PROJECT MUSE®

Accountability of Diocesan Bishops: A Significant Aspect of Ecclesial Communion

Robert J. Kaslyn S.J.

The Jurist: Studies in Church Law and Ministry, Volume 67, Number 1, 2007, pp. 109-152 (Article)

Published by The Catholic University of America Press

DOI: <https://doi.org/10.1353/jur.2007.0037>

➔ *For additional information about this article*

<https://muse.jhu.edu/article/610260/summary>

ACCOUNTABILITY OF DIOCESAN BISHOPS A SIGNIFICANT ASPECT OF ECCLESIAL COMMUNION

ROBERT J. KASLYN, S.J.*

Introduction

The bishops of the United States have openly acknowledged the need for accountability in the Catholic Church. For example, in the "Charter for the Protection of Children and Young People," the bishops unequivocally state, "We pledge ourselves to act in a way that manifests our accountability to God, to his people and to one another in this grave matter."¹ Further, after their November 2002 meeting in Washington, D.C. the bishops issued "A Statement of Episcopal Commitment" in which they reiterated this commitment from the perspective of their "episcopal communion and fraternal solidarity, a moral responsibility we have with and for each other."² In addition, the first report from the National Review Board contains the important statement: "the exercise of authority without accountability is not servant leadership; it is tyranny."³

From these and similar statements, one could formulate a thesis such as the following: "accountability exists as an integral element in the structure of the Church and is essential to the office of bishop."⁴ If accepted, this thesis would imply, at the least, two important consequences. One, canonists and theologians must situate accountability within an ecclesiological framework, thereby providing not only a theological and canonical rationale for accountability but also means for its implementation. Two, while the crisis currently affecting the Church in the United States highlights the importance of accountability, the crisis does not occasion it. In other words, accountability exists and has existed in the

* School of Canon Law, The Catholic University of America.

¹ USCCB, "Charter for the Protection of Children and Young People (Revised)," [=Charter] *Origins* 32 (November 28, 2002) 409, 411-415.

² USCCB, "A Statement of Episcopal Commitment," *Origins* 32 (November 21, 2002) 408. Although this statement appeared in the issue of *Origins* previous to that containing the text of the Charter, the text nonetheless explicitly refers to the *Charter*.

³ National Review Board, "Report: Causes and Context of the Sexual Abuse Crisis," *Origins* 33 (March 11, 2004) 681. This study resulted as one recommendation found in article 8 of the *Charter*.

⁴ For purposes of this article, "bishop" will refer to a diocesan bishop and not to an auxiliary, coadjutor, or titular bishop.

Church: the current situation has merely focused attention on the question of how well or how poorly accountability operates in reference to contemporary church structures.⁵

Taking the thesis as accepted—at least, *pro tempore* until arguments have been presented in the following pages—then two fundamental topics arise: first, the theological and canonical basis for accountability and especially episcopal accountability in the Church and, second, and presupposing that foundation, the practical implementation of accountability in the Church's life.

Admittedly, the first of these questions is both more theoretical and more theological; the second, more practical and canonical. But this combination of doctrine and legislation is not an anomaly: as the then Archbishop Herranz has noted, the legislator intended a "doctrinal and technical juridical analysis" in the code⁶ and therefore canonical analysis often requires theological analysis as well. In other words, both the theological foundation and the canonical application mutually complement and support one another.

The first part of this article will offer an overview of a theological foundation for accountability in the Church, namely, *communio* ecclesiology. Canon 209, §1 articulates the fundamental obligation derived from this ecclesiology: that is, the obligation to maintain communion (*communio*) with the Church. In other words, no one member of the faithful exists in isolation but rather within a community of faith in which all exercise an active role. Episcopal accountability therefore derives from and relates to this fundamental Christian obligation. This ecclesiological perspective shall then serve as a basis for understanding the second section of the article, the practical dimensions of accountability in the Church. The article shall conclude with certain specific recommendations for the practice of accountability in the Church.

⁵ See, for example, Francis Oakley and Bruce Russett, eds., *Governance, Accountability, and the Future of the Catholic Church [= Governance]*, (New York: Continuum International Publishing Group, 2004). The text includes fifteen articles by various scholars; after two introductory articles, six of the remaining are grouped under the title, "Historical Perspectives on a Changing Church;" and the final seven are grouped under the title, "The Church Today."

⁶ Julian Herranz, "The Personal Power of Governance of the Diocesan Bishop," *CLSA Proceedings* 49 (1987) 17.

Part I: Accountability: Ecclesiological Foundation

Prenote: Description of accountability

To provide the foundation for accountability within a *communio* ecclesiology, the two concepts—accountability and *communio*—require elaboration. In reference to the first term, *Black's Law Dictionary* defines accountability as “the state of being responsible or answerable” with a cross-reference to “responsibility.”⁷ The *Dictionary* in turn defines responsibility as “the state of being answerable for an obligation and includes judgment, skill, ability and capacity.”⁸ Accountability therefore requires a certain amount of ability / judgment and capacity—dependent in turn upon the specific task at hand—as well as the quality of “being answerable.” Certain foundational points need to be made concerning these requirements.

Canon 378 articulates the prerequisites for ordination to the episcopate, thereby offering certain indications of the particular abilities required for the office of bishop:

1° outstanding in solid faith, good morals, piety, zeal for souls, wisdom, prudence, and human virtues, and endowed with other qualities which make him suitable to fulfill the office [*officium*] in question.

Also required are a good reputation; the fact of having reached thirty-five years of age; and academic talent in such fields as scripture, canon law or theology, demonstrated either through a degree or through expertise in the field.⁹ Among the means of assessing an individual's qualifications for exercising the episcopate, the code provides that the papal legates exercise an important role. Among their responsibilities, they are “to instruct the informational process concerning those to be promoted [to the

⁷ Henry Campbell Black, *Black's Law Dictionary*, Fifth Edition (St. Paul, Minnesota: West Publishing Co., 1979) 18.

⁸ *Ibid.*, 1179.

⁹ Implicit in this description are the requirements for ordination itself, expressed succinctly in canon 1025 and elaborated in canons 1026 to 1052. There is a great amount of material on the selection of bishops; in addition to the standard commentaries, see also, e.g., Rene Metz, “La désignation des évêques dans la droit actuel: Étude comparative entre le Code latin de 1983 et le Code oriental de 1990,” *Studia Canonica* 27 (1993) 321–334; idem, “Papal Legates and the Appointment of Bishops,” *The Jurist* 52 (1992) 259–284; Thomas Green, “The Church's Sanctifying Mission: Some Aspects of the Normative Role of the Diocesan Bishop,” *Studia Canonica* 35 (1991) 245–276.

order of bishop], according to the norms given by the Apostolic See" (c. 364 4°).¹⁰

But in addition to fulfilling these qualifications, the individual must also possess the personal capacity¹¹ to fulfill the triple *munera* for those persons, Christian faithful and others, entrusted to his care. While all the Christian faithful are called to fulfill the triple *munera* of Jesus Christ (that is, the functions of priest, prophet and ruler) in virtue of their baptism (see c. 204), those consecrated bishop fulfill in the person of Christ the head (*Christi Capitis*) the functions of teaching, sanctifying, and governing (see c. 1008).¹² This personal capacity necessarily entails a theological dimension, namely, the grace of the sacrament. *Lumen gentium* 21 states:

This holy synod teaches, moreover, that the fullness of the sacrament of orders is conferred by episcopal consecration, that fullness, namely, which both in the liturgical tradition of the church and in the language of the fathers of the Church is called the high priesthood, the acme of the sacred ministry. Now episcopal consecration confers, together with the office of sanctifying, the office also of teaching and ruling, which however, of their very nature can be exercised only in hierarchical communion with the head and members of the college.¹³

Consequently, the personal capacity of an individual to exercise the office of bishop derives from his episcopal consecration—the reception of the sacrament of orders and the individual's cooperation with God's grace offered in and through the sacrament. The issuance of the pontifical mandate (see c. 1013) recognizes not only that a judgment has been made that the individual possesses the necessary qualifications to exercise the functions associated with the episcopacy but also necessarily as-

¹⁰ For the text of the canons, see *Code of Canon Law, Latin English Edition, New English Translation* (Washington, D.C.: CLSA, 1998). Translations of the Code will be taken from this edition, unless otherwise noted.

¹¹ According to *Black's Law Dictionary*, capacity includes both "power [and] fitness to fulfill the task" [188].

¹² See Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus* 11, in Norman Tanner, ed., *Decrees of the Ecumenical Councils* (=Tanner), two volumes (Washington, D.C. and London: Sheed and Ward and Georgetown University Press, 1990) 2: 924: "Accordingly, [the bishops] feed their sheep in the name of the Lord by fulfilling their office of teaching, sanctifying and governing them." The decree continues in paragraphs 12 - 19 by presenting various ways in which bishops fulfill their office.

¹³ Tanner 2:865.

sumes the grace of the sacrament of orders—grace which works with nature, i.e., with the individual person. Contextualized theologically, a bishop is not an isolated figure but one who lives and exercises his function within the Church and within the college of bishops; he must respond to the grace of the sacraments, especially the sacrament of orders, and by so doing discharge the responsibilities entrusted to him by God.¹⁴

In addition to fulfilling the qualifications and manifesting the capacity to discharge their office, bishops must possess the quality of being accountable. The immediate question that ensues is, "To whom is the bishop accountable?" Or, in broader terms, how do canonists and theologians articulate the principles related to that accountability which is inherent in the office of bishop? A response is indicated by the above citation from *Lumen gentium* 21: bishops must exercise their office in *communio* both with the entire Church and with the other bishops in the college of bishops, including the bishop of Rome. In other words, the one ordained to the episcopal order actively shares in that communion that is the college of bishops, which communion exists within the broader *communio* that is the Church.¹⁵ This *communio* ecclesiology requires further elaboration.

I. A. *Communio Ecclesiology*

In its "Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion," the Congregation of the Doctrine of the Faith underlined the importance of *communio* ecclesiology:

The concept of *communio* (*koinonia*), which appears with a certain prominence in the texts of the Second Vatican Council, is very suitable for expressing the core of the mystery of the church and can certainly be a key for the renewal of Catholic ecclesiology. A deeper appreciation of the fact that the church is a com-

¹⁴ See, for example, the Decree on the Pastoral Office of Bishops in the Church, *Christus Dominus* 6 in Tanner 2: 922: "As legitimate successors of the apostles and members of the episcopal college, bishops should be ever conscious that they stand together and they should let it be seen that they are solicitous for the good of all the churches."

¹⁵ See James L. Heft, "Accountability and Governance in the Church. Theological Considerations," in *Governance*, who suggests that one way "to address the absence of 'downward' accountability is to broaden the recently emphasized concept of the church as a communion to include more evidently communion not just of the bishops with one another and with the pope, but also of the entire hierarchy with the laity" [127].

munion is indeed a task of special importance which provides ample latitude for theological reflection.¹⁶

A systematic and comprehensive ecclesiology based on *communio* continues to be developed by theologians and canonists; the process is complicated because, as Avery Dulles notes,

The Latin term *communio*, like its Greek equivalent, *koinonia*, is a very rich concept, only feebly captured by our English word "communion." *Koinonia* has significance for almost every aspect of the Christian life. All believers are called into communion with Christ through faith, baptism, and sacramental life. Their joys and sufferings, taken up into Christ's passion and resurrection, are transformed by him so as to lead into fellowship with the Father, the Son, and the Holy Spirit. On earth we enjoy a pledge and foretaste of the intimate union with God that is our final destiny. Seen in its full range, communion has anthropological, eucharistic, cosmic, and eschatological dimensions.¹⁷

Given this complexity, we can address only certain elements essential to this ecclesiology and thereby establish an ecclesiological foundation upon which accountability finds its place and function.

