THE INCORPORATION PROBLEM: HOW AMERICAN LAW TREATS THE JURIDIC NATURE OF THE CATHOLIC CHURCH

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I. INTRODUCTION: A DESCRIPTION OF THE MEANING AND JURIDIC NATURE OF THE ROMAN CATHOLIC CHURCH

The Roman Catholic Church has a theological and legal means of understanding itself, its structures, its rights, and its authority. American tort law has a legal means of understanding the rights of individuals and organizations when wrongs have been committed and the law violated. What happens when these two come into conflict? What happens when the American tort law system, through the courts, demands part of the Catholic Church do something that canon law dictates that part of the Church cannot do? This is the corporate problem.[1]

It is important to first describe what is meant by the term "Roman Catholic Church" in this Note. Christ established the Church during His ministry on Earth, as relayed in the Gospel of Matthew: "And so I say to you, you are Peter, and upon this rock I will build my church, and the gates of the netherworld shall not prevail against it."[2] The Roman Catholic Church is the Church "which our Savior . . . entrusted to Peter's pastoral care . . . . This Church constituted and organized as a society in the present world, subsists in . . . the Catholic Church, which is governed by the successor of Peter and by the bishops in communion with him."[3] In other words, the Church is a *catholic* body, a universal body.[4]

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1. This issue or tension likely extends to other areas of American civil law and the Catholic Church's canon law. These areas will not be addressed in this Note, as the focus concerns doctrines of and damages specific to tort law.

2. *Matthew* 16:18 (The Didache Bible (2015)); *see also* CATECHISM OF THE CATHOLIC CHURCH ¶ 874 (2d. ed. 1997) [hereinafter CCC] ("Christ is himself the source of ministry in the Church. He instituted the Church. He gave her authority and mission, orientation and goal . . . .").

3. CCC, *supra* note 2, ¶ 816.

4. *Id.* ¶¶ 830–31 ("The word 'catholic' means 'universal,' in the sense of 'according to the totality' or 'in keeping with the whole.' The Church is catholic in a double sense: First, the Church is catholic because Christ is present in her . . . . Secondly, the Church is catholic because she has been sent out by Christ on a mission to the whole of the human race . . . .").

The society of the Church manifests itself in particular churches.[5] These particular churches, in the language of canon law and the Catechism of the Catholic Church, do not refer to individual churches but to dioceses.[6] A diocese is:

> [A] portion of the people of God which is entrusted to a bishop for him to shepherd with the cooperation of the presbyterium, so that, adhering to its pastor and gathered by him in the Holy Spirit through the gospel and the Eucharist, it constitutes a particular church in which the one, holy, catholic, and apostolic Church of Christ is truly present and operative.[7]

Most dioceses cover a geographic area, and the administration of that diocese, the responsibility of which is placed in the bishop, governs the people living within those boundaries.[8] Every diocese is divided further into parts, called parishes, which operate within its boundaries.[9] The Catechism of the Catholic Church defines a parish as "a definite community of the Christian faithful established on a stable basis within a particular church; the pastoral care of the parish is entrusted to a pastor as its own shepherd under the authority of the diocesan bishop."[10] Each parish is tasked with "initiat[ing] the Christian faithful into the ordinary expression of the liturgical life."[11] Canon law requires that a bishop be responsible "to erect, suppress, or alter parishes" only after he has consulted with "the presbyteral council."[12]

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5. This Note uses the term "church" to mean the entire structure and function of a diocesan church. This includes all property owned by the particular church like the building, the parking lot, a school, an office space, etc. The term "parish" refers specifically to the building in which the sanctuary is. Secondary sources may use the term parish in a more expansive manner, but the term has been cabined for purposes of this paper.

6. CCC, *supra* note 2, ¶ 833 ("The phrase 'particular church,' which is the diocese (or eparchy), refers to a community of the Christian faithful in communion of faith and sacraments with their bishop ordained in apostolic succession."); *see also* 1983 CODE c.368 ("Particular churches, in which and from which the one and only Catholic Church exists, are first of all dioceses, to which, unless it is otherwise evident, are likened a territorial prelature and territorial abbacy, an apostolic vicariate and an apostolic prefecture, and an apostolic administration erected in a stable manner.").

7. 1983 CODE c.369.

8. *Id.* at c.372, § 1 ("As a rule, a portion of the people of God which constitutes a diocese or other particular church is limited to a definite territory so that it includes all the faithful living in the territory.").

9. *Id.* at c.374, § 1 ("Every diocese or other particular church is to be divided into distinct parts or parishes.").

10. CCC, *supra* note 2, ¶ 2179; *see also* 1983 CODE c.515, § 1 ("A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (*parochus*) as its proper pastor (*pastor*) under the authority of the diocesan bishop.").

11. CCC, *supra* note 2, ¶ 2179.

12. 1983 CODE c.515, § 2. Under canon law, a bishop has authority and responsibilities not mentioned here but this is the only relevant authority of his for the purposes of this paper.

Each particular church is a distinct church but is still a part of the entire Roman Catholic Church.[13] The Church in Rome, the Vatican, occupies a place of preeminence in the whole Church, but the Bishop of Rome, the Pope, does not outrank bishops of every other diocese in the Church.[14] The Pope does possess the authority to establish dioceses.[15] Once the Pope legitimately establishes a new diocese, it "possess[es] juridic personality by the law itself," just as a "legitimately erected parish possesses juridic personality by the law itself."[16]

The possession of juridic personality means these dioceses and parishes possess an "innate right . . . to acquire, retain, administer, and alienate temporal goods independently from civil power."[17] All parts of the Church—"[t]he universal Church and the Apostolic See, the particular churches, as well as any other juridic person, public or private"—enjoy this right.[18] Any good that one of these bodies comes to possess is called by canon law an "ecclesiastical good[]."[19] The Roman Pontiff, the Pope, "is the supreme administrator and steward of all ecclesiastical goods" but he delegates the daily administration of these goods to the diocese or church to which they belong.[20]

Juridic personhood functions in the Catholic Church the same way corporate structures function in civil law. In other words, juridic personhood provides legal structure, rights, and abilities to different parts of the Church just as corporate structure provides non-profits and for-profit corporations with legal structure, rights, and abilities in the American civil system.

Thus, we arrive at the point of tension: the secular state (the United States in this case) wishes for each entity to adhere to federal and state corporate law structures available to it. The state does not necessarily care if those available structures reflect the entity's internal understanding of itself or its organization. The state also seeks to resolve disputes between entities and individuals according to the goals expressed by the civil law (tort law in this case), which may or may not have a negative impact on the entities' own internal governance. This tension was brought to light by bankruptcy proceedings starting in the 1990s. The impact can be negative, even destructive, when all a diocese's assets are up for grabs in bankruptcy. This Note asks which civil corporate structures in the United States best serve the Catholic Church and preserve the properties owned either by a diocese or an individual parish. In other words, what is the best counterpart in the American civil system to the description of the Church

13. CCC, *supra* note 2, ¶ 834 ("Particular Churches are fully catholic through their communion with one of them, the Church of Rome 'which presides in charity.'").

14. *Id.* ("For with this church, by reason of its pre-eminence, the whole Church, that is the faithful everywhere, must necessarily be in accord.").

15. 1983 CODE c.373.

16. *Id.* at c.373, c.515, § 3.

17. *Id.* at c.1254 § 1.

18. *Id.* at c.1255; *see also id.* at c.1256 ("Under the supreme authority of the Roman Pontiff, ownership of goods belongs to that juridic person which has acquired them legitimately.").

