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**Mercy and the Rule of Law**  
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Most Reverend Bishops, esteemed Fathers, honored guests, fellow canonists and canon law students, ladies and gentlemen.

Before anything else, let me thank the Canon Law Society of Nigeria, and in particular its president Msgr. Pius Kii, for extending to me the invitation to meet with you today, and let me thank my friend from our many years together in diocesan service back in San Diego, California, Mary Jo "Mama" Gretsinger of Kaduna, and Bishop Martin Uzoukwu of Minna, who helped me coordinate so many things as part of my first trip not only to Nigeria but to Africa itself. I am overwhelmed at their kindness and am deeply honored that they thought I might have something worth sharing with you today.

My topic today, or should I say *topics?*, is "Mercy and the Rule of Law", two concepts perceived by many as polar opposite notions in the Church today, existing in a competitive, but maybe even destructive, tension; others see both mercy and the RULE OF LAW as values, indeed, but they regard *mercy* as the primary value, one struggling for effect against that worldly necessity known as the *rule of law*; still others, I suppose, see mercy and RULE OF LAW as two interesting, useful institutions in Church life, but as ones having little to do with each other. Well today, I want to try to sort out these two concepts with you and, while we probably will not settle on a final reconciliation of the competing claims of Mercy and the Rule of Law, perhaps we can at least clarify for ourselves and for others what is at stake in the debate about them, a debate that is erupting all around us.

As it is, I think, *mercy* that is the more controverted concept today, I will begin my remarks by outlining the notion of mercy as it has traditionally been understood in ecclesiastical life. Following this examination of mercy as it is encountered in what we may call the "pastoral realm", we will then outline the real but limited place that "mercy" has in the proper administration of justice, whether secular or ecclesiastical. Next I will suggest a special problem that might be behind the conceptual confusion between mercy and the rule of law which, especially in light of the way that Pope Francis and some others speak about mercy these days, could be hampering the coordination of mercy and the rule of law in the Church. I am going to argue that the recent confusion over the nature of "mercy" in the Church, that is, a confusion between mercy in the pastoral

context and mercy in the governing context, is a manifestation of a much wider and deeper problem confronting not just the Church, but pretty much the whole of Western civilization. To the extent that other civilizations, notably Africa and the Far East, might draw on certain aspects of Western, specifically Euro-American culture, this problem threatens to affect them too: I speak of the rise of “antinomianism” and I will address antinomianism in enough detail so as to include it as almost as a third topic for our consideration today. Finally, I will suggest some practical measures that we as canon lawyers can take to correct the influence of antinomianism in the Church and to restore a proper understanding of the relationship between mercy and the rule of law.

**First, we consider mercy.**

Considerable heat, but not much light, has been generated over the last two or three years concerning the topic of “mercy”. Too many suddenly speak about mercy as if it had only recently been discovered, nay perhaps even invented, by Pope Francis. Then, not a few go beyond this first obviously false conclusion and emphasize mercy, not as a phenomenon that tempers justice, as Shakespeare<sup>1</sup> and Scripture<sup>2</sup> both attest, but as one that *trumps* justice and, among other things, effectively eliminates the need for interior conversion among offenders, something that is assumed to be central to the operation of mercy in, say, Pope John Paul II’s encyclical *Dives in Misericordia* (1980).<sup>3</sup> In turn, *this* misrepresentation of mercy provokes counter-reactions that come across as if one should reject *any* role for mercy in pastoral life and, as I said, it all ends up producing much more heat than light.

So, as a start toward clarifying our thinking about mercy and the rule of law, let’s try to set out how the concept of mercy is traditionally presented in the Church.

First and foremost, Church tradition presents in the context of “mercy” the spiritual and corporal “works of mercy”, seven especially graced occasions to serve the spiritual needs of our brothers and sisters and likewise their corporal needs. You know them well: counselling the doubtful, instructing the ignorant, admonishing the sinner, comforting the sorrowful, forgiving offenses, bearing wrong patiently, and praying for others both living and dead; along with these seven spiritual works come, too, seven corporal works: feeding the hungry, giving drink to the

thirsty, clothing the naked, comforting the sick, visiting the imprisoned, burying the dead, and giving alms to the poor.<sup>4</sup>

The vast majority of Christian discussions of the concept of “mercy” over the centuries, and I suggest, the great majority of Pope Francis’ admonitions of mercy today, really, upon closer observation, deal with this time-tested use of the concept of mercy—that is, with traditional manifestations of spiritual and corporal outreach toward our neighbors made in a pastoral context. There is indeed, in regard to these voluntary, pastoral, manifestations of mercy, an element of *obligation* (sometimes called an obligation in charity) such that one cannot, in good conscience disregard all occasions for exercising mercy toward others without thereby acting wrongly, for to fail consistently in the exercise of these forms of mercy is itself a moral offense. These traditional forms of “mercy” are obligatory on us and for one to fail to exercise them over a significant period of time is to fail in one’s basic duties toward others.

