Ownership of Church Property
A Primer

There is no question that the Catholic Church in America can be accurately described as wealthy. The Church has extensive equity investments, assets, vast land holdings, buildings and institutions. But who owns the property?

Catholic Church property belongs, according to canon law, to the juridic person that lawfully acquired it (Canon 1256). A physical person, such as a bishop or a parish pastor, cannot lawfully, according to canon law, own church property; however, physical persons are the administrators of church property.

A juridic person is the canonical equivalent of a civil law corporation, though not precisely equal to it in nature. The 1917 term was a moral person. In the 1983 code, a juridic person is an equity that is the subject of law, rights and obligations. For example, a diocese is a juridic person.

An administrator is a canonical office that confers specific powers — including the power to alienate or change ecclesiastical property — on the incumbent.

Church property, known in the code as ecclesiastical property, is any property or goods owned by a juridic person. It includes land, buildings and their contents, and sacred vessels. It consists of anything that has value.

The main juridic persons under consideration here are: the Holy See, which is the office of the pope, diocese, parishes and religious communities. With regard to religious communities, the main juridic persons are provinces and local communities.

Juridic persons come into existence by a decree, either explicit or implicit, issued by Church authority competent to do so. Only the pope can create a diocese and only a bishop can create a parish.

In the United States, dioceses are created from the territory of other diocese and usually follow state or county lines and divisions as boundaries.

A diocese is never created without the simultaneous appointment of its bishop.

A crucial concept in understanding the tenure and control of church property is the relationship of the diocesan bishop to the juridic person of the diocese. The diocese and the bishop are one. In fact, the ring given a bishop at the time of his ordination symbolizes his marriage to his diocese.

The pope, as the incumbent of the Holy See, is the supreme authority over the entire Catholic Church. However, the Holy See does not own the church property of all Catholic entities subordinate to it. Because the pope has universal jurisdiction over the entire Church, he has eminent domain over church property that belongs to subordinate bodies. This means that although the pope cannot claim ownership of local churches, he has the jurisdiction or power to sell them (Canon 1273).

This means whereby church property is held depends on the regulations of the Code of Canon Law, the nature of the property in question, and the civil laws and customs of the place where the property is located. Church property is held by a variety of civil law means throughout the United States.

In the United States, church property has been mainly held over the past two centuries in three ways: Parish Corporation, Corporation Sole, and in Fee Simple. In 1911 the Vatican, through the Congregation for the Council, issued norms for the U.S. bishops on the acceptable means of holding church property. In this document, the Parish Corporation was deemed the most acceptable to the Vatican in that it was considered most compatible with canon law; Corporate Sole was considered tolerable with some provisions; and Fee Simple was to be abandoned.
This 1911 document is no longer valid. It remained in force only until the promulgation of the 1917 code, but was probably brought back into force by the Vatican after that code was published. However, there is no Vatican decree granting this document force after the 1983 code came into being. Hence, it is no longer in force.

Authority over church property rests with the administrators who are given a variety of powers in the code concerning administration. One of the primary acts of power is the alienation of church property. Alienation is the sale, gift, long-term loan or mortgage, or any action that weakens or eliminates control over the property by the juridic person that holds dominion or ownership.

There are specific norms in canon law for alienation. An administrator of church property (bishop or pastor) cannot simply sell or otherwise alienate any church property under his authority. Depending on the nature of the property and its value, he is required to seek permission. Basically, a bishop cannot alienate any church property whose value exceed $5 million without the explicit permission of the Holy See through the Vatican Congregation of Bishops.

In 1968 Fr. John J. McGrath, a Catholic priest with degrees in Civil law and in canon law, published a small book entitled, *Catholic Institutions in the United States: Canonical and Civil Law Status*. He said, “If anyone owns the assets of the charitable or educational institution, it is the general public. Failure to appreciate this fact has led to the mistaken idea that the property of the institution is the property of the sponsoring body.”

Consequently, according to Fr. McGrath, ownership of schools, hospitals, parish and diocesan properties belongs to those who donated them (or their descendents) and not to the sponsoring bodies, such as the papacy, a diocese or religious order.

