

# *Canon Law, Civil Law, and the Health Care Apostolate*

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This paper provides an overview of the application of canon law to the administration of Catholic health care in the United States. It is divided into four sections. The first section provides a context for the role of canon law in the life of the Church. The second section considers the fundamental question of juridic personality in the Church. The third section delineates the predominant forms of organization that have hitherto been the main Church related institutions providing health care. The fourth section considers the validity of the McGrath "independence" thesis concerning the continuing applicability of canon law to incorporated health care structures under U.S. civil law. The paper concludes with some practical considerations concerning the relationship between canon law and corporate structures.

## *Introduction*

This paper is designed to provide an overview of the application of canon law to the administration of Catholic health care in the United States.<sup>1</sup> It is divided into four sections. The first section provides a context for the role of canon law in the life of the Church. Such a context underpins any consideration of particulars. It stresses the salvific work of the law as a complementary form of science that concretely seeks to apply the theology of the Church.

The second section considers the fundamental question of juridic personality in the Church. In canon law, as with secular legal systems, clarity concerning the standing of an institution is essential if we are to accurately address the question of what rights and responsibilities exist in relation to it.

The third section delineates the predominant forms of organization that have hitherto been the main Church related institutions providing health care in the US--Societies of the Consecrated Life and Societies of the Apostolic Life. Due attention is also given to an enhanced form of organization in the Church under the provisions of the new code--Associations of the Christian Faithful. The norms detailed here govern the control and privileges of such societies in order to ensure that the work is genuinely orientated to the service of her sacred mission. Such are expressed in the works of mercy and compassion, especially in the care of the poor, the sick, and the vulnerable.

The fourth section considers the validity of the McGrath "independence" thesis, concerning the continuing applicability of canon law to incorporated

health care structures under U.S. civil law. Simply put, if the health care corporation does not have juridic personality in the eyes of the Church, it will not be subject to the rules of canon law concerning the stewardship of ecclesiastical property. In concluding this section, I finish with some practical considerations concerning the relationship between canon law and corporate structures.

### ***Section I: Spirit of the Law***

The word "canon" comes from the Greek, and its use here denotes that body or corpus of law that is unique to the Roman Catholic Church.<sup>2</sup> The general norms of the new Code of Canon Law, promulgated in 1983, have as their foundation the Law of Christ.<sup>3</sup> The Church reflects the commandments of the Faith in her creation of a body of positive law instituted to serve this mission. The Church has literally been instituted " . . . for the guidance and salvation of the people of God."<sup>4</sup>

Law, conceived of as an ordinance of reason for the common good, is a means in the service of this sacred mission.<sup>5</sup> With regard to this mission, the Church seeks to enact the most just and equitable laws designed to help actualize this end in her structures of governance.<sup>6</sup> The purpose of canon law is ultimately no different from the goal of the sacred sciences: to guide the faithful in leading a life centered on Christ witnessed in faith, the sacraments, and acts of charity.<sup>7</sup>

As with all bodies of law, the Church is required to make changes to canon law in order to reflect its life and mission as it is understood in its current age.<sup>8</sup> Certain canons, unlike the Divine Law, are capable of being changed, as a reflection on the ends of the law may further reveal practical improvements that strive ever more fully to reflect the pilgrim nature of the Church. However, the spirit of the law is always one that whilst visible, is always supernatural, in terms of its fundamental ends.<sup>9</sup>

The revision of the 1917 code reflected, in part, shifts in perception concerning the role of the laity. This development, of the proper role of the laity in the life of the Church, called for reforms in the corpus of canon law.<sup>10</sup> In particular, there was recognition that as a community of all the faithful, there is a unique role for all talents and gifts in building up the Kingdom of God. This required a structure of norms in which the laity could be given a greater degree of participation and involvement.<sup>11</sup>

The new code consists of some 1,752 canons. It is important to realize, however, that this is not fixed, but is based on a living faith community and will continue to grow and be subject to modifications as new changes are enacted. Still, if the new code is innovative in a number of key respects, it should be interpreted in continuity with the provisions of the old Pio-Benedictine code where the provisions of both codes are substantially the same.<sup>12</sup> This is of

course not to stress any adherence to a narrow form of legalism. It is simply a recognition of the fact that, notwithstanding certain fundamental developments, there is a rich heritage of legal interpretation to be drawn upon that remains sound in the interpretation of the new code.

