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SATISFACTION OF CIVIL JUDGMENTS AGAINST PUBLIC JURIDIC PERSONS IN THE UNITED STATES IN LIGHT OF CANONS 22 AND 1291: ALIUD IURE CANONICO CAVEATUR?

MARK T. REEVES*

This article explores a narrow segment of canon law in relation to satisfaction of civil judgments. Its purpose is to determine whether any principles and traditions in canon law may be useful in constructing a persuasive argument under the First Amendment to support the proposition that stable patrimony of public juridic persons is unavailable to satisfy civil judgments. The case law in the United States is relatively straightforward concerning the protection offered to religious institutions, including public juridic persons of the Roman Catholic Church, by the Free Exercise Clause of the First Amendment.1 However, whether the stable patrimony of a

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The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." The government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma. Id. (citations omitted).
A public juridic person should be available to satisfy a civil judgment against such public juridic person remains an open issue.

When a civil judgment is rendered against a public juridic person, and all opportunities to appeal such judgment have been exhausted or have expired, the party in whose favor the judgment was rendered generally has a right to enforce such judgment. This right gives rise to a corresponding obligation on the part of the party against whom the judgment was rendered to satisfy such judgment. In order to determine the effect of an enforcement action, which would obligate a public juridic person to satisfy a civil judgment, reference may be made to CIC-1983 cc. 22 and 1291.

I. CODEX IURIS CANONICI (1983), CANON 22: THE CANONIZATION OF CIVIL LAW

CIC-1983 c.22, in a broad sense, canonizes civil law into the scheme of canon law with respect to those matters in which the

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The question remaining is whether civil law may compel enforcement of a civil judgment against a public juridic person to the extent that the amount of such judgment would require the transfer or liquidation of stable patrimony which, according to the principals and traditions of canon law, serves as the economic foundation of such public juridic person. This issue must be examined in view of the fact that such public juridic person is ordered "in finem missioni Ecclesiae congruentum" ("to a purpose befitting the Church's mission"), JOHN PAUL II, CODEX IURIS CANONICI, January 25, 1983, AAS 75, 11 (1983) c.114, § 1 [hereinafter CIC-1983], which mission "Deus Ecclesiae in mundo adimplendam concredidit" ("God entrusted to the Church to be fulfilled in the world"). CIC-1983 c.204, § 1.

For purposes of this study, the term public juridic person has the meaning found in CIC-1983 c.116, § 1, except that only aggregates of persons (i.e., not aggregates of things) are considered in this study.

Public juridic persons are aggregates of persons or of things that are established by the competent ecclesiastical authority so that within the limits allotted to them, they might in the name of the Church and in accordance with the provisions of law, fulfill the specific task entrusted to them in view of the public good. Other juridic persons are private.

In the United States, civil law generally provides a process to enforce a civil judgment. See, e.g., FED. R. CIV. P. 69(a) ("Process to enforce a judgment for the payment of money shall be a writ of execution . . ."). While such process may not impose an express obligation upon the party against whom a civil judgment has been rendered to satisfy the judgment, the process certainly imposes an implicit obligation upon such party through the enforcement power of the court.
jurisdictions of civil law and canon law overlap. In a narrow sense, CIC-1983 c.22 canonizes civil law into the scheme of canon law to the extent that specific reference to civil law is introduced by other canons that address particular matters.

A. The Development of CIC-1983 c.22

CIC-1983 c.22 appears for the first time, in its present form, in CIC-1983. However, CIC-1983 c.22 has its modern origins in CIC-1917, particularly in CIC-1917 c.1529. Prior to the CIC-1917, the Church had a tradition of referring to civil laws in appropriate circumstances. In fact, the Church occasionally adopted civil laws that it believed to be within the competence of its authority and beyond the competence of civil authority.

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5 CIC-1983 c.22. Some commentators adopt the position that canon law refers to civil law in general. CANON LAW in CATHOLIC ENCYCLOPEDIA § III at http://www.newadvent.org/cathen/09056a.htm (last updated June 26, 2003). A cogent argument can be made that CIC-1983 c.22 was introduced into Book 1, De normis generalibus, of CIC-1983 at the conclusion of the redaction process, as a general principle of law. This argument maintains the view that specific instances of the general principle that canon law refers to civil law exist throughout CIC-1983 merely because such specific instances were redacted prior to the time that CIC-198 c.22 was introduced into the draft of CIC-1983. Those who advocate this position argue that CICI-1983 c.22 should be interpreted to apply to a broader range of situations than merely those situations in which canon law specifically makes reference to civil law. See V. DE PAOLIS, I BENI TEMPORALI DELLA CHIESA, 33 n.73.

6 See, e.g. CIC-1983 cc.98 s2, 110, 197, 1286, 1290, 1500, 1588 §2, 1714.

7 Canon 1529 of CIC-1917, Codex Iuris Canonici Pii X Pontificis Maximi. Iussu digestus Benedicti Papae XV auctoritate promulgatus, Vatican City 1933 (Gasparri, P. Ed.) is the first canon of Title 29, De contractibus in Book 3, De rebus. It has a complementary, parallel canon in CIC-1983 c.1290, found in Title 3, De contractibus ac praesertim de alienatione in Book 5, De bonis ecclesiae temporalibus. While CIC-1917 c.1529 appears to be the direct predecessor CIC-1983 c.1290, its relation to CIC-1983 c.22 is less direct.

8 For example, Pope Lucius III (1181-1185) decreed that the sacred canons are aided by the constitutions of princes, and commanded that matters should be concluded in accordance with the statutes enacted by civil laws and canons. X. 5, 32, 1 ("[S]icut humanae leges non dedignantur sacros canones imitari, ita et sacrorum statuta canonum priorem principum constitutionibus adiuvantur.") The edition used for all references in this article to documents from the CORPUS IURIS CANONICI is CORPUS IURIS CANONICI (Aemilius Friedberg ed., 1959).

