

**ALIENATION OF TEMPORAL GOODS OF
SUPPRESSED RELIGIOUS HOUSES AND INSTITUTES:
CANONS 584 AND 616 OF THE
CODE OF CANON LAW**

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ABBREVIATIONS

c.	canon
<i>CathL</i>	<i>Catholic Lawyer</i>
<i>CathReg</i>	<i>Catholic Register</i>
cc.	canons
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus</i>
<i>CIC/17</i>	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
<i>CIC</i>	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
<i>CLD</i>	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
<i>CLSA Comm2</i>	J.P. BEAL, J.A. CORIDEN and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
<i>CLSAP</i>	<i>Proceedings of the Canon Law Society of America</i>
<i>Exegetical Comm1</i>	Á. MARZOA, J. MIRAS, and R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law, vol. I</i>
<i>Exegetical Comm2</i>	Á. MARZOA, J. MIRAS, and R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law, vol. II/2</i>
<i>J</i>	<i>The Jurist</i>
<i>REDC</i>	<i>Revista Española de Derecho Canónico</i>
<i>StC</i>	<i>Studia Canonica</i>
TCDSB	Toronto Catholic District School Board

INTRODUCTION

Some religious institutes and religious houses, especially in the northern and western hemispheres, face extinction because their members are few or elderly. These communities have the concomitant problems of supporting their remaining members and disposing of temporal goods that have become costly burdens. These assets-turned-liabilities can have large monetary value (e.g., real estate). Many religious members who do remain have complex and expensive health care needs. Once a religious community reaches this point, competent ecclesiastical authority may decide to suppress it.

Correctly-done alienations should generally include: respect for founders' and donors' wishes; permissions from the competent authority when the value of the temporal goods to be alienated is above a set amount; accurate appraisal of the goods by at least two experts; and equity toward the remaining members of religious communities.

Suppression of a religious institute or house is a painful experience that sometimes has penal connotations.¹ This process becomes even more noxious if adequate provision for the institute's temporal goods has not been made. Perfect consensus among all remaining religious members is practically impossible. Also, due to emotional or organic causes, religious may not be thinking clearly enough during the suppression process to allocate their temporal goods in canonically and civilly valid ways. Lack of adequate documentation can blur the distinction between entrustment of goods to a religious institute and ownership of those goods by the institute. Confusion about donors' intentions can also lead to expensive lawsuits and discord or distrust among the Christian faithful.

¹ R.M. McDERMOTT, commentary on c. 584, *CLSA Comm2*, 752: “[...] It is rare that an institute of consecrated life gives grave scandal, deviating from its original spirit and end. In such an instance, suppression would be a penal measure [...]”

Canon law contains regulations for alienation of temporal goods, but these norms are not always followed. This noncompliance can have disastrous results, not only for allocation of things but for people's well-being and confidence in the Church.

This paper will look at regulations for alienation of temporal goods of suppressed religious institutes, and at how provision for goods can be improved in future. Chapter One will focus on canons 584 and 616 of the 1983 *Code of Canon Law (CIC)*,² with attention to parallels in the 1917 *Pio-Benedictine Code of Canon Law (CIC/17)*³ and 1990 *Code of Canons of the Eastern Churches (CCEO)*.⁴ Chapter Two will discuss notions in the *CIC* that are related to alienation. Chapter Three will look at the interactions of canon law with civil law, consequences of poorly-done alienation, and how canonists can help ensure that future alienations are correct.

² The version of the Latin Code used throughout this paper will be *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, CLSA, 1998.

³ The version of the 1917 Code used throughout this paper will be *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001.

⁴ The version of the Eastern Code used throughout this paper will be *Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, CLSA, 2001.

CHAPTER 1. SUPPRESSED RELIGIOUS HOUSES AND INSTITUTES

Three versions of the Code of Canon Law will be discussed in this chapter. Parallels between these Codes can be summarized as follows:

<i>Topic</i>	<i>CIC</i>	<i>CCEO</i>	<i>CIC/17</i>
Extinction of a juridic person	c. 123	c. 930	--
Suppression of an institute & decision regarding its goods	c. 584	c. 438, §§1, 2, 4 c. 507, §§1, 2	c. 493
Suppression of a house, only house, institute, or autonomous monastery of nuns (<i>CIC</i>), or monastery, order, congregation, society, province, house, or institute (<i>CCEO</i>)	c. 616, §§1-4	c. 438, §1, §2, §4 c. 510	c. 498

CIC c. 123 forms a useful backdrop for examining cc. 584 and 616. (The topic of juridic personality will be developed in more detail in Chapter Three.)

Upon the extinction of a public juridic person, the allocation of its goods, patrimonial rights, and obligations is governed by law and its statutes; if these give no indication, they go to the juridic person immediately superior, always without prejudice to the intention of the founders and donors and acquired rights [...]

Religious institutes and houses are juridic persons, *ipso iure*.⁵ Because they act in the Church's name, religious institutes and houses are public juridic persons.⁶ According to c. 123, when a public juridic person becomes extinct, the allocation of its goods, rights, and obligations is determined firstly by universal law and proper law. If these regulations are silent, then the goods go to the next-higher-ranking juridic person. The identity of the "juridic person immediately superior" is determined on a case-by-case basis.⁷

'Superiority' exists only for hierarchically-organized juridic persons, such as between a diocese and the Holy See; other public juridic persons (e.g., a university or hospital erected as a

⁵ *CIC* c. 634 §1.

⁶ Cf. *CIC* c. 116 §1.

⁷ G. LO CASTRO, Commentary on c. 123, *Exegetical Comm1*, 795: "Note that the goods will go not to the superior body to which the extinct juridical person is subordinate [...] but to the juridical person presided over by the superior body [...]"

public juridic person) have no immediately-superior juridic persons. Canon law does not say anything about what happens to the goods of these other entities.⁸

1.1. CANON 584

The suppression of an institute pertains only to the Apostolic See; a decision regarding the temporal goods of the institute is also reserved to the Apostolic See.

Only the Apostolic See can suppress an entire institute. This canon respects the gift of a religious institute and the perpetual nature of a public juridic person. Canon 584 is also an exception to the general rule that ‘whoever can erect can also suppress,’ since diocesan bishops cannot suppress diocesan right institutes that they erected.⁹ Even religious institutes of diocesan right, erected by the diocesan bishop, can be suppressed only by the Apostolic See.¹⁰ In unions and mergers, since the juridic personality of at least one of the merged entities will cease to exist. Unions and mergers can be considered as implied suppressions.¹¹

1.2: CANON 616

Canon 616 has four paragraphs. We will look at each paragraph separately. Compare c. 584 (for religious institutes) with c. 616 (for religious houses and autonomous monasteries):

<i>CIC c.</i>	<i>What is suppressed</i>	<i>Who can suppress it</i>	<i>Allocation of temporal goods</i>
584	A religious institute	Apostolic See	Apostolic See
616 §1	A legitimately-erected religious house	Supreme moderator, in accordance with the constitutions, after consulting the diocesan bishop	According to the proper law of the institute, while respecting founders’ and donors’ wishes and acquired rights
616 §2	The only house of a religious institute	Apostolic See	Apostolic See
616 §3	An autonomous house (see c. 613)	The general chapter, unless the constitutions state otherwise	[Not specified in the canon, Presumably, the general chapter or constitutions ¹² decides where the goods go.]
616 §4	An autonomous monastery of nuns	Apostolic See	Consider the constitutions

⁸ R.T. KENNEDY, commentary on c. 123, *CLSA Comm2*, 171: “[...] A relationship of superiority [...] exists only among hierarchically ordered juridic persons [...] other public juridic persons [...] do not have immediately superior juridic persons. Canon 123 is silent as to what happens in such cases.”

⁹ MCDERMOTT, commentary on c. 584, *CLSA Comm2*, 751-752.

¹⁰ T. RINCÓN-PÉREZ, commentary on c. 584, *Exegetical Comm2*, 1496.

¹¹ *Ibid.*

¹² R.M. MCDERMOTT, commentary on c. 616 §3, *CLSA Comm2*, 779.

Canon 616 does not say what happens to the individual religious members within each house, or what might be considered a serious enough cause to suppress the house.¹³ A distinction should be made between withdrawal of members from a constituted house and a true suppression of a canonically-erected house. Canon 616 §1 is about true suppression.¹⁴

1.2.1. CANON 616 §1

Canon 616 §1 acknowledges founders' and donors' wishes, as well as acquired rights.

The supreme moderator can suppress a legitimately erected religious house according to the norm of the constitutions, after the diocesan bishop has been consulted. The proper law of the institute is to make provision for the goods of the suppressed house, without prejudice to the intentions of the founders or donors or to legitimately acquired rights.

Proper law of the institute determines the allocation of temporal goods. If the constitutions are silent about the house's temporal goods, then *CIC* c. 123 should be applied.¹⁵

1.2.2. CANON 616 §2

This paragraph is similar to *CIC* c. 584 but for “the only house of an institute.”

<i>CIC</i> c. 616 §2	<i>CIC</i> c. 584
The suppression of the only house of an institute belongs to the Holy See, to which the decision regarding the goods in that case is also reserved.	The suppression of an institute pertains only to the Apostolic See; a decision regarding the temporal goods of the institute is also reserved to the Apostolic See.

Suppression of the only house is considered to be equivalent to suppression of the entire institute.¹⁶ The similar wording in cc. 584 and 616 should not be a surprise, then. In this case, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life decides where the religious house's temporal goods are allocated.¹⁷

¹³ D.J. ANDRÉS, Commentary on c. 616, *Exegetical Comm2*, 1612.

¹⁴ R.M. MCDERMOTT, commentary on c. 616 §1, *CLSA Comm2*, 778.

¹⁵ ANDRÉS, commentary on c. 616, *Exegetical Comm2*, 1613.