But, interspersed with calls for these broadly-obligatory forms of mercy in a pastoral context, there are also, it seems, in some of Francis’ remarks, calls for a “mercy” of a very different type even though the pope uses the same word “mercy” and even though he seems to hold it as every bit as obligatory as the forms of mercy exercised in a pastoral context. It is here where confusion can begin to set in. I speak now of that second, different form of “mercy”, namely, that kind of “mercy” exercised, on certain occasions, by a lawgiver toward subjects of the law who violate that law, that is, we now speak of mercy in a *governing* context.

It is well established that, from time to time, governing authority, the one charged with the duty to care for the common good of society—caring, chiefly by establishing, as Pope John Paul II indicates in *Sacrae disciplinae leges*,<sup>5</sup> a just order in society—may exercise “mercy” toward a given offender against justice. By this we mean that governing authority may, from time to time, elect not to exact strict justice under the law and may instead choose to forgive an offense without exacting due punishment. This form of mercy takes different names depending on the society in question: clemency, commutation, *nolle prosequi*, executive pardon, amnesty, and so on.

The parable of the unforgiving debtor (in Matthew 18) who, although forgiven-from-above by the higher authority in an act of mercy, was himself unforgiving toward those below, ably demonstrates—while making, of course, the much more important point about the need to extend forgiveness to each other—(demonstrates) the possibility that higher authority can, at least from time to time, elect not to enforce justice on a given individual. That's what the master in this parable originally did, he chose, at first, *not* to exact justice from his debtor. Sadly, though, his debtor chose not to extend this same mercy to others and we know what happens as a result.

But, while there is little doubt that governing authority may, from time to time, elect to show mercy in the governing realm, such mercy is, in contrast to the corporal and spiritual works of mercy in the pastoral context, never obligatory *per se*. Moreover, it is very difficult to establish objective criteria for when governmental exercises of this second form of mercy (that is, mercy in the legal arena, not in the pastoral) might, on occasion, be appropriate; but we know this much: too many indulgences in such mercy weaken the social stability achieved under the rule of law; too few extensions of mercy isolates governing authority from the daily lives of its people.

Now, in trying to develop further our sense of how the application of mercy in the realm of government differs from the application of mercy in pastoral setting, let us underscore this important contrast between these two types of mercy:

Recall, preliminarily, that *negative* moral prohibitions (for example, 'Do not take the name of the Lord in vain', or, 'Do not bear false witness'), insofar as they are calls to **refrain** from certain acts, bind always and everywhere.

But, and more importantly for our purposes, the spiritual and corporal works of mercy, being obligations that are *positive* in nature (thus requiring **actions** on our part), bind, yes, but *in accord with circumstances*, if only because the performance of any given work of mercy might (and in fact usually does) preclude the simultaneous performance of every other act: it is very difficult to perform any two substantial acts at the same time, even if they are both good acts. Again

I say that any Christian who goes a notable period of time without engaging in one or more of the spiritual and corporal works of mercy needs to examine his conscience carefully. Negligence, or something worse, might have crept in, but that still does not mean that we are bound to try to perform every act of traditional mercy—spiritual and corporal—at every time.

Happily Pope Francis has become famous for providing, not just clarion calls for the Christian faithful to recommit themselves to the observance of the spiritual and corporal works of mercy, but frequent suggestions of ways to do that, leading by example as much as by words: he visits the sick and imprisoned, he feeds the hungry, he clothes the naked, and so on. This is all fine and indeed welcome, of course. The problem comes in, however, when his frequent exhortations to the *spiritual and corporal* works of mercy, works which are largely under our authority to apply to our suffering brothers and sisters in a pastoral context, are then too casually applied, if not by him then certainly by others, to exercises of mercy in *the realm of governance*. Here is why: The pursuit of justice, a key duty of governing authority, is not at some fundamental level “optional”, if I may be permitted to describe the spiritual and corporal works of mercy as “optional”. Justice, by its very nature, obliges *all* men and women at *all* times—even if there are many times that human beings and human institutions fail to honor justice or to accomplish justice in concrete circumstances.

But, because the pursuit of justice is binding by its nature on those charged with its application and administration, these same persons have little authority, and often no authority, to waive the requirements of justice in the name of “mercy” or of anything else. This point requires some development. Again, let us consider a parable, this time of the dishonest steward (Luke XVI: 1-13) (not the unmerciful debtor we mentioned earlier, but the dishonest steward!) and let us ask, what specifically about the actions of the dishonest steward were “dishonest”?

You know the story: a steward was about to be fired from his job and, in a scheme to win favor with his associates to whom later, one assumes, he would go for help in times of need, the steward colludes with various debtors to reduce their debts to the master.

