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INDIGENOUS PEOPLES OF THE AMERICAS UNDER THE CANON LAW OF THE CATHOLIC AND ORTHODOX CHURCHES

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I. INTRODUCTION

In a secular society deeply rooted in Protestantism, such as the twenty-first-century United States, the idea of religious law often conjures up two images: (1) the Protestant Reformation and the successive Puritan flight to the New World to avoid the Church of England's domination as the official religion of the state; or (2) the much more recent fears of Islamic Sharia law in the popular culture which led the voters of Oklahoma to pass a ban on "Sharia law" in 2010.² However, the formal religious law of the two Apostolic Churches, the Roman Catholic Church and the Eastern Orthodox Churches also played an influential role in shaping the U.S. and the Americas into what they are today. It is particularly crucial to consider the impact of religious law on Indigenous people, who were and remain some of the last significant populations of unevangelized pagans and other non-Christian religious practitioners today.³

The earliest interactions between American Indians and Alaska Natives in the Americas and the laws of colonialist powers often came not in the secular courts of Spain, England, France, and Russia, but through the religious laws of the Catholic Church and Eastern Orthodox Churches.⁴ These churches first interacted with American Indians and Alaska Natives during the churches' missions when the settlers, such as the Spanish conquistadors and Russian fur traders, also arrived in the Americas.⁵ The Catholic Church weighed in on the legal status of American Indians through papal bulls such as *Inter Caetera* issued by Pope Alexander VI in 1493 and *Sublimis Deus*⁶ by Pope Paul III in 1537. These papal bulls, along with centuries-old ecclesiastical writings from the Holy See concerning pagans, dictated the churches' relationships with American Indians in the New World until the Second Vatican Council and recent Synod of Bishops for the Pan-Amazon region.⁷

² See generally Paula Burkes, *Q&A with Richard Riggs: Business Lawyer Answers Questions About Sharia Ban*, THE OKLAHOMAN (Nov. 19, 2010, 12:00 AM), <https://www.oklahoman.com/story/business/local/2010/11/19/qa-with-richard-riggs-business-lawyer-answers-questions-about-sharia-ban/61198876007> [<https://perma.cc/7T88-WLSW>]. This voter-approved amendment to the Oklahoma State Constitution was struck down as unconstitutional by the Tenth Circuit Court of Appeals. See *Awad v. Zirriax*, 670 F.3d 1111 (10th Cir. 2012).

³ *Native American Religions*, THE SPIRITUAL LIFE, <https://slife.org/native-american-religions/> [<https://perma.cc/3SU2-JTWL>].

⁴ Robert Royal, *Columbus' Forgotten Legacy: Missionaries in the New World*, CRISIS MAGAZINE (June 1, 1992), <https://www.crisismagazine.com/vault/columbus-forgotten-legacy-missionaries-in-the-new-world> [<https://perma.cc/275X-LAR4>]; Mark Thiessen, *Anchorage's Oldest Building, a Russian Orthodox Church, Gets New Life in Restoration Project*, ALASKA'S NEWS SOURCE (Oct. 29, 2023, 12:42 PM), <https://www.alaskasnewsresource.com/2023/10/29/anchorage-oldest-building-russian-orthodox-church-gets-new-life-restoration-project> [<https://perma.cc/GQ3Z-WABA>].

⁵ Royal, *supra* note 4; Thiessen, *supra* note 4.

⁶ Pope Paul III, *Sublimis Deus: On the Enslavement and Evangelization of Indians*, PAPAL ENCYCLICALS ONLINE, <https://www.papalencyclicals.net/paul03/p3subli.htm> [<https://perma.cc/T6ZT-QVWQ>].

⁷ The "New World" is a historical term which the article uses for that nature only. It was certainly not new to those who lived here. And see Philip Pulella, *Vatican Synod Proposes Ordination of Married Men as Priests in Amazon Region*, REUTERS (Oct. 26, 2019), <https://>

The other Apostolic Church in the New World—the Eastern Orthodox Church under the *autocephalous* Russian Orthodox Church—also applied the unwritten church law of the Orthodox Church for the legal status of the Alaskan Natives its adherents encountered in the 18th century.⁸ Despite both churches sharing the first seven ecumenical councils from before the Great Schism of 1054, the legal status of people from the Americas had meaningful differences that reflected not only the dogmatic development in the Catholic Church during the Middle Ages but also the relatively recent pagan history of the Russian Empire originating in the predecessor state of Kievan Rus.⁹ The Russian Orthodox Church and Tsar inherited their legacy from the entwined religious and secular law of the Eastern Roman Empire.¹⁰ The latter approach of cultural harmonization under the Orthodox canon law allowed for the Orthodoxy of the Alaska Natives to become something truly their own.¹¹ This approach won over assimilation in the canon law of the Catholic Church, as can be seen by the recent Synod of Bishops for the Pan-Amazon region, who suggested a major change for the canon law status of South American Indian Catholic practices along with other church reforms originating in the aftermath of Vatican II.¹²

II. BACKGROUND

Defining canon law, in comparison to secular law, can be difficult due to the historical overlap between areas of law and the nature of canon law itself. Canon law, in its earliest form, dates back to the Apostolic age and Jesus Christ himself in first century Judea. The secular encyclopedia Britannica defines canon law as:

[C]anon law, Latin *jus canonicum*, body of laws made within certain Christian churches (Roman Catholic, Eastern Orthodox, independent churches of Eastern Christianity, and the Anglican Communion) by lawful ecclesiastical authority for the government both of the whole church and parts thereof and of the behavior and actions of individuals. In a wider

www.reuters.com/article/us-pope-synod-amazon-priests-idUSKBN1X50HE [<https://perma.cc/GK3V-9XW8>]; See e.g., Sylvia Poggioli, *Vatican II: A Half-Century Later, A Mixed Legacy*, NPR (Oct. 11, 2012), <https://www.npr.org/2012/10/11/162594956/vatican-ii-a-half-century-later-a-mixed-legacy> [<https://perma.cc/TU59-3BZ3>].

⁸ *In the Beginning Was the Word: The Russian Church and Native Alaskan Cultures*, LIBRARY OF CONGRESS, <https://www.loc.gov/exhibits/russian/russch4.html> [<https://perma.cc/D9FL-LBPH>]. At the time, the Russian Eastern Orthodox Church was headed by the Most Holy Synod of the Russian Tsar. *Id.*

⁹ Sean Alan Heinritz, *Memory Keepers & Dual Faith*, UNIVERSITY OF WISCONSIN—MILWAUKEE (2018), <https://dc.uwm.edu/cgi/viewcontent.cgi?article=1067&context=rssso> [<https://perma.cc/8M9F-YE9Z>].

¹⁰ *How Did the Byzantine Empire Influence Russia*, DAILYHISTORY.ORG, https://dailyhistory.org/How_did_the_Byzantine_Empire_influence_Russia [<https://perma.cc/QH66-ASS3>].

¹¹ *Alaska's Native People Meet the Russian Orthodox Church*, I'VE BEEN EVERYWHERE, MAN (July 26, 2018), <http://www.ivebeeneverywhereman.us/our-travels/alaskas-native-people-meet-the-russian-orthodox-church> [<https://perma.cc/84ZG-DRFZ>].

¹² Pullella, *supra*, note 7.

sense the term includes precepts of divine law, natural or positive, incorporated in the canonical collections and codes.¹³

This definition is nearly identical to the one officially provided by the United States Conference of Catholic Bishops, with additional language added for the revised *Code of Canon Law* compiled by Pope John Paul II in 1983 about the law coming from the Holy Spirit according to Catholic tradition.¹⁴ In contrast, the Orthodox canon law, while agreeing with the secular and Catholic definitions, stresses the more unwritten and synodal nature of how the canon law operates in Orthodoxy's ecclesiastical framework: "Although generally referred to as canon law, such a name given to the Church's law suggests a parallel to secular law. It would be more correct to call it the tradition of the holy canons, since they are the object of its concern."¹⁵ This contrast demonstrates the critical difference between how the Roman Catholic Church and Eastern Orthodox Churches operate their ecclesiastical courts.¹⁶ Both churches share the Old and New Testament, the Church Fathers, and the first seven ecumenical councils of the pre-Great Schism Church. Differences manifest due to the Catholic Church's top-down hierarchical organization. With this organization, the Pope, as Vicar of Christ, is the final authority on Earth, meaning that a canon law perspective governs the Church.¹⁷ This organizational structure is akin to a theocratic, elective, absolute monarchy under the principle of papal supremacy.¹⁸ In Eastern Orthodoxy, the highest authority in the church, the Ecumenical Patriarch of Constantinople, is only considered *Primus inter pares*, "first among equals" among the other Patriarchs of the other Orthodox Sees.¹⁹ Thus, his position over other Orthodox bishops is one of honor, not supremacy.

This belief is the Orthodox principle of "*autocephaly*," which is Greek for "self-headed," meaning the bishops, who are heads of autocephalous churches, have no religious authority above them in their jurisdiction.²⁰ Ultimately,

¹³ Peter J. Huizing & Ladislav M. Orsy, *Canon Law*, BRITANNICA, <https://www.britannica.com/topic/canon-law> [<https://perma.cc/9R52-KNPP>]. I exclude the Anglican Communion, the other church that has a form of canon law and historical connection to the New World, from this article because of Anglicanism not being one of the ancient churches. Thus the canon law is mostly a derivative of the Latin Rite Roman Catholic Church due to the differences between the Church of England which tended towards the "high church" end of the Anglican spectrum and the more low church American colonial part of the Communion that was less inclined towards the anglo catholic canon law concepts which is the modern day Episcopal Church.

¹⁴ *Canon Law*, U.S. CONF. OF CATH. BISHOPS, <https://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law> [<https://perma.cc/7BE9-JMX8>].

¹⁵ Lewis J. Patsavos, *The Canonical Tradition of the Orthodox Church*, GREEK ORTHODOX ARCHDIOCESE OF AMERICA (Aug. 12, 1985), <https://www.goarch.org/-/the-canonical-tradition-of-the-orthodox-church> [<https://perma.cc/CT77-WNBF>].

¹⁶ Pullella, *supra* note 7.

¹⁷ *Catechism of the Catholic Church*, VATICAN, https://www.vatican.va/archive/ENG0015/_P2A.HTM [<https://perma.cc/UML5-WE3G>]. The Pope has the legal status of an absolute monarch in Vatican City.

¹⁸ *Id.*

¹⁹ A. Edward Siecienski, *The Papacy and the Orthodox*, YOUTUBE (June 23, 2021), https://www.youtube.com/watch?v=QG_W53B1oZk [<https://perma.cc/MU2K-4W44>].

²⁰ See *Autocephaly*, ORTHODOX CHURCH IN AM., <https://www.oca.org/index.php/questions/>

autocephalous churches have significant freedom operating within their sphere of influence compared to Catholic dioceses, which must answer back to Rome in most situations. Roman Papal authority allowed for the codification of canon law in a way that Eastern Orthodoxy, which was typically coupled with the authority of an emperor going back to Constantine and lasting (if counting the Russian Tsars) to Nicholas II in 1917, did not. In the West, the Popes began fulfilling the role of the emperor within the church for religious matters after the fall of the Western Roman Empire. This shift was then reflected in the Acacian schism by how the pope dealt with the Eastern Roman Emperor Anastasius to preserve the church's teaching through the political independence gained by Rome being situated in the Ostrogothic Kingdom of Italy during this time period, which was de facto independent while still de jure part of the Roman Empire.²¹

The Popes lost this independence from the Eastern Emperor after Justinian, through his general Belisarius, retook Italy for the Eastern Roman Empire. However, the Popes then gained this independence back after the Eastern Roman Empire lost northern Italy for good in the mid 700s when Pope Leo III crowned Charlemagne as Emperor of the Romans in 800²² in a challenge to Eastern Roman legitimacy in light of the reign of the first official female Roman regent and later empress Irene.²³

In the West, this development is reflected by the *Corpus Juris Canonici*, the codification of the canon law that was used beginning in the 1200s. The *Corpus Juris Canonici* was revised around the time of the Council of Trent and was then relied upon throughout the 16th century, until the 1917 Code was

autocephaly/autocephaly-01 [<https://perma.cc/WA7N-2PHR>].

²¹ Joost Schers, *Catholics, Heretics and Schismatics: Episcopal Authority in the Ostrogothic Kingdom, A.D. ad 493–535*, CENTRAL EUROPEAN UNIVERSITY 36 (2015); See James Allan Evans, *Justin I (518–527 A.D.)*, DE IMPERATORIBUS ROMANIS (May 29, 1999), <https://web.archive.org/web/20080515232101/http://www.roman-emperors.org/justin.htm> [<https://perma.cc/UYT9-44LA>]. The Popes during this period acted as an independent authority from the Eastern Roman Emperors which is tradition started by Ambrose of Milan's conflict with Theodosius the Great over the Massacre of Thessalonica that Kings and Emperors may rule over Earthly matters but the Church holds the power over spiritual matters; See also Mike Duncan, *155 The New Bishop of Milan*, THE HISTORY OF ROME (Oct. 16, 2011)(downloaded using Spotify).

²² See John J. Lewis, *Irene of Athens: Ccontroversial Bbyzantine Eempress*, THOUGHTCO (Jan. 27, 2019), <https://www.thoughtco.com/irene-of-athens-p2-3529666> [<https://perma.cc/YM6T-GPEB>].

²³ King's College, *The Papal States*, KINGS COLLEGE (Jan. 3, 2023) <https://www.kingscollege.net/gbrodie/The%20Papal%20States.html>. The legal and theological problem of the two emperors between the line of Holy Roman emperors crowned by the pope in the West and the Eastern Roman emperors in the East and the legal paradigm regarding the division of authority between the Holy Roman Emperors and the Pope is beyond the scope of this article. All that matters, as far as this article is concerned, is that by the time the Catholic Church and its canon law came into contact with the Natives of the Americas, the pope was independent of authority of any emperor whereas the Russian Orthodox Church was still in this mode of authority between the church and the emperor (in this case Tsar) that was reminiscent of the relationship between the Roman emperors and the Ecumenical Patriarch of Constantinople.

promulgated and then revised in 1983.²⁴ To this day, the Code of Canon Law plays a prominent role in the life of Catholics.²⁵ For example, the traditionalist priest Father James Altman, a Catholic priest from Wisconsin, was removed by his bishop and is pursuing his options for an appeal under canon law to be reinstated.²⁶ Moreover, Nancy Pelosi was recently denied communion by the Bishop of San Francisco for her pro-abortion position, violating Canon 915 of the Code, which even as a non-member of the clergy she is bound by as a Catholic.²⁷ These applications of the canon law showcase how the Church law is still separate from the secular law of the United States or any other country, even when operating alongside the secular law.²⁸

Thus, canon lawyers, often called “canonists,” have their accreditation under the authority of the Catholic Church, requiring their specifications separate from the Juris Doctor degree, such as Canonical Latin, Greek and extensive training in Catholic theology that go far beyond the traditional three years of law school in the United States that are typically required to sit for the bar exam.²⁹ Of the nearly 200 ABA-accredited law schools—including many Catholic universities such as Georgetown, Marquette, and Fordham—only the Catholic University of America is authorized by the Catholic Church to grant degrees that allow individuals to practice as canon lawyers in its ecclesiastical courts.³⁰ Additionally, the Catholic University of America is one of only two

²⁴ EDWARD N. PETERS, *THE 1917 OR PIO-BENEDICTINE CODE OF CANON LAW*, IGNATIUS PRESS (2001), <https://cdn.restorethe54.com/media/pdf/1917-code-of-canon-law-english.pdf> [<https://perma.cc/DY6L-PQ6F>]; see also Kenneth A. Briggs, *New Canon Law Code in Effect For Catholics*, N.Y. TIMES (Nov. 27, 1983), <https://www.nytimes.com/1983/11/27/us/new-canon-law-code-in-effect-for-catholics.html> [<https://perma.cc/Z9LF-H2JM>].

²⁵ See BBI-TAITE, *What Is Canon Law and Why Does the Church Need It*, YOUTUBE (Oct. 30, 2017), https://www.youtube.com/watch?v=9JeZ84_HyIA&t=4s [<https://perma.cc/H6JT-C6FP>].

²⁶ Joseph O’Brien, *Catholic Church Law and Law of Love Inform Father Altman Case*, NAT’L CATH. REG. (Jul. 16, 2021), <https://www.ncregister.com/news/catholic-church-law-and-law-of-love-inform-father-altman-case> [<https://perma.cc/SP4H-GFXZ>].