Communio exists as the fundamental reality in the life of the Christian believer in as much as it derives from baptism and determines all subsequent events and actions in that individual's life. Yves Congar states that the Latin word *communio* derives from both *cum mœnus* and *cum munus*, conveying the sense of individuals being involved in the same task.¹⁸ *Lumen gentium* expresses this commonality inherent in communion by stating, "It has pleased God, however, to sanctify and save men and

¹⁶ Congregation for the Doctrine of the Faith, "Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion," May 28, 1992, *Origins* 22 (1992-1993) 108.

¹⁷ Avery Dulles, "Foreword," in Robert Kaslyn, *Communion with the Church and the Code of Canon Law: An Analysis of the Foundation and Implications of the Canonical Obligation to Maintain Communion with the Catholic Church* (Lewiston, New York, The Edwin Mellen Press, 1994) iv.

¹⁸ Yves Congar, *L'Église. Une, Sainte, Catholique et Apostolique*. *Mysterium Salutis Dogmatique de l'Histoire du Salut* 15. (Paris: Les Éditions du Cerf, 1970) Developing this meaning in an ecclesial sense as a translation of the Greek *koinônia*, Congar on pp. 56-57 describes *communio* as a commonality shared by all the faithful derived from their belief in Christ: through their faith, believers enter into communion with their God as well as with the community of believers. Thus described, *communio*, while essentially indivisible, may be more or less subjectively intense given the degree of participation by the individual believer who has chosen to live in communion.

women not individually and without regard for what binds them together, but to set them up as a people who would acknowledge him in truth and serve him in holiness."¹⁹ In other words, the fundamental state for the Christian believer is living in communion or "being communion," which ultimately derives from God's self-communication to an individual and the concomitant necessity of a response to this self-communication.²⁰

The ecclesiology of *communio* forms the basis for interpreting and implementing the specific canons concerned with the obligation of maintaining *communio*. Canon 209, §1 expresses a fundamental responsibility:

The Christian faithful, even in their own manner of acting, are always obliged to maintain communion with the Church.

This canon occurs in the first title, "The Obligations and Rights of All the Christian Faithful," of Book II, the People of God. Book II first elaborates ecclesiological principles in canons 204–207, for example, the distinction between communion and full communion with the Catholic Church and the participation of all the baptized in the exercise of the triple *munera* of Christ.²¹ Following upon this ecclesiological foundation, canons 208 to 223 express obligations and rights incumbent upon all the faithful—ordained and religious, married and single. Each one of the Christian faithful is obliged to maintain *communio* with the entire Church, the People of God.

Within the aforementioned first title, canon 209 finds its correlative in the last canon, that is, 223, §1:

In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.

¹⁹ LG 9; Tanner 2: 855.

²⁰ The phrase 'being communion' is found in the *instrumentum laboris* of the 1994 Synod of Bishops: "First and foremost the accent must be placed on 'being' communion, and afterward on 'doing' something. Action cannot precede being." Vatican Synod Secretariat, "The Consecrated Life and Its Role in the Church and in the World: Working Paper for October 1994 World Synod of Bishops," article 58: *Origins* 24 (June 30, 1994) 118.

²¹ For a fuller treatment of these principles, see, for example, Robert Kaslyn, "Introduction" and "Introductory Canons [204–207]," in *New Commentary on the Code of Canon Law* [= *New Commentary*], ed. John Beal et al. (New York / Mahwah: Paulist Press, 2000) 241–254 and Aidan McGrath, "Part I Christ's Faithful," in *The Canon Law: Letter & Spirit*, ed. Gerard Sheehy et al. (Collegeville, MN: Liturgical Press, 1995) 115–118.

These two canons taken together establish the ecclesiological framework (both theologically and canonically) within which the Christian faithful exercise rights and fulfill obligations.²² Canon 223, §1 expresses through the phrase "common good" certain elements essential to *communio*—the good of the Church as a whole, the rights of other individuals within the Church, the obligations of the faithful towards one another. All ecclesial activity—that is, the governing, teaching, and sanctifying offices in which all the baptized participate (see c. 204)—must occur within the context of *communio*, which necessarily includes a continuing process by which all of the baptized maintain *communio* with each another. Such activity not only edifies the Church but also provides the basis for any discussion of accountability in the Church. In other words, the obligation of maintaining *communio*—remaining in communion with other believers and with God—necessarily includes the dimension of accountability.

The *communio* that is the Church derives from the salvific activity and will of Jesus Christ; the Church continues to fulfill its divine mission through time, under the guidance of the Holy Spirit until the consummation of the world. This *communio* exists not as a static but as a dynamic reality: the Church is in progress towards its final destiny. In the interim, all the faithful have an obligation to remain in communion with one another and with God and this obligation necessarily implies accountability—accountability to one another and to God. We can view such accountability from the perspective both of the community of the faithful (the *communio fidelium*) and of the constitutive role of the hierarchy within the Church (*communio hierarchica*). An analysis of these two perspectives will assist in understanding the accountability inherent in the office of bishop. Nonetheless, the fundamental unity of *communio* must not be lost: "The communion of the churches and the collegiality of the bishops is based on the more fundamental communion which is the church, the people of God itself."²³

I.B. Communio Fidelium

The communion of the faithful is the foundation for all Church activity, including her sacramental life. In other words, a person, responding to God's invitation to establish a personal relationship, expresses this re-

²² See Robert Kaslyn, "Title I. The Obligations and Rights of All the Christian Faithful [cc. 208–223]," in *New Commentary* 254–257.

²³ Walter Kasper, *Theology and Church* (New York: Crossroad Publishing Company, 1989) 161.

sponse in the external forum (either personally or through others) and receives baptism. The person is thus constituted a member of the People of God and becomes obliged to live in communion with God and with the other faithful.

As already noted, canon 209 explicitly requires all of the Christian faithful to maintain communion with the Church. The obligation finds empirical expression in various ways in the life of the Christian, depending upon one's condition (including but not limited to age, other sacraments received, state in life; see c. 96). More particularly, canon 205 expresses the requirements determinative of those who live in full communion with the Catholic Church. The *sine qua non* is reception of baptism from which ensues union with Christ in the visible structure by the bonds of faith, sacraments, and governance as well as participation in the triple *munera*.²⁴ Referring to the *communio fidelium*, Walter Kasper states, "With this aspect of *communio* ecclesiology, the idea about the church as an 'unequal society' has in principle been surmounted. It means that the common existence of the people of God precedes all differences of functions, charismata and ministries."²⁵

Communio consists of all the people of God, each one of whom makes a definitive contribution to the life of the Church, as willed by God and guided by the Spirit. This focus does not lessen the importance of hierarchical communion—the bishops are authentic teachers of the faith—but rather situates that specification of communion **within** the entire Church as established by Jesus Christ that is, the *communio fidelium*. Further, all the members of the People of God, including all bishops and the bishop of Rome must maintain communion with one another and with God; as one consequence, they are necessarily accountable to one another and to God. Understanding accountability as occurring within, motivated by, and both theologically and teologically directed towards *communio* firmly establishes that responsibility within traditional ecclesiological concepts and perceptions.

From this perspective, accountability reflects the two-fold movement inherent in *communio* ecclesiology; conceived spatially, the movement is both horizontal and vertical. Horizontally perceived, all the faithful,

²⁴ See c. 204. In reference to the three bonds, accepting the bond of faith means accepting the ancient creeds (the symbols of the faith); the bond of sacraments, the sacramental reality of the Church expressed through the seven sacraments; the bond of governance, the constitutive role of bishop, priest, and deacon in the Church.

²⁵ Kasper, *Theology and Church*, 161–162.

including bishops (and thus the bishop of Rome) are members of the *communio* (see c. 208) from which derives the obligation to maintain communion with one another and with their God. Vertically perceived, all the faithful live in *communio* with their God, who communicates himself in the person of His Son under the guidance of the Holy Spirit; all the Christian faithful are possible recipients of God's grace and therefore have the potentiality to live in communion with God.²⁶ This two-fold movement occurs within the Church established by Jesus Christ and therefore includes the *communio fidelium* as has been demonstrated as well as the *communio hierarchica*, to which we shall now turn.

I.C. *Communio Hierarchica*

In the conciliar documents, the necessity of hierarchical communion derives from the theological principles elaborated in *Lumen gentium*, chapter three, "The Hierarchical Constitution of the Church and in Particular the Episcopate" and in the *Nota explicativa praevia* appended to that constitution and written with reference to the third chapter, specifically to paragraph 22. Referring to the college of bishops, *Lumen gentium* 22 states

Just as, by the Lord's decree, St. Peter and the other apostles constitute one apostolic college, so in a similar way the Roman pontiff, Peter's successor, and the bishops, successors of the apostles, are joined together. The collegial character and nature of the episcopal order is shown in the very ancient practice by which bishops appointed throughout the world maintained communion [*communicabant*] with each other and with the bishop of Rome in the bonds of unity, charity and peace; this is also shown in the councils that were convened, by which all the most important matters were settled in common and a decision carefully arrived at through the counsel of many.²⁷

The bond of communion manifests itself in each bishop's "solicitude for the whole Church"²⁸ by which each bishop individually and all bishops together promote "the unity of faith and discipline common to the whole

²⁶ See, e.g., *ibid.*, 150–161 and Susan K. Wood, "The Church as Communion," in *The Gift of the Church. A Textbook on Ecclesiology in Honor of Patrick Granfield, O.S.B.* (Collegeville, MN, The Liturgical Press, 2000) 159–176.

²⁷ Tanner 2: 866.

²⁸ See also LG 23 and c. 782 §2, which specifies this solicitude in reference to missionary activity.

Church" (LG 23). The bishops as a whole and each bishop individually must maintain hierarchical communion with the head and members of the college (LG 22).²⁹

The concepts of hierarchical communion and accountability find explicit manifestation throughout the conciliar texts and even during their formulation. *Lumen gentium* clearly articulates the specific and constitutive role of the bishop of Rome within the college of bishops as its head, a role elaborated in paragraphs 22 and 23. However, this constitutive role is not without limits. During the council, Pope Paul VI indicated that he wished to add the phrase "*uni Domino devictus* (sic)" to *Lumen gentium* 22 to indicate that the pope was answerable to God alone. In July 1964, the assembled fathers, however, rejected this addition, in large part due to the following Doctrinal Commission assessment: "That formula is much too simple. For the Roman Pontiff himself is held to observe Revelation itself, the fundamental structure of the Church, the sacraments, the definitions of prior councils, all of which are too numerous to mention."³⁰

"All of which are too numerous to mention." In other words, the bishop of Rome is not answerable to God alone but is obliged to maintain communion with the Church (*communio fidelium*) and with his fellow bishops (*communio hierarchica*). The bishop of Rome is accountable in as much as there exist real, albeit inchoate, limits on the pope's freedom of action.³¹

²⁹ See also Herranz, "The Personal Power," 20: the power of diocesan bishops "cannot be exercised in an entirely autonomous or independent manner. Rather they must act in accord with the *communio* structures given by Christ to the Church: that is, in communion with the whole of the Episcopal body, and in submission to the one who is its head."

