

**THE COLLABORATION BETWEEN THE *PAROCHUS* AND THE PARISH FINANCE COUNCIL IN THE
PROTECTION OF PARISH PROPERTY: PRACTICAL REFLECTIONS ON THE RELATION
BETWEEN CANONS 532 AND 537 OF THE 1983 CODE OF CANON LAW**

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ABSTRACT

Canon 532 declares that the *parochus* is the administrator of parish property. Canon 537 stipulates that he must involve the parish finance council in the administration and protection of parochial goods. The parish as a public juridic person has the right to protect its property both by canon law and civil law. The *parochus*, who is not the owner but the steward of parish goods, has the primary responsibility to protect them. The Code presumes transparency and accountability in the administrator who is legally capable of carrying out acts of administration on behalf of the parish. However, the legislator also recognizes that there can be possible mismanagement or misappropriation of these goods. Therefore, the law provides checks and balances to prevent such misconduct and to ensure their protection. How the present legal provisions can be applied effectively and implemented appropriately by promoting a sound rapport between the *parochus* and the parish finance council in order to foster the efficacious protection of parish property is the subject matter of this dissertation.

This study seeks to contribute to a deeper understanding of the legal provisions which can be used for the protection of parish property. Specifically, the principal objective of this dissertation is to offer a canonical analysis and practical reflections on the relation between canons 532 and 537. To achieve this objective, the thesis is developed in four chapters. The first examines the dual nature of the parish as a community of the faithful and as a juridic person. The second studies the respective roles of the *parochus* and the parish finance council in the protection of parish property in light of canons 532 and 537. The third deals with contemporary challenges to the protection of parish property. The final chapter reviews various possible particular canonical provisions (particular laws, special instructions, and parish statutes) to promote collaboration between the *parochus* and the parish finance council for the protection of the ecclesiastical goods of the parish.

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ABBREVIATIONS

AA	SECOND VATICAN COUNCIL, decree <i>Apostolicam actuositatem</i>
AAS	<i>Acta Apostolicae Sedis</i>
c.	<i>canon</i>
cc.	<i>canons</i>
CCCB	Canadian Conference of Catholic Bishops
CCEO	<i>Codex canonum Ecclesiarum orientalium</i>
CCLA	CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>
CD	SECOND VATICAN COUNCIL, decree <i>Christus Dominus</i>
CFH	MCKENNA, K.E., L.A. DINARDO, and J.W. POKUSA (eds.), <i>Church Finance Handbook</i>
CIC/17	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
CIC/83	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
CLD	<i>Canon Law Digest</i>
CLSA AO1	COGAN, P.J. (ed.), <i>CLSA Advisory Opinions, 1984-1993</i>
CLSA AO2	ESPELAGE, A.J. (ed.), <i>CLSA Advisory Opinions, 1994-2000</i>
CLSA AO3	ESPELAGE, A.J. (ed.), <i>CLSA Advisory Opinions, 2001-2005</i>
CLSA Comm1	CORIDEN, J., T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>
CLSA Comm2	BEAL, J.P., A. CORIDEN, and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSANZ	Canon Law Society of Australia and New Zealand
CLSAP	<i>Canon Law Society of America Proceedings</i>

<i>CLSGBI Comm</i>	SHEEHY G. et al. (eds.), <i>The Canon Law: Letter & Spirit</i>
<i>Exegetical Comm</i>	MARZOA, A., J. MIRAS, R. RODRIGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary</i>
FLANNERY1	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1
GS	SECOND VATICAN COUNCIL, pastoral constitution <i>Gaudium et spes</i>
LG	SECOND VATICAN COUNCIL, dogmatic constitution <i>Lumen gentium</i>
PCLT	PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS
PB	JOHN PAUL II, apostolic constitution <i>Pastor bonus</i>
PO	SECOND VATICAN COUNCIL, decree <i>Presbyterorum ordinis</i>
SC	SECOND VATICAN COUNCIL, constitution <i>Sacrosanctum Concilium</i>
TANNER1	TANNER, N.P. (ed.), <i>Decrees of the Ecumenical Councils</i> , vol. 1
TANNER2	TANNER, N.P. (ed.), <i>Decrees of the Ecumenical Councils</i> , vol. 2
USCC	United States Catholic Conference (until 1 July 2001)
USCCB	United States Conference of Catholic Bishops (from 1 July 2001)

GENERAL INTRODUCTION

For centuries, the Church has used the parish structure within dioceses as a basic means of being close to the faithful and responding to their needs. The history of parishes has been marked by many variations, some of which were positive; others of which were negative. For a very long period of time, for instance, parishes were identified canonically as “benefices,” of which the *parochus* was primarily the beneficiary. Under this system, they were not identified primarily as pastoral units.

The Second Vatican Council changed this method and instead recognized the parish as a communion of the faithful. It also recognized the juridical character of each parish, with its rights and obligations. Each parish has the specific mission to share in the Church’s threefold mission of teaching, sanctifying, and shepherding. This is to be carried out under the leadership of the *parochus*, but with the direct cooperation of the parishioners. To make this a reality, it is obvious that temporal goods are required.

These goods have a twofold reality: since they belong to a parish, they are ecclesiastical goods, subject to the provisions of the Church’s canonical legislation. But they are also goods belonging to a civil entity – usually a civil corporation in North America – for which the secular law has put in place various accountability mechanisms. While this study is primarily focussed on the possibilities contained in the Church’s canonical legislation, it cannot overlook the public or secular dimension of temporal goods, especially those norms put in place to assure their protection and appropriate use.

The canons express that every parish as a juridic person is to possess sufficient means to achieve its designated purposes (c. 114, §3), or at least the capacity to hold stable patrimony. Naturally, it has the right to protect its goods so as to be able to utilize them for present and

future generations. The parish has four fundamental rights relating to temporal goods, namely, to acquire, retain, administer, and alienate them (c. 1255) in order to perform its functions according to the proper purposes of the Church (cc. 1254, §2; 114, §2; 298, §1). Canon 532 declares that the *parochus*¹ is the administrator of parochial goods; he is the legally capable person to perform acts of administration on behalf of the parish. Canon 537 explains that every parish must have a parish finance council which the *parochus* must involve in his administration and protection of the goods of the parish.²

It is possible that *parochi*, who are constituted as the administrators of the goods of the parish in accord with the norm of law, may misappropriate or mismanage parochial goods.³ A fundamental question arises: is there a legal system in the Church which directs and controls the actions of the *parochus* and the parish finance council in protecting the goods of the parish? Or,

¹ Since the Latin term “*parochus*” has different English translations such as “pastor” or “parish priest,” this study makes use of the technical legal term “*parochus* of a parish” where the universal law may simply mention “the administrator of a public juridic person,” in order to emphasize the application of universal law to the parish and its leadership figure.

² This study reflects principally upon the discipline of the Latin Church, although where necessary it will refer to the corresponding canons governing the Eastern Churches (CCEO).

³ For example, in 2007, Archbishop D.M. Schnurr, then treasurer of the USCCB, noted a number of instances of recent parish financial scandals from various newspapers (Wall Street Journal, New York Times, USA Today, and Time Magazine) in his memorandum on the USCCB Accounting Practices Committee’s recommendations in regard to financial challenges facing the 19000+ parishes in the USA: “in New Jersey, a priest (*parochus*) was sentenced in June 2006 for five years in prison after the misappropriation of \$2 million; in Florida, two priests (*parochi*) were charged in September 2006 with skimming more than \$8.6 million from a parish; in Illinois a priest (*parochus*) was indicted in October 2006 on charges of stealing more than \$190, 000 from a parish; in Connecticut, a priest (*parochus*) was removed in January 2007 over the disappearance of approximately \$500, 000; in Virginia, a priest (*parochus*) has just recently (January 2007) been accused of stealing over \$600, 000; at this time, there are ongoing investigations of fraudulent activity in Texas and Pennsylvania” (USCCB ACCOUNTING PRACTICES COMMITTEE, Recommendations on Parish Financial Governance, 23 March 2007, in <http://www.usccb.org/about/financial-reporting/upload/parishfinancialgovernance.pdf>).

Moreover, in Ottawa, Canada, a very prominent former *parochus* was recently charged with misappropriation of hundreds of thousands of dollars from the parish funds by gambling³ (see M. HURLEY and A. DUFFY, “Former Blessed Sacrament Pastor Father Joe Faces Fraud, Theft, Money Laundering Charges?” 5 July 2012, in <http://www.ottawacitizen.com/business/.html>). As a matter of fact, some in the media have coined the mismanagement of Church finances as the next big scandal for the Catholic Church (see D. GIBSON, “The Bottom Line: Will Church Finances Be the Next Scandal?,” in *Commonweal*, 131 [2004], pp. 10-13; see also M.W. RYAN, “The Second Greatest Scandal in the Church,” 2003, pp. 1-8, in http://www.churchsecurity.info/index_files/Page.html).

more precisely, are there canonical mechanisms or provisions which could promote collaboration between the *parochus* and the parish finance council so as to forestall parish financial mismanagement or misappropriation of parochial goods?

To rephrase these questions in another way: are there laws in the Church which can direct and guide in an efficient manner the *parochus* as administrator of the parish goods and the parish finance council as a collaborative organ in the protection of the parish goods, so that the *parochus* may not be placed in a situation where he can easily mismanage them? The obvious answer to this question would certainly be, “Yes.” There exist in the Church both a complex of laws and an intricate legal system which, if and when used effectively and implemented appropriately, can lead to the efficacious protection of parochial goods and which can forestall abuses and harmful actions of *parochi* and others who are to protect the parish property.

It must be asked, however, whether these laws are always applied appropriately, and whether the various checks and balances foreseen in the legislation are being used and implemented correctly. The efficiency of the application and implementation of these laws needs to be studied from three perspectives: (1) the role of the *parochus* in the protection of parish goods; (2) the role of the parish finance council in protecting parochial goods; and (3) the role of the diocesan bishop in monitoring their protection. These issues are interrelated and need to be examined in a systematic way, which is the object of our study: “*The Collaboration between the Parochus and the Parish Finance Council in the Protection of Parish Property: Practical Reflections on the Relation between Canons 532 and 537 of the 1983 Code of Canon Law.*”

There have been a number of studies which have generally focused on the duties and the obligations of the *parochus*, the role of the parish finance council and its application within the context of a specific country, and the administration of the temporal goods of the parish with

particular reference to that country. Our research indicates that, apart from a few doctoral dissertations of a generic nature, there has been no major study exclusively on the subject matter of the protection of parish property as defined in the title of our thesis.

Some of the major studies that will be helpful in our research are the following:

J.A. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, JCD thesis, Ottawa, Saint Paul University, 1989. This doctoral dissertation studies the canonical perspective of civil incorporation of ecclesiastical institutions in general. It deals with the subject of canonical ownership, the activity of juridical persons, canonical ownership, and canonical ownership and civil incorporation. This work will be helpful in our examination of civil incorporation of the parish as an appropriate measure to protect its property.

E.A. SWEENEY, *The Obligations and Rights of the Pastor of a Parish According to the Code of Canon Law*, JCD thesis, Ottawa, Saint Paul University, 1999. This doctoral dissertation examines the juridical dimensions of the ministry of the *parochus* of a parish. Its principal focus is on the obligations and rights arising from the *tria munera*, that is, the teaching, sanctifying and governing functions of the *parochus* according to the 1983 Code of Canon Law. Our thesis on the other hand will focus on only one aspect of the ministry of a *parochus*, that is, his function as the administrator for the protection of the goods of the parish in collaboration with the parish finance council.

S. MALLAVARAPU, *Participation of the Laity in the Consultative Bodies within the Parish*, Extractum ex dissertatione ad Doctoratum, Romae, Pontificia Universitas Urbaniana, 2001. This doctoral thesis deals with the parish pastoral council and the parish finance council as collaborative organisms involving the laity in the parish. This study is much broader in scope than ours as it deals with several consultative organisms within a parish. Our thesis will be

limited to the collaboration between the *parochus* and the parish finance council in the protection of the parochial temporal goods according to canons 532 and 537.

T.M. ADOPIILLIL, *The Rights and Obligations of the Pastor of a Parish According to the Code of Canons of the Eastern Churches and the Particular Law of the Syro-Malabar Church*, JCD thesis, Ottawa, Saint Paul University, 2003. This doctoral dissertation analyzes the general rights and obligations of the *parochus* which are inherent in his office according to the canons governing the Eastern Churches and the particular law of the Syro-Malabar Church. Whereas this dissertation deals with all the rights and obligations of a *parochus* in light of the Eastern Code and the particular law of the Syro-Malabar Church, our study will examine his rights and responsibilities specifically related to the protection of the goods of the parish in collaboration with the parish finance council according to the Latin Code.

J.M. SIGNIE, *L'administration des biens temporels de la paroisse d'après le Code de droit canonique de 1983: application à l'Église du Cameroun*, JCD thesis, Ottawa, Saint Paul University, 2005. This doctoral thesis deals with administration of the temporal goods of the parish in general, and is centered mainly on the parish finance council's role in their administration according to canon 537 with particular reference to the Church in Cameroon. It studies the administration of Church property in Cameroon during the early stages of evangelization of the country and then analyses the administration of the goods of parishes according to current particular laws in some selected dioceses in the country. Our study on the other hand will be centered specifically on the protection of parish property by the rapport between the *parochus* and the parish finance council and practical reflections on the relation between canons 532 and 537.

P.K. IASAN, *The Parish Finance Council According to Canon 537 of the 1983 Code of Canon Law and Its Implementation in Nigeria*, Romae, Pontificia Università della Santa Croce, 2010. This doctoral thesis studies the parish finance council according to canon 537 and its application within the Nigerian context. The thesis examines the historical development, juridical organization, functions, pastoral relevance, and praxis vis-à-vis the parish finance council in Nigeria. While this study is limited solely to the parish finance council, our study will examine the relationship between canon 532 and canon 537 to define the juridic aspects of the collaboration between the *parochus* and parish finance council in the appropriate protection of parish property.

E.N. OMOROGBE, *The Power of the Diocesan Bishop with Regard to the Administration of Ecclesiastical Goods of Public Juridic Persons Subject to Him: An Application of Canon 1276, §2*, JCD thesis, Ottawa, Saint Paul University, 2010. The central theme of this thesis concerns the power of the diocesan bishop in caring for ecclesiastical goods, the role of administrators of ecclesiastical goods, and the nature and content of the special instructions that the diocesan bishop is expected to issue to the administrators of the ecclesiastical goods of juridic persons subject to him. Whereas it deals with the administration of the temporal goods of the Church by the diocesan bishop at the diocesan level, our study will analyze the protection of ecclesiastical goods by the collaboration of the *parochus* and the parish finance council at the parochial level.

The overall methodology of our study, then, is a systematic analysis which will proceed as follows. Firstly, we will examine the dual nature of the parish as a community of the Christian faithful and as a juridic person from a canonical perspective. Secondly, because canons 532 and 537 of the Code of Canon Law are the direct object of our study, they will be analyzed in a

systematic manner. Thirdly, in order to address certain contemporary challenges to the protection of parish property, such as financial malfeasance, the competent authority according to his prudent discretion may need to apply certain provisions of Book VI dealing with ecclesiastical delicts relating to financial malfeasance. This too requires a study of the canons involved and of their eventual application in dioceses. It also implies an analysis of certain factual situations. Likewise, an analysis of challenges, such as the absence of civil legal conformity with canon law and a general lack of guidance to *parochi* and their collaborators by the bishop/ordinary in the protection of parish property is prompted. Fourthly, it is important to examine how best the particular canonical provisions such as diocesan particular laws, special instructions, and parish statutes could assist in promoting collaboration between the *parochus* as administrator and the parishioners. This will lead to concrete proposals for the practical application of the principles established in our study.

This central theme of our study cannot be explored adequately unless we situate it within the context of the parish, its *parochus* and its parishioners. In order to respond effectively to the questions raised above, we structure our study in four chapters.

The first chapter will deal with the parish as a community of the Christian faithful and a juridic person. It will study the evolution of canonical legislation on the protection of the goods of parishes, the parish as a community of the faithful, the parish as a juridic person, the protection of temporal goods of juridic persons in general, and the protection of those of the parish in particular.

The second chapter will study the role of the *parochus* and the parish finance council in light of canons 532 and 537. It will deal with the development of canon 532, the extent of the authority of the *parochus* as administrator of the parish, and diocesan assistance to the *parochus*.

It will also consider the development of canon 537, the canonical foundations of the parish finance council, the role of the parish finance council as a collaborative structure, and a synthesis of the provisions of canons 532 and 537.

The third chapter will analyse some contemporary challenges to financial security in a parish. It will examine financial malfeasance, the absence of civil legal conformity with canon law, and a general lack of guidance in the protection of the temporal goods of the parish.

The fourth chapter will explore the role of particular law, special instructions, and parochial statutes in promoting collaboration between the *parochus* and the parish finance council. It will study canonical principles guiding such collaboration, the office of parish finance officer, the specific duties of the parish finance council, and the various types of particular canonical provisions (such as diocesan particular laws, special instructions, and parish statutes) which can be used to promote collaboration between the *parochus* and the parish finance council for the protection of parochial goods.

It is our hope that this study will develop some concrete proposals for particular canonical provisions which could actually promote sound collaboration between the *parochus* and the parish finance council. This will substantiate the proposition of this thesis, that there exist legal provisions in the Church which, if and when applied effectively and implemented appropriately, can lead to the efficacious protection of parochial goods by establishing appropriate rapport between the *parochus* and the parish finance council.

CHAPTER ONE

THE PARISH: A COMMUNITY OF THE CHRISTIAN FAITHFUL AND A JURIDIC PERSON

Introduction

Under the regime of the 1917 Code, a parish was regarded as a benefice conferred on the *parochus* (cf. *CIC/17*, c. 451, §1). The *parochus* was considered as the administrator of the parochial benefice under the supervision of the local ordinary (*CIC/17*, c. 1521, §2). But, in light of the insights of the Second Vatican Council,¹ the parish has assumed a deeply theological connotation, and it is now defined in the 1983 Code as “a certain community of the Christian faithful stably constituted in the particular church, whose pastoral care is entrusted to a *parochus* as its proper pastor under the authority of the diocesan bishop” (c. 515, §1).² Moreover, although the parish was regarded as a “moral person” (cf. *CIC/17*, c. 99) in the earlier legislation, canon 515, §3 now defines a parish as a juridic person *ipso iure*. Hence, the parish is a subject of rights and obligations in canon law (c. 113, §2); and it can be established, suppressed, or changed only by competent ecclesiastical authority (c. 515, §2). It must be represented by a physical person (*parochus*) in all juridical affairs and be supervised by the ordinary (c. 1276, §§1-2).

As one can see, there has occurred a significant shift in the theological and juridical notion of a parish. In order to understand what is intended in the collaboration between the *parochus* and the parish finance council in the protection of parish property, the foundation of our study requires a multi-faceted examination of the evolution of canonical legislation on the

¹ See *PO*, no. 20, English translation in FLANNERY1, p. 899; see *SC*, no. 42, English translation in FLANNERY1, p. 15; see *LG*, no. 26, English translation in FLANNERY1, p. 381; see *CD*, no. 30, English translation in FLANNERY1, pp. 581-583; see *AA*, no. 10, English translation in FLANNERY1, pp. 777-778.

² *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, English translation *Code of Canon Law, Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999. This translation is used for all subsequent quotations of the canons of the 1983 Code.

dual nature of the parish: as a community of the Christian faithful and as a juridic person. It is also necessary to review the provisions for the protection of the temporal goods of juridic persons both in general and as applied to the parish in particular.

1.1 – Evolution of Canonical Legislation on the Protection of the Goods of Parishes

This study will investigate the evolution of the canonical legislation on the protection of the goods of parishes during three distinct periods: from the Edict of Milan through the Council of Trent, from the Council of Trent through the 1917 Code of Canon Law, and, finally, from the 1917 Code of Canon Law through the 1983 Code of Canon Law.

1.1.1 – The Edict of Milan through the Council of Trent

Beginning with the Edict of Milan in the year 313, the Church became a sort of “established Church” within one hundred years after the Peace of Constantine.³ Local churches began to multiply in the fourth and fifth centuries. For approximately the first four centuries, “parish and diocese were coextensive.”⁴ Moreover, “parishes in their structure were centralized more or less up to the Middle Ages.”⁵ In the fifth century, prior to the disintegration of the Roman Empire, “the property of the Church both in the cities and in the country was held in patrimony by the community and administered by the bishop. The bishop bore the principal responsibility for the management and maintenance of Church property.”⁶ Right up to the sixth

³ See J.A. CORIDEN, *The Parish in Catholic Tradition: History, Theology and Canon Law*, New York, Paulist Press, 1997 (= CORIDEN, *The Parish in Catholic Tradition*), pp. 22-23.

⁴ J.A. JANICKI, “Commentary on Canons 515-557,” in *CLSA Comm1*, p. 415.

⁵ A.M. STICKLER, “La parrocchia nella evoluzione storica,” in R. FUNGHINI (ed.), *La parrocchia*, Città del Vaticano, Libreria editrice Vaticana, 1997, p. 7.

⁶ W. LA DUE, “Structural Arrangements for the Parish: A Brief History,” in *The Jurist*, 30 (1970), p. 315.

century, under the influence of the Roman law, the holder of Church property was the diocese.⁷ However, this property was indivisible and it belonged to the Church, not to the members of the clergy. Even the bishop was not the owner of the parish but only the head of the administration.⁸ The evolving local parishes were related to the local bishop in some way but there was no uniform pattern.⁹ Since Roman law permitted the local church to be a juridic person and own property in its own name, “the property of the local community sometimes belonged to the parish itself, to the bishop, to the monastery, to the owner of the large estate, or indeed, to the patron saint of the parish.”¹⁰

Then, up to the eleventh century the medieval feudal system heavily influenced the structure of the parish. In the eighth century, the German influence brought with it the private church system known as proprietary churches (*Eigenkirchen*) which led to the setting up of small tithe churches and parish areas, and brought in its train the system of benefices.¹¹ In the feudal system, church property was secularized and removed from the control of the bishops. The church buildings which were public ecclesiastical property under Roman law became privately owned and to a greater extent privately controlled. Since they owned the lands and buildings, the owners assumed the authority to select and provide for candidates for pastoral offices.

⁷ See A. BLÖCHLINGER, *The Modern Parish Community*, G. STEVENS (trans.), London, G. Chapman, 1965, p. 52.

⁸ See *ibid.*

⁹ There seemed to be considerable differences in the structure of urban and rural parishes. Only the Tridentine legislation was to achieve uniformity (see *ibid.*, p. 51).

¹⁰ CORIDEN, *The Parish in Catholic Tradition*, p. 24; see A.M. ROUCA VARELA, “La parroquia en la Iglesia: Evolución histórica, momento actual, perspectivas de futuro,” in J. MANZANARES (ed.), *La parroquia desde el nuevo derecho canónico*, Salamanca, Universidad Pontificia, 1991 (= ROUCA VARELA, “La parroquia en la Iglesia”), p. 22.

¹¹ See BLÖCHLINGER, *The Modern Parish Community*, p. 50.

Consequently the local bishops had less and less power over the parishes and *parochi*.¹² The land owners could sell, give away or bequeath the church property.¹³ The local presbyter was viewed as one of the vassals; and he received part of the income from the church building and its lands for his support, in addition to the stole fees for sacramental administration and the free-will offerings of the faithful.¹⁴ As a result of abuses, namely, the *Eigenkirchen* system began to disintegrate in the ninth and tenth centuries.

The ninth century Carolingian reform endeavored to establish a church, its endowment, and its priest in every village and brought out the following consequences:¹⁵ it insisted on the security of status for the private churches in relation to the owner and required an adequate endowment, of which the owner could not dispose. Even if he could dispose of the whole church and property by private agreement, he could not break up the property to ensure that Church property was assured of retaining its original purpose. After this reform, a priest could be appointed in a private church only with the bishop's approval, and he must have been a freeman and have enough rent-free land to support him. So the priest became economically less dependent upon his landlord and also more independent in relation to his bishop, although he was in principle subordinate to him. The bishop had the duty of visitation and the priest had to make regular reports to him and to be present at diocesan synods.

¹² See LA DUE, "Structural Arrangements for the Parish," p. 316. With the acquisition of parish and tithe rights, and due to the generosity of the faithful and increasing revenues, the founding and administration of private churches had become a profitable undertaking, almost a trade of the early Middle Ages. The outcome of the mediaeval investiture struggle, which focused primarily on the right of appointment of the clergy and the ownership of church property, as well as on related issues, put an end to private churches (see BLÖCHLINGER, *The Modern Parish Community*, p. 64).

¹³ See CORIDEN, *The Parish in Catholic Tradition*, p. 26.

¹⁴ See *ibid.*, pp. 26-27.

¹⁵ See BLÖCHLINGER, *The Modern Parish Community*, p. 65.

As previously stated, because of the feudal system, the clergy became dependent on the support of the landowner; and the bishop's authority began to be diminished. So, the Church's struggle to free its local congregations from the bondage of this privatized system and to be freed from the domination by secular powers, continued until the Gregorian Reform in the eleventh and twelfth centuries (1049-1122).¹⁶ "Gregory VII reconstituted the parish in a structure which remained substantially unchanged to the present."¹⁷ Following this reform, in the middle of the twelfth century, the First Lateran Council (1123) reserved to bishops alone the right to appoint priests to churches and grant even minor benefices. It also forbade the lay ownership of churches.¹⁸ Gratian (1140) transformed the *Eigenkirchen* into the right of patronage (*ius patronatus*).¹⁹ Alexander III (1159-1181) attempted to change the juridical ground of the right of patronage of the lay lords by determining that the *ius patronatus* was a *ius spirituali annexum*, which consequently signified its subordination to Church legislation and, in practice, allowed the Church to diminish rights relating to patronage.²⁰

Moreover, the Fourth Lateran Council called by Innocent III (1198-1216) was considered as the greatest of medieval councils; it took place in Rome in 1215²¹ and introduced some significant norms to enhance the protection of parish property. For instance, the council decreed

¹⁶ See V. BO, *Storia della parrocchia*, Roma, Edizioni Dehoniane, 1988, vol. 2, pp. 167-173; see CORIDEN, *The Parish in Catholic Tradition*, p. 27.

¹⁷ JANICKI, "Commentary on Canons 515-557," p. 415.

¹⁸ See CONCILIUM LATERANENSE I, (1123), cc. 4 & 8, Text and English translation in TANNER1, pp. 190-191; see BLÖCHLINGER, *The Modern Parish Community*, pp. 64-67.

¹⁹ See H. JEDIN and J. DOLAN (eds.), *History of the Church*, New York, Herder and Herder and Crossroad, 1965-1981, vol. IV, p. 233. Patronage would include the right of presentation, certain honorary rights as well as a right to revenues. The patron also had the duty to protect the church and its property and to be responsible for the upkeep and maintenance of the buildings (see BLÖCHLINGER, *The Modern Parish Community*, pp. 67-68).

²⁰ See LA DUE, "Structural Arrangements for the Parish," p. 317.

²¹ See CORIDEN, *The Parish in Catholic Tradition*, p. 30.

that alienations of ecclesiastical properties by laymen without the legitimate consent of ecclesiastical authority were invalid since they were acts of usurpation of jurisdiction.²² It also forbade anyone to have more than one benefice that involved the care of souls in order to avoid any kind of abuse of benefice by certain persons. Hence the council decreed: “whoever receives any benefice with the care of souls attached, if he was already in possession of such a benefice, shall be deprived by the law itself of the benefice held first, and if perchance he tries to retain this he shall also be deprived of the second benefice.”²³

With the change from privately owned churches to patronage, the laity not only retained presentation and nomination rights, but also gained influence over the administration of parish property in the thirteenth and fourteenth centuries:²⁴ firstly, the synod of Exeter (1278) mentioned for the first time five or six laymen commissioned by the *parochus* to maintain the church and render him an annual account; secondly, in Cologne (1330) laymen administered the temporal property of the church and reported on it every two years; thirdly, in France, the synod of Lavaur (1386) mentioned for the first time a lay administration of the parish; finally, in the sixteenth century, the Council of Trent (1545-1563) presupposed this custom to be universally established, and it decreed:

²² [...] “aliorum bonorum ecclesiasticorum, sine legitimo ecclesiasticarum personarum assensu praesumptas, occasione constitutionis laicae potestatis, cum non constitutio sed destitutio vel destructio dici posit necnon usurpatio iurisdictionum, sacri approbatione concilii decernimus non tenere, praesumptoribus per censuram ecclesiasticam compescendis” (CONCILIIUM LATERANENSE IV, [1215], c. 44, in TANNER1, p. 254). This reflects canon 1292 on alienation and canon 1377 on delicts involving alienation of ecclesiastical goods of the 1983 Code.

²³ [...], “ut quicumque receperit aliquod beneficium habens curam animarum annexam, si prius tale beneficium obtinebat, eo sit iure ipso privatus, et si forte illud retinere contenderit, alio etiam spoliatur” [...] (idem, c. 29, p. 248). Moreover, the Second Council of Lyons decreed that: ordinaries, in bestowing benefices involving the care of souls, were not to confer one on someone already holding several benefices, unless and obviously sufficient dispensation is shown for those already held (see CONCILIIUM LUGDUNENSE II, [1274], c. 18, in TANNER1, p. 323); see BO, *Storia della parrocchia*, vol. 4, pp. 181-182.

²⁴ See BLÖCHLINGER, *The Modern Parish Community*, p. 77.

Both ecclesiastical and lay administrators of the fabric of any church, even a cathedral, or of a hospice, confraternity, almshouse, charitable lending house or other pious establishments of any kind, are bound to give an account of their administration annually to the bishop of the diocese, all customs and privileges of any kind to the contrary being hereby withdrawn, unless it happens that the statutes of institution of such a church or premise expressly provide otherwise. But if provision is made by custom or privilege or local statute that the account is to be submitted to others assigned for the purpose, then the diocesan bishop is to be added to their number, and any releases conducted otherwise will not be valid for the said administrators.²⁵

1.1.2 – From the Council of Trent through the 1917 Code of Canon Law

One of the primary disciplinary objectives of the Tridentine Reform (1545-1563) was to strengthen the pastoral governance of the ordinary in his diocese and to improve and expand the lines of communication between the bishop and his *parochi* in order that true pastoral care could be restored.²⁶ Therefore, the Fathers of the Council ordered that each diocese was to be divided into clear and distinct parishes in such a way that every *parochus* would be able to get to know his people, and that all the faithful of the parish could receive the sacraments from him in view of his guiding responsibility for the *cura animarum*.²⁷ For that reason, when parishes became vacant, bishops were promptly to appoint new *parochi* who were found worthy, based on a system of examinations. In the case of poor parish churches whose resources were so meager that they could not meet their obligations, the bishop was to make provision, if this could be done, by

²⁵ “Administratores tam ecclesiastici quam laici, fabricae cuiusvis ecclesiae, etiam cathedralis, hospitalis, confraternitatis, eleemosynae, montis pietatis et quorumcumque piorum locorum singulis annis teneantur reddere rationem administrationis ordinario, consuetudinibus et privilegiis quibuscumque in contrarium sublatis, nisi secus forte in institutione et ordinatione talis ecclesiae seu fabricae expresse cautum esset. Quodsi ex consuetudine aut privilegio aut ex constitutione aliqua loci aliis ad id deputatis ratio reddenda esset, tunc cum iis adhibeatur etiam ordinarius, et aliter factae liberationes dictis administratoribus minime suffragentur” (CONCILIUM TRIDENTINUM, [1545-1563], Sessio XXII, Decretum de reformatione, c. 9, in TANNER2, p. 740).

²⁶ See LA DUE, “Structural Arrangements for the Parish,” p. 318.

²⁷ [...], “mandat sancta synodus episcopis pro tutiori animarum eis commissarum salute, ut distincto populo in certas propriasque parochias unicuique suum perpetuum peculiaremque parochum assignent, qui eas cognoscere valeat, et a quo solo licite sacramenta suscipiant: aut alio utiliori modo, prout loci qualitas exegerit, provideant” [...] (CONCILIUM TRIDENTINUM, Sessio XXIV, Decretum de reformatione, c. 13, p. 768).

the union of benefices, so that the allocation of first fruits or tithes, or contributions may supply the decent support of the rector and parish.²⁸

In addition to the norms of establishing parishes, some of the other important legislation of the Council of Trent in relation to the protection of the temporal goods of the parish concerned the obligation of residence of the *parochus*,²⁹ conferring benefices only on competent persons,³⁰ and conditions for the validity of patronage.³¹ Coriden summarizes the effects of the decrees of Tridentine Reform:

It was a long time before the decrees of the Council of Trent took effect throughout the Church, but they eventually brought about more uniform patterns of parish life. They eliminated the historical differences between urban and rural parishes and moved strongly in the direction of territorial parishes (as over against personal parishes). Unfortunately the Tridentine Reform stressed hierarchical authority and clerical leadership to such an extent that it left the lay members of the church in a purely passive role.³²

The Tridentine Reform was to persist with relatively minor alterations for about three and a half centuries until the promulgation of the first Code of Canon Law in 1917.

²⁸ See *ibid.*

²⁹ [...], “sacrosancta synodus eos admonet et hortatur, ut divinorum praeceptorum memores, factique forma gregis, in iudicio et veritate pascant et regant. Ne vero ea, quae de residentia sancte et utiliter [...], in sensus a sacrosancta synodi mente alienos trahantur” [...] (idem, Sessio XXIII, Decretum de reformatione, c. 1, p. 744); see BO, *Storia della parrocchia*, vol. 4, pp. 178-180.

³⁰ “Inferiora beneficia ecclesiastica, praesertim curam animarum habentia, personis dignis et habilibus et quae in loco residere ac per se ipsos curam ipsam exercere valeant, [...]” (CONCILIUM TRIDENTINUM, Sessio VII, Decretum de reformatione, c. 3, p. 687). The Council of Trent gave great importance to the elimination of abuses arising from benefices. It forbade the accumulation of parish benefices. It gave bishops the right to transfer simple benefices to other churches at their discretion. Benefices were to be given to qualified persons who were obliged to exercise their office and hence the possession of benefice was tied to the exercise of the office (see BLÖCHLINGER, *The Modern Parish Community*, p. 91; see STICKLER, “La parrocchia nella evoluzione storica,” p. 15; see BO, *Storia della parrocchia*, vol. 4, pp. 181-182).

³¹ “Nemo, etiam cuiusvis dignitatis ecclesiasticae vel saecularis, quacunque ratione, nisi ecclesiam, beneficium aut cappellam de novo fundaverit et construxerit, seu iam erectam, quae tamen sine sufficienti dote fuerit, de suis propriis et patrimonialibus bonis competenter dotaverit, ius patronatus impetrare aut obtinere possit aut debeat. In casu autem foundationis aut dotationis huiusmodi institutio episcopo, et non alteri inferiori reservetur” (CONCILIUM TRIDENTINUM, Sessio XIV, Decretum de reformatione, c. 12, p. 718).

³² CORIDEN, *The Parish in Catholic Tradition*, pp. 31-32.

1.1.3 – From the 1917 Code of Canon Law through the 1983 Code of Canon Law

CIC/17 canon 216, §1 read: “The territory of every diocese is to be divided into distinct territorial parts; to each part a specific church and determined population are assigned, with its own rector as its *parochus*, who is over it for the necessary care of souls.”³³ This canon did not define a parish but rather it proposed a number of juridic terms which, together, described the parish: “Thus a parish was understood to be a (1) territorial section of the diocese, with a (2) proper church edifice to which a (3) Catholic population was assigned under the leadership of a (4) proper pastor who was removable or irremovable and who was responsible for the (5) care of souls.”³⁴ Moreover, the 1917 Code treated the parish within the context of the legislation on the *parochus*. A parish was regarded as a parochial benefice conferred on the *parochus* for the assignment of his revenue in accord with *CIC/17* canon 451, §1 which reads: “A pastor [*parochus*] is a priest or moral person upon whom a parish is conferred in title along with the care of souls to be exercised under the authority of the local ordinary.” *CIC/17* canons 1409-1488 contained the provisions for benefices in general and some of the canons in particular indicated that parishes were benefices (see *CIC/17*, cc. 1423, 1425-1427), which were moral persons (cf. *CIC/17*, c. 99).³⁵ An ecclesiastical benefice was described as a “juridic entity constituted or erected in perpetuity by competent ecclesiastical authority consisting of a sacred office and the right of receiving income from the assets attached to that office” (*CIC/17*, c. 1409).

³³ *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation, E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001 (= *CIC/17*).

³⁴ JANICKI, “Commentary on Canons 515-557,” p. 415; see P.G. MARCUZZI, “Verso una nuova definizione giuridica di parrocchia,” in *Salesianum*, 43 (1981), p. 833.

³⁵ See J.A. RENKEN, *Particular Churches: Their Internal Ordering: Commentary on Canons 460-572*, Ottawa, Saint Paul University, 2011 (= RENKEN, *Particular Churches*), p. 180.

Moreover, *CIC/17* canons 1183-1184 made provision for the “council of maintenance” (*consilium fabricae ecclesiae*) of parish property. This council was an optional advisory body constituted by clerics or lay persons, together with the ecclesiastical administrator as president, for the administration of the property of a church (*CIC/17*, c. 1183, §1).³⁶ The purpose of the council of maintenance was to assist the *parochus* in the protection and proper administration of the goods of the church by observing the provisions on the duties of an administrator of ecclesiastical goods of *CIC/17* canons 1522-1523, but the members were not to interfere in matters pertaining to spiritual government (*CIC/17*, c. 1184).³⁷

J.I. Arrieta summarizes the understanding of the parish in the legislation of the 1917 Code as an institution and the *parochus* as administrator of the benefice:

The 1917 Code concentrated on the office and status of the pastor [*parochus*], obscuring the institutional nature of the parish as a community within the diocesan structure. It was primarily concerned with two points: a) determining the rights and duties of the *parochus*; and b) the administration of the parochial patrimony. The consideration of the parish as a canonical institution within the diocesan structure was less prevalent due to the benefice system in force. The benefice was connected with the person who held the title of the pastor [*parochus*], the benefice’s administrator. Once the benefice system was superseded, the new Code began to focus attention of the parish as an organizational community of the particular Church.³⁸

The Second Vatican Council shifted the concept of parish from that of an institution to one of community (*SC*, no. 42; *AA*, no. 10).³⁹ *Presbyterorum ordinis* (1965) called for the elimination or reform of benefices and decreed that the principal emphasis was to be placed on the spiritual purpose of an ecclesiastical office and that the right to income from it was to be regarded as secondary (*PO*, no. 20):

³⁶ See T.L. BOUSCAREN, A. ELLIS, and F.N. KORTH, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Company, 1966 [= BOUSCAREN et al., *Canon Law*], p. 665.

³⁷ See *ibid.*

³⁸ J.I. ARRIETA, *Governance Structures within the Catholic Church*, Montréal, Wilson and Lafleur, 2000, p. 246.

³⁹ See ROUCA VARELA, “La parroquia en la Iglesia,” p. 25.

It is, however, to the office (*officium*) that sacred ministers fulfill that the greatest importance must be attached. For this reason the so-called system of benefices is to be abandoned or else reformed in such a way that the part that has to do with the benefice – that is, the right to the revenues attached to the endowment of the office (*officium*) – shall be regarded as secondary and the principal emphasis in law given to the ecclesiastical office (*officium*) itself. This should in the future be understood as any office (*munus*) conferred in a permanent fashion and to be exercised for a spiritual purpose.

Moreover, the post-conciliar *motu proprio Ecclesiae sanctae* explained that the reform of benefices had been entrusted to the Pontifical Commission for the Revision of the Code of Canon Law:

[...] The reform of the system of benefices is entrusted to the Commission for the Revision of the Code of Canon Law. In the meantime, bishops, having heard the views of the presbyteral councils, are to see that revenues are equitably distributed, even those revenues deriving from benefices.⁴⁰

Unlike the 1917 Code which had devoted eighty canons to benefices (*CIC/17*, cc. 1409-1488), the 1983 Code mentions benefices in only one canon (c. 1272) which calls for their gradual elimination insofar as possible:⁴¹

In regions where benefices properly so called still exist, it is for the conference of bishops, through appropriate norms agreed to and approved by the Apostolic See, to direct the governance of such benefices in such a way that the income and even, insofar as possible, the endowment itself of the benefices are gradually transferred to the institute mentioned in can. 1274, §1.

Finally, incorporating the concepts and emphasis of Vatican II and post-conciliar legislation, the current legislation of the 1983 Code makes a major change from the 1917 Code in regard to the juridic notion of the parish:⁴² it defines the parish as community of the Christian faithful (*communitas christifidelium*) (c. 515, §1) with juridic personality by law (*personalitate iuridica ipso iure*) (c. 515, §3). Hence, the *parochus* is the administrator of the parish as a juridic

⁴⁰ PAUL VI, Apostolic letter *motu proprio* on Implementing Some Decrees of the Second Vatican Council *Ecclesiae sanctae* I, 6 August 1966, no. 8, §1, in AAS, 58 (1966), pp. 757-787, English translation in FLANNERY1 (= *Ecclesiae sanctae* I), p. 596.

⁴¹ See RENKEN, *Particular Churches*, p. 181.

⁴² See idem, "Commentary on Canons 515-544," in *CLSA Comm2*, p. 674.

person (cc. 532; 1279, §1), and a parish finance council must assist the *parochus* in the protection and administration of the parish property (c. 537).

1.1.4 – Summary

The parish had been regarded as a parochial benefice and the *parochus* as the administrator of the benefice since the period of proprietary churches. Right from the ninth century Carolingian reform, actual ownership of church property was gradually returned from their owners to church authorities during the Gregorian Reform in the twelfth century. The former owners remained as patrons and retained the right to present the office holder, the *parochus* of the parish. If the bishop approved such presentation and installed the office holder, he became the beneficiary and enjoyed the income from the benefice. The 1917 Code regarded the parish as a benefice, which was also a juridic entity (*CIC/17*, c. 1409) and a moral person (cf. *CIC/17*, c. 99). The benefice accomplished three purposes: “it restored episcopal control over pastoral appointments, it provided support for the parish clergy, and it safeguarded church property.”⁴³ However, since the *parochus* was not the owner of the benefice, but only its administrator, he had the right only to the income from the benefice with the duty to protect the benefice but not the right to alienate the property without the legitimate consent of the competent ecclesiastical authority; this was the practice since the Fourth Lateran Council. The 1983 Code makes a radical change in the notion of the parish and regards it no longer as a benefice but defines it as a community of the faithful and as a juridic person (c. 515, §§1, 3); and hence it becomes a subject of rights and obligations in canon law (c. 113, §2).

⁴³ CORIDEN, *The Parish in Catholic Tradition*, p. 28.

Moreover, since the change of privately owned churches to patronage, the laity has assisted the *parochus* in the protection and administration of parochial property; and, in fact, the Decree of Reform of Council of Trent required the lay administrators of the fabric of any church to submit an annual account of their administration to the diocesan bishop. The 1917 Code made provision for an optional advisory body called the *consilium fabricae ecclesiae* to assist in the protection and proper administration of parish goods. The 1983 Code requires an obligatory parish finance council to assist the *parochus* in the protection and administration of parish property. Hence, the dual nature of the parish as a community of the faithful and as a juridic person will be subsequently examined from the perspective of the protection of parish property.

1.2 – The Parish as a Community of the Christian Faithful

The juridic concept of parish as a community of the Christian faithful corresponds to the theological principle of *communio* (*koinonia*),⁴⁴ a scripturally oriented concept which can be analogously applied to various facets of the Church, including the parish.⁴⁵ However, the need for parish structure is not to be minimized. Paul VI pointed out that “communion in Christ” could not effectively operate were it not for ecclesiastical structures.⁴⁶ Hence, we will now examine the structure of the parochial community from three perspectives: the underlying doctrinal principles which formed the parish community, the analysis of juridical elements which went into the juridical notion of the parish community in the Code, and finally, the necessity of

⁴⁴ The Greek *koinonia* means: “community, fellowship or participation” (CORIDEN, *The Parish in Catholic Tradition*, p. 28).

⁴⁵ See JANICKI, “Commentary on Canons 515-557,” p. 415.

⁴⁶ See PAUL VI, Address to the Second International Congress of Canonists: Church Law and the Spiritual Order, in *The Pope Speaks*, 18 (1973), p. 282.

canonical erection of the parish community, which is the subject of rights and obligation as a juridic person in canon law.

1.2.1 – Doctrinal Principles

The normative change in the juridic notion of parish as a community of the Christian faithful in canon 515, §1 reflects the intent and thrust of the conciliar and post-conciliar teachings.⁴⁷ *Sacrosanctum Concilium* (1963), cited as a source for canon 515, §1, explained that parish is the most important grouping of the faithful (*paroeciae eminent*) in a diocese (SC, no. 42):

But as it is impossible for the bishop always and everywhere to preside over the whole flock in his church, he must of necessity establish groupings of the faithful; and, among these, parishes, set up locally under a pastor [*parochus*] who takes the place of the bishop, are the most important, for in some way they represent the visible Church constituted throughout the world. Therefore, the liturgical life of the parish and its relation to the bishop must be fostered in the spirit and practice of the laity and clergy. Efforts must also be made to encourage a sense of community within the parish, above all in the common celebration of the Sunday Mass.

Moreover, *Lumen gentium* (1964), also given as a source for canon 515, §1, said that the Church of Christ is really present in every legitimately organized local congregation of the faithful (*legitimis fidelium congregationibus localibus*) (LG, no. 26):

This Church of Christ is really present in all legitimately organized local groups of the faithful, which, insofar as they are united to the pastors, are also quite appropriately called Churches in the New Testament. [...] In these communities, though they may often be small and poor, or existing in the diaspora, Christ is present through whose power and influence the One, Holy, Catholic and Apostolic Church is constituted.

Christus Dominus (1965), also mentioned as a source for canon 515, §1, stated that the purpose for which the parish exists is to provide pastoral care for the faithful in a specific part of

⁴⁷ See RENKEN, *Particular Churches*, pp. 173-181; see F. COCCOPALMERIO, “Quaedam de conceptu paroeciae iuxta doctrinam Vatican II,” in *Periodica*, 70 (1981), pp. 119-140; see A.S. SÁNCHEZ-GIL, “Commentary on Canons 515-544,” in *Exegetical Comm*, vol. II, p. 1255; see JANICKI, “Commentary on Canons 515-557,” pp. 415-416; see M. MORGANTE, *La parrocchia nel Codice di Diritto Canonico: commento giuridico-pastorale*, Milano, Edizioni Paoline, 1985 (= MORGANTE, *La parrocchia nel Codice di Diritto Canonico*), pp. 9-12.

the diocese (*determinata dioecesis parte*) through *parochi* under the authority of the bishop (CD, no. 30):

Pastors [*Parochi*] are in a special sense collaborators with the bishop. They are given, in a specific section of the diocese, and under the authority of the bishop, the care of souls as their particular shepherd. In exercising the care of souls, pastors [*parochi*] and their assistant priests should carry out their work of teaching, sanctifying, and governing in such a way that the faithful and the parish communities may feel that they are truly members both of the diocese and of the universal Church. They should therefore collaborate both with other pastors [*parochi*] and with those priests who are exercising a pastoral function in the district (such as vicar forane or deans) or who are engaged in works of extra-parochial nature, so that the pastoral work of the diocese may be rendered more effective by a spirit of unity.

Apostolicam actuositatem (1965), said that the parish is like a cell of the diocese (*velut cellula dioecesis*) that furnishes an obvious example of community apostolate (*paroecia exemplum perspicuum apostolatus communitarii*) and it stimulates coresponsibility of the community (AA, no. 10):

The parish offers an outstanding example of community apostolate, for it gathers into a unity all the human diversities that are found there and inserts them into the universality of the Church. The laity should develop the habit of working in the parish in close union with their priests, of bringing before the ecclesial community their own problems, world problems, and questions regarding man's salvation, to examine them together and solve them by general discussion. According to their abilities the laity ought to cooperate in all the apostolic and missionary enterprises of their ecclesial family.

The laity will continuously cultivate the 'feeling for the diocese,' of which the parish is kind of a cell: they will be always ready on the invitation of their bishop to make their own contribution to diocesan undertakings. Indeed, they will not confine their cooperation within the limits of the parish or diocese, but will endeavor, in response to the needs of the towns and rural districts to extend it to inter-parochial, inter-diocesan, national and international spheres. This widening of horizons is all the more necessary in the present situation, in which the increasing frequency of population shifts, the development of active solidarity and the ease of communication no longer allow any one part of society to live in isolation. The laity will therefore have concern for the needs of the people of God scattered throughout the world. Especially will they make missionary works their own by providing them with material means and even with personal service. It is for Christians a duty and an honor to give God back a portion of the goods they received from him.

Moreover, in his post-synodal apostolic exhortation *Christifideles laici* (1988), John Paul II described the parish as the "most immediate and visible expression" of the ecclesial community, a family of God, a Eucharistic community and "the pastor [*parochus*] who represents the diocesan bishop is the hierarchical bond with the entire particular Church":

The ecclesial community, while always having a universal dimension, finds its most immediate and visible expression in the *parish*. It is there that the Church is seen locally. In a certain sense it is the *Church living in the midst of the homes of her sons and daughters* [see SC, no. 42].

It is necessary that in light of the faith all rediscover the true meaning of the parish, that is, the place where the very ‘mystery’ of the Church is present and at work, even if at times it is lacking persons and means, even if at other times it might be scattered over vast territories or almost not to be found in crowded and chaotic modern sections of cities. The parish is not principally a structure, a territory, or a building, but rather, ‘the family of God, a fellowship afire with a unifying spirit’ [LG, no. 28], ‘a familial and welcoming home’ [JOHN PAUL II, apostolic exhortation *Catechesi tradendae*, 16 October 1979, no. 67, in AAS, 71 (1979), p. 1333], the ‘community of the faithful’ [c. 515, §1]. Plainly and simply, the parish is founded on a theological reality, because it is a *Eucharistic community* [see *Propositio*, no. 10]. This means that the parish is a community properly suited for celebrating the Eucharist, the living source for its upbuilding and the sacramental bond of its being in full communion with the whole Church. Such suitability is rooted in the fact that the parish is a *community of faith* and an *organic community*, that is, constituted by the ordained ministers and other Christians, in which the pastor [*parochus*] - who represents the diocesan bishop (see SC, no. 42) - is the hierarchical bond with the entire particular Church.

Since the Church’s task in our day is so great its accomplishment cannot be left to the parish alone. For this reason the Code of Canon Law provides for forms of collaboration among parishes in a given territory [see c. 555, §1, 1°] and recommends to the bishop’s care the various groups of the Christian Faithful, [...]. Nevertheless, in our day the parish still enjoys a new and promising season. At the beginning of his pontificate, Paul VI addressed the Roman clergy in these words: ‘We believe simply that this old and venerable structure of the parish has an indispensable mission of great contemporary importance: to create the basic community of the Christian people; to initiate and gather the people in the accustomed expression of liturgical life; to conserve and renew the faith in the people of today; to serve as the school for teaching the salvific message of Christ; to put solidarity in practice and work the humble charity of good and brotherly works’ [PAUL VI, allocution *Ad Em.um P. Card. vicaria potestate Urbis Antistitem*, 24 June 1963, in AAS, 55 (1963), p. 674]. [...].⁴⁸

Furthermore, in his post-synodal apostolic exhortation *Pastores gregis* (2003), John Paul

II mentioned that the participants in the 2000 Synod of Bishops had underscored that the parish is the “fundamental unit in the daily life of the diocese”:

It was upon the parish, however, that the Synod Fathers felt it proper to focus their attention, realizing that it is this community, pre-eminent among all the other communities present in his diocese, for which the bishop has primary responsibility: it is with the parishes above all that he must be concerned. The parish, it was frequently stated, remains the fundamental unit in the daily life of the diocese.⁴⁹

⁴⁸ JOHN PAUL II, Post-Synodal Apostolic Exhortation *Christifideles laici*, 30 December 1988, no. 26, in AAS, 81 (1989), pp. 393-521, English translation in M. MILLER (ed.), *The Post-Synodal Exhortations of John Paul II*, Huntington, Our Sunday Visitor Publishing Divisions, 1998, pp. 396-398.

⁴⁹ Idem, *Post-Synodal Apostolic Exhortation “Pastores gregis,”* 16 October 2003, no. 45, Ottawa, Canadian Conference of Catholic Bishops, 2003, p. 121.

The Congregation for the Clergy, in its instruction *The Priest, Pastor and Leader of the Parish Community* (2002), discussed the nature of the parish and ministry of its *parochus* and stated that the *communitas christifidelium* is the fundamental element of the parish, the parish is a *pars dioecesis* animated by the spirit of communion and baptismal co-responsibility, and the *cura animarum* is proper to the office of the *parochus*:

18. [...] The intrinsic bond with the diocesan community and the Bishop, and his hierarchical communion with the Successor of Peter, ensures the parochial community's membership of the universal Church. The parochial community is therefore a *pars dioecesis* [c. 374, §1] animated by the same spirit of communion, an ordered baptismal co-responsibility, a common liturgical life centered on the celebration of the Holy Eucharist [CD, no. 42; CCC, no. 2179; JOHN PAUL II, *Dies Domini*, nos. 34-36; *idem*, *Novo millennio ineunte*, no. 35], and a common missionary spirit shared by that community. Indeed, every parish 'is founded on a theological reality, because it is a *Eucharistic community*. This means that the parish is a community properly suited for celebrating the Eucharist, the living source for its upbuilding and the sacramental bond of its being in full communion with the whole Church. Such suitability is rooted in the fact that the parish is a *community of faith* and an *organic community* [JOHN PAUL II, *Christifideles laici*, no. 26], that is, constituted by the ordained ministers and other Christians [CONGREGATION FOR THE CLERGY, et al., *Ecclesiae de mysterio*, art. 4], in which the pastor [*parochus*]- who represents the diocesan bishop - is the hierarchical bond with the entire particular Church.'

Thus, the parish, which is like a diocesan cell, should give 'an outstanding example of community apostolate, for it gathers into a unity all the human diversity that are found there and inserts them into the universality of the Church' [AA, no. 10]. The *communitas christifidelium* is the fundamental element of the parish. In a certain sense, the term underlines the dynamic relationship between those persons who, under the indispensable leadership of a proper pastor [*parochus*], are its constituents. As a general rule, such are all the faithful in a given territory, or some of the faithful in the case of personal parishes which have been constituted on the basis of rite, language, nationality or for other specific purposes [c. 518].

19. Another basic element for the idea of parish is that of the *cura pastoralis* or *cura animarum* which is proper to the office of pastor [*parochus*] and principally expressed by preaching the Word of God, administering the sacraments, and in the pastoral government of the community [see COUNCIL OF TRENT, session XXIV, can. 18; CD, no. 30]. In the parish, which is the normal context for pastoral care, 'the pastor [*parochus*] is the proper shepherd of the parish entrusted to him. He exercises the pastoral care of that community under the authority of the diocesan bishop with whom he has been called to share in the ministry of Christ so that, in the service of that community, he may discharge the duties of teaching, sanctifying, and governing, with the cooperation of other priests or deacons and the assistance of the lay members of the faithful and in accordance with the norms of law' [c. 519]. The concept of pastor [*parochus*] is redolent of great theological significance while permitting a Bishop to establish other forms of the *cura animarum* in accordance with the norms of law.⁵⁰

⁵⁰ CONGREGATION FOR THE CLERGY, Instruction *The Priest, Pastor and Leadership of the Parish Community*, 4 August 2002, nos. 18-19, in *Origins*, 32 (2002-2003), p. 382. There does not appear to be an official Latin version of this instruction. The Vatican website offers texts in English, German, Italian, Polish, Portuguese, and Spanish.

The Directory for the Pastoral Ministry of Bishops, *Apostolorum successores* (2004), states that the parish is a stable community of the diocese and the diocesan bishop regulates the parochial administration with special reference to the following:⁵¹

- Parish Pastoral Council. It is desirable that every parish in the diocese should have one, unless the small number of parishioners suggests otherwise [c. 536, §1]. Having consulted the diocesan presbyteral council, the Bishop will evaluate whether or not to make pastoral councils mandatory in all the parishes or in the larger ones.
- Parish Finance Council [c. 537]. Regardless of the number of parishioners, every parish must have a finance council.
- Parish registers [cc. 535, §1; 895; 1121, §1; 1182].
- Rights and duties of the assistant pastor [c. 548].
- Pastoral care of the parish in the absence of the pastor [*parochus*] [c. 533, §3].

In light of the aforementioned conciliar and post-conciliar doctrinal principles pertaining to the parish, one would deduce that the concept of parish community is essentially pastoral-hierarchical (SC, no. 42; LG, no. 26; CD, no. 30; AA, no. 10, etc.).⁵² Structurally, “it [the parish] represents a part of the diocese, entrusted to the diocesan bishop with the pastor [*parochus*] as his cooperator in the care of souls (CD, no. 30) and is an “*exemplum perspicuum apostolatus communitarii*” (AA, no. 10).”⁵³ Based on the conciliar doctrines, J. Calvo explains the hierarchical nature of the parish community:

The generic element, being a *communitas christifidelium* of an eminent nature, as indicated in SC 42, and the more specific elements, the particular pastoral charge, and its juridical incumbent the pastor [*parochus*], are manifestations of a dual hierarchical structure, without which, parish is inconceivable. Where the particular Church is concerned, it is a *pars*, not a group or autonomous *coetus*. As regards pastoral care which is its essential reason and purpose, the hierarchical relationship is strict, since it is the bishop who confers the mandate which legitimates the pastor [*parochus*], whose activities he must also direct.⁵⁴

⁵¹ CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops “Apostolorum successores,”* no. 210, Città del Vaticano, Libreria editrice Vaticana, 2004 (= *Apostolorum successores*), pp. 235-237.

⁵² See COCCOPALMERIO, “Quaedam de conceptu paroeciae iuxta doctrinam Vatican II,” p. 126.

⁵³ ARRIETA, *Governance Structures within the Catholic Church*, p. 247.

⁵⁴ J. CALVO, “Commentary on Canons 515-572,” in *CCLA*, pp. 428; see CONGREGATION FOR THE CLERGY, *Instruction The Priest, Pastor and Leadership of the Parish Community*, nos. 15-18, pp. 380-382.

In this regard, Arrieta highlights that the parish is a canonical concept referring to an institution of pastoral organization in the particular Church:

It [the parish] is therefore not simply a district of the diocese left to the administration of the pastor [*parochus*] but rather a fraction of the community entrusted to a diocesan bishop, established in order to provide pastoral care of the faithful. The parochial entity is not an autonomous institution, but rather fully integrated within the diocese and dependent upon it. The parish is not an example of decentralization in the governance of the particular Church, but rather the ‘deconcentration’ of pastoral functions through the diocesan presbytery.⁵⁵

Moreover, the new ecclesiological approach and theological principles expressed in the Second Vatican Council in relation to the parish reiterate that “the parish is above all the principal *fidelium coetus* that the bishop must establish in the diocese for the convocation of the faithful around the Eucharist and development of the liturgical life (SC, no. 42; LG, no. 26).”⁵⁶ Finally, based on the conciliar doctrines, canon 374, §1 states: “Every diocese or other particular church is to be divided into distinct parts or parishes.” As the parish is portrayed in this canon, it is an organizational unit within a large community, the diocese, which, for reasons of pastoral care, must be subdivided into smaller non autonomous communities entrusted to the *parochus* who is linked to the diocesan bishop.⁵⁷

1.2.2 – The Juridical Notion of Parish Community

As previously stated, the 1917 Code, without intending to offer an essential definition of the parish, explained: “The territory of every diocese is to be divided up into distinct territorial parts; to each part a specific church and determined population are assigned, with its own rector as its pastor [*parochus*], who is over it for the necessary care of souls” (CIC/17, c. 216, §1). During the revision of the Code of Canon Law, the 1977 *Schema* canon 349, §1 had described

⁵⁵ ARRIETA, *Governance Structures within the Catholic Church*, p. 247.

⁵⁶ Ibid; see SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1255.

⁵⁷ See ARRIETA, *Governance Structures within the Catholic Church*, p. 247.

the parish as a “*populi Dei portio*.”⁵⁸ The expression *christifidelium communitas* was preferred by the Code Commission during the elaboration of the 1980 *Schema* and the expression *populi Dei portio* was reserved to the diocese (c. 369).⁵⁹ The promulgated canon 515, §1 offers an innovative description: “A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor [*parochus*] as its proper pastor [*pastor*] under the authority of the diocesan bishop.”

From this description of the parish, A. Marzoa identifies its constitutive essential elements:⁶⁰ “the pastor [*parochus*] and community (material elements) and care of souls (formal element) and the integral non-essential elements: territory,⁶¹ church,⁶² and benefice.”⁶³ Calvo

⁵⁸ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri II, De Populo Dei*, Civitate Vaticana, Typis polyglottis Vaticanis, 1977, c. 349, §1 (= *The 1977 Schema*), p. 134.

⁵⁹ See idem, *Schema Codicis iuris canonici iuxta animadversiones S.R.E. Cardinalium, episcoporum, dicasteriorum curiae romanae, universitatum facultatumque ecclesiarum necnon superiorum institutorum vitae consecratae recognitum Patribus Commissionis reservatum*, Civitate Vaticana, Libreria editrice Vaticanis, 1980, c. 454, §1 (= *The 1980 Schema*), p. 109; see *Communicationes*, 13 (1981), pp. 147-148.

⁶⁰ A. MARZOA, “El concepto de parroquia y el nombramiento de parroco (cuestiones en torno a los cc. 515 y 522),” in *Ius Canonicum*, 29 (1989), pp. 451-452.

⁶¹ By treating the territoriality of parishes in canon 518 and not in this initial canon, the law clarifies the fact that, however important territorial factors are in parish organization, what really is constitutive of the parish is its being a community of persons. Likewise, a diocese is primarily described as a “portion of the people of God” (JANICKI, “Commentary on Canons 515-557,” p. 416). Moreover, canon 518 says that the territory is the usual determining factor for a parish. However, some other factors like rite, language, nationality, etc., can also be a determining factor. Besides, canon 374, which states that a diocese must be divided into parishes, does not mention territory (see RENKEN, *Particular Churches*, p. 174).

⁶² Canon 515, §1 does not identify a church as an element of a parish. Nonetheless, the 1983 Code makes several references to the parish church: see cc. 510, §§2, 4; 857, §2; 858, §1; 859; 934, §1, 1°; 1118, §1; 1177, §§1, 3; 1217, §2; 1248, §2 (see *ibid.*, pp. 173-174, fn. 29).

⁶³ As far as the benefice is concerned, it has not always been the case that the parish was considered only as a benefice since the 1917 Code also permitted the erection of parishes where an appropriate endowment could not be constituted if it can be prudently foreseen that their necessities will be met from other contemporary sources (CIC/17, c. 1415, §3) (see MARZOA, “El concepto de parroquia y el nombramiento de parroco,” p. 452, fn. 8). The current legislation calls for a gradual elimination of benefices where they still exist (c. 1272). Indeed, it is a radical shift from the 1917 Code that the parish is no longer regarded as a benefice in the present Code, which highlights the concept of the community of the faithful.

underscores two distinctive fundamental elements in the juridic concept of the structure of a parish community in which its reasons and purposes are implicitly stated:

1. *A community of the faithful*, with two features: its attachment to a particular Church and the note of stability appropriate to the ecclesial organization.
2. *Pastoral care*, in a dependent relationship with the diocesan bishop and conferred on a priest as its proper pastor.⁶⁴

In a related vein, Renken also includes two fundamental distinctive elements of a parish: “it is (1) a certain community of the Christian faithful stably constituted within a particular Church, (2) whose pastoral care is entrusted to a pastor [*parochus*] as its proper *pastor* under the authority of the diocesan bishop.”⁶⁵

The genesis of canon 515, §1 makes it clear that the juridic concept of the community of the faithful is a personal, essential, and basic element of the parish.⁶⁶ For that reason, Arrieta discerns four elements of the definition focusing on the parish community: a community of the faithful, the reason for the community (pastoral care), the juridical erection of the parish

⁶⁴ CALVO, “Commentary on Canons 515-572,” p. 428.

⁶⁵ RENKEN, *Particular Churches*, p. 173. Other authors identify the elements in the definition of the parish differently. Coccopalmerio mentions seven elements that constitute a parish: “(1) the community of the faithful (*communitas christifidelium*); (2) generally determined by territory (*regula generali solummodo per territorium determinata*); (3) in a particular Church (*in ecclesia particulari*); (4) permanent establishment (*stabiliter constituta*); (5) a pastor [*parochus*] as a proper pastor (*habens parochum, qui agit ut pastor proprius*); (6) under the authority of the diocesan bishop (*sub auctoritate Episcopi dioeceseani*); (7) with the cooperation of presbyters, deacons, and laity (*cum cooperatione aliorum presbyterorum, diaconorum et christifidelium laicorum*)” (F. COCCOPALMERIO, *De paroecia*, Roma, Editrice Pontificia Università Gregoriana, 1991, pp. 3-12, English translation in RENKEN, *Particular Churches*, p. 173, fn. 28).

Sánchez-Gil discerns four elements that configure a parish: “(1) a certain community of the Christian faithful (*certa communitas christifidelium*); (2) whose pastoral care under the authority of the diocesan bishop (*cuius cura pastoralis, sub auctoritate Episcopi dioeceseani*); (3) entrusted to a pastor [*parochus*] as its proper pastor (*parocho, quo proprio eiusdem pastori*); and (4) stably constituted in a particular Church (*stabiliter constituta in Ecclesia particulari*)” (SÁNCHEZ-GIL, “Commentary on Canons 515-544,” pp. 1255-1257).

Marzoa concludes that four elements define a parish: “(1) A determinate (generally territorial (c. 518) but not exclusive); (2) community of the faithful; (3) stably established in a particular Church under the authority of the diocesan bishop; and (4) entrusted to a pastor [*parochus*] as its proper pastor” (MARZOA, “El concepto de parroquia y el nombramiento de parroco,” p. 457).

⁶⁶ See SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1255.

community, and the office of *parochus* for the full care of souls of the faithful of the community.⁶⁷

Therefore, based on the doctrinal principles and interpretations by various authors concerning the juridical notion of a parish, we would deduce that the juridical elements contained in the canon depict the hierarchical nature of the parish community. One would logically hold that there are two fundamental and distinct elements. Firstly, “the parish is a certain community of the Christian faithful stably constituted within a particular church;” this establishes its hierarchical relationship, since the parish is a part of the diocese, not an autonomous group or unit. Secondly, “its pastoral care is entrusted to a pastor [*parochus*] as its proper pastor under the authority of the diocesan bishop;” this also exhibits the hierarchical relationship of the *parochus* with the diocesan bishop who confers on him the office of *parochus*. Hence, “the community” which is a pastorally hierarchical part within the organizational structure of the diocese, and “the *parochus*” who is the hierarchical link with the diocesan bishop, essentially constitute the juridical definition of the parish. Since the parish community is a pastoral structure established by the diocesan bishop, “the pastoral care of the parish is carried out under the authority of the diocesan bishop, apart from which no one can carry out the pastoral care of the souls of the parochial community.”⁶⁸

1.2.3 – Canonical Erection of the Parish Community

In the previous legislation, since there was a connection between the office of *parochus* and the benefice (*CIC/17*, c. 451, §1), the erection of parishes required a stable and appropriate

⁶⁷ See ARRIETA, *Governance Structures within the Catholic Church*, p. 248.

⁶⁸ SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1256.

endowment which would grant an adequate support for the needs of the *parochus* and parish activities (CIC/17, cc. 1415, §1; 1410).⁶⁹ The right to establish and modify national parishes was reserved to the Holy See (CIC/17, c. 216, §4).⁷⁰ Now, the current legislation (c. 515, §2) prescribes that the diocesan bishop is the competent authority to establish or modify parishes in consultation with the presbyteral council; the involvement of the Holy See is no longer required. Nor is there any direct reference to a benefice.

Christus Dominus explained that “concern for the salvation of souls should be the motive for determining or reconsidering the erection or suppression of parishes [...]. The bishop may act in these matters on his own authority” (CD, no. 32). Following the council, *Ecclesiae sanctae*, in discussing parish modifications, reiterated the diocesan bishop’s power to erect, suppress, or change parishes after he has heard the presbyteral council. It also added that when agreements between the Apostolic See and civil government, or acquired rights in the matter by persons, either physical or moral persons, would affect the erection or modification of parishes, special arrangements are to be made with those parties by the competent authority.⁷¹ Further, the 1973 Directory, *Ecclesiae imago* suggested the establishment of a diocesan commission whose function is to handle all matters pertaining to the erection of new parishes and construction of churches in consultation with the presbyteral council.⁷²

⁶⁹ See MORGANTE, *La parrocchia nel Codice di Diritto Canonico*, p. 13.

⁷⁰ See JANICKI, “Commentary on Canons 515-557,” p. 416.

⁷¹ See *Ecclesiae sanctae* I, no. 21, §3, p. 596.

⁷² See CONGREGATION FOR BISHOPS, *Directorium de pastoralis ministerio episcoporum* “*Ecclesiae imago*,” 31 May 1973, no. 178, Vatican City, Typis polyglottis Vaticanis, 1973 (= *Ecclesiae imago*), English translation by the BENEDICTINE MONKS OF THE SEMINARY OF CHRIST THE KING, MISSION, *Directory on the Pastoral Ministry of Bishops*, Ottawa, Canadian Conference of Catholic Bishops, 1974, pp. 91-92; see also *Apostolorum successores*, no. 214, pp. 242-243.

The parish must be juridically erected or established by the diocesan bishop in a stable manner by a formal act of erection in conformity with the law. The decree of erection issued by the diocesan bishop is to contain “those elements that make the parochial institution an ecclesial subject called the ‘parish,’ thereby giving structural organization to the community formed by the group of faithful. Two of these elements are the delimitation of the fraction of the diocesan community and the creation of an office or in other words, a specific parochial function.”⁷³ Prior to the erection or modification of the parish, the diocesan bishop must consult the presbyteral council. Although its opinion is not binding, such consultation is required for the validity of that juridic act (c. 127, §2, 2^o).⁷⁴ The erection of the parish requires a singular decree of the bishop (cc. 51; 156) setting out the relevant structural elements such as territory, the determination of the parish church or place of worship, and, where applicable, the office of the *parochus* and functions attached.⁷⁵ Once a parish is legitimately erected, it possesses juridic personality *ipso iure* (c. 515, §3).

1.3 – The Parish as a Juridic Person

“The 1917 Code used the term ‘moral person’ not only for the Catholic Church and Apostolic See, as the present Code, but also to signify what the present Code more precisely calls ‘juridic persons,’ namely entities constituted by ecclesiastical authority,”⁷⁶ e.g., churches, seminaries, benefices (c. 99). During the revision of the Code of Canon Law, when discussing

⁷³ ARRIETA, *Governance Structures within the Catholic Church*, pp. 248-249.

⁷⁴ See MORGANTE, *La parrocchia nel Codice di Diritto Canonico*, p. 14.

⁷⁵ See ARRIETA, *Governance Structures within the Catholic Church*, p. 249.

⁷⁶ R.T. KENNEDY, “Commentary on Canons 113-123,” in *CLSA Comm2*, p. 156.

the notion of moral personality, the *coetus* on “Special Questions in Book II,” opined that moral persons were “a mere fiction of law” (*meram iuris fictionem*) and “an instrument of juridical technique for solving practical questions.”⁷⁷ It recommended that the resulting juridical doctrine should include three categories of persons in the law: physical persons, juridic persons and moral persons.⁷⁸ Thus, the 1983 Code of Canon Law makes reference to three types of persons:⁷⁹ (1) physical persons, those who become members of the Church through baptism (c. 96); (2) moral persons,⁸⁰ which come into existence without any intervention from church authority (c. 113,

⁷⁷ “Instrumentum technicae iuridicae ad solvendas quaestiones practicas” (*Communicationes*, 21 [1989], p. 126).

⁷⁸ See *ibid.*, p. 127.

⁷⁹ See J. HITE, S. HOLLAND, and F.G. MORRISEY, “A Guide to Understanding Public Juridic Persons in the Catholic Health Ministry, Washington, DC, Catholic Health Association of the United States, 2012 (= HITE et al., *A Guide to Understanding Public Juridic Persons*), p. 27.

⁸⁰ When discussing juridic persons, the *coetus* did not initially intend to include in the Code the reference to moral persons contained in canon 113, §1 since the Catholic Church and the Apostolic See are not creatures of positive law but are of divine origin. The Church pre-exists as a moral entity, before the intervention of human positive law. Except in the law of nations, the personality of the Catholic Church is not of the juridic order but of the moral order. Hence there exists no need to affirm its existence as a legal person in the Code. But the expression of moral person was reintroduced in the final revision of the text, after the last schema had been presented to the pope. By doing so, the legislator obviously intends to underline that the presence of the Church in the juridical order is not constituted by human law but it exists “from divine ordination,” since Christ willed a Church endowed with a juridical structure (see *Communicationes*, 9 [1977], pp. 240-241; see A. GAUTHIER, “Juridical Persons in the Code of Canon Law,” in *Studia canonica* [= *StC*], 25 [1991], pp. 81-82). It would seem that the College of Bishops should also enjoy the status of a moral person by divine disposition (see cc. 330; 336) (see A. MCGRATH, “Commentary on Canons 96-196,” in *CLSGBI Comm*, p. 64; see also L. CHIAPPETTA, *Il Codice di Diritto Canonico: Commento giuridico-pastorale*, Seconda edizione, Roma, Edizioni Dehoniane, 1996, vol. 1, p. 168).

Canon 113, §1 does not state that these are the only moral persons that can exist; for instance, in a similar fashion, the secular world recognizes “nations” and “families” and other entities which come into existence without outside formal intervention (see HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 27; see F.G. MORRISEY, “Basic Concepts and Principles,” in *CFH*, p. 4). In this regard, Kennedy notes that “classification as moral persons distinguishes the Catholic Church and Apostolic See [refers only to the papacy, not to all the offices of the Roman Curia] from juridic persons, which are creations of ecclesiastical authority, and affirmation of the divine origin of the Catholic Church and Apostolic See distinguishes them from other moral persons, such as association of the faithful or funds, which are of human origin” (KENNEDY, “Commentary on Canons 113-123,” p. 155).

Moreover, the Code of Canons of the Eastern Churches has no canonical parallel to Latin canon 113, §1 and its canon 920 makes no mention of moral persons, it reads: “Besides physical persons, there are also in the Church juridic persons, either aggregates of persons or aggregates of things, that are subjects in canon law to the rights and obligations which correspond to their nature” (*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches, Latin-English Edition, New English Translation*, prepared under the

§1); and (3) juridic persons, which are a creation of law (c. 113, §2) and which, in accord with their nature, are subjects of rights and obligations in canon law. Canon 515, §3 reads: “a legitimately erected parish possesses juridic personality by the law itself.” Hence this section will examine the notion of juridic person, the types of juridic persons, the parish as a juridic person, the rights of the parish as a juridic person, and, finally, the role of the *parochus* in relation to the juridic person of the parish.

1.3.1 – The Notion of Juridic Person

A juridic person can be described as “an aggregate of persons or things, whether public or private, established by law or by a competent ecclesiastical authority and ordered toward a purpose congruent with the mission of the Church that transcends the purpose of the individuals who comprise it; a canonically established church corporation,”⁸¹ e.g., a diocese, a parish, a Catholic hospital, a charitable foundation, etc. (cc. 113-123). Canon 114, §1 makes the fundamental distinction between an aggregate of persons [*universitas personarum*] and an aggregate of things [*universitas rerum*]. An aggregate of persons is “a group, such as an association of the Christian faithful who wish to work together to promote some work of piety, charity, or the apostolate.”⁸² It must be composed of at least three persons (c. 115, §2). The statutes of an aggregate of persons bind only those persons who are its lawful members (c. 94, §2). An aggregate of things or an autonomous foundation “consists of spiritual (such as a ministry) or material things (such as buildings, acquired rights, special funds), and is directed by

auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2001 [= CCEO]).

⁸¹ J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, 4th rev. ed., Montréal, Wilson & Lafleur, 2009 (= HUELS, *The Pastoral Companion*), p. 449.

⁸² HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 27.

one or more physical persons acting either together as a college or as individuals (c. 115, §3).”⁸³

The statutes of an aggregate of things bind only those who direct it (c. 94, §2).

The conferral of juridic personality always requires the action of competent ecclesiastical authority, whether the conferral is granted by law (*a iure*) or by a special grant of competent ecclesiastical authority through a decree (*ab homine*).⁸⁴ Since there is no specific canon on juridic persons that explicitly designates the competent authority to establish juridic persons by decree, in light of canon 17, one would make recourse to the parallel canon 312 which speaks about associations of the faithful. Thus, juridic persons, public or private, may be created by a decree of the Holy See, or an episcopal conference, or a diocesan bishop, or by others acting pursuant to apostolic privilege.⁸⁵

A juridic person resembles a corporation which exists in civil society. Its rights and obligations are distinct from those of the individuals who represent it. Hence, the competent authority of the Church may impose certain restrictions when erecting each juridic person. Firstly, the authority may impose a burden upon the founders or proponents of a new juridic person to prove the usefulness of their purpose which pertains to works of piety, of the apostolate, or of charity (c. 114, §2), and to demonstrate satisfactorily that the proposed juridic

⁸³ Ibid.

⁸⁴ The Code mentions a number of entities to which juridic personality is afforded *a iure*: dioceses (c. 373), parishes (c. 515, §3), religious institutes and each of their provinces and individual houses (c. 634, §1), societies of apostolic life unless their constitutions provide otherwise, their parts and houses (c. 741, §1), seminaries (c. 238, §1), ecclesiastical provinces (c. 432, §2), episcopal conferences (c. 449, §2), and public associations of the faithful (c. 313). Moreover, the Code identifies two ecclesiastical entities which achieve juridic personality by administrative decree: an ecclesiastical region (c. 433, §2) and a conference of major superiors (c. 709). Other examples of entities to which juridic personality may be granted by decree are: Catholic colleges, universities, hospitals, and other apostolic oriented institutions (see KENNEDY, “Commentary on Canons 113-123,” p. 157; see G. LO CASTRO, “Commentary on Canons 113-123,” in *Exegetical Comm*, vol. I, p. 754; see J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, Alba House, 2009 [= RENKEN, *Church Property*], pp. 34-35).

⁸⁵ See HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 28.

person possesses adequate means to achieve its designated purpose (c. 114, §3). Secondly, the authority would approve its statutes (c. 117).⁸⁶

Another major distinction of juridic persons is between a collegial and non-collegial juridic person (c. 115, §2), which is applicable only to a *universitas personarum*, a group or community of persons. A juridic person is said to be collegial when, according to law or its statutes, all its members participate in decision-making which determines the actions of the juridic person,⁸⁷ e.g., the episcopal conference, religious institutes. In a collegial juridic person, the members take part in the decision-making either with equal right, as in many religious institutes, or with unequal right, as in the case of participation by auxiliary bishops in the decision-making of episcopal conference (see c. 454). On the contrary, in a non-collegial juridic person, the activity is not determined by the members in general but by the physical person competent to do so by law or the statutes.⁸⁸

A juridic person, whether public or private, is perpetual by its nature. It continues to exist until it has been suppressed (c. 123), amalgamated with another person (c. 121), or divided into distinct parts (c. 122).⁸⁹ A juridic person ceases to exist when it is legitimately suppressed by the competent authority or has ceased to act for one hundred years. A private juridic person, furthermore, ceases to exist if it is dissolved in accordance with its statutes or if, in the judgment of the competent authority, it has ceased to exist in accordance with the statutes (c. 120, §1).

⁸⁶ See W.J. KING, *Public and Private Juridic Personality: A Comparative Legal Analysis*, JCD thesis, Romae, Pontificia Università Gregoriana, 2002 (= KING, *Public and Private Juridic Personality*), pp. 72-73.

⁸⁷ See KENNEDY, "Commentary on Canons 113-123," p. 160.

⁸⁸ See KING, *Public and Private Juridic Personality*, p. 78.

⁸⁹ See HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 27.

1.3.2 – Types of Juridic Persons

To the distinctions, as noted above, between an *universitas personarum* and an *universitas rerum*, and between a collegial and a non-collegial juridic person, another major distinction among juridic persons in the *ius vigens* is the distinction between public and private juridic persons (c. 116, §§1-2).⁹⁰ Hite et al. describe and differentiate a public and private juridic person:

A public juridic person is either an aggregate of persons or of things established by the competent ecclesiastical authority, so that within the limits allotted it, it operates in the name of the Church, and in accordance with the provisions of law, fulfilling the task entrusted to it in view of the public good (see c. 116). In other words, the activities of a public juridic person are a work of the church, and not just the work of the individuals who act on its behalf. Their work is ‘a Catholic work.’ This implies accountability, offering a work of quality, responsible stewardship of temporal goods, and a desire to build up the communion of the Church. [...] A private juridic person is an entity that carries out its activities in the name of the individuals who comprise it. The activities of a private juridic person are often spoken of in terms of being ‘a work of Catholics.’⁹¹

The first criterion for a distinction between a public and a private juridic person is not based on the end of the juridical person as such, but on the means towards the end. As it is understood that all juridic persons work for the common good of the Church, the key difference between them is that a public juridic person acts in the name of the Church (*nomine Ecclesiae*),⁹² while a private juridic person acts in its own name and under the sole responsibility of its

⁹⁰ CCEO does not make the distinction between public and private juridic persons (see CCEO, cc. 920-930). All juridic persons in the Eastern law “are constituted for a purpose that is in keeping with the mission of the Church” (CCEO, c. 921, §1).

⁹¹ Hite et al., p. 33.

⁹² During the preparation of the text of the Code, the difficulty concerning the precise meaning of the expression of “to act in the name of the Church” (*nomine Ecclesiae*) was often raised: the study group was satisfied that, when applied to public juridic persons, to act “in the name of the Church” meant “to act in the name of the hierarchy,” while private juridic persons acted in “their own name”: “[...] denuo quaerunt quid significet expressio ‘nomine Ecclesiae,’ [...] Confundenda enim non sunt, uti iam dicebatur, missio totius Ecclesiae atque munera hierarchica Sacrorum Pastorum propria. [...] expressionem ‘nomine Ecclesiae’ significare ‘nomine Auctoritatis publicae Ecclesiae.’ Hoc in sensu personae iuridicae privatae dicuntur quae non ‘officialiter’ seu nomine Hierarchiae agunt, quamvis propriam quidem habeant partem in missione unica totius Populi Dei” (*Communicationes*, 21 [1989], p. 145).

members.⁹³ Hence, Kennedy notes that the distinction between a public and a private juridic person is essentially a difference in its relationship to the hierarchy:

The distinction between a public and a private juridic person is essentially the distinction between a juridic person that is closely governed by ecclesiastical authority (public juridic person) and one that, although subject to authority in certain respects, enjoys more autonomy and is governed primarily by its own statutes (private juridic person). The distinction is essentially a difference in relationship to the hierarchy. This is cryptically expressed in canon 116, §1 which speaks of a public juridic person fulfilling entrusted functions ‘in the name of the Church,’ a phrase which is generally understood to mean acting pursuant to a mission received from hierarchical authority and under the close supervision and direction of the hierarchy.⁹⁴

The second criterion for the distinction between a public and private juridic person lies in the method of conferral of juridic personality. Conferral of public juridic personality is given by law itself or by a decree of competent authority expressly granting such personality. The conferral of private juridic personality, however, takes place only by decree (c. 116, §2); no private juridic personality is conferred by law.

The third criterion for distinction between a public and private juridic person is that only the temporal goods of public juridic persons are governed by the norms of Book V (and by particular law and their own statutes) since they are ecclesiastical goods (*bona ecclesiastica*) (c. 1257, §1).⁹⁵ The temporal goods of private juridic persons are governed by their own statutes only, unless other provision is expressly made (cc. 1257, §2; 1258). It is generally considered that their temporal goods are not ecclesiastical goods subject to the canonical norms of Book V, including invalidating laws governing acts of extraordinary administration or acts of alienation,

⁹³ See E. MOLANO, “Commentary on Canons 113-128,” in *CCLA*, p. 101; see LO CASTRO, “Commentary on Canons 113-123,” pp. 768-769.

⁹⁴ KENNEDY, “Commentary on Canons 113-123,” pp. 161-162.

⁹⁵ See RENKEN, *Church Property*, p. 35.

except where these norms refer explicitly to the temporal goods owned by private juridic persons (see cc. 1263; 1265, §1; 1267, §1, etc.).⁹⁶

When a public juridic person ceases to exist by suppression, amalgamation, or division, the allocation of its goods, patrimonial rights, and obligations is governed by law and its statutes; when a private juridic person ceases to exist, the allocation of its goods and obligations is governed by its own statutes (cc. 120-123). When a public juridic person is merged or amalgamated with another, the new entity receives *a iure* not only the patrimonial goods and rights of the juridic person that no longer exists, but also its liabilities (c. 121).⁹⁷ For this reason, from the perspective of civil liability, it may sometimes happen that, in the case of a canonical amalgamation, the existing civil corporations, in which the ownership of the temporal goods had been vested, are not immediately dissolved, but remain operative so as to protect other civil entities from potential liability. In every event, any civil law requirements for amalgamation would have to be observed in such instances.⁹⁸ Canon 121 also requires that, in the use of goods and in the fulfillment of obligations transferred to the new juridic person, the intention of the founders and donors must be faithfully fulfilled (this is a fundamental principle in canon law).

When a public juridic person is divided, divisible common patrimonial goods and rights are divided in due proportion. The same applies also to debts and other liabilities. If the goods in

⁹⁶ See *ibid*; see HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 33.

⁹⁷ See HITE et al., *A Guide to Understanding Public Juridic Persons*, p. 36.