19. *Id.* at c.1257, § 1.

20. *Id.* at c.1273.

in canon law? This question is of the utmost importance, given that each diocese's decision will result in specific ways of dividing assets and granting damages awards. When conflict arises, the choice the diocese made regarding their legal corporate structure will determine the effect a final judgment has on them.

This Note first provides a brief summary of the 2020 Supreme Court case, *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Feliciano*, which reveals how American civil law has largely left the question of juridic personality unanswered.[21] Section III explores why tort law and the principle of respondeat superior, in light of the past decades of sex abuse in the Church, render the juridic definition of the Roman Catholic Church crucial. Section IV discusses the juridic nature of the Catholic Church from its own perspective. This overview will establish the differences between the Church's understanding of itself and the structures available to the Church under American civil law as described in Section V. Then, Section VI explores how the Church has historically incorporated under civil law and defends the Church's selection of a particular corporate model. The Note concludes with an overview of related legal issues that may appear moving forward considering ongoing issues of liability and ownership of assets.

II. *ROMAN CATHOLIC ARCHDIOCESE OF SAN JUAN V. FELICIANO*

This per curiam opinion from the Supreme Court illustrates the tension between legal, civil structures and the structures which internally govern the Catholic Church under canon law. Various courts, throughout the development of this case, attempted to grasp incorporation of the Church with an entirely civil framework, but the civil law is not a perfect match for the Catholic Church. As a result of this imperfect union, each court comes to a vastly different conclusion, and the United States Supreme Court opinion leaves more questions about the Church's civil incorporation than it answers.

In 1979, the Archdiocese of San Juan created a trust to administer a pension plan for employees.[22] In 2016, various employees filed complaints alleging the Trust had terminated the pension plan, denying them access to the benefits.[23]

The complaint named "the Roman Catholic and Apostolic Church of Puerto Rico" as a defendant, claiming it "was a legal entity" in Puerto Rico.[24] The court of first instance in Puerto Rico had previously granted only the Roman Catholic and Apostolic Church of Puerto Rico legal personhood by

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21. Roman Cath. Archdiocese of San Juan v. Feliciano, 589 U.S. 57 (2020).

22. *Id.* at 58.

23. *Id.* at 59.

24. *Id.* A number of other defendants are named as well. *Id.* The case had previously come up to the Supreme Court (after a lengthy time in the Puerto Rican courts) to grant a preliminary injunction on the payment of funds but "because 'there was a dispute as to which defendants in the case had legal personalities,' the Supreme Court remanded the case to the court of first instance to "determine who would be responsible for continuing paying the pensions, pursuant to the preliminary injunction." *Id.* at 60.

reason of the 1898 Treaty of Paris.[25] The other defendants, like the Archdiocese of San Juan, were a "division or dependency" of the Roman Catholic Church, not separately incorporated, and therefore not possessing their own legal personhood.[26] The Puerto Rico Court of Appeals reversed and held that the Roman Catholic Church in Puerto Rico was a "legally nonexistent entity."[27]

Before the case reached the United States Supreme Court, the Supreme Court of Puerto Rico reviewed the decision of the lower court.[28] Reversing the Court of Appeals decision, the court observed that "'each entity created that operates separately and with a certain degree of autonomy from the Catholic Church is in reality a fragment of only one entity that possesses legal personality,' at least where the entities have not 'independently submitted to an ordinary incorporation process."'[29] Therefore, these "subdivisions" are only "indivisible fragments" of the Church's personhood and are not separate legal entities.[30]

Two justices dissented and provided examples of a better recognition of the Church's own understanding of itself. For example, "Justice Colón Pérez likewise determined that, under Puerto Rico law, 'each Diocese and the Archdiocese ha[s its] own legal personality' and that no separate 'legal personality' called the 'Roman Catholic and Apostolic Church' exists."[31] On an appeal of this decision, the Archdiocese asked the Supreme Court, under both First Amendment clauses, to defer to the Church's own conception of itself.[32] The United States Supreme Court remanded the cases for a lack of jurisdiction.[33] The premise of this case, that the Roman Catholic Church as a whole and the Archdiocese of San Juan could both (along with individuals) be named as defendants in the case, makes a presumption about the corporate structure of the Catholic Church that does not reflect the juridic personhood of various parts of the Church. In other words, the presumption does not reflect reality.

This leaves an open question: Can the Church as a whole, or a geographic center extending beyond diocesan boundaries, be named in litigation or held liable for the actions of its subset? That is, can the Vatican or the Pope be named apart from individual dioceses and individual churches? To answer these

25. *Id.* at 59. This court would hold only the Archdiocese and the schools accountable. "Perpetuo Socorro Academy likewise constituted a separate legal person because it had been incorporated in accordance with Puerto Rico law, even though its registration was not active in 2016, when the orders were issued." *Id.* at 60.

26. *Id.* at 59–60. The lower court required payment out of the pension Trust under the injunction and ordered it done so by the Church and all dependencies. *Id.* at 60.

27. *Id.*

28. Feliciano v. Roman Cath. and Apostolic Church, 200 P.R. Offic. Trans. 458 (2018).

29. *Feliciano*, 589 U.S. at 61 (citation omitted).

30. *Id.* (citation omitted).

31. *Id.* (alteration in original) (citation omitted).

32. *Id.* at 61–62. The religious autonomy doctrine is cited as the basis but is beyond the scope of this Note.

33. *Id.* at 63, 65. There was a lack of jurisdiction because Puerto Rican courts "do not exercise Article III jurisdiction." *Id.* at 65.

questions, the Court would have to take a position, either the Solicitor General and Catholic Church's position or the original plaintiffs' perspective, on the juridic personhood of the Catholic Church.[34]

The legal complexity and difficulty this case illustrates was set on fire by the sex abuse crisis in the Church. Sex abuse claimants, seeking restitution for their harms, sued dioceses throughout the United States. These suits resulted in bankruptcy proceedings for many dioceses.[35] The principal issue of the *Feliciano* case, what civil incorporation means for the legal personality of the Catholic Church, bankruptcy makes even more important, more crucial for answering clearly and sufficiently. What should courts do with pension funds, bankruptcy, and other legal questions when the defendant is the Catholic Church?

III. The Principle of Respondeat Superior's Conflict with the Land Holdings of the Roman Catholic Church

The first clerical sex offender case to grab public attention was that of Fr. Gilbert Gauthe from the Diocese of Lafayette, Louisiana.[36] Uncovered in 1983, there were multiple lawsuits, an eventual trial, and a conviction related to Fr. Gauthe.[37] This was the first of many such scandals to come to light recent decades. As a result of this pastoral and legal problem in the Church, United States bishops began to internally research and comment on the issue of clerical sex abuse.[38] In 1985, Reverend Michael Peterson, F. Ray Mouton, and Reverend Thomas Doyle produced a nearly hundred-page document on the criminal, civil, and canon law concerns of such behavior.[39] Also addressing medical and spiritual concerns, insurance liabilities, and public relations, the document provides an example of a proposal for dealing with the crisis.[40] Unfortunately, the Church's efforts in the 1980s and 1990s did not resolve all pending litigation, questions of liability, and occurrences of sexual abuse in the Church. While the Church, as demonstrated by the 1985 proposal, took steps to rectify the situation, ongoing claims of sexual abuse financially threatened churches and dioceses in the United States in a way the Church had not experienced before.

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34. These are not questions of standing for the Supreme Court to explore, but rather questions of existence under the law.