¹⁶ RINCÓN-PÉREZ, commentary on c. 584, *Exegetical Comm2*, 1496; ANDRÉS, commentary on c. 616, *Exegetical Comm2*, 161.

¹⁷ MCDERMOTT, commentary on c. 616 §2, *CLSA Comm2*, 778.

This canon (unlike *CIC* c. 616 §§1 and 4, which say that proper law of the institute makes provision for an institute's temporal goods) states that the Holy See determines where this property goes. This, too, resembles *CIC* c. 584.

1.2.3. CANON 616 §3

To suppress the autonomous house mentioned in can. 613 belongs to the general chapter, unless the constitutions state otherwise.

CIC c. 613 §1 says that a “religious house of canons regular or of monks under the governance and care of its own moderator is autonomous unless the constitutions state otherwise.” Unlike cc. 584 and 616 §§2 and 4, c. 616 §3 does not even mention the Apostolic See's involvement with goods of these autonomous houses.

CIC c. 616 §3 does not say what happens to the suppressed house's goods. Perhaps, if suppression of a self-governing house is done through the general chapter and constitutions, then the general chapter also allocates the house's temporal goods if the constitutions are silent.¹⁸ Note that the general chapter, not the local chapter, decides on suppression.¹⁹

1.2.4. CANON 616 §4

To suppress an autonomous monastery of nuns belongs to the Apostolic See, with due regard to the prescripts of the constitutions regarding its goods.

Suppression (by the Holy See) and allocation of goods (by the constitutions) are done by separate entities. Usually, the allocation of temporal goods in the constitutions includes a series of alternative arrangements.²⁰ If the constitutions are silent, then the Holy See decides where the temporal goods go. In any case, the welfare of the surviving religious members, the intentions of

¹⁸ MCDERMOTT, commentary on c. 616 §2, *CLSA Comm2*, 779.

¹⁹ ANDRÉS, commentary on c. 616, *Exegetical Comm2*, 1614.

²⁰ *Ibid*, 1615.

founders and donors, canon law concerning ecclesiastical goods in Book V of the *CIC*, and applicable civil law must also be considered.²¹

1.3. THE 1917 PIO-BENEDICTINE CODE OF CANON LAW

Like the 1983 Code, the *CIC/17* c. 1501 said that goods from an extinct juridic person (the *CIC/17* used the expression “moral person”) are allocated to the immediately superior juridic person and it said nothing about property of juridic persons that had no immediately superior juridic person. Canon 123 of the *CIC* basically repeats *CIC/17* c. 1501; so, if we follow the interpretation of the older norm (cf. c. 6 §2), the goods of extinct juridic persons who lack immediately superior juridic persons should be given to the diocese, the bishops’ conference, or the Holy See. This arrangement, however, might clash with sponsors’ expectations for an apostolate erected by the diocesan bishop but run by religious. Unless the statutes of the apostolate state that upon extinction its goods will be allocated to the religious institute, the diocese will get its goods instead.²²

Canons 584 and 616 were preceded and are paralleled by norms in the *CIC/17*.

<i>CIC</i> c.	<i>CIC/17</i> c.	<i>What is suppressed</i>	<i>Allocation of temporal goods</i>
584	493	Religious institute (pontifical right or diocesan right), even if it is only one house	Allocation by the Apostolic See, with consideration for donors’ intentions
616	498	Religious house of an exempt religious institute	Not specified in the canon
	498	Religious house of an non-exempt religious congregation of pontifical right	Not specified in the canon
	498	Religious house of a religious institute of diocesan right	Not specified in the canon
	498	Only house of a religious institute	Not specified in the canon

CIC/17 c. 498 said relatively little about provision for temporal goods of suppressed religious houses. Compared to the *CIC/17*, the *CIC* sounds more decentralized in its control over temporal goods.

²¹ R.M. MCDERMOTT, commentary on c. 616 §4, *CLSA Comm2*, 779.

²² KENNEDY, commentary on c. 123, *CLSA Comm2*, 171.

1.4. THE CODE OF CANONS OF THE EASTERN CHURCHES

CIC c. 584 corresponds to *CCEO* cc. 438 and 507, and *CIC* c. 616 corresponds to *CCEO* cc. 438 and 510.²³ The contents of these canons can be summarized as follows.

<i>Canon</i>	<i>What is suppressed</i>	<i>Allocation of goods</i>
<i>CIC</i> c. 584	A religious institute	Allocated by the Apostolic See
<i>CIC</i> c. 616 §1	A legitimately erected religious house	Allocated by the proper law of the institute, without prejudice to founders' or donors' intentions or to acquired rights
<i>CIC</i> c. 616 §2	The only house of an institute	Allocated by the Holy See
<i>CIC</i> c. 616 §3	An autonomous religious house of canons regular or of monks under the governance and care of its own moderator	Not specified in the canon
<i>CIC</i> c. 616 §4	An autonomous monastery of nuns	Allocated according to the prescripts of the constitutions
<i>CCEO</i> c. 438 §1	Monastery <i>sui iuris</i> , filial monastery of eparchial right, stauropegial monastery (all within the boundaries of the patriarch's territory)	Not specified in the canon
<i>CCEO</i> c. 438 §2	Other monasteries <i>sui iuris</i> or filial monasteries	Not specified in the canon
<i>CCEO</i> c. 438 §4	<ul style="list-style-type: none"> - Confederated monastery <i>sui iuris</i> - Non-confederated monastery <i>sui iuris</i> - Stauropegial monastery <i>sui iuris</i> - Dependent monastery - Monastery of pontifical right 	<ul style="list-style-type: none"> - Confederated monastery <i>sui iuris</i>: goods go to the confederation - Non-confederated monastery <i>sui iuris</i>: goods go to the eparchy - Stauropegial monastery <i>sui iuris</i>: goods go to the patriarchal Church. - Dependent monastery: goods go to the monastery <i>sui iuris</i> - Monastery of pontifical right: allocated by the Apostolic See, without prejudice to donors' intentions
<i>CCEO</i> c. 507 §1	A legitimately erected order of patriarchal right, even if it consists of only one house	Allocated by the Apostolic See, without prejudice to donors' intentions
<i>CCEO</i> c. 507 §2	A legitimately erected congregation of patriarchal or eparchial right, even if it consists of only one house	Not specified in the canon
<i>CCEO</i> c. 510	<ul style="list-style-type: none"> - A house of an order or congregation - The only house of an order or congregation 	Not specified in the canon

The *CCEO* need not legislate for public and private juridic persons separately. However, the *CCEO* is still more detailed than the *CIC* and leaves less for proper law to determine.²⁴

²³ J. ABBASS, *The Consecrated Life: A Comparative Commentary of the Eastern and Latin Codes*, Ottawa, Faculty of Canon Law, Saint Paul University, 2008, 84-87.

²⁴ R.M. MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life [cc. 573-746]," *CLSA Comm2*, 742.

CHAPTER 2. RELATED NOTIONS

Canons 584 and 616 do not exist in isolation but in a wider context of norms and notions related to alienation of goods. These include issues specific to religious, administration of goods, and penalties for incorrect alienation of goods.

2.1. ALIENATION AND RELATED IDEAS

Alienation is related to the notions of ownership and stewardship. How is alienation different from these concepts, and what consequences do these differences have?

2.1.1. OWNERSHIP

For something to be alienated, it must first be owned: “you can’t give what you don’t have.” Ownership implies *dominium*²⁵ or a right to freely use and dispose of property.²⁶ Sometimes, ownership of religious-associated property can be convoluted. Unfortunately, canonical ownership does not always match civil ownership.²⁷ It might happen that members of a religious house may think that they tacitly own an apostolate that was entrusted to them.

Parish property is separate from diocesan property.²⁸ Here is an example of an ownership dispute: A parish was entrusted to a religious order in the 1800s, on condition that the religious would administer the parish. The religious eventually left the parish and took the parish’s hefty cemetery fund with them. They claimed a right to the money, since they had indeed administered the parish. The diocese argued that they did not own the cemetery fund, which had been in a

²⁵ J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, Society of St. Paul/Alba House, 2009, 13; J.K. MALLETT, “Book V: Temporalities under the Revised Code of Canon Law,” in *CathL*, 29 (Spring 1984), 188; J.J. COUGHLIN, *Canon Law: A Comparative Study with Anglo-American Legal Theory*, New York, Oxford University Press, 2011, 177; W.J. KING, “Steward and Servant: The Duties of a Good Householder,” in *CLSAP*, Washington, Canon Law Society of America, 2014, 232.

²⁶ B.A. GARNER et al. (eds.), *Black’s Law Dictionary*, 4th pocket edition, St. Paul, West, 2011, 548, col. 2.

²⁷ F.G. MORRISEY, “The Directory for the Administration of Temporal Goods in Religious Institutes,” in M. THÉRIAULT and J. THORN (eds.), *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I., on the Occasion of His 75th Birthday and of the 50th Anniversary of His Presbyteral Ordination*, Ottawa, Faculty of Canon Law, Saint Paul University, 1991, 275.

²⁸ N. CAFARDI, “Closing Churches, Merging Institutes, and Dividing Dioceses,” in *CLSAP*, Washington, Canon Law Society of America, 1990, 225.

separate bank account from other parish money. The diocese was also now saddled with a money-losing parish that needed money to run the cemetery. How is money that is set aside for a work supposed to be classified?²⁹

What about ownership in disaster situations? If property is destroyed, not sold,³⁰ to whom does compensation belong? Imagine the following: a diocese subsidized a poor parish for years without a written agreement. After the parish burned down, the fire insurance policy (bought by the diocese) paid two million dollars. The diocese wanted repayment from the parish out of the insurance money. The pastor refused; he claimed that the subsidies were donations, not loans, to the parish. There was no paper trail, so the diocese was in a weak position to recover the monies.³¹

2.1.2. ALIENATION

Alienation is the partial or total transfer of ownership³² to another person or persons. Strictly speaking, alienation is not administration, nor is it a threatening contract.³³ However, Daniel Conlin notes:

[...] taken together, the whole thrust of the canons on juridic personality and alienation points to the following conclusion: any transfer of ownership and any transaction which may weaken the patrimonial condition need to follow the canons on alienation, even intra-ecclesial transfers between inter-related public juridic persons.³⁴

A worsened patrimonial condition is considered similar to alienation.³⁵ *CIC* cc. 1291-1294, which are applicable to alienation, also apply to threatening transactions.³⁶

²⁹ CAFARDI, "Closing Churches," 226-227.