⁹⁸ Civil law requirements for amalgamation would ordinarily provide that the members of each juridic person involved would first vote in favor of amalgamation. The canonical ownership of temporal goods would have to be clearly determined. It would be necessary to determine if all temporal goods of each juridic person involved would be subject to the amalgamation. Depending on the type of amalgamation involved, and on the new corporate structure, land titles, insurance policies, automobile registrations, leases, and similar documents might also have to be adjusted to the new name or title. Once the necessary steps have been taken, a date is determined for the final transfer of temporal goods to the new entity. Usually, appropriate celebrations or rituals are observed in such instances (see *ibid.*, p. 37).

question are not divisible, each party is to receive a proportionate share of the proceeds. This also applies in the case of liabilities (c. 122).⁹⁹ Canon 122 provides that “the competent authority to divide assets and liabilities, and to impose the terms of shared use of indivisible goods, is the same authority as that which is competent to divide the juridic person;”¹⁰⁰ for instance, in the case of a parish, this authority is the diocesan bishop (c. 515, §2).

If a public juridic person is extinguished, the destination of the goods and patrimonial rights and obligations is governed by law and its statutes. Canon 123 prescribes that when provision is not made in universal or particular law nor in its statutes, then the goods and liabilities of the extinguished public juridic person go to the immediately higher juridic person, taking into account any acquired rights.¹⁰¹ For instance, the goods of the parish go to the diocese if the parish is absolutely suppressed and not united in an “extinctive union” with another parish.

1.3.3 – The Parish as a Juridic Person

A lawfully erected parish is a juridic person *a iure* (c. 515, §3).¹⁰² Specifically, pursuant to canon 116, §2, a parish has public juridic personality *ipso iure*.¹⁰³ It has a non-collegial character in accord with canon 115, §2. One would deduce that this juridic personality does not refer to the parish community as an association, but as a structured hierarchical institution. One can neither apply the criterion of equal rights to its members, nor can decisions be subject to the

⁹⁹ See *ibid.*, 38.

¹⁰⁰ KENNEDY, “Commentary on Canons 113-123,” p. 170.

¹⁰¹ See *ibid.*, p. 171.

¹⁰² As previously stated, the 1917 Code did not contain a canon stating so directly that the parish has juridic personality, but instead said that benefices were non-collegiate moral persons (*CIC/17*, c. 99) and identified parishes as benefices (*CIC/17*, cc. 1423; 1425-1427) (see RENKEN, “Commentary on Canons 515-544,” p. 681).

¹⁰³ See COCCOPALMERIO, *De paroecia*, p. 47.

vote of parishioners.¹⁰⁴ The parish is a subject of rights and obligations in canon law in accord with its nature (c. 113, §2): that is, “the specific rights and obligations of its pastoral purpose, and those that derive from the use of patrimonial assets which are destined to that end. To guarantee the civil validity of the patrimonial acts of the parish, it will be important that the parish avail itself of civil juridic personality as well, under public law when possible, by means of the current methods of each country.”¹⁰⁵ As a public organizational structure of the particular Church, it functions in the name of the Church (*nomine Ecclesiae*) in view of the public good (c. 116, §1).¹⁰⁶ Its legal representative (c. 118)¹⁰⁷ and the administrator of its goods (c. 1279) is its *parochus* (c. 532). He is assisted in this by the parish finance council (cc. 537; 1280).¹⁰⁸

“Although parish is a distinct part (*pars distincta*) of the diocese (see c. 374, §1), it is a juridic person distinct from the juridic person of the diocese (see c. 373).”¹⁰⁹ As a consequence, since the parish is a juridic person, its property belongs to it as a juridic person (see c. 1256), and not to the diocese. In this regard, Kennedy explains:

The temporal goods of a parish are owned by a single legal construct known as the parish; they are not co-owned by an aggregate of persons as are the temporal goods of an

¹⁰⁴ See CALVO, “Commentary on Canons 515-572,” p. 429.

¹⁰⁵ SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1259. In this regard, Renken notes that “it is critically important that civil legal structures protecting ecclesiastical property correspond as closely as possible to the provisions of canon law” (RENKEN, *Particular Churches*, p. 192). The appropriate methods of protecting the temporal goods of the parish as a juridic person will be studied in detail in the third chapter of this thesis.

¹⁰⁶ See RENKEN, *Particular Churches*, p. 191.

¹⁰⁷ When a parish or parishes are entrusted to priests *in solidum*, the moderator alone represents the parish in juridic affairs (c. 543, §2, 3^o) (see COCCOPALMERIO, *De paroecia*, p. 47).

¹⁰⁸ In this regard, Coccopalmerio comments that the *parochus* is the administrator of the goods. Even though the *parochus* is assisted in the administration of the goods of the parish by the parish finance council, he still retains his sole responsibility for the administration because he is the only administrator: “Parochus est bonorum administrator. Etiam si autem parochus in administrandis bonis paroeciae a consilio adiuvetur a rebus oeconomicis (cf. c. 537), parochus tamen remanet administrationis unicus responsabilis, quia est unicus administrator” (ibid., p. 49); see RENKEN, *Particular Churches*, p. 191.

¹⁰⁹ RENKEN, *Particular Churches*, p. 192.

association of the faithful which has not been erected as a juridic person (c. 310). Debts of the parish are not joint liabilities of the parishioners. Action taken by pastors [*parochi*] or others involved in administering the assets of a parish are not subject to challenge in ecclesiastical or civil tribunals on the ground that the actions were contrary to the wishes of the ‘true owners,’ the parishioners. A great deal of ill-conceived and unsuccessful but nonetheless expensive litigation, ecclesiastical and civil, has resulted from attempts to vindicate the rights of parishioners to ‘their’ parochial debts. Much of this kind of confusion is traceable to the imprecise speaking of juridic persons, such as parishes, as aggregate of persons.¹¹⁰

The parish, as a juridic person, is perpetual by nature (c. 120, §1). Renken notes on the modification of a parish as a juridic person that it would be very rare for a territorial parish, as a juridic person, to become extinguished through a century of inactivity (see c. 120, §2). Should such extinction, in fact, occur, its goods, patrimonial rights, and financial obligations would pass on to the diocese, the immediately superior juridic person (c. 123). But, it would not be uncommon for a personal parish, also a public juridic person, to cease its activity for a century, or to be extinguished by the diocesan bishop, in which case canon 123 would apply, and its assets and liabilities would pass on to the diocese.¹¹¹

A territorial parish, however, is commonly not suppressed but rather it is “merged” with one or more neighboring parishes. This modification is also known as “extinctive union,” that is, a union of a juridic person with one or more others whereby it ceases to exist. In the case of an “extinctive union,” the norm of canon 123 does not apply, since the parish is not juridically suppressed, and also the goods of the merged parish are to be passed on to the successor parish(es) whose territory is modified to create that of the merged parish.¹¹² Misinterpretation or

¹¹⁰ KENNEDY, “Commentary on Canons 113-123,” p. 159.

¹¹¹ See RENKEN, *Church Property*, p. 41, fn. 79. For a decision on an extinctive union of a personal parish, see SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *coram* GANTIN, 25 June 1994, Prot. no. 24048/93 CA, in W.L. DANIEL (trans.), *Ministerium Iustitiae: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura, Official Latin with English Translation*, Montréal, Wilson & Lafleur, 2011 [= *Ministerium Iustitiae*], pp. 476-481. For a decision on a suppression of a personal parish, see SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *coram* AGUSTONI, 4 May 1996, Prot. no. 25500/94 CA, in *Ministerium Iustitiae*, pp. 488-501.

¹¹² See RENKEN, *Particular Churches*, p. 182; see F. DANEELS, “Soppressione, unione di parrocchie e riduzione ad uso profano della chiesa parrocchiale,” in R. FUNGHINI (ed.), *La parrocchia*, Città del Vaticano,

erroneous application of canon 123 on the suppression of a parish, as a juridic person, has been common in recent times. Therefore, the Congregation for the Clergy sent a letter to the United States Conference of Catholic Bishops in order to clarify the disposition of its goods when a parish ceases to exist. The Congregation explained that in the United States a parish is often said to be suppressed when, in fact, it has been merged or amalgamated with one or more other parishes:

[...] Thus the goods and liabilities should go with the amalgamated person, not to the diocese. This would also seem to be more consonant with the requirement that the wishes of the founders, benefactors and those who have acquired rights be safeguarded. In most cases, 'suppressions' are in reality a 'unio extinctiva' or 'amalgamation' or 'merger' and as such the goods and obligations do not pass to the higher juridic person, but should pertain to the public juridic person which remains or emerges from the extinctive union. The goods and liabilities should go to the surviving public juridic person, that is, the enlarged parish community. [...].¹¹³

Regarding suppression or extinctive union of parishes, Daneels comments on the jurisprudence of the Supreme Tribunal of the Apostolic Signatura: the supreme tribunal may identify errors in the process (*in procedendo*) of suppressing a parish, but not in the decision (*in decernendo*) itself. The parish as a juridic person can be legitimately suppressed by the competent authority according to canon 120, §1. Moreover, to suppress a parish, a just cause is sufficient and it is difficult to prove the lack of a just cause. Furthermore, canon 515, §2 does not require prior consultation of the parish and parishioners. It appears also from the cases studied at the Apostolic Signatura that bishops do not take lightly the painful decision of suppressing a parish. Therefore, one should reflect seriously before presenting to the Apostolic Signatura

Libreria editrice Vaticana, 1997, pp. 90-91; see J.J. MYERS, "Suppression and Merger of Parishes: Brief Overview of Canonical Issues," in *CLSA AO1*, p. 112.

¹¹³ CONGREGATION FOR THE CLERGY, Letter regarding the Correct Application of Canon 123 on the Suppression and Merger of Parishes, 3 March 2006, Prot. no. 20060481, in RENKEN, *Particular Churches*, pp. 189-190; see idem, Circular Letter and Procedural Guidelines for the Modification of Parishes and the Closure, Relegation and Alienation of Churches, 30 April 2013, Prot. No. 20131348, in *The Jurist*, 73 (2013), pp. 211-219.

recourse against the suppression of a parish.¹¹⁴ However, when a parish as a juridic person is either modified or is taken up in an extinctive union, it is possible that a group of the faithful, even though lacking juridic personality, can lodge recourse against the decision of the diocesan bishop, but acting only as individuals, either singly or together to the competent dicastery,¹¹⁵ the Congregation for the Clergy.¹¹⁶

1.3.4 – The Rights of the Parish as a Juridic Person

The 1917 Code used the term *persona iuridica* only in three canons (*CIC/17*, cc. 687; 1489, §1; 1495, §2), while the remaining canons, including those which state general norms on this subject (*CIC/17*, cc. 99-103; 106), used *persona moralis*. Unlike the 1917 Code which did not distinguish clearly between a moral person and a juridic person, the 1983 Code now indicates a moral person as a natural phenomenon or as something that transcends the juridical system, while a juridical personality is the formal instrument in the hands of the legislator to give life to new subjects by law.¹¹⁷ Because this “juridic personality” is classified and constituted as a “person,” it is the “subject” of rights and duties in the legal system of canon law.¹¹⁸ A juridic

¹¹⁴ See F. DANEELS, “The Suppression of Parishes and the Reduction of a Church to Profane Use in the Light of the Jurisprudence of the Apostolic Signatura,” in *Forum*, 8 (1997), pp. 288-290. However, one would note that although the jurisprudence of the Apostolic Signatura speaks about the suppression of parishes in general, it does not shed any light on the distinction between the extinctive union and the suppression of parishes.

¹¹⁵ See PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, “Responsio ad dubium ad normam c. 299, §3,” 29 April 1987, in AAS, 80 (1988), p. 1818, English translation in *CCLA*, p. 1635.

¹¹⁶ See JOHN PAUL II, Apostolic Constitution *Pastor bonus*, 28 June 1988, in AAS, 80 (1988), pp. 841-930, English translation in *Code of Canon Law, Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999, art. 97, 1°, p. 716.

¹¹⁷ See LO CASTRO, “Commentary on Canons 113-123,” pp. 749-750.

¹¹⁸ Persons denominated “juridical” and “not moral,” “quia revera ipso ordine iuridico positivo Ecclesiae uti subiecta obligationum et iurium canonicorum constituuntur” (*Communicationes*, 9 [1977], p. 240).

person is an artificial person which has a capacity for continuous existence with canonical rights and duties like that of a natural person:

A juridic person, [...] is an artificial person, distinct from all natural persons or material goods, constituted by competent ecclesiastical authority for an apostolic purpose, with a capacity for continuous existence and with canonical rights and duties like those of a natural person (e.g., to own property, enter into contracts, sue or be sued) conferred upon it by law or by the authority which constitutes it. Like a civil-law corporation, it is a legal construct which can and must be conceived of apart from the natural persons who constitute it, administer it, or for whose benefit it exists. It is not a group or collectivity and may properly be referred to only in the impersonal singular, 'it.' The establishment of a juridic person follows, logically and usually chronologically, either a group of natural persons or an accumulation of material goods, which serves as the substratum or basis in reality of the juridic person. Of its nature, a juridic person is perpetual, once established, it can outlast all natural persons or material goods which formed its substratum (see c. 120, §1).¹¹⁹

Therefore, once established, a juridic person is perpetual, and it allows for activities that individuals acting on their own would often be unable to assume or to carry out personally. Such activities involve works of piety, of the apostolate, or of charity, whether spiritual or temporal. It is clear that a parish readily fits into this description of the purposes of a juridic person.¹²⁰ Unless a parish is legitimately suppressed or significantly altered (cf. c. 515, §2), its mission extends beyond the life of its present members of the community due to its perpetual nature.¹²¹

The Code says nothing explicitly about the rights and obligations of the juridic person of the parish.¹²² However, by analogy with the rights and obligations of all the faithful, Coriden identifies several rights and obligations of a parish as a juridic person:

1. The right to existence (see c. 374, §1) until any legitimate alteration or suppression (cc. 515, §3; 120, §1);
2. The right and duty to maintain ecclesial communion with the rest of the Church (c. 209), which implies the profession of common faith, celebration of sacraments, and recognition

¹¹⁹ KENNEDY, "Commentary on Canons 113-123," p. 155.

¹²⁰ See F.G. MORRISEY, "The Civil Incorporation of Parishes," unpublished paper presented in the Diocese of Charlottetown, Prince Edward Island, 4 February 2011 (= MORRISEY, "The Civil Incorporation of Parishes – Prince Edward Island"), p. 7.

¹²¹ See *ibid.*

¹²² See COCCOPALMERIO, *De paroecia*, p. 48.

of the governance of the Church, and it can also mean the provision of support to or reception of assistance from other local churches (cc. 209, §2; 222; 529, §2; 1260);

3. The right to equality (c. 208), in spite of differences among Catholic parishes and each contributes to and cooperates in building up of the Body of Christ;
4. The right to hear the word of God and to have the sacraments celebrated in a worthy and fitting manner (cc. 213; 214; 528; 762; 897);
5. The right to pastoral leadership (c. 515, §1), and the right to have the ministry duly exercised (cc. 217; 524), as well as the right to have regular visits from the diocesan bishop (c. 396);
6. The right to have its temporal goods carefully administered and protected according to Book V of the Code (c. 532);
7. The right to undertake and to support certain activities and services (cc. 298; 394; 839); for instance, the parish has the right and duty to promote social justice and to assist those who are poor (c. 222);
8. The right to promote various vocations, apostolate, and ministries (cc. 211; 215; 394, §2);
9. The right to information, to communications, and to consultation (cc. 212; 536), especially in matters touching the future of the parish and its activities;
10. The right to Christian formation and to Catholic education, especially with a view to carrying out the mission of the Church (c. 794);
11. The right and duty to carry out acts of evangelization (cc. 211; 781);
12. The right to acquire and to use temporal goods (cc. 537; 1280) and an obligation to render an account of their use (c. 1287, §2);
13. The right to defend its rights in the competent ecclesiastical forum according to the norm of law and treated with equity (c. 221);
14. The right and duty to pursue the path to holiness and spiritual growth (cc. 210; 839).¹²³

¹²³ See CORIDEN, *The Parish in Catholic Tradition*, pp. 72-79; see idem, "The Rights of Parishes," in *StC*, 28 (1994), pp. 298-307. For more reflections on the rights of parishes, see idem, "The Vindication of the Rights of Parishes," in *The Jurist*, 54 (1994), pp. 24-26; see also idem, "The Foundations of the Rights of Parishes: The Bases for the Canonical Right of Parishes and Other Local Catholic Communities," in *PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS* (ed.), *Ius in vita et in missione Ecclesiae: Acta Symposii internationalis iuris canonici occurrente X anniversario promulgationis Codicis iuris canonici diebus 19-24 aprilis 1993 in Civitate Vaticana celebrati*, Civitate Vaticana, Libreria editrice Vaticana, 1994, pp. 505-525.

Among the rights of a juridic person, one of the most important rights is that of being able to acquire, retain, administer, and alienate temporal goods. Goods that are owned by one juridic person are not owned by another, even if that other person is somehow its superior; for instance, goods belonging to a parish do not belong to the diocese even if, civilly, they have been operating under one and same civil entity.¹²⁴ Although there is an obligation of accountability to higher authorities, whether to the Holy See, or to the diocesan bishop,¹²⁵ the parish community has a proper and authentic autonomy which must be respected.¹²⁶

1.3.5 – The Role of the *Parochus* in the Juridic Person of the Parish

Being artificial persons, juridic persons can act only by means of the natural or physical persons who represent them.¹²⁷ In the case of public juridic persons, the representatives are designated by universal or particular law or by the statutes (c. 118). According to universal law, the *parochus* represents the parish in all its juridical affairs (c. 532), diocesan bishop represents the diocese (c. 393),¹²⁸ and the rector of a seminary represents it for all the affairs of the

¹²⁴ See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 7.

¹²⁵ See *ibid.*

¹²⁶ See COCCOPALMERIO, *De paroecia*, pp. 23-49.

¹²⁷ See KENNEDY, “Commentary on Canons 113-123,” p. 164; see MCGRATH, “Commentary on Canons 96-196,” p. 67.

¹²⁸ Kennedy comments that: who, by law or by statutes, are said to represent and act in the name of the Church seems to create a source of tension between diocesan bishops and *parochi* in places where the civil law structure of a diocese does not mirror the canonical structure. For instance, where a diocese is civilly structured as a corporation sole, as in many dioceses in the United States, church-related assets are considered to belong to a single corporation whose sole representative is the diocesan bishop. He alone acts for the corporation. This method of holding title to church property is incompatible with canon law (see KENNEDY, “Commentary on Canons 113-123,” p. 164); see MORRISEY, “Basic Concepts and Principles,” p. 5. The question about a canonically compatible method of protecting temporal goods of the parish as a juridic person will be investigated in depth in the third chapter of this thesis.

seminary (c. 238, §2), etc. The person who acts in the name of and behalf of the juridic person “manifests its will.”¹²⁹ Without the representative, a juridic person does not have a voice; and it would find itself incapable of manifesting its will and participating in the formation of juridical relationships.¹³⁰ Since the observance of the norms of law constitutes a general limit on the action of the juridic person, one who represents it must follow the applicable universal law, particular law, and the statutes. Whoever represents a juridic person cannot manifest ill will in regard to that entity. Indeed, a representative who would act intentionally against the interests of the juridic person could be held responsible before a court for the acts. So, the juridic person of the parish will answer only for acts carried out by its order or in its name by the representative.¹³¹

The Code offers special protection to juridic persons and tends to favor assessing responsibility to the administrator who performs a juridic act, rather than to the juridic person itself.¹³² Canon 1281, §3 sets out the general principles concerning the responsibility of juridic persons as well as the responsibility of administrators of the property of a juridic person, e.g., in case of mismanagement, or suits brought before the ecclesiastical or civil courts.¹³³ Firstly, the parish as a juridic person is responsible for the acts of the *parochus* as administrator if the act is both valid and licit. Secondly, the parish is not responsible for the invalid acts of the *parochus* as

¹²⁹ CASTRO, “Commentary on Canons 113-123,” p. 775.

¹³⁰ See *ibid.*

¹³¹ See *ibid.*, p. 776.

¹³² For example, canon 1281, §3 protects the juridic person and holds its representative imputable for his or her invalid acts committed in the name of juridic person. Canon 133, §1 prescribes that the delegated person acts invalidly if that person exceeds the limits of his or her mandate. Canon 639, §3 protects the religious institute from the unlawful contracts of its members (see M. POLL CHALMERS, “The Remedy of Harm in Accord with Canon 128,” in *StC*, 38 [2004], pp. 144-145).

¹³³ See J. KRUKOWSKI, “Responsibility for Damage Resulting from Illegal Administrative Acts in the Code of Canon Law of 1983,” in M. THÉRIAULT and J. THORN (eds.), *The New Code of Canon Law: Proceedings of the Fifth International Congress of Canon Law*, Ottawa, ON, Saint Paul University, 1986, vol. 1, pp. 237-239; see MORGANTE, *La parrocchia nel Codice di Diritto Canonico*, p. 128.

administrator, except to the extent the parish as juridic person may have profited by that invalid act, e.g., when prescribed procedures for extraordinary administration or alienation are articulated for validity, but the *parochus* nevertheless acts beyond or in violation of these procedures (cc. 1281; 1291). Hence, the *parochus* is obliged to repair any damage as a consequence of an invalid juridical act from which the parish does not benefit (c. 128). Only when the act brings profit to the juridic person partially, does the administrator bear responsibility together with the juridical person.¹³⁴ Burdening the victim/the parish as a juridic person to repair the damage would contradict the general principle determined in canon 128, according to which the obligation is borne by the author of the illegal juridical act. Thirdly, the parish is, however, responsible when the act of the *parochus* is valid, but illicit (c. 1288), e.g., when the administrator neglected to fulfill a prescribed procedure or condition which was not required for validity (c. 10); however, the parish has the right to sue the *parochus* in the ecclesiastical courts or to have recourse against him for any damage caused (see cc. 128; 1389, §2; 1729, §3).¹³⁵ The civilly valid actions for which the required canonical solemnities have not been observed could be addressed through corrective canonical measures in order to vindicate the rights of the parish (c. 1296). Moreover, such irresponsible or negligent acts of administration on the part of the *parochus* causing damage to the parochial goods could subject him to the procedure for formal removal from office (cc. 1740-1747).¹³⁶

¹³⁴ See KRUKOWSKI, “Responsibility for Damage Resulting from Illegal Administrative Acts in the Code of Canon Law of 1983,” p. 238.

¹³⁵ See F.G. MORRISSEY, “Commentary on Book V,” in *CLSGBI Comm*, p. 726; see M.L. ALARCÓN, “Commentary on Book V,” in *CCLA*, p. 989.

¹³⁶ See E. McDONOUGH, “Addressing Irregularities in the Administration of Church Property,” in *CFH*, p. 226.

Having reviewed the parish as a juridic person, we will now study the norms on the protection of the temporal goods of juridic persons in general, and how these are applied to the parish in particular.

1.4 – The Protection of the Temporal Goods of Juridic Persons

Book V of the Code explains that property ownership within the Church relates to public juridic persons (c. 1256). In other words, Church property is owned by one public juridic person or another; conversely, all property belonging to a public juridic person is considered Church property or ecclesiastical goods (c. 1257, §1). “This notion of property ownership through public juridic persons is critical because it forms the basis for the applicability of the Canon Law to incorporated apostolates sponsored by public juridic persons.”¹³⁷ The Code requires every public juridic person to have an administrator (c. 1279, §1) “who acts on its behalf, directing its affairs, making its decisions, and protecting its goods.”¹³⁸ For example, dioceses act through their bishops, and parishes through their *parochi*.

V. De Paolis underscores the theological foundation of observance of the canonical norms on the administration and protection of the ecclesiastical goods of the public juridic persons:

These norms remind us that public juridic persons in the Church have the right to goods because they share in the purposes of the Church and in the mission of the Church, live in the communion with the Church, and act in the name of the Church, and are therefore in communion with the Roman Pontiff, the visible sign of church unity and its guarantor. Precisely these

¹³⁷ A.J. MAIDA and N.P. CAFARDI, *Church Property, Church Finances and Church Related Corporations*, St. Louis, MO, Catholic Health Association of the United States, 1984 (= MAIDA and CAFARDI, *Church Property*), p. 10.

¹³⁸ *Ibid.*, p. 26.

requirements of unity and communion demand the observance of the canonical norms on the administration [and protection] of church goods.¹³⁹

This section will examine the right of the Church to possess temporal goods, the temporal goods of the Church at the service of the mission of the Church, the responsible stewardship of ecclesiastical goods of the juridic persons, the canonical notion of “administration,” and, finally, the canonical notion of “administrator” of the temporal goods of juridic persons.¹⁴⁰

1.4.1 – The Right of the Church to Possess Temporal Goods

The Catholic Church possesses temporal goods by “innate right,” founded in the very nature of the Church (c. 1254, §1).¹⁴¹ It was by the Edict of Constantine (313) that the juridical personality of the Church, its essential independence in the acquisition of goods, was legally acknowledged throughout the Empire.¹⁴² The Church, as a juridic person, had actually acquired and owned temporal goods even before the Edict of Constantine which ordered the restoration of property not to individual Christians, but to societies of Christians and to “the churches.” This was a clear recognition of a juridical personality distinct from that of individual members of the church.¹⁴³ In this regard, B. Ferme notes:

We know that after his victory over Maxentius (28 October 312), Constantine restored to the Church those goods that had been confiscated during the persecution of Diocletian. In fact on

¹³⁹ V. DE PAOLIS, “Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life,” in *The Jurist*, 43 (1983) [= DE PAOLIS, “Temporal Goods of the Church”], p. 354.

¹⁴⁰ While canon law refers to a number of public juridic persons established by the law itself, this section of the study focuses exclusively on the diocese as a juridic person in general and as applied to the parish in particular, which will be subsequently developed in the following section.

¹⁴¹ See RENKEN, *Church Property*, p. 13.

¹⁴² See U.C. WIGGINS, *Property Laws of the State of Ohio Affecting the Church*, Canon Law Studies, no. 367, Washington, DC, The Catholic University of America Press, 1956, p. 7.

¹⁴³ See J.A. GOODWINE, *The Right of the Church to Acquire Temporal Goods*, Canon Law Studies, no. 131, Washington, DC, The Catholic University of America Press, 1941, p. 59.

the 13 June 313 he had recognized religious liberty and announced the restitution to Christians of the property that had been confiscated. These immovable goods were restored to the Churches, defined for this purpose in the sense of being ruled by a bishop. *They were not returned to the individuals or to the universal Church.*¹⁴⁴

As previously mentioned, since Roman law permitted the local church to be a juridic person and own property in its own name, it was not uncommon that the property of the local community sometimes belonged to the parish itself, local churches, etc., that had lawfully acquired it.¹⁴⁵ Further, various early ecumenical councils attest to the exercise of the right to possess and protect church property; for instance, the Council of Chalcedon (451),¹⁴⁶ the Second Council of Nicaea (787),¹⁴⁷ the Fourth Council of Constantinople (869-870).¹⁴⁸ Further, “the property rights of the Church belong to it essentially as a juridically perfect society, and not by

¹⁴⁴ B. FERME, “The Temporal Goods of the Church: Some Historical Notes and Reflection,” in J. FOX (ed.), *Render unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, Rome, Pontifical University of St. Thomas Aquinas, 2000 [= FOX, *Render unto Caesar*], p. 9 [emphasis added].

¹⁴⁵ See above, p. 11, fn. 10.

¹⁴⁶ The Council of Chalcedon moved to protect the ecclesiastical goods during the vacancy of benefices: “It is not permitted for clerics, following the death of their own bishops, to seize the things that belong to him, [...] those who do this risk losing their personal rank” (CONCILIUM CHALCEDONENSE, [451], c. 22, in TANNER1, p. 97).

¹⁴⁷ The Second Council of Nicaea reaffirmed the legislation of the six previous councils (can. 1) and provided for the better ownership and protection of ecclesiastical goods: “If it is discovered that a bishop or a monastic superior in transferring episcopal or monastic farmland to the control of the ruler, or has been conceding it to another person, the transaction is null and void in accordance with the canon of the holy apostles which stipulates: ‘Let the bishop take care of all ecclesiastical affairs, and let him administer them as if under God’s inspection. It is not permitted him to appropriate any of these things, nor to make a present of the things of God to his own relatives. Should the latter be poor, let him care for them as for other poor people, but let him not use them as an excuse for selling off the church’s possessions.’ [...] And the bishop or monastic superior who acts thus should be expelled, the bishop from the episcopal house and monastic superior from the monastery, because they wickedly waste what they have not gathered” (CONCILIUM NICAENUM II, [787], c. 12, in TANNER1, pp. 147-148).

¹⁴⁸ The Fourth Council of Constantinople distinguished between church property and the property of church men and legislated concerning the administration and protection of the former. The independence of church property was asserted in canon 18, which decreed that no secular person could take away property that had been possessed by the Church for a period of thirty years even though the Church could show no transfer of title: “Whatever is known to have been possessed by churches for thirty years must remain subject to the control and use of the prelate of the church” (sint omnia in potestate ac usu praesulis ecclesiae, quaecumque intra triginta spatium annorum ab ecclesiis possessa fuisse noscuntur) (CONCILIUM CONSTANTINOPOLITANUM IV, [869-870], c. 18, in TANNER1, p. 180).

virtue of a favorable concession of the secular powers.”¹⁴⁹ The First (1123), Second (1139), Third (1179), and Fourth (1215) Lateran Councils declared that this right does not exist as a grant from any secular authority.¹⁵⁰

Canon 1256 reads: “Under the supreme authority of the Roman Pontiff, ownership of goods belongs to that juridic person which has acquired them legitimately.” The canon establishes the fundamental principle that the ownership of goods belongs to the juridic person which has lawfully acquired them. Its application “under the supreme authority of the Roman Pontiff” in no way implies that the pope is the owner of all the temporal goods of the Church; instead, the juridic person owns these goods under the supreme authority of the Roman Pontiff.¹⁵¹ The principal practical application of this canon is that a property acquired by the

¹⁴⁹ WIGGINS, *Property Laws of the State of Ohio Affecting the Church*, p. 12; see GOODWINE, *The Right of the Church to Acquire Temporal Goods*, pp. 39-55.

¹⁵⁰ The First Lateran Council declared that if any prince or other lay person should take upon himself the disposition, control or ownership of ecclesiastical things or possessions, let him be regarded as sacrilegious: “Si quis ergo principum vel aliorum laicorum dispositionem seu donationem rerum sive possessionum ecclesiasticarum sibi vendicaverit, ut sacrilegus videatur” (CONCILIIUM LATERANENSE I, [1123], c. 8, in TANNER1, p. 191). The Second Lateran Council repeated the aforesaid decree of the previous council in much the same manner (see CONCILIIUM LATERANENSE II, [1139], c. 25, in TANNER1, p. 202). The Third Lateran Council deplored the abuses of the laity in exacting from the clergy excessive grants and subsidies. It declared that, for the future, the properties of the Church could be taxed only if the bishops and clergy admitted this necessity. Further this Council placed under censure those who presumed to interfere with the property rights of the Church: “[...] Praeterea, quia in tantum quorundam laicorum processit audacia, ut episcoporum auctoritate neglecta clericos instituant in ecclesiis et removeant etiam cum voluerint, possessiones quoque atque alia bona ecclesiastica pro sua plerumque voluntate distribuant, et tam ecclesias ipsas quam earum homines talliis et exactionibus praesument gravare, eos qui amodo ista commiserint, anathemate decernimus feriendos [...]” (CONCILIIUM LATERANENSE III, [1179], c. 14, in TANNER1, pp. 218-219). The Fourth Lateran Council made specific mention of secular officials and forbade any kind of authority over the administration of church property: “Adversus consules ac rectores civitatum et alios, qui ecclesias et viros ecclesiasticos talliis seu collectis et exactionibus aliis aggravare nituntur, volens immunitati ecclesiasticae Lateranense concilium providere, praesumptionem huiusmodi sub anathematis districtione prohibuit, transgressores et fautores eorum excommunicationi praecipiens subiaccere, donec satisfactionem impendant competentem” (CONCILIIUM LATERANENSE IV, [1215], c. 46, in TANNER1, p. 255).

¹⁵¹ When the canon was being prepared, a proposal was presented to omit reference to the Roman Pontiff since it attributes ownership to juridic persons: “Suggestum est ut deleantur verba, “sub suprema auctoritate Summi Pontificis,” quia hic canon tribuit dominium bonorum personis iuridicis et non apparet ratio mentionis supremae auctoritatis Pontificis in hoc contextu.” This proposal was not accepted, “since it denotes the nature of the authority of the Supreme Pontiff over ecclesiastical goods - namely, that this power is not the same as ownership”: “quia denotant naturam auctoritatis Summi Pontificis supra bona ecclesiastica, quod scilicet talis potestas non aequivalet dominio” (*Communicationes*, 12 [1980], pp. 397-398, English translation in RENKEN, *Church Property*, p. 53, fn.

parish, e.g., a parochial house, belongs exclusively to the parish, even where, for purposes of the civil law, all parochial property is vested, for example, in a diocesan corporation or a diocesan trust.¹⁵² The canon uses the term *dominium*,¹⁵³ “a concept in ancient Roman Law which was used to express the idea that one has a virtually absolute right over a thing (*ius in re*).”¹⁵⁴ Myers points out that the concept of *dominium* usually includes three rights:

The right to make physical use of a thing and to possess it (*utendi*); the right to income gained from it in money, kind, or services (*fruendi*); and the right to manage it –well or badly – including conveying it to someone else (*abutendi*). The social policy was to keep these three rights as closely as possible – although some exceptions were made – particularly regarding the right to income.¹⁵⁵

In light of canon 1254, *dominium* means that a person has all four rights of ownership: the right to acquire, the right to retain, the right to administer, and the right to alienate. If one

110). Some years later, the Pontifical Council for Legislative Texts clarifies that, to say that the Roman Pontiff is the supreme administrator of all ecclesiastical goods is not meant to say that he is their owner. The Roman Pontiff “as supreme administrator of all ecclesiastical goods” (c. 1273) refers to the supreme power of governance and representation of the Pope in the Church and over the goods of public juridic persons. Therefore, the unity of the ecclesiastical goods is guaranteed not only by its purposes, but also by power, not by ownership - it belongs to the juridic person which acquired them (c. 1256) (“Si può, quindi, affermare che l’unità del patrimonio ecclesiastico è garantita non solo dai fini, ma anche dal potere, non di proprietà - che rimane alla persona giuridica che li ha acquistati- del Romano Pontefice in virtù del suo avere il supremo governo e la rappresentanza nella Chiesa”) (PCLT, *Nota La funzione dell’autorità ecclesiastica sui beni ecclesiastici*, 12 February 2004, in *Communicationes* 36 [2004] [= PCLT, *Nota La funzione dell’autorità*], p. 30).

¹⁵² See MORRISEY, “Commentary on Book V,” p. 709.

¹⁵³ M. DiPietro writes: “The actual use of the word *dominium* which introduces the notion of complete ownership of property occurs only in twice in Book V of the 1983 Code. *Dominium* is used once in canon 1256 and a second time in canon 1269, which deals with the private ownership of sacred objects. *Proprietas*, also connotes a type of ownership, used in canon 1284, §2, in the context of the enumeration of the duties of an administrator. The use of *dominium* in canon 1256 settles the historical dispute among canonists concerning the placement of ownership of Church property in God, in the saints, or in the universal Church. Juridically, *dominium* is placed in the public juridic person acquiring the temporal good and the rights of ownership are subject to the Roman Pontiff (c. 1256) (M. DiPIETRO, “Public Juridic Persons: Owners and Trustees of Church Property,” in FOX, *Render unto Caesar*, p. 82).

¹⁵⁴ RENKEN, *Church Property*, p. 54. “*Dominium* denotes full legal power over a corporeal thing, the right of the owner to use it, to take proceeds there from, and to dispose of it freely. The owner’s *plena potestas in re* (= full power over a thing) is manifested by his faculty to do with it what he pleases and to exclude anyone from the use thereof unless the latter has acquired a specific right on it (a servitude, an usufruct) which he might obtain only with the owner’s consent” (A. BERGER, *Encyclopedic Dictionary of Roman Law*, part 2, Philadelphia, American Philosophical Society, 1953, p. 441).

¹⁵⁵ J.J. MYERS, “Commentary on Book V,” in *CLSA Comm1*, pp. 862-863.

cannot exercise all four of these actions, one does not have full ownership.¹⁵⁶ Then, the concept of *dominium* in the Code is not confined to the aforesaid meaning in classical Roman law since the Code embraces not only full ownership but also partial ownership: “Virtually all ownership, partial or full, is acquired by juridic persons in the Church either by gift or contract, with the result that either the intention of the donor, which the Code demands must be fulfilled (c. 1300), or the local civil law of contracts, which the Code canonizes (c. 1290), determines the extent of ownership conveyed.”¹⁵⁷ A juridic person may sometimes acquire, possess, and administer the goods received by gift or contract, but it may not have the right to alienate them. Therefore, “the test of full ownership (*dominium*), then, consists in determining whether all four rights can be exercised.”¹⁵⁸ Besides, “those owning ecclesiastical goods must make sure the *dominium*, as understood by the Church, is reflected in secure civil legal structures.”¹⁵⁹ For instance, where the Church does not have civil recognition in regard to property rights, it acquires such through the

¹⁵⁶ See RENKEN, *Church Property*, p. 54; see F.G. MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” in *The Jurist*, 56 (1996), p. 592.

¹⁵⁷ R.T. KENNEDY, “Commentary on Book V, in *CLSA Comm2*,” p. 1458. For instance, “where common law system prevails; there is no precise equivalent for *dominium* in the common law. In common law there is no fundamental objection to ownership being fragmented, and various aspects of ownership often are separated in varying combinations. One person can hold a legal estate and have possession of something; another can have an equitable interest or have a right to income – a right which can be conveyed. Other burdens such as easements or other servitudes can be attached. Therefore, [...] ecclesiastical juridic persons, in a common law country, can come into possession of property or funds and not have *dominium* in any full sense. They might have an equitable interest or a right to income. They might be trustees or legal owners, but they may be required to distribute any income or other proceeds. They might possess property which is otherwise encumbered” (MYERS, “Commentary on Book V” p. 863). For that reason, even though canon 1256 refers exclusively to ownership (*dominium*), this term must be interpreted broadly to include other ownership rights as regulated by secular law (see M.L. ALARCÓN, “Commentary on Canons 1254-1258,” in *Exegetical Comm*, vol. IV/1, p. 28).

¹⁵⁸ MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 592.

¹⁵⁹ RENKEN, *Church Property*, p. 55. In this connection, Kennedy comments that “canon 1256 gives rise to number of Church-State conflicts as well as internal ecclesiastical disputes between diocesan bishops and pastors [*parochi*] or other administrators of church property. The problems arise when the civil law structure of a diocese is not compatible with the canonical structure, resulting in divergent views of ownership of church related property and of appropriate person to administer and alienate such property” (KENNEDY, “Commentary on Book V,” p. 1457). As previously mentioned, this issue of canonically compatible ownership of property and its protection will be treated in the third chapter of this thesis.

establishment of corporations and similar entities: “When a corporation is established in secular law, in the mind of the civil legislator it will be the corporation which owns, retains, administers, and alienates its temporal goods, not the ‘Catholic Church’ as such. The Church, on the other hand, will consider such corporations as means of protecting its ownership (see c. 1284, §2, 2^o) but not as the ‘owners’ of the goods in question.”¹⁶⁰

The application of canon 1256 confirms that a parish, as a juridic person, owns the goods which it acquires legitimately. It makes it clear that the *parochus* is the administrator and not their owner. The ordinary is neither the administrator nor the owner of the goods of the parish, but only their supervisor (c. 1276).¹⁶¹ As long as the essentials for acquisition have been fulfilled, ownership belongs to the juridic person. In other words, “if a temporal good is acquired through a method valid (though somehow illicit), however, it is considered nonetheless to have been acquired ‘legitimately’ as that term is used in canon 1256.”¹⁶²

1.4.2 – The Temporal Goods of the Church at the Service of the Church’s Mission

The Second Vatican Council declared that the Church utilizes temporal things so far as this usage is required for its mission (*quantum propria eius missio id postulat*).¹⁶³ In fact, the temporal goods are at the service of all human beings (*De bonorum terrestrium ad universos homines destinatione*) (GS, no. 69). With regard to achieving the proper purposes of the temporal goods of the Church, *CIC/17*, canon 1496 made specific mention of divine worship and the

¹⁶⁰ MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 592.

¹⁶¹ See RENKEN, *Church Property*, p. 55.

¹⁶² *Ibid.*

¹⁶³ See GS, no. 20, English translation in FLANNERY1, p. 985.

support of clergy and other ministers. However, based on *PO*, no. 17, canon 1254, §2 states four purposes for which the Church claims the right to possess temporal goods: “The proper purposes are principally: [1] to order divine worship, [2] to care for the decent support of the clergy and other ministers, and [3] to exercise works of the sacred apostolate, and [4] of charity, especially toward the needy.”

On 19 June 1979, when discussing the *Canones praeliminares* of the 1977 *Schema canonum libri V: De iure patrimoniali Ecclesiae*,¹⁶⁴ the consultors of the *coetus studiorum de bonis Ecclesiae temporalibus* voted that there was no need to multiply the listed objectives in the canon since “all the other ends that could be added are nothing but the development of the ends already contained under the more general formulation of ‘works of the sacred apostolate and of charity’.”¹⁶⁵ However, authors have differences of opinions whether or not the listing of the purposes in canon 1254, §2 is taxative:

Insertion of the word ‘principally’ indicates, for some, the existence of other purposes,¹⁶⁶ while others suggest that the insertion was made solely because the paragraph speaks generally of the purposes of the Church, not just of the ownership of temporal goods by the Church, and therefore, the purposes of the ownership are, in fact, taxatively stated.¹⁶⁷ In any event, in light of the conciliar definition of the apostolate as all activity of the Church directed to bringing the world to Christ, it would be difficult to conceive of any ecclesial purpose not included in ‘works of the sacred apostolate.’¹⁶⁸

¹⁶⁴ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri V: De iure patrimoniali Ecclesiae*, Civitate Vaticana, Typis polyglottis Vaticanis, 1977, c. 2, p. 8.

¹⁶⁵ “Fere omnes Consultores censent omnes alii fines qui addi possent non esse nisi explicationem quandam finium qui veniunt sub formula generali ‘opera sacri apostolatus et caritatis’” (*Communicationes*, 12 [1980], p. 396-397, English translation in RENKEN, *Church Property*, p. 20, fn. 22).

¹⁶⁶ See V. DE PAOLIS, *De bonis Ecclesiae temporalibus: Adnotationes in Codicem: Liber V*, Romae, Editrice Pontificia Università Gregoriana, 1986 (= DE PAOLIS, *De bonis Ecclesiae temporalibus*), p. 29; see MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 591; see V.G. D’SOUZA, “General Principles Governing the Administration of Temporal Goods of the Church,” in V.G. D’SOUZA (ed.), *In the Service of Truth and Justice*, Festschrift in Honor of Prof. A. Mendonça, Professor Emeritus, Bangalore, Centre of Canon Law Studies, Saint Peter’s Pontifical Institute, 2008 (= D’SOUZA, “General Principles”), p. 471.

¹⁶⁷ See MAIDA and CAFARDI, *Church Property*, p. 10; see RENKEN, *Church Property*, p. 21.

¹⁶⁸ KENNEDY, “Commentary on Book V,” p. 1455.

Keeping in mind the proper objectives of the temporal goods of the Church mentioned in this canon, “[if] any ecclesiastical property which is not in fact devoted to one or other of these purposes is not rightly held, [it ...] should therefore be reassigned. The Church is opposed to the accumulation of any property, of whatever kind, which serves no purpose other than to provide unnecessary security.”¹⁶⁹ Arguably, those goods which are merely held for the sake of wealth and security but not for any of the principal purposes of canon 1254, §2, have indeed no right to be called ecclesiastical goods.¹⁷⁰ The temporal goods of the Church are for the mission of the Church and they cannot be owned and administered “in the spirit and logic of profit and accumulation.”¹⁷¹ The crux of the question concerning the proper purposes of the temporal goods of the Church is that these goods must always be used “for those purposes that justify the existence of the Church’s temporal goods (*PO*, no. 17).”¹⁷²

In light of the traditional rule for interpretation, *favorabilia amplianda, odiosa restringenda* (cf. c. 18), the scope and content of each of the objectives require a broad interpretation so that each one might be totally fulfilled. Thus,

the objectives of providing for worship may cover the building and preservation of churches, providing them with furniture and other appurtenances, the organization of acts of worship and their financing, etc. The support of the clergy would include not only income, but also other means for their spiritual, cultural, and scientific formation, according to the circumstances of each case. The apostolate and charity offer an immense and varied field, but the priority would be the most urgent needs of the poor according to *PO*, no. 17.¹⁷³

¹⁶⁹ MORRISEY, “Commentary on Book V,” p. 708.

¹⁷⁰ See RENKEN, *Church Property*, p. 22.

¹⁷¹ DE PAOLIS, “Temporal Goods of the Church,” p. 352.

¹⁷² *Ibid.*, p. 350.

¹⁷³ ALARCÓN, “Commentary on Book V,” p. 965. Practical applications of the objectives of temporal goods of the Church mentioned in canon 1254, §2 can be found in other places of the Code. In particular, Book IV: “The Sanctifying Office of the Church” regulates the objective of divine worship or piety. D’Souza points out the requirement of temporal goods concerning the objective of divine worship prescribed in Book IV: “There are a number of applications for the use of material goods in the divine worship, especially for sacraments and sacramentals: water for baptism, bread and wine for the Eucharist; oil for confirmation and anointing of the sick and also for baptism, ordination, consecration of chalices, churches, etc. Canon 1215, §2 states that the bishop should not

The Directory for the Pastoral Ministry of Bishops *Apostolorum successores* notes that the diocesan bishop has the duty to ensure that the ecclesiastical goods of the diocese and other public juridic persons subject to him are used according to the proper purposes of the temporal goods of the Church: “In the administration of goods, always presupposing that justice is

give permission to build a church until, among other requirements, he also decides that the necessary means will be available to build the church and to provide for divine worship” (D’SOUZA, “General Principles,” p. 470, fn. 6).

As far as the objective of the fitting support for the clergy and other ministers is concerned, canon 281, §1, states that “they deserve remuneration which is consistent with their condition, taking into account [both] the nature of their function and the conditions of places and times,” together with “social assistance which provides for their needs suitably in case of illness, incapacity, or old age” (c. 281, §2). Married deacons who dedicate themselves full-time to the ecclesiastical ministry deserve sufficient remuneration to provide for themselves and their families, unless they already receive secular remuneration (c. 281, §3) (see CONGREGATION FOR THE CLERGY, *Directory for the Ministry and Life of Permanent Deacons*, 22 February 1998, nos. 16-20, Vatican City, Libreria editrice Vaticana, 1998, pp. 85-86). Moreover, the Pontifical Council for Legislative Texts has established that the ‘remuneration’ of which canon 281 speaks cannot be considered to be a ‘stipend,’ that is, “it is not the quantity of services performed that needs to be recognized and proportionately compensated, but rather the person of the cleric, who offers his services, or should offer his services, for reasons other than those which would motivate the average laborer.” Consequently, a diocese can establish systems which guarantee a remuneration adequate to the status of clerics, taking also into account other sources of clerics’ income (cf. c. 1274), e.g., the pension established by varied pension systems in the State (PCLT, *Decretum de recursu super congruentia inter legem particularem et normam codicalem*, in *Communicationes*, 32 [2000], pp. 162-167).

Apostolate means “every activity of the Mystical Body of Christ” that aims to spread the Kingdom of Christ throughout the world, which the Church exercises in different ways through all its members (AA, no. 2). Canon 211 stipulates that “all the Christian faithful have the duty and right to work [works of apostolate] so that the divine message of salvation more and more reaches all people in every age and in every land.” D’Souza identifies some of the instruments through which the Church does the works of apostolate mentioned in Book III. “The Teaching Function of the Church”: “the houses of formation of ministers (major and minor seminaries), houses and works of apostolate exercised by consecrated persons, missionary activity, schools, universities, means of social communication, liturgical and catechetical books” (D’SOUZA, “General Principles,” pp. 470-471, fn. 8). Moreover, carrying out the apostolic works would mean in concrete circumstances: “education, care of the sick, missionary endeavors, family programs, etc.” (MORRISEY, “Commentary on Book V,” p. 708).

GS, no. 69 establishes the obligation for the objective of charitable care towards the needy and the poor. “Earthly goods destined for all (*De bonorum terrestrium ad universos homines destinatione*): God destined the earth and all it contains for all men and all peoples so that all created things would be shared fairly by all mankind under the guidance of justice tempered by charity. No matter what the structures of property are [...] we must never lose sight of this universal destination of earthly goods. In his use of things man should regard the external goods he legitimately owns as not merely as exclusive to himself but common to others also. [...] the Fathers and Doctors of the Church, who taught that men are bound to come to the aid of the poor and to do so not merely out of their superfluous goods. [...] it urges them according to their ability to share and dispose of their goods to help others, above all by giving them aid which will enable them to help and develop themselves.” Furthermore, the Directory, *Ecclesiae imago* said, “each of the works of charity the bishop and Christian community perform should radiate honesty, sincerity, generosity, which are reflection of God’s gratuitous love for men” (*Ecclesiae imago*, no. 132, p. 68). As a matter of fact, charity is the theological virtue manifested in human solidarity, friendship, social work, which is a requirement of the human or Christian fraternity (see ALARCÓN, “Commentary on Canons 1254-1258,” p. 21). In concrete situations, charity, especially for the needy is to identify oneself with “the poor [cc. 222, §2; 529, §1; 848; 945, §2; 1181, 1285, etc.], the dispossessed, those who have lost hope, those who feel abandoned by what they see to be an affluent world, and so on” (MORRISEY, “Commentary on Book V,” p. 708).

observed, the Bishop concerns himself first of all with providing for divine worship, charity, the apostolate and the support of the clergy: these ends are given precedence over all others.”¹⁷⁴

Canon 114, §1 dictates that the purpose of the juridic person is to be in congruity with the mission of the Church which transcends the purposes of the individuals.¹⁷⁵ The purposes of the juridic person specifically pertain to works of piety, of the apostolate, or of charity, whether spiritual or temporal (c. 114, §1), which correspond to the proper purposes of the temporal goods of the Church mentioned in canon 1254, §2. Similarly, the obligation of the Christian faithful to provide for the needs of the Church, “what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers” (c. 222, §1), corresponds to the right of the Church to pursue its proper objectives in canon 1254, §2.¹⁷⁶ If the Church has the right to acquire, retain, administer, and alienate temporal goods, the members of the Church have the obligation to provide what is necessary.¹⁷⁷ Therefore, one would readily realize that the purposes or ends of public juridic persons in the Church (c. 114, §2) correspond to the principal purposes of temporal goods of the Church (c. 1254, §2), and both in turn correspond to the duty of the Christian faithful who are to provide for the needs of the Church or juridic persons (c. 222, §1). “Since public juridic persons share in a special way in the mission of the Church, one can say that ecclesiastical goods are ‘indispensable’ in achieving that mission.”¹⁷⁸ In other words, the ecclesiastical goods at the service of the mission of Church are a *sine qua non*.

¹⁷⁴ *Apostolorum successores*, no. 188, p. 206.

¹⁷⁵ See KENNEDY, “Commentary on Canons 113-123,” p. 158.

¹⁷⁶ See A. MCGRATH, “Commentary on Canons 204-367,” in *CLSGBI Comm*, p. 125.

¹⁷⁷ See *ibid*.

¹⁷⁸ E.N. OMOROGBE, *The Power of the Diocesan Bishop with Regard to the Administration of Ecclesiastical Goods of Public Juridic Persons Subject to Him: An Application of Canon 1276, §2*, JCD thesis, Ottawa, Saint Paul University, 2010 (= OMOROGBE, *Administration of Ecclesiastical Goods*), p. 75.

1.4.3 – Responsible Stewardship of Ecclesiastical Goods of Juridic Persons

Black's Law Dictionary defines the term 'steward' "as a person appointed in place of another."¹⁷⁹ In addition to designating the proper administrators of public juridic persons, canon law also sets forth specific duties of these administrators (see c. 1284). Indeed, "the relationship of canonical administrator to public juridic person has been described as one of 'stewardship'."¹⁸⁰ Indeed, the word "steward" (*dispensator*), used in canon 1273, describes not only the role of the Roman Pontiff but also the role of every administrator of ecclesiastical property.¹⁸¹ Hite comments on the idea of "stewardship" of an administrator of church property:

Although the term 'steward,' is not used in the remainder of the canons in regard to the administration [and protection] of church property, it is a concept which is useful for explaining the concept of administration since it refers to all those actions which are intended for the preservation, development, management, reception and use of church property. In a sense an administrator receives church property in trust for the Church and its works.¹⁸²

Morrisey underscores two key factors that contribute to the concept of 'responsible stewardship' of ecclesiastical goods: "In the Church the concept of ownership, of which administration is a corollary, carries with it the notion of responsible stewardship, precisely because [1] the right of the Church to own and [2] otherwise to deal with temporal goods is solely with a view to the pursuit of its proper objectives as outlined in canon 1254, §2."¹⁸³

The notion of stewardship can aptly be applied to canonical administrators because it contains three important and pertinent concepts. Firstly, just as a steward is the one who stands in a confidential position, a position of trust towards the object of his or her stewardship, so also the

¹⁷⁹ B.A. GARNER (ed.), *Black's Law Dictionary*, 7th ed., St. Paul, Minnesota, West Group, 1999 (= *Black's Law Dictionary*), p. 1426.

¹⁸⁰ MAIDA and CAFARDI, *Church Property*, p. 62.

¹⁸¹ See MORRISEY, "Commentary on Book V," p. 719.

¹⁸² J. HITE, "Church Law on Property and Contracts," in *The Jurist*, 44 (1984), p. 120.

¹⁸³ MORRISEY, "Commentary on Book V," p. 719.

administrator of a public juridic person does so in a relationship of trust towards the juridic person. Secondly, the property held by the steward is not the steward's own; it belongs to others; but the steward will hold, manage, and make the best of it for the owner. Likewise, an administrator is not the owner of the property of the public juridic person¹⁸⁴ but carries out the four rights of ownership, that is, to acquire, retain, administer, and alienate (c. 1255), on behalf of the juridic person. Thirdly, stewardship connotes the fact that one has been charged by a higher authority to look after the affairs of someone who cannot do so for himself or herself. Similarly, an administrator has been entrusted with the guardianship of the ecclesiastical goods of the juridic person which is unable to do so for itself.¹⁸⁵

Canon law affects canonical stewards in two principal ways in their administration and protection of the ecclesiastical goods of public juridic persons. The first way in which canon law affects canonical stewards is in the realm of faith. They are to see that the conduct of the public juridic persons does not violate the teachings of the Church because they act in the name of the Church. Since canonical stewards direct the conduct of the public juridic person, they are obliged to guide its conduct in accordance with the teachings of the Church in matters of faith and morals, since these do affect its conduct. The second way in which canon law affects canonical

¹⁸⁴ As far as ownership is concerned, the administrators are not the owners of church property but merely its guardians (see BOUSCAREN et al., *Canon Law*, pp. 829-833). As previously stated, not even the Roman Pontiff who is the supreme administrator (c. 1273) is the owner of all church property (c. 1256); but merely he is its supreme guardian (see *ibid.*, p. 830; see above, pp. 53-54, fn. 151). With regard to ownership of ecclesiastical goods, S. Woywod comments: "The title of ownership of ecclesiastical goods is vested in the individual legal ecclesiastical person, but it is ownership of a peculiar type which in effect approaches trusteeship. The legal person, who holds the title to church property and goods, is not free to use and dispose of the goods at will, as the owner of private property can do. Canon Law regulates the use and administration of ecclesiastical goods. That the Roman Pontiff is by his very office the supreme administrator and dispenser of all ecclesiastical goods, is evident from the very constitution of the Catholic Church. Great as his powers are as supreme administrator, they are limited by the very nature of ecclesiastical goods, which are held in trust by ecclesiastical persons for the purposes of charity and religion" (S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, rev. by C. SMITH, New York, J.F. WAGNER, Inc, 1948, vol. 2 [= WOYWOD, *A Practical Commentary*], p. 202; see also RENKEN, *Church Property*, p. 22, fn. 28).

¹⁸⁵ See MAIDA and CAFARDI, *Church Property*, p. 62.

stewards occurs in the area of administration and protection of the goods of public juridic persons. Since the public juridic person is a creature of canon law, canonical stewards are responsible to comply with canon law as it affects the administration and protection of the goods of the public juridic person; for instance, the law forbids administrators of ecclesiastical goods to alienate them without following proper procedures (c. 1291).¹⁸⁶ Besides, as every canonical steward is regarded as a trustee or fiduciary in a hierarchical structure of the Church, each is also accountable to those in higher authority; for instance, a *parochus* is accountable for his stewardship to his bishop or the bishop is accountable for his stewardship to the Holy See.¹⁸⁷

Lastly, responsible stewardship implies a twofold duty: “[first] to administer [and protect] the entrusted goods as a prudent householder would do (as mentioned in canon 1284, §1) and [second] to give an account to the faithful of the goods received and the uses to which these were put (as prescribed in canon 1287, §2).”¹⁸⁸ In his post-synodal apostolic exhortation *Pastores dabo vobis* (1992), John Paul II brings out the relationship between accountability, trust, and honesty of stewardship of ecclesiastical goods: “[...] the priest should also offer the witness of a total ‘honesty’ in the administration of the goods of the community, which he will never treat as if they were his own property, but rather something for which he will be held accountable by God and his brothers and sisters, especially the poor.”¹⁸⁹

¹⁸⁶ See *ibid.*, pp. 62-63.

¹⁸⁷ See *ibid.*, p. 64; see D’SOUZA, “General Principles,” pp. 476-479.

¹⁸⁸ MORRISEY, “Basic Concepts and Principles,” p. 7.

¹⁸⁹ JOHN PAUL II, Post-Synodal Apostolic Exhortation *Pastores dabo vobis*, 25 March 1992, no. 30, in AAS, 84 (1992), pp. 657-804, English translation in J.M. MILLER (ed.), *The Post-Synodal Exhortations of John Paul II*, Huntington, Our Sunday Visitor Publishing Divisions, 1998, p. 536.

1.4.4 – The Canonical Notion of “Administration”

Administration can be defined as “the direction and management of goods, property, and activity of a juridic person for purposes befitting its mission.”¹⁹⁰ The protection of ecclesiastical goods is one of the important aspects of administration of the juridic person. In order to understand the acts of administration of ecclesiastical goods, it is necessary to understand the meaning of the term “administration” as used in the Code. The Pontifical Council for Legislative Texts discussed this notion of administration in the Code in a *Nota* (2004). It noted that:

The term ‘administration’ has a double meaning in the Code, which one must carefully distinguish: (1) ‘Administration’ can indicate the function proper to ecclesiastical authority – different from the function of legislating and judging – consisting in placing *acts of governance* in respect to the law: e.g., singular administrative acts which include singular decrees and precepts, rescripts, privileges, and dispensations (see canons 35-93). Administration here refers to the power of governance. (2) ‘Administration’ can also refer to economic actions, which seek to conserve, to make to bear fruit, and to better a patrimony. The Legislator uses the term *in both senses* in the Code. For example, when he is regulating an administrative act in Book I, he is evidently making reference to the *first meaning* of ‘administration;’ when, however, he establishes in canon 1279 the need for a public juridic person to have an administrator, he is adopting the *second meaning* of ‘administration.’

It is important to recall this distinction when examining Book V, and in particular in Title II on ‘the administration of goods,’ since there the Legislator is adopting both senses of the term ‘administration’ in relation to ecclesiastical goods. Concretely, when canon 1273 identifies the Roman Pontiff as the supreme administrator of ecclesiastical goods, it is referring to the *power of jurisdiction of the Pope* in the Church and, therefore, over the goods of public juridic persons destined for the proper purposes of the Church, as well as to *an administrative function of an economic type* founded on dominative power over goods.¹⁹¹

It is evident from the *Nota* of the Pontifical Council for Legislative Texts that when the *parochus*, as an administrator, is dealing with economic actions such as acquiring, administering, and alienating goods, “administration” refers to the second meaning. In light of what the Pontifical Council has noted, one would say that such economic actions are not “administrative

¹⁹⁰ CFH, p. 309.

¹⁹¹ PCLT, *Nota* La funzione dell’autorità, p. 26, English translation in J.A. RENKEN, “The *Parochus* as Administrator of Parish Property,” in *StC*, 43 (2009), pp. 491-492 [emphasis added]; see also in idem, *Church Property*, p. 148, fn. 8.

acts” of executive power of governance, but rather they are “juridic acts of administration.”¹⁹² Huels defines the term “the acts of administration” in a broad sense: “Act of administration is any juridic act performed in the administration of a parish, diocese, or other juridic person, e.g., singular administrative acts and contracts.”¹⁹³ However, although the acts of administration can be described broadly as “administrative,” in the strict sense of the term, since they “lack one or more essential characteristics of an administrative act, it does not involve the Church’s power of governance.”¹⁹⁴

Moreover, Coccopalmerio points out that the concept of administration is broader than acts of administration. The term “*administrare*” means to

carry out the activities aimed at using ecclesiastical goods for the purposes of the juridical person to whom they belong. Therefore, we can indicate the following fundamental activities (pursuant to the norms of Book V, particularly cc. 1281ff): recognize what those goods are, and their condition (cf. c. 1283, §2): - acquire or alienate property; - dispose of goods for various purposes; -preserve, restore, or transform goods; draft and preserve the documents relative to the administration of goods by rendering an account to the local ordinary.¹⁹⁵

So, each duty of an administrator in Book V (cc. 1282-1289) is not to be confused with juridic acts of administration inasmuch as it does not make or change any juridic effect; for instance, to draw up a report of administration (c. 1284, §2, 8°), to present an annual financial report to the

¹⁹² “Acts of administration are activities that can be described broadly as ‘administrative’ but lack one or more essential characteristics of an administrative act and thus do not involve the Church’s power of governance” (J.P. BEAL, “Protecting the Rights of Lay Catholics,” in *The Jurist*, 47 [1987], p. 156; see POLL CHALMERS, “The Remedy of Harm in Accord with Canon 128,” p. 122).

¹⁹³ J.M. HUELS, *Empowerment for Ministry*, New York, Paulist Press, 2003, p. 254.

¹⁹⁴ BEAL, “Protecting the Rights of Lay Catholics,” p. 156; see POLL CHALMERS, “The Remedy of Harm in Accord with Canon 128,” p. 122.

¹⁹⁵ F. COCCOPALMERIO, “Commentary on Canons 492-494,” in *Exegetical Comm*, vol. II/2, p. 1180. In a related vein, J.T.M. De Agar underscores the fact that the term administration has a broad connotation which involves both juridical as well as non-juridical aspects: “Administration refers to the collection of acts and measures undertaken to conserve and increase a patrimony and to make it serve the aims for which it has been designated. It is a complex activity with various aspects guided by juridical and financial criteria” (J.T.M. DE AGAR, *A Handbook on Canon Law*, Montréal, Wilson and Lafleur, 2007, p. 248).

local ordinary (c. 1287, §1), to give an account to the faithful concerning the goods offered by them (c. 1287, §2), etc.

The juridic acts of administration of the *parochus* are not public juridic acts but rather they are private ones placed on behalf of the parish as a juridic person.¹⁹⁶ Beal describes “juridic acts of administration” as “acts of the church authorities in their official capacity that partake in the nature of a private transaction.”¹⁹⁷ Accordingly, all juridic transactions or contracts in acquisition, administration, and alienation, which may be entered into by the *parochus* in his official capacity as administrator of parish property fall into the category of private juridic acts done on behalf of the parish as a juridic person, because contracts by their very nature are bilateral or multilateral rather than unilateral, while public juridic acts are mostly unilateral.¹⁹⁸ Since acts of administration are juridic acts, the person who acts unlawfully and causes harm to the juridic person, is personally liable for these acts (cc. 128; 1289). Poor financial

¹⁹⁶ A juridic act may be defined as “a human act, lawfully placed by a capable person, which has one or more juridic effects” (J.M. HUELS, “Juridic Acts in Canon Law,” unpublished commentary on cc. 124-128, Ottawa, Saint Paul University, Faculty of Canon Law, 2012, p. 1). Juridic acts are categorized as public juridic acts and private ones (see *ibid.*, p. 2). Public juridic acts are authoritative, binding acts carried out in the name of the Church. They are mostly unilateral acts of power of governance such as legislative, judicial, and executive acts since they are placed by a person in a position of authority without the cooperation of the person(s) affected by them (see H. PREE, “On Juridic Acts and Liability in Canon Law,” in *The Jurist*, 58 [1998], p. 46). On the contrary, private juridic acts are carried out by persons in their own name, not in the name of the Church. At the same time, they are activities within the Church, subject to laws. Therefore, some private juridic acts in the Church may need a kind of involvement of authority for their consent, permission, approval, etc. (see *ibid.*, pp. 46-47). Therefore, “Juridic acts of administration [are private juridic acts] as contrasted with the administrative acts, which are public juridic acts. Juridic acts of administration lack one or more of the essential elements of an administrative act; they are not acts of executive power” (POLL CHALMERS, “The Remedy of Harm in Accord with Canon 128,” p. 122). However, one would argue that an act of administration could sometimes be a public juridic act of executive power of governance. For instance, since the act of designation of stable patrimony of the parish is a unilateral act placed by the *parochus* as administrator, it seems that it would be a public juridic act of the executive power of governance. In fact, the Code gives various instances whereby the *parochus* exercises executive power of governance: to delegate a priest or a deacon with the faculty to assist at marriages, to dispense from some marriage impediments (cc. 1079, §2; 1080), to dispense from private vows (c. 1196, 1^o) or to commute them (c. 1197), to suspend, dispense, or commute a promissory oath (c. 1203), and to dispense or commute the obligation of holy days and days of penance (c. 1245).

¹⁹⁷ BEAL, “Protecting the Rights of Lay Catholics,” p. 156.

¹⁹⁸ See POLL CHALMERS, “The Remedy of Harm in Accord with Canon 128,” p. 123.

administration may be a cause for removal from office (cf. c. 1741, 5°) or even a canonical delict subject to a penalty, not excluding deprivation from office (cf. c. 1389, §1).¹⁹⁹

1.4.5 – The Canonical Notion of “Administrator”

Huels explains that an administrator is: “(1) an official of the church who is responsible for administrative tasks in general, including planning, organization, leadership of groups, finances, etc. (2) a person responsible for financial administration.”²⁰⁰ Since public juridic persons are artificial persons, creatures of the law, the human agents who act for them are called “administrators of juridic persons” in canon law. Canon 1279, §1 assigns the proper canonical administrators of ecclesiastical goods. It states:

§1. The administration of ecclesiastical goods pertains to the one who immediately governs the person to which the goods belong unless particular law, statutes, or legitimate custom determine otherwise and without prejudice to the right of the ordinary to intervene in case of negligence by an administrator.²⁰¹

¹⁹⁹ See HUELS, *The Pastoral Companion*, p. 410.

²⁰⁰ Idem, *Empowerment for Ministry*, p. 254.

²⁰¹ There are two different English translations of the first paragraph of this canon. The original Latin reads: “Administratio bonorum ecclesiasticorum ei competit, qui immediate regit personam ad quam eadem bona pertinent, nisi aliud ferant ius particulare, statuta aut legitima consuetudo, et salvo iure Ordinarii interveniendi in casu neglegentiae administratoris.” The 1995 *CLSGBI* (and *Exegetical Comm*), translates the first line as “the administration of ecclesiastical goods pertains to the one with *the direct power of governance* over the person to whom the goods belong,” while the 1999 *CLSA* translates it as “The administration of ecclesiastical goods pertains to *the one who immediately governs* the person to which the goods belong.” It seems the *CLSA* translation is better because the Latin does not in any way use the word *potestas* in relation to the verb *regit*. In fact, nowhere in this canon the power of governance is mentioned. As argued above, the administration of ecclesiastical goods is not carried out solely with the power of governance, but also with the juridic acts of administration which do not involve the power of governance. Besides, given the broad scope of administration of ecclesiastical goods, lots of its duties do not even fall into the category of juridic acts inasmuch as they do not change or make any juridic effect(s). Therefore, the administration of ecclesiastical goods entails the exercise of the power of governance but it is not coterminous with the power of governance (see OMOROGBE, *Administration of Ecclesiastical Goods*, p. 93, fn. 15).

De Paolis notes: to govern the juridic person *per se* and to administer the goods of that juridic person are distinct acts; both are not necessarily to be carried out by the same person. Indeed, in many things, the governance of the juridic person is distinguished from the administration of its goods. Canon 1279, §1 gives the general principle for secure administration that the responsibility for the administration of ecclesiastical goods rests firmly upon the individual who immediately governs the juridical person to whom the goods belong (see DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 89). Further, this responsibility denotes the ultimate responsibility. Therefore, this is in no way altered by the fact that various supportive means are either prescribed, e.g., a parish finance council (c. 537)

§2. In the administration of the goods of a public juridic person which does not have its own administrators by law, the charter of the foundation, or its own statutes, the ordinary to whom it is subject is to appoint suitable persons for three years; the same persons can be reappointed by the ordinary.

This canon sets forth the general principle that one who immediately governs the public juridic person is the administrator of ecclesiastical goods owned by that juridic person. Accordingly, the diocesan bishop for a diocese²⁰² and the *parochus* for a parish are the proper canonical administrators. So, every juridic person must have its own administrator and finance council (cc. 1279, §1; 1280). From the functional point of view, the administration of ecclesiastical goods is regulated by the following principles:

- The Roman Pontiff, in virtue of his power of governance over the entire Church, is the supreme administrator and financial officer of ecclesiastical goods. Therefore, it belongs to him to regulate the ownership and administration of goods, to require that certain acts be subject to given requirements, etc. (cc. 1256 and 1273).
- The immediate administration of goods belongs to the organs of representation of the person who holds the title to them, according to the norms of universal and particular law as well as their own proper statutes. Every [juridic] person must have its own economic organs: the administrator and a finance committee [or at least two counselors] (c. 1280).
- This administration is subject to the vigilance and control of the ordinary to whom the juridic person is subject. It belongs to him to give instructions, to intervene in case of negligence, to appoint administrators for juridical persons which do not have them, to approve acts of extraordinary administration, etc. (cc. 1276-1279).²⁰³

On this basis, the Code establishes the rules and duties for administrators to observe in the fulfillment of their office (cc. 1281-1289). Since these duties regard ecclesiastical goods, they are always carried out in the name of the Church. Moreover, administration is only one function of an administrator in respect to temporal goods. Canons 1254, §1 and 1255 set the basis for the functions of an administrator of a juridic person. According to these canons, all administrators

or devised, e.g., parish finance officer to assist in the fulfillment of this obligation (see MORRISEY, "Commentary on Book V," p. 724).

²⁰² The diocesan finance officer is the routine administrator of the ecclesiastical goods of the diocese (c. 494, §3) under the authority of the diocesan bishop who governs the diocese (cc. 369, 393).

²⁰³ DE AGAR, *A Handbook on Canon Law*, pp. 249-250.

are expected to carry out four fundamental functions, or rights (acquisition, retention, administration, and alienation) regarding the temporal goods of the juridic person with which they are entrusted. Administrators have a fiduciary relationship towards these goods, which are not their personal property. They are bound to take care of and to protect the goods according to the proper purposes of the Church (c. 1254, §2). They are to fulfill their function with the diligence of a good householder (c. 1284, §1) and according to the norm of law (c. 1282).²⁰⁴

Finally, canon 1289 stipulates: “Even if not bound to administration by the title of an ecclesiastical office, administrators²⁰⁵ cannot relinquish their function on their own initiative; if the Church is harmed from an arbitrary withdrawal, moreover, they are bound to restitution.” Many administrators of public juridic persons are designated by law. Others take up this task by statute, lawful custom, or appointment by an ordinary (c. 1279). However, there are instances where the functions of an administrator are fulfilled by persons not so designated who, either voluntarily, or in response to a request from some office-holder, undertake such functions.²⁰⁶ Since the sudden interruption in the stewardship of temporal goods would result in grave harm, the Code holds responsible the administrators, even an unofficial one whose arbitrary withdrawal caused the harm. This requirement of personal restitution by anyone with the responsibility of an administrator of goods of a public juridic person is an application of canon 128. In simple terms,

²⁰⁴ See RENKEN, *Church Property*, p. 22.

²⁰⁵ Omorogbe observes that it would have been more appropriate not to use the term administrator for such unofficial persons because the Code has already determined the proper use of the term administrator of ecclesiastical goods (cc. 118; 1279, 1). Since it designates an ecclesiastical office in accordance with canon 145, the reference to administrators who are not office-holders is not appropriate (see OMOROGBE, *Administration of Ecclesiastical Goods*, p. 118, fn. 82). The corresponding CCEO, canon 1033 states: “An administrator of ecclesiastical goods who relinquishes an office or function on his own initiative is bound to restitution, if the Church is harmed by such an arbitrary abandonment of duty.”

²⁰⁶ See KENNEDY, “Commentary on Book V,” p. 1492.

“a person who accepts the office of administrator is thereby understood automatically to accept the obligations inherent in the task (see c. 1283, 1°).”²⁰⁷

1.5 – The Protection of the Temporal Goods of the Parish

As a public juridic person *ipso iure*, the parish exists as a distinct entity within the Church, although it is part of the diocese (c. 515, §§1, 3). The parish owns its own property in canon law (c. 1256). As it is not a collegial juridic person (c. 115, §2), the right and responsibility to protect parish property are vested in the *parochus* as its legal representative (cc. 532; 118).²⁰⁸ Moreover, canon 1279, §1, establishes that the *parochus* who immediately governs the parish is primarily responsible for the protection of the goods of the parish entrusted to him. Since these goods are ecclesiastical goods, he must follow the applicable universal law,

²⁰⁷ MORRISEY, “Commentary on Book V,” p. 731.

²⁰⁸ See T.J. GREEN, “Shepherding the Patrimony of the Poor: Diocesan and Parish Structures of Financial Administration,” in *The Jurist*, 56 (1996) (= GREEN, “Shepherding the Patrimony of the Poor”), p. 726. *CCEO* canon 290, §1 states: “In all juridic affairs the pastor [*parochus*] represents the person of the parish.” Unlike *CIC* canon 532, it does not prescribe that the *parochus* also “is to take care that the goods of the parish are administered according to the norm of cc. 1281-1288.” But, the *CCEO* does specifically expect that the Eastern *parochus* as administrator is also to see to the proper administration of the ecclesiastical goods of the parish according to canons 1022-1033 (see V.J. POSPISHIL, *Eastern Catholic Church Law*, rev. ed., New York, Saint Maron Publications, 1996, p. 259; see J.D. FARIS, *Eastern Catholic Churches: Constitution and Governance*, New York, Saint Maron Publications, 1992, pp. 583-584; see J.A. RENKEN, “Parishes in the Latin and Eastern Codes: A Comparative Study,” in *Studies in Church Law*, 7 [2011] [= RENKEN, “Parishes in the Latin and Eastern Codes”], p. 159).

The other canonical equivalents of the *parochus* are: the priest of the quasi-parish (c. 516, §1); the moderator of the priests *in solidum* (cc. 517, §1; 543, §2, 3°; 520, §1); the priest provided with powers and faculties of a *parochus* of a vacant parish in which, due to a lack of priests, a deacon, a person other than a priest or a community of persons has been given a share in the exercise of parochial pastoral care (c. 517, §2); one presbyter as the *parochus* in the case of entrusting the parish to a clerical religious institute or clerical society of apostolic life (c. 520, §§1-2); the parochial administrator (c. 540); the interim parish leader when a parish becomes vacant or the *parochus* becomes impeded, who immediately assumes parish governance temporarily until a parochial administrator is appointed (c. 541, §1); the priest who substitutes for the *parochus* during his absence (c. 533, §3); and the priest who fulfills the function of a moderator when the moderator ceases from office until the bishop appoints another moderator (c. 544) (see F.R. AZNAR GIL, “La administración de los bienes temporales de la parroquia,” in J. MANZANAREZ (ed.), *La parroquia desde el nuevo derecho canónico*, Salamanca, Universidad Pontificia, 1991, p. 173; see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 487, fn. 1).

particular laws, and statutes which govern them.²⁰⁹ “The *parochus* neither owns the parish nor acts as the bishop’s delegate or agent regarding it. He is ultimately responsible in his own right for parish administration, i.e., for the management of its resources toward the effective achievement of its goals.”²¹⁰

Moreover, the *parochus* exercises his pastoral governance role under the authority of the diocesan bishop (c. 519) who appoints him either indefinitely or for a fixed term (c. 522). The authority of the *parochus* as administrator is limited to the performance of acts of ordinary administration. He does not enjoy unlimited powers in the management of parish goods. Rather, the limits and manner of his managerial functions are clearly determined and often restricted by universal law, e.g., acts of extraordinary administration and acts of alienation. Thus, *parochi* act invalidly whenever they either exceed the limits and manner of ordinary administration unless they have first obtained a written faculty from the ordinary (c. 1281, §1), or have not followed the formalities required for validity in case of alienation of parish goods (c. 1291).²¹¹ Moreover, an administrator of parish goods must carry out his functions under the supervision of the diocesan bishop or ordinary (c. 1276, §1).

Requiring the ordinary’s permission for acts of extraordinary administration or alienation and recognizing the supervisory role of the diocesan bishop does not mean that the bishop is the administrator of the parish goods; rather, he exercises only a monitoring function to assure

²⁰⁹ See AZNAR GIL, “La administración de los bienes temporales de la parroquia,” p. 172.

²¹⁰ GREEN, “Shepherding the Patrimony of the Poor,” p. 727.

²¹¹ See F. TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” in *Boletín eclesiástico de Filipinas*, 62 (1996), p. 49; see M.P. HUBER, “Ecclesiastical Financial Administrators,” in *CFH*, p. 116.

financial accountability and the standards of a responsible administrator.²¹² *Parochi* are subject to the pertinent prescriptions of Book V of the Code binding all administrators of ecclesiastical goods. The law itself identifies the duties incumbent upon each *parochus* as administrator (cc. 1281-1289). A serious violation of these duties with grave harm to the parish constitutes a cause for removal from office (cf. c. 1741, 5^o)²¹³ unless another solution can be found.

The administrative authority of the *parochus* over the parochial goods begins at the time he takes canonical possession of the parish (c. 527, §1) and it lasts until he loses his office (cf. c. 538). His administrative functions relating to the temporal goods of the parish are assured from the discipline of canon 1741, 5^o which states that “poor administration of temporal goods with grave damage to the Church whenever another remedy to this harm cannot be found” can be a legitimate cause for removal of a *parochus* from office. Besides, any negligence on the part of the *parochus* as the administrator of the parish goods would invoke the intervention of the ordinary (*salvo iure Ordinarii interveniendi in casu neglegentiae administratoris*) (c. 1279, §1).

The phrase used in canon 532, “*curet ut bona paroeciae administrentur ad normam cann. 1281-1288*” seems to suggest that the *parochus* has only a supervisory role over the parochial goods of the parish. The reference to canons 1281-1288 is, therefore, necessary to resolve any doubt with regard to his role as administrator of the goods of the parish.²¹⁴ Moreover, any idea of designating a person other than the *parochus* as the administrator of the parish would be *contra legem* because one must be aware of the fact that canon 1279, §1 speaks of only exceptional cases “*nisi aliud ferant ius particulare, statuta aut legitima consuetudo.*” According

²¹² See GREEN, “Shepherding the Patrimony of the Poor,” p. 727.

²¹³ See TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” p. 49.

²¹⁴ See CALVO, “Commentary on Canons 515-572,” p. 446.

to this canon, the administrator of parish goods in ordinary circumstances must be none other than the *parochus*.²¹⁵ At the same time, when pastoral circumstances so require, one cannot rule out the possibility of designating another canonical equivalent to the *parochus* as the administrator of the goods of the parish (cc. 516, §1; 517, §§1-2; 526, §1; 539; 541, §1; 543, §2, 3°).

Despite the fact that canon 532 states that the *parochus* is to see to the proper administration of parochial ecclesiastical goods according to the discipline of the canons 1281-1288, it does not prevent him, as administrator of parochial property, from being involved in other functions of an administrator (the acquisition, the retention, and the alienation of goods) (cc. 1254, §1; 1255). In fact, the Code has sought to emphasize some canons governing administrators because of the particular importance of these canons. However, notwithstanding this reference to canons 1281-1288, no commentator denies that all the pertinent canons in Book V also apply to the functions of administrator of the goods of a parish. Hence, one would logically conclude that canon 532 should say that the *parochus* is to take care of the goods of the parish according to the applicable canons of Book V.²¹⁶

Commenting on the proper application and interpretation of canon 532, De Paolis points out three misleading hypotheses, which have no foundation, and are unsustainable since they are based on an erroneous theory:

1. Some authors identify legal representation as the same thing with administration of the goods of the parish; they cannot even imagine a situation whereby the pastor [*parochus*] does not directly administer the goods of the parish, and that the particular law can envisage such hypothesis. [Since this view is based on an erroneous theory, it is unfounded].

²¹⁵ See V. DE PAOLIS, “Il consiglio parrocchiale per gli affari economici e i beni patrimoniali della parrocchia,” in R. FUNGHINI (ed.), *La parrocchia*, Città del Vaticano, Libreria editrice Vaticana, 1997 (= DE PAOLIS, “Il consiglio parrocchiale per gli affari economici”), p. 285.

²¹⁶ See *ibid*; see COCCOPALMERIO, *De paroecia*, p. 204; see RENKEN, *Particular Churches*, p. 267, fn. 88.

2. Others equate the responsibility for administration with that which is a consequence of the role of vigilance, a function that is proper to the superior, with administrative responsibilities, which are proper to the finance officer. The pastor [*parochus*] then being the superior must necessarily be the actual administrator of the goods of the parish. [Even this argument is founded on an erroneous basis and it is, therefore, unsustainable].
3. Some others make reference to canon 1289 which forbids the administrators of goods to relinquish their duty arbitrarily. However, the resignation is arbitrary if it is done contrary to the law or against the will of the superior. Such resignation would leave the juridical person without an administrator, which will consequently expose the goods of the juridical person to danger.²¹⁷

Moreover, canon 537, in making reference to canon 532, seems to establish the juridical representation of the *parochus* as well as his ultimate responsibility for the administration of goods, but it does not refer to direct and actual administration. Therefore, there is a possibility of delegating the administration of parish goods to a person other than the *parochus* (cf. c. 1282).²¹⁸ Unlike juridical representation, which is personally exercised by the *parochus*, he can entrust the direct management of the goods to another person who is a cleric or a lay person (cf. c. 1282), whose functions would be similar to those entrusted to the diocesan finance officer who serves under the supervision of the diocesan bishop (cf. c. 494, §3).²¹⁹ In the present context, the

²¹⁷ “(1) Alcuni autori, identificando rappresentanza legale con amministrazione, non riescono neppure ad immaginare o concepire che il parroco non amministri direttamente i beni della parrocchia, e che comunque il diritto particolare possa prevedere una tale ipotesi. Tale tesi, proprio perché poggia su una teoria erronea non ha alcun fondamento. (2) Altri identificano responsabilità circa l'amministrazione o di vigilanza, compito proprio del superiore, con responsabilità amministrativa, propria dell'economo. Essendo il parroco superiore ne consegue che egli debba essere anche amministratore effettivo dei beni della parrocchia. Anche tale tesi poggia su basi erranee e pertanto è insostenibile. (3) Qualche altro si appella al can. 1289, che proibisce di abbandonare arbitrariamente l'ufficio o l'incarico di amministratore. Ma una dimissione è arbitraria se fatta contro il diritto o contro la volontà del superiore. Tale dimissione comporta che la persona giuridica si ritrovi senza amministratore, con la conseguenza che i suoi beni siano esposti al pericolo” (DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” pp. 285-286, English translation in P.K. IJASAN, *The Parish Finance Council According to Canon 537 of the 1983 Code of Canon Law and its Implementation in Nigeria*, JCD thesis, Romae, Pontificia Università della Santa Croce, 2010 [= IJASAN, *The Parish Finance Council*], pp. 94-95).

²¹⁸ See DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 286.

²¹⁹ See SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1331; see RENKEN *Particular Churches*, p. 267. For instance, in assisting the *parochus* in his administration and protection of parish property, an office of parish finance officer which exists in various parishes, can be regulated by diocesan particular law (see GREEN, “Shepherding the Patrimony of the Poor,” pp. 732-734). The office of parish finance officer will be discussed in detail in the fourth chapter of this thesis.

parochus is sometimes assisted by a parish finance officer in fulfilling this responsibility under his supervision.

Moreover, the Code does not envision that the *parochus* exercises the role of the administrator on his own; it specifically requires a parish finance council to assist him in the administration and protection of the goods of the parish (c. 537). To carry out this task, he has also the help of the vicar forane or dean according to canon 555, §1, 3°. The canon states that the vicar forane has the responsibility to ensure that “ecclesiastical goods are administered carefully” in parishes. The members of the parish finance council can assist the *parochus* in protecting the parish property without prejudice to the discipline of canon 532 which dictates that only the *parochus* is the administrator of its ecclesiastical goods.²²⁰ The parish finance council itself does not have the responsibility of administering the parish property; rather, it is the personal responsibility of the *parochus* alone.²²¹ Moreover, any civil determination about the parish and its goods must reflect the fact that the *parochus* alone is to represent the parish and to see to it that parochial goods are administered and protected according to the norms of canon law and civil law. In addition, diocesan particular law may address the civil involvement of a *parochus* on behalf of the parish.²²²

²²⁰ The wording of canon 537: firstly, “*parocho [...] adiutorio sint*,” makes it clear that the parish finance council is not an “administrative council,” but rather, its purpose is to assist the *parochus* in the administration of the goods of the parish; secondly, invoking canon 532 (“*firmiter praescripto can. 532*”) also confirms that the administration of the parish rests with the *parochus* who is the only administrator of the parish. Indeed, canon 537 does not compromise the administrative role of the *parochus* in the administration and the protection of the goods of the parish (c. 532) (see F. COCCOPALMERIO, “Quaestiones de paroecia in novo codice,” in *Periodica*, 73 [1984], pp. 403-404).