9 This phenomenon finds expression in matrimonial law. X. 5, 15, 5, in which Roman law, governing the diriment impediment of perpetual impotence, was recognized by Pope Celestine III (1191-1198) and C.30, q.3, c.1, in which Pope St. Nicholas I (858-867) adopted a law governing the impediment of legal relationship, which existed in Roman law. See AMLETO GIOVANNI CICOGNANI, CANON LAW, 119 § 1 at 119 (Rev. Joseph M. O'Hara & Rev. Francis Brennan trans., 1934).
Later, as the science of canon law developed into an autonomous body of law, this practice subsided because there was less of a need for ecclesiastical courts to seek recourse to civil law.\textsuperscript{10}

Notwithstanding the developments in the science of canon law, civil law continued to be applied in ecclesiastical matters in those instances in which canon law was silent.\textsuperscript{11} In such cases, Roman law,\textsuperscript{12} which had been the foundation of the law of the early Christian communities, continued to be a \textit{fons suppletorius}\textsuperscript{13} of canon law. As the European nations began to develop their own codes, canonists were at odds with respect to whether, in cases in which canon law was silent, the \textit{fons suppletorius} would be Roman law or the law of the more recent European codes.\textsuperscript{14} Some canonists maintained the position that the more modern codes should suffice.\textsuperscript{15} Other canonists held the view that the more modern codes should suffice with respect to prospective laws and to the introduction of custom, while Roman law should suffice with respect to matters regarding established laws.\textsuperscript{16} Ultimately, with the promulgation of CIC-1917, reference to civil law as a \textit{fons suppletorius} was abrogated.\textsuperscript{17}

\textsuperscript{10} Canon law developed as an autonomous body of law, independent from civil law, as can be seen, for example, in a decree of Pope Honorius III (1216-1227), "\textit{Ocurrunt raro ecclesiasticae causae tales, quae no possint statutis canonicis expediri.... Firmiter interdicitus et... inhibemus ... quisquam docere vel audire ius civile praesumat.}" Extravagantes communes in Corpus iuris canonici 5, 33, 28. [hereinafter X].
\textsuperscript{11} See 2 \textsc{The New Encyclopedia Britannica} 809 (15th ed. 1998) (discussing sources of cannon law).
\textsuperscript{12} Id. at 151.
\textsuperscript{13} In this article, \textit{fons suppletorius} means a source of canon law to which recourse is made in the event that a lacuna is discovered in the application of a canon or in the event that a canon is deficient in any manner. See P. MAROTO, \textsc{Institutiones Iuris Canonici Ad Normam Novi Codicis} § I 443, 446.
\textsuperscript{14} \textsc{Canon Law in Catholic Encyclopedia} § III at http://www.newadvent.org/cathen/09056a.htm (updated June 26, 2003).
\textsuperscript{15} CICOGNANI, supra note 9, at 124.
\textsuperscript{16} Id.
\textsuperscript{17} In the case in which canon law was deficient, CIC-1917 c.20 explicitly authorized the \textit{fons suppletorius} to be derived, "\textit{a legibus latis in similibus; a generalibus iuris principiis cum aequitate canonica servatis; a stylo et praxis Curiae Romanae; a communi constantisque sententia doctorum}," without mentioning civil law as a possible source.
B. The Church’s Tradition of Recognizing Civil Law

Since the establishment of the Church, there has been a relationship between canon law and civil law. Beginning in the fourth century, the Church availed itself to the laws of the state, which offered significant privileges and protections. As the Church continued to thrive, the civil societies within which it existed, particularly the European nations, developed their own legal codes. Often finding that its actions had consequences in civil law under these legal codes, the Church developed an interest in securing the privileges and protections offered by such legal codes. Likewise, the Church recognized the need to adapt the requirements of its legal system to the requirements of various peoples, and to the demands of diverse times and circumstances. Hence, throughout the centuries, the Church has recognized civil law, in some manner and to some degree, particularly in cases of overlapping jurisdiction.

By canonizing the civil law established for a given territory, CIC-1983 c.22 expresses the Church’s understanding that ecclesiastical actions often have consequences in civil societies. CIC-1983 c.22, in particular, reflects the will of the legislator to give civil effect to matters that are subject to the jurisdiction of the Church. If CIC-1983 c.22 is interpreted broadly, then civil effect would be given to all ecclesiastical matters which civil law may also regulate. If CIC-1983 c.22 is interpreted narrowly, then civil effect would be given only to those ecclesiastical matters governed by canons in which reference to civil law is explicitly mentioned in CIC-1983. CIC-1983 c.1290, which pertains to the alienation of ecclesiastical goods, is one such canon in which reference to civil law is explicitly mentioned in CIC-1983.

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18 BRITANNICA, supra note 12, at 149.
19 Id.
20 Id.
21 For purposes of this article, the term ecclesiastical goods will be used to refer generally to temporal goods of the Church throughout history, whether such goods are corporeal (both immovable and movable) or incorporeal, affording due recognition to the fact that, with the promulgation of CIC-1983 c.1257 § 1, only temporal goods which pertain to the universal Church, the Apostolic See, particular churches or other public juridic persons are considered to be ecclesiastical goods.
C. The Nexus between CIC-1983 cc.22 and 1290.

There is a nexus between CIC-1983 cc.22 and 1290. Both of these canons give expression to the notion that the Church avails itself to the privileges and protections of civil law. Canon CIC-1983 c.1290, which preceded CIC-1983 c.22 in the drafting of the CIC-1983, builds upon the tradition of its predecessor, CIC-1917 c.1529. CIC-1917 c.1529 provided that applicable civil law was to be observed in canon law with the same effects in materia ecclesiastica. When a draft of the revision to CIC-1917 c.1529 was distributed for review by the Pontifical Commission as c. 44 in the 1977 Schema, it provided that applicable civil law was to be observed in canon law with the same effects in re quae potestati regiminis Ecclesiae subest. CIC-1983 c.1290, as finally incorporated into the CIC-1983, provides that the applicable civil law is to be observed in canon law with the same effects quoad res potestati regiminis Ecclesiae subjectas.

In both c.44 of the 1977 Schema and CIC-1983 c.1290, there is an emphasis on the effects of civil laws with respect to matters subjected to the power of governance of the Church. The emphasis is not on the effects of civil laws upon the Church itself. On the one hand, this suggests that canon law, and not civil law, is primarily applicable with respect to matters affecting the Church. On the other hand, civil law is applicable, in a secondary or auxiliary manner, with respect to matters that are subject to the governance of the Church. This is certainly apparent from the exception clause, which limits the general principle of the canonization of civil law, found in CIC-1917 c.1529, c.44 of the 1977 Schema and CIC-1983 c.1290: nisi iuri divino contraria sint aut aliud iure canonico caveatur.

