**Temporal Goods: A Compensation Fund?**

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**Introduction**

“… but she out of her poverty has put in everything she had, all she had to live on.”

Mark 12:44 (NRSV)

 No longer breaking news and much to the chagrin of the *Christifideles* the clerical sexual abuse scandals continue to overwhelm the Roman Catholic Church. Nevertheless, the release of the Pennsylvania Grand Jury Report (hereafter *Report*) in August 2018[[1]](#footnote-1) on the heels of abuse crises in Guam, South America, and Germany seemingly “upped the ante.”[[2]](#footnote-2) By publicly documenting the extent of “cooperation” in evil amid the upper echelons of the Catholic Church the *Report* ostensibly confirmed a lack of transparency, which had been largely speculation up to that point. That six dioceses could be involved in so many cases over several years seems unconscionable. Yet, the *Report* itself, when viewed alongside the plethora of settled “cases” promises comparable findings through further Grand Jury investigations as they unfold in dioceses across the United States (U.S.).

Apart from gross negligence in safeguarding vulnerable members of the “flock” from victimization there are instances noted whereby the episcopate engaged in, covered up, mishandled, or failed to intervene in alleged or verified cases concerning the sexual abuse of minors.[[3]](#footnote-3) Inevitably, many *Christifideles* were subsequently subjected to prolonged risks for physical or psychological harm. Whether on-going exposure was merely careless or intended is irrelevant from the standpoint that harm and/or suffering resulted. Harm and suffering frequently equates with financial liability, which for the Church results in costly litigation and hefty victim compensation schemes.[[4]](#footnote-4)

While restorative justice is vital to victims of sexual abuse, it is equally prudent to query what this entails. Accordingly, it is incumbent upon the *Christifideles* to query whether the Church is properly utilizing its temporal goods in accordance with its stated purpose. In other words, should the Church replete with its perceived “deep pockets” be “selling off” temporal goods to remunerate lawsuits, which in some situations far exceed those of other “institutions?”[[5]](#footnote-5) Should there be limits? In this context, one ought to also contemplate whether there is a difference in the “handling” or disposition of sexual abuse cases involving minors when the competent authority has knowingly increased the risk of financial liability to the faithful. What should happen?

In asking these difficult questions, an apt place to begin suggests scrutinizing the essence of the Church’s purpose for material possessions as it pertains to acquiring, retaining, administering, and alienating temporal goods.[[6]](#footnote-6) This brief analysis seeks to examine the above questions as they apply to dioceses in the U.S. and its territories. Enquiry concerning canon 1254, *inter alia* in the 1983 *Code of Canon Law* may allow insight vis-à-vis the connotation of “temporal goods,” their application, and relevancy to restitution regarding the sexual abuse of minors. Examination will not consider the nature or technical aspects of financial transactions or Chapter 11 bankruptcy filings, which have occurred in several U.S. dioceses involved in litigation.[[7]](#footnote-7)

**Financially Obligated**

**Background**

 While the total amount of monetary settlements made on behalf of sexual abuse victims may never be known, it is estimated that U.S. Catholic dioceses have paid settlements of more than $3 billion to alleged victims of sexual abuse and roughly 19 dioceses have filed for Chapter 11 bankruptcy.[[8]](#footnote-8) Moreover, in perhaps the largest payout to date, the Brooklyn Diocese which has previously settled 374 cases through a self-regulating Reconciliation and Compensation Program at $500,000 each, was ordered to pay an additional $27.5 million in a vicarious liability suit which involved a lay volunteer.[[9]](#footnote-9) Considering the current litigious environment, the promise of further Grand Jury investigations vis-à-vis historic sexual abuse allegations, and mediocre episcopal leadership - what “legitimate expectations” should the *Christifideles* have for “proper purposes” affixed to their donations?

**Ecclesiastical Goods**

 Bedsides defining Church “membership” the corpus of canon law includes an assortment of canons, which describe the obligations and rights of *all* *Christifideles*.[[10]](#footnote-10) These rights and obligations anchor fundamental concepts attributed to the “People of God” in an ecclesiological perspective.[[11]](#footnote-11) Deliberating the acquisition and use of the Church’s temporal goods ought to transpire from this notion of ecclesiology; doing otherwise is short sighted. For neglecting to approach “temporal goods” comprehensively risks forcing isolated, sterile, corporate like pronouncements in rendering dispositions. Temporal goods managed in this fashion jeopardize negating good intentions, love, charity, or devotion, which customarily accompanies tithes or legacies freely given to the Church.[[12]](#footnote-12) Consider the introductory canon concerning temporal goods:

*Canon* *1254 §1*. To pursue its proper purposes, the Catholic Church by innate right is able to acquire, retain, administer, and alienate temporal goods independently from civil power. *§2.* The proper purposes are principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.

Against the framework of sexual abuse litigation c.1254 ostensibly lacks clarity regarding the Church’s practice of financially compensating or settling lawsuits on behalf of victims. For instance, if criminal conduct or breach of fiduciary duty has occurred by someone associated with the Church, is it then permitted for the state to contravene the Church’s innate right to property? Do civil law interventions which re-direct the Church’s right to retain, administer, or alienate resources away from its stated “proper purposes” toward restitution infringe the Church’s innate rights?[[13]](#footnote-13) And finally, is “restitution” as it pertains to the sexual abuse of minors and the failure to protect the vulnerable truly congruent with the “proper purposes” of ownership and uses of ecclesiastical goods?

