



Mark E. Chopko
PARISH STRUCTURES
Identity, Integrity, and Indissolubility

Protecting the property of Catholic parishes and defining its ownership in civil law requires careful positive action and cannot be taken for granted.

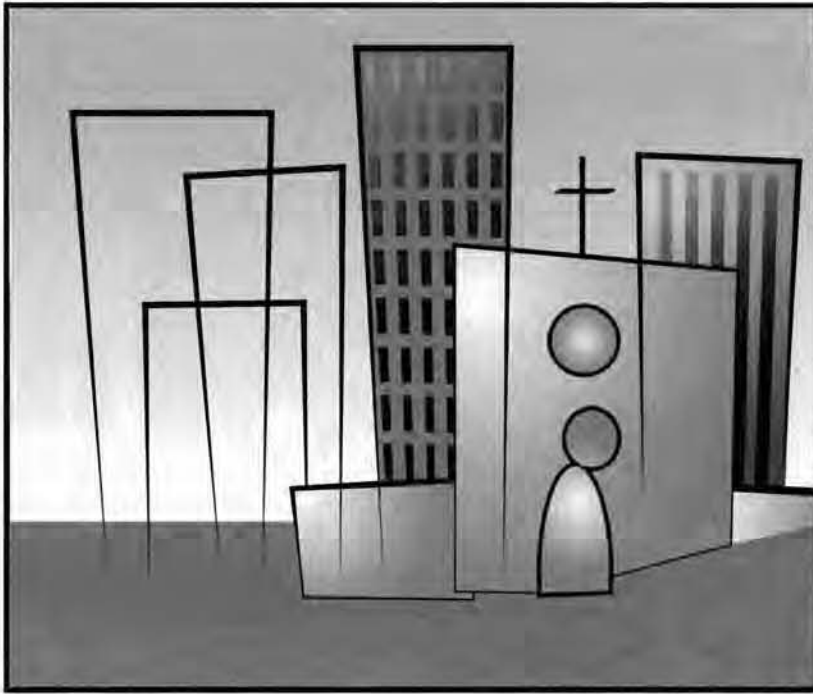
More than just a place to go on Sundays, parishes are a source of community and identity for millions of Catholics in the United States. When I introduced two of my friends to each other, they discovered themselves to have similar South Side Chicago roots. Their neighborhoods and points of reference were not streets or parks but parishes. Remembrances were triggered based on who attended

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what church and whether the CYO basketball teams were any good. Often parishes were picked by accident—where one lived and grew up dictated what church one attended. Catholics now give attention to choosing their parishes based on the availability of schools and other programs, a style of music and liturgy, cultural values, or other factors. Having put so much effort into these choices, Catholics sometimes regard them possessively. Thus, when in the last several years some have perceived that their parishes were under assault, ripples of concern swept through Catholic parish communities.

At the outset let me state that there is no movement to target parish assets for seizure in the course of church litigation. Nonetheless, it is true that liability claims and creditors have threatened to reach patrimony, that is, the real estate and cash present in parishes. In some ways, nineteenth-century structures have collided with twenty-first-century liabilities, and the results are not always gratifying.

It is not that church administrators have been inattentive, but rather that they have been complacent. One assumed that the operating presumptions made for parishes at the time they were created would continue to be part of the culture. Similarly, structural choices



asionally outlawed and therefore forbidden to own property. One solution, adopted by Maryland Jesuits and later adapted by Catholics in other colonies, was to place land and other property in the hands of reliable lay trustees who would hold the property in fee simple

(that is, in a person's own name), but with the recognition that the property was indeed held in trust for the local church.

were obvious to those who made them, and they did not conceive they would need to be explained to successive generations of litigants, judges, and regulators. But, even if we were not prodded by the liability situation facing Catholic dioceses in the United States, it is clear that we need to give additional attention to the structure and operation of parishes. Some of the operating assumptions on which parish structures were designed need to be rethought and brought into conformity with the realities of modern life and sometimes even the new (1983) *Code of Canon Law*.

