


2013

# Ownership, Control, Sponsorship, and Trusteeship: Governance Relationships Within Private Catholic Religious-Sponsored Secondary Schools in the United States

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The University of San Francisco

OWNERSHIP, CONTROL, SPONSORSHIP, AND TRUSTEESHIP: GOVERNANCE RELATIONSHIPS  
WITHIN PRIVATE CATHOLIC RELIGIOUS-SPONSORED SECONDARY SCHOOLS  
IN THE UNITED STATES

A Dissertation Presented  
to  
The Faculty of the School of Education  
Leadership Studies Department  
Catholic Educational Leadership Program

In Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Education

by  
Brother David L. Caretti, FSC  
San Francisco  
December 2013

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THE UNIVERSITY OF SAN FRANCISCO  
Dissertation Abstract

Ownership, Control, Sponsorship, and Trusteeship: Governance Relationships Within  
Private Catholic Religious-Sponsored Secondary Schools in the United States

The governance of private Catholic religious-sponsored secondary institutions in the United States is wholly unique, for many different influences distinguish these institutions from not only their public counterparts but also other Catholic schools operated by a diocese or parish. In the face of the changes of the post-Vatican II era, including the diminishing numbers of religious brothers, sisters, and priests available to minister within their respective apostolates, religious congregations have employed one particular governance construct, the board of limited-jurisdiction, originally created within the Catholic university and healthcare realms. Thus, while such boards hold the chief role in directing the progress of an individual institution, they are each in a governance relationship to that religious congregation and remain beholden to both Canon and civil law.

The purpose of this study was to explore existing governance relationships between religious congregations and boards of limited-jurisdiction, specifically addressing the notions of Ownership, Control, Sponsorship, and Trusteeship. This was accomplished through the employment of focus-group methodology. Six focus groups were conducted by the researcher: three comprised of the leadership of different religious congregations and the other three being trustees from limited-jurisdiction boards related to each of the congregations.

The results of this study witnessed that private Catholic religious-sponsored governance has many overlapping realities, which have highly varied definitions and understandings among groups engaged in Catholic governance. Further, the following

conclusions were surfaced: civil corporation structures have been created or altered while canonical structures have not changed; Ownership is understood in three ways: ownership of property, of institution, and of mission or charism; the level of control held by the congregation differs within each governance relationship; the terms used to describe governance lack cohesive definitions, particularly true of Sponsorship; trustee formation for both religious and lay trustees while important often fails to provide sufficient coverage of Canon law; trustee turnover is a particular challenge; the role of the religious trustee is perceived to be unique, yet has not been formalized; and, civil law has been given precedence over Canon law. This study addressed a particular gap in the literature regarding the governance of Catholic secondary schools.

This dissertation, written under the direction of the candidate's dissertation committee and approved by the members of the committee, has been presented to and accepted by the Faculty of the School of Education in partial fulfillment of the requirements for the degree of Doctor of Education. The content and research methodologies presented in this work represent the work of the candidate alone.

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## DEDICATION

This dissertation is dedicated to

THE BROTHERS OF THE CHRISTIAN SCHOOLS  
OF THE SAN FRANCISCO DISTRICT

And also to

BROTHER FIDÈLE LINH VAN NGUYEN, FSC  
1934 — 2013  
“LÃO GIÀ”

## ACKNOWLEDGEMENTS

“Your dissertation is NOT where set the world on fire; it’s where you prove that you know how to use flint and steel.” —Sister Sharon McMillan, SNDdeN

God’s provident blessings have been most present to me in the example, witness, and accompaniment of many different individuals throughout my doctoral experience. I am an extrovert, as this list can attest, and God shines in my life through those who surround me. Without these people, along with countless others, I would not have been successful. I am grateful to stand on their shoulders.

The guidance of my chair, Dr. Gini Shimabukuro, EdD, not only throughout the writing of this study but also through three directed-study courses, has been one of the greatest experiences of mentorship in my life. She balanced, full well, my personal vicissitudes and made the experience engaging and full of growth. I am certain that the Blue Dot Café will never be the same without dissertation discussions punctuated by knitting chatter.

I also am grateful for the two other members of my panel, Father Stephen Katsouros, SJ, EdD, and Dr. Dan McPherson, PhD. Father Steve continually encouraged me to think broadly about the value of board governance, and Dr. McPherson’s attention to detail called me to think first of my reader.

Further, within the community of the University of San Francisco and the Catholic Educational Leadership program, I must express my gratitude to Brother Raymond Vercruysse, CFC, EdD, my community member, friend, and first doctoral adviser at USF, as well as to Dr. Doreen Jones, EdD. Both of these educators provided needed guidance and encouragement. Dr. Sarah Wannemuehler, EdD, having been my first professor at USF, continually encouraged me to pursue research in the realm of law and governance. Lastly, I am grateful to the Jesuit Community of the University of San Francisco whose zeal for Catholic education has made this program possible not only for me but also for many other CEL students.

This experience has provided me with the accompaniment of my fellow students, some of whom I hope will be lifelong companions: Dr. Justin Christensen, EdD, who has challenged me to be a better Brother, educator, and student, as well as Erin Kayser and Heidi Harrison, my peers in the classroom and in our shared Lasallian ministry.

My parents have always been my primary educators, in true Catholic fashion. My mother, Roberta Caretti, graciously allowed me to process my thoughts and vent frustrations



in uncountable, sometimes daily, phone calls. My father, Louis Caretti, and my sister, Kathryn Caretti, both provided legal resources and expertise to both question and shape my conception of civil law.

Significantly supporting me in multiple ways was my religious congregation, the De La Salle Christian Brothers of the District of San Francisco. Brother Stanislaus Campbell, FSC, during his term as Brother Visitor first made doctoral studies possible for me by not only allotting me the time, but also through providing the District's financial support. Brother Donald Johanson, FSC, our current Brother Visitor, allowed me to continue and finish my research with encouragement. Brothers James Joost, FSC, and Thomas Jones, FSC, in their capacity as Auxiliary Visitors have also accompanied me during this experience. The mentorship of Dr. Gery Short, PhD, Director of the Office of Education for the District, has been invaluable since my initial stages, for he has been a partner both in processing and discerning governance, as well as asking questions to always link history and theory with current practice, allowing for critique and influence.

The life of a De La Salle Brother is empty without the supports of our Institute, Faith, Apostolate, and Community, and I have been blessed to have all three within my local community at Saint Mary's College High School. My community of Brothers has been more than fraternally supportive, and my success is due in great part to them. Brother Edmond Larouche, FSC, Director and President, has continually shown great pastoral care and concern for me, and Brother V. Kenneth, FSC, former Director of the community helped me stay on target as to my motivation for studying. Brother Fidèle Nguyen, FSC, sadly passed away before I could complete this project, but his shared wisdom from his own experience of doctoral studies was irreplaceable, and is deeply missed. My dear friend, Mr. Lawrence Puck, a layman within our Brothers community, has never been short of exemplary. Zealous discussions with Larry throughout my life as a Brother have pushed me further than ever and, while studying governance, he always forced me to look at the realities of situations, especially when I wanted to stay within the safety of the philosophical realm. I have been very fortunate to work with Dr. Peter Imperial, EdD, Principal of Saint Mary's, over the past several years, for as an alumnus of the CEL program at USF, he has mentored me professionally and as a doctoral student. Ms. Cathy Molinelli, our Academic Vice Principal has expressed her care so frequently, in ways as simple as letting me mull over a problem while sitting in her office.

The encouragement and accompaniment of friends throughout this process has been invaluable, for God truly blesses us when our friends become family. Scott and Cyndi Stanfield allowed me to process aloud while out walking or over a cocktail, and they generously helped me take the last look for errors in the text right before submission. Also, Genesta Jackson welcomed the birth of her daughter, Brigid Grace, my goddaughter, on the

day this dissertation was defended. Sister Eleanor Capper, RSJ, Sister Sharon McMillan, SNDdeN, and Father William Vollmer, friends from our MA and summer programs at the University of Notre Dame, also continued to check-in with me and support me in prayer. What also has brought me great joy in this experience is that five former students, Madeleine Harrington, Agnes Balla, Joshua Montero, Luke Rose, and Robert Clinton, took special notice of my work, and were always so considerately thoughtful of me.

Lastly, I am grateful to all of my former students at Saint Mary's College High School, who put up with graduate school and dissertation stories. May they remember my words, "It only gets worse! See what my teachers do to my papers?!?" when the time comes for them to complete their doctoral work. I promise, I will read their dissertations.

I am truly blessed that God, in his goodness, has made himself present in these people. They have taught me more than I could recall.

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## CHAPTER I

### THE RESEARCH PROBLEM

#### Statement of the Problem and Need for the Study

Governance is a process which exerts “authoritative direction and control” (Dwyer, 2003, p. 12), which necessarily includes the entire endeavor of operating an educational institution. All schools within the United States, whether public or private, which includes Catholic schools, are governed according to various systems. Public schools are operated by a local school district and ultimately responsible to state government. Private schools, in the eyes of civil government, are independent entities largely left to themselves to order their own operations; Catholic schools are private schools within American education. Although the topic of governance is not unique to Catholic education, the way in which governance is exercised within the Catholic Church is distinctive from other forms of governance structures, stemming from the unique history of Catholic education, especially the last half of the 20<sup>th</sup> century.

American Catholic education, along with the whole American Catholic Church, was greatly impacted by the works of the Second Vatican Council (1962-1965). The most recent 50 years of history, the Post-Vatican II era, has a unique history in comparison to the history of the Pre-Vatican II era (Buetow, 1970; Walch, 2003). This era following the Second Vatican Council witnessed a wide-sweeping renewal of Catholic theology (Beal, 2006), coupled with a sharp decline in the numbers of priests, brothers, and sisters, who were the traditional work-force of Catholic education (Heft, 2011). Because of these factors, the

traditional governance models employed during the Pre-Vatican II era were neither germane to, nor operative in, the current Post-Vatican II era.

The theological renewal of Vatican II had a substantial impact upon the governance of American Catholic education. The promulgated documents of the Council brought greater prominence to the laity, both granting and encouraging them to take a new and more visible role within the Church and its ministries (McBrien, 1994; Modde, 1992). Institutes of Religious Life were called upon to hearken back to their founding inspirations, and directed to make necessary adaptations in order to be more faithful to addressing the modern era (Sammon, 2002; Stamm, 1981). Hence, in its theological orientation, Vatican II had a transformative role within the recent history of American Catholic education, radically altering the Church's own understanding of its mission and relationship to the world (Denig & Dosen, 2009).

American Catholic education would not have survived without the diligent work of many religious sisters, brothers, and priests. Members of institutes of religious life arrived on the shores of the United States intending to serve the Catholic population by establishing Catholic schools and Catholic hospitals. For the majority of this history of American religious congregations, sisters, brothers, and priests solely staffed and operated these Catholic social-service institutions (Steinfels, 2004), yet within the past 50 years, institutes of religious life within the United States have changed drastically. Many brothers, sisters, and priests have left religious life, very few people have chosen to enter religious life, and the majority of those who remain have aged (Nygren, 1993).

Consequently, the numbers of religious active within schools in the United States dropped sharply throughout the Post-Vatican II era (McDonald & Schultz, 2013). Religious congregations, of late, have found it increasingly more difficult to address the needs of their

institutional ministries (apostolates), given the limited human and financial resources available to them. This shift, toward a fewer and a more aged membership, has impacted greatly how religious congregations continue to respond to the needs of the apostolates that they support or operate.

Because the congregations cannot address institutional needs by assigning religious personnel to these apostolates, focus has been shifted towards maintaining, continuing, and deepening the mission of the individual apostolate (Mueller, 2000). Religious congregations have attempted to ensure that their institutions will continue to be inspired by the same philosophy, founding story, and charism seen in the mission of the religious congregation given to it by the Church (Burns, 2006; Catholic Health Association, 2007; M. K. Grant & Vandenberg, 1998; Heft, 2011; Tavis, 2010). The great conundrum of the current state of affairs is that religious congregations have never had to safeguard their individual missions with the encumbrance of so few religious in the day-to-day operation of individual apostolates. Current patterns in the demographics of religious institutes in the United States suggest that this trend, the decrease and aging of current religious, will continue (Heft, 2011; Nygren, 1993; Tavis, 2010). Also, with the demographics of religious congregations being what they are and seemingly will continue to be, no expert within the literature has broached the topic that congregations should directly staff and operate these institutions; that feat would be impossible.

The means by which Catholic religious congregations continue to oversee their apostolates varies from congregation to congregation. Religious congregations, in many instances, have created structures that not only addressed the requirements of the Code of Canon Law (CIC: *Codex Iuris Canonici*), but also allowed them to seek the protection of civil law that could be gained by individually incorporating their respective institutions (Maida &

Cafardi, 1984; Maida, 1975; McGrath, 1968). Boards of trustees have become common practice for the oversight of local Catholic institutions. Furthermore, each board's own relationship to the religious congregation has a specific structure tailored to address the local situation. Complete commonality would be unrealistic due to the diversity of institutional apostolates, as well as the probable emergence of new needs in the future (Mueller, 2000).

The endeavor described as governance has come to have many overlapping realities (Mueller, 2000). Organizations, such as the Catholic Health Association (CHA), have referred to the "Sponsorship" of Catholic works rather than their "governance" (Catholic Health Association, 2007). Experts have addressed the notions of both "governance" and "sponsorship", and generally have viewed one narrowly and the other widely. Morrissey (2006) stated that governance is an internal activity of the organization, while Haney, O'Brien, and Sheehan (2009) claimed that it is a ministry of the Church and visible in Canon law, yet other experts (Dunn, 1995; Tavis, 2010) have maintained that its presence is not literal or explicit. Also noted by Morrissey (2007) was the fact that in different and existing governance contexts "sponsorship [exists] with or without ownership; ownership with or without control, or very little control; and control with various forms of sponsorship" (p. 30). This disagreement in the meaning and usage of terminology among scholars and practitioners is a great source of confusion within the realm of Catholic school governance, for it leaves wide room for miscommunication, misinterpretation, and misunderstanding (Conlin, 2001; DiPietro, 1991; Morey & Holtschneider, 2000; Morey, 1995; Mueller, 2000; Savage, 1991; Tavis, 2010).

During recent decades, religious congregations have begun to face new legal situations, as well. During the 1940s, with the precedent of the 1942 case, *President and*

*Directors of Georgetown College v. Hughes*,<sup>1</sup> states began to strike down laws which gave charitable institutions various types of immunity from lawsuits by the general public (Coughlin, 2007a; Mawdsley, 2006; Moots & Gaffney, 1980; Shaughnessey, 1988). The sexual abuse crisis within the American Roman Catholic Church, uncovered in early 2002 by the Boston Globe exposé (Steinfels, 2004), had a huge impact on the number of lawsuits facing Catholic institutions within the United States (Coughlin, 2011). Institutions with poorly structured governance and corporation status have become a great weakness for those seeking assets by lawsuit (Asdorian, 2006).

Given this panorama replete with change, the need for continual discernment of both current and potential governance and Sponsorship models is great. Bryk, Holland, Lee, and Carriedo (1984) in their work *Effective Catholic Schools* considered governance to be one of two major problems facing Catholic education at the time of their study (p. 101). Traviss (2001) made explicit that further study of governance models is needed and must include “the impact of religious order ownership” (p. 103). Heft (2011) conveyed that the implementation of boards of trustees in high schools founded and operated by religious congregations has had “varying degrees of success” (p. 227). Not only is this need for continual discernment perceived by those within Catholic governance circles (Catholic Health Association, 2007; Haney, OBrien, & Sheehan, 2009; Mueller, 2000; J. S. O’Brien, 1987; Sheehan, 1981, 1990; Tavis, 2010), but also, vigilance and necessary adaptation of governance models are called for by secular experts as well (BoardSource, 2010; Carver, 2006; Chait, Ryan, & Taylor, 2005; DeKuyper, 2003). Tavis (2010) characterized as “scarce” (p. 19) the existing literature on Sponsorship in relation to primary and secondary schools. While governance of Catholic institutions has certainly been discussed by the

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<sup>1</sup> *President and Directors of Georgetown College v. Hughes*, 130 F.2d 810, 824 (1942).



aforementioned scholars, the specific exploration of governance within the realm of private, Catholic, religious-sponsored secondary schools has not yet been fully addressed within the extant literature.

### Purpose of the Study

The purpose of this study was the exploration of existing governance relationships, specifically in the areas of Ownership, Control, Sponsorship, and Trusteeship, between religious congregations and boards of limited-jurisdiction at their local secondary educational institutions. In order to achieve the purpose of this study, the researcher conducted focus group interviews with two types of groups for three religious congregations that operate private, Catholic secondary schools in the United States. The first was conducted with members of religious congregational leadership, who oversee the governance structures of their secondary schools, and the second was conducted with trustees who currently serve on boards at local secondary school apostolates.

### Conceptual Framework

The realm of Catholic secondary school governance includes a number of very specific notions that, in combination, demonstrate its uniqueness within the general topic of school governance. For the purpose of this study, the term “governance” will be used to mean the entire endeavor of operating Catholic schools. There is not one aspect of a Catholic school's operation that falls outside of the purview of its governance.

Within the topic of governance, four specific ideas or aspects of governance make up its endeavor: Ownership, Control, Sponsorship, and Trusteeship<sup>2</sup>; based upon these four framing concepts, the study employed a deductive approach in its methodology. The first three of these concepts stem primarily from the work of Maida and Cafardi (1984), *Church Property, Church Finances, and Church-Related Corporations*, and were used continually throughout the work. They wrote:

They are often used interchangeably, but the concepts they convey are not interchangeable. Ownership is a legal conclusion; control is the practical effect of legal and factual considerations; and sponsorship is a canonical relationship that must be given a civil law effect. (p. 211)

The fourth concept within the framework, Trusteeship, comes from Richard Chait and his colleagues (2005) in their work, *Governance as Leadership*, wherein they described the trustee and his or her role as the following:

- A person who holds assets for the benefit of another;
- they ensure the organization's assets are used well to fulfill its mission;
- that resources are used effectively to fulfill the mission;
- promoting lawful and ethical behavior; and
- serve the interests of the organization, not self-interest. (pp. 35-36)

The notion of Trusteeship is likened to the legal qualification of a board's "duties of loyalty and care". An individual discussion of each concept of Ownership, Control, Sponsorship, and Trusteeship will reveal the intricacies of these aspects of governance.

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<sup>2</sup> To distinguish from normal usage, Ownership, Control, Sponsorship, and Trusteeship will be capitalized when being used as a concept.

### *Ownership*

In their work, Maida and Cafardi (1984) claimed that the concept of Ownership belongs in the realm of legality, and furthermore he noted that Catholic institutions are bound by two distinct codes of law, Canon and civil, each espousing a distinct conception of Ownership.

#### *The Civil Conception of Ownership*

Maida and Cafardi (1984), relying on *Black's Law Dictionary*, wrote bluntly, "Ownership is the radical right to dispose of property because it is yours" (p. 211). Gray (1996) stated that, in terms of Catholic schools, Ownership belongs to those who can close the school, itself the most radical move possible to be made. Thus, Ownership is the ability to determine an end for one's property at will. American law respects the right of an individual to hold property and dispose of it. Thomas Jefferson's unalienable rights listed in the Declaration of Independence, "life, liberty, and the pursuit of happiness" were inspired by the list of unalienable rights of human persons by John Locke, "life, liberty, and property" (Becker, 2009). Corporations themselves, as individuals under civil law, have the right to own property and to do with it as the corporation wills.

According to civil law, non-profit corporations are not "owned" by the board members who govern them (BoardSource, 2010; Maida & Cafardi, 1984; R. Smith, Brown, & Reynolds, 2006). Instead, emphasis is given to who governs and can direct the corporation. This is because those board members who govern a non-profit corporation do not do so for their own benefit, but instead for the benefit of the greater whole, either the whole corporation or even the public.

*The Canonical Conception of Ownership*

Ownership of property is “the radical right to dispose of property because it is yours” (Maida, 1975, p. 211). It is considered to be a tenet of natural law (McGrath, 1968), that is “the universal moral law given by God for all creatures, and knowable by reason alone” (McBrien, 1994, p. 1245). In short, the ability to own property is understood outside of the realm of faith, because its origin is considered to be universally accepted.

Canon law scholars agree that the canonical notion of ownership has a different emphasis than that of civil ownership, having its foundation in Roman law rather than in English Common Law (Kennedy, 2000a; Maida, 1975; Morrissey, 2006). The only property regulated by Canon law is ecclesiastical property, which is property acquired by a juridic person (c. 1256, CIC)<sup>3</sup>, the Canonical construct for property ownership (This is defined on p. 18). The property that is owned by religious congregations, or by any public juridic person in the Church, is defined as Church property, yet the custodianship of such property belongs to the specific juridic person and not to another juridic person including a diocese or even the Holy See (Maida & Cafardi, 1984).

Noted expert in the canonical aspects of Catholic governance and Sponsorship structures, Francis Morrissey (2006), made a distinction between the secular and canonical notions of ownership. Morrissey used the term “stewardship” to elucidate the type of ownership that public juridic persons have of Church property. Much like a civil not-for-profit corporation holds property on behalf of the public benefit, public juridic persons hold Church property on behalf of the Roman Catholic Church.

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<sup>3</sup> This citation is the way in which citations directly from the Code of Canon Law of 1983 (CIC) will be cited. The text consulted was Beal, Coriden, and Green (2002), *New Commentary on the Code of Canon Law*. However, the above citation style will be used to distinguish citations of the Code as opposed to citations from the commentary. Commentary citations will be cited by author.

Furthermore, a public juridic person is limited by Canon law when intending to divest itself of Church property. A specific process called “alienation” must be followed in order to seek permission to sell or give away Church property (Beal, Coriden, & Green, 2002; Maida & Cafardi, 1984; Renken, 2009).

### *Control*

Maida (1984) outlined the concept of Control in the following definition: “The reserved right to have the final say in certain areas of corporate affairs, outlined in the corporate articles and bylaws; usually used to refer to reserved rights of the corporate members; also referred to as *corporate control*” [italics original] (p. 307). Control, then, is outside of the realm of ownership of property, for Maida stated that Control is not the same as Ownership, but generally an owner has the right of Control over his or her property. Applying this directly to the realm of Sponsorship of Catholic institutions, Huger (2001) asserted that “the sponsoring religious institute must have sufficient control over the sponsored entity so that it can exercise its responsibilities as prescribed by Canon law” (p. 20). Within the governance of private Catholic religious-sponsored secondary schools, the two parties within the governance relationship (those are, the religious congregation and the board of trustees) each exercise a level of Control over the individual apostolate in either direct or indirect ways.

### *Sponsorship*

Of the aforementioned concepts of Catholic governance, Sponsorship is the most inconsistent. Although Sponsorship has become a way of speaking about a religious congregation’s relationship to its apostolates, neither the concept nor the term appear in either civil or Canon law (Conlin, 2000; DiPietro, 2006; Dugan, 2006; Dunn, 1995; Golden,

2006; Tavis, 2010). John McGrath coined the term in his work on the canonical status of Catholic institutions (M. K. Grant, 2001a). Maida and Cafardi (1984) noted the term's use in the Catholic sacraments, in particular, the baptismal liturgy, in which the godparent as sponsor speaks the baptismal promises on behalf of the infant being baptized.

Sponsorship is a way in which the Catholic identity and particular mission of an institution is maintained, continued, and deepened. Dutiful sponsors of Catholic institutions cannot be absentee landlords; they must know the character and culture of their individual institutions, and be able to balance that over and against the culture and charism of the religious congregation. The great deal of the literature on Sponsorship is unanimous on the fact that mission is at the core of Sponsorship (Catholic Health Association, 2007; Drahmman, 1991; National Catholic Educational Association, 1996; Savage, 1991; R. Smith et al., 2006).

### *Trusteeship*

The majority of the literature on the role of the trustee is found outside of Catholic circles, in secular business literature. Governing by means of a board of trustees is a convention of American corporation law, and is meant to ensure the viability of the corporation and limit the potential for self-interested control on the part of the trustees (BoardSource, 2010).

The role of the trustee within the board is vital to the fulfillment of the mission of the school. The individual trustee participates in board deliberations, including questions of mission, which must ensure the continuance, viability, and responsiveness of the school as institution. DeKuyper (2003) wrote of the role of the board:

The board is the guardian of the school's mission. It is the board's responsibility to ensure that the mission is relevant and vital to the community it serves and to monitor the success of the school in fulfilling its mission. (p. 23)

Although the board “speaks with one voice” (p. 24), the individual trustee must understand his or her role to embrace and witness to the mission of the school so that it may be realized in the lives of the constituencies of the school community.

The Association of Catholic Colleges and Universities (ACCU) devoted an entire issue of its publication, *Current Issues in Catholic Higher Education*, to the notion of Trusteeship in Catholic tertiary education. The central question posed to the contributors of the issue was, “What do you as trustee or as sponsoring group expect of sponsoring groups or trustees?” (Gallin, 1991, p. 3). One contributor, Healy (1991), went so far as to refer to the “art of trusteeship” (p. 18) within Catholic universities, noting that to be a trustee of a Catholic institution requires skill, knowledge, and technique. Lastly, Coriden and McManus (1980) noted that “the myriad personal influences of trustees...have a much greater impact on the ‘Catholic’ nature of [Catholic] institutions than the fact that their property is or is not subject to Canon law” (p. 144).

### Research Question

This study addressed the following research question, along with four subsidiary questions:

What are the governance relationships between the religious congregations and the boards of limited-jurisdiction at the local institutions?

1. How is Ownership delineated between the religious congregation and the board of limited-jurisdiction?
2. How is Control divided between the religious congregation and the board of limited-jurisdiction?

3. How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction?
4. How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction?

### Limitations

A few limitations hindered the generalizability of the study as it was accomplished. The first was that the participating religious congregational leaders and trustees of the local schools all responded affirmatively to the invitation to take part in the study, and any who denied the invitation, by their decision, were not included. Thus, pertinent data may have been lost by virtue of non-participation.

The second limitation was that there was not access to unlimited funding or time to obtain the widest amount of data possible. Geographical distances and the ability to schedule interviews within the time allotted posed a challenge to the breadth of the study's inclusion of participants.

The third limitation was that the researcher was himself a member of a religious congregation that governs its own private Catholic secondary schools by having established governing boards. Familiarity of the participants with the researcher's congregation may have had an intangible effect on both the depth and phraseology of the responses to the researcher's inquiries. Also, assumptions on the part of those interviewed about the existing knowledge of the researcher may also have affected the contents of their responses.

Finally, a fourth limitation was related to the methodology employed within this study: focus groups. The public forum of a focus group combined with the need on the part of individual participants to save face or posture may have led to these individuals



offering false or only partial truths in their responses (Krueger & Casey, 2008). Secondly, if the moderation of the group was not skillfully done, the focus group discussion may not have generated the necessary data (Morgan, 1996a, 1996b).

### Significance

This research study attempted to address the gap in the literature that exists regarding governance relationships within private Catholic religious-sponsored secondary schools in the United States. In the past, there has been no individual study that has specifically addressed this topic in Catholic education. Given that American religious congregations are undergoing great change at the present time, this study has provided data on the qualities and effectiveness of current governance relationships between the religious congregations and their respective boards of trustees at their local apostolates of secondary education.

Since the work of governance is never fully complete, and structures should always be under examination and improved in light of such (BoardSource, 2010; Carver, 2006; Chait, Holland, & Taylor, 1996; Chait et al., 2005; Sheehan, 1990), the results of this study will assist religious congregations and boards of trustees of private Catholic religious-sponsored secondary schools in improving their respective governance relationships. It will provide for them information on both the formal and informal elements of such relationships. Furthermore, the contributions of this study as a gathering of descriptive data through focus group methodology may be able to surface themes leading toward the creation of a quantitative instrument aimed at similar inquiries.

The history written of Catholic education in the United States marked the historical connection between religious-sponsored Catholic colleges and universities and religious-

sponsored Catholic secondary institutions, yet no work of yet has so fully established the connection between the evolution of governance as taken from the tertiary realm into the secondary realm. In that many religious congregations in the United States addressed these governance relationships with their tertiary institutions earlier than they did with their secondary institutions, the experience of structuring those relationships on the tertiary level had an effect on how they structured those on the secondary level.

### Definition of Terms

Within this study, a number of terms are used in a unique way, or are themselves “Catholic” terminology that are distinctive to the topics pertaining to Catholic education in the United States, the Canon law of the Roman Catholic Church, the federal and state civil law of the United States, or Institutes of Religious Life in the Roman Catholic Church.

These terms are listed in alphabetical order below:

#### *Alienation*

The process within Canon law wherein a public juridic person seeks permission of competent authority to divest itself of ecclesiastical property. Alienation is addressed within canons 1290-1294 in Title III of Book V of the Code of Canon Law (CIC).

#### *Apostolate*

“Apostolate is the mission of Christ and participation in it. Its object is to bring Christ to others, its goal is the greater glory of God, its scope universal. The work is carried out by every human agency by which the life of grace may be given or increased in the soul. A mandate from the Church is essential to the Catholic apostolate” (P.J. Kenedy & Sons, 2010, p. A-7).

*Apostolic Delegate (Delegation) and Nuncio (Nunciature)*

According to Noonan (1996), the Apostolic Delegate is “a prelate who most commonly holds a titular see as an archbishop and who represents the Holy See in a nation, but without diplomatic standing. He is tied to the Church of that nation and not its government.” (p. 396). Furthermore, the title “nuncio” is granted to a prelate who serves “as both the ambassador of the Holy See in the host nation and as the representative of the pope to his Church in that nation” (p. 92).

*Association of Catholic Colleges and Universities (ACCU)*

The Association of Catholic Colleges and Universities is a professional membership organization founded in 1899 with the purpose of “promot[ing] and strengthen[ing] the mission and character of Catholic higher education in the United States and...serv[ing] as its collective voice” (Association of Catholic Colleges and Universities, 2011).

*Board of Limited-Jurisdiction*

Also called a policy-making board. A body that participates in the policy-making process by formulating, adapting, and enacting policy. The board has been delegated final authority to enact policy regarding certain areas of institutional operation, although its jurisdiction is limited to those areas or operation that have been delegated to it by the constitution and/or bylaws, and approved by the delegating Church authority (Dwyer, 2003, p. 13).

*Charism*

“A specific gift of grace of the Holy Spirit which directly or indirectly benefits the Church, given in order to help a person live out the Christian life, or to serve the common

good in building up the Church” (United States Conference of Catholic Bishops, 2000, p. 870).