What does this canon anticipate?[[14]](#footnote-14) First, the law identifies the Church’s innate right and competence to assert freedom from civil authority in acquiring and managing its temporal goods. Second, the law stipulates “what” temporal goods are to accomplish. *Prima facie* then, envisioning a fork in the road where civil and ecclesiastical law meet is decidedly plausible. Yet ecclesiastical law is not meant to, nor should it presume to operate in a vacuum. For the *Christifideles*, ecclesiastical law is understood to work alongside civil legal systems.[[15]](#footnote-15) Perhaps, no illustration better exemplifies the intersection of civil and ecclesiastical law united with human relations than the circumstances associated with alleged sexual abuses.

Secular systems external to the Church have an obligation to enforce legitimate laws and protect the welfare and safety of its citizenry. Protecting vulnerable members of society falls within the purview of secular governance. Investigating crimes (e.g., forensic investigations for sexual, physical, and/or emotional child abuse, rape investigations, extortion inquiries, etc.) and pursuing justice (e.g., civil procedures, penal procedures, incarceration, sex-offender monitoring, facilitating tort claims and settlements, etc.) through lawful procedures are indispensable to achieving due process in the quest for justice. Secular systems exercise a regulatory function, in so far, as they owe a responsibility to monitor and oversee organizations operating within their jurisdictions. Thus, the Church, as an organization is subject to secular authority and must adhere to legitimate laws and regulations, unless they infringe divine law.

Yet rather than merely yielding to secular law, ecclesiastical jurisprudence ought to endeavor to surpass values and laws, many of which derived from Christian principles. Especially when norms seek to safeguard the dignity and welfare of human persons. Ironically, the Church has staunchly worked to secure justice for the vulnerable, those whom secular society has neglected or failed to secure justice for.[[16]](#footnote-16) For centuries the moral compulsion to “do the right thing” as rooted in the Gospel served as the bedrock for Church norms and praxis. Accordingly, the perpetration of child sexual abuse and the corresponding intentions of “mishandling” such allegations are irrefutably contrary to secular rule and the essence of the Church. Nevertheless, the Church as a community of *Christifideles* and its assets are structured toward “divine worship;”[[17]](#footnote-17) therefore, any re-routing of temporal goods from their designated “proper purposes” to compensate immoral and illicit acts appears indefensible.

**Restitution**

The concept of remedy in the form of *restitutio in integrum* claims rich tradition in civil and canonical procedure.[[18]](#footnote-18) The question of restitution; which, seeks to restore a victim’s status is complicated because it often forces “justice” by assigning an arbitrary dollar value to harm and suffering. Restitution also creates an obligation for financial compensation from the *Christifideles*, which is arguably incongruent with intentions behind donations.[[19]](#footnote-19) Victim compensation, in and of itself, neglects to punish the “proper offenders” given that neither bishops nor priests are settling financial claims from personal pocketbooks.

The *Christifideles* a community comprised of laity and those in holy orders is called to pursue a holy life,[[20]](#footnote-20) but the perpetration or sanctioning of sexual crimes presumes either a temporary or permanent abandonment of this quest.[[21]](#footnote-21) Apart from the spiritual, moral, and legal implications attached to sexual crimes remains the questionable practice of diverting Church resources from their “proper purposes” for victim compensation in an effort to reverse wrongs. In recalling that the principle assets of the Church are Her sacraments, and temporal goods are necessary to ensure stability and orientation toward divine purpose, then any introduction of “compensation” language presents a dichotomy. For the rudimentary paradigm as supported by c. 1254 does not explicitly permit provisions for “robbing Peter to pay Paul” through compensation packages designed to rectify harm inflicted by bishops or clerics. Yet this is precisely what occurs.

Typically the laity financially support the Church through tithes, legacies, and other charitable means; which are expensed and subsequently invested to accrue additional revenues and the like.[[22]](#footnote-22) Hence, indirectly the laity bear the financial burden for compensating suffering brethren as “chastisement” on behalf of “individuals” within the hierarchy.[[23]](#footnote-23) Moreover, obscurity often accompanies “restitution” and the multi-million-dollar compensation schemes reached through private agreements, arbitration, or court judgements.[[24]](#footnote-24) Determining “just” compensation is extremely difficult. Thus, compensation is a delicate topic, which necessitates somber deliberation. Haphazard compensation paradigms or tactless treatment toward victims’ risks abrogating Christian charity for those truly suffering the aftermath of sexual abuse.[[25]](#footnote-25)

Christian values enshrined in ecclesiastical norms demand truth; as such, truth and mercy must be part of the Church’s daily life. Whereas, c. 1254 negates outright “proper purposes” for temporal goods as a compensation fund for children sexually abused by clergy, the canon perhaps depends upon Christian sensibilities by including “… of charity, especially toward the needy.” If justice demands *caritas*,[[26]](#footnote-26) then it is incumbent upon all “that the obligation to promote social justice takes precedence over charity.”[[27]](#footnote-27) The Church’s sense of justice is distinct from secular authorities because it answers to a higher judge, whom teaches about “… the demands of justice and peace in conformity with divine wisdom.”[[28]](#footnote-28) Whether “social” justice is a viable “legal” loop hole to justify this most unfortunate use of temporal goods is debatable. However, until a judicious strategy is determined it is highly doubtful that *Christifideles*, would ever consider leaving the truly harmed in a state of prolonged suffering.