### *Section II: Juridic Personality*

The juridic status of an organization is fundamental to the rights and duties it bears under the operation of the law. As with secular law, canon law undertakes to delineate these rights and responsibilities. Her understanding of juridic personality reflects the Roman law origins of the concept. The concept of a physical person being the bearer of rights and duties was developed in the law of persons in the *Institutes* of Gaius Noster and the *Corpus Juris Civilis* of Justinian. Moreover, within the Roman law sources there was a recognition, albeit in embryonic form, of artificial personality, e.g., colleges and corporations. These entities were recognized as the bearers of obligations beyond the mere sum of the individuals involved in them.<sup>13</sup>

It is from the Roman sources that the Church has drawn heavily in systematizing her own canon law. In the *Decretals* of Gratian, and in subsequent additional canon law sources known collectively as the *Corpus Juris Canonici* (derived from an analogy with the Roman law corpus), many such artificial persons were enumerated. The heritage of the Roman law is seen in the arrangement of the Pio-Benedictine Code into the Roman law tridactic structure of persons, things and actions.<sup>14</sup>

However, whilst the Church has historically drawn heavily upon the body of Roman law in the development of her jurisprudence, she has made it distinctively her own. Consequently, her appropriation of sources must always be judged in relation to their ability to serve her sacred mission.

Within the Pio-Benedictine code, there was a two-fold division between physical persons and moral persons. The former corresponded to natural persons who by virtue of their baptism became members of Christ's faithful. Such rights varied, of course, depending on the status of the natural person in the hierarchical structure of the Church.<sup>15</sup>

Whilst preserving the concept of a physical person more or less intact from the old code, the principal change in the new code concerned the enumeration of various rights that are enjoyed by the Christian faithful. It represented a conscious attempt to engage the royal priesthood shared by all members of the Church, and not simply the rights and responsibilities of those called to holy orders and to traditional forms of governance.<sup>16</sup> Canons 208-223 present an enumeration of many of these *ex lege* rights. Taken together, they represent a substantial change, giving enhanced recognition to the role of the laity in the life of the Church.<sup>17</sup>

Another change between the two codes concerns the concept of artificial personality. The term "moral person" is abandoned in the new code with the exception of the Church herself and the Apostolic See. The term moral person was judged to be misleading in that it tended to confer on subordinate structures within the Church a status they did not properly warrant. Subordinate structures derive their authority from the operation of the canon law itself.<sup>18</sup> To that extent they are "creatures" of the law and not independent of it. Only the Church and the Apostolic See exist prior to canon law, in that they are founded, and derive their authority, from Christ Himself. Hence, they alone are properly regarded as moral persons.<sup>19</sup>

Such a change away from the usage of moral person also reflects the nomenclature current in most civilian and common law systems. They use the term "juridic person." To that extent, it may also assist in making more transparent what is meant by artificial personality within the Church. In effect, Church usage has strong parallels with secular usage.<sup>20</sup>

Having explained the adoption of the use of juridic person, it remains to detail the main provisions concerning its use. In the new code, a juridic person is an aggregate of three or more persons (*universitas personarum*) or things (*universitas rerum*), with rights and duties under canon law, distinct from the individuals who pertain to it.<sup>21</sup> As such, it is analogous to the civilian form of corporation common in the U.S. legal system. As an artificial entity, with no natural terminus, it is generally presumed to be perpetual in duration.<sup>22</sup>

Its creation is by virtue of two forms; by virtue of the law itself, or by a decree from competent ecclesiastical authority.<sup>23</sup> This reflects similar provisions in the old code.<sup>24</sup> There are, in consequence, only two modes for the conferment of this status.

