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THE CANON LAWYER AND THE LOCAL CHURCH

REV. JOSEPH N. PERRY*

INTRODUCTION

Innovations and shifts in church order since the Second Vatican Ecumenical Council (1962-1965) have created situations in which ordained and non-ordained members of the People of God necessarily interact more frequently. Especially at the level of the local diocese, new conceptions of the cooperative relationship between the bishop and other members of the local church have been introduced by the weighty decrees of *Lumen Gentium* and *Christus Dominus*.

Law and legal institutions form an essential part of the nature and mission of the Church. Canon lawyers are among the key experts who assist the bishop in his shepherding role. Indeed, canonists have recently been thinking a great deal about their role in guiding contemporary legal development.

This article will explore the position of the canon lawyer in the post-conciliar Church. Topics addressed are: (1) the canonist as a professional; (2) the canonist's relationship with the residential bishop; and (3) a look at some future projections of canonical ministry. These reflections are based on the Church's legal tradition as exemplified in the *Code of Canon Law* and in one particularly significant post-conciliar revision—the proposed schema on *The People of God, Book II*.

I. THE CANONIST AS A PROFESSIONAL

A survey of the legal structures of the *Code of Canon Law* (1917) reveals the canon lawyer to be situated most frequently in the Diocesan Curia. The Code describes the key legal offices, specifically the chancery and tribunal, which have labored most closely with the bishop in administering the diocese. These canonists, who usually are priests, have been

* Tribunal, Archdiocese of Milwaukee.

advisors to the bishop in certain other matters. Prior to Vatican Council II, there were few consultative structures in this country other than the cathedral chapter of priests, diocesan examiners, and the not-so-familiar diocesan synod.¹ Nor did the *Code of Canon Law* envision that the role of church lawyers would expand beyond either the curial tasks or the scope of legal teaching in the major seminaries and universities. Recent post-conciliar legal development, however, begs for a widening of the canonist's advisory, educative, and advocatory roles.

The staff of the Diocesan Curia includes the Vicar-general for administration, the vicar-judicial or officials of the diocesan court, chancellor, defender(s) of the bond, procurators and advocates, the promoter of justice, judges, notaries, and auditors.² Canon lawyers in the diocesan court are governed specifically by the canons found in *de Processibus*.³

The tasks of the canonist, who assists persons in their relations with the Church, are both serious and sensitive. Canonists are appointed by the residential bishop, and take an oath, pledging to fulfill their duties and observe that confidentiality most appropriate to their work.⁴ They are to work zealously for justice in the Church and are to hold the dignity and fundamental rights of each person inviolable.⁵

The busiest office of the Curia today is the tribunal. This level of activity will probably continue for some time. The marriage courts have contributed significantly to the renewed image of the canonist by the expeditious manner in which many courts have responded to questions placed before them. Most canonists in the United States and Canada work in the diocesan tribunals and are involved with the increasing num-

¹ See CODE OF CANON LAW Canons 356-362 (law on diocesan examiners), 385-390 (law on diocesan synod), 391-422 (law on chapter of canons) (1917).

² CODE OF CANON LAW, *liber secundus*, tit. VIII, cap. IV., *de curia dioeclesiana* (1917)(Canons 363-390). See also *Pontificia Commissio Codici Iuris Recognoscendo, Schema Canonum Libri II, De Populo Dei*, proposed norms 281-329 (Typis Polyglottis Vaticanis 1977). There are several significant additions in the proposed law's conception of the curial offices; a *moderator curiae* (norms 285-287), business manager (norm 308), and episcopal vicars (norms 289-294).

³ CODE OF CANON LAW Canons 1552-1998 (1917). See also *Schema Canonum Modo Procedendi Pro Tutela Seu De Processibus*, proposed norms 1-449.