²²¹ See RENKEN *Particular Churches*, p. 267.

²²² See *idem*, “Commentary on Canons 515-544,” p. 704. The civil recognition of the parish and its goods will be studied in detail in the third chapter of this thesis.

Before taking canonical possession of the office (see c. 527, §1), the priest chosen to be the *parochus* must do two things: firstly, he must take an oath of fidelity in the presence of the ordinary or his delegate to administer the temporal goods of a juridic person well and faithfully (c. 1283, 1°):

[...] I shall carry out with the greatest care and fidelity the duties incumbent on me toward both the universal Church and the particular church in which, according to the provisions of the law, I have been called to exercise my service [...] I shall follow and foster the common discipline of the whole Church and I shall observe all ecclesiastical laws, especially those which are contained in the Code of Canon Law [...].²²³

Secondly, the *parochus* is to prepare and sign an accurate and clear inventory of immovable property, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal, and to review any inventory already made. He is to preserve one copy of this inventory in the archive of the parish and another in the archive of the curia. He is to note in each copy any change in the parish patrimony (c. 1283, 2°-3°).²²⁴

After he takes canonical possession of his office, he cannot on his own initiative renounce his canonical responsibility for the administration and protection of the parochial goods; should he do so arbitrarily, and if this results in grave harm to the parish, then, he is bound to make restitution (c. 1289). Hence, the *parochus*, as an administrator of the parochial goods, is always bound to fulfill his function with the diligence of a good house holder (c. 1284, §1) in the name of the Church, and according to the law of the Church (c. 1282).²²⁵

²²³ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Oath of Fidelity on Assuming an Office to Be Exercised in the Name of the Church “Iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo,” 1 March 1989, in AAS, 81 (1989), pp. 106 and 1169; reprinted in AAS, 90 (1998), pp. 543-544, English translation in *CLD*, vol. 12, pp. 561-562; see also in *CLSA Comm2*, p. 1854.

²²⁴ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 493.

²²⁵ See *ibid.*

Conclusion

Until the fifth century bishops possessed the principal responsibility for the management and protection of church property. Nonetheless, it was not uncommon that a Christian community sometimes owned property in its own name since Roman law permitted the local church to be a juridic person. Since the period of proprietary churches, the parish has been regarded as a benefice and the *parochus* as the administrator of the benefice. In the twelfth century, due to the Gregorian Reform, when actual ownership of church property returned to church authorities, bishops asserted their authority either to accept the presentation or freely to appoint the *parochus*, the office holder, who became the beneficiary of the benefice.

The 1917 Code regarded the parish as a benefice, which was constituted as a juridic entity (*CIC/17*, c. 1409), and also considered as a moral person (cf. *CIC/17*, c. 99). However, since the *parochus* was not the owner of the benefice, but only its administrator, he had the right only to the income from the benefice with the duty to protect it, but not the right to alienate the property without the legitimate consent of the competent ecclesiastical authority. The 1983 Code makes a radical change in the notion of the parish and regards it no longer as a benefice but defines it as a community of the faithful and as a juridic person (c. 515, §§1, 3).

The constitutive essential elements of the parish as a community of the faithful (c. 515, §1) establish its hierarchical relationship, since “the community” (which is a pastorally hierarchical part within the organizational structure of the diocese) and “the *parochus*” (who is the hierarchical link with the diocesan bishop) essentially constitute the juridical structure of the parish. Since the parish community is a pastoral structure established by the diocesan bishop, the pastoral care of the parish is carried out under his authority, apart from which no one can carry out the pastoral care of the souls of the parochial community.

Once a parish is juridically erected, it is a public juridic person *ipso iure* (c. 515, §3). It is a subject of rights and obligations in canon law (c. 113, §2). Its goods are ecclesiastical goods (c. 1257, §1) governed by the applicable norms of Book V of the Code, particular law, and applicable statutes. It should also avail itself of civil juridic personality in order to guarantee the civil validity of its patrimonial acts and to protect its goods. As a public juridic person, it functions in the name of the Church (*nomine Ecclesiae*). Its legal representative (c. 118) and the administrator of its goods (c. 1279, §1) is its *parochus* (c. 532). He is assisted in this by the parish finance council (cc. 537; 1280). Since the *parochus* holds the ultimate responsibility for the administration and protection of the parish goods, this responsibility is in no way altered when the direct administration of parish goods is delegated to a parish finance officer or when supported by the parish finance council. Although the parish can legitimately be suppressed, or significantly modified (extinctive union) (c. 515, §2), it is perpetual by its nature (c. 120, §1).

As a public juridic person, the parish has the right to possess (c. 1256), protect, and use its goods according to the proper purposes of temporal goods of the Church (cc. 114, §2; 1254, §2) but not in the spirit and logic of profit and accumulation. As the *parochus* is not the owner of the parish property, his relationship to the parish as a public juridic person is that of responsible stewardship. All juridical transactions or contracts relating to the acquisition, administration, or alienation of temporal goods placed by the *parochus* are not administrative acts of executive power of governance; instead, they are juridic acts of administration which are not public juridic acts of power of governance.

Since the *parochus* is the administrator of the parish goods (cc. 532, 1279, §1), he is to carry out the four fundamental rights or functions of the juridic person, namely to acquire, retain, administer, and alienate its temporal goods (cc. 1254, §1; 1255). Moreover, *parochi* are subject

to all pertinent prescriptions of Book V of the Code binding all administrators of ecclesiastical goods. The law itself identifies the duties incumbent upon each *parochus* as administrator (cc. 1282-1289); a serious violation of these duties could even constitute a cause for removal from office (cf. c. 1741, 5°). As an administrator of the parish goods, he must work under the supervision of the diocesan bishop or ordinary (c. 1276, §1). Finally, the *parochus* as an administrator is always bound to protect the parochial goods and to fulfill his function with the diligence of a good house holder (c. 1284, §1) in the name of the Church, and according to the law of the Church (c. 1282), which also includes their protection by civilly valid methods (c. 1284, §2, 2°).

CHAPTER TWO

THE ROLE OF THE *PAROCHUS* AND THE PARISH FINANCE COUNCIL IN THE PROTECTION OF THE TEMPORAL GOODS OF THE PARISH IN LIGHT OF CANONS 532 AND 537

Introduction

Canon 532 identifies the *parochus* as the “administrator” of the ecclesiastical goods of a parish. Moreover, canon 537 requires each parish to have its own parish finance council to assist the *parochus* in the administration of temporal goods of the parish. Therefore, it is necessary to analyse the role of the *parochus* as well as the role of the parish finance council in the protection of temporal goods. Since canon 532 establishes the *parochus* as the administrator of parish goods, the wording of the canon raises some fundamental questions vis-à-vis the *parochus*: how are the functions of an administrator of parish goods carried out? As mentioned in the previous chapter, does this canon oblige him only to administer the parish goods? Is he not also competent to acquire, retain, and alienate ecclesiastical goods as an administrator of a public juridic person, in light of canon 1255? If so, what are the legal norms that direct such an administrator of parish goods?

The answer as to how these functions of an administrator are to be carried out is to be found in a systematic analysis of canons 1281-1288 as prescribed in canon 532 and other applicable canons of Book V. In affirming the Church’s natural right to acquire, retain, administer, and alienate temporal goods, canon 1254, §1 identifies those acts as a basis for the functions of a *parochus* as administrator of parish goods. Hence, in order to understand better the role of the *parochus* as administrator in the protection of parochial property, this chapter will systematically study the development of canon 532, the extent of the authority of the *parochus* as

administrator of temporal goods of the parish, and also the provisions for diocesan assistance that can be given to the *parochus* as administrator of temporal goods of the parish.

Then, as far as canon 537 is concerned, we must note that it is an innovation in the 1983 Code. It binds every parish to have a parish finance council. In other words, the mind of the legislator is that the protection of parish goods is not the domain of the *parochus* alone. Rather, the members of the parish are given a role to assist in this task. Therefore, in order to analyse carefully the mind of the legislator on the eventual assistance of the parish finance council in the protection of its goods, this chapter will also systematically study the development of canon 537, the canonical foundations of the parish finance council, the role of the parish finance council as a collaborative structure in the protection of temporal goods of the parish. Finally, the chapter will offer a synthesis of the provisions of canons 532 and 537.

2.1 – The Development of Canon 532 of the 1983 Code

The study of canon 532 will first focus attention on its connection to the 1917 Code, and then will consider the initial discussion of the *Coetus de Populo Dei* on the need for this canon in the 1983 Code. It will next examine how the canon appeared in *schemata*, and, finally, it will review the promulgated text in order to understand better its background and foundation, and to recognize the *munera* of the *parochus* as administrator in the protection of parochial property.

2.1.1 – The Connection of Canon 532 with the 1917 Code of Canon Law

Canon 532 is a new canon in the 1983 Code. It does not as such have a predecessor in the 1917 Code. Since it is a new canon, the *fontes* do not refer to any source for canon 532 in the

1917 Code of Canon Law.¹ According to *CIC/17* canon 451, §1, the *parochus* could be either a priest or a moral person, e.g., an ecclesiastical corporation, a chapter, or a religious institute, etc., and a *parochus* had a parish in his own right (*in titulum*).² The phrase “*in titulum*” may be translated “with rightful possession designating the office, rights, and duties of the legal holder of the parish.”³ He is thus distinguished from a parochial vicar who, even when he has full parochial powers, has only the administration of the parish but not the title to the office of *parochus*.⁴ It is precisely because the *parochus* holds “title” to the parish as a benefice, that he automatically becomes its juridic representative and has the right to the revenue to which legitimate custom or legal taxation entitles him (*CIC/17*, cc. 463; 1507, §1).⁵ Hence, as previously stated, the benefice was connected with the person who held the title of *parochus*, so much so he was considered as the administrator of the benefice.

2.1.2 – The Initial Discussions of the *Coetus de Populo Dei*

In 1976, the *Coetus de Populo Dei* worked on the revision of canons 451-470 of the 1917 Code based on the teaching of the Second Vatican Council on *parochi*, as found in *Christus Dominus* no. 30, and it proposed new norms on parishes and *parochi*.⁶ The proposed norms *de*

¹ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex iuris canonici, fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano, Libreria editrice Vaticana, 1989, p. 151.

² See BOUSCAREN et al., *Canon Law*, p. 192.

³ WOYWOD, *A Practical Commentary*, vol. 1, p. 185.

⁴ See BOUSCAREN et al., *Canon Law*, p. 192.

⁵ Since canon 515, §3 dictates that each parish has a juridic personality which is the subject of rights and obligations in canon law (c. 113, §2), the representation in juridic affairs by the *parochus* is not automatic because he is not a legal title holder of the parish; its legal representation is therefore given to him by law (c. 118). This is a significant change from the 1917 Code, which is reflected in canon 532 of the 1983 Code due to the revision of the benefice system (see JANICKI, “Commentary on Canons 515-557,” p. 428).

⁶ See *Communicationes*, 8 (1976), p. 23.

paroeciis et de parochis establish clearly that only a physical person can be the *parochus* who can represent the public juridic person of the parish in all juridic affairs; this serves as the foundation of the discipline of canon 532. Firstly, the *coetus* proposed that the parish is to be entrusted only to a *sacerdos* as *parochus*.⁷ Secondly, concerning the office of the *parochus*, a juridic person or a moral person cannot be a *parochus*; rather, only a physical person can be so appointed.⁸ Consequently, when a parish is entrusted to a clerical religious institute or a clerical society of apostolic life, one *sacerdos* is to be its *parochus*; or, when the parish is entrusted to a group of priests, one of them should be a moderator.⁹ Thirdly, when a group of priests (*coetus sacerdotum*) assumes the parochial office, the text made it clear that such a group of priests is not a juridic person. They are individual priests who assume the joint pastoral care of the parish *in solidum*. However, the moderator alone represents the parish or parishes entrusted to the group in juridic affairs.¹⁰

⁷ “De ipsa paroecia inde proponitur notio quae sequitur: est certa quae in Ecclesia particulari constituitur populi Dei portio, cuius cura pastoralis, sub auctoritate Episcopi dioecesani, committitur *uni sacerdoti, paroeciae parcho*” (ibid) [emphasis added].

⁸ In this regard, Huels explains: “Under the law of the 1917 Code, a juridic (moral) person could hold title to certain offices while a designated physical person exercised the office on behalf of the juridic person. Also, benefices were offices that had juridic personality, which led not a few canonists to conclude that all offices were juridic persons by nature. These practices and ideas are *alien to the modern codes*, even if they continue to be discussed by some authors. *Only a physical person [persona physica] can acquire and exercise an office*” (J.M. HUELS, “Towards Defining the Notion of ‘Office’ in Canon Law,” in *The Jurist*, 70 [2010], p. 430) [emphasis added].

⁹ “Normae propositae de parochis singulis: Secundum ius recognitum quod proponitur, persona iuridica seu moralis non potest esse parochus. In iure Codicis Iuris Canonici (can. 452) potest, de indulto Apostolicae Sedis, paroecia personae morali uniri, ita ut ipsamet persona iuridica sit parochus. Regula autem iuris recogniti est ut *sola persona physica possit esse parochus*. Hac autem norma non impeditur quominus quaedam paroecia alicui Instituto vitae consecratae aut Societati clericorum committatur, sed id ea tantum lege fieri potest ut *unus sacerdos sit paroeciae parochus*, aut, si pluribus insimul committatur, *Moderator*” (*Communicationes*, 8 [1976], p. 25) [emphasis added].

¹⁰ “Normae propositae de coetu sacerdotum: Ceterum talis coetus non est persona iuridica. Sunt ergo singuli sacerdotes, qui autem insimul seu coniuncti eandem curam assumunt, in solidum officiis. [...] Moderator, qui solus etiam in omnibus negotiis iuridicis personam gerit paroeciae aut paroeciarum coetui commissarum” (ibid., pp. 29-31).

Hence, the norms proposed by the *coetus* concerning parishes and *parochi* made it clear that a parish is to be established as a juridic person *a iure* (c. 515, §3), whose pastoral care is entrusted in a stable manner only to a physical person who is to hold the office of *parochus*. Furthermore, while explaining the duties of the parochial office (*officium docendi, officium sanctificandi, officium regendi*), the *coetus* laid the foundation for canon 532 by expressly stating that one of the duties of the *officium regendi* of the *parochus* is to represent the person of the parish in all juridic affairs in accordance with the norm of law. This became canon 532 in the promulgated Code.¹¹ The second provision of the promulgated canon, which establishes the *parochus* to be the administrator of parish goods, was added in the *schema* based on the general principle according to canon 1279: “the administration of ecclesiastical goods pertains to the one who immediately governs the juridic person to whom the goods belong.” However, the application of this principle in relation to the *parochus* and the parish was not formally discussed by the *coetus* dealing with the issue, even though it was incorporated more generally into canon 1279 (*circa immediatum bonorum administratorem profertur novum principium generale*).¹²

2.1.3 – The 1977 Schema

The 1977 *schema* canon 366 states: “In all juridic affairs the *parochus* represents the parish according to the norm of law; he is to take care that the goods of the parish are administered according to the norm of canons 25 to 33 of the section on ecclesial patrimony.”¹³

¹¹ “Officii regendi ratione, [...] statuitur tandem etiam in omnibus negotiis iuridicis parochum personam gerere paroeciae, ad normam iuris” (ibid., p. 27).

¹² See *Communicationes*, 5 (1973), p. 97.

¹³ “In omnibus negotiis iuridicis parochus personam gerit paroeciae, ad normam iuris; curet ut bona paroeciae administrentur ad normam cann. (De iure Ecclesiae patrimoniali, cann. 25-33)” (*The 1977 Schema*, p. 140; *Communicationes*, 13 [1981], p. 284).

A keen observation on this draft canon would indicate that it contains two provisions: a) the *parochus* is the legal representative of the parish; b) the *parochus* is the administrator of the ecclesiastical goods of the parish. Arguably, it seems that these two provisions are redundant or superfluous because they have been adequately legislated elsewhere in the 1983 Code. Firstly, canon 118 specifies that the representation of legal persons is established by law (universal, particular, statutes), and canons 515, §1 and 519 clearly identify the *parochus*, its proper pastor, as the concerned physical person to represent the parish in question. Secondly, canon 1279, §1 sets forth a general principle that the administrator of ecclesiastical goods is “the one who immediately governs the person to which the goods belong.” Hence, the designation of the *parochus* as administrator of parish goods as per canon 532 is merely a specification of this general principle. An exception to this principle can be made by particular law, the statutes of a public juridic person, or by lawful custom; however, no particular law or statute can derogate from universal law (c. 135, §2). Neither canon 532 nor any another canon on parishes and *parochi* contains an express provision for particular law to provide for the contrary (c. 6, §1, 2°), and no custom contrary to current law obtains the force of law until it has been observed continuously for thirty years by a community intending thereby to introduce a law (cc. 25-26).¹⁴

2.1.4 – The 1980 Schema and the 1981 Relatio

The 1980 *schema* canon did not introduce any substantial change in the content or in the words or the canon; however, numerically canon 366 in the 1977 *schema* became canon 471 in the 1980 *schema*, and the prescribed canons 25-33 of the *schema De iure Ecclesiae patrimoniali*, which are to be observed by the administrator of parish goods as per canon 366, also changed

¹⁴ See KENNEDY, “Commentary on Book V,” p. 1481.

numerically into canons 1232 to 1239.¹⁵ On 9 May 1980, the *Coetus de Populo Dei* rejected a proposal from a consultative organ that particular law could remove juridic representation of the parish from its *parochus*.¹⁶ In the 1981 *Relatio*, moreover, the Secretariat rejected a proposal for the addition of the words “...and according to the norm of particular law” (*et ad normam iuris particularis*) in order to take into account the various circumstances of each nation. It responded that the proposed addition does not seem necessary because the canon says, “according to the norm of law” which can also be particular law. In addition, canons 1232-1239 often refer to particular law.¹⁷

2.1.5 – The 1982 Schema

The 1982 *Schema* canon did not change the 1980 *schema* text and the text remained the same as in the previous *schema*. However, canon 471 in the 1980 *schema* became canon 532 in the 1982 *schema*; and the reference to canons 1232 to 1239 also changed into canons 1281 to 1288.¹⁸ The canon then remained the same up to the promulgated text of the Code of Canon Law.

¹⁵ See *The 1980 Schema*, p. 114.

¹⁶ See *Communicationes*, 13 (1981), p. 284.

¹⁷ See *Communicationes*, 14, (1982), p. 225; see PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab Em. mis atque Exc. mis Patribus Commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis*, Città del Vaticano, Typis polyglottis Vaticanis, 1981 (= *Relatio*), p. 127.

¹⁸ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici, Schema novissimum post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum*, Civitate Vaticana, Typis polyglottis Vaticanis, 1982 (= *The 1982 Schema*), p. 99.

2.1.6 – Summary

The aforementioned study on the development of canon 532 reveals that no change seems to have been occurred in its various drafts. The Pontifical Commission for the Revision of the Code of Canon Law made it clear that the parish is to be established as a public juridic person (c. 515, §3) and it is to be entrusted only to a single physical person, namely the *parochus*, who is to represent it in all juridic affairs. Canon 532 attributes two functions to the *parochus* as the canonical administrator of the parish.¹⁹ Firstly, that of legal representative of the parish in all juridical affairs; this is a logical parallel to the responsibility of the diocesan bishop for the entire diocese (cf. c. 393). Secondly, the function of the administrator of parish goods is attributed to the *parochus*, which is the consequence of the capacity of the parish as a juridic person to acquire, retain, administer, and alienate temporal goods (cf. c. 1255). It was remarked that these two provisions might seem redundant in the sense that they have been duly legislated in canons 118 and 1279, §1. However, the placement of this canon under “Parishes, *Parochi*, Parochial Vicars” is important in order to emphasize the role of the *parochus* as legal representative and administrator of ecclesiastical goods of the parish and to underscore the newness and significant change from the 1917 Code of Canon Law.

2.2 – The Extent of the Authority of the *Parochus* as Administrator of Ecclesiastical Goods

Canon 532 establishes that the *parochus* is the administrator of the goods of the parish. Canon 1279, §1 reinforces the point that the *parochus* who immediately governs the parish is the only administrator (*l'amministratore unico*) who is responsible to protect the goods of the parish

¹⁹ See SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1331.

according to canon law and civil law.²⁰ Canon 1255 empowers him all the more as administrator of the public juridic person to carry out acts relating to acquiring, retaining, administering, and alienating temporal goods according to the canons of Book V.²¹ Hence, this section will explore the extent of the authority of the *parochus* as administrator in placing juridic acts of acquisition, ordinary and extraordinary administration, and alienation of the temporal goods of the parish.

2.2.1 – The Acquisition of Goods by the *Parochus*

“Acquisition means taking title of temporal goods. Title may consist in the right to ownership in the strict sense and also in other rights or obligations by other subjects.”²² The right of a parish to acquire goods is basically limited by the proper purposes of temporal goods (c. 1254, §2).²³ In acquiring temporal goods, the *parochus* must be aware of at least some fundamental principles governing the acquisition of goods by just means, e.g., subsidies, bequests, endowments, purchases, etc. Firstly, he is bound by the general norm: offerings given to the *parochus* as administrator are presumed to be offerings given to the parish itself, not to him personally, unless the contrary is evident from the donor (c. 1267, §1). Secondly, he is to respect the general rule: “Offerings given by the faithful for a certain purpose can be applied only for that same purpose” (c. 1267, §3). Thirdly, he needs a just cause to refuse an offering and requires the permission of the local ordinary to refuse a major gift and to accept an offering

²⁰ See L. MISTÒ, “La gestione amministrativa della parrocchia e la questione della perequazione tra gli enti ecclesiastici,” in J.I. ARRIETA (ed.), *Enti ecclesiastici e controllo dello Stato: Studi sull’Istruzione CEI in materia amministrativa*, Venezia, Marcianum Press, 2007 (= MISTÒ, “La gestione amministrativa della parrocchia”), p. 89.

²¹ See F.R. AZNAR GIL, “El cuidado y la administración de los bienes temporales de la parroquia,” in *Revista española de Derecho canónico*, 66 (2009), p. 617.

²² D. TIRAPU, “Commentary on Canons 1259-1272,” in *Exegetical Comm*, vol. IV/1, p. 44.

²³ See TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” pp. 44-45.

burdened by a modal obligation or condition (c. 1267, §2).²⁴ Fourthly, he is to observe the secular legislation applicable in the territory (cf. c. 1259), etc.²⁵ The Code mentions several means whereby the *parochus* who is a legally capable person may lawfully acquire temporal goods on behalf of the parish,²⁶ and thereby places the juridic act of entering into agreements by accepting temporal goods. In effect, these temporal goods then become ecclesiastical goods (c. 1257).

1. Free-will Offerings of the Faithful

The parish has the right to require temporal assistance from the Christian faithful to fulfill its proper purposes (cf. cc. 1259-1261, §1) during or outside liturgical celebrations.²⁷ In the same way, the faithful have the freedom to donate their temporal goods for the benefit of the parish in general (cf. c. 1261) or for a specific purpose (cf. c. 1267, §3). Moreover, they have an obligation to provide for the needs of their parish (see cc. 222, §1; 1254, §2).²⁸ In this regard, the diocesan bishop, in an appropriate manner, is bound to admonish and urge the faithful about their obligation of material support (c. 1261, §2). This is a specification of the general responsibility of the diocesan bishop to urge the participation and assistance of the faithful in the various works

²⁴ If a modal obligation undertaken at the time of accepting a gift is broken, it does not result in reversion of the gift to the donor, whereas breach of a conditional gift results in a reversion of ownership to the donor (see KENNEDY, "Commentary on Book V," p. 1469).

²⁵ See RENKEN, "The *Parochus* as Administrator of Parish Property," p. 497; see MORRISEY, "Acquiring Temporal Goods for the Church's Mission," p. 590.

²⁶ See RENKEN, "The *Parochus* as Administrator of Parish Property," pp. 496-503; see J.G. GRENÓN, "El párroco y la administración de los bienes eclesíasticos," in *Anuario argentino de Derecho canónico*, 11 (2004), pp. 409-416; see TESTERA, "The Temporal Patrimony of the Parish and Its Administration," pp. 45-47; see AZNAR GIL, "La administración de los bienes temporales de la parroquia," pp. 169-170.

²⁷ See AZNAR GIL, "El cuidado y la administración de los bienes temporales de la parroquia," p. 623.

²⁸ See GRENÓN, "El párroco y la administración de los bienes eclesíasticos," p. 410; see TESTERA, "The Temporal Patrimony of the Parish and Its Administration," p. 45.

of the apostolate (c. 394, §2).²⁹ The *parochus* is to be aware that the free-will offering is a common means of acquiring temporal goods for the “regular church support.” For instance, the customary offertory at Sunday Mass, the so-called “Sunday collections” which includes parish envelopes, is the ordinary way the faithful support their local parish, and to which the Code does not make any specific reference in Book V.³⁰

2. Special Appeals in the Parish

Canon 1262 reads as follows: “The faithful are to give support to the Church by responding to appeals and according to the norms issued by the conference of bishops.” Since the term “Church” in Book V signifies any public juridic person in the Church (c. 1258), it certainly includes parishes which are public juridic persons *a iure* (c. 515, §3).³¹ The faithful may offer their donations either freely (c. 1261, §1) or upon the request of the competent authority (c. 1262); for instance, the *parochus* can make a special appeal for the renovation of the parish church in his parish by observing the norms issued by the conference of bishops.³²

²⁹ See KENNEDY, “Commentary on Book V,” p. 1461.

³⁰ See J.A. CORIDEN, *An Introduction to Canon Law*, New York, Paulist Press, 1990, p. 166; see RENKEN, *Church Property*, p. 71. Although the Church in many parts of the world freely exercises this right to be supported by its faithful (c. 1261, §1), and the faithful enjoy the right to donate freely to the Church, this situation differs in some countries; for instance, the Church in Germany accepts the cooperation of the state in exercising its right to material support (see J.N. PERRY, “Support for the Church,” in *CFH*, pp. 72-73).

³¹ See KENNEDY, “Commentary on Book V,” p. 1461.

³² Particular law for the USA concerns special fund-raising campaigns for parishes (and other public juridic persons in the Church); but it does not address so-called “regular church support” (see UNITED STATES CONFERENCE OF CATHOLIC BISHOPS [= USCCB], Complementary Norms for Canon 1262 on Fund Raising Appeals, 2 May 2007, in RENKEN, *Church Property*, pp. 73-75; see also RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 498), while particular law for Canada implies an application to “regular church support” (see CANADIAN CONFERENCE OF CATHOLIC BISHOPS [= CCCB], Complementary Norm for Canon 1262, 28 June 1989, in *Complementary Norms to the 1983 Code of Canon Law*, Ottawa, CCCB Publications, 1996, pp. 102-105).

3. Sacramental Offerings of the Faithful

The *parochus* is to be aware that the so-called “stole fees” are a means to acquire parochial goods (c. 1264, 2°).³³ “A ‘stole fee’ is the standard offering expected of the faithful on the occasion of a special liturgical celebration, especially baptisms, weddings, and funerals”³⁴ except Mass offerings (cc. 945-958).³⁵ The provincial bishops are competent to set the amount for these offerings in a provincial council or meeting (c. 1264).³⁶ The diocesan bishop, after having heard the presbyteral council, is competent to determine the allocation of these offerings and the remuneration of clerics who are fulfilling parochial functions (c. 531). The faithful may give more or less than the required amount, but the ministers of sacraments and sacramentals are not to demand an amount greater than the one established by the provincial bishops. All stole fees given to *parochi*, other priests, deacons, and lay ministers who perform parochial functions

³³ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 499; see TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” pp. 45-46.

³⁴ HUELS, *The Pastoral Companion*, p. 414.

³⁵ Mass offerings are not ecclesiastical goods of the parish since they do not correspond to the public juridic person of the parish; rather, they belong to physical persons who are *parochi* or other priests who celebrate Masses. Each priest has a right to keep Mass offerings in accord with the provisions of canons 945-958 (see GRENÓN, “El párroco y la administración de los bienes eclesíasticos,” pp. 411-412; see MISTÒ, “La gestione amministrativa della parrocchia,” p. 90; see HUELS, *The Pastoral Companion*, p. 415). However, one would argue that “Mass offerings are also a means to acquire parochial goods even though such parochial mass offerings are held by the parish only until such time as they are given to the priest who fulfills the Mass intention” (RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 500).

The *parochus* is also to be aware that Mass offerings held by the parish are not subject to diocesan taxation. The CCEO explicitly states that “no tax can be imposed, on the offerings received on the occasion of the celebration of the Divine Liturgy” (CCEO, c. 1012). Moreover, in this regard, PCLT clarifies that the offerings made for the celebration of Masses from a physical person cannot be taxed by the diocesan bishop (cf. c. 1263), and are regulated according to the dispositions of canons 945-951: “que las ofertas por las intenciones de Misas, por ser ‘entradas’ de una *persona física*, no pueden gravarse con un tributo ordinario y se regulan según su propia normativa (cf. cc. 945; 951)” (PCLT, Decree *De recursu super congruentia inter legem particularem et normam codicalem*, p. 23). However, some hold that interest accrued on Mass offerings need not be used for Masses but becomes an ecclesiastical good of the parish which is then understood to be ordinary parish income; it is therefore subject to diocesan taxation (see A. GOLDEN, “Mass Offerings Held in an Interest Bearing Account,” in J.J. KOURY and S.M. VERBEEK (eds.), *CLSA Advisory Opinions*, Washington, DC, CLSA, 2007, p. 78).

³⁶ The CCEO empowers the eparchial bishop to determine the fees for the various acts of the power of governance, to establish the offerings for the sacramental and liturgical celebrations (see CCEO, c. 1013, §1).

are to be turned over to the parochial account (c. 531).³⁷ It is worth noting here that the ministers are also to make sure that the sacraments are available to the needy and the poor (c. 848).³⁸

4. Special Collections for Parochial Needs

Special collections are ordered by the local ordinary for parochial or other projects which may be diocesan, national, or universal, and which do not require any prior consultation at the diocesan level as in the case of imposing a diocesan ordinary or extraordinary tax (cf. c. 1263).³⁹ However, the special nature of this collection implies that the local ordinary would have recourse to it only with moderation.⁴⁰ If, indeed, he does order such a collection, then the parish would be obliged to cooperate with him. A special collection is taken up in all churches or oratories regularly open to the service of the faithful, including those belonging to religious institutes, for specified parochial projects (c. 1266).⁴¹ However, the *parochus* is to be aware that any special collection for parochial needs requires the prior order of the local ordinary.⁴² Renken explains that sending the special collection for the parochial purpose to the diocesan curia is unnecessary:

It would seem that, if a special collection is designated by the local ordinary for a given parish, there would be no need to send it to the diocesan curia merely to have it immediately returned to the parish. Revenue for the parish generated by the special collection would be reported with the annual parish financial report to be sent to the diocesan curia (see c. 1287, §1).

³⁷ See TIRAPU, “Commentary on Canons 1259-1272,” p. 61; see HUELS, *The Pastoral Companion*, pp. 414-415.

³⁸ See RENKEN, *Church Property*, p. 114.

³⁹ Kennedy comments: “the placing of a mandatory quota upon a collection (e.g., requiring a parish to return a designated amount) transforms a collection into a tax, subjecting it to the consultative and other requirements of canon 1263” (KENNEDY, “Commentary on Book V,” p. 1469; see R.L. KEALY, “Taxation, Assessment and Extraordinary Collections,” in *CFH*, p. 86).

⁴⁰ See MORRISSEY, “Commentary on Book V,” pp. 714-715; see *Communicationes*, 12 (1980), p. 405.

⁴¹ See GRENÓN, “El párroco y la administración de los bienes eclesíasticos,” p. 411.

⁴² The *CCEO* vests the eparchial bishop with the power to order special collections in the parish churches (see *CCEO*, c. 1014).

The special collections to be sent to the diocesan curia, therefore, would be those for diocesan, national, and universal projects.⁴³

Moreover, it is arguable that a multiplicity of mandated collections taken up during liturgical celebrations may become an obstacle to the primacy of spiritual concerns; and it may lead to frustration among the faithful, which could perhaps be avoided by a comprehensive plan, antecedent consultation with parish councils.⁴⁴

5. Insurance Claims for Parochial Property

If any insurance claim is made in case of loss or damage of ecclesiastical goods, the revenue from the claim becomes an ecclesiastical good of the parish (cf. c. 1284, §2, 1°).⁴⁵

6. Revenue through Loans and Mortgaging of the Parish Property

A parish may receive revenue through loans or placing a mortgage, with the obligation to repay it in time or risk liability or legal action (see c. 1284, §2, 5°).⁴⁶

7. Income from Leased Parish Property

Cafardi notes that “a lease is a contract from an owner of property to another party that grants exclusive possession of the property to the other party for a specified period of time in exchange for some consideration or payment. At the end of the lease, the exclusive right to possess the leased property reverts to the owner unless otherwise specified.”⁴⁷ If a parish leases its own property to others in order to acquire revenue, the *parochus* will acquire the proceeds on

⁴³ RENKEN, *Church Property*, p. 123, fn. 136; see idem, “The *Parochus* as Administrator of Parish Property,” p. 499, fn. 31.

⁴⁴ See KENNEDY, “Commentary on Book V,” p. 1468; see KEALY, “Taxation, Assessment and Extraordinary Collections,” p. 86.

⁴⁵ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 500.

⁴⁶ See *ibid.*

⁴⁷ N.P. CAFARDI, “Leasing Ecclesiastical Goods,” in *CFH*, p. 208; see MORRISEY, “Commentary on Book V,” p. 737.

behalf of the parish,⁴⁸ in which case, he is to observe the norms of the conference of bishops for the same matter, especially the permission to be obtained from competent ecclesiastical authority (c. 1297), and also the applicable civil law (c. 1290).⁴⁹

8. Earnings from the Investment of the Property

The earnings produced from investments (cf. c. 1284, §2, 6°) or from an already existing parochial stable patrimony (cf. cc. 1285; 1291) are ecclesiastical goods of the parish.⁵⁰

9. Pious Wills Offered to the Parish

“A pious will is a temporal good [gift] given for one or more pious causes”⁵¹ (cc. 1300-1301). It is basically a gift given to achieve a pious cause either by an *actus inter vivos* or by an *actus mortis causa* (c. 1300).⁵² Pious wills may be given to a parish; and once their transaction is legitimately complete, the assets become ecclesiastical goods of the parish; however, the ordinary has the right to be the executor of all pious wills whether *mortis causa* or *inter vivos* (c. 1301, §1).⁵³

⁴⁸ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 501.

⁴⁹ See GRENÓN, “El párroco y la administración de los bienes eclesíasticos,” pp. 412-413.

⁵⁰ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 501.

⁵¹ J.A. RENKEN, “Pious Wills and Pious Foundations,” in *Philippine Canonical Forum*, 10 (2008), p. 78. A pious cause is “anything done principally in consideration of God and a supernatural end to merit grace or glory with God, or in satisfaction for one’s own or another’s sins” (P.J. ZIELINSKI, “Pious Wills and Mass Stipends in Relation to Canons 1299-1310,” in *StC*, 19 [1985], p. 122).

⁵² When a gift is given *inter vivos* this means that ownership of property is irrevocably transferred to the pious cause, without any consideration of the death of the donor entering into the act. A gift given *mortis causa* is a transfer of ownership upon the death of the donor which may be achieved by two ways: (a) through a last will and testament, which is not contractual; and it need not be accepted by the beneficiary; it can be revoked as long as the testator lives; or (b) a gift in contemplation of death (*donatio mortis causa*), which is contractual (see c. 1290) and therefore must be accepted by the donee for it to be effective (see RENKEN, “Pious Wills and Pious Foundations,” p. 78).

⁵³ See GRENÓN, “El párroco y la administración de los bienes eclesíasticos,” p. 414.

10. Pious Trusts Given to the Parish as Trustee

A pious trust is a gift given by a donor (trustor) to a third party (trustee) who owns and administers it in order to apply its earnings and/or principal goods themselves for pious causes according to the intention of the donor.⁵⁴ It may be established either *inter vivos* or by last will and testament (c. 1302). The former is contractual and the latter is not. The parish may be the recipient of the donation given through a pious trust. Supposing a pious trust is entrusted to the parish as a trustee, the *parochus* on behalf of the trustee must inform the local ordinary of its goods and the terms for distribution. If the donor expressly forbids the trustee to inform the ordinary about it, and if the stipulations of the donor prevent the ordinary from exercising his canonical responsibilities as executor, then, the trustee/the parish cannot accept the gift; in other words, the parish cannot be the trustee (c. 1302, §1).⁵⁵

11. Non-Autonomous Pious Foundations Entrusted to the Parish

Morrisey explains that a non-autonomous foundation (c. 1303, §1, 2º)

is that which arises when a donation or bequest is made to an existing juridic person [public juridic person], e.g., a parish, a religious institute, in trust and on condition that annual income accruing would, on a long-term basis, be devoted to the specified purpose determined by the donor: 'to celebrate Masses, or to perform other determined ecclesiastical functions, or in some other way to fulfill the purposes' of piety, of the apostolate, or of charity (see c. 114, §2), e.g., to help fund an aspirant to the priesthood, to support the local branch of the St. Vincent de Paul Society, to promote a missionary endeavor, etc.⁵⁶

⁵⁴ See RENKEN, "Pious Wills and Pious Foundations," p. 88.

⁵⁵ If the trust is offered *inter vivos*, the donor may select to revoke the prohibition and permit the ordinary to be informed. If it is offered by a last will and testament, the refusal would frustrate the intention of the deceased donor. In this situation, the norm of canon 1301, §3 could possibly be invoked: "Stipulations contrary to this right of an ordinary attached to last wills and testaments are to be considered non-existent" (see *ibid.*, p. 89).

⁵⁶ MORRISEY, "Commentary on Book V," p. 742. The key difference between an autonomous pious foundation and a non-autonomous pious foundation is that an autonomous foundation [an endowment] is *itself* a juridic person (public or private) established by competent ecclesiastical authority whereas a non-autonomous pious foundation is *not* a juridic person, is a kind of pious trust entrusted only to a public juridic person but not to a private juridic person (see RENKEN, "Pious Wills and Pious Foundations," pp. 92-93). In fact, canon 1303 distinguishes between a foundation with personality (autonomous) and one without personality (non-autonomous). This is one of the principal novelties from the law of the 1917 Code in which a pious foundation never became a juridic person (see J.M.V. GARCÍA-PEÑUELA, "Commentary on Canons 1299-1310," in *Exegetical Comm*, vol. IV/1, p. 166; see BOUSCAREN et al., *Canon Law*, p. 853).

A non-autonomous pious foundation is an endowment; its earnings are used for pious causes intended by the donor. If a parish legitimately acquires a non-autonomous pious foundation, then the goods as well as the earnings from that foundation are ecclesiastical goods (c. 1257, §1).⁵⁷

All in all, since a parish required temporal goods in order to carry out its mission according to its proper purposes (cc. 114, §2; 1254, §2), the principal means identified in Book V⁵⁸ for the acquisition of goods by a parish would apply in the case.

2.2.2 – The Administration of Goods of the Parish

The administration of property is compared to the function of a government by Morrissey:

Just as the proper function of government is to strive for the well-being of persons and thus to help them achieve their purpose in life and in society, so too the administration of property consists in taking care that the property which has lawfully been acquired is preserved and is used for the purpose for which it was assigned.⁵⁹

In general, the administration of goods consists of three activities: “1) to preserve the goods owned; 2) to help them bear fruit; and 3) to apply these fruits to the purpose(s) for which the

Moreover, Renken differentiates a non-autonomous pious foundation from a pious trust: 1. A pious trust is received by a physical person or juridic person, but a non-autonomous pious foundation can be entrusted only to a public juridic person. 2. A pious trust may be fulfilled in a rather brief time, but a non-autonomous pious foundation lasts for a long time (as determined by particular law). 3. A pious trust does not require maintaining an endowment, but a non-autonomous pious foundation involves maintaining an endowment whose earnings are used to pursue a pious cause. Therefore, every non-autonomous pious foundation is a trust, but not every trust is a non-autonomous pious foundation (see RENKEN, *Church Property*, pp. 307-308).

⁵⁷ Since a non-autonomous pious foundation belongs to another public juridic person, in practical terms, it would be a long-term trust and be not necessarily perpetual; however, it may last perpetually or for a long period of time. Particular law is to determine its duration (see *ibid.*, p. 313; see D.J. WARD, “Bequests and Gifts to the Church Under the Code of Canon Law,” in *The Catholic Lawyer*, 30 [1986], pp. 277- 280).

⁵⁸ The Code also mentions two other means of acquiring temporal goods which may rarely occur: 1) prescription (cc. 1268-1270) which is “an acquisition of goods through holding them in good faith as if their owner for a long period of time determined by canon law and/or civil law” (see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 502, fn. 39); 2) a benefice which is an “income accruing from an endowment attached to an office” (*ibid.*). If it exists, it should be gradually eliminated (c. 1272). The parish may also obtain goods by other means, such as by way of a merger of parishes (see c. 121), and depending on local circumstances: rent, grants, etc. (see *ibid.*).

⁵⁹ MORRISSEY, “Commentary on Book V,” p. 719.

goods are owned.”⁶⁰ The *parochus* as administrator has the authority and the responsibility in canon law to administer the goods and finances of the parish in accord with the universal law, particular law, and applicable civil law.⁶¹ As a prudent administrator, before proceeding with an act of administration, he needs to know whether the parish has statutes which determine the limits of ordinary administration, or whether the diocesan bishop, after consulting the diocesan finance council, has fixed the limits of ordinary administration for parishes in the diocese.

D.J. Walkowiak notes that “an act of ordinary administration involves actions which are necessary for the day-to-day life of a public juridic person and for the regular maintenance of its property. The administrator of a juridic person subject to the diocesan bishop does not need any special authorization in order to carry out such acts.”⁶² Canon 1281, §§1-2 simply refers to “acts which exceed the limits and manner of ordinary administration,” but it does not define or give any criterion for determining which actions of an administrator are of an ordinary nature. Therefore, in light of the requirements for a valid act of extraordinary administration (c. 1281, §1), any routine act of administration for which an administrator does not need special authorization is the simplest criterion to determine an act of ordinary administration.⁶³ Canon 1284, by giving a general description of duties of the administrator, may serve as a guideline to

⁶⁰ RENKEN, *Church Property*, p. 147; see V. DE PAOLIS, *I beni temporali della Chiesa*, nuova edizione, Bologna, Edizione Dehoniane, 2011, pp. 190-191; see BOUSCAREN et al., *Canon Law*, p. 829.

⁶¹ See HUELS, *The Pastoral Companion*, p. 407.

⁶² D.J. WALKOWIAK, “Ordinary and Extraordinary Administration,” in *CFH*, p. 194; see F.G. MORRISEY, “Ordinary and Extraordinary Administration,” in *The Jurist*, 48, (1988), pp. 715-716.

⁶³ It is neither the amount of money nor even the nature of the act but the necessity of prior recourse to the higher authority or to another body before carrying out the act which will make the difference between an act of ordinary administration and an act of extraordinary administration (see MORRISEY, “Ordinary and Extraordinary Administration,” p. 716; see also AZNAR GIL, “El cuidado y la administración de los bienes temporales de la parroquia,” p. 640).

determine the scope of “the purposes and methods of ordinary administration.”⁶⁴ However, this canon does not differentiate juridic acts of ordinary administration from duties of an administrator which are not juridic acts inasmuch as they do not have any juridic effect(s). Therefore, as it was clearly established in the first chapter that an act of administration is a juridic act,⁶⁵ for clarity and canonical precision, acts of ordinary administration and duties of administrators will be separately identified according to Book V of the Code. Hence, this section will deal with duties of the *parochus* as administrator of the goods of the parish, acts of ordinary administration by the *parochus*, and acts of extraordinary administration by the *parochus*.

2.2.2.1 – Duties of the *Parochus* as Administrator of the Goods of the Parish

Parochi as administrators of parochial property are to carry out a number of duties or obligations on behalf of the parish. A grave neglect or violation of parochial duties which persists after a warning or a poor administration of temporal goods of the parish which cannot otherwise be remedied would constitute a cause for his removal from office (c. 1741, 4^o-5^o). The following are canonical duties expected of a *parochus* as administrator of the goods of the parish:

1. To update the parish inventory which he had prepared before he undertook his duties as administrator (see c. 1283, 3^o);⁶⁶

⁶⁴ Z. COMBALIA, “Commentary on Canons 1273-1289,” in *Exegetical Comm*, vol. IV/1, p. 114. Since carrying out acts within the general faculties of an administrator establishes a criterion for acts of ordinary administration, canon 1284 determines some of those acts which all administrators are obliged to fulfill with the diligence of a good father of a family (see F.R. AZNAR GIL, *La administracion de los bienes temporales de la Iglesia*, segunda edición revisada y ampliada, Salamanca, estudios 67, Publicaciones Universidad Pontificia, 1993, p. 381; see J.P. SCHOUPE, *Derecho patrimonial canónico*, Pamplona, Ediciones Universidad de Navarra, S.A, 2007, p. 157).

⁶⁵ See chapter I, p. 66, fn. 196.

⁶⁶ An important element to keep in mind in updating the inventory is to ascertain the ownership of all properties in the parish. In other words, by examining the parish inventory, and other financial records, one should be able to determine who owns goods that are located on the parish property (c. 1284, §2, 9^o) (see L.A. DiNARDO,

2. To be vigilant that the goods of the parish entrusted to his care are not lost or damaged in any way (c. 1284, §2, 1°);⁶⁷
3. To take care that the ownership of ecclesiastical goods of the parish is protected by civilly valid means (c. 1284, §2, 2°);⁶⁸
4. To observe the regulations of canon and civil law and the regulations imposed by a founder, donor, or legitimate authority, and be aware lest the nonobservance of the civil law result in harm to the parish (c. 1284, §2, 3°);⁶⁹
5. To keep well-ordered parish account books of income and expenses (c. 1284, §2, 7°);⁷⁰
6. To draw up an annual parish administration report (c. 1284, §2, 8°);⁷¹
7. To submit an annual parish financial report⁷² to the local ordinary who is to present it for the examination by diocesan finance council (c. 1287, §1);

“The Inventory of Property,” in *CFH*, p. 154). The diocesan bishop has a responsibility to see to the preparation and updating of inventories (see *Apostolorum successores*, no. 189, p. 208). Particular diocesan law may require an annual submission of an updated inventory of the goods of the parish together with the annual financial report. Furthermore, nothing prevents this inventory from being reviewed by the diocesan finance council or finance officer to assure the regular recordings of changes in stable patrimony and other goods (see c. 1283, 3°) (see RENKEN, *Church Property*, p. 233).

⁶⁷ “He [The diocesan bishop] should instill in pastors [*parochi*] and in those charged with the administration of goods a strong sense of responsibility for the preservation of these goods, taking adequate security measures so as to avoid theft” (*Apostolorum successores*, no. 189, p. 208).

⁶⁸ With regard to civilly valid methods, the third chapter will examine the parish corporation as a privileged means to protect parish property.

⁶⁹ Regarding the observance of laws, Alarcón admonishes that “all civil, administrative, commercial, fiscal, and other secular norms must be followed, since failure to do so could entail civil penalties, loss of goods, or of their value, the prescription of actions, the mandatory impositions of charges, costly juridical proceedings” (ALARCÓN, “Commentary on Book V,” p. 992).

⁷⁰ The Code also requires the *parochus* to keep a special book for Mass offerings (c. 958, §1) and to maintain another book for noting the individual obligations, their fulfillment, and the offerings of a non-autonomous pious foundation in a parish (c. 1307, §2).

⁷¹ Every diocese may develop a prescribed format describing the content of the annual report. The parish annual administration report at the minimum should detail “ordinary and extraordinary income, ordinary and extraordinary expenses, savings and loans, bank accounts, property sales and purchases, construction, demographic and sacramental statistics” (T.J. PAPROCKI and R.B. SAUDIS, “Annual Report to the Diocesan Bishop,” in *CFH*, p. 179).

⁷² Every diocese may require the use of a standard format for the annual financial report. Although the parish bookkeeper or the parish finance council may prepare the report, the *parochus* must approve it before it is sent to the local ordinary (see HUELS, *The Pastoral Companion*, p. 411). It would suffice if it contains a regular balance sheet, listing assets and liabilities, with the normal support documents (see MAIDA and CAFARDI, *Church*

8. To render a parish financial report to the faithful concerning the goods offered by them according to the norms of particular law (c. 1287, §2);⁷³
9. To prepare an annual parish budget of projected income and expenses (c. 1284, §3);⁷⁴
10. To protect in a suitable and safe archive the documents and legal papers on which depend the property rights of the parish, and to deposit authentic copies of them in the archive of the curia when this can conveniently be done (c. 1284, §2, 9°); etc.⁷⁵

Property, p. 72). The Code also requires an annual financial report for a non-autonomous pious foundation if a parish owns it (c. 1307, §1).

Moreover, Renken notes on the review of the annual financial report that the diocesan financial council may compare each new financial report from the previous year. It may note observance of civil and canon law on such matters as acts of alienation, extraordinary administration, just wages, insurance coverage, investment of surplus revenue, etc. It may also compare the budget proposed for the current year being reported and the budget proposed for the next fiscal year. After having reviewed the reports, the diocesan finance council will offer its comments to the local ordinary who may seek clarifications (see RENKEN, *Church Property*, p. 233).

⁷³ It is evident that diocesan particular law may prescribe the format and manner of presenting the report to the faithful. However, one of the most common formats would contain: “the year to date actual (actual income or expense), the year to date budget, and the year to date actual of the preceding year” (R.R. THOMAS, “Financial Reports to the Faithful,” in *CFH*, p. 170). The Code also requires an annual report to the faithful for a non-autonomous pious foundation if a parish owns it (c. 1307, §1). The report to the faithful concerns only those goods donated by the faithful (see c. 1287, §2), nonetheless, “financial transparency suggests giving the faithful a *complete* report of *all* revenue from *whatever* sources” (RENKEN, *Church Property*, p. 235) [emphasis in original]. In some instances, lack of financial reporting has not only discouraged the faithful from further participation, but “even served to cover up for a weak system of financial administration” (TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” p. 56). Moreover, “if public accounts are to be issued, it would be appropriate that the particular law specify that they may be audited accounts” (MORRISEY, “Commentary on Book V,” p. 730).

⁷⁴ Unlike a budget which is required for dioceses (c. 493), universal law does not mandate a budget for parishes but it is left to particular law to determine it (c. 1284, §3). It is usually required by diocesan particular law. The *parochus* and/or the book keeper prepares it and the parish finance council is consulted for its input (see HUELS, *The Pastoral Companion*, p. 411). A parish budget should reflect the proper purposes of the temporal goods of the Church; and hence it should be prepared “not just with a view to increasing income, meeting expenditures, and providing for unforeseen circumstances, but also in the light of the demands of social justice (see c. 1286) and in the light of one of the principal purposes of raising funds in the Church, namely to be able to perform the works of charity toward the needy (see c. 1254, §2)” (KENNEDY, “Commentary on Book V,” p. 1487).

⁷⁵ See HUBER, “Ecclesiastical Financial Administrators,” pp. 116-119; see TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” pp. 53-57; see MISTÒ, “La gestione amministrativa della parrocchia,” p. 90; see RENKEN, “The *Parochus* as Administrator of Parish Property,” pp. 503-506; see HUELS, *The Pastoral Companion*, pp. 409-410; see SCHOUPPE, *Derecho patrimonial canónico*, pp. 166-169.

2.2.2.2 – Acts of Ordinary Administration by the *Parochus*

Parochi as administrators are to carry out a number of juridic acts on behalf of the parish which are acts of ordinary administration for the day-to-day upkeep of the parish property. The following may be categorized as acts of ordinary administration:

1. To purchase insurance for the parish property (c. 1284, §2, 1°);⁷⁶
2. To collect goods and the income accurately and on time from debts, rents, interest, or dividends, or any other income of the parish according to its local circumstances (see c. 1284, §2, 4°);
3. To pay necessary bills for the ordinary maintenance of the parish such as paying vendors and service providers, etc;
4. To pay the interest due on a loan or mortgage in a timely manner (c. 1284, §2, 5°);⁷⁷
5. To pay a just and decent wage to employees in the parish (c. 1286, 2°);⁷⁸

⁷⁶ A *parochus* would be held to be seriously negligent in his administration if the parish church or parochial house, destroyed by fire, were found to have been inadequately insured (see MORRISEY, “Commentary on Book V,” p. 728). These insurance policies should assure the funds for the replacement value of the property, or to pay for amounts due because of a liability settlement or judgment, and should be periodically reviewed to keep pace with inflation. For that reason, the purchase of the insurance policy is to be undertaken by an individual familiar with the organization’s exposure to loss and should be accomplished with the assistance of knowledgeable professionals. For instance, in the USA, in order to take advantage of the expertise of the finance council, as well as economic advantages that come from the pooling of insurance, most of the dioceses have created comprehensive insurance programs (see J.A. FRANK, “Insurance and Ecclesiastical Goods,” in *CFH*, p. 217).

⁷⁷ The promulgated text of canon 1284, §2, 5° wisely substitutes the term “as soon as possible” (*citissime*) in the earlier draft with “in a timely manner” (*opportune*) thereby recognizing the economic prudence of retaining a debt at an advantageous interest rate in order to pay the debt (see *Communicationes*, 5 [1973], p. 98; see KENNEDY, “Commentary on Book V,” p. 1487; see RENKEN, *Church Property*, p. 215). Moreover, Renken notes that the *parochus* is to establish wisely a debt reduction schedule so that the debt itself is eliminated in a timely fashion (see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 504).

⁷⁸ To meet the need to provide decent remuneration to lay employees, *parochi* as administrators need to be attentive to “civil laws about pay; standards of fair and just pay; comparative pay data for key jobs” (W.P. DALY, “Remuneration for Church Employees,” in *CFH*, p. 57). With regard to the employee benefits, the Code prescribes that clergy are to receive adequate remuneration for their personal needs, services, and social security (c. 281, §§1-2). Lay persons who perform some ecclesiastical service permanently or temporarily are to receive decent remuneration for their personal and family needs, insurance, social security, and medical benefits (c. 231, §2). Moreover, if there is a conflict between civil law and canon law concerning rights of employees, canon law (or divine law) must prevail for the Church (see c. 22); for instance, *parochi* as administrators of ecclesiastical goods “are to observe meticulously civil labor and social policy, according to the principles handed down by the Church” (c. 1286, 1°) even when civil labor policy requires employee benefits for those in same-sex unions, abortion, contraceptives, etc. (see *ibid.*, pp. 58-59; see RENKEN, *Church Property*, pp. 228-231).

6. To purchase supplies;
7. To make necessary repairs;
8. To open regular bank accounts to facilitate financial transactions;
9. To accept ordinary donations (see c. 1267, §2) and to offer donations within the limits of ordinary administration for purposes of charity from moveable goods which do not belong to the stable patrimony of the parish (c. 1285);
10. To invest the money which is left over after expenses for the purposes of the juridic person of the parish with the consent of the ordinary (c. 1284, §2, 6°);⁷⁹
11. To pay the tax to the diocese if the diocesan bishop, after having heard the finance council and the presbyteral council, has imposed an ordinary tax or an extraordinary tax (c. 1263); or if he has imposed a seminary tax (c. 264, §§1-2);⁸⁰
12. To grant the remuneration of clerics who performed parochial functions of sacraments and sacramentals as determined by the diocesan bishop after he has heard the presbyteral council (see cc. 1264, 2°; 531); etc.⁸¹

2.2.2.3 – Acts of Extraordinary Administration by the *Parochus*

Acts of extraordinary administration may be defined as “actions which because of their nature, importance, or financial value, exceed the limits of the routine administration of the goods and activity of a juridic person. Such acts often require the permission of a higher authority.”⁸² If the *parochus* performs an act of extraordinary administration without written

⁷⁹ The requirement of consent for the investment of surplus funds, like the other prescripts in canon 1284, is for liceity (see c. 10) (see KENNEDY, “Commentary on Book V,” p. 1487).

⁸⁰ Since the tax is to be proportionate to the income of the parish, the stable patrimony of the parish is not subject to taxation, though income produced by stable patrimony can be taxed (see cc. 264, §2; 1263) (see RENKEN, *Church Property*, p. 228).

⁸¹ See J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, Saint Louis, B. Herder Book Co., 1952, vol. 2, p. 731; see BOUSCAREN et al., *Canon Law*, p. 835; see HITE, “Church Law on Property and Contracts,” pp. 260-261; see HUELS, *The Pastoral Companion*, pp. 415-416; see RENKEN, “The *Parochus* as Administrator of Parish Property,” pp. 503-506; see GRENÓN, “El párroco y la administración de los bienes eclesíasticos,” pp. 416-418.

⁸² *CFH*, p. 312; see MORRISSEY, “Ordinary and Extraordinary Administration,” pp. 717-725.

faculty (*facultas scripto*) from the ordinary, he acts invalidly (c. 1281, §1).⁸³ The following may be categorized as juridic acts of extraordinary administration by their nature; however, they are juridically acts of extraordinary administration only when they are so designated by the statutes of the parish; or if they fail to do so, they are to be determined by the diocesan bishop after he has consulted diocesan finance council (c. 1281, §2):

1. To purchase land or buildings;
2. To replace major equipment;
3. To take up a special collection (see c. 1266);
4. To dedicate surplus funds or to make long-term investments (see c. 1284, §2, 6°);⁸⁴
5. To spend over a designated financial amount;
6. To accept a gift with modal obligations or specified conditions, or to refuse major bequests (see c. 1267, §2);⁸⁵
7. To take a loan for an extended period (see c. 1284, §2, 5°);
8. To make donations for purposes of piety or charity beyond a designated amount (see c. 1285);
9. To designate the stable patrimony of the parish (see cc. 1285; 1291);⁸⁶

⁸³ It should be noted that the term “written faculty” (*facultas scripto*) has been used only once in the Code. Huels notes that “a faculty is an ecclesiastical power or authorization necessary for performing lawfully an act of ministry or administration in the name of the Church” (HUELS, *Empowerment for Ministry*, p. 261). A faculty may be obtained by the law itself (*a iure*) or by delegation from a person competent to grant the faculty (*ab homine*) (see *ibid.*, p. 36). As the *parochus* has the general faculty by his office or by law to place juridic acts of ordinary administration, presumably, he does not have the faculty to place juridic acts of extraordinary administration; therefore, he has to obtain it from the ordinary on each occasion. The faculty must be in writing (cc. 37; 54, §2); however, the oral grant of faculties is also valid but illicit. Nonetheless, to place a juridic act of extraordinary administration, the faculty must be in writing for validity since canon 1281, §1 explicitly prescribes it (see c. 10).

⁸⁴ “The statutes, or in their absence the diocesan bishop, could declare an investment over a certain amount to be an act of extraordinary administration, in which case failure to obtain a [written] faculty from the ordinary would canonically invalidate the investment (c. 1281, §§1-2)” (see KENNEDY, “Commentary on Book V,” p. 1487).

⁸⁵ Since the burden of a particular condition or modal obligation could worsen the patrimonial condition of the parish, the acceptance of such gift by its very nature could be a canon 1295 transaction, and hence one would conclude that it is an act of extraordinary administration (see *ibid.*, p. 1470).

10. To initiate or contest civil litigation in the name of the parish (see c. 1288);⁸⁷
11. To repair an object which is precious for artistic or historical reasons (see c. 1292, §2);
12. To enter contracts which may threaten the patrimonial condition of the parish (see c. 1295);⁸⁸

⁸⁶ De Paolis proposes that the action of designation of stable patrimony by competent authority is an act of extraordinary administration: “Si può affermare che un atto con cui si assegnano dei beni al patrimonio stabile è un atto di amministrazione straordinaria, in quanto si sottraggono dei beni alla libera disposizione della persona giuridica (cf. c. 1281, §§1-2)” (DE PAOLIS, *I beni temporali della Chiesa*, p. 259; see idem, *De bonis Ecclesiae temporalibus*, p. 101; see idem, “De bonis Ecclesiae temporalibus in novo Codice Iuris Canonici,” in *Periodica*, 73 [1984], p. 145). In a related vein, Cafardi states that “the administrative act which restricts such funds on a permanent basis constitutes them as a stable asset of the public juridic person in the law, whether or not the phrase “stable patrimony” is ever used, though it is to be noted that such a stabilization is an act of *extraordinary administration* which must be done with the approval of the competent superiors” (N.P. CAFARDI, “Alienation of Church Property,” in *CFH*, p. 251) [emphasis added]. Likewise, Renken holds that “stable patrimony is those immovable and movable goods which, by legitimate designation of competent authority through an act of extraordinary administration, form the secure basis of a juridic person so that it can perform its works” (J.A. RENKEN, “The Stable Patrimony of Public Juridic Persons,” in *The Jurist*, 70 [2010], p. 161). Therefore, “unless the statutes state otherwise, a pastor [*parochus*] would need the written faculty of the diocesan bishop to designate parish goods as stable patrimony. Since designating stable patrimony is an act of extraordinary administration and since the pastor [*parochus*] is the administrator of the parish goods (c. 532), only he is competent to designate the stable patrimony of his parish” (ibid., p. 154). Hence, one would conclude that designating stable patrimony is an act of extraordinary administration since this distinction between stable patrimony and non-stable patrimony is the basis for determination in matters of alienation (cc. 1291-1294), contractual transactions which may jeopardize the patrimonial condition of a public juridic person (c. 1295), diocesan taxation (c. 1263), and charitable donations (c. 1285) (see ibid., p. 162).

⁸⁷ Since contentious civil litigation usually entails risks and expenses and it might also affect the patrimony of the parish adversely or favorably, it would therefore constitute an act of extraordinary administration. Moreover, while the law does not state that suits carried out without the required permission are invalid, the administrator would be liable for damages, where applicable, according to canon 128 (see ALARCÓN, “Commentary on Book V,” p. 995).

⁸⁸ “Given the significant threat to the patrimonial condition of a public juridic person involved in canon 1295, it seems that the canon concerns an act which by its very nature is an act of extraordinary administration. Indeed, an administrator entering a threatening contract involving an amount surpassing the legitimately defined amount must obtain the consent of the competent ecclesiastical authority: this requirement itself indicates the extraordinary nature of the act of an administration” (J.A. RENKEN, “Contracts Threatening Stable Patrimony: The Discipline and Application of Canon 1295,” in *StC*, 45 [2011], p. 513) [emphasis in original].

If the *parochus* enters into canon 1295 transactions which may jeopardize the patrimonial condition of the parish, he must involve the persons and processes identified in the same norms that govern alienation (cc. 1291-1294) according to canon 1295. Consequently, some acts of extraordinary administration placed by the *parochus* may even require the permission of the Holy See for validity (see RENKEN, *Church Property*, p. 282). Morrissey identifies three elements to be considered when determining whether there is a risk of jeopardizing the patrimonial condition of the parish: loss or diminishing of ownership, control, and sponsorship. For instance, some transactions which could worsen the patrimonial condition of the parish are borrowing money, entering into long-term leases, taking out mortgages, changing the status of ownership, etc. (see F.G. MORRISSEY, “Alienation of Temporal Goods in Contemporary Practice,” in *StC*, 29 [1995], p. 311). For that reason, “it is incumbent upon ecclesiastical authorities responsible for approving the statutes of public juridic persons to see it to that statutes do conform to canons 1291-1294, and where necessary to achieve the purpose of such conformity, that the appropriate civil documents conform also” (see KENNEDY, “Commentary on Book V,” p. 1502). For more detail on canon 1295 transactions requiring solemnities for alienation see RENKEN, “Contracts Threatening Stable Patrimony,” pp. 508-510.

13. To lease or rent parochial property for an extended period (see c. 1297);⁸⁹
14. To accept a non-autonomous pious foundation in a parish (see c. 1303, §1, 2°);⁹⁰
15. To make an extensive repair or renovation of buildings;
16. To open a new cemetery for the parish;
17. To construct new buildings;
18. To establish a new school for the parish;
19. To build a new parish church (see c. 1215, §§1-2);⁹¹
20. To demolish and sell an old church which the diocesan bishop has relegated to profane but not sordid use (see c. 1222); etc.⁹²

Therefore, one would conclude that since a canon 1295 transaction entails risk of harm to the patrimonial condition of the juridic person of the parish in question, it is *by its very nature* an act of extraordinary administration. Moreover, a threatening contract is not alienation since there is no transfer of ownership. Although the transactions envisaged in canon 1295, whereby the patrimonial condition of a juridic person may be jeopardized, are not considered to be acts of alienation, nevertheless, given the nature of such acts, the canonical provisions relating to alienation of stable patrimony (cc. 1291-1294) must be observed. Such acts could also be considered to be acts of extraordinary administration (see KENNEDY, “Commentary on Book V,” p. 1504; see RENKEN, “Contracts Threatening Stable Patrimony,” pp. 512-513) [emphasis added]. However, some authors still hold a canon 1295 transaction as an “alienation in the broad sense” since it threatens the patrimonial condition and requires the formalities of alienation: “Alienatio intelligi potest sensu stricto [c. 1291] et sensu lato [c. 1295]” (DE PAOLIS, *De bonis Ecclesiae temporalibus*, pp. 99-100; see ALARCÓN, “Commentary on Book V,” p. 1002).

⁸⁹ For instance, in Canada, “the leasing of ecclesiastical property, when the lease extends over a period of two years, constitutes an act of *extraordinary administration*” (CCCB, Complementary Norm for Canon 1297, 12 January 1987, in *Complementary Norms to the 1983 Code of Canon Law*, p. 117) [emphasis added]. In the USA, “the valid leasing of ecclesiastical goods owned by a parish or other public juridic person subject to the governance of the diocesan bishop requires *consent* of the diocesan bishop when the market value exceeds \$100,000 or the lease is to be for one year or longer” (USCCB, Complementary Norm for Canon 1297 on Leasing of Church Property, 8 June 2007, in RENKEN, *Church Property*, pp. 289-290) [emphasis added].

⁹⁰ “Since the authorization required by canon 1304 is for validity, in effect it makes the acceptance of a non-autonomous foundation an act of extraordinary administration (see c. 1281, §1)” (KENNEDY, “Commentary on Book V,” p. 1518).

⁹¹ Even though the diocesan bishop, after having heard the presbyteral council, must give his consent to build a new church (c. 1215, §§1-2) or to relegate a church to profane but not sordid use for a grave cause (c. 1222, §2), the *parochus* is the agent responsible to build a new church or to demolish or sell an old one since the church building belongs to the parish, whose administrator and legal representative is its *parochus* (see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 507, fn. 48).

⁹² See AZNAR GIL, “La administración de los bienes temporales de la parroquia,” pp. 202-206; see RENKEN, “The *Parochus* as Administrator of Parish Property,” pp. 506-507; see WALKOWIAK, “Ordinary and Extraordinary Administration,” p. 193; see HUELS, *The Pastoral Companion*, pp. 415-416; see M.J. O’BRIEN, “Instructions for Parochial Temporal Administration,” in *The Catholic Lawyer*, 41 (2001), pp. 121-122.

2.2.3 – The Alienation of Goods by the *Parochus*

Black's Law Dictionary defines alienation as "conveyance or transfer of property to another, e.g., alienation of one's estate"⁹³ The Latin verb *alienare* means "to make something another's."⁹⁴ In canon law, "alienation is the transfer of ownership of property belonging to the stable patrimony of a juridic person, even if this transfer of ownership is to another juridic person"⁹⁵ by way of sale, donations, exchanges, credit transfers, etc.

As a juridic act, alienation differs radically from administration. Under the law of the 1917 Code (see *CIC/17*, c. 1530), alienation was classified as an act of extraordinary administration. The 1983 Code categorizes it differently.⁹⁶ In fact, the purpose of administration is to preserve and to enhance the productivity of temporal goods whereas the purpose of alienation is to terminate ownership or pass it to another, in other words, it means transferring goods for the benefit of the Church.⁹⁷ Hence, alienation is governed by norms that differ from the norms that govern acts of extraordinary administration. The *parochus* must be aware of what acts would constitute an alienation⁹⁸ and which ones would not do so.⁹⁹

⁹³ *Black's Law Dictionary*, p. 73.

⁹⁴ D.P. SIMPSON, *Cassell's Latin Dictionary*, New York, Wiley Publishing, Inc., 1966, p. 34.

⁹⁵ HUELS, *The Pastoral Companion*, p. 418; see also RENKEN, *Church Property*, p. 249.

⁹⁶ On 19 June 1979, when discussing the *Canones praeliminares* of Book V, the *coetus studiorum de bonis Ecclesiae temporalibus*, reflecting on the *CIC/17* canon 1495, §1, added the Church's "right to alienate" to the canon which became canon 1254, §1 of the 1983 Code. It specified two separate acts, administration and alienation: "[...] administrare et alienare [...]," "quia alienatio non est actus extraordinariae administrationis." Besides, the Code grouped the canons on alienation under the title "Contracts and Especially Alienation." This clearly indicates that 1983 Code distinguishes administration from alienation (see *Communicationes*, 12 [1980], p. 396); see also DE PAOLIS, *De bonis Ecclesiae temporalibus*, p. 98.

⁹⁷ See T.R. LEON, *The Process of Alienation and Related Concepts: Rationale and Procedure in Canon Law and Secular Law with Particular Reference to India*, JCD thesis, Leuven, Katholieke Universiteit, 2002, pp. 69-72; see KENNEDY, "Commentary on Book V," p. 1494; see RENKEN, *Church Property*, p. 247.

⁹⁸ For example, alienation means to transfer ownership or title to stable patrimony to another (e.g., a sale of land or goods), to use stable patrimony for some purpose other than that for which it was legitimately designated, to transfer to others the "control" of major decision-making of an apostolic work, and to burden the stable patrimony

Since alienation is the transfer of ownership of stable patrimony,¹⁰⁰ there is no alienation if no transfer of ownership takes place. As a matter of fact, if the value of goods to be alienated is lower than the prescribed minimum established by the conference of bishops, neither any permission nor any special procedure is required.¹⁰¹ Canon law does not prohibit the *parochus* as administrator from alienating ecclesiastical goods of the parish in an absolute manner; rather it

perpetually or for a long time (e.g., to grant an easement), etc. (see MORRISEY, "Alienation of Temporal Goods in Contemporary Practice," pp. 295-296; see RENKEN, *Church Property*, pp. 249-250).

⁹⁹ For example, the following transactions are not alienation: to spend free capital, to make or renegotiate a loan, to use ecclesiastical goods as collateral for loans, to mortgage property, to lease property, to sell old non-precious furniture or equipment in order to replace it with a new one of equal value, to refuse gifts, to accept foundations, to surrender involuntarily parish property to civil government authority, to grant an easement temporarily, to spend money for the purpose/intention for which it was donated, and to lose temporal goods by prescription (since this is not a contract but an act of poor administration), etc. (see LEON, *The Process of Alienation and Related Concepts*, pp. 96-99; see MORRISEY, "Alienation of Temporal Goods in Contemporary Practice," pp. 306-310; see *idem*, "Alienation and Administration," in *Health Progress*, 79 [1998], p. 26; see RENKEN, *Church Property*, pp. 251-253; see KENNEDY, "Commentary on Book V," p. 1494).

¹⁰⁰ The act of legitimate designation of stable patrimony is not "automatic." So, it does not come into existence "by accident" (see RENKEN, "The Stable Patrimony of Public Juridic Persons," p. 149). Accordingly, the lawful designation of stable patrimony must be explicit in order to avoid confusion between acts of extraordinary administration and acts of alienation of ecclesiastical goods of the parish in question: "Hay que destacar, además, que tan apenas se encuentran indicaciones sobre qué bienes temporales forman parte del "patrimonio estable por asignación legítima" de la parroquia, tal como establece el c. 1291, lo cual induce a confusiones entre los actos de administración extraordinaria y los actos de enajenación, ámen de otras cuestiones" (AZNAR GIL, "El cuidado y la administración de los bienes temporales de la parroquia," p. 640).

Nonetheless, the designation could also be implicit by law; for instance, firstly, if the administrator had indicated it in the inventory distinguishing the fixed and the free capital (c. 1283), this would be a type of designation by law. It should be recalled here that the parallel *CCEO* canon 1026 explicitly states that any change in the stable patrimony of that juridic person is to be noted on each copy of the inventory while the *CIC* makes references to the term "stable patrimony" only twice (cc. 1285; 1291); secondly, if a donor specifies that the goods so given, are to be restricted to use for a particular purpose, then it would assume a stable or fixed character; thirdly if an administrator of a public juridic person sets up a fund with the duly noted intent that the fund be permanent, e.g., a retirement fund by the diocesan bishop or an education fund for the poor students in the parish by the *parochus*, the act of administration which restricts such funds on a permanent basis constitutes them as the stable asset of the public juridic person; fourthly, the manner in which the property is used could make an implicit designation, e.g., if a parish buys land and constructs a grade school on it, no one would doubt that this property is part of the parish stable patrimony, even though it was never so formally designated. Fifthly, the nature of certain properties is such that they are ordinarily acquired with the intention to be retained for an indefinite period of time; and hence the very act of acquisition implicitly designates them as part of the stable patrimony, e.g., land, buildings, books, and furniture; etc. Finally, a custom could make an implicit designation by thirty continuous and complete years (see c. 26) (see CAFARDI, "Alienation of Church Property," pp. 252-254; see MORRISEY, "Alienation of Temporal Goods in Contemporary Practice," p. 300; see *idem*, "Commentary on Book V," pp. 732-734; see KENNEDY, "Commentary on Book V," p. 1496; see J. ABBASS, "Alienating Ecclesiastical Goods in the Eastern Catholic Churches," in *Folia canonica*, 5 [2002], p. 127).

¹⁰¹ See J. MANTECÓN, "Commentary on Canons 1290-1298," in *Exegetical Comm*, vol. IV/1, p. 133.

has established a system of checks and balances from higher authorities.¹⁰² Hence, as an integral part of the alienation process, the law imposes upon him certain prescriptions for validity (cc. 1291; 1292, §§1-3) and other requisites for liceity (cc. 1293-1294) in addition to the prescripts of the civil law regarding contracts (c. 1290).¹⁰³

Hence, if it is determined that a contemplated act is indeed an act of alienation of stable patrimony, then a number of canonical formalities must be observed both for the validity of the act and for its liceity. These requirements can now be reviewed.

2.2.3.1 – Solemnities for the Valid Alienation of Stable Patrimony of the Parish¹⁰⁴

1. To require prior permission¹⁰⁵ of the diocesan bishop (for validity) if the value of the stable patrimony is between the minimum and maximum amounts determined by the conference of bishops (c. 1292, §1);¹⁰⁶

¹⁰² See SCHOUPPE, *Derecho patrimonial canónico*, p. 160. Such requirements were introduced into the law in order to protect ecclesiastical goods from being alienated by irresponsible administrators. Canon law controls alienation based on the fundamental distinction between stable patrimony and non-stable patrimony (see RENKEN, “The Stable Patrimony of Public Juridic Persons,” p. 155).

¹⁰³ See M.G. MORENO ANTON, *La enajenación de bienes eclesiásticos en el ordenamiento jurídico español*, estudios 93, Salamanca, Universidad Pontificia, 1987 (= MORENO ANTON, *La enajenación de bienes eclesiásticos*), pp. 39-53.

¹⁰⁴ See J.A. RENKEN, “The Collaboration of Civil Law and Canon Law in Church Property Issues,” in *Studies in Church Law*, 4 (2008) (= RENKEN, “The Collaboration of Civil Law and Canon Law”), pp. 72-74; see MORENO ANTON, *La enajenación de bienes eclesiásticos*, pp. 42-50; see CAFARDI, “Alienation of Church Property,” pp. 254-257.

¹⁰⁵ Renken notes in a comparative study between the *CCEO* and the *CIC* on temporal goods: in several canons the *CCEO* speaks of required consent (*consensus*) but the *CIC* speaks of permission (*licentia*) for the validity of an act. Since such permission is required for a valid act, the *CIC* actually requires consent. Thus, the *CCEO* terminology is more precise than the *CIC*. For example, one may compare *CIC* canons 1291; 1292, §2; and 1304, §1 with the corresponding *CCEO* canons 1035, §1, 3°; 1036, §4; and 1048, §2 (see J.A. RENKEN, “Temporal Goods in Latin and Eastern Codes: A Comparative Study,” in *Studies in Church Law*, 5 [2009], p. 97, fn. 32).

¹⁰⁶ For instance, in the USA, particular law pursuant to canon 1292, §1 states: “[...] For the alienation of property of other public juridic persons subject to the Diocesan Bishop, the maximum limit is \$3,500,000 and the minimum limit is \$25,000 or 10% of the prior year’s ordinary annual income, whichever is higher” (USCCB, Complementary Norm for Canon 1292, §1 on Minimum and Maximum Sums for Alienation of Church Property, 1 December 2011, in <http://www.usccb.org/complementary-norms/canon-1292-1-cfm>).

Moreover, before granting the consent to the *parochus* for valid alienation, the diocesan bishop must have the threefold consent: the consent of the diocesan finance council, the college of consultors, and those concerned

2. To require the additional prior permission¹⁰⁷ of the Holy See for validity if the value of the stable patrimony is greater than the maximum amount set by the conference of bishops (c. 1292, §2);¹⁰⁸
3. To require the additional permission of the Holy See for validity if the goods, regardless of monetary value, are regarded precious for artistic or historic reasons,¹⁰⁹ or goods given by reason of a vow (c. 1292, §2);
4. To alienate the divisible goods validly, the *parochus* as administrator must disclose the parts already alienated when seeking permission for the alienation (c. 1292, §3);¹¹⁰

who hold any rights over those goods to be alienated (see MANTECÓN, “Commentary on Canons 1290-1298,” p. 134). Furthermore, the consent of the parish finance council may be necessary according to the diocesan particular law or statutes. In addition, local statutes may require the consent or counsel of other parish bodies, e.g., parish pastoral council (see CAFARDI, “Alienation of Church Property,” p. 259).

¹⁰⁷ The permission of the Holy See does not substitute for the other permissions already required for alienations above the minimum amount determined by conference of bishops. It is required in addition to (*insuper*) them (see KENNEDY, “Commentary on Book V,” p. 1499). For dioceses and parishes, the competent authority of the Holy See regarding the regulation of ecclesiastical goods is the Congregation for the Clergy (see *Pastor bonus*, art. 98, p. 716).

¹⁰⁸ In comparison between *CIC*, c. 1292, §2 and *CCEO*, c. 1036, §§2-3, by way of an application of the principle of subsidiarity in favor of the Eastern patriarchal Churches, the *CCEO* canon does not require recourse to the Holy See when the proposed alienation is within the territory of the patriarchal Church. When the value of an alienation exceeds the maximum or by double the maximum established by the synod of bishops of the patriarchal Church, or it concerns precious goods, or goods given to the Church by vow, “the required consent for these alienations within the patriarchal territories is given in all cases by the bishop and/or patriarch with the consent either of the permanent synod or the synod of bishops (*CCEO*, c. 1036, §§2-3)” (ABBASS, “Alienating Ecclesiastical Goods in the Eastern Catholic Churches,” p. 131; see *idem*, “The Temporal Goods of the Church: A Comparison of the Eastern and Latin Codes of Canon Law,” in *Periodica*, 83 [1994], pp. 684; see RENKEN, “Temporal Goods in Latin and Eastern Codes,” pp. 106-107).

¹⁰⁹ If there were to be an official diocesan/parish inventory of those items and places, that would be the best indication whether or not recourse must be made to the Holy See, otherwise, it becomes a matter for the diocese to decide about the status of such objects in the parish (see N.P. CAFARDI, “Alienation of Objects Precious by Reason of Artistic or Historical Significance,” in *CLSA AO2*, p. 419). However, if such status of the objects is known for certain, it clearly requires the consent of the Holy See for their alienation (see SACRED CONGREGATION OF THE COUNCIL, “Circa donaria votiva et alienationes,” 14 January 1922, in *AAS*, 14 [1922], p. 160, English translation in *CLD*, vol. 1, pp. 730-731).

¹¹⁰ Either a subreption which is a concealment of fact, or obreption which is a false statement, has an invalidating effect, when it concerns an essential condition required for the validity of the act (c. 63, §§1-2). Therefore, concealing the fact of prior parts having already been alienated would render the rescript invalid (c. 1292, §3). Moreover, according to a decision of the Pontifical Council for the Authentic Interpretation of the Canons of the Code, if a parish is simultaneously alienating several separate goods and their total value exceeds the established amount, the permission of the Apostolic See is also required (see PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CANONS OF THE CODE, “De alienatione bonorum ecclesiasticorum,” 20 July 1929, in *AAS*, 21 [1929], p. 574, English translation in *CLD*, vol. 1, p. 731).

2.2.3.2 – Formalities for the Licit Alienation of Stable Patrimony of the Parish¹¹¹

1. To identify a just cause (urgent necessity, evident advantage, piety, charity, or some other grave pastoral concern) for licit alienation of goods with a value greater than the defined minimum amount (c. 1293, §1, 1°);
2. To receive written appraisals from experts on goods with a value greater than the defined minimum amount for liceity (c. 1293, §1, 2°);
3. To follow precautions prescribed by legitimate authority for liceity in alienating goods with a value greater than the defined minimum amount (c. 1293, §2);
4. To refrain from alienating ecclesiastical goods at a price under their estimated value (c. 1294, §1);
5. To invest carefully the money received from alienation for the advantage of the Church or to expend the money prudently according to the purposes of the alienation (c. 1294, §2);
6. To require special written permission in case of alienating ecclesiastical goods to the administrator of these goods or to their relatives up to the fourth degree of consanguinity (c. 1298).

Moreover, diocesan particular law may also set even a lower amount than the prescribed minimum amount set by the conference of bishops, which requires the consent of the diocesan bishop, and consent of the parish finance council and others concerned (e.g., donors) before alienating stable patrimony.¹¹² If a *parochus* had not obtained the prescribed permission required for valid alienation of ecclesiastical goods of the parish, he would have committed a delict according to canon 1377 which reads: “A person who alienates ecclesiastical goods without the prescribed permission is to be punished with a just penalty.” Evidently, the responsible

¹¹¹ See RENKEN, “The Collaboration of Civil Law and Canon Law,” pp. 72-74; see MORENO ANTON, *La enajenación de bienes eclesiásticos*, pp. 40-42.

¹¹² See CAFARDI, “Alienation of Church Property,” p. 254; see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 508.

party/administrator who is responsible for the invalid alienation may be punished with a just penalty by due process according to the norm of law.¹¹³

Finally, canon 1296 speaks about a civilly valid but canonically invalid alienation:

Whenever ecclesiastical goods have been alienated without the required canonical formalities but the alienation is valid civilly, it is for the competent authority, after having considered everything thoroughly, to decide whether and what type of action, namely, personal or real, is to be instituted by whom and against whom in order to vindicate the rights of the Church.

The competent authority to decide on corrective actions would be “the immediate canonical superior of the person responsible for the canonically invalid alienation”¹¹⁴ since otherwise the decision-making process in regard to corrective action could involve all those whose permission is required for valid alienation.¹¹⁵ Despite the fact that the Latin Catholics are to follow the *CIC*, as long as there has been no authentic interpretation on this canon, to resolve the doubt (c. 17), recourse can be made to the parallel *CCEO* canon 1040 which states “the higher authority of the one who carried out the alienation.”¹¹⁶

The action of the competent authority may be “personal” which is directed against the responsible party/administrator who did not observe canon law, or “real” which is geared towards repossession of the ecclesiastical good which was invalidly alienated. The procedure could be followed either administratively or judicially. Should the latter be chosen, it should be further decided whether to proceed through the civil or through the canonical forum. The latter is

¹¹³ This canon will be further analyzed under financial malfeasance in the third chapter, see 3.1.2.4, p. 178.

¹¹⁴ See KENNEDY, “Commentary on Book V,” p. 1506. For example, if a bishop sells a parish property without obtaining the required consent from either of the diocesan finance council, the college of consultors, or the concerned *parochus*, he is not the appropriate authority to decide whether and which type of possible corrective action to take because of his obvious conflict of interest. Even though a parish is a public juridic person subject to him, it is undoubtedly the authority above the bishop, the Holy See, that is competent to decide on the possible remedial action (see ABBASS, “Alienating Ecclesiastical Goods in the Eastern Catholic Churches,” pp. 132-134).

¹¹⁵ See KENNEDY, “Commentary on Book V,” p. 1506; see RENKEN, *Church Property*, p. 285, fn. 85.

¹¹⁶ See ABBASS, “Alienating Ecclesiastical Goods in the Eastern Catholic Churches,” p. 134; see KENNEDY, “Commentary on Book V,” p. 1506; see RENKEN, *Church Property*, p. 285.

more appropriate if the case simply concerns two juridic persons.¹¹⁷ However, “the canon does not exclude the possibility that in a given situation the prudent course might be to take no action of any kind, other perhaps than that prescribed by canon 1377.”¹¹⁸ Should it also occur that an act of alienation recognized as valid by civil law, is held as valid but illicit in canon law (see cc. 1293-1294), then the one harmed has the right to bring canonical action (see c. 1400, §2) against the administrator who has illegitimately inflicted damage by his juridic act out of malice or negligence in order to repair damages (c. 128).¹¹⁹

A practical application of canon 1296 demands that the competent authorities explore and adopt measures available in order to avoid or to minimize the risk of a clash between these two jurisdictions of civil law and canon law. A practical means to safeguard parish property from invalid alienations would be to have a clause inserted into the statutes of the juridic person and in the civil legal documents (e.g., articles of incorporation and bylaws of the corporation), to the effect that the alienation/transaction would be null in civil law if it were void in canon law.¹²⁰

2.3 – Assistance to the *Parochus* in the Protection of Parish Property

A diocesan bishop, as an ordinary, has the right to supervise (*ius advigilandi*) the administrator of the goods of a parish which is a public juridic person subject to him (c. 1276). In some cases, supervision is expressed also by authorizations given by superior authority to carry out acts of administration of a certain gravity or importance (see cc. 1276; 1281; 1291; 1285;

¹¹⁷ See MORRISEY, “Commentary on Book V,” p. 737.