³⁰ The pertinent part of the text reads as follows: "quia formula est nimis simplificada: Romanus Pontifex enim etiam observare tenetur ipsam Revelationem, structuram fundamentalem Ecclesiae, sacramenta, definitiones priorum Conciliorum, etc. Quae omnia enumerari nequeunt." See Giuseppe Alberigo and Franca Magistretti, eds., *Constitutionis dogmaticae Lumen gentium: synopsis historica* (Bologna: Istituto per le scienze religiose, 1975) 432, lines 28–29, "X. A. Observationes Pauli Papae VI a Secretario generali Concilii ad Commissionem doctrinalem missae," and 456, lines 401–402, "Relatio commissionis doctrinalis (iul. 1964) c. III." See also Patrick Granfield, *The Limits of the Papacy. Authority and Autonomy in the Church* (New York: Crossroad, 1987) especially chapter III: "The Possibility of Limitation," 51–76. See also Granfield's article, "The Church Local and Universal: Realization of Communion," *The Jurist* 49 (1989) 449–471 where he notes that attempts had been made to have the final conciliar text include "some of the traditional canonical limitations" of papal authority but "The majority, however, argued that such limitations were obvious and any reference to them in the text would somehow diminish the supreme power of the pope." [463].

³¹ This statement does avoid—as did the Theological Commission—the specific issue of the means by which the pope is held accountable especially since an individual cannot

Clearly the teaching of the ecumenical council—with the agreement of Pope Paul and the assembled bishops—admits the accountability of the bishop of Rome. But such accountability is not limited only to the Roman Pontiff but also applies to all bishops. For bishops, maintaining *communio* includes, at least in part, remaining united to the other members of the college of bishops and the faithful and being faithful to divine Revelation, the fundamental structure of the Church, and conciliar definitions.

For its part, the Code of Canon Law expresses this obligation in a variety of contexts. For example, canon 333, §2 states, "In fulfilling the office of supreme pastor of the Church, the Roman Pontiff is always joined in communion with the other bishops and with the universal Church."³² The Bishop of Rome as bishop must maintain the *communio* that exists among bishops (*communio hierarchica*) as well as that existing among the entire people of God (*communio fidelium*). Furthermore, canon 437, §1 explains that the pallium which metropolitans receive from the Roman Pontiff "signifies the power which the metropolitan, in communion with the Roman Church, has by law in his own province." These examples demonstrate that "being communion" exists not only as a general obligation but one that all the faithful, including the bishop of Rome and those holding office in the Church, must foster and exemplify in their particular state of life.

Therefore, we may understand this obligation of maintaining hierarchical communion / ecclesial communion as the foundation for the accountability of bishops. Such an understanding is reinforced by the treatment of *communio* found in the *Nota explicativa praevia*. According to the *Nota*, through episcopal consecration a man receives an ontological participation in the sacred functions (*munera*), that is, the *munera* of teaching, sanctifying, and governing.³³ These functions become powers that may be exercised only through canonical or juridical determination. Such a determination, by legitimate authority, demonstrates that the individual bishop exercises his *munera* in union with the entire Church.

appeal a sentence or decree of the bishop of Rome (c. 333, §3). Nonetheless, the lack of means to implement accountability does not necessarily lead to the conclusion that there is no such accountability although defining its parameters is not easy.

³² The *fontes* for this canon cite the *Nota explicativa praevia* to *Lumen gentium*, thereby emphasizing the importance of the bishop of Rome in maintaining and protecting *communio*, both *communio hierarchica* and *communio fidelium*.

³³ See *Nota explicativa praevia*, Tanner, 2:899 and c. 375, §2.

In other words, the person consecrated a bishop must live in *communio* with the whole Church and, more specifically, in hierarchical *communio* with the college of bishops, including its head, the bishop of Rome. Such *communio* is not "some vague *disposition*" but rather "an *organic reality* which requires a juridical form and at the same time is animated by charity."³⁴

Communio hierarchica finds its meaning and purpose within the foundational *communio* that is the Church established by Jesus Christ. The very structure of *Lumen gentium* itself demonstrates this contextualization of hierarchical communion as Karl Rahner notes:

After the first two chapters dealing with the essence of the Church, Chapter III takes up as its general theme one which is obviously indispensable in Catholic ecclesiology, the hierarchical constitution of the society. The order is deliberate, since in the order of the history of salvation and objectively the nature of the Church is prior to its hierarchical organization, though it never existed in fact without this constitution. It is only because the Church is the fellowship of the redeemed that it can also be constituted as a hierarchical society and so be the means of salvation and the primordial sacrament for the world.³⁵

In other words, hierarchical *communio* presumes the foundational *communio* or *communio fidelium*; the members of the hierarchy do not exist in isolation. As one consequence, therefore, each bishop, in addition to maintaining hierarchical communion with the other bishops, including the bishop of Rome within the college of bishops, must also maintain communion with all the faithful.

The coalescence of both the communion of the faithful and hierarchical communion manifests itself in a variety of ways; in particular, through the history of the development of doctrine. This development reminds us of the dynamic nature of *communio*, of the developmental nature of our relationships within the *communio* that is the Church as well as with our God and the responsibility and accountability that exists among all the Christian faithful.

³⁴ *Nota explicativa praevia*, Tanner 2: 899.

³⁵ Karl Rahner, "Chapter III. The Hierarchical Structure of the Church," in *Commentary on the Documents of Vatican II* (= *Commentary*), ed. Herbert Vorgrimler 5 volumes (New York and London: Herder and Herder and Burns and Oates Limited, 1969) I: 186.

I.D. Communio and the Development of Doctrine as an Exercise of Accountability

As already noted, *communio* exists as a dynamic reality; the communion that is the Church exists in history and therefore develops in its self-understanding under the guidance of the Spirit. One historically clear manifestation of accountability is found in the development of doctrine. Determining whether an individual or faith community may be considered "to be in *communio*" or "not to be in *communio*" in a given historical time period is not a simple task.³⁶ The Church progresses towards its fulfillment at the consummation of the world; during this progress, in a specific time period, the judgment that an individual remains in the *communio fidelium* (or, conversely, has separated oneself from the *communio fidelium*) may remain fluid, changing as the community's self-understanding develops under the guidance of the Holy Spirit.

The important point for our purposes is the necessity that the entire *communio fidelium* exercises a role in the articulation of Church belief and practice; the entire Church is accountable to God for the truth entrusted to her. The human apprehension of divine truths—that is, the sense of faith (LG 12)—requires not only God's grace but also the co-operation of all believers. James Heft summarizes such cooperation as follows:

Nearly 150 years ago, John Henry Newman reminded us about the importance of consulting the faithful not just in matters of opinion, but also of doctrine. Before defining the doctrine of the

³⁶ We can elaborate on this statement in reference to *communio* itself and also in reference to the development of doctrine. In reference to *communio* itself, see Ludwig Hertling, *Communio. Church and Papacy in Early Christianity*, Jared Wicks, trans. (Chicago: Loyola University Press, 1972) 15: "The concept of *communio*, in Greek *koinonia*, is one of the key ideas for understanding the early Church. It is one of those primitive concepts that contain a full range of ideas which are not yet reflectively developed. It was only much later that *communio* was analyzed and integrated into a theological system. . . . This is not to say that *communio* was a vague or nebulous concept in early Christianity. People knew quite well what they meant by it. But for us it is not always easy to know which of its various meanings they intended to emphasize in a particular case." In reference to the development of doctrine, see, for example, Jaroslav Pelikan, *The Christian Tradition. A History of the Development of Doctrine*, 5 volumes (Chicago and London: The University of Chicago Press, 1971–1989). For one particular example, the orthodox teaching of two wills in Christ took hundreds of years to find clear articulation within Christology; in the interim, holding various positions was considered to place one within or outside *communio*.

Immaculate Conception in 1854, Pope Pius IX asked the bishops throughout the world whether the faithful believed it. Not long afterward, the first Vatican Council declared, in a somewhat circuitous way, that the infallibility of the pope is the same infallibility with which the Lord had blessed the church as a whole. In the late 1940s, Pope Pius XII asked the bishops whether their people believe in the Assumption of Mary, which he defined in 1950. Vatican II develops further the doctrine of the *sensus fidelium*, and its role in the formulation of dogmatic teaching. Such official teaching underscores the indispensable role of the laity in the very formulation of binding church doctrine.³⁷

Therefore, the cooperation of the entire community of faith in articulating the Church's beliefs forms one dynamic aspect of *communio*—and thus one dynamic aspect of accountability.

Such inter-connectedness—the *communio*—existing among all the people of God does not deny constitutive roles for some but rather emphasizes the unity of the whole Church guided by the Holy Spirit. *Lumen Gentium* 12 states

The universal body of the faithful who have received the anointing of the holy one (see 1 Jn 2, 20 and 27), cannot be mistaken in belief. It displays this particular quality through a supernatural sense of the faith in the whole people when 'from the bishops to the last of the faithful laity' it expresses the consent of all in matters of faith and morals. Through this sense of faith which is aroused and sustained by the Spirit of truth, the people of God, under the guidance of the sacred magisterium to which it is faithfully obedient, receives no longer the words of human beings but truly the word of God (see 1 Th 2, 13); it adheres indefectibly to 'the faith which was once for all delivered to the saints' (Ju 3); it penetrates more deeply into that same faith through right judgment and applies it more fully to life.³⁸

This emphasis upon the presence of the Spirit among all the people of God thereby roots the infallibility of the Church in general and of the magisterium in particular in the entire Church, the *communio fidelium*.³⁹ Thus,

³⁷ Heft, "Accountability and Governance," 126–127.

³⁸ Tanner, 2: 858

³⁹ Aloys Grillmeier, "Chapter II. The People of God," in *Commentary* 1: 164.

According to Vatican II, watch and ward is truly kept over the reality of revelation and salvation by the people of Christ as a whole, though in various degrees of active service. [...] The participation of all believers in the preservation of "the faith" and the institution of the offices with their special charism of infallibility are derived from the free decree of God's grace. It was God's will that his truth and his salvation should abide inviolate and efficacious in the whole people of the new covenant [...].⁴⁰

In other words, the *communio* that is the Church has been entrusted with the task of remaining faithful to the will of Jesus Christ in establishing the Church. "Watch and ward" could be understood as the accountability of all the faithful towards one another and towards God, the accountability that exists within the *communio* in which all have a distinct function. Finally, maintaining and fostering *communio* means living in *communio* with the entire Church, past, present, and future.⁴¹

Having established the theological foundation for accountability and examined its role in the development of doctrine, this analysis will now turn to specific means through which bishops maintain *communio* with

⁴⁰ Ibid., 165. Grillmeier's reading of *Lumen gentium* 12 does recognize that a unique function has been entrusted to the college of bishops: "The holders of office are infallible, not merely in *credendo* along with the whole people of God, but also in *docendo*, by virtue of the charism given to them, which embraces their teaching." "Office" at that time (i.e., the Second Vatican Council) strictly speaking meant a share in *iurisdictio* or "sovereign pastoral authority." On this issue, see, for example, Klaus Mörsdorf, "Ecclesiastical Office," in *Sacramentum Mundi*. Six volumes (New York: Herder and Herder, et al., 1968) 2:167–170 and, in the same volume, Otto Semmelroth, "Office and Charism," 2: 171–173.

⁴¹ In more traditional terminology, the terms "the Church militant," "the Church suffering," and "the Church triumphant" are used to refer to the unity of all the People of God of every time. See, for example, *Lumen gentium* 49: "Until therefore the Lord comes in his majesty and all his angels with him (see Mt 25, 31) and, when death has been destroyed, all things will have been made subject to him (see 1 Cor 15, 26–27), some of his disciples are pilgrims on earth, others who have departed this life are being purified, while others are in glory gazing 'clearsighted on God himself as he is, three in one;' all of us, however, though in a different degree and manner, communicate in the same love of God and our neighbor and sing the same hymn of glory to our God." See Otto Semmelroth, "Chapter VII. The Eschatological Nature of the Pilgrim Church and her Union with the Heavenly Church," *Commentary*, 1: 282: "These conditions of the people of God are really distinct one from the other. But they are not separate: an active love unites them. [...] We are given an important, if concise, theological interpretation of this unity which consists above all in the solicitous intercession of the heavenly Church for the pilgrim Church on earth and the prayer of petition with which the earthly Church invokes the heavenly." *Communio* unites all the people of God—living and deceased—with one another.

one another, with the bishop of Rome and with all the faithful; or, in other words, the means by which bishops are held accountable.

