

THE AVAILABILITY OF PARISH ASSETS FOR DIOCESAN DEBTS: A CANONICAL ANALYSIS

*Nicholas P. Cafardi**

TABLE OF CONTENTS

I.	INTRODUCTION	361
II.	BASIC CANONICAL CONCEPTS.....	362
III.	PARISH PROPERTY AND THE RIGHTS OF THE DIOCESE	365
IV.	PARISH SUPPRESSIONS – WHERE DOES THE PROPERTY GO?	368
V.	CONCLUSION	372

I. Introduction

In addressing the question of which Church assets might be available to creditors in a bankruptcy situation, it is important to examine how the Church itself looks at the property that it holds. We must also understand that this question will be answered within the framework of our civil law. Paul Kauper and Stephen Ellis, writing over thirty years ago in the *Michigan Law Review*, had this to say about incorporated churches:

An incorporated religious society is viewed as a dual entity. It is, first and primarily, a religious association dedicated to spiritual ends, with its own internal authority concerning religious matters. As a corporation, it is a secular entity, operating under state auspices and subject to the general laws of the state respecting corporate procedure and contractual and proprietary matters. In short, a religious society is seen as serving both religious and secular purposes, and the incorporation privilege is directed to the secular aspects of its

* Dean and Professor of Law, Duquesne University School of Law. J.D., University of Pittsburgh School of Law; J.C.L., University of St. Thomas, Rome.

operation.¹

In the Kauper-Ellis dichotomy, the Church's internal authority governs religious matters, and the corporate form governs corporate procedure, contracts and property matters. What happens, though, when highly developed Church legal systems, such as the Canon Law of the Roman Catholic Church, have their own laws not only on internal religious matters, but also on questions of corporate form and tenure of property?

Which rules govern and when do they apply? Can we ever say one problem is so purely secular as to be determined solely by the laws of the state, and not at all religious or theological, where the Church's own law governs? What happens in a bankruptcy situation, where there are clear laws of the state to be complied with, but where the laws of the Church have a great deal to say about how Church property is to be acquired, administered and disposed of? Can we ever really make that secular-religious distinction that Kauper and Ellis write of? To answer these questions more completely, we need to start by looking at what exactly the law of the Church does say about the tenure of property.

II. *Basic Canonical Concepts*

The Canon law of the Roman Catholic Church was the first legal system in the world to develop the notion of a fictitious legal personality. Although there are roots in the Roman *collegium*, *sodalitas* and *municipium*,² the term *persona ficta*, meaning a fictitious or legal person, is actually used for the first time in legal history by the canonist, Sinibaldo Fieschi in the mid-thirteenth century.³ That concept of legal personality has endured and grown in Church law. The notion appears in both the 1917 and 1983 Code of Canon Law,⁴ and most recently in 1983 under the concept of what the Code calls a "juridic person." This name was

¹ Paul Kauper & Stephen Ellis, *Religious Corporations and the Law*, 71 MICH. L. REV. 1500 (1972).

² HARRY G. HENN, HANDBOOK OF THE LAW OF CORPORATIONS 11 (1970).

³ *Id.* at 11-12; cf. Miriam Theresa Rooney, *Maitland and the Corporate Revolution*, 26 N.Y.U. L. REV. 24, 37-38 (1951). A noted canonist, Fieschi went on to become Pope Innocent IV (1243-1254).

⁴ 1917 CODE cc.100, 101, 102; 1983 CODE c.113.

chosen because of its compatibility with European civil legal systems, which also use the term “juridic persons” to describe what, in American law, we would call a corporation. Both civil and Canon law “recognize as subjects of rights and responsibilities not only human beings but also other entities, often labeled in modern civil law ‘juridical persons,’”⁵ with a nod going to the Canon law for being the first on the scene.