35. Marie T. Reilly, *Catholic Dioceses in Bankruptcy*, 49 SETON HALL L. REV. 871, 872–75, 922 (2019).

36. *See* Cath. News Serv., *U.S. Church's Response to Sex Abuse Shows Progress, But Questions Remain*, NAT'L CATH. REP. (Aug. 24, 2018), https://www.ncronline.org/news/us-churchs-response-sex-abuse-shows-progress-questions-remain [https://perma.cc/M5CY-UBRE].

37. *Id.*

38. *See, e.g.*, MICHAEL PETERSON, F. RAY MOUTON & THOMAS DOYLE, THE PROBLEM OF SEXUAL MOLESTATION BY ROMAN CATHOLIC CLERGY: MEETING THE PROBLEM IN A COMPREHENSIVE AND RESPONSIBLE MANNER (1985).

39. *Id.* at 14–25, 34–46, 58–73.

40. *Id.* at 26–31, 47–57, 74–92.

Some of these lawsuits throughout the United States culminated in bankruptcy. In 2004, the Archdiocese of Portland became the first to file for Chapter Eleven bankruptcy.[41] Bankruptcy illustrates our corporate problem. The problem predates the examples of bankruptcy, but bankruptcy brought to light why the Church needed to be concerned with the corporate structure selected by its dioceses in the United States. Before dioceses began to file for bankruptcy, there was no real reason for the laity, clergy, or leadership to think twice about a civil corporate structure chosen by a bishop simply for the sake of forming a legal entity under the law. After dioceses began filing bankruptcy, the importance of their corporate structure became more apparent. This importance was accentuated by the recent *Harrington v. Purdue Pharma* case.[42] After *Purdue Pharma*, bankruptcy can no longer be used to force consolidation of third-party claims.[43] This is exactly what the Catholic Church was doing in bankruptcy to aggregate claims and force settlements. As of yet, the ramifications of this decision are unknown, but the decision will certainly radically alter the Church's use of bankruptcy moving forward.

Across the United States today, dioceses still operate under different structures, with different assets belonging to different parts of the structure, without any clear indication from either the civil court system or the United States Conference of Catholic Bishops regarding how courts will adjudicate distribution of assets during bankruptcy and what structures are best, respectively.

Those harmed by the sex abuse of clergy or others working for the Catholic Church rightly have legal claims against those parties. The difficulty for victims, and the lawyers representing them, consists in asking whom exactly to sue for damages. Victims could sue only the individual violator, or they could sue the individual and their superior, often a bishop, or even the diocese as a whole. What about suing the Vatican itself, the seat of the Roman Pontiff? Often, it is not simply the individual that is sued but the diocese, and sometimes, additional juridical entities of the Catholic Church.[44]

If the institution is at fault, through the doctrine of respondeat superior, then it becomes crucial to understand how the civil law will conceive of the Catholic Church and how the state will identify the corporate structure of the Catholic Church. How the state does so will impact where liability and the responsibility to pay damages fall.

The stakes are put best by Mary Reilly:

> The legal contexts in which property of the estate issues arose in the Catholic bankruptcy cases differed depending on the debtor's organizational structure, the organizational structure of parishes within the diocese subject to the bishop's canonical authority, and

41. Reilly, *supra* note 35, at 873.
42. Harrington v. Purdue Pharma L.P., 603 U.S. 204 (2024).
43. *Id.* at 226–27.
44. *See, e.g.*, Doe v. Holy See, 557 F.3d 1066 (9th Cir. 2009).

the respective rights of the debtors and parishes in property under secular law.[45]

Bankruptcy courts tend to look at the civil law of the diocese's jurisdiction to determine the corporate nature of the Church.[46] Judges tend not to look into the Church's own internal understanding of its corporate structure.[47] This leaves the Catholic Church to grapple with civil corporate structures and tort doctrines of liability, the most important of which is the doctrine of respondeat superior.[48] Found in American tort law, respondeat superior holds an employer liable for the wrongful or negligent acts of an employee, if those acts are performed within the scope of employment.[49] There exists no national standard for the doctrine; instead, states develop their own tests for determining liability.[50] Respondeat superior is interpreted like strict liability; if it applies, then the employer is liable even if they attempted to mitigate the actions of their employee.[51]

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45. Reilly, *supra* note 35, at 883.

46. *See, e.g.*, Mark E. Chopko, *Principal Civil Law Structures: A Review*, 69 JURIST 237, 239 (2009) ("[C]hurch administrators must affirmatively design structures and operations for a specific result. If they intend that one structure be separate from another, they must have the requisite civil capacity to be considered separate civil entities. Unless the civil law specifically contemplates the reference to canon law, one cannot count on the application of the internal law of the Church, much less that a court will get it right . . . . A church entity will have the attributes of the structure (or lack thereof) that has been chosen for it. The secular law will respect the canonical structure and governance if those canonical concepts are properly expressed in the civil law documents organizing the entity." (footnotes omitted)).

47. There is a twofold reason for this hesitancy. First, the court only considers that which is brought before it in briefing and argument. Many lawyers representing the Catholic Church have simply not made the argument that the Church's own understanding should govern the corporate structure assigned to it. Second, there is not a strong precedent for looking into the belief of individual religions. The Church would need to assert First Amendment free exercise arguments in favor of taking the theological understanding of the Church's corporate structure as beliefs of Catholicism over and above the selected civil corporate structure.

48. It is important to remember that this is an issue faced exclusively in the United States. While the doctrine of respondeat superior is an Anglo-American legal concept, the pervasive theories of liability present in America are unique to American tort law and are not replicated in places like the United Kingdom. As a result, similar questions often do not plague the Church in other countries. *See* BCLP et al., *Corporate Criminal Liability – Perspectives from the US, UK and France*, JDSUPRA (Apr. 13, 2018), https://www.jdsupra.com/legalnews/corporate-criminal-liability-97539 [https://perma.cc/R7M7-7WBD]; *see also U.K. Law Commission Rejects U.S. Respondeat Superior Standard For Corporate Criminal Liability*, FCPA PROFESSOR (July 11, 2022), https://fcpaprofessor.com/u-k-law-commission-rejects-u-s-respondeat-superior-standard-corporate-criminal-liability/ [https://perma.cc/6PTZ-TF2V] ("In conclusion, the Law Commission rejected the idea that U.S. style respondeat superior was a suitable alternative to the U.K. current corporate criminal liability standards.").

49. RICHARD A. EPSTEIN & CATHERINE M. SHARKEY, CASES AND MATERIALS ON TORTS 652–53, 656 (12th ed. 2020); *see also* Lundberg v. State, 255 N.E.2d 177 (N.Y. 1969); Bazley v. Tortorich, 397 So. 2d 475 (La. 1981).

50. *See Lundberg*, 255 N.E.2d 177; *Bazley*, 397 So. 2d 475.

51. EPSTEIN & SHARKEY, *supra* note 49, at 656.

The Roman Catholic Church is one of the largest landowners in the world.[52] It is not the Vatican which owns every tract of land. Rather, individual dioceses, and in various United States jurisdictions, individual churches, own the land itself. According to various projections, the Church owns 177 million acres of land worldwide both for churches and schools as well as farmland and forest.[53] For reference, that is an area of land larger than the country of France, twice the size of Germany, and bigger than the state of Texas.[54]

It is possible the Church in some regions of the United States will experience increased consolidation of dioceses and churches over time.[55] Other regions have seen growth in population of Catholics and an increase in Mass attendance.[56] This shifting and issues of sexual abuse in the Church have resulted in forty-one dioceses submitting themselves to bankruptcy proceedings,[57] leaving American civil law not knowing who owns the land. Individual churches, the diocese, the United States Conference of Catholic Bishops, or some combination thereof could all own the land. The outcome depends on the civil structures available to the Catholic Church and on the

52. Here, think of the landholdings by every public and private juridic person within the Catholic Church. This means every diocese, individual church, prelature, religious order, and more.

