons, the thesis, which I will prove below, provides a perfect explanation of the current problem, and a position that is truly Catholic, because on the one hand it preserves the indefectibility of the Church and the infallibility of its magisterium, by refusing to recognize the authority of Christ in those who promulgate error, but on the other hand it protects the apostolicity and unity of the Church as a unified and single moral body, by recognizing in them who are legally designated to ecclesiastical offices a legal designation until this designation should be taken away from them by competent authority.

THIRD SECTION

THE THESIS IS STATED AND PROVED; OBJECTIONS ARE ANSWERED

21. The thesis is declared and proved.

T H E S I S

HE WHO HAS BEEN ELECTED TO THE PAPACY BY A CONCLAVE DULY AND LEGALLY CONVOKED, BUT WHO HAS THE INTENTION OF TEACHING ERROR, OR OF PROMULGATING HARMFUL DISCIPLINES, IS NOT ABLE TO RECEIVE PAPAL AUTHORITY UNTIL HE SHOULD RECANT AND REJECT THE ERROR OR THE HARMFUL DISCIPLINES, OR IN OTHER WORDS, HE IS NOT THE POPE FORMALLY; HE REMAINS, HOWEVER VALIDLY DESIGNATED TO RECEIVE THE PAPAL AUTHORITY, IN OTHER WORDS HE IS THE POPE MATERIALLY, UNTIL A LEGAL CONCLAVE OR OTHER COMPETENT AUTHORITY SHOULD ASCERTAIN THAT THE SEE IS VACANT.

Proof of the first part:

Major: He who intends to teach error or promulgate harmful disciplines, posits an impediment to receiving papal authority.
Minor: But papal authority is not infused by God into a validly designated person who posits an impediment to receiving papal authority.
Conclusion: Therefore into a validly designated person who has the intention of teaching error or promulgating harmful disciplines, papal authority is not infused by God.

Proof of the major: The condition of accepting authority *sine qua non* is that he who receives it have the intention of promoting the common good of the community of which he is the head. However, the common good of the Church is to teach men the truth, to rule them in the correct paths to heaven, and to sanctify them by true and valid sacraments. Therefore the authority of the Church has an essential order to teaching men the truth, to ruling them in the rights paths to heaven, and to sanctifying them by means of valid and true sacraments. He who does not intend these ends posits an impediment to accepting authority.

Proof of the minor: From what has been said above. Authority, taken concretely, results from the conjunction of two parts of which the one is material and the other formal. This conjunction is not able to take place if there is an impediment, by analogy to natural things.

Proof of the second part.

Major: The legal designation to the papacy is not able to be lost except in these three ways: through (1) the death of the subject; (2) the voluntary refusal of the designation or renunciation of office by the subject; (3) the removal of the designation by competent authority.

Minor: But he who has been elected by a conclave duly and legally convoked, but who has the intention to teach error or to promulgate harmful disciplines (namely John Paul II), has neither died, nor has voluntarily refused or renounced the designation, nor has been removed by competent authority.

Conclusion: Therefore he who has been elected by a conclave duly and legally convoked, but who has the intention of teaching error or of promulgating harmful disciplines (namely John Paul II) has not lost his legal designation to the papacy.

Proof of the major: From Canon Law (Canon 183 § 1). Neither translation nor lapse of fixed time pertain to the papacy.

Proof of the minor: From the facts. John Paul II (1) is living, (2) has accepted the designation of the Conclave and has never given it up, and (3) has not been removed by competent authority.

22. Response to objections.

OBJECTIONS AGAINST THE FIRST PART OF THE THESIS

I. That thesis is erroneous which places in the faithful the right of accusing him who has been elected to the papacy of not intending the good of the Church, because this right pertains only to the competent authority. But the thesis places in the faithful the right of accusing him who has been elected to the papacy of not intending the good of the Church. Therefore the thesis is erroneous.