Fr. McGrath was primarily concerned with the ownership of educational and health care institutions, which he claimed did not actually constitute church property. This part of his theory was attacked by Adam Cardinal Maida in his address to the Catholic Lawyers Association in 1973.

The Vatican also responded negatively to the McGrath thesis.

By analogy, if the McGrath Theory is applied to diocese and parishes, each entity would be required to have a board of directors or trustees, and 51% of the membership of those boards would be required to be laypersons in order to reflect the fundamental premise of the thesis. This is essentially the same arrangement as the 19th century trustee arrangement that the Vatican had already condemned. Under this arrangement, each parish would be owned by its trustees in Fee simple. Thus the Church authorities affectively would cede control over church property to the laity.

In order to retain control over church properties in the United States, all forms of civil tenure somehow involved the diocesan bishop. In their book *Church Property, Church Finances and Related Church Corporations*, Cardinal Maida and Nicholas Cafardi stated that Corporation Sole was the preferable civil law means for diocese to hold church property. Thus, each diocesan parish would be a corporation with one member, the diocesan bishop. In other methods of incorporation, the bishop would be an ex-officio member with other members chosen from the diocesan consultors and often including the pastor in parishes.

While it is not precisely true to say that the diocesan bishop or the diocese, as a separate juridic entity, owns the church property of each parish, it is true that the bishop, as the sole agent of the diocese, has administrative control over each parish. Were a bishop to create separate corporations for each parish with a board totally distinct from the diocesan administration, significant problems would arise if a parish community, through its board, were to challenge his decision to close a parish, or if itself were to close a parish or otherwise dispose of significant parish holdings.
The details of the property transfers being initiated by Bishop Robert Vasa of Baker, Oregon and Bishop Robert Brom of San Diego, California, or the bankruptcy filings by Bishop John Vlazny of Portland, Oregan, Bishop Gerald Kicanas of Tucson, Arizona and Bishop William Skylstad of Spokane, Washington, are not clear at this time.² ³

If these bishops have totally separated themselves from each parish by setting up completely separate corporations, then it is possible that they have acted in a manner that is analogous to that followed in the 19th century Church, but that was subsequently condemned by the Vatican.

In order to understand the ownership of church property in the United States, it would be essential at this time to have answers to the following questions:

- How is each diocese incorporated in its own state?
- How is each parish incorporated?
- What is the make-up of membership of any diocesan parish or board?
- Who holds the civil title or ownership to all properties and other holdings of the diocese that are not attached to or affiliated with parishes?
- Is the bishop conveying properties, securities or other holdings from diocesan ownership to parish ownership?
- Is the bishop or any of the individual entities, such as parishes and schools, establishing any other forms of corporate structures to hold church properties?
- What is the nature of all securities held by the diocese and each parish? Are any funds, stocks or bonds being set up for a specific purpose, such as development, pension or special disaster? This question is important because money as such is not considered church property, but any funds or securities and the like that are set up for a specific purpose become church property and subject to all the canonical regulations concerning the administration of church property.
- Does the diocese have properties in other dioceses and under what title are these held?
- Does a diocese or any equity that is part of or related to a diocese have cash or securities of any kind located in banks or institutions that are outside the territory of the diocese or outside the United States?

Tom Kyle
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1/ Adapted from Sex, Priests and Secret Codes, the Catholic Church’s 2,000-Year Paper Trail of Sexual Abuse, by Rev. Thomas P. Doyle, OP, Richard A.W. Sipe and Patrick J. Wall, III, Volt Press, Los Angeles, CA, © 2006 by Thomas P. Doyle, Richard A.W. Sipe and Patrick J. Wall, III.

2/ In February 2006 the diocese of Tucson incorporated each of its 84 parishes separately. Bishop Gerald Kicanas, another diocesan official and the local pastor are members of each board. See www.tucsondiocese.org.

3/ Bishop William Skylstad’s plan has not met favorably with the civil bankruptcy court. See www.dioceseofspokane.org.