¹¹⁸ Ibid.

¹¹⁹ See RENKEN, *Church Property*, p. 286.

¹²⁰ See *ibid.*, pp. 286-287; see ALARCÓN, “Commentary on Book V,” p. 1004; see MORRISEY, “Commentary on Book V,” p. 737.

1295; etc.).¹²¹ For that reason, the diocesan bishop, as an ordinary, has a general canonical responsibility “to urge the observance of all laws of the Church by those whose responsibility it is to administer [and to protect] ecclesiastical goods, and to ensure that abuses do not creep into such administration” (c. 392, §2).¹²² His supervision extends particularly to the protection of the ecclesiastical goods, pursuant to canon 1276.¹²³ In practice, his supervision includes vigilance, visitation, and accounting.¹²⁴ In this regard, De Paolis explains succinctly the implications of the supervision of the ordinary:

The administration must be carried out under the supervision of the ordinary or superior. The one who administers church goods has only an executive function which he or she must fulfill according to canon law and the directives of superiors. The latter have supervision over church goods, not their administration. Supervision implies the right to visit, to demand reports, to inspect the books, and to prescribe a correct and orderly system of administration in accord with universal, particular, and proper laws. In some cases, supervision is expressed also by authorizations given by superior authority to carry out administrative acts of a certain gravity or importance.¹²⁵

In a related vein, Testera points out that, in exercising his supervisory role, the diocesan bishop, without any need to interfere in the direct management of the temporal goods of the parish under his jurisdiction, has three kinds of rights to ensure the protection of parish property:

¹²¹ See DE PAOLIS, “Temporal Goods of the Church,” p. 352.

¹²² KENNEDY, “Commentary on Book V,” p. 1477.

¹²³ Since the supervisory role of ordinaries is applicable to “public juridic persons subject to them” according to canon 1276, §1, it is an act of the power of governance or jurisdiction (see c. 129, §1) enabling them to inspect the administration, and if needs be, to introduce corrective measures (see c. 1279, §1) (see MORRISEY, “Commentary on Book V,” p. 722).

Nonetheless, canon 1276, §1 also makes an exception to this general rule that the statutes of a private juridic person may grant such a juridic right to the ordinary. In this regard, Kennedy explains: “This is in keeping with the greater autonomy of private juridic persons. Canon 1276, §1, however, allows for lawful titles which give an ordinary greater rights. Such titles could include the statutes of a private juridic person which accord supervisory rights to the ordinary, or statutes of a public or private juridic person (e.g., a health care, educational, or other charitable institution or foundation) designating the ordinary as administrator of its temporal goods” (KENNEDY, “Commentary on Book V,” p. 1477).

¹²⁴ See J.D. HANNAN, “The Local Ordinary’s Guardianship of Church Property,” in *The Jurist*, 1 (1941), p. 317.

¹²⁵ DE PAOLIS, “Temporal Goods of the Church,” p. 352.

1. *ius rationem exigendi* – he has the right to demand accurate accounts, updated financial reports, supporting evidence of all transactions carried out by administrative functionaries (c. 1287, §1).
2. *ius visitandi* – visitation rights which allow the ordinary to inspect the properties, official books, and other pertinent documents, to check on the observance of rules and laws, conduct of administrators and other personnel, etc. (c. 1276, §1).
3. *ius praescribendi modum administrationis* – the right to issue rules conducive to an effective administration (c. 1276, §2). Yes, the ordinary may impose his will on inferior administrative officers through the issuance and enforcement of particular norms as long as they are within the framework of general and statutory law.¹²⁶

Hence, in view of assisting the *parochus* in his *munus* of administration, as well as protecting the ecclesiastical goods of the parish as a public juridic person subject to the ordinary, this section will examine how that ordinary exercises his general oversight role (cc. 1276, §§1-2; 1279, §§1-2) by placing public juridic acts of the power of governance by way of appointing an administrator, granting permission or consent for certain acts of administration by the *parochus*, issuing diocesan special instructions, promulgating diocesan particular laws, and finally intervening in cases of negligence of an administrator.

2.3.1 – Appointment of the *Parochus*

The diocesan bishop is to appoint a *parochus* or his canonical equivalent in each parish (see cc. 150-151). Canon 523 stipulates that the provision of the office of *parochus* belongs to the diocesan bishop who confers the office by a singular decree, which is a public juridic act of executive power of governance (c. 157). However, canon 1279, §2 provides for an exceptional situation¹²⁷ which is not applicable to parishes. When no administrative authority has been provided either in the law, in the documents of foundation, or in the statutes of a public juridic

¹²⁶ TESTERA, “The Temporal Patrimony of the Parish and Its Administration,” pp. 50-51.

¹²⁷ See MORRISEY, “Commentary on Book V,” p. 725.

person, the competent ordinary is to appoint suitable persons as administrators. The appointment is for a term of three years, renewable for subsequent terms. If the diocesan bishop had entrusted this duty to the diocesan financial officer, then the bishop could also appoint a suitable person for the proper administration and protection of goods of public juridic persons subject to the diocesan bishop (see c. 1278).

2.3.2 – Granting Permission for Certain Acts of Administration by the *Parochus*

Several canons in Book V mention specific instances of the supervisory duty of the ordinary.¹²⁸ One of the most common ways to exercise his supervision is to grant permission for certain acts of administration. This is an individual public juridic act of executive power of governance. For licit and sometimes for valid acts of administration (see c. 10), the law requires the *parochus* to be authorized by the ordinary in the following instances:

1. Permission to refuse offerings in matters of greater importance (c. 1267, §2);
2. Permission to accept offerings burdened by a modal obligation or condition (c. 1267, §2);
3. Faculty to place acts of extraordinary administration validly (c. 1281, §1);
4. Consent to invest the surplus money after expenses for the purposes of the juridic person (c. 1284, §2, 6°);
5. Permission to initiate or contest a legal proceeding in civil court (c. 1288);
6. Permission to alienate some stable patrimony validly (c. 1292, §§1-3);
7. Permission to place validly some transactions which can worsen the patrimonial condition of a juridic person according to the requirements of canons 1291-1294 (c. 1295);

¹²⁸ For example, to intervene when an administrator is negligent (c. 1279, §1); to receive from administrators their oath regarding efficient and faithful performance of duty (c. 1283, 1); to determine acts of extraordinary administration where the relevant statutes fail to do so (c. 1281, §2); to receive an annual financial report and to present it for examination by the diocesan finance council (c. 1287, §1), etc. (see KENNEDY, “Commentary on Book V,” pp. 1477-1478).

8. Permission to lease ecclesiastical goods (c. 1297);¹²⁹
9. Permission to sell or lease parochial goods to the administrators or to their relatives up to the fourth degree of consanguinity or affinity (c. 1298);
10. Permission to accept a non-autonomous foundation validly (c. 1304, §1);
11. Approval to deposit immediately and safely the money and movable goods assigned to an endowment (c. 1305);
12. And also, consent to renounce a trial of an issue involving temporal goods (c. 1524, §2).¹³⁰

2.3.3 – Promulgation of Particular Laws

The diocesan bishop may exercise his supervision over public juridic persons subject to him by the promulgation of particular laws; this is an individual public juridic act of the legislative power of governance. There are several canons in Book V which require the diocesan bishop to establish particular laws for parishes, which bind *parochi* as administrators who are to administer and protect the parochial property (e.g., see cc. 1281, §2; 1284, §3; 1287, §2; 1303, §1, 2°; 1304, §2; etc.). Moreover, nothing prevents the diocesan bishop from establishing additional particular laws concerning the administration as well as the protection of the goods of parishes in light of current local circumstances beyond those particular laws envisioned in the universal law.¹³¹ Chapter IV will investigate in detail the role of diocesan particular laws in the protection of parish property.¹³²

¹²⁹ “It is left to the conference of bishops to determine if permission is to be required for validity or simply for liceity” (see *ibid.*, p. 1507).

¹³⁰ See *ibid.*, pp. 1477-1478; see RENKEN, *Church Property*, p. 168; see COMBALIA, “Commentary on Canons 1273-1289,” pp. 93-94; see SCHOUPE, *Derecho patrimonial canónico*, p. 176.

¹³¹ See J.A. RENKEN, “Particular Laws on Temporal Goods,” in *Studies in Church Law*, 4 (2008), pp. 451.

¹³² Presuming that *parochi* are aware of particular laws of the conference of bishops and provincial bishops governing ecclesiastical goods of the parish, this thesis will study diocesan particular laws only. According to Book V, the conference of bishops is competent to establish norms for special appeals (c. 1262); for begging for alms

2.3.4 – Issuance of Special Instructions

Issuing special instructions is one way of fulfilling the task of special vigilance by the ordinary in order to assist the *parochus* in his *munus* as administrator of parochial property.¹³³ The ordinary is to issue special instructions within the limits of universal and particular law (c. 1276, §2). This is an individual public juridic act of executive power of governance and “it is an application of the principle of subsidiarity in canon law.”¹³⁴ The ordinary may issue special instructions to enable administrators to apply the law correctly. Because of circumstances which vary from place to place, the Code prefers not to enter into details, but, rather, in application of the principle of subsidiarity, leaves such matters to the local level. Any instruction must also conform to the requirements of canon 34 which determines the juridic nature of instructions. For example, the local ordinary can issue an instruction on the manner and the format of presenting the annual parish financial report, or on the manner and the format of rendering an account to the faithful about their offerings to the parish (c. 1287, §§1-2). Chapter IV will review in depth the role of diocesan special instructions for the protection of parochial property.

(c. 1265, §2); for benefices (c. 1272); for the minimum and maximum amounts for the alienation of ecclesiastical goods constituting parish stable patrimony (these norms also govern canon 1295 transactions) (c. 1292); for leasing goods, especially regarding the permission required (c. 1297). Nevertheless, these general decrees issued by the conference of bishops obtain binding force only after having received the *recognitio* of the Holy See and legitimately promulgated (c. 455, §2). Moreover, the provincial bishops are competent to establish norms for offerings on the occasion of the administration of the sacraments and sacramentals (c. 1264, 2°), and for Mass offerings (c. 952) (see *ibid.*, pp. 447-448).

¹³³ See *idem*, “The *Parochus* as Administrator of Parish Property,” p. 516; see AZNAR GIL, “El cuidado y la administración de los bienes temporales de la parroquia,” pp. 639-640.

¹³⁴ “L’applicazione del principio di sussidiarietà da parte del Legislatore canonico” (PCLT, *Nota La funzione dell’autorità*, p. 28); see RENKEN, *Church Property*, pp. 169-170; see SCHOUPPE, *Derecho patrimonial canónico*, p. 176.

2.3.5 – Intervention in Cases of Negligence by the *Parochus*

Canon 1279, §1 acknowledges clearly that “the right of intervention in the event of negligence is an essential element of supervision.”¹³⁵ Conversely, “administrators must respect not only the legitimate supervisory role of ordinaries but also the competence of ecclesiastical authority to regulate the exercise of rights, including the rights of administrators, in the interest of the common good (see c. 223, §2).”¹³⁶ In the situation of the negligence of an administrator, the ordinary has the competence to correct errors, to insist on a different method of administration and, if necessary, even to apply punitive or disciplinary measures.¹³⁷ O’Brien notes that “negligence is the failure to act as a reasonably prudent person would act in like circumstances in the administration of the parish or an unwillingness to exercise reasonable care in the administration leading to injury of persons or damage to property.”¹³⁸ Without prejudice to canon 1389, §2,¹³⁹ the negligence of *parochi* as administrators would be evident in the following circumstances:

1. Failing to update inventories (c. 1283, 3°);
2. Failing to update insurance (c. 1284, §2, 1°);
3. Omitting to make necessary repairs to buildings;
4. Delaying to pay bills and salaries (and having to pay extra interest fees) (see c. 1284, §2, 5°);

¹³⁵ KENNEDY, “Commentary on Book V,” p. 1481.

¹³⁶ Ibid.

¹³⁷ See MORRISEY, “Commentary on Book V,” p. 725.

¹³⁸ O’BRIEN, “Instructions for Parochial Temporal Administration,” p. 140.

¹³⁹ Culpable negligent acts involving financial malfeasance will be discussed in chapter III.

5. Failing to keep well-ordered parish account books of income and expenses (c. 1284, §2, 7°), to maintain another book for noting the individual obligations, their fulfillment, and the offerings of a non-autonomous pious foundation (c. 1307, §2), and also to keep a special book for Mass offerings (c. 958, §1);
6. Allowing the neighbourhood children to use the land, without taking any safety precautions;
7. Failing to see to the proper upkeep of property (for instance, not shovelling pathways, de-icing the parking lot, etc.);
8. Failing to comply with the guidelines and programs offered by those offices and persons designated by the diocesan bishop to assist in the financial operations of the parish; etc.¹⁴⁰

Even though the diocesan bishop may entrust his duty of supervision of the administration of property of public juridic persons subject to himself to the diocesan finance officer (c. 1278), canon 1279, §1 does not indicate that the diocesan finance officer can intervene when an administrator is negligent of his duties. Rather the diocesan finance officer would inform the diocesan bishop about an administrator's negligence and the diocesan bishop (directly, or through others such as the finance officer) would then make the intervention.¹⁴¹ The diocesan bishop may propose the following:

1. That the *parochus* follow certain practical lessons in administration;
2. That the *parochus* employ a business manager who, at frequent intervals, would submit a complete report of the administration of the *parochus* to the curia;
3. That the *parochus* seek the advice of the vicar forane or of a neighboring *parochus* before undertaking any important business matter;

¹⁴⁰ See O'BRIEN, "Instructions for Parochial Temporal Administration," p. 140. There are other acts/signs of negligence of *parochi*, although they do not have a *direct* effect on financial management: neglecting to fill out and update the baptismal, confirmation, marriage, and death registers appropriately; neglecting to respond to telephone messages or to leave forwarding telephone numbers if absent; neglecting to be available (or not showing up) when appointments are fixed; etc.

¹⁴¹ See RENKEN, *Church Property*, p. 192.

4. That the *parochus* be assisted by a parochial administrator with specific competence in temporal administration;
5. That the *parochus* receive very specific assistance from the parish finance council mandated in canon 537.¹⁴²

If such corrective measures do not preclude great harm being done to the parish due to the negligence or poor administration of the *parochus*,¹⁴³ the protection of its financial patrimony may require the intervention of the diocesan bishop to initiate the process of administrative removal of the *parochus* from office (see c. 1741, 5°). Had he illegitimately placed or omitted an act through culpable negligence, he would perhaps commit a delict deserving a just penalty (see c. 1389, §2).¹⁴⁴ However, in those instances where a decision is left to the discretion of the administrator, he cannot be accused of negligence if he took a decision in a particular matter, even though time might prove that this was not the right decision to have taken.¹⁴⁵

¹⁴² See V.G. D'SOUZA, "The Procedure for the Removal and Transfer of Pastors: Balancing Rights," in *Studies in Church Law*, 4 (2008), p. 309.

¹⁴³ The poor administration is one which "does grave damage to the Church" and the term "church" could be not only the parish, but also other public juridic persons (c. 1258) such as the diocese. Therefore, (1) it can happen that the diocese is affected by the bad administration of the *parochus*, e.g., it could make the diocese liable to pay the dues or loans undertaken by him or even to compensate affected persons; (2) It can happen on account of his doing something against the norms, e.g., alienating goods without due permission (c. 1291); (3) It can happen on account of his omitting to do something, e.g., not being vigilant concerning the goods under his care and thus allowing them to suffer damage or loss (c. 1284, §2, 1°); (4) It could happen even without his fault, because of his lack of experience, e.g., in keeping accurate records of income and expenditure (c. 1284, §2, 7°); (5) It could happen on account of his excessively imprudent generosity, e.g., if he goes on giving gifts and charities outside the limit of ordinary administration (c. 1285), etc. (see *ibid.*, pp. 308-309).

¹⁴⁴ See MORRISEY, "Commentary on Book V," p. 725.

¹⁴⁵ For example, the wisdom of a decision by the *parochus* to patch a church's parking lot rather than to resurface the entire lot may be doubted by the local ordinary. This is a matter of ordinary administration. Therefore, the bishop would not intervene in this decision. An appropriate arena for discretionary decision is given to the *parochus* in the administration of the parish property (see O'BRIEN, "Instructions for Parochial Temporal Administration," p. 141).

2.4 – The Development of Canon 537 of the 1983 Code

This study of canon 537 will first focus on its connection to the 1917 Code, and then will consider the initial discussion of the *coetus De populo Dei* on the need for this canon in the 1983 Code. It will next examine how the canon appeared in the various *schemata*, and, finally, will review the promulgated text in order to understand better the canonical foundation as well as the role of the parish finance council to assist the *parochus* in exercising his *munera* as administrator in the protection of parochial property.

2.4.1 – The Relation of Canon 537 to the 1917 Code of Canon Law

The 1917 Code did not specifically mention a parish finance council as does the 1983 Code which requires that there is to be a parish finance council in each parish, which is a public juridic person *a iure* (cc. 537; 1280; 515, §3). The *fontes* of the 1983 Code of Canon Law identify CIC/17 canons 1183-1184; 1520, §§1-2; 1521, §1; 1525, §1 as sources for canon 537.¹⁴⁶ According to these sources, firstly, the parish finance council has some similarities with the “council of maintenance” (*consilium fabricae ecclesiae*) (CIC/17, cc. 1183-1184). As previously mentioned, this was an optional advisory body to assist the *parochus* in the proper administration and the protection of the goods of the church by observing the provisions on the duties of an administrator of ecclesiastical goods according to CIC/17 canons 1522-1523.¹⁴⁷ Secondly, the parish finance council reflects to some extent the “diocesan council of administration” (*dioecesanum consilium administrationis*) (CIC/17, c. 1520, §1). This was a consultative body established by the ordinary in his episcopal city, consisting of himself as a president and two or

¹⁴⁶ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex iuris canonici, fontium annotatione et indice analytico-alphabetico auctus*, p. 152.

¹⁴⁷ See BOUSCAREN et al., *Canon Law*, p. 665.

more qualified men, expert insofar as possible also in civil law.¹⁴⁸ The nature of the council was such that the members had only a consultative vote except in those cases in which their consent was expressly required by law (see *CIC/17*, cc. 1532; 1539) or by the documents of foundation (*CIC/17*, c. 1520, §3). Persons related to the local ordinary in the first or second degree of consanguinity or affinity could not be appointed as the members of the council except by indult of the Holy See (*CIC/17*, c. 1520, §2). Thirdly, *CIC/17* canon 1525, §1 indicated that all administrators (whether clerics or lay men) of any church (including the cathedral church, any pious place canonically erected, or a confraternity) are bound to make an annual account of the administration to the local ordinary.¹⁴⁹

CIC/17, canon 1520 on the *dioecesanum consilium administrationis*, noted as a source for canon 537, gives a hint that diocesan particular law on parish finance council may reflect, *mutatis mutandis*, the Code's norms governing the diocesan finance council (cc. 492-493).¹⁵⁰ Moreover, *CIC/17* canon 1525, §1, also mentioned as a source for canon 537, is again a clear indication for diocesan particular law to involve the parish finance council in fulfilling the duties of the *parochus* as administrator. Even though canon 1525, §1 mentions a specific duty of rendering an annual financial report to the local ordinary (c. 1287, §1), nothing prevents diocesan particular law from involving the parish finance council in similar specific duties such as in the preparation of the annual administration report (c. 1284, §2, 8°), the annual financial report to the faithful (c. 1287, §2), and the annual budget (c. 1284, §3), etc.

¹⁴⁸ See *ibid.*, p. 831; see ABBO and HANNAN, *The Sacred Canons*, p. 725.

¹⁴⁹ See WOYWOD, *A Practical Commentary*, vol. 2, p. 206.

¹⁵⁰ See RENKEN, *Particular Churches*, p. 289, fn. 140.

2.4.2 – The Initial Discussions of the *Coetus de Populo Dei*

Canon 537 was not considered in the 1977 *Schema* but it was inserted thereafter by the *coetus De populo Dei* since the draft legislation on the parish finance council was initially proposed by the *coetus* on 14 May 1980, in which the *coetus* considered for the first time finance councils for parishes, quasi-parishes, and supra-parishes:

Can. 351 ter §1. Where circumstances suggest it, in each parish there is to be a finance council, which is governed by the norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, together with the *parochus* as president, administer the goods of the parish, always without prejudice to the prescripts of can. 366.

§2. In the judgment of the diocesan bishop, a finance council can be also established in each quasi-parish as well as for communities constituted according to the norm of canon 349 bis §3 and according to the prescripts of the statutes.

§3. In the case of supra-parochial goods of supra-parishes according to the norm of canon 349 ter for its own goods to be administered, the diocesan bishop can constitute a specific finance council and establish suitable norms for it.¹⁵¹

The Secretary of the Pontifical Commission did not see the need for such a canon on the parish finance council since the Code elsewhere requires a council of administration as a general norm for all juridic persons in Book V. Nonetheless, having observed that an extensive treatment on parish, quasi-parish, and supra-parish finance councils is unnecessary, he proposed a shorter canon¹⁵² which reads as follows:

Can. 351 ter. In each parish there is to be a finance council which is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected

¹⁵¹ “Can. 351 ter §1. Ubi adiuncta id suadeant, in unaquaque paroecia habeatur Consilium a rebus oeconomicis, quod regitur normis ab Episcopo dioecetano editis et in quo christifideles, secundum easdem normas selecti, una cum parochus praeside bona paroeciae administrant, salvis semper praescriptis can. 366. §2. Consilium a rebus oeconomicis haberi potest etiam, de iudicio Episcopi dioecetani, in singulis quasi-paroeciis, necnon in communitatibus, ad normam can. 349 bis §3 constitutis, secundum statutorum praescripta. §3. Si ratione supraparoeciali ad normam can. 349 ter bona propria administranda sunt, Episcopus dioecetanus constitutionem Consilii a rebus oeconomicis specialis imponere normasque idoneas edere potest” (*Communicationes*, 13 [1981], pp. 307-308) [author’s translation].

¹⁵² See *ibid*, English translation in RENKEN, *Particular Churches*, p. 289, fn. 139; see also in *idem*, *Church Property*, p. 195, fn. 97.

according to these same norms, are to assist the *parochus* in the administration of the goods of the parish, without prejudice to the prescript of can. 471.¹⁵³

This text of the canon was unanimously accepted by the *coetus*, which eventually became canon 537 of the promulgated law. Paragraphs §§2-3 of the previously proposed text concerning finance councils for quasi-parishes and supra-parishes were suppressed.

2.4.3 – The 1980 *Schema* and the 1981 *Relatio*

The 1980 *Schema* canon 476 simply repeats the second text proposed at the initial discussion.¹⁵⁴ In the 1981 *Relatio*, when discussing on the 1980 *Schema* canons 475-476, there was a proposal to specify the connection between the parish pastoral council and the parish finance council. The Secretariat responded that “no connections should be offered because they are different organs.”¹⁵⁵ Therefore, it becomes clear that both organs exist for different purposes. The former exists for fostering pastoral activity (*ad actionem pastorem fovendam*) (c. 536), in other words, for the pastoral planning of the parish,¹⁵⁶ whereas the latter exists to assist the

¹⁵³ “Can. 351 ter. In unaquaque paroecia habeatur Consilium a rebus oeconomicis, quod, praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parochi in administratione bonorum paroeciae adiutorio sint, firmo praescripto can. 471” (*Communicationes*, 13 [1981], p. 308).

¹⁵⁴ “Can. 476. In unaquaque paroecia habeatur Consilium a rebus oeconomicis, quod, praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parochi in administratione bonorum paroeciae adiutorio sint, firmo praescripto can. 471” (*The 1980 Schema*, p. 116).

¹⁵⁵ “Nulla conexio praevidenda est, quia agitur de organis diversis” (*Relatio*, p. 127; *Communicationes*, 14 [1982], p. 226).

¹⁵⁶ The parish pastoral council has the same nature and function as the diocesan pastoral council at the parish level since the sources of canon 536, §1 as identified by the *fontes* of Code of Canon Law (PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex iuris canonici, fontium annotatione et indice analytico-alphabetico auctus*, p. 152) invariably make reference to the diocesan pastoral council (see *CD*, no. 27; see *Ecclesiae sanctae* I, no. 16, §1, p. 601; see CONGREGATION FOR THE CLERGY, Circular Letter on Pastoral Councils *Omnes christifideles*, 25 January 1973, no. 12, English translation in *CLD*, vol. 8, pp. 287-288; see *Ecclesiae imago*, no. 204, p. 105). Hence, the purpose of the parish pastoral council, “to assist in fostering pastoral activity” (c. 536) may be essentially understood in terms of “parish pastoral planning” similar to that of the diocesan

parochus in the administration of the goods of the parish (*parocho in administratione bonorum paroeciae adiutorio sint*) (c. 537).¹⁵⁷

Moreover, there was another proposal that particular law for the parish finance council be established both by the diocesan bishop and the conference of bishops. The Secretariat also rejected this recommendation since it judged that the legislative intervention of the conference of bishops in this matter was unnecessary. Instead, diocesan bishops should issue particular laws in accord with the universal law.¹⁵⁸

2.4.4 – The 1982 Schema

The 1982 *Schema* canon did not change the 1980 *Schema* either in content or in wording; however, numerically canon 476 became 537.¹⁵⁹ It remained the same up to the promulgated text of the Code of Canon Law.

2.4.5 – Summary

The 1977 *Schema* did not include any canon on the parish finance council. It first appeared in the 1980 *Schema* and then, unchanged, became the promulgated law. Canon 537 is a

pastoral council which “investigates, considers, and proposes practical conclusion about those things which pertain to the pastoral works in the diocese” (c. 511).

¹⁵⁷ Both the parish pastoral council and the parish finance council differ in their purpose, composition, and obligatory establishment: “Evidentissime non sunt eadem res. Hoc clarissime apparet sive ex textu Codicis, sive ex diversa finalitate, sive ex differenti compositione, sive tandem ex diversa obligatorietate duorum Consiliorum” (COCCOPALMERIO, “Quaestiones de paroecia in novo codice,” pp. 404-405).

¹⁵⁸ “Animadversio non recipitur, quia etiam in hac materia non videtur necessarius interventus legislativus Conferentiae. Provideant propria auctoritate singuli Episcopi dioecesani, servatis normis quae iam traduntur in iure universali (cfr. cann. 471 et 1232-1239)” (*Relatio*, p. 128; *Communicationes*, 14 [1982], p. 227).

¹⁵⁹ “Can. 537. In unaquaque paroecia habeatur Consilium a rebus oeconomicis, quod, praeterquam iure universali, regitur normis ab Episcopo dioecesano latis et in quo christifideles, secundum easdem normas selecti, parocho in administratione bonorum paroeciae adiutorio sint, firmo praescripto can. 532” (*The 1982 Schema*, p. 101).

specific application of the general norm of canon 1280 which requires each juridic person to have a finance council or at least two counselors. However, merely two counselors are insufficient for the parish since the law requires a mandatory finance council.¹⁶⁰ Since it is constitutive law, the diocesan bishop cannot dispense from it (c. 86).¹⁶¹ Moreover, as previously stated, the wording of the canon 537 “*parochus [...] adiutorio sint*” as well as the invocation of canon 532 (“*firmiter praescripto can. 532*”) makes it clear that the parish finance council is not an “administrative council.”¹⁶² The administration of the goods of the parish rests with the *parochus* alone and the parish finance council is to assist him in exercising that responsibility. Canon 537 does not compromise the administrative role of the *parochus* in the protection of the goods of the parish (c. 532).¹⁶³

2.5 – Canonical Foundations of the Parish Finance Council

The Code, following the insights of the Second Vatican Council, calls for a new openness, an accountability, and a public act of faith in the competence of the laity as equally interested and reliable members of the Church regarding the administration of its

¹⁶⁰ See RENKEN, *Particular Churches*, p. 290.

¹⁶¹ See HUELS, *The Pastoral Companion*, p. 408.

¹⁶² Only the initial draft canon by the *coetus De populo Dei* stated that the parish finance council would have been a council of administration (see *Communicationes*, 13 [1981], pp. 307, can. 351 ter §1). But then, the appearance of the canon in the 1980 and the 1982 *Schemata* as well as in the promulgated canon 537 invariably affirms that it is not a council of administration. It is neither a substitute for the *parochus* nor a council of administration, but it is only to assist him in the administration of the goods of the parish (see J.L. ROQUE PÉREZ, “El consejo parroquial de asuntos económicos en el CIC de 1983,” in *Revista mexicana de derecho canónico*, 9 [2003], pp. 147-149).

¹⁶³ See COCCOPALMERIO, “Quaestiones de paroecia in novo codice,” pp. 403-404; see RENKEN, *Church Property*, p. 196, fn. 100.

temporalities.¹⁶⁴ Consequently, the Code provides for shared responsibility which demands a process of consultation, involving not only the Holy See, the conference of bishops, and the presbyteral council, but also finance councils.¹⁶⁵ Indeed, “the theological meaning of shared responsibility is that God’s truth, which provides the guidance for the Church, comes not only through the hierarchical leaders but also through the people. In order for the Church to have the fullness of God’s light and guidance, the people must be consulted.”¹⁶⁶ The parish finance council is one of the organs of consultation that can help to realize these objectives. Hence, this section will consider the consequences of a parish being identified as a community of the faithful, shared responsibility in decision-making, the juridical significance of consultation, and membership on the parish finance council as an ecclesiastical office.

2.5.1 – The Consequences of a Parish Being Identified as a Community of the Faithful

The conciliar and post-conciliar teachings of the Church underscore the consequences of a parish being identified as a community of the faithful in relation to the parish finance council.

2.5.1.1 – Conciliar Documents

Presbyterorum ordinis, no. 17, is mentioned as the source for canon 537. It states that administrators should protect the parochial goods with the assistance of competent lay persons: “They are to manage ecclesiastical property, properly so called, according to the nature of the case and the norm of ecclesiastical laws and with the help, as far as possible, of skilled lay

¹⁶⁴ See A.P. BENNETT, “The Practical Effects on the Fiscal Administration of Church Finances of Book Five: The Law Regarding Church Possessions,” in *CLSAP*, 42 (1980), p. 171.

¹⁶⁵ See *ibid.*, p. 172.

¹⁶⁶ JANICKI, “Commentary on Canons 515-552,” p. 431.

people.” Moreover, *Apostolicam actuositatem*, no. 10, insists that the lay people are to offer their particular skills in the administration of the goods of the parish: “By their expert assistance they increase the efficacy of the care of souls as well as of the administration of the goods of the church.” Furthermore, *Lumen gentium*, no. 37, recommends that the sacred *pastores* are to recognize the responsibility of the laity in the church and to assign offices to them in the service of the church: “They should willingly use their prudent advice and confidently assign offices [e.g., membership in the parish finance council] to them in the service of the church.”

2.5.1.2 – Post-Conciliar Documents

The Congregation for the Clergy, in its 2002 instruction *The Priest, Pastor and Leader of the Parish Community*, discusses the role of the parish finance council: “In accordance with the norms of law on just and honest administration, organs which have been established to consider the economic questions in a parish may not constrain the pastoral role of the *parochus*, who is the legal representative and administrator of the goods of the parish.”¹⁶⁷ Besides, the 1997 instruction *Ecclesiae de mysterio*, in discussing the structures of collaboration in the particular Church, states that the parish finance council represents “a form of active participation of the faithful in the life and mission of the Church as communion.”¹⁶⁸ Furthermore, the 1973 Directory on Bishops, *Ecclesiae imago*, discusses the diocesan bishop’s responsibility to take suitable measures to educate the faithful to a sense of participation, cooperation, and co-responsibility

¹⁶⁷ CONGREGATION FOR THE CLERGY, Instruction *The Priest, Pastor and Leadership of the Parish Community*, no. 26, p. 386.

¹⁶⁸ CONGREGATION FOR THE CLERGY et al., Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priests *Ecclesiae de mysterio*, 15 August 1997, in AAS, 89 (1997), pp. 852-876; also in *Communicationes*, 29 (1997), pp. 179-205, Vatican English translation in W.H. WOESTMAN, *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law*, 3rd rev. ed., Ottawa, Saint Paul University, 2006 (= *Ecclesiae de mysterio*), art. 5, p. 300.

with regard to the administration of the temporal goods of their diocese, parishes, and institutions.¹⁶⁹ Its 2004 successor Directory, *Apostolorum successores*, underscores that the parish finance council is a mandatory body of a parish: “Regardless of the number of parishioners, every parish must have a finance council.”¹⁷⁰

2.5.1.3 – The Code of Canon Law

A number of canons in the Code provide for the community of the faithful to share their responsibility for the mission of the Church. The parish finance council could be one of many means or structures for them to share in this responsibility. Firstly, for the protection of the goods of the parish, the community of the faithful is to collaborate with their *parochus* by their baptismal call (cf. c. 204, §1). Secondly, they are to share their responsibility based on the fundamental equality of each one’s own condition and function (see c. 208). Thirdly, they are to share their expertise with *parochi* by their active participation in parish councils according to the norm of law (see c. 228, §2).¹⁷¹ Consequently, they may participate in the pastoral and financial direction of the parish through consultation either directly or by their representatives (see cc. 536-537).¹⁷²

¹⁶⁹ See *Ecclesiae imago*, nos. 131 [also noted as source for canon 537], 133, and 135, pp. 67-69.

¹⁷⁰ *Apostolorum successores*, no. 210, p. 237.

¹⁷¹ See J.A. RENKEN, “Pastoral Councils: Pastoral Planning and Dialogue among the People of God,” in *The Jurist*, 63 (2003), pp. 151-152.

¹⁷² See CORIDEN, “The Rights of Parishes,” pp. 302-303.

2.5.2 – Shared Responsibility in Decision-Making

Shared responsibility does not mean that “every member of the Church has the same responsibilities or is equally empowered to exercise the responsibilities of another.”¹⁷³ But, it does mean that “each member of the Church, by reason of baptism, has the right and duty to participate in the Church’s mission among people.”¹⁷⁴ Shared responsibility in the local Church “has meaning only if lay people are assured ‘in concrete’ a genuine role in the decisions of the local Christian community.”¹⁷⁵ In this regard, J. Boyle states that “shared responsibility is not a cheap borrowing from secular culture; it is rather the recovery of an element in the constitution of the Church. That means that the priestly office, whether of the bishop or of the presbyter, cannot be thought of apart from or in opposition to the people of God with its diversity of gifts, but rather as a part of that community.”¹⁷⁶

In fact, shared responsibility does not mean shared power. Those who seek co-responsibility find themselves in confrontation with ecclesiastical authorities because they do not distinguish between decision-making and decision-taking (choice making):

Persons on both sides of the conflict seem to regard the making of a decision as involving nothing more than making a choice. Decision-making ‘power’ is thus narrowly viewed as ‘choice-making’ power, the power to make the final choice or at least participate by deliberative vote in making the final choice. Consultation is viewed as something altogether different. For many bishops and pastors, consultation poses no threat to their authority because it is not determinative of the final choice; for many of the faithful, on the other hand, to be consulted is not enough; what is sought is definitive voice in choosing the final course of action.¹⁷⁷

¹⁷³ J. HICKEY, “Shared Responsibility Perspectives,” in *Origins*, 7 (1977-1978), p. 584.

¹⁷⁴ *Ibid.*, p. 582.

¹⁷⁵ J.M. MESA, “The Participation of Lay Men and Women in the Decision of the Church as Ministry,” in *East Asian Pastoral Review*, 17(1980), p. 256.

¹⁷⁶ J.P. BOYLE, “Presbyters, Pastors, Laity: Decision-Making in the Church,” in *American Ecclesiastical Review*, 169 (1975), pp. 606-607.

¹⁷⁷ R.T. KENNEDY, “Shared Responsibility in Ecclesial Decision Making,” in *StC*, 14 (1980), p. 8.

In order to avoid this tension between decision-making and decision-taking, one should understand that decision-making whether undertaken by an individual or by a group is a complex process. Kennedy identifies five stages of a decision-making process: 1. gathering of relevant data; 2. creative idea production; 3. making decisions; 4. implementing a decision; 5. evaluating the implementation.¹⁷⁸ Therefore, it is obvious that decision-taking is one of the many stages of decision-making. Each stage separately and together entails the exercise of influence and power in the overall consultative process. Therefore, even though casting a deliberative vote in the choice of a course of action is one way to share responsibility for a decision, it is not the only way, because the responsibility for a final decision does not rest solely with the choice-maker [e.g., the *parochus* in the parish finance council] but also with data and idea givers, implementers and evaluators, and so on.¹⁷⁹

The *parochus* as an administrator of the parish is ultimately responsible to make decisions in the parish. However, it is clear that no administrator should attempt to make decisions alone. He must fulfill this responsibility in conscious dependence upon others for factual data, creative ideas, implementive initiatives, and evaluative feedback. In this regard, *Lumen gentium*, no. 37 explains:

Many benefits for the Church are to be expected from this familiar relationship between the laity and their pastors [*pastores*]. The sense of their own responsibility is strengthened in the laity, their zeal is encouraged, and they are more ready to unite their energies to the work of their pastors [*pastores*]. The latter, helped by the experience of the laity, are in a position to judge more clearly and appropriately [in other words, to make more clear and suitable decisions] in spiritual as well as in temporal matters.

¹⁷⁸ See *ibid.*, pp. 9-20. W. Dalton summarizes the stages identified by Kennedy and divides the creative idea production stage into three steps: members freely expressing their options, identifying opinions, and clarifying criteria in the choice (see W. DALTON, *Parish Pastoral Councils*, Dublin, The Columba Press, 1993, pp. 49-52).

¹⁷⁹ See KENNEDY, "Shared Responsibility in Ecclesial Decision Making," p. 14.

In a hierarchically structured organization like the Church, although “choice-making authority is usually reserved to designated office holders like bishops and pastors [*parochi*], participation in other equally critical phases of the decision-making process is not so reserved.”¹⁸⁰ Decisions arrived at through a proper decision-making process are far more likely to generate trust and confidence and enthusiastic “internal commitment to the Church and its mission on the part of the clergy and laity.”¹⁸¹ Hence, the presiding role of the *parochus* in the parish finance council has to be seen within the process of decision-making which involves many stages. In this sense, the parish finance council members have the opportunity to participate in the decision-making process so that the *parochus* can make decisions in an effective manner, but this process must be well understood by all. Indeed, “participatory decision-making in the Church is both an art and a work of the Spirit.”¹⁸²

2.5.3 – The Juridical Significance of Consultation

“Consultation, as a path towards decision-making, is the key to discovering the needs and expectations of a person, a group, or a community. It allows the consulting person or group to identify problem areas and possible improvements, to gather opinions on potential solutions or policies being implemented, and to provide information.”¹⁸³ If the stakeholders are not involved

¹⁸⁰ J.P. BEAL, “Consultation in Church Governance Taking Care of Business by Taking after Business,” in *CLSAP*, 2006 (= BEAL, “Consultation in Church Governance”), p. 29.

¹⁸¹ *Ibid.*, p. 34.

¹⁸² K.S. SEBASTIAN, “Participation of the Laity in the Decision-Making Structures of the Local Church,” in *Vidyajyothi Journal of Theological Reflection*, 66 (2002) (= SEBASTIAN, “Participation of the Laity”), p. 65.

¹⁸³ A. ASSELIN, “Consultation in the Parish A Needless Burden, a Necessary Evil, or a Worthwhile Opportunity?,” in *In the Service of Truth and Justice*, Festschrift in Honor of Prof. Augustine Mendonça, Professor Emeritus, V.G. D’SOUZA (ed.), Bangalore, Centre of Canon Law Studies, St Peter’s Pontifical Institute, 2008 (= ASSELIN, “Consultation in the Parish”), p. 111.

in the decision-making process, the decisions may not be effective. So, the authorities have an obligation to consult the people directly affected by their decisions.¹⁸⁴

Canon law adopted the Roman law principle as the rationale for consultative bodies: “That which affects all must be approved by all”¹⁸⁵ (c. 119, 3°; *CIC/17*, c. 101, 2°). Provost shows that the basis of consultation is rooted in the magisterial teachings of the Church and its law:

The basis for consultative bodies in the Church is truly theological, rooted in the magisterial teaching of the Church and articulated in fundamental principles found in the Church’s law. [...] From the very earliest days of the Church, the office holders have rightly relied on consultative groups in carrying out their responsibilities. The *presbyterium*, for example, performed this function for the bishop. When the Church took on elements of the Roman governmental system, that system’s advice and consent structure corresponded well with the Church’s own experience of the value of consultation.¹⁸⁶

When a decision is reached in a consultative effort, “it doesn’t mean the Church functions by a democratic vote or by consensus but rather it falls within the rich tradition of consultation which seeks out the opinions and reactions of those who will be affected before proceeding on a given matter in the Church.”¹⁸⁷ According to Asselin, “the Church is a community in which all members have a role (see c. 204, §1); when a decision is reached in a consultative effort, people feel affirmed and the decision earns their respect.”¹⁸⁸

Consultation as a legal principle is a basis for active participation in the life and work of the Church and it calls for collaboration and shared responsibility in the Church as

¹⁸⁴ See *ibid.*

¹⁸⁵ “Quod omnes tangit debet ab omnibus approbari” (*RJ* 29 in *VI*°).

¹⁸⁶ J.H. PROVOST, “Canon Law and the Role of Consultation,” in *Origins*, 18 (1988-1989), p. 796.

¹⁸⁷ *Idem*, “The Working Together of Consultative Bodies: Great Expectations?,” in *The Jurist*, 40 (1980), p. 263.

¹⁸⁸ ASSELIN, “Consultation in the Parish,” p. 112.

communion.¹⁸⁹ The purpose of consultation is to listen and to incorporate opinions and advice into the decision-making process. The role of consultative bodies by their nature is not to execute things. Rather, they are well positioned to define situations, to propose options, to analyze objectives, to alert the choice maker to potential obstacles, to assist in the development of plans and strategies to overcome these obstacles, and to galvanize the consensus for effective implementation.¹⁹⁰ The Church being a hierarchical communion, individuals and groups offer advice to their leaders (c. 212, §§2-3). Even though consultation at times remains mandatory where the law requires consultation as a pre-condition for valid action (see c. 127), consultation is to be seen more as a Catholic way of doing things which involves listening to the wisdom of the Spirit present in the Church and doing this in a structured way through consultative bodies:

Consultative bodies in the Catholic Church are not designed for political confrontation, power plays or pushing hidden agendas. They are a structured manner in which the Church – all of us, in the sense, attempts to listen to the Spirit who dwells in our midst, who is leading the Church and who can speak through charism and experiences as well as in office and ordination.¹⁹¹

2.5.4 – Membership in the Parish Finance Council as an Ecclesiastical Office

The Code defines broadly that “any function (*munus*) constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose” is an ecclesiastical office (c. 145, §1).¹⁹² This *munus* is a position of service which the office holder carries out individually or collegially. It follows that “offices exercised collegially are true canonical

¹⁸⁹ See PROVOST, “Canon Law and the Role of Consultation,” p. 796.

¹⁹⁰ See BEAL, “Consultation in Church Governance,” p. 31; see ASSELIN, “Consultation in the Parish,” p. 113.

¹⁹¹ PROVOST, “Canon Law and the Role of Consultation,” p. 797.

¹⁹² Huels proposes a concise definition: “An office is a stable position of service, established by law, which a physical person acquires by canonical provision or the law itself and which he or she exercises on behalf of a public juridic person in accord with the norm of law” (HUELS, “Towards Defining the Notion of ‘Office’ in Canon Law,” p. 430).

offices, even if the title to the office comes by virtue of law rather than canonical provision.”¹⁹³ Therefore, a number of collegial offices are acquired *ipso iure*,¹⁹⁴ e.g., membership in a parish council (needless to speak here about other collegial offices at the level of universal, regional, diocesan, and so on). Since members of the finance council assume their particular task for the promotion of the proper purposes of the temporal goods (c. 1254, §2), which are certainly spiritual goals (cf. c. 145), their involvement with these realities offers solid grounds to confirm that membership in the finance council is an ecclesiastical office.¹⁹⁵ Interestingly, the 1997 *Ecclesiae de mysterio*, which was approved *in forma specifica*, explicitly recognizes membership on the parish finance council as an “office” in parish structure.¹⁹⁶

Provost argues that “the function of those invited to a council is constituted in a stable manner by law, even though it is not exercised in an ongoing fashion but only when the councils meet.”¹⁹⁷ Moreover, “the technical notion of office in canon 145 does not include as an essential element participation in the ecclesiastical authority, nor does it include participation in the *potestas regiminis* or power of jurisdiction¹⁹⁸ (see c. 129, §1), nor in the sacred ministry or power

¹⁹³ Ibid., p. 423, fn. 74.

¹⁹⁴ See *ibid.*, p. 423.

¹⁹⁵ See A.G. FARRELLY, *The Diocesan Finance Council: A Historical and Canonical Study*, JCD thesis, Ottawa, Saint Paul University, 1987 (= FARRELLY, *The Diocesan Finance Council*), pp. 178-179; see A.S. AMANCHUKWU, *The Role of the Finance Council in the Administration of a Diocese in the Light of the 1983 Code of Canon Law (cc. 492 & 537)*, JCD thesis, Romae, Pontificia Università Lateranense, 1990 (= AMANCHUKWU, *The Role of the Finance Council*), p. 82.

¹⁹⁶ Only those faithful who possess the qualities prescribed by canon law may be elected to these *offices* [presbyteral council, diocesan and parish pastoral councils and finance councils]: “Possunt eligi in eiusmodi *officia* solum illi christifideles qui habent facultates lege canonica requisitas” (*Ecclesiae de mysterio*, art. 5, §2, p. 300) [emphasis added].

¹⁹⁷ J.H. PROVOST, “Participation of the Laity in the Governance of the Church,” in *StC*, 17 (1983), p. 437.

¹⁹⁸ F.J. Urrutia opines that membership on the parish financial council carries with it a limited sharing in the executive power of governance (see F.J. URRUTIA, “Delegation of the Executive Power of Governance,” in *StC*, 19 [1985], p. 343).

of orders.”¹⁹⁹ This is a significant change from the 1917 Code, where the legal meaning of office in the strict sense required such participation (*CIC/17*, c. 145, §1). Therefore, there may be offices with proper or vicarious power (c. 131), offices without authority, consultative offices, etc.²⁰⁰ So, when the parish finance council is duly established in parishes, membership on the council is an ecclesiastical office. Its stability, rights, and obligations are to be determined by particular law (c. 145, §§1-2). The members as a group enjoy the right to advise the *parochus* (see c. 228, §2). If, by particular law, the members vote, it is an individual juridic act; but the result is the collegial juridic act, which is granting consent as a group for the validity of the subsequent act of administration of the *parochus*.²⁰¹

2.6 – The Parish Finance Council as a Collaborative Structure in the Protection of the Temporal Goods of the Parish

Councils in a parish are not merely bodies to facilitate and to coordinate the activities of the Christian community, but they are also agents which contribute to the Church as communion,

However, from the wording of the canon 537, one would hold that the parish finance council does not have a share in the executive power of governance since its purpose is merely to assist the *parochus* in the administration of the goods of the parish (“*parocho in administratione bonorum paroeciae adiutorio sint*”). Hence, De Paolis concludes that it does not participate or cooperate in the power of governance of the Church: “Non avendo il consiglio alcun potere neppure amministrativo, [...] o meno come partecipazione o cooperazione al potere di governo della Chiesa (cf. c. 129, §2)” (see DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 283).

¹⁹⁹ J.I. ARRIETA, “Commentary on Canons 145-156,” in *Exegetical Comm*, vol. I, p. 896; see J.H. PROVOST, “Commentary on Canons 145-196,” in *CLSA Comm2*, p. 198. “Relator observat dari posse officium institutionale quod non habeat participationem potestatis” (*Communicationes*, 21 [1989], p. 178).

²⁰⁰ See ARRIETA, “Commentary on Canons 145-156,” p. 897.

²⁰¹ Since the *parochus* is not a member of the council, he may not vote, not even to break a tie as confirmed by an authentic interpretation of canon 127, §1 (see PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, “De Superiore eiusque Consilio ad normam c. 127, §1,” 14 May 1985, in *AAS*, 77 [1985], p. 771, English translation in *CCLA*, p. 1619). Conversely, as previously stated, groups in the Church (e.g., a parish finance council) which are not juridic persons cannot as such lodge recourse, but only as individuals acting either singly or together, provided that they really have a grievance; for instance, when the council was not convoked according to law (see c. 166, §1) or when their unanimous counsel was not respected without an overriding reason (see c. 127, §1, 1°), etc., the individual members can make recourse to the competent authority (see *idem*, “Responsio ad dubium ad normam c. 299, §3,” p. 1635).

as well as structural means which lead the faithful to respect one another, fellowship, exchange of views, common decision-making, and selfless collaboration.²⁰² Accordingly, “a finance council for every juridic person is to vouch not only for transparency and accountability but also for the realization of the Church as an organic communion.”²⁰³ Indeed, the parish finance council is an organ of collaboration (*un órgano de colaboración*) prescribed in order to collaborate with the *parochus* for the proper administration and protection of the ecclesiastical goods of the parish.²⁰⁴ This section will explore the establishment, purpose and nature, composition and term of membership of the parish finance council as a collaborative structure, and, finally, the relationship between the parish pastoral council and the parish finance council in the protection of parochial property.

2.6.1 – The Establishment of the Parish Finance Council

Universal law requires each parish to have a parish finance council (c. 537). Its establishment is therefore obligatory, in place of an optional council for the maintenance of the church under the law of the 1917 Code (*CIC/17*, cc. 1183-1184).²⁰⁵ The *parochus* is competent to establish the parish finance council as required by universal law. Arguably, given the mandatory requirement, if the *parochus* fails to establish it, this would be a violation of universal law. The diocesan bishop may bring pressure upon the *parochus* to fulfill this duty in this regard.

²⁰² See S. ARULSAM, “The Urgency of Promoting Lay Leadership in Emerging India II,” in *Vidyajyothi Journal of Theological Reflection*, 69 (2005), p. 501.

²⁰³ SEBASTIAN, “Participation of the Laity,” p. 61.

²⁰⁴ See ROQUE PÉREZ, “El consejo parroquial de asuntos económicos en el *CIC* de 1983,” p. 149; see J.M. SIGNIÉ, *L’administration des biens temporels de la paroisse d’après le Code de droit canonique de 1983: application à l’Église du Cameroun*, JCD thesis, Ottawa, Saint Paul University, 2005 (= SIGNIÉ, *L’administration des biens temporels*), p. 114.

²⁰⁵ See SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1349.

If the *parochus* is negligent, it may be a due cause for his removal from office (cc. 1389, §2; 1741, 4^o).²⁰⁶ When the *parochus* establishes the parish finance council, depending upon the complexities or necessities of the administration and protection of the temporal goods of the parish, various sub-committees for the council could also be formed such as a budget committee, fundraising committee, building committee, property maintenance committee, etc.²⁰⁷ Sánchez-Gil comments that “job descriptions” for the various committees are to be clearly stipulated in the statutes of the parish finance council:

In this case, it can be advisable that the statutes specify what tasks must be carried out jointly by all the members of the committee, and what tasks are better entrusted to the parochial financial officer –if he or she exists– to the secretary, or treasurer [and various sub-committees]. In principle, it seems preferable that the committee, as such, limit itself to the functions of advising, leaving to the aforementioned individuals, under the supervision of the pastor [*parochus*], the function of an executive character, such as carrying out of ordinary administrative acts [i.e., acts of ordinary administration] (e.g., managing the income and expenses of the parish), [and duties such as] drafting balance sheets, and income statements, etc.²⁰⁸

With regard to the norms governing the parish finance council, in the first place, the council is subject to universal law, in particular, the applicable norms of Book V of the Code. Secondly, it is governed by particular law or statutes established by the diocesan bishop.²⁰⁹ This is another area where the lower level authorities, through the application of the principle of subsidiarity, may respond to their distinctive legal-pastoral needs given diocesan and parish

²⁰⁶ See AMANCHUKWU, *The Role of the Finance Council*, pp. 84-85.

²⁰⁷ See K.S. SEBASTIAN, *Consultative Bodies within the Parish According to the 1983 Code of Canon Law*, JCD thesis, Romae, Pontificia Università Urbaniana, 1989 (= SEBASTIAN, *Consultative Bodies*), p. 126.

²⁰⁸ SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1351.

²⁰⁹ See DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” pp. 283-284. Unlike the *CIC* canon 537, *CCEO* canon 295 on the parish finance council has relegated its specific governing norms only to particular law which, by taking into consideration the sociological and cultural diversity among the various autonomous churches, is to determine the composition of the council, who is to preside over it, and the competency of the councils, etc. (see FARIS, *Eastern Catholic Churches*, p. 601; see P.T. SHEA, “Parish Finance Councils,” in *CLSAP*, 68 [2006], p. 171; see RENKEN, “Parishes in the Latin and Eastern Codes,” pp. 147-148, fn. 34).

diversity.²¹⁰ Since the parish is a public juridic person,²¹¹ its governing statutes,²¹² which are to define the purpose, constitution, government, and operation of the parish (cc. 94; 117), should also clearly define the precise relationship between the finance council and the *parochus* whose primary administrative leadership position is to be respected (c. 532). In this regard, Green explains:

The finance council does not have an autonomous executive role but needs to be viewed constantly in relationship to the pastor [*parochus*] as the primary administrative figure in the parish. The finance council is to collaborate with him in making the most effective use of parish financial resources for the good of the Church.²¹³

If the diocesan bishop deems it more prudent, he may allow parishes to submit draft formulations of their own statutes for the parish finance council, which he might then approve for those parishes.²¹⁴ These statutes must be promulgated for them to have their legislative force (cc. 94, §3; 7). The ordinary method of promulgating statutes is by a decree attached to the statutes themselves (see c. 8, §2).²¹⁵ Besides, “if parishes are to have constitutions [statutes of the

²¹⁰ See DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 284; see GREEN, “Shepherding the Patrimony of the Poor,” p. 729.

²¹¹ Some authors hold that a quasi-parish is a juridic person since it is considered equivalent to a parish in spite of its provisional nature (c. 516, §1) even though juridic persons are to be perpetual (c. 120) (see J.A. RENKEN, “The Quasi-Parish: A Definite Community of the Christian Faithful in a Particular Church,” in *StC*, 43 [2009], p. 39; see COCCOPALMERIO, *De paroecia*, p. 58). Consequently it too must have a finance council which is to assist the *quasi-parochus* as administrator of the goods of the quasi-parish (see c. 537).

Moreover, although as a general rule, a *parochus* is to have the parochial care of only one parish, he can be assigned to more than one parish in light of canon 526, §1 which reads: “A pastor [*parochus*] is to have the parochial care of only one parish; nevertheless, because of a lack of priests or other circumstances, the care of several neighboring parishes can be entrusted to the same pastor [*parochus*].” In such situations, each parish must have a parish financial council to assist the canonical administrator for the protection of ecclesiastical goods since each parish to which the same priest is assigned remains an independent juridic person (see RENKEN, “Commentary on Canons 515-552,” p. 697).

²¹² The statutes of the parish will be treated in chapter IV.

²¹³ GREEN, “Shepherding the Patrimony of the Poor,” p. 729.

²¹⁴ See E.A. SWEENEY, *The Obligations and Rights of the Pastor of a Parish According to the Code of Canon Law*, New York, St Pauls, p. 193.

²¹⁵ According to canon 8, §2, particular law “begins to oblige a month after the day of promulgation unless the law itself establishes another time period.” Moreover, diocesan bishops will be aware that “a lower level

parish finance council] tailored to their unique makeup and needs, diocesan norms should indicate the necessary components of each constitution.”²¹⁶ Furthermore, “it may be helpful to repeat the diocesan particular law on parish finance councils in the parish statutes.”²¹⁷

2.6.2 – The Purpose and Nature of the Parish Finance Council

The purpose of the parish finance council is to assist the *parochus* in the proper administration of the parochial goods while respecting the competencies of the *parochus* as legal representative as well as administrator of the goods.²¹⁸ This was clear from the significant change made in the very first draft text proposed for canon 537. It had first stated that “the Christian faithful, together with the *parochus* as president, administer the parish goods” (*in quo christifideles, [...] una cum parochus praeside bona paroeciae administrant*); but, before it became part of the 1980 *Schema*, this new text had been substituted and appeared in the *schemata* and in the promulgated canon as “the Christian faithful are to assist the *parochus* in the administration of the goods of the parish” (*in quo christifideles [...] parochus in administratione bonorum paroeciae adiutorio sint*).²¹⁹ Moreover, the addition of the phrase, “*firmiter praescripto*

legislator cannot validly issue a law contrary to higher law” (c. 135, §2). If he does otherwise, his action will be in violation of the principle of subsidiarity; moreover, its legality can be contested through a hierarchical recourse to the PCLT (see *Pastor bonus*, art. 158, pp. 727-728).

²¹⁶ JANICKI, “Commentary on Canons 515-572,” p. 433.

²¹⁷ RENKEN, “The Statutes of a Parish,” p. 119.

²¹⁸ See ROQUE PÉREZ, “El consejo parroquial de asuntos económicos en el *CIC* de 1983,” p. 151. It is relevant here to distinguish between the competence of the administrator and the parish finance council in the administration of goods: the former is a function of governance while the latter is not; the former is a function of decision-making while the latter is a function of an external cooperation to the superior (see DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 282).

²¹⁹ See *Communicationes*, 13 (1981), pp. 307-308.

can. 532,” confirms the mind of the legislator that the *parochus* alone is the administrator of goods of the parish as a juridic person.

A fundamental question about the nature of the parish finance council is the following: does the parish finance council have a deliberative vote, a consent-giving vote, or purely a consultative vote (only counsel, and not consent) in taking decisions?²²⁰ This question requires a multifaceted analysis. Firstly, as noted above, the wording of canon 537 makes it clear that it is not an administrative council; rather it is an advisory council to the *parochus* who is the sole administrator of the parish.²²¹ Consequently, in no way, can it substitute itself for the *parochus*; instead, it is to collaborate with the *parochus* through its expertise.²²² Therefore, obviously, it does not have a deliberative vote since the *parochus* alone makes the decisions in the parish. But, of course, as previously discussed, the parish finance council will assist in the decision-making process and not in the decision-taking/choice-making which is reserved to the *parochus*.

²²⁰ See AZNAR GIL, “La administración de los bienes temporales de la parroquia,” p. 177. The canonical distinction between a deliberative vote (the Code in canon 127 does not speak of “deliberative votes;” rather, such are now called “collegial votes”) and a consent-giving vote : in both cases an officeholder can propose to a group an act for which its intervention is required. In the case of the deliberative vote (e.g., the conference of bishops), the officeholder would be bound by the majority decision of the group; in other words, the officeholder would be obliged to complete the act if the deliberative vote of the group so indicated. However, in cases where consent is required, the officeholder is not bound to place the proposed act even if he receives the consent of the group to do so; in other words, even after receiving the consent of the group, the officeholder retains the freedom to place the proposed act or not. Moreover, failing to receive the consent of the group, the officeholder cannot place the act (see J.J.M. FOSTER, “To Protect by Civilly Valid Means: Reorganization and the Canonical-Civil Restructuring of Dioceses and Parishes,” in *CLSAP*, 70 [2008], pp. 108).

²²¹ “Hoc in casu, non habemus consilium administrationis, quod revera administrat paroeciam, sed habemus solummodo commissionem quae dat consilia parochi, qui est unicus administrator paroeciae” (COCCOPALMERIO, “Quaestiones de paroecia in novo codice,” p. 403).

²²² See DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 283, fn. 28; see F. NIÑO SÚA, “El consejo parroquial de asuntos económicos,” in *Theologica xaveriana*, 142 (2002), p. 296.

Secondly, one could also draw some clue about the competence of the parish finance council from the concept of a non-collegial juridic personality according to canon 115, §2.²²³ It reads:

An aggregate of persons (*universitas personarum*), which can be constituted only with at least three persons, is collegial if the members determine its action through participation in rendering decisions, whether by equal right or not, according to the norm of law and the statutes; otherwise it is non-collegial.

It is clear from this canon that the parish is a non-collegial juridic person because the decision is made only by the administrator, the *parochus* (cc. 532; 1279, §1) and the members of the parish finance council only assist him in the decision-making process. In other words, “the members cannot decide on anything with a deliberative voice binding the *parochus*.”²²⁴ De Paolis explains that given the nature of the parish as a community of the faithful and a non-collegial juridic person, it is not fitting for the parish finance council to have a deliberative function, but it is more coherent that a council with a consultative function would be sufficient and hence the *parochus* has the ultimate responsibility in the administrative field:

To understand the consultative function of the parish finance council, it is necessary to refer to the nature of the parish as a ‘community of the faithful’ and not as an association or society of persons. The parish community is not a collegial juridic person (as is an association), which has juridic significance, often mediated through the election of their representatives, the will of individual members, but it is a non-collegial juridic person (cf. c. 115, §2) of which a person is a member, different than in the case of an association or a religious institute, not by personal choice, but by the mere fact of being baptized and in communion with the Catholic Church and residing within the territory of the parish, wherein the *parochus*, the proper pastor of the entire community (not only of those who participate in the parish life), and guarantor of communion with the bishop, has the ultimate responsibility in the administrative sphere. In aggregates of the faithful as a community and a non-associative structure, it is not appropriate for a council to have a deliberative function: a council with a consultative function is sufficient.²²⁵

²²³ See SEBASTIAN, *Consultative Bodies*, p. 113.

²²⁴ *Ibid.*, p. 114.

²²⁵ “Per comprendere la funzione consultiva del CPAE occorre fare riferimento alla natura della parrocchia come, ‘comunità di fedeli’ e non come associazione o società di persone. In quanto comunità la parrocchia non è una persona giuridica collegiale (come un’associazione), nella quale ha rilevanza giuridica, sia pure spesso mediata tramite l’elezione di propri rappresentanti, la volontà dei singoli membri, ma è una persona giuridica non collegiale (cf. c. 115, §2), di cui si è membri, diversamente che nel caso di un’associazione o di un istituto religioso, non per propria scelta, ma per il solo fatto di essere battezzati e in comunione con la Chiesa cattolica e di risiedere all’interno del territorio parrocchiale, dove il parroco, pastore proprio di tutta la comunità (e non solo di chi partecipa

Thirdly, unlike canon 536 §2 which states that “a parish pastoral council possesses a consultative vote only” (*tantum consultivo*), the consultative nature of the parish finance council is not stated in canon 537.²²⁶ However, it is explained in the 1997 instruction *Ecclesiae de mysterio*, which states:

Diocesan and parish pastoral councils and parish finance councils, of which non-ordained faithful are members, enjoy a consultative voice only and cannot in any way become deliberative structures. Only those faithful who possess the qualities prescribed by the canon law may be elected to these offices.²²⁷

Since this instruction was approved *in forma specifica* and promulgated, it is a legislative document which is to be treated as universal law.²²⁸ Consequently, this later law expressly derogates from the earlier law (c. 20) concerning the nature of the parish finance council (c. 537), and makes its consultative nature explicit, which was otherwise implicit in the promulgated text of the canon. However, the parish finance council is clearly not changed with its purpose and task to assist the *parochus* as administrator in the administration and protection of parish goods.²²⁹

alla vita parrocchiale), e garante della comunione con il Vescovo, ha la responsabilità ultima anche in campo amministrativo. Nelle aggregazioni di fedeli a struttura comunitaria e non associativa non è conveniente che il consiglio abbia funzione deliberativa: è sufficiente un consiglio con funzione consultiva” (DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” p. 282, fn. 27, Spanish translation in NIÑO SÚA, “El consejo parroquial de asuntos económicos,” p. 297) [author’s translation].

²²⁶ In a similar fashion, the Code does not indicate that the diocesan finance council is consultative only (cc. 492-493) as canon 514, §1 does for the diocesan pastoral council. This is because the diocesan finance council sometimes must give its consent before the diocesan bishop can act validly concerning acts of extraordinary administration of diocesan property (c. 1277), acts of alienation of ecclesiastical goods belonging to the diocese and public juridic persons subject to the diocesan bishop (c. 1292, §1), and acts of administration which can worsen the patrimonial condition of the diocese or a public juridic person subject to the diocesan bishop (c. 1295) (see RENKEN, *Particular Churches*, p. 290, fn. 142).

²²⁷ *Ecclesiae de mysterio*, art. 5, §2, p. 300.

²²⁸ See J.M. HUELS, “Interpreting an Instruction Approved *in forma specifica*,” in *StC*, 32 (1998), p. 16.

²²⁹ See RENKEN, *Particular Churches*, p. 290.

The parish finance council by its nature is therefore consultative and not deliberative.²³⁰

In this regard, canon 537 simply states that the parish finance council is to assist the *parochus* in the administration of the goods of the parish. It does not specify if it can give only counsel, or also consent. It will be up to the particular law to determine so. Nonetheless, nothing prevents diocesan particular law or statutes from determining its competence and identifying circumstances in which it may be required to give its counsel or consent²³¹ before the *parochus* is

²³⁰ See ROQUE PÉREZ, “El consejo parroquial de asuntos económicos en el CIC de 1983,” p. 151.

²³¹ As far as the consent-giving vote of the parish finance council is concerned, De Paolis argues that according to universal law, in particular cases, an advisory council may be called to give its counsel, but this does not exclude that in some cases it may be called to give its consent (see cc. 500, §2; 627, §2; 1292, §§1-3); for instance, the presbyteral council “possesses only a consultative vote,” however, this does not prevent it from giving its consent in some cases when expressly defined by law (c. 500, §2) (in fact, the universal law does not identify any situation in which the diocesan bishop must receive the consent of the presbyteral council [see cc. 495, §1; 461, §1; 500, §2; 515, §2; 536, §1; 1215, §2; 1222, §2; 1263; 1742, §1]). A similar expression is also found in canons 514, §1; 536, §2. This means that a body which is consultative in nature does not have an independent decision-taking power; rather, it can render its consultative aid only to those who have this power. Nonetheless, this “assistance” could be in the form of “counsel or consent” in accordance with canon 127, §1. Hence, since there are deliberative bodies and advisory bodies, the parish finance council belongs to the second category according to its nature since it operates to offer its prior assistance to the *parochus* who has the decision-making power. This assistance can be given in a distinct mode of either counsel or consent according to canon 127, §1, unless the law does not exclude the second way. Such exclusion does not seem to be in any norm concerning the parish finance council (see DE PAOLIS, “Il consiglio parrocchiale per gli affari economici,” pp. 278-279, fn. 20; see also B. UGGÉ, “Il *munus regendi* dei laici in parrocchia,” in *Quaderni di diritto ecclesiale*, 17 [2004], p. 433).

Moreover, as already mentioned, an authentic interpretation on canon 127, §1 affirms that a superior does not have the right of voting with others or to break a tie when the law requires that the superior must have the consent of the council or of a body of persons (see PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, “De superiore eiusque consilio ad normam c. 127, §1,” p. 1619). This also confirms that a consultative body could give its counsel or consent to the superior; for instance, the consent-giving vote of the parish finance council in particular cases determined by diocesan particular law.

On the one hand, Green explains that the 1997 multi-dicastery instruction’s limitation of parochial councils to a consultative role is in keeping with the *ius vigens* on such bodies in c. 536, §2; c. 514, §1. Hence before, not after, the instruction the *parochus* might conceivably have needed the consent of the parish finance council occasionally to act validly as is true for the bishop vis-à-vis the diocesan finance council in extraordinary administration (c. 1277) and in some alienation (c. 1292, 1) cases (see T.J. GREEN, “The Players in the Church’s Temporal Goods World,” in *The Jurist*, 72 [2012], pp. 72-73, fn. 106; see J.P. BEAL, “Ordinary, Extraordinary and Something in between: Administration of the Temporal Goods of Dioceses and Parishes,” in *The Jurist*, 72 [2012], p. 120). In this regard, Huels writes that a major point of *Ecclesiae de mysterio*, art. 5 is to stress that the faithful have only a consultative vote on the councils or committees of which they are part. Hence, a diocesan particular law that would take away the canonical authority of the *parochus* would be contrary to universal law, and therefore invalid (for instance, the *parochus* as the legal representative of the parish as well as the administrator of the goods of the parish [c. 532], decision-making authority in the parish, etc.) (see HUELS, “Interpreting an Instruction Approved in *forma specifica*,” p. 30).

On the other hand, Foster says that a careful reading of the Congregation for the Clergy’s 1997 instruction *Ecclesiae de mysterio*, art. 5, §§2-4 confirms the interpretation that particular law can require certain actions

able to perform certain acts of administration of the ecclesiastical goods of the parish, e.g., acts of extraordinary administration or some acts of alienation. In such cases, if particular law had so determined, the *parochus* cannot act validly if he fails to obtain the consent of the parish finance

proposed by the *parochus* be done only after he has consulted the council or received its consent (see J.J.M. FOSTER, "Canonical Issues Relating to the Civil Structuring of Dioceses and Parishes," in *CLSAP*, 70 [2008], p. 328, fn. 40). For a similar opinion on the consent-giving vote of the parish finance council by particular law after the promulgation of this instruction approved *in forma specifica*, see SIGNÉ, *L'administration des biens temporels*, p. 128; see IJASAN, *The Parish Finance Council*, p. 58; see K.M. McDONOUGH, "The Diocesan and Parish Finance Council," in *CFH*, p. 139; see J.A. RENKEN, "The Statutes of a Parish," *StC*, 44 (2010), pp. 118-119.

Having taken into consideration divergent opinions concerning a consent-giving vote, one would not so insist on the purely consultative (*puramente consultiva*) nature of the parish finance council that it may give only counsel, not the consent as some authors do (see M. CALVI, "Il consiglio parrocchiale per gli affari economici," in *Quaderni di Diritto Ecclesiale*, 1 [1988], p. 23; see F. COCCOPALMERIO, "La 'consultività' del consiglio pastorale parrocchiale e del consiglio per gli affari economici della parrocchia [cc. 536-537]," in *Quaderni di Diritto Ecclesiale*, 1 [1988], p. 65; see SÁNCHEZ-GIL, "Commentary on Canons 515-544," p. 1351): firstly, universal law as in the 1997 instruction *Ecclesiae de mysterio* states that parish finance council is not a deliberative structure and enjoys "consultative voice only;" however, when a consultative council possesses a consultative vote only, nothing prevents it from giving its consent since the Code itself elsewhere allows various diocesan consultative councils for the consent-giving vote (see cc. 500, §2; 1277; 1292, §§1-3) even when it mentions explicitly that a council has only a consultative vote (see c. 500, §2) as argued above. Secondly, according to canon 381, §1, the bishop has the right to legislate unless it is certain that he would act contrary to higher law (c. 135, §2). Thirdly, since there seems to be divergence of opinions and interpretations of the 1997 instruction *Ecclesiae de mysterio*, 5, §2 concerning consent-giving vote, one could argue that it gives rise to a positive and probable doubt about the meaning of a law, in which case, the diocesan bishop does not have to abide by the doubtful law (see c. 14). Therefore, in the absence of an authentic interpretation from the Supreme Legislator on the *dubium* whether the parish finance council as a consultative body is allowed for its consent-giving vote by particular law, one can safely assume that diocesan particular law might require the *parochus* to receive the counsel or the consent of the parish finance council for certain cases in accordance with canon 127, §1. A diocesan bishop could therefore determine that he will not entertain any request for alienations or for acts of extraordinary administration at the parish level, if the request is not accompanied by the consent of the parish finance council.

Hence, one would properly conclude that the parish finance council as a consultative body does not have a deliberative vote since it has neither administrative power nor decision-making power (*né potere amministrativo né potere decisionale*); nonetheless, it has the task of giving prior assistance to the *parochus* for the administration and protection of the goods of the parish. But, this consultative assistance could be in the form of either counsel or consent-giving vote (*un parere o consenso*) by particular law for the validity of certain acts of administration in accord with canon 127, §1, reserving all decisions to the administrator, namely the *parochus* (see DE PAOLIS, "Il consiglio parrocchiale per gli affari economici," p. 282). According to canon 127, when counsel is required, although he is not obliged to accept the opinion of the parish finance council, if he acts contrary to that opinion without an overriding reason, especially if unanimous, his action is valid but merely illicit. Nonetheless, if he had not consulted it at all, his action is invalid. In the same manner, when consent is required, if he had not received the consent of an absolute majority of those present, his action is invalid. Even though he is not bound by the consent of the parish finance council since he alone has the decision-making authority in the parish, if he acts contrary to the negative consent of the parish finance council, he acts invalidly; for instance, the six members of the council vote three in favour, one against, and two abstentions. Then, the vote fails and it is clearly a negative consent since an absolute majority requires more than half of those who are present. Nevertheless, if the council offers a positive consent, he is not bound to act accordingly; he may change his mind later and decide not to act upon it.

council (c. 127, §2, 1°). In this regard, when the law calls for consent or counsel of the group according to canon 127, Green notes that the *parochus* is obliged to do the following:

1. He must convoke the council formally unless particular law makes an exception if a given body is asked to give its counsel on the proposed course of action rather than its consent (cc. 166; 127, §1). Moreover, he should foster a climate respectful of the right of free expression of those being consulted;
2. He is not to go to the group with a decision already made but in a spirit of ecclesial service open to the insights of its members and formulate decisions accordingly;
3. Consultation of a group requires him to seek the opinion of all members of a given group even though he is not bound to follow the opinion in making a certain decision;
4. If the consent of the group is to be obtained, he may not act validly unless an absolute majority of those who are authorized to approve his proposed decision actually endorse it;
5. It is the right and duty of those consulted to express their views honestly;
6. It is important to take minutes at any meeting of such groups in order to assure the accurate record of such votes; as already noted, since he is technically distinct from the financial consultative body involved in a given decision, he may not vote or break a tie. After the input of the group consulted, since he is the ultimate choice-maker, he may choose to act or not to act after the vote is taken;
7. He is normally not to act contrary to the consensus of those consulted without an overriding reason. There is a burden on his authority to respect the informed consensus of the consultative group given the presence of the Spirit in the faithful;
8. It is not only when particular law makes explicit reference to consultative input by groups or individuals in financial matters, but also, in the areas when parish financial decisions are especially complex (where no explicit reference is made to necessary ‘consultation’), *parochi* are to enlarge the parameters of consultation to ensure appropriate input from different sources.²³²

Finally, the 1997 instruction *Ecclesiae de mysterio* specified that the presence of the *parochus* is necessary for the validity of the acts of the parish finance council: “The *parochus* must preside over parochial councils. Therefore, decisions taken by a parochial council

²³² See GREEN, “The Players in the Church’s Temporal Goods World,” pp. 57-59.

assembled without the presidency of the *parochus*, or contrary to his wishes are invalid, i.e., null.”²³³

Moreover, universal law remains silent as to the continuation or cessation of the parish finance council when the parish is vacant. In such cases, canon 19 allows for resolving the *lacuna legis* “in light of laws issued in similar matters.” The most similar circumstance would be that of the diocesan finance council. While the diocesan pastoral council and diocesan presbyteral council cease when the episcopal see is vacant (cc. 501, §2; 513, §2), it is clear that the diocesan finance council continues since universal law dictates that the council is to elect a temporary finance officer if the diocesan finance officer is elected diocesan administrator (c. 423, §2). Just like the diocesan finance council, by analogy, the parish finance council should be understood as continuing when the parish is vacant or its *parochus* is impeded unless particular law provides otherwise.²³⁴ In such situations, the parish finance council as a stable body continues to offer its assistance to the parochial administrator (c. 539) or the temporary interim leader of the parish (c. 541).²³⁵ In fact, the existence of the parish finance council is dependent on the existence of the parish, not the *parochus*, since the parish as a juridic person requires a parish finance council (cc. 1280; 515, §3). However, this is to be distinguished from the acts of the parish finance council, which are dependent for their validity on the presence of the *parochus*, as noted above.²³⁶ For this reason, the clear intent of the legislator is that the parish is

²³³ *Ecclesiae de mysterio*, art. 5, §3, p. 300.

²³⁴ See T.J. PAPROCKI, “Parish Finance Council,” in A.J. ESPELAGE (ed.), *CLSA Advisory Opinions, 2001-2005*, Alexandria, VA, CLSA, 2006 (= *CLSA AO3*), p. 159; see ASSELIN, “Consultation in the Parish,” p. 123.

²³⁵ See RENKEN, *Particular Churches*, p. 290.

²³⁶ See PAPROCKI, “Parish Finance Council,” p. 159.

never without some form of pastoral leadership of a *parochus* or his equivalent (see cc. 150-151):

When a parish pastorate is vacant or the pastor [*parochus*] has been impeded from exercising his pastoral function, the diocesan bishop as soon as possible is to appoint a parochial administrator, who takes the place of the pastor [*parochus*] (c. 539). Even before appointment of a parochial administrator in such circumstances, the parochial vicar, if there is one, is to assume the temporary governance of the parish; if there is more than one, the senior parochial vicar (in terms of appointment) is to assume such governance. If there is no parochial vicar, then a pastor [*parochus*] determined by particular law assumes temporary governance of the parish (c. 541, §1). [...] even when there is no resident pastor [*parochus*] and someone other than a priest has been entrusted with a participation in the exercise of the pastoral care of a parish due to lack of priests, in which case the diocesan bishop is still required to appoint some priest with the powers and faculties of a pastor [*parochus*] to direct the pastoral care (c. 517, §2).²³⁷

As for the dissolution of the parish finance council, a temporary parochial administrator certainly should not dissolve the parish finance council and establish a new one, in keeping with the principle *nihil innovetur* (cf. c. 428, §1). When a new *parochus* is appointed, however, he is free to dismiss, replace, or modify the parish finance council in accord with the statutes or particular law issued by the diocesan bishop:

From a pastoral and not strictly canonical perspective, it may be understandable that a new pastor [*parochus*] might be inclined to dismiss his predecessor's team and put 'his own people' in place, even in the absence of any charges or suspicion of malfeasance. Prudence would indicate, however, that he would not be too hasty, without cause, to dismiss the experience of incumbents who are a storehouse of important financial information about the parish and its corporate history.²³⁸

2.6.3 – The Composition and Term of Membership of the Parish Finance Council

Canon 537 states that the parish finance council consists of the Christian faithful selected according to the universal law and norms issued by the diocesan bishop. The canon does not

²³⁷ Ibid. In the situation of canon 517, §2, the priest supervisor who is the administrator, having the powers of the *parochus*, may delegate full or partial powers of financial administration to a lay minister or deacon (see HUELS, *The Pastoral Companion*, p. 407). In a similar situation, when there is no *parochus* or ordinary administrator, the diocesan bishop could appoint a lay parish director as the administrator of the property of the parish, and he or she may be designated by the diocesan bishop to preside over the parish finance council according to established diocesan norms (see B.A. CUSACK and T.G. SULLIVAN, *Pastoral Care in Parishes without a Pastor: Applications of Canon 517, §2*, Washington, DC, CLSA, 1995, pp. 19-23).

²³⁸ PAPROCKI, "Parish Finance Council," p. 160.

mention anything more. Hence, obviously, the statutes and/or particular law would address membership in the parish finance council, such as terms of membership, renewal of terms, possible provisions for removal of members for cause, means of selection, officers (such as chairperson, vice-chairperson, secretary/treasurer), preparation of agenda, distribution of minutes, frequency of meetings,²³⁹ dissolution/reestablishment, etc.²⁴⁰

According to the wording of the canon, any one of the *christifideles* (clerics, religious, and laity) is eligible to be a member of the parish finance council (c. 207). Therefore, it is possible that it may be constituted with only clerics, only religious, only laity, a mixture of some, or all of the three categories. It would in practice be composed largely, if not entirely, of lay parishioners who assist the *parochus* in the administration and protection of parochial property.²⁴¹ One would hope that in order to avoid the complete exclusion of the laity, diocesan particular law would determine a definite number of lay members in the parish finance council.²⁴² In fact, having finance council members comprised of all three categories would reflect the spirit of the Second Vatican Council allowing all the baptized in the Church to offer their active participation in its mission.²⁴³

²³⁹ Concerning the minimum number of times for the meetings of parish finance council, Renken comments that if by particular law it is involved with the annual budget and the financial report, logically the parish finance council would need to meet at least twice a year. However, inasmuch as it truly assists the *parochus* in the administration and protection of the parochial goods, it would need to meet more frequently. Hence, the diocesan particular law may specify that the parish finance council meet a minimum number of times annually; for instance, quarterly, or every other month, every month, etc. (see RENKEN, *Church Property*, p. 198).

²⁴⁰ See *idem*, “The Statutes of a Parish,” p. 119; see GREEN, “Shepherding the Patrimony of the Poor,” p. 730.

²⁴¹ See RENKEN, *Particular Churches*, p. 290; see SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1350.

²⁴² See SEBASTIAN, “Participation of the Laity,” p. 60; see ASSELIN, “Consultation in the Parish,” p. 122.

²⁴³ See AMANCHUKWU, *The Role of the Finance Council*, pp. 96-97.

A significant change in the use of the term *christifideles* is that it also allows for the eligibility of women,²⁴⁴ and hence, there can be men and women in the council. Moreover, particular law may prescribe that the members are to be parishioners. In the absence of such a requirement, one would argue that the appointment of a baptized non-Catholic for this office would be valid since canon 149, §1 does not require full communion in the Church (*in Ecclesiae communione*) in order to be promoted to an ecclesiastical office.²⁴⁵ However, the 1997 instruction *Ecclesiae de mysterio* states that “only those faithful who possess the qualities prescribed by canon law may be elected to these offices.”²⁴⁶ Therefore, according to that instruction and the Code, the following qualities may be required of members of the parish finance council:

1. The faithful designated to this office must be in full communion with the Catholic Church (*in plena communione cum Ecclesia catholica*) (see c. 512, §1);²⁴⁷
2. They should be outstanding in firm faith, good morals, and prudence (see c. 512, §3);²⁴⁸
3. Those who are in invalid marriages are not to exercise this ecclesiastical responsibility (see CCC, no. 1650).²⁴⁹
4. They are to be truly expert in financial affairs and civil law (see c. 492, §1);
5. They are also to be outstanding in integrity (*integritate praestantibus*) (see c. 492, §1);

²⁴⁴ It is remarkable to note here that the requirement of “suitable men” (*viris idoneis*) (see CIC/17, c. 1520) or “laity selected from among men” (*selectos inter viros*) (see *Ecclesiae imago*, no. 135, p. 69) was abrogated.

²⁴⁵ See FARRELLY, *The Diocesan Finance Council*, p. 178. Moreover, since the canon does not refer “only” to *Christifideles*, there could still be the possibility of admitting baptized non-Catholics as members of the council.

²⁴⁶ *Ecclesiae de mysterio*, art. 5, §2, p. 300.

²⁴⁷ See *ibid.*, p. 300, fn. 85.

²⁴⁸ See *ibid.*

²⁴⁹ See *ibid.*

6. Anyone related to the *parochus* up to the fourth degree of consanguinity (see c. 108) or affinity (see c. 109) are to be excluded from the parish finance council in order not to give room for any kind of nepotism or conflict of interest (see c. 492, §3). However, if there is any genuine need to make such an appointment, the *parochus* could obtain the written permission of the diocesan bishop (see c. 1298);
7. Practical wisdom demands, as far as possible, that they are to be expert in various fields such as accounting, law, insurance, investment, business, constructions, communications, etc.²⁵⁰
8. Finally, particular law may determine additional criteria or qualifications for membership on the finance council; for instance, as noted above, they must be parishioners possessing parochial domicile (c. 102, §1), must have an active participation in the parish, etc.²⁵¹

Although canon 1280 requires a minimum of two members on the finance council, in addition to the *parochus*, it would seem that three would be a more appropriate number, to provide for absences, and so forth.²⁵² However, as mentioned earlier, since the Code requires each parish to have its own finance council, merely two counselors would not be sufficient. So, particular law may mandate a greater number of members for the finance council. Parochial vicars may be included as *ex officio* members since they are co-workers with the *parochus* and sharers in his solicitude (c. 545, §1).

Particular law may also indicate how they become members of the council, for instance, by appointment, election, or *ex officio*.²⁵³ As is the case for the diocesan finance council, the parish finance council need not be a representative group.²⁵⁴ Rather, what is important is its

²⁵⁰ See SHEA, "Parish Finance Councils," pp. 175-176.

²⁵¹ See NIÑO SÚA, "El consejo parroquial de asuntos económicos," pp. 298-299.

²⁵² Moreover, by analogy, it is derived from canon 492 which requires three members of the Christian faithful for the diocesan finance council (see SIGNIÉ, *L'administration des biens temporels*, p. 117; see ROQUE PÉREZ, "El consejo parroquial de asuntos económicos en el CIC de 1983," p. 151).

²⁵³ See RENKEN, *Church Property*, pp. 197-198.

²⁵⁴ See SHEA, "Parish Finance Councils," p. 176; see GREEN, "Shepherding the Patrimony of the Poor," p. 730; see SEBASTIAN, *Consultative Bodies*, p. 123.

expertise. Because of the particular qualities required of the members, they are often not elected by the parishioners²⁵⁵ but are appointed (*nominentur*) by the *parochus* after a careful inquiry, and the diocesan norm has to specify whether the nomination must be approved by the bishop or just communicated to the diocesan curia within a specified period of time.²⁵⁶

As far as the term of office for members of the parish finance council is concerned, it could be five years, renewable, as is for the diocesan finance council members (see c. 492, §2). However, diocesan particular law may specify a different term for membership in the parish finance council. Since membership in the council is an ecclesiastical office, those so designated should receive a letter of appointment in writing which is required for liceity (c. 156).²⁵⁷ Members of the finance council can lose their office in the council like any other ecclesiastical office, such as by way of the lapse of predetermined term communicated in writing, acceptance of freely made resignation, removal, transfer, privation, and death (cc. 184-196).²⁵⁸

Lastly, two common questions concerning membership of the parish finance council are: (1) Is the *parochus* a member on the parish finance council? (2) Who is to preside over the same council? The answer to the former could be deduced from the very nature of the council; “since the parish finance council offers its assistance to the *parochus*, it follows that he is not a member

²⁵⁵ A parish survey in some dioceses of the USA in 2005 indicated that 75% of the members of the parish finance council were appointed by the *parochus*, 9% were representatives of parish activities and organizations, and 7.2% were elected at large (see SHEA, “Parish Finance Councils,” p. 176).