Like CIC-1917 c.1529, CIC-1983 c.1290 expresses the will of the legislator to refer to civil law, specifically in matters pertaining to contracts and payment obligations. Consequently, the Church recognizes that, notwithstanding the ecclesiastical

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22 In the text of this article, for simplicity, the Pontifical Commission for the Revision of the Code of Canon Law (i.e., Pontificia Commissio Codici Iuris Canonici Recognoscendo) will be called the Pontifical Commission.
23 In the text of this article, the Schema canonum libri V de iure patrimoniali ecclesiae published by the Pontifical Commission in 1977, will simply be called the 1977 Schema.
24 CIC-1983 c.1290.
25 Id.
effects of such transactions, there are also civil consequences appurtenant to such transactions. The legislator, however, places the law of the Church in a position superior to civil law by articulating two exceptions to the canonization of civil law in CIC-1983 cc.22 and 1290. By these canons, civil law is canonized into canon law: (i) insofar as it is not contrary to divine law (i.e., either per se or as applied), and (ii) unless something is otherwise provided in canon law. The first exception rightfully places divine law in a superior position to civil law, consistent with the teachings of the Church. The second exception echoes the principle that the Church, as a societas perfecta, does not depend upon civil laws for its existence. Consequently, CIC-1983 cc.22 and 1290 give expression to the notion that the Church avails itself to the privileges and protections of civil law without compromising its ecclesiastical principles and traditions.

II. CIC-1983 C.1291: THE ALIENATION OF ECCLESIASTICAL GOODS

Reasonable arguments can be made to support the proposition that the enforcement and satisfaction of a civil judgment, from ecclesiastical goods which constitute stable patrimony, is an alienation under canon law. A valid alienation requires, inter alia, compliance with certain formalities set forth in CIC-1983 c.1291. CIC-1983 c.1291 must be read in conjunction with CIC-1983 c.1290, which canonizes civil law into the scheme of canon law dealing in matters “de contractibus” and “de solutionibus.” CIC-1983 c.1290 is a part of the scheme of canons de contractibus ac praesertim de alienatione and therefore, could be construed to introduce civil law in all matters concerning alienation in general.

A. The Roots of CIC-1983 c.1291 in Roman Law

CIC-1983 c.1291, rooted in Roman law, has a rather complex history. Throughout the centuries, beginning in the early Church in Rome, ecclesiastical goods were treated with special

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26 CIC-1983 cc.22 and 1290.
28 CIC-1983 c.1290.
consideration. Initially, the alienation of ecclesiastical goods was generally forbidden, except under certain circumstances. As the Church developed, burdens were placed upon administrators to protect and conserve ecclesiastical goods with vigilant care. An understanding of the rich history of CIC-1983 c.1291 provides considerable guidance for the interpretation of this canon.

In ancient Rome, law and religion, in certain respects, were not precisely differentiated. In fact, there were many points of contact between the *ius sacrum* (i.e., the religious law) and civil law. Sacred places and things were afforded special consideration under Roman law well before Christianity was accepted by the Roman Empire. Ancient Roman religious beliefs maintained that certain divinities controlled the upper world, and that places and things dedicated to the worship of these divinities were sacred. They called such places and things *res sacrae*. Following the dawn of the age of Constantine, Roman law applied the concept of *res sacrae* to Christian places of worship and preserved the notion that places and things devoted to divine worship merited special consideration.

A discussion of alienation in early Roman law requires, by way of background, an understanding of ownership. The concept of ownership is rooted in the term *dominium*. The term *dominium* appears for the first time in the literature at the end of the Republic (i.e., approximately 27 B.C.). Legal historians maintain that the term *dominium* had a very specific meaning in terms of the law affecting one's rights in property. By the end of the Republic, to have *dominium* in property under Roman law was to have *plena potestas in re*, which included the rights: (i) to use the property in which one had *dominium*; (ii) to take any proceeds or profits generated by such property; and, (iii) to

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29 CIC-1983 c.1291.  
30 *Id.*  
32 *Id.*  
35 A. GAUTHIER, INTRODUCTION TO ROMAN LAW FOR STUDENTS IN CANON LAW 78 (1994).  
dispose of such property freely.\textsuperscript{37} However, by this period in Roman law, there was often a fundamental difference between the factual holding of property (i.e., \textit{possessio}) and \textit{dominium}, which did not always reside in the same person. In fact, the rights appurtenant to \textit{dominium} (i.e., \textit{ius utendi fruendi et abutendi}) could be granted to a party, or appropriated by a party (e.g., a servitude for drainage), who was not the \textit{dominus} or owner of a property which was the subject of such rights.\textsuperscript{38} Consequently, in practice, Roman law permitted the rights appurtenant to \textit{dominium} to be alienated independently from, but subject to, the interest of the \textit{dominus}. This means that the \textit{dominus} could alienate certain rights in a property without relinquishing ownership of the property. Under Roman law, for example, the right to use property could be alienated independently from the right to recover and retain the proceeds derived from an agricultural enterprise on such property.\textsuperscript{39}

Even though ownership was considered sacrosanct during the classical period of Roman law, it is apparent that rights appurtenant to ownership were not unlimited.\textsuperscript{40} Furthermore, in later periods of Roman law, particularly in the fourth and fifth centuries, the distinction between \textit{possessio} and \textit{dominium} became less clear.\textsuperscript{41} During this period, the \textit{dominus}, as well as the person in possession of the property of the \textit{dominus}, were able to alienate rights in the property to others.\textsuperscript{42} In addition, the ownership of property could be limited with regard to the interests of neighbors as well as to limitations imposed by public law. Thus, the notion of \textit{dominium} or ownership became subject

\textsuperscript{37} P. CUMIN, A MANUAL OF CIVIL LAW 62 ("Dominium est ius utendi, fruendi, et abutendi, quatenus iuris ratio patitur."); A. BERGER, TRANSACTIONS OF THE AMERICAN PHILOSOPHICAL SOCIETY 441 (1953).

\textsuperscript{38} CUMIN, supra note 37, at 82.

\textsuperscript{39} JOLOWICZ, supra note 31, at 158–59

\textsuperscript{40} SCHULZ, supra note 34, at 338; JOLOWICZ, supra note 31, at 158.

\textsuperscript{41} M. BRETOLE, STORIA DEL DIRITTO ROMANO 393, n.102 (2000).

