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The Code of Canon Law and Civil Law

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THE CODE OF CANON LAW AND CIVIL LAW

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I. INTRODUCTION

We are familiar with the maxims that the civil law follows the canon law, or that neither the government nor the Church should enter into the precincts of the other.[1] Indeed, Justice Hugo Black has enshrined these reassuring generalities in a much broader constitutional generality: "The First Amendment[2] has erected a wall between Church and state. That wall must be kept high and impregnable. We could not approve the slightest breech."[3] Nonetheless, in recent years we have been confronted with a number of cases in which the civil law does not appear to follow canon law, and the government, by court or administrative action, very definitely has entered upon the Church's "precincts."

Two cases immediately come to mind. In the first, a Missouri state court ordered the Bishop of Jefferson City to restore side altars to a parish church from which they were removed following a heated dispute between the parish priest, who was supported by the Bishop, and the parishioners, who opposed his decision to remove them.[4] In the second, a New Hampshire state court allocated to itself the jurisdiction to decide whether the Bishop of Manchester had properly carried out his duties with respect to a Diocesan Catholic school.[5]

Other situations also come to mind. For example, the EEOC may insist that federal civil rights laws relating to sex and pregnancy prohibit the Bishop from terminating an unmarried, pregnant teacher[6]—or, even better, a religion teacher[7]—from her employment in a parochial elemen-

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[1] *See* Everson v. Board of Educ., 330 U.S. 1, 14-15 (1947).

[2] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST., amend. I. The first amendment is often divided into two religion clauses: the "Establishment Clause" and the "Free Exercise Clause."

[3] Everson v. Board of Educ., 330 U.S. 1, 18 (1947).

[4] Struemph v. Behan, No. 10132, slip op. (Cir. Ct. of Osage County Mo. 1982), *rev'd sub. nom.* Struemph v. McAuliff, No. 46061, slip op. (Mo. Ct. App. Sept. 6, 1983).

[5] Reardon v. Lemoyne, 122 N.H. 1042, 454 A.2d 428 (1982).

[6] Dolter v. Wahlert High School, 483 F. Supp. 266 (N.D. Iowa 1980).

[7] Walthal v. Seven Holy Founders School, No. 81 C 5422 (N.D. Ill.).

tary school. Also, we are only too aware of the difficulties in draftsmanship encountered when a diocese or a religious order wants to incorporate separately one of its ministries. How do we maintain control and still insulate from liability?

These realities would have us restate the maxim to say that "the civil law sometimes follows the canon law." Of course, we already know that the "high and impregnable" wall is only a line that we dimly perceive.[8]

More seriously, these realities actually point to a broader and less fortunate conclusion. There is no universally applicable legal doctrine that governs the relationship between civil and canon law in the United States today. There is no concordat giving us a road map of specific agreements on specific issues as is the case with many other countries. Instead, we have a few sound principles rooted in an undergrowth of confusion.

This Article attempts to illuminate a few of those sound principles. It is not by any means exhaustive, and certainly it is not the last word on the subject. In fact, it is hoped that it prompts the kinds of questions and criticisms that will help us advance our knowledge in this area of the law.

II. THE AMERICAN SYSTEM, THE CHURCH AND ITS LAWS: AN ANALYTICAL ORIENTATION

The American legal system permits institutions to function according to their own rules, as long as their rules and conduct do not violate the general laws of the land.[9] In fact, when a member claims that an institution has not followed its own rules, a civil court will ordinarily defer to the appropriate decisionmaking body within the institution. If the member claims that the wrong body within the institution made the decision, a civil court will consider that claim and make its own determination as to what is the proper decisionmaking body. If the member claims that the decisionmaking body rendered the wrong decision, a civil court will at least consider that claim to determine whether fundamental due process was observed. Of course, a claim that the institution violated some gen-

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[8] Lemon v. Kurtzman, 403 U.S. 602, 614 (1971); *see also* Wolman v. Walter, 433 U.S. 229, 236 (1977); Roemer v. Board of Public Works, 426 U.S. 736, 745 (1976); Everson v. Board of Educ., 330 U.S. 1 (1947).