53. *See, e.g.*, Dan Budzyn, *Who Owns More Land: Bill Gates, McDonald's, or The Catholic Church?*, YAHOO FIN. (Sept. 13, 2022), https://finance.yahoo.com/news/owns-more-land-bill-gates-132113385.html [https://perma.cc/4JP2-MVUP]. It is difficult to find a reputable rough estimate of the total amount of land the Catholic Church owns in the US. *See also Catholic GeoHub*, GOODLANDS, https://catholic-geo-hub-cgisc.hub.arcgis.com [https://perma.cc/4SX5-CEUB] (last visited Jan. 16, 2025). This website undertook to catalog and analyze all the land owned the by the Catholic Church in 2019. This land database project is the first of its kind.

54. 177 million acres is roughly 276,562 square miles. *See* CUEMATH, https://www.cuemath.com/questions/how-many-acres-in-a-square-mile/ [https://perma.cc/FVK4-59TQ] (last visited Oct. 5, 2025). France is approximately 210,016 square miles. *France*, BRITANNICA, https://www.britannica.com/place/France [https://perma.cc/LL5U-HMLE] (last visited Jan. 18, 2025). Germany is approximately 138,068 square miles. *Germany*, BRITANNICA, https://www.britannica.com/place/Germany [https://perma.cc/GJ7J-7VFH] (last visited Jan. 15, 2025). Texas is approximately 261,258 square miles. U.S. CENSUS BUREAU, *Texas* (2020), https://data.census.gov/profile/Texas?g=040XX00US48 [https://perma.cc/8UBJ-AZRV].

55. *See* Susan Klemond, *A New Approach to Parish Mergers*, FRANCISCAN MEDIA (Apr. 2022), https://www.franciscanmedia.org/st-anthony-messenger/a-new-approach-to-parish-mergers/ [https://perma.cc/3SWX-FWK4]; *see also Other Steubenvilles? What U.S. Dioceses Might Face Merger Plans?*, THE PILLAR (Feb. 27, 2023), https://www.pillarcatholic.com/p/other-steubenvilles-which-u-s-dioceses-might-face-merger-plans [https://perma.cc/PY77-45GW]; *Chicago Consolidation: Archdiocese Announces New Groupings from Parish Mergers*, NAT'L CATH. REG. (Feb. 10, 2022), https://www.ncregister.com/cna/chicago-consolidation-archdiocese-announces-new-groupings-from-parish-mergers [https://perma.cc/J4GN-63VC].

56. *See* Gary Gately, *Thousands of Churches Close In Northeast, Rust Belt, But Dioceses Can Hardly Build Them Fast Enough In South, Southwest*, CATH. OBSERVER (Apr. 23, 2024), https://thecatholicobserver.substack.com/p/a-tale-of-two-churches-northeast [https://perma.cc/N39R-4WQ6].

57. The number of dioceses in bankruptcy proceedings was taken in early 2025. To find numbers updated on a regular basis, see Marie T. Reilly, *Catholic Diocese in Bankruptcy*, PENN STATE LAW ELIBRARY (Dec. 20, 2024), https://elibrary.law.psu.edu/bankruptcy/index.2.html [https://perma.cc/3V9V-HTU7]; *see also* Reilly, *supra* note 35.

juridic nature of various arms of the Church in the United States. The Supreme Court has left the boundaries of the Church's juridic nature unspecified.

IV. STRUCTURE OF THE CATHOLIC CHURCH UNDER CANON LAW

The Catholic Church need not wait for the Supreme Court to decide what its juridic personhood consists of under the law.[58] This has already been established for the Church by its inception (through Christ's words in the Gospels) and formalized in canon law.[59] Nevertheless, the Church rightly recognizes that its creation was not done apart from civil society but within it.[60] Catholics around the world are subject both to canon law and to the civil law of the state in which they reside.[61] There are numerous consequences, some possibly negative and harmful for the Church, of this requirement and others under the law. An exploration of canon law itself elucidates these ramifications.

In canon law, the term "juridic persons" refers to "corporate agency for entities distinct from the persons who comprise them."[62] In other words, a diocese is a distinct 'person' from the human person of the bishop who heads that diocese. The bishop has a formal role in the life and functioning of his specific diocese, but he is not the diocese. He does not comprise the diocese in its entirety, but he does represent the diocese in a legal manner.[63] These "persons" are "subjects in canon law of obligations and rights which correspond to their nature," just as ordinary persons have rights and duties.[64]

A juridic person may be private or public.[65] It is public if "founded to serve the public good."[66] The churches of an individual diocese are a great example of this. A diocese will have multiple public juridic persons as each

58. To the extent that the Church must abide by the law of the United States, of course, it is crucial for the Church to know and understand what the Supreme Court determines regarding its judicial personhood. However, there is a vision articulated by the Catholic Church, in canon law, that may or may not be the same as the vision the Supreme Court determines.

59. It is possible that the United States, through judicial proceedings, will fail to recognize and accept the Church's own juridic structure under canon law. If this structure is not recognized by the United States, then the Church will be incapable of legally acting as canon law instructs in the United States.

60. *See* CCC, *supra* note 2, ¶¶ 2238–2240; *see also infra* note 61.

61. For a biblical example of this point see *Matthew* 22:21 ("At that, he [Christ] said to them, 'Then repay to Caesar what belongs to Caesar and to God what belongs to God.'"). God has never asked humanity to ignore the civil authority, attempt to live outside it (except in the rare vocational case of hermits), or create a Church that operates completely outside of civil society's bounds. *See also* 1983 CODE c.204, § 2 ("This Church, constituted and organized in this world as a society, subsists in the Catholic Church governed by the successor of Peter and the bishops in communion with him.").

62. Reilly, *supra* note 35, at 877.

63. 1983 CODE c.393 ("The diocesan bishop represents his diocese in all its juridic affairs.").

64. *Id.* at c.113, § 2.

65. *Id.* at c.116, § 1.

66. Reilly, *supra* note 35, at 878 n.31.

church comprises its own juridic person.[67] These are not the only juridic persons to exist in each diocese. Every "diocesan-affiliated entit[y]" like "schools, cemeteries, [and] special purpose trusts are all public juridic persons with distinct agency under canon law."[68] Juridic persons, importantly, are not the same as moral persons in canon law. The 1983 Code of Canon Law only recognizes one moral person and that is the Holy See.[69]

These juridic persons also have an "innate right . . . to acquire, retain, administer and alienate temporal goods independently of civil power."[70] Such goods may be called assets, including all non-liquid assets (like real property) and liquid ones. The goods, or property, of a public juridic person are subject to canon law. If one juridic person owns a piece of property, then another juridic person cannot simultaneously own that property.[71] For example, say a church in the Diocese of Fort Worth, Texas, owns a large plot of land on which sits the parish, parish hall, multiple parking lots, a small playground, and a Mary garden. The next closest church or the office of the Diocese of Fort Worth cannot assert a claim to ownership of the land, *even if* the selected state corporate structure would allow such a claim. Goods held jointly by private associations within the Church are not "'ecclesiastical goods' and are not subject to canonical norms regulating such goods" as described in this paragraph.[72]

To facilitate the ownership of property by public juridic persons, a "juridic person senior in the hierarchy" will administer the land "for the benefit of the juridic person."[73] However, the reality of diocesan administration is that more than one individual, often an entire staff, manage the property of the diocese. The bishop (with his staff) tends to be "the administrator for property belonging to the diocese, the juridic person that the bishop administers," while a pastor (always appointed directly by the bishop) administers church properties.[74]

Each diocese, church, and other juridic entity in the Catholic Church first looks to canon law's prescriptions in determining what formation and ownership actions are lawful. However, this does not mean that each of these entities ignore the prescriptions of civil law. In fact, most dioceses in the United

67. *Id.* at 878 n. 30–31.

