

“ACCOUNTABILITY”
AND THE JURIDICAL RESPONSIBILITY
OF THE PUBLIC ECCLESIASTICAL
ADMINISTRATION

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RIASSUNTO: Integrale al governo della Chiesa è l'amministrazione quotidiana e la protezione concreta dei suoi beni. A tutti i livelli, la pubblica amministrazione deve essere responsabile della realizzazione dello standard di buon governo. Tale responsabilità, e il relativo fenomeno della trasparenza, concetti usati e enfatizzati nella dottrina giuridica e nella pratica di gestione corporativa secolare, non devono essere esagerati o applicati indiscriminatamente alla Chiesa. Devono sempre corrispondere all'ordine dato dalla divina costituzione della Chiesa.

PAROLE CHIAVE: pubblica amministrazione, buon governo, responsabilità, trasparenza.

SOMMARIO: 1. The public ecclesiastical administration in ecclesial context. – 2. The subjects of public ecclesiastical administration. – 3. The object of such administration. – 4. The basis for administrative responsibility. – 5. Responsibility in canonical administrative law. – 6. Reparation of damages as a consequence of juridical responsibility. – 7. The introduction of the notion of “accountability” into ecclesial society. – 8-10. American secular doctrine on accountability. – 11. Legitimacy of some application to the Church. – 12. The standard of good governance as self-regulatory accountability. – 13. Accountability to hierarchical superiors. – 14. Accountability to the ecclesiastical judiciary. – 15. Accountability to the administration’s own subjects? – 16. “Transparency”.

ABSTRACT: Integral to the governance of the Church is the day-to-day administration and concrete protection of her goods. At all levels, the public administration has to be accountable for its realization of the standard of good governance. Such accountability, and the related phenomenon of transparency – concepts employed and emphasized in secular juridical doctrine and corporation management practice – ought not be exaggerated or applied indiscriminately to the Church. They must always correspond with the order given by the divine constitution of the Church.

KEYWORDS: Public administration, good governance, responsibility, accountability, transparency.

1. **B**y the will of Christ, the divine Founder of the Church, the successor of St. Peter and the successors of the apostles in communion with him are entrusted with the supernatural care of the household of the faith, the family that is the new people of God redeemed by the blood of Christ. The goal of this care is to channel the salvific fruits of sanctification flowing from the passion, death and resurrection of Christ into the lives of all willing to receive them, so that all may be reborn as adoptive sons of the Father through the indwelling of the Holy Spirit. This goal is achieved fundamentally through the missionary work of the Church, by which she proclaims the Gospel, administers the sacraments to those who believe and request them, and establishes communities of faith. And in the order of the divine will for marriage and the generation of human life, it is fostered most intimately and profoundly in the context of the family, where the faith is handed on and nurtured.

Integral to this holy work of drawing all nations and people to Christ is the organization of the sacred ministry, including its promotion, regulation, and protection. Such governmental ends are accomplished both through normative direction and through more concrete measures that take into account the circumstances of persons and places. Such measures depend upon the daily exercise of governing authority in the Church with respect to her common goods and services. This is accomplished by the public ecclesiastical administration, which exercises executive power and performs other functions that provide immediate and concrete service to the public goods and members of the Church, advancing her toward her institutional end, the *salus animarum*.¹

2. As canonical doctrine recognizes,² the expression “public ecclesiastical administration” has both objective and subjective senses. Its subjective sense identifies the physical persons or groups of persons who carry out the activity and the manner in which they are organized. These are the acting subjects of administration or, in a manner of speaking, administrators. Its objective sense (*vide infra* n. 3) pertains to the object of administration, that is, the administrative activity carried out by those endowed with administrative authority.

The subjects of administration are principally the active organs of administration, though there are also consultative organs (e.g., councils, experts)

¹ Cf. F. D’OSTILIO, *Il diritto amministrativo della Chiesa*, Città del Vaticano, Libreria Editrice Vaticana, 1995 («Studi Giuridici», 37), pp. 74, 86, 272-273; D. FOLIGNO, *Scienza del diritto amministrativo e diritto canonico (Appunti per un saggio dogmatico)*, in *Raccolta di scritti in onore di Arturo Carlo Jemolo*, vol. 1/1, Milano, Giuffrè, 1963, pp. 576-577.

² Cf. J. KRUKOWSKI, *Introduzione alla disciplina del diritto amministrativo ecclesiastico*, «Apolinaris», 61 (1988), pp. 156-159.

and organs of control. These active organs of administration are the officials endowed with administrative authority as well as collegial bodies endowed with executive power (e.g., the membership of a congregation of the Roman Curia, the conference of bishops).

The public ecclesiastical administration is (to be) organized in such a way as to respect certain fundamental principles dictated either by the divine origin of the Church or by the natural order of things.³ Several of these principles have implications for the accountability of an individual organ of public administration, as will be seen *infra*. First, the activity of the public administration is to be understood as flowing from a unity of ecclesiastical power, such that executive power is not seen to stand in contrast or opposition with legislative and judicial power. Second, the power of the capital offices (the Supreme Pontiff, diocesan or eparchial Bishop) is inalienable, such that they cannot abandon or be considered to have abandoned their executive power and be restricted to the exercise of legislative power. Third, that being said, such capital officials have the right and, in the case of the Bishop, even the duty in law to share executive power with other officials, namely, the vicar general or protosyncellus. Fourth, the distinction between the central administration (i.e., the Supreme Pontiff and Roman Curia) and the particular administration (e.g., the diocesan Bishop or supreme Moderator) gives rise to a relative decentralization and autonomy of the latter – “relative,” because the ordinary governance is proper to the latter, while the extraordinary intervention of the former is not excluded. Fifth, the public administration is justly to limit its intervention in particular cases in accord with the principle of subsidiarity. And sixth, administration is to be exercised in such a way that promotes, preserves, and protects ecclesiastical communion; one factor that ideally brings this to realization is a unity of mind and action within the public administration.⁴

The central ecclesiastical administration is the supreme authority of the Church (i.e., the Supreme Pontiff and, in principle, the College of Bishops), together with the Roman Curia.⁵ The particular administrations can take diverse forms, the most common being the complex of organs governing a diocese or other particular Church. But it is inclusive of others not territorially circumscribed, such as those within the governing struc-

³ Cf. J. MIRAS, J. CANOSA, E. BAURA, *Compendio di diritto amministrativo canonico*, 2nd ed., Roma, EDUSC, 2009 («Subsidia Canonica», 4), pp. 51-54. See also J. KRUKOWSKI, *Fondamenti del diritto amministrativo nella Chiesa*, in *La funzione amministrativa nell'ordinamento canonico – Administrative function in Canon Law – Administracja w prawie kanonicznym*, vol. 1, in J. WROCEŃSKI, M. STOKŁOSA (eds.), Warszawa, Uniwersytet Kardynała Stefana Wyszyńskiego, 2012, pp. 103-114.

⁴ Cf. cann. 407, § 3; 480; 543, § 1; 548, § 3 CIC; cann. 215, § 4; 249 CCEO.