[9] *See* Watson v. Jones, 80 U.S. 679, 727, 733 (1871); Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978); Hennessey v. National Collegiate Athletic Ass'n, 564 F.2d 1136 (5th Cir. 1977); North Dakota v. North Central Ass'n, Etc., 23 F. Supp. 694, 697 (E.D. Ill. 1938), *aff'd*, 99 F.2d 697 (7th Cir. 1938); Harris v. Missouri Pac. R.R. Co., 1 F. Supp. 946 (E.D. Ill. 1931); Jackson v. Board of Trustees, 22 Ill. App. 3d 898, 317 N.E.2d 318 (1974); Gordon v. Thor Power Tool Co., 55 Ill. App. 2d 389, 205 N.E.2d 55 (1965); German v. Supreme Tribe of Ben Hur, 201 Ill. App. 190 (1916); Engel v. Walsh, 258 Ill. 98, 101 N.E. 222 (1913); Board of Trade v. Nelson, 44 N.E. 743 (Ill. 1896).

eral law of the land, will be dealt with in the same way as a similar claim about any person or entity.

The Church is a special kind of institution, and the first amendment to the United States Constitution puts a special gloss on its right to function according to its own rules. As in the case of secular institutions, when a member claims that a church has not followed its own rules, a civil court will ordinarily defer to the appropriate decisionmaking body within the church.[10] If the member claims that the wrong body within the church made the decision, a civil court will consider that claim and make its own determination of the proper decisionmaking body, *unless* doing so would require it to decide a religious issue.[11]

Again, if the member claims that the decisionmaking body made the wrong decision, a civil court will only consider that claim if doing so would not require it to resolve a religious issue.[12] When there is a claim that the Church violated some general law of the land, the court should decide whether the Church's religious status confers any special exemption.[13]

The Roman Catholic Church is a special kind of church. The rules governing its structure and operations are found in the Code of Canon Law and other documents. The civil law treats these in a fashion similar to the analogous documents or principles of any other denomination.

III. LITIGATION

Litigation of cases containing the kinds of questions just sketched touches upon three important points: (A) presenting the appropriate religious documents or other factual matters to the court; (B) demonstrating their relevance to the issues in the case; and (C) dealing with the emerging Church-state issues.

A. *Presenting the Appropriate Religious Documents or Other Factual Matters to the Court*

Under the Federal Rules, the determination of foreign law, such as the Code of Canon Law, is treated as a question of law:

> A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admis-

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[10] Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 713 (1976).

[11] *Id.* at 708-09.

[12] *Id.* at 710; Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449 (1969).

[13] NLRB v. Catholic Bishop, 440 U.S. 490, 499 (1979).

> sible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.[14]

Under the law of some states, like Illinois, the determination of foreign law, such as the Code of Canon Law, is treated as a question of fact for the court, not the jury to determine:

> Since judicial notice is not taken of the law and official documents of a foreign country they must be proved, except to the extent that they may be self-authenticating. Under the best evidence rule if there is no showing that the foreign law is statutory it may be proved by persons qualified by knowledge and experience. If it is statutory the statutes should be produced either in the form of statute books identified as authentic or by copies properly exemplified and authenticated by the seal of a qualified officer.[15]

However the Canon Law or other Church governing documents get into evidence, the matter becomes interesting when there is a conflict over what is the appropriate governing principle. Remember, the Code of Canon Law is part of a 2,000-year-old living and growing body of law. It has to be read in light of previous codes, conciliar documents, papal pronouncements with various degrees of binding impact, documents of national bishops' conferences, and substantial amounts of discretion left to ordinaries, religious superiors, and pastors.[16] Accordingly, the parties can differ as to which document or provision applies to the matter at issue. They may disagree over the interpretation of a given provision or how it should be applied to a particular situation. They may agree that a certain provision applies, but disagree as to whether another provision alters or nullifies the impact of the first provision. The conflict may take on various forms and there may be honest opinions on more than one side of a given issue.

Civil courts have a very limited role in relation to such conflicts.[17] As a threshold matter, a court must determine whether resolving the conflict would require it to decide a religious issue. A civil court, of course, is prohibited from deciding religious issues, and so a conflict over what may be the appropriate principles of Church law could curtail the court's ability to address the case at all.