Such aggregates of persons or things, may or may not have juridic personality depending on whether or not they are constituted as such in the eyes of the Church and the legitimate interpreters of her law.<sup>25</sup> Most structures within the Church receive personality when the formalities of the law are observed, for example, in the lawful creation or erection of dioceses, parishes, religious orders, provinces, houses, seminaries, etc.<sup>26</sup>

Another major change instituted by the new code was the division of juridic personality into a two-fold division between public and private.<sup>27</sup> In the old code there was no such division. Unlike the conferral of public juridic personality, private juridic personality can only be obtained by decree of competent ecclesiastical authority.<sup>28</sup>

In analyzing the distinction between public and private personality, attention needs to be paid to the question of who acts *in nomine Ecclesiae*.<sup>29</sup> Public juridic persons act in the name of the Church. The Church vouches for and therefore commits herself to the acts of those public juridic persons within the scope of their spheres of competence. The Church acts here through her

public juridic personality. On the other hand, such a power to speak on behalf of the institutional Church cannot be imputed to private juridic persons. Private juridic persons act under their own name and under their own responsibility even though it may be subject to the vigilance of competent ecclesiastical authority.<sup>30</sup>

Lastly, in concluding this section, it is important to realize that the recognition of public juridic personality is of profound importance when it comes to a consideration of the applicability of canon law requirements concerning the administration of Church property. This will be dealt with in the fourth section of this paper. Suffice it here to state that only public juridic persons are subject to the universal canon law concerning the administration and alienation of property. With a few exceptions, the property of a private juridic person is controlled only by the internal constitution of the organization itself.<sup>31</sup>

### ***Section III: Forms of Church Organization***

There are several possible forms of organization within the Church that can engage in apostolic activity. Regardless of the precise form they take, they work towards the same end, of bearing witness and service to the salvific work of Christ via charitable activities. The term "apostolate" expresses the active process of engagement within society in contradistinction to societies that embrace the contemplative life as their primary means of service to the Church via prayer.<sup>32</sup>

Turning exclusively for the purposes here to those organizations that engage in apostolic work, Canon 640 states that, "They are to do all in their power to donate something from their own resources to help the needs of the Church and the support of the poor." These apostolates are a concrete expression of the norm expressed in Canon 573, ". . . to seek the perfection of charity in the service of God's Kingdom, for the honor of God, the building up of the Church and the salvation of the world." The works of mercy, via the provision of health services, are such a key form of activity, and many Societies of the Consecrated Life and Societies of the Apostolic Life, such as the Sisters of Mercy and the Daughters of Charity, have been engaged in serving the people by these means, particularly by their dedication to the care of the poor. There are, however, as we shall see in a later part of this section, newer structures in the Church that are also beginning to take on some responsibility for this important apostolic work--Associations of the Christian Faithful.<sup>33</sup>

Societies of the Consecrated Life are one of the important structures of organization in the Church.<sup>34</sup> Their uniqueness in the classification of the canon law is due to their profession of the evangelical counsels of poverty, chastity, and obedience.<sup>35</sup> They are to be differentiated from Societies of the Apostolic

Life, in that the latter do not express those distinctive vows, although they may take others.<sup>36</sup>

For either form of society, of consecrated or of apostolic life, public juridic personhood is acquired by the foundation of provinces and houses. As was seen in the previous section, such personhood arises, *ipso jure*, upon the lawful erection of the entity.<sup>37</sup> The power of jurisdiction is required, and this would seem to depend on an ability to exercise the *potestas sacra*.<sup>38</sup> In consequence, it would seem that exclusively lay religious institutes or societies are not competent to fulfil this--male or female. Competent superiors or moderators would need to be in holy orders. Recourse can of course be made to a suitable legislator to erect public juridic personality, e.g., the diocesan bishop as local ordinary. As public juridic persons, by the operation of the law, they speak in the name of the Church, and they are clearly governed by the strictures of canon law.<sup>39</sup> As shall be seen in the next section, this is particularly pertinent when we come to examine some of the norms concerning the administration of ecclesiastical property.

