March 9, 2007 - A proposal: Look to Civil law to reform parishes , By TOM GALLAGHER, National Catholic Reporter

The parish is the primary institution where the church lives out its life. “The parish is a beacon that radiates the light of faith,” Pope Benedict XVI said in December. “Thus it meets the most profound and authentic desires of the human heart, giving meaning and hope to the lives of individuals and families.”

The pope speaks of an ideal. The reality in the United States’ 19,000 parishes is, unfortunately, quite different. Far too often, the local institution designed to radiate the light of faith is dulled by structures that impede the church’s mission.

The evidence is abundant: In the past 50 years weekly Mass attendance has plummeted to the low 30 percent range, vocations to the priesthood and religious life have been decimated, a priest culture has emerged that has enabled illicit and criminal behavior to exist, and the moral authority of bishops is near record lows. The sexual abuse scandal alone has cost the church over $1 billion. Four dioceses have raced to civil courts seeking bankruptcy protection. The actual opportunity costs -- the money that could have, should have, been spent to further the mission of the church -- are beyond calculation.

There are, of course, many reasons for parish decline. One thing, however, is clear: Lay executives responsible for this kind of performance would be fired and a massive reorganization would take place, but not so in the Catholic church.

The parish governance model is broken and in need of an overhaul.

Parishes are the creation of two distinct legal systems -- state civil law and canon law. Under canon law, the laity act simply as advisers to the pastor, who controls all parish authority. As a result, the civil character of parishes is woefully underdeveloped. The application of state civil law is depressed, superseded and replaced by church law.

From a civil law perspective, the Catholic parish governance model contradicts almost every reasonable and prudent course of action found in the secular world. No one would ever vest all civil law authority, directly or indirectly, in the hands of a single person. It also violates the theological concept of stewardship. Since church law will not change in the foreseeable future, we should look to state civil law to solve some of the noncanonical problems parishes face.

In my state, Connecticut, parishes are created under a state civil law known as the “Religious Corporation Act.” The Catholic church subsection of the act is incredibly thin in terms of what the state requires from the parish corporation. There is token representation of two lay trustees appointed on an annual basis. The ex officio, or permanent, members of the parish corporation are the bishop, the vicar general (almost always a priest) and the parish pastor (always a priest).

According to the sacrament of holy orders, the candidate for the priesthood swears an oath of obedience to the bishop. The bishop appoints pastors, removes pastors, reassigns pastors and takes the lead in defrocking priests. Given that the bishop controls the two ex officio members of the parish corporation, the vicar general and the pastor, and that the two lay trustees are removable annually, the bishop de facto controls the parish corporation.

In operation, it is simply impossible for the bishop and vicar general to attend bimonthly or monthly meetings of each parish corporation (a frequency that is reasonable). The bishop, therefore, effectively controls the parish in absentia.

Meanwhile, conflicts abound. The bishop, for example, needs the cooperation and support of pastors to raise money through the bishop’s annual appeal. The diocesan funding source, the “cathedraticum” or tax on ordinary parish revenue, funds the daily operations of the diocese. But pastors can reduce their contribution by accounting for large “ordinary” gifts as extraordinary revenue, not subject to the diocesan tax. In addition, the bishop lacks the practical ability to “fire” pastors for managerial lapses. The conflicts of interest and the inability to remove pastors for managerial lapses are fatal impediments to authentic and permanent reform.

The third problem is the limited role, and number, of lay trustees. It is often the case that trustees are friends of the pastor and not particularly competent in finance, risk management, investments and so on. The primary duty of trustees is to sign a single form signifying that an annual meeting of the parish corporation has taken place among the bishop, vicar general, pastor and the trustees. The ability of the bishop to remove lay trustees annually impedes the work of trustees.

Similar structures -- whether parishes exist under the direction of a “corporation sole” or in cases where nominal representation by lay trustees exists -- are present throughout the United States. Any reform of the governance structure of

Catholic parishes needs to begin with an immediate reform of state laws that vest, directly or de facto, all civil law authority in a single person.

Citizens of goodwill and state legislators should seek well-run Catholic parish corporations because the church is the largest provider of health, education and social services outside the government. Parishes serve as anchors to their communities. We the faithful -- bishops, priests, deacons and laity -- need to step forward and craft changes to state laws that produce a governing structure that allows for the best of our vocations to the priesthood and the diaconate and to the married and single life to blossom in an environment of mutual respect and understanding.

Any new governance model needs to preserve certain elements of the current model, while it changes others. A governance structure is needed that protects the bishops, pastors and priests from overreaching laity, while the laity need a structure that makes room for real participation and protection from overreaching bishops, pastors and priests.

What would a new governance model look like? It is critical to separate out the key duties that the bishop must always control from those he does not. These “reserved powers of the bishop” should include theology, dogma and catechetics, sacraments and their implementation, appointment and removal of pastors and priests, and approval of any parish corporation bylaw change.

The “general administrative powers” that each parish corporation board should control include: creation of a strategic plan, budgets and spending policies; lay personnel policies (hiring, firing, performance evaluations); establishment of bylaws, financial control mechanisms, and annual audits; and creation of board committees in such areas as risk management, audit, investment, finance, evangelization and so on.

With respect to the general administrative matters, each member of the parish corporation board would have one vote irrespective of the member’s vocation. As a result, for all general administrative matters the lay members of the board, along with the bishop or his representative, and the pastor, would each have one vote.

The idea of reserved powers is common among Catholic hospitals and health systems. It is not new. What is new is thinking how best to bifurcate governance powers in a way that preserves the bishop’s fundamental control of theological, dogmatic and sacramental matters, while creating new ways for the laity to participate in an authentic, full and meaningful manner.

Thoughtfully proposed changes would preserve key elements of the office of bishop, while strengthening numerous administrative capabilities in running a parish. In this way, the managerial duties become dispersed among many talented people, not concentrated entirely in the pastor. This would be a tremendous benefit to overtaxed pastors and priests. The bishop, pastor and the laity become co-responsible for the parish, enabling all stakeholders to have an authentic and fitting role aligned with the gifts of each vocation and enlivened by a right to vote.

Tom Gallagher, a graduate of The Catholic University of America’s law school, is a former parish trustee and former Wall Street securities lawyer. He is an investment management professional and also runs a start-up company. He lives in Riverside, Conn.