Part II Diocesan Bishops and Accountability

This article began with a quote from the bishops of the United States: "We pledge ourselves to act in a way that manifests our accountability to God, to his people and to one another in this grave matter."⁴² Such accountability was reiterated by Bishop Gregory, as USCCB president, in his "Report on the Implementation of the Charter," where he states: "We [the bishops] were determined not only to take the steps necessary to deal with this terrible crisis but also to create the means by which we could be held accountable for making certain that these steps were put into effect."⁴³

But accountability cannot remain an abstraction, an idea without practical application in the Church's life. Holding individuals accountable necessarily implies specific means to implement such accountability. From the perspective of hierarchical communion, specific means exist to ensure that individuals are accountable for their actions. According to canon 375, §1, bishops are "constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship and ministers of governance." As regards this exercise of the triple *munera*, the "ministry of governance" most directly impinges upon the topic of accountability today and will be the focus of the following analysis. Nonetheless, the bishop's accountability in exercising his sanctifying and teaching office is also implicit in the obligation of maintaining *communio* and therefore included in the following discussion.⁴⁴

⁴² Footnote 1.

⁴³ "Report on Implementation of the 'Charter for the Protection of Children and Young People,'" *Origins* 33 (January 15, 2004) 521; 523–541.

⁴⁴ At the same time, we must recognize that specific means for episcopal accountability from the perspective of the *communio fidelium* might not be fully established or implemented throughout the Church. See, for example, John Beal, "It Shall Not Be So Among You!" in *Governance*, 91: "It is hard to escape the conclusion that the inability of church authorities to take rights seriously in the church is the result of a deeply ingrained bias in the church's legal system and the mentalities of leaders immersed in it. This bias makes it impossible for the law and those who administer it to recognize any genuine equality between the ordinary faithful and their ordained leaders, or, at least, to give the recognition of such equality any practical effect." As will be seen, many of the means of accountability demand the full cooperation of church leaders as well as their recognition that such means are in agreement with post Vatican II ecclesiology.

The following analysis will proceed systematically, beginning with an overview of consultation in general followed by reference to specific forums within which consultation may occur and ways in which this process may prove more beneficial to the Church. Financial accountability will next be discussed followed by a consideration of hierarchical recourse against acts of administrative discretion. General reference shall then be made to specific concepts related to diocesan accountability: the right to associate and episcopal relations with religious institutes and societies of apostolic life. Finally, suggestions for future structures of accountability shall be presented.

II.A. Consultation in General

As has been demonstrated, all the faithful must maintain *communio* with the Church. Episcopal consecration and a specific canonical mission reinforce this obligation for bishops. Maintaining *communio* is presupposed as a *sine qua non* for the exercise of their office (c. 375, §2). Their authority has been given them to build up the Church and to shepherd the people of God. Further, their authority is not unlimited; a bishop must follow the norms of law and maintain *communio* with his fellow bishops and with the people of God. In this connection, consultation with the people of God is essential to the bishop's exercise of authority.

In a panel discussion sponsored by the Woodstock Theological Center of Washington, D.C. on May 22, 2003, Sharon Euart emphasized the importance of consultation in the Church's life.⁴⁵ She began by presenting the ecclesiological context within which consultation and the exercise of the power of governance occurs. Consultation does not necessarily indicate that the Church is either a democracy or a constitutional monarchy nor are consultative bodies "designed for political confrontation, power plays or for pushing hidden agendas."⁴⁶ From another perspective, the

⁴⁵ Sharon Euart, "A Canon Law Perspective: Broadening Participation Through Existing Structures," in Woodstock Theological Center, *Restoring Trust in Church Leadership*, A Woodstock Occasional Paper (Washington, D.C. Woodstock Theological Center, 2003) 12-17. See also her article, "Clergy Sexual Abuse Crisis: Reflections on Restoring the Credibility of Church Leadership," *The Jurist* 63 (2003) 125-138. Although consultation involves both laity and the ordained, the process can provide highly effective means for the laity to contribute to the Church's life. See Heft, "Accountability and Governance," 126: "Long before this current crisis, however, a clear doctrinal basis has existed for a more effective inclusion of the laity in the life of the church and for structures that support that inclusion."

⁴⁶ Euart, "A Canon Law Perspective," 15.

obligations to maintain communion and to consider the common good would—or should—preclude such activities.

At the same time, however, consultation does reflect the fact that the Church is an incarnate reality founded by Jesus Christ. And Jesus Christ gave this incarnate reality the mission to continue making present the reality of salvation won by his life, death, and resurrection. The various means of consultation, therefore, are the “practical expressions of the reality that the church is God’s work through all the people of God, that the presence of the Spirit dwells in our midst, and that the church needs structures through which it stays in touch with that Spirit.”⁴⁷ Or, succinctly, the Church is a *communio* in which all the faithful exercise an active role derived from the sacrament of baptism.

Robert Kennedy made a similar point in his article, “Shared Responsibility in Ecclesial Decision-Making.”⁴⁸ He states

Contemporary discussion of decision-making within the Catholic Church often seems pre-occupied with the notion of ‘power’. Persons who make decisions affecting the life and direction of an ecclesial community are said to have power in the Church; those who have no part in the making of such decisions are said to be powerless, without significance or influence in the life of the Church.⁴⁹

Kennedy holds that a dichotomy between “those with power” and “those without power” is too simplistic a distinction, one which does not reflect either the actual situation or the complex process that is summarized by the phrase ‘decision making.’ For Kennedy, consultation is an element that is integral to the decision-making process, a process which consists of several stages, all of which require the exercise of influence and power and to which various people contribute.⁵⁰ Again from another aspect, this reflects not only the interaction among those who form the *communio* that is the Church but also each one’s necessary participation in that *communio*.

Thus, for both Kennedy and Euart, consultation is vital to the life of the Church; in fact, consultation could be considered as integral to or perhaps even constitutive of the exercise of the triple *munera*. In as much as

⁴⁷ Ibid., 14

⁴⁸ Robert T. Kennedy, “Shared Responsibility in Ecclesial Decision-Making,” *Studia Canonica* 14 (1980) 5–24.

⁴⁹ Ibid., 7.

⁵⁰ Ibid., 9.

consultation—and consultative bodies—are a means, an attempt to have the entire Church discern the presence of the life-giving Spirit and determine where that Spirit is leading the Church, then consultation, in this broad sense, is necessary to the *communio* that is the Church. As one consequence, Euart suggests, “I believe as a preliminary step to making these [i.e., consultative] structures effective vehicles for participation of the faithful, it is crucial that the process for the selection and appointment of bishops and other church leaders give significant consideration to a candidate’s understanding of and attitude towards consultation within the Church.”⁵¹

A correlative right and duty of the faithful is that of expressing their opinions on ecclesial issues to their bishops as well as to one another. This right and duty find explicit expression in canon 212, §3:

According to the knowledge, competence and prestige which they possess, [the Christian faithful] have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.

The ecclesiology of *communio* provides the proper context for understanding the exercise of this right and duty: the Church as a *communio* in which a dynamic interaction among all the faithful constitutes the Church on mission.⁵²

Having established the necessity of consultation in the Church, we will now consider certain means for its practical implementation.

II.B Consultation: Practical Dimensions

Consultation, properly understood, is necessary to the life of the Church and to the discernment of the Spirit’s presence. A bishop either

⁵¹ Euart, “Canon Law Perspective,” 15; see also Heft, “Accountability and Governance,” 130–131.

⁵² See Kaslyn, “Title I,” commentary on canon 212 in *New Commentary*, 263–267. See also Beal, “It Shall Not Be So,” 90. Beal cites here the statement of Pope Pius XII, “Something would be lacking in the church’s life if she had no public opinion. Both pastors of souls and lay people would be to blame for this.” Pius XII, “Allocutio participantibus conventui internationali scriptorum ephemeridum catholicarum, Romae habito,” February 17, 1950: *Acta Apostolicae Sedis* 42 (1950) 256.

exercises the power of governance through proper consultation of all the faithful or he does not. A bishop may bring serious harm to the *communio* that is the Church through an inability or unwillingness to implement such consultation.

The bishops themselves have established certain means of accountability. For example, the conference of bishops explicitly established specific structures to ensure accountability in the bishops' observance of the procedures they have established to repair the damage caused by the sexual abuse crisis and to assist in preventing such crises in the future:

- *The Office of Child and Youth Protection*. Currently directed by Teresa M. Kettelkamp, this office, according to the *Charter*, has the responsibility to assist dioceses and eparchies in the implementation of safe environment programs and the development of appropriate mechanisms to audit adherence to diocesan policies as well as producing an annual public report on the progress made in implementing the *Charter*. Incidentally but very importantly, the bishops specifically stated that this Office has the obligation to list those dioceses not in compliance with "the provisions and expectations" of the *Charter*.⁵³

- *The National Review Board*. The Board reviews and approves the annual report on the implementation of the *Charter* in each diocese; reviews and approves any recommendations from that report; commissions a comprehensive study of the causes and context of the current crisis; commissions a descriptive study of the nature and scope of the sexual abuse problem.⁵⁴

- *Diocesan Review Boards*. Each diocese has been mandated to establish a diocesan review board which "functions as a confidential consultative body to the bishop / eparch." Its purpose is to assist the hierarchy in the assessment of allegations of clerical sexual misconduct and suitability.

⁵³ "Charter for the Protection of Children and Young People (Revised)," *Origins* 32 (November 28, 2002) article 8: 413.

⁵⁴ *Ibid.*, article 9:413. As of May 2004, the reports issued in compliance with the Review Board text include the following: "The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States," conducted by the John Jay College of Criminal Justice (Washington, D.C., USCCB, 2004); The National Review Board, "Report: Causes and Context of the Sexual Abuse Crisis," *Origins* 33 (March 11, 2004) 653; 655–688; USCCB, the Office of Child and Youth Protection and the National Review Board, "Report on the Implementation of the 'Charter for the Protection of Children and Young People,'" (= *Charter*) *Origins* 33 (January 15, 2004) 521; 523–540. The last two documents are also available from the USCCB webpage.

ity for ministry and in the development of diocesan policies on these issues.⁵⁵

In as much as the USCCB established these structures to make bishops accountable for their actions concerning the current sexual abuse crisis, we must ask whether or not these means are sufficient to achieve the accountability required in the Church today, one that reflects *communio* ecclesiology. For example, as Ladislav Örsy notes, the effectiveness of the diocesan review boards depends too much upon how an individual bishop utilizes these boards, with the danger of obscuring the call to accountability inherent in them. As he states: the diocesan review board

suffers from a lack of independence that can seriously affect its work: the bishop can easily and legally render the board ineffective. Considering how many bishops in the past failed to respond vigorously even to repeated complaints, a stronger body with better-defined rights and duties should have been created. Had the priests and the people of the diocese been given an opportunity to have a voice in the selection of the candidates for the board, the chance to provide wise advice to the bishops would have been greater. This is a glaring failure in using the God-given wisdom and energy of our Christian people. The danger that some bishops may appoint persons who will 'never cause any problems' is obvious.⁵⁶

A second difficulty could arise from a misunderstanding of the nature of consultation, from the perspective of either the bishop or the faithful or both: the boards do not replace the decision-making responsibility of the diocesan bishop.

What options exist if a bishop chooses not to implement the diocesan review board or chooses not to cooperate with structures established by the USCCB? It could be argued that he is in danger of violating the bond of *communio* with his brother bishops and hence they could or should or

⁵⁵ *Charter*, article 2, *Origins* 32 (November 28, 2002) 412.