⁵ Cf. cann. 331; 333, § 1; 336; 360 CIC; cann. 43; 45, § 1; 49 CCEO.

tures of institutes of consecrated life, personal ordinariates or prelatures, and so on.⁶

3. As regards the object of public ecclesiastical administration, in general it can be said that the public administration is attributed «functions of social provision and, as a means for their realization, functions of juridical execution by means of regulatory dispositions and individual resolutions», or, generally speaking, «acts of power and dominion with executive force».⁷ It would be too restrictive to limit juridical administrative activity to the issuance of singular administrative acts, even though this is the most common and pre-eminent expression of such activity.⁸ The juridical activity of the public ecclesiastical administration is threefold: 1) unilateral, constitutive activity, or that which makes provision for particular cases by means of a singular administrative act, 2) normative activity, and 3) contractual activity.

These three kinds of activity do not exhaustively constitute the entire function of the public administration. Rather, these are the strictly *juridical* expressions of public administration. There are other kinds of activities that are related to these juridical functions while not themselves being strictly juridical. Some operations of the administration are of a moral or patrimonial nature, according to which those with administrative power exercise true authority without necessarily placing concrete juridical acts of governance: the general coordination of the administration, encouragement and persuasion, vigilance, ordinary daily financial administration, and so on. These are carried out in virtue of what one author calls the «power of leadership».⁹ In addition, the public administration carries out a number of other tasks – not unique to itself – that do not create new juridical situations but contribute to the important work of providing due order in those areas of ecclesial life in which it is engaged. These tasks include the transmission and reception of information, recording juridical facts, giving consultation to other authorities, and the coordination of efforts with other authorities.¹⁰

⁶ For the chief examples of particular organs of public ecclesiastical administration, see cann. 87, § 1; 134; 381; 391; 393; 406; 409, § 2; 413; 419-421; 423; 426; 596; 617; 717; 738, § 1 CIC; cann. 110, § 4; 167, § 4; 176; 178; 191; 212-213; 215; 227; 229; 248; 441; 511; 984 CCEO.

⁷ See G. DELGADO, *Administración eclesiástica y garantías jurídicas (Canones 20, 78, y 80)*, in *El proyecto de ley fundamental de la Iglesia*, Pamplona, BUNSA, 1971, p. 194.

⁸ «Fra le forme più tipiche di funzionamento dell'amministrazione rientrano l'emanazione di atti amministrativi e loro esecuzione» (KRUKOWSKI, *Introduzione alla disciplina...*, cit., p. 158). See also E. LABANDEIRA, *Trattato di diritto amministrativo canonico*, Milano, Giuffrè, 1994, p. 213.

⁹ F. J. URRUTIA, *Administrative Power in the Church according to the Code of Canon Law*, «Studia canonica», 20 (1986), pp. 260-262.

¹⁰ For a treatise on these and other non-juridical elements of administrative activity, see L. CARLONI, *L'attività amministrativa non provvedimento nel diritto canonico*, Roma, EDUSC, 2013 («Dissertationes, Series Canonica», 35).

4. The public ecclesiastical administration was identified above as a function, or governmental organ, ordered toward service. It has dominion over ecclesial goods for the purpose of protecting them and giving the faithful appropriate access to them. In carrying out this service, it is always to act in an authentically ecclesial manner, ever striving to support and promote the apostolate and the correct administration of the sacraments and exercise of the *munus docendi*. Its constant point of reference is indeed the design of the divine Founder for His Church, and it endeavors to yield to the prompting of the Holy Spirit, who animates the life of the Church and whose fruit can be seen in the exercise of good governance (*vide infra* n. 12).

The public administration's particular governing genius resides in the ability to address concrete needs in the life of the community, whether through the issuance of singular administrative acts or by expressing authoritative persuasion or exhortation in particular factual scenarios. It is for the public administration to apply general and abstract legislative norms in the way that best promotes the good of those involved. The legislator, especially the supreme legislator, provides such norms in the first place in order to care for that which in the wisdom of the Church, reflecting on the treasury of gifts given her by Christ, is so endowed with dignity as to merit universal protection. He also employs legislation as an instrument for declaring and establishing those things necessary for ensuring just social relationships; in this regard, legislation can be seen to positivize the intuitive understanding of the juridical science about that which is just in any society (*iuris prudentia*), and in particular that of the Church. Accordingly, the public ecclesiastical administration is bound to act in accord with the Church's sacred discipline («*ad normam iuris*»). Its activity is thus directed by, among others, the principle of legality, that is, «the submission of governing authorities to the law in the exercise of power, such that both the abuse of power and neglect and disregard of it in the exercise of authority are avoided».¹¹ Canonical legislation itself contains its own elements of flexibility; accordingly, in the canonical system, the principle of legality is not a matter of mere law-abidingness but of submission to the normative character of the whole system in which this flexibility can be applied to particular cases in a legitimate manner.

It can happen that the public administration may fail, by commission or

¹¹ See J. HERRANZ, *De principio legalitatis in exercitio potestatis ecclesiasticae*, in *Acta conventus internationalis canonistarum, Romae diebus 20-25 maii 1968 celebrati*, PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO (ed.), Città del Vaticano, Typis Polyglottis Vaticanis, 1970, pp. 221-238, at 224. On the principle of legality, see also, e.g., KRUKOWSKI, *Fondamenti del diritto amministrativo nella Chiesa*, cit., pp. 115-119; MIRAS, CANOSA, BAURA, *Compendio di diritto amministrativo canonico*, cit., pp. 66-84; I. ZUANAZZI, *Il principio di legalità nella funzione amministrativa canonica*, «*Ius Ecclesiae*», 8 (1996), pp. 37-69.

omission, to submit to the norm of law – whether of the positive legislation, of an administrative norm or legitimate custom, or even of the divine law, or to norms of natural justice or those flowing from the nature of things (*ex iure naturae*). When such occurs, the public administration may not ignore its injustice or simply acknowledge the illegitimate activity. It owes some explanation and even reparation to the injured parties and/or the community. In this way, the principle of legality naturally refers to the principle of administrative responsibility.

5. In common usage, the term “responsibility” is frequently used as a synonym of the word “obligation” – e.g., the diocesan Bishop has a “responsibility” to complete a visitation, himself or through others, of all parishes in his diocese each *quinquennium*. This is “responsibility” in the sense of «field of competence». ¹² Perhaps one could say this is a matter of «positive» responsibility. ¹³ In doctrine, it is used at times to describe the correct and just exercise of the personal autonomy and liberty of a member of Christ’s faithful. ¹⁴ However, in the discipline of canonical administrative law, which is heavily a public law, the term has a particularly settled doctrinal meaning. In the public law of ecclesiastical administration, it is not just any kind of obligation but one flowing from some illegitimate or harmful act or from negligence.

As Gordon explains, the term responsibility «has an undoubtedly pejorative meaning». ¹⁵ It is, as D’Ostilio defines it, «the juridical obligation that falls upon a subject to respond for an action or state of affairs of which he is the cause». ¹⁶ Similarly, Pree descriptively characterizes it as «the reaction of

¹² See H. PREE, *La responsabilità giuridica dell’Amministrazione Ecclesiastica*, in *La giustizia nell’attività amministrativa della Chiesa. Il contenzioso amministrativo*, E. BAURA, J. CANOSA (eds.), Milano, Giuffrè, 2006 («Monografie Giuridiche», 31), p. 62: «b) Responsabilità-competenza».