**Bishops and their flocks**

That *Christifideles* generallyadvocate some form of victim compensation neither negates episcopate responsibility toward accountable governance nor reduces the legitimate expectations *Christifideles* hold for sound fiscal management. By law, diocesan bishops exercise virtually an unfettered power of governance through executive, legislative, and judicial authority.[[29]](#footnote-29) Unless otherwise indicated lay *Christifideles* largely stand aside and trust that the episcopate, as successors of the Lord’s apostles, are acting virtuously and exercising diligence in governing, teaching, and pastoring. Events like the *Report’s* release have revealed otherwise. Widespread documentation by secular authorities exposed shell-like games played amid the highest reaches of the Church, which have eroded trust and invoked anger and resentment. News of dioceses filing Chapter 11 bankruptcy protections while liquidating assets for litigating sexual abuse cases produces thoughts such as “wow, another one.”

Prior to the Vatican’s kibosh of it, the USCCB planned penning “new measures” aimed at preventing and punishing wayward clergy from sexually assaulting minors and an “unprecedented code of conduct for bishops.”[[30]](#footnote-30) A noble gesture perhaps, but one which only serves to illustrate just how dismal the situation remains.[[31]](#footnote-31) If primary school pupils learn that lying, cheating, stealing, or hurting others is naughty, then what can the*Christifideles* legitimately expect their bishops will learn from a code of conduct? Upcoming Grand Jury investigations and class-action lawsuits suggest the episcopate ought to curtail efforts to “re-define” age-old concepts of moral and legal conduct and “oversee” the people and resources entrusted to them by the Lord.[[32]](#footnote-32)

**Conclusion**

The gravity of these historic (and current) sexual abuse scandals, often stretching back decades have had serious consequence for the Church regarding its reputation in the world as a moral beacon, its fidelity to the Gospel message, and its dubious utilization of temporal goods. The scope of the sexual abuse of minors’ crises viewed in conjunction with the purpose of temporal goods, the responsibility of the episcopate, the meaning of good stewardship, the faithful’s obligation to financially support the church, and compensation to alleged victims and their attorneys presents a realistic quandary for the *Christifideles*.

Yes, the Church possess an innate right independent of civil authority to acquire and manage its resources, but rights presume responsibilities.[[33]](#footnote-33) The Church has a moral and legal responsibility to abide by legitimate secular laws or it risks the loss of its tangible assets. Irrefutably, the tacit “approval” of the episcopate to extend risk and increase liability by subjecting the *Christifideles* to cruel physical and emotional maltreatment is immoral and/or illicit; moreover, these actions eclipse divine, civil, and ecclesiastical law and have resulted in significant losses. The progression of complex and cumbersome civil litigation has far reaching consequences. Pending class action lawsuits against the USCCB and Holy See seeking financial damages on behalf of plaintiffs alleging sexual abuse will undoubtedly re-route and reduce temporal resources further.[[34]](#footnote-34)

Rightly so, Church authorities continue to issue statements of apology addressed to victims of child sexual abuse; but rarely, if ever have apologies included acknowledgment to the entire *Christifideles* regarding the abuse and mis-use of temporal goods to rectify deplorable individual behavior. While restitution is important; so is debating whether monetary and time limits are necessary in the resolution of historic sexual abuse claims.[[35]](#footnote-35) The *Christifideles* are neither oblivious to the use of Church monies in litigation nor willing to accept condescending treatment from clergy. It may transpire that until the restoration of trust and an “end” is in-sight to the abuse crises the lay *Christifideles* will divert tithes, legacies, and other charitable donations to alternate “Catholic” charitable causes in lieu of the Church.

Holding the offending episcopate accountable is problematic given the structure and organization of the Church.[[36]](#footnote-36) Resignation and/or laicization, while serious consequences, do not resolve financial issues associated with clergy maintenance and compensation and/or litigation. Liability insurance or similar mechanisms common to “employees” in secular professions are unrealistic and would have little impact on stemming the tide of lawsuits. Lay *Christifideles* must exercise their right to “cooperate” in governance via episcopal oversight to reduce risk and liability before isolated incidents fester and evolve into crises.[[37]](#footnote-37)

The bulk of bishops are good stewards and work tirelessly to ensure the proper exercise of governance and protection of the flocks. Yet, to fully realize the “proper purposes” for temporal goods as envisioned by c. 1254, prudence demands bishops safeguard temporal goods and persons through utilizing all available civil and ecclesiastical legal strategies. Secular and ecclesiastical systems must work in tandem to safeguard the Church’s primary purpose, which is “divine worship.” Quite simply it befits all*Christifideles* to truly discern the “proper purposes” of the poor widow’s two small copper coins….[[38]](#footnote-38)