⁵⁶ Ladislav Örsy, "Bishops' Norms: Commentary and Evaluation," *Boston College Law Review* 44 (2003) 1010. See also Peter Phan, "A New Way of Being Church. Perspectives from Asia," in *Governance*, 178–190. On p. 182 Phan states, "... bishops do not have a 'downward' accountability to those under them, namely, the priests, the deacons and the laity in their dioceses. Of course, there are various diocesan committees upon which bishops depend for advice, but these entities have only a consultative voice. Except in the rarest of cases, bishops can ignore their recommendations with impunity, and they are not bound to give an account of their decisions to their flock."

must act.⁵⁷ Further, the Christian faithful in a given diocese could request the implementation of the *Charter*; if the bishop refused, that refusal could form the basis of hierarchical recourse.⁵⁸

In addition to these means of accountability developed by the bishops themselves, other means derive from universal law. A number of canonical institutes exist through which the people of God may express their views and by which bishops may consult with them. According to the National Review Board, "The bishops failed to make effective use of the accountability mechanisms already built into the Church's structure by church law through the diocesan councils and those councils failed to assert themselves."⁵⁹ Further, "We cannot accept that the universal law of the church establishes such councils to be window dressing."⁶⁰ Finally, "Bishops need not fear the active participation of faithful Catholics, whether they be clergy or laity, when they function in these councils required by the church's own law."⁶¹

More specifically, canon law mandates or provides for the following five consultative bodies:

- *The diocesan synod*, which is described in canon 460 as a "group of selected priests and other members of the Christian faithful of a particular church who offer assistance to the diocesan bishop for the good of the whole diocesan community."

- *The presbyteral council*. This required council also "assists the bishop in the governance of the diocese" (c. 495 §1).⁶²

⁵⁷ See National Review Board, "Report: Causes," 683: "The history of the church is replete with examples of bishops properly taking other bishops to task, beginning with Paul's remonstrance to Peter at Antioch (Gal. 2:11). For some reason, however, confronted with the problem of sexual abuse of minors by clergy, such instances of fraternal correction [. . .] have been the exception, not the rule."

⁵⁸ Canon 48 describes a singular decree as "an administrative act issued by a competent executive authority in which a decision is given or a provision is made for a particular case according to the norms of law." The bishop's denial of the request to establish the board could be understood as a decree giving a decision and therefore capable of being the subject of hierarchical recourse (see cc. 1732—1739).

⁵⁹ National Review Board, "Report: Causes," 681.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, 682.

⁶² The presbyteral council exercises an important function in the life of the diocese. See James Provost, "Presbyteral Councils and Colleges of Consultors: Current Law and Some Diocesan Statutes," *CLSA Proceedings* 49 (1987) 194—211. Provost notes that diocesan consultors were originally an U.S. invention as a senate of the bishop; further, "During Vatican II there was a concerted effort to provide effective means for consultation

- *The college of consultors.* This body, required in every diocese, finds its purpose in the canons that give it specific responsibilities. For example, a bishop must consult with it and at times obtain its consent before placing more important acts of administration, especially financial in nature.⁶³

- *Diocesan Pastoral Council.* This council, to be constituted "to the extent pastoral circumstances suggest it," under the authority of the bishop "investigates, considers and proposes practical conclusions about those things which pertain to pastoral works in the diocese" (c. 511).

- *The Diocesan Finance Council.* Canon 493 states that this required council exercises the functions entrusted to it in Book V of the Code concerning temporalities as well as preparing and reviewing the diocese's annual budget.⁶⁴

Many of the faithful, ordained and lay, have had experiences with some or all of these structures; both positive and negative points have been raised about each of them, depending upon how each body is utilized within a specific diocese. For example, some diocesan priests criticize their presbyteral council as being merely a 'rubber stamp' for an agenda already approved by the bishop; priests in other dioceses claim a genuine experience of consultation and consequently believe their bishop takes their opinions seriously. In other words, the diocesan bishop exercises a determinative influence on these bodies and their ability to fulfill their functions.⁶⁵ Bishop Wilton Gregory, president of the USCCB, in his ad-

in the Church. A decision was made to broaden the role of the existing *senatus* of the bishop, the cathedral chapter, or, in our [i.e., the U.S.] case, the diocesan consultors. As is evident from a note inserted in the decree by the council itself, the intent seems to have been to expand both the breadth of representation and the seriousness of involvement of the existing body, rather than to create something new or even parallel to the existing *senatus*." [194–195]. See also the discussion below concerning the bishops' text, *United in Service. Reflections on the Presbyteral Council*.

⁶³ For a listing of its functions, see Barbara Anne Cusack, "Title III: The Internal Ordering of Particular Churches [cc. 460–572]," in *New Commentary*, 662.

⁶⁴ National Review Board, "Report: Causes," 682, criticizes the lack of consultation of the finance board by bishops during the current crisis. "Certainly the payment of large sums of money to the victims of priest abusers is not a routine occurrence. Canon law mandates that such payments require review and approval by the diocesan finance council. Yet, to the knowledge of the board, not all dioceses were honoring this commitment."

⁶⁵ See cc. 495–501 especially c. 500 which emphasizes the diocesan bishop's role in his relationship to the council. See also Barbara Ann Cusack, "Chapter III: The Presbyteral Council and the College of Consultors [cc. 495–502], in *New Commentary*, 652–663. In her introductory remarks she states, "While the canons set forth general principles

dress at the November, 2003 bishops meeting, reiterated the importance of helping consultative bodies become more effective:

We [i.e., the bishops] need to find more effective ways to foster and to nurture successful participation and dialogue in the very fine and effective structures given to us in canon law: the council of priests and the diocesan pastoral council. [. . .] As bishops, let us commit ourselves to being models of and catalysts for discourse that builds up rather than fractures or divides our communion.⁶⁶

These episcopal comments easily apply to all the consultative bodies operative in the diocese. In order for the Christian faithful to consider these bodies significant in their diocesan life, the bishop himself must first take these bodies seriously and truly consult with them or, when required, receive their consent.

In 1991, the then NCCB issued the text, *United in Service. Reflections on the Presbyteral Council*.⁶⁷ The text makes a number of valuable theological statements concerning the relationship between the presbyterate and the bishop, statements with significance broader than this body alone and which could apply to all consultative bodies in the diocese. For example, *United in Service* states that bishop and priests "are united in service by the sacrament of orders through which they share, in differing degrees, the priesthood of Christ. The presbyteral council uniting priests and the diocesan bishop is a visible expression of this sacramental bond."⁶⁸ In the section of the document entitled "Canonical Perspective," the bishops stated, "The ultimate responsibility for the welfare of the diocese pertains to the bishop. [. . . The Presbyteral Council] is neither the sole possession of the bishop nor of the priests but a joint venture. Its purpose is thwarted if dominated by either."⁶⁹

on the council's form, membership and manner of functioning, it is the local diocesan bishop who shapes the council according to the needs of the particular church." This "shaping" of the council therefore depends on a particular bishop's understanding of and appreciation for such a body.

⁶⁶ Wilton Gregory, "Viewing the Church as a 'Communio': Three Challenges," *Ori-gins* 33 (November 20, 2003) 413.

⁶⁷ NCCB, *United in Service. Reflections on the Presbyteral Council*. (Washington, D.C.: USCC, 1992). See also National Review Board, "Report: Causes," 681-682.

⁶⁸ *United in Service*, 1.

⁶⁹ *Ibid.*, 9.

The bishops also described elements essential to the council's practical operation. But these elements apply not only to the presbyteral council but also to any type of consultation and to the various means that exist to facilitate such consultation. Among these elements, the bishops stress

- *Trust*: "The effectiveness of the presbyteral council demands trust between the bishop and the council, among the members of the council, and between the council and the presbyterate."⁷⁰

- *Participation*: "Full participation is required for a productive presbyteral council."⁷¹

- *Preparation of Agenda*: "The agenda, with input from many sources, needs to address issues of substance."⁷² Further, "Canon Law does not prescribe restrictions concerning items to be discussed by the presbyteral council. [. . . The council] needs to be interested in the varied facets of diocesan life for which the bishops and priests are responsible."⁷³

- *Consensus*: "It often happens, when consultation and discussion are well done, that a consensus emerges that clearly indicates what recommendations should be made. The council should strive for this kind of consensus through dialogue."⁷⁴

Trust—Participation—Agenda—Consensus—are concepts integral to the working of all consultative bodies in the diocese and not only applicable to the presbyteral council.

Clearly, if the bishops' recommendations on presbyteral councils were implemented in a given diocese, then the Church would have a valuable instrument to help deal with the current crisis as well as providing better means of insuring episcopal accountability. But these recommendations could apply to all consultative bodies in the diocese. For example, canon 511 describes the functions of the [diocesan] pastoral council: "under the authority of the bishop [this body] investigates, considers and proposes practical conclusions about those things which pertain to pastoral works in the diocese." The pastoral council consists of clerics, religious and "especially laity" (c. 512 §1). The concepts of trust, participation, agenda and consensus applicable to presbyteral councils could also apply to pastoral councils—and the laity could therefore make an effective contribution to the life of the diocese and their contribution would be recognized

⁷⁰ Ibid., 13.

⁷¹ Ibid., 14.

⁷² Ibid., 15.

⁷³ Ibid.

⁷⁴ Ibid., 16.

as such. In addition, such an application would also strengthen the accountability necessary to proper governance. As already noted, the faithful have a right to voice their opinions to the bishops on issues important to their Christian lives (c. 212, §3); and the bishops have a concomitant obligation to provide means adequate for such expression.⁷⁵ This cooperation between the bishop and the Christian faithful entrusted to his care concretely manifests the *communio* ecclesiology the bishop is called to foster.

Consultation therefore constitutes one important way in which bishops implement the accountability demanded both by them and by *communio* ecclesiology. But the universal law includes other means besides consultation by which bishops implement accountability. One key area in which laity are assuming a greater role concerns the administration of temporalities and therefore financial accountability to which this study will now turn.

II.C. Financial accountability.

Book V of the code, "The Temporal Goods of the Church," stresses the importance of sound administration of ecclesiastical goods and offer a variety of means to ensure accountability in such administration.⁷⁶ In addition to these means established by the code, some Christian faithful are taking the initiative in other ways.

One important association concerned with church finances is Foundations and Donors Interested in Catholic Activities, Inc. (FADICA) The web page for FADICA describes itself as a consortium of private charitable foundations and individual donors who share an interest in religious philanthropy.⁷⁷ Furthermore it states:

⁷⁵ Heft, "Accountability and Governance," 126–127 emphasizes that the laity's role is not to be limited to the right to express their opinion; he states, "Such official teaching underscores the indispensable role of the laity in the very formulation of binding church doctrine. What we still lack, however, are structures to ensure that the experience and voice of the faithful become a regular part of the life of the church for the discernment of doctrine."

⁷⁶ See, for example, c. 1277 which requires the diocesan bishop to "hear the finance council and college of consultors to place acts of administration which are more important in light of the economic condition of the diocese." Canon 1280 requires a finance council for each juridic person (or at least two counselors); c. 1287 §1 requires certain administrators to present an annual report to the local ordinary; and c. 1287 §2 requires a report to the faithful on their free will offerings.

⁷⁷ Taken from the FADICA web page: www.fadica.org. See also Francis Butler, "Financial Accountability. Reflections on Giving and Church Leadership," in *Governance*, 153–160.