⁴ See Pope Paul VI's Allocution to Auditors, Officials, Advocates of the Tribunal of the Sacred Roman Rota (January 11, 1965), reprinted in 57 ACTA APOSTOLICAE SEDIS 233-36 (1965). ("The bishop places the ecclesiastical tribunal in the charge of men who hold most firmly to justice and give an incorruptible judgment to those legitimately seeking justice with due dispatch"). See also *Schema de Populo Dei*, norm 283. *Omnes qui ad officia in Curia admittuntur debent: (1) promissionem emittere de munere fideliter adimplendo, adito etiam iuramento secundum rationem iure vel ab episcopo determinatam; (2) negotia ad se spectantia debita cum diligentia tractare, ad normam iuris; (3) secretum servare intra fines et secundum modum iure aut ab episcopo determinatos. See generally Canons 364 (2) and 364 (3).*

⁵ CANON LAW SOCIETY OF AMERICA, CODE OF PROFESSIONAL RESPONSIBILITY, § IA, 2.

bers of petitions for declarations of marital nullity. Many priest-canonists are utilized in this capacity on a part-time basis. Both the *American Procedural Norms* (composed by the Canon Law Society of America to promote a more effective process amidst the peculiar phenomenon of marital breakdown in the United States) and the *Motu Proprio Causas Matrimoniales* (determining norms for expediting marriage cases) have facilitated a renewed legal ministry to marital failure in the Church.⁶ Aware that their services touch only a small percentage of Catholics in broken marriages, marriage ministry nonetheless taxes so much of the canonists' services that other areas of Church life which beg advocacy and education—such as diocesan revamping, church-state issues, and ecclesial and social justice—necessarily take second place.

Tribunals have become truly the arm of the parish. The Sacrament of Marriage is being serviced by tribunal ministry in new and remarkable ways. Second marriages are part of Church life today. Many of these marriages follow declarations of nullity; the Church has just begun to assess the ramifications of this phenomenon for preaching and pastoral praxis. Tribunals represent one expression of reconciliation within the Church. In these instances, canonists are true ministers, mediating the compassionate Christ and the forgiving Church.⁷ The contemporary marriage scene suggests that the future reputation of the canonist depends a great deal on the conciliar-inspired reform of procedural law. It is essential that swift and thorough service be guaranteed the countless faithful who petition Church courts.⁸

To a certain extent, the Church is formed by its law. The professionalism of canon lawyers will depend on the quality of decisions made in the Church courts—those which are already being made, with the facilitating norms, and those still to be made. In fact, these decisions have already affected the Church community as a whole.

The professional nature of a canon lawyer depends not only on academic training, but to an even greater degree on the skill of practicing law. The Church lawyer critically evaluates norms, seeking a deeper un-

⁶ For the text of *The American Procedural Norms*, see 30 JURIST 363-68 (1970). These norms were first approved on April 28, 1970 by Pope Paul VI for a three-year term. They were extended for a year on July 1, 1973. Presently, all twenty-three norms are approved for use, pending the promulgation of the new code of canon law following the request made by the National Conference of Catholic Bishops. For the text of *Causas Matrimoniales*, see 63 ACTA APOSTOLICAE SEDIS 441-46 (1971).

⁷ *Directory on the Pastoral Ministry of Bishops*, § 200 ("Priests and laymen who are attached to the diocesan curia should be mindful that they are collaborating in the pastoral work of the bishop").

⁸ For a critique of the Code Commission's schema on procedural law and future projections of processes and personnel, see Green, *Marriage Nullity Procedures in the Schema De Processibus*, 38 JURIST 311 (1978).

derstanding of the *sensus fidelium*. An ability to comment on the *usus ecclesiae* is developed in order to "assist in and support the improvement and development of church law and procedure."⁹

Canonists all over the world have offered their critique of the various schemata for the revision of the Code. American canonists cooperated in these efforts, providing their insights as practitioners, historians, and legal researchers. In addition to the successful work with the *American Procedural Norms*, the Canon Law Society of America, after several years of ardent study and research, proposed norms for the selection of bishops to respond to the special circumstances of the American Church.¹⁰ At its best, this proposal has contributed to the ongoing dialogue between canonists and the Roman authorities concerning the delicate matter of how our episcopal leaders might be chosen by means of a broader ecclesiastical process.¹¹ An ongoing dialogue between canonists and theologians regarding specific theological-canonical issues is important to the post-conciliar Church. This instruction, arising from significant theological developments, creates foundations for legal ministry. In addition, it is a dialogue that enjoys lasting relevance. Hopefully, a permanent commission for canonical matters will continue following the revision of the Code. Such a structure would allow for an ongoing exchange between Rome and canonists throughout the world, so that an updating of the law in light of progressive theological and jurisprudential insights may be effectuated.