Principally, the dishonest steward's dishonesty lay in this: by having debtors of the master write out bills for less than they, in justice, owed to his master, the dishonest steward was effectively giving away what did not belong to him, namely, his master's rights and property. Clearly, had the master told his debtors, "I forgive this part of your debt" or even "I forgive all of your debt" (just as the kind master had done in the parable of the unforgiving debtor), no one would have wondered at the "injustice" of the act because, as the owner of goods with the legal right to dispose of them as he chooses, there would have been no *injustice* in such forgiveness. But a *steward* is not free to treat the rights and goods of a *master* as if those rights and goods belonged to himself. To take upon oneself such a role, even in the name of showing "mercy" to the debtors of the master, is to commit the crime of embezzlement and theft.

Now, the Church has been graced by God to act as his minister on this earth and in that sense, the Church is the dispenser or *steward* of his many gifts. Moreover, and unlike typical ministers of human beings or of human institutions, the Church *has* been entrusted by Christ to represent *both* his justice *and* his mercy to his people. A key place to see this dual role spelled out is, for example, in Canon 978 § 1, wherein we read about the priest confessor that "he is constituted by God as minister of both divine justice and of divine mercy."<sup>6</sup> Now it is startling enough for us to be given a role in dispensing God's justice; but to be allowed to dispense, in any part, his *mercy* as well, staggers the imagination. That kind of role, I suggest, is not fulfilled by mere *servants* of God, but by the very brothers and sisters of our Jesus Christ.

But that being understood, we must be clear that the Church does not *own* the treasury of mercy that Christ entrusted to her and the dispensing of mercy in the context of law and justice is never to be undertaken lightly or contrary to His will. Mercy too seldom shown, as we said a few minutes ago, breaks the spirit of people laboring under law; but mercy indulged in too often saps their search for God as He is: love, pure love, in truth, pure truth.

So as we said, recently there has arisen in the Church a serious confusion between the obligatory nature of "mercy" as spelled out in a pastoral context, that is, in regard to the spiritual and corporal works of mercy, a

form of mercy broadly binding on Christians, and the nature of that “mercy” as the concept is from time to time encountered in the context of governance, a form of mercy rarely, if ever, binding on governing authority. I believe that such elemental confusion is causing us to impose the former understanding of mercy in the latter context, to the harm of both. I believe, further, that this confusion between two forms of mercy has been able to take hold so quickly in the Church because of a long simmering, deeper, and by now pervasive problem against which canon law must struggle to operate today. I refer to “antinomianism”. This antinomianism, if it has not provoked the confusion evident between two notions of mercy in the Church, has created the environment in which such confusion can spread quite quickly. So we need to take a more careful look at this problem.

Antinomianism means several different things (philosophically, theologically, and so on),<sup>7</sup> but here I will use the term “antinomianism” to describe the present difficult conditions under which law in general, and canon law in particular, is trying to function, namely these four: (1) many of the most basic requirements of ecclesiastical law are widely unknown among the mass of believers; (2) among mid-level ecclesiastical leadership (typically priests, pastors, and lay co-workers), law is very often incompletely understood or sometimes plainly misunderstood; (3) among many influential opinion-shapers in the Church (especially academics and opinion writers), law itself is a suspect category; and finally, (4) among too many in high positions of ecclesiastical leadership, law is ridiculed and lawyers are constantly pointed-to as the best example of how *not* to live the Christian life. This widespread ignorance about, pastoral confusion concerning, social suspicion of, and governing contempt toward law is what I refer to as “ecclesiastical antinomianism”. While one or another of these four factors has always been with us, of course, and always will be, the simultaneous confluence of all of four factors now is, I believe, unprecedented in Church history. It is important, therefore, I think, to try to figure out how this situation of massive ecclesiastical antinomianism arose, if only to try to find ways to avoid repeating such mistakes in the future.

We can begin, I think, by suggesting a starting date, a specific day on which this modern antinomianism first began to impact the Catholic



Church. That day, I suggest, was Friday, February 23, 1962, the morning *after* a magnificent document, Pope St. John XXIII's apostolic constitution *Veterum sapientia* on Latinity in the Church, was signed by His Holiness on—so I am told by old men who once were young and who were present at the time—the main altar of St. Peter's basilica before dozens of ranking prelates and amid hundreds of priests and seminarians.<sup>8</sup>

What, you may rightly ask, am I talking about? How can the signing of a document on Latinity in the Catholic Church mark the beginning of our steady decline into antinomianism? Let me suggest a way.