In the 1983 Code of Canon Law, there are two types of juridic personality – public and private.⁶ Private juridical persons, while recognized in Church law, are not official Church bodies.⁷ They tend to be private associations of the faithful⁸ and this presentation does not deal with them. Public juridic persons, on the other hand, are critical to our analysis. According to the Code, “a public juridic person is an aggregate of persons or aggregate of things, constituted by operation of law or by an act of competent ecclesiastical authority as its own legal person, existing independently of other persons, endowed with its own rights and duties, which are fitting to its own nature.”⁹

Why do I say that public juridic persons are critical to our analysis? This is the case because *all* church property is held by one public juridic person or another. In fact, the Code of Canon Law defines Church property as all of the property of public juridic persons.¹⁰ While we may not realize it, we have all dealt with and come to know public juridic persons in our lifetimes and perhaps in our legal careers. Every Roman Catholic parish is a public juridic person under the Code of Canon Law.¹¹ Every diocese is a public juridic person.¹² Every religious order, each of its provinces and local houses, is a public juridic person.¹³

⁵ Albert Gauthier, *Juridical Persons in the Code of Canon Law*, 25 *STUDIA CANONICA* 77, 79 (1991).

⁶ 1983 CODE c.116, § 2.

⁷ Gauthier, *supra* note 5, at 90.

⁸ *Id.*

⁹ ADAM CARDINAL MAIDA & NICHOLAS P. CAFARDI, *CHURCH PROPERTY, CHURCH FINANCES AND CHURCH-RELATED CORPORATIONS* 324 (1984) (The definition combines elements of 1983 CODE c.113, § 2 and c.114.).

¹⁰ 1983 CODE c.1257, § 1.

¹¹ *Id.* c.515, § 3.

¹² *Id.* c.373.

¹³ *Id.* c.634, § 1.

A parish, as a parish, has rights and duties of its own, as distinct from the individual members of the parish.¹⁴ A diocese has rights and responsibilities of its own distinct from the individual members of the diocese.¹⁵ That is what it means to be a public juridic person – to have rights and responsibilities of one’s own, independent of the rights and responsibilities of others – based on one’s own existence at law.

All Church property is held by one public juridic person or another.¹⁶ This is a critical notion because what belongs to one public juridic person cannot simultaneously belong to another public juridic person. The Code of Canon Law makes this quite clear in Canon 1256, “[t]he ownership of goods pertains to that juridic person that legitimately acquired those goods”¹⁷ According to the Code, parish property is parish property. It belongs to the public juridic person of the parish and not to another public juridic person. Similarly, diocesan property is diocesan property. It belongs to the public juridic person of the diocese and not to another public juridic person. And the property of the two is not to be confused or co-mingled. Their proper autonomy is to be respected.¹⁸ Every administrator of a public juridic person is charged by the Code with two important duties, (1) a negative duty: to take care lest the property of the public juridic person be lost; and (2) a positive duty: to protect the public juridic person’s ownership of property through civilly valid means.¹⁹ In the proper exercise of these duties, the property of separate public juridic persons will be kept separate. Parish assets will not be co-mingled with diocesan assets, and diocesan assets will not be co-mingled with parish assets.

¹⁴ *Id.* cc.532, 1281-1288.

¹⁵ *Id.* cc.393, 1281-1288.

¹⁶ 1983 CODE c.1257, § 1.

¹⁷ *Id.* c.1256. “Dominium bonorum, sub suprema auctoritate Romani Pontificis, ad eam pertinet iuridicam personam, quae eadem bona legitime acquisiverit.” *Id.* “The ownership of property, under the jurisdiction of the Roman Pontiff, belongs to the juridic person that acquired the property.” (Author’s translation).

¹⁸ “Le leggi canoniche, perciò, prevedono una netta distinzione e autonomia dei vari enti ecclesiastici gli uno rispetto agli altri.” Canon Law provides for a clear distinction between the autonomies of the various Church entities, “one from the other.” Acta Consilii I, Nota, *La funzione dell’autorità ecclesiastica sui beni ecclesiastici*, COMMUNICATIONES I 24, 25 (2004).