²⁵⁶ See SEBASTIAN, *Consultative Bodies*, p. 123.

²⁵⁷ The members of the parish finance council may also be asked to make a promise of service and confidentiality (cf. c. 471, 1°-2°) (see S. MALLAVARAPU, *Participation of the Laity in the Consultative Bodies within the Parish*, Extractum ex dissertatione ad doctoratum, Romae, Pontificia Universitas Urbaniana, 2001 (= MALLAVARAPU, *Participation of the Laity*), p. 95).

²⁵⁸ See IJASAN, *The Parish Finance Council*, pp. 74-76; see AMANCHUKWU, *The Role of the Finance Council*, pp. 108-117; see ROQUE PÉREZ, “El consejo parroquial de asuntos económicos en el CIC de 1983,” p. 154; see MALLAVARAPU, *Participation of the Laity*, p. 95; see SEBASTIAN, *Consultative Bodies*, p. 123).

of it.”²⁵⁹ The answer to the latter could be first arrived at from the norm of the 1997 instruction *Ecclesiae de mysterio*; since it requires the presidency of the *parochus* for validity, it can be readily concluded that the *parochus* should preside over the parish finance council personally or by a delegate; secondly, it can be inferred by analogy: just as the diocesan bishop is to preside over the diocesan finance council, so too, the *parochus* is to preside over the parish finance council personally or through a delegate.²⁶⁰ Nevertheless, he should not delegate the parish finance director or business manager to preside over the council since such a person would be akin to the diocesan finance officer who works for the bishop and the council, and answers to them. Similarly, since the parish finance director would take direction from and answer to the *parochus*, it would be contradictory for such a person also to preside over the council.²⁶¹

2.6.4 – Relationship between the Parish Pastoral Council and the Parish Finance Council

The parish finance council is mandated by universal law (c. 537) while the parish pastoral council is an optional institution which may be mandated by diocesan particular law, “if the diocesan bishop judges it opportune after he has heard the presbyteral council” (c. 536, §1).²⁶² If the diocesan bishop has mandated the parish pastoral council by particular law, then each parish in his diocese would be required to have two parish councils, namely the parish pastoral council and the parish financial council. Therefore, “it must be clearly understood that these are two

²⁵⁹ RENKEN, *Particular Churches*, pp. 289-290.

²⁶⁰ See SÁNCHEZ-GIL, “Commentary on Canons 515-544,” p. 1351; see J.I. DONLON, “Chairperson of Parish Finance Council,” in *CLSA AO3*, p. 161.

²⁶¹ See DONLON, “Chairperson of Parish Finance Council,” p. 162.

²⁶² Since the requirement of consultation with the presbyteral council is for validity in accord with canon 127, §1, if the diocesan bishop had not consulted the council, then the issuance of the general decree (c. 29) directing all *parochi* to form the parish pastoral councils would be invalid.

distinct parish councils; one council is not subordinate to each other. Each has a distinct purpose. Each relates directly to the *parochus*, not to the other parish council.”²⁶³ However, one must recognize that there are varying opinions on this point, taking into consideration the particular focus of each council.²⁶⁴

Practical pastoral wisdom would promote collaboration between these two councils since “the common point of reference is the *parochus*.”²⁶⁵ One would envisage that any economic question can have both pastoral as well as technical aspects, just as pastoral planning necessarily has financial implications. Evidently, “these two councils must cooperate and act ‘in communion’ with each other.”²⁶⁶ Therefore, the statutes should determine not only the function of any council but also their relationship to each other. In order to establish some rapport between these two councils, nothing prevents the diocesan bishop from legislating that some members of the parish finance council may be selected from the parish pastoral council provided they are well-versed in financial matters.²⁶⁷ The diocesan particular law may also identify how the liaison between these councils can be achieved, e.g., by requiring regular exchange of minutes of meetings, perhaps by requiring a member of each council to serve on the other, by

²⁶³ RENKEN, “The Statutes of a Parish,” p. 120.

²⁶⁴ No matter which approach is taken it must be clearly understood that “the two councils are distinct; one is not subordinate to the other. Each has a distinct purpose and relates directly to the *parochus*, not to the other” (ibid). Nevertheless, if the parish finance council is merely treated as a sub-committee of the parish pastoral council, and if the particular focus of each council is not recognized, it must be emphasized that these practices are certainly contrary to the letter and spirit of the present legislation (see SEBASTIAN, “Participation of the Laity,” p. 60).

²⁶⁵ RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 493, fn. 14.

²⁶⁶ ASSELIN, “Consultation in the Parish,” p. 125.

²⁶⁷ See COCCOPALMERIO, “Quaestiones de paroecia in novo codice,” p. 406.

determining a “job description and terms of reference” for each council, by providing adequate formation to the members of both councils.²⁶⁸

Although the Code does not require that parish pastoral councils be established, distinct from the parish finance council (which is mandatory), it would be important to make sure that the pastoral concerns of the parish are duly taken into consideration. For this reason, nothing prevents diocesan particular law from identifying instances in which the parish pastoral council may be required to give its counsel²⁶⁹ before the *parochus* is able to perform certain acts of administration. Of course, any provisions relating to the consent or advice of the finance council would also have to be observed. Such diocesan guidelines would do well to leave considerable room for pastoral judgment and discernment at the parish level.²⁷⁰ Particular law may also require the *parochus* to submit to the diocesan bishop an indication of the votes of the councilors in certain instances, if necessary. Diocesan particular law may require the counsel of the parish pastoral council in addition to the counsel or consent of the parish finance council in the following instances:

1. When the *parochus* performs acts of extraordinary administration or acts of alienation (although care must be taken not to confuse the function of pastoral planning with that of the parish finance council to assist in the administration and protection of parish property);²⁷¹
2. When the *parochus* seeks broad support for significant parish ventures (such as undertaking a parish capital campaign, initiating major fundraising efforts, or entering

²⁶⁸ See ASSELIN, “Consultation in the Parish,” p. 125; see RENKEN, “The Statutes of a Parish,” p. 120.

²⁶⁹ See RENKEN, “The Statutes of a Parish,” p. 120; see GREEN, “The Players in the Church’s Temporal Goods World,” p. 74.

²⁷⁰ See W.J. RADEMACHER, *The New Practical Guide for Parish Council*, Mystic, CT, Twenty-Third Publications, 1987, p. 49; see JANICKI, “Commentary on Canons 515-552,” p. 433.

²⁷¹ See RENKEN, “The Statutes of a Parish,” p. 120.

into a major undertaking, such as building a school or parish center, etc.), it is highly desirable to elicit a consensus;²⁷²

3. When it involves certain situations concerning parish property where the parish finance council must also give its advice or consent;²⁷³
4. When the parish budget is proposed for diocesan approval;²⁷⁴
5. When the *parochus* presents an annual parish financial report to parishioners (diocesan particular law may dictate that the parish pastoral council should receive a complete and detailed report, while the report to the entire parish may be more general);²⁷⁵
6. When proposing to the diocesan bishop a request for the construction of a new church (see c. 1215, §§1-2);
7. When it is proposed to close a parish (see c. 515, §2);²⁷⁶
8. When a church is to be relegated to profane use (see c. 1222, §§1-2);²⁷⁷
9. When hiring parish staff, although the parish finance council would have a role in determining salaries and other benefits; etc.

Experience shows that the parish pastoral council and the parish finance council do not always get along well with each other. For instance, the parish pastoral council can come up with great plans for wonderful pastoral projects while parish finance councils can overemphasize the

²⁷² See GREEN, "Shepherding the Patrimony of the Poor," p. 732; see idem, "The Players in the Church's Temporal Goods World," p. 74.

²⁷³ See RENKEN, "The Statutes of a Parish," p. 120, fn. 33.

²⁷⁴ See HUELS, *The Pastoral Companion*, p. 411; see GREEN, "Shepherding the Patrimony of the Poor," p. 732.

²⁷⁵ See HUELS, *The Pastoral Companion*, p. 412.

²⁷⁶ Apart from the canonical procedures, for pastoral considerations, generally, the bishop will want to consult the parishioners in some manner, either through their parish pastoral council, or in a general meeting, or perhaps a combination of the two since closing or altering parishes is not purely a financial matter; it is primarily a pastoral concern. It needs to be placed in the broader context of pastoral planning (see J.H. PROVOST, "Some Canonical Considerations on Closing Parishes," in *The Jurist*, 53 [1993], pp. 369-370).

²⁷⁷ In consulting those who have acquired rights, in the case of churches belonging to parishes, it is recommended that the bishop hear also the parish pastoral council. Apart from the *parochus* or rector of a church, the notification of the decree of the relegation of a church to profane use to the parish pastoral council or parish finance council can be useful, although it is not required by the law (see N. SCHÖCH, "Relegation of Churches to Profane Use [c. 1222, §2]: Reasons and Procedure," in *The Jurist*, 67 [2007], p. 498-501).

need to save money and focus on fundraising. Sometimes, each council wishes to have its views predominate and both of them end up in conflict.²⁷⁸ In order to foster unity between them and to foster their cooperation, the *parochus* is to tailor questions appropriate to the abilities of each council and obtain the proper guidance of both groups respectively.²⁷⁹ For instance, a *parochus* has two questions in a concrete situation: (1) where should he place surplus funds and (2) what should he do with them? The *parochus* will ask the former question to the parish finance council and the latter to the parish pastoral council. This situation makes it clear that the *parochus* should consult the parish finance council in order to know the parish's financial reality, and at the same time, he is to consult the parish pastoral council when he wants to deliberate about what to do in a particular pastoral situation. Each council pursues a different purpose, proceeds in a different way, and requires different talents; however, each contributes in its own way to fulfill the proper purposes of the temporal goods of the parish. Provost summarizes their relationship succinctly: "The finance council members are the technicians who assist in the administration of the Church's resources but the pastoral council members are the stewards of the Church's pastoral treasure."²⁸⁰

2.7 – A Synthesis of the Provisions of Canons 532 and 537

Firstly, canon 532 establishes that the *parochus* is the administrator of the goods of the parish which is a specific application of the general norm of canon 1279, §1; while canon 537 establishes that each parish must have a parish finance council which is a specific application of

²⁷⁸ See SHEA, "Parish Finance Councils," p. 171.

²⁷⁹ See M.F. FISCHER, *Pastoral Councils in Today's Catholic Parish*, Mystic, CT, Twenty Third Publications-Bayard, 2001, pp. 176-183.

²⁸⁰ PROVOST, "The Canon Law and the Role of Consultation," p. 797.

the general norm of canon 1280. Therefore, the *parochus* must have the assistance of the parish finance council in the administration and the protection of parish goods.

Secondly, the *parochus* is the only administrator of the parish as a public non-collegial juridic person; and the parish finance council is not an administrative council. Hence the *parochus* alone has the decision-taking power while the parish finance council exercises a role of shared responsibility in the decision-making process of the administrator concerning the administration and the protection of the goods of the parish.

Thirdly, as the consequence of being an administrator of the parish, the *parochus* is able to perform the fourfold function of acquiring, retaining, administering, and alienating the temporal goods on behalf of the parish (c. 1255). At the same time, the parish finance council renders its assistance to the *parochus* in carrying out acts of administration and duties of an administrator of the temporal goods of the parish.

Fourthly, the *parochus* alone is competent to place the juridic acts of administration such as acquisition, acts of ordinary or extraordinary administration, and alienation of temporal goods of the parish; however, the diocesan particular law can identify instances when the *parochus* is to seek the counsel or to obtain the consent of the parish finance council before he performs some acts of administration or protection of the goods of the parish.

Fifthly, the parish finance council does not have a deliberative vote. Unless the diocesan norms provide otherwise, it possesses a consultative vote only; however, the council, as a consultative body, can render its assistance to the *parochus* in the form of either counsel or consent by particular law.

Sixthly, decisions taken by a parochial council without the presidency of the *parochus* are invalid. So, he presides over the parish finance council either personally or through a delegate.

Seventhly, although membership in the parish finance council is recognized as an ecclesiastical office, the members do not enjoy any power of governance since their role is to assist the *parochus* in the administration of parish goods. Since the parish council is not a juridic person, it cannot lodge recourse as a council; it can however do so through individual members acting either singly or together.

Eighthly, since the parish finance council is to give its assistance to the *parochus*, the *parochus* is not a member of the council. Hence, he cannot vote, not even to break a tie when members of the parish finance council vote if required by particular law.

Ninthly, the parish finance council continues as a stable body even when the parish is vacant or its *parochus* is impeded unless particular law provides otherwise. In such instances, it offers its assistance to the parochial administrator or the temporary interim leader of the parish (c. 541).

Finally, in every case, the preeminent position of the *parochus* must be recognized since the Code entrusts to him immediate responsibility for the administration and the protection of parish property and for juridical representation of the parochial community (c. 532). The parish finance council does not have an autonomous executive role in the administration and protection of the goods of the parish; and hence, as a collaborative structure, it assists the *parochus* as he carries out his responsibilities.

Conclusion

The law makes it clear from the analysis of canon 532 that only a physical person can exercise the office of *parochus*, who is the legal representative of the parish and the administrator of its ecclesiastical goods. These designations of the *parochus* as the administrator

of parish goods and the legal representative of the parish as per canon 532 are merely specifications of the general norm canon 1279, §1 and canon 118. As the consequence of the *parochus* being the only administrator of the goods of the parish, firstly, he alone has the authority in canon law to place juridic acts such as acquisition of goods, ordinary and extraordinary administration of them, and alienation of the temporal goods of the parish in accord with universal law, particular law, and applicable civil law. Nevertheless, although the *parochus* unilaterally exercises his acts as an administrator, at times, for liceity or validity, he requires the cooperation and authorization of the diocesan bishop as an ordinary, since the parish is a public juridic person subject to him. Secondly, he is bound by the canonical duties of an administrator of temporal goods according to Book V of the Code of Canon Law. As a result of the juridical personality of the parish, his authority for placing acts of administration, and his obligation to fulfill the canonical duties of an administrator, the *parochus* has the primary responsibility for the protection of the parochial goods according to canon law.

Moreover, the diocesan bishop, as an ordinary, has the right to supervise (*ius advigilandi*) the *parochus* in his administration of the goods of a parish (c. 1276). The supervision of the ordinary has the twofold purpose of assisting the *parochus* in his *munus* of administration as well as protecting the goods of the parish (cc. 1276, §§1-2; 1279, §§1-2). The bishop/ordinary exercises his power of governance or jurisdiction over parishes by granting permission or consent for certain acts, issuing special diocesan instructions, promulgating diocesan particular laws, and intervening in cases of negligence.

Since the analysis of canon 537 shows that the parish finance council is a not an administrative council, the *parochus* alone is competent to take all decisions in the administration and protection of parish goods; and, at the same time, the parish finance council

assists him in discharging these responsibilities. Even though the parish finance council possesses only a consultative vote, it can, in accordance with the provisions of particular law, render assistance to the *parochus* through advice or consent before he performs certain acts. Particular law can also involve the parish finance council in the fulfillment of certain specific duties of the administrator of the goods of the parish.

The *parochus* must preside over the parish finance council personally or through a delegate since his presence is required for the validity of the acts of the council. Since the council offers its assistance to the *parochus*, he is not a member of it and therefore cannot vote in the decision-making process. Being a collaborative structure of the parish, it does not cease but continues to function even when the parish is either vacant or the *parochus* is impeded. In summary, the parish finance council assists the *parochus* in his administrative duties.

CHAPTER THREE

CONTEMPORARY CHALLENGES TO THE PROTECTION OF THE TEMPORAL GOODS OF THE PARISH

Introduction

When parish goods are properly protected, maintained, and applied to the purposes for which they were acquired, the faithful will be more inclined to continue to contribute any of their treasure to the works of the parish.¹ Parishioners who feel that their parish leadership is accountable and trustworthy in financial matters, who feel that they are part of the parish financial decision-making process, contribute more.² Conversely, a lack of information about, participation in, and confidence in parish fund-raising and financial administration would result in low levels of giving by parishioners.³ Moreover, a sad litany of embezzlement, misuse of funds, bad investments, wheeling and dealing, and poor management of goods of the parish not only undermines confidence but also brings many challenges and impacts upon the protection of parish property.⁴ Therefore, this chapter will explore some contemporary challenges to the protection of parochial property.

At times, due to lack of transparency and accountability in financial administration, the parish faces the challenge of financial malfeasance which in one way or another risks the protection of its property. Moreover, it often faces the challenge of absence of civil legal

¹ See BEAL, "Ordinary, Extraordinary and Something in between," p. 128.

² See C.E. ZECH, *Why Catholics Don't Give... And What Can Be Done About It*, Huntington, Indiana, Our Sunday Visitor Publishing Division, 2000 (= ZECH, *Why Catholics Don't Give*), p. 112.

³ See BEAL, "Ordinary, Extraordinary and Something in between," p. 128, fn. 67.

⁴ See F.J. BUTLER, "Financial Accountability: Reflection on Giving and Church Leadership," in F. OAKLEY and B. RUSSETT, *Governance, Accountability, and the Future of the Catholic Church*, New York, Continuum, 2004 (= BUTLER, "Financial Accountability"), p. 154.

conformity with canon law in the protection of its property. Civil legal recognition of parish property must be as compatible as possible with the provisions of canon law. Civilly valid methods of protection must guarantee the ownership of the goods of the parish as a distinct juridic person from those of the diocese, and they should recognize the *parochus* as the administrator and legal representative of the parish. *Parochi* often face the challenge of a general lack of guidance for the protection of parish property due to a dearth of special instructions, particular laws, and other forms of assistance in this regard. Hence, this chapter will attempt to analyse some contemporary challenges, such as financial malfeasance by parish administrators, absence of civil legal conformity, and general lack of guidance in the protection of temporal goods.

3.1 – Challenge: Financial Malfeasance

When the care or protection of goods is handled in a manner that is deliberately malicious or negligent, such activity constitutes financial malfeasance (see c. 1321). It may be a violation of one or more penal laws to which are attached penal sanctions.⁵ This section will examine some factual data relating to financial malfeasance at the parish level; it will then look at the provisions of the Code relating to this topic; and, finally, it will consider the diocesan bishop's implementation of provisions against financial malfeasance.

3.1.1 – Factual Data Analysis of Financial Malfeasance in Parishes

Factual data confirm occurrences of financial malfeasance in parishes. For example,

The Archdiocese of San Francisco sued one of its pastors [*parochi*] following his embezzlement of over one quarter of a million dollars. The Diocese of Brooklyn, New York, discovered, too, that

⁵ See J.A. RENKEN, "Penal Law and Financial Malfeasance," in *StC*, 42 (2008), p. 14.

a pastor [*parochus*] had squirreled away \$1.4 million in a secret bank account. The Diocese of Arlington, Virginia, took action to recover \$1.1 million from a former pastor [*parochus*] who had dipped into the parish funds for himself. A church renovation project in the Diocese of Little Rock, Arkansas, was looted to the tune of a half million dollars by a parish employee. [...] This range of behaviour, from honest and generous to dishonest and even criminal, reminds us of what we can be as church, either open, accountable, and living generous lives together, or a church that is vulnerable to abuse and misconduct.⁶

This clearly indicates that there seem to be emerging numerous instances⁷ in which *parochi* have mismanaged or misappropriated the goods of the parishes entrusted to their care.

In 2006, Zech, an economist at Villanova University, Philadelphia, Pennsylvania, USA and director of the Center for the Study of Church Management, coauthored a report which shows that eighty five percent of dioceses responding to the survey acknowledged having funds stolen. Eleven percent of the reported cases exceeded \$500,000 in losses. In 93 percent of the embezzlement cases, police reports were filed and in 91 percent of the cases, insurance claims were also filed. The dioceses appear to pursue embezzlements in a professional manner, which in all likelihood is a deterrent against future occurrences.⁸

In regard to embezzlements in parishes, M. Ryan proposes a theory: “Assuming Sunday collection embezzlements are ongoing at 10 percent of the approximately 17,900 parishes [in the United States] at any given time, the average parish loss falls somewhere in the neighborhood of \$1000 per week, or roughly \$50,000 per year. That computes to an annual loss of about \$90

⁶ BUTLER, “Financial Accountability,” p. 156; see J. BERRY, *Render unto Rome: The Secret Life of Money in the Catholic Church*, New York, Crown Publishers, 2011 (= BERRY, *Render unto Rome*), p. 9; see also J.J. POKORSKY, “Avoiding the Next Tsunami,” in *CLSGBI Newsletter*, 157 (2009), p. 36; see also USCCB ACCOUNTING PRACTICES COMMITTEE, *Recommendations on Parish Financial Governance*, pp. 1-2.

⁷ On 1 February 2012, Iglesia ni Cristo/Church of Christ studied some recent cases of Catholic Church embezzlement. In this study, some 15 cases were reviewed; in one case \$8.6 million was involved; in others, the sums began at \$50, 000 and went upwards. Many of these cases resulted in prison sentences for perpetrators (see IGLESIA NI CRISTO/CHURCH OF CHRIST, “Catholic Church Embezzlement Case Histories,” p. 11 February 2012, p. 1, in <http://www.network54.com/Forum>). Moreover, as already mentioned, 5 July 2012, in a parish in Ottawa, Canada, a very prominent former *parochus* was recently charged with misappropriation of hundreds of thousands of dollars from the parish funds for gambling (see HURLEY and DUFFY, “Former Blessed Sacrament Pastor Father Joe Faces Fraud, Theft, Money Launderings Charges,” p. 1).

⁸ See R. WEST and C. ZECH, *Internal Financial Controls in the U.S. Catholic Church*, Villanova, PA, Villanova University, Center for the Study of Church Management, 2006, p. 11.

million solely attributable to Sunday collection embezzlements.”⁹ Therefore, he points out, “if funds are accurately deposited, a priest can write checks to cash. The parish finance council will monitor the accounts, with special focus on the cash account. The weekly collection should always be counted in the presence of two people with the total collection matching the amount that is deposited in the bank and shown on the deposit slip.”¹⁰

With regard to the church’s financial accountability, the findings of a national poll conducted by Foundations and Donors Interested in Catholic Activities (FADICA) with the Gallup Organization involving Catholic parishioners in the United States in 2002 indicate that sixty five percent of the samples of Catholics who regularly attend church agree that the Church should be more accountable on finance.¹¹ Conversely, this lack of accountability also makes an impact in the obligation of church support of the faithful. In a 1985 survey of empirical data, A.M. Greely, a sociologist, found that Catholics donated on average \$320 per year as opposed to \$580 by Protestants and noted that “the decline in Catholic contributions over last quarter century is the result of a failure in leadership and an alienation of membership.”¹² In a similar fashion, in a 2000 study titled *Why Catholics Don’t Give...and What Can Be Done about It*, Zech showed some underlying factors regarding the lack of accountability: Catholics felt that they did

⁹ Ryan draws this theory based on “the parish population data from the Center for Applied Research in the Apostolate (CARA), a Georgetown University affiliated research center, and financial figures drawn from media reports he has culled in more than twenty years of research on Catholic Church embezzlements. Ryan estimates \$90 million was embezzled from Sunday collections in the calendar year 2010” (BERRY, *Render unto Rome*, pp. 10, 363, fn. 25).

¹⁰ BERRY, p. 11.

¹¹ See BUTLER, “Financial Accountability,” p. 156.

¹² BERRY, *Render unto Rome*, p. 12.

not have sufficient influence or participation in financial decision-making processes, information on how church funds were spent, and how contributions were used, etc.¹³

In view of achieving better accountability and of avoiding occurrences of financial mismanagement or malfeasance, one would see the importance of consultation of parishioners and their direct input into decision-making processes relating to parish financial matters. This can be assured primarily through their representation on the parish finance council (and the parish pastoral council).¹⁴ Moreover, administrators of parish goods are to consider that “shared parish decision-making is just an extension of stewardship. One effective way of instilling stewardship in the faithful is to develop in them an attitude of ownership of the resources over which they are stewards.”¹⁵ In this connection, Butler recommends some means to forestall financial mismanagement, to help achieve better accountability, to draw more talent and resources, and to spark wider participation by the laity in parishes:

1. Transparent financial practices and uniform reporting;
2. Stronger financial controls and lay input on expenditures;
3. More efficient and accountable fund raising;
4. More open church planning and evaluation;
5. Lay oversight of legal and financial investing practices by the church;
6. Improved standards, screening, compensation, and the quality of the church personnel;
7. And recommendations on organized efforts to recruit and develop better managerial leadership for all church-related institutions.¹⁶

¹³ See ZECH, *Why Catholics Don't Give*, pp. 71-72.

¹⁴ See *ibid.*, p. 134. In this regard, D. Gibson notes: “when it was revealed in July 2002 that a Brooklyn diocese *parochus* had misappropriated some \$1.8 million in parish funds, the diocese’s finance chief acknowledged that as many as one in five parishes in the nation’s fifth largest diocese did not have a finance council. [...] two thirds of parishes nationwide have finance councils, and many of these exist in name only” (see GIBSON, “The Bottom Line: Will Church Finances Be the Next Scandal?,” p. 12).

¹⁵ *Ibid.*

¹⁶ BUTLER, “Financial Accountability,” p. 160.

Besides, a study on internal financial controls in the Catholic Church in the United States identifies some internal accounting control mechanisms associated with curbing financial fraud/embezzlement.¹⁷ Although this study focused on the diocesan level, some of its findings can be modified and applied at the parish level since they were not only effective in detecting financial fraud/malfeasance but also served as a deterrent to similar malpractice:

1. The diocesan bishop as an ordinary is to provide a parish finance handbook containing special instructions for the financial administration and protection of parish property;
2. The diocesan bishop is to establish policies (particular law) concerning fraudulent financial activities for parishes;
3. Parishes are to conduct an annual internal audit supplemented by external audits conducted at least every three years;¹⁸
4. There should be a public disclosure of names and professions of every member of the parish finance council, along with their conflict of interest guidelines;
5. The parish finance council is to have minimum quarterly meetings;
6. The *parochus* is to involve the parish finance council in the preparation and submission of annual financial data to the local ordinary;
7. The diocesan bishop is to establish a uniform budgeting process¹⁹ and standardized accounting software for all parishes;
8. The diocesan bishop is to provide for communication channels for parishes to report suspected irregularities or fraudulent activities while protecting anonymity.²⁰

¹⁷ See WEST and ZECH, *Internal Financial Controls in the U.S. Catholic Church*, pp. 1-14.

¹⁸ There is no canon in universal law, as such, on the obligation of having internal and external audits. Hence, it would be very beneficial to have clear legislation in this regard by diocesan particular law (see F.G. MORRISEY, "Challenges for the Administration of Temporal Goods in the Light of Changing Circumstances," in *Studies in Church Law*, 6 [2010], p. 48).

¹⁹ In this regard, particular law can stipulate that the parish finance council is to be involved not only in the preparation of the report, but also is to give its consent before the report is sent for final diocesan approval.

²⁰ See WEST and ZECH, *Internal Financial Controls in the U.S. Catholic Church*, p. 11.

Thus, the data indicate that there can be certain rules for sound financial administration issued either by the Holy See, the conference of bishops, or by the diocesan bishop. Such norms, were they issued would be particularly relevant to ensure accountability, to protect the goods, and to overcome financial malfeasance. Such accountability and transparency may be assured by way of properly “stewarding church [parish] financial patrimony, serious effort to empower others, especially laity in pursuing [the] Church’s [parish] mission, the need to avoid clericalism, the necessity of a collaborative exercise of financial governance, the need for serious efforts to shape public opinion positively, especially through more transparent decisional processes.”²¹

3.1.2 – Provisions of the Code Relating to Financial Malfeasance

The penal law of the Church was designed to be an instrument of last resort. A penal process is to be begun only when it has become evident that “fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, [and] reform the offender” (c. 1341). There are instances when a person must be punished within the Church community for actions that are totally unacceptable; nevertheless, “the Christian faithful have the right not to be punished with canonical penalties except according to the norm of law” (c. 221, §3).²²

²¹ T.J. GREEN, “Selected Issues in Developing Structures of Diocesan Communion,” in *The Jurist*, 69 (2009), pp. 436-437.

²² A canonical penalty affects only Catholics; non-Catholics are not subject to ecclesiastical laws (see c. 11) (see V. DE PAOLIS, *De sanctionibus in Ecclesia: Adnotationes in codicem: Liber VI*, Rome, Editrice Pontificia Università Gregoriana, 1986, p. 120). As a general rule, “canon law considers a penalty to be *extrema ratio* – a last resort- whether at the time of establishing the penalty, or at the moment of applying or remitting it” (idem, “Penal Sanctions, Penal Remedies and Penances in Canon Law,” in P.M. DUGAN (ed.), *The Penal Process and the Protection of Rights in Canon Law*, Montréal, Wilson and Lafleur, 2005, p. 160). Moreover, in canon law, there is always a presumption of innocence as in the common law (see K. PENNINGTON, “Innocent until Proven Guilty: The Origins of a Legal Maxim,” in DUGAN (ed.), *The Penal Process and the Protection of Rights in Canon Law*, pp. 45-56). Before beginning a penal process, the ordinary personally or through another suitable person must conduct a preliminary investigation about the fact of financial malfeasance, circumstances surrounding the allegation (e.g., the duration of the alleged financial malfeasance, the amounts appropriated, the collaboration of accomplices [c. 1329,

“There is really nothing in the Code that can serve as a basis to punish a Church representative who squanders or misappropriates funds. [...] But, it would be preferable to have a canon that specifically speaks of the misappropriation of church funds.”²³ However, if one examines the canons closely, there are provisions available for Church authorities to invoke in order to address issues of theft, mismanagement, embezzlement, conflict of interest, and the like.²⁴ According to Renken, canons 1389, §§1-2; 1391; 1375; 1377; 1380; 1385; 1386 list a number of delicts relating to financial malfeasance to which penalties are attached. Delicts relating to financial malfeasance could lead to the imposition of such penalties;²⁵ however, “none of the penal laws in the Code which may apply in the case of financial malfeasance are incurred *latae sententiae*; rather, all the penalties related to the violation of these penal laws are *ferendae*

§2] or conspirators [c. 1329, §1], etc.), and the imputability of the accused unless this seems entirely superfluous (c. 1717, §1). In order to resolve an issue of financial malfeasance, the ordinary would choose the preferred method of judicial process or he may select the extrajudicial process (c. 1342, §§1-2) if the delicts regarding financial malfeasance are very clearly established as a result of the preliminary investigation (e.g., if the offender, aware of the accusations, confesses to them, if documentary and other proofs indicate quite clearly that the offender committed the delicts, and if the civil authorities have already discovered indisputable facts and responsibility, etc.) (see RENKEN, “Penal Law and Financial Malfeasance,” pp. 25-28). Moreover, an accused person is never obliged to take the stand in a Church court (c. 1725), nor to take an oath (c. 1728, §2). The standard of proof will vary according to the nature of the case, but, in the end, the judge must have moral certitude about the proof or lack thereof in relation to a given crime of financial malfeasance of which a person has been accused (c. 1608) (see F.G. MORRISEY, “Financial Mismanagement and Canon Law,” unpublished paper presented to the Diocesan Fiscal Management Conference, Houston, Texas, 25 September 2012, p. 4).

Penal law, which establishes a penalty, is subject to strict interpretation (c. 18). Therefore, the ordinary determines whether or not a criminal action is possible because the statute of limitation (all penal laws related to financial malfeasance have a prescription period of three years [see c. 1362, §1]) for initiating it has run out (see T.J. GREEN, “Commentary on canons 1717-1731,” in *CLSA Comm2*, pp. 1808-1809). Moreover, a penal process may be unnecessary if the only issue is repairing certain damages, e.g., if a *parochus* is willing to make restitution for the misappropriated goods or suitable reparation for damages (cc. 128; 1289) and truly repents of the delict and pursues a path of personal penance and reform (c. 1347, §2) (see *ibid.*, p. 1809; see RENKEN, “Penal Law and Financial Malfeasance,” p. 56). Furthermore, the decision regarding the penal process follows the general norms on decisional decrees (cc. 50-51) for liceity. Hence, when the demands of justice require that penalties be imposed, one must always ensure the due process in *procedendo et decernendo* which is one of the most important rights of an accused person.

²³ MORRISEY, “Challenges for the Administration of Temporal Goods in the Light of Changing Circumstances,” p. 46.

²⁴ See *idem*, “Financial Mismanagement and Canon Law,” p. 1.

²⁵ See RENKEN, “Penal Law and Financial Malfeasance,” pp. 34-35.

sententiae.”²⁶ Moreover, a diocesan bishop can establish particular penal laws concerning financial malfeasance for his diocese, which will bind all *parochi* (cc. 391, §2; 135, §2; 1316-1318). Besides, ecclesiastical authorities with the executive power of governance in the diocese can establish penal precepts threatening determinate penalties in case of a financial malfeasance (c. 1319, §§1-2).²⁷

3.1.2.1 – Abuse and Negligence in Exercising the Office of *Parochus*

When analyzing the provisions of canon 1389 on malicious abuse and negligence in exercising an ecclesiastical office, it becomes evident that such actions are considered to be canonical delicts (with appropriate penalties attached). Several specific actions that could involve malicious abuse of an office or a function are listed in canons 1378, §1; 1382; 1383; 1387; 1388; 1396; see also cc. 1457, and 1741, 4°;²⁸ however, none of the canons on abuse through an act or omission of ecclesiastical power or office explicitly involves acts of financial malfeasance. Therefore, “canon 1389 is the norm which would be applied to malicious or negligent acts involving financial malfeasance.”²⁹ Canon 1389 provides the basis for a criminal action against Church authorities whenever the Code does not explicitly penalize a given abuse

²⁶ Ibid., p. 16.

²⁷ A penal precept is a warning that threatens a penalty if a person does not comply with the law (cc. 1319, §1; 49). However, the Code prohibits precepts threatening indeterminate penalties and perpetual expiatory penalties (c. 1319, §1), e.g., privation of office, dismissal from clerical state (c. 1336, §1, 2°, 5°) (see T.J. GREEN, “Commentary on Book VI,” in *CLSA Comm2*, pp. 1538-1539). Moreover, Renken observes that “no penal law permits one to be removed from the clerical state for financial malfeasance” (RENKEN, “Penal Law and Financial Malfeasance,” p. 57).

²⁸ See A. MARZOA, “Commentary on Canon 1389,” in *Exegetical Comm*, vol. 1V/1, p. 528.

²⁹ RENKEN, “Penal Law and Financial Malfeasance,” p. 37. Canon 1389 reads as follows: “§1. A person who abuses an ecclesiastical power or function is to be punished according to the gravity of the act or omission, not excluding privation of office, unless a law or precept has already established the penalty for this abuse. §2. A person who through culpable negligence illegitimately places or omits an act of ecclesiastical power, ministry, or function with harm to another is to be punished with a just penalty.”

of office,³⁰ e.g., financial malfeasance by the *parochus*. In this regard, Daneels suggests the application of this canon when there are “serious irregularities in the administration of the temporal goods of the parish, and there is even a serious suspicion of embezzlement.”³¹ Therefore, when the *parochus* abuses ecclesiastical power or office (c. 1389, §1) maliciously (*dolus*), or illegitimately places or omits an act of ecclesiastical power or function through culpable negligence (*ex culpabili neglegentia*) (c. 1389, §2) with harm to another, the provisions of canon 1389 can be invoked;³² for instance, in case of violation or omission of duties of an administrator of goods in relation to acts of acquisition, acts of ordinary or extraordinary administration, and alienation of parish goods.

3.1.2.1.1 – Violation/Omission of Duties by the *Parochus*

Regarding possible instances of violation or omission in fulfilling the “duties of an administrator” of ecclesiastical goods by the *parochus*, the following can be mentioned:

1. failing to keep well organized books of receipts and expenditures in the parish (c. 1284, §2, 7°);
2. failing to draw up the parish annual report of administration (c. 1284, §2, 8°);
3. failing to prepare the parish annual budget of projected income and expenditures if required by particular law (c. 1284, §3);

³⁰ See GREEN, “Commentary on Book VI,” p. 1593.

³¹ F. DANEELS, “The Administrative Imposition of Penalties and the Judicial Review of Their Legitimacy,” in DUGAN (ed.), *The Penal Process and the Protection of Rights in Canon Law*, p. 248.

³² Canon 1389, §1 is the only canon which also implicitly permits the possible imposition of a perpetual expiatory penalty of deprivation of office in the case of financial malfeasance. Therefore, this canon is an exception to the general rule contained in canon 1349, which states that if a penalty is indeterminate, the judge is not to impose graver penalties unless the law provides otherwise. However, he cannot impose perpetual penalties (see RENKEN, “Penal Law and Financial Malfeasance,” p. 36, fn. 63). Book VI imposes deprivation of office only for five types of delicts: (1) for solicitation in confession (c. 1387); (2) for abuse of an ecclesiastical office (c. 1389, §1); (3) for attempted marriage of a cleric (c. 1394, §1); (4) for violation of residence obligation (c. 1396); and (5) for physical violation of human life (c. 1397).

4. failing to observe employment laws for parish employees (c. 1286);
5. failing to render the annual parish report to the faithful concerning the goods offered by them to the parish (c. 1287, §2);
6. failing to observe the legitimate provisions of civil law contracts (c. 1290);³³ etc.³⁴

3.1.2.1.2 – Violation/Omission in the Acquisition of Goods by the *Parochus*

For possible instances of violation or omission in “the act of acquisition of goods” by the *parochus*, the following can be mentioned:

1. embezzling funds owned by the parish (c. 1256);³⁵
2. requiring a greater offering than is permitted on the occasion of the administration of sacraments or sacramentals performed in the parish (c. 1264, 2°);
3. failing to obtain the written permission of the one’s own ordinary and the local ordinary for begging for alms in the parish (c. 1265, §1);³⁶

³³ If legitimate provisions of civil law (c. 1290) are not followed for gifts *inter vivos* offered to the parish, it will clearly invalidate the contract; besides, canon 1299 provides, with regard to gifts *mortis causa*, “the formalities of the civil law are to be followed *if possible*; if they have been omitted, the heirs must be admonished regarding the obligation, to which they are bound, of fulfilling the intention of the testator” [emphasis added]. Therefore, when necessary, the requirements of contract law are to be observed for any gift or transfer to the public juridic person of the parish; for instance, notarization, public registration, etc. This is especially so when it is a matter of transfer enacted by title or deed or that is meant to constitute a trust or endowment (e.g., acceptance of a non-autonomous pious foundation for the parish). Therefore, clearly, the invalidity of civil transfer will directly impact the ability of the ecclesiastical person to receive or retain the gift (see R.E. JENKINS, “Gift, Donations and Donor Intent in the Canon Law of the Catholic Church,” in *The Jurist*, 72 [2012], pp. 91-92).

³⁴ See RENKEN, “Penal Law and Financial Malfeasance,” pp. 38-40; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 5. For a detailed list of duties of the *parochus*, see in this dissertation, chapter II, 2.2.2.1, pp. 98-100.

³⁵ For instances of embezzlement of parish funds/Sunday collections, see above, pp. 164-165, fn. nos. 6-9.

³⁶ In this area, the law seeks to minimize any kind of misrepresentation, fraud, and exploitation of the generosity, etc. of donors. Hence, the law requires written permission of the ordinary whether religious or diocesan – private or physical persons, are to beg. For example, in a situation where a parish is entrusted to a clerical religious institute or society of apostolic life having one presbyter as *parochus* (c. 520, §§1-2), if he begs for alms or undertakes fundraising in the parish, it must be made clear for whose benefit the activity is being carried out, i.e., whether the fund is for the benefit of the religious institute/society of apostolic life or for the parish. In the case where the begging is for the benefit of a pontifical institute or society, the written permission of the supreme moderator/major superior (see c. 134, §1), and the local ordinary of the parish is required (c. 1265, §1); in the case of a diocesan institute or society, then, the written permission of the local ordinary of the principal house and the local ordinary of the parish is required. However, if the fundraising is for the parish itself, then such permissions are not required since the Code does not forbid public juridic persons from begging for alms (unless diocesan particular

4. keeping some of the revenue gathered in a special collection of the parish, rather than sending it all to the diocesan curia (c. 1266);
5. retaining for personal use an offering destined for the parish (cc. 1267, §1; 531; 551);³⁷
6. refusing an offering for the parish without a just cause,³⁸ or refusing an offering for the parish in a matter of greater importance without the written permission of the ordinary (c. 1267, §2); etc.³⁹

3.1.2.1.3 – Violation/Omission in Acts of Ordinary Administration by the *Parochus*

For possible instances of violation or omission of “juridic acts of ordinary administration” by the *parochus*, the following can be mentioned:

1. failing to pay the diocesan tax from the parish (c. 1263);
2. failing to take out insurance policies to protect the parish goods entrusted to his care (c. 1284, §2, 1°);
3. failing to collect the return of the parish goods and the income accurately and protect them (c. 1284, §2, 4°);

law requires permission for a major fundraising event) (see KENNEDY, “Commentary on Book V,” p. 1467). In the case of mendicant Orders (e.g., Dominicans, Franciscans, Capuchins, Augustinians, Carmelites), the legislator confirms their right to beg for alms and therefore, they do not need any permission (see DE PAOLIS, *I beni temporali della Chiesa*, p. 155). However, it often happens that, when the order first came to the diocese, the written agreement between both parties addressed issues relating to fund-raising. The terms of any such agreement would have to be carefully observed. The Eastern Code forbids any person to collect alms without the permission of that person’s own ordinary and the written consent of the local ordinary: “Physical and juridic persons [private or public] cannot collect alms without the permission of the authority they are subject to and without the written consent of the hierarchy of the place where the alms are collected” (CCEO, c. 1015).

³⁷ This means deliberately using parish funds in a fashion contrary to the proper purposes of the ecclesiastical goods (c. 1254, §2); in other words, *parochus* employs parish funds for his own personal use rather than responsibly stewarding the parish financial patrimony (cc. 532; 1284) (see GREEN, “Commentary on Book VI,” p. 1593).

³⁸ “A just cause for refusal of a gift might arise due to the manner in which the gift was acquired (*quoad modum*) or the nature of the gift itself (*quoad substantiam*)” (JENKINS, “Gift, Donations and Donor Intent in the Canon Law of the Catholic Church,” p. 96). For the former, e.g., stolen money, funds earned by immoral activities, etc., for the latter, e.g., donations from a company that produces abortifacient drugs, an acceptance of a gift that would create a conflict of interest, etc. (see *ibid*).

³⁹ See RENKEN, “Penal Law and Financial Malfeasance,” p. 38. For a detailed list of means of acquisition of goods by the *parochus*, see in this dissertation, chapter II, 2.2.1, pp. 88-96.

4. failing to pay at the stated time the interest due on loans or mortgages, and to take care that the capital debt of the parish is repaid in a timely manner (c. 1284, §2, 5°); etc.⁴⁰

3.1.2.1.4 – Violation/Omission in Acts of Extraordinary Administration by the *Parochus*

The following can be mentioned as possible instances of violation or omission of “juridic acts of extraordinary administration”⁴¹ by the *parochus*:

1. accepting offerings which contain a modal obligation or condition for the parish without the written permission of the ordinary⁴² (c. 1267, §2);
2. failing to obtain the written faculty of the ordinary when required (c. 1281, §§1-2);
3. failing to obtain permission of one’s proper ordinary to initiate or contest civil litigation in the name of the parish (c. 1288);⁴³
4. failing to follow the norms on alienation for canon 1295 transactions placed on behalf of the parish (see c. 1296);

⁴⁰ See *ibid.*, pp. 38-40; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 5. For a detailed list of acts of ordinary administration by the *parochus*, see in this dissertation, chapter II, 2.2.2.2. pp. 101-102.

⁴¹ If these acts are not so designated (c. 1282, §2), then, they will fall under the category of acts of ordinary administration. For a detailed list of acts of extraordinary administration by the *parochus*, see in this dissertation, chapter II, 2.2.2.3, pp. 102-105.

⁴² For example of a modal obligation, a donor might offer a certain amount of money to a *parochus* with the words, “You should use this money to feed the poor of the parish.” The obligation is enforceable. If, however, the *parochus* were to use the funds for another charitable purpose, the donor would not be able to demand return of the gift. In other words, as previously stated, failure to abide by the terms of a modal obligation does not affect the gift transfer adversely. It remains irrevocable (see S.O. SHERIDAN, “Endowments and Pious Wills: To Rebuild the Church,” *The Jurist*, 72 [2012], p. 97). For example of a condition, when a new parish church is under construction, a donor offers the necessary amount of money “provided that” the *parochus* will use it to build the altar of the parish church; or another donor makes a large donation “on the condition that” he will place a permanent plaque on the wall to honor the donor. If the *parochus* were to breach these conditions without the consent of those concerned, each donor can demand the return of the gift since the fulfillment of that condition is necessary to effect the transfer of the gift. Further, canon 1267, §2 refers that refusal of a gift should not occur even when obligations or conditions are attached if the refusal would place the patrimony of the juridic person in jeopardy. Hence the canon refers to the provision of c. 1295 (see *ibid.*). Hence, in all circumstances above, the law wisely requires the permission of the ordinary in order to ensure the protection of the parish property.

⁴³ For instance, in a situation where a parish is entrusted to a clerical religious institute or society of apostolic life having one presbyter as *parochus* (c. 520, §§1-2), if the suit pertains to the benefit of the temporal goods of a pontifical religious institute or society of apostolic life, the written permission of the supreme moderator/major superior (see c. 134, §1) is required; in the case of a diocesan institute or society, the written permission of the local ordinary of the principal house; If the suit pertains to the temporal goods of the parish itself, then the permission of the local ordinary would be required.

5. failing to obtain the required permission in leasing the goods of the parish (c. 1297);
6. failing to obtain written permission from the ordinary for accepting a non-autonomous pious foundation for the parish (1304, §1);⁴⁴
7. reducing or transferring Mass obligations in the parish without regard for the requirements of the law (cc. 1308-1309);⁴⁵ and reducing, moderating, commuting pious wills (other than Mass obligations) of parishioners without observance of the law;⁴⁶ etc.⁴⁷

⁴⁴ The law seeks to avoid any kind of abuse concerning acceptance as well as administration of a non-autonomous pious foundation. Hence, canon 1304, §1 requires the permission of the ordinary for validity of its acceptance. When the permission is given in writing (see c. 1306, §1), ideally, the ordinary is to make an express mention of the importance of the donor's intent and of the means by which the ordinary will exercise vigilance over the foundation to assure proper fulfillment of it (see JENKINS, "Gifts, Donations and Donor Intent," p. 105).

Since a non-autonomous foundation is a form of pious trust, the ordinary referred to in canon 1304 is to be determined according to canon 1302, §3. Thus, for example, in a situation where a parish is entrusted to a clerical religious institute or clerical society of apostolic life having one presbyter as *parochus* (c. 520, §§1-2), if a non-autonomous pious foundation is accepted by him (c. 1304, §1), it should be made clear whether the temporal goods which form the *corpus* of the trust/non-autonomous foundation according to the intention of the donor are to be used for the benefit of the parish (in which case it will continue to benefit whoever is the next *parochus* even if the institute or society leaves the parish), or for the benefit of the religious institute/society of apostolic life. If it is entrusted for the benefit of the parish, canon 1302, §3 resolves the issue in favor of the local ordinary who is to give the permission. However, if it is given for the benefit of a pontifical clerical religious institute or a clerical society of apostolic life, then the written permission of the supreme moderator/major superior of the institute or society is required (see c. 134, §1); but, if he belongs to a clerical religious institute or clerical society of apostolic life of diocesan right, then, the written permission of the proper ordinary, namely, the local ordinary of the place where the parish is situated, is required (see KENNEDY, "Commentary on Book V," p. 1515; see SHERIDAN, "Endowments and Pious Wills," p. 151).

⁴⁵ "If there is a just and necessary cause, reduction of Mass obligations [e.g., a non-autonomous Mass foundation of a parish] is reserved to the Holy See [Congregation for the Clergy] except in three circumstances (cc. 1308-1309): (1) if due to diminished revenue, the proper ordinary is competent to reduce Mass obligations if competence of ordinary is expressly provided in the charters of the foundation (2) If due to diminished revenues, the diocesan bishop, or the supreme moderator of the clerical religious institute or society of apostolic life of pontifical right can reduce the Mass obligations of a foundation to the established offering level in the diocese. (3) If insufficient for an ecclesiastical institute to pursue the proper purposes, the diocesan bishop or the supreme moderator of a clerical religious institute or society of apostolic life of pontifical right can reduce the Mass obligations of an institute, e.g., Catholic school or health care facility" (SHERIDAN, "Endowments and Pious Wills," p. 156). The same authorities mentioned above have the power to transfer Mass obligations to days, churches, or altars different from those mentioned in the foundation; they can do so only for a foundation, but this power is not extended to transfer Mass obligations attached to the ecclesiastical institutes, in which case, recourse is to be made to the Holy See. Moreover, when it concerns the benefit of the clerical religious institute or society of apostolic life for reduction or transfer of Masses, canons 1308-1309 refer only to the competence of the supreme moderator of the clerical religious institute or society of apostolic life of pontifical right. So, if it regards a diocesan institute or society, one would presume that recourse is to be made to the Holy See. However, for a diocesan institute/society, one could go through the "ordinary," who is the bishop of the place where the foundation is located.

⁴⁶ "For a just necessary cause, the ordinary can reduce, moderate, or commute pious wills if the founder has given him the power (c. 1310). If the founder has not given this power, the ordinary can also equitably lessen the obligations of pious wills if it becomes impossible to fulfill the obligations due to the decreased revenue or some other cause other than the administrator. In other situations, recourse is to be made to the Holy See" (ibid., p. 159).

⁴⁷ See RENKEN, "Penal Law and Financial Malfeasance," pp. 38-40.

3.1.2.1.5 – Violation/Omission in Acts of Alienation by the *Parochus*

The following can be mentioned as possible violations or omissions of juridic “acts relating to alienation” by the *parochus*:

1. failing to observe the norms of the Code on alienation of goods belonging to the parish (cc. 1291-1294) (see c. 1296);
2. alienating the goods of the parish to his close relatives up to the fourth degree of consanguinity or affinity without the special written permission of the diocesan bishop (c. 1298).⁴⁸

3.1.2.2 – Production and Use of False Documents by the *Parochus*

Canon 1391 on the production and the use of false documents⁴⁹ envisions a facultative just penalty⁵⁰ for various offences, such as deliberately producing a false public ecclesiastical document, substantially tampering with it, and intentionally using some other altered documents, etc.⁵¹ The following could be mentioned as possible delicts by the *parochus*:

1. falsifying parish records of donor’s contributions (cc. 1261-1262; 1264, 2°; 1266);
2. falsifying the amount involved in an act of extraordinary administration to make it appear as an act of ordinary administration of the parish (c. 1281, §§1-2);
3. falsifying civil legal documents of the parish (c. 1284, §2, 2°);

⁴⁸ See *ibid.*, p. 40.

⁴⁹ Canon 1391 reads: “The following can be punished with a just penalty according to the gravity of the delict: 1° a person who produces a false public ecclesiastical document, who changes, destroys, or conceals an authentic one, or who uses a false or altered one; 2° a person who uses another false or altered document in an ecclesiastical matter; 3° a person who asserts a falsehood in a public ecclesiastical document.” Moreover, canon 1540, §§1-3 describes: “Public ecclesiastical documents are those which a public person has drawn up in the exercise of that person’s function in the Church, after the solemnities prescribed by law have been observed. Public civil documents are those which the laws of each place consider to be such. Other documents are private.” An ecclesiastical document refers to acts of ecclesiastical governance, whether legislative, judicial, or executive (see J. ARIAS, “Commentary on Book VI,” in *CCLA*, p. 1091).

⁵⁰ When the penal law refers to a just penalty, it could be either a medicinal or an expiatory penalty.

⁵¹ See GREEN, “Commentary on Book VI,” p. 1596. The falsification of a document can be done by concealing or not mentioning an important fact (*subreptio*) or giving a false reason (*obreptio*) (see c. 63, §§1-2) (see ARIAS, “Commentary on Book VI,” p. 1081).

4. falsifying parish books of receipts and expenditures (c. 1284, §2, 7°);
5. falsifying the annual parish financial report and annual parish report to the faithful (c. 1287, §§1-2);
6. falsifying parish documents relating to alienation (cc. 1291-1294), canon 1295 transactions, and leases (c. 1298);
7. falsifying parish documents relating to pious wills, pious trusts, non-autonomous pious foundations (e.g., falsifying revenue from an endowment) (cc. 1299-1310); etc.⁵²

3.1.2.3 – Impeding the Use of Ecclesiastical Goods of the Parish

Canon 1375 states: “Those who impede [...] the legitimate use of sacred goods or other ecclesiastical goods [...] can be punished with a just penalty.” This penal law can be invoked especially when the parish is prevented from exercising its innate right to acquire, retain, administer and alienate temporal goods, or its innate right to require financial support from the faithful.⁵³ Among the actions that could fall under this canon, the following can be noted:

1. disregarding the intentions of founders and donors concerning the allocation of goods when a parish is merged (c. 121), divided (c. 122), or becomes extinct (c. 123);
2. retaining offerings which the donor presumably intends for the parish, not for the *parochus* (c. 531);
3. failing to observe fiduciary obligations arising from a pious will, pious trust, a non-autonomous pious foundation of the parish, and so forth.⁵⁴

⁵² See RENKEN, “Penal Law and Financial Malfeasance,” pp. 42-43; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 6.

⁵³ See RENKEN, “Penal Law and Financial Malfeasance,” p. 44.

⁵⁴ See *ibid.*, pp. 44-45; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 7.

3.1.2.4 – Invalid Alienation of Ecclesiastical Goods of the Parish by the *Parochus*

Canon 1377 states: “A person who alienates ecclesiastical goods without the prescribed permission is to be punished with a just penalty.” Although the canon, as written, applies to any Catholic, in our particular context, we could say that if a *parochus*, without the appropriate permission of the diocesan bishop (c. 1292, §1), or, in some cases, of the Holy See (c. 1292, §§2-3), alienated ecclesiastical goods belonging to the parish’s stable patrimony, he would be liable for the penalty prescribed in the canon, provided all the other requirements of the penal law were met.⁵⁵ Since penal law must be strictly interpreted, the penalty prescribed in this canon refers specifically to acts of alienation (sale, transfer of ownership) of stable patrimony of the parish, but not to other related acts, such as mortgaging (see c. 1295), leasing (c. 1297), or even violation of other legal requirements for liceity according to canons 1293-1294, etc.⁵⁶

3.1.2.5 – Simony in the Parish

If a *parochus* had administered any sacrament for someone with a deliberately simoniacal contract (c. 1380) (the deliberate intention of purchasing, or selling the sacrament), both the

⁵⁵ See GREEN, “Commentary on Book VI,” p. 1585. However, in the situation of a parish run by a clerical religious institute or clerical society of apostolic life having one presbyter as *parochus*, it is possible that they may own some property in the parish in the name of their own religious institute or society of apostolic life; in that case, the required permission for the valid alienation process of such property is governed by canon 638, §§3-4. According to this canon, pontifical right institutes require the written permission of the competent superior with the consent of the council and in addition, the permission of the Holy See if a transaction exceeds amount determined by the Holy See, and for precious objects and votive offerings. CICLSAL (Congregation for Institutes of Consecrated Life and Societies of Apostolic Life) may also require a *nihi obstat* from the local diocesan bishop for a transaction which would take place in his diocese. Diocesan right institutes require the written permission of the competent superior with the consent of the council and in addition, the written consent of the local ordinary of the principal house. Additionally, the permission of the Holy See is needed for the same reasons as noted above. The Holy See may also need the *nihil obstat* of the local ordinary of the place where the asset to be alienated is located (see R. SMITH, “Commentary on Canons 617-672,” in *CLSA Comm2*, pp. 803-804).

⁵⁶ See J.T.M. DE AGAR, “Commentary on Canon 1377,” in *Exegetical Comm*, vol. IV/1, p. 492; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 7; see RENKEN, “Penal Law and Financial Malfeasance,” p. 47.

parochus as well as person who received the sacrament would have committed this delict and hence would incur the penalty prescribed in this canon.⁵⁷

3.1.2.6 – Bribery in the Parish

It is possible that the *parochus* might even commit the delict of bribery in his parish (c. 1386);⁵⁸ Such would occur, if, for instance, in return for gifts received from a person, he would neglect to collect rent from this person for the use of parish property (see c. 1284, §2, 4^o). Or, were he to use his influence to make certain that a contractor who had promised him gifts, would receive the endorsement of the parish finance council for a parish building project (see c. 1290); etc.

⁵⁷ See ARIAS, “Commentary on Book VI,” p. 1074. For validity (c. 1347, §1), a *ferendae sententiae* censure foreseen in canon 1380 can be imposed only after a warning to withdraw from contumacy. The penalty could be received by both parties (the celebrant and the person receiving the sacrament); however, if the dual agreement is made for a third party who is unaware of the agreement, the offence is not incurred. Evidently, this canon does not apply to the legitimate offering for the celebration of Mass (cc. 945-958), and other sacraments and sacramentals (c. 1264, 2^o).

Although Mass offerings are not ecclesiastical goods of the parish, it may be an instrument for financial malfeasance in the parish (see c. 1385). Mass offerings are governed by canons 945-958 and by the 1991 Decree on Collective Mass Intentions *Mos iugiter* of the Congregation for the Clergy approved in *forma specifica* by the Roman Pontiff (See CONGREGATION FOR THE CLERGY, Decree on Collective Mass Intentions *Mos iugiter*, 22 February 1991, in AAS, 83 [1991], pp. 443-446, English translation in CLD, vol. 13, pp. 527-530). Canon 1385 seems to penalize a deliberate violation of canon 947 which prohibits any appearance of trafficking in or trading Mass offerings. If the penalty chosen is a censure, the requirement of a previous warning (c. 1347, §1) must be observed *ad validitatem*. For examples of the offence concerning Mass offerings: if the *parochus* – combines intentions illegitimately in a single Mass (c. 948); retains more than one offering a day, except on Christmas (c. 951); requires an offering higher than what has been set (c. 952, §§1-2); accepts more offerings for Masses than a priest can satisfy within a year (c. 953); does not transfer the entire Mass offering to other priests (c. 955, §1); retains the amount of more than one offering from the offerings received to celebrate a collective Mass (*Mos iugiter*, art. 2, §1); celebrates more than two collective Masses in a week (*Mos iugiter*, art. 2, §2); etc. (see A. MARZOA, “Commentary on Canon 1385,” in *Exegetical Comm*, vol. 1V/1, pp. 519-520).

⁵⁸ However, the delict is not incurred if the gift is given after the activity has been taken place (see GREEN, “Commentary on Book VI,” p. 1591). The Code gives possible instances for bribery of tribunal personnel such as the judge, the advocate, and the procurator in the context of various tribunal violations (cc. 1456; 1488; 1489).

3.1.2.7 – Clerics (the *Parochus*) Carrying out Commercial Activities in the Parish

If the *parochus* involves himself in pursuits of trade or business without the permission of the competent authority, he would incur the penalty foreseen in the canon 1392 (cf. cc. 286, 672).⁵⁹ However, it has been generally been accepted by canonists that the sale of pious objects, books, and the like, at churches and shrines, is not covered by this canon.

Moreover, when the Code does not penalize a legal violation, but, “when the special gravity of the violation demands punishment and there is an “urgent need to prevent or repair scandals,” the general norm of canon 1399 could be invoked by proper authority in a rare case where a “creative” new form of financial malfeasance would be perpetrated by a *parochus*.⁶⁰

3.1.3 – The Diocesan Bishop’s Implementation of Provisions against Financial Malfeasance

For corrective measures, in case of financial malfeasance by *parochi*, the diocesan bishop can implement the provisions of Book VI dealing with delicts involving “financial malfeasance.” As noted above, he may establish particular penal laws for parishes concerning issues of financial malfeasance which are not addressed in the universal law (c. 391, §1). He may establish such laws by a general decree (c. 29) and promulgate them; this is an individual public juridic act of legislative power. Moreover, those who have executive power in the diocese can issue penal

⁵⁹ On 22 March 1950, the Holy See had introduced a *latae sententiae* excommunication for any cleric or religious of the Latin Church, or member of a secular institute, “who conducts trade or business of any kind, even that which consists in exchange of currencies, either in person or through others, whether for his own benefit or that of others.” Absolution from this censure was reserved to the Holy See. Likewise, “superiors, who shall have failed to prevent these same crimes according to their office and power, are to be deprived of their office and declared incapable of any office of government or administration” (CONGREGATION FOR THE COUNCIL, “De vetita clericis et religiosi negotiatione et mercatura,” 22 March 1950, in AAS, 42 [1950], pp. 330-331, English translation in *CLD*, vol. 3, pp. 68-69). The 1983 Code removed a specific reference to a censure, and left the matter rather open-ended (see MORRISSEY, “Financial Mismanagement and Canon Law,” p. 9). Nonetheless, permanent deacons are not subject to the prohibition of this canon unless diocesan particular law provides otherwise (c. 288). Further, this canon binds only clerics, not non-clerical members of religious institutes or societies of apostolic life (see c. 18).

⁶⁰ See RENKEN, “Penal Law and Financial Malfeasance,” p. 54.

precepts which threaten the *parochus* with determinate (medicinal or expiatory but non-perpetual) penalties in order to avoid financial malfeasance (cc. 49; 1319, §1).⁶¹

Even if a diocesan bishop decides not to pursue a penal process, he may administratively remove from office a *parochus* guilty of financial malfeasance.⁶² Whether a *parochus* was appointed for a definite or indefinite period, it requires a grave cause and the manner of proceeding for removal from office (cc. 1740-1747) according to canon 193, §§1-2. The same requirements would apply in the case of removal of the practical equivalent of a *parochus*, such as quasi-*parochus* of a quasi-parish;⁶³ priests ministering in *solidum* (cc. 517, §1; 542-544); and also the *parochus* who is entrusted with more than one parish (c. 526, §1).⁶⁴

In order to demonstrate that he has indeed reformed his ways and wishes to restore justice, the *parochus* could submit his resignation from office to the diocesan bishop in writing, or orally before two witnesses as required for validity (c. 189, §1). If the *parochus* is unwilling to

⁶¹ See *ibid.*, p. 55.

⁶² See *ibid.*, p. 56. According to canons 1740-1741, a *parochus*, since he is an administrator of ecclesiastical goods, may be removed administratively from office for several reasons which may relate to financial malfeasance: when his ministry is harmful, at least ineffective; his manner of acting is a disturbance to the ecclesiastical community, loss of reputation among the upright parishioners, grave neglect of parochial duties which persists after a warning, and poor administration of temporal goods with grave harm to the parish when another remedy to the harm cannot be found, etc. (see *ibid.*, pp. 56-57). In light of canon 18, the diocesan bishop is to follow strictly the procedures according to canons 1742-1747. Accordingly, for validity: (1) in the first phase of the instruction, the diocesan bishop must explain the cause and arguments for the removal and to discuss the matter with two *parochi* selected by the presbyteral council; (c. 1742); (2) in the second phase, if the *parochus* opposes the cause and reasons for his removal, the bishop must put his objections in writing after allowing him to inspect the acts and to offer any contrary proof; he must again consider the matter together with the two same *parochi*; and he must issue the decree of removal establishing whether the *parochus* is removed or not (c. 1745, 1°-3°). Had he not followed these requirements for validity, the removal will be invalid and its legality will be questioned in case of recourse.

⁶³ See RENKEN, *Particular Churches*, p. 199.

⁶⁴ However, canon 526, §1 does not require that the priest be the *parochus* of each parish nor does it forbid this. Therefore, in order to avoid procedural difficulties in case of his removal, he could be appointed as *parochus* for one parish and parochial administrator for other parishes since an office of parochial administrator (cc. 539-540) requires only a simple removal without involving the procedure for removal (see *ibid.*, p. 239; see also J.H. PROVOST, "Priests Serving as Pastors in More Than One Parish," in *CLSA AO1*, pp. 124-126). Likewise, a priest entrusted with the powers and faculties of a *parochus* (c. 517, §2) requires a simple removal, and also a *parochus* who is a member of a religious institute or a society of apostolic life requires only a simple removal according to canons 538, §2; 682, §2.

resign, the diocesan bishop may resort to administrative removal from office according to the procedure (cc. 1740-1747),⁶⁵ or he may impose an involuntary transfer on the *parochus* (cc. 190, §§2-3; 1748-1752).⁶⁶ If a *parochus* abuses his office, the diocesan bishop might find it necessary to invoke a canonical procedure to have him removed from office. He could thus decide to use the procedure outlined in the Code of Canon Law for the removal of a *parochus*. Or, if the case is more serious, he could entrust the issue to the promoter of justice to see whether it would be appropriate to initiate formal penal proceedings (there are two possible penal procedures: one administrative [by the ordinary] and the other judicial [through the tribunal]) against the *parochus* (cc. 196; 1336, §1, 2°; 1717-1728). If he is found guilty, then an appropriate penalty could be imposed, not excluding removal from office (c. 1389, §1).⁶⁷

⁶⁵ See RENKEN, "Penal Law and Financial Malfeasance," p. 56.

⁶⁶ A decision of the Supreme Tribunal of the Apostolic Signatura cautions that, since one cannot provide for an office which is not vacant (except in the case of c. 153, §2), neither can one provide for a transfer to the same (SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *coram* AGUSTONI, 24 June 1995, Prot. nos. 23443/92CA, 23444/92CA, 23445/92CA, in *Forum*, 6 [1995], pp. 117-122; also in *Ministerium Iustitiae*, pp. 357-376).

⁶⁷ A *parochus* can be sanctioned with a penal privation only for the delict of canon 1389, §1, where financial malfeasance is considered as a malicious abuse of ecclesiastical office. However, if other penal laws involving financial malfeasance are violated, he can be removed from office only administratively (see RENKEN, "Penal Law and Financial Malfeasance," p. 57). Nonetheless, the non-penal administrative process could be used for the removal of the *parochus*, even though the cause for removal may have a penal character. When the use of non-penal procedure serves a better purpose in some circumstances, the bishop can use this in lieu of the penal procedure. In this regard, D'Souza points out several reasons: first, the swiftness of the procedure provides for the good of the parish at the earliest; second, it does not harm the rights of the *parochus* in the process; third, the expression "even through no grave personal negligence" in canon 1740 means to say that this administrative procedure can be used whether the *parochus* is culpable or non-culpable, i.e., his actions call for a penalty or not; fourth, even though the bishop has sufficient evidence to institute a penal process, canon 1718, §1, 2° permits him to decide whether it is expedient to use this process or not; finally, the most important factor in employing the procedure for removal is that the bishop should not intend to punish the *parochus*, but only have the direct and immediate concern to provide for the good of souls (see D'SOUZA, "The Procedure for the Removal and Transfer of Pastors," p. 308, fn. 40).

A decision of the Apostolic Signatura substantiates the last point that the bishop's concern is not to punish the *parochus* but to provide for the good of the souls in the removal process: "Ex actis patet Episcopum in amotione parochi intendisse directe et immediate bonum fidelium prorsus independenter a natura criminali, vel minus, rationis agendi eiusdem parochi. In casu, non agitur de privatione poenali... sed de amotione... ab causam quae ministerium parochi noxium vel saltem inefficax reddebat" (SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, *coram* ROSSI, 25 June 1988, Prot. no. 18.970/87CA, no. 12a, in Z. GROCHOLEWSKI, "Trasferimento e rimozione del parroco," in R. FUNGHINI (ed.), *La parrocchia, Studi giuridici*, vol. 43, Città del Vaticano, Libreria editrice Vaticana, 1997, p. 217, fn. 63).

3.2 – Challenge: Absence of Civil Legal Conformity with Canon Law

In canon law, each juridic person owns its property separately from other juridic persons (c. 1256) and has its own administrator (c. 1279), “who is empowered with discretionary capacity or autonomy in the administration of that juridic person.”⁶⁸ However, there are limits to the discretion of each administrator, beyond which there exist requirements for consultation or approval: “This includes *horizontal* consultation and consent with the finance council of the juridic person and other interested parties, and *vertical* consultation and consent with the administrator’s superior.”⁶⁹ In fact, essential elements of a juridic person concerning its autonomy in “governance, ownership of property, and protection against liabilities”⁷⁰ are at risk when a parish faces a challenge of civil legal nonconformity with canon law. Hence, civil legal structures for the protection of parish property must correspond as closely as possible to the provisions of canon law. In this regard, Brown notes:

The structures of governance and administration of a parish in civil law ought to reflect the same degree of distinctness and autonomy in the governance and administration of the parish and parish property that exists in virtue of the parish’s being a distinct juridic person in canon law. By the same token, the civil structure must preserve the same ability of the diocesan bishop (and theoretically the Holy See) to intervene in the administration and governance of the parish in appropriate circumstances that exist in canon law. In canon law this does not make the parish a mere administrative unit of the diocese or the Church universal. A parish is, in fact, a distinct juridic entity in canon law which enjoys a considerable degree of autonomy in day-to-day administration and governance. The diocesan bishop ordinarily may intervene only when there is some failure or negligence on the part of the one who has the principal and immediate power of governance and administration over the affairs of the parish (usually the pastor [*parochus*] as that expression is used in the Code of Canon Law [cc. 1279; 519; 532]).⁷¹

This section will first consider canons relating to civil protection of parish property. It will then analyze the advantages as well as the disadvantages of currently existing principal civil

⁶⁸ W.J. KING, “The Corporation Sole and Subsidiarity,” in *CLSAP*, 63 (2003), p. 117.

⁶⁹ *Ibid.*

⁷⁰ P.J. BROWN, “Square Pegs in Round Holes: Toward a Better Model of Parish Civil Law Structures,” in *The Jurist*, 69 (2009) (= BROWN, “Square Pegs in Round Holes”), p. 303.

⁷¹ *Ibid.*, p. 304.

legal structures of protecting parish property in order to evaluate whether such civil legal structures really serve to protect parish property in accord with canon law.⁷² Next, it will study the position of the Holy See regarding the civil structure of parishes. It will examine civil incorporation as a means of protecting the temporal goods of the parish, and it will shed some light on the practical consequences of such civil incorporation. It will examine the relation between the civil corporation board and the parish finance council. Finally, it will consider issues relating to the observance of civil law in the protection of temporal goods of the parish.

3.2.1 – Canons Relating to Civil Protection of Parish Property

Canon 1284 outlines a number of principles that underlie the spirit of protection of the temporal goods of each juridic person, including the parish. Canon 1284, §1 reminds all administrators, including *parochi*, that they are to perform their duties “with the diligence of a good householder.” Canon 1284, §2, 2^o contains the discipline for the civil protection of parish property. It states that administrators (*parochi*) must “take care that the ownership of ecclesiastical goods is protected by civilly valid methods.” The canon does not indicate what these means might be since they vary from country to country. Nevertheless, Hite notes that this provision of the law would include “proper registration of legal title to real or personal property, holding of securities directly or through an insured broker, and establishing civil structures (corporations) that ensure the juridic person can meet its canonical responsibilities.”⁷³ In the context of North America, among the other means of civil structures for the protection of parish

⁷² This study will limit its scope to the context of North America concerning civil protection of parish property. It will mainly consider civil legal structures of protecting parish property in the United States and it will also sometimes review relevant and similar situations in Canada.

⁷³ HITE, “Church Law on Property and Contracts,” p. 261.

property, one of the most appropriate means has been the use of civil corporations,⁷⁴ which will be reviewed later in this chapter. Furthermore, Foster identifies four juridic elements pertaining to the canonical structure of the parish to be respected in any civil structure protecting parish property:

1. A parish as a juridic entity is separate and distinct from other parishes and the diocese (cc. 515, §3; 1255);
2. A parish is governed by a single officeholder different from the diocese. As universal law indicates, the *parochus* is the canonical administrator of the parish (c. 532) just as the diocesan bishop is for the diocese;
3. The administrator of the parish is assisted in exercising pastoral functions by groups of advisors, such as the parish finance council (c. 537) and the parish pastoral council if required by particular law (c. 536);
4. The diocesan bishop exercises a supervisory function in relation to parishes as public juridic persons subject to him (cc. 1276, §2; 1287, §1, etc.).⁷⁵

3.2.2 – Current Civil Legal Models of Protecting Parish Property

The principal existing forms of organization in civil law employed for the protection of parish property in the USA are the following: (1) The Parish as an Association; (2) The Parish as a Trust; (3) The Parish Corporation Sole; (4) The Parish Member Corporation; and (5) The Parish Non-Member Corporation.⁷⁶

⁷⁴ See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 2.

⁷⁵ See FOSTER, “To Protect by Civilly Valid Means,” pp. 109-110. Because organizational forms differ from one civil jurisdiction to another, it is clear that no one structure aligns perfectly with the Church’s structure in every civil territory. Nevertheless, the civil structure chosen by ecclesiastical administrators should reinforce – or at the very least, not conflict with the canonical structures (see *ibid.*, p. 110).

⁷⁶ See M.E. CHOPKO, “Principal Civil Law Structures: A Review,” in *The Jurist*, 69 (2009), pp. 237-251; see BROWN, “Square Pegs in Round Holes,” p. 286; see MAIDA and CAFARDI, *Church Property*, pp. 127-135; see KING, “The Corporation Sole and Subsidiarity,” p. 123. In the United States and Canada, corporation law has evolved since the mid-1800s. Options exist for property ownership and incorporation in several forms. No matter how property is titled and administered, administrators of parish goods are bound by the Code of Canon Law and its governing principle of subsidiarity. Informed consultation, participatory decision-making, accountability, openness

3.2.2.1 – The Parish as an Association

If a parish is not explicitly given a civilly recognized structure, it may be treated as a “voluntary association” through operation of civil law.⁷⁷ If a parish wanted to be recognized as a voluntary association, civil authorities would ask if there are articles of association. If not, it would find itself “at the mercy of civil authorities’ interpretation of association law with respect to administration, governance, and ownership of its property.”⁷⁸ Therefore, if a parish wants to be treated as a voluntary association, Chopko observes that the administrator of the parish is to make sure that statutes clearly establish the juridic character of the parish for secular purposes.⁷⁹ Statutes can play the dual role of articles of association as well as canonical statutes of a parish, provided that they are so declared as articles of association or association bylaws in civil law; otherwise, there is no guarantee that civil authorities will view them as such.⁸⁰ Hence, Brown

in financial administration, rigorous accounting, and public audit of fiscal management and fiscal controls are elements of the practical exercise of subsidiarity (see KING, “The Corporation Sole and Subsidiarity,” pp. 124-132).

⁷⁷ See CHOPKO, “Principal Civil Law Structures,” p. 242.

⁷⁸ BROWN, “Square Pegs in Round Holes,” p. 288.

⁷⁹ Renken says that “even if statutes are not strictly required for parishes (and other public juridic persons *a iure*), there are clear advantages in having them. More importantly, many of the norms of parish statutes can be included in the documents governing parishes in the civil legal system, so that the norms for parishes are identical in the canonical and civil *fora*, [...] [especially in the context of] *civilly structuring parishes in a manner which corresponds to the canonical notion of a parish*” (RENKEN, “The Statutes of a Parish,” pp. 101-102) [emphasis added]. In a related vein, Beal notes that, even if the law did not require that parishes have them, “good governance of these juridic persons would seem to call for such statutes to provide with organizational stability, to bring together in one place the fundamental norms for the administration of the entity, to spell out specifically the responsibilities of the administrator and the limits of his authority, and, *especially where parishes are civilly incorporated separately from or have a civil identity distinct from that of their diocese, to coordinate the canonical norms for the governance of the unit with its civil charter and by-laws*” (BEAL, “Ordinary, Extraordinary and Something in between,” p. 119) [emphasis added]. The statutes of the parish will be further discussed in chapter IV.

⁸⁰ See BROWN, “Square Pegs in Round Holes,” p. 288. Under the operation of state law, if parishes as unincorporated associations have a separate juridic character from each other and from the diocese, such understanding must be documented in the articles of association. Because, such as in a corporation sole diocese, if parishes are considered under civil law as simply activities or extensions of the diocese, the diocese will be responsible for every wrong thing that happens in the parish, e.g., property torts, labor and employment issues, contractual disputes etc. However, if parishes are treated as civil entities separate from other parishes and from the corporate diocese, liabilities created as a result of parish operations would not ordinarily ascend to the diocesan

explains that parishes as public juridic persons are to confront this question and resolve it “either by assuring [that] the entity has statutes that are explicitly declared civil articles of association and/or bylaws, or canonical statutes and civil bylaws that are carefully tailored to one another, or choosing some other form of organization in civil law.”⁸¹

3.2.2.2 – The Parish as a Trust

In some dioceses, parishes are established as “charitable trusts.”⁸² Parish assets are held in a charitable trust with the bishop as trustee. The bishop then appoints a *parochus* as trust administrator for his parish. The beneficiaries of this trust are the parishioners.⁸³ There are some challenges in the creation of parish trusts. The first will be that the role which civil law may ascribe to civil authorities in overseeing the administration of trusts, would allow the authority to intervene whenever it is determined that the trust is not being properly administered. The second challenge will be how to distinguish civilly ordinary administration from extraordinary administration in the trust documents and to allow ordinary administration of the affairs of the parish by the *parochus* as canonical administrator. The third challenge will be that just like all charitable trusts, parish trusts will bring state regulation and scrutiny. This state regulation will

entity; in the same way, missteps at the diocesan level would not put in jeopardy the property of the individual parishes (see CHOPKO, “Principal Civil Law Structures,” p. 244).

⁸¹ BROWN, “Square Pegs in Round Holes,” p. 289.

⁸² See MAIDA and CAFARDI, *Church Property*, pp. 131. For example, the Diocese of Pittsburgh, USA organized its parishes as charitable trusts to provide separate legal status for parish assets. On 9 June 2006, the Parish Deposit & Loan Fund Trust was established as a Delaware Statutory Trust by the Diocese of Pittsburgh (see DIOCESE OF PITTSBURGH, *Parish Deposit & Loan Fund Trust Participant’s Manual*, 2008, pp. 1-18, in <http://diopitt.org/sites/default/files/ParishDepositLoanFundTrust.pdf>).

⁸³ See R.L. KEALY, “Methods of Diocesan Incorporation,” in *CLSAP*, 48 (1986), p. 169; see MAIDA and CAFARDI, *Church Property*, pp. 131.

be especially complicated where any bishop needs to make changes in parish operations, to merge, or suppress a parish,⁸⁴ and so forth.

3.2.2.3 – The Parish Corporation Sole

Some dioceses decide to form a “parish corporation sole.”⁸⁵ A corporation sole is “a corporation having or acting through only a single member.”⁸⁶ The *parochus* and his successors will be named as corporation sole.⁸⁷ This accords well with canon 532 since this model provides

⁸⁴ See CHOPKO, “Principal Civil Law Structures,” p. 248; see BROWN, “Square Pegs in Round Holes,” pp. 290-291.

⁸⁵ When the first diocesan corporation sole was established in Baltimore by the grant of the Legislature of Maryland on 28 March 1833, it was, on the one hand, considered as an alternative to the negative influence of “lay trusteeism” and it recognized the episcopal jurisdiction in civil law. On the other hand, it also paved the way to eliminate the absolute fee simple method of holding church property in their own name by bishops and priests. However, where the “corporation sole” model was not available, the Fourth Provincial Council of Baltimore (1840) issued a decree urging the bishops or priests, who held the property in “absolute fee simple title,” to execute legal valid wills delineating clearly their personal properties and church properties and to maintain an accurate inventory of the ecclesiastical goods and their civil deeds (see P.J. DIGNAN, *A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932)*, Canon Law Studies, no. 14, Washington, DC, The Catholic University of America, 1933, pp. 158-162).

Just like the model of a diocesan corporation sole, each parish/the *parochus* could be created as a separate corporation sole when a statute allows for it. For instance, in California State provision (30 March 1878) states: “A corporation sole may be formed under this part by the bishop, chief priest, presiding elder or other presiding officer of any religious denomination, society or church, for the purpose of administering and managing affairs, property, and temporalities thereof (Cal. Corp. Code. §10002). For example, recently, in 2002, the Diocese of Stockton, USA reorganized the civil structure of each parish as a civilly separate corporation sole (see FOSTER, “To Protect by Civilly Valid Means,” pp. 110-125). Moreover, on 26 July 2011, the bishop of the Diocese of Sacramento, USA approved restructuring all parishes of the diocese into a civilly autonomous corporation sole; and it became effective at the beginning of 2012 (see DIOCESE OF SACRAMENTO, “Diocesan Reorganization,” 26 July 2011, in <http://www.diocese-sacramento.org/parishes/PDFs/Reorganization.pdf>).

⁸⁶ *Black’s Law Dictionary*, p. 344.

⁸⁷ As previously noted, when a parish is civilly structured as part of a diocesan corporation sole represented by the person of the diocesan bishop, parish assets are considered to belong to a diocesan corporation whose sole representative is the diocesan bishop, who alone acts for the corporation and can operate with all of the legal rights granted to corporations. In such a civil forum, the roles of the *parochus* as the legal representative and administrator of ecclesiastical goods are compromised. Hence, this method of holding title to church property is incompatible with canon law (see KENNEDY, “Commentary on Canons 113-123,” p. 164; see RENKEN, “The Statutes of a Parish,” p. 116). Moreover, King points out that since the corporation sole has “the all-too-tight integration of ownership and control in one person. [...] it will be an attractive font for those who claim damages, actual and punitive, for the tortious misconduct of an agent of the church. The imminent danger of the corporation sole model is that everything is indeed in one bucket. Exposure to liability is grave, whether that arises from the misconduct of the one who is construed to be an employee or agent of the bishop, or from the breach of fiduciary duty owed by the bishop as the corporate sole” (KING, “The Corporation Sole and Subsidiarity,” pp. 133-134).

for a clear administration of the parish property and representation of the parish in all juridic affairs by the *parochus*. It seems though that this mode of organization grants too much independence to the *parochus* in the administration and governance of the parish; this issue becomes complicated when describing the relationship between the corporation sole parish and the diocesan structure.⁸⁸ Hence, when the corporation sole is used for parishes, there need to be clear limitations such as on the corporate powers of the *parochus* in the articles of incorporation and bylaws to assure that the parish corporation operates according to canon law.⁸⁹

3.2.2.4 – The Parish Member Corporation

The “parish member corporation” model,⁹⁰ ordinarily establishes the bishop as the sole member with reserved powers⁹¹ regarding acts of extraordinary administration. Morrissey identifies the following as powers to be reserved to the canonical administrators of juridic persons which have been civilly incorporated:

(1) To change the philosophy and mission of the work; (2) To have the corporate documents— charter and by-laws – approved, amended, or abrogated; (3) To establish subsidiary corporations; (4) To amalgamate the corporation with other corporations, or suppress it; (5) To encumber the real estate and the funds of the juridic person with; (6) Designating the chief executive officer and some or all of the members of the board; (7) Appointing the auditor; (8) Approving operating or capital budgets, or both. As new situations arise, the listed powers can change.⁹²

⁸⁸ See CHOPKO, “Principal Civil Law Structures,” p. 246.

⁸⁹ See *ibid*; see BROWN, “Square Pegs in Round Holes,” p. 290.

⁹⁰ See ARCHDIOCESE OF PORTLAND IN OREGON, Letter of Archbishop to Parishioners on Parish Member Corporations, 14 March 2008, in <http://www.archdpdx.org/bankruptcy/ABletter.Restr.pdf>.

⁹¹ Morrissey notes that “the reserved powers are such that the secular corporation binds itself in its by-laws, or possibly even in its charter, not to act until the required canonical authorizations have been obtained for those specific instances which have been reserved” (MORRISEY, “Basic Concepts and Principles,” p. 14).

⁹² *Ibid*.

The *parochus* carries out acts of ordinary administration under the guidance of the board of directors. However, in this model, “the bishop may obtain powers vis-à-vis the parish far beyond what is anticipated canonically. Furthermore, his status as sole member might obscure his proper role in civil law and give the appearance that all of the separate member corporations (parishes organized in this manner) are simply individual components of a single civil entity, thus defeating the aim of separation of assets.”⁹³ On the other hand, this model can mirror canonical governance in the sense that the *parochus* essentially operates the parish subject to the bishop’s supervision on issues reserved under canon law.⁹⁴

3.2.2.5 – The Parish Non-Member Corporation

The “parish non-member corporation” model dates back to the 19th century. On 25 March 1863, a church incorporation law was passed in the New York Legislature as *an Act Supplementary to the Act entitled, “An Act to provide for the Incorporation of Religious Societies,” passed 5 April 1813*;⁹⁵ this amendment reads in part as follows:

It shall be lawful for any Roman Catholic Church or congregation now or hereafter existing in this state to be incorporated according to the provisions of this act: the Roman Catholic archbishop or bishop of the diocese in which such church may be erected or intended so to be, the vicar-general of such diocese, and the pastor [*parochus*] of such church for the time being, respectively or a majority of them, may select and appoint two lay men, sign a certificate, showing the name or title by which they and their successors shall be known and distinguished as a body corporate by virtue of this act, which certificate shall be duly acknowledged or proved, in the same manner as conveyance of real estate [...]. The trustees of every such church or congregation, and their successors shall have all the powers and authority granted to the trustees of any church,

⁹³ BROWN, “Square Pegs in Round Holes,” p. 293.

⁹⁴ See CHOPKO, “Principal Civil Law Structures,” p. 251.