*Veterum sapientia* (and the extensive implementing legislation issued two months later by the Sacred Congregation for Seminaries and Universities),<sup>9</sup> is really, I suggest, two different things: it is, on the one hand, a magnificent and at times even exciting, inspiring, explanation of the role of Latin in the Catholic tradition and a defense of the role of Latin in ecclesiastical work in the modern world. The intellectual or academic aspects of *Veterum sapientia* have come to serve as rallying point for—well, for what, exactly?, we can't really say "preservation" of Latin in the Church, because Latin is largely lost today but rather, for—Latin's *recovery* in the Church, now, before the damage caused by the effective banishment of Latin becomes irretrievable. *Veterum sapientia* is road map back home and it has lent its name to several wonderful Latin language learning undertakings, some of which I and even my children have happily participated in.

But *Veterum sapientia* was also something else. Canonists know (even if few others do) that the literary genre of *Veterum sapientia* was that of an "apostolic constitution", that is, the highest legislative genre in the Church. Now, not only was *Veterum sapientia* presented to the Catholic world precisely *as law*, but it was signed and published in, as I mentioned above, a deliberate, near-solemn sacred setting to much acclaim and official celebration. Its announcement on the eve of the Second Vatican Council, represented, I suggest, the high-water mark of ecclesiastical officialdom's trust in the power of law *qua* law to make reality, to direct human behavior, and to establish criteria by which one's contribution to the body ecclesiastic should, in part, be measured.

And what exactly did *Veterum sapientia* legally command? It commanded language usage. It required Latin to be spoken in all Catholic and pontifical faculties and seminaries around the world when treating any of the sacred sciences, that is, when discussing anything dealing with philosophy, theology, canon law, church history, liturgiology, and so on; it commanded the removal of faculty from these institutions who could not speak Latin, and it effectively called for the dismissal of students (most of whom were seminarians and priests) who could not communicate about these topics in Latin.

Now it is, I suggest, widely accepted by professional linguists, experts in the science of human language, that **any** governmental legislation concerning human language is notoriously hard to enforce; moreover, of the two primary legal approaches to language—namely, prohibiting its use, or commanding its use—*prohibiting* the use of language among a people is very difficult, but **commanding** the use of a language within a community, as *Veterum sapientia* purported to do, is basically impossible. To be sure, governmental authority can, through incentives or disincentives, encourage or discourage specific language use, but, any attempt to use the law to *prohibit* languages within healthy societies rarely works well, and attempts to use law to *command* the use of languages within healthy societies is essentially impossible. These conclusions flow not from the nature of *law*, indicating something fundamentally weak or impotent about it, but rather, these conclusions flow from the nature of *language* indicating something incredibly powerful and inexorable about it. In brief, pit law against language and language always wins. And yet this is exactly what *Veterum sapientia* tried to do, it tried to command the use of a language within a society, and it failed completely to accomplish that.

When I was studying canon law at the Catholic University of America in the mid-1980s, we still had on our faculty some members who, either as teachers or students, had been at CUA in 1963 when, for a couple of weeks, a few faculty attempted to comply with *Veterum sapientia* and deliver their lectures in Latin while startled students tried to follow their lessons in this ancient tongue. It was, so I am told, a complete mess and it collapsed in a couple of weeks. I can well imagine that the law failed, and I say this as one who loves to speak Latin and who regularly tries to improve my use of living Latin. But I belong to a very small minority of

Catholics, even among Catholic intellectuals, who love Latin as a language and spend time with it. In any case, the attempt to follow the pontifical *law* laid down in *Veterum sapientia* was abandoned almost everywhere in the Catholic world within a very few months. And the few places that managed to deliver at least some course lectures in Latin in the following years still quietly made sure that study notes for students were unofficially available in Italian and English.

Now, what has all this to do with the beginning of antinomianism in the Church? It is, I suggest, this: If an apostolic constitution, of all things, dealing with a matter so completely within the authority of the Church as was the use of Latin in Catholic educational institutions, resting on such obviously deep traditions, and published with all the pomp and circumstance that surrounded the promulgation of *Veterum sapientia*, if that kind of ecclesiastical *law* could be such an almost-immediate and evident dead-letter, then, the question was inescapably broached, what other kinds of ecclesiastical law might be, if not simply ignored (as *Veterum sapientia* quickly came to be) then at least minimalized and marginalized and even stigmatized as, of course, we know so many ecclesiastical laws since the mid-1960s have become. The wholesale rejection of *Veterum sapientia* at the very beginning of the Second Vatican Council whet the appetite of forces in the Church, especially among the intelligentsia, who were already badly affected by the secular antinomianism that had arisen in the West in the wake of the Second World War, and it suggested to them, at the dawn of the Second Vatican Council, that maybe, just maybe, there would be other ecclesiastical laws that could be ignored with impunity. That is why I suggest February 23<sup>rd</sup>, 1962, the morning after *Veterum sapientia* was published, when people began to doubt whether that law should be, even could be, complied with, as the beginning of our long descent into antinomianism in the Catholic Church, an antinomianism that is with us to this day and which is, I think, the worst the Church has ever had to suffer through.