68. *Id.* at 878.

69. 1983 CODE c.113, § 1 ("The Catholic Church and the Apostolic See have the character of a moral person by divine ordinance itself.").

70. *Id.* at c.1254, § 1.

71. Reilly, *supra* note 35, at 878.

72. *Id.* at n.30. For the definition of a private association, see 1983 CODE c.310 (A private association not established as a juridic person has no agency of its own, but individual members of the association can "jointly contract obligations and can acquire and possess rights and goods as co-owners and co-possessors."); *see also id.* at c.1257, c.515, § 3 (stating the same as to parishes), c.373 (stating the same as to diocese), c.634, § 1 (stating the same as to religious orders), c.116, § 1.

73. Reilly, *supra* note 35, at 879; *see also* 1983 CODE c.1279, § 1.

74. Reilly, *supra* note 35, at 879; *see also* 1983 CODE c.532, c.531, c.1276, c.515, § 1.

States have an entire staff of both clerics and lay people, lawyers and non-lawyers, to ensure the diocese acts in accord with both canon and civil law.[75]

Canon law acknowledges this reality by providing proscriptions regarding human law and adherence to laws of the state. Canon law explicitly "acknowledges secular law and requires that Catholics must comply with it, except for secular laws that are contrary to divine law or when canon law expressly supersedes it."[76] Yet this mandate presents a sort of obstacle for the Church. That is, if the Supreme Court articulates a juridic personality that does not mirror the Church's own understanding of itself, then the Church in the United States will have to abide by and legally organize itself in a way contrary to canon law.[77]

The civil law ramifications of this would likely create First Amendment conflicts. Faced with this situation in the United States, the Catholic Church would (should) assert free exercise defenses to civil law requirements that do not align with the Church's understanding of itself. Lawyers for the Church should argue that the Church's structures—its hierarchy, dioceses, churches, schools, etc.—all manifest Catholic beliefs and reflect back on Catholic beliefs. The structure the Church instituted was not random. It is the very faith the Church proclaims actualized in the world. It reflects the divine will of God and His instruction to the Church.[78] In other words, these are not simple structural debates or the decision to choose one model over the other just for the sake of it. These are decisions implicating the faith and are therefore subject to First Amendment protections.

Questions of First Amendment rights are not the only questions asked as a consequence of canon law's differences from American civil, specifically tort, law. Canon law tends to speak in generalities in a way that civil law does not and this presents another interpretive and practical issue for the Church, as illustrated by the disparity between canon law and the formation options provided by various state laws.

V. POSSIBILITIES UNDER AMERICAN CIVIL LAW

This section explores how the above proscriptions of canon law compare to the possibilities made available by American civil law.

It is state, not federal law, which determines the potential corporate forms for the Church, based on the possibilities granted by law.[79] This means that there is no uniform system to govern the corporate form of the Church in the United States, as different states handle the matter differently. While the Church in one state may find no tension between the dictates of canon law and the forms

75. *See, e.g.*, *Contacts*, CATHOLIC DIOCESE OF FORT WORTH (2025), https://fwdioc.org/contacts.

76. Reilly, *supra* note 35, at 876; *see also* 1983 CODE c.22.

77. Canon law does not expressly supersede civil law in this area and divine law includes no provision on this matter. 1983 CODE c.22. In Sections V & VI, examples of dioceses organizing their funds in ways not recommended by the Church will be explored.

78. *See* CCC, *supra* note 2, and accompanying text.

79. *See* Reilly, *supra* note 35, at 880.

available to the Church under civil law, the Church in another state may find they are incapable of complying both with the prescriptions of canon law and with the requirements of civil law.

The law grants seven options for the Catholic Church to choose from:[80]

1. No Corporate Structure

A rare choice and often unused in contemporary practice, this structure (or lack thereof) allows a diocese to operate "without a separate civil law structure for themselves and the parishes."[81] This means the "diocese may simply exist as a religious entity which, by state law or custom, operates without any civil structure for it or its principal activities."[82] If a bishop chose to organize in this way, then "church administrators should contemplate drafting a set of canonical statutes for the separate but related church entities that operate within the diocesan communion."[83] Such statutes would only serve to govern the internal affairs of a diocese. They would in no way be binding on the state, should the state need to, for example, prosecute an individual for sex abuse. The diocese, and its individual actors, would not be free from liability even if the internal canonical statutes provided a structure for affairs that insulated parts of the diocese and their assets from civil recovery. Nevertheless, such statutes may "still fix responsibility in the proper juridic person and assure some form of indemnification."[84]

In cases where the diocese operates without a separate civil law structure, it is common to see the state deem the diocese and/or its churches unincorporated associations.[85] As a result, each church would not be an "activit[y] of the diocese" but its own entity.[86] Each church would become its own separate juridic person. Each diocese would become its own person as well.

The merits and demerits of this choice under canon law are well-defined. Deeming a diocese and its churches (and any other formal structure present within the geographic boundary of the diocese) as unincorporated associations would neatly fall within canon law's understanding of a public juridic person. The diocese would then own, as a separate juridic person, certain property and assets and each church/other formal entity would separately own certain property and assets. Then, if one priest committed crimes of sexual abuse, it would be harder for a plaintiff to name the bishop of that diocese in order to have access to greater monetary assets as damages because the assets are separately owned.

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80. There are roughly 4–7 choices (dependent on the primary structure) under civil law to organize. Chopko, *supra* note 46, at 241.

81. *Id.* at 242.

82. *Id.* at 241–42.

83. *Id.* at 243 ("Canonical statutes will make clear the issues of separation and connectivity, the allocation of operational authority and responsibility, and the limits on the ability of administrators of different juridic persons to operate."); *see also* 1983 CODE c.117–18.

84. Chopko, *supra* note 46, at 243.

85. *Id.*

86. *Id.* at 244.

On the other hand, no state *has* to call each diocese and its churches unincorporated associations. Similarly, no state would be required to adhere to the internal statutory framework laid out by a diocese. The state could theoretically choose to do whatever it so desires within the bounds of its statutory law. State legislatures may even change statutory law in order to be able to assign a different form of property ownership to various parts of the Catholic Church in their state. For example, the state may foresee being faced with more than one diocese where high-profile sexual abuse cases come to light. The state may feel an obligation to its citizens to ensure that all those harmed are made whole. It may choose to define the corporate structure of the Church, when the Church has neglected to choose a structure for itself, in a way that would afford the most recovery to victims. This would certainly not be the only consideration a state would have in assigning corporate structure, but it is clear to see how the decision not to select one such structure would be imprudent. The Catholic Church in that state may end up with far fewer means of legal recourse when a plaintiff names the bishop of a diocese in their lawsuit as a means of claiming recovery from a larger pool of liquid assets.[87]

2. Corporation Sole: Diocese

Opposite the option provided above, the corporation sole structure has historically been favored in the United States by Catholic bishops.[88] Many state legislatures, in the late 1800s and early 1900s, began to establish "corporate sole charters for religious organizations including Catholic dioceses, which otherwise could not incorporate."[89]

This form "places all the management control of the organization in a single person as agent for the corporation sole, e.g., the bishop of a Catholic diocese and his successors."[90] Other features of this form (as dictated by statute) include its survival into perpetuity, the ability of continuous property ownership, the election of the sole manager of the corporation, and the manager's requirement to "act in accordance with the rules of the organization of which the manager is a part."[91] The corporation is "formed deliberately

87. Of course, the state would be justified in considering such possibilities and generating particular laws as a result of those considerations. The well-being and safety of its citizens ought to be of the upmost importance to the state. Abuse victims are also certainly deserving of recovery, even if the recovery can never make them whole after the violations they have felt as abuse victims. This Note does not mean to suggest that abuse victims cannot or should not be able to recover damages from the Catholic Church. Instead, it attempts to outline how such recovery can be appropriately done under considerations both of canon law and of the civil law.