³⁰ W.F. CAHILL, "The Dedication of Property to the Fixed Patrimony of a Church: Part I," in *J*, 17 (1957), 144-145.

³¹ CAFARDI, "Closing Churches," 224-225.

³² RENKEN, *Church Property*, 247; GARNER, *Black's Law Dictionary*, 31, col. 2.

³³ F.G. MORRISSEY, "Ordinary and Extraordinary Administration: Canon 1277," in *J*, 48 (1988), 722; J.A. RENKEN, "Contracts Threatening Stable Patrimony: The Discipline and Application of Canon 1295," in *StC*, 45 (2011), 501.

³⁴ D.C. CONLIN, *Canonical and Civil Legal Issues Surrounding the Alienation of Catholic Health Care Facilities in the United States*, Rome, Pontifical University of Saint Thomas, 2000, 166.

³⁵ V. DEPAOLIS, "Temporal Goods of the Church in the New Code, with Particular Reference to Institutes of Consecrated Life," in *J*, 43 (1983), 356-357: "We would do well to remember that any juridical transaction in which

2.1.3. STEWARDSHIP AND APOSTOLATES

Unlike ownership, ‘stewardship’ (sometimes called ‘trusteeship’) implies a fiduciary relationship between the trustee and the actual owner of the entrusted goods.³⁷ Religious institutes have their own charisms,³⁸ commonly in education and health care. Religious can purchase schools or hospitals, or they can be entrusted with them by a benefactor or government, for the apostolate. It is possible for religious to run an apostolate and determine its policies for so long that people, including the religious, assume that the religious own it.

When apostolates become expensive to maintain, they may need to be sold to non-religious. Loss of control over property might be practically equivalent to alienation.³⁹ If a for-profit buyer of a formerly religious-run hospital will do procedures that violate Catholic teachings,⁴⁰ to what extent should this factor influence the decision to sell?

2.2. ISSUES SPECIFIC TO RELIGIOUS

As Chapter One pointed out, religious institutes and houses are juridic persons. At the same time, they face issues related to alienation that other juridic persons need not consider.

the patrimonial situation of the public juridical person loses value is considered comparable to alienation (cc. 1295; 638 §3).”

³⁶ *CIC* c. 1295.

³⁷ J.M. FITZGERALD, “The Official Catholic Directory: Civil and Canon Law Requirements,” in *CathL*, vol. 30, no. 2 (March 1986), 124-125; compare M. DIPIETRO, “Public Juridic Persons: Owners and Trustees of Church Property,” in J. FOX (ed.), *Render unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, Rome, Pontifical University of St. Thomas Aquinas in Rome, 2000, 79: “In a general sense, all Church property is impressed with trust obligations.”

³⁸ A.J. MAIDA and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, St. Louis, Catholic Health Association of the United States, 1984, 45.

³⁹ MALLETT, “Book V: Temporalities,” 190.

⁴⁰ Cf. J. RIGALI, “Proposed Sale of Two Catholic Hospitals to For-Profit Chain,” in *Origins*, vol. 27, (1997), 362: “No matter what contractual commitments may have been made, it will be impossible for the hospital, after its sale, to preserve all the values of Catholic health care.”

2.2.1. VOW OF POVERTY

Religious profess the evangelical vow of poverty in imitation of Christ. Proper law determines how the vow of poverty will be practically lived out in a specific religious institute.⁴¹ Full renunciation of goods, valid even in civil law, occurs before perpetual profession.⁴² It is possible, though, to take ‘detachment’ too far, such that it becomes ignorance or indifference about temporal affairs. This can lead to invalid alienation of temporal goods and damage to the Church.

Every juridic person must have at least two finance counsellors, if not a whole finance council, who assist the administrator.⁴³ Each religious institute, and each province governed by a major superior, must have a finance officer.⁴⁴ Finance officers, at least, should be knowledgeable about legal and financial facets of alienation of goods.

2.2.2. CARE FOR MEMBERS

The vow of poverty can complicate alienation of goods by religious institutes. Rights and obligations are inseparable: if individual religious forgo their natural rights to personal goods in favour of the religious institute, then the institute has a corollary duty to provide for its members’ needs.⁴⁵

Not every religious will cooperate quietly in the institute’s or house’s suppression. If suppression is immanent, some might want to enter another religious congregation or return to the secular world.⁴⁶ Canon law emphasizes the importance of equity.⁴⁷ The community’s

⁴¹ *CIC* cc. 598 §1 and 600; S. EUART, “Religious Institutes and the Juridical Relationship of the Members to the Institute,” in *J*, 51 (1991), 109-110.

⁴² *CIC* c. 668 §4; E. MCDONOUGH, “The Protection of Rights in Religious Institutes,” in *J*, 46 (1986), 175.

⁴³ *CIC* c. 1280.

⁴⁴ *CIC* c. 636 §1.

⁴⁵ Cf. *CIC* c. 670; M. WELCH, “Provisions for Departing Members,” in *Bulletin on Issues of Religious Law*, 12 (Fall 1996), 1.

⁴⁶ F. MORRISEY, “Planning for the Demise or Diminishment of Canadian Religious Institutes: Canonical Issues,” in *StC*, 49 (2015), 538.

temporal goods should be used to support members who wish to leave, as well as members who stay. A ‘land-rich-but-cash-poor’ religious institute may need to alienate temporal goods to provide a decent ‘care package’ for all members.

A survey from 1995 showed a drop in the number of departures from religious institutes. Those who do leave are often long-term members.⁴⁸ Proceeds from alienation of ecclesiastical property should be equitably allocated for job search resources and health care. How ironic if a religious community that helped others through its apostolates floundered to supply its own members’ needs!

Religious houses and institutes also differ in their level of liability for members’ actions.⁴⁹ If religious institutes must budget resources to pay for individual members’ misdeeds, then the pool of temporal goods available to provide for remaining members may shrink.

2.3. CLASSES OF TEMPORAL GOODS

‘Temporal goods’ can be physical or intangible, consumable or non-consumable, sacred or profane, precious or not precious (e.g., real estate, vehicles, furniture, sacred vessels, and patents).⁵⁰

The category of ‘temporal goods’ contains different subsets, such as ecclesiastical or non-ecclesiastical goods, stable patrimony or non-stable patrimony, relics, venerated images, artistically or historically precious goods, and votive offerings.⁵¹ Temporal goods of religious are

⁴⁷ For example: *CIC* cc. 19; 122, 1^o, 2^o; 221 §2; 271 §3; 686 §3; 702 §2; 1148 §3; 1752.

⁴⁸ WELCH, “Provisions for Departing Members,” 2.

⁴⁹ Cf. J. ABBASS, “Departure from Religious Institutes in the Latin and Eastern Catholic Churches,” in *StC*, 32 (1998), 108-109: “The Latin norm explicitly states that the exclaustated religious remains dependent on the institute’s superiors as well as the local ordinary [...] However, given the very different norm expressed by *CCEO* c. 491, superiors or Eastern religious institutes may not be held as responsible as their Latin counterparts for the exclaustated member,”

⁵⁰ J. RENKEN, *Church Property*, 23-24.

⁵¹ *CIC* cc. 1189, 1190, 1234 §2, 1291, 1292 §2.

regulated by Book V of the *CIC* and proper law.⁵² Only stable patrimony is governed by canons about alienation.⁵³

2.3.1. STABLE PATRIMONY

Stable patrimony consists of temporal goods meant to promote long-term survival of the juridic person to whom they belong.⁵⁴ Stable patrimony must be legitimately and deliberately designated as such.⁵⁵ Explicit designation of stable patrimony is preferred, since it leaves no doubt that the designated goods are preserved in the long term for the juridic person's purposes.⁵⁶ Goods that are meant for quick resale are not part of stable patrimony.⁵⁷

2.3.2. SACRED AND PRECIOUS ITEMS

Sacred and precious goods get special treatment in canon law. A sacred object owned by a public juridic person, such as a religious institute or house, can be transferred to the ownership of only another public juridic person.⁵⁸ The prescription period for an object owned by the Holy See is 100 years, and it is 30 years for objects owned by other public juridic persons.⁵⁹

The sale of relics is forbidden in strong language: *nefas est*.⁶⁰ Few other norms in the *CIC* use these words.⁶¹ It should be no surprise that a mere change in custody of relics or highly-

⁵² *CIC* c. 635.

⁵³ N.P. CAFARDI, "Alienation of Church Property," in "Alienation of Church Property," in K.E. MCKENNA, L.A. DiNARDO, and J.W. POKUSA (eds.), *Church Finance Handbook*, Washington, Canon Law Society of America, 1999, 247: "From the context of canon 1291, it is clear that the rules on alienation apply only to a very special type of church property that the *Code of Canon Law* refers to as 'stable patrimony.'"

⁵⁴ RENKEN, *Church Property*, 24, 224; MORRISEY, "The Directory for the Administration," 275.

⁵⁵ RENKEN, *Church Property*, 225: "To be underscored is the importance of a "legitimate designation" (cfr. can. 1291) in order for a good to be part of the stable patrimony of a juridic person"; J.F. HITE, "Property Issues for Religious," in *CLSAP*, Washington, Canon Law Society of America, 1987, 139.

⁵⁶ RENKEN, *Church Property*, 226.

⁵⁷ HITE, "Property Issues for Religious," 139: "Stable patrimony means that the immovable property will be used in the life, ministry or work of the institute for an extended period of time, as opposed to being held temporarily as an investment or for resale."