Resp. I distinguish the major: it does not pertain to the faithful, but to competent authority to *legally* accuse him who has been elected to the papacy of not intending the good of the Church, *I concede;* it does not pertain to the faithful, but to competent authority to *privately* accuse him who has been elected to the papacy of not intending the good of the Church, *I deny.* And I counterdistinguish the minor: the thesis would have the faithful accuse legally him who has been elected to the papacy of not intending the good of the Church, *I deny;* privately, *I concede.* And I deny the conclusion. The faithful have no right to condemn legally someone elected to the papacy, but only with a private judgment by comparing the changes of Vatican II with the previous magisterium and practice. The reason is that the faithful cannot give their assent to formulas which are contradictory. Because, however, the "magisterium" of Vatican II contradicts the previous magisterium, the faithful cannot *not accuse,* by private judgment, him who promulgates this "magisterium," in the same way that the faithful of Constantinople accused Nestorius.

II. That thesis is erroneous, even protestant, which places in the faithful the right of scrutinizing, by private judgment, the acts and magisterium of a general council and a pope. But in the thesis which you propose, the faithful scrutinize, by private judgment, the acts of the magisterium of a general council or pope. Therefore the thesis is erroneous, even protestant.

Resp. I distinguish the major: the faithful do not have the right of scrutinizing, by private judgment, the acts and magisterium of a general council or pope, inasmuch as they (the faithful) are able to dissent from the magisterium of the Church, *I concede;* inasmuch as they are not able to compare the magisterium with preceding magisterium, *I deny.* And I counter distinguish the minor and I deny the conclusion. The faithful, in fact, *must* compare, because the Catholic Faith is one, and all its truths are consistent. Not even natural truth is able to tolerate contradiction, because it is unintelligible. Much more is contradiction repugnant to supernatural truth and to the supernatural habit by which one assents to these truths.

III. If there is a contradiction between the magisterium of Vatican II and previous magisterium, the faithful must presume that the contradiction is merely apparent and not real. But in the thesis which you propose the faithful do not presume in such a way. Therefore the thesis is erroneous.

Resp. I deny the major because it is absurd. It is metaphysically impossible to give assent to two dogmatic formulas which contradict each other. Therefore the

faithful are not able to assent to the magisterium of the Second Vatican Council, and at the same time to previous magisterium because they contradict each other. In order, therefore, that the faithful assent to both at the same time, it would be necessary that they *interpret,* by means of their own private judgment, either one or the other act of magisterium, in order that they in some way become consistent. But in such a case the notion of magisterium is ruined, because the faithful relying on their own judgement, lose the supernatural motive of adherence to the magisterium. Furthermore, each one of the faithful would have his own personal interpretation, and would fall easily into error. To the contrary, the faithful are not able, by their private judgment to decide whether a contradiction in the magisterium is apparent or real, but they have a single duty with regard to a contradiction: to adhere to the previous magisterium and to reject the contradicting doctrine. To interpret the magisterium pertains only to the magisterium, and not to the faithful.

IV. Those who adhere to the thesis, as well as the sedevacantists in general, are similar to the Old Catholics, who accused the First Vatican Council of defecting from the tradition of the Church by promulgating the doctrine of pontifical infallibility.

Resp. No analogy exists between the Old Catholics and the present-day Catholics who refuse the errors of Vatican II. The reason is that no one is able to find in the magisterium of the Church a condemnation of pontifical infallibility. If the Old catholics had been able to find in previous magisterium the doctrine of infallibility called "an insanity," or condemned as "an evil doctrine," or "reproved, proscribed, and condemned" by the apostolic authority of a preceding pope, then *correctly* would they have refused such a new and contradictory doctrine. For with such words Pius IX condemned the doctrine of religious liberty. It is evident, however, that nowhere have these words been said concerning the doctrine of pontifical infallibility. Therefore the comparison does not have merit.

V. Those who adhere to the thesis, as well as the sedevacantists in general, are similar to the followers of Fr. Feeney, who gave their own interpretation to the doctrine that there is no salvation outside the Church.