1. Office of the Attorney General, Commonwealth of Pennsylvania, *Report I of the 40th Statewide Investigating Grand Jury* (Harrisburg, PA: Pennsylvania Office of Attorney General, August 14, 2018), accessed November 25, 2018, https://www.attorneygeneral.gov/wp-content/uploads/2018/08/A-Report-of-the-Fortieth-Statewide-Investigating-Grand-Jury\_Cleland-Redactions-8-12-08\_Redacted.pdf. The Pennsylvania Grand Jury Report made public in August 2018 reported on decades of sexual abuse perpetrated by priests and lay members of religious orders in the Roman Catholic Church; allegations reached into the thousands. Note: this essay focuses on the sexual abuse of minors within the Church. It does not consider sexual harassment, assault, or relationships between adults. [↑](#footnote-ref-1)
2. Carol Glatz, “Vatican Tribunal Finds Archbishop Apuron of Guam Guilty of Abuse,” *Catholic News Service* (Washington, D.C., March 19, 2018), accessed November 25, 2018, http://www.catholicnews.com/ services/englishnews/2018/vatican-tribunal-finds-archbishop-apuron-of-guam-guilty-of-abuse.cfm provides an update following the Vatican’s verdict concerning the prior Archbishop Aupon of Guam accused of sexually abusing children; Haidee V. Eugenio, “Guam’s Nearly 200 Clergy Sex Abuse Claims to Go into Mediation,” *Pacific Daily News* (Guam, September 13, 2018), accessed November 25, 2018, http://www.guampdn.com/ story/news/2018/09/13/clergy-sex-abuse-cases-mediation-jeopardy/1253631002/ reports on roughly 200 claims filed in Guam which are pending litigation regarding allegations of rape and sexual abuse against Catholic bishops, priests, teachers, and others. Plaintiffs are seeking $5-10 million dollars in damages and 59 similar cases have been files in local courts; Elise Harris, “All Chilean Bishops Present Resignation, Await Decision from Pope,” *EWTN News* (Vatican City, May 18, 2018), accessed November 25, 2018, http://www.ewtnnews.com/catholic-news/Vatican.php?id=17524 Reports on the May 15-17 gathering between the Pope and the 34 Chilean bishops following investigation into sexual abuse cover-ups by members of the Church hierarchy in Chile. The investigation, which resulted in a 2,300-page report is not in the public domain; Kate Connolly, “‘Shocking’ Sexual Abuse of Children by German Clergy Detailed in Report,” *The Guardian*, September 25, 2018, sec. World news, accessed November 25, 2018, https://www.theguardian.com/world/ 2018/sep/25/report-details-sexual-abuse-german-catholic-church The German Catholic Church released results in September 2018 of an investigation into decades of alleged sexual abuse of minors’ cases. “The report details the cases of 3,677 children, the majority of whom are male, between 1946 and 2014. About 1,670 clerics, mainly priests are implicated.” The report described how 60% of the abusive priests evaded punishment and how systematic transfers arranged by members of the hierarchy facilitated secrecy and increased the propensity for additional victimization. [↑](#footnote-ref-2)
3. The PA Grand Jury Report provides a well-documented account of the actions or lack thereof by several bishops over many decades, which ultimately contributed to the wholesale institutional failure of the Church in alleged and confirmed cases of child sexual abuse. As noted above, bishops in the U.S., Germany, Chile, and Guam are implicated in the systematic sexual abuse of children and its cover-up. Several bishops have resigned or “been” resigned by the Vatican in the wake of these scandals breaking to the public. The issue then becomes where do these “resigned” bishops go and whom is financially responsible for their upkeep? See Bishop Jerry Vincke, “Why I Said ‘Yes,’” *Catholic Diocese of Salina*, accessed November 27, 2018, https://salinadiocese.org/ illustrates the difficulty of providing for bishops following their resignation regarding residence, basic sustenance, and oversight. [↑](#footnote-ref-3)
4. See Catholic Church, *Code of Canon Law: Latin-English Edition*, trans. Canon Law Society of America (Washington, D.C.: Canon Law Society of America, 2012) (hereafter CIC); and, *Codex Iuris Canonici Auctoritate Ioannis Pauli PP. II Promulgatus* (Vatican City: Libreria Editrice Vaticana, 1983) for the official, Latin version of this and all subsequent references to the Code of Canon Law. Canon 1258 defines the meaning of “Church” as it pertains to temporal goods. Likewise, “Church” in this paper is synonymous with “Roman Catholic Church” and “Catholic Church.” Canon 1257.1 defines “ecclesiastical goods” in the context of temporal goods and the public juridic person. Canon 128 speaks to the obligation one has to repair damage inflicted upon another. [↑](#footnote-ref-4)
5. Elise Viebeck, “Boy Scouts Lobby in States to Stem the Flow of Child Abuse Lawsuits,” *The Washington Post* (Washington, D.C., May 9, 2018), accessed November 9, 2018, https://www.washingtonpost.com/ powerpost/boy-scouts-lobby-in-states-to-stem-the-flow-of-child-abuse-lawsuits/2018/05/08/0eee0a44-47d8-827e-190efaf1f1ee\_story?noredirect=on&utm\_term=.06f27872db48. The Boy Scouts of America (BSA) referenced here merely as a comparison to the Catholic Church given the size and scope of the organization. Statistics indicate that 2.3 million youth and nearly one million adult volunteers are members of the BSA. Moreover, since 2008 BSA has been the defendant in “at least 200 federal lawsuits.”; Patrick Boyle, “Scouts Honor,” *The Washington Times* (Washington, D.C., May 20, 1991), accessed November 28, 2018, http://www.newsline.umd.edu/Boyle/shonor1.htm notes that numbers for alleged abuse victims are difficult to ascertain due to the secrecy frequently stipulated in damage payment clauses. Although there are roughly 2,000 documented BSA cases of reported sexual abuse prior to 1994, experts suggest the actual numbers are higher; Aimee Green, “Portland Sex Abuse Verdict Leaves Boy Scouts Vulnerable to More Lawsuits,” *The Oregonian* (Portland, Oregon, April 13, 2010), accessed November 28, 2018, http://www.oregonlive.com/news/ index.ssf/2010/04/portland\_sex\_abuse\_verdict\_lea.html compared the BSA’s handling and of child sexual abuse cases to those in of the Catholic Church for both historic and current allegations commenting “BSA knowledge of abuse dated back to the 1920s… a snowball effect much like the Catholic Church….” [↑](#footnote-ref-5)
