RESPONSE TO THE ROLE OF LAW AWARD

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This is an award that I shall always cherish. May I express my profound thanks to all of you for it, and especially to the members of the Board of Governors.

I know, that in receiving this award, I have been singled out as, in some sense, representative of people in Tribunal work. It takes no special humility on my part to be able to say that there are undoubtedly many Tribunal people who are deserving of the award. I can think of at least a dozen off the top of my head. But the lot has fallen to me, and I accept it with thanks.

It is the privilege of the recipient each year to pass on to the assembly a though or tow, or maybe even three, on the subject of law. Being a man of few words and even fewer ideas, I have only one thought for this evening. And that one thought is an ecumenical one.

Ecumenical ideas, especially when they aim at consensus, can, of course, get completely out of hand. We've probably all heard the story about Jesus attending an ecumenical gathering. He said, "Men, I've got an idea." "Very interesting," said the Presbyterian, "but is it sophisticated?" The Baptist said, "Is it moral?" The Methodist said, "Is it non-alcoholic?" The Disciple of Christ said, "Is it scriptural?" The Lutheran said, "Is it evangelical?" The Quaker said, "Is it quiet?" The Catholic said, "Is it authoritative?" The Episcopalian said, "Is it archaic?" And Jesus said, "Cheeripes! Forget it!"

My idea is not so complicated, and doesn't really aim at consensus. It's very simple really. Perhaps too simple. Maybe that's why nobody has tried it. But the idea is this: that as the Catholic Church sets out to renew and reform its law, it should investigate thoroughly the various legal systems of other Christian Churches with a view to using one or other of them, rather than the 1918 Code, as a model or starting point.

When a major new edifice is planned, say a museum or a civic center or a cathedral, a first step is always to invite several architectural firms to submit their designs for consideration. These plans are then weighed, one over against the other, in open competition, in the hope that the best, or at least the most feasible, design will be selected.

I would suggest that the proper first step in our post Vatican II reconstruction of church law should have involved a similar process of selection. The 1918 Code should certainly have been <u>one</u> of the models considered. Perhaps it should even have been the favored model, because it was the incumbent, and "melior est conditio possidentis." But it was, I think, a calamity that it was the <u>only</u> model considered, that no other bids were accepted.

It is, I think, generally agreed, and need not be demonstrated here, that every society tends to produce its own type or style of law. A dictatorship has a different kind of law from a democracy. Rather the whole style of legislating is different. They are different legal systems. They belong to different worlds. So, when a dictatorship is overthrown, the legislative architects of the new society do not take the old code and tinker with it, or try to democratize it. They start afresh. Or they look to a model law more congenial to the new society, and use that as their point of departure.

It cannot be denied, I think, that in recent years, the Catholic Church has undergone a profound change in philosophy. Not as diametric, certainly, as a shift from dictatorship to democracy, but profound nonetheless, and involving a dramatic change in the self image of the Church. Were this not the case, I, for one, would gladly settle for a tinkering with the 1918 Code. But the facts, it seems to me, demand either that we start afresh, or perhaps better still, that we investigate other already existing models that are more congenial to our present ecclesiology.

My specific recommendation is that one or other of the Protestant models might serve us well as a starting point. I spent a good part of last year examining the law of sanctions and the procedural law of the early American Presbyterians, a law that was ratified and adopted in this City of Philadelphia in 1788. It is entirely different from Books IV and V of our Code. It is much simpler and more direct and more trustful and, I think, more Christian. It is probably much more like what we American Catholics would spontaneously devise today, if only we could divest ourselves of our excessive attachment to and dependence on the 1918 Code.

Not everyone, of course, would prefer the Presbyterian law to the 1918 Code as a point of departure for reform. But our final preference or final choice of model is not the point. And, anyway, the 1788 Presbyterian law is obviously only illustrative. The point is that, if we're really serious about rebuilding our law, then it behooves us to open up the competition, and, at the very least, to acquaint ourselves with other designs.

To this end, the Departments of Canon Law in our Universities would do well, I think, to offer a course in Comparative Ecclesiastical Law, in which the legal systems of all Christian Churches would be investigated and compared. The Canon Law Society could perhaps give consideration to arranging a symposium on the subject of Comparative Church Law. Perhaps some year, at one of these annual conventions, we could even invite in five or six Anglican or Protestant experts in Church government, and hear them out on how they would revise our law were they in our shoes.

At any rate, we have, for too long now, acted as though the Catholic Church alone has a canon law, that other Christian Churches have none. This is not true. It <u>is</u> true that the Reformed Churches tend to take more seriously than do we, scriptural admonitions like St. Paul's that:

> If you really died with Christ to the principles of this world, why do you still let rules dictate to you, as though you were still living in the world? 'It is forbidden to

> pick up this, it is forbidden to taste that, it is forbidden to touch something else,' all these prohibitions are only concerned with things that perish by their very use – an example of human doctrines and regulations. (Colossians 2, 20-23)

It is true that the Reformed Churches pay more attention to such passages than do we. It is even true that, because of such passages, the Reformed Churches have, on occasion, explicitly disclaimed any legislative power. But the matter is, at least to some extent, semantic. The Protestants, despite their disclaimer, are certainly not lawless or without law. They do, in fact pass what we call laws, and they do, in fact, have what we call canon law.

Protestant law does, of course, maintain a much lower profile than does ours. The Protestants, partly because of their attention to St. Paul, have, over the years, been exquisitely sensitive to over legislating. Which is undoubtedly one of the important lessons we can learn form them in the Art of Legislating.

This, at any rate, is what I'm talking about – the Art of Legislating – nothing less. There is no doubt but that this Canon Law Society has, for many years, been actively receptive to the insights of Protestant scholars on a variety of subjects; but, inexplicably, what we have failed to do is to examine and to appreciate their law as such, and their style of legislating.

Our Brethren have much to teach us on the role of law in the Church. We have much to learn from them, and I would urge that we postpone now longer the learning process.