Vatican Council II, in its *Lumen Gentium* and *Apostolicam Actuositatem* decrees, emphasized the corporate responsibility of all those baptized toward building up Church life and mission. Particular attention was given to the role of the laity. The structural embodiment of new interrelationships between clergy and laity necessitates the professional competence of canonists. Many local churches are undergoing diocesan reformation in light of these new directions. The canonist is a key advisory figure in establishing conciliar-inspired legal institutions, and in coordinating the work of legal and corporate persons toward a vibrant local church. Indeed, canon lawyers are indispensable components of due process and accountability structures, since the litigation which secures rights of individual and juridical corporate persons is handled most effectively through the judicial branches of the Diocesan Curia.

The canonist also renders professional service to seminaries, schools

⁹ CANON LAW SOCIETY OF AMERICA, CODE OF PROFESSIONAL RESPONSIBILITY § Ib., 1.

¹⁰ CANON LAW SOCIETY OF AMERICA, PROCEDURE FOR THE SELECTION OF BISHOPS IN THE UNITED STATES—A SUGGESTED IMPLEMENTATION OF PAPAL NORMS (1973). See also J. Provost, *Selection of Bishops: Does Anybody Care?* 18 CHICAGO STUDIES 211-22 (1979).

¹¹ Due process norms for the United States, another important venture begun in 1969 by the same society, were approved that same year by the National Conference of Catholic Bishops and by the Holy See in 1971.

with ecclesiastical faculties, religious communities, and institutes—all of which are structured by the norms of law. Moreover, they can help foster fiscal responsibility and shape issues regarding diocesan property and employer-employee relationships. Contributions may also be made in other areas which affect the rights of persons, so that the goal of a well-ordered diocesan community may be realized. Canonists necessarily facilitate this cooperative mission of building Church life and mission. They serve all baptized and are companions to the bishop. The following section will examine this latter relationship.

II. THE CANONIST AND THE LOCAL BISHOP

The residential bishop is both judge and legislator of the diocese.¹² He exercises his judicial role, however, most often through others whom he appoints. The bishop, in fact, is advised not to become involved in litigation unless it involves his clerics.¹³ The bishop may or may not be a canon lawyer. His legislative and judicial authority arises from his position within the ordained hierarchy, in communion with the Roman Pontiff.¹⁴ As chief pastor of the local church, he possesses all the power

¹² Canon 1572(3): "*In unaquaque dioecesi et pro omnibus causis a iure expresse non exceptis, iudex primae instantiae est loci Ordinarius, qui iudicariam potestatem exercere potest ipse per se, vel per alios, secundum tamen canones qui sequuntur.*" Canon 335(1): "*Ius ipsis et officium est gubernandi dioecesim tum in spiritualibus tum in temporalibus cum potestate legislativa, iudiciaria, coactiva ad normam sacrorum canonum exercenda.*"

¹³ Canon 1573(2): "*Officialis unum constituit tribunal cum Episcopo loci: sed nequit iudicare causas quas Episcopus sibi reservat.*" Canon 1572(2): "*Exceptis causis de quibus in can.*" Canon 1578: "*Episcopos semper potest tribunali ipse per se praeesse; sed valde expedit ut causas, praesertim criminales et contentiosas gravis momenti iudicandas relinquat tribunali ordinario, cui praesit officialis vel vice-officialis.*" Canon 1579(3): "*Si demum controversia enascatur inter religiosas personas physicias vel morales diversae religionis, aut etiam inter religiosos eiusdem religionis non exemptae vel laicalis, aut inter religiosum et clericum saecularem vel laicum, iudex primae instantiae est Ordinarius loci.*"

