

THE RELEVANCE OF CANON LAW IN A BANKRUPTCY PROCEEDING

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I. Introduction

A petition in bankruptcy has been filed by several Roman Catholic dioceses in the United States in response to the numerous lawsuits and threats of lawsuits against the diocese as a result of the sexual abuse claims against each of them. An editorial and an article quoting a nationally known bankruptcy lawyer in the press provides the frame of reference for the following comments concerning the relevancy of canon law in bankruptcy proceedings involving a Roman Catholic Diocese as the Debtor, and a corporation sole that holds assets of the church, some of which certainly belong to the Debtor Diocese.

In the article, the lawyer is quoted to have said that the bankruptcy court may have more power than the bishop to seize

parish property.¹ Nothing, not schools, rectories, hospitals or earmarked charitable donations “can be walled off.”² The lawyer suggests that the bankruptcy court has the power to seize the property of a parish, a non-debtor.³ An editorial in the same paper asserted that “canon law has no more standing in a federal bankruptcy proceeding than the bylaws of any corporation, which is to say none.”⁴

One of the issues that is likely to be contested in the bankruptcy proceeding that provokes this speculation is what role the canon law of the Roman Catholic Church will have in the bankruptcy court’s determination of the rights of the parish and the rights of the diocese to that portion of the property titled in the corporation sole that is actually acquired by distinct parishes.⁵

The bankruptcy petition filed in the U.S. Bankruptcy Court, District of Oregon is captioned the “Roman Catholic Archbishop of Portland, OR, and successors, a corporation sole, aka

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¹ Joe Feuerherd, *Portland Bankruptcy Seen as High-Risk Strategy*, NAT’L CATHOLIC REP., July 30, 2004, available at http://natcath.org/NCR_Online/archives2/2004c/073004/073004h.php.

² *Id.*

³ *Id.*

⁴ *Bankruptcy Filing Sets Dangerous Precedent*, NAT’L CATHOLIC REP., July 30, 2004, available at http://natcath.org/NCR_Online/archives2/2004c/073004/073004z.htm.

⁵ The Code of Canon Law was promulgated by Pope John Paul II in January 1983. It is identified as 83CIC which is Latin for *Codex Iuris Canonici*. Each statement of a norm is called a canon. The official language of the 1983 Code of Canon Law is Latin. The English translations used in these comments are taken from the CODE OF CANON LAW LATIN-ENGLISH EDITION NEW ENGLISH TRANSLATION (1999). 1983 CODE c.515 defines a parish as follows:

§ 1. A parish is 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.

§ 2. The diocesan bishop alone is competent to erect, suppress or alter parishes; he is not to erect, suppress or notably alter them without hearing the presbyteral council.

§ 3. A legitimately erected parish has juridic personality by the law itself.

1983 CODE c.515 (emphasis added).

Archdiocese of Portland in Oregon aka Archbishop of Portland in Oregon.”⁶ The bankruptcy petition filed in the Bankruptcy Court for the District of Arizona is captioned “The Roman Catholic Church of the Diocese of Tucson *aka* The Diocese of Tucson, an Arizona corporation sole.”⁷

Presumably, the property descriptions in the deeds identify property of the diocese and of each parish community. The Canon Law of the Roman Catholic Church is clear that property acquired by a parish belongs to the parish.⁸

Thus, the Diocese of Tucson, for example, is claiming that mere title to the Parish Real Property which is in the name of the Diocese is enough to establish ownership by the Parish.⁹ Further, the Diocese does not have any equitable, beneficial or proprietary interest in the Parish Real Property.¹⁰ “Upon the filing of a bankruptcy petition, a separate entity – the estate – is created and is comprised of all of the debtor’s assets.”¹¹ The Tort Claimants¹² presumably will argue that all of the property titled in the corporation sole constitutes the bankruptcy estate of the Debtor Diocese and therefore is subject to the payments due the Tort Claimants and other unsecured creditors of the Debtor Diocese.

The editorial quoted in the opening paragraphs of this article perhaps offers a rather broad and overly simplistic conclusion on the irrelevance of Roman Catholic canon law to the Court’s determination of the availability of a portion of the property,

⁶ Bankruptcy Petition at 1, *In re* Roman Catholic Archbishop of Portland, Oregon, No. 04-37154 (Bankr. D. Or. 2004) (on file with author).

⁷ Disclosure Statement Regarding Plan of Reorganization dated September 20, 2004 at 1, *In re* Roman Catholic Church of the Diocese of Tucson, No. 4-04-04721 (Bankr. D. Ariz. 2004) (on file with author) [hereinafter Disclosure Statement].

⁸ See 1983 CODE c.1256 “. . . ownership of goods belongs to that juridic person which has acquired them legitimately”

⁹ See Disclosure Statement, *supra* note 7, at 19.

¹⁰ *Id.*

¹¹ Joy Flowers Conti, *Anticipating and Avoiding Bankruptcy – Liability Exposure from Related Entities*, in THE ADMINISTRATION OF CHURCH PROPERTY: A JUBILEE INTERNATIONAL AND ECUMENICAL CANON LAW CONFERENCE, 231, 248 (Joseph Fox, O.P., ed., 2001).

¹² The Tort Claimants are generally those who may be identified in a bankruptcy proceeding as having a claim against the Debtor Diocese either because of a settlement of a claim against the Debtor Diocese or because of the successful litigation of the tort claims against the Debtor Diocese. See Disclosure Statement, *supra* note 7, at 9.

titled in the corporation sole acquired by Parishes, to satisfy the obligations due to claimants and creditors only of the Debtor Diocese. The potential complexity in the Court's determination of the rights of the Debtor Diocese or the Parish to the disputed property titled in the corporation sole may result from two factors: the distinctiveness of a Parish vis-à-vis a Diocese under Roman Catholic canon law and the special attributes of a corporation sole.

A parish and a diocese are separate canonical entities in the internal structure of the Roman Catholic Church. The canonical term for a distinct legal entity created by an act of the canonical competent authority or by canon law itself is a juridic person.¹³ In the legal system of the Roman Catholic Church, every public juridic person, under the supreme authority of the Roman Pontiff (the Pope), is the owner of the property that it has acquired by any just means.¹⁴ Therefore, every parish, because it is a public juridic person by canon law, itself has all rights to the real and personal property that result from the parish's acquisition of such property by any just means.¹⁵ The theological definition of a parish stated in canon law is a *community* of Christian faithful within a defined territory.¹⁶ It is important to note that the theological concept in canon 515, which distinguishes the parish from other public juridic persons generally, is that a parish is, theologically, a *communitas*, not simply a *universitas*, an aggregate of persons.¹⁷ Further, parish property is ecclesiastical (Church)

¹³ 1983 CODE c.113, § 2. In the Church, besides physical persons, there are also juridic persons that are subjects in canon law of obligations and rights that correspond to their nature. See also 1983 CODE c.116, § 2. There are two classes of juridic persons in the Church: public juridic persons and private juridic persons. A parish is a public juridic person. See also 1983 CODE c.1257. All temporal goods of a public juridic person in the Church are ecclesiastical goods and governed by the canons of 1983 Code. See Nicholas Cafardi, *The Availability of Parish Assets for Diocesan Debts: A Canonical Analysis*, 29 SETON HALL LEGIS. J. 361 (2005), which provides a fuller explanation of the canonical scheme of 1983 Code. This author will limit references to specific canons either in their full-text or simply to a concept that is relevant to the context of this paper because the reader can consult the work of Nicholas Cafardi for a more detailed supporting explanation of the canonical structure of the Roman Catholic Church. *Id.*

¹⁴ 1983 CODE c.1256.

