RESPONSE ROLE OF LAW AWARD

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When I received an unexpected telephone call last February from Msgr. Mark Bartchak, I presumed that he wanted to ask me to do something about a canon 1395, §2 case. However, he started off by asking me if I intended to attend the CLSA convention in Pittsburgh in October. Without hesitation I answered no and added that I attended conventions only when I have to. He then said that the Board of Governors had agreed that they would bestow on me the annual Role of Law Award at the convention. As you have surmised I quickly changed my mind and you see me here.

I was most surprised and am most honored by this totally unexpected award. Just as Saint Paul was an apostle born "out of the normal" (1 Cor 15:8), I am a canonist born out of the normal course of events, out of the ordinary due time. I began my formal studies for the licentiate in canon law at the University of St. Thomas Aquinas in Rome some months after I had celebrated my twenty-fifth anniversary of ordination. I defended my doctoral dissertation a little over three years later in 1984 and sat in 1986 for the twelve hour written post doctoral exam for the diploma of advocate of the Tribunal of the Roman Rota on the thirtieth anniversary of my ordination. Although I had enjoyed canon law as a student for the priesthood and as a young priest, I had no thought – much less plans – on becoming a canonist in my mature age. This was changed in 1980 during the general chapter of the Missionary Oblates of Mary Immaculate. Father Francis George, who was then vicar general of my religious congregation and my predecessor as provincial of the Central U.S. Province, asked me to accept two very minor jobs in our general curia in Rome when I finished my term of office and to study canon law for an eventual position at our general house. This was a sudden change in my life. Once I had finished my studies at the age of almost fifty-six, the superior general suggested that I might like to teach canon law at St. Paul University in Ottawa starting in the fall of 1986. The rest is history.

Not long before starting to study canon law, I visited the members of my province in Denmark. While there one evening I went for supper at the residence of the bishop of Copenhagen and during the meal the priest with me brought up the subject of my plan to study canon law. Even if the bishop did not laugh out loud when he heard this, his expression clearly indicated that he thought that this was rather ridiculous. Perhaps he can be excused since he is a theologian and as many theologians, at least at that time, did not have a proper esteem for canon law.

Before I proceed further, I wish to thank the Board of Governors for conferring on me this most unexpected highest award granted by the Society. I hope that my publications have helped and will continue to help its members in serving justice in the Church.
His dictis, I now turn to the main subject of my remarks. Don't worry! Before preparing this talk I consulted a number of issues of the Proceedings of the annual CLSA convention, and learned that in the recent past the custom exists for the awardee to give a rather brief response. As a canonist, I will not break with this legitimate custom - especially keeping in mind that I am addressing a group that has just finished a good meal and is no doubt tired toward the end of the convention.

Since the pontificate of Pius XII, it has been the practice of the popes to receive in audience the auditors of the Roman Rota and their co-workers at which he addresses them on an important topic relating to the Apostolic Tribunal. Clearly the various popes do not intend to direct these allocutions to the Rota alone, but to all those called to administer justice in the Church as well as all involved the Church's governing munus. This was clearly stated by John Paul II in his first allocution to the Rota.1 In recent years, it seems that some American religious pundits with great facility read in the pope's most recent allocution a reprimand or at least a criticism of the tribunals in this country. This, however, is not the subject of these remarks.

Of particular importance is John Paul II's first allocution to the Rota on February 17, 1979. In this address the Holy Father began by speaking of the Church's committed effort to be the interpreter of that thirst for justice and dignity which the men and women of our age experience so strongly. In her function of proclaiming and upholding the basic rights of the human person at every stage of his or her existence... As the Church's self-awareness has developed, the human-Christian person has found not only recognition but also, and above all, an explicit, active, and balanced defense of personal basic rights in harmony with those of the ecclesial community. This, too, is a duty the Church cannot renounce. In the area of the relations between person and community, she provides a model for integrating the

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1 "I am delighted with this opportunity to meet for the first time those who, beyond all others, embody the Church's judicial function in the service of truth and love for the building up of the Body of Christ. I am happy to recognize in them, as in all administrators of justice and specialists in canon law, professionals of a vital role in the Church, indefatigable witnesses to a higher justice in the midst of a world characterized by injustice and violence, and, consequently, most valuable collaborators in the pastoral activity of the Church herself' John Paul n, February 17, 1979, in AAS 71 (1979) 422-127; English trans, in ORe February 26, 1979, 6-7; The Pope Speaks 24 (1979) 217-222; Papal Allocutions to the Roman Rota, 1939-2002, William H. Woestman, OMI, (Ottawa, Saint Paul University, 2002) 153.
orderly development of society and the development of the Christian's personality in a community of faith, hope, and love (see LG, no. 83).  