¹⁴ See Decree on the Pastoral Office in Bishops in the Church, *Christus Dominus*, Vatican Council II (October 8, 1966), reprinted in 58 ACTA APOSTOLICAE SEDIS 673, 674-75 (1966), which states:

The bishops, by virtue of their sacramental consecration and their hierarchial communion with the head of the college and its other members, are constituted members of the episcopal body. The order of bishops is the successor to the college of apostles in their role as teachers and pastors, and in it the apostolic college is perpetuated. Together with their head, the Supreme Pontiff, and never apart from him, they have supreme and full authority over the universal church, but this power cannot be exercised without agreement of the Roman Pontiff.

See also The Dogmatic Constitution on the Church, *Lumen Gentium*, Vatican Council II (November 21, 1964), reprinted in 57 ACTA APOSTOLICAE SEDIS 25-27 (1965):

Just as, in accordance with the Lord's decree, St. Peter and the rest of the apostles, constituted a unique apostolic college, so in like fashion the Roman Pontiff, Peter's successor, and the bishops, the successors of the apostles are related with and united

needed to govern his portion of the larger Church.¹⁵ The bishop must oversee the phases of pastoral life which legal ministry embraces. His canonists are invaluable in aiding him to clarify the legal implications of decisions he must make, and the legislation he must promulgate, for the good of all. Canonists possess a continuing duty to advise the Ordinary about Canonical matters; to advise all engaged in the pastoral ministry about canonical matters which protect the rights of persons and the good order necessary in the administration of the Church in matters both spiritual and temporal, and to raise the consciousness of others in the Church concerning possible areas of injustice or inequitable practice.¹⁶

With the exception of the share in ordinary power that the vicar general, episcopal vicars, and officialis have as diocesan officials, the Church lawyer's role is strictly advisory and educative. Authority rests with the local Ordinary to reserve to himself any and all matters which he deems to be of sufficient import. While the local bishop retains the freedom to consult whomever he chooses, canon lawyers are among the important groups which offer the bishop assistance. The challenge remains to guarantee their optimum service to diocesan government.

The canon lawyer must clarify the legal functions of persons who, by delegation, share the power of the bishop. The inevitable ambiguity, confusion, and overlapping of tasks which is bound to occur when several "legal persons" stand in the place of the bishop in similar ways—such as the vicar general, episcopal vicars, auxiliary bishops, and deans—may be offset through the work of the canon lawyer. In this vein, the legal expertise of the canonist is especially helpful to the *moderator curiae*/chancellor who must facilitate sound pastoral governance by guaranteeing an effective interaction among the co-responsible structures of the diocese.¹⁷

A permanent seat should be provided for a canonist, so that he may advise on matters of canonical consequence, on priest councils, episcopal councils, diocesan synods, and diocesan pastoral councils.¹⁸ Additionally, these institutions should be periodically reviewed, so that they will be of

to one another. Indeed the very ancient discipline whereby the bishops installed throughout the whole world lived in communion with one another and with the Roman Pontiff in a bond of unity, charity and peace; likewise the holding of councils in order to settle conjointly, in a decision, rendered balanced and equitable by the advice of many, all questions of major importance; all this points clearly to the collegiate character and structure of the episcopal order, and the holding of ecumenical councils in the course of the centuries bears this out unmistakably.

¹⁵ See CODE OF CANON LAW Canon 335(1) (1917).

¹⁶ CANON LAW SOCIETY OF AMERICA, CODE OF PROFESSIONAL RESPONSIBILITY Canon 5.

¹⁷ *Schema, de Populo Dei*, norms 285-287.