²⁷ Carl Bunderson, *Archbishop Cordileone Tells Priests that Nancy Pelosi Communion Denial Is ‘Pastoral, Not Political*, CATH. NEWS AGENCY (May 20, 2022, 1:04 PM), <https://www.catholicnewsagency.com/news/251308/archbishop-cordileone-tells-priests-pelosi-communion-denial-is-pastoral> [<https://perma.cc/F2AS-US6D>].

²⁸ *Id.* As you can see, Nancy Pelosi was a catholic laywoman under the jurisdiction of the Church while being Speaker of the House in the United States Government, a secular government.

²⁹ Gabriel Kuris, *Law School Applicants and the Bar Exam*, U.S. NEWS & WORLD REP. (Sept. 18, 2023, 2:12 PM), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/what-law-school-applicants-should-know-about-the-bar-exam> [<https://perma.cc/9KNT-JB97>].

³⁰ See *School of Canon Law*, THE CATH. UNIV. OF AM., <https://engage.catholic.edu/campaign/school-canon-law> [<https://perma.cc/PD97-HK4W>]. Father Altman recently revealed that, as of 2021, the going rate for a canon lawyer is \$250 per hour. *Altman Seeks Canon Law Advice on Options*, WINONA J. (May 21, 2021), <https://www.winonajournal.com/altman-seeks-canon-law-advice-on-options/#:~:text=Lawyer%20fees%20What%20does%20counsel%20from%20a%20specialist,rate%20for%20canon%20lawyers%20is-%20%24250%20an%20hour> [<https://perma.cc/2U2U-PWEU>]. This is comparable to the 2020 hourly rates of partners at firms with 101–500 attorneys. See Kathryn Rubino, *The Bigger the Biglaw Firm, the Bigger the Billing Rate*, ABOVE THE LAW (Jul. 14, 2020,

canon law schools in North America, alongside St. Paul's University in Ottawa, Canada.³¹

In contrast, the Orthodox churches have never codified their canon laws like the Catholics due to *autocephaly*. While Orthodox churches share mostly the same canons, their interpretation is left up to each *autocephalous* church and their ecclesiastical tradition.³² Orthodox churches do not have canon lawyers; the clergy and bishops handle matters on a case-by-case basis because situations transpire with the laity mostly uninvolved compared to the Latin West.³³ Thus, due to this autocephalous interpretive tradition and the fact that the Russian Orthodox Church was the only Eastern Orthodox Church with a presence in the New World, the tradition of the Russian Orthodox Church guided the Americas from the age of discovery until recently.³⁴

III. ENTERING THE NEW WORLD AS THE EASTERN ROMAN EMPIRE ENDS

The Catholic Church was the first Apostolic Church to interact with the Native Americans after 1492.³⁵ By authorizing the expeditions of Columbus and other New World explorers, the Spanish Crown ensured both that these explorers brought the Catholic Church with them to the Americas and that the Spanish Crown retained its status as the Catholic power in the West at that time.³⁶ Spain had gained this position after both driving out the last Muslim polity from the Iberian Peninsula shortly before Columbus sailed and through intermarriages with the European royal families.³⁷ The state of the European and Mediterranean powers in the 15th century was of intense warfare against other Christian Kingdoms and the Islamic powers of North Africa, Arabia, and the newly formed Ottoman Empire (that had spent the past several centuries conquering the lands of the Eastern Roman Empire).³⁸ In 1452, under Mehmed

4:44 PM), <https://abovethelaw.com/2020/07/the-bigger-the-biglaw-firm-the-bigger-the-billing-rate/#:~:text=The%20biggest%20law%20firms%20have%20an%20average,averaging%20partner%20billing%20rates%20of%20%24380%20an%20hour> [https://perma.cc/Z4HX-55K2].

³¹ Edward Peters, *What Is a Canon Lawyer?*, CATH. ANSWERS (Nov. 1, 1991, 9:42 PM), <https://www.catholic.com/magazine/print-edition/what-canon-lawyers-are-and-arent> [https://perma.cc/NN5V-W7QF].

³² See Protecting Veil, *Orthodox & Roman Catholic Canon Law - Fr. Alexander Rentel*, YOUTUBE (May 22, 2020), <https://www.youtube.com/watch?v=s5oaLvMas-I> [https://perma.cc/BRA3-TWH9].

³³ Patsavos, *supra* note 15.

³⁴ See John Matusiak, *A History and Introduction of the Orthodox Church in America*, ORTHODOX CHURCH IN AM., <https://www.oca.org/history-archives/oca-history-intro> [https://perma.cc/E8UT-S2DJ].

³⁵ The Pluralism Project, *First Encounters: Native Americans and Christians*, THE PLURALISM PROJECT: HARVARD UNIV., <https://pluralism.org/first-encounters-native-americans-and-christians> [https://perma.cc/7KZK-H3FQ].

³⁶ *Id.*

³⁷ Charles J. Lockett, *Ferdinand and Isabella: The Marriage That Unified Spain*, THE COLLECTOR (May 31, 2022), <https://www.thecollector.com/marriage-of-ferdinand-and-isabella> [https://perma.cc/FSH3-UWTU].

³⁸ Hayden Chakra, *Centuries of War Between Christianity and Islam: Reconquista Period*, ABOUT HIST. (May 30, 2023), <https://about-history.com/>

the Conqueror, the Ottoman Turks finally took Constantinople.³⁹ It was within this context that Pope Nicholas V issued the first new canon law that would be applied to American Indians before the Pope knew the Americas existed in the papal bull *Dum Diversas*,⁴⁰ which stated that:

Therefore we consider, that those rising against the Catholic faith and struggling to extinguish Christian Religion must be resisted by the faithful of Christ with courage and firmness, so that the faithful themselves, inflamed by the ardor of faith and armed with courage to be able to hate their intention, not only to go against the intention, if they prevent unjust attempts of force, but with the help of God whose soldiers they are, they stop the endeavors of the faithless, we, fortified with divine love, summoned by the charity of Christians and bound by the duty of our pastoral office, which concerns the integrity and spread of faith for which Christ our God shed his blood, wishing to encourage the vigor of the faithful and Your Royal Majesty in the most sacred intention of this kind, we grant to you full and free power, through the Apostolic authority by this edict, to invade, conquer, fight, subjugate the Saracens and pagans, and other infidels and other enemies of Christ, and wherever established their Kingdoms, Duchies, Royal Palaces, Principalities and other dominions, lands, places, estates, camps and any other possessions, mobile and immobile goods found in all these places and held in whatever name, and held and possessed by the same Saracens, Pagans, infidels, and the enemies of Christ, also realms, duchies, royal palaces, principalities and other dominions, lands, places, estates, camps, possessions of the king or prince or of the kings or princes, and to lead their persons in perpetual servitude, and to apply and appropriate realms, duchies, royal palaces, principalities and other dominions, possessions and goods of this kind to you and your use and your successors the Kings of Portugal.⁴¹

This broad grant of authority to the Portuguese Kings for his claims in Western Africa against the Muslim powers was at the indirect urging⁴² of East-

the-reconquista-centuries-of-war-between-christianity-and-islam [https://perma.cc/CK28-4L2B]; Marcus Tanner, *Timeline: The Ottomans and the Balkans*, BALKAN INSIGHT (Nov. 30, 2010, 6:11 PM), <https://balkaninsight.com/2010/11/30/the-ottomans-six-centuries-in-europe> [https://perma.cc/QWK6-BTAC]. These Christian kingdoms include pre-Reconquista Hispania, Cyprus, most of Anatolia, and Bulgaria.

³⁹ Syed Muhammad Khan, *Battles & Conquests of The Ottoman Empire (1299–1683)*, WORLD HIST. ENCYC. (Jun. 29, 2021), <https://www.worldhistory.org/article/1791/battles—conquests-of-the-ottoman-empire-1299–1683> [https://perma.cc/9PES-JVGY]. The Muslim powers that ruled Hispania after the fall of the Visigothic Kingdom until the Reconquista were not the Ottomans but successor states of the Umayyads. See e.g. Greg Noakes, *End of Muslim Rule*, CITIES OF LIGHT: THE RISE AND FALL OF ISLAMIC SPAIN, <https://www.islamicspain.tv/history-of-islamic-spain/article-end-of-muslim-rule> [https://perma.cc/UB64-FBLB].

⁴⁰ Pope Nicholas V, *Dum Diversas*, UNAM SANCTUM CATHOLICAM, (Feb. 5, 2011, 9:19 PM) <https://unamsanctamcatholicam.blogspot.com/2011/02/dum-diversas-english-translation.html> [https://perma.cc/3UPR-FLDK]. The English translation of the title *Dum Diversas* is “Until Different,” which further supports that this was the modus operandi heading into the New World despite Pope Nicholas V being dead for over 40 years before Columbus sailed.

⁴¹ *Id.*

⁴² For a humorous take on the late Eastern Roman Empire begging for help towards the end, See Dovahhatty, *Byzantine History Speedrun*, YOUTUBE (2021), https://www.youtube.com/watch?v=S89ggZVIG_o (last visited Jan 20, 2024).

ern Roman Emperor Constantine XII Palaiologos, who was begging Nicholas V for aid against the Ottoman Turks.⁴³ Thus, with universal application, the Pope issued this papal bull to offer financial, legal, and religious incentives to fight against the Muslim powers who were enslaving the Christians through conquest⁴⁴ and, later on, piracy.⁴⁵ *Dum Diversas* did not come in time to save the Eastern Romans, but it set the stage for the conflicts in the New World as the Spanish first encountered the Indigenous peoples of the Americas.⁴⁶ The Spanish were given approval from the Catholic Church to act towards the Indigenous peoples in a harsh manner that maximized profit for the Catholic powers against non-Christians.⁴⁷ This was an affirmation of prior canon law, albeit with an additional prerequisite of converting the natives to Christianity, which was stated in *Inter Caetera*, issued shortly after Columbus sailed for America in 1492:

Wherefore, as becomes Catholic kings and princes, after earnest consideration of all matters, especially of the rise and spread of the Catholic faith, as was the fashion of your ancestors, kings of renowned memory, you have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith.⁴⁸

Under this papal bull, as continued by *Dum Diversas*, the Indigenous of the Americas had the status of pagans and heathens, so they could be dealt with harshly if they opposed the Catholic monarchs.⁴⁹ However, unlike the pagans who helped the Muslims besiege Constantinople, the Indigenous were considered excellent candidates for conversion. Therefore, the Spanish were to make every effort to convert the residents of lands “found in the direction

⁴³ Philip Chrysopoulos, *May 29, 1453: The Day Constantinople Fell*, GREEK REP. (May 29, 2025) <https://greekreporter.com/2022/05/29/may-29-1453-the-day-constantinople-fell/> [https://perma.cc/QHG3-7KBC];

see also Walter K. Hanak, *Pope Nicholas V and the Aborted Crusade of 1452–1453 to Rescue Constantinople from the Turks*, 65 BYZANTINOSLAVICA 337–59 (2007).

⁴⁴ Patrick Smith, *Christian Slaves of the Ottoman Empire: An Analysis of the Fifteenth-century Captive Lives and Writings of Konstantin Mihailović, Johan Schiltberger and Brother George of Mühlenbach* (Aug. 2020), (M.A. thesis, La Trobe Univ., <https://doi.org/10.26181/602dacb2b5efd>) [https://perma.cc/7ST9-SPBQ].

This did not include those already Christian in Africa, For the history of African Christians in modern day Ethiopia who were known to the powers in Europe, see Haggai Erlich, Professor Emeritus at Tel-Aviv Univ., *Islam, Christianity, Judaism, and Ethiopia: The Messages of Religions*, Lecture at the Fifth Annual Levzion Lecture (2013), https://openscholar.huji.ac.il/sites/default/files/levzion/files/nvskh_ktvb_2009.pdf [https://perma.cc/3GXN-NFMA].

⁴⁵ Rory Carroll, *New Book Reopens Old Arguments About Slave Raids on Europe*, THE GUARDIAN (Mar. 11, 2004, 5:34 AM), <https://www.theguardian.com/uk/2004/mar/11/highereducation.books> [https://perma.cc/LEA3-ZK73].

⁴⁶ See *Doctrine of Discovery*, PRESBYTERIAN CHURCH (U.S.A.), <https://www.presbyterianmission.org/ministries/racial-equity-womens-intercultural-ministries/gender-and-racial-justice-ministries/doctrine-of-discovery> [https://perma.cc/NYG9-UDX4].

⁴⁷ *Id.*

⁴⁸ Pope Alexander VI, *supra* note 7. (beginning the letter by thanking the Catholic Monarchs for driving the Muslim Saracens fully out of Spain by conquering the Emirate of Granada the previous year).

⁴⁹ *Id.*; Pope Nicholas V, *supra*, note 43.

of India or towards any other quarter, the said line to be distant one hundred leagues towards the west and south from any of the islands commonly known as the Azores and Cape Verde.”⁵⁰

It is important to consider the language of the *Inter Caetera*. It was originally thought that Christopher Columbus had found the long-sought pathway to India,⁵¹ and thus, the people he encountered on his voyages fit easily into the canon law framework for what was considered a human being descended from one of the three sons of Noah in Shem, Ham, and Japheth as described in the Book of Genesis.⁵² Once it was clear that Columbus had encountered a people hitherto unknown in Europe, the question of whether the Indigenous of the Americas had souls under the canon law was raised.⁵³ If they did not have souls, the Catholic secular powers were under no duty to convert them to Christianity and could enslave the natives free of any conditions since they would not legally be considered pagans or heathens. Therefore, they would not be protected under church law because it required a soul that could be inherited from one of the sons of Noah.⁵⁴

The question sounds preposterous to modern-day people, as it did to many of the people who lived in the sixteenth century when this issue was debated.⁵⁵ However, the Church clarified the canon law on this question in *Sublimis Deus* in 1537. *Sublimis Deus* forbade enslavement, concluding that the peoples of the Americas were made in the image of God like all other men, thus having souls that could be converted:

By virtue of Our apostolic authority We define and declare by these present letters, or by any translation thereof signed by any notary public and sealed with the seal of any ecclesiastical dignitary, which shall thus command the same obedience as the originals, that the said Indians and other peoples should be converted to the faith of Jesus Christ by preaching the word of God and by the example of good and holy living.⁵⁶

The first major ecclesiastical legal question concerning Natives of the Americas was settled through the papal bull of Pope Paul III in favor of the position that Natives were people with souls, making them pagans who could

⁵⁰ Pope Nicholas V, *supra*, note 43.

⁵¹ This is where the misnomer of “American Indian” comes from.

⁵² See *Laws of the Indies: Spain and the Native Peoples of the New World*, TEACH DEMOCRACY (1999), <https://teachdemocracy.org/bill-of-rights-in-action/bria-15-4-c-laws-of-the-indies-spain-and-the-native-peoples-of-the-new-world> [<https://perma.cc/54NF-7LUB>]; For the story of Noah and his sons repopulating the earth following the destruction of humanity in the great flood, see *Genesis* 9–10.

⁵³ See THE PLURALISM PROJECT, *supra* note 35.

⁵⁴ See *id.*, Identification with the lineage of Ham carried significant negative consequences in later Christian interpretation as well, given African enslavement was historically justified by reference to the misinterpreted “Curse of Ham.” See The Tavis Smiley Show, “*The Curse of Ham: Slavery and the Old Testament*,” NPR (Dec. 15, 2003, 12:00 AM), <https://www.npr.org/2003/12/15/1548811/the-curse-of-ham-slavery-and-the-old-testament> [<https://perma.cc/R4UY-774J>].

⁵⁵ *Id.*

⁵⁶ Pope Paul III, *Sublimis Deus: On the Enslavement and Evangelization of Indians*, PAPAL ENCYCLICALS ONLINE (May 29, 1537), <https://www.papalencyclicals.net/paul03/p3subli.htm> [<https://perma.cc/3RF6-KM3X>].

only be enslaved for just reasons. This meant that the canon law question was settled in favor of Natives given that, if Indians did not have souls, then Catholics would not have to bother with converting or dealing justly with them under canon law and could just exploit them under the approval of law.⁵⁷ How this was applied on the ground by the clergy, primarily the Jesuits and Franciscans, was highly varied as can be seen throughout the early actions of the Spanish and other Catholic powers that would come to dominate the New World.⁵⁸

IV. HOW THE SPANISH AND PORTUGUESE MISSIONARIES APPLIED THE CANON LAW FROM THE 15TH THROUGH 18TH CENTURIES

The first missions in the New World appeared shortly after Columbus' arrival, but the first on-the-ground example of applied canon law would not be seen until 1511, when Pedro de Córdoba, a member of the Dominican Order, barred those participating in the *encomienda* system from receiving the sacraments.⁵⁹ The first recorded instances of canon law being applied was the right of the Priest, in this case, Dominican Superior Pedro de Córdoba and his friars, to withhold communion when they were aware of communicants being in open and notorious mortal sin.⁶⁰ This action by the priests to counteract those who disobeyed the commands set by *Inter Caetera* was an act of discipline against those breaking church law.⁶¹ The reason for the discipline was that the Spanish could enslave non-Christian American Indians under canon law during this time period but only when said Indians made war against them as outlined in *Dum Diversas* and *Inter Caetera*. The *encomienda* system violated canon law by turning every American Indian who lived on land claimed by the Spanish crown, even those who never raised a hand against the Spanish, into de-facto slaves of the colonial authority, even after *Sublimis Deus* forbade such actions.⁶²

⁵⁷ See *id.*

⁵⁸ See *Exploration of North America*, HISTORY (Jun. 6, 2023), <https://www.history.com/topics/exploration/exploration-of-north-america> [<https://perma.cc/F37H-FKVN>].