The establishment of a society and its constitution are subject to the authority of the Church's hierarchical structure. They need either papal or diocesan approval.<sup>40</sup> In addition to its fundamental constitutional document, the community draws up subordinate rules to govern detailed aspects of its life. These may be subject to less formality and difficulty in terms of change than the fundamental constitutional document.<sup>41</sup>

Societies of the Consecrated Life are governed by structures of superiors, councils, and chapters. There are two basic levels of superior--provincial moderator and supreme moderator. They are to govern according to the rules of the society, and the community usually elects them for a set period of office.<sup>42</sup> Both levels of superior are required to have a council comprised of several members of that community according to the level of governance. Whilst largely advisory, there are several instances in canon law where they are obliged to consult or obtain the consent of such a council, e.g., Canon 638, para. 3, concerning the validity of an act of alienation of community property.

Chapters are collegiate in nature, are the highest decision making structure, and are held every three to six years. To such a body may be reserved major changes in the internal constitution of the community. They also elect the supreme moderator of the community.

Canons 298-329 constitute the form of organization known as Associations of the Christian Faithful. As was mentioned earlier concerning the question of juridic personality, such association constitutes one of the rights of physical persons within the Church. The Christian faithful are free to create and to govern associations for charitable and religious purposes, promoting the Christian calling in the world, and are free to organize to meet those purposes. This right of association was explicitly recognized more forcefully in the new

code than it had been under the old Pio-Benedictine code, particularly in relation to the question of judicial standing within the Church. The new code, therefore, broadened the ecclesial role of Associations of the Christian Faithful.

Associations of the Christian faithful are explicitly defined in Canon 298. They can be made up of the clergy alone, laity alone, or a combination of the two. The Christian faithful are encouraged to support those groups that have ecclesiastical approbation. However, there is nothing in the nature of associations *per se* that requires any such recognition. Associations of the Christian faithful, for example, the Holy Name Society or a local prayer group, may seek official recognition in the eyes of the Church, though they are not under any obligation to do so. Needless to say, providing their work is useful and is compatible with the teaching of the Church, they provide an invaluable service to the Church.

Nevertheless, operating with only a *de facto* status can bring with it certain disadvantages, for example, a lack of any significant juridic standing *qua* artificial person. This lessens any rights. They cannot claim appellations such as "Catholic" for themselves. The use of the title "Catholic" is reserved in canon law and can only be granted by competent authority, e.g., the local ordinary in the case of a diocese.<sup>43</sup>

What then is the possible canonical status of a *juridic* association over and above the *de facto* association? Associations in general, whether public or private, are recognized only when the competent authority approves their statutes. Such approval is designed to ensure, *de minimis*, the association's integrity, its commitment to the legitimate work of the Church, and its fidelity to the Church's doctrine.<sup>44</sup>

Public associations are those that are juridically erected by competent ecclesiastical authority for the purposes of teaching the doctrine of the Church, promoting public worship, conducting a health care apostolate, etc.<sup>45</sup> This establishment as a public association *ipso jure* creates it a juridic person, subject to all the appropriate provisions of the new code, such as the provisions concerning the temporal goods of the Church.<sup>46</sup> Other associations remain canonically private, or, *de facto*.

All recognized associations, whether public or private, must have their own statutes.<sup>47</sup> This acknowledges their status as an organization in the Church with their own internal structures or "particular laws" of rights and duties. The statutes are to define clearly the goals of the association, its form of governance, membership, etc. It is the recognition of these statutes that is necessary for an association to gain canonical status as a public or private association.