The organization was formed in 1976 and functions primarily as a learning and leadership forum for its members. FADICA enables its members to track trends and research of significance to faith-based philanthropy, to interact with religious leaders, to help solve problems, and to mentor the next generation of foundation trustees.⁷⁸

One activity sponsored by FADICA was a nation-wide survey among Catholic parishioners who describe themselves as frequent Mass attendees. The Gallup Organization of Princeton, New Jersey conducted the survey. The following statement is one result of the survey: "Seven out of ten Catholics want the church to be more accountable for its finances." Thus, "Dioceses and parishes that seek to live by the values of Christian stewardship should consider constructive measures that help parishioners understand where their donations go and how parishioners can become more familiar and informed about the financial dimensions of Catholic life."⁷⁹

In other words, bishops and pastors can no longer presume the good will of Catholics unless the former discharge their stewardship role responsibly; the latter now desire financial accounting and justifiably so. David Gibson echoes this assessment when he states:

Catholics are now focusing on fiscal accountability as a priority in restoring trust in the church. Polls consistently show that eight in ten Catholics rate church financial reform as a top concern. Just as important, both conservatives and liberals agree on this issue, making it one of the rare areas of convergence in a polarized church.⁸⁰

In part, Gibson ascribes the origin of this financial concern to the powerlessness which many Catholics have experienced within the Church. Further, the clergy sexual abuse scandal revealed that often donations to the Church had been used more to harm than to edify the Church.

A second important contribution by FADICA was an address given by its President, Dr. Francis J. Butler on February 14, 2004, entitled "A Professional Code of Ethics Reflecting the Nature of a Christian Vocation

⁷⁸ FADICA web page www.fadica.org.

⁷⁹ "New FADICA/Gallup Survey Shows Strengthened Catholic Opinion On Financial Accountability / Bishops' Image Improving," November 3, 2003, <http://www.fadica.org/FADICANewsArchives.htm>.

⁸⁰ David Gibson, "The Bottom Line. Will Church Finances Be the Next Scandal?" *Commonweal* 131 (February 13, 2004) 10.

and an Understanding of Leadership in the Church.” The address was given as part of a series of discussions held at Boston College entitled “The Church in the 21st Century Initiative.”⁸¹ While Dr. Butler’s talk offers significant material for reflection, certain of his ten rules or canons, as he calls them, comprising a Catholic code of ethics for church leaders, both cleric and lay, deserve special mention in the context of accountability and in particular financial accountability.

- Number 3: “I will do everything in my power to be accountable and open in my professional and personal life while fostering transparency and openness in the church.”⁸²

- Number 4: “I will exercise the authority of my office in a way that empowers those whom I serve and work in a collaborative spirit of servant leaders.”

- Number 8: “I will do all in my power to foster broad participation in the life of the church, to encourage public opinion to respect honest differences and the rights of others.”

- Number 9: “I will oppose anything that encourages clericalism and decisions and actions that foster a caste system of membership and power in the Church.”

- Number 10: “I promise to be a good steward in the use of the church’s money, insisting on full public disclosure, independent audits, honesty and accountability in all fundraising.”

As Butler notes, these principles have a wider application than to financial matters; these and the other five principles apply equally to the “ministry of governance” by the diocesan bishop. In reference to diocesan temporalities, bishops must face facts: the Christian faithful now question how their financial contributions are used. People are rightfully demanding financial accountability (c.1287, §2).⁸³ These principles offer a

⁸¹ For the text of his remarks, see <http://www.fadica.org/documents/BostonCollegeVersion21704final.doc> (accessible through FADICA’s web page; for a direct link to the Boston College series, see <http://www.bc.edu/church21>).

⁸² This and following principles are found in Butler’s talk available on the web at <http://www.fadica.org/documents/BostonCollegeVersion21704final.doc>.

⁸³ See Butler, “Financial Accountability,” 154–156 where he describes various canonical norms and provisions by the conference of bishops that intend to assist bishops in their financial administration. Yet a differences exists between policies enacted by the conference and their implementation in a specific diocese: “It is truly baffling to see the hierarchy collectively embrace a practice or policy when they assemble, and then almost proudly ignore it when they return to their dioceses” [155].

constructive way in which a bishop could partially fulfill his financial responsibility towards the faithful in his diocese and demonstrate his accountability. But at the same time, these principles, if applied by bishops to their actions, would foster that accountability to one another and to the faithful that the bishops have pledged to implement.

David Gibson has urged as essential the establishment of "some mechanism for national [financial] oversight and reporting. [. . .] Ideally that would be undertaken by, or in collaboration with, the bishops' conference, perhaps along the lines of the National Lay Review Board."⁸⁴ Further, in view of the perspective of this article, Gibson also states:

The changes necessary to reverse the church's closed-door mentality on financial matters need not entail a radical revision of church structures or a return to the divisive nineteenth-century battles over "trusteeism." Contrary to what many prelates fear, accountability is not a threat to the bishop's trifold mission "to teach, to sanctify, and to govern." Opening the church's books involves no change in doctrine or theology, and the bishop or pastor would still have the final say on how diocesan or parish funds are spent. The priority right now is for simple transparency, so that everyone can know what is coming in and what is going out, and where it is going. Next is to cultivate the collaboration that canon law requires, but which is not being fulfilled.⁸⁵

Once again, efforts to fulfill legitimate expectations of accountability are an integral part of the bishop's governance of the diocese. All the Christian faithful have the obligation to help meet the financial needs of the Church (see c. 222, §1), but the bishops have a concomitant responsibility to assure the faithful that such financial donations are utilized in the best way possible. The diocesan bishop possesses the authority to regulate the administration of ecclesiastical goods according to legitimate customs and circumstances (see c. 1276 §1); in doing so, he can ensure greater financial accountability and involvement by lay faithful in diocesan governance.

As well as financial accountability and consultation, other means to foster accountability pertain to a review of actions already taken by a bishop or to be taken by him in the future. One of the more important is administrative discretion, to which this study will now turn.

⁸⁴ Gibson, "The Bottom Line," 13.

⁸⁵ Ibid.

II. D. Administrative Discretion and Hierarchical Recourse

In reference to diocesan bishops, canon 391, §1 states, "It is for the diocesan bishop to govern the particular church entrusted to him with legislative, executive and judicial power according to the norm of law." In reference to exercising executive authority, "administrative discretion" exists in those situations "whenever the effective limits on [administrators'] authority leave them 'free to make a choice among possible courses of action or inaction.'"⁸⁶ In such cases, the bishop may act or not; and if he chooses to act, he often has several options available to him.

While a bishop possesses the necessary authority to govern the diocese entrusted to him, this authority is somewhat limited. The bishop must follow 'the norm of law' as canon 391 states and he also must maintain *communio* in exercising that authority. In other words, a bishop is accountable for his exercise of the power of governance in the particular church that has been entrusted to him. As already noted, *communio* ecclesiology reflects the common status of all the Christian faithful, ordained and lay (see c. 208) from which flow the various manifestations of communion—*communio fidelium*, *communio hierarchica*, *communio ecclesiarum*. Each of the faithful, including the diocesan bishop, must labor within the Church and thus operate within the various manifestations of *communio*. Such labor is not without tension; as Kasper states

The ideal of this communion is not harmony without tension. All life moves in tension, as J. A. Mohler showed; where tension ends there is death. And we have no desire for a dead church. We want a living one! But a distinction must be made between genuine tensions, where the poles are related to one another in a complementary way, and unconnected indeed irreconcilable differences, which shut themselves off mutually and exclude one another, both in logic and attitude.⁸⁷

One means to deal with such tension is communication and dialogue within the fundamental unity of the Church.⁸⁸ In other words, when the

⁸⁶ John Beal, "Confining and Structuring Administrative Discretion," *The Jurist* 46 (1986) 70. In note 1, Beal cites Kenneth Davis, *Discretionary Justice: A Preliminary Inquiry* (Baton Rouge, Louisiana State University Press, 1969) 4, as the source for this description.

⁸⁷ Kasper, *Theology and Church*, 163.

⁸⁸ Such dialogue and communication does not necessarily lead to the conclusion that everything is open to discussion. For example, the constitutive role of the bishop, including the bishop of Rome, derives from the very nature of the Church as intended by Jesus

bishop recognizes that he exercises his authority within the *communio* that is the Church, he realizes that he needs support not only from his fellow bishops but also from all the faithful within his diocese in varied ways. He must maintain both *communio hierarchica* as well as *communio fidelium*.

The "Report: Causes and Context of the Sexual Abuse Crisis" by the National Review Board recognizes the bishop's obligation to maintain both manifestations of *communio*. The Board, in order to restore the bonds of trust within the Church, makes these two recommendations:

—Greater accountability of bishops and other church leaders. The church must choose bishops who see themselves first and foremost as pastors; and the bishops must ensure that their brother bishops act accordingly. Diocesan and presbyteral councils should be revitalized to provide an increased measure of advice and oversight for bishops [. . .]

—Meaningful participation by the Christian faithful in the church. The bishops and other church leaders must listen to and be responsive to the concerns of the laity.⁸⁹

While we have already stressed the importance of consultation by the bishop, other means exist within the code to provide "oversight" over his actions.

In the exercise of his authority in the diocese entrusted to him and, in particular, his exercise of the executive power of governance, the bishop must consider the common good as well as legitimate customs and acquired rights. In issuing decrees and precepts, he must "seek out the necessary information and proofs and, insofar as possible, hear those whose rights can be injured" (c. 50). In addition, he must issue the decree in writing, with reasons given, if a decision is rendered in a particular matter (c. 51). Consultation and various factors influencing decision making beforehand can provide valuable assistance to the bishop in exercising administrative discretion.

Once again, the code provides for means by which the bishop is held accountable for the exercise of his executive power of governance. An individual person might believe the bishop's decision adversely affects

Christ. As well, the obligation to "believe with divine and Catholic faith . . . the one deposit of faith entrusted to the Church" (c. 750 §1) binds all those who wish to remain in communion.

⁸⁹ National Review Board, "Report: Causes," 657.

him or her or adversely affects life in the diocese. In such cases, the code first recommends an effort to find an equitable solution through common counsel and mediation (see c. 1733). If these attempts fail, then the particular decisions of the bishop may become the proper subject of hierarchical recourse; in other words, the bishop is held accountable for the decrees he has issued.⁹⁰ A superior authority (i.e., the Roman congregations as the hierarchical superior of the bishop under the direction of the bishop of Rome) determines whether or not the bishop acted legitimately or not. This judgment of a bishop's actions is a direct application of canon 221:

§1. The Christian faithful can legitimately vindicate and defend their rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.

Each of the Christian faithful can exercise this right of recourse. In 1972, the NCCB approved a resolution stating in part, "The promotion of adequate protection of human rights and freedoms within the Church is central to the bishops' role of service to the people of God."⁹¹ Thus, the bishops must recognize that they have a canonical and moral obligation to act justly in their dealings with all the people of God; otherwise their actions can be subject to review.⁹²

⁹⁰ See canon 1732 for the scope of hierarchical recourse: "What is established in the canons of this section concerning decrees must be applied to all singular administrative acts which are given in the external forum outside a trial excepting those which have been issued by the Roman Pontiff or an ecumenical council."

⁹¹ NCCB, *On Due Process* (Washington, D.C., National Conference of Catholic Bishops [1972]) 2.