⁵⁹ See Hartono Budi, *Bartolomé de las Casas, and the Question of "Evangelization,"* 2 JOURNAL TEOLOGI 49, 51 (2013).

⁶⁰ Paul Keller, *Can a Priest Withhold Communion from a Catholic?*, U.S. CATH. (Sept. 13, 2021) <https://uscatholic.org/articles/202109/can-a-priest-withhold-communion-from-a-catholic> [<https://perma.cc/FW9Y-SL9D>]. (For when a priest can deny communion.)

⁶¹ See A. Boudinhon, *Interdict: A Form of Ecclesiastical Censure*, CATHOLIC ANSWERS (1907–1912), <https://www.catholic.com/encyclopedia/interdict> [<https://perma.cc/KY32-EEFM>]. It is important to distinguish the personal opinions of the early missionaries, priests and bishops during this time period from the canon law of the time. Further, Pedro de Córdoba, his Dominicans and those later on such as Bartolome de las Casas were more pro-Native than the church law and were openly expressing their opinions (Bartolome de las Casas gained his title "Protector of the Indians" from the King of Spain, not the church.) There were also those, including de las Casas himself before his famous repentance after reading *Ecclesiasticus* 34:21, who disregarded canon law and propagated the *encomienda* system throughout New Spain.

⁶² See Mark Cartwright, *The Encomienda System and Forced Indigenous Labor in the Spanish Empire*, BREWMINATE (Aug. 8, 2022), <https://brewminate.com/the-encomienda-system-and-forced-indigenous-labor-in-the-spanish-empire> [<https://perma.cc/GVF4-GRPQ>]. For the ill-treatment of the Pueblos as forced laborers, including by some of the Catholic

However, following canon law did not always produce outcomes that were favorable to the peoples of the Americas.⁶³ A textbook case is the destruction of the Aztec Empire by Herman De Cortés and the conquistadors.⁶⁴ The Aztec Empire was not only pagan in nature, but practiced human sacrifice on its prisoners of war, Native and non-Native alike, which was abhorrent to the canon law.⁶⁵ Cortés, under the canon law articulated in *Dum Diversas*, *Inter Caetera*, and *Sublimis Deus*, was canonically justified in destroying a pagan empire that was hostile to the Spanish and to the teachings of the church. Thus, Cortés could destroy the Aztecs without canon law penalty.⁶⁶

A powerful testimony to this divergence in the applicable canon law is seen in the words of Bartolomé de las Casas, a priest who repented from his early illegal treatment of American Indians under canon law and was led to the Dominican Order by the works of Pedro de Córdoba's Dominicans in Cuba.⁶⁷ Bartolomé de las Casas wrote glowingly of Cortés, saying "Through this captain, God opened the door for us to preach his holy gospel, and it was he who caused the Indians to revere the holy sacraments and respect the ministers of the church."⁶⁸ Cortés was supported in his toppling of the Aztecs by many of the Native peoples of what is today Mexico, including his wife Malintzin, who for their own various reasons, including being against the human sacrifice practiced by the empire, opposed the Aztec rule.⁶⁹ These two major examples during the early days of the Spanish Conquest—Pedro de Córdoba and the

priests in violation of the canon law under *Sublimis Deus*, see *The Pueblo Revolt of 1680: America's First Revolution*, NEW MEXICO NOMAD, <https://newmexiconomad.com/the-pueblo-revolt-of-1680> [https://perma.cc/V2SL-PHHH].

⁶³ For the modern and historical Catholic justification for the destruction of the Aztec Empire based on Catholic canon law, see Steve Weidenkopf, *The Real Story of the Conquistadors*, CATH. ANSWERS (Feb. 17, 2023), <https://www.catholic.com/magazine/online-edition/the-real-story-of-the-conquistadors> [https://perma.cc/VLH5-HJLU].

⁶⁴ See *Id.*

⁶⁵ See Camilla Townsend, MALINTZIN'S CHOICES: AN INDIAN WOMAN IN THE CONQUEST OF MEXICO 20 (2006) (offering a low-end estimate of the total pointing out that not all were sacrificed compared to Michael Harner, who offered a number as 800,000 fellow Indians of conquered Tribes and nations sacrificed). For the canon law on human sacrifice, see *Deuteronomy* 18:10.

⁶⁶ See *Id.*

⁶⁷ Extra History, *Bartolomé de las Casas - Changing Your Mind - Extra History*, YOUTUBE (Sept. 12, 2020), <https://www.youtube.com/watch?v=vH65erzQBkY> [https://perma.cc/KA2H-SHHP].

⁶⁸ Letter IV from Hernán Cortés to Charles V, King of Spain (Oct. 15, 1524) in HERNÁN CORTÉS: LETTERS FROM MEXICO, 282 (Anthony Pagden ed., trans. 1971). Many traditionalist Catholics today view Cortes fondly for his actions along the lines of De Las Casas. See e.g. Jon Frodin, *Burn the Ships: Hernán Cortés and the Order that Changed the New World*, ONEPETERFIVE (Aug. 27, 2018), https://onepeterfive.com/burn-ships-hernan-cortes-new-world/#_ftn7 [https://perma.cc/GDT6-4J32]. Frodin's view is representative of how many contemporary Catholics continue to view Cortés positively and in a similar light to de las Casas.

⁶⁹ Townsend, *supra* note 65 at 6; see also James C. Clark, *Cortez Teamed up with Indians to Conquer the mighty Aztecs*, ORLANDO SENTINEL (Sept. 6, 1992), <https://www.orlandosentinel.com/news/os-xpm-1992-09-06-9209080363-story.html> [https://perma.cc/2MWJ-47LQ].

Aztecs—demonstrate how canon law was applied internationally without the built-up, centuries-old structures found in Catholic Europe.⁷⁰

However, the canon law system consisting of canon lawyers, clergy, and other learned men was an international law unto itself, which, through its ecclesiastical niche, was highly transportable due to the deeply held religious convictions of the Spanish explorers to the New World.⁷¹ Additionally, before 1492, canon law was already a legal system that dealt with all who came before it equally concerning the laws of the Church, be they kings or commoners, men or women, European or not.⁷²

A prime example of this canon law principle is the treatment of the Incan Emperor Atahualpa—one of the last Sapa Inca to rule the Incan Empire—by the Catholic authorities that had accompanied the Spanish, such as the friar Vicente de Valverde. De Valverde knew that he was speaking to a powerful king in their famous encounter, yet he spoke with authority from above the Incan Emperor but also above the kings and emperors of Europe:

At this moment Fray. Vicente de Valverde . . . came forward with his breviary, or, as other accounts say, a Bible, in one hand, and a crucifix in the other, and, approaching the Inca [Atahualpa], told him, that he came by order of his commander to expound to him the doctrines of the truth faith . . . The friar then explained the mysterious doctrine of the Trinity, and . . . [of the] redemption of Jesus Christ . . . This power had been transmitted to the successors of the apostle. . . who, under the title of the Popes, held authority over all powers and potentates on earth.⁷³

Incan Emperor Atahualpa replied to this plea of conversion:

As for the Pope of whom you speak, he must be crazy to talk of giving away countries which do not belong to him. For my faith . . . I will not change it. Your own God, as you say, was put to death by the very men whom he created. But mine,” he concluded, pointing to his Deity,—then alas! sinking in glory behind the mountains,—”my God still lives in the heavens, and looks down upon his children.”⁷⁴

⁷⁰ For what said structures looked like, see *The Medieval Law School*, UC BERKELEY LAW, <https://www.law.berkeley.edu/wp-content/uploads/2020/08/Medieval-Law-School.pdf> [https://perma.cc/RWE7-JUGK].

⁷¹ JAMES A. BRUNDAGE, *MEDIEVAL CANON LAW* 3 (1st ed. Routledge 1995).

⁷² *Id.*

⁷³ David Sowell, Encounter at Cajamarca presented at Juniata College (1993) in 1 JUNIATA VOICES, at 66–67, <https://www.juniata.edu/offices/juniata-voices/media/volume-1/1993-david-sowell-5.pdf> [https://perma.cc/T9PT-4346]. Vincente de Valverde also asked Atahualpa to submit to the King of Spain and Holy Roman Emperor Charles V under the authority of the Spanish Requirement of 1513. However, while the Spanish Requirement of 1513 is important to the history of the New World, it is not a part of the canon law even if it could be argued to be that it is a secular interpretation of the *Dum Diversas* and *Inter Caetera* by the Spanish throne but that does not make it law under the canons.

⁷⁴ *Id.* Also, the Inca, including Atahualpa, were pagans who practiced a unique form of ancestor worship, during this time period and he was likely referring to both the pagan gods he worshiped who were thought to reside within the Inca temples and his ancestors whose mummies were housed in the estates they resided in during their lifetimes. See Kaitlynn Harless, Force and Deceit: The Creation of an Andean-Catholic Religion (Apr. 9, 2018) (B.A. thesis, University of Colorado Boulder) at 4–5, <https://scholar.colorado.edu/>

When Atahualpa questioned the authority of which Friar Vincente de Valverde claimed to be speaking, the friar answered him by showing him the Bible and stating that it was the “Word of God.”⁷⁵ This caused Atahualpa, a man from a culture that had not discovered literacy yet, to assume he was being insulted.⁷⁶ Atahualpa struck the Bible from the hands of de Valverde in disgust after the Bible failed to speak to him when he held it up to his ear.⁷⁷ This action was a violation of canon law as both a personal (attacking a cleric) and real sacrilege in throwing a holy text (the Bible) to the ground.⁷⁸ It was viewed by the Church as a personal affront to God regardless of Atahualpa’s state of mind as a “pagan Indian.”⁷⁹ Atahualpa was taken prisoner by the Spanish for this action and the men serving under him were killed on the spot.⁸⁰ The secular authorities spared Atahualpa’s life due to his rank as Emperor and his promise to fill a room, which would come to be known as the “Ransom Room” full of gold for them.⁸¹ Regardless, the Spanish decided that Atahualpa, after he was found to have conspired with other Incas to kill the Spanish, had to be executed, which resulted in another showing of applied canon law. Since Atahualpa was a pagan South American Indian who had made war on Catholicism, he was legally, under canon law, considered an infidel and thus could be burned to death, which was his original sentence by the Spanish.⁸² However, Francisco Pizarro, the commanding conquistador, favored Atahualpa, and he had the priests that were with him offer the emperor the choice to be baptized into the Catholic faith.⁸³ This favoritism through using the canon law commuted his sentence to death by strangulation as non-heretical Catholics could not be burned to death under canon law. He thus died as a Catholic in good standing.⁸⁴

downloads/s7526c923 [https://perma.cc/9Q7Q-MGHU].

⁷⁵ Sowell *supra* note 73 at 67.

⁷⁶ *Id.*

⁷⁷ *Id.* Atahualpa was a pagan who believed that the gods of the world resided in physical temples/ holy places or in the royal mummified remains of his ancestors who would speak through soothsayers. Atahualpa had likely never seen a book before being shown this Bible so when de Valverde said it was the “Word of God” he had a reasonable expectation from his cultural framework that the book would literally speak to him if he held it up to his ear and when it did not his thought process showed through his actions.

⁷⁸ See SAINT THOMAS AQUINAS, SUMMA THEOLOGICA II-II, Q, xcix; see also Joseph Delany, *Sacrilege*, 13 THE CATH. ENCYC. (1912), <https://www.newadvent.org/cathen/13321a.htm> [https://perma.cc/5V6X-C9MF].

⁷⁹ See SAINT THOMAS AQUINAS, *supra* note 78 at xcix; Delany, *supra* note 81.

⁸⁰ Sowell *supra* note 73 at 68.

⁸¹ *Ransom Room*, WORLD MONUMENTS FUND (2018), <https://www.wmf.org/project/ransom-room> [https://perma.cc/KWE4-XB8E]. This room is still extant. *Id.*

⁸² GREAT LIVES FROM HISTORY: THE RENAISSANCE & EARLY MODERN ERA 67 (Christina J. Moose ed., Salem Press 2005).

⁸³ *Id.*

⁸⁴ Mathew Lyons, *The Death of Atahualpa, the Last Emperor of the Incas*, MATTHEW LYONS <https://mathewlyons.co.uk/2021/08/05/the-death-of-atahualpa-the-last-emperor-of-the-incas> [https://perma.cc/2NS3-4DHQ]; *Fourth Lateran Council: 1215*, PAPAL ENCYCLICALS ONLINE (1215), <https://www.papalencyclicals.net/councils/ecum12-2.htm#3> [https://perma.cc/DPB4-QY5T]. Canon three states that the penalty is only for heretics. *Id.* This was reaffirmed in the papal bull *Exsurge Domine*. Pope Leo X, *Exsurge Domine: Condemning the Errors of*

This intersection of secular and canon law in Catholic societies is important as the two legal codes converge and interact with one another. It is also important to keep in mind their distinctness as separate legal codes with the canon law supposing the existence of the secular law. For example, it was rightful under both codes for the secular power to put Atahualpa to death under canon law even if, as Catholics, they had to abide by canon law in terms of keeping their own standing within the Church when dealing with a fellow Catholic in the now baptized Atahualpa. However, it was considered unlawful for a priest or other member of the clergy to be involved in the shedding of blood due to his divine office, meaning that a death sentence had to be carried out only by secular authority.⁸⁵ Hence, it is common to observe various secular powers offer up their own secular interpretation of the canons, such as the Spanish Requirement of 1513, which was a secular interpretation of the papal bulls that were valid under canon law. Although, because the Spanish Requirement of 1513 was issued by the Spanish Crown and not the Pope it was only a non-binding secular interpretation which had power in the Kingdom of Spain and their New World territory and not in the canon courts of the Catholic Church.⁸⁶ This is why those such as Bartolomé de las Casas, who had independent authority originating from within the Catholic Church canon law, separate from the secular laws such as the Requirement of 1513, could use the powers of his priestly office on individual Spaniards who were not following the canon law in relation to the Indians.⁸⁷

These early priests would lay the foundation for canon law in the New World, and some such as Friar Vincente de Valverde eventually became one of the early Bishops of Cusco.⁸⁸ These bishops, who had started in the New World as missionaries, began to set up the structures of the medieval church at home.⁸⁹ The question then turned to the canon law status of the Indians who remained within their settled, colonial society and how to bring them into the church.⁹⁰ The proposition of bringing the Indians into Catholicism posed a

Martin Luther, PAPAL ENCYCLICALS ONLINE (1520) <https://www.papalencyclicals.net/leo10/110exdom.htm> [<https://perma.cc/JEK7-LGJC>]). This bull was published in 1520—13 years before Atahualpa's execution. Atahualpa, despite the obvious of burning to death being a horrible way to die, agreed to be baptized so that his body could be mummified alongside his royal ancestors in keeping with Incan religious practices.

⁸⁵ *Fourth Lateran Council*, *supra* note 84 at Canon 18.

⁸⁶ Juan Lopez de Palacios Rubios, *El Requerimiento* by Juan López De Palacios Rubios (1513), ENCYC. VA. (Dec. 7, 2020), <https://encyclopedia.virginia.org/entries/el-requerimiento-by-juan-lopez-de-palacios-rubios-1513> [<https://perma.cc/JB5V-NKZZ>].

⁸⁷ FRANCIS AUGUSTUS MACNUTT, BARTHOLOMEW DE LAS CASAS; HIS LIFE, APOSTOLATE, AND WRITINGS, at 238 (2007) (ebook), <https://www.gutenberg.org/files/23466/23466-pdf.pdf> [<https://perma.cc/8JHX-5ZJJ>].

⁸⁸ ARTHUR HELPS, THE SPANISH CONQUEST IN AMERICA; AND ITS RELATION TO THE HISTORY OF SLAVERY AND TO THE GOVERNMENT OF THE COLONIES 1, 7 (Michael Oppenheim ed., 1904), https://ufdcimages.uflib.ufl.edu/AA/00/07/65/56/00004/AA00076556_00004.pdf [<https://perma.cc/6K83-JLE2>].