Now I do not wish to lay the guilt of modern ecclesiastical antinomianism solely at the feet of *Veterum sapientia*, for however much it contributed to the rise of antinomianism, it was not the only influence harmful to the rule of law taking hold in the Church in those years.

Another contribution to this environment of widespread confusion about the place of law in the Christian society had begun a few years before, in January 1959, when John XXIII announced his intention to reform the Pio-Benedictine Code of Canon Law of 1917.<sup>10</sup> John, a conservative man despite his reputation as a “progressive”, probably thought that a mere updating of the 1917 Code would be sufficient in the wake of the Council he had just announced. He certainly had no idea that the canonical revision process he had committed the Church to in 1959 would last two dozen years until 1983! Nevertheless, what actually happened upon his 1959 announcement of the reform of the Code of Canon Law was, in effect, to sound the death knell for the 1917 Code, years, nay *decades*, before its replacement would be, even could be, ready. Almost overnight, it became difficult, and in many ways impossible, to enforce the requirements of a ‘doomed Code’, a set of laws that everyone knew was going to be replaced—even though no one knew when that would happen.

Consider: Commentary on the 1917 Code, which had gone on steadily under the Code while the Church grappled with the implications of operating under codified canon law instead of its just being officially collected in the *Quinque Libri Decretalium*,<sup>11</sup> ceased almost immediately upon John’s 1959 announcement—and as canonists, we know, given the *ratio* of Roman, continental, and canon law, how very important continuing *scholarly commentary* on law is to the living operation of codified law.<sup>12</sup> The last of the great pan-textual commentaries on canon law—oh, how much do we owe them!—the *Comentarios al Código de Dercho Canonico* from Madrid, came out in 1963.<sup>13</sup> Two great scholarly projects in canon law, the *Dictionnaire de Droit Canonique*<sup>14</sup> and *Dictionarium Morale et Canonicum*,<sup>15</sup> the first hardly half-way through the alphabet in six volumes on the eve of the Council was rushed to completion in just one more volume immediately after the Council, and the second, a dictionary barely three letters into the alphabet in 1962, was completed as quickly as possible within a year or two of the council’s close. These events suggested that the canonical community felt the need to record the latest insights into the first expression of the Church’s *codified* legal tradition before, well, before almost no one would care about it anymore. In any case, the prolonged period of legal uncertainty occasioned by John’s premature announcement of a reform of canon, a period lasting, we know now, some 24 years, bred into an

entire generation (really, into two generations) of ecclesiastics uncertainty about the very existence of law itself, about what role law would play, what role law could play, and even whether law should play in the Church after a council such as the Twenty-First. Young priests (including many of today's bishops, and even some of today's cardinals) learned, through no fault of their own, of course, either to ignore law (which to them seemed almost literally non-existent during their schooling) or to look to *theological* experts, and not to *canonical* scholars, for insights into what place law should have in the 'Church of Now'. All of this was fertile breeding grounds for antinomianism in the Church.

But even here, I do not want to suggest that modern ecclesial antinomianism grew out of, more or less, only what Pope St. John did, quite inadvertently I need hardly say, to contribute to the development of antinomianism in the Church, for I can suggest still deeper roots in this way: Consider that, in the last five years of the reign of the Pius XII (who was, I might add, the last pope who was formally credentialed in law—and that makes nearly 60 years without a canonist pope, a very long period in Church history to go without a lawyer on the throne of St. Peter), the Code Interpretation Commission had basically ceased to issue authentic interpretations of the Pio-Benedictine Code.<sup>16</sup> Incredible to think that for five long years, the Holy See gave the impression that either the 1917 Code of Canon Law was so perfect that it needed no more refining (an obviously false claim for any legal system to make) or, that attempting to keep the law up-to-date with binding interpretations was not so important after all, prompting the obvious question, why not?

These events, then, the cessation of authentic interpretations of the Code of Canon Law that began in the mid-1950s, the prolonged uncertainty and neglect for canon law itself that started in the late 1950s, and perhaps most symbolically, the repudiation of law that the rejection of *Veterum sapientia* occasioned in the early 1960s, left the Catholic Church especially vulnerable to the secular antinomianism which the horrors of two world wars in barely two generations had already bred into the civil arena. By 1975, the Roman prelate Gabriel Cdl. Garrone was openly worried about the future of law in the Church: "In recent years," the cardinal said, "the study of Canon Law [has undergone], for various reasons, a lessening of interest, especially

among ecclesiastical students. This trend has had a certain disorientating effect upon the Church.”