¹³ See J. MIÑAMBRES, *La responsabilità canonica degli amministratori dei beni della Chiesa*, «Ius Ecclesiae», xxvii, 3 (2015), pp. 577-594, at pp. 588 and 593; this positive sense is used throughout the article, together with the sense about to be explained. On “responsibility” as an indicator of particular duties of the public administration in the legitimate placing of singular administrative acts, see I. ZUANAZZI, *Dalle norme alla prassi pastorale: l’amministrazione a servizio della comunione nella realtà locale*, «Ephemerides Iuris Canonici», 57 (2017), pp. 129-159.

¹⁴ See, e.g., J. HERVADA, *Elementos de Derecho Constitucional Canónico*, 2nd ed., Pamplona, EUNSA, 2002, especially in Chapter IV. On the different uses of the term in law, see M. D’ARIENZO, *Il concetto giuridico di responsabilità. Rilevanza e funzione nel Diritto Canonico*, Cosenza, Luigi Pellegrini, 2012, which is summarized and examined by J. Otaduy, «Ius Canonicum», 56 (2016), pp. 452-460.

¹⁵ See I. GORDON, *La responsabilità dell’amministrazione pubblica ecclesiastica*, «Monitor Ecclesiasticus», 98 (1973), p. 395, at §4.1.

¹⁶ See F. D’OSTILIO, *La responsabilità per atto illecito della Pubblica Amministrazione nel diritto canonico*, Roma, Pontificia Università Lateranense, 1966, p. 3, n. 4. There is abundant literature on this doctrinal characterization of *responsibilitas* and its implications.

the juridical order to the infraction of a protected juridical duty (violation of a right, non-fulfillment of obligations, the commission of unlawful deeds) on the part of a physical or juridical person – a reaction that carries for the latter the obligation to submit to the consequences envisioned for such an infraction (penal sanctions in the case of penal responsibility, fulfillment of the obligation, or reparation of damages in the case of so-called contractual and extracontractual responsibility).¹⁷ The positive implication of this from the perspective of justice is that «the correct and appropriate exercise [of the administrative function] has been recognized as a juridical obligation that can be demanded». ¹⁸ Should the principle of legality be violated, then, the obligation known as responsibility begins to fall upon the administration.

Indeed, the public administration is bound to fulfill an ensemble of primary duties in virtue of its function established by the legislator for the good order of the society. It is the failure in fulfilling these obligations that causes harm, whether in the form of a concrete injury or the more abstract erosion of the good order and health of the society. This is a violation of justice inasmuch as one or more subjects have not been given what is their due – whether it be the society as whole (legal injustice), the administration's own subjects (distributive injustice), or another *de facto* or *de iure* equal party (commutative injustice).

6. Doctrine describes the illegitimate act of the administration with the adjectives *damnosus*, *antiuridicus vel poenalis*, and *imputabilis*. That is, in brief, the act or omission is damaging, injurious of some subjective right (*contra ius*) or the public good itself (thus being reinforced by a penal law), and placed intentionally.¹⁹ The act is intentional in the sense that moral dominion for the act or omission is attributed to the administration. This is the imputability of the administration, or its causal relationship with the harm caused by the act or non-act. Having such imputability, it comes to be burdened by the secondary obligation of responsibility – secondary, that is, to the principal, unfulfilled or violated public obligation. That responsibility is a relational obligation: it is a responsibility of the administration to give an answer to someone for the injurious behavior – whether that someone is one or more physical persons or a juridical person or other kind of group or community.²⁰

¹⁷ See PREE, *La responsabilità giuridica dell'Amministrazione Ecclesiastica*, cit., pp. 60-61.

¹⁸ See MIRAS, CANOSA, BAURA, *Compendio di diritto amministrativo canonico*, cit., p. 84.

¹⁹ Cf. D'OSTILIO, *La responsabilità per atto illecito...*, cit., pp. 22-41; IDEM, *Il diritto amministrativo della Chiesa*, cit., pp. 352-356. On the distinction between a civilly illicit act and a criminally illicit act, see GORDON, *La responsabilità dell'amministrazione pubblica ecclesiastica*, cit., pp. 391-394, at §3.

²⁰ Cf. D'OSTILIO, *La responsabilità per atto illecito...*, cit., pp. 42-43, nn. 1-2.

The obligation here described as responsibility is mentioned in the CIC, especially in cann. 639, §§ 1-3 and 1281, § 3, thus in the patrimonial context. This, however, is only juridically emblematic of the full responsibility of the public ecclesiastical administration. For the Church's juridical order is founded on the divine constitution of the Church and the natural law, or, from another perspective, on the deposit of the faith and the moral doctrine of Christ built upon and flowing from human nature and authentically declared by the sacred Magisterium. Accordingly, should the public administration also be imputable for some moral harm, due to its acts or omissions, it is responsible to give some answer for its conduct and even repair damages inflicted (cf. cann. 57, § 3; 128 CIC; can. 935 CCEO). Fulfillment of this responsibility ideally occurs immediately at the local level shortly after the illegitimate act or omission has occurred. If it does not, or does not to a satisfactory degree, on the occasion of hierarchical recourse the organ of control can impose obligations on the inferior organ of administration to repair any damage inflicted by its administrative act (cf. can. 1739 CIC; cann. 1004-1005 CCEO). Such obligations may even be imposed by the administrative tribunal if the matter enters the judicial sphere through contentious-administrative recourse. Indeed, the Apostolic Signatura may, at the request of the recurrent, adjudicate the question of damages inflicted by an illegitimate administrative act placed or approved by a dicastery of the Roman Curia.²¹

Offenses arising from violating the principle of legality, abuse of power through placing illegitimate singular administrative acts or other harmful authoritative conduct, and negligence in the exercise of the administrative function can in fact constitute delicts to be punished with a just penalty (cf. can. 1389, § 2 CIC; can. 1464, § 2 CCEO). Because of this, one harmed by such a delict can denounce the administration to the competent authority, which may then not only impose a just punishment but also impose penal damages in accord with the norm of penal law (cf. can. 1729, § 1 CIC; can. 1483, § 1 CCEO).