Subject to the oversight of competent authority, the association has considerable autonomy in its internal direction. However, this autonomy is greater for private than for public associations. Public associations take on all

the rights and duties of public juridic persons, and must work in accord with other such persons.<sup>48</sup>

Private associations enjoy a greater autonomy from hierarchical control, for example, their goods do not constitute ecclesiastical property for the purposes of alienation requirements. They are, however, still subject to the vigilance and governance of competent authority by virtue of their Catholic identity.<sup>49</sup>

The authority competent to erect or recognize an association depends upon the geographical scope of its coverage. The Holy See is the competent authority concerning universal or international associations, the conference of bishops for national associations, and the local ordinary for diocesan associations.<sup>50</sup> By virtue of the power of the local ordinary, written consent is needed for the valid erection of any branch of an association in his diocese, even if it were of apostolic privilege.<sup>51</sup>

#### ***Section IV: Corporate Structures and Property Control***

All organs of the Church enjoy--*iure nativo independenter a civili potestate*--the right to acquire, own, and dispose of property for the good of its mission within the Church. Property is not acquired for its own sake, and indeed some religious institutes may be allowed to exclude a right to property as a special expression of evangelical counsel.<sup>52</sup> The acquisition must be lawful by right of natural or positive law.<sup>53</sup> Of their nature, as official representatives of the Church, Societies of the Consecrated Life, Societies of the Apostolic Life, and Public Associations of the Christian Faithful are public juridic persons.

The public juridic person must ensure that it is able to effectively carry out its canonical responsibilities as defined by the code. Clearly, in an age of declining membership of traditional forms of religious organization, and in light of financial pressures in the administration of their apostolic work, there often arises a need to organize the running of the apostolate in creative ways to cater for new and emerging needs, for example, new delivery mechanisms of care. Such indeed has been the use of civil law corporate structures to meet organizational challenges. The not-for-profit hospital corporation is just such a creature that can be utilized in the service of the Church's apostolic mission.<sup>54</sup>

The status of these incorporated entities, with regard to the applicability of certain provisions of canon law, has been a contested issue within the Church's jurisprudence. The particular source of this contention was the publication of the McGrath thesis.<sup>55</sup> In this thesis, McGrath argued that the civilly incorporated apostolic structure was essentially independent from the jurisdiction of canon law. Such entities were not moral persons in the eyes of the Church.<sup>56</sup> Whilst the sponsoring body was a moral person by operation of the law (*ipso jure*), this did not extend to the apostolic work undertaken for the benefit of the public by that religious body, e.g., the university or hospital.<sup>57</sup>

Notwithstanding the fact that the sponsoring religious institute may have had "legal" title to the property, the determinate underlying relationship was one of trustee administration of these goods for the public weal.<sup>58</sup>

Since the apostolate, according to McGrath, did not derive moral personality by operation of the law, it could only do so by formal decree.<sup>59</sup> In the event, no health care corporation was incorporated by the use of any such decree. McGrath argued that only two such decrees have in fact been granted--the foundation of the Catholic University of America and Niagara University.<sup>60</sup> McGrath's conclusion follows directly from this logic: the boards of these corporations are autonomous, answerable only to their articles of incorporation, and ultimately to the general public by virtue of their "equitable" title.<sup>61</sup>

Given the autonomy of the incorporated apostolate, McGrath argued that the only remaining role left for the sponsoring body was one of spiritual or moral influence and not control.<sup>62</sup> Under the provisions of the Pio-Benedictine code, since the corporation had no moral personality, it could not be subject to the canons concerning the alienation of ecclesiastical property.

The Vatican has, however, not accepted this thesis. As stated by Cardinal Garrone and Cardinal Tabera in a letter to Cardinal Krol, "We wish to make it clear that this [McGrath] thesis has never been considered valid by our Congregations and has never been accepted."<sup>63</sup> It was considered to result in the denial of Church control over the direction of these apostolates. In particular, the case against the McGrath thesis centered on his interpretation of juridic personality.<sup>64</sup>

The case contra McGrath has been argued most forcefully by Maida.<sup>65</sup> He argued that there were two grounds for asserting that the incorporated apostolate could have juristic personality. Firstly, the moral personality of the sponsoring body could extend to the apostolate. The work of the apostolate cannot be so easily severed from the moral person who very often created and funded it. Why would a change in the civil law holding pattern have any necessary change on this moral person in the eyes of canon law? Civil law is only canonically valid to the extent that it is compatible with the provisions of canon law and its authentic interpretation. The question has to be viewed canonically, and not simply through the assumptions of U.S. civil law.<sup>66</sup>