Those words, “*a certain disorienting effect*” are an understatement about the steadily deteriorating relationship between life and law in the Church. Today, the ‘disorienting effects’ arising from the lack of canonical expertise can be seen everywhere. It should be little wonder then that today, among so many laity and clergy of all levels in the Church, heirs to a half century of marked neglect for, confusion about, and disappointment in law, so many seem unable to help the Church distinguish between her inalienable role as governor of Christ’s holy people on earth and her indispensable role as a channel of God’s saving love. As a result, and to put it briefly, mercy in the pastoral context, a form of love binding on us as Christians, a concept that, *Deo gratias*, we have managed over the last 50 years to keep somewhat before the eyes of the faithful, is, I fear, being confused with mercy in the governing realm such that the occasional relaxation of the demands of justice that is sometimes permitted in the course of governing society is now being presented by, and demanded by many, as if it were something owed in justice, as if one who does not extend mercy in the *realm of government* is suddenly and actually acting unjustly! This mistake has been made worse, and perhaps even it has been made possible, by the widespread ignorance of law that ecclesial antinomianism produces.

Well, no more than you do, do I wish to recite a litany of examples of antinomian attitudes in the Church—we all have seen many examples. Rather, having plausibly, I hope, suggested how and when modern antinomianism took hold in the Church, and how this backdrop of antinomianism aggravates the confusion that seems to have arisen between two operations of mercy in the Church, I would like to turn our thoughts to some practical measures we might consider for addressing this confusion verging on crisis. I have five suggestions.

1) We must observe the law ourselves, even when others do not realize that what we are doing is something called for by law. If Scripture admonishes us to always to have a reason ready for our hope (1 Peter III: 15), so may we always have canon or two ready to document the soundness of our governing decisions. Keep in mind that many actions we perform in accord with law also coincide with good common sense;

it would not hurt us or the cause of legal reform to point out to others that law very often requires what common sense or pastoral prudence already suggests.

2) We should commit ourselves as canonists to serious, continuous study of canon law, both modern and historical. Law is a vehicle of social stability, in that it allows for that level of predictability which a healthy society requires for success. But law cannot be applied in a society if its people literally do not know or recall what it says. It is not enough that we have law printed in books or available on-line, that is not enough for law to serve its role as the social memory of what makes for stable society. We lawyers, we practitioners and scholars of the law, we must know the law in our minds and hearts. Consider: for some sixteen centuries, until the 19<sup>th</sup>, the language of one of the most spectacular African civilizations could be seen easily, but no one could *read* it, because the memory of what those symbols carved in stone meant was lost to us. For too many today, canon law looks almost like Egyptian hieroglyphs, mysterious terms with no apparent connection to real Church practice and real Church values. It is, first and foremost, the task of canon lawyers to make the law come alive in our minds and hearts—much like the Psalmist who sings “The blessed man delights in the law of the Lord, and on his law he mediates day and night” (Ps 1:2)—if we are ever to hope that law will reassume its vital role of service to society. We may take as a model the “lectio divina” as practiced by priests and religious, and commit ourselves as canonists to a daily “lectio legalis” thus ensuring ourselves that we stay in touch with the whole of modern canon law and not just those areas in which, for professional or personal reasons, we deal with more commonly. The Code is an integrated whole and we need to approach it as such.

Speaking, by the way, of continually studying the law, I note that the *Enchiridion Indulgentiarum* grants a partial indulgence to those who engage in the study of Christian Doctrine (Conc. 6). Canon law is of course, one of the ecclesiastical sciences (Canon 252 § 3), so why not augment our personal relationship with Christ Himself while studying the law by which His Church is governed?

By the way, and as much as I regret the antinomian effects that *Veterum sapientia* had on the Church, I fully support its call to restore and

preserve Latin in the study of ecclesiastical sciences. Let me recommend Latin especially for the study of canon law: not so much for the current law, because obviously almost all of the commentaries on the Johanno-Pauline Code are available in modern research languages: but rather, I urge Latin studies on canonists to enable them to access directly the great commentaries on Pio-Benedictine law, and even decretal law, works representing the accumulated legal and pastoral wisdom of many centuries, works composed almost entirely in Latin, but only rarely (and then usually incompletely) translated into modern languages. One of the hallmarks of modern ecclesiastical antinomianism is disdain for the history and development and past insights of law; but we know better, we who appreciate the import in Canon 6 § 2<sup>17</sup> and the value Canon 21<sup>18</sup>, and we know that the current Code grew out of an incredible pastoral-legal tradition offering fertile grounds for insights today to those who can read Latin.

3) Be patient with the personal jibes and insults thrown at canon lawyers today by anyone, including by those in the Church who should know better. While we might be suffering an unprecedented level of contempt for law in the Church currently, we are certainly not the first generation of lawyers to be abused by those who should be using law to lead, and we will not be the last. My mother used to advise me when faced with my small disappointments and sufferings, "Offer it up" and she meant it, and so do I: offer up the suffering unfairly inflicted on us for being lawyers and unite them with the sufferings of Christ.