6. Canon 1255 “The universal Church and the Apostolic See, the particular churches, as well as any other juridical person, public or private, are subjects capable of acquiring, retaining, administering, and alienating temporal goods according to the norm of law.” Alludes to the Church’s ability to possess and manage temporal goods in congruence with the rights and purposes described in c. 1254. [↑](#footnote-ref-6)
7. Refer to Barbara Anne Cusack, “Silver and Gold We Have Not: Balancing Conflicting Values in Diocesan Bankruptcy,” in *Canon Law Society of America: Proceedings of the Seventy-Nineth Annual Convention* (Washington, D.C.: Canon Law Society of America, 2018), 92–106 for an in-depth discussion regarding Chapter 11 bankruptcy process resulting from the sexual abuse crises in the Archdiocese of Milwaukee. The Archdiocese of Milwaukee, a civil corporation since 1983, had designated the position of the Archbishop as its sole corporate member. Moreover, in accordance with State of Wisconsin law each Catholic parish independently incorporated; thereby, obtaining its own corporate identity separate and apart from the Archdiocese. As independent “corporations” each parish owns and manages its own assets. [↑](#footnote-ref-7)
8. See Christine Rousselle, “Winona-Rochester Diocese to File for Bankruptcy amid Abuse Lawsuits,” *Catholic News Agency* (Washington, D.C., November 20, 2018), accessed November 28, 2018, https://www.catholicnewsagency.com/news/winona-rochester-diocese-to-file-for-bankruptcy-amid-abuse-lawsuits-35858/. The most recent filing for Chapter 11 bankruptcy, as of November 20, 2018 is the Diocese of Winona-Rochester. Bishop Quinn explained to his flock that 17 priests are subjects of allegations for committing child sexual abuse and 121 survivors of sexual abuse have filed claims for compensation. Bishop Quinn noted “Filing for bankruptcy will allow the diocese to reorganize their finances, and continue to provide social services work.” Parishes and schools in the diocese are separate corporate entities, thus not part of the bankruptcy proceedings. Refer to John Anthony Renken, “The Parochus as Administrator of Parish Property,” *Studia canonica* 43 (2009): 487–520 for detailed discussion on the parish as a public juridic person, which enjoys all the rights and obligations inherent to this designation. [↑](#footnote-ref-8)
9. Sharon Otterman, “Brooklyn Diocese Is Part of $27.5 Million Settlement in 4 Sex Abuse Cases,” *The New York Times* (New York, September 19, 2018), sec. New York, accessed November 28, 2018, https://www.nytimes.com/2018/09/18/nyregion/catholic-church-sex-abuse-settlement-brooklyn.html. This settlement, reportedly the largest to date alleged sexual abuse on behalf of four victims which took place between 2003-2009. A volunteer religion teacher, whom pled guilty to first-degree sexual misconduct in 2009 is serving a 15-year prison sentence. Two priests named in the suit allegedly were negligent in supervising the volunteer who “had a desk on Church property and received a stipend.” Notably, a “local after school program based next to the Church” is responsible for paying 1/3 of the court ordered settlement. [↑](#footnote-ref-9)
10. Canon 11 states “Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the efficient use of reason, and, unless the law expressly provides otherwise, have completed seven years of age.” Canons 204-223 found in “Book II: The People of God” represent an especially close match in ideology and content with what we have come to think of as fundamental human rights. Statements regarding human dignity, fundamental freedoms, human rights, and the common good are within these canons. Canon 204 describes the *Christifideles* as “... those who, in as much as they have been incorporated in Christ through baptism, have been constituted as the people of God….” Moreover, c. 204 speaks to the spiritual effects of baptism and the sacramental basis for incorporation of the individual in the Church, which ultimately constitutes the baptized person(s) as physical juridical persons within the universal church, which entails rights and obligations as described in c. 96. Delineated throughout the code are rights and obligations for specific situations. [↑](#footnote-ref-10)
11. Robert J. Kaslyn, “Introduction, Book II: The People of God [Cc. 204-746],” in *New Commentary on the Code of Canon Law* (New York: Paulist Press, 2000), 241 alludes to introductory cc. 204-207 pertaining to the “People of God” and their functional importance to understanding the remainder of the *CIC*. [↑](#footnote-ref-11)