\textsuperscript{42} It is noteworthy that, in Roman law, one who was not the \textit{dominus} could alienate property in certain circumstances. Reference to this practice is mentioned in the Institutes of Justinian. See, e.g., THE INSTITUTES OF JUSTINIAN § 2.8 (Thomas Cooper ed., 1852) ("Accidit aliquando, ut, qui dominus rei sit, alienare non possit, et contra qui dominus non sit, alienandae rei potestatem habeat."). All references to the Institutes of Justinian in this study are from the Thomas Cooper edition. The Institutes of the Justinian was a manual of law for the Roman Empire, first published on November 21, 533, having statutory force from December 30, 533. Id. at vii.
to a liberal interpretation. However, this liberal principle of ownership was aimed at keeping ownership interests as free as possible from restrictions on alienation. In that way, real or personal property could be freely alienated.43

B. Alienation in the History of the Church

There is long-standing recognition of the inviolable right of the early Church in Rome to hold title to real property under Roman law. In the beginning of the third century, Christians began to hold property in a “corporative, properly ecclesiastical,” manner.44 Then, after Constantine granted religious liberty to the Christians in the Roman Empire on June 13, 313, he began to restore the property, which had previously been confiscated from the Church in Rome during the reign of Diocletian. However, immovable goods (e.g., real property) were not returned by the emperor to individuals or to the universal Church. Rather, immovable goods were restored to particular churches under the governance of bishops.45 Consequently, estates (i.e., legal interests) in Church property vested in the particular Church communities under the governance of local bishops having responsibility for the administration of Church goods.46

As early as 374, the Council of Valencia determined that any sale or donation of ecclesiastical goods by a bishop was invalid, “absque collaudatione et subscriptione clericorum.”47 In 397, c.4 of the Council of Carthage set forth the requirement that: (i) necessitas nimia must be present in order to alienate ecclesiastical goods, and (ii) the decision to alienate must be proposed to the primate of the province, “ut cum statuto numero episcoporum utrum faciendum sit arbitretur.”48 Later, Pope Leo the Great (440-461) instructed the bishops of Sicily that no bishop may alienate ecclesiastical goods “nisi forte aliquid horum

43 SCHULZ, supra note 34, at 334–37.
45 J. GAUDEMET, STORIA DEL DIRITTO CANONICO 128.
47 L. CENTURIONI, L’AMMINISTRAZIONE DEI BENI ECCLESIASTICI 85.
48 Decretum of Gratian, Part II, C.27, q.4, c.39 [hereinafter C.].
faciat, ut meliora prospiciat, et cum totius cleri tractatu atque consensus id eligat, quod non sit dubium profuturum ecclesiae."  

As the administration of goods in the particular churches became more important, in 451, the Council of Calcedon, in c.26, mandated that every diocese must nominate an *econo* who would be obligated to administer the goods of the diocese.

*The Institutes of Justinian* confirms that the principle of *res sacrae* was imposed upon the patrimonial system of the early Church in Rome. This principle held that *res sacrae* were dedicated to God's service and that they were not generally subject to alienation or hypothecation. The *res sacrae*, consequently, were treated differently than other property in the Roman Empire. This is not inconsistent with the Constantinian notion that an estate (i.e., a legal interest) in Church property should not vest in particular individuals (e.g., in a bishop) or in the universal Church, but rather in particular churches under the governance of bishops. This notion prevailed in the Roman Empire and is considered to be a precursor to the right of the Church to acquire, retain, administer and alienate property, which developed under later European law.

As the Church developed within the Roman Empire, particular churches began to acquire goods. There was a general sentiment in the Christian community that these ecclesiastical goods must be protected and conserved. C.14 of the Council of Rome of 502 reflected this sentiment by providing that no one, not even the pope, could alienate an estate of the Church of Rome.

During the Middle Ages, the alienation of Church property, in any manner, whether by transfer for value or by prescription, was not generally favored. An example of this sentiment is

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49 C.12, q.2, c.52.

50 *Decretum of Gratian, Part I*, 89, 4 [hereinafter D.].

51 *The Institutes of Justinian*, supra note 42, at 2.1.8 ("Sacrae res sunt, quae rite per pontifices Deo consecratae sunt; veluti aedes sacrae, et donaria, quae rite ad ministerium Dei dedicata sunt; quae etiam per nostram constitutionem alienari et obligari prohibimus, excepta causâ redemptionis captiurorum.").

52 Id. at 2.1.7 ("Nullius autem sunt res sacrae, et religiosae, et sanitae: quod enim divini juris est, id nullius in bonis est.").


54 C.12, q.2, c. 20.
found in the laws of that time governing prescriptive rights.\textsuperscript{55} Following the reform of Gregory VII (1073-1085), the Church could obtain prescriptive rights against a member of the laity within thirty years, but a period of forty years was required in order for a member of the laity to obtain prescriptive rights against the Church.\textsuperscript{56} Furthermore, throughout the later Middle Ages, a notable interest developed in the protection and conservation of ecclesiastical goods. From the twelfth century onward, those to whom the care of ecclesiastical goods was entrusted were considered protectors and defenders of such ecclesiastical goods.

Later, the concept of alienation continued to be further refined. As in Roman times, the concept of alienation included the transfer of \textit{plena potestas in re}, as well as transfers of lesser rights or interests in ecclesiastical goods. This expansive sense of alienation continued to reflect the commercial exigencies of society. In 1468, Pope Paul II (1464-1471), in the apostolic constitution \textit{Ambitiosae}, specified with particularity that alienation included a wide variety of transactions: simple transfer of property, mortgaging an interest in property, granting an interest in property for value, leasing an interest in property, and granting an interest in land in exchange for certain services.\textsuperscript{57} \textit{Ambitiosae} had a tremendous impact upon the canon law governing alienation of ecclesiastical goods. In particular, \textit{Ambitiosae} eventually served as the foundation for the canons governing alienation in the CIC-1917.\textsuperscript{58}

\textbf{C. Alienation in the CIC-1917}

The development of the CIC-1917 reflects the concern of canonists wishing to maintain a broad interpretation of

\textsuperscript{55} Prescriptive rights, in this context, are interests in property which may be transferred and acquired \textit{ipso iure}, upon the passage of a predetermined period of time and upon the satisfaction of certain predetermined conditions precedent. The law of prescription is presently recognized in CIC-1983 cc.197-98.

\textsuperscript{56} \textit{Decretales D. Gregorii Papae IX (Liber Extra) in Corpus Iuris Canonici} 2, 26, cc.3, 4, 6, 8, 9 [hereinafter X.].

\textsuperscript{57} \textit{Extravagantes communes} in \textit{Corpus iuris canonici} 3, 4, 1 [hereinafter Extrav. com.] ("Si quis autem contra huius nostrae prohibitionis seriem de bonis et rebus eisdem quocquam alienare praesumpserit: alienatio, hypotheca, concessio, locatio, conductio et infeudatio huiusmodi, nullius omnino sint roboris vel momenti.").

alienation as the universal Church entered the twentieth century. The transactional environment was becoming more and more complex, and, if the Church were to avail itself of the benefits and corresponding risks of the modern business environment, the law governing the alienation of ecclesiastical goods needed to embrace a wide variety of transactions. Canonists, prior to the promulgation of CIC-1917, considered the transfer of rights and interests in property, as well as the transfer of possession, within the ambit of transactions that constituted alienation. Consequently, canonists during this period were generally in accord with the notion that alienation included the transfer of rights or interests which might constitute less than full ownership in property.