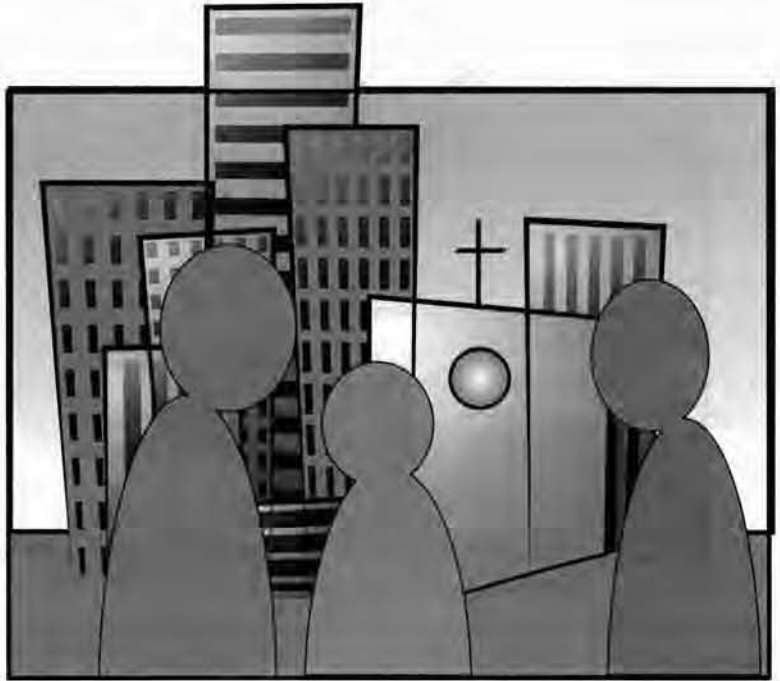
This article will chart briefly some of the history of how we have arrived at the current situation, offer a brief reflection on certain theological and ecclesiastical operating assumptions, and make other observations about the possible coming structural revolution for parishes.

Some History

In the territory now called the United States of America, local parish churches existed before there were native bishops and dioceses. Throughout its colonial history, American Catholics labored under significant legal disabilities. The church faced many of the same problems here that it faced in England. Even when the church was not banned outright, it went through various periods when its ability to hold property was under severe restriction. For example, even in Maryland, founded by the Catholic Calverts, the church was oc-

Even after the Revolution, many of the models adopted by the new states by which religious organizations were allowed to own property reflected a Protestant polity. Those corporate forms that did exist provided for governance entirely by lay people; no clergy were permitted to serve on any church board. These civil forms and agencies allowed under the law did not acknowledge differences in ecclesiastical law or custom, but rather promoted a uniform property tenure system subject to the law of the state. Since all were to be treated equally, a basic premise of the American experience, no distinctions, exceptions, or special treatment were allowed for different churches. The assumption at the time was that American institutions reflected a form of homogeneous Protestantism, and one form really was all that was needed.

Catholic bishops and pastors tried to cope with these disabilities as best they could through a variety of devices, including the reliable lay "trustee" and holding title to real property in the name of the bishop (again with the understanding that such property really was in trust for the church). I have already alluded to the problem of reliability among trustees. But property placed in the bishop's name precipitated a new problem: On a few occasions, the biological heirs of the bishop claimed that the real estate titled in his name at the time of his death should pass to them and not to his successor.



Corporation Sole

A major breakthrough in the mode and tenure of Catholic church property occurred in 1833. In that year, the first statutory corporation sole was created by the Maryland legislature for the Archbishop of Baltimore. It was considered an improvement after 60 years of abuses in the administration of church property in various forms. It allowed the church to end the fee simple ownership of real estate by bishops (which had been gaining ground since the First Provincial Council of Baltimore as a solution to unreliable lay trustees) and provided a civil legal method for episcopal supervision of church property. In 1837, through the Third Provincial Council of Baltimore, the bishops decreed that dioceses should use devices provided in the civil law to protect the intentions of donors giving real and other property to the church. Likewise, the council instructed that such property also should not be titled in the bishop's name. Property in the corporation sole recognized that this was ecclesiastical property, subject to the law of the church and of the state, that it was separate and apart from the bishop's personal estate, and that there was no need for devices or craft to reach the desired end.