*Code of Canon Law (CIC)*

“The universal law of the [Roman Catholic] Church, the most recent revision of which was promulgated by Pope John Paul II and became effective November 27, 1983. The previous code was promulgated by Pope Benedict XV in 1917 and had been largely prepared during the pontificate of St. [Pope] Pius X. This former code is referred to as the Pio-Benedictine Code” (Maida & Cafardi, 1984, p. 304).

*Eleemosynary*

An adjective used to describe institutions of a charitable nature (OED Online, 2011b).

*Establishment Clause*

A legal reference to the First Amendment of the U.S. Constitution contained within the Bill of Rights: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” (Congress of the United States, 1791).

*Holding Corporation, or Parent Corporation*

“The ‘super corporation’ that owns a controlling interest in several other corporations; it is called a *holding* corporation because its role is not to operate but to hold an interest in other corporations; sometimes also called a *parent corporation*” [italics original] (Maida & Cafardi, 1984, p. 314). Generally a term from the for-profit sector, the controlling interest is maintained through ownership of shares (Phelps & Lehman, 2005).

*The Holy See or The Apostolic See*

“The pope (called the Roman pontiff in Canon law) or one of the congregations, tribunals, or offices, collectively known as the Roman curia, used by him to administer the Universal Church; also called the *Apostolic See*” [italics original] (Maida & Cafardi, 1984, p. 314).

*Juridic Person*

An artificial person, distinct from all natural persons or material goods, constituted by competent ecclesiastical authority for an apostolic purpose, with a capacity for continuous existence and with canonical rights and duties like those of a natural person (for example, to own property, to enter into contracts, to sue or be sued) conferred upon it by law or by the authority which constitutes it (Kennedy, 2000b, p. 155).

*Land O’Lakes Seminar*

In 1967, Rev. Theodore Hesburgh, CSC, then President of the University of Notre Dame, hosted a gathering of representatives of American Catholic colleges and universities. The meeting was held in Land O’Lakes, Wisconsin, and included 26 people representing nine leading Catholic universities, bishops, scholars, and religious superiors. The document, *Land O’Lakes Statement: The Nature of the Contemporary Catholic University*, a foundational document, addressing such issues as academic freedom, Catholic identity, and the university’s relationship to Church hierarchy, was the major outcome of the seminar (Gallin, 1992).

*Licit/Illicit*

A discussion of liceity may be found in Chapter II on page 55.

### *Member(s)*

“The highest level of authority in a membership corporation, corporate members normally reserve certain corporate powers to themselves, and, within this framework of reserved powers, the board of trustees governs the day-to-day operations of the corporation...” (Maida & Cafardi, 1984, p. 316).

### *Membership Corporation*

“A corporation in which there are two levels of corporate authority: (1) the corporate members who reserve specified corporate powers to themselves, and (2) a board of trustees or directors who oversees the day-to-day operations of the corporation within this framework of reserved powers” (Maida & Cafardi, 1984, p. 318). This structure is common to religious entities (Phelps & Lehman, 2004c).

### *National Catholic Educational Association (NCEA)*

The National Catholic Educational Association (NCEA) was founded in St. Louis, Missouri in July 1904, and it currently continues as an association of educational professionals and institutions to “provide leadership, direction, and service to fulfill the evangelizing, catechizing and teaching mission of the Church” (National Catholic Educational Association, 2011). The NCEA is organized into the following departments: Chief Administrators of Catholic Education (CACE), Elementary Schools, Secondary Schools, Religious Education, Seminary, and Boards and Councils of Catholic Education.

### *Province*

“A grouping of several houses which constitutes an immediate part of the same institute under the same superior and has been canonically erected by legitimate authority is

called a province” (c. 621, CIC). “Geographical division of a religious institute...sometimes also referred to as a *district* or *region*” (Maida & Cafardi, 1984, p. 323).

*Provincial Superior*

“A person with canonical authority for the governance of a province of a religious institute” (Maida & Cafardi, 1984, p. 324).

*Religious Congregation (Religious Order or Institute of Religious Life)*

“A collegial public juridic person, properly recognized by the competent ecclesiastical authority, consisting of individual members who take temporary and then permanent vows of poverty, chastity, and obedience in accordance with the institute’s constitutions and who live a common life; the canonical administrators of a religious institute are the superior general and council” (Maida & Cafardi, 1984, p. 325).

*Reserved Powers*

“[T]he powers that the corporate members keep for their own exercise and do not delegate to the board of trustees” (Maida & Cafardi, 1984, p. 325).

*Second Vatican Council, Vatican II (1962-1965)*

The 21<sup>st</sup> and most recent ecumenical Council held by the Roman Catholic Church. An ecumenical council is “a gathering of all the bishops of the world, in the exercise of their collegial authority over the universal Church. An ecumenical council is usually called by the successor of Saint Peter, the Pope, or at least confirmed or accepted by him” (United States Conference of Catholic Bishops, 2000, p. 873). Vatican II “signaled the Catholic Church’s movement from a Church of cultural confinement, particularly of the European variety, to a genuine world Church” (McBrien, 1994, p. 657). The major result of the Council was the

promulgation of 16 documents, the most important of which and are closely related to this study include the following documents: *Lumen gentium* (the Dogmatic Constitution on the Church), *Gaudium et spes* (the Pastoral Constitution on the Church in the Modern World), *Dei verbum* (the Dogmatic Constitution on Divine Revelation), *Gravissimum educationis* (the Declaration on Christian Education), *Perfectae caritatis* (the Decree on the Appropriate Renewal of the Religious Life), and *Apostolicam actuositatem* (the Decree on the Apostolate of the Laity).

### *Sectarian*

A legal qualification from the Horace Mann case, and defined by the Oxford English Dictionary as such, “Pertaining to a sect or sects; confined to a particular sect; bigotedly attached to a particular sect” (OED Online, 2011a). An example of a sectarian institution would be a Catholic seminary, a tertiary institution devoted specifically to the education and formation of priests. For either the federal or a state government to support the education and formation of priests would be a breach of governmental support of a particular religion.

### *Stable Patrimony*

The immovable property (land and buildings) and fixed capital...of a public juridic person. Property that is part of stable patrimony is subject to the canonical alienation procedures while non-stable property is not (Hite, 2000, p. 38).

### *Subsidiarity*

A principle of the Catholic Church that calls for decisions generally to be made at the lowest appropriate level (Dwyer, 2003, p. 19).



### *Tertiary*

A word that designates the third level of a classification. Levels of different Catholic educational institutions may be referred to as “primary” (elementary), “secondary” (high school), and “tertiary” (college or university).

### *United States Conference of Catholic Bishops (USCCB)*

“The United States Conference of Catholic Bishops is a permanent initiative composed of Catholic bishops of the United States of America in and through which the bishops exercise in a communal or collegial manner the pastoral mission entrusted to them by the Lord Jesus of sanctification, teaching, and leadership, especially by devising forms and methods of the apostolate suitably adapted to the circumstances of the times. Such exercise is intended to offer appropriate assistance to each bishop in fulfilling his particular ministry in the local Church, to effect a commonality of ministry addressed to the people of the United States of America, and to foster and express communion with the Church in other nations within the Church universal, under the leadership of its chief pastor, The Pope.” (P.J. Kenedy & Sons, 2005, p. A–10)

### *Valid/Invalid*

A discussion of the legal notion of validity may be found in Chapter II on page 55. This is different from the methodological notion of validity discussed within Chapter III.

## CHAPTER II

### REVIEW OF LITERATURE AND BACKGROUND OF THE STUDY

#### Introduction

“Questions of governance are best understood against the backdrop of historical research” (Traviss, 2001, p. 105). The literature review of this study, in its full scope has many diverse sources and a pronounced breadth. Private Catholic religious-sponsored secondary school governance has evolved and been altered by many events, factors, and individuals over the course of its existence within the United States. This chapter, which also provides the background for this study, functions as a forum for what the existing literature has provided regarding the elements and history of governance of private Catholic religious-sponsored secondary schools in the United States.

Five major areas will be explored in this chapter. The first is the history of private Catholic religious-sponsored secondary schools in the United States as related to the governance and transformations of institutes of religious life. Secondly, an exploration of the two systems of law will follow, Civil and Canon, that govern private Catholic religious-sponsored secondary schools and have a serious role in determining their individual identities. Thirdly, this chapter will survey an historical episode, the McGrath/Maida Debate, the 15-year-long dispute over the canonical and civil identity of Catholic institutions in the United States that permanently altered the understanding and practice of governing Catholic institutions (educational and health care) in the United States. Fourthly, this chapter will review related literature including pertinent studies addressing different aspects of the relationship between religious institutes and the boards of trustees at their sponsored

private Catholic secondary schools. Finally, this chapter closes with an overview of the most prevalent corporation and board structure in use within Catholic educational institutions, the “membership corporation”, and its board model, what some have called the “two-tiered board” or the “board of limited-jurisdiction”.

## History of Catholic Secondary Educational Governance as Related to Religious Congregational Governance and Catholic Tertiary Institutions

### *Religious Congregational Governance*

Institutes of Religious Life have been engaged in the apostolate of Catholic education in the United States since its beginnings, and the peculiar culture of such institutes of religious life has left its mark on the American Catholic educational culture. Religious institutes, themselves, have their own unique governance and structure that derive from their own constitutions or rule of life (Shea, 2003). Geographically, religious institutes are divided into territories that have authority on the basis of the principle of subsidiarity to make autonomous decisions on the part of their members and apostolates. These territories, at the discretion of the individual institute, may be referred to by different names, such as “province”, “district”, or even “region”.

The leadership of individual religious institutes is exercised by members of the religious institute who have been elected or appointed as superior (c. 620, CIC).<sup>4</sup> This superior “holds power over all the provinces, houses, and members of an institute” (c. 622, CIC). To a degree, this includes the oversight of the various and diverse apostolates of an

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<sup>4</sup> This citation is the way in which citations directly from the Code of Canon Law of 1983 (CIC) will be cited. The text consulted was Beal, Coriden, and Green (2002), *New Commentary on the Code of Canon Law*; however, the above citation style will be used to distinguish citations of the Code as opposed to citations from the commentary. Commentary citations will be cited by author.

individual province of a religious congregation, which may include any combination of primary, secondary, or tertiary educational institutions as well as those dedicated to healthcare or social service. Decisions made in one realm, whether related to personnel, finance, or any other area, necessarily include and impact decisions and situations in the other areas; they are not isolated. As a part of his or her duties as superior, the superior of a religious institute may assign members to live in a particular communal residence of the institute (Cody, 1980; Shea, 2003), and also may assign an individual religious to work or minister at an apostolate of the congregation (Cody, 1980; Truhlar, 2003).

In bygone eras, religious were assigned and reassigned with relative fluidity within the apostolates of the local province of the congregation. Given the decline in the number of religious in the United States, assignment of religious personnel to communities and apostolates, while attempting to address relative needs of the congregation as a whole, has become increasingly difficult.

Each religious congregation is autonomous, for different religious orders do not direct the mission or the apostolate of another religious order. For example, the Jesuits do not have the authority to create policy for the Congregation of Holy Cross (Ford, 1968). This does not mean that there is no sense of cooperation, for advice is oftentimes sought by religious congregations of other congregations out of collegiality (personal communication, Gery Short, 2009) and the creation of professional organizations for the purpose of collaboration is evident as seen in the National Catholic Educational Association (NCEA) and the Association of Catholic Colleges and Universities (ACCU). Catholic education, even given the existence of these important bodies, is neither centralized nor systematized as in the case of public education in the United States.

*Evolution of Secondary Schools*

The American educational model, both private and public, did not originally include the level of secondary education (Harris, 1996), and disagreement remains about the way in which the Catholic high school developed in history. More specifically, two highly regarded historians of Catholic education have told divergent stories of the beginnings of Catholic secondary education: Goebel (1936) and Buetow (1970). Goebel believed that Catholic high schools developed primarily from elementary schools, and Buetow believed, instead, that these academies developed predominantly from the Catholic colleges and universities, the majority of which were founded by religious congregations (Burtchaell, 1998; Ford, 1968; Power, 1958). Although decades lapsed between the contributions of these historians, Buetow did not make reference to the dissertation work of Goebel (1936), potentially having missed it entirely.

In his dissertation study, Goebel (1936) stated his belief that the format of the Catholic high school developed as a response to the evolution of the secondary school within the public education system. Buetow (1970) articulated the same notion as Goebel (1936) believing that public secondary schools served two different types of students, those who were college-bound and those for whom high school was terminal. In Goebel's view, the Catholic high school developed within Catholic education in a way that closed the gap between elementary schools and those that granted academic degrees (tertiary institutions). He called it "the natural outgrowth of the elementary school system" and "emphasized the necessity of adolescent training" (p. 1). Goebel also noted that, through the 19<sup>th</sup> century, the format of the Catholic secondary school was rather amorphous, describing this group as ranging "from schools teaching the 'three R's' to schools granting academic degrees" (p. ix).

Goebel reported that the first school to title itself as a “high school” was Saint Ann’s High School in Detroit, Michigan, in 1838.

Buetow (1970), instead, focused more upon the development of secondary schools as a downward growth of the Catholic colleges and universities, and thereby distinguished them from their public counterparts. “On the secondary level, the high school evolved from the academy” (p. 111). The academy format of secondary education within the United States was generally considered to be college preparatory, and thus non-terminal, whereas the “high school” framework for secondary education was considered to be terminal. In his description of the latter years of the 19th century, Buetow noted that in comparison to the high school, the format of the academy was dominant within American Catholic education.

The original structure of the NCEA lends testimony to this evolution, for within the original structure of the NCEA, the secondary schools were subsumed under the department of colleges and universities. During those initial decades of the NCEA, questions existed within the membership as to the appropriate relationship between Catholic secondary schools and the Catholic tertiary institutions, for Fr. Matthew Schumacher (1909), delivered a keynote speech to the college department at the annual meeting in 1909 and proposed, “...the ideal condition in the relationship between a Catholic high school or academy and the Catholic college is the separation of the two, one doing preparatory work only, the other doing collegiate work alone” (p. 140). It was not until 1929, when Catholic secondary schools, having evolved to a point which gave them a distinct niche within Catholic education as separate entities from the colleges, were granted an individual department within the structure of the NCEA (Horrigan, 1978).

Catholic college-preparatory academies did not develop in the same manner as public college-preparatory institutions. These Catholic academies were a part of the Catholic

college or university to which they were, literally, preparatory. Given that the majority of Catholic colleges and universities were founded by Catholic religious congregations (Burtchaell, 1998; Ford, 1968; Power, 1958), many of the secondary educational institutions have the same origins. For example, when Georgetown University was founded in the late 18th century, it had three departments: elementary, college preparatory, and university (Buetow, 1970). The University of San Francisco also had its own college preparatory department; this is the institution that has now become Saint Ignatius College Preparatory (Totah, 2005; Ziajka, 2005). Saint Mary's College of California, when it was founded in San Francisco and throughout its days in Oakland, California, had its own high school department, Saint Mary's College High School (Isetti, 1979; McDevitt, 1963). In the year 1915, 350 Catholic colleges and universities still had preparatory schools attached to them (Totah, 2005).

Having been founded by individual congregations, the governance of Catholic colleges and universities in the United States in each institution's early years was determined by those parties who exerted initial control over the institutions (Ford, 1968; Haney et al., 2009). As with most institutions or apostolates belonging to religious congregations in the United States during the 19th and early 20th centuries, the parties who served in the capacity of governance were themselves members of the same congregation; the congregation directly controlled the governance and operation of these institutions through the presence of their members within the governing bodies (Dosen, 2009; Power, 1958). The sheer numbers of religious available for service added to the fluidity with which they moved throughout the network of apostolates within their respective provinces. There were plenty of religious able to serve in the capacity of a board member and, as yet, the ecclesiology of the Second Vatican Council (1962-1965), which embraced the appropriate role of the laity,

had not yet arrived on the scene. At the time, if these institutions had been incorporated under state law even during their initial years, those who served as trustees on the corporate board were themselves consecrated religious (Ford, 1968). This way of doing governance created and maintained Catholic higher education as “dependent subsystems” (Stamm, 1993, p. 10) to the individual religious congregations who founded each institution; they had direct governance Control.

By virtue of the fact that the earliest private Catholic secondary schools were merely part of a larger institution of their Catholic university, the governance of these high schools was not accomplished separately from the governance of the larger university. Though, given the difference between the governance of an institution and its day-to-day management, the day-to-day management of the high school was oftentimes distinct from the governance of the high school by being directed by a high-school department headmaster or principal.

### *Catholic Tertiary Institutions and Board Governance*

This comingling of governance between high schools and colleges did not last in perpetuity, for even prior to the Second Vatican Council the governance of many private Catholic religious-sponsored secondary schools had been separated from their parent college or university. Many of the board governance forms which developed in the universities during this period of time, while not immediately implemented within private Catholic religious-sponsored secondary schools, have been implemented within more recent years. An exploration of the evolution of these board governance constructs within Catholic tertiary institutions is pertinent to the discussions of secondary school governance, especially since the most effective governance models employed by religious congregations in Catholic



colleges and universities were then applied to suit the governance situations of their secondary educational institutions (Cody, 1980).

### *The Post-World War II Era*

The Post-World War II Era has been considered to be a major turning point within the history of Catholic education in the United States (Bassett, 1999; Dosen, 2009; Eden, 2002; Ellis, 2001; Gallin, 2001; Heft, 2011; Whitehead, 1988; Wittberg, 2003). In his dissertation, Eden (2002) focused on the great shift that occurred in Catholic tertiary education during the period that followed the Second World War yet preceded the Second Vatican Council. With the return from the war, the United States government offered the reward of education to those who had so nobly served the country, the legislative title of which was the Serviceman's Readjustment Act, popularly called the G.I. Bill (Gallin, 2001). The federal government funded the education of thousands of veterans at the institution of their choice, which included many Catholic colleges throughout the country. Government funding at that time was thus extended to religious colleges and universities, which received an influx of federal funds in the form of tuition, temporarily suspending the opposition to governmental support of religious education. The G.I. Bill also allowed veterans to attend Catholic secondary institutions, for of the 7.8 million World War II and Korean War veterans to benefit from this, 4.4 million veterans used their funds to attend secondary schools including private, religious institutions (McLaughlin, 1985). Various other programs, such as the National Defense Education Act of 1958, the Higher Education Facilities Act of 1963, and the Higher Education Act of 1965, also brought federal monies to the doorstep of religious educational institutions (Bassett, 1999; Gallin, 2001). Catholic religious congregations welcomed these federal dollars because they had neither the financial nor the personnel resources to operate their universities given the large influx of students during the

post-World War II era (Bassett, 1999; Eden, 2002; Ellis, 2001; Whitehead, 1988; Wittberg, 2003).

*The Challenge to State Funding: The Horace Mann Case*

As the presence of that young generation of veterans began to wane within American colleges and universities, it once again became questionable to what degree it was constitutionally appropriate for the United States government to give federal funds to private and religious educational institutions given the Establishment Clause of the First Amendment to the U.S. Constitution, popularly known as the separation of Church and State. The most noteworthy example of this movement was decided on June 2, 1966, the day on which the Maryland Court of Appeals delivered judgment regarding *Horace Mann League v. Board of Public Works of Maryland*<sup>5</sup> (Gallin, 1996).

Robison (1966) and Preville (1989) have given thorough summaries of this infamous case of Catholic educational history. The *Horace Mann* case began with a filed complaint on September 10, 1963, by the plaintiffs, the Horace Mann League, and nine individual taxpayers. The complaint raised the question of constitutionality over four statutes of the State of Maryland, which had, together, allocated \$2.5 million in state funds resourced from taxation and granted to four Church-related higher education institutions. The defendants included the Governor, Comptroller, and Treasurer of Maryland, as well as the four colleges: Hood College (United Church of Christ), Western Maryland College (Methodist), Notre Dame College (Catholic), and Saint Joseph College (Catholic). Francis X. Gallagher, a Baltimore lawyer, represented the two Catholic institutions during the lawsuit (Gallin, 1996).

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<sup>5</sup> *Horace Mann League v. Board of Public Works*, 242 Md. 645, 220 A.2d51, cert. denied, appeal dismissed, 385 U.S. 97 (1966).

The grants had been given to assist in the construction of buildings at these four institutions; this included a dormitory, three science facilities, a dining hall, and a general classroom building (Robison, 1966). In deciding the case, the Maryland Court of Appeals designed a set of criteria to determine whether a specific college was “legally sectarian” (Preville, 1989, p. 200) and thereby ineligible for state funding. These were the criteria:

1 ) The stated purposes of the college; 2 ) the college personnel, which includes the governing board, the administrative officers, the faculty, and the student body (with considerable stress being laid on the substantiality of religious control over the governing boards as a criterion [*sic*] of whether a college is sectarian); 3 ) the college’s relationship with religious organizations and groups, which relationship includes the extent of ownership, financial assistance, the college’s memberships and affiliations, religious purposes, and miscellaneous aspects of the college’s relationship with its sponsoring church; 4 ) the place of religion in the college’s program, which includes the extent of religious manifestation in the physical surroundings, the character and extent of religious observance sponsored or encouraged by the college, the required participation for any or all students, the extent to which the college sponsors or encourages religious activity of sects different from that of the college’s own church and the place of religion in the curriculum and in the extra-curricular programs; 5 ) the result or “outcome” of the college program, such as accreditation and the nature and character of the activities of the alumni; and 6 ) the work and image of the college in the community. (p. 200)

In the judgment, the court applied these criteria to ascertain whether or not the grants were rightfully made to the colleges, and only Hood College was deemed to be non-sectarian.

The two Catholic colleges, Notre Dame College and Saint Joseph College, along with Western Maryland College were deemed to be “legally sectarian” and the grants were determined to be “invalid and unconstitutional” (p. 200).

The Supreme Court of the United States refused to hear further appeal of the case, yet the decision of the Maryland Court of Appeals was binding within the jurisdiction of the State of Maryland. Gallin (2001) noted that Catholic institutions across the country were still fearful that decisions similar to the one made in *Horace Mann* could reach their own jurisdictions, being extended by the affirmation of federal courts. In fact, the criteria were extended in a different way, being adopted by the education department of New York in

order to delineate entitlement of church-related colleges to “Bundy money” under the New York State statute, Aid to Private Higher Education of 1968 (Gallin, 1996).

Even before the final decision of *Horace Mann* was promulgated in June 1966, Francis Gallagher spoke to groups of Catholic educators of potential and probable effects of the *Horace Mann* case; he warned Catholic colleges and universities of the possibility of their losing access to federal monies (Gallin, 1996; Harrington, 1999; Preville, 1989). Gallagher spoke at the NCEA convention in April 1966 and opined freely upon the mistakes made by his client colleges by being “overzealous in their claims about their Catholicity” in college publications, in which “the Catholic faith ‘permeated’ everything from chemistry to gym classes” (Gallin, 1996, p. 118). He even characterized such language as a “Trojan horse” that would give credence to arguments about the failure of the wall of separation between Church and State.

By January 1967, in a speech delivered to a gathering of Jesuit college presidents, Gallagher had developed recommendations “designed to neutralize the effects of the *Horace Mann* ruling” (Preville, 1989, p. 202). These recommendations included the following points:

That the method of appointing the members of the college board of trustees be modified to allow a greater number of laymen, thus effecting a better balance on the board and eliminating any real or apparent unbridled authority in a religious superior.... That the stated corporate objectives be consistent with the primary aim of the college, and the charter be amended accordingly; that religious motivations be placed in proper perspective so as to eliminate an undue emphasis on the so-called permeation theory.... That the title to property of a church-related college be vested in the college corporation itself.... (p. 202)

Gallagher’s counsel was welcomed and implemented by Catholic tertiary educational institutions that rapidly, if not hastily, initiated organizational changes on the level of governance to preserve their eligibility for federal funding (Gallin, 1996; Geiger, 2003; Golden, 2006; Maida, 1973b; O’Grady, 1969; Preville, 1989; Whitehead, 1988; Zorzi, 1995).

While, as mentioned, the Supreme Court of the United States had denied an appeal of *Horace Mann*, the same issues “received a full hearing in 1971 in the case *Tilton v. Richardson*...which challenged the constitutionality of Title 1 of the Higher Education Facilities Act of 1963” (Preville, 1989, p. 205). This case also involved four Catholic colleges in Connecticut who had received federal construction grants amounting to \$2-million. The Supreme Court ruled in favor of the Catholic colleges stating that the act under scrutiny “did not involve an excessive government entanglement with religion” (p. 210) and that the granted financial aid was not done in a way that established a continuing relationship between civil government and the Catholic universities. Furthermore, as an added benefit, the *Tilton* decision struck down the possibility of challenging the “non-sectarian” character of Catholic tertiary institutions *en masse* and instead required that suit would have to be brought on an individual basis (Gallin, 1996).

Both of these landmark cases, *Horace Mann* and *Tilton*, greatly impacted the practice of Catholic tertiary governance, primarily by greatly altering practices surrounding who is placed on the governing board of an individual Catholic university (Burtchaell, 1998; Dosen, 2009; Gallin, 2001). In 1960, less than 10% of Catholic college governing boards had laymen who served as trustees, amounting to about 5% of all Catholic college trustees. Yet, by 1977, over 92% of Catholic college governing boards included laymen among their trustees and lay people accounted for 62% of all Catholic college trustees (Stamm, 1981). Laicization of governing boards, elimination of the strong control of religious superiors, establishment of clear criteria to determine the legal-sectarian nature of an institution, and the individual incorporation of religious communities and colleges are a part of the revolutionary legacy of *Horace Mann* and *Tilton* (Preville, 1989).

While having great impact upon the policies and practices of governance within Catholic tertiary education, neither of these cases directly affected Catholic secondary education. Federal and state funding has not been available to Catholic elementary and secondary schools due to the fact that within this sphere of Catholic education, principles of academic freedom are not observed and there is a potential for indoctrination (Whitehead, 1988). Were federal and state funding allowed, it would be a breach of the Establishment Clause. Nonetheless, to say that there were no effects whatsoever by the *Horace Mann* and *Tilton* cases upon private Catholic religious-sponsored secondary schools would be simple-minded. Based on the above discussion, scholars conclusively believe that *Horace Mann* and *Tilton* had a strong effect on the structuring and restructuring of governance relationships of Catholic tertiary institutions to their founding religious congregations. Cody (1980) noted the influence of Catholic college governance upon the structuring of governance within Catholic secondary schools. This means that the consequences of these two cases must have also had an impact, albeit indirectly, upon the governance relationships within private Catholic religious-sponsored secondary institutions.

*The Laicization of Catholic University Boards*

“I knew that if I were going to see Notre Dame grow into a first-rate Catholic University I could no longer have to get permission from a Provincial every time I needed a new lawn mower!” (Gallin, 1996, p. 1). This statement from Father Theodore Hesburgh, CSC, then President of the University of Notre Dame, witnesses to the fact that members of religious congregations themselves surfaced questions about the appropriateness of the relationship between their own religious congregation and the university. This was done especially in the areas of “control, internal relationships between religious and lay personnel, and relationships between the Catholic colleges and universities and the hierarchy” (Ford,

1968, p. 6). Scholars (Burtchaell, 1998; Eden, 2002; Ford, 1968; Gallin, 1996; Hesburgh, 2000; Power, 1958; Stanford, 1965) have contended that the actual success and survival of many Catholic tertiary institutions had come to be threatened by the religious congregations that founded them. Burtchaell (1998) also witnessed to this phenomenon in his exposition of Boston College, the College of New Rochelle, and Saint Mary's College of California. Hesburgh (2000) spoke of his similar experience at the University of Notre Dame, and Gallin (1996) described the situations of another five well-known Catholic tertiary institutions. Oftentimes, decisions were made by religious provincial superiors to suit the needs of the province or the local house of religious life rather than the needs of the institution, for it was common practice that the local superior was also the chief administrator (Heft, 2011; Morey, 1995). Administrative assignments were made on the basis of the religious community's needs rather than the apostolate's administrative needs, and assets were comingled between universities and congregations.

The first American Catholic college to organize a board structure independent from a sponsoring religious order was Webster College of St. Louis, Missouri, a ministry of the Sisters of Loretto, and it was only a few miles distant from the Jesuit institution, Saint Louis University (Burtchaell, 1998; Gallin, 2001). This event, nicknamed "*L'Affaire Grennan*" (Burtchaell, 1998, p. 593), was the announcement of not only the secularization of Webster College, but also of the secularization of the current president, Sister Jacqueline Grennan, SL, who had requested to be released from her vows as a Sister of Loretto and intended to remain as its president. Archbishop Fulton J. Sheen, a popular Catholic television personality of the mid-20<sup>th</sup> century, even referred to her as a "Benedict Arnold" because of her stance on the secularization of Catholic universities; Grennan recently died in January 2012 (Vitello, 2012).

The tone of an article written by Grennan (1969), entitled *Freeing the Catholic College from Juridical Control by the Church*, demonstrates well some of the anarchical thought pulsing through Catholic universities and their religious congregations. Within this piece, Grennan admitted that the university broke its ties with the Catholic Church out of the belief that juridical control by the Church through the Sisters of Loretto would hamper Webster College from becoming a successful institution, and that this action was necessary to remain “eligible for federal dormitory loans” (p. 103). Grennan stated that many other Roman Catholic tertiary institutions had done likewise for the same reasons. Webster College was totally secularized and permission for alienation of the University was obtained. The history of Webster College witnesses to a very extreme view of Catholic institutional governance, for in this view of Catholicity, hierarchical control is either in total or must be non-existent.

Grennan (1969) also noted the governance changes made by Father Theodore Hesburgh, CSC, president of the University of Notre Dame and Father Paul Reinert, SJ, president of Saint Louis University. Throughout the literature on Catholic institutional governance, although it was Grennan at Webster College to first accomplish the addition of lay people onto the institution’s governing board (Conlin, 2000), Reinert and Hesburgh are given the credit for actually accomplishing this feat (Gallin, 1996). Likely, they are given the credit due to the fact that the University of Notre Dame and Saint Louis University, under their respective leadership, maintained their Catholic identity and were not secularized.