⁹⁵ N.Y. Religious Corp. Law, §91. In USA, the “parish incorporation” model, which began on 25 March 1836 in New York, is now available in Connecticut, Delaware, Maryland, Massachusetts, Michigan, New Jersey, Rhode Island, and Wisconsin (see J.P. BEAL, “It’s Déjà vu All Over Again: Lay Trusteeism Rides Again,” in *The Jurist*, 68 [2008] [= BEAL, “It’s Déjà vu All Over Again”], p. 541, fn. 123).

congregation or society, by the fourth section “Act to provide for the incorporation of Religious Societies,” passed April fifth, eighteen hundred and thirteen [...].⁹⁶

Accordingly, this State legislature permitted both diocesan and parish corporations. The parish is organized as a religious corporation with no member. The parish corporation is governed by a five member board of directors. The officers are the bishop, the vicar general, the *parochus*, and two lay persons selected by them.⁹⁷ In canon law, the *parochus* is responsible for the ordinary administration of parish properties; the bishops are involved in the extraordinary administration of the parish. In this model, however, since parish governance is subject to the actions of a board of directors, the bishop by his presence on the board is involved in decisions of both ordinary and extraordinary administration. Therefore, there can be confusion about acts of ordinary administration and acts of extraordinary administration.⁹⁸ The formality of a board vote is required to pass certain actions. The diocesan bishop’s oversight over the ecclesiastical goods of the parish is guaranteed since he is one of the board of directors; however, given the

⁹⁶ *Laws of the State of New York Passed at the Eighty-Sixth Session of the Legislature*, Albany, NY, 1863, pp. 65-67, in J.P. MURPHY, *The Laws of the State of New York Affecting Church Property*, Canon Law Studies, no. 388, Washington, DC, The Catholic University of America, 1957, p. 49. This Act was further amended in 1895 to require the permission of the diocesan bishop or diocesan administrator for the validity of the corporate acts of the board and again in 1902 to allow the bishop to transfer property of a divided parish to the newly created parish and to divide the assets proportionately (see MURPHY, *The Laws of the State of New York Affecting Church Property*, p. 50).

⁹⁷ See KEALY, “Methods of Diocesan Incorporation,” p. 169. Concerning its formalities, Chopko observes that in employing this model, care must be taken in the drafting of the core documents and in the implementation of and adherence to corporate formalities such as annual reports, certain forms and certifications, and so forth (CHOPKO, “Principal Civil Law Structures,” p. 249).

⁹⁸ In this regard, Morrissey observes that many decisions can be taken by three of the directors; thus the *parochus* and the two parishioners who are directors of the board can carry out most functions related to the corporation. However, the documents can provide that, in certain instances, the affirmative vote of the bishop (or of the vicar general) is required (see F.G. MORRISSEY, “The Civil Incorporation of Parishes,” unpublished paper presented in Atlantic Episcopal Assembly, Halifax, NS, 12 September 2012 (= MORRISSEY, “The Civil Incorporation of Parishes – Halifax”), p. 14.

number of parishes in a diocese, the participation of the bishop in parish meetings may not be practical.⁹⁹

In addition, more or less in the same period as in the United States, the parish corporation evolved in Canada. In the 19th century, on 3 March 1839, some three-quarters of a century after the Conquest, a law was passed in Quebec authorizing the recognition of parish corporations.¹⁰⁰ This law was particularly important, because it also allowed the diocesan bishop to establish canonical parishes, without government intervention.¹⁰¹ As Canada developed, somewhat similar legislation regarding ownership of ecclesiastical property was passed in the other provinces and territories. There was no obligation, however, to have the canonical parishes incorporated separately. Since the 1839 legislation which allowed for parish corporations, Quebec has had such a system in place for number of years, known as “the *fabrique*.”¹⁰² In the 20th century, in Saskatchewan a general law, dating back some 100 years, allowed for the automatic civil incorporation of parishes by posting a notice in the official *Saskatchewan Gazette*.¹⁰³

While various forms of civil incorporation of parishes for protecting parish property are available, toward a better model in the long run, the competent ecclesiastical authorities may

⁹⁹ However, Morrissey observes that, although the bishop would have the right to attend parish meetings, he would not have to attend corporation meetings in each parish, provided they have their quorum (see *ibid*).

¹⁰⁰ See *Lower Canada Statutes*, 1839, 2 Victoria, c. 27.

¹⁰¹ See MORRISSEY, “The Civil Incorporation of Parishes – Halifax,” p. 8.

¹⁰² See *ibid*; see also B.M. BOYER AND J. COUTU, “An Act Respecting *fabriques*: Text of Law and Commentary,” in ASSEMBLY OF QUÉBEC CATHOLIC BISHOPS, *Canonical and Pastoral Guide for Parishes*, Canadian edition, Montréal, Wilson and Lafleur, 2006, pp. XIV-1-28.

¹⁰³ See “An Act to Incorporate the Roman Catholic Parishes and Missions in the Diocese of Regina,” chapter 67, 15 March 1912, as amended by the *Statutes of Saskatchewan*, 2000, c. 07. Moreover, in Canada, Manitoba has legislation in place that allows parishes to be recognized as separate corporations. In Prince Edward Island, rather than having a universal Bill, as was the case for Saskatchewan, it was considered more appropriate to incorporate the parishes individually, which possibility is presently available under the Companies Act (R.S.P.E.I., 1988, Cap. C-14, Part II). Other provinces do not yet have their parishes incorporated civilly (see MORRISSEY, “The Civil Incorporation of Parishes – Halifax,” p. 8).

perhaps take concerted efforts “to introduce into civil legislation the ‘juridic person structure’ which would correspond to the same in canon law.”¹⁰⁴ Brown proposes that the concept of juridic person parish in canon law be introduced into civil law in the United States, which may be applied elsewhere toward achieving a more adequate civil model of a parish:

Is it possible for “juridic persons” (in particular parishes) to be treated in American civil law the way they are treated in canon law today? Although American law does not *per se* include the concept of the juridic person as understood in canon law, structures do exist that allow corporate entities to govern themselves more or less however they choose (so long as there is no intent to defraud, the methods chosen assure that they meet their more general obligations to society, and the independent rights of third parties are protected). Could the concept of the juridic person, therefore, be introduced into American law through the manner in which church entities are currently able to organize themselves under civil law? If this is possible, civil courts would be obligated to enforce norms of canonical governance in civil law not as an application of canon law by the civil court, but rather as a matter of contractual or corporate obligation sanctioned by existing principles of civil law. Questions about the correct interpretation of canon law would not be questions of law in this context, but questions of fact pertaining to the structures of governance chosen by the entity for itself. Such questions would ordinarily be resolved in civil law through expert testimony, not legal rulings by the court.

Similarly, are the means currently available in civil law for parishes to limit their liabilities and insulate themselves from the liabilities of other parishes, the diocese, and other juridic persons? If so, what methods are available which are most effective? [...] for the Catholic Church, structure and relationships between different church entities are not simply matters of administrative convenience; they touch on Church’s very conception of itself; its theology (ecclesiology being a branch of theology). The Church’s convictions about church structure and governance *are* matters of belief and doctrine for those who practice the Catholic form of the Christian religion. These convictions should therefore be given due regard and concrete protection in American law under existing constitutional principles of religious liberty.¹⁰⁵

3.2.3 – The Position of the Holy See Regarding Civil Structure of Parishes

Although the 1917 Code did not refer to civil incorporation of ecclesiastical goods of juridic persons such as parishes, or to similar procedures, the 1983 Code canon 1284, §2, 2° now explicitly charges the administrators of parishes to ensure that the ownership of ecclesiastical goods is protected by civilly valid means.¹⁰⁶ In many countries of the world, there exists a

¹⁰⁴ RENKEN, *Particular Churches*, p. 196.

¹⁰⁵ BROWN, “Square Pegs in Round Holes,” pp. 309-310; see also RENKEN, *Particular Churches*, p. 196, fn. 56.

¹⁰⁶ See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 3; see Beal, “It’s Déjà vu All Over Again,” p. 557.

concordat or international treaty between the government of that country and the Holy See. Such concordats usually provide for the civil recognition of all canonical entities in that country, including parishes. Like many other countries, the USA or Canada does not have such treaty; therefore, other means must be used to provide civil recognition and protection of properties and assets of parishes.¹⁰⁷

A little over a century ago, on 19 July 1911, the Sacred Congregation for the Council issued a private letter to the ordinaries of the United States and expressed its opinion on the separate incorporation of parishes in response to a request from some American bishops on the proper method of civilly incorporating parishes. It explained that “parish incorporation” is the preferred method to hold title, to administer, Church property:

1. Among the methods which now are in use in the United States for holding and administering church property, the one known as *Parish Corporation* is preferable to the others, but with the conditions and safeguards which are now in use in the State of New York. The Bishops therefore should immediately take steps to introduce this method for the handling of property in their dioceses, if the civil law allows it. If the civil law does not allow it, they should exert their influence with the civil authorities that it may be made legal as soon as possible.
2. Only in those places where the civil law does not recognize *Parish Corporations*, and until such recognition is allowed, the method commonly called *Corporation Sole* is allowed, but with the understanding that in the administration of ecclesiastical property the Bishop is to act with the advice, and in more important matters with the consent, of those who have an interest in the premises and of the diocesan consultors, this being a conscientious obligation for the Bishop in person.
3. The method called *in fee simple* is to be entirely abandoned.¹⁰⁸

Obviously, the private letter of the Holy See considers the parish incorporation of New York as the privileged method for the protection of parish property; hence it recommends that parishes in the United States be incorporated civilly with a board of trustees, and not established as corporation sole. Therefore, “the mind of the Congregation in 1911 was that the parish

¹⁰⁷ See *ibid.*

¹⁰⁸ SACRED CONGREGATION FOR THE COUNCIL, Letter on Parish Corporation and Administering Church Property in the United States, 29 July 1911, in *CLD*, vol. 2, pp. 443-445.

corporation method with five trustees best reflects ecclesiastical legislation and the corporation sole method does not.”¹⁰⁹

This 1911 directive was not sent to Canada. However, on 14 December 2005, Archbishop Luigi Ventura, at that time Apostolic Nuncio in Canada, sent a letter to Canadian Bishops concerning the separate incorporation of parishes. He mentioned that Cardinal G.B. Re, the Prefect of the Congregation for Bishops, “raised the matter of the real conflict between c. 515, §3 which grants judicial personality to a legally [canonically] established parish by virtue of the law itself, and the Canadian civil law concept of a diocesan corporation sole, which removes the legal and economic autonomy of the individual parish, granted by the Code, and places it in the hands of the bishop.”¹¹⁰ Hence, the Nuncio then suggested that among the options presented to the Nunciature by its civil counsel for consideration, in the Province of Ontario and other Common Law Provinces, the establishment of non-profit, charitable corporations for each parish of the diocese would be appropriate.¹¹¹ He even mentions that the parish could also assume the role of civil employer for the purpose of vicarious liability and thereby insulating the bishop of the diocese, along with other parishes, from liability. He then refers to the other possibility of entering into various trust agreements to reduce the exposure of assets. He also provides a rationale for his recommendation:

Since the *corporation sole* is in fact incompatible with the canonical autonomy of the parish, it appears necessary that all dioceses having their bishop holding the civil status of a

¹⁰⁹ RENKEN, *Church Property*, p. 50. In this regard, Beal comments that “the New York model of the parish corporation provided a legal vehicle that once recognized the legal personality of the local parish or congregation, insured hierarchical control of the administration of its property, and left place, at least in principle, for lay involvement in the congregation’s financial affairs” (BEAL, “It’s Déjà vu All Over Again,” p. 541).

¹¹⁰ APOSTOLIC NUNCIATURE OF CANADA, Letter to the Atlantic Episcopal Assembly on Civil Incorporation of Parishes, 14 December 2005, Prot. no. 6089/05, Halifax, Canada, p. 2.

¹¹¹ See *ibid.*, pp. 2-3.

corporation sole look seriously into changing it. [...] This means re-establishing the primacy of Canon Law in the financial structure of the dioceses.¹¹²

However, “there has been some resistance among Church leaders to take all the steps necessary to protect goods of parishes, because a number of these measures imply some loss of direct control over the goods in question. Nevertheless, experience shows that this is a small price to pay for the added security, rather than placing all the eggs in one basket.”¹¹³ After a number of USA dioceses filed for bankruptcy protection, one of the conditions generally imposed by the courts has been that each parish be incorporated separately.¹¹⁴

Recent civil court decisions seem to uphold the position of the Holy See preferring the civil protection of ecclesiastical goods under separate parish corporations rather than as part of the one diocesan corporation sole which is incompatible with the canonical autonomy of parishes. In this regard, a case involving the Diocese of Wilmington, Delaware, USA,¹¹⁵ on 28 June 2010, shows that incorporation on paper is not sufficient. There has to be a real separation of ownership of right between the diocese and parishes and not simply some type of sham. In this particular case, although the parishes were separately incorporated, their assets were pooled in the diocesan account; and so, the court held that all the funds in the pooled investments program would be considered part of the diocese’s bankruptcy estate. Although this decision was appealed, it provides an idea how the courts will look at such activities. Morrissey opines that “if

¹¹² Ibid., p. 3.

¹¹³ MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 2.

¹¹⁴ See *ibid.*

¹¹⁵ See *In re: Catholic Diocese of Wilmington, Inc.*, Adv. Proc. No. 09-52866, Case No. 09-13560 (CSS) (Bankr. D. Del).

the corporations are separate, they must act separately –which means they must have their own name, place of business, personnel, financial reports, and so forth.”¹¹⁶

Moreover, the decision of the Supreme Court of Canada in the *John Doe v. Bennett* case,¹¹⁷ on 25 March 2004, exposes the danger of holding parish property under the diocesan corporation sole which exposes the assets of parishes (which in canon law are the property of such juridic persons) to the claim of creditors of the diocese. It holds the opinion that a corporation sole’s activities and liability are not merely confined to matters pertaining to property. The bishop is a corporation capable of suing and being sued in all courts with respect to all matters:

The purpose for which ecclesiastical corporations sole like the appellant are created is to serve as a point of legal interface between the Roman Catholic Church and the community at the diocesan level. To restrict the purpose of the corporation sole to the acquisition, holding and administration of property is to capture only a portion of the purpose it is intended to serve and to artificially truncate its functions. The bishop is a corporation capable of suing and being sued in all courts with respect to all matters, and has the power to hold property and borrow money for all diocesan purposes. If the bishop is negligent in the discharge of his duties, the corporation is directly liable, because the office of bishop/archbishop, the enterprise of the diocese and the episcopal corporation are legally synonymous.¹¹⁸

In the specific context of this case, this decision applies to diocesan corporations. However, in the case of immense liability of the diocese, had the individual parishes of that diocese been separately incorporated, the properties of those parishes as distinct civil entities/juridic persons would be kept intact and protected from any liability of the juridic person of the diocese.

When a parish is registered civilly as a corporation, the civil recognition neither takes away its ownership of ecclesiastical goods nor does it change the canonical status of the juridic

¹¹⁶ MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 3.

¹¹⁷ *John Doe v. Bennett*, 2004 S.C.J. No. 17, File No. 29426.

¹¹⁸ *Ibid.*

personality with its rights and obligations.¹¹⁹ The parish uses secular law mechanisms purely as a means for the protection of its ecclesiastical goods. There is no doubt that parish goods are subject to the norms of canon law on temporal goods. Besides, civil incorporation of ecclesiastical goods of the parish does not constitute a canonical act of alienation.¹²⁰

3.2.4 – Civil Incorporation as a Means of Protecting the Temporal Goods of the Parish

Many obvious advantages arise from separate civil recognition of parishes. Such advantages protect not only the temporal goods of the parish but also the rights of the canonical juridic person (parish). Among these advantages, the following can be mentioned:

1. The ownership rights of temporal goods of parishes are so duly protected that others cannot simply seize them for other purposes;
2. Liability for the actions of others is strictly limited to the activities of the corporation of the parish, i.e., it is limited only to the acts carried out in the name of the parish;
3. Liability issues are reduced in the case of torts committed in other parishes, i.e., acts carried out elsewhere will not redound on a parish because it is part of the same diocese;
4. When parishes are separately incorporated, if there is a suit against a diocese, usually this will not affect the parishes and their capacity to carry out their mission. Thus a parish is not drawn into needless civil litigation;

¹¹⁹ Just as a juridic person such as a parish, *a iure* retains its juridic personality when it is civilly incorporated, in a similar fashion, a previously acquired canonical status survives civil incorporation in the case of civilly incorporated Catholic institutions *ab homine*, e.g., an educational or charitable institution, hospital, etc. founded in the name of a diocese or a religious institute. Hence, the canonical status of a separately incorporated institution remains that of an apostolic work of the sponsor which retains ownership of that property even at civil law (see R.T. KENNEDY, “McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States,” in *The Jurist*, 50 [1990], pp. 370-371). For more information in this regard, see D.C. CONLIN, “The McGrath Thesis and Its Impact on a Canonical Understanding of the Ownership of Ecclesiastical Goods,” in *CLSAP*, 64 (2002), pp. 84-85; see A. MAIDA, “Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities,” in *Catholic Lawyer*, 19 (1973), p. 278; see RENKEN, *Church Property*, pp. 42-52; see SACRED CONGREGATION FOR CATHOLIC EDUCATION and SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Letter on “McGrath Thesis” on Constitution of Ecclesiastical Property, 7 October 1974, Prot. nos. SCI, 427/70/23 and SCRIS, 300/74, original English text, in *CLD*, vol. 9, p. 370.

¹²⁰ See RENKEN, *Church Property*, p. 45; see also KENNEDY, “McGrath, Maida, Michiels,” p. 373.

5. The parishioners can become more actively involved in the administration as well as protection of the goods of the parish. It will thus develop a stronger sense of community;¹²¹ etc.

On the other hand, a few disadvantages can be noted:

1. The necessity of holding annual parish corporation meetings;
2. The necessity of electing parishioners to serve as members of the corporation;
3. The necessity of having accounting and related banking practices carried out in accordance with the law governing these corporations;
4. The possible application of civil laws relating to other issues (such as employment) that would have to be taken into consideration; etc.¹²²

As can be readily seen, the disadvantages are minor when compared with the advantages.

Separate civil parish incorporations in a diocese certainly serve as means to protect the temporal goods as well as the rights of parishes as public juridic persons which are distinct from the public juridic person of the diocese in canon law.

3.2.5 – Practical Consequences of Civil Incorporation of Parishes

The diocesan bishop could judge it opportune for each parish to be incorporated civilly. By particular law, the bishop may mandate or permit this as a general rule throughout the diocese. Because, in a certain sense, this might affect the situation of the parish, it might be advisable for him, before making any general norm on this issue, to consult the presbyteral council (c. 515, §2) on this issue. When the parish corporation system is operative, it will be necessary for the *parochus* to take into consideration the following consequences:

¹²¹ See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” pp. 7-8; see idem, “The Civil Incorporation of Parishes – Halifax,” pp. 11; see also KEALY, “Methods of Diocesan Incorporation,” p. 173.

¹²² See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” p. 8; see idem, “The Civil Incorporation of Parishes – Halifax,” pp. 11-12.

1. To begin holding periodic (at least annual) meetings of the corporation;
2. To elect parishioners to be members;
3. To adjust book-keeping and accounting and bank accounts to reflect the new structure;
4. Because parish corporations will need to be recognized as a charitable undertaking (for taxation purposes), one important purpose is to promote the religious, charitable, and educational operations of the parish;
5. In order to make certain that activities are carried out in accordance with the Church's internal rules, the system of "reserved powers" is to be made operative (which would ensure that the canonical provisions must have been fulfilled before the Corporation takes certain decisions in the secular sphere);¹²³
6. It will be extremely important to segregate carefully assets belonging to the parish from those belonging to the *parochus* personally, or to the diocese. For this reason, detailed inventories, as mandated by canon 1283, would be most opportune;¹²⁴
7. The issue of who is a member of a parish would have to be made clear. If the parishioners are to vote for representatives, then they must know clearly who are the parishioners eligible to vote;¹²⁵
8. Distribution of parish assets upon a closure of the parish is to be done properly with due respect to the wishes of founders and benefactors;¹²⁶ etc.¹²⁷

¹²³ Concerning the list of reserved powers, see above, p. 189, fn. 92. Since the canonical steward is usually acting as corporate member, he should reserve only limited corporate powers essential to his exercise of his canonical stewardship. All other powers should remain in the corporation's own board of trustees in order to create the necessary legal distance (see MAIDA and CAFARDI, *Church Property*, p. 135).

¹²⁴ As a general presumption, it is considered that all goods in a parish rectory belong to the parish unless the *parochus* has declared personal goods in a special inventory. It should also indicate those assets that are restricted (e.g., certain building funds, cemetery fund, and the like). For more information on inventory, see chapter II, p. 98, fn. 66.

¹²⁵ In a personal parish a person becomes a member by a rite, language, or nationality (c. 518). However, in a territorial parish, a person becomes a member and acquires a proper *parochus* or ordinary both by domicile and by quasi-domicile according to canon 107. But, since the faithful, especially in cities, do not feel bound by parish boundaries, but rather they go to the church of their choice, it has become necessary to devise another method of determining parish membership. The most practical means to date seems to be holding parish envelopes, or having obtained a tax receipt for donations during the previous year, or both. This phenomenon of selecting parishes according to one's preference and not according to geographical limits is something new, reflecting the mobility of people. The result is sometimes called "cross-over parishes" (see MORRISEY, "The Civil Incorporation of Parishes – Prince Edward Island," p. 10). In many places it has become a practice that one becomes a parishioner by "registration," even though the person lives in the territory of another parish. Hence, Renken suggests that "given the rather wide-spread practice, perhaps the Legislator or some other higher competent ecclesiastical authority will address the arrangement to make some canonical accommodation" (RENKEN, "The Statutes of a Parish," p. 115); see also, R.A. HILL, "Parish Membership on Other Than Territorial Basis," in *CLSA AO1*, pp. 126-128.

¹²⁶ For a discussion on modification of parishes, see chapter I, pp. 42-44.

3.2.6 – Relation between a Civil Corporation Board and the Parish Finance Council

Canon 537 requires that the parish must have a parish finance council to assist in the administration of parochial goods. Moreover, when the same parish is civilly incorporated in view of protection of parish property, the state law would require a parish corporation board of directors. Hence, diocesan particular law would clarify the practical relationship and functional collaboration between the parish finance council and the parish corporation board. If parishes are incorporated separately, particular law can perhaps say that “the corporation board, often consisting of the bishop, the pastor [*parochus*], the auditors, and others could serve as the canonical finance council.”¹²⁸

3.2.7 – Observance of Civil Laws Relating to Issues of Temporal Goods of the Parish

Apart from the duty of a canonical administrator to protect parish goods through civilly valid methods (c. 1284, §2, 2°) as discussed above, a number of canons insist on observance of the applicable civil legislation on various issues relating to the temporal goods of the parish (see cc. 1268; 1286, 1°; 1288; 1290; 1296; and so forth). Canon 1284, §2, 3° calls for the observance of civil law by the *parochus* as administrator so that no damage comes to the parish from the non-observance of civil law. Indeed, the general norm canon 22 canonizes certain aspects of the civil law: “[Those] civil laws to which the law of the Church yields are to be observed in canon

¹²⁷ See MORRISEY, “The Civil Incorporation of Parishes – Prince Edward Island,” pp. 8-12; see *idem*, “The Civil Incorporation of Parishes – Halifax,” pp. 12-16.

¹²⁸ F.G. MORRISEY, “Pastors and Parishes According to the New Code of Canon Law,” in *Pastoral Life*, 33 (1984), p. 9. For instance, in Quebec, Canada, “the administration of parishes is, by the civil law of the province, entrusted to a committee called a *fabrique*, consisting of the chairman (who may be the pastor [*parochus*], or another named by the bishop), the pastor [the *parochus*], and six churchwardens (*marguilliers*) elected at a parish assembly. The chair has no powers other than to convoke meetings. All decisions are made collegially by the *fabrique*” (HUELS, *The Pastoral Companion*, p. 409); see BOYER AND COUTU, “An Act Respecting *fabriques*: Text of Law and Commentary,” pp. XIV-1-28.

law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.” Those laws to which Canon Law differs are indicated in various parts of the Code, such as, for instance, the laws on adoption, on arbitration, on contracts, and so forth. Accordingly, this section will examine certain issues highlighted in Book V requiring the observance of civil law by the *parochus* as administrator in exercising responsible stewardship of temporal goods of the parish, such as prescription, employment, civil litigation, and contracts.

3.2.7.1 – Prescription Period for the Protection of Parish Property

The *parochus* as administrator needs to be alert to the danger of losing property through inadvertence, by civil prescription.¹²⁹ Canon 1268 states that “the Church recognizes prescription as a means of acquiring temporal goods and freeing oneself from them, according to the norms of canon 197-199.” The *parochus* will be aware that the Church receives prescription according to the civil legislation of the nation in question¹³⁰ without prejudice to the exceptions established in the Code (c. 197). In order to be valid, the prescription must be in good faith not only at the beginning but through the entire course of time (c. 198). Nonetheless, the Code identifies some instances when the norms of canon law on prescription are to be observed even if the civil law indicates otherwise. According to canon 1269, for example, the sacred objects owned by a public juridic person of the parish can be acquired only by another public juridic person, e.g., a chalice owned by a parish, even if used exclusively by the *parochus*, may not be acquired after his death by his relatives by prescription.¹³¹ Furthermore, according to canon 1270, immovable property

¹²⁹ See KENNEDY, “Commentary on Book V,” p. 1470.

¹³⁰ In general, civil law prescription periods are briefer; for example, “in the United States, prescription periods would rarely exceed twenty years for realty (the equivalent of immovable property) or six years for personalty (the equivalent of movable objects” (ibid).

¹³¹ See MORRISEY, “Commentary on Book V,” p. 717.

and precious moveable objects as well as other real or personal property rights and claims of public juridic persons like parishes, dioceses other than that of the Apostolic See are subject to a thirty year period of prescription.¹³² Hence, for third parties to acquire, through prescription against parishes, “the ownership and real rights over immovable goods and precious movable ones, thirty years will have to pass. The same time period will have to pass also for the extinction of personal and real rights belonging to these persons.”¹³³

3.2.7.2 – Observance of Civil Employment Laws for Parish Employees

Canon 1286 places upon *parochi* as administrators an obligation to observe the civil employment laws, particularly in matter of contracts of work. However, this obligation is to be fulfilled “together with” the social doctrines of the Catholic Church¹³⁴ as to labor relations, social security (c. 1286, 1°), honest and fair wage in proportion to the needs of the worker and his or her family (cc. 1286, 2°; 231, §2).¹³⁵ If the civil laws in question were to be manifestly immoral or unjust, canon law must prevail for the Church.¹³⁶ In light of canon 1286, the parish, in the United States, for example, as employer is bound by some civil laws and social policy in general,

¹³² CCEO prescribes a fifty year period for property belonging to a church *sui iuris* or to an eparchy (see CCEO, c. 1019).

¹³³ ALARCÓN, “Commentary on Book V,” p. 976.

¹³⁴ Kennedy notes that administrators should not presume to give priority to civil legislation over Church doctrine; instead, civil laws are to be observed alongside or together with the teaching of the Church (see KENNEDY, “Commentary on Book V,” p. 1489).

¹³⁵ The Church’s social teachings on labor matters were set out by Pope John Paul II in his social encyclical “*Centesimus annus*” published in the centenary year of Pope Leo XIII’s social encyclical “*Rerum novarum*” (see JOHN PAUL II, Encyclical *Centesimus annus*, 1 May 1991, in AAS, 83 [1991], pp. 793-867, English translation in *Origins*, 21 [1991-1992], pp. 1, 3-24); see PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church*, 25 October 2004, Vatican City State, Typis polyglottis Vaticanis, 2004.

¹³⁶ See RENKEN, *Church Property*, p. 229.

and there are laws from which parishes are exempt and also laws that exempt parishes as they do any organization:

1. Parishes are bound to observe the federal and state employment and tax laws as are all employers. For this reason, parishes can withhold income for social security and medicare taxes;
2. Parishes are to comply with minimum wage laws, immigration laws, and laws which involve a statutory duty to report certain matters (for example, the sexual abuse of minors); however,
3. Parishes are exempted from COBRA (continuation of health insurance after termination), ERISA (employment retirement income security act), state-based unemployment insurance laws (although churches may “opt in” in some cases for some or all employees), and religious discrimination under equal employment laws – even for so-called ‘secular work;’ also,
4. Laws from which any organization (parishes) may be exempt because of staff size include the Family and Medical Leave Act (FMLA) and Worker Adjustment Retraining Notification Act (WARN), etc.¹³⁷

3.2.7.3 – Lawsuits in Civil Courts for the Protection of Parish Goods

Canon 1288 forbids *parochi* as administrators and legal representatives to initiate or to contest litigation in a civil forum in the name of the parish without the written permission of their own ordinary. As previously stated, an obvious reason for the permission of the ordinary is the patrimonial risk to which the parish is usually subjected by a civil lawsuit.¹³⁸ Kennedy explains that civil litigation involving parishes or church-related entities raises both problems and opportunities, not just for the parish/entity involved but also for the particular church/diocese, or institute of consecrated life of which the church-related litigant is a part. Such civil litigation is

¹³⁷ See L.A. BUDNEY, “The Parish as Employer,” in *CLSAP*, 64 (2002), pp. 64-65; see also DALY, “Remuneration for Church Employees,” pp. 58-59. For more information, see J.A. ALESANDRO and A.J. PLACA, “Church Agents and Employees: Legal and Canonical Issues,” in *CLSAP*, 58 (1996), pp. 52-54.

¹³⁸ See KENNEDY, “Commentary on Book V,” p. 1491; More information concerning the extraordinary nature of this act of civil lawsuit, see chapter II, p. 104, fn. 87; and for its required permissions, see above, p. 174, fn. 43.

usually accompanied by publicity. Moreover, the resolution of issues in one case often has implications for other situations not yet litigated, especially in common-law nations, such as the United States and Canada; the precedent-setting nature of court decisions can have long-range effects and transcend the interests of present litigants. This is one of the considerations to seek the wisdom of requiring permissions of one's ordinary (diocesan or religious) before initiating or contesting litigation in the civil court. However, the ordinary cannot insist that an administrator refrain from civil proceedings if the parish is the defendant since non-compliance may result in civil ramifications, e.g., contempt of court.¹³⁹ In such a situation, "the ordinary may prompt the administrator [*parochus*] to settle the dispute out of court. This may avoid further negative publicity and perhaps, result in less harm to the stable patrimony of the public juridic person [parish]."¹⁴⁰

3.2.7.4 – Canonization of Civil Laws for Contracts in Parishes

Parochi as administrators of the temporal goods of the parish enter into contracts of various kinds which may involve acts of acquisition (including acceptance of pious wills or trusts or non-autonomous foundations), acts of ordinary and extraordinary administration, and acts of alienation. *Parochi* are to follow those principles of civil law which have been accepted by canon law, except where such provisions are contrary to divine law or canon law provides otherwise (c. 1290). Canon law commonly does not contradict so much provisions of civil law; but rather it constitutes exceptions to the canonization of the provisions of civil law as the canons add requirements upon administrators of ecclesiastical goods (e.g., consultation, consent, permission)

¹³⁹ See RENKEN, *Church Property*, p. 237.

¹⁴⁰ Ibid.

to those already found in civil law.¹⁴¹ In a number of instances canon law provides otherwise; in other words, it grants exceptions or adds requirements on contracts at the parish level, which *parochi* must observe in addition to the operative civil laws:

1. To obtain permission of competent authority (either diocesan bishop or both diocesan bishop and the Holy See) for some valid alienations which belong to the parish's stable patrimony and whose value exceeds a pre-determined amount (cc. 1291; 1292, §§1-3);
2. To identify a just cause for licit alienation of parish goods with a value greater than the defined minimum amount (c. 1293, §1, 1°);
3. To receive written appraisals from experts on parochial goods with a value greater than the defined minimum amount (c. 1293, §1, 2°);
4. To observe precautions prescribed by legitimate authority for the licit alienation of goods of the parish whose value exceeds the defined minimum amount (c. 1293, §2);
5. To refrain ordinarily from alienating assets of the parish for a price under than their estimated value (c. 1294, §1);
6. To follow the norms on alienation (cc. 1291-1294) for canon 1295 transactions in parishes;
7. To observe particular law on contracts regarding the leasing of ecclesiastical goods, as established by the conference of bishops, when he leases parish property (c. 1297);
8. To obtain special written permission from competent authority before entering into alienation or lease contracts with close relatives of *parochi* as administrators or to the administrators themselves (c. 1298);
9. To inform the ordinary¹⁴² of the pious trusts and their movable and immovable goods with the obligations attached to them when a pious trust is established in the parish (c. 1302, §1);
10. To obtain the written permission of the ordinary to accept a non-autonomous pious foundation by the parish (c. 1304, §1), etc.¹⁴³

¹⁴¹ See KENNEDY, "Commentary on Book V," p. 1493.

¹⁴² For the concerned ordinary mentioned in numbers 9 and 10, see above, pp. 173-174, fn. 44.

¹⁴³ See RENKEN, "The Collaboration of Civil Law and Canon Law," pp. 73-78.

Therefore, *parochi* are required to be reasonably familiar with the secular legal system in which they live and, in particular, with its approach to the law of contracts so that they may more effectively cooperate with civil attorneys representing parishes. Conversely, their civil attorneys must be familiar with the canonical exceptions to the canonization of civil law in order that they may serve in the best interests of parishes or church related entities.¹⁴⁴ In practice, whenever the question arises either of entering into or of voiding a contract regarding parish property, *parochi* as administrators should seek the advice of a civil lawyer competent in this field and should be guided by the advice given. Care and prudence are required in selecting the lawyer in question.¹⁴⁵

3.3 – Challenge: A Lack of Guidance in the Protection of the Temporal Goods of the Parish

Because of numerous instances of embezzlement or related malfeasance that dioceses have had to face in recent years,¹⁴⁶ they are trying to implement new procedures to tackle such problems, and specifically in parishes within the diocese.¹⁴⁷ Conversely, one would realize that there has been a grave lack of guidance in the protection of temporal goods of parishes. Apart from the universal law, the Code makes provision for particular laws and special instructions to offer guidance for the protection of parish property. This section will examine how a dearth of particular laws and special instructions, and a lack of practical formation for *parochi* and their

¹⁴⁴ See *ibid.* For an extensive treatment of the canonization of civil law and its exceptions in canon law on contracts, see RENKEN, “The Collaboration of Civil Law and Canon Law,” pp. 71-79.

¹⁴⁵ See MORRISEY, “Commentary on Book V,” p. 732.

¹⁴⁶ See above, pp. 164-165, fn. nos. 6-13.

¹⁴⁷ See MORRISEY, “Financial Mismanagement and Canon Law,” p. 13.

collaborators, have given birth to this challenge of facing a general lack of guidance for the effective protection of parish property.

3.3.1 – Dearth of Particular Laws

In light of current local circumstances, the diocesan bishop may decide to enact particular laws beyond those already envisioned in the universal law in order to address the challenge of a dearth of proper guidance in temporal goods' administration. Such laws, if appropriately applied, would minimize parish financial mismanagement in the diocese.¹⁴⁸ For instance, a diocesan bishop may establish particular laws to promote better collaboration between the *parochus* and the parish finance council in order to enhance parish financial administration. In this regard, on 18 January 2007, the USCCB Accounting Practices Committee made some recommendations which were reviewed by the USCCB Committee on Budget and Finance. Although the USCCB did not establish this recommendation as particular law, nonetheless, a diocesan bishop could turn this recommendation into particular law for his diocese for an effective protection of parish property. The recommendations ask specifically for each parish to send a letter to the diocesan bishop containing:

1. The names and professional titles of the members of the parish finance council;
2. The dates on which the parish finance council has met during the preceding fiscal year and since the end of the fiscal year;
3. The date(s) on which the approved (i.e., that is by the parish finance council) parish financial statements/budgets were made available to the parishioners during the preceding fiscal year and since the end of the fiscal year. A copy of said published financial statements/budgets should be provided to the bishop; and
4. A statement signed by the parish priest [*parochus*] and the finance council members that they have met, developed, and discussed the financial statements and budget of the parish.¹⁴⁹

¹⁴⁸ See RENKEN, "Particular Laws on Temporal Goods," p. 451.

¹⁴⁹ USCCB ACCOUNTING PRACTICES COMMITTEE, Recommendations on Parish Financial Governance, pp. 3-4; see also RENKEN, "The *Parochus* as administrator of Parish Property," p. 515, fn. 66.

Moreover, a diocesan bishop could mandate by particular law regular internal audits of parishes. In this regard, on 12 November 2007, the USCCB Ad Hoc Committee on Diocesan Audits discussed how the use of internal or external audits of parishes would enhance the transparency and accountability of parish finances and the good stewardship of *parochi* as administrators. Based on the recommendations of the Diocesan Fiscal Management Conference (DFMC) given to the committee, D.F. Walsh, the chair of the USCCB Ad Hoc Committee on Diocesan Audits, highlights the following recommendations which aid *parochi* in fulfilling their canonical and legal responsibilities:

1. Parishes contain the most significant assets within any (arch) diocese. Strong systems of internal controls will reduce the risk of fraud, misuse, waste or embezzlement. An internal audit department would help ensure parishes are following appropriate business practices, civil regulation and diocesan requirements and procedures. The DFMC strongly supports the value and need for regular internal audits of parishes.
2. An internal audit program would be a vital aid to the bishop in fulfilling his responsibility under canons 1276 and 1284.
3. Scarcity of resources may limit funds available for accounting, reporting and financial management. Inadequate staffing can make separation of duties impossible and lead to ineffective internal controls. Organizations with ineffective internal controls are particularly vulnerable to costly mistakes and the illicit actions of the unscrupulous.
4. Recognizing that most people employed by the Church consider their work as ministry, it is easy to place excessive trust in the individual. Parishes may view the imposition of internal controls as somehow impugning the integrity of the staff. This trusting environment is exactly what a dishonest employee exploits.
5. Supervision, separation of duties and internal controls are ways to help honorable people remain honest. An effective internal audit program does not guarantee thefts will not occur. However, it will increase the opportunity for detection and thus serve as a significant deterrent. It will also encourage the development of stronger parish financial management, monitor adherence to federal and state laws and create a reporting mechanism to identify parishes with greater risk.
6. The patrimony role of the internal audit function is to aid pastors [*parochi*] in fulfilling their canonical and legal responsibilities. An effective internal audit will help safeguard the assets of a parish, ensure that record keeping, accounting, and reporting comply with the policies of the diocese, identify areas of improvement and report findings and observations to the pastor [*parochus*], parish finance council and the audit or accounting committee of the diocese.¹⁵⁰

¹⁵⁰ USCCB AD HOC COMMITTEE ON DIOCESAN AUDITS, Report to the Body of Bishops by D.F. WALSH, Chairman, 12 November 2007, pp. 2-3, in <http://www.usccb.org/about/financial-reporting/upload/Report-to-Bishops-20Nov-2007.pdf>; see also in RENKEN, *Church Property*, pp. 171-175.

Even if financial audits are not mandated by the conference of bishops, a diocesan bishop could mandate regular internal audits of parishes by means of particular law. “This would be a practical application of the letter and spirit of canon 1276.”¹⁵¹

While diocesan particular laws will vary depending upon the contributing factors in various times and places, such diocesan laws may help regulate and assist *parochi* in fulfilling their duties relating to acts of acquisition, ordinary administration, extraordinary administration, and alienation of ecclesiastical goods for the purpose of forestalling any financial mismanagement and thereby protecting parish property. Such possible areas requiring particular laws will be explored in Chapter IV.

3.3.2 – Dearth of Special Instructions

In light of canon 1276, §2, the diocesan bishop or those with executive power in the diocese can issue a number of special instructions within the limits of universal and particular law in order to respond to protect parish property. A number of recent protocols (instructions)¹⁵² for parish financial administration, due to many instances of financial mismanagement in parishes, bring to the fore that there has been a dearth of special instructions for the protection of parish goods. In this regard, Morrissey gathers several significant norms from the recently given protocols in many parishes in view of forestalling eventual financial mismanagement, which speak volumes for the need of special instructions in this area:

¹⁵¹ RENKEN, *Church Property*, p. 175.

¹⁵² The term “protocol” is used in lieu of “instruction” in canon law (cc. 1276, §2; 34). In this particular context, it is given to those entrusted with implementing the law, such as *parochi*, parochial administrators, and moderators whose duty it is to see that laws are duly executed (see ARCHDIOCESE OF OTTAWA, Protocol for Parish Financial Administration, 31 March 2012, pp. 1-13, in <http://archottawa.ca/documents/administration/parishfinance.Pdf>) (= ARCHDIOCESE OF OTTAWA, Protocol).

1. There must be a parish finance council, composed of at least three registered parishioners (elected or appointed);
2. The council must meet at least four times a year;
3. Written reports are to be given to the parishioners regarding the financial state of the parish, at least semi-annually, and an annual report is to be submitted to the diocesan administration;
4. There must not be a multiplicity of parish bank accounts; all are to be in the name of the parish, and not in any individual or organizational name. There can be a general operating account, a Mass account, and, if the parish has a cemetery, a cemetery account;
5. Bank accounts must be of a commercial nature, with checks returned with the monthly statements. Personal banking is not allowed;
6. There must be two signatures on every check; one must be by the pastor [*parochus*] and the other is by a member of the finance council;
7. Tamper-evident bags must be used to bring forward the collection. Nothing is to be removed from the bag for any purpose; the bag must remain on parish property;
8. At least two designated, unrelated persons are to count collections. At least two teams of counters are to be appointed. A written record is to be signed by both tellers;
9. Expenditures are to be made by check (taking into account possibilities for on-line payments of bills). Parishes may have credit cards with pre-approved limits;
10. Supporting documentation is to be made available before bills are paid;
11. There can be a petty cash account, up to a certain limit. All funds taken from the account are to be signed for;
12. Bank statements are to be reconciled each month;
13. Receipts are to be given when the funds are received, not on the basis of a pledge or other commitment;
14. For computers, user names and passwords are to be used. Data should be backed up regularly;
15. All necessary tax reports are to be filed on time, using the appropriate forms. Tax receipts may be issued only for documented donations;
16. Members of the finance council serve on a volunteer basis (reasonable expenses reimbursed);
17. Prior diocesan approval is required for all fundraising activities;
18. External audits may be ordered by the diocese, etc.¹⁵³

Having taken into consideration the norms contained in the recent protocols, the ordinary is not to wait to issue a special instruction until after an occurrence of embezzlement or financial

¹⁵³ See MORRISEY, "Financial Mismanagement and Canon Law," pp. 13-14.

malfeasance; instead, he may give special instructions to *parochi* as administrators for effective performance of their duties relating to acts of acquisition, ordinary administration, extraordinary administration, and alienation of temporal goods, on a regular need basis. He may also update these instructions periodically in order to assist *parochi* in the proper administration and protection of parish property. Such possible areas requiring special instructions will be reviewed in Chapter IV.

3.3.3 – Absence of Practical Formation of *Parochi* and Their Collaborators

As short term projects to assist in the practical formation of *parochi* and their collaborators, diocesan training sessions may be provided to the parish finance council members regarding their roles and responsibilities.¹⁵⁴ Diocesan bishops can arrange workshops on parish financial administration, ecclesiastical (universal and particular) and civil laws governing parish property, etc.¹⁵⁵ Workshops can even be dedicated specifically to the duties of *parochi* and the parish finance council to execute the law regarding the protection of parish property.¹⁵⁶

As long-term projects to provide for practical formation of future *parochi*, financial training can be integrated into current seminary programs so that students would be better prepared to handle parish financial matters.¹⁵⁷ A diocese could even consider sending some

¹⁵⁴ See USCCB ACCOUNTING PRACTICES COMMITTEE, Recommendations on Parish Financial Governance, p. 4.

¹⁵⁵ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 519.

¹⁵⁶ See *ibid.*

¹⁵⁷ See *ibid.*; see USCCB ACCOUNTING PRACTICES COMMITTEE, Recommendations on Parish Financial Governance, p. 4. In this regard, there seems to be different opinions: on the one hand, Pokorsky suggests that seminaries should consider not only offering a “parish administration” class in seminary formation, but also seminarians could even be practically prepared in the use of a computer spreadsheet program in conjunction with practical parish bookkeeping practice (see POKORSKY, “Avoiding the Next Tsunami,” p. 44). On the other hand, Archbishop D.M. Schnurr, then treasurer of the USCCB, opines that “Finance is an area of parish ministry that is wide open for participation of the laity. Members of the laity who have expertise and experience with administration

priests for advanced studies in business: “Priests specially trained in administration would not only be able to ‘speak the language’ of a fellow priest and pastor of souls, but would be able to judge whether a particular priest is truly capable of fulfilling his duties as the primary parish administrator. If not, they would presumably be able to assist him in seeking necessary help from the laity.”¹⁵⁸ Priests may also be encouraged to learn voluntarily the basic techniques of bookkeeping and financial control.¹⁵⁹ Hence, the challenge of facing the dearth of practical formation of *parochi* and their collaborators could be addressed by an ongoing formation both on a short-term and a long-term basis in order to provide for effective parish financial administration.

Conclusion

In order to address the challenge of financial malfeasance, Book VI of the Code of Canon Law provides corrective measures for the protection of parish property. Although no canon specifically speaks about financial malfeasance, universal penal laws offer certain provisions relating to this situation. In particular, canons 1389, §§1-2; 1375; 1377; 1380; 1385; 1386; 1391; and 1399 can be invoked at the occurrence of various forms of financial malfeasance in parishes since these canons implicitly prescribe appropriate penalties for such wrongdoing. The competent ecclesiastical authority can impose those penalties by a judicial or extrajudicial

and finance should be invited and encouraged to consider a stewardship of their talents. The message to seminarians should be that, as parish leaders, they are to recognize, call forth, and coordinate the talents that God has entrusted to a particular parish community” (USCCB OFFICE OF MEDIA RELATIONS, Report concerning the Accounting Practices Committee’s Recommendations on Parish Financial Governance, 18 January 2007, in <http://old.usccb.org/comm/archives/2007/07-015.shtml>).

¹⁵⁸ POKORSKY, “Avoiding the Next Tsunami,” p. 44.

¹⁵⁹ However, there is a caveat; he also may learn just enough to consider himself an “expert” – that is, just enough to be dangerous (see *ibid.*, p. 45).

process as a last resort (see cc. 1341-1342). Moreover, diocesan bishops can establish particular penal laws concerning financial malfeasance which will bind all *parochi* as administrators of goods of parishes in their diocese (cc.1316-1318). Furthermore, those who have the executive power of governance can establish penal precepts threatening determinate penalties in case of financial malfeasance (c. 1319, §§1-2). The diocesan bishop could thus implement these provisions according to universal and particular penal norms for the purpose of the protection of parish property.

The *parochus* as administrator of parish goods has the obligation to protect these goods through a civilly valid method (c. 1284, §2, 2°). However, the diocesan bishop is to grant permission for the provision of civil structures of parishes available in his territory since he is the sole authority to alter parishes after he has heard the presbyteral council (c. 515, §2). In order to respond to the challenge of the absence of civil legal conformity, *parochi* should opt for structures available in civil law which reflect as closely as possible the distinctness and autonomy in the governance, administration, and ownership of parish property that exists in virtue of the parish as a juridic person in canon law. Among the various civilly valid methods available for the protection of parish property, with their advantages as well as disadvantages, the parish non-member corporation model is considered to be the privileged means or more appropriate preventative measure to protect the parish property according to the position of the Holy See because this model seems to recognize the hierarchical control, lay involvement in the administration of parish property, ownership of its property, and limiting the liability issue only to the actions done in the name of the parish, etc. Church authorities should keep trying to influence the civil government/authorities to introduce the concept of canonical juridic person into the civil law, as the method through which church entities are currently able to organize

themselves. Moreover, the *parochus* as a responsible steward is to observe the applicable civil laws so that no damage comes to the goods of the parish because of non-observance of civil laws (c. 1284, §2, 3°), especially in various kinds of contracts regarding acts of acquisition, ordinary administration, extraordinary administration, and alienation.

The challenge of a general lack of guidance for the protection of parish property due to a lack of particular laws, special instructions, and practical formation of *parochi* and their collaborators can be addressed by providing sufficient diocesan particular laws, special instructions, and workshops dedicated to this theme, not only for the purpose of avoiding embezzlement or malfeasance which happen occasionally, but most particularly in view of regularly assisting *parochi* and their collaborators to provide for an effective administration and protection of parish property.

CHAPTER FOUR

THE ROLE OF PARTICULAR LAWS, INSTRUCTIONS, AND STATUTES OF A PARISH IN PROMOTING COLLABORATION BETWEEN THE *PAROCHUS* AND THE PARISH FINANCE COUNCIL IN THE PROTECTION OF THE TEMPORAL GOODS OF THE PARISH

Introduction

Universal law is not the sole source of the norms that govern the actions of the *parochus* and the parish finance council. Universal law leaves considerable flexibility for particular canonical provisions such as particular laws, special instructions, and the statutes of a parish. In fact, as an application of the principle of subsidiarity, Book V of the Code of Canon Law allows the diocesan bishop to establish particular laws for the administration and the protection of the goods of parishes.¹ This principle of subsidiarity also allows a diocesan bishop or those with executive power in his diocese to issue special instructions in order to explain the manner of implementing universal or particular laws for the protection of the temporal goods of parishes (c. 1276). The diocesan bishop can establish statutes for individual parishes in which he can include norms concerning the protection of their temporal goods and give them legislative force (see c. 94, §3).

The diocesan bishop/ordinary can utilize these particular canonical provisions (particular laws, special instructions, and statutes) not only when the law explicitly allows for such provisions, but also he has the right to make use of them in his diocese according to the local circumstances of parishes subject to him. As this study envisions that a sufficient and an appropriate use of such particular canonical provisions would minimize parish financial mismanagement to the maximum extent possible, it will therefore examine how the careful application of these particular canonical instruments would help promote collaboration between

¹ See cc. 1281, §2; 1284, §3; 1287, §2; 1303, §1, 2°; 1304, §2.

the *parochus* and the parish finance council and thereby provide for an efficacious protection and transparent administration of the goods of the parish.

This chapter will first consider canonical principles guiding collaboration between the *parochus* and the parish finance council in the protection of temporal goods. It will then study the office of parish finance officer as a means of protecting parish property. It will next explore specific duties of the parish finance council in the protection of parish goods. It will finally review various types of particular canonical provisions not only as means of promoting collaboration between the *parochus* and the parish finance council, but also as effective canonical tools for detecting and deterring parish financial mismanagement; in other words, they can be sound canonical resources to enhance the protection of parochial goods.

4.1 – Canonical Principles Guiding Collaboration between the *Parochus* and the Parish Finance Council in the Protection of the Goods of the Parish

As the *parochus* and the parish finance council are expected to keep in mind the canonical principles concerning the proper management and protection of the goods of the parish, this section will analyze some underlying canonical principles that promote collaboration between them.

4.1.1 – The Principle of *Communio* in the Protection of the Goods

The parish is essentially a communion of baptized believers united in faith, sacraments, and ecclesiastical governance (see c. 205).² R. Castillo Lara explains that communion is both internal and external because it “is concretized in the *visible external behavior* of adhering to a

² See J.A. RENKEN, “The Principles Guiding the Care of Church Property,” in *The Jurist*, 68 (2008), p. 141.

credo, participation in the sacraments, and observance of the law.”³ Therefore, communion among all the faithful and with the universal Church includes not only the internal aspect of the spiritual life, but also the external aspects of material goods needed to accomplish the Church’s proper objectives.⁴ Communion with the Church demands the communion of goods, which implies that “those who have more give it to those who have less.”⁵ In this regard, *LG*, no. 13 states:

Between all the various parts of the Church there is a bond of intimate communion whereby spiritual riches, apostolic workers, and temporal resources are shared. For the members of the people of God are called upon to share their goods, [...], “according to the gift that each has received, administer it to one another as good stewards of the manifold grace of God” (1 Pet 4:10).

The communion shared by the Christian faithful in a parish is reflected in their right (cc. 1261, §1; 1299, §1) and duty (c. 222, §1) to assist in meeting the needs of the parish so that it will achieve its proper purposes.⁶ As D’Souza says, this principle of communion should perhaps permeate every aspect of administration and protection of ecclesiastical goods:

The ecclesiology of *communio* must be reflected in the area of temporal goods. No part of the church’s administration can afford to forget this primary imagery of the church, nay a theological principle. We cannot just speak of communion of faith in the abstract, we cannot just stop at the hierarchical communion, but we need to understand also the ‘communion of goods’ – which is best expressed in sharing – holding it for the purposes of the church and its mission and administering it. The principle should touch on every aspect – whether it is acquisition, administration, or alienation. Providing for the purpose of the church manifests a sense of communion and participation in its mission.⁷

³ “La communion, cependant, ne reste pas circonscrite à la sphère purement intérieure et spirituelle. Elle a une expression concrète que l’on pourrait appeler juridique. Elle se concrétise en *comportements extérieurs visibles* d’adhésion à un credo, de participation à des sacrements, d’observance des lois” (R. CASTILLO LARA, “La communion ecclésiale dans le nouveau Code de Droit Canonique,” in *StC*, 17 [1983], p. 336) [emphasis added].

⁴ See M.L. ALARCÓN, “Introduction to Book V,” in *Exegetical Comm*, vol. IV/1, p. 12.

⁵ L.Y. MEDROSO, “Administration of Temporal Goods of the Church and Transparency,” in *Philippine Canonical Forum*, 6 (2004), p. 243.

⁶ See RENKEN, “The Principles Guiding the Care of Church Property,” p. 139.

⁷ D’SOUZA, “General Principles,” p. 494.

Communion is expressed in a parish in two common ways: firstly, the parish has the system of the common use of goods in times of need to fulfill its purposes; and the faithful have an obligation to give for its needs (c. 222, §1); secondly, it has the system of the common ownership of goods through the parish; since the juridic person is the owner of the goods, physical persons cannot treat such goods as their own individual private property (c. 1256).⁸

Indeed, within the communion of the one Catholic Church, there exists the parish which owns its temporal goods. Within the Church, the parish possesses its temporal goods under the supreme authority, administration, and stewardship of the Roman Pontiff so that it can achieve its proper purposes (c. 1273).⁹ The theological foundation of this canon is so important in the sense that, as already mentioned, the parish “lives in communion with the Church, and acts in the name of the Church, and is therefore in communion with the Roman Pontiff, the visible sign of church unity and its guarantor. Precisely these requirements of unity and communion demand the observance of canonical norms on the administration [and protection] of church [parish] goods.”¹⁰ Diocesan particular laws and special instructions could therefore help instill this spirit of communion in guiding both the *parochus*¹¹ and the parish finance council in the protection of parish property.

⁸ See *ibid.*, pp. 495-496.

⁹ See RENKEN, “The Principles Guiding the Care of Church Property,” pp. 139-141.

¹⁰ DE PAOLIS, “Temporal Goods of the Church,” p. 354.

¹¹ According to canon 1741, 1°, if the manner of acting of the *parochus* in the parish brings disturbance to ecclesiastical communion, it can be a legitimate cause for his removal from office.

4.1.2 – The Principle of Subsidiarity in the Protection of Parochial Goods

The principle of subsidiarity was one of the ten principles which governed the revision of the Code of Canon Law.¹² Regarding the function of this principle, the Pontifical Commission for the Revision of the Code of Canon Law stated:

The function of the principle of subsidiarity is to strengthen and confirm legislative unity in all the fundamental and major statements of the law of any society that is complete and compactly structured within itself. This principle of subsidiarity also has the function of defending the reasonableness or need especially of individual institutions to provide for their own advantage *by particular laws enacted by themselves as well as by a reasonable amount of autonomous executive power and authority.*¹³

The principle of subsidiarity is expressed in the law in two ways: by allowing for the establishment of particular law, and by requiring that determinations in the protection and caring for temporal goods be made by local authorities.¹⁴ The Code respects this principle by making sufficiently general and broad norms so as to inspire particular legislation relevant for local circumstances. The nature of this principle makes two affirmations:

- (a) Positively, the lower authority must have the greater responsibility for accomplishing office; and the lower authority can and must have recourse to superior authorities, as their assistance is indispensable;
- (b) Negatively, the superior authority must not interfere in the exercise of the responsibility of the inferior authority, unless it is beyond their competence; in other words, it speaks of a desirable non-intervention by higher level authorities vis-à-vis lower level authorities.¹⁵

¹² The central committee of the Pontifical Commission for the Revision of the Code of Canon Law drafted these principles in April 1967. The Synod of Bishops met on the 30th of September to the 4th of October, 1967. They voted in favor of principle 5: 128 *placet*, 58 *placet iuxta modum*, 1 *non placet* (see *Communicationes*, 1 [1969], pp. 99-100).

¹³ “Principium confirmat unitatem legislativam quae in fundamentis et maioribus enunciationibus iuris cuiuslibet societatis completae et in suo genere compactae servari debet. Propugnat vero convenientiam vel necessitatem providendi utilitati praesertim institutionum singularium tum *per iura particularia ab iisdem condita tum per sanam autonomiam regiminis potestatis executivae illis recognitam*” (ibid., p. 81, English translation by R. SCHOENBECHLER, “Principles Which Govern the Revision of the Code of Canon Law,” in J. HITE and D. WARD [eds.], *Readings, Cases, Materials in Canon Law*, Collegeville, MN, The Liturgical Press, 1990, p. 88) [emphasis added].

¹⁴ See RENKEN, “The Principles Guiding the Care of Church Property,” pp. 142-143.

¹⁵ D’SOUZA, “General Principles,” p. 487; see also ALARCÓN, “Introduction to Book V,” p. 14.

This principle takes into account the decentralization and adaptation relating to governance, recognizes legitimate pluralism within certain boundaries, and thus upholds unity but not uniformity in the ecclesial communion.¹⁶ Thus, this principle provides for greater autonomy or competence for particular churches. In concrete, in Book V of the Code of Canon Law, the supreme legislator acknowledges the right of the diocesan bishop to issue particular laws and special instructions concerning administration and the protection of goods of parishes, taking into consideration the local situations of parishes in his diocese. The *parochus* and the parish finance council are bound by such particular laws and norms of special instructions.

4.1.3 – The Principle of Accountability and Transparency

This principle is simply based on the fact that the *parochus* as administrator is not the owner of the parochial property. The one who administers parish goods has only an executive function, to be carried out according to canon law and the directives of one's superiors.¹⁷ For instance, in a spirit of accountability, *parochi* as administrators are "bound by their office to present an annual financial report to the local ordinary who is to present it for examination by the finance council" (c. 1287, §1)¹⁸ and "to render an account to the faithful concerning the goods offered by the faithful" (c. 1287, §2). In this regard, D'Souza notes:

Faithful fulfillment of the requirements of presenting the accounts to concerned authorities and people as per law does much to prevent scandals that are so damaging to the credibility of the Church and the effectiveness of its mission. [...] The principle of accountability takes into account also the norms on liability of the administrators for the illicit and invalid acts

¹⁶ See D'SOUZA, "General Principles," p. 487.

¹⁷ See DE PAOLIS, "Temporal Goods of the Church," p. 352. For a detailed discussion on the supervisory role of the diocesan bishop/ordinary, see in this dissertation: chapter II, 2.3 – Assistance to the *Parochus* in the Protection of Parish Property, pp. 112-120.

¹⁸ The Code also sets down an analogous norm for public associations erected as juridic persons (c. 319), for religious (c. 636, §2), and for *sui iuris* monasteries of nuns (c. 637).

(c. 1281, §3) and [it would also provide for the imposition of penalties in cases of serious abuse or violation of the law] (cc. 1377; 1389).¹⁹

Accountability and transparency do not mean that everyone can demand a full disclosure of accounts through financial statements. “This transparency is attained by following the laws of the Church which provide external control and complex internal mechanisms that can guarantee the right and proper administration of the temporal goods of the Church.”²⁰ In this regard, this principle also reflects the hierarchical nature of the law of the Church. In a democratic institution, the power of the office-holder emanates from the people and is therefore accountable to the people, whereas in the hierarchical Church, a priest represents the persons to whom Christ entrusted the government of the Church in a hierarchical order – such as the pope and the bishops. Hence, the *parochus* is accountable first to his diocesan bishop as the bishop himself is accountable to the Pope or the Holy See. The necessary consequence of this principle is that “no pastor [*parochus*] should allow his parishioners or a ‘self-appointed’ group thereof to dictate that he submits to their supervision and audit, except to his ordinary or the bishop; similarly neither the bishop should submit to the priests’ supervision and audit. His responsibility is to the Supreme Pontiff in all matters, including financial, of how he administers in his diocese (cf. c. 399).”²¹ Should the laity consider it certain that administration or protection of the goods of the parish is being unlawfully or improperly carried out, they should inform the bishop.²²

¹⁹ See D’SOUZA, “General Principles,” p. 477.

²⁰ MEDROSO, “Administration of Temporal Goods of the Church and Transparency,” p. 242. The external control over the administration and protection of parish goods is done by the vigilance of the diocesan bishop/ordinary. The internal control mechanism is exercised by the intervention of the parish finance council by its counsel or consent (see *ibid.*, pp. 243-244).

²¹ *Ibid.*, p. 242.

²² See *ibid.*, p. 244.

Moreover, the principle of accountability and supervision can be considered to flow from the principle of trust. Indeed, in the words of the Code, we are dealing with what could be called the “principle of stewardship” (cf. c. 1273) or of being the “good householder” (c. 1284, §1).²³ Because the goods of the parish are held *in trust*, (entrusted to him), the *parochus* must take an oath of office that he will administer them well and faithfully (c. 1283, 1°); the law requires him to take responsibility for his actions if he withdraws arbitrarily from his function (c. 1289) or if he places acts of administration invalidly (c. 1281, §3), and so forth.²⁴ “Since in the administration [and protection] of the goods, the Church’s image comes into play, we can easily understand the serious obligation [of accountability] in some cases of observing church laws and the fact that in certain cases of transgression the Code even envisions the possibility of canonical punishment (c. 1377)”²⁵ Diocesan particular laws and special instructions may perhaps ensure accountability and transparency in the administration and protection of parochial property by mandating prompt reporting of the annual parish financial statement, an annual report to the faithful, an annual parish budget.

4.1.4 – The Principle of Collaboration

According to Renken,

to collaborate means “to work together” for a common purpose, whether as equals, as agents of a superior, as persons who give consent, or as persons who offer their counsel. Several examples of these kinds of collaboration are found throughout the Code, particularly in Book V. Since ecclesiastical goods belong to the Church and not to individuals, and must be used for the proper purposes of the Church, those charged with caring for them wisely collaborate with others. Collaboration is a principle underlying the Code’s discipline on temporal goods.²⁶

²³ See D’SOUZA, “General Principles,” p. 479.

²⁴ See RENKEN, “The Principles Guiding the Care of Church Property,” pp. 168-171.

²⁵ DE PAOLIS, “Temporal Goods of the Church,” p. 352.

²⁶ RENKEN, “The Principles Guiding the Care of Church Property,” p. 152.

The diocesan bishop collaborates with different diocesan groups (e.g., finance council or college of consultors) by receiving their counsel (see cc. 1281, §2; 1305; 1310, §2), or their consent (see cc. 1292, §1; 1295) in order to assist the *parochus* in his administration and protection of the goods of the parish. The law requires the *parochus* as administrator to collaborate with the parish finance council (c. 537). To be able to act, the *parochus* in some cases could need the advice or consent of that council²⁷ or of other superior authorities both on the diocesan level (see cc. 1281, §1; 1292, §1; 1295) and on the level of the Holy See (see c. 1292, §2) in order “to guarantee the security of church [parish] goods and also to prevent certain ‘adventures’ that, besides jeopardizing church [parish] goods, can also create scandalous situations.”²⁸ Therefore, it would be important not to reduce to a mere level of formality the involvement and co-responsibility of the various bodies whose purpose is to exercise control.²⁹ In this light one can understand the prescription of canon 127, §3: “All whose consent or counsel is required are obliged to offer their opinion sincerely.” This prescription must be completed with the stipulation found in canon 1292, §4: “Those who by advice or consent must take part in alienating goods are not to offer advice or consent unless they have first been thoroughly informed both of the economic state of the juridic person whose goods are proposed for alienation and of previous alienations.” One would hope that, the more diocesan particular laws and special instructions promote this principle of collaboration between the *parochus* and the parish finance council, the better they would provide for the protection of the goods of the parish.

²⁷ Since universal law does not prescribe any specific instances when the *parochus* has to consult the parish finance council, particular law will determine instances in which the *parochus* should collaborate with it to seek its counsel or to obtain its consent.

²⁸ DE PAOLIS, “Temporal Goods of the Church,” p. 353.

²⁹ See *ibid.*

4.1.5 – The Principle of Objectivity and Neutrality

In order to ensure objectivity and neutrality in financial matters, the Code has provisions against nepotism and favoritism.³⁰ For this reason, to avoid any conflict of interest, persons related to the *parochus* up to the fourth degree of consanguinity or affinity may rightly be excluded from the parish finance council (cf. c. 492, §3). Furthermore, selling or leasing ecclesiastical goods to the *parochus* as administrator or to his relatives up to the fourth degree of consanguinity or affinity is forbidden without the special written permission of the competent authority (c. 1298). With regard to this principle, Kennedy comments:

It is simply a specification of the general obligation of all ecclesiastical administrators, not just those of public juridic persons, always to act in the best interest of the entity they have been appointed to serve, unmoved by selfish considerations, careful to avoid even the appearance of conflict of interest, ever conscious that in financial matters the Church can lose a great deal more than money. Without unyielding integrity of its administrators, the Church can lose credibility, and a witness without credibility is worthless.³¹

In light of this principle, the Code envisions that both the members of the parish finance council and the *parochus* are to be persons of expertise and of integrity (*integritas*) (cf. c. 492, §1).³² Hence, diocesan particular law or special instructions may help the *parochus* observe pertinent norms in view of eliminating even any kind of appearance of nepotism or favoritism in the administration and protection of the temporal goods of the parish.

4.1.6 – The Principle of Utilizing Ecclesiastical Goods for Their Proper Purposes

Ecclesiastical goods belonging to the parish are to serve the mission or proper purposes of the Church (parish) as stated in canons 1254, §2; 114, §2; and 298, §1.³³ In order to assure that

³⁰ See D’SOUZA, “General Principles,” p. 485.

³¹ KENNEDY, “Commentary on Book V,” p. 1508.

³² See D’SOUZA, “General Principles,” p. 486.

³³ Renken notes: “several canons in Book V reflect the principle that ecclesiastical goods are owned for the proper purposes of Church [parish]. Within the limits of ordinary administration, administrators [*parochi*] are

parish property is properly protected and used, the owner of the goods of various “parish” groups must be clearly established. At times, it is not always easy to determine if certain temporal goods are ecclesiastical goods. For instance, when parishioners embark on fundraising activities under the auspices of a parish, but for purposes directly related to it (e.g., to support a parish football team), do the goods received become the property of the parish or do they remain the property of those who donated them for a specific purpose? These goods, once donated, no longer belong to the donors, even if given for a specific purpose. It is because of the numerous difficulties which arise from unclear fundraising activities, that canon 1265, §1 prescribes that certain permissions are required before these activities are undertaken.³⁴ Diocesan particular law could therefore include norms relating to the eventual ownership of those goods, and special instructions could perhaps explain the manner of administration of any goods so acquired.

Moreover, the goods of associations which have not been given juridical recognition are not considered to be ecclesiastical goods, but are the joint possessions of the members of the group (c. 310). In the same way, the goods of private associations (private juridic persons) are also not considered to be ecclesiastical goods and they are therefore governed by their own statutes. However, the goods of a parish organization, depending on its status, could be

permitted to make donations for purposes of piety, or Christian charity (but never from stable patrimony), which are proper purposes (c. 1285). Likewise, if any ecclesiastical good is alienated, if the proceeds are not invested for the advantage of the Church [parish], they must be expended prudently for the intended purposes of the alienation (c. 1294, §2), which would be for the proper purposes of the Church [parish]. When goods have been entrusted to a non-autonomous foundation of a public juridic person [e.g., a parish] subject to the diocesan bishop, when the time has lapsed, the goods are to be remanded to the institute for clergy support (c. 1274, §1) unless the donor has made a different determination (c. 1303, §2); this assures that the generosity of the donor continues to benefit the clergy, which is a proper ecclesiastical purpose” (RENKEN, “The Principles Guiding the Care of Church Property,” p. 151).

³⁴ See MORRISEY, “Basic Concepts and Principles,” p. 8; see USCCB, *Complementary Norms for Canon 1262 on Fund Raising Appeals*, 2 May 2007, p. 1.

considered to be ecclesiastical goods.³⁵ Special instructions could explain the juridic status of various pious associations or parish organizations functioning in parishes³⁶ and their relationship to *parochi* in order to avoid any confusion between the goods of those entities and the ecclesiastical goods of the parish in view of their proper administration and protection.

4.1.7 – The Principle of Just Acquisition of Temporal Goods

Alarcón describes the concept of just acquisition: “the juridical means intended for establishing the useful bond between an object and a subject which both enjoy the protection of the law, are lawful methods of acquisition.”³⁷ Canon 1259 reads: “The Church can acquire temporal goods by every just means of natural or positive law permitted to others.” Commenting on positive law, Kennedy notes: “positive law, in keeping with canonical tradition, refers here to civil as well as canon law.”³⁸ One should, however, note that the canon uses the term *licet*

³⁵ In this regard, a decision of the Holy See, on 13 November 1920 determined that the goods owned by the St. Vincent de Paul Society are not ecclesiastical goods as it is a private association; consequently, they are not governed by the general prescriptions of canon law, but rather by their own statutes (see SACRED CONGREGATION OF THE COUNCIL, Letter concerning dubium solvendum proposuit circa dependentiam Conferentiarum S. Vincentii a Paulo a potestate ordinarii, 13 November 1920, in AAS [1921], pp. 135-144); see J.R. AMOS, “Individuals or Associations without Juridic Status,” in *CFH*, p. 20; see MORRISEY, “Basic Concepts and Principles,” p. 8; The same would apply to the goods of the Knights of Columbus and similar associations, which do not have public juridic personality in the Church (see MORRISEY, “Basic Concepts and Principles,” p. 8; see AMOS, “Individuals or Associations without Juridic Status,” pp. 20 and 28).

However, Renken explains that “if a group is officially organized by the *parochus* to perform some work on behalf of the parish, it is appropriately recognized as a ‘parish organization.’ It is not distinct from the parish, unless the contrary is evident, which would be the case of a *de facto* association of parishioners who freely select to unite to promote or perform some work, who hold regular meetings on parish property, who contribute to the mission of the parish, etc. The goods of a formally established ‘parish organization’ are ‘ecclesiastical goods’ (c. 1257, §1), belonging to the parish which has legitimately acquired them (c. 1256) and whose administrator is the pastor [*parochus*]. Since these organizations are part of the parish, their goods should be identified on regular parish financial reports (see 1287, §1)” (see RENKEN, “The Statutes of a Parish,” p. 132).

³⁶ For more information on associations in parishes without juridic recognition, see AMOS, “Individuals or Associations without Juridic Status,” pp. 17-28; see L.M. SISTACH, *Associations of Christ’s Faithful*, Montréal, Wilson & Lafleur, 2008, p. 138.

³⁷ ALARCÓN, “Commentary on Book V,” p. 968.

³⁸ KENNEDY, “Commentary on Book V,” p. 1460.

(lawful) and not *legitimus* (valid): one would therefore realize that civil law cannot simply be the point of reference for the Church. Since the civil law could sometimes be unfair, the Church relies on a higher order, which is the moral order.³⁹ Therefore, any immoral means of acquiring goods such as forcible retention, robbery, blackmail, and similar procedures would be considered illicit.⁴⁰ Furthermore, any type of coercion or undue pressure in the name of religion would be contrary to the law; and thus the acquisition of goods would not be legitimate (c. 1256). Hence, the goods acquired by either immoral or illegitimate means would have to be returned to their owners since canon law respects the moral order.⁴¹ According to the Church's position regarding the moral order, diocesan particular laws should determine norms for just acquisition of goods other than those mentioned in universal law; and special instructions may explain the methods of just and legitimate acquisition of goods.

³⁹ “Si noti tuttavia che il canone ha la parola ‘licet,’ (è lecito) non ‘è legítimo’: il punto di riferimento della Chiesa non può essere semplicemente la legge dello Stato, che, per ipotesi può essere ingiusta, ma un principio di ordine superiore, che appartiene all’ordine morale. Se infatti la legge dello Stato fosse discriminante nei confronti della Chiesa, essa non avrebbe più legittimità, in quanto non è nell’ordine morale, cioè non è lecita” (DE PAOLIS, *I beni temporali della Chiesa*, p. 145).

⁴⁰ See D’SOUZA, “General Principles,” p. 475.

⁴¹ See *ibid.* Moreover, taking or keeping the goods of one’s neighbor, harassing a person in any way with respect to his/her goods, and usurping another’s property against the reasonable will of the owner are forbidden by the Seventh Commandment (see *ibid.*). Regarding a legitimate acquisition of goods and effects of such juridic acts (of contracts) (c. 1256), one would say that an acquisition of goods against one’s will due to external force (*ab extrinseco*) that cannot be at all resisted, would make the juridic act null and is considered as if it had not been done (c. 125, §1). Similarly, an acquisition of goods from someone in ignorance or error or substantial deceit/fraud (*dolus*) that amounts to a condition *sine qua non* also is invalid (c. 126, §1). Nevertheless, an acquisition of goods out of grave and unjust fear or accidental deceit (*dolus*) does not invalidate a juridic act; but, the juridic act in question may be rescinded by the superior authority through administrative recourse (cc. 125, §2; 1739). The effects of a rescission are not retroactive. Nevertheless, a party who placed an act due to grave fear or fraud may be awarded damages (c. 128) (see HUELS, “Juridic Acts in Canon Law,” pp. 8-11). For more information on the lawful means of acquisition according to Book V of the Code, see chapter II, 2.2.1, pp. 88-96.

4.1.8 – The Principle of Respect for the Intention of the Donors

This principle hails from natural law rather than positive ecclesiastical law. Yet, the supreme legislator has decided to give this natural law principle a juridic value by requiring administrators of ecclesiastical goods to observe meticulously the intention of donors.⁴² Canon 1267, §3 spells out this principle clearly: “offerings given by the faithful for a certain purpose can be applied only that same purpose.” “The same principle is repeated on other occasions throughout Book V; for instance, in canons 1284, §2, 3°; 1292, §1; 1299, §2; 1300; 1302, §1; 1303, §2; 1304, §1; 1307, §1; 1310, §2. Indeed, it is presupposed throughout the entire Title IV of Book V on wills in general and on foundations.”⁴³

Any eventual change in the intention of the faithful must be made according to the law (cc. 1308-1310) which, in some cases, requires the permission of the Holy See.⁴⁴ If there is some doubt about the donor’s intention, recourse should be made to the donor; if this is not possible, recourse is to be made to the ordinary since he is the “executor [*a iure*] of all pious wills,” both *mortis causa* and *inter vivos* (c. 1301, §1).⁴⁵ For this reason, stipulations in last wills and testaments contrary to his right must be considered as non-existent (c. 1301, §3). Diocesan particular laws and special instructions should always urge the *parochus* as administrator of parochial goods and the parish finance council to observe this moral principle of respect for the intention of donors in the protection of the goods of the parish.

⁴² See OMOROGBE, *Administration of Ecclesiastical Goods*, p. 234.

⁴³ MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 599. This principle is highlighted in several canons in other Books of the Code: cc. 121; 122; 123; 326, §2; 531; 616, §1; 706, 3°; 954 (see *ibid*; see also RENKEN, *Church Property*, p. 130, fn. 153).

⁴⁴ See DE PAOLIS, “Temporal Goods of the Church,” p. 352; see also RENKEN, “The Principles Guiding the Care of Church Property,” p. 164.

⁴⁵ See RENKEN, *Church Property*, p. 131.

4.1.9 – The Principle of Assuming Obligation for the Future

Protecting stable patrimony is one of the fundamental principles guiding the Code's treatment of ecclesiastical goods. The law presumes that every parish possesses stable patrimony to fulfill its proper purposes (cc. 114, §3; 1285; 1291), or at least the capacity for stable patrimony. Alarcón notes that stable patrimony provides the minimum secure financial basis for the parish to achieve its purposes in the present and in the future:

Stable patrimony is comprised of those goods that constitute the minimum secure financial basis to enable the juridical person to subsist autonomously and to attend to the purposes and services proper to it; there are no absolute rules, however, for establishing the stability of a patrimony, since this depends not only on the nature and the quantity of the goods, but also on the financial requirements for the fulfillment.⁴⁶

In a related vein, Renken explains that the protection of stable patrimony helps future generations use it for the proper purposes of the parish.⁴⁷ Therefore, diocesan particular laws should mandate *parochi* to designate the stable patrimony of the parish; and special instructions would show that stable patrimony is to be so designated, distinguishing it from the non-stable patrimony in the parish inventory. Such legally protected goods would help guarantee that the parish could fulfill its purposes for present and future generations.

Several principles which have already been integrated into various parts of this thesis are not repeated here.⁴⁸ Indeed, the various principles on the administration and protection of temporal goods of the parish are not exhaustive. They serve as values. To overlook the

⁴⁶ See ALARCÓN, “Commentary on Book V,” p. 993.

⁴⁷ See RENKEN, “The Principles Guiding the Care of Church Property,” p. 175. In this regard, Morrissey comments that a juridic person should assume obligations for the future: “the 1983 Code is very forward looking when it comes to matters of investment and provision for the future. It is all well and good to say that we rely on Providence, but we must remember also that there are numerous responsibilities that must be met and it would be highly improper simply to rely on some future unknown benefactor” (MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 602).

⁴⁸ For example, the principle of supervision, see chapter II, pp. 112-120; the principle of consultation, see chapter II, pp. 132-134; 140-146; the principle of observance of civil law and the principle of justice in employment, see chapter III, pp. 201-207.

significant values/principles underlying the legislation on temporal goods “would mean that the canons risk being reduced to merely formalistic prescriptions, which would not be conducive to expressing the faith of the people of God but would be seen simply as means of control and centralization.”⁴⁹

4.2 – The Office of Parish Finance Officer as a Means to Protect Parochial Goods

The Code makes no explicit reference to the possible office of “parish finance officer.” Yet, this office is envisioned as a means or structure to promote financial accountability in the administration as well as the protection of ecclesiastical goods of parishes.⁵⁰ It must be understood, however, that “such a figure would not diminish the role of the *parochus* who by universal law must remain the legal representative of the parish and the administrator of parochial goods (c. 532).”⁵¹ As a matter of fact, this office is a growing phenomenon and it exists already in many parishes, especially in relatively large parishes with significant budgets and institutional commitments.⁵² By analogy with the diocesan finance officer (cf. c. 494),⁵³ this study proposes this office of parish finance officer as a means to promote greater accountability and transparency in parish financial administration and thereby to offer better protection of the goods of the parish. It will first examine the need for a parish finance officer. It will then explore

⁴⁹ MORRISEY, “Acquiring Temporal Goods for the Church’s Mission,” p. 603.

⁵⁰ See GREEN, “Shepherding the Patrimony of the Poor,” p. 732.

⁵¹ RENKEN, *Particular Churches*, p. 267, fn. 89.

⁵² See SHEA, “Parish Finance Councils,” p. 183; see also GREEN, “Shepherding the Patrimony of the Poor,” p. 732.

⁵³ See SANCHEZ-GIL, “Commentary on Canons 515-544,” p. 1331.

the functions of this officer if one is appointed. Finally, it will recommend the development of diocesan particular law to regulate the office.

4.2.1 – The Need for a Parish Finance Officer

If a parish finance officer would assist the *parochus* in the administration and the protection of parochial goods, the *parochus* would certainly be able to concentrate more on his *tria munera* of teaching, sanctifying, and governing the parishioners entrusted to his care (cc. 528-529). Since the majority of *parochi* seem to have a very limited or no background in financial administration, a well-versed person in this field with proper qualifications and skills⁵⁴ would obviously be of great help to protect against harm to parochial goods and to provide for an effective financial administration and protection.⁵⁵ Contrary to the fear of many *parochi*, an office concerning fiscal accountability and compliance with the law would not be a threat to the threefold mission of the *parochus* to teach, to sanctify, and to govern, as he would still have the final responsibility in parish financial administration if a finance officer were appointed in a parish. Since every parish is concerned about transparency in its financial administration “so that everyone can know what is coming in and what is going out, and where it is going,”⁵⁶ the office

⁵⁴ The Archdiocese of Boston notes the following qualifications and skills for the office of parish finance officer: degree in business/accounting or demonstrated related experience, supervisory/management experience, understanding and support of the mission of the Church, demonstrated experience in accounting, knowledgeable about safety and security issues, knowledgeable of human resource issues, including policies, procedures, selection, benefits, federal and state laws, knowledgeable of parish policies and guidelines in relationship to diocesan policies and guidelines, demonstrated experience in QuickBooks computer technology and skills, demonstrated supervisory and management experience, strong oral and written communication skills, proficient with Microsoft office suite software, ability to work collaboratively and with flexibility (see ARCHDIOCESE OF BOSTON, “Parish Business Manager: Essential Duties and Responsibilities – St. Eulalia Parish, Winchester,” 5 January 2011, p. 2, in <http://www.boston-catholic.org/Utility/Employment/Content.aspx>) (= ARCHDIOCESE OF BOSTON, “Duties of the Parish Business Manager”).

⁵⁵ See POKORSKY, “Avoiding the Next Tsunami,” p. 44.

⁵⁶ GIBSON, “The Bottom Line: Will Church Finances Be the Next Scandal?,” p. 13.

of parish finance officer might serve as one of the means or tools to uphold the principle of accountability and transparency in each parish. Indeed, this provision would help cultivate the presbyteral-lay collaboration that canon law requires in the administration and protection of temporal goods of the parish.⁵⁷

4.2.2 – The Functions of the Parish Finance Officer

The parish finance officer will assist the *parochus* in fulfilling his responsibility for the administration and the protection of the goods of the parish. Although the relationships between the parish finance officer and the parish finance council would be somewhat similar to those which exist between the diocesan finance officer and the diocesan finance council, there is one significant difference in that the parish finance council does not necessarily have a role in the selection or removal of the parish finance officer.⁵⁸ The parish finance officer should have some working relationship with the parish finance council. He or she should attend its meetings as a resource person. However, he or she should not be a member of the council or at least should not vote in the decision-making process since this person receives advice from the council.⁵⁹ Furthermore, as previously stated, since he or she would take direction from and answer to the *parochus*, it would be contradictory for the parish finance officer also to preside over the council.⁶⁰ Although the parish finance officer is to submit pertinent reports to the council and provide relevant information to its members, he or she should be excused from meetings from

⁵⁷ See *ibid.*

⁵⁸ See SHEA, “Parish Finance Councils,” p. 183.

⁵⁹ See *ibid.*

⁶⁰ See chapter II, p. 153, fn. 261.

time to time so that the council can help evaluate his or her performance prior to the evaluation by the *parochus*.⁶¹ Moreover, just as the diocesan finance council is consulted before appointing the diocesan finance officer (c. 494, §1), the parish finance council could have some role in the hiring of the parish finance officer, perhaps acting as a search committee.⁶²

Green suggests that a parish finance officer can be hired for several parishes together rather than for only one parish. In that case, the structuring of the office would be somewhat more complex, involving several *parochi* and parish finance councils. Nevertheless, in a period of severe financial constraints, when individual parishes might find it difficult to hire an officer, such an arrangement might be appropriate.⁶³ Moreover, Green also comments that the parish finance officer may function in several areas, such as financial management, property management, human resources management, communication and information systems, resource development, and other duties as assigned by the *parochus*.⁶⁴

Hence, one would realize that the duties of a parish finance officer are numerous and cover many dimensions, such as the areas of financial and human resources management, care of property, appropriate communications, and the development of resources. When they are all put together, they can appear to be somewhat overwhelming, but, at the same time, they provide a good composite view of the expectations placed on his shoulders.

In the Area of Parish Financial Management:

1. To develop, implement, and administer local financial policies and procedures in consultation with the *parochus* and the parish finance council in accordance with higher

⁶¹ See SHEA, "Parish Finance Councils," p. 184; see GREEN, "The Players in the Church's Temporal Goods World," p. 75.

⁶² See SHEA, "Parish Finance Councils," p. 184.

⁶³ See GREEN, "Shepherding the Patrimony of the Poor," p. 733.

⁶⁴ See *ibid.*

level norms such as universal law, diocesan particular law, statutes of a parish approved by the diocesan bishop, customs, special instructions, and the parish financial manual;

2. To prepare the budget for consideration by the *parochus* and the parish finance council;
3. To monitor the operating budget of the parish and report regularly to the *parochus* and the parish finance council as to potential problem areas;
4. To prepare the annual financial report, interim reports, general ledgers, and other monthly reports for the *parochus* and the parish finance council;
5. To handle bank relations which include management of accounts and problem solving;
6. To approve checks for the signature of the *parochus*, with appropriate documentation;
7. To manage bookkeeping functions, including, but not limited to, payables and receivables and all other parish-related revenues and expenses;
8. To assist the *parochus* in the administration of offertory enhancement programs, fund raising for special parish projects, planned giving, and the special appeal;
9. To act as a liaison between the *parochus* and diocesan development services in maintaining the diocesan parishioner database;
10. To oversee the management of parish operational and financial records;
11. To prepare and file required employee tax forms and to ensure that all federal, state, and local taxes are paid in accordance with federal, state, and local regulations;
12. To administer payment of salaries and benefits; etc.⁶⁵

In the Area of Parish Human Resource Management:

1. To implement diocesan human resource policies;
2. To maintain payroll and benefit records of the parish staff and volunteers;
3. To supervise certain members of the parish staff under the direction of the *parochus*;
4. To coordinate implementation of required training programs;
5. To direct the management of the parish office, as appropriate;

⁶⁵ See ARCHDIOCESE OF BOSTON, "Duties of the Parish Business Manager," p. 1.