7. In diverse regions of the world, there has in recent decades been an outcry against the public ecclesiastical administration for incidents, or alleged incidents, of negligence or abuse of power in relation to the commission of sins against the sixth commandment of the Decalogue by clerics with a minor. Usually it is the Bishops of the Church who are charged with negligence or abuse of power, as well as some major Superiors of religious institutes. As can be seen in the variety of cases that have been verified or alleged, this is

²¹ Cf. JOHN PAUL II, Apostolic Constitution *Pastor bonus* (PB), 28 June 1988, «AAS», 80 (1988), pp. 841-934, at art. 123, § 2; BENEDICT XVI, Motu proprio *Antiqua ordinatione*, 21 June 2008, «AAS», 100 (2008), pp. 513-538, at artt. 34, § 2 and 101-103 (= LP).

indeed a question of the activity of the public administration; it is not legislative, judicial, magisterial, or sacramental activity. Indeed, a Bishop, who transfers a priest accused of that delict to another office involving the care of souls, who re-admits him to a ministerial office or role after some spiritual retreat or therapeutic treatment, or who decrees a preliminary penal investigation and transmits the matter to the Apostolic See, is placing singular administrative acts or is at least making prudential arrangements for particular cases. On the other hand, the Bishop who tolerates certain behaviors on the part of clerics or otherwise fails to appreciate the nature of the acts allegedly committed by a cleric and remains passive may be seen to be committing negligence in the exercise of his public administrative authority. These acts and omissions on the part of the administration can be damaging and injurious to subjective rights; and for that reason, it assumes the obligation of bearing public responsibility.

Because these occurrences have gained such popular attention in ecclesial and secular society, there have been consistent and ultimately uncontested demands for “accountability” on the part of the public ecclesiastical administration. The claim is made that the administration has in certain places committed serious negligence or even remotely cooperated in the commission of delicts; this has not only harmed individual members of the faithful but has also destroyed the reputation of ecclesiastical authorities, with the tragic result of compromising the credibility of their proclamation of the Gospel. If ecclesiastical authority is to be trusted, it is said that it owes an explanation not only to victims and their families but also to society. This is the outcry for accountability, which is a term that has been introduced into ecclesial parlance.

8. “Accountability” (“*rationis redditio*”), as a general dimension of governance, is not a term used in the Church’s sacred discipline but rather in secular law. It is not a foreign concept, though, being detected especially in regard to the correct administration of ecclesiastical goods (*rationem reddere*), and it has come to be used broadly within the Church in a somewhat natural way in the contemporary period as just explained in n. 7. It remains largely undefined, or perhaps its meaning is presumed. Turning to secular juridical doctrine is therefore helpful, and we can say that this is cautiously legitimate: “cautiously”, since the divine design of the Church must remain pristinely intact; but “legitimate”, since honest secular juridical doctrine, like that canonical, strives to promote a good social order and just relationships among the members of society, such that genuine progress in the doctrine in one juridical order can and often does suggest some new insight applicable, *mutatis mutandis*, to another. As Beal explains: «Other societies have already struggled with the vexing problem of holding their leaders account-

able for their exercise of power while investing them with sufficient authority to maintain public order and pursue their societies' highest aspirations effectively. While these solutions to the enduring dilemma of governance cannot be transposed without alteration to the Church, the Church can re-join the conversation with other legal traditions». ²²

Accountability is a notion related to juridical responsibility (*vide supra* nn. 5-6) and can even be seen as somewhat synonymous with it. One who is accountable for some act or non-act is legally responsible for it or has an obligation to give an answer for it. ²³ In one respect, it could be seen as the "public relations" implication of juridical responsibility. Even when one's accountability does not extend to the general public, it is often an expression of juridical responsibility.

Accountability can be understood also as a measurement of responsibility. The weight of one's responsibility for something determines the extent to which he is accountable for it. And so a defect in satisfying the demand of one's accountability thus amounts in a greater or lesser injustice or liability. ²⁴ In other words, if one has not given adequate account for his sphere of responsibility, a portion of his responsibility remains such that he must still give an account for it. Failure to give an adequate account can lead to further harm and thus give rise to further responsibility. Accountability is used also in criminal law to measure the guilt of an accomplice or material cooperator in some crime or other offense against the law. Such a person can be said to be «accountable for crimes of others»; this degree of culpability is attributed to the person in virtue of so-called «accountability theory». ²⁵ In this context, accountability presupposes one's mental competence in proportion to the act for which he is answerable. ²⁶

9. Nevertheless, accountability is not necessarily related to administrative juridical responsibility, in the proper sense of a negative reaction of the juridical order to harmful acts for which the public administration must give a response. It may also refer to those operations of the administration by which it gives *just disclosure* to interested parties about its ordinary governing activities. It has been understood as the obligation burdening govern-

²² J. BEAL, *It Shall Not Be So Among You! Crisis in the Church, Crisis in Church Law*, in *Governance, Accountability, and the Future of the Catholic Church*, F. OAKLEY and B. RUSSETT (eds.), New York, Continuum, 2004, p. 101, n. 4.

²³ Cf. v. «accountable», in *Black's Law Dictionary*, 10th ed., B. A. GARNER (ed.), Thomson West, Minnesota, St. Paul, 2014, p. 23; v. «accountability (legal accountability)», in *The Walters Kluwer Bouvier Law Dictionary. Compact Edition*, S. M. SHEPPARD (ed.), New York, Aspen Publishers, 2011, p. 25.

²⁴ Cf. v. «Accountability», *Words and Phrases. Permanent Edition*, vol. 1B, Thomson West, Minnesota, St. Paul, 2007, p. 208.

²⁵ Cf. v. «Accountability» and «Accountability Theory», in *ibidem*, p. 209.

²⁶ Cf. v. «Accountable», *ibidem*.

mental organs to demonstrate that they have not exercised their power arbitrarily. This does not imply that they have or may acted arbitrarily; rather, it follows from the public interest in the correct administration of public goods and services.

Moreover, in a more officially politicized society, it has come to mean also the obligation of governmental organs to demonstrate whether power has been exercised in a way that «meet[s] expectations for performance held by their various publics».²⁷ In other words, various physical or juridical persons or other communities of persons may hold certain expectations for an authority to govern in a particular manner or issue particular kinds of decisions. To each of these the authority might be said to be “accountable” inasmuch as they claim some right to demand certain results from him or progress in achieving their own goals.

Whatever form accountability takes, it usually creates its own demands on the public administration beyond those that immediately and principally burden its work of governing, since much time and resource needs to be devoted to preparing instruments of accountability. Reports and other forms of information-transmission are media by which such accountability can be accomplished, since they can be communicated quickly, dispersed widely, and joined to public records. These means illustrate, for example, the budget and expenditure of the administration, the formulation and accomplishment (or not) of institutional goals, the functional quality of those that assist the administration (e.g., the staff, contracted agencies, consultants), and the results of any external or internal auditing mechanisms.²⁸

The reduction or the expansion of obligations of accountability bring to light certain possible tensions or, at any rate, the interplay of particular goods. *The expansion of accountability* obligations enhances the control of the public administration, public confidence in it, the legitimacy of its activity, prioritization of the public exhibition of success, minimization of superfluous administrative officials, the greater coordination of public services, and the minimization of costs. On the other hand, *the reduction of accountability* obligations can result in greater freedom on the part of the administration to pursue particular more urgent objectives, flexibility in acting, focused activity, internally motivated effectivity of administrative officials, fewer resour-

²⁷ P. L. POSNER, *Chapter Eighteen: Accountability Challenges of Third-Party Government*, in *The Tools of Government. A Guide to the New Governance*, L. M. SALAMON (ed.), New York, Oxford University Press, 2002, p. 524. Accountability is more difficult to achieve when the one bound to give it only indirectly has dominion over the governing activity in question (cf. B. G. PETERS, *The Future of Governing*, 2nd ed., Kansas, University Press of Kansas, Lawrence, 2001, pp. 137-141).