⁸⁹ Miguel Angel Gongora Meza, *Guide to Cusco Cathedral in Peru: History, Facts, Maps and Tours*, EVOLUTION TREKS PERU (Feb. 25, 2023), <https://www.evolutiontreksperu.com/peru/tourist-attraction/cusco-cathedral> [<https://perma.cc/ZDG6-895Y>].

⁹⁰ *The Catholic Mission in the Inca Empire Lacked Responsible Church Leadership*,

threat of erasure; a forceful assimilation into the Latin language of the Church could inevitably affect the native cultures who tied many of their cultural practices into their language.⁹¹ Or was a better solution to welcoming Indians into the Church through a procedure that preserves their language and culture, provided said culture does not contradict Church teaching.⁹²

The Council of Trent, which was as a response to the Protestant Reformation, allowed for both approaches.⁹³ This gave the Bishops in New Spain and Portuguese America the right to set the local canon law under their authority as successors of the Apostles for how questions such as these would be handled.⁹⁴ There were several early councils held in Lima in the new Viceroyalty of Peru to debate these topics, but it was at the Third Council of Lima 1582–3 that this question was answered in a form that affirmed the principle of *linguas generales*:

Each person is to be instructed in the doctrine in a manner they understand: the Spaniard in Romance, and the Indian also in his language. Otherwise, regardless of how well they recite the things of God, their efforts will not bear the fruit of understanding, as the Apostle himself has said. Therefore, no Indian shall anymore be required to learn the prayers or the cartilla in Latin, it being sufficient and in fact better that they learn and recite it in their language.⁹⁵

This local canon law established that Indians would be instructed in their native tongues, be baptized using their own language, and learn prayers such as the Our Father and Hail Mary in their own language.⁹⁶ These principles affirmed the first and second councils of Lima.⁹⁷ Furthermore, the Second Council of Lima 1567–1568 had previously enacted ecclesiastical penalties for priests who did not learn the Indian languages and refused to instruct Indians in their native languages:

... take care to learn [the Indians'] language and that in this regard they be gently and rigorously prompted by their bishops; those who neglect their obligation shall, in the first year, lose a third of their salary. The penalties for the second and third years will increase according to the offense and these will be administered by the prelates themselves or by their visitors.⁹⁸

EURASIA REV. NEWS & ANALYSIS (Feb. 23, 2011), <https://www.eurasiareview.com/23022011-the-catholic-mission-in-the-inca-empire-lacked-responsible-church-leadership> [https://perma.cc/ULJ3-723B].

⁹¹ Juan Coronel, *The Language of the Incas*, TREXPERIENCE: TRAVEL BLOG, <https://trexperienceperu.com/blog/the-language-of-the-incas> [https://perma.cc/WL6A-BZT4].

⁹² Amy Huras, Castilianization in the Archdiocese of Lima, 1600–1700 (2016) (Ph.D. dissertation, University of Toronto) https://tspace.library.utoronto.ca/bitstream/1807/89277/1/Huras_Amy_201606_PhD_thesis.pdf [https://perma.cc/4YKN-Q42U].

⁹³ *Id.*

⁹⁴ See 1983 CODE OF CANON LAW c.375, § 1.

⁹⁵ Huras, *supra* note 92 at 55 (quoting translation of *Tercer concilio provincial limense*, in CONCILIOS LIMENSES (1551–1772), (Rubén Vargas Ugarte, ed., 1951)).

⁹⁶ *Id.* at 53.

⁹⁷ *Id.* at 54.

⁹⁸ *Id.* at 54, n. 122.

Not all the canons of the Council of Lima were pro-Indian culture. The Incan *kipus* that were considered idols were ordered destroyed in keeping with the First Commandment as understood by the Catholic Church at that time, and the Incan *kipus* were thought to “preserve the memory of their old superstitions and rites and ceremonies and perverse customs.”⁹⁹

The Council of Lima was the first theological debate on the question of whether the Indian cultures being encountered should be replaced entirely by Latin Catholic culture or if they could be brought into the Church while stripping away their pagan elements. So, from an Indian perspective, the canons of Lima were a mixed bag. These local canon law pronouncements were de facto if de jure implemented in other colonial territories under different Kingdoms, such as Portuguese America, where the Jesuits decided early on their mission was to support native languages.¹⁰⁰ However, the secular law of the Kingdom of Spain was much less Indian friendly, despite the personal views of the Spanish King on allowing the Church to support the native languages as seen in the non-canon law Council of the Indies in 1596. The secular authorities urged the King to enforce a strict Spanish language policy due to the needs of the Priests over the Indians.¹⁰¹

The canon law developed similarly, if at a slightly more advanced pace, in the Viceroyalty of New Spain in modern-day Mexico. There were several reasons for this, with a major reason being an event in Catholic Mariology and in Mexican History known as Our Lady of Guadalupe in 1530, which brought many Indians to the faith due to the “nativeness” of how Mary was reported to appear in the apparition.¹⁰² This reported apparition was the beginning of modern Mexican identity as it brought both the Natives and European residents of New Spain in support of the vision against the Old World officials.¹⁰³ This impact was obvious in the local canon law as the more mundane issues which canonists were mostly concerned with back in Europe rose in prevalence amongst Indians since they were now beginning to embrace at least some form of Catholicism at a much greater rate than, for example, the Incas down in South America. This occurrence mirrors the timing of local canon law councils—the first major council in the Viceroyalty of Peru, The Third Council of Lima, only took place in the 1580s.

⁹⁹ Priya Shah, *Language, Discipline, and Power: The Extirpation of Idolatry in Colonial Peru and Indigenous Resistance*, 5 VOCES NOVAE 101, 112 (2018), <https://digitalcommons.chapman.edu/cgi/viewcontent.cgi?article=1074&context=vocesnovae> [<https://perma.cc/A53Y-258N>]. The quoted language is Priya Shah’s translation of the original letter. *Id.* at 112, n. 69.

¹⁰⁰ GUSTAVO C. M. CABRAL, *Chapter 5 Jesuit Pragmatic Literature and Ecclesiastical Normativity in Portuguese America (16th–18th centuries)* in KNOWLEDGE OF THE PRAGMATICI 155 (Mar. 25, 2020) <https://brill.com/display/book/edcoll/97890004425736/BP0000005.xml> [<https://perma.cc/X6VD-UKW7>].

¹⁰¹ See Huras, *supra* note 92 at 66.

¹⁰² See Damariz, Maria Guadalupe and Liberation Theology: A Study of Two Religious Movements that have shaped Mexican culture and society, 4–5 (Apr. 28, 2018) (Thesis, Carthage College), (on file with Indigenous Peoples Journal of Law, Culture and Resistance).

¹⁰³ *Id.*

By contrast, New Spain had major councils such as the First Provincial Council of Mexico back in the 1550s, over 30 years prior, showing the greater need to address issues involving the Native Catholics and the broader Catholic community in Mexico. The first Provincial Council of Mexico barred Indians from serving in the clergy due to them not being as fully Catholic as the Church had hoped from the first phases of conversion. The Junta Apostolica of 1539, which was issued shortly after Our Lady of Guadalupe, did allow Indians to join some orders of the clergy.¹⁰⁴ However, this decree by the first Provincial Council of Mexico was more due to the practicality of converting so many pagans at once as the ban was only in effect for around 30 years.¹⁰⁵ The Third Provincial Council, while still affirming the first, also made some exceptions to get Indians in the priesthood through a canon law loophole by the lobbying of the Holy See, including the Pope, to adjust the local canon law without making it formal canon law by issuing another papal bull.¹⁰⁶

Critical race scholars have made arguments that the restrictions on Indians from being in the clergy membership were due to racism reasserting itself, which has some truth to it.¹⁰⁷ It was also due to the practical reality as noted in the canon law decisions of the Bishop of Mexico Alonso de Montúfar O.P. and the French Canonist Juan Focher.¹⁰⁸ Focher held the position of *docterino* within the Diocese of Mexico.¹⁰⁹ Focher's life and work are a testament to the international nature of canon law as he was a French-educated canonist stationed in Mexico, which was then under New Spain, and worked with Spanish Catholics while enforcing the canon law to minister the sacraments to the recently converted Indians.¹¹⁰ A prominent example of this was the sacrament of matrimony in relation to the marriages of recently converted Indians in what became known to historians as the "matrimonial cases." These "matrimonial cases" were essentially a debate over authority on who had canon law jurisdiction over Indian marriages in the Church.

According to the friars, the *Omnimoda* Brief of 1522, issued by Pope Adrian VI, gave them canon law jurisdiction over marriage cases involving the Indians.¹¹¹ One of the reasons the friars argued for this authority was due to the cost concern of Indians having to travel long distances or pay for

¹⁰⁴ Stafford Poole, *Church Law on the Ordination of Indians and Castas in New Spain*, 61 *HISP. AM. HIST. REV.* 637, 637–8 (1981), <https://doi.org/10.1215/00182168-61.4.637> [<https://perma.cc/7QJT-2RHY>].

¹⁰⁵ *See Id.* at 640.

¹⁰⁶ *Id.*

¹⁰⁷ *See e.g., Id.* at 638.

¹⁰⁸ Magnus Lundberg, *Unification and Conflict The Church Politics of Alonso de Montúfar OP, Archbishop of Mexico, 1554–1572*, 118 (2002) (Ph.D. dissertation, Lund University), <https://uu.diva-portal.org/smash/get/diva2:117526/FULLTEXT01.pdf> [<https://perma.cc/7Z8K-XGSJ>].

¹⁰⁹ *Id.* at 118–19.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 143. *See also* Leonardo Falcon, *Manufacturing Sin on the Frontier of Heresy. Bishops, Franciscans and the Inquisition in Cuba during the Long Sixteenth Century 1511–1611* (2019) (Ph.D. dissertation, Florida International University), <https://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=5545&context=etd> [<https://perma.cc/EY87-DGLG>].

representatives to conical courts in order to defend or debate the validity of their marriages like Catholics in Europe had to do regardless of if they were peasants or a King of England.¹¹² Bishop Alonso was concerned they were annulling marriages that were valid under canon law and that the Indians entering said marriages were not properly instructed as to what they were committing to in comparison to their previous plural marriage societies.¹¹³ Bishop Alonso took an approach concerning the Indians to try to minimize their culture. Like Bartolomé de las Casas, the Bishop cared deeply for the souls of Indians and their rights as human beings but considered their culture a threat to their salvation.¹¹⁴ Therefore, using his authority as Bishop, after defeating the friars over the issue of who had canon law jurisdiction, the Bishop assigned the Indian converts the canon law status of children in the Church, meaning that they were to be supervised in their practice.¹¹⁵ Bishop Alonso also ended the exemption granted by the friars for Catholic Indians to pay tithes to the Church, thus normalizing their tithe status to those of European Catholics.¹¹⁶ His reasoning was that the Indians were already used to paying tribute to their pagan cults, and they needed to understand that:

They had two lords, God and the King. Thus, they had to render to Caesar what is Caesar's – the tribute – and to God what is God's – the ecclesiastical tithe. He continued by stating that if only one tax should be paid, it should be the tithes, as the spiritual kingdom was to be preferred to the temporal, as the Pope stood above the King and that only the Pope – and not the King – could abolish the payment of tithes.¹¹⁷

However, despite clear distinctions legally and in the historical records between the Church and the kings, when canon authority was exhibited by international canonists like Juan Focher it muddled the waters for the Indians who had no context for this system inherited from the old world.¹¹⁸ The authority of bishops, priests, and other clergy, which came from the Catholic Church in Rome rather than the kings of Spain, was incomprehensible for those outside the medieval intersection of canon law and secular law. To the Indians,

¹¹² Lundberg *supra* note 108 at 143. See also Amanda Onion, et.al., *Pope Clement VII forbids king Henry VIII from remarrying*, HISTORY. (Sept. 18, 2019), <https://www.history.com/this-day-in-history/pope-clement-vii-forbids-king-henry-viii-from-remarrying> [<https://perma.cc/F9K5-PP2U>]. For the famous tale of King Henry VIII's disagreement with the Church and for European peasants, see JAMES A. BRUNDAGE, *MEDIEVAL CANON LAW*, 73–74 (Longman 1995).

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¹¹³ Lundberg *supra* note 108 at 143.

¹¹⁴ *Id.* at 146. Interestingly, the Bishop lived through the Inquisition of Grenada in terms of Christianizing the area of Islam as he was born near Grenada shortly after it was brought back into Catholic hands. *Id.*

¹¹⁵ *Id.* at 145–47.

¹¹⁶ *Id.* at 169–170.

¹¹⁷ *Id.*

¹¹⁸ See DAVID REX GALINDO, *DOCTOR NAVARRO IN THE AMERICAS: THE CIRCULATION AND USE OF MARTÍN DE AZPILCUETA'S WORK IN EARLY-MODERN MEXICO*, 338–39 BRILL (Manuela Bragagnolo ed., 2024), <https://brill.com/display/book/9789004687042/BP000012.xml?language=en> [<https://perma.cc/HQ7K-LRX9>].

the legal authority was all from Spain as noted by contemporary sources.¹¹⁹ Further, Francisco de Zamora wrote on why the Indians had little interest in Catholicism if the Spanish authorities acted horribly towards them, as was the case with the Pueblo Indians of what is today the US State of New Mexico:

[The Spaniards] took away from them by force all the food that they had gathered for many years, without leaving them any for the support of themselves and their children, robbed them of the scanty clothing they had to protect themselves . . . causing the natives much harm and wounding their feelings. This brought great discredit to our teaching, for they said that if we would be Christians caused so much harm and violence, why should they become Christians?¹²⁰

The Pueblo Indians are a perfect example of what happened when a European power, including an international one that was high in the hierarchy of the Catholic Church, brought nothing but harm to a group of Indians without any apparent benefit for the Indians themselves.¹²¹ The Pueblos, despite their historic rivalries with other Pueblos and other Indian nations such as the Navajo, were not under an empire they wanted to escape from like the Indians who were under the yoke of the Aztecs in Mexico. The Pueblos did not practice human sacrifice in their form of paganism, nor did they have power like the Aztecs or Incas in exacting human sacrifice on other groups of Indians.¹²² The Pueblos also had no events like the reported Our Lady of Guadalupe apparition to bring them to Catholicism as a religion of their own.¹²³

Unlike the Tanio, who were previously brutalized by the Spanish, the Pueblos importantly maintained their numerical advantage over the Spanish.¹²⁴ This advantage would bear fruit in the 1680 Pueblo Revolt, where both the Spanish and the Catholic Church would be kicked out of New Mexico for over a decade by the Pueblos.¹²⁵ The canon law played a huge part in this reaction against the Catholic Church:

¹¹⁹ See Amanda Zeddy, Pueblo Indian Neophytes during Early Spanish Rule in New Mexico, 4 (May 3, 2018), https://nanopdf.com/download/pueblo-indian-neophytes-during-early-spanish_pdf# [https://perma.cc/27G2-6GZA].

¹²⁰ *Id.* (quoting ANDREW L. KNAUT, THE PUEBLO REVOLT OF 1680: CONQUEST AND RESISTANCE IN SEVENTEENTH CENTURY NEW MEXICO (1995)).

¹²¹ See generally Tony Tekaroniacke Evans, *Po'Pay: The Little-Known Pueblo Hero Who Led the First American Revolution*, HISTORY (July 12, 2023), <https://www.history.com/news/pueblo-revolt-1680-popay> [https://perma.cc/EZC6-5GCA] (describing Pueblo people's revolts against oppressive treatments by the Catholic Church).

¹²² See generally Catherine Wilde, *Human Sacrifice in Mesoamerica*, MESOAMERICA FOR TRAVELERS AND STUDENTS (Jun. 9, 2019), <https://mesoamericanstudiesonline.com/2019/06/09/human-sacrifice-in-mesoamerica> [https://perma.cc/QB7Q-J6Q8]; See generally Kim MacQuarrie, *Why the Incas offered up child sacrifices*, THE GUARDIAN (Aug. 3, 2013), <https://www.theguardian.com/science/2013/aug/04/why-incas-performed-human-sacrifice> [https://perma.cc/SHZ6-TMAV].

¹²³ See Posadas, *supra* note 102.

¹²⁴ Joseph R. Aguilar, *Researching the Pueblo Revolt of 1680*, 55 EXPEDITION MAGAZINE, no. 3 (Dec. 2013), <https://www.penn.museum/sites/expedition/researching-the-pueblo-revolt-of-1680> [https://perma.cc/RX9H-MMW3].