*Father Hesburgh and the University of Notre Dame.*

Father Theodore Hesburgh, CSC, former president of the University of Notre Dame and initiator of the Land O’Lakes Seminar of July 1967, has been recognized by scholars of Catholic higher education for his impact and influence during the last half of the 20<sup>th</sup> century (Burtchaell, 1998; Eden, 2002; Gallin, 1996, 2001, 2003; Geiger, 2003; D. J. O’Brien, 2003;



Stamp, 1993; Wittberg, 2003). The influence of Father Hesburgh (1945), however, reaches back to his doctoral dissertation in theology at The Catholic University of America, entitled *The Relation of the Sacramental Characters of Baptism and Confirmation to the Lay Apostolate*. Within this document, Hesburgh uncovered a theology for lay Catholics of the appropriateness of their own authority and right to exercise a ministry and function within the Church by virtue of their having received sacraments of initiation of Baptism and Confirmation in the Roman Catholic Church. This dissertation was to become the foundation for two significant movements within Catholic education during the mid-20th century.

First, Hesburgh recounted in his autobiography that the Apostolic Delegate specifically requested two copies of his dissertation the day after it was submitted, and upon his own reading of the documents of Vatican II almost two decades later, items “were taken almost verbatim from [his] doctoral dissertation, especially in the document ‘On the Laity’” (Hesburgh, 2000, p. 48). Such theology also appears within the Code of Canon Law (c. 225 §2, CIC). Second, it was the theology that Hesburgh surfaced in his dissertation, on the baptismal apostolate of the laity, that further laid the foundation for shifting the governance model of the University of Notre Dame from complete control by the priests of the Congregation of Holy Cross, into what has now come to be called the board of limited-jurisdiction or the two-tiered board model. This particular structure, the one most pervasively used within the governance of Catholic educational institutions at the current moment, when structured properly, is the way in which American civil law and the Canon law of the Church are not only appropriately observed, but also deferentially respected.

## The Two Sources of Law: Civil and Canon

Every person or corporation within the United States is held to the requirements of law, both federal and state. Even given the existence of the Establishment Clause of the U.S. Constitution, Catholic institutions in the United States are in no way exempt from following civil law. Their ability to exist freely as religious entities does not place them outside the jurisdiction of United States federal and state law.

Unique to the governance of Catholic educational institutions, all Catholic institutions have a dual identity in the legal realm (Cerullo, 2012; Haney et al., 2009; Maida & Cafardi, 1984; Maida, 1975; McGrath, 1968; Morey & Piderit, 2006; Sheehan, 1981, 1990). They have a legal status under civil law wherein they abide by the requirements of local, state, and federal statutes. As Catholic institutions, they also have a canonical status, wherein they abide by the requirements of the law of the Roman Catholic Church, Canon law; this is outlined in the Code of Canon Law of 1983. Canon law mandates that Catholic institutions are beholden to the requirements of both Canon and civil law (c. 1284 §2, 3°, 1290, CIC), especially in determining their policies, procedures, and relationships to other legal entities (Haney et al., 2009; Maida & Cafardi, 1984; Maida, 1975; Morrissey, 2002; Sheehan, 1990). In that this determination is unique to each institution's own identity and legal existence, each institution has a number of different options for determining structures and, consequently, a good amount of variance exists in these policies from institution to institution.

As an aside, contrary to the above, American civil law does not make the same appeal to Catholic institutions. Civil law is not concerned whether or not Catholic institutions specifically observe Canon law, for the government would see itself as breaching the boundary of the First Amendment (Coughlin, 2007a; Maida & Cafardi, 1984). Civil legal authority is only concerned with whether a corporate entity observes its own bylaws or

abides by the provisions set forth in the Articles of Incorporation accepted by the Secretary of State of the local state. The principles of Canon law, if stated specifically within such civil-legal documents, are recognized, not on the authority of Canon law of the Roman Catholic Church, but instead as items within the Articles of Incorporation or bylaws of an individual corporate entity recognized under civil law (Asdorian, 2006).

Catholic secondary schools in the United States have a dual identity (Brown, 2010), or a dual legal personality, in that they are born into two legal worlds and they exist in both worlds (Cerullo, 2012; Maida, 1975; Stamp, 1993). The first is canonical and, as a Catholic institution, the individual school must abide by the requirements and directives of the Canon law of the Roman Catholic Church. The second is civil; as an educational institution within the United States of America and, furthermore, being located within the borders of a specific state, federal and state laws also have bearing upon the governance of an individual Catholic secondary school. Legal experts on both sides sometimes erroneously assume that their expertise in one field also gives them expertise in the other (Brown, 2010), but these systems are each founded in a different tradition of law and have great variances (Griffin, 1984).

### *A Brief History of Canon Law*

As a parallel, the Code of Canon Law is the collection of bylaws of the Roman Catholic Church, and these statutes affect the actions and workings of the Church. The Canons give direction and procedure as to the governance of the Roman Catholic Church as well as to all its ministries, including congregations of religious life and secondary educational institutions. Pope John Paul II (1983) clearly articulated the purpose of the Code of Canon Law in *Sacrae disciplinae leges*, the apostolic constitution announcing the promulgation of the Code of 1983:

In actual fact the Code of Canon Law is extremely necessary for the Church. Since, indeed, it is organized as a social and visible structure, it must also have norms: in order that its hierarchical and organic structure be visible; in order that the exercise of the functions divinely entrusted to her, especially that of sacred power and of the administration of the sacraments, may be adequately organized; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined; in order, finally, that common initiatives, undertaken for a Christian life ever more perfect may be sustained, strengthened and fostered by canonical norms. (para. 24)

Griffin (1984) agreed when he wrote, “The purpose of canon law is to structure the people of God here on earth for the mission entrusted us” (p. 27).

The existence of Canon law is necessitated out of practicality. In response to the promulgation of the 1983 Code, Bassett (1984) noted, “Without laws the Church would not be a community” (p. 10). The existence of such law is understood to be of necessity, in so much as any community, especially a worldwide religion, would need regulations that direct how the community members structurally relate to one another in a practical way. Even since its beginnings, the Canon law of the Roman Catholic Church had a uniqueness from all other codes of law in that it serves a dual purpose. On the one hand, the Code of Canon Law is a set of laws that regulate the community of the Roman Catholic Church, yet it is also a code set forth as principles aimed at enabling the Church to fulfill its own pastoral and evangelical mission (Hite, 2000). Thus, the Code of Canon Law is also an expression of the theology of the Roman Catholic Church (Coughlin, 2007b).

The Canon law of the Roman Catholic Church has a development that stretches back over the many centuries of the Church's existence. Having its origin in Roman law, Canon law originally existed as a scattered collection of statutes in various sources throughout most of the Medieval, Renaissance, and Enlightenment eras. By the 19<sup>th</sup> century, with Napoleon having forced the recodification of laws in territories under his rule, codification of laws became desirous (Coriden, 2004), and, eventually, at the continuous

urging of the bishops to bring Canon law into the modern era, at the turn of the 20<sup>th</sup> century, Pope Pius X began the process of codification (Boudinhon, 1910). Pius X died while the process was underway, so it was completed and promulgated in 1917 under his successor, Pope Benedict XV. For this reason, the 1917 Code of Canon Law is generally known as the “Pio-Benedictine Code”.

With the announcement of the Second Vatican Council in 1959, Pope John XXIII also called for the revision of the then current Pio-Benedictine Code, knowing that a revision was once again necessary (McManus, 2002; Stamp, 1993). In fact, it was more than a mere fine-tuning, for the word used was *recognitio*, “a rethinking of the Code, rather than a simple revision” (Coriden, 2004, p. 29). It was not until 1983, 34 years later, that the new Code of Canon Law was promulgated. During this 34-year period, it was well known that the Pio-Benedictine Code of 1917 was rendered obsolete, yet without a replacement it was still in effect. However, in general, during the immediate post-Vatican II era, the 1917 Code was relatively ignored because its archaic formulae no longer addressed sufficiently the post-Vatican II Church. Coriden and McManus (1980) stated just this in their work published before the promulgation of the 1983 Code and appealed to the usage of the Vatican II documents to “supercede, in principal and as norms” (p. 148) the 1917 Code. Governance affairs of Catholic educational institutions were conducted with little if no attention to the antiquated system of Canon law (Gallin, 1996). This period was for Canon law and governance a type of interregnum experience, and although there was a lack of legal guidance in the canonical realm for all Catholic apostolates, including all levels of education, questions of Ownership or Control and the role of lay people within Catholic education were not suspended during this period.

### *Role of Canon Law Within Catholic Secondary School Governance*

As previously mentioned, as a Catholic institution, every Catholic secondary school is required to abide by the directives of the Code of Canon Law. For Catholic secondary schools, the responsibility for this oversight would naturally rest with the administration as well as any governing board that exists, particularly because these levels have the responsibility for upholding the Catholic identity of the institution. Four areas of the Code of Canon Law most directly pertain to Catholic secondary schools. First, within *Book I: The General Norms of the Code* are found the canons that describe the unique structure of juridic person status, a legal construct which distinguishes legal entities within the Code's span of law. Second, *Book II: The People of God* outlines the rights and abilities of individual persons and associations, including their participation within the apostolate of the Church. Third, the canons that directly address Catholic education as an existence are recorded within Title III of *Book III: The Teaching Function of the Church*, and these directives establish Catholic education and situate it within the ministries of the Church. Lastly, because Catholic educational institutions are actually bricks-and-mortar assets, *Book V: The Temporal Goods of the Church* has pertinence, for as such it governs all entities defined as ecclesiastical property providing directives for the acquisition and alienation of goods.

#### *Book I and Juridic Person Status*

As an entity within the Roman Catholic Church, every private religious-sponsored secondary school has a canonical status that defines its relationship and place within the structure of the Church as a whole. This canonical status is its juridic person status. An individual private religious-sponsored secondary school canonically may be a part of the public juridic person of its sponsoring religious institute, or the school itself may have been

constituted as a public juridic person or as a private juridic person (Haney et al., 2009; Kennedy, 1990; Maida & Cafardi, 1984; J. S. O'Brien, 1987). The recognition of an entity as a canonical juridic person by the Church “does not automatically confer civil law status” (Asdorian, 2006, p. 19); these are wholly separate.

According to the Canon Law of the Roman Catholic Church (c. 96-123, CIC), there are three types of persons within the Church: physical persons, moral persons, and juridic persons (Hite, 2000). Physical persons (c. 96-112, CIC) are those individual human persons who are members of the Roman Catholic Church by virtue of receiving the sacrament of baptism. Moral persons (Beal et al., 2002), originally the category used in the Pio-Benedictine Code of 1917 for all other entities other than physical persons, are those entities (the Apostolic See and the Catholic Church) that exist “by divine ordinance” (Beal et al., 2002, p. 154) or “by no legislator” (Morrissey, 2001, p. 29). The existence of the Apostolic See and the Catholic Church, having been instituted by God and not founded by a specific person or group of persons, are considered to be unique under Canon law in this case, and are differentiated from the third classification of personhood, the juridic person (Beal et al., 2002; Hite, 2000).

The legal code of the Roman Catholic Church also allows for a specific construct that resembles the civil legal entity of corporation (Maida & Cafardi, 1984; Morrissey, 2001). This Canon law construct is called a “juridic person” (Beal et al., 2002, p. 154) and is addressed in canons 113-123 of the Code of Canon Law. A specific purpose is required in order for an entity to be constituted by competent Church authority as a juridic person under Canon law. “Competent authority” (Beal et al., 2002, p. 114) includes diocesan bishops, curial officials, national conferences of bishops, and the Holy See. Similar to their civil law counterpart, the corporation, these juridic persons act as persons under the law;

they have the right to own and administer property, they have the right to sue and be sued, they may divest themselves of property, and they may incur debts and enter into contracts in their own name (Maida & Cafardi, 1984). While there are similarities between the canonical juridic person and the civil corporation, Canon law, within its own system, does not acknowledge the construct of the American civil corporation (Bassett, 1999).

All juridic persons are aggregate bodies, either a group of persons (*universitates personarum*), such as a diocese or religious institute, or a collection of things (*universitates rerum*), such as a monetary fund reserved for a specific charitable purpose (Beal et al., 2002, p. 114). Juridic persons have a legal personality apart from the individuals or things that comprise them (King, 2006) and they “carry out purposes which exceed the capacity of individuals” (Morrisey, 2008, p. 12); this is the same as in the secular corporation. Also, the items belonging to a juridic person are not owned by the individual persons who administer or comprise the juridic person (Maida & Cafardi, 1984). The juridic person is the owner, and those who administer the juridic person are considered stewards of its property (King, 2006). King noted this weighty responsibility of “trustees, officers, directors, administrators...all who are involved in overseeing the work of a juridic person”, and formidably recommended that they “should be thoroughly imbued with the distinctions between Ownership and Control on one hand, and stewardship and governance toward a spiritual or religious mission on the other” (p. 62). The construct of juridic personality allows for the definition of ownership of property, as well as accountability for its oversight; it ensures that this work, deemed to be important, will continue in perpetuity beyond the individuals that comprise it (King, 2006).



*Public Juridic Persons and Private Juridic Persons.*

Within the 1983 Code of Canon Law there exist two different forms for juridic persons: public and private (c.116, CIC). The primary distinction between these two classifications is the degree of the respective closeness of their relationship to Church authority within the hierarchical structure of the Church (Kennedy, 2000b).

Public juridic persons are corporation-like entities that are governed within the structure of the Church. A public juridic person realizes its work both “in the name of the Church” and “in the purposes set out for them” (Kennedy, 2000b, p. 160). Public juridic persons come into perpetual existence by virtue of the law or they may be created by decree of competent Church authority. Those that have juridic personality by law include institutions, such as (arch)dioceses (c. 373, CIC), seminaries (c. 238 §1, CIC), parishes (c. 515 §3, CIC), or religious institutes and their individual provinces (cc. 573 §2, 578, 579, 581, 589, CIC). Examples of those created by decree of Church authority are groups, such as the Knights of Columbus, or individual educational or health-care institutions (Hite, 2000). Catholic educational institutions, other than seminaries, are not conferred juridic personality by virtue of law; they must be constituted as such by decree (Brown, 2010; Kennedy, 2000b). The goods owned and administered by a public juridic person are ecclesiastical goods, and being such they are subject to all provisions governing the possessions of the Church as outlined in Book V of the Code of Canon Law. Furthermore, all Church property is owned by one public juridic person or another (Maida & Cafardi, 1984).

The canonical designation of private juridic person is a new classification for juridic persons in the 1983 Code of Canon Law (Hite, 2000; Kennedy, 2000b; Maida & Cafardi, 1984). It was devised as a way to address the call of Vatican II to recognize that “all members of the faithful have the right to engage in apostolic action not only by giving

assistance to works...but also by founding and governing...organizations on their own initiative” (Kennedy, 2000b, p. 161). Different from those of public juridic persons, the properties and goods of a private juridic person are not considered to be ecclesiastical goods (Catholic Health Association, 2007; Cerullo, 2012; Hite, 2000; Kennedy, 2000b; Morrissey, 1986, 2001). Though, even given the non-ecclesial nature of their property, the fact that such entities act in their own name and not in the name of the Church, and the distance from the hierarchy afforded in the private juridic person status, the institution which is constituted a private juridic person by competent authority yet fully remains a Catholic institution (Kennedy, 2000b). Under Canon law, the Saint Vincent de Paul Society is a private juridic person (Fitzgerald, 1985).

Canonists and experts in Catholic educational governance disagree upon the usefulness of the private juridic person status. Some believe that the structure of private juridic person is underutilized and may be a potential boon to solving difficulties with governance structures (M. K. Grant & Vandenberg, 1998; Modde, 1992) even going so far as to state that it might alleviate the institution from being perceived as pervasively sectarian, thus opening the institution to federal and state funding (Kennedy, 2000b). Others, though, believe that this is an unnecessary category and that governance structures may be appropriately addressed solely through the canonical identity of the public juridic person (Gonsorcik, 2001). Gonsorcik, while hoping to validate and champion the use of the private juridic person within Catholic health care institutions in the United States, came to the conclusion that members of the Church hierarchy, who are the only authorities competent to grant such status, are unwilling to do so “for large, multi-billion dollar operations” (p. 241). Likely, this is due to the fact that the property of a private juridic person is not ecclesiastical property. Of course, there are also those experts who do not pass judgment upon its

implementation due to its not having been used enough (Maida & Cafardi, 1984; Morrissey, 2001, 2011).

Thus, an individual private Catholic religious-sponsored secondary school may be canonically related to the Church in a number of ways. It may or may not have its own juridic personality. If it does not have its own juridic personality, then it is a part of a larger public juridic person of the Church. In this case, a diocesan school without its own juridic personality would be a part of the public juridic person of the diocese, and a religious-sponsored school would be a part of the public juridic person of the related religious institute. On the other hand, if an individual private Catholic religious-sponsored secondary school does have separate juridic personality, it is because it has been constituted either a public juridic person or a private juridic person, and by competent authority of the Church. There is no encouragement or directive on the part of Canon law that individual institutions, such as high schools, are required to possess or not possess juridic personality (Gonsorcik, 2001; Hite, 2000, 2000; Maida & Cafardi, 1984). This directly adds to the complexity of structuring private Catholic religious-sponsored secondary school governance.

### *Book II and the People of Catholic Education*

Book II of the Code of Canon Law sets forth a comprehensive and principled schema of the diversity of peoples and roles within the structure of the Church. It witnesses to the particular ecclesiology (the theology of Church as community) of Vatican II by its subtitle, “The People of God” (Kaslyn, 2000). This title of the Church has its roots in early Christian writings, and is “a race...which would be one, not according to the flesh, but in the Spirit” (United States Conference of Catholic Bishops, 2000, para. 781). Book II fills the function of describing the Church’s members and their relationship to one another.

Catholic education is an activity of many diverse people within the Church of different states of life: religious, lay, and ordained (McDonald & Schultz, 2013), and each of these groups is addressed within Book II of the Code. By virtue of baptism, Christian education is a right of the Christian faithful (c. 217, CIC). Furthermore, the text acknowledges the right of the Christian faithful to “found and direct associations for purposes of charity or piety” (c. 215, CIC) and “to participate in the mission of the Church” (c.216, CIC). Members of the Christian faithful may also make use of ecclesiastical law forums, to both protect and defend their rights within the Church (c. 221, CIC). The topics of Book II of the Code of Canon Law regulate, by principle, the actions and relationships of the people within the Church who participate in the Church’s apostolate of education.

### *Book III and the Existence of Catholic Education*

The major function of the Roman Catholic Church is the action of teaching, being mandated by Jesus to spread the Gospel throughout the world (Coriden, 2000). Book III of the Code of Canon Law grounds the theology of *Gravissimum Educationis*, the Second Vatican Council’s *Declaration on Christian Education*, and reflects its important principles (Euart, 2000). Grochowski (2008) considered that the origin of Catholic education is the “result of two interlocking requirements” (p. 151), that of the parents to give their children a Catholic education and the previously mentioned duty of the Church to teach and provide formation of the Christian faithful. The Code clearly states that the Church has both a duty and right to provide Catholic education for the faithful (cc. 794, 800, and 801, CIC), moreover noting the specific responsibility of pastors of “arranging everything so that all the faithful have a Catholic education” (c. 794, CIC). Canon law avers that parents have a duty to provide a Catholic education to their children, and also stresses their right to choice of institution (c. 793, 796, 797, 798, and 799, CIC), going so far as to suggest that civil society is also

responsible for assisting parents in accomplishing their moral and religious formation (c. 793, 797, and 799, CIC).

The definition of the specific relationship of the local bishop (inclusive of archbishops) to individual Catholic schools is found within Book III of the Code of Canon Law. As successors of the initial apostles of Jesus (United States Conference of Catholic Bishops, 2000, para. 77, 861–862), bishops are the “authoritative teachers of those ‘Christian faithful entrusted to their care’” (Coriden, 2000). Bishops have the duty to establish Catholic schools (c. 802, CIC), to maintain vigilance over religious curriculum (c. 803, CIC) including the teachers of such religious curriculum (c. 804 and 805, CIC). They may make a formal visitation at any Catholic school within their respective jurisdiction (c. 806, CIC). “Even if it is in fact Catholic, no school is to bear the name *Catholic school* without the consent of competent ecclesiastical authority” [emphasis original] (c. 803, §3, CIC).

Private, religious-sponsored Catholic schools also find their origin in Book III of the Code, for Canon 801 specifically addresses the contribution of institutes of religious life. Such religious congregations, whose expressed purpose of foundation was to participate within the apostolate of education, are encouraged to maintain their commitments to the educational mission specifically by means of their schools (Euart, 2000).

### *Book V and Church Property*

Book V of the Code of Canon Law addresses all entities considered ecclesiastical property, and gives primary attention to the acquisition, retention, administration, and alienation of such goods (c. 1254, CIC). All religious institutes, including those that are engaged in Catholic education, are bound to observe the proscriptions of this portion of Canon law (c. 635, CIC). As previously mentioned, all property belonging to any public juridic person within the Roman Catholic Church is considered to be ecclesiastical property.

As ecclesiastical property, and given the mission of the Church, such property serves supernatural ends (Coughlin, 2011). Canon 1254 is the foundational principle for the ownership and administration of ecclesiastical property:

§1. To pursue its proper purposes, the Catholic Church by innate right is able to acquire, retain, administer, and alienate temporal goods independently from civil power.

§2. The proper purposes are principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially towards the needy.

Thus, by its own legislation, the Church asserts its own ability to hold property, without requiring the approbation of civil authority, and outlines the major purposes for which any and all ecclesiastical property is retained. Catholic education would necessarily be a part of the “sacred apostolate” as a specific mission of the Church. This power to own property is extended in Canon 1255 to all juridic persons, binding them to observe the canonical proscriptions in their administration.

Book V also addresses a number of related topics within property ownership and acquisition. The Christian faithful are obligated to support the Church in the fulfillment of its mission (c. 1260, CIC) and they are also “free to give temporal goods for the benefit of the Church” (c. 1261, CIC). Such activities have been identified as the “internal raising of funds within the Church” (Kennedy, 2000a, p. 1461). The Church may engage in fundraising (c. 1262), as well as taxation (c. 1263), of its persons (physical or juridic), yet the Church is not obliged to do either (Kennedy, 2000a). Catholic schools, as a part of the Church, have the permission of Canon law to engage in fundraising to obtain funds, and they may also be the subject of taxation on the part of their local diocese (c. 1263).

*Alienation.*

Alienation is the formal process within Canon law by which a public juridic person divests itself of goods. In this responsibility to the Church, prior to divestiture of the property in question, permission to do such must be sought from the appropriate canonical authority by the individuals overseeing the public juridic person owner. Institutions possessing private juridic person status are not bound to abide by canonical requirements concerning alienation due to the goods of private juridic persons not being ecclesiastical goods (Kennedy, 2000a, 2000b; Morrissey, 2001).

The etymological root of the legal term, “alienation”, is the Latin verb *alienare*, meaning “to make something another’s”. Alienation of temporal goods is the transfer of ownership” (Kennedy, 2000a, p. 1493). Actions that do not transfer ownership, such as mortgage, do not require alienation under Canon law (Kennedy, 2000a). The 1983 Code of Canon Law stipulates that the local conference of bishops (c.1292) has the authority to determine a monetary-value threshold at which goods exceeding such value must be formally alienated. This constitutes a valid alienation.

As an example of the canonical process of alienation, in the late 1980s, when the De La Salle Brothers of the San Francisco District came to the decision to sell their winery, Christian Brothers Winery, Brother Mark Murphy, FSC, was Visitor (Provincial) of the District. Having been one of the largest land owners in the Napa Valley, at the time of sale, the assets to be sold would have exceeded even today’s limit of \$3,000,000 (Huger, 2001). As a part of seeking permission to alienate the winery, Brother Mark and the current president of the winery at the time, Brother David Brennan, FSC, went in person to the Vatican to obtain permission from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, the appropriate canonical authority for alienation by a religious

institute. Permission to alienate was granted, and the winery was sold in November 1989 (Miller, 2010). This constituted a valid and licit alienation.

As Catholic universities began to restructure their governance models during the 1960s, whether alienation was necessary within the specific situation was oftentimes in question. There was no pattern to whether or not alienation was sought during the laicization of governance structures. On the one hand, there were Catholic colleges and universities that deemed it necessary to seek alienation. When the University of Notre Dame ceded ownership of the institution from the Congregation of Holy Cross to the new university board of trustees that included lay people, Father Hesburgh, president of the university, obtained a rescript of alienation from the Vatican, granting permission to “give away [the] half-a-billion-dollar institution” (Hesburgh, 2000, p. 172) to a board of trustees that now included lay people within its membership.

On the other hand, the case of Father Paul Reinert, SJ, is exactly the opposite. At the time, Reinert was President of Saint Louis University and he was the major driving force behind the movement to laicize not only the board of trustees of Saint Louis University, but also, the boards at all Jesuit universities in the United States. Reinert chose not to seek permission to alienate the university when the board was expanded to include both Jesuits and lay people primarily because he believed it to be unnecessary on the grounds of civil corporation structure that did not recognize Canon law as binding (Gallin, 2001). For a period of about 30 years, the issue of alienation had seemingly been laid to rest until the trustees of Saint Louis University entered into an agreement to sell its teaching hospital, Saint Louis University Hospital, to a secular, for-profit corporation (Huger, 2001).

This proposal to sell Saint Louis University Hospital, a Catholic hospital, to a secular, for-profit corporation did not sit well with Archbishop Rigali, who was then Archbishop of



Saint Louis. Rigali (1997, 1998) voiced his opposition to the sale of the hospital and attempted to control, if not prevent, the process of the sale itself. His argument was grounded in the fact that the Missouri Province of the Society of Jesus, as a public juridic person of the Church, had never alienated Saint Louis University, which included Saint Louis University Hospital.

Dispute ensued over the canonical status of Saint Louis University and its hospital, with Rigali representing one faction that claimed that alienation of the hospital property needed to be granted in order to accomplish the sale of the hospital, and the other faction represented by Father Lawrence Biondi, SJ (1998), then current president of the university, who claimed that Saint Louis University was not ever Church property, but instead, an institution chartered by the State of Missouri as a public trust. The ultimate resolution of this disagreement was that, upon formal request by the Jesuits to alienate Saint Louis University Hospital, the Vatican granted permission for alienation, with the proviso that the bylaws be amended to include policies to avoid future conflict and “whereby the Society of Jesus can exercise its own proper measure of control with respect to the university to ensure its compliance with canon law” (Rigali, 1998, p. 632).

The formal process of seeking permission of a higher authority in order to alienate property belonging to a juridic entity is unique to Canon law and is not recognized by civil authorities. As religious congregations and private Catholic religious-sponsored secondary schools examine issues pertaining to Ownership as part of the designing and restructuring of their governance relationships and structures, attention must be paid to the requirements of Canon law and clarity must exist over exact ownership of assets within the canonical and civil realms.

*Validity and Liceity.*

The concepts of valid/invalid and licit/illicit are oftentimes used to describe actions within Canon law. “Validity concerns the substance of the act, whereas the word *licit* refers to its lawfulness” (Vere, Trueman, & Madrid, 2005, p. 8). A valid action is such that it has been accomplished due to the law being met (McKenna, 2000). A licit action, otherwise described as lawful, does not have any effect on the validity of an action (Coriden, 2004). Such an action is one that has followed the proper requirements of law, and an illicit action is one that has not followed the proper requirements of law (McKenna, 2000). This is most easily seen in the sacramental life of the Catholic Church, wherein certain people have the power to perform acts reserved to them under Canon law. An ordained priest has the ability to preside at liturgy and consecrate the Eucharist; any Eucharistic liturgy at which he presides is “valid”. On the other hand, if a non-ordained man or woman, using all the trappings and prayers of the Roman Catholic Eucharistic liturgy were to preside at a liturgy, the liturgy would be “invalid” due to it being performed by a non-ordained person (c.900 §1, CIC).

Examples involving liceity are a bit more complex as these cases involve whether an individual has license to perform such actions. Within the Roman Catholic tradition, the ordination of priests is reserved to those who rank as bishop; an ordination of a man performed by a bishop is a valid ordination. However, if a bishop does not have the permission to ordain an individual man, then performing an ordination on that person, while being a valid action, is “illicit”.

These same classifications also apply to situations involving the ownership of ecclesiastical goods. A specific transfer of ownership may be classified as valid or invalid, as well as licit or illicit. Sadly, there have been instances in which ecclesiastical property has

been invalidly alienated (*de facto*) through a loss of Ownership or Control, even in accord with civil law, over the specific goods (Coughlin, 2011). For various reasons, Catholic colleges and universities have been lost to these types of situations, as in the case of the College of Santa Fe where the De La Salle Brothers had no course of action when faced with the bankruptcy of the institution in 2009 (personal communication, Brother Timothy Coldwell, FSC, Visitor, District of New Orleans-Santa Fe). In canon 1296, the 1983 Code of Canon Law addresses the situation of “Civilly Valid but Canonically Invalid Alienations” (Beal et al., 2002, p. 1505). For these cases, competent authority is required to examine the situation to determine how to appropriately “vindicate the rights of the Church” (p. 1505). Moves to correct these situations would depend upon the details of the situation and, most importantly, the financial impact of making the said correction. Canon law does not override either U.S. federal law or the law of individual states, and American civil authorities will not enforce the prescriptions of Canon law. Recognition of Church entities by American civil authorities is only by virtue of them having been incorporated, so in structuring this incorporation, it is left to these Catholic institutions to design their civil governance structures to be fully aligned with the mandates of Canon law (Bassett, 1999; Catholic Health Association, 2007; Maida & Cafardi, 1984; Maida, 1973a, 1980; Wilson, 2003).

### *Civil Law Structures Pertinent to Catholic Secondary School Governance*

#### *Incorporation*

Many Catholic institutions within the United States, especially those in the realms of health care and higher education, have been erected as individual, non-profit, tax-exempt corporations under civil law granting each a distinctive identity, separate and distinct in the

eyes of civil law (Dugan, 2006). Incorporation itself is a means by which the a Church institution is both recognized by the civil government and protects the institution's mission and property (Cerullo, 2012). Institutes of Religious Life and other sponsoring bodies, while holding canonical juridic status, have also obtained civil juridic status by being established as discrete non-profit corporate entities (Burns, 2006; Conlin, 2002; Harrington, 1999; King, 2006; Maida & Cafardi, 1984; Maida, 1973a, 1975) even down to the provincial or individual house/community level (Maida & Cafardi, 1984).