¹⁹ 1983 CODE c.1282, § 2.

III. *Parish Property and the Rights of the Diocese*

It is very clear, under the Code of Canon Law, that parish property is *not* diocesan property, and therefore may not be used to pay the debts of the diocese, not even in bankruptcy situations. But, the clever reader of the Code will say, are there not valid ways for a diocese to *take* parish property, and may not those ways be used by a diocesan bishop to make parish assets available for diocesan debts? The short answer is that there are *no* ways for a diocese to seize parish property under the Code. The principle that the property of one juridic person is *not* the property of another still controls. But while there is no way in which a diocese can legitimately take parish property, there are ways in which parish property can flow to a diocese.

One way is the diocesan tax. Canon 1263 allows a diocesan bishop, having heard the diocesan finance council and the priests' council, to impose a moderate tax for diocesan necessities on parishes in proportion to their income.²⁰ Note what is being taxed: not assets, but income. The Latin is *redditus*. So while Canon 1263 contemplates a parish paying a moderate proportion of its annual income to the diocese for legitimate diocesan needs, it does not contemplate, indeed does not allow, a parish's assets to be seized by the diocese. Here, again, we run into the prohibition of Canon 1256. And note, that, by its terms, Canon 1263 limits the diocesan taxing authority: it can only be a moderate tax; it can only be on income; it can only be imposed after hearing the diocesan finance council and the priests' council, whose job it is to see that the tax is moderate and only for true diocesan needs.

For the purposes of our analysis, in determining whether parish assets are in any way available for diocesan debts, it is important to note that the Canon 1263 tax only applies to the *unrestricted* income of the parish.²¹ This is a major limitation on the

²⁰ *Id.* c.1263. "Ius est Episcopo diocesano, auditis consilio a rebus oeconomicis et consilio presbyterali, pro diocesis necessatibus, personis iuridicis publicis suo regimini subiectis, moderatum tributum, earum redditibus proportionatum, imponendi" *Id.* "It is the right of the diocesan bishop, having heard the diocesan finance council and the priests' council, to impose a moderate tax for diocesan necessities on public juridic persons subject to him in proportion to their income" (Author's translation).

²¹ Nicholas P. Cafardi, *L'Autorita di Imporre Le Tasse Da Parte del Vescovo Diocesano Secondo Quanto Previsto dal Canon 1263*, in *ATTUALI PROBLEMI DI INTERPRETAZIONE DEL*

bishop's taxing power. If funds are solicited at the parish for a special purpose, for example mass stipends, they must be used for that purpose entirely and completely and they are *not* subject to a diocesan tax. Why is that? Quite simply, to tax such funds would be to divert the intention of the donor, which controls all gifts to the Church. A tax would take part of the gift and use it for a purpose not specified in the gift, a clear violation of Canon 1267 section 3.²² As a result, the taxing authority of the diocesan bishops does not provide a way for the diocese to reach parish assets to pay for diocesan debts. The most a diocesan bishop could do would be to levy a moderate tax on unrestricted parish income, which could be used, among other things, for diocesan debts. Parishioners who are opposed to this use of their free will offerings to their parish could simply cease making unrestricted gifts to the parish. Restricted gifts would allow the parish to survive, and the diocese would have nothing to tax.

It has been suggested by civil lawyers reading the Code of Canon Law that the Code gives the bishop a right to extinguish a parish and take all of its assets, thereby making all parish assets available for diocesan creditors. There is no doubt that there is language in the Code that could be misread that way. Under Canon 515 section 2, the diocesan bishop can, after consulting the priests' council, suppress a parish,²³ and under Canon 123, the goods of a suppressed juridic person go to "the next higher juridical person," provided the parish has no legitimately approved statutes directing otherwise.²⁴ The assumption of the

CODICE DI DIRITTO CANONICO 127-38 (Pont. Univ. S. Tommaso D'Aquino ed., 1997).