¹²⁵ *Id.*

Pueblo people had had enough of Christianity, after eight decades of living in what historian Ramón Gutiérrez has described as an imposed theocratic utopia. Backed by armed force and not reluctant to use the whip, Catholic missionaries had set out to destroy the ancestral Pueblo world in every respect, including what people could believe and how they could marry, work, live their lives, and pray. When the rebels could capture Franciscan priests, they killed them, sometimes after torturing them¹²⁶

One canon law in particular that was a sticking point for the Pueblo Revolt was “an end to marriages on Christian terms.”¹²⁷ Traditional Pueblo marriage was not outright polygamy outside of a few exceptions but much more transactional.¹²⁸ “Marriage was not an insoluble monogamous commitment but rather an arrangement for cohabitation and reproduction between two individuals for an indefinite period.”¹²⁹ In contrast, the Catholic canon law was as it is today and considers marriage a sacrament and divorce is an impossibility if carried out correctly.¹³⁰ This harkens back to the “Imposed theocratic utopia”¹³¹ remarked upon by Ramon Gutierrez as the Church imposed every teaching top down through the authority given to them by the Spanish and from the canon law without winning the hearts and minds of the Pueblos before imposing the canon law on their society.¹³² And that is shown by the record of how the Spanish interacted with most of the peoples of the new World from 1492 which then bore fruit in the Pueblo Revolt.

V. THE FIRST DAUGHTER OF THE CHURCH ARRIVES IN THE NEW WORLD IN THE FORM OF NEW FRANCE

In contrast to Spain in the Indies and New Mexico, the French missionaries used canon law much more similarly to the Mexican and Peruvian canonists. However, they got there through a completely different process, motivated by varied interests and the distinct time periods between missionary efforts. The French Church during the late 17th Century was going through a movement known as *Gallicanism*, the ecclesiastical position that the Catholic Church should be the state Church of France, with the King playing a large part, arguably on par with the Pope.¹³³ The idea was that the Church in France

¹²⁶ Edward Countryman, *The Pueblo Revolt, 1680*, 1 (Nov. 2018), https://www.tidridge.com/uploads/3/8/4/1/3841927/the_pueblo_revolt.pdf [<https://perma.cc/KJS2-H5EL>].

¹²⁷ *Id.*

¹²⁸ See Michael P. Gueno, *Among the Pueblos: The Religious Lives of Franciscan Missionaries, Pueblo Revolutionaries, and the Colony of Nuevo Mexico, 1539–1722*, 113 (Aug. 20, 2010) (Ph. D. dissertation, Florida State University), <https://diginole.lib.fsu.edu/islandora/object/fsu:183618/datastream/PDF/view> [<https://perma.cc/4884-BYLT>].

¹²⁹ *Id.*

¹³⁰ *Canons and Decrees of the Council of Trent*, UNIV. OF OR., <https://pages.uoregon.edu/dluebke/Reformations441/CouncilofTrent—Excerpts.html#24Marriage> [<https://perma.cc/YNA8-PPBA>].

¹³¹ Gueno, *supra* note 128 at 198, 220–22.

¹³² -See *id.* at 221–22.

¹³³ See The Editors of Encyc. Britannica, *Gallicanism*, ENCYC. BRITANNICA (Jan. 3, 2018), <https://www.britannica.com/topic/Gallicanism> [<https://perma.cc/G69X-NHWE>]. For an expanded definition of how Catholics today contextualize the movement, see *Gallicanism*,

and her colonies should be run with a strong preference for the authority of the ecumenical councils, such as Trent and earlier, over papal bulls and other declarations from Rome.¹³⁴ This contrasted with the separate spheres seen in the Spanish colonial efforts where the King submitted to the Pope as a Catholic, but his civil authority and that of his kingdom were separate.¹³⁵ While an earlier papal bull such as *Sublimis Deus* would still be highly influential in how the canon law was applied, it would not be as binding in the minds of the Gallican French clergy as it was for the Spanish Clergy seen in the first century of history in the New World as would an ecumenical council such as the Council of Trent.¹³⁶

When the first non-Jesuit¹³⁷ French missionaries reached the New World, they were highly influenced by this movement and saw local canon law as guiding how the status of American Indians they encountered should be considered. Seventeenth-century France was also a nation undergoing a religious revival, which trickled down to the colonies and resulted in a sort of Christian “utopia” in the canon law—as seen in New Mexico with the Spanish—which got them driven out by the Pueblos.¹³⁸ However, there were a few aspects working in favor of the American Indians of New France accepting Catholicism in general that likely softened this initial strictness in applied canon law.

Firstly, the religious revival was short-lived and not backed up by the harshness of the secular Spanish state, like the colonial government under Don Onate.¹³⁹ Second, the French Missionaries lucked out in finding perhaps one of the few pre-Christian monotheistic peoples in the Anishinaabe, who they were able to preach to. Thus, it was not difficult for Catholicism to take root. Many of the already monotheistic Indians knew the God preached to them by the missionaries under the Indian name of “Gitchi Manidoo,”¹⁴⁰ and thus having the Great Spirit already in their culture and religious profile.¹⁴¹ The authority

CATHOLIC ANSWERS ENCYC., <https://www.catholic.com/encyclopedia/gallicanism> [https://perma.cc/LAT5-3CFU].

¹³⁴ See The Editors of Encyc. Britannica, *supra* note 133; CATHOLIC ANSWERS ENCYC., *supra* note 133.

¹³⁵ *Why are Ferdinand II of Aragon and Isabella I of Castile known as the Catholic Monarchs?*, FASCINATING SPAIN, <https://fascinatingspain.com/spanish-culture-fascinating/spanish-culture/why-ferdinand-ii-aragon-isabella-i-castile-catholic-monarchs> [https://perma.cc/B2WU-RN3Q].

¹³⁶ *Id.*

¹³⁷ The Jesuits were highly dogmatic opponents of *Gallicanism* in favor of Papal Supremacy. ERIC NELSON, *THE JESUITS AND THE MONARCHY: CATHOLIC REFORM AND POLITICAL AUTHORITY IN FRANCE (1590–1615)* (2005).

¹³⁸ See CORNELIUS J. JAENEN, *THE ROLE OF THE CHURCH IN NEW FRANCE* 1, 5–6 (Terry Cook & Gabrielle Blais eds., 2d ed. 1985), https://central.bac-lac.gc.ca/.item?id=H-40_en&op=pdf&app=Library [https://perma.cc/ADH5-QQZP] (describing the enthusiastic religious revivalism of seventeenth-century France and its translation to Montreal and Quebec).

¹³⁹ *Id.* at 6–9.

¹⁴⁰ See Native American Legends: Gitchi Manitou, NATIVE LANGUAGES OF THE AMERICAS, https://www.native-languages.org/gitchi-manitou.htm#google_vignette [https://perma.cc/2682-8E6R].

¹⁴¹ *Id.* This North American tribe appears to be one of the few monotheistic groups of people

for the missions in New France followed a much more decentralized path than the Spanish as the original Jesuit missionaries founded their Churches under the authorization of the Jesuit General, just as the Franciscans did. Thus, the Papacy did not assert its authority broadly.¹⁴²

The Sacred Congregation for the Propagation of the Faith has its origins in the first papal bull to concern Indians in nearly one hundred years since *Sublimis Deus* was issued in 1537. Pope Gregory XV's papal bull *Inscrutabili Divinae Providentiae* 1622 sets the guidelines for missionary work in non-Christian nations and how the chain of authority was to exist under this new organization:

In this way they may know all and individual matters pertaining to the purpose of propagating (propagandam) the faith in the whole world; then all are to meet again in the aforementioned place of congregation to report back to me the important matters that have been discussed. Certainly they should discuss the remaining matters among themselves and settle them with prudence among themselves. Let them oversee all the missions for the proclamation and teaching of the Gospel and Catholic doctrine, and let them appoint the necessary agents for this work. We also impart and grant to this congregation in advance—by means of our apostolic authority—full and liberal powers, means, and permission to take on each and every relevant, specific and distinct matter that will need to be inquired into, managed, dealt with, acted upon, and carried out. And truly a matter of such importance should be speedily advanced; hence we command that—beyond funds from our personal treasury and funds collected from the faithful—those who carry out this work should also be funded from reserves in our Apostolic Camera. In this way, we will continue to support this work in the future. And, furthermore, we command that the people who carry out this work report back to this Holy See of ours; hence we free this group fully from all other duties, as they are expressed in writing.¹⁴³

Thus, the Jesuits encountering the Indians in New France had a free hand with post facto approval from the Papacy as a check on what the clergy was doing in the New World.¹⁴⁴ They used it accordingly in setting the tone

that never had any contact with Judaism in antiquity, as did the monotheistic Samaritans, pre-Christian Greek and Roman “God Fearers” and arguably Zoroastrians. See JODY L. ONDICH, *History, Beliefs, Rituals, Legends, in WORLD RELIGIONS: THE SPIRIT SEARCHING* (2021) (ebook), <https://mlpp.pressbooks.pub/worldreligionthespiritsearching/chapter/mythology-folklore-legends> [<https://perma.cc/8NQF-7ZA6>], for information about Anishinaabe religious belief. There is even a “Flood story” that predates contact. Kevin L. Callahan, *An Introduction to Ojibwe Culture and History*, UPPER MIDWEST ROCK ART RSCH. ASS’N, <https://www.oocities.org/athens/acropolis/5579/ojibwa.html> [<https://perma.cc/F4PF-2GEB>].

¹⁴² Jaenen, *supra* note 138, at 9. Sacred Congregation for the Propagation of the Faith would exist as an organization, although renamed, until June 4th, 2022, when it was merged with another Vatican organization. See *The Dicastery for Evangelization*, VATICAN NEWS (June 4, 2022, 9:00 AM), <https://www.vaticannews.va/en/vatican-city/news/2022-06/dicastery-evangelization-vatican-predicate-evangelium.html> [<https://perma.cc/K987-2R6B>].

¹⁴³ Maria Teresa Prendergast & Thomas A. Prendergast, *The Invention of Propaganda: A Critical Commentary on and Translation of Inscrutabili Divinae Providentiae Arcano*, OMNILOGOS (Dec. 2013).

¹⁴⁴ *Id.*

for relations with the Indians in a manner that was different from the Catholic clergy in New Spain. The Jesuits utilized the American Indian vocabulary to communicate Catholic concepts in a greater fashion than the Council of Lima would permit. This allowed expanded communication by using terminology beyond the communicative nature of the language and into the epistemological values of the native culture. For example, a Jesuit handbook for conversion in the Huron language referred to God as “the Great Voice,” the soul as “medicine,” heaven as “the sky” or “sky-country,” and demons as “earth-dwelling spirits” since hell is “in the earth.”¹⁴⁵ The Jesuits had the canon law authority under *Inscrutabili Divinae Providentiae* 1622 to take these actions, but it was a knife-edge issue as similar use of language had been disallowed by the Vatican in relation to the missions in China.¹⁴⁶

It was this middle ground in converted Indians where the canon law was first applied to the “spiritual dreams” aspect of the Indian cultures. Originally, even after the Chinese Rite Controversy, the Jesuits took a positive opinion of Native American dreams relating to Jesus and other Church-related areas.¹⁴⁷ However, they were wary due to the non-Catholic background of the dream cultures although they noted that the origin appeared to be good according to Jesuit Simon Le Moyne in 1654:

“Formerly their dreams were the God of their hearts, but now God is in their dreams; for the greater number dream only of God, Paradise, or Hell, and of the Angels, who in their sleep invite them to come to them in heaven.” He then recounted a story of a young convert who had seen “a child of rare beauty” who inspired him spiritually and, as the native believed, healed him by making the sign of the cross over his body. Le Moyne commented, “He thought then, and still thinks, that it was his guardian Angel. We know nothing more about it; but we do know that the Angels make no distinction between the Souls of the Savages and our own.”¹⁴⁸

The Jesuits took a less concerned approach after a new Pope, Alexander VII, took office.¹⁴⁹ By the 1660s, these dreams were seen as holy and valid under the canon law authority granted to the Jesuits by *Inscrutabili Divinae Providentiae* 1622.¹⁵⁰ The Jesuits had the authority to allow them to continue in converts, and thus, these dreams were not suppressed as pagan occultism like they would have been by the clergy in New Mexico during this time, as demonstrated by the treatment of the Pueblos.¹⁵¹ This is an example of how local canon law can radically differ without a formal position from the Papacy, as these two missions operating within the same Church during concurrent

¹⁴⁵ Deirdre C. McMurtry, *Discerning Dreams in New France: Jesuit Responses to Native American Dreams in the Early Seventeenth Century* 1, 97 (2009) (Ph.D. dissertation, Ohio State University).

¹⁴⁶ *Id.*; see *id.* at 99 (describing the global perspective local canon law was taking during this period).

¹⁴⁷ *Id.* at 100–01.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 102.

¹⁵⁰ See *Id.*

¹⁵¹ *Id.*

eras differed radically in their outcomes for the status of the Indians. However, the canon law situation of American Indians would transform into the new branch of the Catholic Church. The Irish Church was the branch of the Catholic Church that became dominant in post-18th century America and parts of Canada. The Irish Church applied their own local canon law while ignoring much of the canon law set forth from the Holy See and lobbying for the Vatican to upend centuries of tradition in relation to Americans and other non-western Catholics.

VI. THE LONG 19TH CENTURY FOR AMERICAN INDIANS IN THE CATHOLIC INDIAN BOARDING SCHOOLS

The Church's history of applying internal canon law can shed light on issues with contemporary impacts, including the Catholic-run Indian Boarding Schools.¹⁵² Under the discussed canon law, there were a few papal bulls going back centuries—some non-binding local canon law as seen through the Third Council of Lima. And lastly, the papal bull from the Pope to the missionaries, giving them a lot of leeway with a light level of post facto supervision in *Inscrutabili Divinae Providentiae* 1622. The earlier pieces of canon law targeted Indians as Indians, whereas the latter, such as *Inscrutabili Divinae Providentiae*, began to move away from that direct terminology.¹⁵³ The Church, by sending missionaries to different pagan cultures such as those in South East Asia and sub-Saharan Africa, had been involved with Indians for a couple hundred years at this point and most of the fundamental issues concerning the canon law and Indians had been settled. *Inscrutabili Divinae Providentiae* only applied to Indians in a general sense. It would have applied similarly to missionaries interacting with, for instance, Hmong or Bantu peoples in that they had a free hand with post facto approval or veto from the Papacy.

The 19th century was a time of dramatic change for Indians in the United States and Canada. Indians went from being in total control over their own territorial laws and customs to being moved onto the reservations with the governments of the United States and Canada chipping away at the sovereignty of the nations during this era as seen through the *Allotment Acts* and *Major Crimes Act* in the United States¹⁵⁴ and the *Indian Act* of 1876 in Canada. This era of secular law's impact is seen through the application of Catholic canon law in tracking the long-running contest of local canon law between the "utopian method" seen in the earliest eras of New Spain and New Mexico. This was a choice between a full imposition of Latin Western Catholicism on the Indians, and of the competing "acculturation method," as exhibited by the Third Council of Lima, Mexico post-Our Lady of Guadalupe and by the Jesuits in New France who built off what their predecessors had implemented

¹⁵² See Maria Wiering, *Troubling Past: The Church's Role in America's Indian Boarding School Era*, THECATHOLICSPIRIT.COM (Apr. 26, 2022), <https://thecatholicspirit.com/news/local-news/troubling-past-the-churchs-role-in-americas-indian-boarding-school-era> [https://perma.cc/A2BU-6TDD].

¹⁵³ Prendergast, *supra* note 143, at 141.