¹⁵ See 1983 CODE c.1259.

¹⁶ See *supra* note 5.

¹⁷ 1983 CODE c.515.

property governed by the canons of the 1983 Code. It must also be noted that as a public juridic person, the parish is a separate and distinct canonical entity which once created by the bishop has rights as stated in 1983 Code. The 1983 Code is not created by or subject to modification or abrogation by the bishop.¹⁸ The pastor represents the parish in juridic affairs and the pastor is to take care that the property of the parish is administered according to the norms of the 1983 Code. The pastor must see to it that no harm comes to the assets of the parish.¹⁹ Presumably parishes will be before the Court claiming their sole right vis-à-vis the diocese to that portion of the property titled in the corporation sole that the parish has acquired. Consequently, the Court will be asked to address the rights of the parish and the diocese to that property that each claims belongs to it. The language on the face of the deeds of the corporation sole may not contain any explicit "in trust" language. Therefore, it appears that the argument of Tort Claimants may be as follows: the corporation sole has a fee simple ownership with no restrictions on the ownership rights of the titleholder. All assets titled in the corporation sole are Diocesan assets. In response, and in addition to arguments based in American law, the Dioceses and the Parishes may advance

¹⁸ 1983 Code is promulgated by the Pope and is the law applicable to the universal Church of the Latin Rite. 1983 Code was promulgated on January 25, 1983. For an English translation of *Sacrae Disciplinae Leges*, the Constitution promulgating the 1983 Code of Canon Law, see 1983 CODE at xxvii. *Sacrae Disciplinae Leges* explains the theological purpose of the Code, in part, as follows:

Since the Church is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to it, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined; in order, finally, that common initiatives undertaken to live a Christian life ever more perfectly may be sustained, strengthened and fostered by canonical norms. Finally, by their very nature canonical laws are to be observed. The greatest care has therefore been taken to ensure that in the lengthy preparation of the Code the wording of the norms should be accurate, and that they should be based on a solid juridical, canonical and theological foundation.

Id. at xxxi.

¹⁹ 1983 CODE c.1284; see also 1983 CODE cc.519, 522, 526-34, 540 (describing some of the duties of a pastor or parochial administrator).

arguments based in Roman Catholic canon law to exclude the property acquired by the Parishes titled in the corporation sole from the bankruptcy estate that is legally available to make payments due by the Debtor Diocese to its Tort Claimants and other unsecured creditors of the Diocese.²⁰

The corporation sole is a special type of religious corporation. The nature, status and identity of the corporation sole are created by a specific act of the state legislature. As will be illustrated later in this discussion, many of the current state statutes specifically incorporate church law in the statute authorizing the corporation sole.²¹ This fact makes canon law relevant. The relevancy of canon law to the special nature of the corporation sole can be stated in a very practical way. Can the American Bankruptcy Court ignore the state statute's incorporation of canon law in its definition of a corporation sole? In its determination of rights of a diocese and a parish to property of the Church titled in the corporation sole, can the Court avoid First Amendment and other constitutional protections of the corporation franchises granted by the state? In the adjudication of rights of the diocese and the parish, if the Court ignores the rights and relationships established by the universal canon law of the Roman Catholic Church that are based on its theological self-perception, can the Court cause the corporation sole to sell or encumber parish property which does not belong to the diocese in canon law? Can the Court compel the bishop, who acts in the corporation sole, to violate the oath and authority of his ecclesial office in matters of church property? Can the Court ignore the fact that secular law itself often deems the property functions of the ecclesial office as defined by church law to be the corporation sole? These are the legal and practical implications that need to be addressed if it is argued that canon law has no relevance in the bankruptcy proceeding of the named Debtor Diocese whose assets are titled in a corporation sole.

The scope of this article is limited to addressing only the threshold question of the foundational relevance of canon law to

²⁰ See Disclosure Statement, *supra* note 7, at 19-22.

²¹ See WASH. REV. CODE ANN. § 24.12.010 (West 2004); COLO. REV. STAT. § 7-52-101 (2004); MONT. CODE ANN. § 35-3-202 (2004); NEV. REV. STAT. ANN. § 84.020 (West 2004); MICH. COMP. LAWS ANN. § 458.1 (West 2004); OR. REV. STAT. § 65.067 (2004); ARIZ. REV. STAT. ANN. § 10-11902 (2004).

the adjudication of rights of the Parish and the Debtor Diocese in regard to specific portions of the property titled in the corporation sole. Once the relevancy of canon law is established, its application in the interfacing of canon law and American law in the resolution of the specific issues before the Court ultimately depends upon the facts and legal arguments before the Court which will certainly include among other areas of law, constitutional, trust and corporation law, as they become relevant in the context of the bankruptcy proceedings.

The following comments focus only on the relevancy of canon law to the legal structure and status of a corporation sole. These comments are further limited to the underlying issue that needs to be resolved by the Court before addressing the ultimate distribution of property for the payment of claims of the Tort Claimants and other Claimants and unsecured creditors of the Debtor Diocese. The preliminary issue is whether all of the property, “merely titled” in the corporation sole, is part of the bankruptcy estate and, therefore, available to pay Tort Claimants and other Claimants and unsecured creditors of the Debtor Diocese. If the Court decides it is, then the second issue is the priority of the claims of the Parish as Claimants, Tort Claimants and other unsecured creditors of the Debtor Diocese. If the Court decides that property claimed by the Parish is excluded from the bankruptcy estate, then the second issue – the priority of Parish Claimants – may not need to be addressed. Either way, the Court will be venturing into the internal life of the Church by determining the rights internally among juridic persons in a church polity. The rights of these juridic entities are stated in the codified law of an ecclesial body, the Roman Catholic Church. Given the clarity of 1983Code, there is no internal dispute between the juridic persons in the Church, the diocese and the parish, concerning rights to parish property.²² Ironically, the ecclesial dispute, the conflict between parish and diocese, pastor and bishop may be created by the Court’s action.