The law on this point is in a somewhat primitive state of development, and there do not seem to be well-developed legal tools for dealing with even clearly spurious claims of conflict. For example, in a recent case an attorney claimed that the Catholic Church was not hierarchical, but

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[14] FED. R. CIV. P. 44.1.

[15] ILL. R. EVID. 9:08; *see also* Atwood Vacuum Mach. Co. v. Continental Casualty Co., 107 Ill. App. 2d 248, 262-63, 246 N.E.2d 882, 890 (1969).

[16] Codex Juris Canonici, Acutoritate Joannis Pauli P. P. II Promulgatus vii-xiv.

[17] Maryland and Virginia Eldership v. Church of God, 396 U.S. 367, 367 (1970).

congregational. The court merely ignored the claim and decided the case as if it were never made. A possible alternative approach would be to require the party making the claim to substantiate it with expert testimony. Experts being what they are, this approach may have limited utility. Another possible approach would be to use the fraud exception to the non-civil court review rule,[18] but this is probably both too much and too little for most cases.

Thus, there may be no way for the civil court to address such a conflict because any approach available in a given case may require the court to decide as religious issue. As a result, resolution of this threshold issue may end the whole case, or at least have a very substantial impact on its outcome.

B. *Demonstrating Relevance to the Issues in the Case*

Although we can discuss any number of problems relating to the relevance of Church law in a given case, I believe there is one basic problem which is worth special attention. This problem arises when a party, a government agency, or the court asks, "Why do we have to deal with Church law at all? Why can't this case be resolved like any other case?" These questions, or some variation of these questions, are asked in many ways in many different situations.

Certainly, *Jones v. Wolf*[19] and cases like it support those who ask the questions. These cases and the questions themselves may even point to the direction the resolution of certain kinds of Church-state cases increasingly may take in the years to come.

Take an employment contract as an example. If a Church employee has a written contract, how far beyond the express terms of that contract can or should a court go in resolving an employment dispute? There is, of course, the question of what are the express terms of the contract. To illustrate, we begin with a signed writing: "St. Edna School employs James Jones as a dietician for one year at a salary of $10,000." We next move to any documents that the signed writing expressly incorporates by reference. "This contract shall be governed by the rules and regulations of St. Edna School as they are now and as they may be amended from time to time." If there is no express incorporation language in the signed writing, we look to the rules and regulations of St. Edna School to see if they contain a provision that relates to employment contracts, and to determine whether there is a policy of bringing this provision to the employee's attention. "These rules and regulations as they may be amended from time to time govern St. Edna's relationship to all of its employees.

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[18] Serbian Eastern Orthodox Diocese v. Milivojevich, 426 US. 696, 712-13 (1976).
[19] 443 U.S. 595 (1979).

Accordingly, it is the policy of St. Edna School that these rules and regulations be regularly brought to the employees' attention and that their significance be fully explained."

Let us suppose that either the contract or the rules contain a provision that the employment relationship at St. Edna's is also governed by the appropriate provisions of Church law relating to a bishop's and a pastor's responsibilities for school employees. Even better, let us suppose that there is no such provision.

When the case comes to court, the judge will have before him, or her, the signed contract and St. Edna School's rules and regulations. Both the school and the employee will probably produce Church law experts giving different interpretations of the bishop's and pastor's responsibilities under Church law regarding school employees. What should the court do? The court could conclude that the resolution of the dispute over the bishop's and pastor's responsibilities would require it to resolve a religious issue, and therefore decline to proceed further with the case. The court could also rule that this dispute is irrelevant and decide the case on the basis of the signed writing and the rules and regulations, assuming it can do so without addressing a religious issue. This second approach would certainly be more tempting if the contract papers did not contain a provision relating to the bishop's authority.

We concede the appeal of the neutral principles approach for this kind of case. The court can sidestep a religious dispute, and even believe that it is doing justice. After all, how can the poor employee be expected to know his duties and responsibilities if even the experts disagree? Why should the employment relationship be burdened with such obscurity and uncertainty? The neutral principles approach, however, completely negates the relevance of Church law.