6. To recommend items such as salary and benefits for approval by the *parochus* after appropriate consultation with diocesan guidelines and the parish finance council;
7. To take any disciplinary actions and/or terminations only with the approval of the *parochus*, and in consultation with the diocesan human resources office;
8. To evaluate support staff for whom the parish finance officer is responsible through annual performance reviews, and to ensure that the annual performance reviews of all other staff are performed; etc.⁶⁶

In the Area of Property Management:

1. To supervise and coordinate maintenance and repairs of the various parish facilities while monitoring their use;
2. To oversee major renovations and capital projects in accordance with diocesan policies;
3. To assist the *parochus* in his dealings with the diocesan facilities management department, real estate department, and the risk management department;
4. To act as a resource for any *ad hoc* building committee;
5. To have responsibility for parish security in the leasing or rental of parish facilities;
6. To act as liaison with local government agencies and the diocesan real estate department; etc.⁶⁷

In the Area of Communication and Information System:

1. To coordinate the preparation of parish bulletins as well as newsletters;
2. To update the parish census information and parish website; etc.⁶⁸

In the Area of Resource Development:

1. To supervise and coordinate various parish revenue enhancement programs under the direction of the *parochus*;

⁶⁶ See GREEN, "Shepherding the Patrimony of the Poor," p. 733; see ARCHDIOCESE OF BOSTON, "Duties of the Parish Business Manager," p. 2.

⁶⁷ See GREEN, "Shepherding the Patrimony of the Poor," p. 733; see ARCHDIOCESE OF BOSTON, "Duties of the Parish Business Manager," p. 2.

⁶⁸ See GREEN, "Shepherding the Patrimony of the Poor," p. 733; see ARCHDIOCESE OF BOSTON, "Duties of the Parish Business Manager," p. 2.

2. To serve as a liaison between the *parochus* and the diocesan development office; etc.⁶⁹

4.2.3 – The Development of Particular Law for the Office of Parish Finance Officer

The “job description” of the diocesan finance officer might serve as a model for a “job description” of the parish finance officer: “appointment, possible consultation with parish councils, Catholicity factor, integrity, financial and legal expertise, term of office, removal possibility.”⁷⁰ Accordingly, diocesan particular law may stipulate the following possible norms for an office of parish finance officer:

1. The *parochus* names a parish finance officer after having heard the parish finance council (and the parish pastoral council);⁷¹
2. A Catholic⁷² who is an expert in financial affairs and integrity of character (see c. 494, §1) is eligible for this position; such a person may be a lay person or a cleric but preferably a lay person is eligible for this position;
3. The parish finance officer is to be appointed for a five year term (or a lesser term) which is renewable (see c. 494, §2);
4. The parish finance officer is subject to removal for a grave cause⁷³ by the *parochus* after he has heard the parish finance council (and the parish pastoral council) (see c. 494, §2);

⁶⁹ See GREEN, “Shepherding the Patrimony of the Poor,” pp. 733-734.

⁷⁰ Idem, “The Players in the Church’s Temporal Goods World,” p. 75.

⁷¹ For example, the statutes of the Diocese of Sacramento state: “In line with shared responsibility and collaboration, larger parishes are encouraged to have a ‘Director of Parish Operations’ [a parish finance officer] to assist the pastor [*parochus*] - in some cases to be shared by two or more neighboring parishes. Normally, this person will be named and employed by the parish(es), but, in a given case, could be appointed by the Diocesan Bishop. Appointment of such a person does not relieve the pastor [*parochus*] of his obligation ‘to take care that the goods of the parish are administered according to the norm of cc. 1281-1288,’ unless otherwise provided by the norm of law or written concession of the Diocesan Bishop” (DIOCESE OF SACRAMENTO, “Diocesan Statutes,” 26 November 2006, pp. 71-72, in http://www.diocese-sacramento.org/PDFs/Statutes_Book_Web.pdf).

⁷² As it was argued in the case of a member of the parish finance council, a baptized non-Catholic could also be eligible for the office of parish finance officer (see chapter II, p. 150, fn. 245).

⁷³ Such a grave cause should be specified in the contract of the parish finance officer; for instance, embezzlement, culpable negligence, grave damage to the parish stable patrimony, etc. (see GREEN, “Shepherding the Patrimony of the Poor,” p. 733).

5. The parish finance officer is to assist in the administration of the goods of the parish under the authority of the *parochus* in accord with the budget determined by the parish finance council (see c. 494, §3);
6. The parish finance officer is to meet the expenses which the *parochus* and the parish finance council lawfully authorize (see c. 494, §3);
7. The parish finance officer is to render an annual account of receipts and expenditures to the parish finance council (see c. 494, §4);
8. A part-time or a full-time parish finance officer may be appointed according to the determination of the *parochus* taking into consideration the necessity of the parish; besides, as stated above, if circumstances require, the diocesan bishop may allow for the appointment of one finance officer for several parishes together;
9. The parish finance officer may attend the parish finance council, of which he is not a member; etc.

Moreover, just as the relationship between the diocesan bishop, the diocesan finance council, and the diocesan finance officer is stipulated in the Code, diocesan particular law may stipulate more on the relationship between the *parochus*, the parish finance council, and the parish finance officer in light of parish diversity in the diocese.⁷⁴

4.3 – Specific Duties of the Parish Finance Council in the Protection of Parochial Goods

Canon 1280 introduces a change in the previous law of the 1917 Code;⁷⁵ every juridic person (public or private) is to have its own finance council which is to assist in the performance of the duties of its administrator in accordance with the statutes of the juridic person. These statutes should provide for the sharing of certain financial and administrative matters between the administrator and the finance council. Indeed, by requiring counsel or consent for certain

⁷⁴ See *ibid.*, pp. 732-733; see *idem*, “The Players in the Church’s Temporal Goods World,” pp. 74-75. For more information on the office of parish finance officer, see R.S. RICHARDS, “The Parish Financial Officer: Varied Relationships in Diocese and Parish,” JCL thesis, The Catholic University of America, 2010, pp. 47-58.

⁷⁵ See MORRISEY, “Financial Mismanagement and Canon Law,” p. 17.

decisions, the statutes could counteract the tendency of an administrator to act against advice received, especially if it were unanimous.⁷⁶ The statutes should identify the forms of assistance to be given to the administrator either by means of the council's advice or by consent.⁷⁷ As the Code prescribes specific duties of the diocesan finance council,⁷⁸ these could serve as a model to assign certain duties for the parish financial council.

⁷⁶ See *idem*, "Commentary on Book V," p. 725.

⁷⁷ See ALARCÓN, "Commentary on Book V," p. 987.

⁷⁸ The Code identifies the following principal *duties* of the diocesan finance council: (1) to prepare an annual diocesan budget of foreseen income and expenditures (c. 493); (2) to examine the annual diocesan report of revenue and expenses (c. 493-494); (3) to review the annual financial reports presented by administrators subject to the diocesan bishop, after they have submitted them to the local ordinary (c. 1287, §1); (4) to elect a temporary diocesan finance officer if the diocesan finance officer is elected the diocesan administrator *sede vacante* (c. 423, §2).

The diocesan finance council must give its *counsel* to the diocesan bishop in the following instances: (1) to appoint and to remove the diocesan finance officer (c. 494); (2) to impose a moderate tax upon public juridic persons subject to his authority (c. 1263); (3) to impose an extraordinary tax upon juridic persons and upon physical persons subject to his authority (c. 1263); (4) to place acts of administration which are more important in light of the economic conditions of the diocese (c. 1277); (5) to determine acts of extraordinary administration placed by public juridic persons subject to him (c. 1281, §2); (6) to make a prudent judgment on the investment of money and movable goods assigned to an endowment for the benefit of a foundation (c. 1305); (7) to lessen the obligations attached to a foundation (but not foundation Masses) if through no fault of the administrators, the fulfillment of these obligations becomes impossible because of diminished revenue or some other cause (c. 1310, §2).

The diocesan finance council must give its *consent* to the diocesan bishop in the following instances: (1) to place acts of extraordinary administration as defined by the conference of bishops (c. 1277); (2) to give permission to alienate goods of public juridic persons subject to his authority, and to alienate diocesan goods, which belong to stable patrimony and whose value is beyond the minimum amount established by the conference of bishops (c. 1292, §2); (3) to give permission to administrators to perform any contractual transaction which can worsen the patrimonial condition of a public juridic person subject to his authority, or to perform the transaction himself to involve diocesan goods (c. 1295, §2) (see RENKEN, *Church Property*, pp. 102-104; see J.P. SCHOUPPE, *Droit canonique des biens*, Montréal, Wilson and Lafleur, 2008, pp. 198-200). There are number of other occasions in which even though not prescribed by the Code, the diocesan finance council could be involved in the following: (1) to draw up guidelines for parish finance councils (c. 537); (2) to grant permission for collections and other forms of fund-raising (c. 1265, §1); (3) to authorize special collections (c. 1266); (4) to use of the common fund of the diocese (c. 1274, §3); (5) to issue guidelines for administration (c. 1276); (6) to determine guidelines for the extraordinary administration carried out by other administrators (c. 1281); (7) to invest excess capital (c. 1284, §2, 6°); (8) to engage in civil litigation, etc. (see MORRISEY, "Financial Mismanagement and Canon Law," pp. 15-16).

Moreover, Morrisey recommends the following to be part of the mandate of the diocesan finance council: (1) to be a vehicle of research, study, policy recommendation, and general advice concerning the financial administration of the diocese; (2) to advise and work with all the official advisors of the diocese: (3) to verify financial statements; (4) to arrange for audits; (5) to review the annual approved budgets; (6) to monitor investments and investment policies (patrimony of the diocese, outside funds belonging to others such as parish funds deposited with the diocese; (7) to monitor civil legislation, retaxation, salaries, income tax receipts, etc.; (8) to monitor policies and transactions dealing with building and properties; (9) to organize and maintain security funds (pensions, funds for law suits, etc.); (10) to recommend policies regarding insurance; (11) to recommend criteria for establishing stable patrimony; (12) to recommend and review what decisions constitute acts of ordinary and extraordinary

Since the parish finance council is a consultative organ of collaboration with the *parochus* in the management of the goods of the parish, the diocesan bishop has the right to identify the duties of the parish finance council, ensuring that the right and duty of the faithful to manifest their opinion on issues pertaining to the good of the parish are respected (c. 212, §3).⁷⁹ In fact, specifying duties of the parish finance council would be an act of the supervisory role of the bishop over the goods of parishes under his jurisdiction (c. 1276, §1).⁸⁰ Just as the diocesan finance council assists the diocesan bishop in his financial administration, the parish finance council assists the *parochus* in his financial administration. The precise duties of the council should be listed in its statutes or in diocesan particular law, and also in the statutes of a parish.⁸¹

4.3.1 – The Possible Specific Duties of the Parish Finance Council

This section would identify the possible specific duties of the parish finance council to foster the protection of parochial goods:

1. To give counsel or consent on all acts of extraordinary administration in the parish (see c. 1281, §1);⁸²

administration; (13) to draft contract policies and to review the financial aspects of existing contracts; (14) to implement the annual budget; (15) to prepare all necessary information requested by the diocesan bishop; (16) to assist in contacting personnel for specific needs; (17) to review book-keeping services for parishes; etc. (see *ibid.*, 16-17).

⁷⁹ See SCHOUPE, *Droit canonique des biens*, pp. 213-215.

⁸⁰ V. DE PAOLIS, “L’amministrazione dei beni: soggetti cui è demandata in via immediata e loro funzioni (cc. 1279-1289),” in R. FUNGHINI (ed.), *I beni temporali della Chiesa*, studi giuridici 50, Città del Vaticano, Libreria editrice Vaticana, 1999 (= DE PAOLIS, “L’amministrazione dei beni”), p. 63.

⁸¹ See HUELS, *The Pastoral Companion*, p. 408.

⁸² The advice of the parish finance council should be both for acts of ordinary administration and acts of extraordinary administration. However, the degree of consultation varies. The *parochus* does not need any specific authorization for certain actions of day-to-day administration, but he may find it helpful to seek the advice of the parish finance council even in these matters; for example, while the purchase of an ordinary amount of office supplies is within the authority of the *parochus*, the finance council may provide useful advice on strategies that reduce the cost of such recurring purchases (USCCB BUDGET AND FINANCE COMMITTEE, *Diocesan Financial Issues Manual*, November 2002, p. I-I-9, in <http://www.usccb.org/about/financial/reporting/upload/-Diocesan-Financial-Issues-Manual.pdf>).

2. To assist in preparing and updating inventory of assets (c. 1283);
3. To advise on appropriate insurance policies for the parish property (c. 1284, §2, 1°);
4. To advise on investments (if not provided by the diocesan offices) (c. 1284, §2, 6°);
5. To review banking arrangements;
6. To help prepare and monitor the application of the annual parish budget (see c. 1284, §3);
7. To review any indebtedness of the parish, i.e., to pay the interest on a loan or mortgage when it is due and to help draw up a debt reduction plan (c. 1284, 5°);
8. To approve all matters that require the consent of the diocesan bishop;
9. To prepare or to review the annual parish financial report (see 1287, §1);
10. To formulate and communicate the annual report to the parishioners (see 1287, §2);
11. To help engage in civil litigation (c. 1288);
12. To give counsel or consent on alienations of parish property (see cc. 1291-1294);
13. To advise on lease agreements (c. 1297);
14. To assist with technology;
15. To advise on fundraising for the parish;⁸³
16. To advise on the purchase of land and buildings;
17. To provide advice on hiring and firing of parish personnel (personnel policies);
18. To advise as to maintenance of property, needed repairs;⁸⁴

⁸³ It is to assess the effectiveness of existing fundraising programs and recommend new programs or changes to existing programs if revenues are insufficient; to help for the acquisition of required licenses, support documentation for tax filings, and actual tax filings, etc. (see *ibid*).

⁸⁴ “It is to review maintenance and utility costs seeking to minimize costs through preventative maintenance, energy conservation, and the implementation of risk management programs and recommendations,” etc. (*ibid*).

19. To oversee construction and renovation related projects of parish facilities;
20. To assist possibly with keeping parish books relating to financial administration (if this is not entrusted to a specific person);
21. To approve non-budgeted expenses over a certain amount and also to provide advice on how to use undesigned bequests or other unbudgeted revenue;
22. To help establish and manage a parish endowment program and to provide advice and oversight if an endowment already exists.
23. To provide advice on matters requiring proxies by the parish civil corporation when it is incorporated separately;
24. To be knowledgeable about diocesan particular laws and instructions on parish financial administration in order to provide advice on their implementation and compliance;
25. To provide advice regarding conflicts of interest, protection of whistleblowers and fraud detection, reporting and prevention;
26. To advise on any financial and legal matters within the council's competence as specified by particular law or as brought to its attention by the *parochus*.⁸⁵

If diocesan particular law, the statutes of the parish finance council, or the statutes of individual parishes prescribed certain specific responsibilities as listed above or included other precise duties within the competence of the council according to local needs and circumstances, such competencies of the council would help protect parish goods.

⁸⁵ See *ibid.*, pp. I-I-9–I-I-11; see F.R. AZNAR GIL, “La nueva organización económica de las diócesis españolas,” in *El derecho patrimonial canonico en España*, estudios 75, Salamanca, Universidad Pontificia, 1985, pp. 214-217; see MORRISEY, “Financial Mismanagement and Canon Law,” p. 19; see HUELS, *Pastoral Companion*, p. 408; see RENKEN, *Church Property*, p. 198, fn. 104.

Moreover, from various guidelines for the parish finance council, Shea gathers another list of its several tasks/duties in a more or less similar fashion: “(1) financial policies, (2) financial planning, (3) fundraising or stewardship risk management, (4) management of real estate, (5) acceptance of bequest with conditions, (6) establishment of a parish cemetery, (7) establishment of a school, (8) review of a fund-raising procedures (e.g., bingo and raffles), (9) development of the school budget, (9) employee benefits, (10) reasonable household expense reimbursement of priest, (11) review ministry-related expenses, (12) to review summary of parish credit card, (13) long range financial planning, (14) recommendations for increasing revenue, (15) implementation of parish special collections, (16) monitoring observance of diocesan policies, (17) a member is to review bank account reconciliation on a monthly basis, (18) guidance on parish accounting and computer system, (19) see that independent contractors comply with IRS regulations, (20) develop a long-term capital improvement plan, (21) help establish a parish endowment plan, etc.” (see SHEA, “Parish Finance Councils,” pp. 180-181).

4.3.2 – The Checklist of Major Annual Activities of the Parish Finance Council

Assisting in combating financial mismanagement rests, in one way or another, also with the parish finance council. If it does not carry out its role appropriately, then things will slip through the cracks.⁸⁶ Therefore, the USCCB Budget and Finance Committee offers a checklist of six major activities which could be established as an annual plan of activities of the parish finance council in view of preventing financial mismanagement:

1. Parish Annual Report
 - a. Review completed report prior to submission to the diocesan bishop. The report should be complete within 45 days of the end of the fiscal year;
 - b. Coordinate communication to parish community of the financial situation of the parish. Consider using printed material, oral presentations, and parish hall meetings. Report should be presented to the parish as soon as possible, but no later than 5 months after the end of the fiscal year.
2. Parish Budget Report
 - a. Project and plan resources to meet specified goals;
 - b. All individual program budgets are reviewed: church, elementary school, religious education, and auxiliary groups;
 - c. Share proposed budget with the parish pastoral council and the general parish;
 - d. Complete and submit to diocesan bishop as required.
3. Financial Review
 - a. Financial report and significant financial facts should be prepared for every meeting;
 - b. Budget amounts are compared to the actual income and expenditures to monitor results in comparison to budget projections;
 - c. Year over year trend reports for programs, revenues, and expenses are analyzed to plan corrective action;
 - d. At least quarterly, a representative from the finance council should review the general ledger detail and reconciliation of cash and investment accounts.
4. Accounting/Internal Control Systems/Best Practices

⁸⁶ See MORRISEY, “Financial Mismanagement and Canon Law,” p. 14.

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- a. Review accounting system to determine if it produces current and accurate financial records;
 - b. Ensure that appropriate risk management practices are in place;
 - c. Identify all parish bank accounts, not just known operating accounts. Confirm that these account balances are reflected in the financial statements. Determine if the number of accounts can be reduced to ease administration;
 - d. Review current bank account signature cards and account reconcilements for all parish accounts on a regular basis;
 - e. Review the separation of duties, to the extent possible, of personnel involved in the finances of the parish;
 - f. Review any statements received for any parish account related to a credit or debit card, store account, purchase order, purchasing card or other similar instrument. Verify that purchases had the necessary approvals, were for a parish (not personal) purpose and are coded to the proper general ledger account.
5. Auxiliary Groups
- a. Review budget and upcoming activities for the next year;
 - b. Review revenue and expenses along with bank account reconcilements;
 - c. Meet with the groups to acknowledge their contribution of time, talent, and treasure. Reinforce financial accountability from various groups to the parish.
6. Compliance Oversight
- a. Taxable activities: review support documentation and tax filings for payroll taxes (including W-2's), bingo, pull-tabs, and concession sales;
 - b. Licensing activities: review support documentation and filings for bingo, pull-tabs, carnivals, raffles and other events that may be restricted by the local municipality;
 - c. Payments for services provided to parish: Confirm that 1099 Federal forms are complete and filed for independent contractors;
 - d. Deductions from parish employee pay: Confirm that payroll deductions are submitted on a timely basis to the benefit providers;
 - e. Confirm that all compensation to employees and contractors, including bonuses or gifts, is reflected appropriately on the respective form W-2 (for employees) or form 1099 (for independent contractors).⁸⁷

⁸⁷ USCCB BUDGET AND FINANCE COMMITTEE, *Diocesan Financial Issues Manual*, pp. I-I-17–I-I-18; see also ARCHDIOCESE OF CHICAGO, “Parish Finance Council Guidelines,” 9 August 2007, pp. 13-14, in http://www.arch-chicago.org/departments/financial_services/documents/FinanceGuidelines.pdf.

Based on this model of a checklist, were each parish finance council to establish an annual plan of its activities, this would certainly provide for an efficacious financial administration and protection of parochial goods.

4.4 – Various Types of Particular Canonical Provisions for the Protection of the Temporal Goods of a Parish

Book V, as already noted, makes provisions for the diocesan bishop⁸⁸ as one of the lower legislators⁸⁹ to establish particular laws in respect to higher laws⁹⁰ for the administration and the protection of parish property. Moreover, Book V permits the local ordinary⁹¹ to issue special instructions to assist *parochi* in the administration as well as the protection of parochial goods (c. 1276, §§1-2). Many canons in Book V presume that parishes have their own statutes to ensure the protection of its goods (see cc. 1279; 1281, §2; 1295). This section will therefore study the effective use of these particular canonical provisions so as simultaneously to decrease potential harm and to increase the protection of parish property.

⁸⁸ When the law mentions that the “diocesan bishop” only is competent to act, his vicars are excluded (c. 134, §3) (see J.M. HUELS, *Liturgy and Law*, Montréal, Wilson and Lafleur, 2006, p. 71).

⁸⁹ The legislators in the Church are (1) the pope, (2) the college of bishops with the pope, (3) the diocesan bishop and his equivalents, (4) the conference of bishops, (5) plenary councils, and (6) provincial councils. Only the first two can issue universal laws, and the last four can issue only particular laws (within their territory). The congregations of the Roman Curia do not have legislative power except when granted expressly by the pope. Legislative power is principally exercised by the Church’s legislators when they promulgate laws. It is ordinarily exercised in five ways: (1) by promulgations (e.g., Code of Canon Law, apostolic constitution, *motu proprio*); (2) by the promulgation of an authentic interpretation of law given by the legislator or his delegate in the form of law (c. 16, §2); (3) by the legislator’s approval in *forma specifica* of an act or a document of executive power (4) by the promulgation of certain statutes (c. 94, §3), and (5) by an oral approval of change in law given by the pope (*per rescriptum ex audientia Sanctissimi*) (see *ibid.*, pp. 79-80; see DE AGAR, *A Handbook on Canon Law*, p. 29).

⁹⁰ A legislative activity “must respect the principle of the hierarchy of norms which renders inefficacious those norms which are inferior (either by reason of their grade or of the issuing authority involved) and contrary to the law of the superior grade” (c. 135, §2) (ARRIETA, *Governance Structures within the Catholic Church*, p. 32).

⁹¹ When the law mentions that the “local ordinary” may act, it includes both the bishop and his vicars. The term “ordinary” in canon law includes all local ordinaries as well as major superiors of clerical religious institutes of pontifical right and clerical societies of apostolic life of pontifical right who possess ordinary executive power (c. 134) (see HUELS, *Liturgy and Law*, pp. 71-72).

4.4.1 – Diocesan Particular Law to Promote Collaboration between the *Parochus* and the Parish Finance Council in the Protection of Parochial Goods

Particular laws are established for a particular territory, such as a diocese or the region of a conference of bishops, etc. They bind those for whom they are established who have a domicile or quasi-domicile (cc. 102-105) in the territory as long as they are actually present in the territory (c. 12, §3).⁹² The diocesan bishop can establish particular laws to exercise his vigilance over the goods of parishes subject to him (see c. 1276).⁹³ This section explores the enactment of possible diocesan particular laws relating to the duties of the *parochus* as administrator: i.e., acts of acquisition, ordinary administration, extraordinary administration, and alienation of goods of the parish, which would promote collaboration between the *parochus* and the parish finance council in the protection of parish property.

⁹² Outside their territory, the faithful are bound by their own particular laws only if they are personal or if their transgression would cause harm in their own territory (c. 13, §2, 1°). Those who have no domicile or quasi-domicile (*vagi*) are bound to both universal and particular laws which are in force in the territory where they are staying (c. 13, §3) (see *ibid.*, p. 99). Moreover, particular laws can be personal laws; however, they are presumed to be territorial unless clearly personal. “Personal laws are given for non-territorially defined groups of persons that are capable of receiving laws, such as institutes of consecrated life and societies of apostolic life, personal prelatures, and various associations of the faithful. Personal laws bind the persons for whom they were given wherever they go” (*idem*, “Commentary on Canons 1-28,” in *CLSA Comm2*, p. 65).

⁹³ See A. LONGHITANO, “L’amministrazione dei beni: la funzione di vigilanza del vescovo diocesano (cc. 1276-1277),” in FUNGHINI (ed.), *I beni temporali della Chiesa* (= LONGHITANO, “L’amministrazione dei beni”) p. 97; see SCHOUPPE, *Droit canonique des biens*, p. 195. As already noted, the diocesan bishop is obliged to legislate in a number of instances in Book V concerning the administration and the protection of temporal goods (cc. 1281, §2; 1284, §3; 1287, §2; 1303, §1, 2°; 1304, §2; etc.). Besides, he can enact particular laws for various purposes according to other Books of the Code (see cc. 277, §§2-3; 491, §3; 533, §3; 535, §1; 537; 548, §1; 755, §§1-2; 772, §1; 777; 838, §4; 1316, etc. (see J.L. GUTIÉRREZ, “La potestà legislativa del vescovo diocesano,” in *Ius canonicum*, 24 [1984], p. 523).

4.4.1.1 – Duties of the *Parochus* as Administrator of Parish Goods

In order to exercise his vigilance role,⁹⁴ the diocesan bishop may establish particular laws on the duties of the *parochus* as administrator of parochial goods (see cc. 391, §§1-2; 1276, §1). Sometimes, the Code itself makes provisions for the establishment of particular laws on duties of administrators of ecclesiastical goods (see cc. 1284, §3; 1287, §2). The diocesan bishop may establish particular laws requiring *parochi* to involve⁹⁵ the parish finance council for the following duties in order to provide for a more secure protection of parochial goods:

1. to conduct an internal audit of financial records of each parish and to arrange for a review of its financial practices every year by an official of the diocesan curia in accord with canon 1276, and that the report of audits and reviews are to be presented to the *parochus*, the parish finance council, and to the competent diocesan authority (e.g., the diocesan bishop, the vicar general, the diocesan finance officer, etc.);⁹⁶
2. to prepare the annual parish administration report and the annual parish financial report in accord with canons 1284, §2, 8°; 1287, §1;⁹⁷

⁹⁴ The notion of supervision/vigilance is different from administration: those who administer exercise control over the assets and interests of the owner of the property while those who supervise exert a power over persons and goods and intervene to protect a public interest. Moreover, vigilance is different from legal representation: one who supervises exercises a controlling influence, whereas one who represents legally is acting on behalf of another. In the context of a parish, as already mentioned, the *parochus* acts as the legal representative of the parish and the administrator of its goods, the diocesan bishop has the role of a supervisor (see DE PAOLIS, *I beni temporali della Chiesa*, pp. 195-196).

⁹⁵ In discussing the power and function of administrators of ecclesiastical goods, De Paolis explains that when the law mandates it expressly, every administrator must involve other persons (their superiors, e.g., diocesan bishop, local ordinary, or ordinary, etc.), or institutions (such as finance council) in fulfilling their tasks and duties as an administrator (see DE PAOLIS, “L’amministrazione dei beni,” pp. 73-74).

⁹⁶ See RENKEN, *Church Property*, p. 175. For example, the statutes of the Diocese of Sacramento state: “Diocesan finance staff shall perform a ‘parish financial operations review’ for each parish in the diocese every three years, as well as upon a change in pastor [*parochus*], and at the term renewal for a pastor [*parochus*]. Recommendations made as part of this ‘review’ are to be implemented by the parish within six months from the date that the ‘findings and recommendations report’ is presented to the pastor [*parochus*] and the parish finance council. An independent third party is to be engaged to perform the ‘parish financial operations review’ every third time such a ‘review’ is performed” (DIOCESE OF SACRAMENTO, “Diocesan Statutes,” p. 71).

⁹⁷ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 510. In order to ensure the involvement of the parish finance council in the parish financial administration, diocesan particular law might also require that “the annual parish financial report shall include the names and professional titles of the council members, the council’s meeting dates during the fiscal year, and a signed acknowledgment by each member of the council stating that they have reviewed the annual parish financial report prior to its submittal” (DIOCESE OF SACRAMENTO, “Diocesan Statutes,” p. 71).

3. to provide for civil legal protection for the goods and to preserve the documents of parish property rights in suitable archives in accord with canon 1284, §2, 2°, 9°;⁹⁸
4. to draw up the annual parish budget in accord with canon 1284, §3, and to send the copy of the parish budget for the approval of the local ordinary;⁹⁹
5. to prepare the annual parish report to the faithful for the goods acquired from them in accord with 1287, §2; it may perhaps order each *parochus* to submit a detailed report to the parish pastoral council and to present a general report to parishioners;¹⁰⁰ etc.

4.4.1.2 – Acts of Acquisition of Parish Goods

The Code allows for various means of acquisition of goods for the parish.¹⁰¹ Sometimes, the Code itself envisions particular laws to be determined by the competent authority to ensure more protection for the acquisition of the goods in the parish (see cc. 531; 1303, §1, 2°; 1304, §2). The diocesan bishop may establish particular laws that the parish finance council is to be consulted in some acquisitions of temporal goods by the *parochus* in order to provide for a better protection to those goods of the parish: e.g.,

1. to establish the method of handling regular collections;
2. to obtain the permission of the local ordinary in order to initiate a special collection (other than those prescribed by the local ordinary) (c. 1266);¹⁰²

⁹⁸ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 516.

⁹⁹ See RENKEN, “Particular Laws on Temporal Goods,” p. 449. For example, the statutes of the Diocese of Sacramento state: “Each parish shall conduct its financial operations in accord with an annual parish operating budget prepared with the assistance of the parish finance council” (DIOCESE OF SACRAMENTO, “Diocesan Statutes,” p. 70). Since canon 1284, §3 does not identify the legislative authority, clearly, the diocesan bishop can make such law (see cc. 391; 135, §1). However, should the conference of bishops make such a law, it must have the special mandate of canon 455, §1 (see RENKEN, “Particular Laws on Temporal Goods,” p. 450, fn. 3).

¹⁰⁰ See RENKEN, “Particular Laws on Temporal Goods,” p. 449; see HUELS, *The Pastoral Companion*, p. 412. Since canon 1287, §2 does not identify the competent authority, the same procedure would apply here (see above, p. 247, fn. 99). For example, the statutes of the Diocese of Sacramento mention that a full report of parish finances shall be made to parishioners annually; in addition, it recommends interim reports to be made periodically (see DIOCESE OF SACRAMENTO, “Diocesan Statutes,” p. 71).

¹⁰¹ See chapter II, 2.2.1, pp. 88-96.

¹⁰² According to canon 1266, since the local ordinary (i.e., the diocesan bishop, the vicar general and the episcopal vicar [c. 134, §2]) can order a special collection, a vicar would do this by means of general executory

3. to receive the written permission of the local ordinary before initiating any capital campaign in parishes;
4. to inform the local ordinary before they accept a pious will, whether *mortis causa* or *inter vivos* (c. 1301), or a pious trust (c. 1302);
5. to obtain the permission of the local ordinary to accept validly a non-autonomous pious foundation (c. 1304, §2°);
6. The diocesan bishop, having heard the presbyteral council, can establish a particular law on the allocation of offerings on the occasion of the parochial functions and the remuneration of clerics performing these functions (c. 531);
7. The diocesan bishop can issue a particular law determining the duration of non-autonomous pious foundations (c. 1303, §1, 2°) which will be established in parishes;
8. The diocesan bishop can establish conditions, in addition to those found in the universal law (c. 1304, §1) for the establishment and acceptance of a non-autonomous pious foundation (c. 1304, §2); etc.¹⁰³

4.4.1.3 – Acts of Ordinary Administration of Parish Goods

The diocesan bishop can establish particular laws providing that the *parochus* should consult the parish finance council for some acts of ordinary administration for which advice given at an early stage in the process can preclude a lot of hardships later. Moreover, although the universal law does not mention acts of ordinary administration which are more important (*maioris momenti*) in the light of the economic condition for parishes, nothing prevents the diocesan bishop from designating such acts of ordinary administration of greater importance by particular law and including them in the statutes of the parish.¹⁰⁴ Particular law may require the

decree (cc. 31-33) since he lacks legislative power (see RENKEN “The *Parochus* as Administrator of Parish Property,” p. 512, fn. 61).

¹⁰³ See RENKEN, “Particular Laws on Temporal Goods,” pp. 449-451. As noted above, since nos. 6-7 do not identify the competent legislative authority, the same procedure would apply here (see above, p. 247, fn. 99).

¹⁰⁴ See BEAL, “Ordinary, Extraordinary and Something in between,” p. 125; According to canon 1277, acts of ordinary administration more important in light of the economic condition of the diocese are to be determined by

parochus to receive the prior counsel of the parish finance council for the valid performance of such acts of ordinary administration of greater importance. In this regard, Beal notes:

In fact, designating certain acts of parish administration administrative acts of greater importance for whose performance the pastor [*parochus*] must first consult with his finance council can be a critical way of ensuring accountability in a pastor's [*parochus*] stewardship of parish property without heavy-handed interventions from above by the diocesan bishop.¹⁰⁵

For the following acts of ordinary administration, the diocesan bishop might ask the *parochus* to consult the parish finance council, or he might establish them as acts of ordinary administration of greater importance requiring the advice of the parish finance council:

1. to hire or fire a parish finance officer or bookkeeper;
2. to add or terminate positions on the parish staff;
3. to fire parish employees;
4. to lease parish property;
5. to engage or change insurance carriers (c. 1284, §2, 1°), banks, or investment managers;
6. to establish policies concerning the rental or use of parish property and facilities;¹⁰⁶
7. to invest surplus parish revenue (c. 1284, §2, 6°) and endowed parish funds, with the consent of the local ordinary (c. 1305);
8. to reduce, moderate, or commute pious wills not involving Mass offerings (c. 1310); etc.

the diocesan bishop himself. After having designated the acts of ordinary administration of greater importance, he must consult his finance council and college of consultors before engaging in these activities and thereby ensures transparency and an atmosphere of trust regarding the financial situation and activities of the diocese (see *ibid.*, pp. 124-125; see RENKEN, "The *Parochus* as Administrator of Parish Property," p. 514, fn. 64).

¹⁰⁵ BEAL, "Ordinary, Extraordinary and Something in between," p. 125.

¹⁰⁶ See *ibid.*, p. 125, nos. 1-6.

4.4.1.4 – Acts of Extraordinary Administration of Parish Goods

After having heard his finance council, the diocesan bishop is able to designate acts of extraordinary administration for parishes (c. 1281, §1) by particular law either by including them in the statutes of parishes or by a separate general decree.¹⁰⁷ Particular law can stipulate that the *parochus* is either to seek the counsel or to obtain the consent of the parish finance council for these acts of extraordinary administration prior to receiving the written faculty from the ordinary. It may also require the *parochus* to submit to the diocesan bishop an indication of the votes of the councilors.¹⁰⁸ With regard to compiling a list of acts of extraordinary administration for parishes, Beal comments:

For diocesan bishops and their advisors, getting it “just right” entails, on the one hand, avoiding the temptation to be “too soft” by confining the discretion of the pastors [*parochi*] and other administrators too little to insure appropriate oversight of their stewardship while, on the other hand, resisting the urge to be “too hard” by so restricting the scope of pastors’ [*parochi*] authority that they must come to the bishop for the faculty to perform even the most routine functions. Getting it “just right” is important not only for preventing the hollowing out of the office of pastor [*parochus*] by reducing his role to that of executor of episcopal decisions but also for preserving both the reality and the perception of relative autonomy of parishes from the dioceses in which they are located. Unless the proper autonomy of parishes and other juridic persons from the diocese is adequately maintained, secular courts will be inclined to “pierce the corporate veil” and view parish property as available for settlements of claims against the diocese and vice versa.¹⁰⁹

Among the acts of extraordinary administration, Beal proposes the following seven acts performed by the *parochus* to be established by particular law as acts of extraordinary administration for parishes:

1. Unbudgeted expenditures in excess of the minimum amount set in accord with the norm of canon 1292, §1 for restricted alienation;
2. Opening, closing, or substantially modifying parish schools, cemeteries, and other parochial institutions;

¹⁰⁷ See *ibid.*, p. 122.

¹⁰⁸ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 514;

¹⁰⁹ BEAL, “Ordinary, Extraordinary and Something in between,” p. 123.

3. Erecting, raising or substantially modifying buildings on parish property;
4. Renovations of parish churches and their worship space;
5. Purchase of or acceptance of gifts of real estate;
6. Amending or revising parish canonical or civil statutes, and
7. Performance of any act of ordinary administration *maioris momenti* for which the parish finance council has given a negative consultative vote.¹¹⁰

4.4.1.5 – Acts of Alienation of Parish Goods

Diocesan particular law, in addition to the requirements of canons 1291-1294, may require the counsel or even the consent of the parish finance council prior to acts of alienation of parochial stable patrimony by the *parochus*. For example, although the conference of bishops is competent to establish amounts for the value of the parish stable patrimony beyond which the *parochus* cannot validly alienate it without permission (c. 1292, §1), diocesan particular law may, however, set even a lower amount which requires the *parochus* to obtain the consent of the

¹¹⁰ Ibid., p. 122. Renken gives another list of seven acts of extraordinary administration able to be established as particular law by the diocesan bishop: “(1) the legitimate designating of parochial stable patrimony (c. 1291); (2) the refusing of gifts of greater importance and the accepting of gifts burdened by a modal obligation or condition (c. 1267, §2); (3) the initiating or contesting of civil litigation (c. 1288); (4) the entering into contracts which may threaten the patrimonial condition of a parish (c. 1295); (5) the leasing of parish property (c. 1297 and norms issued by the conference of bishops); (6) the accepting of pious wills, whether mortis *causa* or *inter vivos* (cc. 1300-1307); and (7) the erecting a new parish church and the demolishing or selling an old church which the diocesan bishop has relegated to profane but not sordid use (c. 1222)” (see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 511). More or less in a similar fashion, Chiappetta proposes another list of acts of extraordinary administration (see L. CHIAPPETTA, *Il manuale del parroco: Commento giuridico-pastorale*, Roma, Edizioni Dehoniane, 1997 [= CHIAPPETTA, *Il manuale del parroco*], pp. 1077-1078).

As commentators suggest different lists of acts of extraordinary administration to be established by particular law, one would conclude that it is up to the diocesan bishop to compile carefully such a list according to the situation of his diocese in consultation with his finance council and prudently designate it as particular law for parishes in his diocese. For determining such acts which exceed the limits and manner of ordinary administration, Renken suggests the following factors be considered: “(1) the quantity involved; (2) the risk of loss; (3) the effect that the act can have on the substance of the temporal good; (4) the effect that the act can have on the revenue of the temporal good; (5) the endangerment of the stable patrimony; (6) the modality and complexity of the transaction; (7) the predicted financial return; (8) the value of the thing; (9) the duration of the time of execution; (10) the certitude of economic results; (11) the patrimonial and economic impact on the juridic person in question, etc.” (RENKEN, *Church Property*, pp. 180-181).

diocesan bishop, the consent of the parish finance council, and others concerned (e.g., donors).¹¹¹

It can also require the *parochus* to submit to the diocesan bishop an indication of the votes of the councilors (e.g., in the minutes of meetings of the parish finance council, or in correspondence given to the diocesan bishop).¹¹²

Finally, apart from these possible particular laws, if the diocesan bishop deems it necessary or prudent to enact any other particular law for the protection of parish property other than those already established in the universal law, he can freely do so according to the needs of local circumstances in his diocese inasmuch as they are not contrary to the universal law (see c. 1276).

4.4.2 – Diocesan Special Instructions to Promote Collaboration between the *Parochus* and the Parish Finance Council in the Protection of Parochial Goods

Canon 34 reads:

§1. Instructions clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them. They are given for the use of those whose duty it is to see that laws are executed and oblige them in the execution of the laws. Those who possess executive power legitimately issue such instructions within the limits of their competence.¹¹³

¹¹¹ See RENKEN, “Particular Laws on Temporal Goods,” p. 452; see HUELS, *Pastoral Companion*, pp. 419-420.

¹¹² See RENKEN, “Particular Laws on Temporal Goods,” p. 452.

¹¹³ The *coetus* working on “General Norms” intended to follow the *motu proprio Cum iuris canonici Codicem* of Benedict XV in drafting the new canon on instructions: “Rev. mus. Secretarius adnotat nullam haberi petitionem ut textus reformetur et Coetus qui textum paravit praecise voluit executionem dare praescripto M.P. *Cum iuris canonici Codicem* Benedicti Pp. XV diei 15 Sept. 1917” (*Communicationes*, 23 [1991], p. 174).

The *motu proprio Cum iuris canonici Codicem* stipulated the juridic nature of an instruction as follows: “[...] to issue *Instructions*, as need arises, whereby those prescriptions [of canons] may be more fully explained and appropriately enforced. These documents are to be drawn in such a manner that they shall not only be in reality explanations of and complements to the canons, but also that they may be clearly seen to be such; and therefore it will be very helpful to cite the canons themselves in the text of these documents” (BENEDICT XV, *Motu proprio Cum iuris canonici Codicem*, 15 September 1917, in *AAS*, 9 [1917], pp. 483-484, English translation in *CLD*, vol. 1, p. 56).

J.R. Schmidt comments on the competent authority to issue instructions: “by nature the instructions have functioned since their inception in an administrative and executive order [...] to put the law into practice.” Here, “the administrative power is considered in relation to executive power as genus to species.” It is a *decreta executoria*

§2. The ordinances of instructions do not derogate from laws. If these ordinances cannot be reconciled with the prescripts of laws, they lack all force.

§3. Instructions cease to have force not only by explicit or implicit revocation of the competent authority who issued them or of the superior of that authority but also by the cessation of the law for whose clarification or execution they were given.

Huels explains that “instructions are norms of executive power that clarify or elaborate on laws and determine the approach to be followed in implementing them. Instructions may not derogate from laws and cease to have force when the laws on which they are based are revoked. An instruction (*instructio*) is not to be confused with the General Instruction (*institutio*) of the Roman Missal, which is a legislative document.”¹¹⁴ Canon 34 addresses the purpose, the scope, the competent authority, and the cessation of instructions. Firstly, the purpose of instructions is to clarify the prescripts of laws, elaborate on, and determine the methods to be observed in fulfilling them. Secondly, with regard to its scope, unlike a general executory decree, instructions are not given for the community at large, but are directed to those whose duty is to execute the law.¹¹⁵ Thirdly, the competent authorities to issue instructions are those who have executive or administrative power of governance.¹¹⁶ An instruction binds subordinate administrators who are

which seeks the observance and the execution of an existing law (see J.R. SCHMIDT, “The Juridic Value of the *Instructio* Provided by the *motu proprio Cum iuris canonici Codicem*,” in *The Jurist*, 1 [1941], pp. 292-298).

¹¹⁴ See HUELS, *Pastoral Companion*, p. 448.

¹¹⁵ A. Mendonça compares an instruction to a general executory decree: “The instructions bear some clear resemblances to general executory decrees: they may be issued by those with executive authority (see cc. 136-144) within the limits of their competence (see c. 31, §1); they must conform to the law and cannot derogate from the law (see c. 33, §1); they cease to have effect by implicit or explicit revocation, or by the cessation of the law which they were intended to explain and execute (see c. 33, §2). They are also distinctly different from general executory decrees: they are not given directly to the community, but to those whose responsibility it is to execute the law for the community (see c. 32); they do not require promulgation, nor is there any *vacatio legis* (c. 31, §2)” (A. MENDONÇA, “Commentary on Canons 1-95,” in *CLSGBI Comm*, p. 28).

¹¹⁶ If the bishop issues a general decree, without specifying whether it is legislative or executive, the presumption ordinarily is that it is legislative. However, the same thing cannot be applied for an instruction. “An instruction, by nature and form, is an act of executive power. Even if issued by a legislator, or approved by him in *forma specifica* the presumption ought to be that it remains an administrative document, unless the contrary is evident” (J.M. HUELS, “Interpreting an Instruction Approved in *forma specifica*,” in *StC*, 32 [1998], p. 15).

responsible to execute or apply the law in concrete circumstances.¹¹⁷ Finally, an instruction lacks force in three ways: (1) Since instructions are supposed to clarify the law, if they derogate from the laws they seek to clarify and execute, they lack all force; if there is anything in them contrary to the law, the law prevails; and the contrary provision of an instruction has no force. (2) If the law on which an instruction is based ceases to have force, the instruction itself ceases to have force *ipso iure*, or at least that part of it relating to the law in question. (3) They also cease to have force when revoked explicitly or implicitly by the same authority who issued them or the superior of the authority who issued the instruction.¹¹⁸ Moreover, since instructions are intended to explain and clarify a law, they are dependent upon a prior law for their existence and effect.¹¹⁹

Since instructions serve as a means of vigilance over *parochi* as administrators of the ecclesiastical goods of parishes, (c. 1276, §§1-2),¹²⁰ in order to promote collaboration between the *parochus* and the parish finance council in the protection of parish property, this section examines issuing special instructions concerning the duties of the *parochus* as administrator: i.e., acts of acquisition, ordinary administration, extraordinary administration, and alienation of parish goods.

¹¹⁷ See M.R. MOODIE, "Commentary on Canons 29-58," in *CLSA Comm2*, p. 100.

¹¹⁸ See M.J. CIÁURRIZ, "Commentary on Canons 29-34," in *Exegetical Comm*, vol. I, p. 465; see HUELS, "Interpreting an Instruction Approved *in forma specifica*," p. 9.

¹¹⁹ See MOODIE, "Commentary on Canons 29-58," p. 100. Nevertheless, an exception is an instruction approved *in forma specifica* by the Roman Pontiff, which has a legislative force in the sense that it would be able to make a new law or to derogate from an existing law; e.g., the 1997 Instruction *Ecclesiae de mysterio* (see HUELS, "Interpreting an Instruction Approved *in forma specifica*," pp. 5-46; see J.H. PROVOST, "Approval of Curial Documents *in forma specifica*," in *The Jurist*, 58 [1998], pp. 213-225).

¹²⁰ In this regard, Schouppe explains that the diocesan bishop can intervene in three principal ways into the administration and protection of ecclesiastical goods of the parish by the *parochus*: (1) by legislation of particular laws; (2) by issuance of special instructions; (3) by vigilance and control (primarily through authorizations (grant or denial) and visits; secondarily in case of negligence of the administrator) (see SCHOUPPE, *Droit canonique des biens*, p. 195; see also LONGHITANO, "L'amministrazione dei beni," pp. 95-97).

4.4.2.1 – Duties of the *Parochus* as Administrator of Parish Goods

The local ordinary may issue special instructions to describe the manner of implementing the following duties of *parochi* as administrators for the protection of parochial goods.¹²¹

4.4.2.1.1 – Inventories of Parochial Property

Since canon 1283, 2^o-3^o obliges the *parochus* to prepare the parish inventory for the purpose of protecting the goods of the parish, the special instruction may explain that the *parochus* as administrator is:

1. to conduct the inventory according to the form provided by the diocesan finance officer;
2. to seek an estimation of the value of the property and to enter it in the inventory;
3. to update the inventory every year;¹²²

¹²¹ Should the special instruction insist on the requirement of seeking counsel or obtaining consent of the parish finance council by the *parochus* in this section, one would presume that this requirement has been already established by diocesan particular law. Moreover, commenting on parish financial administration, Chiappetta proposes a Decalogue of Transparency, i.e., a set of ten duties that are necessary to be observed by *parochi* for the transparency of financial administration in parishes (1) to make an exact interpretation about the ownership of parochial goods so that no private person may seize them; (2) to make an accurate distinction between the goods of the parish and personal goods of the *parochus*; (3) to make a careful distinction between the offerings given to the parish and to the *parochus*; (4) to make an effective use of tenders for any contract determined for the purpose of the parish; (5) to draw up a budget in the beginning of the year; (6) to keep well-organized receipts and documents of the parish; (7) to draft carefully the annual reports (to the diocese and to the faithful); (9) to observe the applicable civil laws (10) to function and to consult the parish finance council effectively (see CHIAPPETTA, *Il manuale del parroco*, p. 1076). Moreover, for examples for some possible duties of the *parochus* as administrator to be addressed by special instructions, see RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 517.

¹²² As already stated, it is presumed that all goods in a parish church and rectory belong to the parish unless the *parochus* has declared the personal goods in a special inventory. Thus, when a *parochus* is transferred to a new parish, he may bring with him only those goods that have been indicated (and are) personal; the other goods (furniture, office equipment and supplies, household utensils, and so forth) must remain with the parish. It is therefore strongly recommended that the *parochus* prepare a special inventory of his personal items that have a significant monetary or sentimental value. A copy of this inventory is also to be sent to the concerned diocesan office. This will assist the parish in the proper transfer of personal items to a priest’s family in the event of his death or disability (see ARCHDIOCESE OF BOSTON, “Parish Finance and Administration Policies,” 31 March 2010, p. VI, in <http://www.bostoncatholic.org/parishfinanceandadministrationpolicyandproceduremanual2010.pdf>).

Moreover, in view of a careful application of the laws on alienation, it is important that goods designated as part of the stable patrimony of the parish (such as lands, buildings, funds for a specific purpose, and so forth) are to be clearly distinguished from those that are used for day-to-day operations (see ARCHDIOCESE OF OTTAWA, *Administration Manual*, Canada, 1996, p. 32).

4. to submit to the diocesan finance officer each year the results of the updated inventory together with the annual parish report of administration/annual parish financial report (cf. cc. 1284, §2, 8°; 1287, §1);¹²³
5. to submit the inventory to the parish finance council for its review before he delivers it to the finance officer;
6. to retain a copy of the updated annual inventory in the archive of the administration together with other books of receipts and expenditures (cf. c. 1284, §2, 7°) and other documents and records (cf. c. 1284, §2, 9°);
7. to include any notations relating to either civil law requirements or limitations which may have been placed on immovable or movable goods (cf. c. 1284, §2, 3°);¹²⁴
8. to ensure that inventories ascertain the ownership of property of the parish;
9. to submit it in a timely manner to the subsequently appointed *parochus* or parish administrator for his review, updating, correction, and signed approval; etc.¹²⁵

4.4.2.1.2 – The Annual Parish Budget

If diocesan particular law had established that each parish is to prepare a budget of income and expenditures according to the strong recommendation of canon 1284, §3, the instruction may state the following:

1. As budgeting is very helpful in the pastoral planning of the parish, according to the particular law of the diocese, each parish shall prepare a financial budget for the upcoming fiscal year at least two months prior to the beginning of the fiscal year and in anticipation of filing annual parish financial report to the diocese.
2. The standard format/sample forms for such budget can be downloaded from the diocesan website or to be obtained from the office of the diocesan finance officer.
3. As the budget should be balanced, it is understood that budgeting for deficit operations is not permitted, except in the case of major capital expenditures that have been duly authorized.
4. The parish financial council must be involved for its input in developing the annual budget (if particular law has so mandated it).¹²⁶ As per particular law, it would instruct that the final budget

¹²³ If particular law had so mandated, then the instruction would demand its submission to the diocesan finance officer and the prior involvement of the parish finance council as mentioned in nos. 4 and 5.

¹²⁴ For example, a church building might have been designated a national historic landmark or the goods given to the parish may have restrictions attached to their use or disposition by the donor of the goods (see DiNARDO, “The Inventory of Property,” p. 155).

¹²⁵ See *ibid*; see O’BIEN, “Instructions for Parochial Temporal Administrators,” p. 140.

must be submitted to the diocese for approval with signatures of the *parochus* and the members of the finance council whom he consulted in the preparation of the budget. The members of the finance council should also participate in the communication of the annual budget to the parish community preferably before the beginning of the fiscal year or early in the new year.

5. During the fiscal year, the *parochus* and the finance council must review actual revenues and expenditures against budgeted amounts on a monthly basis. Any material variance should be investigated and resolved as soon as possible.
6. By analogy, if particular law had so stipulated, budget for parishes shall be examined and approved by the diocesan finance council (see c. 493). No extraordinary expenses foreseen on the budget can be undertaken before the approval. If necessary, the competent diocesan authorities shall meet with the *parochus* and the parish finance council to examine certain details of the budget before it is submitted for definitive approval.¹²⁷

4.4.2.1.3 – The Annual Parish Financial Report

The instruction would prescribe the manner of presenting the annual parish financial report to the local ordinary (c. 1287, §1). It may simply explain that the financial report is a document in the prescribed format to be forwarded to the diocese, listing revenues and expenditures of the previous financial year. Each parish is to submit a complete financial report¹²⁸ to the diocese annually on or before the date that is determined by the diocese. The annual financial report is to be reviewed by the parish finance council. As per particular law, it would instruct that it must be signed by the *parochus* and by the finance council members who reviewed it.

Moreover, when there is a change of *parochus* or administrator, he may be asked to forward the report to the competent diocesan authorities covering the period from the beginning

¹²⁶ If the diocesan particular law had stipulated the involvement of the parish pastoral council, then the special instruction would also require the same.

¹²⁷ See ARCHDIOCESE OF OTTAWA, Protocol, pp. 10-11; see *idem*, *Administration Manual*, pp. 44-45.

¹²⁸ A complete financial report may consist of the financial statements, parish annual administration report (c. 1284, §2, 8°), budget, and other related documents (e.g., annual parish financial questionnaire, annual parish statistical survey) sent by the diocese (see ARCHDIOCESE OF OTTAWA, Protocol, p. 11). For the contents of the financial report, see in this dissertation: chapter II, pp. 99-100, fn. nos. 71-72.

of the year to the time of the departure of the *parochus* or administrator. Feedback shall be provided annually on the report and suggestions offered for sound future administration. For this reason, the diocesan authorities will be available to meet the *parochus* and the parish finance council when necessary.¹²⁹

4.4.2.1.4 – The Parish Financial Report to the Faithful

The instruction may prescribe the manner of rendering an account to the faithful about their offerings to the parish (c. 1287, §2). This report should correspond to the annual financial report sent to the local ordinary.¹³⁰ If particular law had so stipulated, it could reinforce the fact that the financial report is to be made to the parish pastoral council at least twice a year. In addition, a written year-end financial report is to be presented to the entire parish community as soon as possible after the end of the fiscal year. As per particular law, it would instruct that the *parochus* and the parish finance council chair are to sign this report, verifying that the report was reviewed by the parish finance council members whose names should also be listed on the report,¹³¹ and a copy of the signed annual report to parishioners should be sent to the diocesan finance office. Copies of the annual report should be made available to all parishioners.¹³²

¹²⁹ See *idem*, *Administration Manual*, p. 71.

¹³⁰ It should include the activity of all the bank accounts of the parish, school, cemetery, and other related organizations, cash balances, any outstanding bills, loan balances, etc. In addition, explanations should be given for significant differences between actual and budgeted amounts. Reports with an operating deficit (that is greater than the planned budget by more than \$10,000) should contain an explanation (see ARCHDIOCESE OF BOSTON, “Parish Finance and Administration Policies,” p. VI-2).

¹³¹ See *ibid.*, p. VI-3.

¹³² In this regard, Thomas explains that financial reports to the parish might be published in the weekly parish bulletin of the amounts collected in the previous week’s collection(s). However, the annual report could be a listing of major sources of income and expenses and a narrative by the *parochus* or the parish finance officer or

4.4.2.1.5 – Parish Records of Income and Expenditures

Canon 1284, §2, 7^o obliges the *parochus* to keep well-ordered parish financial books of receipts and expenditures. The instruction may indicate the objectives of parish financial records: (1) they help summarize the financial activity of the parish accurately and completely in a concise and consistent manner; (2) they help the *parochus* understand the sources and uses of funds at the parish level; (3) they are useful references to provide information for the preparation of a parish budget, annual financial report, and annual report to parishioners;¹³³ (4) obviously, they provide for a transparent financial administration.

Then, it could stipulate certain accounting principles for receipts/revenues and expenses/liabilities:

1. Revenue is to be recorded when received, not on the basis of a pledge or other commitment;
2. Receipts over which the parish has no discretion as to their use (e.g., donations for special collections, offerings for the poor) represent custodial transactions which are to be recorded as liability (custodial obligation) until paid. This includes receipts from national and diocesan special collections and payments for mass intentions;
3. Expenses are to be recorded when incurred (upon receipt of merchandise and when services are rendered) and recorded as a liability (accounts payable) until paid.
4. Payments that will be reimbursed are to be recorded to accounts receivable until reimbursement is received. This includes sales taxes paid to a vendor that are eligible for refund from the federal or provincial governments.
5. The principal amount of all loans payable is to be recorded as a liability and reported on the balance sheet. Principal payments are to be recorded as indicated on the annual financial report to diocesan administration.¹³⁴

Finally, it may elaborate on the format for parish records of income and expenses.¹³⁵

chair of the finance council. The report can be given in both oral and written form (see THOMAS, “Financial Reports to the Faithful,” p. 169). See also PAPROCKI and SAUDIS, “Annual Report to the Diocesan Bishop,” p. 181.

¹³³ See ARCHDIOCESE OF BOSTON, “Parish Finance and Administration Policies,” p. VI-1.

¹³⁴ ARCHDIOCESE OF OTTAWA, Protocol, p. 10.

4.4.2.1.6 – Internal Audit of Parish Financial Records

As a practical application of canon 1276, if the diocesan particular law had imposed a regular internal audit and a review of parish financial records, then the instruction may explain the manner of conducting the audit and the internal review of parish financial practices.¹³⁶ The diocesan bishop will be able to fulfill this role by entrusting the financial officer or the chancellor, with this function (c. 1278). The finance officer/chancellor uses auditors to carry out this supervisory function of the diocesan bishop by auditing the books of all parishes and their related entities (e.g., parish schools, cemeteries, etc.). The instruction could state the following:

1. Parishes, schools, cemeteries, and the other related entities will be audited at least once every three years. The audit shall be conducted in accordance with the Manual “Internal Audit Procedures for Parish/School/Cemetery.”
2. When possible, audit findings should be corrected during the audit and noted in the final audit report.
3. Audit personnel will conduct an exit interview at the conclusion of each audit to discuss audit findings and solicit responses from the pastor [*parochus*]/administrator. A written draft of the report will be delivered to the pastor [*parochus*] within 15 business days of the completion of the audit fieldwork and the pastor [*parochus*] will have 30 days to submit any written comments to be included in the final report.
4. Following the completion of the audit, a composite numerical rating will be assigned ranging from ‘1’ to ‘5.’ A ‘1’ rating indicates that the entity is in strong compliance with policies and procedures, that audit findings are relatively minor and any weakness can be handled in a routine manner. A ‘5’ rating indicates that the entity is essentially noncompliant with policies and procedures, may have violation of laws or procedures, and does not demonstrate effective internal control over financial operations. This system will help the diocese determine which entities may require additional assistance and support from the diocesan offices or which may be subject to more frequent follow-up audits.
5. Material findings, noted as such in the final audit report, and not corrected during the audit report, or satisfactorily addressed in the entity’s written response, may be subject to follow-up visitations. The Chancellor may request a meeting with the pastor [*parochus*] and the parish finance council to resolve the outstanding issues.

¹³⁵ For a guide for the format of parish accounting books, see *idem*, *Administration Manual*, policy no. 18, pp. 1-14. Furthermore, the instruction may explain “the manner of maintaining parochial archives on property rights” (RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 517).

¹³⁶ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 518.

6. Audit findings relating to Form W-2 Wage and Tax Statements and Form 1099 MISC Miscellaneous Income and related tax forms will require immediate resolution and possibly amended tax filings.
7. Copies of final audit reports shall be forwarded to the Episcopal Vicar, Vicar General, Chancellor, and Chairman of the Diocesan Audit Sub-Committee. In the case of parishes staffed by religious order priests, a copy of the final audit report is to be sent to the Provincial of the Order.¹³⁷

4.2.1.7 – Civil Incorporation of Parishes

Since the Code of Canon Law clearly envisions a system whereby civil laws are observed to protect the ownership of parish property (c. 1284, §2, 2^o), the duty to protect this property civilly also rests with the *parochus* as administrator of the parish. As per particular law of the diocese, the instruction would explain the manner of civil incorporation of parishes where it is permitted by the civil legal system. The instruction may direct parishes that “the civil charter or statutes must be parallel to those of the Code as much as possible. The rights of full *dominium* as provided by the Code (c. 1254, §1) must also be upheld in the civil statutes of incorporation.”¹³⁸

The instruction may direct parishes as follows:

1. Each parish in the diocese is to be incorporated separately under statute (statute number) of (name of the state) state law.¹³⁹ These corporations are “non-stock, religious” corporations. Like any other corporation, these parish corporations may own property, hire employees, file tax returns, etc;
2. Like any corporation, each parish corporation should have its own bylaws which direct certain aspects of its operation. Parish corporation bylaws should be approved by the diocesan bishop. Parish corporation bylaws may not contradict federal law, state law, canon law (universal or particular law);

¹³⁷ ARCHDIOCESE OF BOSTON, “Parish Finance and Administration Policies,” pp. IVI-1–IV-2.

¹³⁸ OMOROGBE, *Administration of Ecclesiastical Goods*, p. 298. Since the practice of a diocesan corporation sole, whereby all property in the territory of the diocese, including that of parishes, is held by the office of the diocesan bishop, is contrary to canon law, this arrangement does not recognize the right of full *dominium* of each parish. Since such provisions are contrary to canon law, instructions cannot direct administrators to comply with such a norm (see c. 34), unless perhaps when there are overriding considerations (e.g., where the State does not allow separate incorporation of parishes) (see *ibid*).

¹³⁹ For example, see Statute 187 of Wisconsin state law, in <http://statutes.laws.com/wisconsin/187>.

3. Under civil law, each parish corporation is run by a board of five directors, also known as trustees, consisting of the bishop of the diocese, the Vicar General of the diocese, the *parochus*, and two lay people chosen from the parish; this board of directors designates officers. In each parish, the officers consist of a president – this is always the diocesan bishop; a vice president – this is always the *parochus*; a treasurer – this is always one of the lay trustees; and a secretary – this is always the other lay trustee.¹⁴⁰
4. Each parish corporation is treated as a not-for-profit, tax-exempt organization by federal and state governments. Since this occurs through some blanket rulings in state and federal law, it does not require the parish to file its own individual tax exemption paper work. For the proof of tax exempt status, a parish corporation should provide the vendor with a copy of the Official Catholic Directory (OCD or Kennedy) page¹⁴¹ on which the parish appears and a copy of this group ruling from the Internal Revenue Service (this ruling says that every officially recognized Catholic parish is automatically tax exempt. A parish is “official” if it is listed in the OCD) (for the USA, not for Canada).
5. When it is necessary to explain (e.g., to a bank) the authority of the *parochus* over the parish corporation, the following documents would be handy in such situations: (a) Articles of Incorporation (which establish the legal existence and identity of the parish as a corporation); (b) Bylaws (which establish the overall structure of the parish corporation and identity of its officers; the diocesan bishop is *ex-officio*, the president of the corporation; the *parochus*/administrator is *ex-officio*, the vice president of the corporation and holds fiscal authority in the corporation); (c) Appointment Letter (which establishes that a specific priest, as the *parochus* or administrator of the parish, is the director and officer of the office of the corporation with fiscal authority over all of the corporation’s assets; any financial accounts using parish’s tax IDs are therefore under his authority).
6. The board of directors of each parish corporation must meet at least once annually wherein they elect officers to fill the roles of treasurer and secretary and transact other business. The secretary records the minutes of these meetings and distributes copies to the other members of the board, and forwards a copy of the approved minutes of each meeting to the Chancellor of the diocese.
7. Three members of the board of directors constitute a quorum at all meetings for the transaction of business. Such corporate action may also be authorized by written consent signed by all members of the board without a meeting. It is not necessary for the bishop to attend all meetings of the parish corporation or the parish finance council. However, depending on the provisions of the articles of incorporation or on the by-laws, major decisions regarding parish finances, such as fundraising, real estate transactions, capital expenditures, and other specific activities as prescribed by universal or particular law, could require the explicit consent/permission of the diocesan bishop or of the ordinary.¹⁴²

¹⁴⁰ The bishop and the *parochus* also fulfill their respective roles according to canon law.

¹⁴¹ In this regard, the Diocese of Yakima states: “Organizations included in the Official Catholic Directory (OCD) are automatically covered by the USCCB Group Ruling establishing tax-exempt status. Any newly-created or newly-acquired Catholic organization that wishes to qualify for exemption from federal tax under Section 501(c)(3) of the Internal Revenue Code by virtue of inclusion in the USCCB Group Ruling must file an application with the Diocese of Yakima Pastoral Center for inclusion in the OCD. In addition, any Catholic organization that is currently listed in the OCD but that reincorporates or otherwise changes its corporate form (i.e. from association to trust or corporation) is considered a new legal entity for IRS purposes and must file a new application for inclusion in the OCD” (DIOCESE OF YAKIMA, “United States Catholic Conference Group Ruling and the Official Catholic Directory [A Sample of Kennedy Directory, 2012 – Diocese of Yakima],” in <http://www.yakimadiocese.org/files/ApendixJ-USCCGroupRulingIRSLetterKennedyDirectory>).

¹⁴² See DIOCESE OF MADISON, “The Parish Corporation,” in <http://www.madisondiocese.org/parishes/>

4.4.2.2 – Acts of Acquisition of Parish Goods

The diocesan special instruction may describe the manner of implementing some acquisition of goods by the *parochus* as administrator for the protection of parochial goods.

4.4.2.2.1 – Sunday Collections/Regular Parish Support

In order to avoid any kind of misappropriation in handling collections, the instruction may particularly address how routine parish collections for regular parish support are to be secured, counted, and deposited.¹⁴³ It may instruct the manner of collecting and securing parish revenue as follows:

1. Collection receipts must be handled by no less than two persons from the time of collection until the time of deposit in the parish bank account;
2. From the time before the collection proceeds are brought up in the procession of offerings in the church, or before they are sent directly from the church for counting, the parish finance council is to make certain that collection proceeds must be put in a sealed, tamper-evident envelope or collection bag as soon as possible;
3. Cash/checks/envelopes must never be removed from the collection for any purpose;
4. The locked or sealed collection bags are to be placed in a secured area; i.e., either in a safe or locked cabinet in the sacristy or parish office. Moreover, parish collections or other receipts must not be taken home or elsewhere by anyone. They must remain on parish property;
5. The collection is to be counted and recorded by at least two designated, unrelated persons. If a designated counter is not available, then a substitute counter must be assigned;
6. The collection bags must be unlocked or unsealed in the presence of, at least, two unrelated counters. Members of the count team must account for all the collection bags used and if any bag is missing or there is evidence that any bag was tampered with, a report must be made to the *parochus* immediately;
7. Checks are to be endorsed by using a rubber deposit stamp designed for “deposit-only” purposes. Besides, parishioners’ envelopes must be verified as to amounts and checks which are not in envelopes should be photocopied;

The ParishCorporation.aspx. The instruction might also explain the relationship between the parish finance council and the parish corporation board.

¹⁴³ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 517, fn. 68.

8. The cash from the poor box and votive candles must be collected at least weekly; more often in those churches where there are numerous visitors throughout the week. The principle of collection by two persons is to be followed as well as the safeguarding of receipts in tamper-evident bags kept in a safe or locked cabinet;
9. Collections and other parish receipts must be deposited as soon as possible after receipt. For example, Sunday collections must be counted and deposited no later than the next business day;
10. The parish finance council is to make sure that a written record of the count and the deposit must be signed by at least two unrelated counters, given to the parish bookkeeper and kept in parish files.¹⁴⁴

4.4.2.2.2 – Restricted Donations and Pledges

Parishes might receive restricted donations (e.g., for evangelization, missionary work, faith formation, education, charity, building fund, facilities improvement, etc.). Besides, parishes could ask for pledges for a project, e.g., for building faith formation classes, a multi-purpose hall, etc. As the redemption of these pledges would ordinarily go on for a few years, the instruction may cover the accounting and reporting of this type of acquisition of goods:

1. Careful records should be kept for each individual restricted gift from the time of acceptance to the time the gift has been expended;
2. A file should be set up in the parish office for each individual gift (even if the donor restrictions are received orally), including the original donor letter and copies of all transaction activity concerning the gift; these records should be kept on file at least five years after the restriction has been met and the gift expended;
3. The parish should report all activity for each restricted donation in a separate account even if the gift and subsequent expenditures occur in multiple years. The amount of the donation should remain segregated in a separate account until the restriction has been satisfied or the gift fully expended; the parish should report this fact in writing to the donor.

¹⁴⁴ See ARCHDIOCESE OF OTTAWA, Protocol, pp. 6-7; see DIOCESE OF MEMPHIS, *Parish Accounting Manual*, December 2006, pp. 1-6, in <http://www.cdom.org/administrative/documents/ParishAccountingManual.pdf>; see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, June, 2010, p. 8, in <http://www.diocese-sacramento.org/PDFs/ParishFinancialMgtHandbook.pdf>. The parish finance officer (or designee) is to monitor the entire money counting process. The parish finance council should monitor and periodically review the procedures followed by the parish finance officer (or designee) and the volunteer counting teams (see DIOCESE OF STOCKTON, "Parish Accounting and Policies," 7 May 2008, p. 13, in <http://dioceseofstockton.org/wp-content/uploads/2013/01/Parish-Accounting-Financial-Policies.pdf>). For more information on securing Sunday collection and accounting guidelines, see M.W. RYAN, "Guidelines for Securing a Church's Sunday Collection," 2010, pp. 1-13, in http://www.churchsecurity.info/index_files/Page.html.

4. If the gift has not been expended, but the restriction has been satisfied, the remaining amount should be reclassified to an unrestricted account.
5. This documentation should be sent to the finance office with the annual financial report.
6. Moreover, pledges for the purpose of a parish should be supported with pledge cards only, which should be kept and filed until the end of the drive. Each family is to have a separate ID number. Once initial pledges are received, the parish should run and save a pledge status report until the pledge drive is complete. Pledge account statements should be compiled and sent to parishioners no less than twice a year.¹⁴⁵

4.4.2.2.3 – Special Collections

The instruction may expound the manner of requesting special parish collections. It might say that special collections listed¹⁴⁶ in the diocesan directory may be taken up in whatever way the *parochus* deems more suitable for his parish. The usual method is to hold a second collection. Every year the dates of authorized second collections will be sent to the parishes in time to notify the envelope companies for printing. Monies collected should be deposited in the parish account and a check written to the diocese with the correct number in the parish accounting manual chart of accounts.¹⁴⁷ The check should be sent to the diocesan curia immediately after the collection is taken up and deposited in the parish account. Any other collection not listed in the diocesan

¹⁴⁵ See DIOCESE OF MEMPHIS, *Parish Accounting Manual*, pp. 10-15. The restriction can be temporary or permanent. In order to use the money as stipulated by the donor, authorization to use the money must be in writing from the donor; for example, a contribution received from a donor who has sent a letter restricting its use to the purchase of a particular statue to be placed in the parish sanctuary in memory of a family member. Or, a gift received from a donor accompanied by a letter stipulating that the parish should invest the amount and use only the investment's income for Catholic school tuition for local underprivileged children (see *ibid.*, p. 10).

¹⁴⁶ For instance, as a practical application of canon 1266, the USCCB endorses the following special collections which the local ordinary would order for the diocese: (1) Church in Latin America; (2) Aid to the Church in Central and Eastern Europe; (3) Catholic Relief Services; (4) Catholic Home Mission Appeal; (5) Catholic Communication Campaign; (6) Peter's Pence; (7) Catholic Campaign for Human Development; (8) Retirement Fund for Religious; (9) Pastoral Solidarity Fund for the Church in Africa; (10) Black and Indian Missions; (11) Operation Rice Bowl; (11) Holy Land; (12) The Catholic University of America; (13) World Mission Sunday (see USCCB, "National Collections Schedule for 2013-2014," in <http://www.usccb.org/about/national-collections/collection-administration/upload/2013-2014-Collection-Schedule.pdf>).

¹⁴⁷ See DIOCESE OF TYLER, "Personnel and Finances," April 1997, p. O-15, in <http://www.dioceseoftyler.org/pastoral/finance.pdf>.

directory must not be taken up during Mass (but, at the discretion of the *parochus*, may be taken up at the doors of the church after Mass).¹⁴⁸ As per particular law, if the *parochus* wants to initiate any other special collection, this requires prior consultation with the parish finance council and the permission of the local ordinary (c. 1266).

4.4.2.2.4 – Fundraising Activities in Parishes

As a general rule, fundraising by a parish is limited to parish operations, capital expenditures, and to collections ordered or requested by the local ordinary. The instruction may illustrate the manner and the extent of fundraising activities and the corresponding involvement of the parish finance council:

1. According to the prescripts of canon 1265, §1, no physical or private person can begin a fundraising activity without written permission of the local ordinary. Therefore, fundraising must not take place for individuals, or for organizations outside of the parish which do not have prior written permission from the local ordinary;¹⁴⁹
2. *Parochi* must not promote fundraising projects which could be interpreted as projects which they are personally promoting, whether it be for a person or community located in the diocese or elsewhere;
3. Any major fundraising proposal in the parish must be first discussed with the parish finance council and then it must be submitted to the office of the Episcopal Vicar for examination and approval. Exempted are annual feasts which are traditional in a parish;
4. Where they hold bingo and other games of chance, bazaar/carnival, food sale, etc. on church premises, as a fundraising activity for the parish, they should take into consideration three areas:

¹⁴⁸ See ARCHDIOCESE OF OTTAWA, *Administration Manual*, p. 50.

¹⁴⁹ Morrissey notes that canon 1265 is a very practical norm governing fundraising since the requirement of obtaining permissions from their proper ordinary and local ordinary helps avoid potential abuses, both on the part of individuals and on the part of certain organizations and institutions. Such a restriction does not apply to public juridic persons but it does apply to their members. However, as already noted, difficulties arise when it is not always clear whether a given activity comes under this norm: for instance, if Catholic parents wish to raise funds for the parish school (e.g., sports activities), is this covered by this canon? Or, what if those who raise the funds for a Catholic activity wish to administer them personally, and not entrust them to the parish? It follows, then, that when permission is granted to undertake a fundraising activity, the modalities of administration should be clearly determined. Otherwise, it might be preferable not to grant permission (see MORRISSEY, “Acquiring Temporal Goods,” p. 597). Moreover, if the organization is a pontifical/diocesan religious institute or society of apostolic life, for the procedure for obtaining the required permissions, see in this dissertation: chapter III, pp. 172-173, fn. 36.

- 1) proper planning, 2) compliance with federal, state, and local regulations, 3) proper cash management, accounting, and record keeping;¹⁵⁰
5. Where such fundraising games are held, separate accounting shall be kept for all revenues and expenditures. They become restricted funds unless provided otherwise.
6. The permission to raise funds carries with it the obligation to provide to the office of the Episcopal Vicar a periodic report on the results of the campaign and the use of the proceeds.
7. Any change in the use of the funds so collected must be approved beforehand by the Episcopal Vicar.
8. Revenue received from such activities is exempted from the diocesan administration tax. However, revenue should be listed in the annual parish financial statement (c. 1287, §1) and the faithful shall, by some appropriate means, be given an account of the results of the fundraising activity (c. 1287, §1).¹⁵¹

4.4.2.2.5 – The Offerings Given to *Parochi*

Since sacramental offerings given to administrators are presumed to have been given to the parish according to canons 1267, §1 and 531, the instruction may clearly address this in order to avoid any possible abuse. It would simply explain that the amount of the offerings set by the provincial bishops received in the parish on the occasion of administering a sacrament or sacramental is to be placed in the general parish revenue account, even if someone not assigned in the parish performs these functions, and those who perform the function can receive their due remuneration allotted for the same. Priests may retain personal offerings and gifts provided the

¹⁵⁰ For example, the Diocese of Bridgeport notes that accurate record keeping is essential if parishes are to comply with Connecticut, local and federal requirements: “Parishes are required to generate a report on any fundraising event to the pastor (*parochus*), the parish finance council, the parish pastoral council, and parishioners, and document the results of each fundraising activity. Reports should be used to determine if the event achieved the budgeted net proceeds target, and how to modify the event to achieve the best results going forward. Parishes should prepare the required Connecticut State reports within the specified time period – usually 10 to 30 days after the event, depending on the type of fundraiser” (DIOCESE OF BRIDGEPORT, *Parish Finance Manual*, chapter 8: Parish Fundraising, p. 17, in http://www.bridgeportdiocese.com/files/finances/chapter_8_final.pdf).

¹⁵¹ See ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 74-75. For information on parish fundraising activities, see DIOCESE OF BRIDGEPORT, *Parish Finance Manual*, pp. 1-17.

intention of the donor to give to *parochi* is certain; however, income tax receipts to the donors cannot be issued for such personal gifts.¹⁵²

4.4.2.2.6 – Goods Acquired from Modification of Parishes

The merger, division, or suppression of parishes involves distribution of goods according to canons 121-123. The instruction might instruct *parochi* to see to it that the prescripts of these canons are properly observed for the allocation of goods when the diocesan bishop merges, divides, or suppresses parishes (c. 515, §2).¹⁵³ The bishop might prudently involve the concerned *parochi* and parish finance councils in these modifications.

4.4.2.2.7 – Goods Acquired through Prescription

The Code provides norms regulating prescription for acquiring (or losing) goods (cc. 197-199; 1268-1270). Unless the canon law provides otherwise, the secular law of the place is to be followed in this regard. The instruction can explain how to apply these norms properly by taking into consideration the civil law of the place.¹⁵⁴ In this regard, it can direct the *parochus* to make use of the expertise of the parish finance council.

4.4.2.3 – Acts of Ordinary Administration of Parish Goods

The *parochus* as administrator “is empowered in virtue of his office to carry out acts of ordinary administration without having to consult with or receive the permission or consent of

¹⁵² See ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 90-91.

¹⁵³ See OMOROGBE, *Administration of Ecclesiastical Goods*, p. 257.

¹⁵⁴ See MORRISEY, “Acquiring Temporal Goods,” p. 598.

any other authority, council, or individual in advance.”¹⁵⁵ Nonetheless, the instruction could describe the manner of performing acts of ordinary administration which would ensure the protection of temporal goods of the parish.

4.4.2.3.1 – Types of Banking Accounts and Signing Officers

As per particular law of the diocese, the instruction could first explain that the types of parish banking accounts are to be of a commercial nature based on a pass book and checks returned with monthly statements. The style of “personal banking” based on a pass book only is not permitted.¹⁵⁶ It would then instruct the signing procedure for all parish accounts: for instance, all checks issued from parish accounts must have two signatures; one of which must always be the *parochus*; and the other one may be either the chair or another member of the parish finance council.¹⁵⁷ Or, the instruction could prescribe a certain amount beyond which two signatures are required.¹⁵⁸ It may place certain restrictions on signatures: any person receiving a salary or other payment from the parish, or any person related, by family or marriage, to the *parochus*, or related to any person receiving a salary or other payment from the parish, must not be signing officers. No one other than authorized signers may sign checks. Facsimile signatures are never to be used.

¹⁵⁵ BEAL, “Ordinary, Extraordinary and Something in between,” p. 112.

¹⁵⁶ See ARCHDIOCESE OF OTTAWA, Protocol, p. 5

¹⁵⁷ See ARCHDIOCESE OF OTTAWA, Protocol, p. 5. Diocesan particular law may require that these two signatories on parish accounts be only clergy in which case the instruction will explain this regulation accordingly. For example, particular law of the Archdiocese of St. Louis states that only clergy are to be signatories on parish accounts: these two signatories should therefore be the *parochus* and the parochial vicar. In parishes that have no parochial vicar, the *parochus* may have the permanent deacon assigned to the parish as a second signatory. In parishes that have no parochial vicar or retired priest in residence or permanent deacon, the dean should be the second signatory (see ARCHDIOCESE OF ST. LOUIS, “Statutes and Policies,” 1 November 2012, p. 16, in <http://archstl.org/files/field-file/Section.pdf>).

¹⁵⁸ For example, the parish accounting manual of the Diocese of Stockton states that “all check disbursements in excess of \$5, 000 require two signatures” (DIOCESE OF STOCKTON, “Parish Accounting and Policies,” p. 18).

Blank checks are never to be signed. Besides, checks are to be pre-numbered and used consecutively and they are to be stored in a locked safe or cabinet with limited access.¹⁵⁹

4.4.2.3.2 – Electronic Banking, Credit Cards, and Reconciling Procedures

In order to forestall any misuse of these instruments of financial transaction, an instruction could state some conditions on the usage of electronic banking for the payment of parish expenses: e.g., such payments are permitted only to major corporate suppliers (e.g., for gas and hydro payments), or for government remittances (e.g., municipal taxes or payroll deductions payable to municipal, state or federal government agencies). With the exception of the payment of regular salaries, no electronic transfer should be made to an individual. A written document authorizing the electronic transfer must be signed by two signing officers and kept in the parish files and must be verified at the time of the monthly bank reconciliation.¹⁶⁰

The instruction can give guidance in the proper use of credit cards: a parish may establish a credit card account with its banker with a preapproved limit. Credit cards should be used only in those instances where it is not appropriate to issue a check for payment. A parish credit card must never be used for personal expenses (even if the parish is to reimburse them), for ATM transactions or cash advances, or wire transfers. For each credit card, the account balance must be paid in full monthly on or before the due date as shown on the statement. Revolving credit card use is not allowed. Parishes must never provide card numbers to unknown individuals or organizations. Receipts and supporting register tapes must be kept for all purchases made with a

¹⁵⁹ See DIOCESE OF MEMPHIS, *Parish Accounting Manual*, p. 16.

¹⁶⁰ See *ibid.*, pp. 7-8.

credit card and they must be kept on file in the office.¹⁶¹ Regarding the bank reconciling procedures, the *parochus* should review the monthly bank statements upon their receipt. At least four times per year a financial council member who is not a signing officer or an individual who is independent of handling and recording the parish account is to review the bank reconciliation.¹⁶²

4.4.2.3.3 – Routine Collection of Income, Purchases, and Payments

The instruction would give general guidelines on the manner of collecting and securing parish revenue (c. 1284, §2, 4°), routine purchases, and payments. The *parochus* is responsible for all purchases and payments made on behalf of the parish. However, he may assign routine purchasing and paying responsibilities as he deems appropriate (e.g., to the parish finance officer). Purchases or payments should be made within the constraints of the budget. Spending or purchasing in excess of the budgeted amount requires specific authorization from the *parochus*, who must consult the parish finance council.¹⁶³ Purchases should be made proportionately throughout the year, based on the cash flow. Payments should be made from original invoices and they should not be made from statements without supporting documentation. Original supporting documentation (invoices or receipts that provide evidence of the transaction) should

¹⁶¹ Regarding credit card expense reimbursements, the Diocese of Stockton observes that sometimes the *parochus* or another parish employee will charge parish expenses on his or her personal credit card. When this happens, the *parochus* or employee pays the entire statement balance of his or her personal credit card account and then submits appropriate receipts to the parish for reimbursement for the parish's portion of the bill. The payment should be made payable to the *parochus* or employee, not to their credit card (see DIOCESE OF STOCKTON, "Parish Accounting and Policies," p. 17).

¹⁶² See DIOCESE OF MEMPHIS, *Parish Accounting Manual*, p. 30; see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, p. 10.

¹⁶³ See DIOCESE OF MEMPHIS, *Parish Accounting Manual*, p. 16.

be reviewed and approved by signature or initials and dated.¹⁶⁴ Moreover, the instruction may explain the manner of developing/paying off a debt reduction schedule.¹⁶⁵

4.4.2.3.4 – Insurance for the Parish Property

Since the *parochus* as the administrator has the duty to protect goods by taking out insurance policies (c. 1284, §2, 1°), the instruction would first expect the *parochus* to consult the parish finance council for their expertise in this regard in the event of purchasing insurance coverage. Whether the parish is part of the diocesan insurance plan or the *parochus* himself purchases it with the assistance of the insurance professional, the purchaser will need to determine the following:

1. what to cover (building and contents, fine arts, financial assets, earnings, vehicles, personal effects of priests);
2. for what value;
3. whom to cover (employees, volunteers, students, professionals, boards);
4. what type of coverage to purchase;
5. what coverage forms (property, business income and extra expense, boiler and machinery, general liability, auto liability, auto physical damage, professional liability, crime, umbrella and excess liability).¹⁶⁶

Further, the instruction would direct the administrator to be familiar with the necessary steps to be taken when a loss or an accident or event that can result in a claim for damage occurs. The responsibilities that should be common to all administrators include:

¹⁶⁴ See DIOCESE OF STOCKTON, “Parish Accounting and Policies,” p. 18; see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, p. 9,

¹⁶⁵ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 517.

¹⁶⁶ FRANK, “Insurance and Ecclesiastical Goods,” p. 217.

1. protection of persons and property from harm or further damage. Examples of appropriate action or obtaining immediate medical care for injuries or removing standing water from a building or securing a facility;
2. contact claims personnel as soon as possible and cooperate as required;
3. do not admit liability or make promises of payment;
4. preserve all evidence;
5. obtain detailed information regarding injured persons or any witnesses;
6. obtain and submit detailed estimates of actual damages;
7. make all necessary repairs to restore the asset as quickly as possible.¹⁶⁷

4.4.2.3.5 – Donation for Charitable Purposes in the Parish

The law says that competent authority should ensure that the parish possesses the means to achieve its designated purposes before it is established (c. 114, §3). The law refers to permanent means to achieve its purposes as “stable patrimony” (cc. 1285; 1291). One of the purposes of owning ecclesiastical goods by the parish is for charity to the needy (cc. 1254, §2; 114, §2). However, since the prescript of canon 1285 is intended to protect the stable patrimony of the parish, which forms a secure basis for the juridic person to perform its functions, the legislator prohibits *parochi* from making donations even for charitable purposes from the stable patrimony of the parish. The instruction, pursuant to canon 1285, should explain that once ecclesiastical goods have been legitimately designated stable patrimony, they are no longer able to be donated. In this regard, Omorogbe opines that “giving away stable patrimony is an act of alienation, not administration.”¹⁶⁸ The instruction could state that, if the donation from movable goods which do not belong to the stable patrimony exceeds the amount designated by the diocese

¹⁶⁷ Ibid., pp. 220-221.

¹⁶⁸ OMOROGBE, *Administration of Ecclesiastical Goods*, p. 269.