88. *See* Chopko, *supra* note 46, at 245 ("Many of the state statutes authorizing the formation of a corporation sole date to the nineteenth century."). Of the eighteen bankruptcy proceedings Reilly analyzes, nine of them concern corporation sole structures and three of the non-corporation sole structures were not dioceses but religious corporations that formed as non-profit corporations. This means that nine out of fifteen, a majority, choose the corporation sole model. Reilly, *supra* note 35, at 922.

89. Reilly, *supra* note 35, at 880.

90. *Id.*

91. *Id.* at 880 n.52.

through operation of state statute or as a default choice under the common law."[92] A corporation sole diocese often does not have the same legal status as the "individual parishes, funds, and auxiliary operations" that may exist within the diocese.[93]

In one way, this form looks consistent with canon law. The bishop is able to directly facilitate the ownership of property and administer the land for the juridic person.[94] Just one problem: Canon law sees more than one juridic person in this scenario. Each parish, each school, each monastery, etc., are all separate juridic persons. This form fails to recognize the separate juridic nature of churches "with the agency to own property distinct from the bishop."[95] In other words, the civil law model of corporation sole grants a larger number of assets to a diocese than canon law. Separate juridic persons own their own property and assets not subject to the ownership of others, even if the diocesan office assists in their administration in some way.

Certain scholars laud this form as one which allows "the bishop to use parish property as collateral for diocesan or parish projects at capital costs more favorable than could be achieved by individual parishes borrowing against parish property."[96] This potential benefit certainly does not outweigh the considerable cost of its failure to recognize that separate juridic persons own separate property. Additionally, there are examples of corporation sole dioceses where the churches "have not been given separate civil character."[97] This poses a question in the civil law context that is crucial for those dioceses facing bankruptcy or civil liability of whether a parish's "activities" are activities "of [the] diocese or activities on their own."[98] All this does is further muddy the water between what canon law describes and what rights civil law grants to corporate entities.

3. *Corporation Sole: Church*

Highly related to the form described above, a corporation sole church structure exists when the diocese, by the bishop, "nam[es] the pastor and his successors under ecclesiastical law[] as the corporation sole."[99] Therefore, each church is "an autonomous agency" which directs its own administration, from meetings to finances to building projects.[100] What is the relationship between a corporation sole church and their diocese? The answer can be quite complicated. Scholars argue that choosing this structure necessarily results in the need for "clear limitations on the corporate powers of the pastor and clear restrictions in the deeds and other documents to assure the church corporation

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92. Chopko, *supra* note 46, at 245.
93. *Id.* at 246.
94. 1983 CODE c.1279, § 1.
95. Reilly, *supra* note 35, at 881.
96. *Id.*
97. Chopko, *supra* note 46, at 244.
98. *Id.*
99. *Id.* at 246.
100. *Id.*

operates according to the precepts of canon law."[101] If such organization and clarity is achieved, then this model could be one which better adheres to canon law than the ones described up to this point. However, it is unclear exactly what legal structure a diocese takes if this is the only form available in the state. If the diocese could be another autonomous agent with its own ownership rights, then the model may function well. However, if the diocese would not be a similar agent to each church and the relationship between the diocese and the church was not well-defined, then the same concerns expressed for the corporation sole diocese model would apply here.

4. Trust: Diocese

When a diocese chooses to organize as a trust, it can look quite similar to the corporation sole diocese structure. Importantly, the "source of [the] legal identity" of a diocese formed as a trust can be found *either* in state statute *or* the common law.[102] This means the structure may be available to a diocese present in a state lacking a corporation sole formation model. (Today, every state allows formation under a corporation sole model.) There is also "well defined" state regulation in the realm of trusts, unlike the realm of corporation soles.[103] Such regulation is principally done by the state attorney general as the regulator of public charities.[104]

A bishop considering the trust model may ask himself, "do restricted funds and auxiliary operations have distinctive legal status from the diocese or are they activities of the trust?"[105] This question is familiar by this point. It is another variation on the common theme of whether the churches and other formal entities of a diocese can separately own and control the property and assets they rightfully own and control under canon law. If the diocese is really responsible for them, as could be the case, then the same issues discussed with the corporation sole diocese and no adequate corporate structure models exist here.

5. Trust: Church

Similar to the trust model described above, a diocese may elect to incorporate each individual church present in the diocese as a trust. The diocese can do this even if it is not organized as a trust.[106] In this structure, the "bishop serv[es] as trustee and the pastor serv[es] as trust administrator."[107] Given that there is ample recognition in the law for the trust system, organizing in this way is predictable and straightforward.[108] It may also be more appropriate than the

101. *Id.* at 246–47.
102. *Id.* at 247.
103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.* at 248.
107. *Id.*
108. *Id.*

trust diocese model. What makes this model unique is that the bishop (and his staff) retains a kind of active role in the administration of church goods. There are reasons this may be preferable: greater manpower, better oversight, and providing more expertise and unification across a diocese. There are also reasons this could pose the same problems as above. A bishop may be personally liable for actions of the trust administrator or other employees of the trust if he serves as the trustee. The diocese itself may or may not be liable through its representation by the bishop. The assets of a diocese could still be on the line if a particular trust administrator commits a crime or a tort. The conclusion depends on a state's specific law and judicial precedent regarding trust administration in the proper jurisdiction.

6. Religious Corporations Church Non-Member

Unlike the corporation sole structure, this structure requires a church to "organize[] as a religious corporation, with no member, governed by its directors, numbering usually from three to five."[109] This means the church would be a non-profit corporation without a formal membership structure. Given the non-membership character, all directors are unelected. The directors typically include at least the bishop of the diocese and the pastor, though the diocese (through the bishop) could choose to include other certain employees as directors.[110] Lots of documentation, particularly at formation, and various formalities over time accompany this structure.[111]

This can present a unique difficulty for the churches because it may be unclear when the bishop is acting on behalf of the church, through "ordinary administration," or on behalf of the diocese, through "extraordinary administration."[112] The liability and ownership of assets or the legal access to such assets may change depending on what the bishop does for a particular church. If this model were appealing to a diocesan bishop, then he would need to review the state law and judicial precedent on this question to determine if it is a settled question with a clear answer or if it is possible that his diocese would face unintended consequences in the future.