Maida argued that these entities were usually moral persons prior to the founding of the apostolate. The only way they could have legitimately divested themselves of their canonical obligations would have been to have undergone a valid alienation under the norms of the old Pio-Benedictine Code. An understanding of the chronological realities and the substantive contribution of the resources and labor of the religious society would point to this. Since the religious entity is a moral person, it follows that its apostolic works are part and parcel of that juridic entity.<sup>67</sup>

Secondly, he argued that the McGrath thesis employed an overly constricted understanding of the way in which the erection of personality was possible. The category of *ex lege* creation can be extended to cover entities that share essential attributes of personality. Two such attributes are the right to sue and the right to own and acquire property. Given the possibility of conferral of the status of moral personality by *implication* of the law, many such health care apostolates would in fact have separate moral personality attached to them. It would not be necessary to erect them by formal decree as McGrath had argued.<sup>68</sup>

What are the merits of Maida's two major critiques concerning juridic personality? It can be argued, as Kennedy does, that Maida engages in some over-simplistic reductionism of his own to combat the McGrath thesis, since some religious congregations were involved only in the work of administration regarding the running of a hospital, a hospital funded from other sources. They did not claim to own or control it, and the corporation was always intended to be separate from the religious congregation. In such cases, there would be no moral personality established.<sup>69</sup> In addition, even if there was an invalid alienation of ecclesiastical property or some other illegal juridic act, since the apostolate was part of the moral personality of the sponsoring religious body, prescription may well have rectified the canonically illegal act, since most would have been performed in good faith.<sup>70</sup>

Further, with regard to Maida's second thesis concerning the separate and distinct juridic personality of many apostolates, Kennedy argues that Maida renders redundant any distinction between the *ex lege* creation of moral personality and the use of formal decree to create moral personality for other organizations not strictly necessary to the witness and service of the Church.<sup>71</sup>

In making these criticisms, Kennedy certainly points to the need to judge the particulars of each case on its own merits and to be cautious of sweeping generalizations. However, Kennedy's criticisms do not strike at the heart of Maida's central contentions. Firstly, religious congregations have moral personality, and since its apostolic work is part and parcel of that personality, the corporation remains a part of that moral personality unless it has been canonically severed from it. The requirements of canon law must be considered, and reliance cannot be placed on the civil law understanding of such corporations. Maida is surely correct to highlight the undue emphasis that McGrath placed on civil law cases such as *Bradfield v. Roberts* to determine the canonical status of an entity.

Secondly, there can be juridic personality attached to the health care corporation in and of itself as a separate entity from the sponsoring religious body. To argue that this may happen by implication of the law is not to deny, as Kennedy argues, that there is no real distinction between creation by operation of the law and by formal decree. Rather, it simply means that the

occurrence of erection by formal decree points to an *unusual need* to have to resort to it in order to establish juridic personality. Formal decrees are rare, and this may be evidence that they need only be resorted to in highly particular circumstances. By granting approval for the erection of an apostolate, the competent ecclesiastical authority usually does not need to grant personality explicitly via a decree, since it can already be assumed to have been implicitly granted.

The discussion of the McGrath/Maida disputation is not a mere academic exercise. It has important implications concerning the control of Church property and its administration by an apostolate. What then are some of those canonical responsibilities, and how can civilian structures be formed to satisfy those responsibilities?