⁵⁸ *CIC* c. 1269.

⁵⁹ *CIC* c. 1270.

⁶⁰ *CIC* c. 1190, §1.

⁶¹ Cf. *CIC* c. 983 §1 (violation of the seal of Confession), *CIC* c. 1026 (forcible ordination or wrongful obstruction of ordination), and *CIC* c. 927 (consecration of one species only or of both species outside of Mass).

reverenced images⁶² is regulated in the Code; as was mentioned earlier, the notion of alienation involves a transfer in ownership or loss of control of the object, even if no money is exchanged during the transfer. Every appearance of trafficking must be avoided.

2.3.3. DIVISIBLE ASSETS

Persons who are asked for permission to alienate goods must be informed about any parts of a divisible asset that have already been alienated. If this notification does not occur, their permission is invalid.⁶³

2.3.4. DONATIONS WITH CONDITIONS AND MODAL OBLIGATIONS

Donations that have ‘strings attached’ to them can complicate alienation of goods when the religious community faces suppression. Donors should be encouraged to not place dedication or purpose restrictions on their donations, so as not to tie the recipient’s hands.⁶⁴ Permission is required to accept offerings burdened with modal obligations or conditions.⁶⁵

2.4. ALIENATION AND PERMISSIONS

Evidently, alienation must consider many factors and perspectives. In order to get a wide-angle view of temporal goods and their alienation, input is needed from within and from outside of the religious community.

2.4.1. MAXIMUM AND MINIMUM AMOUNTS

Regulation of alienation can help prevent damage to the Church by inept stewards. Six elements stand out about permission (*licentia*) required for alienation.

- 1) A competent authority issues permission.
- 2) This permission is for the validity of alienation of goods.
- 3) These goods are part of stable patrimony.

⁶² *CIC* c. 1190, §§2-3.

⁶³ *CIC* c. 1292 §§3-4. *CIC/17* c. 1532 §4 parallels *CIC* c. 1292 §3.

⁶⁴ W.F. CAHILL, “The Dedication of Property to the Fixed Patrimony of a Church: Part II,” in *J*, 17 (1957), 265. These discussions should occur at the time of the donation, since it can be very difficult to untangle restrictions after the donor dies or otherwise can no longer be contacted.

⁶⁵ *CIC* c. 1267 §2.

- 4) These goods are legitimately designated.
- 5) This stable patrimony is owned by a public juridic person.
- 6) The value of these goods exceeds an amount specified in law.⁶⁶

CIC cc. 1292-1294 apply to alienation of stable patrimony that exceeds the minimum value set by law; they do not apply to alienation of non-stable patrimony or to alienation of stable patrimony that is valued below the minimum value.

Religious institutes observe the threshold values set by the Holy See. Other public juridic persons follow the minimum and maximum values set by the conference of bishops applicable within its territory.⁶⁷

If the value of the stable patrimony is below the minimum amount, then the administrator needs no one's consent for alienation. If the value of the stable patrimony belonging to a non-subject juridic person is between the minimum and maximum set amounts, then the competent authority is determined by the juridic person's statutes; otherwise, the competent authority is the diocesan bishop, with consent from "those concerned."⁶⁸ For alienation of stable patrimony whose value is above the maximum amount, votive offerings, and precious goods, additional permission of the Holy See is required.⁶⁹ Autonomous monasteries mentioned in *CIC* c. 615 and institutes of diocesan right also need the local ordinary's written consent.⁷⁰

Goods whose value exceeds the threshold minimum value need a just cause for alienation and expert appraisal.⁷¹ Usually, goods are not sold for less than their appraised value.⁷² Validity of permission and validity of consent to alienate an item depends on the appraisal.⁷³

⁶⁶ Cf. *CIC* c. 1291.

⁶⁷ RENKEN, *Church Property*, 247; *CIC* c. 1291 §1.

⁶⁸ *CIC* c. 1292 §1.

⁶⁹ *CIC* cc. 638 §3, 1292 §2.

⁷⁰ *CIC* c. 638 §4.

⁷¹ *CIC* c. 1293 §1; cf. *CIC/17* c. 1530 §1, 1°.

⁷² *CIC* c. 1294 §1 says "ordinarily" this should not happen; cf. *CIC/17* c. 1531 §1, which admitted no exceptions.

⁷³ E. D'AURIA, "Alienation of Temporal Goods in Roman Catholic Canon Law: A Potential for Conflict," in *Ecclesiastical Law Journal*, 12 (January 2010), 40.

2.4.2. DOCUMENTATION

The preceding sections show that good bookkeeping is important for alienation.

Documents that should be readily retrievable and regularly reviewed include:

- Title to ownership that is canonically- and civilly-valid.
- Records of threshold values. These may be especially important for religious with houses in the territories of multiple conferences of bishops.
- Records of donations, including those with conditions or modal obligations attached to them. Include contact information for donors and executors.
- Records of previous alienations of divisible assets.
- Two copies of inventories.⁷⁴ This also helps prevent misunderstandings and theft.⁷⁵
- Appraisals from at least two experts.⁷⁶ The *CIC/17* also required appraisal before alienation.⁷⁷
- History of civil incorporation of properties. Note the original canonical status of property and any changes in this status.
- Records of insurance coverage⁷⁸ that are understood clearly.
- Agreements between bishops and religious.⁷⁹ Do goods of associated works (e.g., a parish cemetery) belong to the diocese or to the religious?
- Agreements between religious. If an arrangement like a covenant agreement is used, clearly indicate rights and obligations of each party. Include information about elder care and pension arrangements.⁸⁰
- Agreements between religious and non-religious. Lay employees of religiously-associated apostolates should know what will happen to them if the religious community ceases to exist.
- Legitimate designation of stable patrimony: Explicit designation is less ambiguous than implicit designation.

Such documents, if clearly drawn up and accurately maintained, would prove a great help in smoothing out the painful process of suppression.

Suggestions for suppressed or merged parishes can be adapted for use by religious communities that will be suppressed. Relevant actions and paperwork can include: notification to

⁷⁴ *CIC* c. 1283, 2^o-3^o.

⁷⁵ KING, “Steward and Servant [...]” 231: “A new pastor, moving into a parish, was heard to say of his predecessor, ‘He took everything except the plates, and then he came back for those.’”

⁷⁶ The wording of *CIC* c. 1293 §1, 2^o is somewhat odd. It states that there should be “a written appraisal” (singular) by “experts” (plural). If followed literally, two or more experts would prepare a joint written appraisal.

⁷⁷ *CIC/17* c. 1530 §1, 1^o.

⁷⁸ MORRISEY, “Planning for the Demise,” 539.

⁷⁹ See D.J. WARD, “A Diocese, a Parish, a Religious Institute, a Member: An Exploration of Canon and Civil Law,” in *CLSAP*, Washington, Canon Law Society of America, 2013, 320.

⁸⁰ A, HEREFORD, “Practical Guidelines for Aging Institutes,” in *CLSAP*, Washington, Canon Law Society of America, 2015, 234-235; MORRISEY, “Planning for the Demise,” 549-550. A covenant agreement arranges that a weaker religious community puts itself under the care of a stronger religious community, without losing its own identity. Once the last member of the weaker community dies, the stronger community assumes the assets of the weaker community and the weaker community ceases to exist.

people who have not cashed outstanding cheques that pertinent bank accounts are about to be closed; ensuring that employees' paperwork is accurate, updated, and provided to future employers as appropriate; arrangements with groups that have used religious-associated property under an informal agreement (e.g., youth groups), such that they can find another place from which to run their activities; payment for early termination of rental agreements; and cancellation of service contracts, rental agreements, insurance policies, memberships, and subscriptions. Cancellations, terminations, repayment of debt, and closures of bank accounts should be confirmed in writing.⁸¹

2.5. PENAL LAW

The preceding sections make it clear that religious may not alienate their temporal goods without oversight. What happens, then, if the rules are not known or not followed?

Penal sanctions exist to restore justice, repair scandal, and reform the offender.⁸² For alienation without permission, *CIC* c. 1377, *CIC/17* c. 2347, and *CCEO* c. 1449 all contain threats of punishment:⁸³ *CIC* c. 1377 (an indeterminate, preceptive, *ferendae sententiae* “just penalty”); *CIC/17* c. 2347 (“an appropriate penalty” for objects priced below one thousand lira; deprivation of favourable status, a fine, or suspension for objects priced between one thousand and thirty thousand lira; or excommunication for deliberately not seeking the required permission); *CCEO* c. 1449 (“an appropriate penalty”). The *CIC* contains mostly indeterminate penalties for incorrect alienation. This seems only natural, since the gravity of the punishment

⁸¹ These suggestions are based on R.W. OLIVER, “Temporal Goods and the Suppression/Merger of Parishes,” in *J*, 72 (2012), 175-177.

⁸² J.A. RENKEN, *The Penal Law of the Roman Catholic Church: Commentary on Canons 1311-1399 and 1717-1731 and Other Sources of Penal Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 2015, 35. [Justify FN's](#).

⁸³ RENKEN, *The Penal Law*, 256.

should vary with the gravity of the offence. Damages, even if unintentionally caused, must be repaired.⁸⁴ Betrayal of trust, though, may warrant a harsher punishment (cf. c. 1326 §1, 2°).⁸⁵

⁸⁴ *CIC* c. 128.

⁸⁵ J.A. RENKEN, "Penal Law and Financial Malfeasance," in *StC*, 42 (2008), 56.

CHAPTER 3. INTERACTIONS OUTSIDE OF THE CHURCH

The Church, her members, and her temporal goods exist at the intersection of canon law (Latin Code, Eastern Code, universal law, and proper law) and civil law (federal, regional, and municipal civil laws of different regions), yet actions in one legal system might lack effect in the other system.⁸⁶ If religious communities are not vigilant about their temporal goods, it may be easier for others try to misappropriate those goods. Individual religious, already on edge because of immanent suppression, may be caught in the middle.