In support of the foundational relevance of canon law to the determination of the primary issue of the rights of the diocese and parish to property titled in the corporation sole and derivately of

²² 1983 CODE cc.515, 1286.

that determination, the claims of the Parish Claimants vis-à-vis Tort Claimants and other unsecured creditors, the following is proposed. First, canon law is relevant because it is incorporated by the state legislature in the statutory language creating a corporation sole. Second, the incorporation of canon law is, therefore, relevant to the legislature's definition of the legal capacity of the corporation sole. Sometimes the ecclesial office itself, which is in conformity with church law, is deemed or is described as the corporation sole.²³ This legal capacity determines the authority of the corporation to act. The authority to act according to church law is relevant to the legal disposition of the primary issue of the rights of the diocese and of the parishes to property "merely titled" in the corporation sole. The California statute, for instance, explicitly states that the religious organization governs the corporation sole.²⁴ This primary issue, which in effect is at the root of defining the bankruptcy estate available to pay claimants and creditors, needs to be resolved before the Court's resolution of the distribution of the bankruptcy estate to the Debtor's claimants and creditors. Third, canon law, at the very minimum, is relevant to the necessary finding of facts concerning the underlying relationship of the diocese and the parish that will be relevant to the application of constitutional and trust law which the Court may need to address in determining the definition of the bankruptcy estate of the Debtor titled in the corporation sole.

These propositions are based on three selected fundamental legal principles in American law. The first principle of corporation law is the legal notion of corporate capacity that includes statutorily authorized corporate purposes and powers of the corporation stated in the state's corporation law and incorporated in its Articles of Incorporation or Charter (hereafter, Articles or Charter).²⁵ The corporation sole is a unique type of corporation created by specific provisions in state corporation statutes to protect the internal order and autonomy of churches in regard to the acquisition, administration and

²³ See, e.g., COLO. REV. STAT. § 7-52-102 (2004); ARIZ. REV. STAT. ANN. § 10-11904 (2004).

²⁴ See CAL. CORP. CODE § 10013(c) (West 2004).

²⁵ 19 C.J.S. *Corporations* §§ 554, 556 (1990).

alienation of church property. The unique status as a special type of religious corporation created by the legislature cannot be ignored. The second principle is the charter is constitutionally protected as a contract.²⁶ The franchise “to be” a corporation granted to the incorporator, the church acting through an ecclesial officer statutorily authorized to form a corporation and the franchise to the corporation “to act” as a corporation are granted by the state through the issuance of the Charter²⁷ to the corporation sole. The third principle is the fundamental doctrine that courts must apply law to its finding of facts. The primary determination of the assets that constitute the bankruptcy estate for payment to the Debtor Diocese’s claimants and creditors and the ultimate determination of the merits of various claimants and creditors to payment from the bankruptcy estate may involve the application of property, trust, corporate and constitutional law as well as bankruptcy law. The facts underlying the creation of the corporation sole by the legislature need to be considered and provide the frame of reference for the Court’s adjudication. Likewise, the internal ecclesial relationships are the facts which give the meaning of the word “church.” The benefit of the church is the purpose for which the corporation sole is constituted. These facts and the nature and purpose of the corporation sole need to be considered by the Court in its determination of the bankruptcy estate available to pay claimants and other creditors of the Debtor Diocese. The facts of the relationships within the Roman Catholic Church are defined by canon law.

II. The Legislature Has Incorporated Canon Law As An Essential Property or Attribute of the Corporation Sole

A corporation by definition is a creature of the legislature.²⁸ The corporation’s existence and capacity are derived from positive authorization by government authority²⁹ and functions only in

²⁶ See *Tr. of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (4 Wheat.) (1819).

²⁷ See *id.*; HENRY WINTHROP BALLANTINE, *BALLANTINE PRIVATE CORPORATIONS* § 3 (1927).

²⁸ 18 AM. JUR. 2d *Corporations* § 1 (2004); *Harbison v. Strickland*, 900 So. 2d 385, 389 (Ala. 2004); *Tr. of Dartmouth Coll.*, 17 U.S. at 518.

²⁹ See BALLANTINE, *supra* note 27, § 3; 18 AM. JUR. 2d *Corporations* § 2 (2004); 19 C.J.S. *Corporations* § 554 (1990).

accord with those powers conferred on it by the law creating it.³⁰ The corporation's authority to act is given through the issuance of Articles or a Charter to it by the state. It is important to distinguish three provisions in the Articles of a corporation. Because it is a creature of the legislature, a corporation, whether a business corporation, a corporation aggregate or a corporation sole, has only the properties or attributes and rights and obligations conferred by the legislature.³¹ These properties define its legal capacity to act as a corporation. Statutes describe at least three essential and defining attributes of a corporation: (A) its capacity to act in perpetuity as a separate legal entity; (B) the powers of a corporation; and (C) the use of its powers to fulfill its authorized purposes.³² It is important to understand the distinct, but interdependent, function of these properties described in the Articles of a corporation.

A. *Capacity To Be A Corporation*

Given the modern comfort with corporations, one may not distinguish capacity "to be" a corporation from the capacity of a corporation "to do" activities described in the purposes and powers of the corporation. Ballantine in his classical work on corporations distinguishes the capacity "to be" a corporation from the capacity of the corporation "to do" its activities.³³ Ballantine explains that the corporation is actually the result of the first franchise from the state given to the incorporator "to be" a corporation.³⁴ The corporation's being logically precedes its powers to act. Modern statutory statements of powers often include corporate existence, its perpetuity and the power to do all things necessary or convenient to carry out its affairs. Thus, statutory statements of power often also include the concepts of

³⁰ See *Southland Rentals, Inc. v. Walker*, 147 So. 2d 73, 74 (La Ct. App. 1962) (citation omitted). See also *Seven Springs Farm, Inc. v. Croker*, 801 A.2d 1212, 1216 (Pa. 2002) (citation omitted).

³¹ 18 C.J.S. *Corporations* § 19 (1990). See also LARRY D. SODERQUIST & A.A. SOMMER, JR., *UNDERSTANDING CORPORATION LAW* 6 (1990).

³² See, e.g., Rev. Model Nonprofit Corp. Act §§ 2.02(b)(1); 3.01; 3.02 (1987) [hereinafter RMNCA].

³³ BALLANTINE, *supra* note 27, § 3; see also 18 AM. JUR. 2d *Corporations* § 76 (2004).

³⁴ BALLANTINE, *supra* note 27, § 3.

the capacity “to be” and the capacity “to do.”³⁵ The power “to be” and the power “to do” are old distinctions in our law. Courts continue to use the distinction in issues involving corporate actions.³⁶

Interestingly, the notion of a corporation and of the special type of corporation referred to as the corporation sole can trace its legal evolution to Roman Catholic canon law.³⁷ O’Hara in his succinct historical summary of the modern corporation sole in the United States begins with Blackstone’s identification of the defining attribute of a corporation sole as the capacity of a “particular station,” not a person, to act in perpetuity.³⁸ Blackstone states:

[c]orporations sole consist of one person only and his successors, in some particular station, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural person they could not have.

It is worth noting that in this definition, it is a “particular station” itself that is incorporated. The law endows the “particular station” with legal capacity to act in perpetuity. The legal capacity to act attributed to a “particular station,” either in a civil society or a religious society, is the unique attribute of the corporation sole from its origin in common law over five centuries ago to its present defining attribute in modern American statutes authorizing the corporation sole. In modern statutes, this “particular station” is referred to as the person or office of a religious group or church, which by the law of that church is authorized to act in the name of the church, specifically in matters related to managing the property of the church.