Resp. Rather it is those who give a benign interpretation to the Second Vatican Council who are similar to Fr. Feeney, who precisely do not seek the interpretation of the Second Vatican Council *in the magisterium of those who have promulgated it,* but who give their own interpretation to this Council, which differs from that which has been given to it by the "magisterium" of Paul VI and of John Paul II. For interpretation is nothing else than the discovery of the meaning or the intention of the author. But the author of the magisterium is he who teaches. Therefore John Paul II is the authentic interpreter of the magisterium of the Second Vatican Council. Otherwise the faithful would fall into private interpretation of the

magisterium, where the Church makes a document, and each one adopts an interpretation according to his own opinion. On the contrary only the magisterium is the authentic interpreter of the magisterium, and the Church learning does not have the right to interpret in a private way. Furthermore, the interpretation which John Paul II gives to the Second Vatican Council is heterodox not only in word but also by deed. Therefore Catholics correctly reject this magisterium.

OBJECTIONS AGAINST THE SECOND PART OF THE THESIS

VI. Canon 188 § 4 says that he who publicly should defect from the Faith tacitly renounces his office. But the conciliar "popes" have publicly defected from the Catholic Faith. Therefore they have renounced their office tacitly. Therefore they are not popes either formally or materially.

Resp. I distinguish the major: Canon 188 § 4 says that he who should publicly defect from the Catholic Faith tacitly renounces his office, if his imputability is public, *I concede;* however if it is occult, *I deny.* The reason is that defection from the the Faith must be legally known, which happens either by declaration or by notoriety. But the notoriety requires that not only the fact of the crime be publicly known, but also its imputability (Canon 2197). In the case, however, of defection from the Catholic Faith, either through heresy or through schism, it is necessary that the defection be pertinacious in order that it be imputable. Otherwise the law becomes absurd: every priest who through lack of advertence in a sermon pronounces a heresy would be guilty of notorious heresy, with all of the connected penalties, and tacitly would renounce his office. But defection from the Catholic Faith on the part of conciliar popes, although it be public with regard to fact, is not public with regard to imputability, and therefore there is no tacit renunciation. What is public is the intention of these "popes" to promulgate errors condemned by the ecclesiastical magisterium, and a sacramental practice which is heretical and blasphemous. Because this is so, one must conclude they necessarily do not possess apostolic authority, but one cannot conclude more or less. Not more, because competent authority alone is able to ascertain and declare legally the reality of their defection from the Catholic Faith, and not less, because it is impossible apostolic authority, because of the infallibility and indefectibility of the Church, promulgate errors which have been condemned by the ecclesiastical magisterium, and a sacramental practice which is heretical and blasphemous.

Instance: But Canon 188 says that the renunciation does not require a declaration.

Resp.: Does not require a declaration of the vacancy of the office, if the imputable defection is notorious or declared by law; *I concede;* if the defection is not

notoriously imputable, or declared, *I deny.* In other words, it is necessary that public defection from the Catholic Faith have a certain legal recognition, either by the notoriety of the imputability or by legal declaration.

Instance: But the imputability of the defection of the these "popes" is notorious.

Resp.: I deny. In order that imputability be notorious, it is necessary that either (1) he who has pronounced the heresy publicly confess that he professes a doctrine which is against the magisterium of the Church, such as Luther; (2) when he has been warned by the authority of the Church, and the warning having been made, he publicly rejects authority. But neither one nor the other of these conditions are fulfilled in the conciliar "popes." Therefore the imputability of the defection is not notorious.

Instance: But Canon 2200 presumes the immutability if the fact of the crime has been proved.

Resp.: I distinguish. It presumes imputability given the external violation of the law, *I concede;* it presumes imputability when the law has not been externally violated, *I deny.* In the case of defection from the Catholic Faith, the violation of the law *involves pertinacity,* and if it should be absent, the law is not violated. Where, therefore, pertinacity is neither notorious nor declared by law, Canon 2200 is not able to be applied.

I think, however, that there is not a true dissension between the supporters of Canon 188 and the supporters of the thesis. For all agree that John Paul II does not possess the office of the papacy, because to possess an office is the same thing as to enjoy authority or jurisdiction. The thesis teaches that John Paul II retains a right to the papacy *(ius in papatu)*, i.e., a legal designation to the papacy. But designation to office is not the possession of office. Therefore there is not an incompatibility between these two arguments. However let the supporters of Canon 188 beware, for logically their argument implies: (1) that John Paul II was legally elected to the papacy; (2) that he, at least for a time, legitimately and fully possessed the papacy [!], because no one is able to renounce an office which he does not already have; (3) that John Paul II, as full possessor of the papacy, is above Canon Law, and therefore this canon cannot be applied to him. The thesis, however, passes over Canon Law, and relies on philosophical principles of authority itself, which are able to be applied even to the supreme authority of the Roman Pontiff.