¹⁸ For the proposed law governing these legal institutions, see *Schema, de Populo Dei*, norms 309-315 (priest councils), norm 285 (episcopal council), norms 326-329 (diocesan pastoral council).

maximum service to the bishop, and to prevent the unnecessary duplication of tasks. In summary, canonists "use their professional expertise in the evaluation of canonical or quasi-canonical agencies and structures within the Church as regards either their design or the functioning of these agencies and structures."¹⁹

The services of the canonist outside the traditional confines of chancery, tribunal office, and classroom depend in large measure on the diocesan bishop. In other words, it depends upon whether the Ordinary recognizes, elicits, or needs the church lawyer's expertise and advice. The authority of a canonist is based on expertise. In the Church community, expertise and service are recognized and called to the benefit of the wider Church. A problem arises when a particular bishop is too restrictive in his recognition of the gifts of the members. The creative and imaginative use of canonists calls for a bishop sensitive to post-conciliar developments. As chief pastor, he is singularly able to elicit the talents of the faithful. The bishop either is a catalyst for growth and richness or stifles talent and initiative. The life and spirit of a particular church hinges on the bishop's leadership qualities. He significantly shapes the contours of the mission of the local church.

In rethinking the leadership role of bishops, and reasserting the important role of the laity, Vatican Council II attempted to recast the idea of episcopal leadership by diminishing the strictly monarchical overtones underlying the Code, and by emphasizing the corporate mission of the baptized. Within this corporate mission, there are many and varied talents which are to be employed in fostering the well-being of the whole Church.²⁰

Prior to the Council, the local bishop dealt with a much smaller group of cooperative bodies. In addition to auxiliary bishops, the vicar general, a chancellor, consultors, and priest curialists, the bishop usually utilized others—often priests—to assist in the decisionmaking process. These individuals frequently were not given official appointment. While pastoral governance under the ecclesiology of the 1917 Code of Law had been peculiarly clerical in nature, the Council now directs the bishop to broaden his resources of consultation and cooperation so that the whole Church—clerics and lay men and women—will feel that they are sharing

¹⁹ CANON LAW SOCIETY OF AMERICA, CODE OF PROFESSIONAL RESPONSIBILITY Canon 6.

²⁰ THE DIRECTORY ON THE PASTORAL MINISTRY OF BISHOPS, § 98:

In making use of the human resources of those who cooperate in ruling the church, the bishop is led by supernatural considerations and pursuing above all the good of souls, he preserves the dignity of persons by emphasizing their talents in as fitting and useful a way as possible for the service of the community by placing the right person in the right place.

See 1 Corinthians 12:27-31.

the burden of Church mission.²¹

Canon lawyers stand among others of professional competence at the local church. Pastors and theologians help the bishop minister to the faithful's spiritual and sacramental needs. Liturgists help insure the quality of worship. Catechists and educators maintain the life and operation of the Gospel in the community. Married couples, with insights on family life, help to insure the growth of the local church. Financiers and civil lawyers guarantee fiscal responsibilities and the church's obligations within the civil forum.

Unlike other ecclesiastical works, canonical ministry secures order and justice in the Christian community. Church law exists for the well-being of the total Church. The canonist's sole task is to serve the Church community. The canonist has no work without the community. In this sense, the character of legal ministry is truly ecclesiastical, strictly social, and fundamentally ministerial. Historically, consultation has been an important element in Church life. Today, as more of the faithful are called to be involved in Church mission, it is an even more operative element.

Consultative decisionmaking necessitates that advice be both accepted and discarded. Since there will be many advising the bishop, with a plurality of backgrounds and opinions, tension may arise. Hopefully, this can be a creative tension. In one sense, the burden of the bishop may be increased rather than lightened, since there will be so many who wish to be heard. Channels for resolution of conflicts are essential in dealing with violation of rights, real or apparent, as well as with legitimate dissent. Structures should be called for to evaluate individuals enjoying the service of authority in the diocese. Canonists are key figures in enhancing respect for the sanctity of rights and the responsible use of power.

In view of the important service of canon lawyers, and out of concern for their professional and ministerial competence, the Canon Law Society of America (CLSA) drafted and approved a code of ethics for itself. This code was approved at the 1979 CLSA convention in Albuquerque, New Mexico.