Through the act of secular American law, the capacity to be a corporation and to act with all of the rights and privileges granted by the state to corporations is conferred on the office of the church that the church itself vests with the authority to acquire,

³⁵ RMNCA § 3.02.

³⁶ See *Twp. of Lansing v. City of Lansing*, 97 N.W.2d 128, 133 (Mich. 1959); *Bankers Trust N.Y. Corp. v. Dept of Fin.*, 593 N.E.2d 275, 277 (N.Y. 1992).

³⁷ James B. O’Hara, *The Modern Corporation Sole*, 93 DICK. L. REV. 23 (1988).

³⁸ *Id.*

³⁹ *Id.* at 23 (quoting 1 W. BLACKSTONE, COMMENTARIES 469).

administer or alienate church property. For example, the Arizona statute states explicitly that the successor in office by the name or title specified in the Articles of Incorporation is "deemed a corporation sole."⁴⁰ The Montana statute is also explicit "[the] office is incorporated."⁴¹ The language of the modern statutes, explicitly incorporating the church law defining the church ecclesial office and the successors to the office in regard to authority or rights concerning church assets,⁴² and giving this office the capacity to be a corporation distinguishes the corporation sole created at common law and by the states from a one person corporation. The one person corporation permitted in some general business and nonprofit corporation statutes is not to be confused with the corporation sole.⁴³

B. *Powers of the Corporation Sole*

The capacity or power of the corporation itself "to do" is usually included in the state statutes under the title "Powers of the Corporation." The enumeration of powers usually is broad and includes a list of powers, such as the power to sue, to contract, to acquire property, etc. These powers are applicable to individuals and to all corporations generally.⁴⁴ The state statute may vest all corporations, even those with limited purposes, with all of the powers of a natural person or all of the powers necessary to carry out its authorized purposes.⁴⁵

⁴⁰ ARIZ. REV. STAT. ANN. § 10-11904 (2004).

⁴¹ MONT. CODE ANN. § 35-3-202(d) (2004).

⁴² See, e.g., ALA. CODE §§ 10-4-1 to -2 (2004); CAL. CORP. CODE §§ 10002, 10005 (West 2004); COLO. REV. STAT. § 7-52-101 (2004); HAW. REV. STAT. § 419-1 (2003); MICH. COMP. LAWS ANN. § 458.2 (West 2004); MONT. CODE ANN. § 35-3-201 (2004); NEV. REV. STAT. ANN. § 84.030 (West 2004); N.H. REV. STAT. ANN. § 306.6 (2004); WASH. REV. CODE ANN. § 24.12.010 (West 2004); WYO. STAT. ANN. §§ 17-8-110 to 111 (2004); see *Wright v. Morgan*, 191 U.S. 55 (1903) (corporation sole only exists by specific authorization).

⁴³ WILLIAM MEADE FLETCHER, 1 FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 50 (West Group, perm. ed., rev. vol. 1999); H. C. HENN & J.R. ALEXANDER, LAW OF CORPORATIONS §§ 6, 258 (West 3d ed. 1983).

⁴⁴ See, e.g., RMNCA § 3.02 (1987).

⁴⁵ SODERQUIST & SOMMER, *supra* note 31, at 7-8, 10. See *City of New York v. Comtel, Inc.*, 293 N.Y.S.2d 599, 608 n.3 (1968). "A general franchise gives a corporation the right to exist and do business by virtue of the corporate powers granted it by the [s]tate." *Id.*

Several statutes are explicit in stating that the power in the corporation sole to acquire, possess, purchase, hold, sell, rent or otherwise dispose of property for the object and purpose of the corporation sole.⁴⁶ The powers of the corporation are exercised within the statutorily defined capacity and purpose of the corporation sole. By explicit statutory incorporation of church law in the corporation sole statute, canon law defines the identity of the incorporator, the office which is incorporated, and consequently, the scope of authority of the corporation sole concerning church property for which it is the record owner. This office, defined by church law, is deemed the corporation by state law. The powers of the corporation, though statutorily broad, can only be exercised validly within the capacity and purpose of the corporation sole.

The capacity and purpose of the office deemed the corporation sole is "in conformity" with church law. Therefore, it is the statutory scheme itself created by the legislature that makes canon law relevant to the existence of the corporation sole and to the authority that the corporation sole has in regard to property titled in its name. A review of statutory language of several statutes illustrates the relationship between the exercise of the powers of a corporation to its statutorily authorized purposes.⁴⁷ The powers of a corporation are broad enough to include powers necessary or incidental to accomplish the objects and purposes for which the corporation sole is formed and not inconsistent with the statutes of the state. It is the purpose of the corporation that controls the exercise of its powers.⁴⁸

⁴⁶ See, e.g., ARIZ. REV. STAT. ANN. § 10-11901 (2004); § 10-11904; HAW. REV. STAT. §§ 419-1, 419-3 (2004); COLO. REV. STAT. § 7-52-103 (2004); WASH. REV. CODE ANN. § 24.12.010 (West 2004); MONT. CODE ANN. § 35-3-205 (2004); MICH. COMP. LAWS ANN. §§ 458.1, 458.271 (West 2004).

⁴⁷ See COLO. REV. STAT. § 7-52-103 (2004); MONT. CODE ANN. § 35-3-205 (2004); NEV. REV. STAT. ANN. § 84.050 (West 2004); WASH. REV. CODE ANN. § 24.12.020 (West 2004). See also 19 C.J.S. *Corporations* §§ 555, 556(a), 557(a) (1990).

⁴⁸ See COLO. REV. STAT. § 7-52-103 (2004); WYO. STAT. § 17-8-112 (2004); MONT. CODE ANN. § 35-3-205 (2004); NEV. REV. STAT. ANN. § 84.050 (West 2004); WASH. REV. CODE ANN. § 24.12.020 (West 2004). See also 19 C.J.S. *Corporations* §§ 558(a)-(b), 559(b) (1990).

C. *Purposes of the Corporation Sole*

Once the state grants corporation status, the corporation exists for the purposes or objectives permitted by law. Generally, these purposes are business, religious, charitable, or scientific. Some corporation statutes may limit the purposes of certain types of corporations. This limitation of purpose differentiates the corporation sole from the general purposes authorized in general corporation statutes. The exercise of the statutorily granted powers may be limited by the nature of their statutorily permitted purposes such as in the case of charitable and religious corporations, especially the corporation sole. For example, several corporation sole statutes state that the purpose or object in establishing the corporation sole is to administer the property of the church, in trust, or for the benefit of religion or for the church or religious denomination which is the object of the corporation sole.⁴⁹ Consequently, a logical reading of the statute suggests that the powers of the corporation are exercised to achieve the purpose of the corporation sole in conformity with church law.