7. Religious Corporations Church Member

This last structure mirrors the one described above except that there is a membership structure for the religious corporation. The "sole member of the parish corporation" is the bishop.[113] Thus, the same difficulty present above is present in this structure. Daily tasks are still under the direction of the pastor, guided by a board of directors, on which the pastor is a member.[114]

109. *Id.* at 248–49.
110. *Id.*
111. *Id.* at 249.
112. *Id.* at 248–49.
113. *Id.* at 251.
114. *Id.*

Some scholars prefer this method as the one best reflective of canon law's prescriptions because the "pastor essentially operates the parish subject to the bishop's supervision on issues reserved under canon law."[115] That is, the bishop could essentially be very hands off and the church would function in practice like a separate juridic person. If this were the case, then the model would be quite appealing. However, it is not clear that even if the bishop were far removed, state law would see it the same way. Additionally, if the bishop holds legal title to all the property of the diocese, then this form contradicts canon law for the same reason as the corporation sole form.

VI. Civil Law Structures Proper to the Catholic Church

In the United States, some dioceses tend towards consolidated ownership and others do not. Consolidation means that all real and personal property is held by one entity, whether or not that entity is responsible for day-to-day administration.[116] The "complexity of ecclesiastical administration or the demographics" of a diocese are often the driving forces behind such a decision.[117] Bishops and administrators may determine that different structures better suit their diocese and community.

While certain structures seem to better comport with canon law, there is no perfect answer. One structure may look to be at odds with canon law in one diocese but, for reasons of particularity, serves another better than a different legal form. No matter the model chosen under the law, each bishop and administrator makes decisions, hopefully, with the best interests of their area and the Church in mind. However, the bishops are cabined by the civil structures available to them. There may simply not be a state statute authorizing the diocese to form under the law in the manner the bishop would prefer or the way that best comports with canon law. In these cases, the bishop will choose a model and ought to develop clear internal guidance on how the model affects and determines the ownership of property and assets as well as liability within the diocese.

These decisions must be civilly recognizable. That is, "if [bishops] intend that one structure be separate from another, they must have the requisite civil capacity to be considered separate civil entities."[118] It is unlikely, especially if the Supreme Court were to decide the question of the Church's juridic personhood under the law, that the prescripts of canon law will be adhered to by the courts. Unless the civil law were to grant an exception, a carveout that acknowledged and accepted the Church's own understanding of its juridic nature as expressed in canon law, then it is unlikely canon law will be applied in any of these cases of formation or bankruptcy.[119] Additionally, many individuals, American judges and lawyers included, misunderstand the Catholic Church's structure and governance. The Church "is a constellation of related,

115. *Id.*

116. *Id.* at 252.

117. *Id.*

118. *Id.* at 239.

119. *See id.*

but ecclesiastically and civilly separate entities," not "one large corporate bureaucracy run by a rigid top-down hierarchy."[120] This confusion is made worse because, given the differences present in state law structures, each diocese has to incorporate (at least somewhat) differently. Therefore, there is no uniform mode of organizing the Roman Catholic Church under civil law in the United States. This is just a fact of the Church's reality in America.

In 1840, the Fourth Provincial Council of Baltimore adopted the corporation sole model as its preferred model of formation.[121] In 1911, the Holy See issued the *Letter from the Sacred Congregation on the Council* to the United States bishops on corporate formation.[122] The letter explicitly addressed the corporate code in New York but had wider applicability for the Church given its prescriptions.[123] The letter explicitly stated that the "[p]arish [c]orporation is preferrable to others [the church non-member corporation described above] but with the conditions and safeguards which are now in use in the state of New York."[124] Rome strongly urges the bishops to immediately switch to or select this model for incorporation if possible.[125] If the model was not legally available, then the bishops were to lobby for its introduction in the law and to use the corporation sole model only until a better one was introduced.[126] Rome highly discouraged the corporation sole structure.

The United States bishops rejected the words of Rome and would not feel the effects of their rejection until the late 1990s and early 2000s. When litigation over sex abuse in the Church began, dioceses structured as a corporation sole faced a difficult problem articulated well by Mary Reilly:

> For debtors organized as corporations sole with title to property centralized in the bishop, the debtors asserted that they held only legal title to certain property in trust for parishes, schools, cemeteries, or other juridic persons whose separate interests the bishop must safeguard and respect under canon law. Sexual abuse claimants argued that state law and the Bankruptcy Code exclusively governed property rights, effectively stripping parishes of any rights in property formally titled in the bishop's name, notwithstanding

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120. *Id.* at 256.

121. WILLIAM FANNING, *Provincial Councils of Baltimore*, NEW ADVENT: CATH. ENCYCLOPEDIA (1907), https://www.newadvent.org/cathen/02239a.htm [https://perma.cc/ZP4F-2GAR]. The eighth decree stated that "[b]ishops are to control ecclesiastical property and not permit priests to hold it in their own name." *Id.* A provincial council is "[a] deliberative assembly of the bishops of an ecclesiastical province, summoned and presided over by the metropolitan, to discuss ecclesiastical affairs and enact disciplinary regulations for the province." AUGUSTE BOUDINHON, *Provincial Council*, NEW ADVENT: CATH. ENCYCLOPEDIA (1911), https://www.newadvent.org/cathen/12515a.htm [https://perma.cc/VWY6-JU6M]. Such councils also, with "the metropolitan[,] possess authority in an ecclesiastical province according to the norm of law." 1983 CODE c.432 § 1.

122. Chopko, *supra* note 46, at 250.

123. *Id.*

124. *Id.* (emphasis omitted).

125. *Id.*

126. *Id.*

> their beneficial "ownership" of property under canon law. Sexual abuse creditors used a reverse strategy in cases of debtors organized as religious corporations with separately incorporated parishes with their own legal title to property. In these cases, the debtors did not include in their estates property titled in the names of separately incorporated parishes. Sexual abuse creditors tried to capture parish property into the debtors' estates using a variety of legal arguments, all of which elevated the substance of the bishop's canonical authority over parishes . . . .[127]

In other words, if a church had a school, parking lot, church, and parish center but all were legally listed as held by the bishop of their diocese, then they would be in danger of losing all that property, even if no priest or person on their staff had committed any canonical or state crimes. If the church were separately incorporated, then they could still be in danger of losing the property because of a reliance on arguments about Church hierarchy. On the other hand, "parishes and other affiliated entities were separately incorporated and held record title to property" in dioceses organized as non-profit or religious organizations at the time of bankruptcy filings.[128]

Today, some combination of the trust and non-profit corporation models described above (churches are all individually incorporated as trusts or non-profit corporations) with the church non-member or member corporations is likely the best choice for bishops across the United States. In its best form, each church (and other entities within a diocese) would be separately incorporated, and the property owned by these churches and other entities would be held in trusts. One example of this is the Archdiocese of Indianapolis.[129]

Prior to 2010, the Archdiocese was an unincorporated association.[130] Between 2009 and 2010, the Archdiocese reorganized as a non-profit corporation, R.C. Archdiocese of Indianapolis Properties, Inc.[131] The non-profit "hold[s] title to all archdiocesan and parish real estate" in trust.[132] "The archbishop will continue to have certain powers over real property, similar to our current practice and in accord with canon law . . . but the parish will also have certain rights and responsibilities over that property."[133] While the church does not own the property separately from the diocese, in its own trust, the Archdiocese clearly understands and adheres to the dictates of canon law by

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127. Reilly, *supra* note 35, at 885. "The Archdiocese of Portland and the Dioceses of Tucson, Spokane, San Diego, Fairbanks, Gallup, Stockton, Helena and Great Falls-Billings were organized as corporations sole at the time of their [bankruptcy] filings." *Id.* at 884.

128. *Id.* at 885 ("The Archdioceses of Milwaukee, Saint Paul and Minneapolis, and the Dioceses of Davenport, Wilmington, Stockton, Helena, Duluth, New Ulm, and Great Falls-Billings were organized as non-profit or religious corporations at the time of filing.").