²⁸ Cf. C. POLLITT, G. BOUCKAERT, *Public Management Reform. A Comparative Analysis*, New York, Oxford University Press, 2000, pp. 163-165.

es being directed toward rendering an account, and increased effectiveness and efficiency.²⁹

10. Accountability implies a passive subject. One who has the burden of accountability has to render an account *to someone*. The popular clamor for the accountability of Bishops has perhaps at times presumed that public authorities have to give a total account to anyone who is interested – juridically interested, or merely curious. At the same time, it may not always be evident who these passive subjects are in each case. As is helpfully explained in one manual on public administration in the United States of America,³⁰ accountability takes different forms according to the one before whom the administration is holding itself accountable.

(a) The public administration can be said to be accountable to itself, and this is accomplished through self-regulation. Practically speaking, this requires good ethics, general efficiency, the appointment of highly qualified officials at all levels, and the willing submission of the administration to external controls in each of these areas.

(b) In a system in which there is a separation of powers, the administration is also accountable to the legislature, that is, the collegial legislator. That organ is not merely one that issues laws but also has the power to place coercive and favorable acts in relation to the administration, such as disciplinary acts or the granting of different authorizations. Thus it has mechanisms for intervening and for holding the administration accountable for its actions, inaction, or financial administration.

(c) The administration is also accountable to the judiciary. When its own internal operations of adjudication or supervision fail to resolve controversies, its activity can be subject to judicial scrutiny.

(d) Finally, the administration is accountable to the citizens subject to it. This is realized in the first place through application of the principle of participation, by which citizens take part in governance, especially by having positions on committees and local boards available to them. Another kind of participation is the contribution made by interest groups which, with financial and other forms of pressure, advance the work of administration in pursuit of some (at least perceived) good end. The right to elect public administrators, too, creates the dynamic of public attentiveness to works of the administration.

Do these forms of accountability exist in the Church?

²⁹ Cf. *ibidem*, pp. 170-171.

³⁰ M. E. DIMOCK, G. O. DIMOCK, *Public Administration*, 3rd ed., New York, Holt, Rinehart and Winston, Inc., 1964, pp. 373 ff. In a similar sense, see P. AUCOIN, R. HEINTZMAN, *The Dialectics of Accountability for Performance in Public Management Reform*, in *Governance in the Twenty-first Century: Revitalizing the Public Service*, B. G. PETERS, D. J. SAVOIE (eds.), Montreal & Kingston, McGill-Queen's University Press, 2000, pp. 244-280.

11. There are some aspects of the secular model (especially the common law, American government) that cannot be introduced into the Church. Obviously, elements of her constitutional structure preclude the separation of powers that makes some aspects of secular accountability possible. Nor should the Church's administration ever succumb to pressure groups when it would compromise her fidelity to declaring the truth, maintaining her sacred discipline, or treating others with justice. However, in different respects, these dimensions of secular accountability can be perceived even in the Church.

Indeed, ecclesiastical accountability can be seen as an obligation that is directive, successive, and even preventative to the carrying out of administrative activity. That is, accountability can give direction to public administration; it may be demanded after the work of administration has been carried out, or not (as an expression of juridical responsibility); and it can extrinsically inform administrative activity prior to placing acts of authority.

12. The primary and most important expression of directive accountability is self-regulation or self-limitation. This can only be realized when there is a commitment on the part of those within the public administration to the standard of good governance. The persons of which an organ of public administration is composed are to strive to keep themselves accountable to the goal of governing the Church well, and even with excellence.

This should be easily acceptable to all who give some basic reflection to the spirit of ecclesiastical governance. The object of such governance consists in the promotion of just social relationships among all the faithful and of the faithful with the goods of the Church. Because of the supernatural origin and character of these goods, and in view of the example of the divine Founder who is the Good Shepherd, ecclesiastical administration has the character of service and can only be considered *good* governance when it practically corresponds to this pattern. The good governance of the ecclesial society stems from an understanding of ecclesiastical authority as a *diaconia* in relation to the community of the faithful, being limited by their rights, in order to foster the attainment of its proper, supernatural good. In brief, the organs of public ecclesiastical administration are endowed with ecclesiastical power «for the service of the community assigned to them» and «for the pastoral care of subjects». ³¹

³¹ See PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Principia quae Codicis Iuris Canonici recognitionem dirigant*, «Communicationes», 1 (1969), p. 82, n. 6. Cf. J. MIRAS, *Sentido ministerial de la función de gobierno y tutela jurídica en el derecho administrativo canónico*, in *La dimensión de servicio en el gobierno de la Iglesia*, A. VIANA (ed.), Colección Canónica, Pamplona, EUNSA, 1999, pp. 261-262; A. VIANA, *Aspectos de la relación del fiel con*

The public ecclesiastical administration should see this as directing its whole *modus operandi*. When it does, it will naturally govern by being personally engaged with its subjects. It will exercise its function in a self-limiting manner, such that it will act in concrete cases according to the objective demands of justice, even when this at times might lead to circumscribing its own freedom even beyond what is strictly demanded by law. This personal character of administrative governance in the Church also extends to a reasonable concern for avoiding even the perception of injustice on the part of the persons involved: «[I]t would not seem sufficient that a singular administrative decision simply be legitimately made», that is, that it be issued in accord with the norm of law; «it must also fully conform to the criteria of good pastoral governance; moreover, it should also be perceived by the faithful involved, at least insofar as possible, as a good and wise decision».³²

There is also the passive, preparatory dimension of good governance according to which the highest administrative authorities welcome the prudential insights of others as an ordinary part of administration. In this regard, some authors stress the better implementation of the consultative principle in the Church as a kind of preventative accountability internal to the administration in its effort to achieve good governance.³³

This goal of carrying out good governance on the part of the administration should motivate it to implement many practical measures that foster the efficiency and excellence of those who take part in it. Qualities should be clearly articulated according to which one may be judged suitable (*idoneus*) for a particular function or office within the administration. An administrative deontology ought to be articulated including not only the nature and content of the work (cf. a “job description”) but also certain concrete standards of excellence. Means for the ongoing formation of administrative staff, especially those engaged in the formation of singular administrative acts and administrative norms, would justly be offered and their use encouraged. In such ways, administrative authorities and officials may keep themselves accountable to the standard of the good governance worthy of the Church.

la organización eclesíastica, «Fidelium iura», 4 (1994), p. 101. On this emphasis by the sacred Magisterium, see, e.g., Paul VI’s discourses to the Sacred Roman Rota of 28 January 1971 («AAS», 63 (1971), pp. 135-137, n. 1) and 25 January 1966 («AAS», 58 (1966), pp. 152-153), as well as *PB*, preface, n. 1.

³² F. DANEELS, *The Reduction of a Former Parish Church to Profane Use in the Light of the Recent Jurisprudence of the Apostolic Signatura*, in “*Quod iustum est et aequum*”. *Scritti in onore del Cardinale Zenone Grocholewski per il cinquantesimo di sacerdozio*, M. JĘDRASZEWSKI, J. SŁOWIŃSKI (eds.), Poznań, Archdiocese of Poznań, 2013, p. 165.