12. See W. Cole Durham, Jr. and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (New York: Aspen Publishers, 2010), 451–458 for discussion regarding comparative perspective on direct public financing and religious entities. Unlike many European countries supported by direct taxation or government funding schemes, U.S. religious entities depend upon direct financial contributions from its members, charities, and other parish/diocese fund-raising efforts. Historically the prohibition for the direct funding of religion is rooted in the U.S. Constitution’s Establishment Clause, which serves to stringently demarcate a direct church and state funding paradigm. However, indirect funding schemes through tax exemptions and other benefits or payments to social welfare organization are feasible in accordance with non-profit status laws and other regulatory stipulations. Increasingly there are indications that American generosity may be decreasing. Kathy Schiffer, “Legatus Suspends Nearly $1 Million in Donations to the Holy See,” *National Catholic Register*, November 19, 2018, accessed November 29, 2018, http://www.ncregister.com/blog /kschiffer/legatus-suspends-1-million-in-donations-to-the-holy-see reported that funds earmarked for the Holy See were withheld after the Vatican intervened with the U.S. Conference of Catholic Bishops (USCCB) General Assembly’s plan (November 2018) by thwarting their debate and subsequent vote on measures to “end” the sexual abuse of minors’ scandals affecting U.S. Catholic churches. [↑](#footnote-ref-12)
13. Civil law intervention into Church assets and documents pertaining to allegations of either direct or vicarious liability regarding sexual abuse and fraud are subject to civil investigation, which frequently leads to litigation, arbitration, etc. is too large a topic to discuss here. However, by way of a basic definition *Black’s Law* describes “A “tort” is “a civil wrong, other than a breach of contract, for which a remedy may be obtained, in the form of damages; a breach of duty that the imposes on persons who stand in a particular relation to one another.” (Bryan A. Garner, J.D., LL.D., ed., *Black’s Law Dictionary*, 4th Pocket Edition. [St. Paul, MN: Thomson Reuters, 2011], 763). *Black’s Law Dictionary* page 454 Vicarious Liability is “Liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or an associate (such as an employee) based on the relationship between the two parties.” For detailed discussion consult *Fathers and Brothers: The Legitimate Expectation of Diocesan Clerics in the Light of Canon 384 of the Code of Canon Law*, Canon Law Monograph Series 7 (Leuven, Belgium: Uitgeverij Peeters, 2018), chap. 3 and pages 422-423. [↑](#footnote-ref-13)
14. Canon 17 states that “Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator.” Any attempt to discern the aim or purpose of any canon or piece of legislation ought to first consider the textual meaning in conjunction with exegetical and teleological methods as specified in c. 17. [↑](#footnote-ref-14)
15. Canon 22 “Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.” [↑](#footnote-ref-15)
16. See R.H. Helmholz, *The Spirit of Classical Canon Law*, The Spirit of the Laws (Athens, Georgia: The University of Georgia Press, 1996), chapter 5 ("Principles of Ecclesiastical Jurisdiction: The Protection of Miserabiles Personae and Jurisdiction ex Defectu Justitiae"). Helmholz traces the history of the Church’s jurisdiction following Roman law principles and the Gospels in developing rationale for exclusive jurisdiction over its clergy and competence over those categorized as less fortunate and in need of “special” protection, (i.e. those categorized as *miserabiles personae)*. “The relation of ecclesiastical jurisdiction to temporal law and the Church’s right to intervene in secular matters were the subject of two decretals by Pope Innocent II…” (ibid, page 118) suffice it to say that the Church sought to correct what it considered to be defective justice on behalf of the people. Chapter 13*, “*Cooperation and Coercion in the Court of Church and State: Invocation of the Secular Arm”provides discussion on the spheres of competence via the “two-swords” theory. While 12th century jurisprudence re: church and state relations do not necessarily mirror those of the 21st century the idea that both were institutions under God and that both shared values and norms common to Christian society is indisputable. In the modern sexual abuse crisis in which the state is dictating conduct rather than vis-a-versa the authors remarks are perhaps fitting “… canonical theory had immediate and practical consequences. The Church made strenuous efforts to turn its ideas about the proper relation between its courts and those of lay princes into reality, and those efforts bore fruit ….” (ibid, page 357). [↑](#footnote-ref-16)
17. Edward Morgan, “Temporal Goods” (Course Lecture, KU Leuven, Faculty of Canon Law, October 15, 2018). As discussed by Professor dr. Morgan, the primary principle of temporal goods ownership is arguably to “order divine worship” as described in c. 1254.2 but in conjunction with cc. 204 and 205 to truly comprehend who the Christian faithful are. What resources the Church requires to pursue and conduct (cc.1254-1255) its mission, to “order divine worship” is substantiated in cc. 209–219 among others. Given that the principle assets of the Church are Her sacraments it is self-evident that the acquisition, retention, administration, and alienation of temporal goods as indicated throughout the *Code of Canon Law* isto ultimately ensure the Church’s stability, viability, and divine purpose as primary to ownership. [↑](#footnote-ref-17)
18. See Helmholz, *The Spirit of Classical Canon Law*, chapter 4 (“Remedies and Canonical Procedure: The Canonical Restitutio in Integrum") for a brief history on the reception of the Roman Law of Restitutio into canon and civil law concerning the classical law period and the ius commune. For our purposes in discussing clerical sexual abuse of minors it is perhaps useful to note “… remedy called *restitutio in integrum*. An ancestor of the modern law of restitution, the phrase commonly translated as ‘restitution to a prior condition,’ by the early writers.” (ibid, page 89). While legal procedure has changed over the centuries; the concept, expanded upon by canon lawyers retains significant similarity to modern day jurisprudence. Of further historical interest is the scope of remedy; “… substantial harm was always required in any event before *restitutio* was granted, that requirement was thought to provide a sufficient safeguard against excessive use of remedy.” (ibid, page 103). For a detailed present-day discussion on the use of restitution concerning tort and contract issues and the influence of canon law in procedure and remedy, refer to Morgan, *Fathers and Brothers*, chapters 3 and 4. Moreover, in the framework provided here, pondering *whom* the defendant is in these alleged historical child sexual abuse cases presents interesting questions (to me as a non-lawyer). [↑](#footnote-ref-18)