3.1. INTERACTIONS WITH CIVIL LAW

The relationship between canon law and civil law can be harmonious or acrimonious. When the two systems clash, unpleasant confrontations in civil courts are possible.

3.1.1. ‘CANONIZATION’ AND COMPLEMENTARITY

In specific situations, canon law harmonizes with, and even ‘canonizes,’⁸⁷ civil law. From the early centuries, Catholics have been urged to respect and comply with civil law.⁸⁸

Christians are not differentiated from other people by country, language or customs [...] But at the same time, they demonstrate to us the wonderful and certainly unusual form of their own citizenship.

They live in their own native lands, but as aliens [...] They obey the appointed laws, and go beyond the laws in their own lives [...]⁸⁹

Canon law and civil law concepts sometimes overlap. For example, canon law refers to prescription, the gain or loss of goods, rights, or obligations with the passage of time.⁹⁰ The

⁸⁶ Cf. M.M. MOREY, “The Way We Are: The Present Relationship of Religious Congregations of Women to the Colleges They Founded,” in T. SCHIER and C. RUSSETT (eds.), *Catholic Women’s Colleges in America*, Baltimore, The Johns Hopkins University Press, 2002, 287; R.T. KENNEDY, “Note on the Canonical Status of Church-Related Institutions in the United States,” *CLSA Comm2*, 175; J.F. HITE, “The Temporal Goods of Religious Institutes,” in *CFH*, 45.

⁸⁷ COUGHLIN, *Canon Law*, 130; J. CORIDEN. and F.R. MCMANUS, “The Present State of Roman Catholic Canon Law regarding Colleges and Sponsoring Religious Bodies,” in P. MOOTS and E. GAFFNEY, *Church and Campus: Legal Issues in Religiously Affiliated Higher Education*, Notre Dame, University of Notre Dame Press, 1979, 144.

⁸⁸ Mt 22:21: “[...] Then he said to them, ‘give therefore to the emperor the things that are the emperor’s, and to God the things that are God’s’”; 1 Pt 2: 17: “[...] Fear God. Honor the emperor.”

⁸⁹ ANONYMOUS, “Letter to Diogenes,” in B. CAVANAUGH, *Fresh Packet of Sower’s Seeds: Third Planting*, New York/Mahwah, 1994, 51-52.

corresponding civil law term is ‘statute of limitations.’ (Section 2.3.2 addressed prescription in the context of sacred objects.) Canon law about temporal goods approximates the civil “law of property.”⁹¹ Temporal goods should be protected even by civilly valid means.⁹²

3.1.2. CONFLICT AND CHURCH-STATE RELATIONS

For all their areas of potential agreement, canon law and civil law have different sources of authority. When civil law violates divine law or contradicts provisions of canon law, canon law prevails.⁹³

Church and state collide over civilly-valid but canonically-invalid alienation of goods. In these situations, the competent ecclesiastical authority decides what (if any) action to take, by whom, and against whom.⁹⁴

3.2. IDENTITY AND BELONGING(S)

Alienation of ecclesiastical goods of religious institutes presupposes that those goods are somehow Catholic. In cases where these ‘goods’ are apostolates, the identity of the apostolate can affect how it is alienated.

3.2.1. JURIDIC PERSONALITY

Religious institutes and houses are juridic persons *ipso iure*,⁹⁵ but the status of their apostolates is not always so clear. Public juridic persons act in the Church’s name; does an apostolate act in its own name, in the name of the religious community, or in the Church’s name? Was the apostolate founded as a separate juridic person, given juridic personality afterward, or always considered as an appendage of the religious community? Juridic persons can acquire and

⁹⁰ *CIC* cc. 197-199, 1268-1270.

⁹¹ D.J. WARD, “Temporal Goods,” in *Proc H*, 2001, 195.

⁹² *CIC* c. 1284 §1, 2°.

⁹³ *CIC* cc. 22, 1290.

⁹⁴ *CIC* c. 1296; J. HITE, “Property and Contracts in Church Law,” in *CathL*, 30 (September 1986), 263; COUGHLIN, *Canon Law*, 178 calls this “a *de facto* alienation of the property but an invalid *de iure* alienation.”

⁹⁵ *CIC* c. 634 §1.

alienate property,⁹⁶ so it matters if apostolates are juridic persons who can survive and manage their own temporal goods beyond the demise of the religious communities associated with them.

If a parish is united *pleno iure* to a religious institute, what becomes of the juridic personality and goods of the parish? Under the *CIC/17*, there was some thought that the parish's juridic personality would be absorbed into that of the religious institute, and the parish's goods and obligations would be transferred to the religious institute.⁹⁷

3.2.2. CATHOLIC IDENTITY

Apostolates can be helped or harmed by the juridic personality or canonical status attached to them. If an apostolate is viewed as Church property (e.g., belonging to a religious community), the “Catholicity” and level of ecclesiastical control over the apostolate is high. On the other hand, such an apostolate is subject to, and liable, under both canonical and civil legal systems. As was alluded to at the beginning of this chapter, what is validly done in one legal system does not necessarily have effects in the other legal system.⁹⁸ After Vatican II, parts of the Church experienced destabilization in identity.⁹⁹

No one canonical status is ideal for all groups or all circumstances.¹⁰⁰ For example, if schools are seen as too ‘Catholic,’ then they might be classified as ecclesiastical property that needs special permission before it can be alienated. From a secular perspective, these schools could lose government financial aid for being too sectarian.

It is feared that the ecclesiastical intervention implicit in canon 812 may be viewed by governmental authorities as so altering the character of Catholic colleges and universities as to render governmental financial aid to such institutions constitutionally impermissible as an “establishment of religion” under the First Amendment to the

⁹⁶ *CIC* c. 1255.

⁹⁷ R.H. DAILEY, *The Primary Effects of the Union Pleno Iure of Parishes with Religious Communities*, Rome, Catholic Book Agency, 1951, v-vi.

⁹⁸ KENNEDY, “Note on the Canonical Status,” *CLSA Comm2*, 172.

⁹⁹ MOREY, “The Way We Are,” 279.

¹⁰⁰ KENNEDY, “Note on the Canonical Status,” *CLSA Comm2*, 175.

federal Constitution and under comparable provisions in the constitutions of many of the individual states.¹⁰¹

Cash-strapped religious communities might be especially wary of overt ecclesiastical ownership of their schools. Catholic universities are both Catholic and academic.¹⁰² However, this ‘both/and’ identity can be uncomfortable. Some schools seem to prefer a flag of convenience: ‘Catholic’ when fundraising among alumni but ‘non-sectarian’ when asking for state funds.¹⁰³

Canon law about Catholic identity is inconsistent.¹⁰⁴ A 1973 document entitled “The Catholic University in the Modern World” listed the following traits as essential to Catholic universities:

1. Christian inspiration of individuals and of the university community.
2. Reflection upon, and contribution to, human knowledge from a Catholic perspective.
3. Fidelity to the Christian message as handed on by the Church.
4. Commitment to service of the faithful and of the human family in their journey toward their “transcendent goal.”

It went on to say: “All universities that realize these fundamental conditions are Catholic universities, whether canonically erected or not.”¹⁰⁵ Compare this to norms in the *CIC* that require permission from competent ecclesiastical authority before the title ‘Catholic’ can be used for a Catholic educational institution, “[e]ven if it is in fact Catholic.”¹⁰⁶

¹⁰¹ S. EUART, “Implications of Canon 812 for Federal Constitutionality of Government Aid to Catholic Colleges and Universities,” in *J*, 50 (1990), 170.

¹⁰² CONGREGATION FOR CATHOLIC EDUCATION, PONTIFICAL COUNCIL FOR THE LAITY, and PONTIFICAL COUNCIL FOR CULTURE, *The Presence of the Church in the University and in University Culture*, 22 May 1994, English translation in *Catholic Mission and Culture in Colleges and Universities: Defining Documents 1965-2014*, Washington, Committee on Catholic Education, United States Conference of Catholic Bishops, 2014, 120: “[...] the institutional identity of the Catholic University depends on its realizing together its characteristics as ‘University’ and as ‘Catholic.’”

¹⁰³ F.G. MORRISEY, “What Makes an Institution ‘Catholic’?” in *J*, 47 (1987), 531-532.

¹⁰⁴ J.H. PROVOST, “Approaches to Catholic Identity in Church Law,” in J.H. PROVOST and K. WALF (eds.), *Concilium: Catholic Identity*, London and Maryknoll, NY, SCM Press and Orbis Books, 1994, 23.

¹⁰⁵ A. GALLIN, “On the Road toward a Definition of a Catholic University,” in *J*, 48 (1988), 544.

¹⁰⁶ *CIC* cc. 803 §3 (Catholic schools) and 808 (Catholic universities).

What about apostolates (e.g., schools) that are *de facto* ‘Catholic’ but not officially so? Though the group itself is minimally subject to ecclesiastical authority, its individual members remain bound by canon law.¹⁰⁷

3.2.3. INCORPORATION

Though civil incorporation might not formally split apostolates away from the single juridic person of the religious institute,¹⁰⁸ incorporation of a public juridic person can result in a loss of control that is functionally equivalent to alienation.¹⁰⁹ Some religious communities have incorporated their apostolates to protect themselves and the apostolates by civilly-valid means.¹¹⁰ In the late 1960s, this strategy backfired.

3.2.4. THE McGRATH THESIS

In 1968, Fr. John McGrath published a monograph¹¹¹ that became known as ‘the McGrath Thesis.’ He proposed that civil incorporation is done by civil authority, it removes apostolates from Church ownership, it exempts them from the provisions of canon law, and it places them under the exclusive jurisdiction of civil law.¹¹² In contrast to the Church’s ‘both-and’ attitude, McGrath argued that canon law yields to civil law.¹¹³ His ideas became very popular.¹¹⁴

¹⁰⁷ KENNEDY, “Note on the Canonical Status,” *CLSA Comm2*, 174.