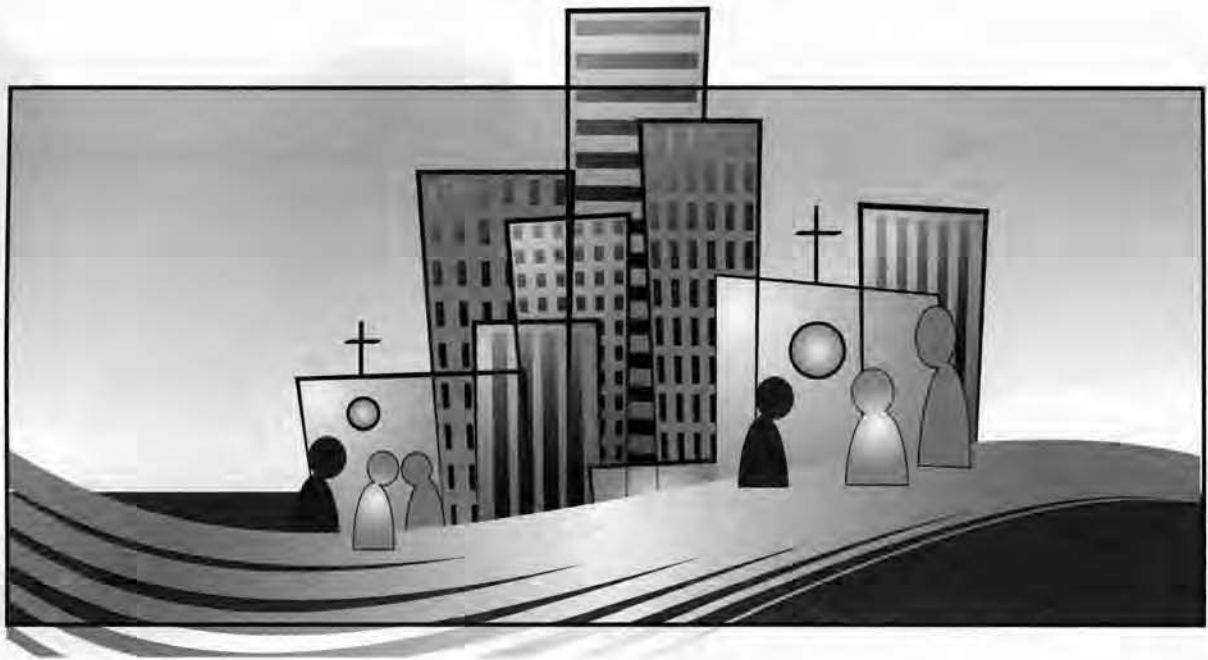
One critical commentator on the American ecclesial legal scene at that time, Bishop John England of Charleston, S.C., criticized some of the administrative choices being made in the United States for the operation of Catholic entities. In his words, Catholic entities were among those institutions most negligently managed. In his view, church administrators did not take sufficient advantage of the various legal devices and structures already available to provide discipline and guidance for corporate activities and direction for the work of trustees. In his view, if the church failed to make adequate rules to direct the operation of real property and the maintenance of donations and gifts, the

fault lay not with the civil law but with the church's administrators. As Bishop England noted, under American law, Catholics "can, without departing from [church] doctrine or discipline, regulate the manner in which the property is to be held, and how it is to be managed, and can establish rules to restrict and to direct its managers..."

How We Arrived

The idea that the structures for Catholic parishes needed to be periodically reviewed and adjusted according to conditions is not a new idea. The roots of the current discussion are in the 1956 deadly fire at the St. Rose of Lima Oyster Roast in the Archdiocese of Baltimore. During that event, the wooden structure in which the function was being held caught fire, and several of the parishioners were trapped in the flames. Prescient risk managers recognized that the potential reach of liability claims could extend beyond St. Rose of Lima to other parishes and to the archdiocese, since all were organized as one corporation sole. By 1963, Baltimore had separately incorporated its parishes while preserving the corporation sole for the operation of the archdiocese itself.