The government regulation context is another area in which the relevance of Church law is frequently questioned. We have all heard some version of this song sung by some government administrator. "St. Edna's is a school. Our jurisdictional standard for schools is $1,000,000.00 in gross revenues per year. St. Edna's meets this standard. Therefore, St. Edna's is covered by—you name it." When we respond that St. Edna's is a religious school and that its religious status should confer a complete or partial exemption, the administrator goes back to his song. "We are religiously neutral. We don't look at religious status. We are not anti-religious or anti-Catholic. We have nothing in our regulations regarding religious institutions."

It is here that the odyssey either begins or ends. How do we demonstrate to the administrator or to a reviewing court that the religious status is relevant? What is the place of Church law?

If seems that we should begin with the rule that the United States

Supreme Court enunciated in *NLRB v. The Catholic Bishop of Chicago.*[20] If a statute does not by its express terms cover religious organizations, and coverage would result in a church-state conflict, then the statute must be construed so as not to cover religious organizations. The key elements of the rule are *no express coverage* in the statute and a *church-state conflict.* We are either fortunate enough to have a statute that is silent on the coverage issue or we are not. Assuming that we are fortunate, then we must focus on whether coverage would result in a church-state conflict. If it does, then the statute should be interpreted as not requiring coverage.

If we are not fortunate and the statute expressly requires religious institutions to be covered, a different result is obtained. We must still focus on whether coverage would result in a church-state conflict. If it does, then in this case the statute should be held unconstitutional.

We, of course, must be very careful about finding church-state conflicts. The walls we build in the exemption area will rise to greet us when it comes time to evaluate the constitutionality of positive benefits flowing from the government.

In such cases, Church law is relevant to the description of the religious character of an institution and the demonstration of a church-state conflict. For example, if the institution at issue is a seminary, the Church law relating to seminaries might show the importance of doctrinal purity. If there is likelihood that coverage by a particular statute would require a seminary to employ a heretic as a religious counselor, then there is arguably a church-state conflict.

In brief, there are problems with the relevance of Church law that may go the the heart of a given case and seriously affect the outcome. We may have to lay a very carefully prepared foundation if we want to use Church law in these kinds of cases.

C. *Dealing with the Emerging Church-State Issues*

The amount of litigation over employment and property issues seems to be increasing at an accelerated rate. I will now turn to a brief discussion of some of the kinds of church-state issues that are emerging from these kinds of cases.

1. Employment

Let us suppose that Grace Smith is employed as a teacher at St. Edna School in the Diocese of Blackacre. There is no writing evidencing the relationship. There are no written school employment policies, nor are

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[20] 440 U.S. 490 (1979).

there written diocesan employment policies, except for a simple statement that all teachers are employed from year to year in accordance with the law of the Roman Catholic Church.

Let us also suppose that the pastor of St. Edna's discovers that Grace is pregnant out of wedlock and fires her immediately. Grace is outraged and files suit for improper termination in a civil court.

The pastor defines the suit by calling a Church law expert as a witness. The expert testifies that under Catholic Church law the pastor has the responsibility of maintaining the religious orthodoxy of the parish school, and that the presence of an unmarried pregnant teacher violates the appropriate atmosphere. Therefore, the pastor was justified in firing her. No other evidence is presented on either side. The civil law follows Church law. Case closed.

But life is not so easy. Since Grace Smith has filed the suit she is likely to introduce some evidence. In fact, let us suppose she calls a Church law expert on her side of the case. The expert testifies that under Catholic Church law pastors are required to accord employees a hearing prior to making a decision to terminate. Had Grace Smith been accorded such a hearing, she would have demonstrated that she was raped by a demented prison escapee. She would have argued that since she was a Catholic, she could not morally have an abortion, and her pregnancy was living testimony of the Church's teaching on this issue. Therefore, her presence constituted a positive contribution to religious orthodoxy at St. Edna School and the pastor was wrong in terminating her.

The court would most likely rule that resolution of this dispute would require it to decide one or more religious issues, and that the Constitution prohibited it from doing so. Case closed. The termination stands. It is possible that the court might conclude that it could at least decide whether or not Grace should have been accorded a hearing without deciding a religious issue, and rule accordingly.[21] The pastor might be able to prevent such a ruling by having his Church law expert testify that Church law does not require a hearing before a termination.