The legislatively authorized legal purpose of the corporation sole is to hold property for the church or religious society. For example, the Arizona statute again provides an example of an explicit statement of the purposes to hold and dispose of the property of the church or religious society.⁵⁰ The definition of church and the rights and relationships among worshipping communities or juridic entities that constitute "church" is a matter of ecclesial law.

In addition to the incorporation of the property management function of the ecclesial office, several of the modern statutes authorizing the corporation sole include explicit references in one provision or another to the role of church law in the operation of the corporation sole. Such references to church law may be found in various parts of the statute usually in the

⁴⁹ See HAW. REV. STAT. § 419-1 (2004); CAL. CORP. CODE, § 10002 (West 2004); MICH. COMP. LAWS ANN. § 458.1 (West 2004); WASH. REV. CODE ANN. §§ 24.12.020, 24.12.030 (West 2004); NEV. REV. STAT. ANN. §§ 84.010, 84.050(1); (West 2004); MONT. CODE ANN. § 35-3-205 (2004); COLO. REV. STAT. § 7-52-103 (2004); WYO. STAT. § 17-8-112.

⁵⁰ ARIZ. REV. STAT. ANN. § 10-11901 (2004).

definition of the corporation sole or the requirements of statements in the Articles of Incorporation. Some statutes explicitly require the precise name of the ecclesial office, in whom is vested the legal title of property of the Church, and the word "successors" to the office to be in the name of the corporation or to identify how the successor is chosen in the Articles.⁵¹ Other statutes require an identification in the Articles of Incorporation of the "substance of the commission," a document evidencing the right to succession to the office, a brief designation of the authority by which the diocese is created or the way in which ecclesial law fills a vacancy, including the authority to which a bishop is spiritually subject.⁵² California, for example, requires that any amendment to the Articles of Incorporation may need to be approved by the religious body itself and the California law explicitly requires that an attempted dissolution of the corporation can be effected only with a certification that such is being effected by the authorization of the ecclesial body.⁵³ These requirements illustrate and reinforce the relevance and authority of the ecclesial law as an explicit and implicitly stated property or attribute of the legal structure and operation of the corporation sole.

While various statutes may differ in detail, they are consistent with the common law tradition and the modern incorporation of church law in the identity of the ecclesial office that is incorporated as the corporation sole. The conclusion that canon law is relevant, and the argument that it may even ultimately be dispositive of the claims of the diocese and the parishes to their separate and distinct rights to assets for which the corporation sole is a record owner, is based on the special religious nature of corporations sole generally in addition to the explicit language of several of the statutes' incorporation of canon law. The statutes of Oregon and Arizona provide explicit examples. The Oregon statute defines the corporation sole as follows:

- (1) Any individual may, in conformity with the constitution,

⁵¹ See, e.g., NEV. REV. STAT. ANN. § 84.030 (West 2004); ARIZ. REV. STAT. ANN. § 10-11903 (2004); COLO. REV. STAT. § 7-52-102 (2004); OR. REV. STAT. § 65.067(2) (2004).

⁵² See, e.g., ALA. CODE §§ 10-4-2(1)-(2), 10-4-5, 10-4-6 (2004); HAW. REV. STAT. § 419-2 (2004).

⁵³ CAL. CORP. CODE §§ 10010, 10013(c) (West 2004).

canons, rules, regulations and disciplines of any church or religious denomination, form a corporation hereunder to be a corporation sole. Such corporation shall be a form of religious corporation and will differ from other such corporations organized hereunder only in that it shall have no board of directors, need not have officers and shall be managed by a single director who shall be the individual constituting the corporation and its incorporator or the successor of the incorporator.

(2) The name of such corporation shall be the same as the office within the church or religious denomination held by the incorporator, and shall be followed by the words "and successors, a corporation sole."⁵⁴

The capacity to incorporate, "to be" the corporation and to form the corporation, is given to the officer authorized by the church and that officer is authorized to incorporate and to form the corporation and such corporation is in conformity with church law.

The Arizona Corporate Sole statute defines the requirement for formation of the corporation sole as "[a] person *vested with the legal title to property of a church or religious society in conformity with its constitution, canons, rites or regulations . . .* may make and subscribe to written articles of incorporation"⁵⁵

This language indicates that the office and the legal title are vested "in conformity" with church law. "In conformity with" the law of the ecclesial body means what it says.⁵⁶ The Articles of a corporation and corporate transactions need to be read in conjunction with the statute creating it.⁵⁷ The interlocking relationship in the corporate properties of capacity, purpose and powers of a corporation sole, in theory and in practice, cannot be ignored by the Court since it is the legislature, not the Court, who has the exclusive authority to create the legal capacity of the corporation sole. This is the "being" of the corporation sole

⁵⁴ OR. REV. STAT. § 65.067 (2004) (emphasis added).

⁵⁵ ARIZ. REV. STAT. ANN. § 10-11902 (2004) (emphasis added).

⁵⁶ General rules for construction of statutes and contracts are applicable to corporation charters. Charters, including special charters, need to be considered in their entirety and should be read in context of usage and practice. 19 C.J.S. *Corporations* § 559(a), (c) (2004).

⁵⁷ See *Harbison v. Strickland*, 900 So. 2d 385, 389 (Ala. 2004); see also *Seven Springs Farm, Inc. v. Croker*, 801 A.2d 1212, 1216-17 (Pa. 2002).

which is created by secular law. The unique nature of the corporation sole, both from a corporation analysis and from a constitutional analysis, is relevant to the Court's disposition of claims involving church property. Whether a court uses neutral principles or deference or some variation of both approaches, it will have to address canon law as an essential property of the corporation sole because the legislature makes it such.⁵⁸ While First Amendment issues will surely be presented to the court, a First Amendment analysis is beyond the scope of these comments on the foundational relevance of canon law to the nature, structure and function of the corporation sole. The grant by the state of the franchise to be and act as a corporation is given to the church through its ecclesial officer acting as an incorporator.⁵⁹ The grant of the Articles of Incorporation to the corporation sole is a dual contract: one, between the state and the corporation and its stockholders and; two, between the corporation and its stockholders. In this case the corporation sole, the incorporator, acts on behalf of the church; the church is analogous to stockholders. These contracts enjoy constitutional protection.⁶⁰

III. The Charter or Articles of Incorporation Enjoys Constitutional Protection As A Contract Among the State, the Church and the Corporation Sole

Since the 1819 United States Supreme Court decision in *Dartmouth College*, it is a well established principle of constitutional law that the Charter granted by the state is a contract protected by the Constitution of the United States.⁶¹ The legislature cannot impair the contract of an individual charter by subsequent legislation.⁶² Subsequent to the *Dartmouth* decision, the state legislatures explicitly reserved the right to amend the state

⁵⁸ *Jones v. Wolf*, 443 U.S. 595 (1979).

⁵⁹ See *New York v. Comtel, Inc.*, 293 N.Y.S.2d 599, 608 n.3 (1965); *Twp. of Lansing v. City of Lansing*, 97 N.W.2d 128, 132 (Mich. 1959).