In fact, prior to the promulgation of the CIC-1917, canonists placed a wide variety of transactions within the scope of alienation. For example, a transaction, by means of which a right in tangible or intangible ecclesiastical goods was transferred, was considered to constitute an alienation. Among the examples of this type of transaction, canonists included a donation, a sale, an exchange, an assignment of payment, a satisfaction of a judgment in a lawsuit, and a negotiated settlement payment. In addition, a transaction was considered to constitute an alienation if such transaction anticipated the possibility of an alienation of ecclesiastical goods in the future. Among the examples of this type of transaction, canonists included a pledge of security for a debt, a guarantee, a mortgage, and the posting of a bond in an arbitration proceeding or a lawsuit. Furthermore, a transaction, by means of which less than full dominium in ecclesiastical goods was transferred, was considered to constitute an alienation. Among the examples of this type of transaction, canonists included: a usufruct (i.e., the use and enjoyment in the profit or benefits derived from something which belongs to another), a servitude (i.e., a partial interest in real property for a particular purpose, such as a drainage easement), and a long-term lease.

Canon 1530 of CIC-1917, setting forth the requirements for the alienation of res ecclesiasticas, falls within Title 28 of Book 3 of CIC-1917, De bonis ecclesiasticis administrandis.

59M. PISTOCCHI, DE BONIS ECCLESIAE TEMPORALIBUS 381 (1932).
60See G. SEBASTIANELLI, DE REBUS 380 (1905); PISTOCCHI, supra note 59, at 380.
Consequently, alienation was considered to be within the purview of administration of ecclesiastical goods in CIC-1917. Title 28 of Book 3 of the CIC-1917 suggested that the following were subject to alienation: *res ecclesiasticas* (i.e., temporal goods, whether corporeal, both immovable and movable, or incorporeal) (CIC-1917 c.1530), property (CIC-1917 c.1532, § 1), precious goods (CIC-1917 c.1532 § 1), sacred things (CIC-1917 c. 1539), and divisible things (CIC-1917 c.1532 § 4). Furthermore, Title 28 of Book 3 of CIC-1917, anticipated, either implicitly or explicitly, that the following kinds of transactions constituted an alienation: the pledging of goods, the granting of a loan and the contracting of a debt (CIC-1917 c.1538 § 1), the sale or exchange of sacred things (CIC-1917 c.1539), the sale or lease of immovable goods (CIC-1917 cc.1540 and 1542 § 1), and a contract for the long-term lease (i.e., an *emphyteusis*) of ecclesiastical land (CIC-1917 c.1541 § 1).

The CIC-1917 also provided numerous expressions which regulated the protection and conservation of ecclesiastical goods. Canon 1519 CIC-1917 required the local ordinary to be sedulously vigilant (i.e., *sedulo advigilare*) concerning the administration of all ecclesiastical goods. Canon 1522 of CIC-1917 required administrators of ecclesiastical goods to prepare an accurate and detailed inventory, including valuation, of all ecclesiastical goods subject to their care. Canon 1523 of CIC-1917 required administrators, as *paterfamilias*, of ecclesiastical goods to vigilantly exercise a duty of care with respect to such goods. Canon 1530 of CIC-1917 imposed certain obligations upon administrators to preserve ecclesiastical goods and to exercise caution in order to avoid damage to the Church in the alienation of ecclesiastical goods. Canon 1542 § 2 of CIC-1917 required the administrator to obtain security for the repayment and to fulfill certain conditions with respect to a long-term lease. The protection and conservation of ecclesiastical goods was a significant and recurring theme in Title 28 of Book 3 of the CIC-1917.

From this survey of the CIC-1917, it is apparent that the legislator considered the traditions of Roman law and the *Corpus Iuris Canonici* in promulgating the canons pertaining to alienation. In the CIC-1917, it is apparent that broad ranges of goods were subject to alienation, a variety of transactions fell within the context of alienation, and obligations of care were
imposed upon administrators to protect and conserve ecclesiastical goods and their respective values. Notwithstanding the fact that the alienation of ecclesiastical goods was merely considered to be an element of the overall administration of ecclesiastical goods in CIC-1917, CIC-1917 established a fundamental understanding of alienation in the modern era. Of no less importance, CIC-1917 c. 726 clearly expressed the notion that the things regulated by Book 3 of the CIC-1917, De rebus, were the means that the Church used to pursue its purpose. Book 3 of the CIC-1917 presented a comprehensive understanding that the alienation of ecclesiastical goods deserved to be handled with great caution and protection in order to avoid damage to the Church and the frustration of its purpose.

D. The Development of Canon 1291 of CIC-1983

The earliest published draft of CIC-1983 c.1291 is c.36 of the 1977 Schema. Canon 36 of the 1977 Schema is derived from CIC-1917 c.1530 § 1. Both canons set forth the requirements for a valid alienation. CIC-1917 c.1530 §1 provides the requisites for the alienation of certain res ecclesiasticas quae servando servari possunt, adopting that language from the apostolic constitution Ambitiosae promulgated by Pope Paul II in 1468. Under the CIC-1917, res ecclesiasticas quae servando servari possunt were those ecclesiastical goods which, by virtue of their nature, function or ultimate ends, were able to be, and needed to be, protected and conserved. Conversely, such goods could not be alienated and, indeed, administrators of such goods were obliged not to alienate them, except under certain prescribed circumstances.

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61 "Res de quibus in hoc libro agitur quaeque totidem media sunt ad Ecclesiae finem consequendum, aliae sunt spiritualis, aliae temporales, aliae mixtae." The word purpose is used throughout this study as the English translation for the Latin word finis and its derivatives.

62 Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema canonum Libri V de iure patrimoniali ecclesiae 17 ("Ad alienanda bona quae personae iuridicae ecclesiasticae ex legitima assignatione patrimonium stabile constituunt, requiritur licentia auctoritatis ad normam iuris competentis, sine qua alienatio invalida est.").

63 Extrav. com., supra note 57, at 3, 4, 1.

64 Commentators indicate that the phrase res ecclesiasticas quae servando servari possunt is not easy to translate. The translation used in this description of res
While the phrase *res ecclesiasticas quae servando servari possunt* does not appear in the 1977 *Schema*, the intent of this phrase is retained and embodied in the new term *patrimonium stabile* in c. 36 of the 1977 *Schema*. The term *patrimonium stabile* was considered to be more comprehensible and precise than its predecessor, *res ecclesiasticas quae servando servari possunt*. Furthermore, commentators suggest that this new term was introduced in the 1977 *Schema* to address the reality of the modern economy of the twentieth century, which was developing far differently from the economies of the past.65

This change is significant from the point of view that the concept *res ecclesiasticas quae servando servari possunt* is a standard or criterion, although perhaps vague, that could have been applied to certain ecclesiastical goods. The concept *patrimonium stabile*, on the other hand, is a category within which certain ecclesiastical goods may be placed. Neither the kinds of ecclesiastical goods that may be placed into the category of *patrimonium stabile*, nor the characteristics of such goods, are identified in the 1977 *Schema*.