More recent antecedents to this discussion are found in the years immediately after the 2002 liability crisis in the church in the United States. The issue is not whether a parish is liable for failing to supervise some errant priest. In my view, the parish cannot be because,



under the polity of the Catholic church, only the bishop can supervise a priest. The issue, rather, is quite like the problem presented by St. Rose of Lima's fire. This time the issue was whether some judgment creditor of the diocese, finding insufficient assets in the diocese to satisfy its claims, might then turn its sights on parishes. This issue was presented rather dramatically in those places where dioceses filed for the protection of the bankruptcy courts⁵ from their potential creditors. In those cases, most of which were filed by dioceses organized as corporations sole, no separate civil structure was described for the parishes. Rather it was always understood that the parishes had autonomy guaranteed under canon law and were functioning as trusts or unincorporated associations under the daily administration of pastors, not the line control of the bishop. In the bankruptcies, however, the creditors went looking for sufficient ecclesiastical property to satisfy their potentially many millions of dollars in claims. They found the parishes to be the source of that property.

Parish Assets

In point of fact, in the territory of the diocese, most of the assets, real estate and cash, are assets of parishes, not of the diocese. Some estimates show that upward of 90 percent of cash collected by offertory collections in a parish stays in the parish, to operate its physical plant, pay the staff, provide education and outreach in the community, and serve the poor. While internally "we" all understood that parish operations were separate from the diocese, that the cash collected belonged in a real sense to the parish, that the real estate on which the parish operated was really a trust obligation of the

diocese, etc., "we" were not always careful about documenting these understandings. In the absence of clear documentation, "we" risked the possibility that some court would misread our intentions and find parish property subject to execution at the behest of the creditors of the diocese. That risk became a reality when bankruptcy courts in two of those proceedings rejected the statutory, canonical, and constitutional arguments of the dioceses and the parishes and ruled that parish property was technically part of the diocesan bankruptcy estate. Plainly, "we" needed to take a hard look at what we are doing.

The Way Out

The place to begin is from our ecclesiology. The structure of our communion is diocesan, not congregational or parish-based. That the Catholic church is a hierarchy is beyond dispute. But hierarchy does not mean "monolith." The church operates on the principle of subsidiarity, with respect for the rights and obligations of its constituent parts.

Under the church's law, parishes are portions of dioceses. Although the parishes themselves are public juridic persons and referred to as non-collegial aggregates of persons, the parishioners in the aggregate do not have collective rights because of their status as "parishioners" in the church. Rather, under canon law, the juridic entities, parishes, have rights.

In contrast to Protestant communions, and a particular challenge to the church during its formative years in the United States, rights in the Catholic church descend, and parishes have rights because they are part of the universal communion. Rights do not ascend from

the people, and governance does not rest on the will of the people. A congregational model, therefore, is foreign to the church's ecclesiology. Thus, when constructing entities within the church's communion, care must be taken to avoid vesting rights in organizations or people contrary to the church's self-identity. More important than avoiding a "rights competition" between a parish and its parishioners, a structure for a parish must find expression within the context of the diocese and avoid creating competing institutional religious rights between the parish and the diocese. It must describe an entity within the fabric of the church that is autonomous in its daily affairs but necessarily bound within that fabric on questions of identity, integrity, and indissolubility. And it must be so clear that even civil judges can understand the structure and properly define and protect it if there is a resort to the courts.

Structural Questions

It follows from all of the above that the precise civil attributes of the parish will be those of whatever civil structure is chosen for it. If no specific civil structure is chosen, the courts will apply certain default rules, likely looking at parishes as activities of the diocese or perhaps an expression of a trust relationship or even an unincorporated association. But the problem persists that, without a clear expression of the civil structure, the courts will be left to figure this out on their own. That is why it is so important to answer the structural question for ourselves, so the courts won't do it for us.

But it is also argued that the secular law must respect canon law on structure and governance. Moreover, the First Amendment guarantees that churches may structure themselves according to their own internal doctrine and law, and such structural decisions are no legitimate business of the state. Thus, even without specifying a structure, courts must understand that parishes are autonomous agencies in the church and

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should defer to canon law. While the above statement on the First Amendment is correct, the applications have always fallen a little short. In the United States, churches do have the right to pick a structure, and the courts cannot pick a different one for the church. The issue is—where is that expressed? In a charter? In canonical statutes? Civil by-laws or articles of association? Where? Depending on a set of default constitutional rules to save church organizations from liability consequences is not prudent in my view.