Similar in ways to that of Canon law, American corporate law has developed over time, yet the exact beginnings of the modern American corporation are uncertain. Some have claimed that the legal construct of corporation had its origin in similar legal structures found in the ancient empires of Babylon and Rome (Maida & Cafardi, 1984; Pomeroy & Peters, 1932), while other scholars of law have traced the American notion of corporation to the common law of England (Dugan, 2006; McGrath, 1968). United States federal and state laws recognize the person as the unit of society and, within which there are two types of persons: physical persons, as in individual people, and artificial persons recognized by civil government in the category of "corporation". A corporation may be defined in the following way:

A corporation is a legal entity that exists in perpetuity until it is dissolved. It is a "fictitious person," separate from its managers or governors, and it is usually given many of the same rights and obligations as natural persons. (BoardSource, 2010, p. 12)

Within the modern era, the format of corporation is a ubiquitous construct, dominant within the business world. Three general categories of corporation exist within the United States: municipal, for-profit, and non-profit. Municipal corporations are entities created by local government for civic matters (Phelps & Lehman, 2004a, 2004d). The for-profit and non-profit corporations, certainly the most common, differ only in the doctrine of private

inurement which “forbid[s] the flow of the organization’s net earnings for non-exempt [charitable] purposes to those in control of the entity” (Manny, 2000, p. 5). For-profit corporations serve private interests, acting with the intention to gain money, and non-profit corporations are intended to serve a public good, such as a charity (Manny, 2000; Phelps & Lehman, 2004a).

In the United States, the rights granted to corporations are very similar to those possessed by an individual physical person (Maxwell, 2001). According to Maxwell, a corporation has the following rights and abilities under law:

- To conduct business in a profit-seeking or non-profit-seeking manner;
- To own, sell, or lease property;
- To sue or be sued;
- To merge with another corporation;
- To make contracts;
- To hire or terminate employees; and finally,
- To borrow money, issue corporate bonds, or invest. (p. 196)

As an artificial person, the corporation differs from a physical person in its perpetual existence. This existence is granted by state authority and is maintained by nature of it being governed by a group of people, more specifically, a board of members or trustees. Though the individuals who comprise this group may change, the corporation is not dissolved on account of alterations to its governing body (Pomeroy & Peters, 1932).

Because incorporation of an entity is a recognition by civil authority of legal personage, a person or a group of persons must seek information from the local state jurisdiction within which the entity is to be incorporated and fulfill all necessary requirements (BoardSource, 2010; Phelps & Lehman, 2004a). Thus, corporate status is

initiated by those who are founding a new institution or in control of an existing institution on behalf of the institution for the primary reason of providing legal protection to both congregation and school by corporate separation (Asdorian, 2006; BoardSource, 2010; Cerullo, 2012; DeKuyper, 2003; Maida & Cafardi, 1984; Maida, 1975; Moots & Gaffney, 1980). Articles of incorporation, a legal document stating the aims, address, and basic structure of the entity, when accepted by the appropriate state authority, create the corporation (BoardSource, 2010; Dwyer, 2003; Maida & Cafardi, 1984). Corporate bylaws outline all policies and procedures that govern the corporation (Dwyer, 2003). These are more specific than the articles of incorporation and generally include the number of persons composing the board, officers of the board, board procedures of voting and meetings, as well as the powers of the board; bylaws are not public documents and are not filed with the state (Maida & Cafardi, 1984).

Due to the fact that a corporation is a perpetual institution, a corporation must be dissolved in order to terminate its existence. Within the incorporation process, dissolution procedures, including the disbursement of property of the corporation, which must be given to another charitable institution, must be outlined within its own articles of incorporation when filed with the state (Maida & Cafardi, 1984).

The creation of an individual corporation is an action of civil governmental authority at both civil and state levels, but it is generally a power reserved to the states. Thus, in the federal and state jurisdictions alone, there exist 52 different jurisdictions (the U.S. Federal Government, each state within the Union, and the District of Columbia) which regulate all corporations within the United States, including Catholic corporate entities of which many high schools are part. The U.S. Federal Government has the ability to create corporations; corporations such as the Federal Deposit Insurance Corporation (FDIC) and the

Corporation for National and Community Service, which oversees AmeriCorps, are such federal corporations (Borden, 2003; Phelps & Lehman, 2004b). Each of the 50 states has its own corporations code by which it organizes, creates, and regulates entities holding legal status within its jurisdiction. These codes, while similar, are not identical, leading to variations across the country among corporate structures and the types of corporations that are brought into existence. As an example, the State of California allows incorporation as a “religious corporation” (West, 2010), while the State of Washington does not (West, 2005).

Within the United States of America, the ownership of property requires the recognition of civil authority (Dignan, 1935), for all fixed property (land or building) is owned by one person or another. As a result of this, unincorporated entities have difficulties in “acquisition, use, and disposition of property, particularly real estate” (Kauper & Ellis, 1973, p. 1500). Legal personage as a corporation is, thus, a desired status by many Catholic institutions. Because of variances and lack of consistency among these 52 different jurisdictions, how the Church has established and continues to establish legal personage under civil law in order to retain property is itself varied and lacks consistency (Asdorian, 2006; Manny, 2000).

There exist two major reasons for which the civil structuring for Church ownership of goods has been accomplished in varied ways. First, as mentioned, each state has its own corporations code that determines the classifications for corporate status within that state. Variance by jurisdiction plays a distinct role in the diversity of corporate forms that exist across the United States within Catholic educational institutions. The second major reason is the presence of anti-Catholicism in the history of the United States.

The existence of anti-Catholic sentiment has been acknowledged by several scholars (Greeley, 1977; Jenkins, 2003; Massa, 2003) and anti-Catholicism has, at different moments

in history, found expression in whether and how the Church was allowed to own property under the civil law of distinct jurisdictions (Dignan, 1935). Dignan noted that, during the 16<sup>th</sup> century, when the American colonies were in their infancy, the Roman Catholic Church had been stripped of juridical status under the reign of Queen Elizabeth I of England that the charter for the colony of Virginia reflected by banning Catholics, branding them “popish recusants” (p. 3), from holding positions in government. He also wrote that laws had remained in effect hindering bishops from holding property in the State of Michigan until 1897 and that, in post-Civil War Missouri, provisions allowing for religious incorporation had been removed from the new constitution ratified in 1865. Asdorian (2006) found that, within the jurisdiction of the Commonwealth of Virginia<sup>6</sup>, churches were not allowed to incorporate until 2002 when the prohibiting statute was found to be unconstitutional on the grounds that it hindered the freedom afforded by the Establishment Clause. Throughout the 17<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> centuries, ownership of property by the Church was, at times, forbidden in some jurisdictions, while the way in which the property was itself titled or vested within public records of land was varied (Asdorian, 2006).

*Benefits Obtained by Virtue of Incorporation.*

Incorporation is not required by any civil authority in the United States. Catholic institutions, whether high schools or other, are able to exist without having a distinct corporate identity under United States civil law (Gallin, 1996), yet, there are distinct benefits to holding legal personage as a corporation. As mentioned in Chapter I, the latter part of the 20<sup>th</sup> century witnessed a change in the legal environment surrounding charitable institutions, for such organizations, including hospitals and schools, enjoyed charitable immunity from

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<sup>6</sup> Virginia refers to itself as a “Commonwealth” as opposed to a “State”, a reflection of its history.



legal suits because they were seen as making a contribution to the greater society (Asdorian, 2006). Gallin (1984) noted well the change, having stated,

Liability in the law courts of the land rests on legal power and responsibility, not on mutual understandings and years of familial practices to which both trustees and communities may have agreed. In our litigious society, there must be clarity and precision as never before. The one who “controls” an institution is the one held responsible.... (p. 8)

The 1990s witnessed the dismantling of the immunity statutes which had protected most charitable institutions from most lawsuits (Mawdsley, 2006; Moots & Gaffney, 1980; Shaughnessey, 1988), and the 2000s beheld the disastrous opening of the sexual abuse crisis within the Roman Catholic Church. These two matters, in consort, have affected recent movements in the incorporation of Church entities.

Other reasons have been mentioned as benefits of separate incorporation, including its assistance in clarifying questions of property ownership and institutional control (Moots & Gaffney, 1980). It enhances the confidence of donors in the corporation, demonstrating that any donated funds will not be distributed to any other Church or religious institute corporation (Harrington, 1999). Scholars have specifically recommended it for religious congregations to increase ease of administration between different apostolates (Maida & Cafardi, 1984), for corporate status enables each institution to govern itself according to its own policies designed in consort with the requirements of state and federal authorities (Wilson, 2003). Individual corporate structures further lessen the impact of direct religious authority, potentially making funds available from government sources (Harrington, 1999; Manny, 2000; Stanford, 1965).

#### *Non-Profit Corporations and Tax-Exempt Status*

Non-profit corporation status and tax-exemption are very closely linked. Hopkins (2010) stated that while the strong majority of non-profit entities also meet the requirements

for tax-exemption, there still exist constructs like mutual benefit corporations that are non-profit but not tax-exempt. A country club would be an example of a mutual benefit corporation, in which the membership, a closed, non-public group, is the beneficiary of the organization. A country club does not intend to make a profit that would be distributed to members and, further, it operates specifically for its members and not for the good of the general public.

Incorporated Catholic secondary schools are non-profit and tax-exempt, and such exemption is granted by the Bureau of Internal Revenue and classified by the Internal Revenue Code (IRC), the set of statutes overseeing all things regarding taxation, as 501(c)(3) corporations. These corporate entities are defined by the IRC as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation..., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. (IRC, §501(c)(3))

Important to note is the fact that this section of the IRC includes charitable, scientific, and educational purposes as well as religious entities. Thus, private Catholic religious-sponsored secondary schools are eligible for tax-exemption under this portion of the IRC by virtue of their functioning with a religious and educational purpose. Not only would this designation within the IRC include private Catholic religious-sponsored secondary schools, but it would also include the corporations of (arch)dioceses, as well as those of individual provinces of religious congregations.

On March 25, 1946, the Department of the Treasury granted tax-exempt status to all institutions included in *The Official Catholic Directory* (OCD) through the Group Revenue Ruling to the United States Conference of Catholic Bishops (Fitzgerald, 1985). “The Group Ruling allows for the exemption from federal income tax of all Catholic institutions listed in *The Official Catholic Directory* for that year” (P.J. Kenedy & Sons, 2005, p. A–6). The Directory is the means by which the USCCB maintains responsibility for annually updating the Group Ruling. Each year, organizations are added and deleted to reflect the actual situation of officially Catholic institutions. Although the Group Ruling of the USCCB only legitimately covers exemption from federal taxation, Catholic organizations and other non-profit entities may apply for similar exemption from state and local taxation. The strong majority of institutions included within the Group Ruling would find themselves classified within the Internal Revenue Code’s 501(c)(3) classification.

By seeking and obtaining non-profit status, an organization has publicly avowed that any surplus revenue from operation is not distributed as dividends to any constituency inside or outside the organization, but is instead re-committed to the same services provided by the non-profit itself (Burton, 2011; Gale, 2009; Phelps & Lehman, 2004d). Furthermore, Burton also noted that if a non-profit organization were to profit from activities unrelated to its stated mission, as delineated in its Articles of Incorporation, those profits would be liable to taxation at the same level of a commensurate stock-holding corporation. This precedent was determined by the court case *Mueller Co. v. Commissioner* which involved the operation of Mueller Macaroni Co. by the New York University Law School, the first time abuse of tax-exempt status was litigated (Rothenberg, 1961).

By granting tax-exempt status, the civil government recognizes a corporate entity for “performing an activity that relieves some burden that would otherwise fall to federal, state,

or local government” (BoardSource, 2010, p. 12). Witte (1991) indicated that church organizations as non-profit corporations have been described within many court cases as assisting the state by “dispens[ing] social benefits” (p. 388). Catholic non-profit corporations, including (arch)dioceses, hospitals, schools, and other social service agencies, being founded with the mission of the Gospel, are charitable or eleemosynary by nature (Catholic Health Association, 2007; Maida & Cafardi, 1984). The Roman Catholic Church most certainly participates prominently in assisting to relieve this burden of the civil government.

Even though diverse types of tax-exemption for such entities have existed since the colonial era, tax-exemption of church-related corporations, regrettably, has been disputed by politicians and legal experts at various moments over the course of American history, (Kauper & Ellis, 1973; Witte, 1991). During the presidency of Ulysses S. Grant, the question of tax-exemption of sectarian (which would include Catholic) organizations was a topic of great debate on the federal level. President Grant (1875), in his final State of the Union Address in December 1875, forcefully recommended to Congress that it make no provision for tax-exemption, as well as also provide no financial assistance whatsoever to any sectarian institution.

Following promptly upon this request, James G. Blaine, a Republican Congressman of Maine proposed an amendment to the U.S. Constitution, intending to clarify the principle of separation between church and state (DeForrest, 2003). In the Senate, where the proposed amendment failed, debate even occurred concerning the infallibility of the Pope (Bradley, 2007); the First Vatican Council (1869-70) had only recently promulgated this doctrine. The “Blaine Amendment”, as the proposed measure came to be called, was perceived as being anti-Catholic, and it eventually failed to gain the two-thirds majority

needed to be enacted (Klinkhamer, 2003). Although the Blaine Amendment failed on the federal level, between 1877 and 1917, 29 states adopted portions of it within their own state constitutions (Witte, 1991).

Modern legal writers have continued to question, on the basis of constitutionality, whether or not tax-exempt status should be maintained for church-related corporations (R. Lee, 2000; Witte, 1991). Witte even went so far as to suggest that churches voluntarily renounce their exemption from taxes as a gesture towards their having become “too mercenary, too opulent, and too self-indulgent” (p. 415). In contrast, however, there is a sense that in tax-exemption there exists a “benevolent neutrality” (p. 414), inasmuch as the taxation of religious institutions could be deleterious to church-related institutions.

Opponents of church-related tax-exempt status have increased the scrutiny surrounding the illegality of tax-exempt organizations engaging in political activity, for this is a way in which it is easy for a tax-exempt organization to be stripped of its tax-exempt status (R. Lee, 2000; Phelps & Lehman, 2004d). All tax-exempt institutions are forbidden to endorse political candidates.

For Catholic corporate entities, the classification of tax-exemption is perceived to hold greater benefit than merely being relieved from various civil taxations. Hopkins (2010) considered that the possession of tax-exempt status by an organization is to be of benefit to them in obtaining greater support of various public constituencies; this is evident in that corporate and individual benefactors of tax-exempt organizations themselves receive the favor of tax incentives for their contributions to such organizations (Burton, 2011).

The canonical and civil dual-identity of Catholic organizations likely will continue to remain a major part of the governance of these institutions for the unforeseeable future. Furthermore, those responsible for the creation and implementation of governance

structures of individual private Catholic religious-sponsored secondary schools, or that of other Catholic institutions, must determine for their respective institutions, a structural relationship that takes into account their apostolate's citizenship in both the civil and the canonical realms. Although these responsible parties have continued to be informed by experts, scholars, and practitioners of Catholic governance, the topic of the true relationship between the civil and canonical identities has persisted to be a source of great debate.

### The McGrath/Maida Debate

In his dissertation study of the governance of Jesuit secondary schools in the United States, Cody (1980) stated that the examination of the evolution of governance, Ownership, and Control on the college and university level is necessary to an investigation of governance, Ownership, and Control on the secondary level. The central study which Cody addressed was that of Msgr. John J. McGrath (1968), a work which ignited great debate among religious congregations, Canon and civil lawyers, and their educational and healthcare ministries. Many scholars of Catholic educational governance and Sponsorship have noted the influence that McGrath has had in shaping both the conversation and the actions of Catholic school governance within the past few decades (Beal, 2006; Conlin, 2000, 2001, 2002; DiPietro, 2006; Gallin, 1996, 2001; Golden, 2006; Grennan, 1969; Kennedy, 1990; Maida & Cafardi, 1984; Maida, 1973a, 1973b, 1975, 1980; Morrissey, 2006; O'Grady, 1969; Stamp, 1993; Zorzi, 1995).

### *McGrath and His Thesis*

The McGrath (1968) study, *Catholic Institutions in the United States: Canonical and Civil Law Status*, arrived at a pivotal moment in the history of Catholic institutions in the United States. Vatican II had ended only a few years earlier, the Church was still waiting on the new

Code of Canon Law, which would take another 15 years to promulgate and enact, and institutes of religious life began to change in revolutionary ways. The study itself was funded by the Raskob Foundation for Catholic Activities, Inc., through The Catholic University of America, and supported by the Catholic Hospital Association (CHA) and the NCEA (McGrath, 1968). NCEA's impetus for producing this study was the *Horace Mann* case (Buetow, 1970; Preville, 1989) that was perceived by Catholic universities as a warning to not appear sectarian for fear of losing access to federal and state monies.

Throughout his professional life, John McGrath was a well-reputed scholar. He was a civil attorney, as well as a canon lawyer, and in 1955 he was admitted to practice before the Supreme Court of the United States, the first priest to do so. McGrath was an administrator and a professor in the School of Law of The Catholic University of America in the years prior to the Second Vatican Council. By all means, given his educational background and professional experience, at the time of the publication of his study in 1968, he was considered to be an expert on legal matters pertaining to United States Catholic institutions. McGrath's last position was as President of Saint Mary's College in South Bend, Indiana, the sister-institution of the University of Notre Dame; he died prematurely of a heart attack in June 1970 (Conlin, 2000, 2002).

During the brief period between the publication of his study in 1968 and his death in 1970, McGrath was a frequent speaker for leaders of American Catholic institutions, including both schools and hospitals (Conn, 1991). McGrath questioned what the true canonical relationship of a Catholic institution was to its sponsoring religious congregation within the structure of American Corporate Law, as opposed to the merely assumed relationship. Conlin (2002) provided a succinct summary of the McGrath Thesis: "...at the moment of an apostolate's civil incorporation, the incorporated institution ceased to be

ecclesiastical goods” (p. 83). McGrath averred that these institutions and their goods, by virtue of their being granted juridic personage by the civil government, belonged to the public whom they served and no longer were a part of the Church. Furthermore, Canon law had no bearing upon them (McGrath, 1968). The significance of this claim is that, if McGrath was correct, all the assets wrapped up in the property and reserves of an individual Catholic institution were basically (and unknowingly or unintentionally) forfeited by any public juridic person when they separately incorporated any one of their apostolates.

The historical milieu of Catholic institutional governance, into which the McGrath study arrived, was a wholly unique set of circumstances. First, the Second Vatican Council, with its ecclesiological overhaul of centuries-old doctrines, left many constituencies within the Church fumbling to make sense and put into practice the new understanding that emerged. Important decisions were made with a zealous desire to embrace the spirit of Vatican II, yet they may have been made based upon an immature understanding of the Council’s objective. Second, Catholic educational institutions were themselves overflowing with students; the tertiary institutions were experiencing student populations larger than ever, and the Catholic grammar schools and high schools were teaching the baby-boom generation. Third, due to factors, such as the G.I. Bill and other new sources of government funding, Catholic tertiary institutions were resourcing funds in ways that they never had and were convinced that they would not be able to survive without such funds. Finally, and most importantly, at the time of the advent of the McGrath study, the Church was in a canonical interregnum period, for the 1917 Code of Canon Law had been functionally deposed by Pope John XXIII in 1959, and a new one would not be in place until 1983. In practice, groups facing problems requiring governance responses, knowing full-well that the



old Code was truly obsolete, and being unable or unwilling to wait for a new Code, turned elsewhere for solutions to their Ownership and Control issues.

The McGrath Thesis had a “virus-like spread through Catholic institutions” (Conlin, 2000, p. 94) and the “civil legal toothpaste had been canonically invalidly squeezed from the wrong tube” (2002, p. 96). Some institutions, intending to impair or even end the relationship they had with their sponsoring religious congregations, utilized McGrath’s theory of civil incorporation as an impetus to make desired changes (Coriden & McManus, 1980). Jacqueline Grennan (1969) of Webster College declared her allegiance to McGrath, and, further, Father Reinert did not seek permission to alienate Saint Louis University from the Jesuits because of his own adoption of the McGrath’s Thesis that alienation was unnecessary due to incorporated entities not being Church property (Gallin, 2001).

### *Opponents to McGrath*

Opposition to the McGrath Theory was slow to start, for those engaged in the debate over the Ownership and Control of Catholic institutions looked upon it favorably, and the theory did not gain the immediate attention of journals of civil or Canon law (Kennedy, 1990). “Once a number of institutions followed the McGrath Thesis, many others quickly followed suit so as to keep pace with the trendsetters and leaders” (Conlin, 2000, p. 82). Kennedy (1990) surmised that it gained popularity among practitioners due to it having been covered in *America* magazine as opposed to more scholarly publications within the legal or educational sphere.

Adam Maida, at the time a canonist for the Diocese of Pittsburgh, Pennsylvania, and later Cardinal Archbishop of Detroit, voiced the most vehement opposition to the McGrath Thesis; his opposition was also the first (Golden, 2006). What has become known as the McGrath/Maida Debate to scholars of Catholic institutional governance began with the

publication of an article by Maida, *Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities*, in 1973. Interestingly, this was three years after McGrath's death, so McGrath never had the opportunity to face his interlocutor in the great debate upon the canonical status (Ownership and Control) of separately incorporated Catholic institutions.

Within the article, Maida (1973b) scolded his own colleagues, stating, "To this day, to the best of my knowledge, his [McGrath's] theories have not been rebutted, his recommendations have received wide acceptance, and the consequences have been most serious for the Church" (p. 275). He decried the stance on the relationship between Canon and civil law proposed by McGrath, writing:

Thus, what Henry VIII did with a sword in England, what Napoleon did with his armies in France, what Lenin did with a political philosophy, McGrath has attempted to do, and has succeeded in many cases, with a legal theory. (p. 275)

The remainder of the article continues not only to thoroughly criticize the McGrath position, but also to lambast McGrath with such aggression as to almost indict him of being the anti-messiah of Catholic institutions in the United States.

Maida (1973a, 1973b, 1975, 1980; Maida & Cafardi, 1984) in his later publications, while he mitigated his direct hostility toward McGrath, stated a clear case for criticism of McGrath's theory. Maida asserted a position that perceived Catholic institutional governance as a type of dual-citizenship wherein Catholic institutions belong to both civil and canonical worlds. Neither the civil nor the Canon invalidates the other (Maida, 1980). McGrath did not consider this to be possible, and he did so from the basis of the Pio-Benedictine Code of 1917.

McGrath has continued to be criticized for his limited and simplistic view of the interaction of Canon and civil law as they pertain to church institutions. In that McGrath

claimed that a Catholic institution once civilly incorporated ceases to be canonically related to the Roman Catholic Church, his detractors noted that this claim must also be extended to any civilly incorporated church entity. This would mean that because provinces of institutes of religious life are themselves incorporated under United States civil law, they themselves ceased to be part of the Catholic Church upon incorporation (Bassett, 1999; Conlin, 2000, 2002). McGrath opponents have noted the fact that authorities within the Roman Catholic Church would have never intended to allow alienation of church property and, furthermore, the disassociation of Church institutions from the church itself, by allowing the individual incorporation of entities within the Church (Bassett, 1999; Conlin, 2000, 2002; Dunn, 1995; Gallin, 1996).

The Church hierarchy finally entered the debate on October 7, 1974, with a letter addressed to John Cardinal Krol, then Archbishop of Philadelphia and President of the Bishops Conference of the United States, from Archbishop Jean Jadot, Apostolic Delegate to the United States, and Gabriel-Marie Cardinal Garrone, Prefect of the Sacred Congregation for Catholic Education (Golden, 2006; Stamp, 1993). The letter unmistakably stated its emphatic rejection of the McGrath Thesis declaring, “We wish to make it clear that this thesis has never been considered valid by our Congregations and has never been accepted” (O’Connor, 1983, p. 370). As a result of this letter and a joint commission on the dispute held by the conference of American bishops and including representation of American religious congregations, the bishops endorsed Maida’s position that incorporation of Church entities does not alter the canonical status of such institutions and render them non-Catholic (Golden, 2006).

McGrath’s work “had the positive effect of bringing to the boards of Roman Catholic institutions a far better representation of the (lay) church community, that is, of the

church itself. This was and is in full harmony with sound Catholic ecclesiology and the doctrine of the Second Vatican Council” (Coriden & McManus, 1980, p. 146). While the work of McGrath undeniably caused great controversy and dissent within the realm of Catholic institutional governance, his work also seemed to have the positive effect of bringing to light existing and inconsistent vagaries surrounding issues of Ownership and Control as related to Canon and civil law.

### Related Literature

The preceding sections of this chapter have used the existing literature to shape the majority of the background of private Catholic religious-sponsored secondary school governance. This section on related literature is designed to complement the prior overview by reviewing other items within current and recent scholarship related to the topic of governance relationships between religious congregations and their local apostolates’ boards of limited-jurisdiction. Although some of the works that are discussed within this section have been previously referenced, the discussion of the included works is upon the purpose, nature, and conclusions offered by these studies.

In completing his own review of literature on Sponsorship in Catholic primary and secondary schools, Mueller (2000) attested to the fact that the many of the works come from the realms of health care and tertiary education. This is consonant with the fact that the alteration of university and health-care governance structures began a few decades before such changes were implemented within the secondary school realm.

The role of Catholic professional associations has been instrumental in furthering the discussion and research on governance, Sponsorship, and the role of juridic persons: in particular, the National Catholic Educational Association (NCEA), the Association of

Catholic Colleges and Universities (ACCU) and their journal *Current Issues in Catholic Higher Education*, the Catholic Hospital Association (CHA) and their publication *Hospital/Health Progress*, and finally the Canon Law Society of America (CLSA), publisher of *Canon Law Digest* and *CLSA Proceedings*. Indices provided on the websites and within the publications of these associations were used to ensure as thorough a view of the existing literature as possible.

The related literature contained in this section is organized into five sections that relate to their context or major area upon which they focus: Demographical Studies, Catholic Health Care and Canon Law Studies, Catholic Tertiary Education, Catholic Primary and Secondary Education, and lastly, Non-Profit Governing Board Literature.

### *Demographical Studies*

The collection of demographical data is recognized as a usual and common task for those studying the current state and trends of education in the United States. Copious amounts of data have been collected on all levels of Catholic education throughout the years, and organizations such as the NCEA, which annually collects such data (McDonald & Schultz, 2010, 2013; Walsh, 2010), and the ACCU have supported research aimed at gathering the demographics of Catholic schools over time (Convey, Haney, National Catholic Educational Association, & National Association of Boards of Catholic Education, 1997; Convey, 1995; McDonald & Schultz, 2009, 2010, 2013; Morey & Holtschneider, 2000; Stamm, 1981, 1993; Taymans & Connors, 2009; Tracy, 2001). Although demographical data are of great importance within research, such data are also the most subject to fluctuation and may themselves be true only for a brief moment in time (Fall, 2004). Also, it is likely that many of these reports could have included heavier statistical analysis; however, the members of the audience who would find this research useful are not themselves primarily

academic researchers or statisticians but, instead, are practitioners and professionals engaged in board governance.

The most recent data on boards within Catholic secondary schools come from McDonald and Schultz (McDonald & Schultz, 2013) and Tracy (2001). McDonald and Schultz, reporting on both primary and secondary Catholic schools, stated that 86.4% of Catholic schools have “an existing school board, commission, or council” (p. 11); this included all such groups that would serve in an advisory, consultative, or jurisdictional manner. Tracy, specifically focusing upon Catholic secondary schools, conveyed that “nearly all Catholic high schools have a school board”, and she accompanied this with the datum that 60% of private Catholic religious-sponsored secondary schools have policy-making boards (p. 10).

Consistency in the reporting of demographic data, especially in reference to common usage, is a necessity in research (M. Lee & Schuele, 2010), yet recent publications reporting demographical data of Catholic primary and secondary school governance do not share common terminology. As an example, research published by the NCEA during the past decade has categorized all primary and secondary Catholic schools by their juridic person status, though, erroneously, has mislabeled such as their “governance” (Taymans & Connors, 2009, p. 5; Tracy, 2001, p. xii) or “sponsorship” (McDonald & Schultz, 2013, p. 10). Further, they have also differed on whether there are four (McDonald & Schultz, 2013; Taymans & Connors, 2009) or five (Tracy, 2001) categories. Table 1 displays these categories. Most troublesome of these discrepancies is seen in the most recent statistical report of McDonald and Schultz (2013), wherein the researchers combined the two categories of private Catholic schools distinguished by Tracy (2001) into their singular category, “Private” (p. 10). Thus, inconsistency in terminology in use within dialogue

Table 1

*Categories for Catholic Secondary School Juridic Person Status*

Tracy (2001) “governance”	Taymans & Connors (2009) “governance”	McDonald & Schultz (2013) “sponsorship”
Diocesan	(Arch)diocesan	Diocesan: sponsored by the arch/diocese
Parochial	Parochial or inter-parochial	Parish: sponsored by a single parish church community
Interparochial		Inter-parish: Sponsored by two or more parishes
Private: Religious-Community Sponsored	Private, religious [ <i>sic</i> ] congregation sponsored/owned	Private: sponsored by a religious order or a private corporation
Private: Independent	Private, independent	

surrounding the governance of Catholic educational institutions most certainly contributes to the ambiguity in understandings that exists in application of such structures.

While most demographical studies on Catholic education have addressed the topics of governance and boards in an ancillary way, there have been other studies that have specifically focused upon the implementation of boards within Catholic primary and secondary education. *Benchmarks of Excellence* authored by Convey and Haney (1997) gathered data on boards, commissions, and councils as used at individual schools, as well as within diocesan offices of education. The study used survey data from individual elementary and secondary schools, as well as offices of diocesan departments of education. The 1997 study expanded upon the previous work of Convey (1995). Convey and Haney explored the elements of board governance, such as structure, duration of existence, size, membership, meeting schedule, committee structures, areas of responsibility, and to whom such boards

were accountable. The authors found that effective elementary and secondary school boards have the following distinguishing characteristics, listed in Table 2, which they called “benchmarks” or “standards” (p. 44).

Table 2

*Benchmarks of Excellence or Distinguishing Characteristics of Effective Boards (Convey et al., 1997, p. 44)*

Benchmark of Excellence	
1	Boards have members that include business people and alumni.
2	Boards take ownership of issues under their jurisdiction.
3	Boards are involved with issues pertaining to budget, policy, mission, philosophy and planning.
4	Boards have goals, review or update them annually and use them as a basis of self-evaluation.
5	Boards have actively working committees: finance, nominating, policy, marketing, development, facility, and executive committees.
6	Boards have contact and communication with their constituencies.
7	Boards assess their progress periodically.
8	Boards have effective meetings.
9	Boards are dedicated and committed to the school's mission.
10	Boards train their new members and provide annual inter-service for all members.
11	Board's main achievements are in the areas of development/fundraising, budget/finance role stability, Long-Range planning, marketing/public relations/recruitment, and plant upgrade.