Of course, life is still not quite so easy. No school of any size and certainly no diocesan school system could address the full range of employment issues by a single reference to Church law. There is at least an organizational need for some policies and contracts. After all, a principal would want to know that when he or she arrived in the morning, there would be a given number of teachers who would teach certain subjects or grades and that they would spend the requisite hours at the school. The principal would also like to know that this was going to happen on a daily

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[21] *Cf.* Avitzur v. Avitzur, 58 N.Y.2d 108, 115, 446 N.E.2d 136, 138, 459 N.Y.S.2d 572, 574 (1983).

basis for an established number of weeks. In a word, we cannot stay in the "state of nature" where every dispute is a religious dispute and management always wins.

Accordingly, let us suppose that the Diocese of Blackacre had a school policy requiring pastors to notify all teachers by May 1 that their contracts will or will not be renewed for the following year. Assume that the pastor discovers that Grace is pregnant in late April. Under the policy he can give her a notice of non-renewal, she can finish out the school year and then go her own way. No litigation. This is better than the state of nature in which the pastor won the case on the basis of a general reference to Church law.

The conflict arises though, when the policy or contract does not help accomplish what the pastor and bishop believe to be the proper result. For instance, the Diocese of Blackacre has a policy that requires a board of three teachers from the allegedly offending teacher's own school to conduct a hearing and render a binding decision regarding the termination. Let us also suppose that Grace Smith is a very popular teacher at St. Edna's and that no three teachers at the School would ever vote to discharge her for any reason.

The pastor is caught between this policy and his canonical obligations with respect to religious orthodoxy of the School. If he fires the teacher anyway, he is likely to be subject to a lawsuit. Given the existence of a specific written policy the court might find that Church law is not even relevant to the case. As a result, the pastor faces the prospect of having the court order St. Edna's to reinstate the teacher with back pay.

If the teacher is a priest or a religious teaching what the bishop or pastor believes to be heresy, the same quandary may apply. The court may conclude that the general school policies cover all employees. The policies may themselves so provide, or there may be separate policies which are even more protective of the priest or religious. Of course, the bishop or pastor may be able to speak to the appropriate ecclesiastical or religious superior who can rely on canonical obedience. But even if these superiors agree with the bishop or pastor, they may decline to act for some unrelated reason or may be having their own church-state conflict with the alleged offender.

I am obligated to say a word about the civil rights acts and employees. A general theory of the relation of the civil rights acts to the various kinds of religious institutions has not been determined. This is particularly evident in the employment context. How does one deal with the civil rights claim relating to age, sex, or race discrimination when the actual motivating factor was religion? What right does the religious institution have to discriminate on the basis of religion?

I just have two points to make here. First, we have to be very precise

in identifying church-state conflicts in the civil rights area.[22] Grace Smith is not religiously objectionable because she is unmarried and pregnant, but because her pregnancy is a public announcement of religiously objectionable conduct. Similarly, if a male teacher were to announce his sexual exploits, he would be religiously objectionable.

Second, we should also be very precise in identifying the particular remedy we want a court or government agency to grant in this area.[23] We should be reluctant to seek a broad ruling that the Church is constitutionally exempt from all or any significant part of the civil rights acts. If we reach for too much, we may prejudice our immediate church-state objective, which is to win this particular case.

One approach we may wish to consider is to urge that the agency or court adopt a rule similar to the court rule prohibiting decision of a religious issue. Such a rule may afford the church-state insulation we desire, without requiring the court to hold laws as important as the civil rights acts unconstitutional.

2. Property

The Catholic Church in this country seems to have its own pattern for current property disputes. We begin with St. John's, a beautiful old church in a part of town that has experienced a sharp decline in the Catholic population. St. John's Church has been limping along for years on a meager Sunday collection from a handful of parishioners. There are four other Catholic Churches in similar circumstances within a mile of St. John's. They each currently have a priest, but with the shortage in vocations it is a struggle for the diocese to keep them staffed.

Then in one week both the boiler and the roof fail at St. John's. The pastor is advised that it will cost at least $350,000 to put them back in service. The parish does not have $350,000. The parish does not even have $10,000. The diocese does not have an extra $350,000. The bishop and pastor meet and decide that the end has finally come for St. John's Church. They arrange for demolition so that the building does not become a menace, and issue a press release.