¹⁵⁴ 18 U.S.C. § 1153.

in Lima.¹⁵⁵ In the 19th Century, foreign missionaries from Europe favored the latter methods and the former pious Anglo-Irish and Italian Clergy, by contrast, favored the former method over religious orders like in times past. Both approaches were valid under the canon law precepts handed down by Rome, especially after the Council of Trent and *Inscrutabili Divinae Providentiae*, but the “utopian” vision would win out for several reasons during this era. Mainline Protestantism’s approach to Indian people can be summed up with the phrase: “Kill the Indian, save the man.”¹⁵⁶ Western Culture Superiority Catholics, outside of French Canada, were a minority in the highly protestant WASP cultures of the United States and the rest of Canada.¹⁵⁷

Protestant actions regarding particular matters of faith or ecclesiastical issues could have a large effect on how the local Catholic Church, both clergy and laity, operated.¹⁵⁸ This transpired in relations with American Indians during the Boarding School Era, which originated in the zealous evangelical movement that fed into the more utopian school. It was documented when the protestant press attacked Catholic clergy.¹⁵⁹ The attacks centered on the amount of resources the Catholic Church had spent on Indian education going back to the 1880s under Father Andrew Stephen, who headed the Bureau of Catholic Indian Missions.¹⁶⁰ These attacks were counter to Catholic canon law which is demonstrated in the papal bull *Immensa pastorum* which upheld the centuries old rights of native people:

We have received written notice, not without most grave sorrow to our fatherly soul, that after so much advice of Apostolic providence given by our predecessors, the Roman Pontiffs, after the publication of many

¹⁵⁵ *Bureau of Catholic Indian Missions*, MARQUETTE UNIV.: RAYNOR MEM’L LIBRARIES, <https://www.marquette.edu/library/archives/Mss/BCIM/BCIM-SC1-history2.php> [https://perma.cc/6VY5–5LE9]. Importantly, if the missionaries were from Europe, they favored the methods they were likely taught as part of the international education missionaries gained schools who kept track of the local canon law which had proved successful such as at the University of Salamanca. See Robert Royal, *Columbus’ Forgotten Legacy: Missionaries in the New World*, CRISIS MAGAZINE (Jun. 1, 1992), <https://www.crisismagazine.com/1992/columbus-forgotten-legacy-missionaries-in-the-new-world> [https://perma.cc/FT7C–P3FE].

¹⁵⁶ Lisa Tatonetti, *Catholics, Carlisle, and Casting Stones: Richard Henry Pratt and the 1890 Ghost Dance*, 33 NINETEENTH-CENTURY CONTEXTS 267, 270 (July 2011).

¹⁵⁷ See Martin E. Marty, *Protestantism’s Influence in the Modern World*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/The-Protestant-Heritage/Protestantisms-influence-in-the-modern-world> [https://perma.cc/B6JL–GYC8].

¹⁵⁸ Priests today still touch upon this problem within the American Catholic Church. See the reading listing from the local parish priest during my time at the University of Michigan Law School; Fr. Gerald Gawronski where he alludes to Catholics having a protestant understanding of faith due to the United States being historically a majority Protestant country. Fr. Gerald Gawronski, *You Can’t Love What You Don’t Know; A Very Basic Catholic Reading List*, <https://sta2.org/church/wp-content/uploads/sites/2/2022/07/FrG-readinglist-2.pdf> [https://perma.cc/7R79–VKGR].

¹⁵⁹ *Id.* at 272 (quoting Michael A. Elliott, *Ethnography, Reform, and the Problem of the Real: James Mooney’s Ghost Dance Religion*, 50 AM. Q. 201, 202 (1998).

¹⁶⁰ *Supra* at 155 and See Sarah Pruitt, *How Henry VIII’s Divorce Led to Reformation*, HISTORY.COM (Aug. 11, 2023), <https://www.history.com/news/henry-viii-divorce-reformation-catholic-church> [https://perma.cc/WB2M–FERP] for the effects of the Church of England breaking with Rome.

constitutions, saying that help, aid, and protection should be given to those who lack faith, and that neither injuries nor the scourge, nor chains, nor servitude, nor death should be inflicted on them, and all this under the gravest penalties and censures of the Church, there are still found especially in the regions of Brazil, members of the true faith, who completely oblivious, as it were, of the charity poured out in our hearts by the Holy Spirit, presume to deal with the unfortunate Indians who dwell in the harsh mountain regions of the same Brazil, whether North or South or in other deserted regions . . . by reducing them to slavery, or selling them to others as if they were property. And so we ask and exhort you, Brothers, that in this matter you permit no lack in the vigilance, solicitude and work due your ministry, to the detriment of your names and dignity, rather burning with the ardent zeal of priestly charity, join your efforts to the rulers of the regions so that priests and laity bring helps to these Indians and lead them to the Catholic faith.¹⁶¹

This exposition of centuries-old canon law was upheld very strongly by Pope Pius X in his 1912 speech given at Saint Peter's Basilica:

Our Apostolic authority, we, mindful of the example of our aforesaid predecessor, condemn and declare guilty of grave crime whosoever, as he says, "shall dare or presume to reduce the said Indians to slavery, to sell them, to buy them, to exchange or give them, to separate them from their wives and children, to deprive them of goods and chattels, to transport or send them to other places, or in any way whatsoever to rob them of freedom and hold them in slavery; or to give counsel, help, favor, and work on any pretext of color to them that do these things, or to preach or teach that it is lawful, or to co-operate therewith in any way whatever." Accordingly, we will that the power of absolving penitents in the sacramental tribunal from these crimes shall be reserved to ordinaries of the localities.¹⁶²

Ultimately, it would be this Americanizing and Canadianizing process that the New World-born Catholic clergy would add to their Latin west zeal, as seen through how the boarding schools were operated in contrast to the past centuries. They chose their race, nation, and beliefs of superiority over the canon law of the Church they believed to be universal for the salvation of all men, including the Indians, who had red faces and had not yet converted or heard of Christ.¹⁶³

¹⁶¹ Pius Onyemechi Adiele, *The Popes, the Catholic Church and the Transatlantic Enslavement of Black Africans 1418–1839*, GEORG OLMS VERLAG 1, 377–78 (2017), https://library.oapen.org/bitstream/id/8aa95306-9256-443f-9e89-de5871874288/external_content.pdf [<https://perma.cc/D557-244E>]. Anyone engaging in these acts could be penalized with excommunication from the Church, but local bishops could exercise discretion when deciding whether to apply the penalty.

¹⁶² *Lacrimabili Statu: Encyclical of Pope Pius X on the Indians of South America to the Archbishops and Bishops of Latin America* (June 7, 1912), https://www.vatican.va/content/pius-x/en/encyclicals/documents/hf_p-x_enc_07061912_lacrimabili-statu.html [<https://perma.cc/88Q2-KMRU>] (showing how some in the Vatican were aware of some of this mistreatment of Indians).

¹⁶³ Margaret Bunson, *The Church and the Native Americans*, CATHOLIC ANSWERS MAG. (Apr. 1, 2009), https://www.catholic.com/magazine/print-edition/the-church-and-the-native-americans?mc_cid=3a1ff61d22&mc_eid=0395903494 [<https://perma.cc/W2KS-NAN7>]. I use "red" because that is how the Indians were viewed during that era.

VII. THE IRISH-AMERICAN CHURCH: A FLAWED INSTITUTION DUE TO CENTURIES OF PROTESTANT OPPRESSION IN GREAT BRITAIN

The Irish Church, which formed the heart of most of the American and the non-francophone Canadian Church, was mostly pious but very uncompromising of non-Latin groups in the Church.¹⁶⁴ The Irish-American Church formed the basis of the American Catholic Church during the 19th century as the waves of Irish immigrants were the vast majority of Catholics in the country:

They were disproportionately represented among the clergy, and especially over-represented among the episcopacy. . . . By the mid-19th century, Irish clergy had taken the lead in church building to serve the immigrant populations of the industrial cities of the East Coast and the Midwest.¹⁶⁵

Irish-American Bishop John Ireland of Saint Paul is a perfect example of how the Irish-American Church viewed these divergences and is exemplified in a well-known exchange between the Bishop and an Eastern Catholic Priest named Father Alexis Toph: which they felt threatened their way of life and faith, likely due to a history of persecution from the English for centuries.¹⁶⁶

[N]o sooner did he read that I was a “Uniate” (Eastern Catholic) than his hands began to shake . . .

“Have you a wife?” “No.” “But you had one?” “Yes, I am a widower.” At this he threw the paper on the table and loudly exclaimed, “I have already written to Rome protesting against this kind of priest being sent to me!” “What kind of priest do you mean?” “Your kind.” “I am a Catholic priest in the Greek Rite, I am Uniate. I was ordained by a lawful Catholic bishop.” “I do not consider you or this bishop of yours Catholic.”¹⁶⁷

The “good” Bishop then ordered one of his Latin rite priests to denounce Father Toph from the pulpit, all for the crime of being a validly ordained priest from the Byzantine tradition who rejoined the Catholic Church after the Council of Florence over four hundred years prior.¹⁶⁸ What Bishop Ireland did was a violation of canon law. Father Toph, as a professor of canon law, knew that his rights under canon law were being disrespected by the Latin West clergy.¹⁶⁹

¹⁶⁴ Michael J.L. La Civita, *Diaspora: America's Ruthenian Catholics*, =ONE MAG., FEB. Feb. 1996), <https://cnewa.org/magazine/diaspora-americas-ruthenian-catholics-30694> [https://perma.cc/8KTQ-8S9U].

¹⁶⁵ Kevin J. Jones, *How The Irish Built Catholic America*, CATHOLIC NEWS AGENCY, Mar. 17, 2021, <https://www.catholicnewsagency.com/news/37992/how-the-irish-built-catholic-america> [https://perma.cc/LC9L-FDV5].

¹⁶⁶ Nicholas J. Zentos & Wendy Marley, *Byzantine Rite Catholics in* ENCYCLOPEDIA OF CLEVELAND HIST., <https://case.edu/ech/articles/b/byzantine-rite-catholics> [https://perma.cc/YBN6-WZ4M].

¹⁶⁷ Anthony E. Clark, *Fr. Alexis Toth, Bishop John Ireland, and the Grace of Reconciliation*, THE CATHOLIC WORLD REP., May 18, 2016, <https://www.catholicworldreport.com/2016/05/18/fr-alexis-toth-bishop-john-ireland-and-the-grace-of-reconciliation/> [https://perma.cc/9QZL-YVMH].

¹⁶⁸ *Id.*

¹⁶⁹ Fr. Andreas, *St. Alexis (Toth) – Defender of Orthodoxy in America*, ARCHANGEL GABRIEL ORTHODOX CHURCH (May 5, 2015), <https://gabriel.church/st-alexis-toth-defender-of-orthodoxy-in-america/> [https://perma.cc/6RM2-7248].

The disdain for the Eastern Catholic priests was a view that was widely shared by the other Irish American Clergy.¹⁷⁰ The Irish-American clergy would lobby Rome successfully to change the canon law status of Eastern priests in the United States, brought them under their direct diocesan control despite the difference in rite, and barred Eastern Catholic priests from having their wives with them in the United States.¹⁷¹ The Irish American clergy during this time period had little openness towards any Indian expressions of the Catholic faith through the “acculturation method” that was not blanket, pious Latin rite Catholicism.¹⁷² This can be seen in how the Indian Boarding Schools taught the notable survivors that, as pagans, they would grow up to be “good-for-nothing Indians” unless they repented of their culture.¹⁷³ Further, the actions of these priests created generational trauma in those whom they converted, not because of the conversion to Catholicism—as their right under the law would have accepted them through their culture—but to their religion of western superiority which wanted to end their Indian cultures:

My dad couldn’t get over being in residence [residential school], and he used to call our own people dirty heathens because that’s what he had been taught at school . . . My dad never believed in anything cultural. We never ever had wild meat. We never spoke our language. And when the powwow first came to our community, me and my sister both got involved on the Powwow Committee, and then one day, my mother said, “Dad said you girls aren’t supposed to be involved with the Powwow Committee because it’s too pagan.” So, I quit, but my sister’s still involved. So, we lost our culture. We lost our language.¹⁷⁴

Examining what the Bible teaches and the canon law is instructive, under both, the First Commandment states, “You shall love the LORD your God with all your heart, with all your soul, and with all your strength.”¹⁷⁵

There are American Indian religious rites that, as Catholics in good standing with the Church, they could not partake in without committing a sin.¹⁷⁶ To an uncomfortable degree for most twenty-first century secular people, a father

¹⁷⁰ *Id.*

¹⁷¹ *Id.* Eastern Catholic Priests in the United States would not be allowed to marry again until Pope Francis lifted the ban in 2014. See Laura Ieraci, *Vatican lifts ban on married priests for Eastern Catholics in Diaspora*, NAT’L CATHOLIC REP., Nov. 17, 2014, <https://www.ncronline.org/news/vatican/vatican-lifts-ban-married-priests-eastern-catholics-diaspora> [<https://perma.cc/8KCN-VQ6R>]. As can be expected, many Eastern Catholic Priests became Orthodox rather than cruelly put away their wives. See Matt Fradd, *Pints with Aquinas #194 | Fr. Michael O’Loughlin*, at 46:17, (YOUTUBE, Feb. 24, 2020), https://www.youtube.com/watch?v=e5vtGp_qIQg [<https://perma.cc/N8E8-Z2BT>].

¹⁷² La Civita, *supra* note 164.

¹⁷³ *Canada’s Residential Schools: Reconciliation*, Vol. 6 TRUTH AND RECONCILIATION COMMISSION OF CANADA 3, 98 (2015).

¹⁷⁴ *Id.*

¹⁷⁵ *Deuteronomy* 6:5.

¹⁷⁶ *Id.* See *Canada’s Residential Schools: Reconciliation*, *supra* note 173 (quoting the father’s comment on the Powwow Committee under the mistaken impression that it was, by itself, a pagan religious festival).

and husband would have the right to prevent his children and spouse from partaking in those pagan rites.¹⁷⁷

During this era, speaking Indian languages outside of the liturgy, eating wild meat if the meat was not being used as part of a pagan rite, and going to powwow to be part of the community were protected under the canon law for centuries. *Sublimis Deus* issued by Pope Paul III in 1537 to the contemporary Pope Pius X pronouncement in 1912 of 1741 *Immensa pastorum* prohibited priests from forbidding the Indians these cultural practices regardless of whether they entered the schools as baptized Catholics or practicing their traditional religion.

The Papacy was largely responsible for allowing thousands of Indian children to go through a system that destroyed them.¹⁷⁸ It would not be until Vatican II that this balance from the “Utopian” legacy of the Franciscans in New Mexico, now taken up by the Irish-American and Canadian Churches, would shift to the acculturation approach of the Jesuits. Even the 1917 codification of the canon law only directly mentions Indians once in the repetition of a general dispensation for those Indians who were polygamists before their conversion. The law was first issued by Pope Pius V in 1571 and allowed for their Christian wife to be the woman they were or were going to be baptized with.¹⁷⁹ All the while, this ill-treatment violated the canon laws of the Church—which the Pope was head of—through lack of direct action. The post facto nature of *Inscrutabili Divinae Providentiae* 1622 resulted in a great deal of canon law leeway, which the Jesuits of that era used mostly in compliance with the canon law. However, extending that authority for the predominantly American Indian parishes in Canada in 1908 while granting the predominantly white parishes to assume normal structure under the same, Pope Pius X allowed for these abuses by not intervening when they saw a problem at these schools. In 1908, dioceses with significant Indigenous populations such as Mackenzie-Fort Smith (in present-day Yellowknife) or Hearst-Moosonee (in northern Ontario) continued to be under its rule, whereas the non-Indigenous ones were detached from it¹⁸⁰ It would not be until Vatican II that this balance from the “Utopian” legacy of the Franciscans in New Mexico, now taken up

¹⁷⁷ *Exodus* 20:12. (the biblical command of children to obey their parents.)

¹⁷⁸ This is in keeping with ancient custom given to other pagans some ground as they are converted to Catholicism. See Letter from Pope Gregory I to Abbot Mellitus (on file with author), <https://my.tlu.edu/ICS/icsfs/ConversionSourcesBritFrnRussia8pg.pdf?target=e1cd546f-6a9a-4124-b399-08930007d2aa> [<https://perma.cc/BN8T-343J>]; see also Letter from Pope Gregory to Abbot Mellitus (601 A.D.) (copy on file with author), <https://www.ccel.org/ccel/bede/history.v.i.xxix.html> [<https://perma.cc/68R4-9BJV>].

¹⁷⁹ Amanda Coletta, *Thousands of Canada's Indigenous Children Died in Church-Run Boarding Schools. Where are they Buried?*, THE WASHINGTON POST (Oct. 21, 2018), https://www.washingtonpost.com/world/the_americas/thousands-of-canadas-indigenous-children-died-in-church-run-boarding-schools-where-are-they-buried/2018/10/19/afd35060-cb25-11e8-ad0a-0e01efba3cc1_story.html [<https://perma.cc/RTV9-KSUE>].