Various canons in Book V of the code point out the requirements of dutiful conduct in respect to the administration of ecclesiastical goods. Canon 1284, para. 1, states that "All administrators are to perform their duties with the diligence of a good householder." Canon 1284, para. 2, lists various criteria to be applied in the conduct of financial administration. Canon 1281 states that the public juridic person should set forth clearly what is to count as an ordinary act and what is therefore an act of extraordinary administration. A clear procedure is needed to validate an act of extraordinary administration, e.g., financial limits at the appropriate level of Superior, validated with the consent of the council or local chapter.<sup>72</sup>

Canon 1291 addresses the question of the validity of an act of alienation of property. Alienation is an act by which ownership or other lesser rights of major encumbrance are transferred to another person. This other person is any person, physical or artificial, that is outside the canonical scope of the public juridic person who currently has the interest in the property. Alienation is not interpreted narrowly here or in canons 1292 and 1295. It covers any act that could negatively effect the stable patrimonial condition of the public juridic person. Written permission at the appropriate level of competent authority is required in addition to the consent of the appropriate council or advisory body. If any act would potentially affect the patrimonial condition adversely (stability of its capital or entailed resources), the appropriate permissions must be sought. The Bishops' Conference for each region determines the threshold over which permission must be sought from the Holy See for alienation. Canon 1295 applies the formalities of alienation to any transaction that worsens the patrimonial condition of the juridic person, and the patrimonial condition of a person is worsened when it is placed at risk.<sup>73</sup>

Risk may be incurred in a number of ways. The most common general category of transaction to which canon 1295 may apply is that of debt incurred. Debt may be unsecured, secured by immovable property, or secured by incorporeal or moveable corporeal property. Another example of risk would be

where the public juridic person acts as a guarantor or surety for the indebtedness of another party. The act of incorporating itself, without preserving adequate safeguards for the control of Church property, would be a transaction that would place the stable patrimony of the juridic person at risk.<sup>74</sup>

In order to discharge their functions in line with their obligations as public juridic persons, administrators and competent ecclesiastical authorities must be in a position where they can exercise ultimate control over the use and disposition of Church property. This requires that the status of apostolate under civil law be compatible with the status of the entity under canon law. If, for instance, the civil law assigns to the board of trustees of a non-profit corporation the legal authority for encumbering and conveying the assets without regard to competent ecclesiastical authority, they will be in breach of their canon law obligations.<sup>75</sup>

The application of Canon 1295 seems clear, as does the equivalent provision in the old code.<sup>76</sup> At issue are the actions of an administrator or other competent authority who permits such a state of affairs to arise in the first place. As we have seen, when an administrator loses control over decisions relevant to alienation and other matters such as extraordinary administration, the stable patrimony is placed at risk. It follows that the corporate structure must be designed so as not only to facilitate efficiency by granting adequate management authority to those with expertise (particularly in an era of declining religious), but also to preserve ecclesiastical authority.<sup>77</sup>

Those who are charged with canonical responsibilities may achieve them in two ways in planning a corporate structure. Firstly, they can do so by acting as trustees in sufficient numbers, thus constituting a majority voting block. Secondly, they can do so by having a two-tier structure composed of both trustees and members, with the members having reserved powers. The members would be those who are able to exercise the required canonical authority. The articles of incorporation would reserve to the members powers of approval with respect to major corporate undertakings concerning debt, major conveyances, etc.<sup>78</sup>

In exercising my prudential judgment so far as preventing the exposure of the stable patrimony to risk is concerned, the second alternative, of reserved power, seems to be the safer option. The former option relies too heavily on the good will of individual trustees who may change over time, such that the majority blocking vote may become ineffective. It is only by the use of such reserved powers that the public juridic person can really ensure that they do not unwittingly place themselves in a position of powerlessness with loss of ultimate control.<sup>79</sup> If power is transferred *carte blanche*, following the McGrath thesis, the public juridic person may well find itself in breach of canon law, since the Church would still consider the property ecclesiastical property governed by the provisions of the code.<sup>80</sup>

## *Conclusion*

The themes addressed have been treated in sufficient depth to stress the importance of the *Code of Canon Law* to the work of any health care apostolate. Particular emphasis was placed upon public juridic personality and the control of property via appropriate civilian corporate structures that are compatible with their canonical status. Due vigilance must be exercised to ensure that the entity is working within its canonical obligations and not just in conformity to civil law requirements