¹⁰⁸ HEREFORD, “Practical Guidelines,” 224; C. MEIGHAN, “Religious Institutes – Property and Tax Issues,” in *CathL*, vol. 33, no. 1 (1990), 27.

¹⁰⁹ MALLETT, “Book V: Temporalities,” 1984, 190.

¹¹⁰ Cf. *CIC* c. 1284 §1, 2°; D.C. CONLIN, “The McGrath Thesis and its Impact on a Canonical Understanding of the Ownership of Ecclesiastical Goods,” in *CLSAP*, Washington, Canon Law Society of America, 2002, 91; KENNEDY, “Note on the Canonical Status,” *CLSA Comm2*, 173; MEIGHAN, “Religious Institutes,” 26.

¹¹¹ J.J. McGRATH, *Catholic Institutions in the United States: Canonical and Civil Law Status*, Washington, Catholic University of America Press, 1968.

¹¹² A. GALLIN, *Independence and a New Partnership in Catholic Education*, Notre Dame, University of Notre Dame Press, 1996, 105; CONLIN, *Canonical and Civil*, 2000, 76; CONLIN, “The McGrath Thesis and Its Impact,” 79, 85, 88; R.T. KENNEDY, “McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil Law Status of Church-Related Institutions in the United States,” in *J*, 50 (1990), 352-361.

¹¹³ CONLIN, “The McGrath Thesis and Its Impact,” 82, 94.

¹¹⁴ P. GLEASON, *Contending with Modernity: Catholic Higher Education in the Twentieth Century*, New York, Oxford University Press, 1995. 316: “Although highly debatable, it [i.e., the McGrath Thesis] was uncritically –

As could be expected, McGrath's ideas were also met with criticism and controversy.¹¹⁵ One of his main critics was Adam Maida,¹¹⁶ who was surprised at the rapid adoption of McGrath's ideas and who countered that civil incorporation does not automatically sever the incorporated entity from canonical control. This seems to be the more supported view. Juridic acts in one legal system (canon or civil) do not necessarily have juridic effects in the other system.¹¹⁷

In 1974, a joint letter from the Sacred Congregation for Catholic Education and the Sacred Congregation for Religious and for Secular Institutes stated that the McGrath Thesis had never been accepted as valid.¹¹⁸ However, the viewpoints of both McGrath and Maida have been criticized as extreme.¹¹⁹

3.3. EXAMPLES OF ALIENATIONS BY RELIGIOUS

The controversy about the McGrath Thesis that started in the 1960s has played out in selected religious-associated alienations since then. These alienations have produced various levels of controversy among Catholics and even non-Catholics.

3.3.1. UNITED STATES OF AMERICA

When the board of directors of Jesuit-associated St. Louis University (SLU) Hospital decided to sell the hospital to a for-profit group, Archbishop Justin Rigali opposed the sale. Rigali made clear that the sale did not have his support or the Holy See's approval. Apparently,

indeed, eagerly – embraced by Catholic educators who were persuaded [...] that laicization was necessary and desirable.”

¹¹⁵ KENNEDY, “McGrath, Maida, Michiels,” 1990, 351-401; GALLIN, *Independence*, 102-131; MOREY, “The Way We Are,” 288-290.

¹¹⁶ CORIDEN and MCMANUS, “The Present State of Roman Catholic Canon Law,” 145; A. MAIDA, “Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities,” in *CathL*, 19 (Autumn 1973), 275-286; CONLIN, “The McGrath Thesis and Its Impact,” 95.

¹¹⁷ MAIDA, “Canonical and Legal Fallacies,” 281: “The state neither has authority nor the jurisdiction to radically affect the canonical status of a creature born of canon law. Similarly, the Church cannot radically effect any changes in the juridical personality, created by the state”; KENNEDY, “Note on the Canonical Status,” *CLSA Comm2*, 175.

¹¹⁸ SACRED CONGREGATION FOR CATHOLIC EDUCATION and SACRED CONGREGATION FOR RELIGIOUS AND FOR SECULAR INSTITUTES, letter, 7 October 1974, Prot. nn. SCI 427/70/23 and SCRI 300/74, in *CLD* 9, 369-371.

¹¹⁹ CORIDEN and MCMANUS, “The Present State,” 150; KENNEDY, “McGrath, Maida, Michiels,” 400.

the Jesuits had not alienated the property to the board of trustees. Rigali argued that the board of trustees' authority was not exclusive or absolute, and they were not independent from canon law or from the rest of the Church.

The Vatican responded that appointment of a board of trustees did not amount to alienation. The Vatican set up conditions that had to be met before the sale could be done. The Jesuit president of SLU issued assurances of compliance with the Holy See's wishes. Rigali regretted that the sale was necessary, but the sale was approved.¹²⁰

3.3.2. CANADA

Sometimes, arrangements for alienation of property are made well in advance and proceed relatively smoothly. In 1986, a private school run by the Institute of the Blessed Virgin Mary (or Loretto Sisters) became part of the Toronto Catholic District School Board (TCDSB) in 1986. In about 2008, the school board asked the Loretto Sisters about buying the Loretto Abbey high school property after the school board's lease of the property expires in 2013. This seems to be an agreeable solution for both the school board and the Loretto Sisters, one that will give more room for the student body, relieve the dwindling number of sisters of the task of maintaining the property, allow the sisters to keep their infirmary on-site, and help keep Loretto Abbey from closing.¹²¹

It is not always a declining number of religious members that necessitates alienation of property. The Mount Alverno Retreat Centre in Caledon, Ontario began as a minor seminary in 1962 and was run as a retreat centre by Capuchin Franciscans from the 1970s until it closed on August 26, 2017. In this case, the rising costs of bussing clients to the retreat centre necessitated the sale. No diocese or religious order had funded the retreat centre, which was a point of pride

¹²⁰ Cf. RIGALI, "Proposed Sale," 362-363; J. RIGALI, "St. Louis University Hospital Sold to For-Profit Corporation," in *Origins*, vol. 27, no. 38 (12 March 1998), 629, 631-633.

¹²¹ S. DABU, "School Board Aims to Buy Loretto Abbey," *CathReg*, 11 Apr 2010, 4.

for the Franciscans. The centre's main sources of income were bookings by high school students. Funding cuts to the educational system translated into too few bookings for the centre to remain financially viable. The centre's new owners intend to change it into a drug rehabilitation centre in 2018.¹²²

Acrimonious alienation is not limited to the Latin Catholic Church, and they happen even when the new owner is itself a religious entity. In early 2008, a monastery near Orangeville, Ontario that had housed Ukrainian Studite monks from 2000 to 2004 was sold to the Orthodox Coptic Church. Don Onyschuk, the vice-chancellor of the eparchy, stated that the monastery was no longer a monastery after the monks departed. Eparch Stephen Chmilar explained that the sale of the property was meant to alleviate financial strain on the debt-ridden eparchy.

Other people disagreed with how the sale was handled. Father John Tataryn claimed that farms on the 125-hectare property could have been sold without alienating the shrine itself, and that Californian monks were ready to move into the property. Other people felt similarly embittered, ignored, or cut off from part of their identity or heritage because of the sale. Apparently, some people who attended Masses at the monastery offered to buy the property.¹²³

In 1958, the Spiritan Fathers founded Neil McNeil High School in Toronto. By 2010, it was part of a group of schools under review for closure, relocation, or amalgamation with other Catholic schools in Toronto because they had too many or too few students. Discussion of options for these schools seems to have pitted the parent council for Neil McNeil against the TCDSB. At least one parent feels that relocating students from McNeil to another school slights both the Spiritans and the school's history. Father Paul McAuley, a Spiritan, explained that the Spiritans had a non-legally binding covenant with the TCDSB that obligates the school board to

¹²² M. SWAN, "Retreat Centre Falls Victim to Rising Costs," *CathReg*, 27 August 2017, 8.

¹²³ M. SWAN, "Monastery Sale Divides Ukrainians," *CathReg*, 25 November 2007, 4.

“use its best efforts” to operate the property as a high school for at least fifty years from the date of the agreement. McAuley claimed that the Spiritans would not have sold the school to the TCDSB if they had known the school might relocate or close.¹²⁴

Costly upgrades and dwindling attendance can affect more than one parish. After more than fifty years of running the pilgrims’ hostel at the St. Anne de Beaupré shrine in Québec, the Redemptorists have closed it. The hostel needed about \$800,000 in repairs to meet fire regulations and was not wheelchair-accessible. Attendance fell again when the shrine’s stairs were repaired in 2016, the shrine’s restaurant closed in 2016, the museum closed in February 2017, and the Redemptorists outsourced the hostel’s administration before they finally decided to close the inn. What was to be done with the building? The Redemptorists considered vacating their monastery and move into the former hostel. Father Bernard Gauthier admitted, “We aren’t innkeepers. The writing has been on the wall for a while now ...”¹²⁵ In terms of letting others take over ecclesiastical property, it helps for religious to know what business they are in.

Reduced attendance and crippling sex-abuse lawsuits in the Archdiocese of Moncton, New Brunswick mean that one parish has already been targeted for closure and nineteen others must prove themselves financially viable; the archdiocese has a total of fifty-three parishes. In effect, parishes must try to save themselves. The Archdiocese of Moncton has paid \$10.6 million to sex-abuse victims, and more lawsuits keep surfacing.¹²⁶

3.3.3. EUROPE

Of course, alienation of goods by religious is done outside of the United States and is not always done peacefully or by ecclesiastical authority. Religious have lost ownership of property

¹²⁴ S. DABU, “Community Fights to Keep Neil McNeil at Home,” *CathReg*, 17 January 2010, 4.

¹²⁵ A. HUSTAK, “Hostel at Quebec Shrine Closed for Good,” *CathReg*, 31 December 2017-7 January 2018, 3.