⁶⁰ See *Jacobson v. E.H. Blackman*, 401 P.2d 181, 183 (Utah 1956); *Florida Bar v. Town*, 174 So. 2d 395, 397 (Fla. 1965) (addressing the contractual nature of a corporate charter); see generally *Tr. of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (4 Wheat.) (1819).

⁶¹ *Dartmouth*, 17 U.S. at 650.

⁶² *Id.*; see *Jacobson*, 401 P.2d at 183.

corporation statutes.⁶³

The Articles of Incorporation comprise a constitutionally protected contract between the state and the church, its ecclesial officer as the incorporator, and between the state and the resulting corporation sole.⁶⁴ This contract created by the act of the legislature is not changeable by the private act of the Diocese. The franchises granted by state law may be changed by the state only in accord with the reservation of its authority in the enabling corporation statute. Any amendment to the statute needs to be accomplished by public legislative process. Likewise, the bishop cannot change, amend or modify the powers of his office as defined by canon law. The state granted the first franchise to form the corporation on behalf of the church to the ecclesial officer identified by church law. The distinction Ballantine made between the franchise “to be” a corporation and the franchise “to do” continues to be recognized in modern corporation law.⁶⁵ The distinction is relevant to the nature of the contract between the state and the church itself. Ballantine explains that the “franchise to be a corporation belongs to the members in their individual capacity.”⁶⁶ In the situation of the corporation sole, this right belongs to the church which acted through its ecclesially defined officer who is empowered by state law to form the corporation sole. Thus, this primary franchise “to be” a corporation sole granted to the church through its authorized incorporator is a constitutionally protected contract. This primary franchise makes canon law relevant because canon law is an essential and material term of the contract defining who holds the right “to be” a corporation sole. Since Blackstone’s early definition of a defining attribute of a corporation sole as the “particular station”⁶⁷ that is incorporated or by recent statutes deeming or equating the corporation sole with the ecclesial office of the incorporator,⁶⁸ canon law is relevant. The contractual protection of this

⁶³ See, e.g., 15 PA. CONS. STAT. § 501 (2004).

⁶⁴ 18 C.J.S. *Corporations* §§ 45, 46 (1990). See *Aztec Motel, Inc. v. State ex rel. Faircloth*, 251 So. 2d 849, 852 (Fla. 1971); *Jacobson*, 401 P.2d at 183.

⁶⁵ *Equitable Bldg. & Loan Assoc. v. Sandia Sav. & Loan Assoc.*, 515 P.2d 140, 144 (N.M. 1973). See also *supra* note 36 and accompanying text.

⁶⁶ BALLANTINE, *supra* note 27, § 3.

⁶⁷ See *supra* notes 38 and 39 and accompanying text.

⁶⁸ See *supra* notes 23, 40, and 41 and accompanying text.

corporation franchise is the established law of *Dartmouth*.⁶⁹ The American legal protection of this franchise and the incorporation of canon law as a material term of the franchise are also consistent with the legal history and usage of the corporation sole and the plain meaning of the statutory language, “in conformity with” the law of the church.

Ballantine explains the secondary franchise from the state, the franchise “to do,” actually belongs to the corporation.⁷⁰ This “right to be and to act as a corporation . . . is a franchise [T]he powers and privileges other than the mere franchise of being a corporation, - belong to the corporate body as such [T]hey ‘are the franchises of the corporation.’”⁷¹ This distinction helps to analyze the nature of the contract between the corporation sole and the state.

By the incorporation of this “in conformity with” language, the state, in effect adopts as secular law, the church’s identification of both the office and the canonically permitted powers of the ecclesial office “to do” the corporation activities in matters relating to property.

This explanation of the corporation sole’s franchise “to do” parallels principles of corporate law well established since Marshall’s classical definition of a corporation in *Dartmouth*:

[An] artificial being . . . existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence They (the properties) enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use.⁷²

⁶⁹ See generally *Tr. of Dartmouth Coll. v. Woodward*, 17 U.S. 518 (4 Wheat.) (1819).

⁷⁰ *Id.*; see also 18 C.J.S. *Corporations* § 45 (1990); 19 C.J.S. *Corporations* § 554; *Twp. of Lansing v. City of Lansing*, 97 N.W.2d 128, 132 (Mich. 1959); *Equitable Bldg. & Loan Assoc.*, 515 P.2d at 144.

⁷¹ BALLANTINE, *supra* note 27, § 3; see also *Twp of Lansing*, 97 N.W.2d at 132-33.

⁷² *Tr. of Dartmouth Coll.*, 17 U.S. at 636; see also SODERQUIST & SOMMER, *supra* note

Marshall's classical comment applied to the corporation sole practically states the definition and *raison d'être* of the corporation sole. Placing title in the corporation sole of all church property located within the territorial limits of a diocese allows the church the flexibility to handle its own affairs. The changing demographics of worshipping communities in the internal ecclesial life of the church and the historical experience with contemporary complexities of state property law⁷³ are precisely the reason to title all church property in accord with the ultimate hierarchical structure of the local church. It must be remembered that the diocese is theologically defined as a particular church, a portion of the people of God entrusted to a bishop.⁷⁴ A parish is a certain, stable community of faithful within the particular church, but distinct from the diocese. The parish is a certain worshipping community distinct from other parishes from the diocese. In canon law, one parish's rights are distinct from another parish's rights and are distinct from the diocese's rights.⁷⁵ The canon law of the Roman Catholic Church is one of the earliest legal systems shaping the law of Western Europe and England.⁷⁶ It establishes rights of dioceses and parishes and provides administrative and judicial processes in the church to remedy violations of rights among or between juridic persons. In such a church, placing the title of all church assets in one corporation sole in fee simple, may not only be reasonable but prudent especially in light of the trust nature of the corporation sole. The church, relying on the constitutional protection of the corporation franchise and the historical and statutory incorporation of church law and relying on its established theology and canon law, is thus able to hold property "without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances" of dealing with the various property laws.⁷⁷

In the facts of the corporation sole, it is reasonable to argue that the state's explicit recognition of canon law is an essential

31, at 3-6.

⁷³ See Disclosure Statement, *supra* note 7, at 19.

⁷⁴ 1983 CODE c.369.

⁷⁵ 1983 CODE c.515, § 1.

⁷⁶ JAVIER MARTINEZ-TORRON, *ANGLO-AMERICAN LAW AND CANON LAW CANONICAL ROOTS OF THE COMMON LAW TRADITION* 8 n.7 (1998).

⁷⁷ *Dartmouth*, 17 U.S. at 636.

property of the corporation sole expressly conferred on the corporation by the language of the statutes and its Articles of Incorporation. Even if some statutes are not as explicit as others in using “in conformity with” language, there are five hundred years of legal history and practice which establish the reason for the invention and uses of the corporation sole in secular law. From the Declaration of Independence in the United States, the corporation sole was sometimes found in its “pure common law” form, other times in variant forms, mostly in its religious form.⁷⁸ It is now found in its religious form in modern corporation sole statutes.