129. *See Frequently Asked Questions*, ARCHDIOCESE OF INDIANAPOLIS (2010), https://www.archindy.org/finance/files/incorporation/Archdiocese%20Incorporation%20FAQ.pdf [https://perma.cc/CED8-EC68] (last visited Dec. 20, 2025).

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

ensuring both the pastors of churches and the archbishop have the ability to manage assets as their office requires. Each church non-profit has a board with, at least, "the pastor, priest administrator . . . and two parish lay representatives (the chairperson of the parish pastoral council and the chairperson of the parish finance council)."[134] The Chairman and President of the corporation is either the pastor or priest administrator.[135] The archbishop is the sole "member of the parish corporation" and he "[a]ppoint[s] and remov[es] the board of directors; [a]pprov[es] any amendments to the Articles of Incorporation and Bylaws; [a]pprov[es] the acquisition, sale, lease, transfer or other alienation of property of the Corporation."[136] Board members will owe fiduciary duties to the corporation, as is dictated by state law, but "[t]he articles or bylaws . . . will specify that directors have indemnification rights."[137] This is another example of healthy separation and attachment between the churches and the diocese. Each pastor leads his own board and its other members are all directly associated with the church. The archbishop retains appointment, removal, and general supervisory authority consistent with canon law and prudence regarding the management of large assets. It is also clear that the archdiocese has considered liability and indemnification questions with enough depth to ensure internal procedures protect the diocese's assets and promote stability. A model such as this is ideal for a diocese in the United States, presuming the structure is possible in the diocese's state and there are not exigent circumstances that make another structure more appropriate for a diocese.

This history and these examples may have a place in guiding the judiciary's determination of the legal personality of the Catholic Church. The outcome of the *Feliciano* case should be informed by this history, but the United States Supreme Court and bankruptcy courts have yet left the corporate problem unsolved. There is little provided by these courts to guide future decisions on the legal personality of the Catholic Church, and the reason why is unclear. It could be because the primary area of law in which these questions have arisen is bankruptcy, a complex, separate legal field that constitutional law tends to avoid saying much about. It could also be that judges simply cannot agree on the best outcome for the Church and the civil law. More likely, the judges just do not know the "right" answer.[138]

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134. *Id.* ("For those parishes with a Parish Life Coordinator (PLC), the PLC will be a fourth board member.").

135. *Id.*

136. *Id.*

137. *Id.*

138. Think of the Archdiocese of Portland's bankruptcy proceedings. One judge said Religious Freedom Restoration Act ("RFRA") claims may be available to the Church, if saddled with certain burdens by the bankruptcy, but was unsure of whether such claims were certainly available or only possible. *In re* Roman Cath. Archbishop of Portland Or., 335 B.R. 868, 888–89 (Bankr. D. Or. 2005).

VII. CONCLUSION: WHERE DOES THE CHURCH GO FROM HERE?

The Catholic Church faces ongoing situations which make questions of civil law personhood and ownership increasingly pertinent to its functions. For example, a group of Carmelite nuns in Arlington, Texas, recently raised questions of ecclesiastical ownership of property when they transferred their convent to their lawyer.[139] Based on accusations of criminal acts, the convent and its superior were disciplined by the Bishop of Fort Worth (and later suppressed by the Vatican), but its nuns failed to adhere to the Church's instruction.[140] After introducing million-dollar civil litigation and joining a group in imperfect communion with Rome (the Society of Pius X),[141] they gave their convent to a Texas non-profit to hold in trust.[142] The non-profit is headed by their lawyer and was done "to ensure that if the community is canonically suppressed, the Fort Worth diocese won't gain control of the monastery property."[143] If the Vatican were to issue a decision against them, forcing the change in property ownership, would the Arlington Carmelites listen and adhere?[144] Without knowing how civil courts would determine the legal ownership of the Arlington Carmelites' land, the Church is left with the difficult question of whether to pursue a civil case or take other action.

The questions of legal ownership raised by this example are similar to the unanswered questions of the *Feliciano* case. The United States Supreme Court remanded that case for lack of jurisdiction, avoiding the real legal question at issue. This leaves courts, the Church, and plaintiffs without an answer to who can properly be named as defendants in a case, who can be liable within the Catholic Church—a question desperately in need of an answer when the Church and the current civil law currently do not align.

In light of this example and others, the Catholic Church will continue to face issues of liability, land ownership, and asset divisions in the civil context. One such issue may be the loss of public places of worship that may follow bankruptcy proceedings and reorganization. If a diocese has to close a church or two, a school, or a center because of the costs of litigation, settling, or liability, would the members of those institutions have a claim given their loss? Is it possible that a "*complete loss* of access to places for Catholic worship and

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139. *See Did the Arlington Carmelites Sell Their Own Monastery?*, THE PILLAR (Oct. 1, 2024), https://www.pillarcatholic.com/p/did-the-arlington-carmelites-sell?utm_source=substack&utm_medium=email [https://perma.cc/7222-NQ9H].

140. *Id.* For a claim regarding the suppression of the nuns, see *Vatican Suppresses Texas Carmel*, THE PILLAR (Dec. 2, 2024), https://www.pillarcatholic.com/p/vatican-suppresses-texas-carmel [https://perma.cc/K9BR-T3ZV].

141. POPE JOHN PAUL II, ECCLESIA DEI (Jul. 2, 1988), https://www.vatican.va/roman_curia/pontifical_commissions/ecclsdei/documents/hf_jp-ii_motu-proprio_02071988_ecclesia-dei_en.html [https://perma.cc/P8M7-CP4E].

142. THE PILLAR, *supra* note 139. ("But regardless of who is in charge, monasteries of nuns aren't allowed to sell off their real property—or even significant or expensive chunks of their property—without permission from the Vatican's Dicastery for Consecrated Life and Societies of Apostolic Life.").

143. *Id.*

144. *Id.*

education could be a substantial burden on the exercise of religion for purposes of the application of RFRA [the Religious Freedom Restoration Act]?"[145] Some courts, like in the Archdiocese of Portland, Oregon, bankruptcy proceeding,[146] have hinted at such a claim being possible, but there is a circuit split on this issue.[147]

What about churches not involved in scandals or bankruptcy? If the diocese files for bankruptcy, churches might seek to remove themselves from the diocese to avoid the possibility of losing their assets, both financial and real property. The issue can be described in this way:

> An unacceptable unintended consequence of restructuring would be to create the possibility that an agency acquires sufficient independence to break communion. Plainly, the locus of church communion most familiar to Catholics is the parish. But, ecclesiastically, the locus of church communion is the diocese and through the relationship to the bishop and his relationship to the Supreme Pontiff. Parishes, by law, are portions of dioceses.[148]

Such removal, as is evident, is not licit under canon law but could be possible under America's civil law. The Catholic Church in the United States awoke to the gravity of corporate formation choices in the late 1980s. These choices, as well as ongoing litigation, keep ever present this tension between the dictates of canon law and the allowances of American civil law. The tension will likely never be fully resolved, but the Catholic Church must organize and maintain itself in a manner consistent with law (civil and canon) and ensure its continued existence in society.

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145. Reilly, *supra* note 35, at 900.

146. *In re* Roman Cath. Archbishop of Portland Or., 335 B.R. 868, 888–89 (Bankr. D. Or. 2005).

147. Reilly, *supra* note 35, at 919–21.

148. Chopko, *supra* note 46, at 240.