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## *Notes*

1. I would like to express my thanks to Ann K. Suziedelis, M.A. for several helpful comments made on an earlier draft of this paper.
2. Constant Van De Wiel, *History of Canon Law* (Peeters Press: Louvain, 1991), 11-2.
3. John Paul II, "Sacrae disciplinae leges," in *Code of Canon Law Annotated* (Montreal: Wilson & Lafleur, 1993), 53. See also M. Wijlens *Theology and Canon Law* (Lanham, MD: University Press of America, 1992), 15-7.
4. F. G. Morrissey, "The Spirit of Canon Law," *Origins* 8 (1978): 35-40.
5. See J. Collins, "Aquinas and Law: Law as a Function of Reason," *Irish Theological Quarterly* 18 (1951): 220-37, commenting on Aquinas' understanding of law in the *Summa Theologicae* II-I, q. 90, a. 4 "...Thus from the four preceding articles, the definition of law may be gathered; and it is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."
6. Wijlens, *Theology and Canon Law*, 15-7.
7. John Paul II, "Sacrae disciplinae leges," 51, 53. See also J. A. Corriden, "Law in Service to the People of God," *Jurist* 41 (1981): 1-20.
8. J. A. Alesandro, "Background on the Canon Law Code's Revision," *Origins* (1983): 541-44, 543-44.
9. Morrissey, "Spirit of Canon Law," 36-39.
10. See F. R. McManus, "Laity in Church Law: New Code, New Focus," *Jurist* 47 (1987): 11-31.
11. F. G. Morrissey, "The Laity in the New Code of Canon Law," *Studia Canonica* 17 (1983): 135-48.
12. Can. 17 on interpretation. See also E. Kneal, "Interpreting the Revised Code," *Jurist* 42 (1982): 304-10.
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17. McManus, "Laity in Church Law," 11-3.
18. Gauthier, "Juridic Persons," 81-2.
19. Can. 113, para. 1; Gauthier, "Juridic Persons," 81-2. See also A. J. Maida and N. P. Cafardi, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook* St. Louis, MO: CHA, 1984, ch. 3.
20. See *Code of Canon Law Annotated*, 133-4. See also Gauthier, "Juridic Persons," 81.
21. Can. 115.
22. Can. 120.
23. Can. 114, para. 1; 116, para. 2.
24. 1917 code can. 100, para. 1. See F. N. North, S.J., *Canon Law for Hospitals: Administration of Temporal Goods*. (St. Louis: CHA, 1962), 3-4.
25. See the discussion below in section four of this paper.
26. Maida and Cafardi, *Church Property*, ch. 3; *Code of Canon Law Annotated*, 133-40.
27. Can. 116.
28. Can. 116, para. 2.
29. Can. 116, para. 1; *Code of Canon Law Annotated*, 136-7.
30. Can. 325, para. 1.
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32. Can. 577.
33. John R. Amos, "A Legal History of Associations of the Christian Faithful," *Studia Canonica* 21 (1987): 271-297, 292-6.
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35. Can. 573; see also the commentary in *Canon Law: Letter & Spirit*, 315-6.
36. Can. 731.
37. Can. 634.
38. Can. 129, para. 1.
39. Michael Fitzgerald, "The Canon Law Implications of the Physician-Hospital Organization in the United States of America," *Studia Canonica* 22 (1988): 27-65, 38-40.
40. Can. 579, 582-584, 593-595.
41. Can. 587.
42. Can. 624-625.
43. Can. 216, 303, 312, 322, 803.
44. Can. 215 "Christ's faithful may freely establish and direct associations which serve charitable or pious purposes or which foster the Christian vocation in the world, and they may hold meetings to pursue these purposes by common effort."
45. Can. 301, 312-313.
46. Can. 313.
47. Can. 304.
48. Can. 313, 315.
49. Can. 323.
50. Can. 312.
51. Can. 312, 381.

52. Can. 634.
53. Can. 1259.
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75. See Robert C. Becker, "Problems of Ecclesiastical and Religious Organizations," *Jurist* 44 (1984): 48-66.
76. 1917 Code Can. 1533; Maida and Cafardi, *Church Property*, 53-60, 61-6, 67-74.
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