(c. 1285), the *parochus* is to obtain the required permission from the local ordinary with prior consultation of the parish finance council.¹⁶⁹

4.4.2.3.6 – Payment of Salary and Other Costs in Parish Ministry for *Parochi*

The instruction could explain that all priests, whether secular or religious working full-time in the diocese in an official function, will receive a monthly salary in addition to lodging, food, and domestic help (see c. 281, §§1-2). This salary may be reviewed annually. The instruction may append the payment schedule for *parochi*, parochial vicars, and others with corresponding deductions (e.g., for income tax).¹⁷⁰ Moreover, canon 276, §2, 4° binds the clergy to the annual retreat. In addition, according to the prescripts of particular law, clergy are to attend courses, theological meetings, or conferences, which offer them an opportunity to acquire further knowledge of the sacred sciences and pastoral methods (c. 279, §2). Canon 283, §2 stipulates that clergy are entitled to a fitting and sufficient time of vacation each year as determined by universal or particular law: canon 533, §2 establishes one month as the duration of the vacation for a *parochus* and canon 550, §3 states the same for the parochial vicar.

¹⁶⁹ See HUELS, *Pastoral Companion*, p. 417.

¹⁷⁰ For instance, *parochi* have several sources of income: (1) Taxable income – (a) monthly salary - this is determined annually by the diocesan bishop in consultation with the presbyteral council and communicated in a letter to *parochi*; (b) car allowance – each *parochus* who owns a car is entitled to a monthly auto allowance, which is set by the bishop in consultation with the presbyteral council; (c) room and board provided at the rectory – the value of these items, housing and food must be included in the self-employment wages and self-employment taxes must be paid on these amounts (*not* income tax); (d) stipends – any stipend (offering) and/or other fees received are taxable income whether received from the parish or an individual (this would include amounts paid for services such as Masses, weddings, baptism, etc.); (e) professional allowance – any allowance given is non-taxable to the extent that it was used to purchase professional material which is to be supported by valid receipts. (2) Non-taxable income – gifts given for birthday, anniversary, Christmas, going-away, get-well-soon and the like are non-taxable (see DIOCESE OF MEMPHIS, *Parish Accounting Manual*, p. 29). For priests assigned to studies, the diocese is responsible for the payment of salary, plus tuition fees, room and board, and cost of books and travel expense for the priests studying outside the country. Likewise, if a *parochus* who is granted sabbatical leave for his continuing education retains his office of *parochus*, the diocese is responsible for the payment of the priest's full salary, all expenses incurred for his studies, but not personal items. The parish is responsible for the replacement priest and his salary (see ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 105 and 107).

Since the Code does not specify who is directly responsible for these payments, the instruction can perhaps mention who is responsible for the expenses for these rights and obligations of the *parochus*.¹⁷¹ Likewise, it could explain any other cost involved in the parish ministry.

4.4.2.3.7 – Use of Parish Funds to Cover Personal Debts of *Parochi*

The instruction might indicate that when there are personal debts in a parish incurred by the *parochus*, he is not to use general parish funds to cover them (e.g., debts from gambling). If a *parochus* has been obliged to enter into a civil settlement with an alleged victim, it is his personal money that is to be used for the payment; parish funds should never be used to cover these costs, even if the alleged actions took place within a parish setting.¹⁷²

The instruction can also address the manner of performing some other acts of ordinary administration, such as seeking to reduce or transfer Mass obligations (cc. 1308-1309);¹⁷³ the manner of seeking to reduce, moderate, or commute pious wills not involving Mass offerings (c. 1310); the manner of determining if a parochial good is sacred (c. 1269), or precious for artistic or historical reasons (cc. 1270, 1292, §2); etc.¹⁷⁴

¹⁷¹ See ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 104-105.

¹⁷² In such situations, the diocese might possibly assist him if he is in serious financial difficulty; however, the diocese should not take the general parish funds to cover them. Moreover, one should be careful not to mix personal and public funds in general accounts. In this regard, Morrissey notes that a diocesan finance officer cannot take from parish funds without the consent of the *parochus*. For instance, while the diocese might administer the parish funds in a common account, this does not give it the right to make use of them as it sees fit (see MORRISEY, “Challenges for the Administration of Temporal Goods in the Light of Changing Circumstances,” pp. 43-44).

¹⁷³ When it concerns the benefit of the clerical religious institute or society of apostolic life for reduction or transfer of Masses, for the procedure of required permissions, see chapter III, p. 175, fn. 45.

¹⁷⁴ See RENKEN, “The *Parochus* as Administrator of Parish Property,” pp. 517-518.

Moreover, as already discussed, if particular law has established acts of ordinary administration of greater importance for parishes “which remain within the domain of the ‘ordinary’ but are either so infrequent or have such a significant impact on the fiscal well-being of the juridical person [parish] that they warrant more careful scrutiny and consideration than usual,”¹⁷⁵ then the instruction could explain how *parochi* are to deal with these acts of greater importance in the parish in an efficient manner in consultation with the parish finance council. For example, the instruction could say what a well-drafted lease would contain:

A well-drafted lease whether for real or personal property will include a clear statement of the length (term) of the lease, together with a clear identification of the parties, lessor and lessee, a clear description of the leased property, a clear statement of what the lease payments are and where, and when and how they are to be paid, a clear statement of how the leased property will be used by the lessee, how and by whom it will be maintained, where the risk of loss (duty to insure) lies for a partial or total loss of the property, which party is responsible for the maintenance, utilities, and property taxes. A tax clause placing the burden of local real estate taxes on the lessee is very important in leases of church [parish] property because typically church property, prior to the lease, when it is being used only by the church [parish], is in the tax exempt category but its use by a non-church party, the lessee, will place it in the taxable category. If this happens, the lease should make it clear that such tax burden falls on the lessee as a cost of leasing the property. [...] In leases where the church [parish] is the lessor, it is also important to include language that the lessee is mindful of the religious nature of the lessor and that it agrees to use the property in such a way that it will not cause public harm to the good religious name of the lessor. The lease should specify that should such an eventuality come to pass a material breach has occurred and, in the lessor’s sole discretion, the lease may be terminated by the lessor.¹⁷⁶

For another example, the instruction may explain the manner and the requirements of applying for parish loans. It could state that all parish loan requests are to be made through the diocesan finance office, and that parishes are not permitted to secure financing from outside

¹⁷⁵ Ibid., p. 113. Morrissey observes that “actions which are over 5% of the maximum amount allowed for alienation would generally fit into this category” (MORRISSEY, “Challenges for the Administration of Temporal Goods in the Light of Changing Circumstances,” p. 31).

¹⁷⁶ CAFARDI, “Leasing Ecclesiastical Goods,” p. 211. However, the lease is to be differentiated from renting or giving license/permission for the use of a parish property (e.g., parish hall, parish school gym), which does not involve any exclusive use of the parish’s property for an extended period of time, but only for a few hours for a single occasion or perhaps repeated occasions. Since licenses are not leases, they are not covered by the Code’s language on leases; however, a license as a contract is covered by canon 1290, which requires conformity to the civil law in contractual matters. As activities such as weddings where alcohol is served, athletic activities in parish school gyms are risky activities, parishes that allow such activities should require in the license agreement some form of insurance provided by the user to the property owner (see *ibid.*, pp. 212-213).

commercial lenders without the written approval of the diocesan bishop. The loan requests must be in writing from the *parochus* in consultation with the parish finance council as per particular law. In emergency situations, when a parish is experiencing cash flow shortages, the diocese might offer an operational loan in small amounts and for short duration. If the loan is for a major project such as renovation or new construction, loan applications should include: total cost of the project; statement of cash and pledges on hand; cash forecast demonstrating ability to repay loan, history of previous loans and explanations of any unpaid loans; and assuring full security for loans by parish funds and/or capital campaigns, etc.¹⁷⁷

4.4.2.4 – Acts of Extraordinary Administration of Parish Goods

According to canon 1281, §§1-2, the determination of acts of extraordinary administration depends on two factors: (1) acts which exceed the limits and manner of ordinary administration; and (2) those duly designated acts which require the intervention of a higher canonical authority before they can be carried out.¹⁷⁸ The diocesan bishop is the competent authority for establishing such acts for parishes. The instruction would explain the manner of obtaining the written faculty from the local ordinary to perform acts of extraordinary administration validly.¹⁷⁹ The instruction would say whether the *parochus* needs either counsel or consent of the parish finance council for such acts. The instruction could lay down further conditions in order to obtain the required authorization to carry out such acts. For instance, it

¹⁷⁷ See DIOCESE OF MEMPHIS, *Parish Accounting Manual*, pp. 31-32. For more possible examples for these acts of ordinary administration of greater importance, whose manner of implementation is to be explained in the instruction, see above, 4.4.1.3, p. 250.

¹⁷⁸ See DE PAOLIS, “L’amministrazione dei beni,” pp. 79-80.

¹⁷⁹ See RENKEN, “The *Parochus* as Administrator of Parish Property,” p. 517.

could require that the project be first studied by the *parochus*; that a minimum of three tenders be presented, along with the recommendation of the parish finance council as to which tender should be accepted; that a statement as to whether or not the parish has sufficient funds available for the project be included, or if a loan will be required. The instruction could also call for copies of documents (e.g., accepting a legacy, accepting a non-autonomous pious foundation, etc.).¹⁸⁰ Furthermore, it could spell out the procedure to be observed when actually carrying out acts of extraordinary administration.¹⁸¹

4.4.2.5 – Acts of Alienation of Parish Goods

The instruction would illustrate the manner of obtaining the permission for alienating the stable patrimony of the parish. First, it would explain what would constitute an act of alienation.¹⁸² Second, when it is foreseen that alienation of stable patrimony will take place, according to particular law, it would direct that any request for alienation to be made by the *parochus* must be accompanied by an extract of the minutes of the parish finance council meeting where such a transaction was discussed with an indication of the counsel or consent-giving votes of the members. Third, it would describe the canonical procedures for the licit alienation of parish property (cc. 1293- 1294). Fourth, it would state the requirements for the

¹⁸⁰ See ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 70-71. If a non-autonomous pious foundation is given for the benefit of a pontifical clerical religious institute or a clerical society of apostolic life, for the required permission procedure, see in this dissertation: chapter III, p. 175, fn. 44.

¹⁸¹ For possible examples of acts of extraordinary administration for parishes, whose manner of implementation is to be addressed by the instruction, see above, 4.4.1.4, pp. 251-252; see chapter II, 2.2.2.3, pp. 102-105; see also O'BRIEN, "Instructions for Parochial Temporal Administration," pp. 121-122. In our opinion, parish manuals in their lists of special instructions must strictly avoid categorizing any act of alienation under acts of extraordinary administration according to the 1983 Code. Moreover, acts which fall under canon 1295 transactions should be categorized as acts of extraordinary administration, not as alienation.

¹⁸² See chapter II, pp. 106-107, fn. nos. 98-99.

valid alienation of parish property: when the value of goods to be alienated falls within the minimum and maximum amount determined by the conference of bishops, then, the *parochus* must receive the permission (consent) of the diocesan bishop who will grant it after he has received the consent of the diocesan finance council and the college of consultors (c. 1292, §1); if the amount exceeds the maximum determined by the conference of bishops, then, the *parochus* needs the permission (consent) of the competent dicastery of the Holy See (Congregation for the Clergy, see *PB*, no. 98)¹⁸³ in addition to the permission of the diocesan bishop (c. 1292, §2).¹⁸⁴

Moreover, apart from these aforementioned acts, if the ordinary deems it necessary or prudent to give a special instruction on any other act according to local circumstances as per universal or particular law concerning its manner of effective implementation for the protection of parish property, he can freely do so (see c. 1276).

¹⁸³ In seeking required permission of the Holy See for a proposed alienation, the petition/file should contain the following information: (1) The identity of the juridic person of the parish seeking permission; (2) A description of the parish property and how this property was originally obtained (e.g., purchase, gift, vow) that is subject of the proposed alienation; (3) Explanation of the just cause (such as urgent necessity, evident advantage, piety, charity, or another pastoral reason) for the proposed transaction (c. 1293, §1, 1°); (4) The appraised value of the property, at least two estimates of value (c. 1293, §1, 2°); (5) The assessment of the effect that the alienation of this property will have on the parish's ability to carry on its ministry; (6) The consent of the intermediate bodies is required according to the universal law (diocesan finance council, college of consultors, and interested parties) (c. 1292, §1) and the counsel or the consent of the parish finance council if required by the statutes/particular law (usually, these take the form of a copy of the minutes of the meeting where approval was given); (7) A statement regarding divisible goods (c. 1292, §3); (8) The offer to purchase (if possible) (c. 1294, §1); (9) The statement of what is to be done with the money received (c. 1294, §2); (10) Sometimes, a statement regarding the observance of civil law formalities (c. 1296); (11) The opinion of the local ordinary in the diocese; the *votum* may be either attached to the petition or sent separately by the bishop; (12) The statement of the current financial condition of the parish seeking the permission, this can be given by a summary of financial statement such as balance sheet showing both the assets and liabilities of the parish (see MORRISEY, "The Alienation of Temporal Goods in Contemporary Practice," p. 298; see CAFARDI, "Alienation of Church Property," pp. 256-257).

¹⁸⁴ It is also recommended that an evaluation shall be made by the diocesan civil lawyer to ensure that all civil formalities are observed (see ARCHDIOCESE OF OTTAWA, *Administration Manual*, pp. 34-37). For more information on solemnities for the licit and valid alienation of parish property, see in this dissertation: chapter II, 2.2.3.1, pp. 108-109 and 2.2.3.2, pp. 110-111. In the case of the required permission for the valid alienation process of a property belonging to a pontifical or diocesan religious institute (c. 638, §§3-4), see chapter III, p. 178, fn. 55.

4.4.3 – Statutes of a Parish to Promote Collaboration between the *Parochus* and the Parish Finance Council in the Protection of Parochial Goods

“Statutes are norms or bylaws of a juridic entity by which its purpose, constitution, government, and operation are defined” (c. 94, §1);¹⁸⁵ and they have legislative force when they are duly promulgated (c. 94, §3). As already noted, several canons on temporal goods in Book V presuppose that juridic persons have their statutes (cc. 1279; 1281, §2; 1295). However, the Code is not so clear whether the law requires statutes for juridic persons *ipso iure*, e.g., dioceses or parishes. Renken argues that the Code does not require statutes for public juridic persons established *a iure* as canon 117 refers to “aggregates *intending to acquire* juridic personality; this phrase may imply that the aggregate itself is petitioning for juridic personality, which would exclude public juridic persons established *a iure* since these are not typically established by petition of the aggregate but by decision of a competent ecclesiastical authority, e.g., a diocesan bishop (see c. 515, §2).”¹⁸⁶ Hence, canon 117 does not require statutes for parishes as juridic persons *ipso iure*; rather, it requires them only for juridic persons established *ab homine* whether public or private at the petition of the aggregate itself, e.g., an association of the Christian faithful, a school, a hospital, etc.¹⁸⁷

In practice, for public juridic persons recognized *ipso iure* (such as dioceses, parishes, etc.), “the statutory norms are identified with their juridical regulations contained in the Code.”¹⁸⁸ Nevertheless, even if statutes are not strictly required for parishes, there are clear advantages in having them: firstly, they can be a helpful tool to bring together in one document

¹⁸⁵ HUELS, *Pastoral Companion*, p. 457.

¹⁸⁶ RENKEN, “The Statutes of a Parish,” p. 101.

¹⁸⁷ See *ibid.*

¹⁸⁸ LO CASTRO, “Commentary on Canons 113-123,” p. 773.

the fundamental norms to be observed by *parochi* and parishioners in fostering parish life;¹⁸⁹ secondly, when parishes are civilly incorporated, many of the norms of the parish statutes can be included in the civil documents governing them in order to coordinate the canonical norms for the governance of the parish with its civil charter and by-laws.¹⁹⁰ Although the parish statutes would ordinarily include norms governing all operations of the parish, our study limits its scope precisely to identify possible norms relating to the duties of the *parochus* as administrator: i.e., acts of acquisition, ordinary administration, extraordinary administration, and alienation of the goods of the parish.¹⁹¹

4.4.3.1 – Duties of the *Parochus* as Administrator of Parish Goods

Because the *parochus* is the competent administrator of the ecclesiastical goods of the parish, (cc. 532; 1279, §1), the statutes may identify the following duties to be carried out by him with the diligence of a good householder (c. 1284, §1):

1. The pastor (*parochus*) is to make an inventory of parish goods before he assumes his function (c. 1283, 2°). The inventory is to be updated every year and the updated copy of the document is to be preserved in the archive of the parish and the archive of the diocesan curia (c. 1283, 3°);
2. The pastor (*parochus*) is to make certain about the ownership of parochial property by civilly valid means (c. 1284, §2, 2°);¹⁹²

¹⁸⁹ See RENKEN, “The Statutes of a Parish,” p. 101.

¹⁹⁰ See *ibid*; see also BEAL, “Ordinary, Extraordinary and Something in between,” p. 119.

¹⁹¹ This section in dealing with the statutes of a parish on the protection of parish goods will not go into detail since these norms have been already dealt with in depth in chapter II in particular and throughout this thesis. Moreover, this study limits its scope to identify the applicable norms as per universal law only since particular law will vary from one diocese to another. Depending on the needs and circumstances of his diocese, each diocesan bishop may freely include pertinent norms in the statutes for the protection of parish property.

¹⁹² For example, according to the statutes of the Diocese of Sacramento, “No one may record or retain title to any parish property in any name other than a civil entity organized or incorporated according to the laws of the State of California and the United States of America to represent the public juridic person of the parish in the civil polity” (DIOCESE OF SACRAMENTO, “Diocesan Statutes,” p. 66).

3. The pastor (*parochus*) is to observe the prescripts of canon law and civil law and be especially vigilant so that no damage comes to the parish property due to the non-observance of civil laws (c. 1284, §2, 3°);
4. The pastor (*parochus*) is to maintain well-organized books of income and expenses (c. 1284, §2, 7°);¹⁹³
5. The pastor (*parochus*) is to prepare the annual parish administration report in the form provided by the diocese, which is to be sent to the local ordinary within the due date after the end of each fiscal year (c. 1284, §2, 8°);
6. The pastor (*parochus*) is to keep in good order all documents and records on which parish property rights are based, and deposit authentic copies of them in the archive of the diocesan curia (c. 1284, §2, 9°). Besides, he is to preserve these documents in the parish archive; they will be inspected by the diocesan bishop or his delegate at the time of visitation or another suitable time, and he is to take care that they do not come into the hands of outsiders (c. 535, §4). Further, older parochial records are to be protected carefully according to the prescripts of particular law (c. 535, §5);
7. The pastor (*parochus*) is strongly encouraged to prepare an annual parish budget (c. 1284, §3); if particular law had mandated it, then, the *parochus* would be directed to submit it to the local ordinary for a review within the time indicated prior to the beginning of each fiscal year;
8. The pastor (*parochus*) is to observe meticulously civil labor and social policies, according to the principles handed down by the Church, in the employment of parish personnel (c. 1286, 1°);
9. The pastor (*parochus*) is to prepare the annual parish financial report (c. 1287, §1), which is to be forwarded to the local ordinary within the due time after the end of each fiscal year. Moreover, he is to render an account to the faithful concerning the goods they have offered to the parish (c. 1287, §2);
10. The pastor (*parochus*) is to observe civil law in entering contracts, provided they are not contrary to divine law and unless canon law makes other provisions (cc. 1290; 22); etc.¹⁹⁴

4.4.3.2 – Acts of Acquisition of Parish Goods

The statutes may identify the following norms to be observed by the *parochus* on the acquisition of goods:

1. The pastor (*parochus*) is the competent authority to receive gifts and offerings on behalf of the parish;

¹⁹³ The statutes of a parish can require the parish to use the official diocesan system of bookkeeping for financial records (see ARCHDIOCESE OF ST. LOUIS, “Statutes and Policies,” p. 16).

¹⁹⁴ RENKEN, “The Statutes of a Parish,” pp. 132-138. The statutes of a parish may require the signatures of the *parochus* and the members of the parish finance council for numbers 5, 7, and 9 (see *ibid*; see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, pp. 112-115).

2. Offerings given to the pastor (*parochus*) (c. 1267, §1), including the offerings given on the occasion of the performance of the parochial functions, are presumed to be given to the parish, unless the contrary is established (cc. 531; 551);
3. The refusal of offerings given to the parish requires a just cause. The refusal of offerings of greater importance as well as acceptance of offerings to which is attached some obligation or condition also requires the permission of the ordinary (c. 1267, §2);
4. “Offerings given by the faithful for a certain purpose can be applied only for that purpose” (c. 1267, §3);
5. A most common means of parochial income is the regular offerings of the faithful offered during Masses on Sundays and holydays of obligations (see c. 222, §1);
6. The pastor (*parochus*) is authorized to gather special collections designated by the local ordinary (c. 1266);
7. The local ordinary may give permission for the pastor (*parochus*) to make a special appeal in the parish, which must be done as per norms issued by the conference of bishops (c. 1262);
8. The pastor (*parochus*) is competent to accept pious wills (cc. 1299-1301); pious trusts (c. 1302); He is to inform the ordinary about all pious wills or pious trusts given to the parish and to follow his directives;
9. The pastor (*parochus*) is competent to accept non-autonomous pious foundations (1303-1307). However, he needs the written permission of the local ordinary to accept a non-autonomous pious foundation validly for the parish;
10. Temporal goods given to parish organizations, depending on their status, could belong to the parish and are subject to the administration of the pastor (*parochus*),¹⁹⁵ etc.¹⁹⁶

4.4.3.3 – Acts of Ordinary Administration of Parish Goods

The statutes may list the following as acts of ordinary administration to be performed by the *parochus*:

1. The pastor (*parochus*) is to take out insurance policies for parish goods insofar as necessary so that they are in no way damaged (c. 1284, §2, 1°);

¹⁹⁵ See RENKEN, “The Statutes of a Parish,” p. 132. In this regard, if groups and organizations utilize the parish tax ID number, then they must account for all cash receipts and expenditures processed through their corresponding bank accounts (see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, p. 13).

¹⁹⁶ RENKEN, “The Statutes of a Parish,” pp. 125-132. The statutes of a parish may require the involvement of the parish finance council in the process of acquiring these goods for numbers 6-9 (regarding no. 6, if special collections made at the initiative of the *parochus* other than those prescribed by the local ordinary).

2. The pastor (*parochus*) is “to collect the return of the goods and the income accurately and on time, protect what is collected, and use them according to the intention of the founder or legitimate norms” (c. 1284, §2, 4^o);
3. The pastor (*parochus*) is to pay the interest due on a loan or mortgage at the stated time and to repay the debt itself in a timely manner (c. 1284, §2, 5^o);
4. The pastor (*parochus*) is to invest the surplus revenue with the consent of the ordinary so that it can be set aside to be used for the purposes of the juridic person (c. 1284, §2, 6^o);
5. The pastor (*parochus*) is allowed to make donations for purposes of piety or Christian charity from movable goods which do not belong to the stable patrimony of the parish (c. 1285); etc.¹⁹⁷

4.4.3.4 – Acts of Extraordinary Administration of Parish Goods

The statutes may, for example, identify the following as acts of extraordinary administration for which the *parochus* needs the written faculty from the ordinary (c. 1281, §1):

1. To designate legitimately the stable patrimony of the parish (see c. 1291);
2. To initiate or to contest civil litigation in the name of the parish (c. 1288);
3. To enter into any contracts which may threaten the patrimonial condition of a parish and which , therefore, require observance of canons 1291-1294 on alienation;
4. To lease parish property;
5. To build a new church (cc. 1215-1216), and to demolish or sell a church which the diocesan bishop has relegated to profane but sordid use (c. 1222); etc.¹⁹⁸

¹⁹⁷ Ibid., pp. 132-138. The statutes of a parish may require consultation of the parish finance council for numbers 1, 3, and 4. Moreover, as already noted, if the diocesan bishop had established by particular law acts of ordinary administration of greater importance, these may be included in the statutes.

¹⁹⁸ Ibid., pp. 139-141. For more examples of acts of extraordinary administration, see above, 4.4.1.4, pp. 251-252; see chapter II, 2.2.2.3, pp. 102-105. Moreover, the diocesan bishop can designate an act of extraordinary administration after having heard his finance council. For example, the particular law of the Diocese of Sacramento considers any commitment in excess of \$15, 000 of parish or school resources as an act of extraordinary administration for which the *parochus* must first consult the parish finance council; and he must subsequently receive formal diocesan approval before he performs the act (see DIOCESE OF SACRAMENTO, *Parish Financial Management Handbook*, p. 109). Diocesan particular law would ordinarily require either the counsel or the consent of the parish finance council for the performance of acts of extraordinary administration before the *parochus* requests the written faculty from the ordinary. If not, the statutes of a parish can very well require the same to protect the parish property.

4.4.3.5 – Acts of Alienation of Parish Goods

The statutes of a parish can prescribe the following norms to be observed by the *parochus* for acts of alienation in the parish:

1. The pastor (*parochus*) is competent for contracts of alienating parish property;
2. The pastor (*parochus*) does not require special permission from the diocesan bishop to alienate validly the parish stable patrimony whose value is below the minimum amount established by the conference of bishops (see c. 1291);¹⁹⁹
3. The pastor (*parochus*) needs the permission of the diocesan bishop to alienate validly parochial stable patrimony whose value is between the minimum and maximum amount established by the conference of bishops, which he may give only after he has obtained the consent of the diocesan finance council, the college of consultors, and those concerned (c. 1291). Such alienation also requires an indication of the parts of a divisible asset which have been already alienated (c. 1292, §3); a just cause (c. 1293, §1, 1°); a written appraisal by at least two experts of the asset to be alienated (c. 1293, §1, 2°), observance of precautions prescribed by legitimate authority in order to avoid any harm to the parish (c. 1293, §2);
4. The pastor (*parochus*) requires the permission of the Holy See, in addition to the permission of the diocesan bishop, to alienate validly parochial stable patrimony whose value is beyond the maximum amount established by the conference of bishops (c. 1291, §2), for parochial goods given to the parish by a vow, or parochial goods precious for artistic or historical reasons (c. 1291, §2).²⁰⁰

Lastly, it is prudent for the diocesan bishop to mention financial malfeasance and its consequences in parish statutes which can serve as a pastoral deterrence to those who are tempted to financial misconduct or inclined to financial negligence.²⁰¹ Should it occur that the *parochus* fail in his fiduciary function as administrator of parish property, he may be liable to ecclesiastical sanctions and required to make restitution. The statutes would identify the following canons which address financial misconduct by *parochi*:

1. If the pastor (*parochus*) illegitimately causes damage to parish goods by a juridic act or any other act with malice or negligence, he is obliged to repair the damage inflicted (see c. 128);

¹⁹⁹ However, if diocesan particular law determines a value lower than the minimum amount established by the conference of bishops for the alienation of parish stable patrimony, then it would read, “the *parochus* does not require special permission from the diocesan bishop to alienate validly the parish stable patrimony whose value is below the amount determined by the diocesan bishop.”

²⁰⁰ RENKEN, “The Statutes of a Parish,” pp. 142-143.

²⁰¹ See *ibid.*, p. 145.

2. If the pastor (*parochus*) acts invalidly, the parish is not bound to answer for it unless and to the extent it is to its own advantage; however, it will answer for illicit but valid acts by the pastor (*parochus*), without prejudice to its right of action or recourse against him (see c. 1281, §3);
3. If the pastor (*parochus*) arbitrarily ceases his administration of parish goods on his own initiative, he is bound to make restitution (see c. 1289);
4. If the pastor (*parochus*) alienates parish goods without the required canonical formalities but the alienation is valid civilly, it is for the competent authority to decide whether and what type of action to be initiated against him in order to vindicate the rights of the parish (c. 1296). Besides, if the pastor (*parochus*) alienates parish goods without the prescribed permission, he is to be punished with a just penalty (c. 1377);
5. Several other delicts mentioned in Book VI of the Code may apply to the pastor (*parochus*) and others charged with the protection of parish property, such as impeding the use of ecclesiastical goods in the parish (see c. 1375); simony in the parish (see c. 1380); illicit profit from Mass offerings (c. 1385); bribery in the parish (see c. 1386); the malicious abuse or negligence of authority in exercising the office of pastor (*parochus*) (c. 1389, §§1-2); and the production and use of falsified documents by the pastor (*parochus*) (c. 1391); etc.²⁰²

Moreover, apart from these possible norms of universal law in the statutes, as and when the diocesan bishop deems it necessary or prudent to include other norms of diocesan particular law relating to the protection of parish property according to the local needs and circumstances, he can freely promulgate them (see c. 94, §3).

Conclusion

The *parochus* and the parish finance council should be aware of the various canonical principles concerning the proper management and protection of the temporal goods of the parish as they collaborate in the protection of parish goods. The office of parish finance officer can serve as a means to promote financial accountability in the administration as well as the protection of ecclesiastical goods of parishes without diminishing the role of the *parochus* who by universal law must remain the legal representative of the parish and the administrator of parochial goods (c. 532). In order to protect parish property, the diocesan bishop would establish

²⁰² Ibid., pp. 144-145.

particular laws to regulate the office of the parish finance officer by analogy with the office of the diocesan finance officer.

Moreover, the diocesan bishop, when exercising his supervisory role over ecclesiastical goods, should make certain that the specific duties of the parish finance council relating to the protection of parochial goods are clearly spelled out, either in diocesan particular law, or in the statutes of the council itself. The *parochus* would then be obliged to seek the intervention of the finance council when he is performing his administrative duties. Furthermore, nothing prevents the diocesan bishop from including prudently these specific activities of the parish finance council also in the statutes of the juridic person of the parish which would bind the *parochus* to seek counsel or to obtain consent for the valid performance of those acts in view of the sound protection of parochial goods.

Book V of the Code of Canon Law, as an application of the principle of subsidiarity, allows the diocesan bishop to establish particular laws for the administration and the protection of the goods of parishes, to issue special instructions in order to explain the manner of implementing universal or particular laws for the protection of the temporal goods of parishes (c. 1276), and also to establish statutes for individual parishes in which he can include norms concerning the protection of their temporal goods (see c. 94, §3). The diocesan bishop/local ordinary can utilize these particular canonical provisions not only when the law explicitly allows for such, but he can also use them in his diocese according to the local circumstances for the protection of parish goods. Apart from the universal law, a sufficient and an appropriate use of these canonical instruments relating to duties of the *parochus* as administrator of the goods of the parish, and to acts of acquisition, ordinary administration, extraordinary administration, and alienation of parish goods, would promote collaboration between the *parochus* and the parish

finance council in the protection of the temporal goods of the parish. They can certainly serve as canonical control mechanisms and remedies to prevent parish financial mismanagement and as canonical means to protect parish property.

GENERAL CONCLUSION

The basic question raised at the outset of this thesis was: is there a legal system in the Church which directs and controls the actions of the *parochus* and the parish finance council in protecting the goods of the parish? Or, more precisely, are there canonical mechanisms or provisions which could be used to promote collaboration between the *parochus* and the parish finance council so as to forestall parish financial mismanagement or misappropriation of parochial goods? Our research revolved around answering this principal question.

A careful analysis of various issues related to the question of collaboration between the *parochus* and the parish finance council in the protection of parish property leads us to conclude that, apart from the universal law, there are particular canonical provisions such as diocesan particular laws, special diocesan instructions, and parish statutes which could be used as sound canonical resources to promote such collaboration. These measures would help deter parish financial mismanagement and foster the protection of parish property.

The four chapters of our thesis have dealt with questions concerning the parish as a juridic person and its right and obligation to protect its property. They also considered the role of the *parochus* and that of the parish finance council in this regard in light of the provisions of canons 532 and 537. Likewise, contemporary challenges faced in protecting parish property and the role of particular canonical provisions in the promotion of collaboration between the *parochus* and the parish finance council were also considered. Through an analysis of the relevant canonical and civil provisions, we have been able to draw some general conclusions, which, if applied, would promote greater collaboration between the *parochus* and the parish finance council.

The first chapter addressed the dual nature of the parish as a juridic person and a community of the faithful. Unlike the 1917 Code of Canon Law which regarded the parish as a

benefice and the *parochus* as the administrator of the benefice (see *CIC/17*, c. 451), the 1983 Code of Canon Law describes the parish as a community of the faithful and as a juridic person (c. 515, §§1, 3). The public juridic personality of the parish is a key juridic concept which establishes the right to acquire and protect its property. The parish remains subject to the diocesan bishop. It has a non-collegial character (c. 115, §2). It is a subject of rights and obligations in canon law (c. 113, §2). Its goods are ecclesiastical goods (c. 1257, §1) governed by the norms of Book V of the Code, by particular law, and by applicable statutes. The parish should also avail itself of civil recognition in order to guarantee the civil validity of its patrimonial acts and to protect its goods. It functions in the name of the Church (*nomine Ecclesiae*). Its legal representative (c. 118) and the administrator of its goods (c. 1279, §1) is its *parochus* (c. 532), who is assisted by the parish finance council in the protection of these goods (cc. 537; 1280). However, the *parochus* holds the ultimate responsibility for their protection. This responsibility is in no way altered when he delegates direct administration of goods to a parish finance officer or when he is assisted by the parish finance council. The parish has the right to possess (c. 1256), protect, and use its goods according to the proper purposes of temporal goods of the Church (cc. 114, §2; 1254, §2). Indeed, it enjoys the four fundamental rights of juridic personality to acquire, retain, administer, and alienate temporal goods (c. 1255).

The second chapter addressed issues concerning the *parochus* as administrator of parish property, the assistance of the parish finance council in the protection of this property, and the supervisory role of the diocesan bishop. First, an analysis of canon 532 leads us to conclude that only a physical person can exercise the office of *parochus* as administrator of parochial goods (cc. 532, 1279, §1). He is to carry out the four fundamental functions on behalf of the juridic person, namely to acquire, retain, administer, and alienate its temporal goods (cc. 1254, §1;

1255). He is not the owner of the parish property. His relationship to the parish is that of responsible stewardship. As an administrator, he is always bound to protect parochial goods and to fulfill his duties with the diligence of a good householder (c. 1284, §1) in the name of the Church, and according to its law (c. 1282).

As the consequence of his being the sole administrator of the goods of the parish, he alone has the authority in canon law to place juridic acts, such as acts of acquisition, ordinary and extraordinary administration, and alienation of the temporal goods in accord with the norms of law. At the same time, he is bound by the canonical duties of an administrator spelled out in Book V of the Code of Canon Law. Because of his authority to place acts of administration and of his obligation to fulfill the canonical duties of an administrator, the *parochus* has the primary canonical responsibility for the protection of parochial goods.

Even though the *parochus* unilaterally exercises his role as an administrator (c. 532), at times, for the liceity or even the validity of his acts, he requires the cooperation and authorization of the diocesan bishop/ordinary (cc. 1281; 1292). Since acts of administration are juridic acts, if these acts or any other act done with malice or negligence, the person who acts unlawfully and causes harm to the juridic person, is personally liable for these acts (c. 128) or liable to make restitution (c. 1289). If it cannot be remedied otherwise, poor financial administration is a cause for removal from office (c. 1741, 5°); indeed, such improper administration can even be a canonical delict of abuse of office subject to penalty, not excluding deprivation from office (c. 1389, §1).

Second, the analysis of canon 537 leads us to conclude that the parish finance council is a collaborative organ to assist the *parochus*; it is not an administrative council. The *parochus* alone is competent to make all decisions in the administration and protection of parish goods. At the

same time, though, the parish finance council assists him in exercising these responsibilities. Even though Church law provides that the parish finance council possesses only a consultative vote, it can, in accordance with the provisions of particular law, render assistance to the *parochus* through advice or consent before he performs certain acts. Particular law can also involve the parish finance council in the fulfillment of certain specific duties. Since the council offers its assistance to the *parochus*, he is not a member of it and therefore does not vote in the decision-making process. The *parochus* must preside over the parish finance council personally or through a delegate. Being a collaborative structure of the parish, it does not cease but continues to function even when the parish is either vacant or the *parochus* is impeded, unless particular law provides otherwise.

Third, the analysis of the supervisory role of the diocesan bishop in the protection of parish property leads us to conclude that the diocesan bishop, as an ordinary, has the right to supervise (*ius advigilandi*) the *parochus* in his administration/protection of the goods of a parish (c. 1276). This supervision has the twofold purpose of assisting the *parochus* in his *munus* of administration as well as protecting the goods of the parish (cc. 1276, §§1-2; 1279, §§1-2). The diocesan bishop exercises his power of governance over parishes and intervenes in three principal ways in the administration or protection of parochial goods: (1) by establishing particular laws, (2) by issuing special instructions, (3) by vigilance and control (primarily, through authorizations [grant or denial of permission or consent or written faculty for certain acts] and visits; secondarily, through addressing any negligence of the administrator).

The third chapter addressed certain contemporary challenges to the protection of parish property. From an analysis of the challenges of financial malfeasance, absence of civil legal conformity, and general lack of guidance in the protection of parish property, this thesis

establishes that the following guidelines would be helpful for diocesan bishops to respond proactively to the protection of the temporal goods of parishes as public juridic persons subject to them:

(1) For corrective measures against financial mismanagement/malfeasance, canons 1389, §§1-2, 1375, 1377, 1380, 1385, 1386, 1391, and 1399 provide for possible corrective measures to be applied in the case of financial mismanagement or malfeasance at the parish level; indeed, these canons prescribe appropriate penalties which can be imposed by a judicial or extrajudicial process as a last resort (see c. 1341). Moreover, diocesan bishops can establish particular penal laws concerning financial malfeasance which will bind all *parochi* as administrators of goods of parishes in their diocese (cc. 1316-1318). They can also in individual cases establish penal precepts threatening determinate penalties in case of financial malfeasance (c. 1319, §§1-2). Even if a diocesan bishop decides not to pursue a penal process, he may resort to an administrative or disciplinary one against the *parochus* found guilty of financial malfeasance; there might even be an administrative removal from office (cc. 193; §§1-3; 1740-1747) or an involuntary transfer to another office (cc. 190, §§2-3; 1748-1752).

(2) Because the diocesan corporation sole method of holding property is contrary to the Code of Canon Law, where the civil system permits, bishops should take all the necessary steps to adopt the civil method which recognizes the ownership of the property of individual parishes (c. 1284, §2, 2°). Although the *parochus* has the obligation to protect these goods through a civilly valid method, the diocesan bishop is to grant permission for the provision of civil structures of parishes available in his territory since he is the sole authority to alter parishes, having heard the presbyteral council (c. 515, §2). Among the various civilly valid methods available for the protection of parish property, with their advantages as well as their

disadvantages, the parish non-member corporation model is considered by the Holy See to be the privileged means or more appropriate measure to protect the parish property. This model recognizes hierarchical control, lay involvement in the administration of parish property, ownership of its property; it limits the liability issue to the actions done in the name of the parish. Indeed, civil parish incorporations separate from the diocese certainly serve to protect the temporal goods and the rights of parishes (which are distinct from those of the diocese in canon law).

(3) In order to address the challenge of a dearth of proper guidance in the protection of parish property, diocesan bishops may consider establishing particular laws beyond those already envisioned in the universal law. This thesis has shown some appropriate areas for establishing particular laws in order to promote collaboration between the *parochus* and the parish finance council and to foster the protection of parochial goods. Diocesan bishops may decide to enact laws relating to acts of acquisition, acts of ordinary and extraordinary administration, and acts of alienation. Furthermore, nothing prevents them from enacting laws on acts of ordinary administration of greater importance. Such laws, if appropriately applied and implemented, would minimize parish financial mismanagement in the diocese.

(4) The diocesan bishop or the local ordinary is not to wait to issue a special instruction (c. 1276) until after an occurrence of embezzlement or financial malfeasance; instead, this dissertation has identified certain concrete areas suggesting special instructions (which clarify, elaborate on, and determine the methods to be observed in fulfilling the prescripts of laws, as stated in canon 34) in order to promote collaboration between the *parochus* and the parish finance council. For instance, he may issue special instructions to *parochi* for effective

performance of their duties; indeed, he may also update these instructions periodically in order to assist *parochi* in the proper administration and protection of parish property.

(5) The diocesan bishop should see to it that periodical training sessions are provided to *parochi* and their collaborators concerning their duties and responsibilities in the financial administration and protection of parish property, and also concerning ecclesiastical and civil laws assuring the protection of parish property. Indeed, he may consider sending some priests for advanced studies in business, and he may promote giving practical formation in financial administration to future *parochi* in seminaries.

The fourth chapter addressed the role of particular canonical provisions to promote collaboration between the *parochus* and the parish finance council for the protection of parish property. From an analysis of certain canonical provisions of particular laws, special instructions, and statutes of a parish, this study suggests the following guidelines for diocesan bishops to respond proactively for the protection of parish property:

(1) As the office of parish finance officer is seen as a means to protect the parish property, the diocesan bishop may mandate this office by particular law and establish a “job description” based on the model of the diocesan finance officer. As this thesis has pointed out, in determining the job description by particular law, the bishop may consider certain factors such as the appointment, possible consultation with parish councils, Catholicity issues, integrity, financial and legal expertise, term of office, and possibility of removal.

(2) The diocesan bishop, in exercising his supervisory role over the goods of parishes under his jurisdiction, is to specify the duties of the parish finance council. He may identify these in the council’s statutes, in diocesan law, or in the statutes of the parish. He must further specify whether this assistance is to be given in the form of counsel or consent. By requiring counsel or

consent for certain decisions, the statutes could dissuade an administrator from acting against the council's opinion, especially if it were unanimous.

(3) As this thesis has demonstrated some concrete areas suggesting particular laws and special instructions, it is strongly recommended that diocesan bishops establish particular laws and issue special instructions in order to promote collaboration between the *parochus* and the parish finance council; this will provide for the protection of parish property.

(4) Even if statutes are not strictly required for parishes, there are clear advantages in having them in order to bring together in one document the fundamental norms to be observed by *parochi* and parishioners in fostering parish life. Parish statutes should also coordinate the canonical norms for the governance of the parish with corresponding civil norms, since much of the discipline of parish statutes can be included in the civil documents governing them. Consequently, it is recommended that diocesan bishops establish statutes for parishes and include norms for the protection of temporal goods of the parish. This, in turn, would provide for the efficacious protection of parish property.

The findings of this thesis indicate a number of ways in which greater *parochus*-council collaboration can be fostered for the protection of parochial temporal goods. They can be expressed from three perspectives:

1. The diocesan bishop should exercise his supervisory role by establishing particular diocesan laws, issuing special instructions, or approving parish statutes;
2. The *parochus* should spare no effort to become familiar with universal and particular laws, as well as with any applicable statutes. He should then observe them to the fullest degree possible;
3. The parish finance council should become directly involved, in accordance with the applicable laws and norms, in promoting sound collaboration with the *parochus*.

If, at these three levels, all those involved assume their responsibilities faithfully, the result will be that the temporal goods of the parish are duly protected, so that they can be used to further the mission of the Church and, more particularly, the mission of the parish.

Moreover, some general conclusions are presented in the form of recommendations for an eventual revision of certain canons of the universal law:

First, the analysis of canon 532 shows that this canon needs to be reformulated; it reads presently as follows: “[...] He is to take care that the goods of the parish are administered according to the norm of cann. 1281-1288.” Since administration is only one of the four fundamental rights of a juridic person, namely, to acquire, retain, administer, and alienate temporal goods according to norm of law (c. 1255), it might be clearer if the canon were worded as follows: “He is to take care of the goods of the parish according to the applicable provisions of Book V.”

Second, the analysis of canon 537 indicates that even though the parish finance council is a consultative structure, its consultation can take place in the form of the *parochus*’ either seeking counsel or consent in keeping with the *ius vigens* on consultative bodies in the Code. However, the 1997 inter-dicasterial instruction *Ecclesiae de mysterio* seems to raise a doubt about this dual role of consultation (counsel or consent) and causes confusion among canonists because it states that the parish finance council enjoys a consultative vote only and it is silent about its consent-giving vote as a consultative body.¹ Hence, the law on parish councils contained in this instruction (art. 5, §2) requires an authentic interpretation from the Supreme Legislator on the *dubium* whether the parish finance council as a consultative body could be allowed by particular law to have a consent-giving vote.

¹ See chapter II, pp. 144-145, fn. 231.

Third, the thesis on the challenge of financial malfeasance in the protection of temporal goods of the parish shows that Book VI contains some provisions which could be implemented against such acts committed by *parochi*. Moreover, canon 1741, 5° provides that the *parochus* can also be removed from his office for poor administration of temporal goods that can be remedied in no other fashion. However, there is no specific canon that addresses the action of an administrator who misappropriates funds. Hence, it would be preferable to have a canon that addresses specifically the misappropriation of funds belonging to a public juridic person.

Fourth, the study on the absence of civil legal conformity with canon law demonstrates that there should be stronger requirements in the Code for public juridic persons to have separate civil recognition. This would radically change the application of the diocesan corporation sole model, a method of holding property in the diocese which is contrary to canon law.

Lastly, since there is no canon, as such, on the obligation of having internal or external audits on the financial administration of a juridic person, there is no compelling reason for administrators to undertake one. The thesis on the challenge of a general lack of guidance in the protection of parish property brings to light the fact that such a law could be established by particular legislation; however, it would be beneficial if canon 1284, which lists various duties of the administrator of a juridic person, also recommended such audits.

APPENDICES¹

APPENDIX I

PARTICULAR LAW ESTABLISHING NORMS FOR PARISH FINANCE COUNCILS

CONTENT – The diocesan bishop, by a general decree, is to issue norms to guide the operation of parish finance councils. Once they are issued, the statutes for each finance council must be approved by the local ordinary through a singular administrative act. The general decree may address the following:

- preamble
- name
- purpose
- membership (ex officio, appointed, elected, etc.)
- officers (executive committee)
- meetings (general, special)
- committees
- finances
- rules of order
- amendments
- dissolution

SAMPLE DECREE

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsbury

Decree Norms for Parish Finance Councils

Whereas, the universal law requires the establishment of finance councils in every parish (537);
and

Whereas, the same law requires the diocesan bishop to issue norms to complement the universal legislation on parish finance councils; and

By this decree, I establish the following norms to govern the parish finance councils in the Diocese of Johnsbury:

- the *parochus* is the legal representative of the parish in juridic affairs
and the administrator of parochial ecclesiastical goods (c. 532);

¹ Appendices 1-10 are taken from J.A. RENKEN, “Selected Issues on Church Property,” unpublished seminar papers, 18-22 January 2010, Ottawa, Saint Paul University.

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- the *parochus* is the president of the parish finance council, which assists him in the administration of parochial goods;
- the *parochus* selects the members of the parish finance council from among the parishioners;
- the members of the parish finance council are to be between three and seven in number; they are to be outstanding in integrity and honesty, and truly expert in financial matters and civil law regarding temporalities (cf. c. 492, §1); excluded are persons related to the *parochus* up to the fourth degree of consanguinity or affinity (cf. c. 492, §3);
- members of the council are appointed for a term of two years, renewable;
- the specific responsibilities of the parish finance council include:
 - to assist the *parochus* in preparing an annual budget of projected income and expenditures before the beginning of each fiscal year, to be presented to the local ordinary (cf. c. 1284, §3); the budget is to be signed by the members of the parish finance council before submission;
 - to review and to attest to the accuracy of the annual financial report which is to be presented to the local ordinary (cf. c. 1287, §2); the annual financial report is to be signed by the parish finance councilors before submission;
 - to be heard by the *parochus* before he seeks the written faculty from the local ordinary to perform an act of extraordinary administration on behalf of the parish (cf. c. 1281, §1); the request is to be signed by the parish finance councilors before submission;
 - to be heard by the *parochus* before he seeks permission from the diocesan bishop to alienate stable patrimony belonging to the parish in accord with the norms of universal and particular law (cf. c. 1291-1292), or to enter contractual transactions which may threaten the patrimonial condition of the parish (cf. c. 1295); these requests are to be signed by the parish finance councilors before submission;
 - to be heard by the *parochus* before he enters into contracts involving leases (c. 1297);

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- the parish finance council is to meet at least four times a year at times announced in advance by the *parochus* to the parishioners; the council may never meet without the *parochus*;
- all parishioners are to know the members of the parish finance council, so that the faithful may make known their opinions and needs to the councilors;
- minutes of meetings are to be made available to the parishioners through a method determined by the *parochus*;
- any changes in the approved statutes must again be approved by the local ordinary.

The above norms are to be contained in the statutes for every parish finance council in the Diocese of Johnsbury. I direct that each *parochus* present to me, within six months of the date of this decree, statutes for his parish finance council to be approved by the local ordinary.

The matter of this decree is effective immediately.

May the Holy Spirit guide all of us in our desire to provide effective care for and vigilance over the goods entrusted to the Church.

Given at Johnsbury, Ontario, this first day of February, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*
Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*
Chancellor

APPENDIX II

PARTICULAR LAW ESTABLISHING ACTS OF EXTRAORDINARY ADMINISTRATION

CONTENT – The decree establishing particular law on acts of extraordinary administration should include the following:

- motive
- legislative authority of diocesan bishop (c. 391)
- notion of particular law (c. 8, §2)
- identification of universal law which invites/requires particular law, if applicable
- the particular law
- effective date (c. 8, §2)
- place, date, signature (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsburg

Decree Particular Law Establishing Acts of Extraordinary Administration

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (c. 1276, §1), especially in order to avoid abuses (c. 391, §2); and

Whereas, the diocesan bishop is competent to determine acts of extraordinary administration for public juridic persons subject to his authority, after he has heard his diocesan finance council (c. 1281, §2); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (c. 391, §1), which he must exercise personally (c. 391, §2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (c. 8, §2); and

Whereas, acts of administration which exceed the limits and manner of ordinary administration must be clearly defined;

By this decree, having heard the diocesan finance council, I establish as particular law of the Diocese of Johnsburg that the following shall be considered acts of extraordinary administration requiring *for validity* the prior written faculty from the local ordinary (c. 1281, §1) to be obtained by an administrator of public juridic persons subject to the Bishop of Johnsburg:

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to expend more than \$25, 000 for the purchase of any movable good; if a purchase is part of a larger purchase, the sum of the entire purchase is subject to this amount;

to expend more than \$25,000 for the repair of property; if a repair is part of a larger project, the sum of the entire project is subject to this amount;

to purchase any real estate or other immovable good;

to erect a building or a cemetery;

to lease property belonging to the public juridic person (cf. c. 1297);

to lease property on behalf of the public juridic person (cf. c. 1297);

to enter any transaction which may worsen the stable patrimonial condition of the public juridic person (cf. c. 1295);

to grant an easement on church property.

If the administrator of a public juridic person subject to the Bishop of Johnsbury performs any of the above-listed acts of extraordinary administration without the prior written faculty of the local ordinary, the act is invalid in canon law and the public juridic person is not bound to answer for it (c. 1281, §3).

This particular law is effective immediately (cf. c. 8, §2).

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor

APPENDIX III**PARTICULAR LAW ON FORMULATION OF ANNUAL BUDGETS**

CONTENT – The decree establishing particular law requiring the creation of annual budgets should include the following:

- motive
- legislative authority of diocesan bishop (c. 391)
- notion of particular law (c. 8, §2)
- identification of universal law which invites/requires particular law, if applicable
- the particular law
- effective date (c. 8, §2)
- place, date, signatures (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsburg

Decree
Particular Law on Formulation of Annual Budgets

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (c. 1276, §1), especially in order to avoid abuses (c. 391, §2); and

Whereas, it is strongly recommended that administrators prepare budgets of incomes and expenditures each year, and it is left to particular law to require them and to determine the ways in which they are to be presented (c. 1284, §3); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (c. 391, §1), which he must exercise personally (c. 391, §2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (c. 8, §2); and

Whereas, the preparation of an annual budget is an indispensable instrument in the process of pastoral planning to meet the needs of the People of God within the perimeters of limited finances;

By this decree, I establish as particular law of the Diocese of Johnsburg:

that the administrators of all public juridic persons subject to the authority of the Bishop of Johnsburg prepare annually a budget of projected income and

expenditures, to be submitted to the diocesan finance officer by 1 May of each year (that is, two months before the beginning of the fiscal year observed in the diocese) on a form provided by the diocesan finance officer;

that administrators prepare these budgets in consultation with the finance council (or, exceptionally, the two financial counselors) of the public juridic person (cf. cc. 537; 1280); and

that the budget be submitted with the signature of the administrator and the members of the finance council (or, exceptionally, the two financial counselors) whom the administrator consulted in preparation of the budget.

This particular law is effective immediately (c. 8, §2).

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ Msgr. Harold B. Anthony, V.G
Chancellor

/s/ + Paul Smith
Bishop of Johnsbury

APPENDIX IV**PARTICULAR LAW ON RENDERING ACCOUNTS TO DONORS**

CONTENT – The decree establishing particular law on rendering accounts to donors should include the following:

- motive
- reference to the universal law (c. 1287, §2)
- the particular law
- effective date (c. 8, §2)
- place, date, signatures (diocesan bishop, Chancellor), seal

SAMPLE DECREE

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsbury

Decree
Particular Law on Rendering Accounts to Donors

Whereas, the diocesan bishop is charged to keep vigilance over the administration of ecclesiastical goods which belong to public juridic persons subject to him (c. 1276, §1), especially in order to avoid abuses (c. 391, §2); and

Whereas, the diocesan bishop has legislative authority in the particular church entrusted to his care (c. 391, §1), which he must exercise personally (c. 391, §2); and

Whereas, the diocesan bishop is able to issue particular law to be observed within the diocese (c. 8, §2); and

Whereas, administrators of ecclesiastical goods which have not been legitimately exempted from the power of governance of the diocesan bishop are bound *ex officio* to present an annual report to the local ordinary who in turn is to present it to the diocesan finance council (c. 1287, §1); and

Whereas, the same administrators are to render an account to the faithful concerning the goods offered by them to the Church according to norms determined by particular law (c. 1287, §2);

By this decree, I establish the following as particular law for the Diocese of Johnsbury regarding the administrators of public juridic persons subject to my governance rendering accounts to the faithful concerning the goods offered by them to the Church:

- the administrator is to provide to each donor an annual report of gifts given by the donor within two weeks after the end of each calendar year;

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- the administrator is to make public a comprehensive annual report of the income and expenditures of the public juridic person at the end of each fiscal year; this report is to correspond to the format of the annual financial report issued by the diocesan finance officer for parishes and other public juridic persons subject to the Bishop of Johnsbury;
- the administrator may make public the above-mentioned comprehensive annual report by sending it to those interested through the postal service; by displaying it in a place readily accessible to the public within the building(s) belonging to the public juridic person; or, in the case of parishes, by including it in the parish bulletin.

The matter of this decree is effective immediately.

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor

/s/ + Paul Smith
Bishop of Johnsbury

APPENDIX V**INSTRUCTION ON INVENTORIES BY ADMINISTRATORS OF PUBLIC JURIDIC PERSONS**

CONTENT – The instruction on inventories should include the following:

- motive
- notion of an instruction (c. 34)
- authority of one with executive power to issue instructions (c. 34, §2)
- law concerning which the instruction is issued
- the instruction
- effective date (c. 8, §2)
- place, date, signatures, seal

SAMPLE INSTRUCTION

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsburg

Instruction
Inventories by Administrators of Public Juridic Persons

Whereas, instructions clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them; they are given by for those whose duty it is to see that laws are executed and oblige them in the execution of laws; they do not derogate from laws (c. 34, §§1-2); and

Whereas, instructions are issued within the limits of their competence by those who possess executive power (c. 34, §1); and

Whereas, the diocesan bishop possesses executive power to govern the particular church entrusted to him (c. 391, §1); and

Whereas, administrators of juridic persons are bound to make an inventory of the stable patrimony owned by the juridic person before they begin their function, are to note changes in the inventory, and are to preserve one copy of the inventory, as initiated and as updated, in the archive of the administration and one copy of the same in the archive of the curia (c. 1283, 2°-3°); and

Whereas, when administrators make and update inventories they are exercising vigilance so that the goods entrusted to their care are in no way lost (c. 1284, §2, 1°);

In order to assure the accurate recording of stable patrimony belonging to public juridic persons subject to the vigilance of the Bishop of Johnsburg, I issue this instruction regarding the inventories to be made and regularly updated by the administrators of public juridic persons

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subject to the authority of the Bishop of Johnsbury, and I instruct that these administrators are:

to use the form provided by the diocesan finance officer for the inventory of the ecclesiastical goods belonging to public juridic persons;

to update this form at least once every year;

to send to the diocesan finance officer each year an updated inventory together with the annual report of administration, which report is to be sent to the diocesan finance officer within one month of the end of each fiscal year, i.e., within one month following 30 June each year (cf. cc. 1284, §2, 7°; 1287, §1);

to retain a copy of the updated annual inventory in the archive of the administration, together with other well organized books of receipts and expenditures (cf. c. 1284, §2, 7°) and other documents and records on which the property rights of the public juridic person are based (c. 1284, §2, 9°).

The matter of this instruction is effective immediately.

Given at the City of Johnsbury, in the province of Ontario, this first day of November, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor

APPENDIX VI

RESCRIPTS (GRANTING PERMISSION/FACULTY/CONSENT)

LAW – Several canons in *Book V* require the competent ecclesiastical authority to grant permission, a faculty, or consent for an administrator of a juridic person to perform an act. Often, the “permission” is really “consent for validity.”

- permission to beg for alms (c. 1265, §1)
- permission to refuse a gift of greater importance, or one having a modal obligation or condition attached (c. 1267, §2)
- “written faculty” to perform an act of extraordinary administration (c. 1281, §2)
- to invest surplus revenue (c. 1284, §2, 6°)
- to initiate or contest a lawsuit in the civil forum (c. 1288)
- to designate stable patrimony (cc. 1291; 1281, §2)
- to alienate stable patrimony valued above the minimum amount (cc. 1291-1292)
- to enter non-alienation contracts which can worsen the patrimonial condition (c. 1295)
- to lease ecclesiastical goods (c. 1297)
- to lease or sell goods to closer relatives (c. 1298)
- to accept a non-autonomous pious foundation (c. 1304, §1)

CONTENTS – To grant permission/faculty/consent, the competent ecclesiastical authority should use precise language in the rescript, indicating what is granted, to whom, etc. The following elements would be included:

- the name of the administrator
- the canon
- the precise permission/faculty/consent granted in response to a request
- date, place, signature

APPENDIX VI.1

PERMISSION TO PERFORM AN ACT OF EXTRAORDINARY ADMINISTRATION

SAMPLE RESCRIPT

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsburg

Rescript
Permission to Perform an Act of Extraordinary Administration

Whereas, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (c. 1282) and with the diligence of a good householder (c. 1284, §1); and

Whereas, administrators invalidly place acts of extraordinary administration unless they have first obtained the written faculty of the ordinary (c. 1281, §1); and

Whereas, having heard the diocesan finance council, the Bishop of Johnsburg has determined that the purchase of real estate by the administrator of a public juridic person subject to his authority constitutes an act of extraordinary administration (cf. c. 1281, §2); and

Whereas, the *parochus* of a parish represents it in all juridic affairs and is its administrator (c. 532); and

Whereas, the Reverend Thomas T. Terreau, moderator of the priests to whom has been entrusted *in solidum* (cf. c. 517, §1; cf. c. 543, §2, 3°) the care of Saint Michael Parish, Johnsburg, has requested permission from the Bishop of Johnsburg to purchase real estate adjacent to Saint Michael Church property (specifically, Lot 46-A of Marryberg township, located at the corner of South and Mildred Streets); and

Whereas, in accord with the particular law of the Diocese of Johnsburg, the Reverend Thomas T. Terreau has heard the members of the parish finance council before making this request;

I, the undersigned Bishop of Johnsburg, grant to the Reverend Thomas T. Terreau the faculty to perform the requested act of extraordinary administration and to purchase the above-mentioned real estate on behalf of Saint Michael Parish, Johnsburg. He is to take care that the ownership of this property is protected in civilly valid methods (c. 1284, §2, 2°) and is to place the appropriate documents attesting to the ownership of the real estate in the parish archive and in the archive of the diocesan curia (c. 1284, §2, 9°). Likewise, he is to exercise vigilance that this property is properly protected by taking out appropriate insurance coverage for it according to diocesan requirements (cf. c. 1284, §2, 1°).

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Given at Johnsbury, Ontario, this first day of August, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor

APPENDIX VI.2

PERMISSION TO ALIENATE STABLE PATRIMONY VALUED ABOVE THE MINIMUM AMOUNT

SAMPLE RESCRIPT

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsbury

Rescript**Permission to Alienate Stable Patrimony Valued Above the Minimum Amount**

Whereas, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (c. 1282) and with the diligence of a good householder (c. 1284, §1); and

Whereas, administrators invalidly place acts of alienation of stable patrimony whose value exceeds the sum defined by the law unless they have first obtained the permission of the diocesan bishop with the consent of his diocesan finance council, the college of consultors, and those concerned (c. 1292, §1); and

Whereas, the *parochus* of a parish represents it in all juridic affairs and is its administrator (c. 532); and

Whereas, the Reverend Robert R. Rhodes, *parochus* of Saint Patrick Parish, Johnsbury, has requested permission from the Bishop of Johnsbury to sell real estate donated to Saint Michael Parish by the late Maurice P. Frazier (specifically, Lot 46-A of Marryberg township, located at the corner of South and Mildred Streets) for the amount of CA\$ 2,500,000, which is between the minimum and maximum amounts established by the Canadian Conference of Catholic Bishops (see CCCB official memorandum, dated February 2008); and

Whereas, the Reverend Robert R. Rhodes has consulted both his parish pastoral council and his parish finance council, and they concur that the just cause for alienating this property, which is not needed for parochial operation, is evident advantage to the parish (cf. c. 1293, §1, 1°) which intends to invest the revenue generated by the sale for the future erection of a parish catechetical center on property adjacent to the parish church (cf. c. 1294, §2); and

Whereas, the Reverend Robert R. Rhodes has obtained two written appraisals of experts that this property is worth less than the proposed selling price (cf. cc. 1293, §2, 2°; 1294, §1);

I, the undersigned Bishop of Johnsbury, having obtained the consent of the diocesan finance council, the college of consultors, and those concerned, grant to the Reverend Robert R. Rhodes permission to alienate the above-mentioned real estate on behalf of Saint Patrick Parish, Johnsbury. He is to take care that the sale of this property is protected in civilly valid methods (cf. c. 1284, §2, 2°) and is to place the appropriate documents attesting to the sale in the parish archive and in the archive of the diocesan curia (c. 1284, §2, 9°). Likewise, he is to invest the

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revenue generated by the sale for the advantage of the church (cf. cc. 1284, §2, 6°; 1294, §2).

Given at Johnsbury, Ontario, this first day of August, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor

APPENDIX VI.3

PERMISSION TO DESIGNATE STABLE PATRIMONY

SAMPLE RESCRIPT

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsburg

Rescript
Permission to Designate Stable Patrimony

Whereas, administrators are bound to fulfill their functions in the name of the Church according to the norm of law (c. 1282) and with the diligence of a good householder (c. 1284, §1); and

Whereas, administrators are to exercise vigilance so that the ecclesiastical goods entrusted to their care are in no way lost or damaged (c. 1284, §2, 1°); and

Whereas, the designation of an ecclesiastical good is a most suitable means to protect it from loss; and

Whereas, the goods which constitute stable patrimony are identified by legitimate designation (cf. c. 1291); and

Whereas, the act of designating stable patrimony of a parish is an act of extraordinary administration requiring the *parochus*, who is the administrator of the parish (c. 532) to obtain the prior written faculty from the local ordinary (c. 1281, §1); and

Whereas, the Reverend Konrad Stevens, *parochus* of Saint Patrick Parish, Johnsburg, has requested permission from the Bishop of Johnsburg to designate three items as stable patrimony of the parish (that is, a new set of vestments valued at \$5,600; a new photocopy machine valued at \$15,200; and a new snow remover valued at \$8,600);

I, the undersigned Bishop of Johnsburg, grant the Reverend Konrad Stevens this written faculty to designate legitimately these three items as the stable patrimony of Saint Patrick Parish, Johnsburg. He is to see that these items are identified as parochial stable patrimony in the next inventory updated for the parish (cf. c. 1283, 3°).

Given at Johnsburg, Ontario, this third day of September, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsburg

/s/ Dr. Madeline Pole
Vice-Chancellor

APPENDIX VII

DECREE ESTABLISHING A TERRITORIAL PARISH

CONTENTS – To establish a territorial parish, several elements should be included in the canonical decree of erection, among which could be the following:

- preamble (motivations to erect the new parish)
- consultation process followed
- statement of canonical erection
- effective date of decree
- juridic personality
- territory
- financial arrangements (if an existing parish is being modified to establish the new one)
- deanery to which the parish belongs
- councils to be established (pastoral, finance)
- place of worship (until a parish church is erected)
- appointment of *parochus* (a separate decree is preferred) and manner of taking Possession of the parish
- date, place, signatures (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith

By the grace of God and the favor of the Apostolic See
Bishop of Johnsbury

**Decree of Establishment
Saint John the Apostle Parish
Johnsbury, Ontario**

The Second Vatican Council, in its decree on the *Pastoral Ministry of Bishops* (CD, no. 32) provides that the diocesan bishop is responsible for the pastoral care of those living in the diocese. He is to see to their spiritual well-being by establishing parishes when it is opportune to do so.

In virtue of this mandate, and because of the growth of the city of Johnsbury, Ontario, and the increasing number of parishioners in Saint Kenneth Parish, after having consulted the presbyteral council of the Diocese of Johnsbury (c. 515, §2) and the parishioners concerned, I hereby establish canonically a new territorial parish (c. 518) in the City of Johnsbury under the patronage of Saint John the Apostle.

Saint John the Apostle Parish, which will be part of the Central Deanery, shall have the following boundaries in Johnsbury:

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on the north: McHenry Street
 on the south: Lucas Avenue
 on the east: Ryan Parkway
 on the west: Brady Street

The parish has juridic personality *a iure* (c. 515, §3) with all the rights, privileges, and obligations attached thereto. I also approve its statutes (c. 117) which are attached to this decree.

The administration of its temporal goods is subject to the existing universal and diocesan laws, as well as any applicable civil laws.

After consultation with the *parochus* and the parish finance council of Saint Kenneth Parish, it is hereby decreed that this parish shall, before December 31, 2009, in application of canon 122, contribute the sum of \$100,000 to Saint John the Apostle Parish.

Before a parish church is erected, liturgical functions may be celebrated in the Knights of Columbus Hall, McHenry Council #699, after agreement with the proper authorities of the Knights. However, baptisms, weddings, and funerals may also be celebrated in Saint Kenneth Parish church, provided both *parochi* agree on the appropriate arrangements.

In accord with the norms of *CIC*, canons 536 and 537, a parish pastoral council and a parish finance council shall be constituted in Saint John the Apostle Parish, according to the norms of universal and diocesan law.

It is to have its own parish registers (c. 535, §§ 1-2) with entries beginning January 1, 2010; its own parish seal (c. 535, §3); and its own parish archives (c. 535, §4).

All the Christian faithful who have domicile or quasi-domicile in the territory defined above belong by law to Saint John the Apostle Parish.

This present decree shall take effect on January 1, 2010.

May Saint John the Apostle, the heavenly patron of this new parish, intercede with the Father for rich blessings to come to this new parish through Jesus Christ and in the power of the Holy Spirit.

Given at Johnsbury, Ontario, this first day of September, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
 Bishop of Johnsbury

/s/ Msgr. Harold B. Anthony, V.G.
 Chancellor

APPENDIX VIII

DECREE APPROVING STATUTES OF A TERRITORIAL PARISH

CONTENTS – The statutes of a territorial parish should include the following:

- name
- date of establishment
- juridic personality
- territory
- deanery
- leadership figure(s)
- councils: finance, pastoral
- functions (in general)
- registers, seal, archives
- general observance of canon law and civil law
- date, place, signatures (diocesan bishop, chancellor), seal

SAMPLE STATUTES

Statutes Saint John the Apostle Parish Johnsburg, Ontario

Whereas a parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a *parochus* as its proper pastor under the authority of the diocesan bishop (c. 515, §1),

Whereas every legitimately erected parish is a public juridic person *a iure* (c. 515, §3), and

Whereas the competent authority, in this case the diocesan bishop (c. 515, §2) approves the statutes of a parish (c. 117),

By this decree I, the Bishop of Johnsburg, approve the following statutes for Saint John the Apostle Parish, Johnsburg, Ontario:

1. Name – These statutes govern the operation of Saint John the Apostle Parish, Johnsburg, Ontario, a territorial parish in the Diocese of Johnsburg (c. 518) and a public non-collegial juridic person, an aggregate of persons (c. 115, §§1-2) subject to the supervision of the diocesan bishop of the Diocese of Johnsburg.
2. Purpose – The purpose of Saint John the Apostle Parish shall be to provide pastoral care, in accord with the discipline of the Church (c. 515, §1; cf. cc. 528-529), to all those who have domicile or quasi-domicile within its territorial boundaries (c. 102), and transients actually residing in those boundaries (*CIC*, c. 107 § 2).

3. Territory –The territorial boundaries of Saint John the Apostle Parish are:

on the north: McHenry Street
 on the south: Lucas Avenue
 on the east: Ryan Parkway
 on the west: Brady Street

4. Deanery – Saint John the Apostle Parish shall belong to the Central Deanery.
5. Church Building – Within five years of its establishment, Saint John the Apostle Parish shall build a church, that is, a sacred building designate for divine worship to which all the faithful have the right of entry for the exercise, especially the public exercise, of divine worship (c. 1214), erected according to the norm of law. It shall be named Saint John the Apostle Church. If the church cannot be erected within five years, the diocesan bishop shall be contacted to extend in writing the time during which the church is to be built.
6. Leadership Figure – To Saint John the Apostle Parish will be assigned a *parochus* (c. 519), or a canonically equivalent figure (cf. cc. 540; 517) in accord with the law of the Catholic Church.
- A. Ministry of the Word. The *parochus* of Saint John the Apostle Parish is obliged to make provision so that the word of God is proclaimed in its entirety to those living in the parish; for this reason, he is to take care that the lay members of the Christian faithful are instructed in the truths of the faith, especially by giving a homily on Sundays and holy days of obligation and by offering catechetical instruction. He is to foster works through which the spirit of the gospel is promoted, even in what pertains to social justice. He is to have particular care for the Catholic education of children and youth. He is to make every effort, even with the collaboration of the Christian faithful, so that the message of the gospel comes also to those who have ceased the practice of their religion or do not profess the true faith (c. 528, §1).
- B. Ministry of Sanctification. The *parochus* of Saint John the Apostle Parish is to see to it that the Most Holy Eucharist is the center of the parish assembly of the faithful. He is to work so that the Christian faithful are nourished through the devout celebration of the sacraments and, in a special way, that they frequently approach the sacraments of the Most Holy Eucharist and penance. He is also to endeavor that they are led to practice prayer even as families and take part consciously and actively in the sacred liturgy which, under the authority of the diocesan bishop, the *parochus* must direct in his own parish and is bound to watch over so that no abuses creep in (c. 528, §2).
- C. Ministry of Care. The *parochus* of Saint John the Apostle Parish, in order to fulfill his office diligently, is to strive to know the faithful entrusted to his care. Therefore he is to visit families, sharing especially in the cares, anxieties, and griefs of the faithful, strengthening them in the Lord, and prudently correcting them if they are failing in certain areas. With generous love he is to help the sick, particularly those close to

- death, by refreshing them solicitously with the sacraments and commending their souls to God; with particular diligence he is to seek out the poor, the afflicted, the lonely, those exiled from their country, and similarly those weighed down by special difficulties. He is to work so that spouses and parents are supported in fulfilling their proper duties and is to foster growth of Christian life in the family (c. 529, §1).
- D. Collaboration in Ministry. The *parochus* of Saint John the Apostle Parish is to recognize and promote the proper part which the lay members of the Christian faithful have in the mission of the Church, by fostering their associations for the purposes of religion. He is to cooperate with his own bishop and the presbyterate of the diocese, also working so that the faithful have concern for parochial communion, consider themselves members of the diocese and of the universal Church, and participate in and sustain efforts to promote this same communion (c. 529, §2).
- E. The following functions are especially entrusted to the *parochus*:
- 1) The administration of baptism
 - 2) The administration of confirmation to those who are in danger of death, according to the norm of canon 883, 3°;
 - 3) The administration of Viaticum (c. 922) and of the anointing of the sick, without prejudice to the prescript of canon 1003, §§2-3, and the imparting of the apostolic blessing;
 - 4) The assistance at marriages and the nuptial blessing;
 - 5) The performance of funeral rites;
 - 6) The blessing of the baptismal font at Easter time, the leading of processions outside the church building, and solemn blessings outside the church building;
 - 7) The more solemn eucharistic celebration on Sundays and holy days of obligation (c. 530, 7°).
- F. The *parochus* shall offer the *missa pro populo* according to the norm of law (c. 534).
- G. The *parochus* shall represent Saint John the Apostle Parish in all juridic affairs, and shall take care that the goods of the parish are administered according to the norm of canons 1281-1288 (c. 532).
- H. The *parochus* must obtain from the diocesan bishop the written faculty to perform acts of extraordinary parochial administration, including the designation of the stable patrimony of the parish, in accord with the norms of universal and particular law (c. 1281, §§1-2).
- I. The *parochus* must observe the norms of universal law dealing with alienation of parish property (cc. 1291-1294), contractual transactions which can worsen the patrimonial condition of the parish (c. 1295), and leases (c. 1297).
- J. If the parish become vacant or the *parochus* becomes impeded from exercising his pastoral function and before the appointment of a parochial administrator, the

- parochial vicar (or, if there are several, the parochial vicar senior by appointment) shall assume immediate temporary governance of the parish. If there is no parochial vicar, the immediate temporary governance of the parish shall be assumed by the vicar forane of the Central Deanery (see c. 541, §1).
7. Parish Councils - There shall be established in Saint John the Apostle Parish two parish councils: a finance council (c. 537) and a pastoral council (c. 536).
 - A. The parish finance council of Saint John the Apostle Parish is governed, in addition to universal law, by norms issued by the diocesan bishop and in which the Christian faithful, selected according to these same norms, are to assist the *parochus* in the administration of the goods of the parish, without prejudice to the prescript of canon 532 (c. 537).
 - B. The parish pastoral council of Saint John the Apostle Parish is governed by norms established by the diocesan bishop, who after hearing the presbyteral council had decreed that such a council is to be established in every parish. The *parochus* presides over the pastoral council which has a consultative vote; in the council, the Christian faithful, together with those who share in pastoral care by virtue of their office in the parish, assist in fostering pastoral activity (c. 536).
 8. Parish Registers - Saint John the Apostle Parish shall maintain parochial records for baptisms, marriages, deaths, and other purposes prescribed by the conference of bishops or the diocesan bishop. The *parochus* shall see that these are accurately inscribed and carefully preserved (c. 535, §1).
 9. Parish Seal – Saint John the Apostle Parish shall have its own seal. Documents regarding the canonical status of the Christian faithful and all acts which can have juridic importance are to be signed by the *parochus* or his delegate and sealed with the parochial seal (c. 535, §3).
 10. Archives - Saint John the Apostle Parish shall have a storage area, or archive, in which the parochial registers are protected along with letters of bishops and other documents which are to be preserved for reason of necessity or advantage. The *parochus* is to take care that all of these things, which are to be inspected by the diocesan bishop or his delegate at the time of visitation or at some other opportune time, do not come into the hands of outsiders. Older parochial registers are also to be carefully protected according to the prescripts of particular law (c. 535, §§4-5).
 11. In addition to the above, the operation of Saint John the Apostle Parish shall be governed by the norms of canon law, universal and particular, and those civil laws which are not contradictory to divine law or canon law (cf. c. 22).

Approval

The foregoing statutes are approved by the undersigned Bishop of Johnsburg, this first day of September, in the year of our Lord, two thousand and nine.

/s/ + Paul Smith
Bishop of Johnsburg

/s/ Msgr. Harold B. Anthony, V.G.
Chancellor.

APPENDIX IX**DECREE APPROVING STATUTES FOR A PARISH FINANCE COUNCIL**

CONTENT – The statutes of a parish finance council will identify several issues related to its purpose, membership, and functions, according to the norms issued by the diocesan bishop (cf. c. 537), among which could be the following:

- preamble
- name
- purpose
- membership (ex officio, appointed, elected, etc.)
- officers (executive committee)
- meetings (general, special)
- committees
- election of members
- finances
- rules of order
- amendments
- dissolution

SAMPLE STATUTES

Saint John the Apostle Parish
Johnsburg, Ontario

**Parish Finance Council
Statutes**

1. Preamble

Saint John the Apostle Parish is a community of baptized Catholics who share our time, talents, and treasure in service of the people of God in south central Johnsburg, Ontario.

The parish finance council, sensitive to the pastoral needs of our fellow parishioners, strives to discern creative and effective means apply available resources to meet those pastoral needs, that we may grow in faith, hope, and love as we witness to the presence of Jesus Christ, the Risen Lord, in this portion of the Lord's vineyard by the gift and power of the Holy Spirit.

2. Name

This council shall be called the "Parish Finance Council of Saint John the Apostle Parish, Johnsburg, Ontario," referred to in these statutes as "the finance council."

3. Purpose

- A. The finance council assists the *parochus* in the administration of the ecclesiastical goods of the parish.
- B. Nothing done by the finance council will compromise the norm of law which indicates that the *parochus* is the legal representative of the parish in juridic affairs and the administrator of its goods (cf. c. 532).

4. Specific Responsibilities

- A. To assist the *parochus* in preparing an annual budget of projected income and expenditures before the beginning of each fiscal year, to be presented to the local ordinary (cf. c. 1284, §3); the budget is to be signed by the members of the parish finance councilors before submission;
- B. To review and to attest to the accuracy of the annual financial report which is to be presented to the local ordinary (cf. c. 1287, §2); the annual financial report is to be signed by the parish finance councilors before submission;
- C. To be heard by the *parochus* before he seeks the written faculty from the local ordinary to perform an act of extraordinary administration on behalf of the parish (cf. c. 1281, §1); the request is to be signed by the parish finance councilors before submission. By particular law of the Diocese of Johnsbury, the following are acts of extraordinary administration performed by *parochi*:
 - 1) To expend more than \$25,000 for the purchase of any movable good; if a purchase is part of a larger purchase, the sum of the entire purchase is subject to this amount;
 - 2) To expend more than \$25,000 for the repair of property; if a repair is part of a larger project, the sum of the entire project is subject to this amount;
 - 3) To purchase any real estate or other immovable good;
 - 4) To erect a building or a cemetery;
 - 5) To lease property belonging to the public juridic person (cf. c. 1297);
 - 6) To lease property on behalf of the public juridic person (cf. c. 1297).
 - 7) To enter any transaction which may worsen the stable patrimonial condition of the public juridic person (cf. c. 1295);
 - 8) To grant an easement on church property;

- D. To be heard by the *parochus* before he seeks permission from the diocesan bishop to alienate stable patrimony belonging to the parish in accord with the norms of universal and particular law (cf. c. 1291-1292), or to enter contractual transactions which may threaten the patrimonial condition of the parish (cf. c. 1295); these requests are to be signed by the parish finance councilors before submission;
- E. To be heard by the *parochus* before he enters into contracts involving leases (c. 1297).

5. Membership

- A. The *parochus* is the president of the finance council, which assists him in the administration of parochial goods.
- B. The *parochus* selects the members of the finance council from among the parishioners.
- C. The members of the finance council are to be between three and seven in number; they are to be outstanding in integrity and honesty, and truly expert in financial matters and civil law regarding temporalities (cf. c. 492, §1); excluded are persons related to the *parochus* up to the fourth degree of consanguinity or affinity (cf. c. 492, §3).
- D. The members of the finance council are appointed for a term of two years, renewable.
- E. All parishioners are to know the members of the finance council, so that the faithful may make known their pastoral needs to the councilors.

6. Meetings

The finance council is to meet at least four times a year at times announced in advance by the *parochus* to the parishioners; the council may never meet without the *parochus*.

7. Officers

- A. The officers of the finance council shall be the chairperson, the vice-chairperson, and secretary. They will be elected at the annual organizational meeting, held after the beginning of a new fiscal year, and shall serve for a one-year term, renewable.
- B. The chairperson is responsible for conducting the business of all meetings of the finance council.
- C. The vice-chairperson assists the chairperson, and substitutes for the chairperson when the chairperson is unable to perform the duties of office.

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- D. The secretary prepares and distributes agenda for meetings, records minutes of meetings and distributes them to members. The secretary places into the parish bulletin announcements of coming council meetings, and summaries of the minutes of the meetings, after these have been approved by the *parochus*.

8. Committees

- A. All committees of the finance council shall be ad hoc committees, whose members are appointed by the chairperson of the finance council with the consent of the *parochus*.
- B. Although others than councilors may serve on ad hoc committees, the majority of members shall be members of the finance council.
- C. The purpose of each ad hoc committee shall be determined clearly by the chairperson of the finance council.
- D. Reports of the activities of the ad hoc committees shall be made at each finance council meeting.

9. Quorum

A simple majority of members of the finance council and its committees shall constitute a quorum necessary for a meeting.

10. Finances

- A. An annual budget for the operation of the finance council will be submitted to the *parochus* in April of each year, after it has been approved by the councilors.
- B. Funding for the operation of the finance council shall come from ordinary parish operating funds.
- C. Councilors shall not receive remuneration for service on the finance council or for duties performed on its behalf, but may be reimbursed for reasonable expenses incurred if these have been approved in advance by the *parochus*.

11. Rules of Order

- A. *Robert's Rule of Order*, as it may be updated periodically, shall govern the operations of the finance council, unless these statutes determine otherwise.
- B. Councilors shall endeavor to reach consensus in all matters being considered by the finance council.

12. Amendments

Appendix

- A. These Statutes may be amended following a two-thirds majority of council members favoring amendment, including those absent from the meeting when a vote for amendment is taken.
 - B. If the bishop of the Diocese of Johnsbury issues particular law governing the operation of parish finance councils, these shall be considered as being incorporated into these present statutes with overriding effect.
 - C. No Statutes or amendment of Statutes shall be effective without approval by the *parochus* and the local ordinary.
 - D. Nothing in the Statutes may contradict the divine law, the universal law of the Catholic Church, or the particular law of the Diocese of Johnsbury.
13. Dissolution
- A. The finance council may be dissolved by decision of the bishop of the Diocese of Johnsbury or, with the approval of the diocesan bishop, by decision of the *parochus* of Saint John the Apostle Parish.
 - B. If the parish has no *parochus* or canonical equivalent, the finance council is suspended until one is appointed.

Approval

The above statutes for the parish finance council of Saint John the Apostle Parish, Johnsbury, Ontario, are approved this tenth day of November, in the year of our Lord, two thousand and nine.

/s/ Msgr. Harold B. Anthony
Vicar General

/s/ Sister Madeline Model, O.P.
Vice-Chancellor.

APPENDIX X**DECREE MODIFYING A TERRITORIAL PARISH**

CONTENTS – To establish a territorial parish, several elements should be included in the canonical decree of modification, among which could be the following:

- preamble (motivations to modify the new parish)
- consultation process followed
- statement of canonical modification
- effective date of decree
- juridic personality
- territory
- financial arrangements (if an existing parish is being modified to establish the new one)
- deanery to which the parish belongs
- councils established (pastoral, finance)
- *parochus* retains his office (or not)
- date, place, signatures (diocesan bishop, chancellor), seal

SAMPLE DECREE

Paul Smith
by the grace of God and the favor of the Apostolic See
Bishop of Johnsbury

Decree of Modification
Saint Kenneth Parish
Johnsbury, Ontario

The Second Vatican Council, in its decree on the *Pastoral Ministry of Bishops* (CD, no. 32) provides that the diocesan bishop is responsible for the pastoral care of those living in the diocese. He is to see to their spiritual well-being by establishing parishes when it is opportune to do so.

In virtue of this mandate, and because of the growth of the city of Johnsbury, Ontario, and the increasing number of parishioners in Saint Kenneth Parish, after having consulted the presbyteral council of the Diocese of Johnsbury (c. 515, §2) and the parishioners concerned, I hereby decree a modification of Saint Kenneth Parish by the canonical establishment of a new territorial parish (c. 518) in the City of Johnsbury under the patronage of Saint John the Apostle, whose territory is taken from Saint Kenneth Parish.

As a result of the establishment of Saint John the Apostle Parish, the territory of Saint Kenneth Parish in the City of Johnsbury and a part of the Central Deanery is modified to be as follows:

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on the north: McHenry Street
 on the south: McNicholas Boulevard
 on the east: Ryan Parkway
 on the west: Brady Street

Saint Kenneth Parish retains juridic personality *a iure* (c. 515, §3) with all the rights, privileges, and obligations attached thereto. The administration of its temporal goods remains subject to the existing universal and diocesan laws, as well as any applicable civil laws. It shall continue to maintain a parish pastoral council and a parish finance council, in accord with the norms of canons 536 and 537 and other applicable universal and diocesan law.

After consultation with the *parochus* and the parish finance council of Saint Kenneth Parish, it is hereby decreed that this parish shall, before December 31, 2009, in application of *CIC*, canon 122, contribute the sum of \$100,000 to Saint John the Apostle Parish. Until a new parish church is built for Saint John the Apostle Parish, the *parochi* of the two parishes are asked to agree on appropriate arrangements so that baptisms, weddings, and funerals of parishioners of Saint John the Apostle Parish may take place in Saint Kenneth Church.

All the Christian faithful who have domicile or quasi-domicile in the territory defined above continue to belong by law to Saint Kenneth Parish; others formerly belonging to Saint Kenneth parish now belong to Saint John the Apostle Parish.

The Reverend Richard Richie will remain the *parochus* of Saint Kenneth Parish according to the norm of law.

This present decree shall take effect on January 1, 2010.

May Saint Kenneth, the heavenly patron of this modified parish, continue intercede with the Father for rich blessings to come to the parishioners through Jesus Christ and in the power of the Holy Spirit.

Given at Johnsbury, Ontario, this first day of September, in the year of our Lord, two thousand and nine.

/s/ + *Paul Smith*
 Bishop of Johnsbury

/s/ *Msgr. Harold B. Anthony, V.G.*
 Chancellor.

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