In the legal context of a corporation sole, “legal nomenclature” may be its own interpreter.⁷⁹ The essential property or attribute of the corporation sole is the integrity of the ecclesial office, deemed the corporation sole, to manage property held for the benefit, purposes and objectives of the church in accord with church law.

If the Court needs to determine who in the church, the Diocese or the Parish, is the owner and has the right to control⁸⁰ property for which the corporation sole is the record holder, the Court must address the “in conformity with” church law language because such language incorporated in the statute goes to the capacity, powers and purposes stated in the charters of the record titleholder. Thus, canon law is relevant as a material term of both corporation franchises. These classical descriptions by Marshall and Ballantine identify the nature of the church’s justifiable reliance on the state franchise “to be” a corporation and for the corporation “to do” “in conformity” with church law. Fletcher, in his treatise on corporations, states that the character of a corporation is defined also by its method of transacting business.⁸¹ In the case of the corporation sole, its method of transacting business is determined by its theology and canon law. Ecclesial law in the Roman Catholic Church, a guide for the ordering of rights and responsibilities in the church, is a juridic expression of

⁷⁸ O’Hara, *supra* note 37, at 28.

⁷⁹ *Id.* at 25.

⁸⁰ See *Jones v. Wolf*, 443 U.S. 595, 610 (1979) (Powell, J., dissenting).

⁸¹ FLETCHER, *supra* note 43, § 51.

its theology.⁸² One contemporary canonist summarizes the practical relationship as:

[I]n theology the Church contemplative is speaking to the people, and in canon law the church active is guiding the faithful. There are not, however, two churches; one and the same church is contemplative and active . . . they naturally support each other. They together reveal something of the internal life of God's covenanted community.⁸³

The state legislature limits the capacity, purpose, powers and the method of transacting the business of the corporation sole to be "in conformity" with church law. The franchise granted to the church and to the corporation sole "to be" and "to do" have the constitutional protection of a contract as long as they meet the state requirement to be "in conformity" with canon law and the provisions of the state law relevant to the corporation sole. This constitutional principle makes canon law relevant, not as "mere bylaws," but as constituent properties or attributes of the corporation sole and, therefore, material terms of its contract with the state. The legal status of the state law and Articles of the corporation sole supersedes the legal effect of bylaws, which operate as regulations among members, directors, and officers⁸⁴ in the corporation. Bylaws can be changed by members or directors. Neither the church nor the state can amend the franchise of the corporation sole "to be" and "to do" by private consent. The franchises are governed by the law at the time at which they were granted.⁸⁵ The legislature may amend its corporation statute only by public legislative processes once it has reserved the right to amend the corporation statute.⁸⁶ The Bishop cannot change the Code of Canon Law promulgated only by the Pope.

The state legislative act deems the ecclesial office the corporation sole and has established that in civil matters the corporation sole has capacity to act validly in relation to property only when it acts "in conformity" with church law. The corporate

⁸² See *Sacrae Disciplina*, *supra* note 18, at xxx-xxxi.

⁸³ See LADISLAS ORSI, *Theology and Canon Law*, in *NEW COMMENTARY ON THE CODE OF CANON LAW*, 1-11 (John P. Beal, James A. Coriden & Thomas S. Green, eds., Paulist Press, 2000).

⁸⁴ See, e.g., 15 PA CONS. STAT. § 5505 (2004).

⁸⁵ See *Aztec Motel Inc. v. Faircloth*, 251 So. 2d 849, 852 (Fla. 1971).

⁸⁶ 18 C.J.S. *Corporations* § 46 (1990).

franchise is coextensive with the articles of incorporation.⁸⁷ The elements of capacity, purposes and powers are the material terms of the Articles of Incorporation. This franchises “to be” and “to do” enjoy constitutional protection as a contract created by the state statute and the granting of Articles of Incorporation.⁸⁸

IV. Canon Law Is Relevant To the Finding of Facts for the Application of Law To the Resolution of the Issues Before the Court

The ultimate resolution of the issues before the court will undoubtedly involve at least First Amendment, trust, property and bankruptcy law. The fundamental argument presented in the Parts II and III of these comments is that the Court must take the Debtor Diocese as defined by church law: it must take the record owner of church property, the corporation sole, as created by the state legislature. Arguably, the corporation sole by definition is inherently in the nature of a trust.⁸⁹ Several statutes have explicit in trust language incorporated in the corporation sole statute.⁹⁰ The statutory language identifying the purpose of the corporation sole for the “benefit” of the Church is trust language. The language “for the benefit of the church” creates the trust duty of the record titleholder to all of the parts of the church, Diocese and Parish. The language “in conformity” with church law protects all parts of the Church, which is the object of the powers of the corporation sole. In the context of discussing a religious corporation sole, Bogert notes that even in instances where there is doubt if language such as bishop or successor creates a religious charitable trust, the grantee may be at liberty to use land as he liked, “except for the restraints imposed by ecclesiastical

⁸⁷ *Emerald Oil Co. v. Tax Comm.*, 267 P.2d 772, 774 (Utah 1954).

⁸⁸ *See* 18 C.J.S. *Corporations* § 46; *Aztec Motel Inc.*, 251 So. 2d at 852; *Florida Bar v. Town*, 174 So. 2d 395, 397 (Fla. 1965). *See also supra* notes 69-70 and accompanying text.

⁸⁹ GEORGE GLEASON BOGERT & GEORGE TAYLOR BOGERT, *THE LAW OF TRUSTS AND TRUSTEES*, § 37 (West Publishing Co., rev'd 2d ed., 1984). *See also* James A. Hayes, Jr., *A Legal Frontier of Church - State Relations In Portland Diocese Chapter 11 Case*, 1, No. 9 *Andr. Bankr. Litig. Rep* 2 (Aug. 27, 2004).

⁹⁰ *See, e.g.*, WASH. REV. CODE ANN. §§ 24.12.020, 24.12.030 (West 2004); MICH. COMP. LAWS ANN. § 458.1 (West 2004); MONT. CODE ANN. § 35-3-205 (2004); CAL. CORP. CODE § 10007(b) (West 2004).

discipline.”⁹¹

In the context of churches, a court may be called upon to determine whether the words on a deed that purport to be an unrestricted fee simple are, in fact, an unencumbered ownership right as opposed to only a statutory record titleholder. Under certain circumstances, the law allows the court to examine facts surrounding the original conveyance and the language of the deed to determine the ultimate legal effect of the words on a deed, which, because of the context of the deed, may be ambiguous. It is precisely when the duties of the title holder, a religious organization, may not be clear that it becomes necessary to examine the factual context in order to determine who in the constitutional law of the church has the right to own and control church property. The language in the corporation sole statute is broadly, the *church*. This broad reference to a church and the definition of the office as described by church law allows all forms of religious polities, such as hierarchical, congregational, connectional, etc., the opportunity to use the corporation sole. Therefore, the meaning of *church* and of the rights of parts of the *church* on whose behalf property is held “in conformity with” church law means that the property is held subject to ecclesial law. These words make the meaning of a title in the corporation sole an issue.