³³ Cf. R. J. KASLYN, *Accountability of Diocesan Bishops: A Significant Aspect of Ecclesial Communion*, «*The Jurist*», 67 (2007), pp. 109-152. Here the author proposes and illustrates that the administration’s accountability is based on the mystery of the Church as a *communio fidelium*.

13. The general discipline of the Church is more explicit about hierarchical accountability (*rationem reddere*) in regard to patrimony or ecclesiastical goods.³⁴ By analogy, it can be said that the total relationship of the public administration to its hierarchical superiors gives rise to aspects of directive, preventative, and successive accountability. For those superiors aid in the better exercise of the administrative function and also stand as organs of control in the event of controversies.³⁵

The directive or preventative accountability to hierarchical superiors is seen as the inverse of the vigilance to be exercised by those superiors. This is thus the position correlative to the vigilance to which the public administration itself is subject. In other words, the organ of public administration over which a superior exercises vigilance owes accountability to the latter. Obviously, all organs of public administration in the Church, including those of the Roman Curia, are accountable to the Roman Pontiff who is, apart from being the supreme legislator and the supreme judge, the supreme organ of administration. The ordinary expression of this accountability is the quinquennial report and the visit *ad limina Apostolorum*.³⁶ These encounters with the Roman Pontiff and the Dicasteries of the Roman Curia are meant to «offer the Bishop a privileged opportunity [...] to give an account of the situation of his diocese and its needs».³⁷ Similar to this expression of accountability is the report of an institute of consecrated life and of a society of apostolic life sent to the Apostolic See at the time of its general chapter, which includes aspects of governance of the institute or society by its public administration.³⁸

A diocesan or eparchial Bishop owes more frequent accountability in regard to the administration of justice in the particular Church entrusted to his care. It is true that the annual report about the state and activity of tribunals to the Apostolic Signatura³⁹ is primarily an accountability of the tribunal to the Apostolic See about its judicial activity. However, it is also an expression

³⁴ See, e.g., cann. 319; 494, § 4; 636, § 2; 637; 1301, § 2; 1302, § 1 CIC; cann. 122, § 3; 232, § 4; 582; 762, § 1, 7°; 1031; 1045, § 2 CCEO.

³⁵ On the characterization of these hierarchical relationships as «accountability structures», see J. H. PROVOST, *Toward Some Operative Principles for Apostolic Visitations*, «The Jurist», 49 (1989), pp. 543-567.

³⁶ See cann. 399-400 CIC; artt. 28-32 PB; cf. cann. 206-208 CCEO.

³⁷ CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum Successores*, 22 February 2004, Città del Vaticano, Libreria Editrice Vaticana, 2004, at n. 15.

³⁸ See can. 592, § 1 CIC; CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Guidelines, Prot. N. SpR 640/2008, 11 May 2008, «AAS», 100 (2008), pp. 580-584. Cf. can. 419 CCEO.

³⁹ Cf. SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA, Circular Letter *Inter munera*, Prot. N. 51712/16 VT, 30 July 2016, «AAS», 108 (2016), pp. 948-953.

of the Bishop Moderator's accountability to the Apostolic See concerning his own administrative vigilance over the correct administration of justice in the tribunal that he governs. This is reflected in the praxis of the Apostolic Signatura, which ordinarily communicates directly with the Bishop Moderator, praising the work of his tribunal and/or expressing critical observations.

Within the particular Church or other local or personal circumscriptions, there are also obligations of accountability corresponding with the exercise of vigilance over certain superiors. A diocesan or eparchial Bishop's vicars owe accountability to the Bishop about the activities carried out in the exercise of their office: «Vicars must always act according to the intention and mind of the Bishop, to whom they should *render an account* of the principal matters in which they are involved». ⁴⁰ Also, those who govern parishes and, without prejudice to titles of legitimate autonomy, other ecclesiastical institutes and juridical persons, sacred places, and sacred things are accountable to the diocesan or eparchial Bishop. ⁴¹ Similarly, local religious superiors are accountable to their superiors, who have a duty to visit them in accord with the norm of proper law (cf. can. 628, §§ 1 and 3 CIC; can. 420, § 1 CCEO).

These relationships of vigilance-accountability are part of the ordinary dynamics of public administration, but they can also take a successive or reactive form. The superior organ of administration may act *motu proprio* when irregular practices or abuses are perceived and demand some particular act of accountability (e.g., the communication of a detailed report, appearance at the chancery for explanations and the handing over of documents, etc.). Or it may act when a member of the faithful challenges an act of a lower-level organ of public administration (cf. can. 1734, § 3, 1° CIC; can. 997, § 2 CCEO); indeed, when recourse is made to an administrative superior, the author of the challenged act finds himself accountable to the former for the merits of his decision and his manner of proceeding.

Such accountability is critical for the good order and fruitful governance of the Church. This does not mean it always has perfect results. Difficulties in the life of the Church have led some to propose the creation of new relationships of accountability. A few decades ago, there was a suggestion for «develop[ing] the role of intermediary agencies of accountability; e.g. metropolitans, meetings of provincial bishops, particular councils, episcopal conferences». ⁴²

⁴⁰ *Apostolorum Successores*, n. 178 (emphasis in original); can. 480 CIC, can. 249 CCEO.

⁴¹ See cann. 396-398; 628, § 2 CIC; cann. 205; 414, § 1, 3°; 420, § 3 CCEO.

⁴² On this proposal, see *Consensus Statement of the CLSA Committee for the Study of Apostolic Visitation and the Limitation of Powers of a Diocesan Bishop*, 11 October 1989, «The Jurist», 49 (1989), p. 343, at B.2. The *Statement's* own caution recognized later in a different context could be applied to this proposal: such innovations could harm «the integrity of the episcopal ministry in the diocese and the unity of diocesan governance» (*ibidem*, p. 345, at D.8). For proposals of a bishop's accountability to a regional or national council of mixed composition

However, one must not too hastily attempt to establish new institutes or endow existing institutes with additional power. It is only after a profound theological and juridical study that such innovations could be truly useful and appropriate, without damaging essential elements of the Church’s divine constitution and the organic development of ecclesiastical organization.⁴³

14. The public ecclesiastical administration may also owe a successive accountability to the ecclesiastical judiciary – to say nothing of the secular one, as the case may be. This is another way of characterizing the position of the public administration within a cause of contentious-administrative recourse. When such a cause is admitted before the Supreme Tribunal of the Apostolic Signatura, the administration stands as a party procedurally equal to the recurrent (when the one aggrieved by the original administrative act is the recurrent before the Apostolic Signatura). It is not wholly accountable to the judge, of course, but only in regard to the specific object of the controversy: the challenged singular administrative act. Moreover, the competence of that tribunal may not replace the administration’s exercise of prudent discretion (*volitio boni*) but is limited to the objective aspects of the controversy (*cognitio veri*), namely, whether the law was violated *in procedendo vel in decernendo*.