²² 1983 CODE c.1267, § 3. "Oblationes a fidelibus ad certum finem factae, non nisi ad eundem finem destinari possunt." *Id.* "Offerings made by the faithful for a certain purpose can be used only for that purpose." (Author's translation).

²³ *Id.* c.515, § 2. "Paroecias erigere, supprimere aut eas innovare unius est Episcopi diocesani; qui paroecias ne erigat aut supprimat, neve eas notabiliter innovet, nisi audito consilio presbyterali." *Id.* "Erecting, suppressing and altering parishes is the sole right of the diocesan bishop, who is not to erect, suppress or alter a parish without having heard the advice of the priests' council." (Author's translation).

²⁴ *Id.* c.123. "Extincta persona iuridica publica, destinatio eiusdem bonorum iuriumque patrimonialium itemque onerum regitur iure et statutis, quae, si sileant, obveniunt personae iuridicae immediate superiori, salvis semper fundatorum vel oblatorum voluntate necnon iuribus quaesitis; extincta persona iuridica privata, eiusdem bonorum et onerum destinatio propriis statutis regitur." *Id.* Translated this reads:

civilists here is that, using these two canons, a diocesan bishop could, willy-nilly, close parishes and seize their assets for his own profligacy. Nothing could be further from the truth. That is *not* what these two canons say, nor is it what these two canons mean.

First of all, the bishop's ability to suppress a parish is far from absolute. Canon 515 section 2 itself says he can only do so after consulting the diocesan priests' council. Granted, consultation is not consent. The priests' council need not consent to the suppression for it to be effective, but the diocesan bishop must bring the issue before them and he must solicit and hear their informed advice. This restriction is in the Canon, among other things, to indicate that a bishop's right of suppression is *not* absolute. He cannot do it simply because he wants to or because he needs the money. The Code interposes the advice of the priests' council because it understands that one person's judgment on such important matters, even the judgment of a diocesan bishop, should not be absolute. To emphasize the weight that a bishop should give the advice of his council, the law specifies in Canon 127 section 2 that a bishop is not to act against the majority without "overriding reason[s]."²⁵ The Latin is *sine praevalenti ratione*.

The conclusion that the bishop's authority to close parishes is absolute can only be reached by reading Canon 515 section 2 out of the context of the rest of the Code. It has been said that, "Canon Law is both a theological and a juridical discipline. It finds its fundamental rules in the experience of a society based on

When a public juridic person becomes extinct, the determination of where its patrimonial goods and rights and obligations go is governed by the law and its own statutes, and if they do not specify, they go to the next highest juridic person, always respecting the wishes of founders and donors and acquired rights; when a private juridic person becomes extinct, its goods and obligations are distributed according to its own statutes.

Id. (Author's translation).

²⁵ *Id.* c.127, § 2. "Si consilium exigatur, invalidus est actus Superioris eadem personas non audientis; Superior, licet nulla obligatione tenatur accedendi, ad earundem votum, etsi concors, tamen sine praevalenti ratione, suo iudicio aestimanda, ab earundem voto, praesertim concordi, ne discedat." *Id.* "When advice is required, the action of the Superior is invalid if he acts without seeking this advice. While he is under no obligation to follow the advice, even when it is unanimous, he may not disregard it either, especially when a consensus exists, unless he has an overriding reason." (Author's translation).

faith and having as its primary purpose the proclamation of the Gospel and the salvation of souls.”²⁶ In the context of the Code, a parish is a community of the faithful by means of which the faith is passed on, works of social justice are performed, the young are educated and the Gospel is preached.²⁷ It is, pre-eminently, the means of assuring that the faithful, through the sacraments, and especially the Eucharist, are spiritually nourished and saved.²⁸ You cannot read the juridic words of the Code and omit the theological. Parishes are not plums for the diocesan bishop to pick when he has debts to pay. They are stable communities of the faithful, with a stable pastor, which constitute the most immediate means for Catholics to work out their salvation. The idea that a bishop would close a parish to pay diocesan debts is abhorrent to the law and reprehensible in fact. It violates the highest principle of the Canon law, which is that every law exists for the salvation of souls. That comes first. It trumps everything else.