4) A small but practical point: watch the way we ourselves describe law and legal issues and obligations. Our very comfortableness with the law can lead us into an excessive casualness about the way we describe law and its operations to others. For example, when we speak of certain matters that are required, as we say, "merely for liceity", we must explain such requirements in terms that do not trivialize them, for phrases such as "merely for liceity", while technically correct and safe enough to use around professionals, breed disrespect for law in others. Instead, let use discussions of laws, even ones that are imposed "merely for liceity", as occasions to remind others about what St. John Paul II said in *Sacrae disciplinae leges*, namely: "Canon laws by their very nature are meant to be observed." All canon laws are expressions of the mind and will of the Legislator, and if these laws deal with matters of widely



varying degrees of importance—and they do—nevertheless, they all spring from a common, divinely established font, the See of Peter.

5) Let us invoke the patronage of the great canonist and lawyer saints, especially St. Raymond Peñafort (1175-1275) and St. Thomas More (1478-1535). In St. Raymond, we have a patron who was not simply a canon lawyer (and who in that respect understands the ecclesiastical issues we confront), but one who organized, as an act of service to the Church requiring four years of his life to assemble, the *Quinque Libri Decretalium*, by which the Church was governed for 683 years until the rise of codified canonistics in the early 20th century. In St. Thomas More, an accomplished civil lawyer who studied canon law, we have something else, namely, a lawyer who understood the limited but absolutely vital role of law in society and a lawyer who understood what happens when lawless attitudes are set loose upon a people.

To conclude, mercy has a great role to play in the lives of ordinary Christians, for any who desire mercy from God must first show it to others. This form of mercy, the form most commonly referred to in the ecclesiastical tradition, binds us to a variety of positive actions toward love of neighbor. On the other hand, mercy in the governing arena, (a mercy that on occasion allows governing authority to refrain from requiring what is otherwise strictly required under the law), is being urged as a normal course of action for ecclesiastical leadership to follow while governing the People of God, this, with, I think, consequent damage to the rule of law and the stability and witness of the Church. Confusion between these two types of mercy has been aggravated by a wider spirit of antinomianism that manifested itself some 50 years ago and since then has been growing in intensity until it now threatens to replace respect for law—and the accumulated pastoral wisdom born from doctrine and experience that canon law represents—with the personal opinions and preferences of whomever happens to be in charge of some given part of the People of God for some given time. While ultimately the correction of these trends must be implemented from the top, we canonists and pastors must continually undertake to prepare ourselves, personally and professionally, to know among ourselves, to explain to others, and to apply in service to the Church, sound canon law.

May Sts. Raymond Peñafort and Thomas More pray for us!

Thank you for your kind attention.

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<sup>1</sup> Consider, for example, Portia's description of mercy in Shakespeare's play, *The Merchant of Venice*, Act IV, Scene 1:

“The quality of mercy is not strained.  
It droppeth as the gentle rain from heaven  
Upon the place beneath. It is twice blessed:  
It blesseth him that gives and him that takes.  
'Tis mightiest in the mightiest. It becomes  
The thronèd monarch better than his crown.  
His scepter shows the force of temporal power,  
The attribute to awe and majesty  
Wherein doth sit the dread and fear of kings,  
But mercy is above this scepterèd sway.  
It is enthronèd in the hearts of kings.  
It is an attribute to God himself.  
And earthly power doth then show likest God's  
When mercy seasons justice.”

<sup>2</sup> See, e.g., Matthew IX: 13, “Go and learn what this means, ‘I desire mercy and not sacrifice’” referencing Hosea VI: 6, “For I desire steadfast love and not sacrifice, the knowledge of God rather than burnt offerings.” Revised Standard translations. See also 1 Timothy I: 15-16.

<sup>3</sup> John Paul II (reg., 1978-2005), enc. *Dives in Misericordia* (30 nov 1980), *Acta Apostolicae Sedis* 72 (1980) 1177-1232.

<sup>4</sup> See generally CATECHISMUS CATHOLICAE ECCLESIAE, (Libreria Editrice Vaticana, 1997), English trans., CATECHISM OF THE CATHOLIC CHURCH, 2<sup>nd</sup>

ed., (United States Catholic Conference / Libreria Editrice Vaticana, 1997/2000) 2447.

<sup>5</sup> Pope St. John Paul II (reg. 1978-2005), ap. con. *Sacrae disciplinae leges* (25 ian 1983), *Acta Apostolicae Sedis* 75/2 (1983) vii-xiv.

<sup>6</sup> 1983 CIC 978. § 1. Meminerit sacerdos in audiendis confessionibus se iudicis pariter et medici personam sustinere ac divinae iustitiae simul et misericordiae ministrum a Deo constitutum esse, ut honori divino et animarum saluti consulat. (CLSA trans.)