¹²⁶ HOEGLER, “20 Moncton Parishes Facing Closure,” 3.

under various people and circumstances, such as in Poland after 1945,¹²⁷ the Netherlands, France, Austria,¹²⁸ Puerto Rico,¹²⁹ Italy,¹³⁰ the Protestant Reformation,¹³¹ and England under Henry VIII. Sometimes, ecclesiastical property was forcibly taken and used to fund state projects.¹³²

Simple carelessness can also cause faulty alienation. The Apostolic Signatura heard a case involving mergers and relocations of Spanish women religious institutes and houses. Goods of a suppressed Spanish monastery were transferred to the diocesan archives, and sisters from the suppressed monastery transferred to a new monastery in another diocese. At some point, the suppressed monastery's inventory omitted to mention the goods in the archives. The superior of the new monastery claimed ownership of those goods but the diocesan archivist disagreed. The Signatura respected Spanish civil law and decreed that the goods belonged to the diocesan archives.¹³³

3.4. CONSEQUENCES OF INVALID OR ILLICIT ALIENATION

The Church suffers materially and spiritually from incorrectly-executed alienations. This harm includes material losses, intangible losses, and intrusion by civil law courts into matters that should be handled through canon law and ecclesiastical courts.

¹²⁷ L. ŚWITO, *Alienacja majątku kościelnego w diecezjach rzymskokatolickich w Polsce*, Olsztyn, Studio Poligrafi Komputerowej „SQL,” 2010.

¹²⁸ M. MEGANCK and X. CLAES, *Le patrimoine monastique en région bruxelloise: Intégration dans la ville contemporaine*, Brussels, CFC-Éditions, 2009, 19, 21.

¹²⁹ A. HERNÁNDEZ RUIGÓMEZ, *La desamortización en Puerto Rico*, 1987.

¹³⁰ A. GIOLI, *Monumenti e oggetti d'arte nel Regno d'Italia*, 1997; C.M. FIORENTINO, *Chiesa e stato a Roma negli anni della destra storica, 1870-1876: Il trasferimento della capitale e la soppressione delle corporazioni religiose*, Rome, Istituto per la storia del Risorgimento italiano, 1996; G. GIAMMARRIA, *Le proprietà de bendettini sublacensi in Campagna: Alatri, Anagni e Fiuggi*, Anagni, Istituto di storia e di arte del Lazio Meridionale, Centro di Anagni, 1987.

¹³¹ D.C. MCLEAISH, *The Laws of the State of Texas Affecting Church Property*, Washington, Catholic University of America Press, 1960, 41-42.

¹³² MEGANCK and CLAES, *Le patrimoine monastique*, 19, 21.

¹³³ SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *coram* STICKLER, 13 June 1987, prot. no. 12230/80, in *REDC* 47 (1990), 269-274, English translation in W.L. DANIEL (trans.), *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura, Official Latin with English Translation*, Montréal, Wilson & Lafleur Limitée, 2011, 187-202.

3.4.1. MATERIAL LOSSES

This is the most obvious form of loss for the Church. Properties may need to be sold off to pay creditors.¹³⁴ Alienation of ecclesiastical goods to pay damages for abuse of minors is especially painful for the Church.¹³⁵ Sex abuse scandals have led to bankruptcy filings by several American dioceses, including Portland in 2004 and San Diego in 2007. At least \$1.2 billion has already been paid out for settlements in the United States.¹³⁶ People may be scandalized if money from parish collection plates, donations, and the proceeds of alienation of ecclesiastical goods are used to pay for pedophiles' and ephhebophiles' court costs. Predatory civil lawyers can treat ecclesiastical goods as prizes for those who feel harmed by the Church or her representatives.¹³⁷ However, public services rendered through Church-associated apostolates are not meant to be gifts to civil corporations.¹³⁸

It is shameful to act like vultures over the spoils of a dying religious community.¹³⁹ If religious members squabble over property, the vow of poverty, instead of being a countercultural witness, could be a meaningless formality and medieval vestige. It would be ironic if the Church, with its emphasis on 'communion,' would rend itself over the issue of alienation of temporal goods.

¹³⁴ KING, "Steward and Servant," 228.

¹³⁵ For example, M. SWAN, "Property Sales are Key to Settlement," *CathReg*, 19 June 2011, 14: "Selling the properties [in northern and eastern Nova Scotia] is a key part of the overall strategy to raise \$18 million by November 2012 in order to satisfy settlement agreements with victims of clerical sexual abuse."; M. SWAN,, "Nova Scotians Find Opportunity in Crisis," *CathReg*, 19 June 2011, 13: "Clerical sex abuse will have cost Antigonish \$18 million by Nov. 2012. That's when the diocese pays the last of three installments to settle a class-action arising from sexual assaults attributed to the deceased Fr. Hugh Vincent MacDonald."; M. SWAN, "Yarmouth's Church Suffers with Town," *CathReg*, 19 June 2011, 15: "What's left of the diocese of Yarmouth [...] now has to raise money to pay for sex abuse settlements past and future by selling real estate."

¹³⁶ M. HOEGLER, "20 Moncton Parishes Facing Closure," *CathReg*, 31 December 2017-7 January 2018, 3.

¹³⁷ KING, "Steward and Servant," 221; W.J. KING, "The Corporation Sole and Subsidiarity," in *CLSAP*, Washington, Canon Law Society of America, 2004, 133-134.

¹³⁸ MAIDA, "Canonical and Legal Fallacies," 1973, 278.

¹³⁹ Cf. Gal 5:15: "[...] take care that you are not consumed by one another."

It is to the Church's advantage for religious to keep accurate inventories of their temporal goods. That way, if those goods are expropriated and acquired by museums or private collectors, the Church would have a description of the property, an idea of where the items went, and what the property's value was.

Alienation of property is complicated by the fact that civil authorities can give a "heritage" designation to certain buildings. Such a designation means that extra-ecclesial permission must be sought before parts of the building can be changed. The criteria used in Ontario to determine "heritage" status are apparently so loose that any Ontario church is eligible for the designation. Expenditure on non-viable church buildings deprives other properties or ministries of funds.¹⁴⁰ Religious communities that run apostolates and are about to be suppressed can thus face formidable simultaneous challenges: they have too few members and cash to maintain their old buildings, so they wish to sell or rent some of this property; civil authorities give a "heritage" designation to at least some of the property; this designation makes the property less attractive to developers, since they will be hampered in how they can change or use the property. As a result of the restrictions, the religious community may lack funds needed for elder care of remaining members, upkeep of whatever property still belongs to it, payment of any damages in scandal-related civil suits, and funding of their apostolates. So, in addition to the pending suppression of their community and possible separation of their members into other communities or long-term care facilities, the apostolates of these religious may founder because of lack of funds that could have been realized from the sale of property.

3.4.2. INTANGIBLE LOSSES

Wrongful alienation might cause the Church to lose money, but loss of confidence among the faithful is far more costly from a pastoral perspective. Canon law is oriented toward the

¹⁴⁰ N. MACCARTHY, "Heritage Designations Can Bind Church's Hands," *CathReg*, 12 June 2011, 17.

salvation of souls.¹⁴¹ As much as possible, contention should be avoided among the faithful.¹⁴² Lawsuits among the brethren¹⁴³ can embolden the Church's enemies and dishearten members of the faithful.

The Church's enemies would like to exploit her temporal goods for themselves rather than for the purposes for which they were given to religious. If the Church runs into trouble by not following its own rules, then civil law is likely to meddle, by invitation or not.¹⁴⁴

Also consider to whom and for what temporal goods are alienated. Sacred goods must not fall into the wrong hands.

Alienation of ecclesiastical property can signal the loss of culture and of memories. In the province of Québec, where seventy-two churches were closed in 2014, Auxiliary Bishop Gaetan Proulx remarked: "It [St. John the Baptist church, which is to be closed because of dwindling attendance and expensive repair costs] was the symbol that the Catholic faith is well established here [...] Churches are to the province of Quebec what castles are to France."¹⁴⁵

As sad as the loss of property can be, the Church must care for people, not only for things. The welfare of surviving religious is a key concern.¹⁴⁶ If people construe that religious are inept or indifferent stewards,¹⁴⁷ they will be less willing to give the Church anything. If

¹⁴¹ Cf. *CIC* c. 1752.

¹⁴² J. CORIDEN, *Canon Law as Ministry: Freedom and Good Order for the Church*, New York, Paulist Press, 2000, 169, 187; HITE, "Property and Contracts," 264.

¹⁴³ Cf. 1 Cor 6:4-6: "If you have ordinary cases, then, do you appoint as judges those who have no standing in the church? ⁵ [...] I say this to your shame. Can it be that there is no one among you wise enough to decide between one believer and another, but a believer goes to court against a believer – and before unbelievers at that?"

¹⁴⁴ M.C. CONNOLLY, "Creative Stewardship among Religious Communities: The Challenge of the 1990s," in *CLSA*, Washington, Canon Law Society of America, 1989, 247 (with respect to equitable compensation of religious) and 239 (with abuse of tax exemption status); KING, "The Corporation Sole," 130-131.

¹⁴⁵ P. VAILLANCOURT, "Historic Quebec Churches No Longer Untouchable," *CathReg*, 21 June 2015, 17.

¹⁴⁶ McDERMOTT, "Religious Institutes," *CLSA Comm2*, 778.

¹⁴⁷ Cf. Lk 16:10: "Whoever is faithful in a very little is faithful also in much; and whoever is dishonest in a very little is dishonest also in much"; KING, "Steward and Servant [...]," 232: "What was harmless inadvertence in decades past may today be culpable negligence if inattention reigns and thus imperils patrimony at the service of the gospel."

religious suspect that Church leaders care more for inanimate objects than for them, filial trust between subjects and superiors will evaporate.