It is the dicasteries of the Roman Curia that have such judicial accountability to the Supreme Tribunal of the Apostolic Signatura in the exercise of their administrative function (cf. can. 1445, § 2 CIC; PB art. 123, § 1; LP art. 34, § 1). This is the impartial and just order established by the supreme ecclesiastical legislator for the exercise of judicial control over the central organs of ecclesiastical administration. It is an order that those dicasteries therefore have a public duty to respect. The practice of seeking approvals from the Roman Pontiff *in forma specifica* prior to or during a contentious-administrative trial may suggest that a dicastery suspects the injustice or illegitimacy of its decision in a particular case; it may also be indicative of a refusal to be judged (but cf. 2 Cor. 5:10). Whatever the case may be, anyone can see that the Church’s ability to shine forth before the nations as the *speculum iustitiae* is impeded when those who govern her at the highest levels search in this manner for a *tribunal favorabilius* (cf. can. 1489 CIC).⁴⁴

and to a provincial council, see, respectively, F. CARDMAN, *Myth, History, and the Beginnings of the Church*, in *Governance, Accountability ...*, cit., pp. 33-48; G. P. FOGARTY, *Episcopal Governance in the American Church*, in *ibidem*, pp. 117-118.

⁴³ For an illustration of how existing organs can be used to achieve accountability understood as external reporting, rather than hierarchical supervision, see D. W. WUERL, *Reflections on Governance and Accountability in the Church*, in *Governance, Accountability...*, cit., pp. 21-22.

⁴⁴ The Church’s discipline envisions that some intervention of the Roman Pontiff could

The dicasteries themselves, as organs of public administration, then, are accountable to the Apostolic Signatura when one aggrieved by their singular administrative acts legitimately introduces a cause before it. In practice, this is usually an act of confirmation or approval of an act of a lower-level organ of administration, which therefore is implicitly standing in a position of judicial accountability to the same Supreme Tribunal.

Less commonly, the public administration may be summoned before another competent tribunal when charged with violating someone's rights in the exercise of its administrative function. While the challenge of a singular administrative act is accomplished in a hierarchical manner, a legitimate administrative act or other kinds of activity of the administration (e.g., exhortation, moral interventions, etc.) could be carried out in such a way that an interested party finds, for example, his right to a good reputation to have been illegitimately harmed. In such a case, the administration may find itself having to be accountable to the competent tribunal when summoned (*pars conventa*) in a cause of rights (*iurium*) (cf. can. 1405, § 3, 1^o-2^o CIC).

15. Does the public ecclesiastical administration have some accountability to its subjects, that is, the members of the clergy and the lay faithful and religious whom it governs? It may seem contradictory to suggest that the governed (*gubernati*) have some right to a reply from the ones that govern them (*gubernantes*). Indeed, that at first glance seems appropriate only when speaking of a democratic society governed by elected officials who represent the people,⁴⁵ which is no description of the Church. «While stockholders in a corporation may have ultimate authority over even the structure of the corporation itself and while in a democracy sovereignty rests with the majority who can alter even the very constitution of the nation, neither of these models serves the Church».⁴⁶ For in the Church, the administration and the beneficiaries of its public services are unequal parties, since the one is endowed with the governing power needed for realizing the given service, while the other is subject to this power and a recipient of the service.⁴⁷

Nevertheless, while it would be a great exaggeration to demand full transparency of governance to all in the Church or in civil society, there are some

be sought not to prevent a recurrent from approaching or receiving a judgment from the Apostolic Signatura but, on the contrary, to permit it even after it has become prohibited by law (cf. *LP* art. 74, § 2).

⁴⁵ For the implications of such democratic accountability, see PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social Doctrine of the Church (CSDC)*, 2 April 2004, Washington D.C., Libreria Editrice Vaticana / United States Conference of Catholic Bishops, 2005, at nn. 406, 408, 567.

⁴⁶ WUERL, *Reflections on Governance and Accountability in the Church*, cit., p. 14.

⁴⁷ Cf. M. LÓPEZ ALARCÓN, *El abuso de derecho en el ordenamiento canónico*, «*Ius Canonicum*», 9 (1969), p. 135.

indications in legislation, doctrine and praxis that hold the administration to an accountability even to its subjects. In general terms, some currents of doctrine maintain that, while administrative activity always demands the use of the prudent discretion that can result in various legitimate courses of action, the faithful have a *right to the correct exercise of the governing function in the Church*, or a right to good governance.⁴⁸ This right flows from the fact that, in virtue of the will of the divine Founder, the faithful, on the one hand, are subject to the hierarchy established by Him and are thus bound to obey the Pastors of the Church and remain in communion with them; while, on the other hand, hierarchical authorities are entrusted with this duty in order to foster the sanctification and salvation of the faithful. The structure willed by Christ, therefore, presupposes the proper exercise of the hierarchical function, thus giving rise to a right of the faithful that this exercise will correspond to the *bonum animarum*. This fundamental right stands as the chief basis for the legislative regulation of administrative activity in general and the juridical institutes of administrative procedure and the system of recourses in particular, as well as the principles of legality and responsibility.⁴⁹

A general accountability toward the administration's subjects has been famously accepted in the context of the widespread crisis of clerical sexual abuse of minors. Weighing the consequence of particular situations of negligence in the application of penal law, the Bishops of the United States of America have declared: «We bishops pledge again to respond to the demands of the Charter in a way that manifests our accountability to God, to God's people, and to one another».⁵⁰ Likewise, authoritative doctrine has observed: «Bishops are ultimately accountable to God for the stewardship of their diocese. But on earth they are also accountable *to their people* and to the College of Bishops under Peter».⁵¹ This, in principle, is a matter of ac-

⁴⁸ Cf. especially J. HERVADA, *Elementos de Derecho Constitucional Canónico*, EUNSA, 2001, pp. 141-142. See also J. CANOSA, *Il rescritto come atto amministrativo nel diritto canonico*, Milano, Giuffrè, 2003 («Monografie Giuridiche», 24), pp. 188-194; G. DELLAVITE, “*Munus pascendi*”: *autorità e autorevolezza. Leadership e tutela dei diritti dei fedeli in un atto amministrativo*, Treves Editore, Roma, Polis – Biblioteca di Scienze Economiche, 2011, pp. 9-11; MIRAS, *Sentido ministerial de la función de gobierno...*, cit., pp. 455-456.

⁴⁹ Cf. J. MIRAS, *Derecho al buen gobierno en la Iglesia: una glosa a la doctrina constitucional de Javier Hervada desde el derecho administrativo*, in *Escritos en honor de Javier Hervada. Ius Canonium: Revista del Instituto Martín de Azpilcueta*, special volume, Pamplona, EUNSA, 1999, pp. 369-370, 373-377.

⁵⁰ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS (USCCB), *Charter for the Protection of Children and Young People*, 2nd ed., Washington D.C., 2011, in fine at «A Statement of Episcopal Commitment». More concretely, at artt. 8-11, the Conference articulates measures it will take «To Ensure the Accountability of Our Procedures».

⁵¹ C. SCIACLUNA, *Response to and Prevention of Clerical Sexual Misconduct: Current Praxis*, «CL-SA Proceedings», 75 (2013), pp. 15-28, at 28 (*sub* «The Accountability of Bishops»), emphasis added.

countability arising from responsibility for grave negligence or even abuse of power.