19. Canons 1276-1284 addresses the issue of oversight and obligates ordinaries to exercise diligence in the administration and use of temporal goods. Because the ordinary is generally not a financial expert he must hear and endeavor to work with the finance council and college of consultors in ordinary and extraordinary circumstances. Many aspects of *Book V* *Temporal Goods* and *Book I General Norms* work together in stipulating competencies, functions, structures, etc. of the ordinary, finance officer, and administrator; thus, consultation of these resources is important. Canon 1284 serves something akin to a checklist and reflects secular law standards in describing expectations for the administration of temporal goods. [↑](#footnote-ref-19)
20. Canons 208, 209.2, 210, and 211 together stress fundamental equality attributed to baptism in Christ, which obligates all to be in communion with the Church and promote the growth of the Church through leading a holy life. [↑](#footnote-ref-20)
21. Canons 210 and 276 both address the Christian faithful’s task to lead holy lives. Whereas c. 210 addresses all the faithful, c. 276 specifically addresses those consecrated to God in holy orders. [↑](#footnote-ref-21)
22. Canon 222 §1. “The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers. §2. They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources.” Canon 1254 resonates c. 222 to a degree. Moreover, *cc. 1260 thru 1263* specify the obligations and means for the faithful to render financial and other support to the Church and the corresponding rights of bishops to request the faithful oblige as appropriate. [↑](#footnote-ref-22)
23. Catholic News Service, “Guam Archdiocese to Move Offices, Sell Chancery, Other Church Properties,” *National Catholic Reporter*, last modified March 27, 2018, accessed November 29, 2018, https://www.ncronline.org/news/accountability/guam-archdiocese-move-offices-sell-chancery-other-church-properties. A poignant example is Guam in liquidating assets and selling the chancery, seminary, and other Church properties to settle more than 150 clergy sexual abuse cases. Chancery property was a gift to the archdiocese in 1950 from the estate of Henry Flores Nelson. Over many years others have also made generous donations in terms of time and money. [↑](#footnote-ref-23)
24. Arguments waged for the ever-increasing size of the monetary rewards pertaining to historic child sexual abuse allegations and the “creative” ways attorneys are filing lawsuits perhaps calls into question what “just compensation” is. Frequently the standards of proof required to render definitive judgements, elapsed time since the abusive event(s), large attorney fees, lack of corroborating evidence or witnesses, deceased accused, and how large sums of money intends to restore victims are all legitimate concerns. Moreover, the “credible evidence” standard is not always clear. Determining whether restitution accomplishes its purpose in restoring a victim is perhaps not plausible to answer. [↑](#footnote-ref-24)
25. Cusack, “Silver and Gold We Have Not: Balancing Conflicting Values in Diocesan Bankruptcy,” 104–105 suggests a balance of values throughout the compensation and Chapter 11 bankruptcy process. Moreover, that seeking the truth, non-economic factors, and objections to claims are critical aspects. Denial of claims is often difficult because it slows the process, but legitimate grounds exist to deny claims (e.g., a prior settlement agreed, abuse alleged did not include sexual abuse as a minor, non-parish or diocese connection concerning the allegations, claims of fraud without evidence, etc.). Allison Silink and Pamela Stewart, “Tort Law Reform to Improve Access to Compensation for Survivors of Institutional Child Sexual Abuse,” *UNSW Law Journal* 39, no. 2 (n.d.): 553–595 argues for extend statutory liability, or the removal of statutory limitations and increasing vicarious liability norms for historic child sexual abuse claims. These arguments among others seek to increase access to tortious compensation for an indefinite period. Sigal Samuel, “Should the Catholic Church Pay Reparations to Sex-Abuse Victims?,” *The Atlantic*, September 25, 2018, accessed November 29, 2018, https://www.theatlantic.com/international/archive/2018/09/catholic-church-reparation-compensation-sex-abuse/570610/ advocates against funds established by dioceses to compensate victims in situations where the statutes of limitations have expired (most U.S. states). Additionally, the author disagrees that alleged victims should have to prove “credible” abuse, and decries payout programs because they stipulate confidentiality and bar compensated victim from filing a future lawsuit concerning same allegations. Compensation programs described as a “deceptive moves” by the author; thus, are viewed as a method designed to buy victims off cheaply, a system which pays much less than court litigated settlements do, and in re-placing compensation programs he advocates instead for the abrogation of statutes of limitations for allegations of sexual abuse. By endorsing the concept that “lawyers representing victims are finding more creative ways to sue the Church via fraud allegations (fraudulent concealment) and to investigate the Church under the Racketeer Influenced and Corrupt Organization Act (RICO),” undoubtedly presents an opportunity for victims and the Church to consider what constitutes just compensation. While the Church must take responsibility for scandals of sexual abuse against minors and engage in the difficult, if not impossible task of setting monetary values on harm and suffering, the Church as a community should also receive equitable treatment comparable to other organizations. [↑](#footnote-ref-25)