¹⁸⁰ Roberto Perin, *The Conversation: A Brief History of the Catholic Church and Native Peoples*, INDIANZ.COM (July 25, 2022), <https://www.indianz.com/News/2022/07/25/the-conversation-a-brief-history-of-the-catholic-church-and-native-peoples> [<https://perma.cc/S9QZ-2K6Q>].

by the Irish-American and Canadian Churches, would shift to the acculturation approach of the Jesuits. Even the 1917 codification of the canon law only directly mentions Indians once in the repetition of a general dispensation for those Indians who were polygamists before their conversion. The law was first issued by Pope Pius V in 1571 and allowed for their Christian wife to be the woman they were going to be baptized with.¹⁸¹

VIII. VATICAN II AND THE AMAZON SYNOD

Vatican II did not directly issue any new canon law related directly to American Indians, but it did open up the “Spirit of Vatican II,” which informally changed the status of missionary work related to Indians:

For the new churches, it recommended adaptation to local cultures, including philosophical and theological adaptation. It also recommended that Catholic missionaries seek ways of cooperating with missionaries of other faiths and of fostering harmonious relations with them. It asserted that art from every race and country be given scope in the liturgy of the Church. More generally, it made clear that the Church was sympathetic to the way of life of different peoples and races and was ready to appropriate aspects of different cultural traditions. Though obvious sounding, these provisions were portentous. Where would they lead?¹⁸²

The relationship between Traditional Indian religion and the Church improved through the general *Nostra aetate* which was issued as part of the Second Vatican Council, which stated that:

No foundation therefore remains for any theory or practice that leads to discrimination between man and man or people and people, so far as their human dignity and the rights flowing from it are concerned. The Church reproves, as foreign to the mind of Christ, any discrimination against men or harassment of them because of their race, color, condition of life, or religion. On the contrary, following in the footsteps of the holy Apostles Peter and Paul, this sacred synod ardently implores the Christian faithful to “maintain good fellowship among the nations” (1 Peter 2:12), and, if possible, to live for their part in peace with all men,⁽¹⁴⁾ so that they may truly be sons of the Father who is in heaven.⁽¹⁵⁾¹⁸³

The canon law post Vatican II became more generally accommodating and friendly to pagans than the homeborn Irish American and Canadian Churches were throughout the 19th century. This change is shown in the recent Synod of Bishops for the Pan-Amazon region, which met at the Vatican in 2019.¹⁸⁴ The Synod of Bishops for the Pan-Amazon region proposed several canon law pronouncements unique to the South American Indians who live

¹⁸¹ Letter from Pope Gregory to Abbot Mellitus, *supra* note 178.

¹⁸² JOHN W. O'MALLEY, WHAT HAPPENED AT VATICAN II AT 120 (Sept. 1, 2010).

¹⁸³ Pope Paul VI, *Declaration on the Relation of the Church to Non-Christian Religions: Nostra Aetate* (Oct. 28, 1965), https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html [<https://perma.cc/RZ9J-3DYM>].

¹⁸⁴ Peter Kwasniewski, *A Theological Review Of The Amazon Synod*, ONEPETERFIVE (Dec. 4, 2019), <https://onepeterfive.com/theological-review-amazon-synod> [<https://perma.cc/M3KR-LW7J>].

deep within the Amazon, such as married priests, female deacons, and an Indigenous rite for the Amazon on par with the Eastern Catholic Churches:

The pastoral care of indigenous peoples has its own specificity. The episodes of colonisation throughout history, motivated by extractivism and bringing about different migratory currents, forced them into situations of great vulnerability. In this context, as a Church, it remains necessary to create or maintain a preferential option for indigenous peoples, and this means that diocesan indigenous pastoral organizations must be established and consolidated with renewed missionary activity, listening in dialogue, incarnate and permanently present. The preferential option for indigenous peoples, with their cultures, identities and histories, requires us to aspire to an indigenous Church with its own priests and ministers always united and in full communion with the Catholic Church

. . . . We want to encourage, support and personally accompany the vocational process and formation of future permanent deacons in the riverside and indigenous communities, with the participation of pastors and religious men and women. Finally, a follow-up program should offer ongoing formation (spirituality, theological training, pastoral matters, updates on Church documents, etc.), under the guidance of the Bishop

A Rite for the Indigenous peoples

116. The Second Vatican Council created possibilities for liturgical pluralism “for legitimate variations and adaptations for different groups, regions, and peoples” (*SC* 38). In this sense, the liturgy should respond to culture so that it may be the source and summit of Christian life (*cf.* *SC* 10) and be really linked to the people’s sufferings and joys. We should give an authentically catholic response to the request of the Amazonian communities to adapt the liturgy by valuing the original worldview, traditions, symbols and rites that include transcendent, community and ecological dimensions.

117. There are 23 different Rites in the Catholic Church, a clear sign of a tradition that from the first centuries has tried to inculturate the contents of the faith and its celebration through language that coheres as much as possible with the mystery it seeks to be express. All these traditions have their origin in function of the Church’s mission: “The Churches of the same geographical and cultural area came to celebrate the mystery of Christ through particular expressions characterized by the culture: in the tradition of the ‘deposit of faith’ (2 *Tim* 1:14), in liturgical symbolism, in the organization of fraternal communion, in the theological understanding of the mysteries, and in various forms of holiness” (*CCC* 1202; *cf.* also 1200–1206).

118. It is necessary that the Church, in her tireless labour of evangelization, work so that the process of inculturation of the faith may be expressed with the utmost coherence, in order that it may also be celebrated and lived in the languages proper to the Amazon’s peoples. It is urgent to form committees for the translation of biblical and the preparation of liturgical texts in the different local languages, with the necessary resources, preserving the substance of the sacraments and adapting their form, without losing sight of what is essential. So too, it is necessary to encourage music and songs, all of which is included in and encouraged by the liturgy.

119. The new organism of the Church in the Amazon should establish a competent commission to study and discuss, according to the habits and customs of the ancestral peoples, the elaboration of an Amazonian rite that expresses the liturgical, theological, disciplinary and spiritual patrimony of the Amazon, with special reference to what *Lumen Gentium* affirms for the Oriental Churches (cf. LG 23). This would add to the rites already present in the Church, enriching the work of evangelization, the capacity to express the faith in their own culture, and the sense of decentralization and collegiality that can express the catholicity of the Church. The commission could also study and propose how to enrich Church rites with the way in which these peoples care for their territory and relate to its waters.¹⁸⁵

These recommendations were received fondly by Pope Francis in his 2020 post-synodal apostolic exhortation, where he wrote in support of the Synod of Bishops for the Pan-Amazon region that echoes the Jesuit acculturative tradition of canon law.¹⁸⁶

This response, along with the Pan-Amazon Synod, was highly controversial within the Catholic Church due to the infighting between the traditionalist wing of the Church and the modernist wing.¹⁸⁷ In particular, the Indians of the Amazon were victims of this infighting since, as part of 2019 Synod,¹⁸⁸ Pope Francis invited a group of Amazonian Indians to perform a rite celebrating “Our Lady of the Amazon”, or what some from the traditionalist wing of the Church called, the “Pachamama idols”, with Pachamama being described by the traditionalists as a pagan deity of the Andes.¹⁸⁹ Traditionalist Catholic activist Alexander Tschugguel among others stole the disputed wooden carvings

¹⁸⁵ *Final document of the synod on the Amazon*, VATICAN NEWS (Oct. 26, 2019), <https://www.vaticannews.va/en/vatican-city/news/2020-02/final-document-synod-amazon.html> [<https://perma.cc/7HPG-WV79>].

¹⁸⁶ POPE FRANCIS, QUERIDA AMAZONIA: POST-SYNODAL EXHORTATION OF THE HOLY FATHER TO THE PEOPLE OF GOD AND TO ALL PERSONS OF GOOD WILL, THE VATICAN (Feb. 2, 2020), https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20200202_querida-amazonia_en.pdf [<https://perma.cc/XNJ8-WQXF>] (highlighted within Pope Francis’s full comments where he embraced the acculturation tradition of the Jesuits when he stated, “It is possible to take up an indigenous symbol in some way, without necessarily considering it as idolatry.”)

¹⁸⁷ See Timothy Gordon, *Stay Catholic Because of the Papacy*, YOUTUBE (Jan. 11, 2024), <https://www.youtube.com/watch?v=J4USKcVW7TQ> [<https://perma.cc/V5LT-CDTQ>] (traditionalist Catholic pundit and lawyer Timothy Gordon explaining the recent infighting in the Church over the Francis papacy modernist wing, which continues to this day.)

¹⁸⁸ See generally Delia Gallagher, *Catholic Leaders Are Meeting to Debate Big Changes. Here’s What You Need to Know About the Vatican’s ‘Amazon Synod’*, CNN (Oct. 4, 2019, 3:07 PM), <https://edition.cnn.com/2019/10/04/world/vatican-amazon-synod/index.html> [<https://perma.cc/35HL-RM7E>] (providing an overview of the Synod).

¹⁸⁹ See Mila Diaz Solano, *What Is Pachamama?*, DOMINICAN SISTERS OF SPRINGFIELD, ILLINOIS, <https://springfieldop.org/what-is-pachamama> [<https://perma.cc/5GLS-KP99>] (providing an indigenous Catholic perspective on this controversy); Taylor Marshall, *The Idols of Pachamama in Rome Are Destroyed and Cast Into the Tiber River*, YOUTUBE (Oct. 21, 2019), https://www.youtube.com/watch?v=_loUTdDJT6Y&t=137s [<https://perma.cc/523D-RV87>] (providing a traditional Catholic perspective on this controversy).

used in the rite and threw them into the Tiber.¹⁹⁰ He did this for religious reasons.¹⁹¹ In fact, Tschugguel justified his actions under canon law in an interview with Dr. Taylor Marshall, where he stated he was doing his duty under the First Commandment.¹⁹² This controversy is the latest in an old debate in the Church over Catholic Orthodoxy between the “Utopian Method” and the “Acculturation Method” in keeping with the universal nature of Catholicism, as the Church claims to be founded by Jesus Christ for the salvation of all men.¹⁹³ Throughout the Catholic Church’s history, a certain string within the Utopians has caused great harm in Indian communities from New Mexico to the boarding schools due to their unbending Latin West zeal at the expense of simple orthodox teachings of the Catholic Church, which are universal in nature.¹⁹⁴

However, the canonists that inherit the legacy of the Third Council of Lima that are more in line with the “acculturation method” would likely argue that the Amazonian Indian rites which took place in the Vatican in 2019 were a bridge too far if the intention did violate the First Commandment of “You shall have no other gods before Me.”¹⁹⁵ How the new pontificate of the first American Pope in Pope Leo XIV will handle the legacy of the Amazon Synod is up for debate, but he appears to be a sincere friend of the Indigenous communities from his time in Peru.¹⁹⁶

This controversy is a perfect example of how, just as practicing secular attorneys operate in the margin, canon lawyers operate within the margins of the canon law they practice. It is not always clear cut what is meant within the canon law or what is put into practice on the ground. These nuances and distinctions relating to the Indigenous peoples will keep canonists busy, as they

¹⁹⁰ See Richard Cavendish, *The Battle of the Milvian Bridge*, HISTORY TODAY (Oct. 10, 2012), <https://www.historytoday.com/archive/battle-milvian-bridge> [https://perma.cc/5WDR-3D8C] (a river in the city of Rome that is important in both Roman and Christian history).

¹⁹¹ Edward Pentin, *Austrian Catholic: Why I Threw Pachamama Statues into the Tiber*, NATIONAL CATHOLIC REGISTER (Nov. 5, 2019), <https://www.ncregister.com/blog/austrian-catholic-why-i-threw-pachamama-statues-into-the-tiber>. This source doesn’t mention your point about the others involved, but we could probably cite another source for that.

¹⁹² Taylor Marshall, *LIVE Q&A with Dr Marshall & Alexander (the Idol Dunker) Tschugguel*, YOUTUBE (Nov. 17, 2019), <https://www.youtube.com/watch?v=i4Rr5wXSXII&t=13s> [https://perma.cc/ATE6-EMDX].

¹⁹³ Carl E. Olson, *Pope Francis Teaches that Everyone Is Saved! Wow! (Hold on. Wait a Second.)*, THE CATHOLIC WORLD REPORT (May 23, 2013), <https://www.catholicworldreport.com/2013/05/23/pope-francis-teaches-that-everyone-is-saved-wow-hold-on-wait-a-second> [https://perma.cc/F83Q-ZB5R].

¹⁹⁴ *The Rites of the Catholic Church*, CATHOLIC NEWS AGENCY, <https://www.catholicnewsagency.com/resource/56009/the-rites-of-the-catholic-church> [https://perma.cc/M7JM-2JQT].

¹⁹⁵ See Trent Horn, *Pachamama, Celibacy, and the Amazonian Synod*, CATHOLIC ANSWERS (Oct. 23, 2019), <https://www.catholic.com/audio/cot/pachamama-celibacy-and-the-amazonian-synod> [https://perma.cc/8LA9-VPW5] (traditionalist Catholic Trent Horn’s nuanced discussion about this controversy where he talks about the “folk Catholicism” of the Andes).

¹⁹⁶ See Mauricio Savarese & Steven Grattan, ‘Leo Will Follow Francis.’ *Amazon Catholics Hope the New Pope Will Protect the Rain Forest*, AP News (May 9, 2025, 9:06 PM), <https://apnews.com/article/brazil-amazon-catholics-new-pope-3d97c4977a56fd09bb0d1a55f7c06224> [https://perma.cc/463S-482L].

have for centuries, as the Catholic Church reckons with its past and adjusts to its future in the Americas and beyond.

IX. *SYMPHONIA* AND THE THIRD ROME INHERITANCE FROM EASTERN ROME.

In contrast to the top-down approach of both past and contemporary Catholic canon law, the Eastern Orthodox Church approach based on *Autocephaly* offers a different tradition of canon law applied to the Native Alaskans that can be contrasted with the past and contemporary canon law of the Catholic Church. The canon law of the Eastern Orthodox Church, like that of the Catholic Church, was based on the first seven ecumenical councils when the Church was united, such as the Council of Chalcedon, the tradition of the Apostles, and the authority of the bishops to issue local canon law in their jurisdiction when the new issue presented themselves throughout the centuries.¹⁹⁷ In addition, the Eastern Orthodox Churches had the religious authority of the Eastern Roman Emperor in Constantinople, which, after the Eastern Roman Empire fell, would be inherited by the Russian Tsars.¹⁹⁸ This concept in the East was known as *Symphonia*, which is the concept that Church and State “shall be one, like body and soul.”¹⁹⁹ Examples of this are both in the civil code of Emperor Justinian and in his theological writing, attempting to end the schism between the Orthodox Church²⁰⁰ and the Churches subscribing to “miaphysite” theology predominantly in Egypt and Armenia:

Justinian’s Christological concerns and his often-high-handed treatment of bishops in this and other matters were not the officious intermeddling of a powerful amateur theologian. Rather, as we shall see, they lay at the core of Justinian’s conception of imperial authority and at the core of his understanding of the Lordship of Christ.²⁰¹

This concept of *Symphonia* would be seen throughout the centuries.²⁰² For instance, Justinian’s successor, Justin II, attempted to reconcile the miaphysites back into the union.²⁰³ The latter compromise doctrine, named *monothelitism*, was developed by Patriarch Sergius of Constantinople and

¹⁹⁷ Lewis Patsavos, *The Harmonization of Canonical Order*, 19–20 J. OF MOD. HELLENISM, 2001–2002, at 211, 215.

¹⁹⁸ Oleg Yegorov, *Why Do Russians Call Moscow the Third Rome?*, GATEWAY TO RUSSIA (Mar. 30, 2017), <https://www.gw2ru.com/history/82225-why-do-russians-call-moscow-the-third-rome> [https://perma.cc/TV6W-QND7].

¹⁹⁹ Mikhail Antonov, *Russian Symphonia vs. Rule of Law?*, 46 BYU L. REV. 1183, 1185 (2021).

²⁰⁰ At the time, and until the Great Schism, this would include the Roman Catholic Church. See, Mary Fairchild, *The Great Schism of 1054 and the Split of Christianity*, LEARN RELIGIONS (July 31, 2019), <https://www.learnreligions.com/the-great-schism-of-1054-4691893>.

²⁰¹ Craig A. Stern, *Justinian: Lieutenant of Christ, Legislator for Christendom*, 11 REGENT UNIV. L. REV. 151, 153 (1998).

²⁰² Cyril Hovorun, *Orthodox Political Theology*, UNIVERSITY OF ST. ANDREWS ENCYCLOPAEDIA OF THEOLOGY (2023), <https://www.saet.ac.uk/Christianity/OrthodoxPoliticalTheology#section2.9> [https://perma.cc/X2JV-94F5].

²⁰³ Averil Cameron, *Justin II (d.578)*, CLAREMONT COPTIC ENCYCLOPEDIA (1991), <https://ccdl.claremont.edu/digital/collection/cce/id/1143> [https://perma.cc/7ZKN-RNRQ].