Confidence in the Church has already been shaken by reports of financial irresponsibility, such as Bishop Franz-Peter Tebartz-van Elst's multimillion-euro renovations to his residence and office in Limburg. The diocese of Limburg approached the Vatican to discuss options to make the bishop repay at least some of the money that he spent or lost. The discovery of the bishop's spending led to inquiries into other German dioceses' financial reserves and to revelations that many dioceses' financial records were deficient.¹⁴⁸ This case illustrates the importance of accurate documentation and showcases to the world divisions between bishops and the people in their dioceses.

Even when faith has not dried up, donations might. In Nova Scotia, some people put money in a trust rather than donate it to the Church:

The idea is that those families will release the trusts to the church after all the abuse settlements are concluded. They want their money to go to their parish, not to lawyers or in compensation for the criminality of abuser priests and the incompetence of diocesan administrators who should have known what was happening.¹⁴⁹

These remarks can apply to religious properties as well as diocesan ones. Sex abuse cases like the one at Mount Cashel in Newfoundland have shaken people's confidence in the Church's financial competence.

Loss of confidence in the Church's property management skills may be a small step from doubting the Church in other matters, including spiritual ones. Ultimately people's salvation may be jeopardized. If non-Catholics lose confidence in the Church, evangelization efforts may be impaired because credibility has been eroded. If the Church resembles 'a corporation in fancy dress,' then it holds little attraction for people seeking a more spiritual way of life.

¹⁴⁸ T. HENEGHAN, "Diocese Goes After 'Bishop Bling' for More than \$5 Million," *CathReg*, 2-9 August 2015, 9.

¹⁴⁹ SWAN, "Yarmouth's Church Suffers with Town," 15.

3.5. CANONISTS' ROLES IN ALIENATION OF TEMPORAL GOODS

If civil lawyers are attack dogs, then canon lawyers are watchdogs. Canonists have the opportunity to avoid wrongful alienations through the legal virtues of: 1) *fiducia* (see temporal goods as means to achieve the Church's ends); 2) *peritia* (realize that law is about rights, not things); and 3) *astutia* (be clever and wary).¹⁵⁰

Accurate documentation (see Section 2.4.3) is hugely important. Preservation of canonical and civil ownership will probably require canonists to be involved in rewriting civil law documents, such that title to the property and titles of officials in charge of the property match in civil and canon law.¹⁵¹

Proper documentation helps with another key feature of correct alienation: good communication. This includes civil lawyers, accountants, and financial experts.¹⁵² Inadequate or inaccurate information can foment distrust and resistance. Different viewpoints between religious and bishops can lead either to dialogue or to increased tension.¹⁵³

Advance notice is also important.¹⁵⁴ Encourage religious to plan allocation of their temporal goods long before suppression looms over them. It is better to tackle difficult issues in an emotionally-cool environment than when the institute is in its end stage. However, avoid extremes; too much anticipation and too delayed a reaction are both dangerous.¹⁵⁵

¹⁵⁰ KING, "Steward and Servant," 221-224.

¹⁵¹ CAFARDI, "Closing Churches [...]," 228.

¹⁵² CORIDEN and MCMANUS, "The Present State," 153; MORRISEY, "The Directory for the Administration," 277; D'AURIA, "Alienation of Temporal Goods," 36, 38, 40, 45-46, 48; P.E. CAMPBELL, "Financial and Civil Law Considerations," in *CLSAP*, Washington, Canon Law Society of America, 1984, 83.

¹⁵³ T. BAHILLO RUIZ, "Las relaciones entre obispos y religiosos en la Iglesia: Realidad y perspectivas a los XXX años del *Mutuae relationes*," in *Estudios Eclesiásticos*, 83 (2008), 548.

¹⁵⁴ MCDERMOTT, commentary on c. 616 §1, *CLSA Comm2*, 778: "[...] a concern for the people of God and mutual relations with the bishop would prompt the supreme moderator in case of suppression [...] to give ample advance notice"; MORRISEY, "Planning for the Demise," 549; MORRISEY, "The Directory for the Administration," 277.

¹⁵⁵ J.-P. DURAND, "Extinctions et suppressions canoniques des monastères, instituts religieux et sociétés de vie apostolique," in *Année Canonique*, 52 (2010), 173.

Canonists can also help with education; some people must be very knowledgeable about canon law, others not so much.¹⁵⁶ Trustees need formation and updates.¹⁵⁷ Religious institutes require finance officers,¹⁵⁸ so it is only fair that these officers be properly trained as good stewards. Canonists can help write quick-reference information sheets, handbooks, or template forms to help religious do correct alienation. Ideally, “best practices”¹⁵⁹ and good business practices¹⁶⁰ should have been researched and implemented.

It is important for canonists, religious, and civil lawyers to understand and appreciate canon law, especially as it relates to religious life, in order to correctly implement the law.¹⁶¹

In addition, studies in comparative law broaden one’s knowledge of law and suggest ideas to improve one’s own legal system. What can the Church learn from the past? When a new Code of Canon Law is drafted, what changes should be included about temporal goods of suppressed religious communities?

The more knowledge that is available, the better equipped religious will be to correctly and sanely alienate temporal goods during suppression. Generally, religious should consider the following: the value of the alienated property; to whom the item will be alienated and its likely use or abuse by the new owner; and the financial condition of their religious institute or house¹⁶² (e.g., if proceeds of the sale are needed for important projects or for care of remaining members).

¹⁵⁶ CORIDEN, *Canon Law as Ministry*, 149.

¹⁵⁷ F. MORRISEY, “Trustees and Canon Law,” in *Health Progress*, vol. 83, no. 6 (November-December 2002), 14.

¹⁵⁸ Cf. *CIC* c. 636 §1.

¹⁵⁹ RENKEN, “Penal Law and Financial Malfeasance,” 6; KING, “Steward and Servant,” 234.

¹⁶⁰ CAMPBELL, “Financial and Civil Law Considerations,” 82.

¹⁶¹ For instance, EUART, “Religious Institutes and the Juridical Relationship,” 113: “[...] canon 668 develops how the notion of dependence is lived out on a practical level [...] It is also a canon to which civil attorneys and treasurers of religious institutes should be attentive.”

¹⁶² Cf. *CIC* c. 1292 §4.

Some places seem to have had habitual disregard for canon law.¹⁶³ In response, Adam Maida wrote:

You might say, “Father, it has always been done this way. There is no bishop in the country that does it your way.” I can only say that the law of the Church *is* the law of the Church. It has not been abrogated, nor has it been modified for us. Even our practice of ignoring it will not make it go away. It is there and it is applicable.¹⁶⁴

Poorly-done alienation carries with it serious consequences that also will not go away. People must know, care, and be determined to follow through on correct procedures for alienation of temporal goods.

¹⁶³ CORIDEN and MCMANUS, “The Present State,” 141: “Certain key provisions of the *Code* have not been consistently observed in the United States, e.g., the regulations for the conveyance of church property [...] and this non-observance has been known and at least tolerated for decades.”

¹⁶⁴ A. MAIDA, “Canon Law Implications of Real Estate Transactions – Impact of the New Canon Law,” in *CathL*, 27 (June 1982), 222-223.

CONCLUSION

It would be inadvisable for an individual to die intestate; similarly, it would be inadvisable for a religious institute to lack clear plans for disposing of its temporal goods in case of immanent extinction. Precise language and good record-keeping are essential in the suppression of religious institutes or houses and alienation of their temporal goods. There must be a clear understanding of what is owned, what is merely entrusted, which apostolates have their own existence and personality recognized in civil law, and which goods can be alienated. The good administration expected in *CIC* c. 1284 cannot be carried out if stewards are ignorant about correct alienation of temporal goods.

If making proper provision for temporal goods is so important and regulated, why is it sometimes still poorly done? Upheaval around alienation in the 1960s resulted in sometimes inadvertent and costly loss of properties from the Church. The process of suppression triggers high emotions and possibly distorted thinking. This is not conducive to clear-headed thinking about alienation, which can make the Church's temporal goods more vulnerable to predation in civil lawsuits. Canonists, in cooperation with civil lawyers and financial experts, can help plan well in advance and make an already noxious process less painful. Laws about alienation of temporal goods already exist. What is needed is increased awareness of those laws and compliance with them. Civil lawyers might be tempted to plunder the Church's goods if correct alienation is neglected.

The financial and even spiritual welfare of the faithful may depend on how well alienation is seen to be carried out in religious institutes.

Considerations go beyond ensuring that the physical goods of the suppressed institutes are properly looked after. The welfare of remaining members of religious institutes, those 'in-

house' and those separated from the institute, is one of the foremost considerations in correct alienation of temporal goods. St. James wryly reminds us to care about physical needs and spiritual well-being.¹⁶⁵

Alienation of temporal goods of religious matters because:

- Large sums of money may be involved.
- Specific permissions are needed in order to dispose of ecclesiastical goods.
- The wishes of founders and donors (or their heirs or executors) must be respected. If the Church's reputation as 'recipient' is damaged, few people may be willing to entrust their hard-earned property to the Church's keeping.
- Remaining members may be traumatized by the impending suppression of their institute and may not be thinking clearly enough to prudently allocate goods during the end stages of their existence. Much like a 'living will' for physical persons, provisions for temporal goods of juridic persons should be done at a time when the people concerned are relatively healthy and lucid.
- The Church must have enough material resources to carry out her mission.

Ideally, religious institutes will have properly provided for their temporal goods through means that are canonically and civilly valid. Unfortunately, this ideal is not always realized.

Perhaps little can be done about past wrongful alienations, but much can be done in future. One of the best means is close cooperation between the Church's hierarchy and religious to ensure that nothing – neither the people nor the things that make up juridic persons – is left to chance. If the Church does not learn from past indiscretions or mistakes, she might repeat or even worsen them.

¹⁶⁵ James 2:15-16: "If a brother or sister is naked and lacks daily food, ¹⁶and one of you says to them, "Go in peace; keep warm and eat your fill," and yet you do not supply their bodily needs, what is the good of that?"

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