But surely a diocesan Bishop cannot be responsible for all that occurs in the life of his priests (i.e., the presbyters subject to him, who are his collaborators), including their private activities and social relationships. And he cannot therefore be expected to be accountable for all that they do. Properly speaking, he is not even responsible for what they do in the exercise of the sacred ministry entrusted to them. His responsibility, *sensu lato*, is really an obligation of fatherly provision and vigilance, whereby he bestows upon them what they need for the carrying out of their ministry and the health of their priestly life, and he remains watchful over these lest they suffer harm due to isolation, conflict, or immorality. The responsibility of the Bishop, *stricto sensu*, is what might result from his own neglect of such provision and vigilance or possibly from any acts causing harm to the priest's life and ministry. This could occur if the Bishop were «disinterested in bringing about the necessary aids required by canonical norms» or «when the Bishop, becoming aware of acts committed by the presbyter that are disturbing or directly delictual, did not adopt adequate pastoral remedies». ⁵² While it would clearly be erroneous to attribute imputability to the Bishop for the presbyter's own disturbing behaviors or delicts themselves, his duty of vigilance binds him both to come to know of such behaviors within reasonable means and then to address them once discovered. Failure to do such would constitute a defect in his administration of the diocesan priestly ministry, and for that he would be responsible; that is, he would have indirect responsibility for the deeds in question. Because of this responsibility, he would assume accountability, or the right of an explanation and assurance of reparation: both to God and hierarchical superiors, as well as to some or even all of his subjects.

Generally speaking, then, such public accountability to one's subjects at large is appropriate when the public good itself has been harmed by the acts or omissions of the public administration. It is also appropriate in more benign circumstances when some public interest is at stake, such as the administration's financial accountability to those bound to provide support for the Church and her sacred ministers and works (can. 1287, § 2 CIC; 1031, § 2 CCEO).

Some accountability to individual members of the faithful subject to the administration likewise appears legitimate. The subjects who could claim a

⁵² Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Nota esplicativa [su] elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero*, 12 February 2004, «Communicationes», 36 (2004), 33-38, esp. at IV, b).

right to such accountability would normally be the same as those «whose rights can be injured» (can. 50 CIC; can. 1517, § 1 CCEO) by a particular act or choice of the public administration, and arguably others with some juridical interest whose rights could be, if not injured, at least negatively impacted.⁵³ The administration may also need to be accountable for acts of *dissimulatio*; for common goods of the Church endowed with the general protection of legislation may be at stake, and individuals either directly affected by the *dissimulatio* or faced by the *rigor iuris* in their own case may find themselves bewildered or claim some grievance. The goal of the Church both to be just and to be perceived as just (and never the latter without the former) would result in some accountability to the parties involved.

16. A typical presupposition to accountability is the willingness and ability to act with *transparency*,⁵⁴ defined in one place as «the availability and increased flow to the public of timely, comprehensive, relevant, high-quality and reliable information concerning government activities».⁵⁵ It has a place within the social teaching of the Church in regard to public communications about financial activity as an example of the social value of knowing the truth, the regulation of financial activity («transparent rules»), and the making of authoritative decisions pertaining to the environment and health.⁵⁶ Intra-ecclesial financial practices justly follow these standards, while the last mentioned would have limited application in the ecclesial society. In another context, transparency has been pledged by the U.S. Bishops in regard to its public communications about promoting ecclesial settings in which minors will be protected from threats of sexual vulnerability (so-called safe environment measures).⁵⁷

How can one characterize an appropriate “ecclesiastical transparency”?

⁵³ Cf. MIRAS, *Sentido ministerial de la función de gobierno...*, cit., p. 277; MIRAS, CANOSA, BAURA, *Compendio di diritto amministrativo canonico*, cit., pp. 238-239, sub b).

⁵⁴ In the patrimonial context, we read: «La consapevolezza responsabile dell’“accountability” davanti alla comunità dei fedeli comporta un modo di agire dell’amministratore improntato alla necessaria trasparenza nell’uso e nella destinazione dei beni amministrati [...]» (MIÑAMBRES, *La responsabilità canonica degli amministratori dei beni della Chiesa*, cit., p. 594).

⁵⁵ D. DE FERRANTI *et al.*, *How to Improve Governance. A New Framework for Analysis*, Washington D.C., Brookings Institution Press, 2009, p. 7. The book concludes with illustrations of how five nations (Ghana, Kenya, Peru, Mexico and Thailand) have sought to increase transparency and accountability with regard to their budgets.

⁵⁶ See CSDC, nn. 198, 353, 369, 469.

⁵⁷ Cf. USCCB, *Charter*, cit., art. 7: «Dioceses/eparchies are to be open and transparent in communicating with the public about sexual abuse of minors by clergy within the confines of respect for the privacy and the reputation of the individuals involved. This is especially so with regard to informing parish and other church communities directly affected by the sexual abuse of a minor».

«The Church is a community in dialogue with God and with her own members, [...] and communication between those who govern and those who are governed has much importance in the ecclesial reality».⁵⁸ In general, within the Church, transparency can be understood as «an openness that takes the form of sharing information, reporting on the discharge of our duties, and accepting critique of our actions» on the part of ecclesiastical authorities. What the public administration does and does not do, then, can be measured in terms of «the teaching and practice of the Church».⁵⁹ Of course, this presupposes the accuracy and relevance of the information shared.⁶⁰

Secular models and standards of transparency, which seem to be societally indiscriminate, should be employed in the Church with caution. While in a democratic society the general public has an interest in all works of government (even if there is reserve in matters of national security, public safety in general, police investigations, etc.), even this can be exaggerated to the extent of claiming a public right to have transparency about all details of public officials' private lives. The Church needs to be a model not only of justice but also of discretion and decency. For example, while a parish has a right to know that its pastor has been suspended from ministry and perhaps a basic rationale for that decision, the details of his case should be handled seriously but with care. He remains a priest, and the dignified treatment of him is also within the public interest of the Church, which treasures the holy priesthood of Jesus Christ. The gravity of his situation thus demands that he be disciplined appropriately in view of the public good; and perhaps that is the just extent of the administration's public transparency, even if the degree of transparency might be greater in regard to those immediately affected by his behavior, when they are able to receive sensitive information with the Church's own discretion.

⁵⁸ See LABANDEIRA, *Trattato di diritto amministrativo canonico*, cit., p. 220, n. 4.

⁵⁹ WUERL, *Reflections on Governance and Accountability in the Church*, cit., pp. 18, 19. The author suggests the examples of the publicizing of the conferral of *mandata* on Catholic university professors of the sacred sciences, the demonstration of the compliance of Catholic hospitals with the norm of the moral law, and the institution and functionality of diocesan and parochial consultative organs (cf. *ibidem*, p. 22).

⁶⁰ Cf. P. STEINFELS, *Necessary but Not Sufficient. A Response to Bishop Wuerl's Reflections*, in *Governance, Accountability...*, cit., p. 28; BEAL, *It Shall Not Be So Among You! Crisis...*, cit., in *ibidem*, pp. 90-91.