Canon 36 of the 1977 *Schema* proposed other substantive changes to CIC-1917 c.1530 § 1. Essentially, CIC-1917 c.1530 § 1 set forth three requirements for the alienation of *res ecclesiasticas quae servando servari possunt*: (i) a written estimate of the value prepared by an expert; (ii) just cause; and (iii) permission from the legitimate Superior, without which the alienation was considered to be invalid. Canon 36 of the 1977 *Schema*, in addition to proposing the new term *patrimonium stabile*, in place of *res ecclesiasticas quae servando servari possunt*, proposed that permission from competent authority, instead of permission from the legitimate superior, should be required in order to achieve a valid alienation. Furthermore, it proposed that the other two requirements for alienation previously found in CIC-1917 c.1530 § 1 (i.e., just cause and a written estimate of value prepared by an expert) be moved to c.38 of the 1977 *Schema*.

In 1980, a noteworthy revision to c.36 of the 1977 *Schema* was being considered. This revision appears in c.1242 of the 1980

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65De Paolis, supra note 64, at 9.

66De Paolis, supra note 46, at 9.
Schema codicis iuris canonici.\textsuperscript{66} Canon 36 of the 1977 Schema required the permission of competent authority in order to alienate goods that were legitimately assigned to stable patrimony. Canon 1242 of the 1980 Schema codicis iuris canonici required permission from competent authority in order to alienate goods which were legitimately assigned to stable patrimony, \textit{and which had a value in excess of the sum defined by law}. This addition does not obviate the need to understand the meaning of the term \textit{patrimonium stabile}, by simply establishing a threshold, in terms of value, to identify those alienations that require permission from competent authority. However, this addition does suggest that there is a certain amount of tolerable intrusion into, or damage to, the stable patrimony of a public juridic person, before the requirement of permission from competent authority is to be invoked. This range of tolerance is not a \textit{lacuna} in the law. Rather, it is an expression of the application of the principle of subsidiarity which is characteristic of the CIC-1983.\textsuperscript{67}

Canon 1242 of the 1980 Schema codicis iuris canonici was later modified by c.1291 of the 1982 Codex iuris canonici schema novissimum.\textsuperscript{68} The only significant change to c.1242 of the 1980 Schema codicis iuris canonici, as reflected in c.1291 of the 1982 Codex iuris canonici schema novissimum, is introduction of the notion of a public juridic person. This introduction presumably reflects a change to conform c.1291 of the 1982 Codex iuris canonici schema novissimum to other provisions of that schema that pertain to the new concept of public juridic person. This

\textsuperscript{66} Pontificia Commissio Codici Iuris Canonici Recognoscendo, Schema codicis iuris canonici, 277 ("Ad valide alienanda bona quae personae iuridicae publicae ex legitima assignatione patrimonium stabile constituant et quorum valor summam iure definitam excedit, requiritur licentia auctoritatis ad normam iuris competentis.").

\textsuperscript{67} A. Perlasca, Libro VI Beni Temporali Della Chiesa, in Codice di Diritto Canonico Commentato 984; Pontificia Commissio Codici Iuris Canonici Recognoscendo, Acta Commissionis, Opera consultorum in apparandis canonum schematibus, De iure patrimoniale Ecclesiae, in Communicationes 5, 100 (1973);

\textsuperscript{68} Pontificia Commissio Codici Iuris Canonici Recognoscendo, Acta Commissionis, Transmissio schematum canonum consultationis causa, Liber quintus, De iure patrimoniali Ecclesiae, in Communicationes 9, 269 (1977).
change, however, is not significant for purposes of this study.

Canon 1291 CIC-1983 is identical to c.1291 of the 1982 Codex iuris canonici schema novissimum. As previously discussed in this article, there are significant differences between c.1291 of the 1982 Codex iuris canonici schema novissimum and CIC-1917 c.1520. Those differences remain between CIC-1917 c.1530 and CIC-1983 c.1291. However, both of these canons express recognition that a public juridic person must have the ecclesiastical goods necessary to fulfill its ecclesial mission and to pursue its ultimate purpose.69

The two most obvious differences between CIC-1917 and CIC-1983 c.1291, for purposes of this study, are that CIC-1983 c.1291 introduces: (i) the term *patrimonium stabile* and (ii) the requirement to obtain permission from competent authority in the event that the ecclesiastical goods subject to alienation are allocated to the stable patrimony of the public juridic person, and the value of such goods exceeds the sum determined by law. Previously, under CIC-1917 c.1530, permission from the legitimate superior was required for any alienation of *res ecclesiasticas quae servando servari possunt*, and permission from the Holy See was required in the event that the value of such goods exceeded 30,000 lire or francs.70 Consequently, two threshold considerations for a proper interpretation of CIC-1983 c.1291 are: (i) the constitutive elements of stable patrimony of a public juridic person and the nature of the allocation of ecclesiastical goods to the stable patrimony, and (ii) the value of such ecclesiastical goods, and the amount beyond which permission from the Holy See is required for a valid alienation. These threshold considerations merit further discussion, because

69 De Paolis, supra note 45, at 9; See also C.12, c.23, q.1 and PO 17, which enumerate the purposes for which the Church is permitted to own ecclesiastical goods, which include: the organization of divine worship, the provision of decent support for the clergy, and the exercise of works of the apostolate and of charity, especially for the benefit of those in need.

70 This standard was applied to the universal Church under the CIC-1917. For comparison purposes, the present value of 30,000 (1917) Italian lire in U.S. dollars would be approximately $56,000.00, and the present value of 30,000 (1917) French francs in U.S. dollars is approximately $73,021.00. The present maximum sum, in U.S. dollars, established pursuant to CIC-83 c.1292 by the U.S. Conference of Catholic Bishops, is $3,000,000.00. The spread between $56,000.00 and $3,000,000.00 represents a practical example of the application of the principle of subsidiarity, by means of which public juridic persons enjoy greater autonomy under the CIC-1983.
the stable patrimony of a public juridic person is considered to be the means by which such public juridic person assures its subsistence, as well as its ability to pursue its purpose and to fulfill its ecclesial mission.\textsuperscript{71}

\textit{E. The Threshold Considerations of Canon 1291}

Stable patrimony is the economic means by which a public juridic person is rendered self-sufficient in order to be able to perform its ecclesial mission, both in the present and in the future. Consequently, there is a tendency in canon law to protect and conserve stable patrimony.\textsuperscript{72} In addition, the concept of valuation bears mention as a canonical construct for determining: (i) whether or not stable patrimony is deemed to be damaged or impaired and (ii) the level of permission required in order to effectuate a valid alienation.