Another difficulty that exists with the civilists is that they assume, from their reading of Canon 123, that the goods of a suppressed parish automatically go to the diocese. I do not believe that this is what the Code either says or means. Note that the language in Canon 123 does not say that the goods of a suppressed “parish” go to the “diocese.” It says that the goods of a suppressed juridic person go to the “next higher” juridic person. So it requires an interpretation. When a parish is closed, is the next higher juridic person always the diocese? I do not believe so.

IV. Parish Suppressions – Where Does the Property Go?

In a true parish suppression, a diocesan bishop is simply cleaning up after the fact. When the law on parish suppression works as it should, the bishop does *not* close a parish, the parish closes itself. The faithful simply stop coming or are no longer there, which can happen for a number of reasons. This is the real purpose of Canon 515 section 2. It allows the bishop, once a parish has become non-functioning in fact, to clean up the juridic

²⁶ Gauthier, *supra* note 5, at 77-78.

²⁷ 1983 CODE c.528, § 1.

²⁸ *Id.* § 2.

aspects of the defunct parish. The law does not want empty shell juridic persons wandering around. When there is no longer a need for the juridic person, it should be suppressed. Its juridic personality, already non-functioning, should be made extinct.²⁹

The flip side of this is that, as long as there is a need for a public juridic person, and the means exist to sustain it, it ought not to be extinguished. This is, I believe, how Canon 515 section 2, always considering the good of souls, is meant to work. It lets a bishop clean up what have become unnecessary juridic persons. In that situation, where the parish is no longer serving the faithful because they are no longer there to be served, then by all means, the parish should be extinguished in law, which is what suppression is. And in that situation, there no longer being a faith community there to serve, it makes sense that the assets of the now defunct parish would go to the diocese. In that case, I will admit that the diocese is the “next higher” juridic person.

But in situations where bishops are closing fully functioning parishes and sending existing parishioners to another parish, we reach a different result. First of all, such acts are *not* true suppressions. They are not suppressions because there is still a parish community there, a stable and sometimes quite large group of people, for whom their parish provides the means of salvation. This is not the previous situation that I talked about, where there is no parish community to speak of and the law, following the facts, allows the bishop to suppress what is no longer a useful or meaningful juridic person. No, in this second situation, there is still a meaningful group of people here, who are supporting their parish, who receive their spiritual sustenance from it, and who would continue to support their parish but for the intervention of the bishop.

When bishops “suppress” parishes like this and tell their people to find the means of their salvation at another parish, these are *not* true acts of suppression, although the bishop and his in-house canonists may call them that. This is not simply my

²⁹ I do not mean to gloss over the technicalities. A parish becomes a juridic person with its erection. It ceases from being one with its suppression. So the bishop is *not* suppressing a juridic person just as he isn't technically erecting one. That happens by operation of law upon the bishop's action of erection or suppression of the parish.

interpretation of the Code. This has always been the understanding of “suppression” in the Code, and even before the Code. As Francis Xavier Wernz says in his *Ius Decretalium* concerning the suppression of a beneficial office, which is what parishes were considered in the past:

Suppression is the total extinction of an ecclesiastical office. Through it, an ecclesiastical office simply gives up its existence in the nature of things and loses its juridic personality. Consequently, its goods and rights in beneficial income lack a subject and a basis, and they must be applied to other ecclesiastical offices and pious causes.³⁰

Note the critical elements cited by Wernz: the juridic person loses its existence in the nature of things. As I said above, in a very real sense the juridic person extinguishes itself. Since there is no longer any subject and/or basis for its juridical personality, its property has nothing to attach to, and the property must go somewhere else. But when a subject still remains, for example, a viable, if small, group of parishioners, the property remains. Why? Again referring to Wernz, because the property still has a subject. It is only when there is no longer a subject, no meaningful parish assembly, that we need to find a new subject for the property.