VII. It is impossible that matter exist without form. But in the thesis, the matter of the pope exists without the formof the pope. Therefore the thesis is erroneous.

Resp. I distinguish the major. It is impossible that matter exist without form, that is, that prime matter exist *actu* without substantial form, *I concede;* that a being *per se* is not able to exist without certain accidents, *I deny.* Substance is merely

analogically material with regard to the accidents which inhere in it, which in turn are merely analogically formal with regard to substance, inasmuch as they are perfections. From the definition of an accident, it is evident that substance is able to subsist without accident. As has been said above, a pope, as pope, is merely a being *per accidens,* and consists therefore of matter and form only in the broad sense and only analogically to a being *per se.* Designation to the office of papacy creates a right in the possessor of the designation; furthermore, authority itself is also a right, and these are only accidents. It is eminently clear that a man can exist without these accidents and can possess the designation without, at the same time, possessing the authority.

VIII. If the electors do not have the right of electing a pope, then the one that they elect is not truly designated to the papacy. But the electors of the conciliar popes do not have the right of electing because they are heretics. Therefore their elect is not truly designated to the papacy.

Resp.: I concede the major. *I deny* the minor and the conclusion. The electors of conciliar "popes," that is of Paul VI, John Paul I and John Paul II, have a right of electing because they have not lost this right owing to heresy for many reasons: (1) their defection from the Catholic Faith is neither declared nor notorious as cited above (Objection VI) and therefore there is neither tacit renunciation nor censure; (2) the right of electing is not jurisdiction. It is not a right of making law. It is not an office. It is merely a moral faculty of designating legally him who should receive supreme authority. Nothing, therefore, is required for the possession and for the exercise of this right *except that someone be legally designated by him who has the legal right to designate the electors of the pope.* The possession of authority, i.e., the right of making law requires that the possessor intend to direct the Church to its proper ends, but the possession of the right of designation requires that the possessor intend only the continuity of the hierarchy of the Church. But the present electors, even if they should favor the Second Vatican Council and the Novus Ordo in general, intend objectively the good of the hierarchical continuity of the Church. Therefore validly and legally they possess the right of designating. And he who has been elected validly and legally has been elected, and possesses a legal right to the papacy.

IX. He who accepts the right of electing from a non-pope does not have a valid and legal right to elect a true pope. But the electors of conciliar popes are designated as electors by a non-pope. Therefore he does not have a valid and legal right to elect a true pope.

Resp. I distinguish the major. He who receives the right of electing the pope from someone who is not even a pope *materially, I concede;* but from someone who is not a pope only *formally, I deny.* I counterdistinguish the minor and deny the conclusion. The reason is that, as I stated above, authority has a double object: the one which regards the making of laws, and the other which regards the continuity of

the body of the Church. Authority properly so called, which is the right of making law, regards the first object, and comes immediately from God; the right, however, of designating, which is not authority properly so called, regards the second object, and comes forth from the Church. But he who has been elected to the papacy receives authority immediately after the acceptation of the election, *unless he should posit an obstacle to receiving the authority,* as I have said above. Therefore it is possible that he who has been elected to the papacy receive the right of designating which regards the continuity of the body of the Church, but not receive the authority which regards the making of laws. In such a case, the pope-elect (the pope merely materially) would designate legally and validly the electors of popes, but would not legally and validly make laws. And such is the case of conciliar popes, who therefore validly and legally designate electors of popes, even Novus Ordo "popes."

X. He who is not a member of the Church cannot be its head. But conciliar "popes" are not members of the Church. Therefore they cannot be its head.