⁹² Numerous articles have been written on the subject of administrative power, its exercise and administrative recourse; for further information, see, for example, the following: John Beal, "Confining and Structuring Administrative Discretion," *The Jurist* 46 (1986) 70-106; idem., "Confining and Structuring Administrative Discretion: A Nuts and Bolts Approach," *CLSA Proceedings* 50 (1988) 86-105; idem., "Hierarchical Recourse: Procedures at the Local Level," *CLSA Proceedings* 62 (2000) 93-106; Thomas Green, "The Pastoral Governance Role of The Diocesan Bishop: Foundations, Scope, And Limitations," *The Jurist* 49 (1989) 472-506; John Huels, "Determining The Correct Canonical Rules for Ambiguous Administrative Acts," *Studia Canonica* 37 (2003) 5-54; John Meszaros, "Procedures of Administrative Recourse," *The Jurist* 46 (1986) 107-141; Michael Moodie, "The Administrator And The Law: Authority And Its Exercise In The Code," *The Jurist* 46 (1986) 43-69; Kenneth Schwager, "Administrative Justice in the Church in Light of Juridical and Theological Considerations," *The Jurist* 58 (1998) 416-436; Michel Thériault, "Le beneficium novae audientiae dans la procédure de recours contre les décrets administratifs," *Studia Canonica* 29 (1995) 85-102 and idem, "La procédure des recours administratifs: survol et évaluation," *CLSA Proceedings* 57 (1995) 387-427.

Having examined certain canonical means of episcopal accountability, this analysis shall now turn to two issues that reflect the need for better and continuous consultation and dialogue as elements of accountability, namely, the right to associate and the relationship between bishops and institutes of consecrated life and societies of apostolic life.

II.E. Accountability: Two Practical Applications

Two basic realities—the fundamental Christian right to associate and the collaborative relationship between a bishop and institutes of consecrated life and societies of apostolic life—offer opportunities not only for consultation and dialogue but also means to assure the diocesan bishop's accountability to the people of God. These realities illustrate specific ways in which the Christian faithful participate in the building up of the Church (see c. 208).

II.E. i. The right to associate

As already noted, canon 212, §3 articulates the right and at times the duty of the Christian faithful to express their opinions on ecclesial issues; a second canon expresses an equally important right as regards the Church's mission. Canon 215, situated in the context of "The Obligations and Rights of All the Christian Faithful," states: "The Christian faithful are at liberty freely to found and direct associations for the purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes." Canon 278, §1, situated in the context of "The Obligations and Rights of Clerics," reiterates this fundamental right of association for clerics.⁹³ At the same time, however, we must recognize that clerics have specific responsibilities that would preclude their participation in certain associations (e.g., those that are too overtly political—c. 287, §2); however, this does not take away their right to associate.

Both laity and clergy, then, either apart or together, possess the right to associate. Canons 298–329 describe a variety of associations, differentiated by the extent to which competent ecclesiastical authority exercises oversight over the members and works. Such a variety reflects the

⁹³ Canon 278, §2 states: "Secular clerics have the right to associate with others to pursue purposes in keeping with the clerical state." Paragraphs 2–3 nuance the exercise of the right but do not remove it completely. Reiterating this right in this context reminds us that clerics do not lose their rights as Christian faithful when they receive the sacrament of orders.

Church as a differentiated *communio* and the active participation of all the people of God in its mission. The diocesan bishop is obliged to foster such forms of the apostolate (c. 394 §1), and various associations can assist him in the governance of the diocese in a variety of ways.

For example, associations, while not by nature consultative bodies, could be utilized by the bishop to provide him with insights into the diocese—specific needs of the people of God, civil and religious concerns affecting them, needed apostolic ventures. Associations could provide one means of fostering dialogue between the bishop and his people. Furthermore, by way of an example, an association of priests in a given diocese could help the diocesan bishop fulfill one part of his obligation to protect the rights of his priests and to assist them in fulfilling their obligations (c. 384). Not only would such an association demonstrate the unity of the presbyterate within a diocese and help provide mutual support, it could also assist in improving morale among clerics, especially in the current climate of mistrust stemming from the sexual abuse crisis. Finally, lay associations could provide numerous contributions to the diocese: first and foremost, in terms of the sanctification of the Church and the proclamation of the gospel (cc. 210–211), activities which derive from baptism (see c. 204). Associations could also assist the faithful in exercising their right to make their needs known, to communicate these needs to other faithful and to church leaders, including bishops, and to express their opinion on ecclesial concerns (c. 212, §§2–3).

The right to associate is vital to the life of the Church today; nonetheless, as already noted, the exercise of this and other rights must explicitly recognize the nature of the Church as a *communio*. That is, through their right to associate, the Christian faithful must build up the Church rather than cause further division; the faithful must promote the common good of the Church (c. 223).⁹⁴

II.D. ii. The bishop and members of institutes of consecrated life and societies of apostolic life

Canon 678, §3 states: “In organizing the works of the apostolate of religious, diocesan bishops and religious superiors must proceed through mutual consultation,” thus highlighting the importance of consultation

⁹⁴ Related to the right to associate and its exercise is the issue of whether or not any or all associations may hold their meetings on Church property; see James Coriden, “The Right of Catholics to Hold Meetings on Church Property: Canonical and Pastoral Issues,” *The Jurist* 62 (2002) 76–91.

specifically between a bishop and superiors of institutes of consecrated life located within his diocese. Such consultation is essential especially given two distinct yet related values contained in the code.

Canon 586 states:

§1 A just autonomy of life, especially of governance, is acknowledged for individual institutes, by which they possess their own discipline in the Church and are able to preserve their own patrimony intact, as mentioned in can. 578. §2 It is for local ordinaries to preserve and safeguard this autonomy.

Canon 678, §1 balances this autonomy by referring to the authority of bishops in apostolic undertakings:

Religious are subject to the power of bishops whom they are bound to follow with devoted submission and reverence in those matters which regard the care of souls, the public exercise of divine worship, and other works of the apostolate.⁹⁵

Through their appointment to their office, bishops have the right and obligation to direct the exercise of the apostolate, the care of souls, and the public exercise of divine worship even when members of religious institutes or societies of apostolic life carry out these activities.⁹⁶ At the same time, the bishop does not have the right to interfere in the internal life of the institute or society. Safeguarding both values—unity in the apostolate and just autonomy of life—requires sustained consultation and dialogue, a willingness on the part of both the bishop and the superior to work together for the good of the people of God.⁹⁷ Both must recognize their distinct roles in building up the *communio* that is the Church.

⁹⁵ In reference to societies of apostolic life, canon 738 pertains: "§1. All members are subject to their proper moderators according to the norm of the constitutions in those matters which regard the internal life and discipline of the society. §2. They are also subject to the diocesan bishop in those matters which regard public worship, the care of souls, and other works of the apostolate, with attention to cann. 679–683."

⁹⁶ See, e.g., c. 392.

⁹⁷ See Sharon Holland, "Religious And Bishops As Custodians Of Communion," *The Jurist* 62 (2002) 312–340. She concludes by stating, "The frequently mentioned spirituality of communion cannot be overemphasized as a means toward the establishment of right-relationships between diocesan bishops and religious in the local church" [339]. Further, "The bishop's pastoral style, which results from ecclesial communion, will foster coordination and collaboration among the various charisms, functions, and ministries at the service of the same People of God. An organic communion is ultimately the work of the Spirit, present both in the bishop's personal responsibility and the sharing of the faithful in that responsibility." (Ibid.).

Nonetheless, at the same time, we must recognize that, while the basic principles are evident, their practical implementation in a given case is not so necessarily evident.

For example, difficulties can arise concerning the right of the superior to assign subjects, especially presbyters, to a particular house of the institute or society. Must the superior inform the bishop? According to canons 678, §1 and 966–969, if the individual wishes to exercise ministry in the diocese, then the bishop needs to be involved, at the least, to concede the faculty to hear confessions. If, however, the man is not involved in public ministry, must the bishop be informed?

According to “Essential Norms” article 12, each bishop or eparch has the right to obtain the necessary information regarding any past activity involving sexual abuse by a religious priest or deacon moving into his diocese; this policy applies “even if the priest or deacon will reside in the local community of an institute of consecrated life or society of apostolic life.”⁹⁸ Two questions arise in this connection: the legitimacy of a diocesan bishop asking for such information and the consequences of providing such information on the part of religious superiors.

The bishop cannot interfere in the internal autonomy of a religious institute (c. 586) or society (c. 732); such autonomy includes the right of the superior to assign men to a specific residence. A bishop can exclude a religious priest from living in his diocese only under very limited circumstances: a most grave cause must exist; the superior neglects to act after being requested to do so by the bishop; and the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life needs to be informed immediately (*statim*: c. 679). One example of a genuine conflict concerns an institute that has only one house or is located only in one diocese and a member of the institute has been found guilty of sexual abuse. Can the bishop demand that the man not live in the diocese? If so, how is this demand reconciled with the right and obligation of the man to live in a house of his institute or society (cc. 665, §1; 740)?⁹⁹ Both supe-

⁹⁸ USCCB, “Essential Norms for Diocesan / Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons,” *Origins* 32 (November 28, 2002) 417. Revised “Essential Norms” approved by the USCCB in June 2005 received Roman *recognitio* on January 1, 2006. They were promulgated on May 5, 2006, to take effect on May 15, 2006.

⁹⁹ See Rose McDermott, “Ecclesiastical Authority and Religious Autonomy: Canon 679 Under Glass,” *Studia Canonica* 38 (2004) 461–480. Dr. McDermott concludes her article by stating, “Studying c. 679 under glass reveals first that the cause prompting the diocesan bishop to employ this severe disciplinary faculty must be at once urgent and most

riors of institutes and societies and bishops should encourage and maintain ongoing dialogue and consultation with one other to provide means to resolve such disputes. The bishop is accountable for his governance of the diocese; the superior, for the institute or society and its members; both are accountable and responsible for the exercise of the apostolate.

An honest evaluation by all concerned recognizes that difficulties in the relationships between bishops and institutes and societies arose in part from the prior lack of consultation. The bishops acknowledge that they must "respect the historical independence of the orders."¹⁰⁰ Yet problems with "Essential Norms" exist in as much as religious superiors were not consulted about the norms; and, as a result, questions have arisen concerning the applicability of the norms to religious, the relationship between the conference of bishops and institutes and societies, and proper procedure in specific cases, for example, in situations where a member of an institute or society holds a diocesan office.¹⁰¹ This lack

grave [. . .]. He must study the matter carefully, know the facts and act only if, after giving a report to the major superior, the latter fails to act. The bishop should keep in mind that eventually he will have to relate this urgent and most grave matter to the Apostolic See" [480]. Further, canon 679 applies to societies of apostolic life in virtue of explicit citation in canon 738 §2.

¹⁰⁰ National Review Board, "Report: Causes," 680. This observation occurs in the context of section 7 entitled "Considerations Relating to the Religious Orders."

¹⁰¹ See National Review Board, "Report: Causes," 680: "However, the orders were not involved in the drafting of the 'Essential Norms' and were hesitant initially to embrace what essentially is a creation of the bishops. As one bishop noted, 'If I were a religious superior . . . I would feel that our independence has been trampled to some extent, and it has been.'" For the current situation, see USCCB, "Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons," copyright 2005 and available at <http://www.usccb.org/bishops/norms2005.pdf>. This version of "Essential Norms," approved by the USCCB and awaiting *recognitio* by the Holy See, incorporates changes arising from dialogue between the US bishops and major superiors of men. Two important texts within the document are footnote one and one paragraph found in Number 12. Footnote one states, "These Norms constitute particular law for the dioceses, eparchies, clerical religious institutes, and societies of apostolic life of the United States with respect to all priests and deacons in the ecclesiastical ministry of the Church in the United States. When a major superior of a clerical religious institute or society of apostolic life applies and interprets them for the internal life and governance of the institute or society, he has the obligation to do so according to the universal law of the Church and the proper law of the institute or society." Number 12 states in part, "In the case of the assignment for residence of such a clerical member of an institute or a society into a local community within a diocese/eparchy, the major superior shall inform the diocesan/eparchial bishop and share with him in a manner respecting the limitations of confidentiality found in canon and civil law all information concerning any act of sexual abuse of a minor and any other information indicating that he has been or may be a danger

of consultation has resulted in legal problems, personal conflicts, and acrimony between bishops and members of institutes and societies. Consultation, mutual respect, and a consideration as well as recognition of each one's responsibilities will contribute to the improvement of this significant pastoral relationship.