Within data from Catholic school boards, there also exist data that have been gathered on jurisdictional or policy-making boards. The dissertation study accomplished by former Jesuit Frank Joseph Cody (1980), during the late 1970s, explored policy boards in Jesuit secondary schools. Cody surveyed all existing Jesuit high schools in the United States (n=47) in order to determine which schools had “bona fide policy boards” as opposed to



“pro forma corporate or advisory” which he titled “non-policy” (p. 82). This was established by means of an initial questionnaire, and by means of a second questionnaire Cody determined that there were 32 Jesuit secondary schools that had bona fide policy boards. He then targeted this population in addressing the purpose of his study: “to describe the current status of policy boards in Jesuit secondary schools in the United States” (p. 174). Cody found that there was a “wide variety of governance patterns” (p. 176) that included boards that were solely advisory to those with full jurisdiction over policy, those that were completely composed of Jesuit members, to those that were lay in majority, and further governance structures made up of a single board or of two different boards. Most pertinent to this study, Cody discovered that Jesuit superiors had an impact upon the boards in many ways “including appointment of members to the board, sitting on the board of trustees, exercising various forms of veto power, and having ultimate authority over the decisions of Jesuit members” (p. 177).

Demographical studies on board governance have also been completed within Catholic colleges and universities. As previously mentioned, distinct from Catholic elementary and secondary schools, the strong majority of Catholic tertiary institutions were founded by religious congregations and not dioceses. In his first study on models of governance in Catholic higher education, Martin J. Stamm (1981, 1993) investigated the changes that had occurred within governing boards as a result of the Second Vatican Council’s declarations on the laity and on religious life. Although he did not mention such, the McGrath/Maida Debate was in full bloom; Stamm included both Maida and McGrath in his “selected bibliography” (pp. 48-50). Stamm accomplished his purpose through the analysis of the governing documents of 134 Catholic colleges and universities. He classified his data on existing governance structures into seven “corporate governance models” (p. 40).

These structures are addressed in the later section on Membership Corporations. Stamm also gathered data on the current level of inclusion of lay people within boards, as well as on the particular functions and authority possessed by boards within Catholic tertiary education.

Having been commissioned by the ACCU, Stamm (1993) generated a follow-up study and, gathering data via survey, he found a number of shifts had occurred since his original study. Stamm discovered an increase from 91% in 1977 to 96% in 1992 of institutions that are incorporated separately from the founding or sponsoring religious congregation. He also found that 98% of all boards have voting lay members and that lay people comprised 77% of all trustees within Catholic university governing boards. Lastly, and most interestingly, the college presidents or leaders perceived that it was specifically the laicization process of their colleges that was of great benefit, and what they believed saved them from collapse.

A further study within the realm of Catholic tertiary education is that of Morey and Holtschneider (2000), *Relationship Revisited*, wherein the researchers examined the relationships of U.S. Catholic colleges with their founding religious congregations. The importance of the Morey and Holtschneider study within the research at hand is that the Morey and Holtschneider study addressed governance relationships on the college level, while this research intends to address such relationships on the level of private secondary education.

The Morey and Holtschneider (2000) study was designed to respond to a “perceived pattern in Catholic higher education”, as well as to “determine if the governance changes at these institutions were part of a larger trend” (p. 8). In order to resource data on the relationships of the two above parties, the study identified a two-fold population: religious superiors who represented the religious congregations and the presidents of the Catholic

colleges. The authors stated that these two groups of people are “the most obvious bearers of institutional legacy and most intimately knowledgeable about how the congregation and college relate around it” (p. 9). Members of boards of trustees from the colleges were not invited to participate within the study; this was a distinct oversight in the design of this methodology.

As with many studies that address the topic of religious congregations in the United States, the Morey and Holtschneider (2000) study joins them in the bleak picture that is often painted of the aging of religious congregations. The researchers drew six conclusions from their research. The first conclusion was that Catholic higher education will continue to exist without any “significant involvement of religious congregations” (p. 31). The second conclusion, seemingly ancillary to the previous conclusion, was that the congregations and colleges will drift apart until there is only an “historical or nostalgic” (p. 32) connection. The third conclusion was that religious charisms will perdure at an institution as determined by the laity present. Even when religious institutes develop programs that provide formation for their lay colleagues, the fear may be that this may only last through the current generation of lay people present (those who knew the members of the religious congregation). Believing that “memory cannot sustain a culture” (p. 33), the researchers fourth conclusion was that some Catholic universities will move away from a particular charism and choose to become “universally Catholic” (p. 33) rather than particularly (charism) Catholic. The fifth conclusion, that remains very similar to the previous two conclusions, was that the laity of the future, not the current members of the sponsoring religious congregation, will determine the survival of the particular congregational identity. The final conclusion was that the attempt to change governance structures at Catholic colleges and universities is, “at best, a stop-gap measure, and at worst, a diversion from the real task at hand” (p. 37).

The continued collection of demographical data on Catholic educational institutions serves two distinct purposes: first, it describes the current state of such institutions by measuring their numerous qualities and variables, and second, through the regular collection of demographical data, existing trends are able to be recognized, addressed as necessary, and re-examined. These data provide an illustration of Catholic education and its various levels unable to be resourced by other means.

*Catholic Health Care and Canon Law Studies*

Catholic Health Care has also suffered many of the same difficulties faced by Catholic educational institutions (Catholic Health Association, 2007). Gonsorcik (2001) presented a complete overview of the history and development of health care apostolates in the United States. The works of Conlin (2000), Dunn (1995), and Gonsorcik are referenced within the literature pertaining to Sponsorship and governance relationships of healthcare ministries. These works are Canon law dissertations and, as such, they employ document-based analysis. Canonist authors conventionally have not described the specifics regarding the applied methodologies of their studies. There exists a segment of literature within Canon law studies that addresses sponsorship and governance relationships between religious congregations and their hospital ministries that is pertinent to the study at hand.

Father Daniel Conlin (2000, 2001, 2002) has made a number of contributions to research and discussion on topics of religious congregational Sponsorship, Canon law, and governance. His research, including his dissertation, has approached the topic from the perspective of Catholic health care ministries, and this is evidenced in his dissertation study which addressed matters of Canon and civil law relating to the alienation of property within Catholic health care apostolates in the United States. Within this work, Conlin offered an expansive treatment of both the McGrath Thesis and controversy, as well as of the

development of the concept of Sponsorship within Catholic health care ministries. His contribution to the knowledge on the McGrath/Maida Debate has been duly noted above. His treatment of the topic of Sponsorship holds an important place within the greater discussion, as he noted that the term is used as a “catch-all term” (p. 124) and is oftentimes substituted for the notions of Ownership and Control. Conlin critiqued the opinion of Maida (Maida & Cafardi, 1984; 1973a, 1973b, 1975, 1980), who believed that the term stemmed from its presence within the sacraments of initiation of the Roman Catholic Church, by appealing to the difference in usage between the canons on the sacraments and the themes of *Book V: Church Property* of the Code of Canon Law. He demonstrated the inadequacy of the argument of Grant (M. K. Grant & Kopish, 2001a, 2001b; M. K. Grant & Vandenberg, 1998; 2001a, 2001b, 2003), who posited that Sponsorship was related to the holding of reserved powers, by noting that reserved powers were the means by which a public juridic person maintained appropriate control over an apostolate because of its ownership under Canon law. Conlin concluded that the future of Sponsorship will require a redefinition of Sponsorship, and he proposed that this meant an openness to lay Sponsorship, even likely without the presence of religious. Regrettably, Conlin failed to fully define or even posit a definition of Sponsorship, for he only noted that the sponsor doing the Sponsorship would need to change (from religious to lay). There was no clarification of what Sponsorship actually is.

In an earlier study, Sister Beverly Katherine Dunn, SP (1995) addressed the issue of Sponsorship of Catholic institutions from the perspective of her own religious congregation, the Sisters of Providence, a group devoted to the apostolate of health care. She stated that health care had “grown far beyond the scope of its sponsoring bodies in terms of the number of people, geographical extent, and complexity, to say nothing of the financial

resources involved” (p. 135). In agreement with Conlin (2000) on the impreciseness and current misuse of the term Sponsorship, Dunn encouraged each individual congregation to standardize for itself the term “Sponsorship” along with other frequently used and pertinent terms by using “accurate and consistent language” (p. 193). This recommended operationalization, while intending to create clarity within the governance relationships between each individual religious congregation and its apostolates, did not solve the problem of the general nebulosity of the term “Sponsorship” across Catholic apostolates, for, even if accomplished, individual people and institutions likely will be using the same term with entirely different meanings.

Another researcher, Father Patsy James Gonsorcik (2001), studied the juridic person status of individually incorporated Catholic health care institutions in the United States. Different from many other studies within Canon law, Gonsorcik analyzed the canonical statutes (the canonical equivalent of the bylaws of a civil corporation) of two Catholic healthcare systems as a part of his research; one was erected as a public juridic person and the other erected as a private juridic person. He recognized that existing governance structures were a response to the changing situations of the present and recent past; however, he also noted that an openness to change such structures was required inasmuch as the current means may not continue to address situations that arise in the future. Gonsorcik warned that total reliance upon procedures designed to evaluate the mission of an individual apostolate “cannot be the final measure” (p. 241). Furthermore, because of the ever-evolving nature of healthcare, especially as regulated by civil authorities, “Catholic healthcare systems could find themselves in the position of not being able to fulfill their mission” (p. 241). Lastly, as mentioned earlier within the section on the private juridic person and the public juridic person, Gonsorcik, originally a proponent of the private juridic person, called

for either the elimination or redefinition of this category due to there being “insufficient trust of this genre by the hierarchy [of the Church]” (p. 239).

Studies completed within the realms of Catholic Health Care and Canon Law have demonstrated that the issues surrounding the governance relationships between Catholic educational institutions and their sponsoring religious congregations are not completely unique to those parties. Knowledge resourced through future work accomplished within these areas by experts within Canon law and Catholic health care will hopefully continue to transfer, at least in part, to similar situations faced by Catholic educational institutions.

### *Catholic Tertiary Education*

Cody (1980), in his research on policy boards in Jesuit secondary schools, made explicit the connection between the governance models employed within both Catholic secondary and tertiary education. Thus, an exploration of pertinent studies conducted within Catholic tertiary institutions is appropriate within the related literature review of this study. Since the promulgation of *Ex Corde Ecclesiae* by Pope John Paul II in 1990, greater attention has been given to the Catholic identity of not only Catholic colleges and universities, the intended audience of the document, but also to its potential indirect influence upon Catholic secondary schools (Heft, 2001, 2011). Noted scholars of Catholic tertiary education, such as Hellwig (2003, 2005), Gallin (1984, 1992, 1996, 2001, 2003), and Burtchaell (1998), have attested to this phenomenon through the topics of their research and writings.

Research studies addressing Catholic identity within Catholic educational institutions frequently make, at least, a passing mention of governance and boards of trustees; however governance is not the crux of their research. As an example, Morey and Piderit (2006), within their study on the Catholic identity of Catholic colleges and universities, stated that

trustees have a substantial role in determining the Catholic identity of the institution. As the holders of “ultimate responsibility for a university” (p. 289), the boards of trustees are the “appropriate bodies to judge whether their institutions are sufficiently Catholic in identity, character, and mission” (p. 305). They defined the current state of Catholic tertiary education as being affected by a “cultural collapse” (p. 245), caused by the rapid decline in the religious congregations that operated these institutions, and in dire need of a Catholic cultural rehabilitation; Morey and Piderit’s perspective is greatly pessimistic. Sponsorship and governance relationships were an ancillary topic for this research in its focus upon Catholic identity.

In a qualitative study of eight Catholic colleges that had been founded by religious congregations of women, Morey (1995) studied the current role and “congregational legacy” (p. 12) of eight colleges and their related congregations of sisters. Based upon interviews conducted with the congregational leaders and college presidents of the eight institutions, Morey noted that “congregations in colleges share legacies that have common historical roots, but they do not always agree about how they understand those legacies or what role those legacies should play in the life of the college” (p. 194), for she found that congregational leaders and university presidents did not agree upon which role should be held by members of the founding congregation. Most importantly, she identified six roles that are held by the sisters: Sponsors, Trustees, Employees, Keepers of the Legacy, Financial Supporters, and Bearers of Catholic Identity. Even given these six common roles, Morey found that the relationships that exist between congregations and colleges varied widely both in their extensiveness and in their tone, for there were some relationships that were close, fond, and harmonious while others were “distant and almost benignly indifferent” (p. 237).



One study on Catholic colleges and universities addressed an individual governance relationship between the Sisters of Mercy and College Misericordia (now Misericordia University). Hanlon (1997) used a survey methodology to resource data from trustees and sisters who had served at Misericordia for a total of six years during the past two decades (n=42). As the study involved the particular situation of Misericordia, Hanlon directed some recommendations toward the college noting that clarification of the role of the Corporate Membership, a reevaluation of the board orientation program, and a study of the current two-tiered governance structure were necessary. Hanlon also made “qualitative recommendations” (p. 142), yet never described any portion of the methodology as qualitative. Instead, Hanlon drew general historical conclusions with the current state of College Misericordia and posed a recommendation that trustees and sponsors “work together to preserve the essential character of the institution and to influence the Catholic character of the college” (p. 142). This seems a very safe recommendation to make.

The literature from the area of Catholic tertiary education that is pertinent to this study on governance relationships is generally addressed within the context of Catholic identity. The studies that have been discussed herein reinforce the important role that governance relationships have in ensuring the Catholic and congregational charism within individual ministries. Private Catholic religious-sponsored secondary schools face many of the same realities posed by the researchers within their respective studies.

### *Catholic Primary and Secondary Education*

The study of board governance within the lower levels of Catholic education commenced with the landmark dissertation study completed by Sister M. Lourdes Sheehan, RSM (1981), wherein she described the usage of boards throughout Catholic elementary and secondary schools as well as those employed within education departments of (arch)dioceses

in the United States. Sheehan specifically mentioned that boards within private religious-sponsored schools were not the subject of her study (p. 40), for she chose instead to describe the use of advisory and jurisdictional boards in parish and diocesan elementary and secondary schools.

Sheehan's (1981) research was completed prior to the promulgation of the 1983 Code of Canon Law and, accordingly, the 1917 Code was still in effect. She recognized that under that current Code, as long as schools were merely entities within parish or diocesan moral persons (the 1917 category which has become the 1983 Code's category of juridic person), clerical authority over the schools had to be maintained. Because of this, Sheehan advocated a "radical change in the traditional relationship of parish and diocesan schools to the bishop" (p. 125). Sheehan endorsed the creation of individual moral personality for all diocesan and parish schools, making them private schools with jurisdictional boards of trustees. She claimed that such a structure was similar to how each parish is related to its own diocese (p. 124). Further, these individual schools and their jurisdictional boards should be overseen by a diocesan school board that is advisory or consultative to the bishop or his diocesan superintendent of education. While Sheehan was not to making recommendations for private Catholic schools, similar structures are fitting for consideration as an option for potential restructuring of current governance relationships of private Catholic religious-sponsored schools.

Joseph Connell (1990) studied the potential effects of changing conditions on the Ownership and Sponsorship of Catholic secondary schools in Northern California. While this was and continues to be an important topic, flaws seriously mar Connell's research. Most of the shortcomings stem from Connell having entirely omitted the dominion of Canon law within Catholic education. Within his review of literature, Connell addressed the

documents of the Second Vatican Council, the United States Conference of Catholic Bishops (USCCB), and the California Conference of Bishops that address education, yet oddly, does not address Canon law. Complicating this omission, Connell defined “Ownership” as:

...assets of a Catholic school are presumably owned by one of the following entities: (1) the diocesan bishop as a corporation sole, or through a related corporation for which he has legal responsibilities; (2) a parish; or (3) a religious institute. (p. 15)

His notion of Ownership does not take into consideration the potential individual incorporation of Catholic ministries, which would affect the liability of the owning party. Connell also defined “Sponsorship” in a very broad way as “the ultimate owners and governors of the schools” (emphasis original, p. 59). This may also have caused him to not properly distinguish between areas of governance structures that address the civil or canonical aspects of each Catholic secondary school as institution.

For his methodology, Connell employed a “survey questionnaire” within a “personal interview” (p. 72). Interviewees were given multiple-choice questions with an option to comment upon each question. All sponsors (defined by Connell as including bishops, pastors, and religious superiors) of Northern California Catholic secondary schools were invited to participate in the study with 34 of 35 responding affirmatively. Based upon the data that were collected, Connell drew a number of conclusions that are pertinent to the study at hand. First, with leadership from the local bishop, there is potential value to collaboration among sponsors of Catholic secondary schools surrounding the survival of Catholic schools. Second, sponsors voiced their commitment to continuing the Sponsorship of their institutions. Third, religious congregational sponsors perceived “nontraditional models of ownership and governance” (p. 175) to be viable options for Sponsorship, but diocesan and parish sponsors did not perceive such. Fourth, religious congregational

sponsors had been employing “transitional sponsorship... as a precondition for nontraditional sponsorship structures” (p. 175). Lastly, that most sponsors had not strategized for the continuation of school Sponsorship and “lack[ed] a clear understanding of how alternative sponsorship models should replace inadequate, traditional sponsorship structures” (p. 180). Connell’s work assessed formidably the likely changes within the environment that surrounded Northern California Catholic high schools in the late 1980s and early 1990s; however, he failed to address the complete picture of Catholic school governance by neglecting areas pertaining to Canon law.

As the study at hand is examining the governance relationships between religious congregational leaders and their boards of trustees, the perspectives of religious congregational leaders on such boards will be a part of the data collected. Gregory Zielenski (1989) completed a study on “the attitudes of religious superiors toward the laity serving in the roles of teachers, administrators, and board members in religious order-sponsored/owned high schools” (p. 1). By use of a survey methodology, Zielenski found that religious superiors had a positive attitude toward members of the laity who served within their order sponsored/owned high schools. As the study examined their perspectives upon trustees, administrators, and teachers, religious congregational leaders were found to have the most positive attitude towards laity who were teachers as opposed to those who had trustee or administrative roles. Their most negative attitude was surrounding the financial cost of the laity as this had been “the largest measureable impact of the laity on the Catholic schools” (p. 116). Religious superiors “indicated an openness in allowing the school board and the principal to govern and operate the school as long as the religious order had input at the governance level” (p. 118). Most important of the findings surfaced by Zielenski was that religious superiors stated that they currently had formal input within

the school on the level of the board and governance, yet they mentioned that they had a desire to increase this role in the future. Given these findings, Zielenski recommended that sponsoring religious congregations need to create formation programs for the laity who minister in sponsored/owned schools, to authentically communicate their confidence in these lay men and women, and finally, to continually, carefully examine their current state of Sponsorship planning for any changes that may need to be made.

Two recent studies have been completed within the topic of Catholic school governance: Tavis (2010) and Walsh (2010). Sister Patricia Tavis, OP, designed a study particular to her own congregation, the Sisters of Saint Dominic of Caldwell, New Jersey, for the purpose of “examin[ing] the factors that a congregation of women religious must consider in order to continue its sponsored relationship and the extent of this sponsored relationship with its secondary educational ministries in the future” (p. 16). Caldwell surveyed 139 members (86%) of her congregation, eliciting responses on Sponsorship, sustainability, change, and their relationship with three schools in particular. Caldwell’s conclusions, due to the specific nature of the study, were strictly focused, and she stated that they were not intended by her to be generalized to other religious congregations. Two that reinforce the topic at hand in this study are that “sponsorship is a concept that is evolving” and “there are canonical and civil responsibilities that must be honored as long as the Congregation stays in a sponsored relationship with the respective secondary schools” (p. 176).

The second study, completed by Sister Mary Grace Walsh, ASCJ (2010), focused upon a very small group of schools within United States Catholic schools, private elementary schools founded by religious congregations. As of 2008, the researcher found 238 private Catholic elementary schools listed in the *Official Catholic Directory* and chose eight for her

purposeful sample that reflected different governance models, locations, and founding religious congregations (p. 82). Walsh designed fieldwork that had three parts: a site-visit, an interview with the head of school and/or congregational leader, or the leader's designate, and the collection of items that "relate[d] to the history and governance of the school" (p. 88). Walsh recommended to congregational leaders that they recommit their efforts to strengthening their individual charism at their sponsored apostolates including an audit and ongoing evaluation of current governance models. She also appealed to dioceses to allow private elementary schools to avail themselves of resources provided by their departments of education. Lastly, Walsh urged school leaders and board members to deepen their knowledge and experience with their school's founding charism and their current governance structures.

Sheehan's (1981, 1990, 1997; Haney et al., 2009; Hocevar, Sheehan, & National Catholic Educational Association, 1991) groundbreaking work surrounding the use of board governance within dioceses and the lower levels of Catholic education inspired several studies that have themselves resourced further data on governance within Catholic primary and secondary educational institutions. As the general situation of Catholic education continues to change, newer research within this level of Catholic education will be of great necessity in determining direction and strategic planning.

#### *Non-Profit Governing Board Literature*

As the most common means of governing a non-profit organization, a great amount of literature is available on the topic of non-profit board governance. These resources range from those which are more akin to manuals explaining how to design structures and accomplish governance through a board (BoardSource, 2010; Chait et al., 1996; DeKuyper, 2003; Sheehan, 1990) to materials which advocate a distinct philosophy of board governance

(Carver, 2006; Chait et al., 2005); yet, the majority of materials contain elements of both the practical and theoretical to some degree.

As board governance is not peculiar to Catholic organizations, literature on non-profit governance addresses a wider audience than Catholic, religious, or educational institutions. Organizations such as BoardSource, NCEA, and the National Association of Independent Schools (NAIS) have published materials on the design and implementation of board governance for institutions within their respective audiences. There are publications meant for the general, non-profit sector (BoardSource, 2010; Carver, 2006; Chait et al., 1996, 2005), for Catholic institutions (Sheehan, 1990), as well as for non-Catholic, independent schools (DeKuyper, 2003). It may be said that each of these authors have described a particular niche within board governance with elements that render each particularly unique within the entire spectrum. Secular board literature with its civil law focus, while potentially helpful to a Catholic institution in some ways, may not adequately address either the canonical side of governance or the implemented structures addressing such canonical elements typical to Catholic institutions.

Board governance literature attempts to define the unique role of the board within an institution, differentiating the role of the individual trustee as well as the trustees collectively, from the role of the CEO/president of the organization. Both DeKuyper (2003) and BoardSource (2010) addressed this describing the tenuous balance that aptly differentiates the two roles as well as allowing the two parties to collaborate, furthering the mission of their particular institution.

John Carver (2006) created a model of board governance called “Policy Governance” (p. 1), a comprehensive method of oversight driven by the creation and refinement of policies. Carver noted that the familiarity of the term, “policy”, was also its

weakness and that in his work he restructured the role of policy by broadening these institution-driving statements into the following four categories. Ends policies “define the reason for the organization’s existence” (p. 81) or the ultimate goal of the organization. Executive Limitations policies allow the board to proactively exercise control by limitation of the CEO as to “what may not be done in the process of achievement [of the ends]” (p. 122). Board-Management Delegation policies determine the relationship between the board and CEO including the oversight the chief executive of the organization. Finally, Governance Process policies are created by the board as a means of how the board “governs its own process” (p. 185). Carver’s Policy Governance model for board governance is comprehensive and Carver himself acknowledged that the method has been critiqued for its non-traditional methods. One critique of him, however, was that in his 2006 work, 60% of his listed references were authored by Carver himself, and another 20% of his references were written by his co-authors and board “disciples” (Murray, 2007, p. 104). Carver also dismissed critics of his work who claimed that, in research, his method had not been found to be effective, by having asserted that “no approach to governance has been shown by research to be effective” (p. 328).

Richard Chait is a well-known author of board governance literature, and of the two types of literature named above, practical and theoretical, Chait and his colleagues have contributed within both genres. Chait, Ryan, and Taylor (2005) in their work, *Governance as Leadership*, based their work upon the premise that much had changed within the past decade of non-profit governance. On the one hand, they noticed that many non-profit executives have earned graduate degrees, attended professional education seminars, and have effectively become highly-trained, competent, and professional leaders. On the other hand, trustees have come to act more like managers, content in allowing the competent CEO to take



greater charge of the organization. Chait and his colleagues asserted that “the real threat to non-profit governance may not be a board that micromanages, but a board that microgoverns, attentive to a technical, managerial version of trusteeship while blind to governance as leadership” (emphases original, p. 5). The authors believed that the major internal issues boards face are due to this role-switching. They proposed the conceptualization of governance within three “modes of governance” (p. 6):

- Type I—the *fiduciary mode*, where boards are concerned primarily with the stewardship of tangible assets
- Type II—the *strategic mode*, where boards create a strategic partnership with management
- Type III—the *generative mode*, where boards provide a less recognized but critical source of leadership for the organization. (p. 6)

Boards are expected to work in the Type I mode, for this is the level of their expected responsibilities of oversight and protection of the institution (p. 34). It is hoped that boards may accomplish Type II governance where the board is able “to determine what matters most to the long-term future of the organization” (p. 68). The Type III governance mode employs generative thinking or sense-making of the information, including data or context of the institution.

An older work by Chait, Holland, and Taylor (1996), *Improving the Performance of Governing Boards*, was a study conducted at six private, non-Catholic colleges and universities in the United States. For three years, the researchers worked with the boards to improve their governance practices. The research resulted in the work published in 1996, which provides practical guidance for governing boards to govern better. The major contribution of this study was the creation of the Board Self-Assessment Questionnaire (BSAQ), an

instrument that “measures the board’s performance on specific behaviors associated with effective trusteeship, pinpoints areas that a board needs to strengthen, and offers various suggestions to remedy areas of relative weakness” (p. 33). The work of Chait and his colleagues has assisted many boards of trustees to ensure that their leadership through governance is effective and performing at a level necessitated by their respective organizations.

Catholic authors have made contributions to board literature that have been aimed at articulating the distinctiveness of boards within Catholic institutions (Convey et al., 1997; McKinney, 2002; Sheehan, 1990). Sheehan, whose landmark dissertation was discussed previously, published a board manual entitled *Building Better Boards* based upon then current research on secular non-profit board governance. Sheehan provided a comprehensive handbook outlining all the major areas of creating and running a board: policy formation, membership requirements, roles and relationships, development and marketing, hiring the CEO/principal, evaluation of the board and CEO/principal, strategic planning, finance, and meeting facilitation. Also included in appendices were example board foundational documents based upon the type of board that was being constituted. McKinney’s contribution was a work on the spirituality of board members, a necessary element of Catholic governance, as the authors of the Foreword stated that even the presence of an opening prayer prior to a meeting might “somehow be evident in the meeting’s final outcomes and decisions” (p. v). The author stated that, through this work, she intended to assist in the spiritual formation process of trustees, providing a theological framework for board governance, as well as “a process for making decisions in a church model” (p. 4). McKinney’s contribution to Catholic board literature is unique in this regard.

Catholic non-profit corporations are the largest singular group of non-profit corporations in the United States (Morey & Holtschneider, 2000). The recommendations coming from the existing wide array of literature available on general non-profit board governance can have an impact upon the evolution of theory and praxis of Catholic non-profit board governance; this depends greatly upon the control or influence of the party seeking to implement such recommendations. Nevertheless, while retaining certain distinctive elements, Catholic non-profit corporations do not exist within a vacuum, and pertinent findings and recommendations from the literature on non-profit board governance must be taken into consideration to some degree.

The items contained within this section of related literature comprise a distinct corpus encompassing governance relationships of private Catholic religious-sponsored secondary schools. Demographical information collected on schools and their boards identified trends likely to be affecting the current state of affairs in these governance relationships. Research conducted within Catholic health care through the discipline of Canon law displayed perspectives akin to the experiences of Catholic educational institutions, especially colleges and universities. Studies within Catholic primary and secondary schools have demonstrated that a wide range of topics exist, from the perceptions of religious superiors on the laity within schools to a recent study wherein a process was designed to suit a women's congregation reassessing the future of their Sponsorship of secondary schools. Lastly, existing literature on non-profit board governance in both secular and Catholic realms has served to define practices of quality boards of trustees that oversee private Catholic religious-sponsored secondary schools.

## Membership Corporations and Boards of Limited-Jurisdiction

Within the non-profit realm of corporate structures, a particular construct called the “membership corporation” exists as an option for configuring the governance of the corporate entity; it is also a paradigm commonly used by religious organizations. Moots and Gaffney (1980), as well as Maida and Cafardi (1984), have directly suggested this structural format for use within Catholic institutions erected as corporations. A multitude of arrangements of membership corporations exist within all levels of Catholic religious-sponsored educational institutions; they may be classified as “two-tiered” (Currie, 2003, p. 97; Geiger, 2003, p. 120; Golden, 2006, p. 98; Gray, 1996, p. 22; Hanlon, 1997, p. 38; Morey & Holtschneider, 2000, p. 15; J. S. O’Brien, 1987; Sheehan, 1990, p. 4, 1997, p. 140) or “double-tiered” (Moots & Gaffney, 1980, p. 9). A membership corporation has been defined in the following way:

...a corporation in which there are two levels of corporate authority: (1) the corporate members who reserve specified corporate powers to themselves, and (2) a board of trustees or directors who oversees the day-to-day operations of the corporation within this framework of reserved powers. (Maida & Cafardi, 1984, p. 318)

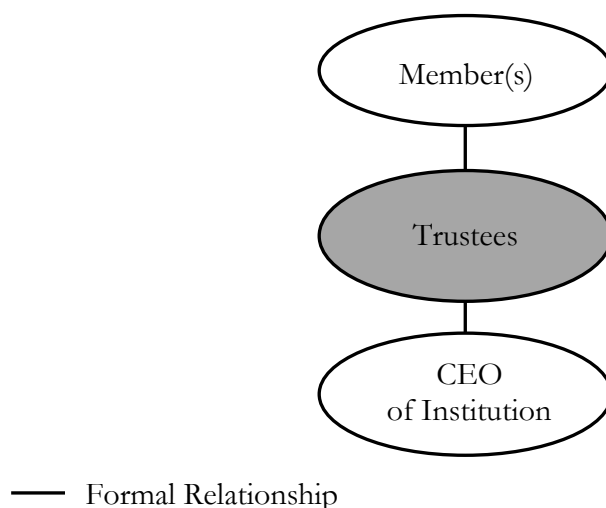
A specifically hierarchical structure characterizes the nature of any membership corporation wherein Control is reserved to the Member(s)<sup>7</sup> of the corporation, who serve as the “highest level of authority” (p. 317). On the one hand, while religious congregations may enter into two-tiered governance because of reasons as simple as replicating successful governance patterns of other institutions and allowing the institution freedom to chart its own course (Hesburgh, 2000), yet on the other hand, Morey and Holtschneider (2000) noted that congregations who face great diminishment have done so due to the fact that it “is easier to

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<sup>7</sup> For the purpose of this study, the word, “Member” (when capitalized) denotes the corporate member, as opposed to “member” (when not capitalized) which retains its typical meaning, designating an individual within a group.

staff a two-tier board than one-quarter of a one-tier” (p. 16). Going even further, Hanlon (1997) boldly proclaimed its use as appropriate in situations where “the influence of a sponsoring religious body upon the college leadership was insufficient” and thus used as “a way of arranging further control by the sponsoring religious body” (p. 38).