Following in the footsteps of John Paul II, rather than discuss some aspect of the law, I want to talk about who we are as canonists, i.e., our identity and our role in the Church. First of all, we are men and women who are baptized Christians sharing in the common priesthood of the faithful. Some of us have been called by the Lord to the ordained priesthood to serve our brothers and sisters in the Church through our ordained ministry. Precisely as canonists or jurists in Church law, all of us share another priesthood, i.e., we have been called to serve the Lord and our fellow Christians as servants of the law. Just as Jesus is the high priest and the mediator of the new covenant (cf. Heb 8:6), we canonists are priests and mediators of the law. As farfetched and mere a stretch of imagination as this may sound, there is a strong foundation for stating that all of us canonists are priests of the law, precisely canon law with all that this implies.

On August 15, 1934, Pius XI issued the constitution Ad incrementum governing the privileges of certain prelates of the various dicasteries of the Roman Curia. In the second paragraph the Holy Father spoke of the auditor prelates of the Roman Rota with the words: *"Iuris dicendi munus . . . itidem nobilissimum est sacerdotium"* (whose office is in like manner a most noble priesthood). These words are based on the text of the Roman jurist Ulpian (+228), who wrote:

A law student at the outset of his studies ought to first to know the derivation of the word *ius*. Its derivation is from *iustitia*. For in terms of Celsus' elegant definition the law is the art of goodness and fairness (*ars boni et cequi*). 1. Of that we [jurists] are deservedly called priests. For we cultivate the virtue of justice and claim awareness of what is good and fair, discriminating between fair and unfair, distinguishing between lawful and unlawful...  

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2 "Christ, the one mediator, set up his Holy Church here on earth as a visible structure, a community of faith, hope and love; and he sustains it unceasingly' and through it he pours out grace and truth on everyone. This society, however, equipped with hierarchical structures, and the mystical body of Christ, a visible assembly and a spiritual community, an Earthly Church and a church enriched with heavenly gifts, must not be considered as two things, but as forming one complex reality comprising a human and a divine element. It is therefore by no mean analogy that it is likened to the mystery of the incarnate Word. For just as the assumed nature serves the divine Word as a living instrument of salvation inseparably joined with him, in a similar way the social structure of the church serves the Spirit of Christ who vivifies the Church towards the growth of the body (see Eph 4:16)."

3 *Papal Allocutions*, 153.

4 PIUS XI, constitution *Ad incrementum* August 15, 1934, AAS 26 (1934) 497.

Pius XII told the Rota auditors that "as priests of the tribunal of justice and priests of the altar of faith," they have "the office to serve justice and define it." Paul VI in his second allocution to the Rota addressed the importance of their ministry:

Truly it is a worthy and eminent ministry upon which reflects the very light of God - primordial and absolute justice, most pure source of all earthly justice. Your ministry of justice (ministerium iustitice), which must be always faithful and irreproachable, must be considered in this divine light. Under this light one understands why it must flee from even the most minute blemish of injustice so as to protect for this ministry its crystal purity.

A year later Paul VI taught:

Since it is proper to the authority in the Church to be of service, it exercises the most worthy ministry of justice. Therefore, when it proclaims the law and protects order, it is penetrated by a human sense, which is simultaneously humble and wise - that makes the judge a teacher, a guide, a father, and a friend.

No doubt Paul VI was familiar with the post-conciliar misunderstanding and misrepresentation of the meaning of the word pastoral. He spoke about this in 1973.