Over the last thirty years, the courts have eroded the traditional deference that had been given to religious organizations, their structures, and their operational independence with respect to their internal affairs. So, whether courts actually understand the autonomy of parishes under church law, courts will now more routinely rely on an examination of the civil documents that describe

the nature of the parish. Even if the courts read church law, the courts are enjoined to do so in secular terms and to avoid deciding religious questions. Although I see an important distinction between *interpreting* church law and *applying* it in a descriptive sense, the best advice in today's world is that if one wants canon law on structure and governance to be respected by the secular courts, canon law should be properly expressed in the civil documents.

In my view, the civil law form should follow from the canon law substance. In canon law, the parish is a public juridic entity. In other words, it has an ecclesiastical identity separate from all of the other public juridic persons in the church. Under the civil law, therefore, care must be given to describe the parish as a unique civil entity.

Separate Entities

In some places, parishes have historically been organized as separate civil corporations. The governance of

the corporation is in the hands of its own board, and the bishop, the pastor, another diocesan official, and usually two elected lay parish representatives serve as its members. Certain key decisions, such as appointments, alienations, and amendments, require the bishop's approval. This form of organization is similar to what has existed in New York State, which was highly praised in a 1911 letter from the Apostolic See to the American bishops. The bishops were enjoined to seek such a corporate model in their state civil statutes. Only until such a corporate statutory reform could be assured were the bishops permitted to use the corporation sole form of organization. That advice was offered a hundred years ago. The corporation sole is still the dominant form of organization for dioceses in the United States.

Yet new forms are emerging. Some dioceses have decided to restructure parishes as express trusts. This form allows the pastor to serve as the trust administrator and gives separate civil character to the parish while, at the same time, it clearly denotes the long-standing supposition that dioceses held parish property in trust for the parish. In many places such forms could be understood more as a re-statement than a restructuring. Other places have begun to experiment with different kinds of corporate forms, including making the parish itself a corporation sole, where the pastor is the sole member. There is also attention being given to placing parish real estate in some form of regional real estate holding corporation or trust.

Whether the parish continues to operate as an activity of the diocese or is made a corporation or trust, the parish real estate is leased back to the parish from the trust entity. Although each of these models is slightly different, all have as their root the idea of giving the parish a separate identity in the civil law as it has in canon law.

In the same way, whatever structures are shaped for parishes must maintain religious integrity. In our polity, the ordinary administration of the affairs of the parish is in the hands of the pastor and his advisers. Certain extraordinary matters are reserved for the bishop: debt-financed construction over certain thresholds, alienation, property, and similar serious matters. It is said that parishes have *dominium* over the temporal goods. This is not the same thing as ownership in the civil sense, but it does connote a sense of control and direction.

At the same time, one must also pay attention to the non-real property—the cash collected and deposited by parishes. Many dioceses have come to address the maintenance of parish excess cash “invested” in traditional diocesan savings and loan pools. They have tried to formalize the relationship to be sure that each parish's deposits are properly credited and followed and that the accounts are attributed to the parishes and not to the diocese. Certainly if proper formalities are followed, the only entity that can reach such funds is the individual parish and only *its* funds. A parish's funds could

still be subject to *its* creditors, but not, if done properly, to the diocese's or to any *other* parish's. As is the case with parish real estate, in this area, some new forms are beginning to emerge. A regional deposit and loan pool might, for example, facilitate a more secure form of deposit (outside the operational framework of the diocese), which could also allow parishes in many places to leverage their capital strength to benefit others. Traditional loan pools limit their activity to the territory of the diocese. There is no reason why a properly structured investment and loan entity could not extend security and mission beyond those limits. Although mostly in design at this writing, such an

operational approach could bolster the integrity of parish funds.

A Last Word

Whatever these other structures and designs have to offer with respect to unique juridic identity and ecclesial integrity, it must also be said that whatever structure is adopted must be indissoluble. After all, we are one church. The unstated benefit of the dominant corporation sole system is that it is crystal clear that all of the parishes within a particular territory are related to the diocese. This new exercise has decision-makers asking whether that traditional system provided the requisite identity and canonical integrity. If so, perhaps no radical structural changes are warranted in a particular diocese. It may be that the current civil structure needs only minor adjustments rather than major reconstruction. The important matter is that these questions are being asked and should continue to be asked in dioceses around the country. Our hope for the future consists in getting these questions asked and answered as thoroughly, precisely, and correctly as possible. □