<sup>7</sup> See, e.g., K. Rahner & H. Vorgrimler, THEOLOGICAL DICTIONARY (Herder and Herder, 1965), s.v. "Law"; Louis Boyer, Dictionary of Theology (Desclee, 1965) s.v. "Antinomianism"; D. Patte, ed., THE CAMBRIDGE DICTIONARY OF CHRISTIANITY (Cambridge, 2010), s.v. "Antinomianism"; and David Bohr, CATHOLIC MORAL TRADITION (Our Sunday Visitor, 1999) 161, contrasting "antinomianism" with "legalism".

<sup>8</sup> Pope St. John XXIII (reg. 1958-1963), ap. con. *Veterum sapientia* (22 feb 1962), *Acta Apostolicae Sedis* 54 (1962) 129-135, Eng. trans. *Canon Law Digest* V: 642-649.

<sup>9</sup> Sacred Congregation for Seminaries (22 apr 1962), implementing norms for '*Veterum sapientia*', *Acta Apostolicae Sedis* 54 (1962), Eng. trans. *Canon Law Digest* V: 649-681.

<sup>10</sup> Less than three months into his pontificate, St. Pope John XXIII (reigned 1958-1963) announced his intention to, among other things, reform the Pio-Benedictine Code of Canon Law. See John XXIII, alloc. *Questa festiva* (25 ian 1959), *Acta Apostolicae Sedis* 51 (1959) 65-69, esp. 68-69. This tripartite plan was reiterated a few months later in John XXIII, enc. *Ad Petri cathedram* (29 iun 1959), *Acta Apostolicae Sedis* 51 (1959) 497-531, at 498, Eng. trans. in C. Carlen, ed., THE PAPAL ENCYCLICALS, in 5 vols., (Pierian Press, 1990) V: 5-20, at 5.

<sup>11</sup> An original and/or critical edition of Gregory's *Quinque Libri Decretalium* does not exist, but accepted as the standard version of is A. Friedberg, ed., CORPUS IURIS CANONICI EDITIO LIPSIENTIS SECUNDA POST AEMILII LUDOUCI RICHTERI, PARS SECUNDA, DECRETALIU COLLECTIONES, DECRETALES D. GREGORII P. IX COMPILATIO (various publishers, most recently Lawbook Exchange, 2000) coll. 1-928, available on-line. For a

general orientation to Decretal studies, see e.g., P. Torquebiau, "Corpus Iuris Canonici", DDC IV: 610-644, esp. "Les Décretales de Grégoire IX", at coll. 627-632. On the *partes decisae*, see R. Naz, "Partes Decisae", DDC VI 1248, or more generally P. Torquebiau, "Corpus Iuris Canonici, II. Les Décrets de Grégoire IX", DDC IV: 627-632, at 632.

<sup>12</sup> We see the value of *scholarly* commentary in canonistics reflected in, say, Canon 19, which states "If a custom or an express prescript of universal or particular law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons." (emphasis added). See also Canon 17.

<sup>13</sup> Aa.vv., COMENTARIOS AL CÓDIGO DE DERECHO CANÓNICO CON EL TEXTO LEGAL LATINO Y CASTELLANO, in 4 vols., (Biblioteca de Autores Cristianos, 1963-1964).

<sup>14</sup> See Raoul Naz (French priest, 1889-1977), ed., *Dictionnaire de Droit Canonique*, in 7 vols. (Librarie Letouzey et Ané, 1935-1965).

<sup>15</sup> See P. Palazzini (Italian prelate, 1912-2000), ed., *DICTIONARIUM MORALE ET CANONICUM*, in 4 vols. (Officium Libri Catholici, 1962-1968).

<sup>16</sup> Authentic interpretation of the 1917 Code dropped off dramatically in the early-to-mid-1950s and seems to have ceased entirely in the later years of the Pius XII's reign. See generally Cosmas Sartori (Italian Franciscan, 1890-1957), *ENCHIRIDION CANONICUM SEU SANCTAE SEDIS RESPONSIONES POST EDITUM CODICEM I. C. DATAE*, 10th ed., rev. by B. Belluco, (Antonianum, 1961) 455 pp., and Eduardo Regatillo (Spanish Jesuit, 1882-1975), *INTERPRETATIO ET IURISPRUDENTIA CODICIS IURIS CANONICI [1928]*, 3rd ed., (Sal Terrae, 1953) 719 pp.

<sup>17</sup> "Insofar as they repeat former law, the canons of this Code must be assessed also in accord with canonical tradition."

<sup>18</sup> "In a case of doubt, the revocation of a pre-existing law is not presumed, but later laws must be related to the earlier ones and, insofar as possible, must be harmonized with them."