Although the term \textit{patrimonium stabile} was not used in the CIC-1917, the concept had been previously introduced in similar words as early as 1851 by Pope Pius IX in his allocution, \textit{Quibus luctuosissimis}.\textsuperscript{73} Furthermore, some of the commentators of the CIC-1917 introduced concepts strikingly similar to \textit{patrimonium stabile} in their writings.\textsuperscript{74} These concepts convey the recognition of a need for the Church to maintain a certain core of patrimonial goods which merit special protection and conservation, and which should not be alienated, unless subject to reasonable controls.

A phrase embodying a concept similar to \textit{patrimonium stabile} is found in CIC-1917 c.1530 § 1. Canon 1530 § 1 of CIC-1917 applied a particular standard to distinguish goods which could be alienated from goods which could not and must not be alienated, except under certain circumstances. As previously mentioned, this standard was embodied in the phrase \textit{res }\textsuperscript{71} See V. De Paolis, supra note 46, at 10; see also CIC-1983 c.1254, § 2.

\textsuperscript{72} CIC-1983 c.1291.

\textsuperscript{73} P. GASPARRI, ed., Codicis iuris canonici fontes, II, 863 (“Omni enim studio et contentione vindicandum ac tuendum curavimus ius ... acquirendi scilicet et possidendi quaeacumque bona stabilia”).

\textsuperscript{74} A. VERMEERSCH & J. CRUESEN, EPITOME IURIS CANONICI CUM COMMENTARIIS II, 596 (“Pro se praeferenda est collocatio in bonis stabilibus frugiferis, utpote quae de maiorem securitatem et magis aliena sit ab omni specie negotiationis clericis vetitae.”); G. VROMANT, DE BONIS ECCLESIAE TEMPORALIBUS 248, n. 5 (“Extinctio aeris alieni aequiparatur alienationi in casu tantum quo solutio fit ex bonis quae ad patrimonium seu capitale stabile pertinent”).
ecclesiasticas quae servando servari possunt. By using this standard, the CIC-1917 implied that there were certain res ecclesiasticas that merited special protection, and for that reason, certain precautions were established to preserve them. The rationale behind the protection of such goods was to assure a certain level of financial stability for the moral person which owned such goods, so that such moral person would be able to maintain its economic self-sufficiency in order to fulfill its ecclesial mission. Ultimately, this concept was introduced into the CIC-1983, using the term patrimonium stabile.

While the term patrimonium stabile is not defined in the CIC-1983, some commentators tend to claim that only those immovable goods that constitute the economic base of a public juridic person, such as real property and certain restricted investments, constitute a part of the stable patrimony. Other commentators agree that both immovable and movable goods (i.e., both real and personal property) may constitute a part of the stable patrimony of a public juridic person. These commentators distinguish working capital, which is not considered to be stable patrimony, from fixed capital, not anticipated to be liquidated to pay current accounts, which is considered to be stable patrimony. The view that stable patrimony includes both immovable and movable property is consistent with the view held by the CIC-1917 regarding res ecclesiasticas quae servando servari possunt. The fact that the term patrimonium stabile is not explicitly defined in the CIC-1983 allows broad discretion to a public juridic person in determining which ecclesiastical goods constitute stable patrimony.

One notable feature of CIC-1983 c.1291 is that the ecclesiastical goods which constitute the stable patrimony of a

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75 The alienation of res ecclesiasticas quae servando servari possunt had been historically prohibited. "[O]mnium rerum et bonum ecclesiasticorum alienationem, per quod ipse dominiun transfertur ... quae servando servari non possunt ... prohibemus fieri."

76 The term moral person is used in this instance, because the term public juridic person did not exist in the CIC-1917.


78 CENTURIONI, supra note 77, at 91

public juridic person must be allocated as such, *ex legítima assignatione.*\(^8\) In order to understand the meaning of the phrase *ex legítima assignatione,* reference may be made to other places in the CIC-1983 where derivative forms of the word *assignatio* are used.\(^8\) In each of the places in the CIC-1983 where derivative forms of the word *assignatio* are used, the context suggests that an *assignatio* is to be, or would have to have been, made by virtue of a juridic act having been placed with the formal requisites set forth in CIC-1983 c.124.

Notwithstanding this analysis, a reasonable argument can be made to support the proposition that the allocation of ecclesiastical goods to the stable patrimony of a public juridic person, *ex legítima assignatione,* could result implicitly. This argument presupposes that a public juridic person, constituted pursuant to CIC-1983 c.114 § 1, pursues a useful purpose and has the means foreseen to be sufficient to achieve that purpose pursuant to CIC-1983 c.114 § 3. The minimum resources foreseen to be sufficient to achieve the purpose for which the public juridic person was constituted are, by their nature, part of the stable patrimony of such public juridic person.\(^8\) Consequently, such resources may become part of the stable patrimony of such public juridic person *ex legítima assignatione* implicitly as a result of other acts.\(^8\)

If an explicit formal act were always necessary to allocate ecclesiastical goods to the stable patrimony of a public juridic person, CIC-1983 c.1291 would offer little protection to ecclesiastical goods which form the economic foundation of a public juridic person. In fact, such ecclesiastical goods, which, by reason of neglect, bad faith or inadvertence, were never formally allocated to the stable patrimony of a public juridic person, would have no protection under CIC-1983 c.1291. Such a result would not seem to be consistent with the intent of the legislator

\(^{80}\) CIC-1983 c.1291.

\(^{81}\) CIC-1983 cc.688, § 2, 691 § 2, 1746.

\(^{82}\) CIC-1983 c.1254, § 1 provides, in relevant part: "Ecclesia catholica bona temporalia iure nativo ... valet ad fines sibi proprios prosequendos." The fines referenced CIC-1983 in c.1254 § 1 are more explicitly identified in CIC-1983 c.1254 § 2: "Fines vero proprii praecipue sunt: cultus divinus ordinandus, honesta cleri aliorumque ministorum sustentatio procuranda, opera sacri apostolatus et caritatis, praeertim erga egenos, exercenda."