Any non-profit corporate entity may be defined as a membership corporation by being defined as such within its founding corporate documentation, the articles of incorporation, and alteration to this may also be made by the amendment of the articles as well. Figure 1 illustrates a simple membership corporation structure wherein one body (trustees) is subordinate to the other (Member). As previously mentioned, all structural and



*Figure 1.* Typical governance structure of a membership corporation.

compositional details of a corporation and its governing structure, including any board, are outlined within the governing documentation, which includes the articles of incorporation and the bylaws of the corporation.

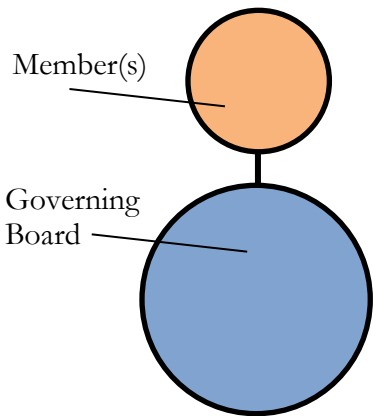
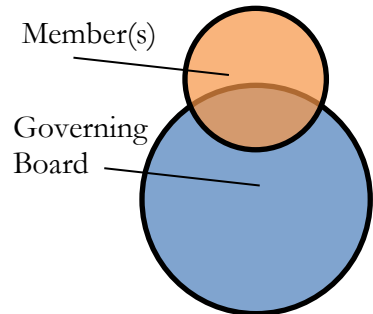
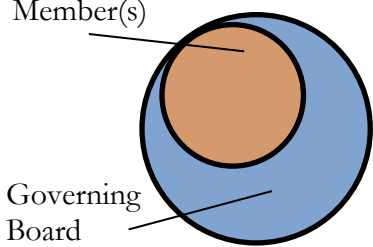
Within the corporate structure, membership may be composed and exercised in various ways. In one such instance, such a role may be reserved to an individual person,

such as a bishop (Sheehan, 1990) or another canonical public juridic person (Maida & Cafardi, 1984), which would include provincials, even potentially local superiors of religious congregations, or pastors. In another situation, the Member(s) may be a group of people as in the case of the University of Notre Dame and its Board of Fellows (Hesburgh, 2000). Furthermore, membership within such a corporation may also be held by a “mission corporation” (Morey & Holtschneider, 2000, p. 21), a corporation designed to oversee the mission and governance of apostolates while creating a separation between the apostolate and the congregation for purposes of liability. Provincial superiors of religious congregations are oftentimes the presidents or directors of such mission corporations (Morey & Holtschneider, 2000). Table 3 displays diagrams for possible configurations of structural relationships of Member(s) and governing boards. These are based upon the study conducted by Martin Stamm (1981), wherein the governing documents of 134 Catholic tertiary institutions were used to resource the data.

In the realm of private Catholic religious-sponsored institutions, an individual religious congregation may choose to structure its individual boards as a bi-cameral entity composed of two hierarchically related boards. Gray (1996) succinctly described this particular structure of governance wherein a lower board, generally a “Board of Trustees” or “Board of Directors”, is delegated authority for the major oversight of a particular institution by a “Board of Members”, the upper board. Within such a structure, the lower board would also be considered a board of limited-jurisdiction, since its authority stems from and is confined to the areas delineated by the upper board. Cerullo (2012) stated that this construct is more common in institutions overseen by religious congregations as opposed to parish or (arch)diocesan institutions.

Table 3

*Possible Structural Membership-Board Configurations Within Membership Corporations*

Diagram	Description
	<p>The Member(s) of the corporation are not part of the governing board; they act separately. Comprising the Member(s) may be a group of individual persons who function as a group, a singular person, a corporation sole, or another corporation.</p>
	<p>Part of the Members participate within the governing board, and others do not; this assumes more than one person comprises the Members.</p>
	<p>The Member(s) of the corporation are all participants within the governing board. This may be a group of individual persons who function as a group, a singular person, a corporation sole, or members of another corporation.</p>

*Note.* Adapted from “Membership Configurations of Independent Bi-Cameral Corporate Governance Systems in American Catholic Higher Education, 1977” by M. J. Stamm, *Emerging Corporate Models of Governance in Contemporary American Catholic Higher Education*, *Current Issues in Catholic Higher Education*, Vol. 2., Summer 1981, p. 42.

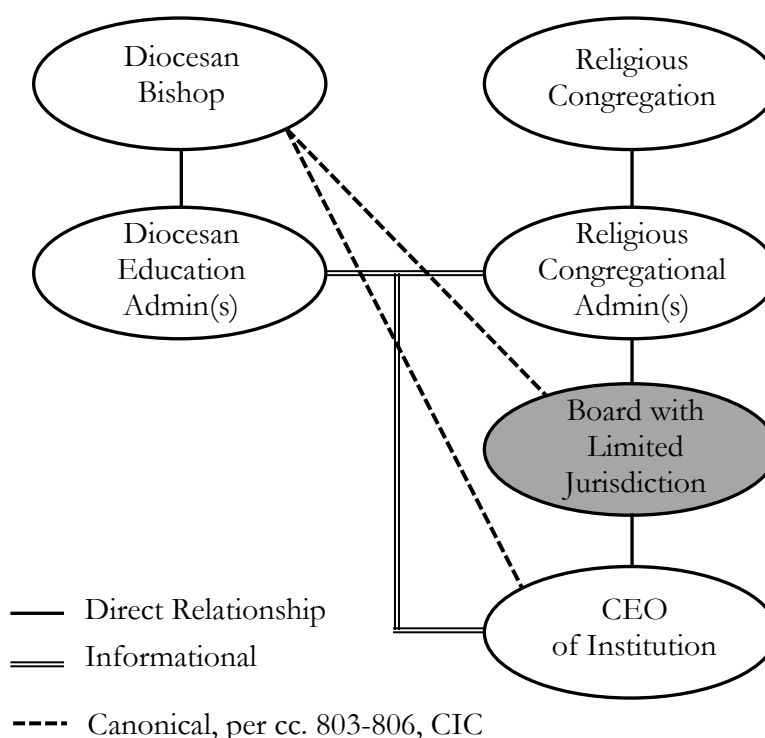
Lourdes Sheehan (1981, 1990, 1997; Haney et al., 2009; Hocevar et al., 1991), author of the landmark dissertation on school boards within Catholic education and noted expert on the structuring and classification of such board structures, asserted that only two specific types of boards are suitable for Catholic institutions: consultative and limited-jurisdiction (1990, p. 2). (While consultative boards are such that they may assist an authority in creating policy or direction in an advisory capacity, they do not possess jurisdiction to finally determine or implement such policy (Dwyer, 2003). Such boards are not addressed within this study.)

Inasmuch as the board of limited-jurisdiction frequently has been defined in similar ways, the following is an illustrative definition:

A board with limited jurisdiction, also called a policy-making board, is a body that participates in the policy-making process by formulating, adapting, and enacting policy. The board has been delegated final authority to enact policy regarding certain areas of institutional operation, although its jurisdiction is limited to those areas of operation that have been delegated to it by the constitution and/or bylaws, and approved by the delegating church authority. (Dwyer, 2003, p. 13)

Stamm (1993), Holtschneider and Morey (2000), Geiger (2003), and Burke (2006) among others, have reported on the strong increase in the usage of this format of governance in Catholic educational institutions, primary, secondary, and tertiary, over the last decades of the 20<sup>th</sup> century. Figure 2 illustrates a diagrammatic representation of such a board and its relationship to a sponsoring religious congregation and other Church officials. (The figure also depicts the relationship that exists with the local bishop, a relationship that pertains to areas of Catholic identity.) As previously mentioned, the owning/sponsoring religious congregation has the ability to determine the governance structure for each of its owned and incorporated apostolates. By creating a board of limited-jurisdiction, the religious congregation allows the local institution to create policy and to determine direction for itself,





*Figure 2.* Diagram of a typical relationship structure of a board of limited-jurisdiction to its sponsoring religious congregation and other Church officials. Adapted from “Religious congregation sponsored private school board with limited jurisdiction” from R. Haney, S. O’Brien, and L. Sheehan, 2009, *A Primer on Education Governance in the Catholic Church*, p. 44. Copyright 2009 by the National Catholic Educational Association.

while allowing the sponsoring religious congregation to preserve its canonical responsibilities (Catholic Health Association, 2007; Haney et al., 2009; Hanlon, 1997; Hesburgh, 2000; J. S. O’Brien, 1987; Sheehan, 1981, 1990). As seen in the above definition of limited-jurisdiction, such a board is entrusted with specific responsibilities by the delegating authority, and it may only act within these parameters.

#### *Reserved Powers*

Boards of limited-jurisdiction, as their name connotes, are governing structures within membership corporations that have final jurisdiction in many areas of oversight of

their respective corporate entities, yet have been limited from total jurisdiction by their respective Member(s) through the mechanism of reserved powers. This reservation of powers divides the authority (Morrissey, 2006) or distributes corporate powers (Stamm, 1981), and for Catholic institutions, respects the requirements of Canon 1282 which binds all public juridic persons, as administrators of Church property, to abide by the conditions of Church law (c.1282, CIC). Thus, the collection of reserved powers within a membership corporation structurally define the relationship between the parties responsible for the governance of the corporation (Morey & Holtschneider, 2003).

Regardless of how corporate powers are distributed between Member(s) and the board of limited-jurisdiction, the collection of principal corporate powers does not change from corporation to corporation. A list of these corporate powers was compiled by Stamm (1981) as a part of his study on institutions of Catholic tertiary education; these are listed within Table 4. Maida and Cafardi (1984) identified five specific powers that were necessary to be among the powers reserved to the Members of any Catholic corporation:

- To establish the philosophy according to which the corporation operates;
- To amend the corporate charter and bylaws;
- To appoint the board of trustees;
- To lease, sell, or encumber corporate real estate; and
- To merge or dissolve the corporation. (p. 157)

They outlined that these functions surrounded the definition of Catholic identity and foundational values of institutions, as well as protected the canonical requirements surrounding the stewardship of Church property. The *Board Handbook: Xaverian Brothers Sponsored Schools* (Xaverian Brothers Sponsored Schools, 2009) lists the powers reserved to

Table 4

*“Selected Primary Corporate Functions of American Higher Educational Corporations”*

	Selected Functional Corporate Areas	Corporation Power and Authority
1	Articles of Incorporation:	Can amend, alter, revise, or dissolve articles of incorporation.
2	Institutional By-Laws:	Can amend, alter, revise, dissolve, or develop the institutional by-laws.
3	Selection of Corporate Members:	Has authority to self-perpetuate the membership of the Corporation, can establish criteria for such selection and can designate the nature, term, and limitations of corporate membership.
4	Selection of Institutional President:	Can select and determine the institution’s chief executive officer or president; can determine process, criteria, and time frame of such selection as well as prescribe responsibilities and rights of the office.
5	Disposition/alienation of Corporate property and assets:	Can make and implement all decisions relative to the disposition, alienation, or donation of all corporate assets.
6	Acquisition of new Corporate property and assets:	Can unilaterally acquire, purchase, or lease any new property or tangible assets for the Corporation.
7	Dissolution of the Corporation:	Can make and implement all decisions relative to dissolution of the Corporation; in some states, may even make and implement decisions relative to the specific disposition of Corporate Assets upon dissolution of Corporation.
8	Borrowing/Loaning Money:	Can make and implement decisions regarding the borrowing of money or loaning of money on behalf of the Corporation.

*Note.* “Selected Primary Corporate Functions of American Higher Educational Corporations” from M. J. Stamm, Emerging Corporate Models of Governance in Contemporary American Catholic Higher Education, *Current Issues in Catholic Higher Education*, Vol. 2., Summer 1981, p. 40.

the Members within their school corporations. As an illustration, these have been provided in Table 5, also listing how these powers correspond to those listed by Stamm (1981) in Table 4. Within this system, while alienation of property is a power reserved to the

Table 5

*Reserved Powers of Xaverian Brothers Sponsored Schools With Correlation to the Primary Corporate Functions of Stamm (1981)*

Reserved Power of Members		Selected Functional Corporate Areas
1	Appointment of the Board	3
2	Alienation of property	5
3	Approval of changes to the corporate documents	1, 2
4	Establishment of associated legal entities	—
5	Merger, dissolution, and distribution of any remaining assets after dissolution.	7

Members, the acquisition of property is not restricted from the boards of limited-jurisdiction. Also, there is no provision restricting the appointment or requirement for approval of the board's candidate for president of the institution.

Research has been conducted mainly on the level of colleges and hospitals on the variety of reserved powers that exist within these institutions. Morey and Holtschneider (2000) surfaced the 10 most commonly reserved powers within American Catholic religious-founded colleges; these are listed in Table 6.

The discussion of reserved powers, although necessary, elicits tension among the parties who participate within such a relationship. Trends during the early 21<sup>st</sup> Century show that many religious congregations have been desirous of increasing the number and deepening the permeation of reserved powers, while administrators have sought to limit the extent of such

Table 6

*Ten Most Commonly Reserved Powers of Religious-Sponsored Colleges and Frequency of Occurrence of Powers From Morey and Holtschneider (2000)*

Common Reserved Power	Frequency of Occurrence
Amendment of governing documents	69%
Purchase or sale of property	67%
Dissolution of the corporation	55%
Mission and identity	53%
Merger or consolidation	50%
Approval of debt	45%
Appointment or removal of trustees	44%
Appointment of the president	38%
Approval of leases	31%
Approval of budgets	19%

*Note.* (Morey & Holtschneider, 2000, p. 17)

structures (Morey & Holtschneider, 2000). Exacerbating the tension is the fact that public juridic persons involved in membership corporations still have canonical impediments that restrict them from abdicating their canonical obligations (Maida & Cafardi, 1984). Yet, the inability of American religious congregations to properly maintain Control through reservation of powers, given their current and likely future state of existence, is a tenuous situation at best (Morey & Holtschneider, 2000). Reserved powers should also, themselves, not be held in such abeyance as to be used by the Members in a threatening way, as Moots and Gaffney (1980) liken them to “nuclear deterrents” (p. 6). The existence of reserved powers within a Catholic membership corporation accomplishes the “sharing [of] authority without abdicating responsibility” (National Catholic Educational Association, 1996, p. 28).

### Summary

This chapter has covered the following five major areas of private Catholic religious-sponsored secondary school governance: the history of American private religious-sponsored secondary schools, the influential law systems of civil and Canon law, the controversial episode of the McGrath/Maida Debate, research related to governance relationships in Catholic secondary education, and the overview of the membership corporation and its board of limited-jurisdiction.

Throughout its scope, the background and historical evolution of governance of private Catholic religious-sponsored secondary schools has extensive roots in diverse topics and influences. These forces have altered the ways in which the governance of such educational institutions has been accomplished over the last half-century. Given the tenuous situation of many traditional religious congregational sponsors, by no means is the current situation of governance solidified; it will likely remain in flux for the near and distant future.

### CHAPTER III

#### METHODOLOGY

##### Restatement of the Purpose

The purpose of this study was the exploration of existing governance relationships, specifically in the areas of Ownership, Control, Sponsorship, and Trusteeship, between religious congregations and boards of limited-jurisdiction at their local secondary educational institutions.

##### Research Design

This study was a qualitative design employing the format of focus group methodology. The work of Krueger and Casey (2008) and Morgan (Morgan, 1996a, 1996b) on conducting focus groups, as well as the work of Kvale and Brinkmann (2008) on interviewing, was used to guide the design and process of this study. Creswell (2008) noted that the use of a qualitative methodology was best in situations where the research was meant to be “exploratory and understanding oriented” (p. 52). Given the collaborative nature of the functioning of boards of trustees, as well as the many elective approaches within the realm of qualitative research, the format of focus groups as a way to obtain data surrounding the existing governance relationships was most directly appropriate.

According to Creswell (2007), the format of focus group interviews is “to collect shared understanding from several individuals as well as to get views from specific people” (p. 226). The method of focus group was chosen to allow the research participants to offer their experiences of their governance relationship in a manner that respects their subjective perspective and maintains the collaborative nature of their own working relationships.

Creswell (2008) noted that focus groups are useful when the subjects “are similar to and cooperative with each other” (p. 226). This is the exact case for trustees who work together on governing boards; they are familiar with one another through their working relationship as trustees. Similarly, the leadership of religious congregations, especially on the province level, also functions within a small group. Decisions pertaining to governance would be made by a provincial superior, upon advice given by any other staff members serving the congregation.

DeKuyper (2003) noted that the construct of board function is that the board “speaks with one voice” (p. 24). At the heart of focus group methodology is that the attention is given to the group as a whole, rather than to the individual voices. Morgan (1996a) stated that it was the “synergy” (p. 139) of the group, brought about by “the fact that the participants both query each other and explain themselves to each other” (p. 139), that made “the discussion in focus groups more than the sum of separate individual interviews” (p. 139). This is much akin to the ancient maxim of an entity being greater than the sum of its parts. Not only is this a phenomenon brought on by the gathering of a group, but a key purpose of focus group methodology, itself, is encouraging participants “to talk to one another, ask questions, exchange anecdotes, and comment on one another's experiences and points of view” (Ho, 2006, p. 05.3).

As with many forms of qualitative research, focus group research has its flaws and is questioned by some researchers. Especially criticized by those who prefer quantitative data-gathering and analysis, focus groups have been considered to be particularly weak due to two primary factors: the forum of the group and the heavy reliance on the moderator (Morgan, 1996b). Focus groups may be open to surfacing erroneous results stemming from participants posturing within the public forum of the group and saving face by



intellectualizing or falsifying answers (Krueger & Casey, 2008), as well as the key position of the group facilitator who may not skillfully moderate the group to gather the necessary data (Morgan, 1996b).

Considering the above concerns, the format of a focus group is also deemed to be of benefit for research wherein targeted and specific data are required to be resourced in an efficient manner. Putting it bluntly, Morgan (1996b) called this method of data collection “quick and easy” (p. 13) because focus groups are more efficient than one-on-one interviews of resourcing the required data from several subjects in one sitting. Given this, it is easily understood why such a format is oftentimes employed within the realm of marketing (Krueger & Casey, 2008; Morgan, 1996b). They are very useful in collecting data on opinions and beliefs (Del Rio-Roberts, 2011). Focus groups allow for diverse viewpoints to surface among a panel of participants; they allow the participants to hear one another’s opinions and to interact, expressing agreement and disagreement with one another (Chioncel et al., 2003; Ho, 2006; Krueger & Casey, 2008; Morgan, 1996a, 1996b). Consensus is not the goal of a focus group (Kvale & Brinkmann, 2008).

Kvale and Brinkmann (2008), although discussing the research method of interviewing, noted that there is a distinct form of interview wherein the interviewee is a person of standing or importance within the organization; they have termed this “elite interviews” (p. 147). Unique to this style of interviewing is gaining access to the necessary persons, having a well-knowledged interviewer able to engage the expert on his or her level, and also having the opportunity to probe and challenge more deeply due to the expert’s own stable position within the organization (Kvale & Brinkmann, 2008). This study was characterized by the qualities listed by Kvale and Brinkmann in that it involved those people who comprise the top levels of governance for private Catholic religious-sponsored

secondary education. Focus group methodology is considered to be particularly effective in such a situation “being a powerful way of engaging with professionals [or] policymakers...” (Chioncel et al., 2003, p. 496).

### Population

Catholic secondary schools within the United States have varied formats and structures for their governance. Numerous works from the literature on Catholic school governance have noted that there are different modes of governance based upon who has the authority to stipulate the form and means of governance (Catholic Health Association, 2007; Haney et al., 2009; Hite, 2000; Maida & Cafardi, 1984; Maida, 1973a, 1975; McDonald & Schultz, 2009, 2010, 2013; J. S. O’Brien, 1987). Addressing Catholic higher education, Geiger (2003) asserted that, in order to understand the governance of these institutions, one needs to examine and consult their different constituencies: those internal, such as trustees and administrators, as well as those external who have control over policies and direction, such as religious congregations, dioceses, and the like. In the diocesan school, the diocese, as owner, may stipulate the format of governance for the individual school, and in the religious-sponsored school, the religious congregation may stipulate the governance model employed.

As noted above, the subset of Catholic schools in the United States included within this study were private religious-sponsored secondary schools. Each of these institutions had a religious congregation that was canonically related to the school as its “sponsor”. Oftentimes, schools that are categorized as such identify themselves as “Lasallian”, “Jesuit”, “Mercy”, “Dominican”, or another such descriptor of its tradition and heritage. As of July 2011, there existed within the United States approximately 430 such

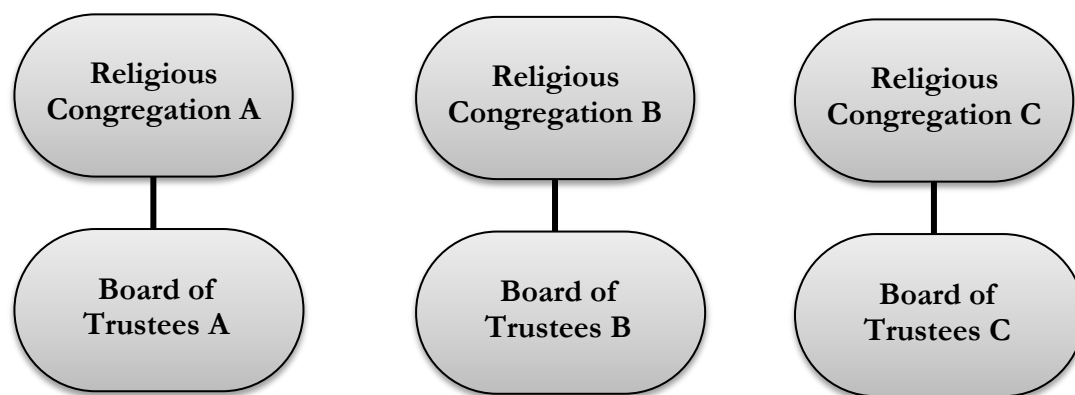
schools that fell within this category, and over 100 religious congregations (at the province or district level) that sponsored these institutions (P.J. Kenedy & Sons, 2010).

### *Sample Population*

From the number of congregations that operate private Catholic secondary schools in the United States, a purposeful sample was used within this study. Krueger and Casey (2008) considered an acceptable “rule of thumb” to be “three or four focus groups with each type or category of individual” (p. 21). The participants in this study were three religious congregations and one board of trustees at a private Catholic religious-sponsored secondary school related to each congregation.

Because the purpose of this study was to explore the relationships that exist between two distinct groups of people, the provincial leadership of religious congregations and trustees of their boards of limited-jurisdiction at congregationally sponsored secondary schools, there were two sets of focus groups that were conducted. Krueger and Casey (2008) stated that if a comparison is to be made within the research between the responses of different parties, then the members of those groups need to be separated into different focus groups; this is called a “double-layer design” (p. 26). For the purpose of this study, in the three focus groups of the first set, the researcher conducted interviews with the members of leadership of the religious congregations along with any members of their leadership teams who were overseeing the congregation’s sponsored secondary educational institutions or those in charge of boards of trustees. The second set of focus groups was conducted with trustees who then currently served on boards on behalf of the same religious congregation. Additionally, this created a two-tiered structure of focus groups, which allowed for comparison between the focus groups of religious congregational leaders, and between the focus groups of trustees (Krueger & Casey, 2008). Figure 3 displays the

structure of the focus group interviews. Greater attention was given to this within the subsequent section on data analysis.



*Figure 3.* Diagram of the structure of the sample population.

The focus groups of this research ranged from 3 to 8 participants. While focus group practitioners dispute the necessary number of participants within an individual focus group, generally, marketing professionals form groups of 10 to 12 and noncommercial groups stay between 4 and 8 participants. Traditionally within the social sciences, focus groups may be as few as 4 (Creswell, 2008) or as many as 10 participants (Kvale & Brinkmann, 2008). Toner (2009) contributed research, however, asserting the validity of “very small focus groups (VSFGs)” (p. 181).

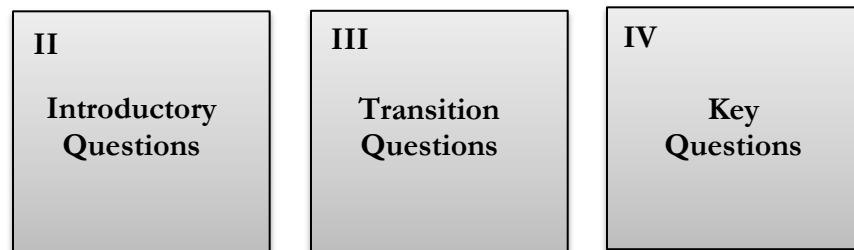
### Focus Group Protocol

As evident in the conceptual framework that outlines a deductive approach to the topic of governance relationships in private Catholic religious-sponsored secondary schools, the focus group interview questions were developed based upon the following central research question and sub-questions of the study:

What are the governance relationships between the religious congregations and the boards of limited-jurisdiction at the local institutions?

1. How is Ownership delineated between the religious congregation and the board of limited-jurisdiction?
2. How is Control divided between the religious congregation and the board of limited-jurisdiction?
3. How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction?
4. How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction?

The focus group session was structured into five distinct parts: Briefing, Introductory Questions, Transition Questions, Key Questions, and Ending. The middle three parts were composed of questions intending to resource the data requested by the research questions of the study; the order of these three parts is illustrated in Figure 4. Each



*Figure 4.* Diagram of the question sections of the focus group session.

part has a unique purpose within the method of focus group interviewing, the majority of which comes from the work of Krueger and Casey (2008) and minimally from Kvale and Brinkmann (2008). Full texts of the two focus group interview structures are included

within Appendices A and B. As the parts Briefing and Ending do not contain questions for discussion by the participants, but instead frame the procedure, these are addressed within the latter section on Data Collection.

### *Introductory Questions*

The first questions for the participants comprised the “Introductory Questions” that serve to collect the first level of data. These questions may also be regarded as “warm-up” questions (Del Rio-Roberts, 2011, p. 313) and are considered to be useful in establishing rapport between the moderator and the participants. Such questions are also designed to begin the discussion with a question that all members of the focus group can answer. Giving each of the participants a means of individually contributing to the discussion assists them to understand that they all have a role in the success of the focus group session (Krueger & Casey, 2008).

The Introductory Questions slightly differed for the two sets of focus groups, yet the two Introductory Questions pertain to similar areas. The first question was intended to introduce the members of the group to the researcher, and the second question addressed the individual participant’s role and relationship within the organization. Those Introductory Questions asked of the religious congregation focus groups were the following:

1. For the purpose of recording, please say your full name, your title, and describe your role with [the religious congregation and province].
2. How long have you been engaged in your current position? What other roles of leadership within this congregation have you held prior to this current role?

The Introductory Questions for the trustee focus groups were the following:

1. For the purpose of recording, please say your full name, your occupation, and how long you have been a trustee of [the school].
2. Other than as a trustee, are you, or have you been connected to this institution in another way?

While the Introductory Questions were not central to the inquiry posed by the research questions of the study, the above questions resourced information pertinent to the functioning of the focus groups, as well as the relationship that participants had with their immediate institutions.

### *Transition Questions*

An essential part within the focus group methodology advocated by Krueger and Casey (2008) are Transition Questions that “set the stage for productive Key Questions” (p. 40). The purpose of such questions is to allow the participants to observe that different perspectives or ways of articulating common or foundational notions exist among them.

The wording of the Transition Questions differed between the two sets of focus groups and, further, although the questions pertain to similar areas, they were reversed in order. One area addressed the charism of the religious congregation, and the other focused upon the participants’ experiences of serving as a trustee. The order of the questions asked of each type of focus group took up, first, the topic that most pertains to them in their current role of religious congregational leadership or Trusteeship, and followed with topics that addressed the situation of the other group.

The Transition Questions asked of the religious congregation focus groups were the following:

1. How would you describe the mission and charism of your congregation?

2. Have you served as a trustee, or on the board of directors, of one of your congregation's secondary schools or on that of another congregational apostolate? If so, what did you understand your role to be as a trustee?

The first Transition Question posed to the leadership of the religious congregation served to define, for the researcher, the mission and charism of the religious congregation, areas over which these individuals would have the authority to define and, as such, broadly determine the context for the activity of governance. The second question opened the topic of Trusteeship (Research Sub-Question 4) giving the researcher insight into the experience and perspective of this group on their previous role as a trustee; it is very likely that religious congregational leaders either previously have served or currently serve as a trustee within their system of apostolates. Also, their individual experiences of serving as a trustee would naturally differ, allowing unique perspectives upon that role to be witnessed by the participants and the moderator.

The Transition Questions asked of the trustee focus groups were the following:

1. How would you describe the mission and purpose of [this school]?
2. What motivated you to say "yes" to being a trustee at [this school]?
3. Have you ever served as a trustee on another board?
  - a. In comparison to this current experience, how have these other Trusteeship experiences been similar, and how have they been different?
4. How would you describe the mission and charism of [the congregation that sponsors this institution]?

The first Transition Question posed within the trustee focus group addressed the mission of the institution, for it is stated within the literature as a fundamental area of oversight for boards of trustees (BoardSource, 2010; Carver, 2006; Chait, Holland, & Taylor, 1991; Chait



et al., 1996, 2005; DeKuyper, 2003). The second question, which was more subjective in its focus, helped to familiarize the researcher and the participants with the personal perspective of an individual participant. The third Transition Question gleaned the previous experiences of Trusteeship of the participants and asked them to compare and contrast those other experiences with their experience within their current religious congregation-related board. This introduced the topic of Trusteeship (Research Sub-Question 4). The final question asked of the trustees resourced their own perspective on the mission of the sponsoring religious congregation and the mission that has directed the individual school, which was also addressed in the first Transition Question. The Transition Questions for both religious congregational leaders and trustees allowed not only for discussion to begin among the participants, but also, for the participants to observe differences among their experiences and perspectives on governance within private Catholic religious-sponsored secondary schools.