Emperor Heraclius several decades later.²⁰⁴ In addition, the *Typos of Constans II*, which was an edict issued by another emperor of the Heraclian dynasty that forbade the discussion of the nature of Christ in the name of the unity of the empire in 640, was also another imperial attempt to resolve this long-standing theological issue on the merit of the emperor's religious authority.²⁰⁵ The concept of *Symphonia* continued in the edicts against Icons issued by Leo IV the Khazar during his reign in the eighth century,²⁰⁶ and the later restoration of the Icons by the first Empress Regent in Roman history, Empress Regent Irene, also occurred in the 700s through her authority derived from *Symphonia*.²⁰⁷ This Orthodox position of *Symphonia* would continue well into the latter days of the empire, as can be seen in these words spoken by the dying Emperor Manuel II Palaiologos to his son and heir, the future penultimate Emperor John VIII Palaiologos, about his future duties in keeping *Symphonia*:

My son, of course, we know very well that the infidel [namely, the Ottomans] dread the day we come to an agreement and unite with the Franks; for, they believe that if this happens, because of us they would suffer much at the hands of the Christians of the West. Therefore, as far as this council is concerned continue and study, and bring it up, especially when you need to scare the infidel. But do not attempt to bring it about, for I see that our own people are unable to find a way for union, peace and concordance, unless they were returned to our original state. And since this is almost impossible, I fear a worse schism may be brought about, and hence we shall be left defenceless before the infidel²⁰⁸

Because the Russian Empire considered itself the successor of the Eastern Roman Empire as the Third Rome, this concept of *Symphonia* played a significant role in their empire due to the ontological understanding of the transition of the Orthodox Emperor from Constantinople to what would become the Russian Empire in the Duchy of Moscow.²⁰⁹ A shocking belief in the West and in Greece, the Russians deeply held the “Third Rome” nature of the Russian Empire, making it the last Orthodox power left standing.²¹⁰ “All the Christian kingdoms have come to an end and have converged in the single kingdom of our sovereign,” Philotheus wrote in one of the epistles. “Two

²⁰⁴ *Monoenergism / Monothelitism*, ORTHODOX CHURCH IN AMERICA, <https://www.oca.org/orthodoxy/the-orthodox-faith/church-history/seventh-century/monoenergism-monothelitism> [https://perma.cc/LTD7-MH6G].

²⁰⁵ This edict resulted in the banishment of Pope Martin I to Chersom in modern day Crimea for refusing to go along with the edict.

²⁰⁶ CYRIL MANGO & ROGER SCOTT THEOPHANES CONFESSOR, THE CHRONICLE OF THEOPHANES CONFESSOR: BYZANTINE AND NEAR EASTERN HISTORY AD 284–813, 565, 610 (Cyril Mango & Roger Scott, trans., 1997) <https://archive.org/details/chronicle-of-theophanes-the-confessor/page/604/mode/2up?q=icon> [https://perma.cc/J7UW-CLGB].

²⁰⁷ *Id.* at 54.

²⁰⁸ Charalambos Dendrinos, *Reflections on the Failure of the Union of Florence*, 39 ANNALES HISTORIAE CONCILIORUM 131, 131 (2007), https://pure.royalholloway.ac.uk/portal/files/16794212/Dendrinos_Florence.pdf [https://perma.cc/25FH-F45H].

²⁰⁹ *Origins of Russia: Moscow Becomes an Empire (Prehistory to 1584)*, GEOHISTORY (2023), <https://geohistory.today/origins-of-russia-pt1> [https://perma.cc/82A9-SZTJ].

²¹⁰ *Id.*

Romes fell, a third stands, and there will not be a fourth one.”²¹¹ The Russian Tsars participated in this by a greater extension of authority shortly before colonizing Russian Alaska, when Peter the Great abolished the office of Patriarch of Moscow and all Rus’ and took upon himself the total of the local religious authority by establishing the Most Holy Governing Synod which reported directly to and was controlled by the Tsar.²¹² Thus, the stage for canon law in the Russian Orthodox Church at this time was with the Emperor with his own religious authority alongside his secular autocratic authority—through his assumed authority from the office of Patriarch, which he abolished, the local canon law authority of the bishops, and the first seven ecumenical councils from before the Great Schism. This Spirit of *Symphonia* was at its greatest before Ambrose of Milan rebuked Theodosius I for ordering the Massacre of Thessalonica in a rage. The Spirit of *Symphonia* was in the autocratic hands of the Tsar until the Russian Revolution.

X. FOR GOD AND TSAR IN RUSSIAN ALASKA CARRYING THE TORCH OF ORTHODOXY TO THE ALASKAN NATIVES

The first time that Orthodox clergy likely interacted with Indians was near Saint Augustine, Florida, and not in Alaska as commonly thought. There was a British-backed Greek colony in the 17th century named “New Smyrna,” which endured a couple of Creek Indian raids.²¹³ This Greek colony did not impact the Indian religious beliefs like the nearby Catholic missionaries in Saint Augustine, so meaningful interactions between the clergy first transpired in Alaska under Saint Herman of Alaska. Before Herman arrived, the Russian colonists had acted harshly towards the Alaska Natives with an eye towards exploitation.²¹⁴ However, the clergy stood up for the Native Alaskans with Tsarina Catherine the Great under both her canon law authority through

²¹¹ Yegorov, *supra* note 198.

²¹² OLGA TSAPINA, WAS THERE A RUSSIAN TRADITION OF CHURCH-STATE RELATIONS? 1, https://www.academia.edu/28209038/Was_There_a_Russian_Tradition_of_Church_State_Relations [<https://perma.cc/3XKG-SMW9>].

²¹³ John Apostolos, *The First Greeks in Florida: New Smyrna & Saint Fotios*, COSMOS PHILLY (Mar. 28, 2020), <https://cosmosphilly.com/the-first-greeks-in-florida-new-smyrna-saint-fotios> [<https://perma.cc/M3CW-VUZZ>]. See The Exhibit on the History of the Greeks located in New Smyrna, that mentions Creek Indian attacks on the Colony, involving in the Saint Photios Greek Orthodox National Shrine *Permanent Exhibit*. Saint Photios Greek Orthodox National Shrine. (2020, July 14). <https://stphotios.org/exhibits/permanent> [<https://perma.cc/3AEC-4244>] (I have heard mixed report on if a Greek Orthodox Priest accompanied them on this journey and could not confirm it either way but is possible that the first the Orthodox and Indians interacted was at New Smyrna and not Alaska even if the latter is one that leaves an impact on that native community whereas New Smyrna is just a footnote.)

²¹⁴ KUAC Fairbanks, *Legacy of Faith: The Russian Orthodox Church in Alaska*, YOUTUBE (Jun. 20, 2016), <https://www.youtube.com/watch?v=BcLREBBc6cl&t=1041s> (last visited Jan. 6, 2023) [<https://perma.cc/JHW5-U5JM>]; see also *Russian Period (1741–1917)*, NATIONAL PARK SERVICE, <http://npshistory.com/publications/ania/hrs/chap3.htm> [<https://perma.cc/WG49-BU98>].

sending the missionaries and her secular authority in ordering an investigation of the ill-treatment.²¹⁵

When formal missionaries for Alaska arrived in 1794 during the reign of Tsar Paul, the Tsar, in his religious authority, encouraged the missions because the Tsar saw the natives as pagans to be converted to the faith instead of economic units for the Russian American Company.²¹⁶ This can be seen in the local canon law relayed by Orthodox priests in Alaska in the 1980s about instructions they were handed by their superiors during the original missions, which they continued to keep.²¹⁷

This attitude reflects the memory of how the Russian Empire chose Orthodox Christianity of their own free will, as relayed in the Russian Primary Chronicle: “[W]e went to Greece, and the Greeks (including the Emperor himself) led us to the edifices where they worship their God, and we knew not whether we were in heaven or on earth.”²¹⁸ The accommodations of not having to learn Greek and the ability to use the vernacular language was a benefit to the adoption of the faith in the 10th century.²¹⁹ Alaska Natives were given this benefit to create a religion that was Alaskan Native Orthodox just as Russians had been given Russian Orthodoxy from the Eastern Romans:

Fr. Michael Oleksa:

It has become certainly . . . since 1824 an Alaskan native religion rather than superficially a white man’s religion with white clergy with missionaries continuing to run the Church after the initial introduction of Christianity had taken place.²²⁰

²¹⁵ *In The Beginning Was The Word: The Russian Church and Native Alaskan Cultures*, LIBRARY OF CONGRESS, <https://www.loc.gov/exhibits/russian/russch2.html> [<https://perma.cc/AL79-9UL8>]; see also Villanova University, *Russian America: The Alaskan Native Spiritual Legacy - Rev Dr. Michael James Oleksa*, YouTube (Apr. 19, 2016), https://www.youtube.com/watch?v=hIVUP9JB_DI [<https://perma.cc/PB7X-YSQV>].

²¹⁶ Matthew A. McIntosh, *The Russian Church and Native Alaskan Cultures*, BREWMINATE (Sep. 3, 2019), <https://brewminate.com/the-russian-church-and-native-alaskan-cultures> [<https://perma.cc/6PZE-VG4B>]; see also SERGEI KAN, MEMORY ETERNAL TLINGIT CULTURE AND RUSSIAN ORTHODOX CHRISTIANITY THROUGH TWO CENTURIES 31 (2015) (where Tsar Peter takes an active interest as head of the Russian Church in the conversion of the Alaskan natives on the Serbian side of the border).

²¹⁷ *Id.* (as seen in the remarks of Fr. Joseph Kreta, “[T]he missionaries were told that when you come to America, when you come to Alaska you are to consider yourself a guest in someone’s home and you will act accordingly.”).

²¹⁸ SAVVAS BOURNELIS, THE CONVERSION OF KIEVAN RUS’ TO EASTERN ORTHODOX CHRISTIANITY 6 (Feb. 20, 2019), https://www.academia.edu/38877755/The_Conversion_of_Kievan_Rus_to_Eastern_Orthodox_Christianity (last visited 2023) [<https://perma.cc/D2XD-W2XP>].

²¹⁹ *Id.* (also the Russian Empire and Slavic peoples more generally maintained much more of their pagan folk beliefs than in Western Europe); see SEAN ALAN HEINRITZ, MEMORY KEEPERS & DUAL FAITH: SURVIVING PAGAN AND PRE-CHRISTIAN ELEMENTS IN SLAVIC CULTURE (2018), <https://dc.uwm.edu/rso/2018/panel2b/2/> [<https://perma.cc/VBL9-9AF9>].

²²⁰ *Id.*; but see ABQ Journal News Staff, *Funeral Mass for Donald Pelotte will be celebrated Thursday at Sacred Heart Cathedral in Gallup*, ALBUQUERQUE JOURNAL (Jan. 12, 2010), <https://www.abqjournal.com/11064/updated-infection-led-to-ex-gallup-bishops-death.html> (In contrast the first Native American to rise to the Bishopric in the Catholic Church did not happen until 1990 in New Mexico.); see also Vermont Catholic, *Walking in a Good Way: Abenaki Catholicism in Ndinakina*, ROMAN CATHOLIC DIOCESE OF BURLINGTON (JULY 11,

This work was primarily done by Herman of Alaska, a mere orthodox monk, after the death of Archimandrite Joasaph in a storm in 1799.²²¹ Herman's work produced great faith in many Alaskan Natives, including an early story of martyrdom by an Alaskan Native named Peter the Aleut, who allegedly died for the Orthodox faith after the Spanish Franciscans in San Francisco attempted to force his conversion to Catholicism.²²² The Spanish allegedly stated, in response to Peter's answer to the Spanish was, that he was a "Christian."²²³ He asserted, "That's not true, you are heretics and schismatics. If you do not agree to accept our faith, then we will torture all of you to death."²²⁴

The formal canon law became more intrinsic with Innocent of Alaska, a Russian missionary priest who would rise through the ranks to become Metropolitan of Moscow.²²⁵ When Innocent was an Orthodox priest in charge of the mission in Alaska, he wrote his 1833 work *Indication of the Way into the Kingdom of Heaven* in the Aleut language as a guide for canons that, as Orthodox Christians, the Alaskan Natives would need if they wished to live an Orthodox life.²²⁶

Salubriously, the works of the future Metropolitan of Moscow produced a faith that would outlast the short presence of Russian Alaska.²²⁷ The Orthodox communities of Native Alaskans still exist and have fused the canon law provided by those such as Innocent of Alaska with their own culture to produce a syncretic but Orthodox faith which has been crucial to Alaskan Native identity for some Alaskan Native villages.²²⁸

2020), <https://www.vermontcatholic.org/uncategorized/walking-in-a-good-way-abenaki-catholicism-in-ndakinna> [<https://perma.cc/XVF6-MP3N>] (This is despite several groups of Native Americans, such as Pelotte's Abenaki people, were Catholic for centuries by 1990 and were producing for lack of a better term "learned men".) (You can also see in the cited documentary that the Orthodox Priest is being genuine as the seminary students in the background are predominantly Alaskan Native.).

²²¹ Rev. Herman of Alaska (azbyka.ru) Venerable Herman of Alaska, Orthodox Church Calendar, , <https://azbyka.ru/days/sv-german-aljaskinskij> [<https://perma.cc/4VN4-BRUX>].

²²² *Martyr Peter the Aleut*, ORTHODOX CHURCH IN AMERICA, <https://www.oca.org/saints/lives/2016/09/24/102713-martyr-peter-the-aleut> [<https://perma.cc/43P6-UKYW>]; but see *The Martyrdom of Peter the Aleut*, CATHOLIC ANSWERS, <https://www.catholic.com/qa/the-martyrdom-of-peter-the-aleut> [<https://perma.cc/2RAU-ATER>] (Catholics dispute this story.).

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Repose of Saint Innocent, Metropolitan of Moscow, Enlightener of the Aleuts, Apostle to the Americas*, ORTHODOX CHURCH IN AMERICA, <https://www.oca.org/saints/lives/2016/03/31/100954-repose-of-saint-innocent-metropolitan-of-moscow-enlightener-of-t> [<https://perma.cc/G28B-JSN9>].

²²⁶ Fr. Andrew, *Indication of the Way into the Kingdom of Heaven by St. Innocent Metropolitan of Moscow, Enlightener of America*, ST. VLADIMIR'S RUSSIAN ORTHODOX CHURCH EDMONTON, ALBERTA (June 15, 2011), <https://stvladimirs.ca/indication-of-the-way-into-the-kingdom-of-heaven-by-st-innocent-metropolitan-of-moscow-enlightener-of-america> [<https://perma.cc/GR3U-VMHF>].

²²⁷ *The History of Orthodoxy in America*, OUTREACH ALASKA, <https://outreachalaska.org/orthodoxy.html> [<https://perma.cc/6ZKR-432L>].

²²⁸ Kan, *supra* note 216.

XI. CONCLUSION

The canon law status of American Indians in the Catholic and Eastern Orthodox Churches had meaningful differences between the average Catholic laity, non-baptized pagans in other regions of the world such as the Hmong or Bantu peoples, and canon law jurisdiction based on their Indian status.²²⁹ Indian status is often seen as a secular political reality.²³⁰ However, it is also a canon law reality that is still relevant to this day, as seen through the recent Synod of Bishops for the Pan-Amazon region proposal of creating a new rite in the Catholic Church for the Indians of the Andes. And the recent controversy related to the Indian Boarding Schools run by the Catholic Churches with reports being issued in Canada in 2015 and with two reports being issued by the United States under Secretary of the Interior Deb Haaland.²³¹ Canon law, though often overlooked, offers a unique perspective into the legal past of Indians in North America and South America. It brings a critical legal lens for examining the future relations between the American Indians and the Apostolic Churches from within their legal codes which remain relevant today in our highly secularized civil societies, be they the United States, Canada, Peru, Mexico, and Brazil, or the Tribal Governments of Acoma Pueblo, Karluk vil-lage, or the Indians of the Amazonian basin.

²²⁹ See 18 U.S.C. § 1151.

²³⁰ For the Secular status of an “Indian” under U.S. law, see Cornell Law School, *American Indian law*, LEGAL INFORMATION INSTITUTE (June 2022), https://www.law.cornell.edu/wex/American_Indian_law [<https://perma.cc/PK43-JVGR>].

²³¹ *Secretary Haaland announces Federal Indian Boarding School initiative*, U.S. DEPARTMENT OF THE INTERIOR (June 22, 2021), <https://www.doi.gov/pressreleases/secretary-haaland-announces-federal-indian-boarding-school-initiative> [<https://perma.cc/XZA4-BN9L>]; Jenna Kunze, *DOI Releases Final Report on Traumatic Legacy of Indian Boarding Schools*, Yahoo News (July 30, 2024, 2:36 PM), <https://www.yahoo.com/news/doi-releases-final-report-traumatic-193634737.html> [<https://perma.cc/85ER-N636>].