Having examined two important issues connected to episcopal accountability, we will now turn to a discussion of certain possible means of accountability that could be utilized in the future.

II. F. Future structures of accountability

That accountability is a foundational ecclesial imperative is recognized by the bishops, canonists, theologians, and other church members. Certain structures and means to ensure accountability already exist. At the same time, specific possibilities have been suggested to provide additional means of structuring accountability. These possibilities, while respecting constitutive elements of the Church's structure, offer other ways for the exercise of accountability.

Speaking on May 22, 2003 at the conference sponsored by the Woodstock Theological Center, *Restoring Trust in Church Leadership*, Father William Byron, S.J. offered two means of "possible structural adjustments" that could perhaps well serve the Church in the future. His first suggestion recognizes the existence of credentialing and quality assurance committees of the board of directors of every hospital.¹⁰² Perhaps such a committee, properly adapted to church needs, could serve to ensure the fruitful exercise of accountability and the building up the Church, both on the parochial and diocesan levels.

Such a proposed committee could follow the hospital model or an educational model. Many schools and colleges have a structured means of assessing their strengths and weaknesses; certain of these means apply to faculty, to academics, facilities, etc. while other means focus more on the mission statement of a given institution and how well or how poorly that institution fulfills its mission. The Middle States Association of Colleges

to children or young people so that the bishop/eparch can make an informed judgment that suitable safeguards are in place for the protection of children or young people. This will be done with due recognition of the legitimate authority of the bishop/eparch; of the provisions of CIC, canon 678, (CCEO, canons 415 §1 and 554 §2) and of CIC, canon 679; and of the autonomy of religious life (CIC, c. 586.)"

¹⁰² William Byron, "Moderator's Intervention: Structural Adjustments," in *Restoring Trust in Church Leadership*, 17.

and Schools is one example of an agency expediting such accreditation procedures. It describes itself as follows:

The mission of the Commission on Secondary Schools of the Middle States Association, a peer-administered, non-profit, non-governmental organization of diverse institutions committed to the highest quality education for all students, is to accredit institutions and to foster and ensure continuous improvement of educational services.¹⁰³

One key process is that of accreditation, that is,

the educational community's means of self-regulation through quality assurance and continuous improvement. The accreditation process is intended to strengthen and sustain the quality and integrity of education, making it worthy of public confidence and minimizing the scope of external control.¹⁰⁴

Perhaps now is the time—or perhaps it has been the time for a while—to establish by law a similar means of assessment of the mission effectiveness of U.S. dioceses. Each diocese could be visited on a regular basis—perhaps in conjunction with the bishops' *ad limina* visits to Rome (c. 400). There could be an assessment committee, consisting of qualified people—ordained and non-ordained, bishops, priests, and deacons—under the over-all direction of the USCCB. There would be a list of criteria for assessing the health of a diocese: analysis of consultative

¹⁰³ Information on the Middle States Association may be found on its web site: <http://www.css-msa.org/about/index.html>.

¹⁰⁴ *Ibid.*, "Why is Accreditation Important?" See also Heft, "Accountability and Governance," 131, who refers to collaborative forms of governance in Catholic higher education. Another model for such evaluation would reflect the processes used in the apostolic visitation of seminaries in 1981 and the current evaluation currently being undertaken. In reference to the former, Pope John Paul II had initiated a study of U.S. seminaries that was conducted with the cooperation of the NCCB under the direction of Bishop John Marshall. The purpose of the visitation was to assess the implementation of conciliar decrees in seminaries and involved extensive collaboration among a variety of individuals and church officials. Concerning the results of the 1981 visitation, see Congregation for Catholic Education, "Letter to the Bishops of the United States Concerning Free-Standing Seminaries," in *Norms for Priestly Formation*, 2 volumes (Washington, D.C. USCC, 1994) II: 223–240. In reference to the current (2005–2006) visitation of U.S. seminaries, see Congregation for Catholic Education, "Vatican Working Paper for U.S. Seminary Visitations," *Origins* 35 (September 29, 2005) 261–267. Essential to the positive contribution of such visitations—and thus to any possible adaptation for use in evaluation of dioceses—is cooperation among all those involved in developing and assessing the subject matter as well as the implementation of suggested or necessary changes.

structures, their usefulness and contribution to the life of the diocese; participation of the faithful in the life of the parish and of the diocese; specific needs of the diocese; type of leadership needed; style of bishop's leadership, etc. Such information could provide a valuable basis for assessing the pastoral needs of the diocese and in assuring the bishop's accountability in meeting those needs. While not exhausting the accountability of the diocesan bishop, such assessment could nonetheless make a significant contribution to the development of structures for implementing accountability.

A second option suggested by Byron, which also would foster such accountability, is inspired by the custom of announcing the banns of marriage (c. 1067). If one were to apply such a custom to bishops, then when a given individual is considered as a bishop for a diocese, his name would be announced on three successive Sundays in dioceses where he is currently ministering, where he formerly ministered, where he went to seminary, and where he is being assigned. The Christian faithful could therefore offer their assessment of the candidate; further, if such a system were in place, "a couple of very embarrassing cases in Florida [...] probably would not have happened."¹⁰⁵

Independently of whether these and similar suggestions are implemented or not, the achievement of the goal of greater participation by all the faithful in the Church requires changes in the way bishops govern their dioceses and fulfill their responsibilities to the People of God. The need for such change and the implementation of accountability structures was recognized in 1986, when the Canon Law Society of America commenced an interdisciplinary study of the history, legislation and praxis of apostolic visitation. The committee commissioned six studies¹⁰⁶ and presented the results of its study in terms of certain suggestions for altering the Church's institutional life.¹⁰⁷ In reference to issues of accountability, the "Statement" noted five important points:

¹⁰⁵ *Restoring Trust in Church Leadership*, 18. In the last phrase Byron refers to the resignation of two bishops in the Diocese of Palm Beach, Florida, resulting from press reports of sexual misconduct earlier in their careers. See, for example, Margot Patterson, "Church in Crisis," *National Catholic Reporter*, March 14, 2000 available at http://www.natcath.com/NCR_Online/archives/031403/031403g.htm.

¹⁰⁶ The six studies were published in *The Jurist* 49 (1989) 341-567.

¹⁰⁷ Consensus Statement of the CLSA Committee for the Study of Apostolic Visitation and the Limitation of Powers of a Diocesan Bishop, "Apostolic Visitation, Accountability and the Rights of the Local Church," *The Jurist* 49 (1989) 341-346.

1. Accountability structures at all levels of church life either have atrophied or are underutilized.

2. There is a need to develop the role of intermediary agencies of accountability; e.g., metropolitans, meetings of provincial bishops, particular councils, Episcopal conferences.

3. There is a need to promote more effective use of accountability structures within the diocese; e.g., diocesan visitation, deans, the quinquennial report process, diocesan pastoral council.

4. Processes of accountability should be adapted to the uniqueness and diversity of local churches.

5. Ineffective accountability practices within dioceses and at intermediary levels allow situations to develop to such an extent that the only recourse may be an apostolic visitation.¹⁰⁸

The National Review Board Report states, for example, that the process of selecting bishops "needs greater lay involvement, both in putting forth the names of priests who might be considered for the episcopacy and in vetting those who have been put forward."¹⁰⁹ The report continues by asserting that many people believe "greater lay consultation in the selection of bishops and other aspects of church governance is required to avoid these problems. The laity largely have been excluded from matters of church governance in the United States [. . .]."¹¹⁰ This situation must change.

Conclusion

The bishops have recently and repeatedly stated that they are accountable; such accountability is not alien to the Church but rather an essential element in the ecclesiology of *communio*. All of the Christian faithful—ordained and lay, married and single—in virtue of their baptism are called to exercise responsibility for the good of the Church. We have examined some of the structures constitutive of accountability in the Church and stressed certain of their strengths and weaknesses. Among other items, we focused attention on the concept of consultation and

¹⁰⁸ Ibid., 342–343.

¹⁰⁹ National Review Board, "Report: Causes," 681.

¹¹⁰ Ibid. The problems to which the Report refers relate to the sexual abuse crisis and bishops: the limited number of candidates for the episcopacy; the lack of parochial experience on the part of bishops; the transfer of bishops from one diocese to another; the need for greater lay involvement in the selection of bishops; the mind-set that encourages bishops to remain silent rather than speak out.

structures of its practical implementation. At the same time, however, we must realize that many difficulties exist in attempting to hold bishops accountable for their actions.

Within the *communio hierarchica*, structures and means of accountability exist, such as oversight by the Roman pontiff (including requested resignation or transfer of a bishop by him), shared responsibility among the members of the college of bishops (their solicitude for the entire Church as well as their solicitude for one another). But within the more fundamental *communio fidelium* specific means of accountability either do not exist; or, if they are present, the means to ensure their implementation are lacking. Nonetheless, the *communio hierarchica* exists within the *communio fidelium* and therefore, the accountability of bishops pertains not only to their mutual relationships (including and never without the bishop of Rome) but also to their relationship to the rest of the faithful within the broader context of the entire people of God.

More specifically, how do the Christian faithful ensure that the bishops themselves consult and take such consultation seriously? How do the Christian faithful ensure that the U.S. bishops in fact institute and utilize the structures (the diocesan review boards) that the USCCB demanded that all bishops establish and utilize? How do the Christian faithful ensure that such structures exercise a determinative influence in the Church's life? How do the Christian faithful hold the bishops accountable for their actions?¹¹¹ Although these questions have arisen explicitly in reference to the sexual abuse crisis, they in fact relate to issues raised by the various documents of Vatican II such as the enhanced status of the laity and the ecclesiology of *communio* with its relevance to the need for more effective intermediary level structures. Both of these developments require that the Christian faithful exercise their rightful role in the Church.¹¹²

¹¹¹ One problem raised by accountability concerns the double standard utilized in treating those ordained to the episcopate and those to the presbyterate. Whereas most priests are put on 'administrative leave' when an accusation of sexual abuse surfaces, the same approach is not followed when accusations are made against bishops. Further, what penalties have been inflicted on bishops who have violated their supervisory responsibilities to the people of God? While it is true that such action, given the current structure of the Church, can only be taken by the bishop of Rome (c. 1405, §1, 3°), the necessity of acting in such cases is clearly seen by the laity and the ordained alike. The various dicasteries of the Roman Curia are concerned with "scandal among the faithful," that is, possible loss of faith among the people of God due to actions done in the Church's name. The Apostolic See must address the scandal of bishops not being held accountable for their actions.

¹¹² See Kasper, *Theology and Church*, *passim*.

Through the exercise of their rights and mindful of the obligation of maintaining and fostering *communio*, all the Christian faithful working together can help the Church not only deal with the present crisis but also learn from it and progress towards the reign of God, under the guidance of the Spirit. This was clearly the intent of Pope John Paul II when he stated,

If communion expresses the church's essence, then it is normal that the spirituality of communion will tend to manifest itself in both the personal and community spheres, awakening ever new forms of participation and shared responsibility in the faithful of every category. Consequently, the bishop will make every effort to develop within his particular church structures of communion and participation which make it possible to listen to the Spirit, who lives and speaks in the faithful in order to guide them in carrying out whatever the same Spirit suggests for the true good of the Church.¹¹³

Such is the task entrusted to the people of God by the bishop of Rome. All the people of God must assume their particular responsibility in accomplishing this task.

¹¹³ John Paul II, apostolic exhortation *Pastores gregis* 44, as quoted in National Review Board, "Report: Causes," 682.