### *Key Questions*

Within the focus group method outlined by Krueger and Casey (2008), Key Questions are most directly related to the research questions driving the study and, as such, these questions are given the greatest prominence within the agenda, as well as within the subsequent analysis of the data.

The same four sub-questions of the research question were used in the development of the focus group Key Questions; however, wording for and order of the Key Questions differed between the two sets of focus groups. The order was derived from the Transition Questions that most immediately precede the Key Questions so as to preserve the flow of the topics within the focus group conversation.

The Key Questions asked of the religious congregation focus groups were the

following:

1. What are the expectations for persons who serve as trustees in your secondary educational institutions? What do you require of your trustees?
2. Describe the structure that connects [the congregation] to the secondary educational institutions and local boards of trustees. From your knowledge, what are the reasons for which your structure was created?
3. Within your system of schools, how would you describe the Ownership relationship of your institutions? Who is the “owner”?
4. As a congregation, do you ever use the term “Sponsorship” to describe your relationship with your educational institutions? What is your understanding of the term “Sponsorship”?

As stated, the first Key Question asked of the religious congregation focus group flowed from the last Transition Question about their own experiences of Trusteeship. This question directly addressed Research Sub-Question 4: How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction? The second Key Question focused upon the topic of control from the perspective of structure. This attends to Research Sub-Question 2: How is Control divided between the religious congregation and the board of limited-jurisdiction? The third Key Question pursued the topic of Ownership from Research Sub-Question 1: How is Ownership delineated between the religious congregation and the board of limited-jurisdiction? Finally, the last Key Question concentrated upon Research Sub-Question 3 and the topic of Sponsorship: How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction? The Key Questions designed for the religious congregation focus groups were intended to resource the central data necessary to best answer the research questions of this study.

The Key Questions posed to the trustee focus groups were the following:

1. Describe the structure that connects this institution and its trustees to the religious congregation. From your perspective, what is the purpose of this structure?
2. What are the expectations of being a trustee of [this school]? What are the requirements for becoming a trustee of [this school]?
3. How would you describe the Ownership relationship of your institution? Who is the “owner”?
4. Have you ever heard or used the term “Sponsorship” to describe the relationship of [the school] to [the congregation]? What is your understanding of the term “Sponsorship”?

Similar to the Key Questions asked of the religious congregation focus groups, the Key Questions designed for the trustee focus groups also directly addressed the research questions of this study. The leading Key Question addressed the topic of Control from Research Sub-Question 2 by examining Control as seen in the structure which delineates authority. The second Key Question, on the topic of Trusteeship, by exploring the duties and requirements for trustees, related to Research Sub-Question 4. The third trustee Key Question addressed the topic of Ownership of Research Sub-Question 1. Lastly, Research Sub-Question 3, on the topic of Sponsorship, was investigated by the final focus group Key Question for trustees.

Each of the Key Questions, whether intended for the religious congregation focus groups or the trustee focus groups, had been designed to directly address the research question of the study as expressed in the four sub-questions. Krueger and Casey (2008) are clear in their directions that the Key Questions used within focus group methodology are the

prime means for resourcing the desired data. Table 7 provides a summary of the focus group questions and their relationship to the research questions of this study.

Table 7

*Summary of Focus Group Key Questions and Related Research Questions*

Focus Group Type	Focus Group Key Question	Related Research Sub-Question
Religious Congregational Leaders	1. What are the expectations for persons who serve as trustees in your secondary educational institutions? What do you require of your trustees?	4
	2. Describe the structure that connects [the congregation] to the secondary educational institutions and local boards of trustees. From your knowledge, what are the reasons for which your structure was created?	2
	3. Within your system of schools, how would you describe the Ownership relationship of your institutions? Who is the “owner”?	1
	4. As a congregation, do you ever use the term “Sponsorship” to describe your relationship with your educational institutions? What is your understanding of the term “Sponsorship”?	3
Trustees	1. Describe the structure that connects this institution and its trustees to the religious congregation. From your perspective, what is the purpose of this structure?	2
	2. What are the expectations of being a trustee of [this school]? What are the requirements for becoming a trustee of [this school]?	4
	3. How would you describe the Ownership relationship of your institution? Who is the “owner”?	1
	4. As trustees, do you ever use the term “Sponsorship” to describe your relationship with [the congregation]? What is your understanding of the term “Sponsorship”?	3

## Validity

As this study was designed around the description of focus group methodology proposed by Krueger and Casey (2008), their notion of validity was central to this study. Given that within focus group methodology “the goal of the researcher is to understand the respondents’ points of view and to be able to communicate these” (p. 202), it is the design of the procedures that take priority in determining validity. Krueger and Casey stated, “We suggest that the researcher worry less about the traditional concerns of validity and instead be ready to answer the following question: ‘What are you doing to ensure that you have followed the steps associated with quality research?’” (p. 203). In that Krueger and Casey believed that within focus group methodology there is a greater ability “to draw upon multiple sources of information...not normally available to the quantitative researcher” (p. 202), the verification of participants’ thoughts, feelings, and observations is possible within the interaction of the focus group itself (Krueger & Casey, 2008). Throughout the session, the moderator and the participants were able to ask clarifying questions. Lastly, these researchers stated that two other means were necessary for ensuring the validity of a focus group study: the testing of focus group questions and the verification of summary comments made by the researcher at the end of the focus group session. As parts of the entire process of conducting focus groups, these steps allowed the researcher to ensure that the questions themselves were suitable and that the entire endeavor was sound.

Another group of researchers, Chioncel, Van der Veen, Wildemeersch, and Jarvis (2003), who dealt with the validity of focus groups within the realm of educational research, echoed the priority of sound procedures as being the way to determine validity. The components that they outlined demonstrated that validity is not something completed prior to beginning the research endeavor or examined at the end of data collection when analysis

begins, but is something present throughout the entire process of focus group design, execution, and analysis. As seen in Table 8, this group of researchers outlined nine elements of the design of a focus group study from the initial design to the analysis of collected data that deserve particular attention as a means of ensuring the validity and reliability of the results. Guiding this study's validity were the recommendations of Krueger and Casey (2008) and those of Chioncel et al. (2003).

Table 8

*Elements of Focus Group Design Ensuring Greater Validity of Results From Chioncel et al. (2003).*

Element	Description
1. Development of a Manual	The manual for the study ensures the consistency of procedures between different focus group sessions.
2. Clarity of Research Question(s)	This helps to assure relevance within answers and the repeatability of the process.
3. Employment of a Time Schedule	Ensures that all questions are able to be answered within the timeframe of the focus group session.
4. Inclusion of Appropriate Participants	Participants should be competent to answer the research questions.
5. Awareness of Group Dynamics	Avoidance of the extremes in group dynamics such as polarization or "groupthink" (Johnson & Johnson, 2000).
6. Coverage of Research Question(s)	The moderator should ensure coverage of the questions without squelching conversation.
7. Fostering Active Participation	The moderator is responsible for ensuring the participation of all without controlling the discussion.
8. Recording of Session	Audio recording, or sometimes video, along with taking minutes improves accuracy.
9. Coding and Interpreting Data	Analysis of focus group data attends to context, such that quality is more important than frequency of themes.

*Note.* Adapted from Chioncel et al., The Validity and Reliability of Focus Groups as a Research Method in Adult Education, *International Journal of Lifelong Education*, Vol. 22, No. 5 Sept-Oct 2003, p. 503-504.

### *Validity Panel*

The questions for both sets of focus group sessions were examined by seven individuals who had personal and professional experience in either or both religious congregational leadership or service as a trustee of a private Catholic religious-sponsored secondary school. A matrix showing the qualifications of the individuals who comprised this panel and their professional experience is included within Appendix C. The suggestions made by these individuals were limited to nuances within the wording of the focus group questions, and the researcher improved the questions based upon the panel's recommendations.

### *Verification of Summary Comments*

Within focus group methodology, it is possible, throughout the discussion, for the moderator to introduce clarifying questions, as necessary, and ask the participants to refine any topic under discussion (Morgan, 1996a, 1996b). In addition, it is common to make use of the final portion of the focus group session to validate the data collected within the session itself by means of the focus group participants (Chioncel et al., 2003; Krueger & Casey, 2008). Krueger and Casey stated that during the final section of the session “the focus group researcher can feed back the key points and seek verification from the participants” (p. 202). This acknowledges the understanding within focus group methodology that participants “are both capable of reporting factual data and interpreting these data” (Chioncel et al., 2003, p. 495). The participants within the focus groups of this particular study, as an “expert panel” (Chioncel et al., 2003, p. 497), not only were the source

of collected data but also assisted in ensuring that the “procedures deliver the desired data” (Morgan, 1996a, p. 146).

### Sample Recruitment Procedure

Participation in the study was solicited by U.S. Mail, telephone, and e-mail where the addresses of the aforementioned members of the sample were accessible. The 2011 Kenedy & Sons *Official Catholic Directory* (OCD) provided primary contact information for all religious superiors, as well as the location of secondary educational institutions operated by the same religious congregations. The researcher contacted first the three religious congregations, and only after receiving their affirmative response to participate in this study, he contacted the board chairpersons of individual boards of trustees for each participating religious congregation. The two letters used by the researcher to make initial contact are contained within Appendices D and E.

All religious provincials and board chairpersons invited to participate within the study, or their designated contact, were asked to return a Contact Information Form, which accompanied the Recruitment Letter, thereby allowing participants to provide contact information of their preference. This Contact Information Form did not serve as a Consent Form, and it was specifically stated on the form that it was not a Consent Form. The Contact Information Form also provided an opportunity for an individual invitee to seek additional information from the researcher about the study. Two individuals followed up specifically with the researcher requesting more information and they were promptly contacted by the researcher thus enabling the individual to seek answers to their questions in a telephone conversation; in the end, these individuals chose to participate. The researcher provided a pre-stamped and addressed envelope for returning the Contact Information



Form to him. The two Contact Information Forms sent to potential participants, one for religious congregations and the other for trustees, are included within Appendices F and G. Lastly, the researcher did limit recruitment contacts to three attempts, whether by phone, e-mail, or postal mail.

After individuals returned the Contact Information Forms, thereby agreeing to be a part of the study, the researcher, in consultation with the individuals, determined focus group locations and times amenable to all members of the focus group. As the people being interviewed for this study were people whose schedules were more greatly impacted than that of the researcher, interviews were scheduled according to the convenience of the participants in terms of their timing and locality. Generally, the focus group sessions took place in the offices or meeting rooms common to the participant trustees and religious-congregation provincial leaders.

### Data Collection

#### *Consent Procedure*

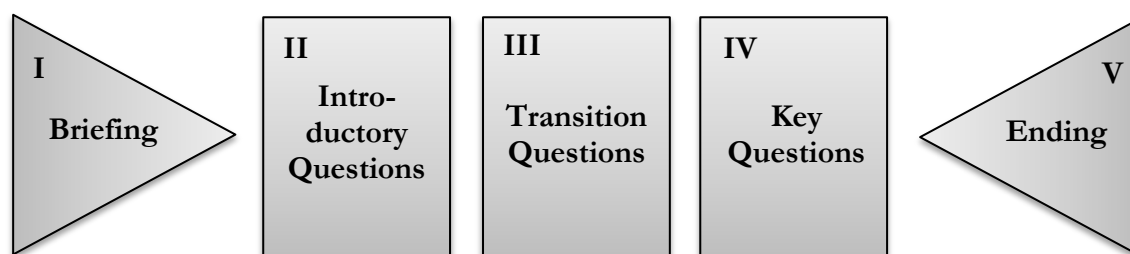
As the meeting of a focus group is a face-to-face encounter between the participants and the researcher, the procedures for gaining the documented consent of participants within this study was accomplished at the beginning of the focus group session. All participants within the study were adults who gave their own consent. Informed Consent Forms with a cover letter were provided to all participants by U.S. Mail through the initial contact person, and these were collected as the first item on the agenda for the focus group session. As desired, the researcher verbally reviewed the Informed Consent Form welcoming any questions from the participants; this form is included within Appendix H and the cover letter is found in Appendix I. The researcher answered all questions posed by the

participants to the best of his ability.

All individuals who gave their consent to participate were asked by the researcher to document their consent of participation by signing and dating the Informed Consent Form distributed to them. Per requirement of the Institutional Review Board for the Protection of Human Subjects (IRBPHS) of the University of San Francisco, all participants within the study were provided a copy of the consent form for them to keep.

### *Focus Group Procedure*

Following the obtaining of consent, the general focus group procedure was implemented by the researcher. As mentioned within the section on sample population, although there were two types of focus groups, the procedure and order of the five parts of each session were the same for both sets of focus groups. Figure 5 depicts the order of the five parts of each focus group session.



*Figure 5.* Diagram of the five parts of the focus group session.

The researcher as moderator of the focus group had the focus group protocol (Appendices A and B) for his use as a reference during the focus group session. The use of such as a manual is a way in which consistency is maintained between focus groups enhancing the validity of the process (Chioncel et al., 2003). This manual included an agenda that reminded the researcher to maintain the order determined for the focus group

session, as well as listing the questions to be asked. The flexibility of focus group methodology allows for follow-up “probes” (Krueger & Casey, 2008, p. 40; Morgan, 1996b, p. 47) by the focus-group moderator. The participants of the focus group were not given a list of questions because it might have either impeded the natural progress of the participants’ conversation or encumbered the researcher’s ability to moderate the discussion based upon what he perceived to be necessary in order to cover the topics of the study. In total, each of the entire focus group sessions lasted between 1.5 and 2 hours.

### *Part I: Briefing*

The focus group interview session began with an introduction called a “briefing” (Kvale & Brinkmann, 2008, p. 128) wherein the researcher as focus group moderator attended to the following tasks. The purpose and major topics of the focus group was shared with the participants. Focus group, as a methodology, was distinguished from both one-on-one and group interview situations, for the focus group is an opportunity for the participants to have a conversation. The researcher encouraged the participants to have a discussion based upon the questions that were asked of the group. He also mentioned that there is not an expectation to come to consensus as a group, but instead that divergent opinions are welcome. The researcher reminded the participants about the role of confidentiality, both on his part as well as on their part. The participants were informed about the audio recording of the focus group session, and they were reminded that they may choose to not answer any specific question or may even leave at any point during the focus group session. Lastly, the researcher welcomed any questions that the participants had prior to beginning the Introductory Questions. Within the total amount of time allotted for the focus group session, the briefing was intended to take only 5-10 minutes depending upon the amount of questions that participants had.

*Parts II-IV: Introductory, Transition, and Key Questions*

The specifics and rationale behind the parts of the focus group session containing the questions has already been outlined within the section on Focus Group Protocol. The majority of the data resourced was accomplished through Parts II-IV. Throughout this portion of the focus group session, the researcher as moderator facilitated the discussion among the participants asking questions as a means to clarify or follow-up as necessary in order to ensure that the research questions were addressed. Prior to the first Introductory Question, the researcher started the audio recording. In terms of duration, it was anticipated that the Introductory Questions would require about 10 minutes, the Transition Questions would require about 15 minutes, and the greatest amount of time, approximately 50 minutes, would be devoted to the discussion of the Key Questions.

*Part V: Ending*

As a means of bringing closure to the focus group session and also as a way to validate the data, the focus group was closed with a final part called an “ending” (Krueger & Casey, 2008, p. 40). Therein, the researcher summarized the major points of the focus group conversation for the purpose of giving the participants the opportunity to recapitulate upon the most important topics of the discussion. The participants were also given a final chance to share any closing comments or questions, and were reminded of their duty to maintain the confidentiality of the discussion. Lastly, the researcher thanked the participants for their time and having shared their experiences. The audio recording was halted at the end of this final part of the focus group session as the summary provided by the participants resulted in pertinent data. With the Ending having lasted approximately 10 minutes, the entire focus group session was scheduled to take approximately 95 minutes, yet the participants were

asked to be available for up to 2 hours (120 minutes), leaving 25 minutes of time if needed for discussion.

### *Qualifications of the Researcher*

In that this study was a qualitative study, the researcher remained the major instrument for data collection. Morgan (1996b), as well as Krueger and Casey (2008), noted that the qualifications and facilitation skills of the focus group moderator weigh heavily in its success as a method for data collection.

The researcher is a member of the Brothers of the Christian Schools of the District of San Francisco, a Roman Catholic, non-clerical, and world-wide society of consecrated life dedicated solely to the apostolate of education. Although he is one of the younger members of his respective province, he has professed his final vows and has served for a total of 12 years in the Congregation. Due to these years of experience, the researcher has a deep experience of the culture and way of life of religious congregations, especially those whose primary ministry is within the field of Catholic education. This experience includes knowledge of the internal governing structures of the Congregation, as well as how the Congregation relates to their individual educational apostolates.

Currently, as a part of his professional ministry, the researcher serves as a trustee on a board of limited-jurisdiction for a private Catholic school in San Francisco, California. This board, in its constitution as a limited-jurisdiction board, is subordinate to two religious congregations who share the responsibility for ultimate jurisdiction of the institution. Prior to service as a trustee, the researcher was subjected to a screening process for membership, meeting specific qualifications including board formation and training sessions required by the bylaws of the corporation. As a trustee, he has participated in discussions pertaining to the governance of the institution, as well as the institution's relationship to its local

archdiocese and its sponsoring religious congregations. These aforementioned qualifications enable the researcher to observe the perspectives of both sides, congregational and trustee.

Having worked within Catholic secondary education for over 10 years, the researcher has had experience in schools that have been both owned by a religious congregation and governed by a board of limited-jurisdiction, as well as in a school that was owned and governed by the local archdiocese. During his tenure in Catholic education, the researcher has served as the chairman of an academic department, the director of retreat ministry, moderator of a school-wide student leadership organization, and an associate within the offices of admissions and communications.

Lastly, the researcher has over 10 years of experience in facilitating focus groups and interviewing people of various backgrounds and ages as a part of his ministry in Catholic secondary education. This has included but is not limited to his role as a member of a school-accreditation visiting team and his having conducted interviews for the purpose of admissions, development and advancement, student activities and leadership, and publications.

## Data Analysis

### *Focus Group Analysis*

The method of focus groups was approached within this study in a deductive manner. From current literature, the four concepts of Ownership, Control, Sponsorship, and Trusteeship were pre-determined as categories within the governance of private Catholic religious-sponsored secondary schools. The process employed within the focus groups was structured according to these pre-determined concepts, and the transcripts resulting from the focus groups reflected the order of the focus group process.

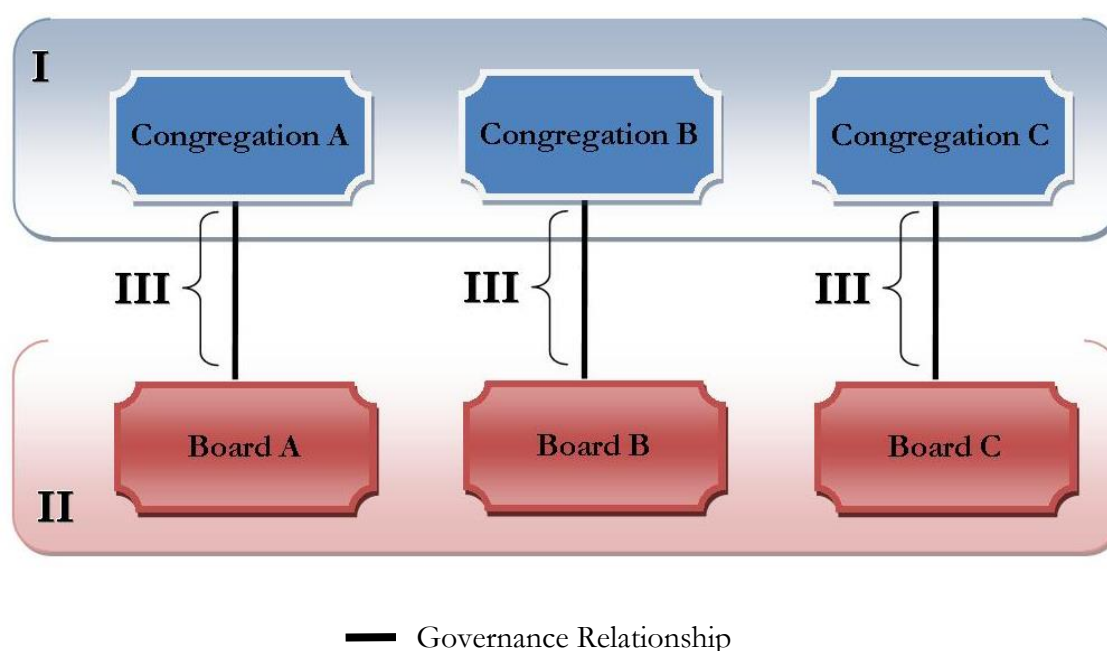
When turning towards the analysis of qualitative data, there exists a plurality of methods by which data may be analyzed (Creswell, 2008). Choice of analysis method generally depends upon the purpose of the study, as well as the specific qualitative method originally used to collect the data (Krueger & Casey, 2008). In the case of focus group methodology, the researcher “must consider the group and not the individuals as the unit of analysis” (Chioncel et al., 2003, p. 497). It is expressly the interaction which occurs within the focus group session itself that allows for the group to resource “insights that would otherwise remain hidden.” (Ho, 2006, p. 05.2).

Krueger and Casey (2008) provided several “analytic frameworks” (p. 125) within which to analyze the data resourced by focus groups. Of those listed, two, in combination, were used to comprise the analytic framework for this particular study: Key Concept and Constant Comparative. Key Concept framework is useful when attempting to understand “how participants view a topic”, and it is aimed at the identification of “factors that are of central importance” (p. 125). The Constant Comparative framework is identified by Krueger and Casey (2008) as having the objective of “identify[ing] patterns in the data and discover[ing] relationships between ideas or concepts” and its key task is to “compare one segment of data with another to identify similarities and differences” (p. 125). The following section addresses how the different segments of the resulting data were compared and analyzed.

### *Three-Fold Comparison Analysis*

The double-layer design of Krueger and Casey (2008) allows the researcher to “make comparisons across any layers in the design” (p. 26). Because of the specific nature of the relatedness of two trustee focus groups for each religious congregation focus group, three different comparisons were made within the analysis of the segments of data. First, a

comparison was made from among the three segments of data collected from the three religious congregation focus groups. Second, the three segments of data collected from the board of trustee focus groups allowed for another comparison to be made between these data sets. Third, a final comparison was made between the focus group data of one of the participant religious congregations and that of each of their board of trustees. These levels of comparison also allowed for what Morgan (1996b) named “group-to-group validation” (p. 63). Figure 6 illustrates the different levels of analysis that were accomplished within this study.



*Figure 6.* Diagram of levels of comparison within focus group data segments. Level I—Comparison between the religious congregations as to their perceptions regarding their governance relationships with their respective institutions. Level II—Comparison between the trustees of private Catholic religious-sponsored secondary schools as to their perceptions regarding their governance relationships with their respective sponsoring religious congregations. Level III —Comparison for consistency between the perceptions of the governance relationships of the religious congregations with each of the board of trustees of their respective institutions.



## *Analysis Procedure*

### *Transcript-Based Analysis*

In describing the different forms of data preparation for analysis, Krueger and Casey (2008) stated that transcript-based analysis is particularly advantageous for academic research. Of the forms of data that the aforementioned authors discussed, a transcript-based method of preparation provides the “highest level of detail for quality analysis” (p. 117). Thus, the analysis for this study was completed by means of a transcript-based method wherein the audio data resourced from the focus groups via recording was downloaded onto a laptop computer in the form of audio mp3 files, and each focus group session was transcribed by the researcher in its entirety. As previously stated, the transcripts directly reflected the order of the focus group procedure, which addressed, by means of individual questions, each concept of Ownership, Control, Sponsorship, and Trusteeship. Supplemental observations from notes taken by the researcher during an individual focus group session will be included as an appendix at the end of the transcript of that focus group.

### *Coding of Concepts*

The conceptual framework of Chapter I outlined the four major concepts of Catholic secondary school governance: Ownership, Control, Sponsorship, and Trusteeship. By means of these four concepts, this study deductively approached the current state of existing governance relationships in private Catholic religious-sponsored secondary schools. It has been previously stated that the research question and sub-questions of this study were designed to address these four concepts and, further, the Key Questions of the focus group process were developed to reflect these research sub-questions. Because of, first, the close

connection between the research sub-questions and the Key Questions of the focus group protocol and, second, the fact that the transcripts directly reflected and preserved the order of the focus group procedure, the researcher was able to correlate efficiently the portions of the transcripts and to resource the data that answered the research question and sub-questions. Previously within this chapter, on page 121, Table 7 displayed the relationship between the Key Questions and the research sub-questions.

Krueger and Casey (2008) prescribed that the researcher needs to arrange the raw data surfaced by the focus groups in such a way as to be able to best analyze them. In order to accomplish the coding of concepts, the researcher completed the following process. The researcher read each of the six focus group transcripts in their entirety; throughout the reading, the audio files of the transcripts were used as appropriate. On a Microsoft Word digital version of the transcript, the researcher color-coded units of text that specifically addressed the four major concepts of the study, and he included a fifth color-code for any important ancillary findings. These units of text ranged between phrases of a few words and multi-sentence quotations.

After the color-coding was completed, the researcher created a matrix document on Microsoft Word for each concept where the units of text were organized, via the Word functions of “copy” and “paste”, according to the focus group session and interview question from which they originated. The researcher worked with one focus group transcript and one matrix (and thus one concept and one research sub-question) at a time, filling in the matrix with the units of text from the transcript. He began with the matrix for Ownership and started with the portion of the transcript for Key Question 3, which addressed Research Sub-Question 1 on the concept of Ownership. After the researcher resourced data from that specific portion of the transcript, he looked through the rest of the

transcript to see if data on Ownership surfaced within other portions of the transcript. He then filled-in the matrix with other data on Ownership that surfaced throughout that focus group session. This process was repeated with the other five focus group transcripts, and the data from those transcripts was placed into the Ownership matrix. The same process was followed by the researcher for coding the subsequent research sub-questions and other potential ancillary findings within the focus group transcripts.

In all, there were five matrices titled, “Ownership”, “Control”, “Sponsorship”, “Trusteeship”, and “Ancillary Findings” from which the researcher was able to make comparisons and to discern any patterns or major themes and sub-themes that best expressed the current state of governance relationships in private Catholic religious-sponsored secondary schools.

#### *Three-Fold Comparison Procedure*

The resulting matrices resourced from the coding process of the transcripts were then compared as outlined in the four comparisons depicted within Figure 6. Comparison began with Level I, investigating the similarities and differences among the religious congregation focus groups. Following this, analysis continued into Level II, in which a comparison was made among the focus groups comprised of members of boards of trustees. Of highest importance within this comparison were the Key Questions as they are most directly related to the research question and sub-questions of the study.

Following the comparison of Levels I and II, Level III comparison examined the focus group responses of the religious congregation and individually those of their respective boards of trustees. The researcher explored the commonalities and divergences of how they described their governance relationship in terms of their perspectives on the themes of the

research question sub-questions, along with their respective definitions of mission and charism.

### *Data Analysis Reporting*

The process of data analysis culminated in the production of a written report by the researcher on the findings resourced by the entire focus group interview process. The report was narrative in style, with major consideration given to the group as opposed to the individual participants, and balancing a summary of participants' discussion (Morgan, 1996b), with the use of pertinent quotations from the focus group transcripts. The ultimate goal of noteworthy qualitative research is, by means of the written word, to allow its reader as personal a connection as possible to the participants (Morgan, 1996b). This endeavor was accomplished in view of the originally stated purpose of the study: to explore existing governance relationships, specifically in the areas of Ownership, Control, Sponsorship, and Trusteeship, between religious congregations and boards of limited-jurisdiction at their local secondary educational institutions.

### Transferability

Instead of generalizability, the notion of transferability characterizes qualitative research and specifically the results of focus group methods (Guba & Lincoln, 1989; Krueger & Casey, 2008). Transferability "is always relative and depends entirely on the degree to which salient conditions overlap or match" (Guba & Lincoln, 1989, p. 24). This researcher understood that the results of this study surfaced an incomplete picture of governance relationships between individual religious congregations and their respective boards of trustees because the sample will have included only three congregations and three boards. As mentioned, there are currently over 100 religious congregations at the province

level who sponsor secondary schools within the United States. Transferability of the results of any qualitative study is determined not by the researcher or author(s) of the study, but instead by the reader who decides whether the results of the study pertain to his or her area of inquiry (Guba & Lincoln, 1989; Krueger & Casey, 2008).

### Ethical Concerns

#### *IRBPHS Approval*

The Institutional Review Board for the Protection of Human Subjects (IRBPHS) at the University of San Francisco was consulted as a check-and-balance on the researcher. This board's role was to determine that ethical practices common to educational academic research were upheld by the researcher. The IRBPHS reviewed the methodological elements and procedures of the research design of this study, which included the procedures of recruitment and participant consent. Appendix J contains the document containing the granting of approval by the IRBPHS.

#### *Confidentiality of Documents*

Throughout the duration of collection and analysis of data, all records of the study were kept confidential. These records were in the form of both computer files and printed documents. The interviews were digitally recorded and their audio transcribed within a printed transcript. Audio recordings and digital files, including transcripts and contact information, were secured in a password-protected computer hard-drive; all paper documents, including the researcher's copy of the informed consent forms, were kept in a secure file cabinet. Only the researcher has had direct access to the files.

## CHAPTER IV

### FINDINGS

#### Overview

The purpose of this study was the exploration of existing governance relationships, specifically in the areas of Ownership, Control, Sponsorship, and Trusteeship, between religious congregations and boards of limited-jurisdiction at their local secondary educational institutions. Data were collected by the researcher by means of two sets of focus group interviews: first, with members of religious congregational leadership and, second, with trustees who currently serve on boards at local secondary school apostolates related to those same religious congregations.

The data resourced addressed the following research question and four subsidiary questions:

What are the governance relationships between the religious congregations and the boards of limited-jurisdiction at the local institutions?

1. How is Ownership delineated between the religious congregation and the board of limited-jurisdiction?
2. How is Control divided between the religious congregation and the board of limited-jurisdiction?
3. How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction?