26. Canon 223 §1. “In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others. §2. In view of the common good, ecclesiastical authority can direct the exercise of rights which are proper to the Christian faithful.” Thus, in conjunction with the obligation to support the Church and ensure social justice via charity as previously noted in c. 222, cc. 1260-1263; and c. 223, stipulates accounting for the rights of others, the common good of the Church, and the role of ecclesiastical authority to ensure the common good. At some level, then the use of temporal goods in the name of *caritas* ought to be diverted under the auspices of “charity” for those in need, whether to compensate suffering victims within the Church or otherwise. [↑](#footnote-ref-26)
27. Kaslyn, “Introduction, Book II: The People of God [Cc. 204-746],” 283. Kaslyn draws from *Apostolicam actuosiatem 8* in arguing that “the demands of justice should be satisfied at the outset, so as to avoid giving in charitable gifts what is due in the name of justice.” Arguably this reasoning has more to do with charitable giving as it relates to income inequality, alms to the poor, feeding and clothing the needy, and caring for the sick prior to purchasing a golden chalice or some other such thing; but it may be that “social” justice ought to also include those harmed and left to suffer due to abuses inflicted upon them. [↑](#footnote-ref-27)
28. Catholic Church, *Catechism of the Catholic Church*, Second Edition. (Washington, D.C.: United States Catholic Conference, 2000), 2419–2420. [↑](#footnote-ref-28)
29. Canons 375 and 378 describe the basic functions and requirements expected of bishops. Canon 381.1 broadly defines the bishop’s scope of power; “A diocesan bishop in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority.” Canon 393 further notes that “The diocesan bishop represents his diocese in all its juridic affairs.” Canon 1284 reflects secular law standards in describing expectations for the administration of temporal goods. [↑](#footnote-ref-29)
30. Los Angeles Times Editorial Board, “Vatican Stalls Efforts to Punish Sexual Abuse,” *Stars and Stripes*, Washington, D.C., November 16, 2018. The Vatican directed the USCCB to table discussion on sexual abuse topics until after February 2019 when Pope Francis plans to meet with bishops from around the world to discuss the on-going sexual abuse of minors’ crises. “Intense Debate over Handling of Abuse Scandal Ensues at USCCB Meeting,” *Catholic News Agency*, accessed November 29, 2018, https://www.catholicnewsagency.com/ news/intense-debate-over-handling-of-abuse-scandal-ensues-at-usccb-meeting-31318/. The USCCB formed a “deliberately small” task force to discuss the issues. However, reports of this task force indicate the discussion primarily focused on homosexuality and the priesthood rather than mechanisms to address the sexual abuse of minor children or the costly litigation. [↑](#footnote-ref-30)
31. Ed Condon, “US Bishops Divided on How to Deal with Sex Abuse Accusations,” *Catholic News Agency*, last modified November 14, 2018, accessed November 29, 2018, https://www.catholicnewsagency.com/ news/us-bishops-divided-on-how-to-deal-with-sex-abuse-accusations-23342. USCCB discussion is reported to have moved away from developing policy and procedure to encourage greater transparency in handling alleged case of sexual abuse among the episcopate to consider a system based on metropolitans and/or archbishops’ oversight. No discussion regarding how failures which can results in the wholesale “alienation” of church property or filing for Chapter 11 bankruptcy reportedly transpired. This is a pity given the lawsuit filed against the USCCB during the conference. See “Vatican, US Bishops Face Class-Action Lawsuit from Victims of Clergy Sex Abuse,” *Catholic News Agency*, last modified November 15, 2018, accessed November 29, 2018, https://www.catholicnewsagency.com/news/vatican-us-bishops-face-class-action-lawsuit-from-victims-of-clergy-sex-abuse-79829/. [↑](#footnote-ref-31)
32. Canon 392 directs the bishop to foster unity and exercise vigilance to avert abuses. [↑](#footnote-ref-32)
33. Canon 1254. [↑](#footnote-ref-33)
34. See “Vatican, US Bishops Face Class-Action Lawsuit from Victims of Clergy Sex Abuse.” Presumably the idea is to pursue international avenues to seek financial and punitive damages via the RICO Act to reach the unincorporated aspect of the Church. [↑](#footnote-ref-34)
35. Viebeck, “Boy Scouts Lobby in States to Stem the Flow of Child Abuse Lawsuits.” The BSA and U.S. Catholic archdioceses have argued that “lookback” periods, which allow for decades old crimes or historic cases to be litigated indefinitely violates due process. While there are arguments for and against these positions establishing prescription for historic abuse compensation schemes at some point may signal a way forward for the organizations, accused, and victims by bringing closure to a tragic series of events. [↑](#footnote-ref-35)
36. Canon 1254.2 among others require that clergy receive decent care and support; this issue is further complicated by incardination norms between clerics and bishops and bishops conference rules. [↑](#footnote-ref-36)
37. Regarding the power of governance, canon 129 §2. “Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law.” [↑](#footnote-ref-37)
38. Mk. 12:42 (NRSV) [↑](#footnote-ref-38)