\(^{83}\) De Paolis, supra note 64 at 10; PERLASCA, supra note 67, at 1017.
in promoting the protection and conservation of the stable patrimony of a public juridic person, which is clearly reflected in CIC-1983 cc. 114 § 3, 1291 and 1295. Furthermore, such a result would also be contrary to more than 500 years of canonical tradition founded upon Pope Paul II's apostolic constitution Ambitiosae. Consequently, the phrase *ex legitima assignatione* should be viewed as a condition precedent to the allocation of ecclesiastical goods to the stable patrimony of a public juridic person. However, this condition precedent may be satisfied implicitly by virtue of the nature, function or ultimate ends of the ecclesiastical goods under consideration. Any other construction of CIC-1983 c.1291 would frustrate the intent of the legislator and could produce an absurd result.

Canon 1291 of CIC-1983 requires permission from competent authority for an alienation when the ecclesiastical goods to be alienated: (i) constitute stable patrimony, and (ii) have *a value which exceeds the sum determined by law*. Canon 1292 § 1 of CIC-1983 authorizes and obligates each conference of bishops to determine such sum for its region. In practice, a conference of bishops is obligated to establish a range, defined by a minimum sum and a maximum sum, within which the permission of competent authority is required in the event of an alienation under CIC-1983 c.1291. Canon 1292 § 2 of CIC-1983 provides that permission of the Holy See is required to validly alienate ecclesiastical goods, when the value of such goods exceeds the maximum sum established by the conference of bishops for its region. This requirement appears to be in addition to the requirement of permission from competent authority set forth in CIC-1983 c.1291.

The value of the ecclesiastical goods to be alienated is not determinative of whether such goods constitute stable patrimony. Rather, such value is an index that is used in the CIC-1983 to determine the levels of approval that are required in order to achieve a valid alienation, thereby fostering the guiding principle of subsidiarity of the CIC-1983. If the value of such goods is equal to, or less than, the sum established by the conference of bishops, then the public juridic person may validly alienate such goods, without further permission. Pursuant to c.

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84 Extrav. com., *supra* note 57, at 3, 4, 1.
85 CIC-1983 c.1291.
1291 CIC-1983, if the value of such goods exceeds the minimum sum established by the conference of bishops, but is equal to, or less than, the maximum sum established by the conference of bishops, then permission to alienate is required from competent authority. Pursuant to c.1292 § 2 CIC-1983, if the value of such goods exceeds the maximum sum established by the conference of bishops, then, in addition to permission of competent authority, permission from the Holy See is also required to complete a valid alienation. Consequently, this scheme (i) respects the principle of subsidiarity, by linking levels of permission to a measured scale of value, and (ii) expresses the legislator's intent to protect and conserve stable patrimony, by establishing a hierarchical approval process.

III. ALIUD IURE CANONICO CAVEATUR?

As previously mentioned, CIC-1983 c.22 and the corresponding canon pertaining to alienation, CIC-1983 c.1290, offer two general exceptions to the canonization of civil law. The first exception requires that the civil law under consideration should not be contrary to divine law. The second exception requires that reference to civil law should not be made if something is otherwise provided in canon law, presumably which would militate against the application of the particular civil law in a particular context.

In the context of alienation, several canons militate against the application of a civil law, which would have the effect of transferring, depleting or otherwise diminishing the stable patrimony of a public juridic person. The tradition and principles of canon law suggest that the stable patrimony of a public juridic person is essential to the self-sufficiency and subsistence of such public juridic person. This position is crystallized in cc. 114 § 3 and 116 § 1 of CIC-1983. Canon 116 § of 1 CIC-1983 provides that a public juridic person fulfills a proper function entrusted to it for the common good. Canon 114 of § 3 of CIC-1983 provides that juridic personality is not to be conferred upon an aggregate of persons unless such aggregate of persons pursues a truly useful purpose and, omnibus perpensis, mediis gaudent quae sufficere posse praeventur ad finem  

87 CIC-1983 c.1291.
praestitutum, assequendum. These requirements for the conferral of juridic personality emphasize the necessity of useful purpose and the means required to pursue such purpose. The means required to pursue such purpose are found in both spiritual and temporal goods.

Certain temporal goods, designated as stable patrimony, are given special consideration in CIC-1983 cc.1285, 1292 § 2 and 1295. Canon 1285 of CIC-1983 provides, by negative implication, that donations for purposes of piety or Christian charity from movable goods cannot be made within the limits of ordinary administration if such movable goods constitute stable patrimony. This canon suggests that stable patrimony requires a certain degree of protection and conservation. Canon 1295 of CIC-1983 subjects any transaction, in which the patrimonial condition of a public juridic person peior fieri possit, to the formalities for alienation set forth in CIC-1983 c.1291, and other canons. Finally, CIC-1983 c.1292 § 2 requires the permission of the Holy See for a valid alienation, in addition to the permission required under CIC-1983 c.1291, if the value of the ecclesiastical goods constituting stable patrimony, which are to be alienated, exceeds the maximum sum determined by law.

The principle which underlies the strong desire of the legislator to protect and conserve the stable patrimony of a public juridic person derives from the desire to advance the constitutive element of such public juridic person: its truly useful purpose. The pursuit of this purpose is the ecclesial mission of the public juridic person. Consequently, there is a relationship between stable patrimony and ecclesial mission.

CONCLUSION

Canon 22 of CIC-1983 canonizes civil law, subject to certain exceptions. Canon 1291 of CIC-1983 sets forth the formalities for the alienation of ecclesiastical goods constituting stable patrimony, having a value in excess of the minimum amount determined by law. Indeed, the principles and traditions of canon law support the proposition that ecclesiastical goods, which constitute stable patrimony of a public juridic person, are to be protected and conserved, notwithstanding any requirement of civil law which would operate to divest such public juridic person of all, or a part, of its stable patrimony, and thereby
constitute an alienation.

The principles and traditions in canon law identified in this article provide a foundation which may be used to construct a persuasive argument under the First Amendment of the United States Constitution to support the proposition that the stable patrimony of a public juridic person should not be available for the purpose of satisfying civil judgments. It is relatively futile to argue that a public juridic person should not be subject to civil liability under the Free Exercise Clause of the First Amendment to the United States Constitution. However, arguments that assert that the stable patrimony of a public juridic person must be conserved and protected from transfer or liquidation, for the purpose of satisfying a civil judgment, are worthy of consideration. This is particularly the case in view of the fact that the stable patrimony of a public juridic person is the economic foundation by virtue of which the public juridic person to able to fulfill its ecclesial mission in the present and in the future. The Free Exercise Clause of the First Amendment of the United States Constitution has been interpreted not as a passive expression of the mere tolerance of religious freedom in the United States, but as an attitude of the founding fathers of our nation, which allows religions to flourish.88

88 See Zorach v. Clauson, 343 U.S. 306, 313 (1952). The Supreme Court found: We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma. Id. (emphasis added).