In fact, I will go so far as to say that for a bishop to call such actions a suppression is a fraud on the law - or in action *in fraudem legis*. Why are these a fraud on the law? Because the bishop is saying one thing and doing another. What he is calling a decree of suppression is, in fact, a decree of merger. An existing, fully functioning parish is being made a part of another parish, the parish to which that viable, stable community of faithful that the bishop says he is suppressing is told to go. Fraud is a harsh term, and I do not use it unadvisedly. It is a principle of natural justice that what a ruler cannot do directly, he cannot do indirectly. A

³⁰ “Suppressio est totalis extinctio officii ecclesiastici. Per illam officium ecclesiasticum simpliciter desinit esse in rerum natura suamque amittit personalitatem iuridicam; consequenter ipsius bona et ius in rebus beneficiales carent subiecto et fundamento et aliis officiis ecclesiasticis vel causis piis sunt applicanda.” 2 IUS DECRETALIMUM, Pars Secunda, *De Hierarchia Iurisdictionis*, Sectio I, Caput I, Titulus XIV, *De Suppressione Officiorum Ecclesiasticorum* (1906). This section was repeated verbatim in Peter Vidal’s revision of the *Ius Decretalium* after the 1917 Code of Canon Law was promulgated. F.X. WERNZ & PETER VIDAL, IUS CANONICUM, Liber Secundus, *De Personis*, Sectio I, Caput I, Titulus XIV, *De Suppressione Officiorum Ecclesiasticorum* (1995).

bishop cannot seize the assets of a functioning parish for diocesan debts directly. Canon 1256 prevents that. And what he cannot do directly, he cannot do indirectly by another name: "suppressing" functioning parishes, and after stripping the assets for himself, making the stable community of the "suppressed" parish part of another parish, but now without their parish assets to help them work out their salvation.

But a grasping bishop will want to call these "suppressions" and not mergers. Why? Because in a merger situation, the next highest juridic person is not the diocese, it is the merged parish. That is where the assets of the closed parish go, along with its debts, to the merged parish, and not to the diocese. This is, I believe, a true and correct application of Canon 121 on the merger of juridic persons; and it is, I believe, the only interpretation allowed by Canon 1267 section 3, which states that "[o]fferings given by the faithful for a specified purpose may be used only for that purpose."³¹ And I am not alone here. Father Frans Daneels, Promoter of Justice in the Supreme Tribunal of the Apostolic Signatura, has written that, when a parish "suppression" results in the suppressed parish becoming an integral part of another parish, "the property and patrimonial rights of the suppressed parish, with the respective debts, go, by the norm of Canons 121-122, to the new parish, or 'pro rata' to the parishes that have incorporated the different parts of the suppressed parish."³² And Father Daneels cites an even older canonist, Gommar Michiels. In his *Principia Generalia de Personis in Ecclesia*, he describes these kinds of suppressions as "extinctive unions." Michiels writes:

In the case of an extinctive union, when from the suppression of two or more [juridic] persons, a new and unique person is created, or where one or more [juridic persons] is united with others so that its existence ceases, then the [juridic] person that remains or emerges has all the rights and obligations of

³¹ See *supra* note 21.