Resp. I distinguish the major. He who is not a member of the Church cannot be its head *formally, I concede,* cannot be its head *materially, I deny.* The reason is that to be a head materially, as has been said above involves only a designation to receive the papacy; the form, however, that is the authority, requires that the designate be a member of the Church. For example St. Ambrose received the designation to the episcopacy of Milan while he was still a *catechumen* (and therefore not baptized and outside the Catholic Church). If he had refused baptism, he would not have been able to receive authority, but would have remained a bishop elect until this designation had been taken away from him. But even if someone wishes to reject his argument, it will be necessary to distinguish the minor: conciliar "popes" are not members of the Church *before God* and *in re, I concede* as only probable, inasmuch as they are only probably pertinacious in heresy; they are not members of the Church *before the law, I deny,* inasmuch as their pertinacity and heresy is neither proven nor presumed by law. The whole force of the objection depends on the possibility of proving their pertinacity, which, without the declaration of the Church, is extremely difficult. Furthermore, if one should have a doubt concerning their pertinacity or their imputability, the presumption would be for the accused, and the argument would collapse.

Instance: Even heretics who err in good faith are not members of the Church.

Resp. I distinguish: heretics *who are born into non-Catholic sects,* who err in good faith, are not members of the Church, *I concede;* heretics, however, *who have been baptized in the Catholic Church,* who err in good faith, are not members of the Church, *I deny.* This distinction *is of the greatest importance,* and those who do not make it fall into great confusion. The reason is that those who have received Catholic baptism are legally members of the Church until they cease to be either through (1) pertinacious and notorious heresy, (2) pertinacious and notorious schism, (3)

pertinacious and notorious apostasy, (4) excommunication. The first three involve pertinacity; therefore they do not have value in the argument. Excommunication is either *latæ sententiæ* or declared. If it is the first, the argument does not hold, because censures against heresy require imputability, that is, notorious pertinacity. If, however, the excommunication has been declared, the argument holds. But if it has not been declared, the argument does not hold. But the excommunication has not been declared. Therefore the argument does not hold. Those who have been born in non-Catholic sects, even if they should err by good faith, are presumed legally to be pertinacious, and therefore are outside the Church legally, even if they are able to be members of the Church by desire.

Instance: Canon 2200 § 2 presumes imputability when there is an external violation of the law.

Resp. This is to beg the question. To cite this canon is circular, because the violation of the law in the case of heresy requires pertinacity. Read the law: (Canon 1325 § 2): *If one, after the reception of baptism, while retaining the name of christian, pertinaciously denies or doubts about any of the truths which must be believed by obligation of divine and Catholic faith, is a heretic; if he gives up the Christian faith entirely, he is an apostate; finally if he refuses submission to the Supreme Pontiff, or rejects communion with the members of the Church subject to the latter, he is a schismatic.* Therefore there is not an external violation of the law where there is not external pertinacity. Even if one wishes to apply Canon 2200 § 2, the presumption of imputability in violation of the law against heresy matters nothing without the declaration of the Church, because presumption must cede to facts. *De facto,* however, it is not certain that these heretical "popes" are pertinacious, nor is there a competent authority or tribunal which is able to declare the fact of pertinacity. The whole argument labors under the difficulty of proving or even presuming pertinacity. In other words, when there is a lack of authority, or when it ceases to operate, confusion results, and certitude in legal matters becomes extremely difficult if not impossible. This argument always descends into an argument concerning the pertinacity of these "popes" from which, in my opinion, there is no exit.

XI. The thesis is absurd because it asserts that someone is and is not the pope at the same time.

Resp. Those who object in such a way do not understand the real distinction between act and potency, nor the distinction between non-being *simpliciter* and being in potency. Let them consult manuals of aristotelian-thomistic philosophy.

XII. The thesis has no foundation in Canon Law.

Resp. I deny. If you research topics concerning the vacancy of ecclesiastical offices, you will find the distinction of offices which are vacant (1) *de iure* and *de facto;* (2) *de iure* but not *de facto;* (3) *de facto* but not *de iure.* The thesis holds that the

office of the papacy is vacant *de facto* but not *de iure* in this sense: John Paul II *de facto* does not possess the office of the papacy, but he possesses a *right to the papacy,* given that there has been no declaration to the contrary by competent authority. In other words, he is the legal titular of the papacy, but does not have possession, because he posits an obstacle to receiving authority.