The resolution of the meaning of *church* for purposes of determining for which entity in the *church*, the debtor diocese or the non-debtor parish, involves First Amendment constitutional law and the particular state’s method of resolving First Amendment issues. While a First Amendment constitutional analysis is beyond the scope of this comment, the facts in *Jones v. Wolf* and other Supreme Court cases provide the precedence for the relevance of canon law in matters relating to the rightful claims to property among church entities which arise from ecclesial relationships. Since in any approach to the resolution of property matters in a church, the courts cannot interpret church doctrine, canon law may be controlling on the merits.⁹² At the very

⁹¹ BOGERT & BOGERT, *supra* note 89.

⁹² *Jones v. Wolf*, 443 U.S. 595, 602 (1979).

The First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, “a State

least canon law has evidentiary value.⁹³

The Supreme Court in *Jones v. Wolf* indicated that courts would be bound to give effect to the result indicated by the parties who are voluntarily members in the church regarding property.⁹⁴ Canon law is a clear statement of relationships of entities in the Roman Catholic Church in regard to property. Canon law is relevant to the factual findings of the nature of the trust obligation of the corporation sole for several reasons: (1) Canon law defines clearly the hierarchical structure of the Roman Catholic Church; (2) Canon law is in a cognizable form which also clearly, in juridic norms, sets forth rights of juridic persons in the Church; (3) Canon law is incorporated in the secular statutes defining the inherent capacity, powers and purpose of the corporation sole to hold property for the purposes of and for the benefit of the church. To determine the duties of the record owner for the benefit of "the church" "in conformity with" church law, as the enabling statutes require, it is necessary to accept the purposes and order of the internal relationships created by canon law; and (4) To determine which part of "the church" has the right to ultimate control and disposition of the property, "the part of the church" needs to be understood "in conformity" with canon law. Clearly, since canon law is not subject to interpretation by the Court, it would seem that deference must be given to competent authority in the church to interpret 1983 Code. The 1983 Code is the concrete, cognizable expression of the theological and juridic order of physical and juridic persons in the church. By action of the secular legislature, the 1983 Code is a concrete, cognizable expression of the objects or purposes of the corporation sole.

The Court's interpretation of a deed in its ultimate resolution of the primary question of the rights of the diocese and the parish cannot be interpreted in isolation from the legal facts of the

may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or tenets of faith."

Id. at 602 (citations omitted).

⁹³ For a discussion of the legal difficulties with the decision in *Jones v. Wolf* and a commentary on Powell's dissent concerning the evidentiary consideration of canon law, see Marianne Perciaccante, *The Courts and Canon Law*, 6 CORNELL J.L. & PUB. POL'Y, 171-209 (1997).

⁹⁴ *Jones*, 443 U.S. at 605.

essential character of the corporation sole as defined by secular law. The fact of the legislative design of the statute incorporating canon law is compelling evidence of the intent of the legislature to make canon law relevant to protect the underlying church relationship in matters of rights to property. An act taken by or imposed upon a corporation sole in regard to property titled in the corporation sole is an act of the corporation. The authority of the corporation, qua corporation, to act is found in the Articles read in connection with the statute authorizing the corporation sole's purposes and powers to act.⁹⁵ The bankruptcy court must consider the whole context of the law of the corporation sole in defining the bankruptcy estate of one part of the church, the Debtor Diocese.⁹⁶

Canon law is relevant to another practical fact. If the court ignores the theological and juridic order of the church and the trust nature of the corporation sole and determines that the parish property is part of the bankruptcy estate subject to mortgage or sale in order to pay the Tort Claimants or other claimants and creditors of the Debtor Diocese, the court must have the jurisdiction to enforce its judgment. By legislative design, the corporation sole can be incorporated by and can only take corporate action through an ecclesiastical officer who in turn by secular law is only authorized to act "in conformity" with or authorized by the church law.⁹⁷ The enforcement of the court's decision may ultimately involve the court in attempting to compel the bishop to act in a manner that may not only violate the constitutionally protected contract of the church and the corporation sole with the state created by the corporate franchises discussed above, but it may be a violation of the First Amendment. Practically, the court would be in a position of attempting to use state authority to compel the bishop to do an act not in conformity with church law and in violation of his oath of office. The act of a bishop violating rights of a parish compel the pastor

⁹⁵ See *Harbison v. Strickland*, 900 So. 2d 385, 389 (Ala. 2004); see also *Seven Springs Farm, Inc. v. Croker*, 801 A.2d 1212, 1216 (Pa. 2002).

⁹⁶ See *Seven Springs Farm*, 801 A.2d at 1216-17.

⁹⁷ See for example who may incorporate to hold property for the benefit of religion, NEV. REV. STAT. § 84.010, 84.020 (2004); CAL. CORP. CODE §§ 10003, 10010 (West 2004); ARIZ. REV. STAT. ANN. § 10-11902 (2004); OR. REV. STAT. § 65.067 (2004); WASH. REV. CODE ANN. § 24.12.010 (West 2004).

to act so that the goods of the parish are protected and administered in accord with the norms of 1983 Code cc.1281-1288. As an administrator of church property of the parish, the pastor takes an oath to administer well and faithfully the temporal goods belonging to the parish.⁹⁸ Court action, effectively could create a conflict between the ecclesial rights and duties of a bishop on behalf of a diocese and of a pastor on behalf of a parish.

If the bishop does not need to act, then the transfer of property held in trust for the church requires action by the state. This raises an interesting situation of state action violating rights of parishes grounded in church law and arguably protected by the incorporation of church law in corporation sole statutes. Thus, canon law is relevant (1) to the identity of the beneficiary of the trust of the corporation sole; (2) to the object of the corporation sole; (3) to the office defined by church law; (4) to the practical consequences of compelling an action by the bishop which he may not be able to take in canon law adopted, in part, as corporation law; and (5) to action taken by the state compelling action by a corporation sole whose statutory definition incorporates canon law.

V. Conclusion

It may be true that in a bankruptcy, everything is up for grabs. Given the nature of the facts in the underlying tort actions, one must acknowledge that the bankruptcy court may be motivated to reach far and wide for any basis to deepen the pot. It is precisely when "bad facts make bad law" that it is necessary to remember that the American legal system is a system "of law, not men." There is only one debtor, the diocese, before the court.

This paper has focused only on one dimension for establishing a narrow point: the foundational relevancy of canon law to the bankruptcy court's proceedings in matters relating to one debtor diocese whose assets are titled in a corporation sole. The corporation sole has a statutory structure and a statutory duty which the bankruptcy court cannot change. The corporation sole has a duty to all parts of the church. The charter and legal status of the corporation sole under state law are one, but significant, if

⁹⁸ See 1983 CODE c.1283.

not controlling legal fact relevant to the determination of the bankruptcy estate of the Debtor Diocese.

The relevancy of canon law does not argue, nor does it allow for, any lessening of the condemnation of the actions of the parties in the underlying tort claims. In the American legal system, legal remedies are fixed by legal rules, fairly analyzed and fairly applied. Justice requires no less.