³² "I beni e i diritti della parrocchia soppressa, con i rispettivi oneri, vanno a norma dei cc. 121-122 alla nuova parrocchia o 'pro rata' alle parrocchie che hanno incorporato le diverse parti della parrocchia soppressa." Frans Daneels, *Soppressione, Unione di Parrocchie e Riduzione ad Uso Profano della Chiesa Parrocchiale*, in LA PARROCCHIA, XLIII STUDI GIURIDICI 85, 90 (Libreria Editrice Vaticana ed., 1997).

the extinct persons.³³

The assets of a parish were contributed by the parishioners to serve that parish community, and not to serve the diocese. There were fund drives to build the parish church. There were fund drives to build the parish school, the rectory, the convent. No parishioner thinks, nor does our law give him or her any reason to think, that the diocese is the beneficiary of the gifts they bestow on the parish except for the annual diocesan tax which falls, in moderation, on all unrestricted parish income. Gifts to a parish were solicited so that the parish community had the means available to them to work out their salvation. And when a bishop tells those people that he is closing Parish X and they need to work out their salvation at Parish Y, then those means need to follow them to Parish Y. Any other result is unjust, and as I have said, a fraud on the law.

So you see, there really is no legitimate way, under the Canon law for a bishop to take parish assets and use them for diocesan debts. His ability to tax under Canon 1263 does not let him do that, and his ability to suppress under Canon 515 does not let him do that.

V. Conclusion

Before I finish, I want to address one more topic, namely, what happens when bishops have not been careful, and the civil law structure of a diocese does not mirror canonical reality. What happens, for example, when the clear canonical provision on *not* commingling the assets of public juridic persons has *not* been followed by a diocesan bishop and, in fact, civil law title to parish assets is not in the name of the parish, but in the name of the diocese, or of the diocesan bishop? Here we have a situation where the civil law title is at complete odds with canonical requirements. This situation is not a new one in the Church. Vermeersch Creusen address it in their venerable treatise, *Epitome Iuris Canonici*. There, they say, “[g]oods can be possessed by a

³³ “Tum in casu unionis extinctivae, cum aut ex suppressis duabus vel pluribus personis moralibus nova atque unica efficitur, aut una vel plures ita alii uniuntur ut esse desinat, ita ut personae morali quae emergit aut remanet competant omnia personarum extinctarum iura et onera inter se compatibilia.” GOMMARUS MICHIELS, *PRINCIPIA GENERALIS DE PERSONIS IN ECCLESIA* 538 (2d ed. 1955).

moral [i.e., juridic] person in as much as it is ecclesiastical so that if it differs by extension from the civil person [e.g., if many houses of religious *sui juris* are conflated into one civil person], the subject of ownership . . . is determined within the limits of ecclesiastical law."³⁴ In such situations, although civil law title to parish property may be in the name of the bishop or diocese, it is clear in Canon law that this is not effective title. The canonical owner of the property remains the public juridic person that acquired them, and all that the bishop or diocese holds is bare legal title, a title of convenience, where the beneficial interest is clearly, indisputably in the parish.

So we circle back to where we started. The Church's own Canon law will not permit parish assets to be used to pay diocesan debts. To do so would destroy the autonomy of separate juridic persons, on which the law insists.³⁵ It would also be a misappropriation of assets, raised for one purpose, and used for another. Strong canonical arguments, tied to First Amendment rights, can be made that the general laws of the state should respect this internal law, so that we do not have the intolerable situation where the state, in a bankruptcy or any other proceeding, is forcing the Catholic Church to function under an ecclesial polity not of its own choosing. Whether or not the civil courts will honor this canonical jurisprudence, how they will decide the possible First Amendment issues it raises, remains to be seen, and I will leave those issues for my fellow panelists.

³⁴ "Bona vere possideri a persona morali quatenus est ecclesiastica, ita ut si extensione differant (v.g. si pluribus domibus religiosis sui iuris una conflatur persona civilis) subiectum iuris coram Deo intra limites lege ecclesiastica definitos contineatur." A. VERMERSCH & J. CREUSEN, 2 *EPITOME IURIS CANONICI*, Liber Tertius, *De Rebus, Pars Sexta, De Bonis Ecclesiae Temporalibus*, Titulus XXVII, § 1, no. 821 (1934).

³⁵ See *supra* note 18.