Thus canon law is not simply a norm of life and a pastoral rule; it is also a school of justice, of discretion, and of charity in action. Where do We find this verified more clearly than among you, in your tribunal, where this law is applied in the service of souls? ... It is through canonical equity that the pastoral character of your judicial office and function is asserted... This ministry of the Church is indeed pastoral in the fullest sense of the word. It is a ministry of the Christian priesthood (see Lg, no. 27), having its roots in the mission that the Lord entrusted to the "first Peter" (PIUS XII, October 3, 1941). Through his successors he continues to govern, teach, and judge (see VATICAN I, Pastor eternus, DS, no. 3056). It is an integral part of the apostolic mandate, shared by all those, priests and lay people, who are called upon to exercise justice in our name and in the name of our brothers in the episcopate. The Apostles, and their successors exercised this power in carrying on this mission. ... Motivated by canonical equity, the judge will take into account all the promptings of charity and seek to avoid the rigor of the law and the rigidity of its technical expression. He will avoid the letter of the law that kills by imbuing his

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6 Pius XH, October 2,1939, in Discorsie Radiomessaggidi Sua Samitd Pio XIII (1939-1940)331-337; Papal Allocutions, 3.
7 PAUL VI, January 11,1965, in AAS57 (1965) 233-236; Papal Allocutions, 80.
interventions with the charity that is the gift of God's freeing and life giving Spirit. He will take account of the human person and of the demands of a given situation, which may compel the judge to apply the law more severely, but ordinarily they will lead him to exercise it in a more human and compassionate manner. He must take care not only to safeguard the juridical order but also to heal and educate, thus giving proof of authentic charity. The pastoral exercise of judicial power is medicinal rather than vindictive. There are penalties, but these should not be seen as some sort of vengeance. As Saint Augustine says, they should rather be viewed as a desirable form of expiation (see De civitate Dei, 21, 13).  

Paul VI's teaching on this subject can be summarized in this way. Canon law and its practitioners are eminently pastoral because their goal is both truth and justice for everyone.

Our pastoral service... [is] one of truth, wisdom, justice, and Christian prudence. It is under this aspect also, and indeed this aspect principally, that our service is reflected in your judicial activity, if what Saint Thomas teaches is true, namely, that every judgment implies right reason and that every judge is, in a sense, justice personified, living justice (qucedam iustitia animata, II—II, q. 60, a. I).  

Following the example of his predecessors John Paul II insisted on the essential role of canon law in the Church:

Canon law plays a role that is in the highest degree educative, both of individuals and of society, with the intention of bringing about an ordered and fruitful environment in which the human-Christian person can come into being and mature in an integral way. In fact, this can be realized only insofar as a person surrenders any exclusive individualism, since the person's vocation is communal as well as personal. Canon law agrees with and fosters this characteristic fulfillment insofar as it helps to overcome individualism, by leading - from a rejection of the self as an exclusive and isolated individual - to the affirmation of the self as an authentically social being through acknowledgment of and respect for the other as a person endowed with universal, inviolable, and inalienable rights and invested with a transcendent dignity.

But the task of the Church and her historical merit, which is to proclaim and defend in every place and in every age the fundamental human rights, does not exempt her but, on the contrary, obliges her to be herself a mirror of justice.  

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(speculum iustitice) for the world. In this regard, the Church has her own proper and specific responsibility.11

As priests of the law, the virtue that must guide and direct our canonical ministry as jurists is that of justice. Thomas Aquinas wrote.

It is proper to justice, as compared with the other virtues, to direct man in his relations with others: because it denotes a kind of equality, as its very name implies; indeed we are wont to say that things are adjusted when they are made equal, for equality is in reference of one thing to another person. ... Because a man's work is said to be just when it is related to another by way of some kind of equality, for instance the payment of the wage due for a service rendered. . . For this reason justice has its own special proper object over and above the other virtues, and this object is called the just, which is the same as "right" (ius). Hence it is evident that right (ius) is the object of justice.12

As priests of the law our pastoral ministry, i.e., all our juridical activity and goal, is necessarily the truth upon which all justice in founded. According to Paul VI we must attempt to exercise justice in a "human and compassionate manner;" we must "take care not only to safeguard the juridical order but also to educate, thus giving the proof of authentic charity."13

11 February 17, 1979, Papal Allocutions, 153-154.
12 II-II, XVIII, art. 1. The Catechism of the Catholic Church echoes this when it states: "Justice is the moral virtue that consists in the constant and firm will to give their due to God and neighbor. Justice toward God is called the "virtue of religion." Justice toward men disposes one to respect the rights of each and to establish in human relationships the harmony that promotes equity with regard to persons and to the common good. The just man, often mentioned in the Sacred Scriptures, is distinguished by habitual right thinking and the uprightness of his conduct toward his neighbor. "You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor." "Masters, treat your slaves justly and fairly, knowing that you also have a Master in heaven." (No. 1807)