The parish is shocked by the news. Former parishioners who long ago have moved elsewhere are shocked. They inquire to determine whether it is really true, whether there is something that can be done to change the decision. Shock turns to anger and anger to a lawsuit seeking an injunction.

The bishop's attorneys march into court and deftly produce a deed

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[22] Serritella, *Tangling with Entanglement: Toward a Constitutional Evaluation of Church-State Contracts*, 44 L. & CONTEMP. PROBS 143 (1981).
[23] *Id.*

showing that the bishop owns St. John's in fee simple absolute. A canon law expert testifies that the Catholic Church is hierarchical, and the bishop is the person in the hierarchy authorized to close the Church. No other evidence is presented. The civil law follows canon law. Case closed. St. John's comes down.

Things of course are a bit more complicated. The plaintiffs allege that the bishop has not followed Church law. In support of this allegation, they produce a canon law expert who testifies that a bishop must confer with his consultors before closing a church. Since the bishop in question had not done so, the closing was contrary to Church law. However, the court determines that it would have to decide a religious issue to resolve the conflict between the Church law experts. Therefore, the case is dismissed. The bishop's decision stands. The church falls.

But there is another level of complexity. The plaintiffs also allege so-called "non-religious" grounds for stopping the demolition. These may include an express or implied trust running in favor of parishioners who live in the area. They also produce some evidence supporting these allegations. As long as these devices contain language relating to the Catholic Church's responsibility for making decisions about St. John's, or are triggered by some religious determination, the court's disposition should follow the pattern just outlined.

If the documents do not contain such references, or the court determines that the references to Church law are too ambiguous to be relevant, then we have an entirely new case. The court will have to examine the documents to determine whom they designate as the custodian of the church's fate, and what limitations are imposed upon the custodian. It is conceivable that the documents will point to the bishop, but put restrictions on what he can do. It is also conceivable that the documents will point to someone else entirely. Fortunately, today there are few such erring documents, and few courts willing to implement them.

IV. SUMMARY AND CONCLUSIONS

Two conclusions emerge from the foregoing discussion. First, Church law has a relatively limited utility in church-state litigation, and that utility is likely to be further restricted in the years ahead. The second conclusion is a corollary of the first: Church law is an important catalyst in the process of drafting documents relating to civil law issues, and the role of Church lawyers as draftsmen will become increasingly demanding. I would like to address each of these conclusions separately.

A. Church law has a relatively limited utility in church-state litigation and that utility is likely to be further restricted as time goes on.

There are at least two tacit assumptions in the maxim, "The civil law

follows the canon law." The first assumption is that there is a clear, precise, self-interpreting provision of canon law for every civil law problem. Civil lawyers are gradually learning that this is a false assumption. Church law is at least as complex, and is subject to a variety of interpretations as is the civil law.

The second assumption is that no one will challenge the Church's expert witnesses on Church law. We are learning that this assumption is also false because increasing numbers of Church law experts are testifying on the other side of the case. These witnesses frequently have credentials which are indistinguishable from those of the Church's own experts.

When these false assumptions are coupled with the constitutional prohibition against civil courts deciding Church issues, our maxim rapidly pales. The civil law can seldom follow the canon law, because the canon law can seldom be clearly established in a civil court. This may be somewhat of an exaggeration today, but I think it is the image of things to come.

If this is a correct view of the future, we can expect church-state litigation to become more complex and more intensely contested. We will not be able to derive much comfort from the tidy references to Church law we have been incorporating into Church documents. Accordingly, we must begin to look at these issues with new eyes.

B. Church law is an important catalyst in the process of drafting documents relating to civil-law issues.

This new view of things to come enhances the challenge for the counseling, drafting, and litigation skills of the Church lawyer. We will have to identify with greater precision the Church's goals and interests as they may be found in Church law or expressed by clients. We will have to find new language to help achieve these goals and protect these interests. We will have to counsel on how properly to use the documents that incorporate the new language. We will have to find new wisdom to avoid litigation where possible and new strength to litigate when there is no reasonable alternative. The role of the Church lawyer in this new era can itself be the subject of an entire presentation.

Although we are on new ground, we must keep our healthy respect for the old ways. Because we are on new ground, we must expect failures and be ready to pick ourselves up again.