In summary, legal tasks have expanded notably beyond those envisioned by the 1917 Code of Law, chiefly because the burden of carrying the Church is now understood to belong to the entire Church and all its members—cleric and lay persons alike. The task of facilitating these joint

²¹ THE DIRECTORY ON THE PASTORAL MINISTRY OF BISHOPS, § 111: "With a fatherly attitude and at the same time a brotherly attitude, and in sincere friendly dialogue, he converses with them [priests] . . . about matters pertaining to the whole diocese so that the entire presbytery has the feeling it is carrying the burden of the particular church along with the bishop." *See id.* § 121b: "[A]n individual layman by reason of the knowledge, competence or outstanding ability he may enjoy is permitted and sometimes even obligated to express his opinion on things which concern the good of the church, let this be done"

labors rests, appropriately, with the canon lawyer.

III. FUTURE PERSPECTIVES OF CANONICAL MINISTRY

Bishop Joseph Abel Francis, SVD, auxiliary of Newark, challenged the Canon Law Society of America with an address delivered at the Fortieth Annual Convention, held in St. Louis in October, 1978. He spoke of the role of the canonist as an advocate for justice within both the ecclesial and civil spheres:

The Canon Law Society of America, cooperatively and through its membership is possibly the most prestigious and influential group in the church, after the bishops in pastoral matters. Many, if not most canonists are at the very center of diocesan policy making in our dioceses and in our religious communities.²²

The bishop urged canonists to effectively broaden their advocacy for the legitimate rights of people, particularly impoverished and minority racial groups, who still lack justice, in both civil and ecclesiastical society. The selection of indigenous bishops representing significant minority racial groups is one such pressing issue; minority presence in diocesan leadership roles is another. The retention of parochial education in our central city parish schools is an additional concern which begs for advocacy.

Father Adam Maida, canonist and writer, evoked a similar theme in an address delivered in 1977 at the Thirty-Ninth Annual Convention of the Canon Law Society of America. Father Maida also called for a broadening of our horizons and involvement as Church lawyers, and for a reduction of our isolationism in relation to the other disciplines in Church life. We should enrich our legal interpretation with biblical, theological, historical, and sociological insights into effective Church advocacy:

Unfortunately we canonists, rightly or wrongly are sometimes viewed as mere interpreters of the law, failing to note or to contribute to the pastoral life of the church . . . [A] canonist who merely explains the law as written and does not take into account the changing circumstances in ecclesial life has failed in his professional responsibility to church people . . . [W]e must be generous interpreters of the law, not its mechanical implementers.²³

There are several contemporary church-state issues which merit a canonist's expertise, perhaps through the United States Catholic Conference. These include such issues as private schools and government aid, taxation of Church property and institutions, abortion and its impact on

²² CANON LAW SOCIETY OF AMERICA, PROCEEDINGS OF THE FORTIETH ANNUAL CONVENTION 2 (Oct. 6-12, 1978).

²³ CANON LAW SOCIETY OF AMERICA, PROCEEDINGS OF THE THIRTY-NINTH ANNUAL CONVENTION 1-2 (Oct. 10-13, 1977).

the Catholic community, right-to-life questions involving the aged and handicapped, and nonprofit status for our charitable institutions in view of their contributions to civil society. Canonists, whether religious, cleric, or lay can facilitate addressing these many and varied concerns by diversifying their interests and broadening the horizons of the Canon Law Society of America.

CONCLUSION

Canonical ministry enjoys a new maturity today, and may well develop into one of the ministries coming of age in the Church. There are many operative ministries today. There is a new spirit in this post-conciliar time. Council decrees and theological, legal, and practical concepts have yet to pass from theory to the lived experience of the Church. When promulgated, the new Code of Canon Law will usher in a new era in Church life. Canonists are indispensable in handling the new law. For years to come, the new law will need interpretation, creative application, and refinement for the bishops, priests, deacons, religious, and lay alike.

The future requires a determination of whether a theology of "communio" for the particular and universal Church, with its implications for broad-based exercise of apostolic activity, can be translated into our fundamentally hierarchical Church. The canonist is indispensable in facilitating this *aggiornamento*.