4. How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction?

This chapter reports the complete findings that resulted from the gathering of data and its subsequent analysis. Herein, first, a demographical description of each congregation and board is given. Second, this chapter provides a report of the findings by research sub-question and individual focus group; within this second section, the ancillary findings that emerged from the focus group conversations. Third and final, by means of the three-level comparison as outlined in Chapter III, the overarching research question of the study is addressed.

### Demographics

In reporting the demographics of the religious congregations and boards of trustees that participated in the study, pseudonyms have been used to maintain anonymity of individual focus group members, religious congregations, and school boards of trustees. Figure 7 has been provided to illustrate the pairings between religious congregations and boards, making use of the pseudonyms. For the religious congregations, data were collected on the geographical extent of the province, number of religious, and an overview of the different types of ministries in which province members serve. In terms of the boards of trustees, specifics about the individual school community were not necessary to obtain, for the local structure of the board is independent from the variables of the school's student population. Most importantly, the general structure of the board of trustees and the number of its members are reported herein as the most pertinent demographical data. For both religious congregation and trustee focus groups, the current positions and pertinent past positions held by focus group participants were also obtained.

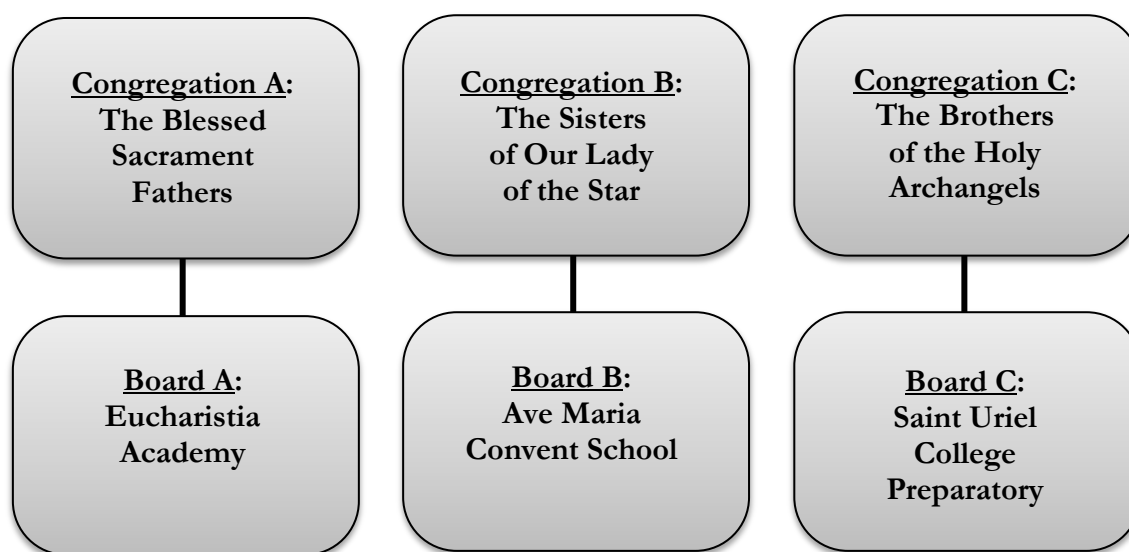


Figure 7. Paired religious congregation and board of trustees using pseudonyms.

*Congregation A: The “Blessed Sacrament Fathers”*

The first religious congregation participant in the study, the Blessed Sacrament Fathers, has been dedicated to education both since their founding, as well as at their beginnings in the United States. Although they have an international presence, in the United States they are currently involved in all levels of Catholic education, primary, secondary, and tertiary, yet according to their founding charism, education is not their exclusive ministry. Personnel of the congregation, both ordained and lay, are also involved in social outreach and other various apostolates.

As of this research, within the United States, currently more than five provinces of the Blessed Sacrament Fathers are individually governed and each holds juridic status (personhood) in the Roman Catholic Church. Geographically placed within the Western United States, the province that participated in this study has approximately 350 members and 5 “traditional” (Congregation A, 2012, p. 4) secondary schools which they self-identified as private Catholic secondary schools each governed by a board of trustees.



Participating in the focus group were three Blessed Sacrament priests. The first held the role of Provincial, the second was a Provincial Assistant for Secondary Education, and the third served in administration for the Province as the religious superior for the local retirement community of the Fathers. All three participants have served as a trustee in at least one of their province's educational apostolates.

*Congregation B: The "Sisters of Our Lady of the Star"*

The second religious congregation participant in the study, the Sisters of Our Lady of the Star, like many other orders, was expelled from France during the French Revolution. A few sisters arrived in the United States as refugees and, during the 19<sup>th</sup> century, they built up institutions of education and furthered their founding apostolate. Today, the Sisters of Our Lady of the Star continue to serve around the globe, but within the United States, by and large, they minister at the primary and secondary levels of Catholic education, having had a presence in Catholic tertiary education as well. They do not limit themselves to strictly educational works, but their members consider themselves to bring an educative spirit to whatever ministry is exercised.

Currently, over 20 private Catholic schools are affiliated with the Sisters of Our Lady of the Star United States Province, and these schools most often comprise both primary and secondary level education. The Sisters began to consolidate their provinces across the United States during the 1970s and 1980s, and the current United States Province spans the entire country. There are approximately 200 Sisters in the United States Province.

The focus group participants were the eight Sisters who constitute the Provincial Team; this includes the Sister Provincial and seven Sister Councilors. Each Sister Councilor is responsible for a geographical area of the Province, and all have a hand in the governance

of the United States Province. Lastly, the members of the Provincial Team have served as administrators and trustees at their apostolates around the country.

*Congregation C: The “Brothers of the Holy Archangels”*

The third religious congregation participant in the study was the Brothers of the Holy Archangels, a solely lay, male congregation. Having been founded in Europe during the 19<sup>th</sup> century, the Brothers have an international presence and exercise a primarily educational apostolate.

Secondary schools of the Archangel Brothers number approximately 20 secondary schools, yet of those, only about half are private, the specific niche of this research, and the others are generally diocesan. The provinces of the Archangel Brothers were consolidated into one, the North American Province of the Brothers of the Holy Archangels, at the turn of the 21<sup>st</sup> century, which now includes a geographical area of mostly the United States, as well as other outlying areas of North America. Just over 200 Archangel Brothers are members of the Province.

Participating in the focus group were five individuals: three Archangel Brothers and two women religious of two other congregations. The first Brother has been serving as Provincial, while the other two are members of the Provincial Leadership Team. The two Sisters have been working within the provincial offices of the Brothers and among their duties is board formation. All members of the focus group, with the exception of the Brother Provincial, serve in some capacity on one of the boards for one of the private Catholic secondary schools within the Province.

*Board A: "Eucharistia Academy"*

Local structures of individual boards differ depending upon many diverse factors. At Eucharistia Academy, the full board governance structure is two-tiered with an upper board of 9 individuals, the "Board of Trustees", and the lower board of approximately 40 individuals, the "Board of Regents". Three Blessed Sacrament Fathers sit on the Board of Trustees for the Academy and the remaining six are lay people.

During the past several years, challenges over the delineation of authority between the Trustees and the Regents necessitated amendments to the bylaws of the school corporation to affirm the proper authority of the Trustees. Because the "Board of Trustees" is directly related to the province of the Blessed Sacrament Fathers, it was individuals from this board who participated in the research.

Three of the lay male trustees participated in the focus group for Eucharistia Academy, and each of them had served at least a partial term as a Regent prior to service as a Trustee. All three Trustees were also alumni of Eucharistia Academy.

*Board B: "Ave Maria Convent School"*

Ave Maria Convent School has a Board of Trustees of over 35 individuals. It is the sole governing body for an institution that includes both primary and secondary levels. Three of the Trustees are also Sisters of Our Lady of the Star and another Trustee is the President/CEO of Ave Maria. Within the governance structure of Ave Maria, the Board of Trustees is most directly related to the local province of the Sisters of Our Lady of the Star.

Participating in the focus group were four female Trustees of the board, and one was the most recent former chairperson. None of the participants were alumnae of Ave Maria

Convent School, yet each one of the women was a mother of either a current or former student.

*Board C: "Saint Uriel College Preparatory"*

The Board of Trustees at Saint Uriel College Preparatory is composed of 15 individuals, several of whom are alumni of the school. One Archangel Brother serves as a Trustee, but during the time of his tenure, he had been ministering at another congregational apostolate. This board serves as the local governing body for Saint Uriel Prep and of the groups within the school, it is the one most directly structurally related to the province of the Brothers of the Holy Archangels.

Of the four focus group participants, three were alumni of Saint Uriel College Preparatory and one was a parent of a former student. While each of the individuals had been connected to the school in a significant way over the past decade, three were fairly new to the role of trustee.

On the following page, in Figure 8, a summary of the demographics contained within this section, is provided as an assistance to the reader. It is hoped that this summary may be useful throughout the remainder of the chapter.

Findings by Research Sub-Questions

*Results of Research Sub-Question 1: Ownership*

Research Sub-Question 1: How is Ownership delineated between the religious congregation and the board of limited-jurisdiction?

*Congregation A: The "Blessed Sacrament Fathers"*

In discussing the topic of Ownership, the focus group of the provincial leadership of

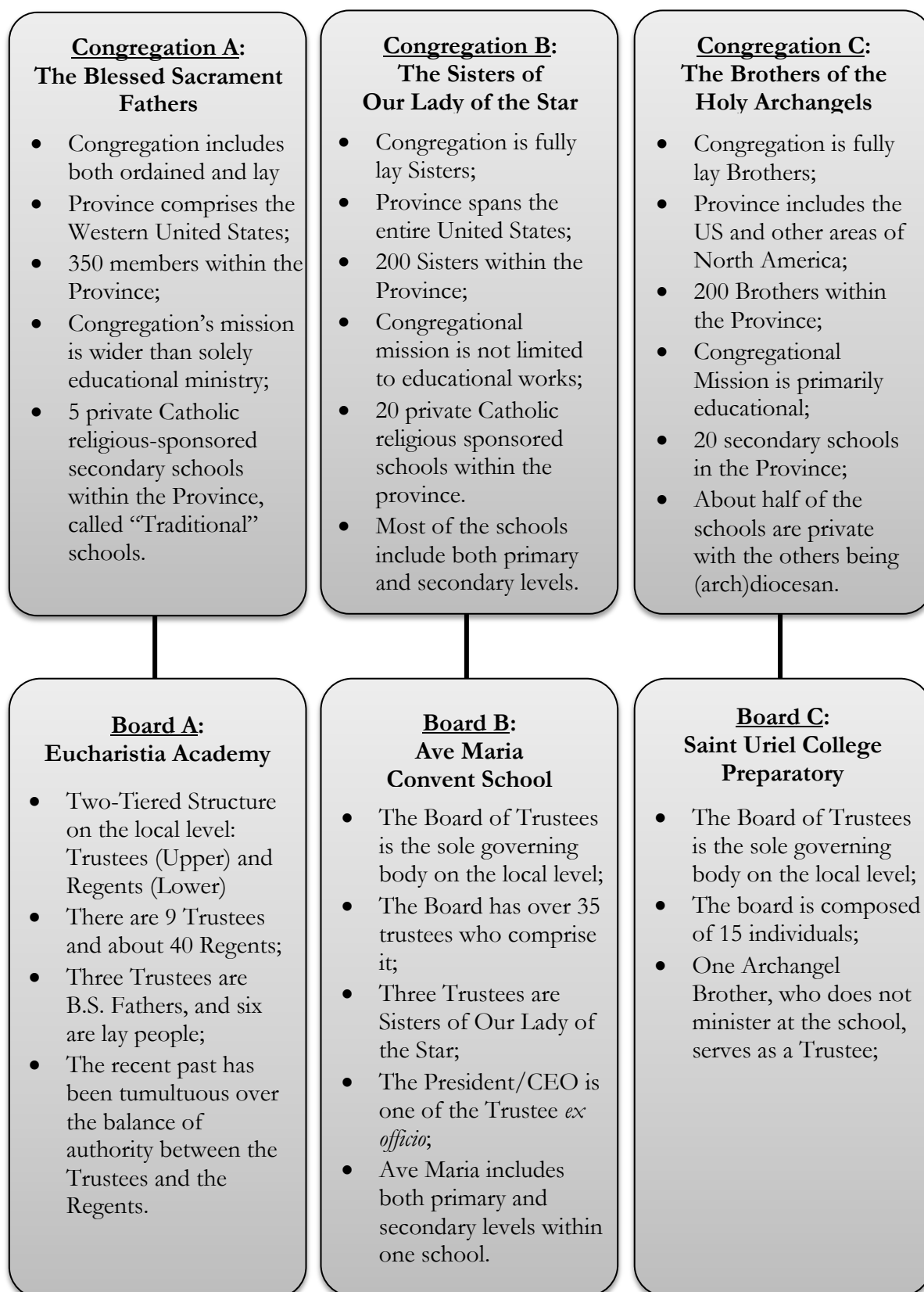


Figure 8. Demographic summary of paired religious congregations and boards of trustees.

the Blessed Sacrament Fathers described both the civil corporation and canonical status of their secondary school apostolates within the session. The focus group participants were clear that the civil owner of the individual school corporations is their local boards of trustees and not the Western Province of the Blessed Sacrament Fathers. In terms of the canonical status of their private Catholic secondary schools, the institutions remain part of the public juridic person of the Western Province of the Blessed Sacrament Fathers.

By the action of the local province of the Blessed Sacrament Fathers, at the time of founding, each school apostolate had been established as a civil corporation within the local state and separate from the civil corporate entity of the province of the Blessed Sacrament Fathers. Related to this history, one focus group participant stated directly, “The province did not own the schools, does not own the schools” (Congregation A, 2012, p. 7)<sup>8</sup>. Each local secondary educational apostolate corporation was actually an institution that included all assets of the local religious community of the Blessed Sacrament Fathers as well as those of the school institution underneath the singular corporate umbrella.

The focus group participants described the current Ownership of each educational apostolate as the local board of trustees, and they own “the property, the school, the whole thing” (p. 14). This is a continuance of a structure that has existed since the founding and incorporation of the educational apostolates, for a board of trustees has always existed and served as the owner of the corporate assets. The original board of trustees of the corporation had been solely composed of Blessed Sacrament Fathers who had been assigned by the Father Provincial to both the local religious community and to ministry in the school. Thus, originally, the civil ownership of the school corporation, inclusive of all property and

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<sup>8</sup> Because the data is reported by discrete focus group segments, quotations and references within the same subsection will be taken from the same data segment. The first time a reference or quotation is made, a full citation is given, but in subsequent quotations and references only the page number is given.

other assets, was in the hands of a group of Blessed Sacrament Fathers, and not that of the province.

Further, the focus group participants relayed that there came a point in time when, at each educational institution, the local religious community of the Blessed Sacrament Fathers was individually incorporated as separate from the local educational institution. In this individual incorporation, the original board of trustees came to oversee only the school corporation and not the religious community corporation, whose governance was appropriately restructured apart from that of the school. Eventually, the ranks of the board of trustees also ceased to be filled with members of the congregation and lay people were allowed to serve as trustees on each local board. For the private secondary schools of the province this process was not accomplished all at once, but happened on a timeline that suited the needs of each individual local institution and its religious community of Blessed Sacrament Fathers.

As prompted by the researcher in follow-up questioning, the focus group addressed the canonical ownership of the individual private secondary schools within the Western Province. The structure of the canonical ownership by the Blessed Sacrament Fathers has never been altered since the schools were each founded by the province. In the eyes of the Canon law of the Roman Catholic Church, the schools have each remained part of the public juridic person of the Western Province of the Blessed Sacrament Fathers, and as such are owned by the province, thus remaining ecclesial goods. None of the schools have been granted status as a separate juridic person.

While discussing the civil and canonical facets of Ownership, the focus group turned toward the question of distribution of assets in the event of the dissolution of an individual school corporation or sale. One member spoke to the case of a school where he had been

president and that in the event of a sale or dissolution, the assets revert not to the board of trustees but instead to the Western Province of the Blessed Sacrament Fathers. Further discussion held that the bylaws of others of the private secondary schools might stipulate otherwise, although it was acknowledged that the local state law regulating the dissolution of non-profit or religious corporations require the assets to be distributed to a similar non-profit or religious corporation thus preserving the dedication of said assets toward that purpose. The focus group members recognized that there might be canonical ramifications in terms of needing to seek permission to alienate the assets if the assets were to be distributed to either another juridic person within the Church or to a non-Church owner.

*Congregation B: The “Sisters of Our Lady of the Star”*

Focus group participants from the Sisters of Our Lady of the Star, United States Province, addressed the topic of Ownership from both a civil and a canonical perspective. Within civil law, they described the legal corporation structures of both the congregation and the schools. Also, they mentioned the fact that due to the consolidation of several provinces of the Sisters into one, country-wide province, as the Provincial Team, they were the inheritors of a very complex civil corporation structure. Subsequently, the participants turned toward the canonical realm of Ownership discussing the topics of juridic personhood and alienation of property, noting specific challenges that they have faced in the past.

The educational apostolates of the sisters are each individually incorporated and the Province is not the civil owner of the property. There is a separate province corporation that belongs to the sisters solely, and the educational corporations are structurally unrelated. One participant stated clearly, “The assets are not on our balance sheet” (Congregation B, 2012, p. 14). Though, in the specific cases where the assets of an individual institution had originally been the property of the Sisters as a corporate entity, by a reversion clause



included within the bylaws of those individual corporations, stating that, if there were to be any sale of property or dissolution of the corporation, the assets would revert to the Sisters of Our Lady of the Star, United States Province. One participant offered,

The reversion had also to do with that we owned the schools; they were our schools. We lived there and we built the schools from the ground up, so some of that reversion has to do with kind of giving back to the [congregation] because we didn't get salaries in those days. (p. 19)

Focus group participants shared that the requirements of the reversion clause have been a part of trustee education in the past. On the part of the congregation of the Sisters, however, complicating this reversion is the fact that a number of the corporations of the defunct provinces are still in existence and the Provincial Team of the Sisters serves as the corporation board for each of them; one participant estimated the number to be at 13 corporations. These corporations had to be maintained due to financial arrangements such as donations or bequests from estates that have and had been made to these corporate entities; this has been done for purely “business reasons” (p. 13).

The discussion of canonical ownership yielded greater detail as the participants discussed the implications of the role of the public juridic person of the Sisters as the canonical owner of the educational apostolates. While they acknowledged the fact that they do not own the schools under civil law, the focus group noted that as the schools are ecclesial goods, within the canonical realm they retain Ownership in trust on behalf of the Church. Focus group participants indicated emphatically that the Province serves as the public juridic person of the individual schools and, further, they have articulated this to both their trustees and heads of school of the different institutions.

This turned the conversation toward the challenges of balancing the civil with the canonical sense of Ownership when working with trustees in the current means of governance. Although the focus group participants had already stated that the congregation

is not the civil owner of the individual school corporations, they do acknowledge that the Sisters remain the canonical owner of the individual schools as the schools do not have individual juridic personhood.

Misunderstandings between the perceptions of different trustees and even on the part of some lay colleagues serving in leadership roles with the Sisters in their schools have persisted at times. Due to previous experiences on differently styled boards, at times trustees have neglected to recognize the canonical ownership of the sisters and their role in defining the mission of their educational apostolates. Within this portion of the session, this is where the focus group discussed the canonical process of alienation. The participants spoke of one school that was separated from the Sisters by its Board of Trustees.

Ownership of the property remained in the hands of the Sisters, and the school moved its premises elsewhere. The Sisters sought and were given permission to alienate the property, yet the land remains unsold. As a part of their responsibilities as canonical owners of ecclesial property, permission to alienate is sought by the Province in any case where, in the bylaws, reversion clauses exist directing the civil ownership and sale of property.

*Congregation C: The "Brothers of the Holy Archangels"*

The responses of the focus group members of the Brothers of the Holy Archangels were simple and uncomplicated, for when they were asked about Ownership as a part of their governance relationship with their educational institutions, they replied immediately by stating both the civil and canonical owners. Also, they described the origins and current civil and canonical corporate identities of the individual schools.

Within the North American Province of the Brothers of the Holy Archangels, each of the private schools was separately incorporated at its founding. Further, under civil law,

the Members<sup>9</sup> and the board of trustees of each school corporation are the owner. (The structure of Membership will be discussed under Research Sub-Question 2, as this format relates most directly to Control as opposed to Ownership.) The participants of the focus group identified that the property and buildings are the assets that are owned by the Members and the trustees within the school corporation. They also identified that it is this group of people who also “owns the business” (Congregation C, 2012, p. 14). The Members of each of the school corporations are members of the Brothers of the Holy Archangels, and only they may dissolve the corporation through sale and distribute the assets.

On the canonical side of Ownership, none of the schools has been set up as a separate juridic person, and the North American Province of the Brothers of the Holy Archangels continues to serve as such for each of the educational institutions. By this, the canonical owner of the educational institutions is the public juridic person of the North American Province of the Brothers of the Holy Archangels. The focus group participants stated that they had not alienated the assets of any of the schools when each was individually incorporated under civil law.

*Board A: “Eucharistia Academy”*

The topic of Ownership was discussed during the focus group session with the trustees of Eucharistia Academy. This facet of the governance relationship between Eucharistia and the Western Province of the Blessed Sacrament Fathers was described in terms of the civil corporation, as well as the canonical status of Eucharistia Academy. The participants of the focus group relayed that the most recent questions that had arisen were

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<sup>9</sup> To differentiate from general membership or an individual member of a board, the term will be capitalized to designate the role of a Member of a corporation as opposed to a trustee. This difference was discussed within Chapter II on page 97.

solved within the civil realm by virtue of the bylaws being amended with the support of the Blessed Sacrament Fathers. The participants were unfamiliar with the canonical terminology “juridic person” and they had mentioned that, to their knowledge, it had not been previously or commonly used.

When asked about the topic of Ownership within their governance relationship with the Blessed Sacrament Fathers, the participants of the focus group stated that the owner of the assets of the school corporation, Eucharistia Corporation, are owned by the nine Trustees, yet they relayed that this Ownership of the Eucharistia Corporation is “ultimately controlled by the Province” (Board A, 2012, p. 21). One Trustee made a concluding remark, stating “In my mind, the [Blessed Sacrament] Fathers own it, and that’s what we want” (p. 22). The other participants nodded in agreement.

*Board B: “Ave Maria Convent School”*

With the focus group participants from the Board of Trustees of Ave Maria Convent School, the researcher discussed the topic of Ownership as connected to the governance relationship of the Board to the Sisters of Our Lady of the Star, United States Province. Unique to this school’s governance relationship and, specifically, how Ownership is delineated between the Board and the Sisters, is the fact that the Sisters have both a retirement center and a cemetery on the school property. The focus group spoke about the civil corporation status of Ave Maria and individual participants did not consider themselves to be familiar enough with canonical structures to answer follow-up questions related to Ownership posed by the researcher.

As reported by the focus group participants and as seen in the bylaws that they shared with the researcher, Ave Maria Convent School is incorporated by the local state

government has been granted status as a 501(c)(3)<sup>10</sup> tax-exempt organization. No other corporation, including those of the province corporation of the Sisters of Our Lady of the Star or their Consortium of schools, is connected to the school corporation either as a parent or a subsidiary corporation. The focus group participants explained the uniqueness of the property agreement with the Sisters due to the presence of the retirement facility and cemetery, stating that there is a difference between the ownership of the land and the buildings. The bylaws defines that the Board of Trustees has authority only over the property that belongs to the Ave Maria Convent School and not the other properties on the premises. The focus group recognized that they do not have the authority to do whatever they will with the corporation's property, and that they are confined to operating a school with it, but that there are also options to purchase the buildings inhabited by the Sisters at a point in the future.

There was a general consensus expressed among the participants of the focus group when one of the trustees stated her perception that there is an "obligation" to "maintain this property and this school in its best condition as we possibly can maintain it" (Board B, 2012, p. 14). The participants admitted that although their ownership is not held in the "strict legal sense" (p. 14) the trustees do not "feel any lack of responsibility and what our responsibility is, that comes with that ownership" (p. 14).

The topics and details of Canon law were not familiar enough to the focus group participants to answer some of the follow-up questions surrounding governance relationships. They were not familiar with the construct of the juridic person and did not know if the school possessed individual juridic personhood apart from the Sisters.

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<sup>10</sup> 501(c)(3) status was discussed on page 62 within Chapter II.

*Board C: “Saint Uriel College Preparatory”*

Focus group members from the Board of Trustees of Saint Uriel College Preparatory discussed the topic of Ownership as part of their governance relationship with the North American Province of the Brothers of the Holy Archangels. They discussed its civil corporation structure and the ownership of the property and assets of Saint Uriel Prep. Upon being asked about the topic of Ownership, focus group participants answered differently and started with “I wouldn’t say that any one person owns it” (Board C, 2012, p. 19). This individual was stressing the sense of Ownership that many members within the community feel responsible for the success of the institution. Very quickly, however, other focus group participants shared that in their perspective the Archangel Brothers own Saint Uriel Prep “practically speaking” (p. 19).

The focus group participants indicated that Saint Uriel is individually incorporated within its local state as a corporation and is also a 501(c)(3) non-profit organization. The property of the school is owned by a parent corporation of the same state and the high school is also owned by that corporation. This parent corporation is not only separate from the North American Province, but also, is separate from the other school corporations. Participants further stated that the schools of the Archangel Brothers are separated from the North American Province of the Brothers of the Holy Archangels and that each of the schools is operated independently by means of “a different set of individuals who run it and make decisions for it” (p. 19).

Because the focus group participants did not address the canonical side of Ownership, the researcher, as focus group moderator, asked follow-up questions regarding their familiarity with Canon law and its terminology, juridic personhood, and alienation of property. The group was generally unfamiliar with these topics, yet one participant shared

that the terms had been mentioned at the board training required by the Archangel Brothers. (This training will be more fully addressed in the section on Research Sub-Question 4: Trusteeship.) Lastly, the focus group participants also had not been aware of any instances where they had been involved in discussions about or engaged in a canonical process of alienation.

*Results of Research Sub-Question 2: Control*

Research Sub-Question 2: How is Control divided between the religious congregation and the board of limited-jurisdiction?

*Congregation A: The “Blessed Sacrament Fathers”*

For the Blessed Sacrament Fathers, the division of Control within governance relationships has its root in the individual incorporation structures of the schools that has been discussed in the above section containing the data surrounding the delineation of Ownership. Without bemoaning the fact, the focus group members were very clear in their position that “numbers [of Blessed Sacrament Fathers within the schools] don’t control the game anymore” (Congregation A, 2012, p. 4). The focus group participants first discussed the current role of the Fathers within the local school boards, as well as how that has evolved from the original structures. They then discussed the reserved powers held by the Province within the governance structure.

When each of the secondary institutions was originally incorporated, a board of trustees was constituted that was composed completely of Blessed Sacrament Fathers. When these boards were composed solely of priests, it was very easy for the Provincial of the Blessed Sacrament Fathers to maintain control over the schools simply by means of his canonical authority to remove and reassign any Blessed Sacrament Father within the

province, the extent of which included Father-Trustees, local school Presidents, and Local Superiors of the religious communities. As the Father-Presidents of these local schools realized that they needed more assistance, especially with gaining a perspective wider than that of the local group of Father-Trustees, the local governance structures were expanded to include lay people. This expansion took different forms depending upon the local needs of each institution, and there currently exist two-tiered boards, melded boards, and clear trustee and regent structures. Although employed by other provinces of the Blessed Sacrament Fathers, the Western Province does not make use of a Membership Corporation, and Membership boards have only been used in cases of institutions that are “co-sponsored with other congregations” (p. 12)

On the local boards of trustees, which is in each case the highest board on the local level, Blessed Sacrament Fathers serve as trustees. Individual Blessed Sacrament Fathers must receive permission from the Provincial to serve as a Trustee. While currently in no local situation do the Fathers solely comprise the membership of the board, Control has been preserved in the hands of the congregation by means of distinct voting mechanisms called “determining features” (p. 12). Examples of these features from local bylaws include:

- the Fathers hold a majority of votes by person,
- a majority of votes is held by weighted-voting where a Blessed Sacrament Father-Trustee’s vote has more value than a lay trustee’s vote, or
- when a two-thirds majority is necessary, the majority cannot be completed without the consent of at least one or more of the Father-Trustees.

These determining features are generally only required in situations that involve matters of mission and identity, closing the school, and limitation of accrual of debt along with other financial transactions. Even given these determining features, the focus group participants



were very clear, stating that the Blessed Sacrament Father-Trustees “don’t control the bylaws. They could stop changes to the bylaws, but they couldn’t complete them [on their own]” (p. 24).

Participants also described the formal and informal influence that the Provincial has on the individual boards of trustees at local institutions. Formally, according to the bylaws and the Sponsorship Agreement (to be discussed in the Sponsorship section), the Provincial has the authority to designate one trustee on each board to be the “representative of the Provincial” (p. 7) and the local superior of the Blessed Sacrament community, who is also assigned to that role by the Provincial, is required to also serve as a trustee. The Provincial must also officially approve an incoming president after his having been selected by the local board of trustees and prior to the president taking up leadership within the school; this is required when the incoming president is a lay person or even a Blessed Sacrament Father from another province. Speaking about the informal influence of the Provincial, the focus group members also relayed that there is a great amount of loyalty to the Blessed Sacrament Fathers on the part of the trustees and his perspectives are taken very seriously when given either in attendance at board meetings or in other correspondence.

Although the division of Control was discussed within the above topics, the actual title of “reserved powers” was never mentioned by the focus group participants. The researcher followed-up with a question specifically regarding “other reserved powers” (p. 7) held by the Province over the local boards of trustees. The Provincial responded with “The only thing would be the name, ‘Blessed Sacrament’ and the designation of being a ‘Blessed Sacrament Institution’” (p. 7). Were this designation to be revoked by the Province, the school would cease to be connected to the Province, the worldwide Congregation, and the

Catholic Church and necessary stipulations regarding property and such would be set in motion according to the bylaws.

*Congregation B: The “Sisters of Our Lady of the Star”*

The discussion of the division of Control within current governance relationships was discussed by the focus group members from the Provincial Team of the Sisters of Our Lady of the Star. The topics that were discussed within this portion of the focus group session emanated from two sources: first, the role of individual Sisters within the governance structures of the local schools, and, second, the use of limited-jurisdiction governance and the powers that have been reserved to the Province itself through the bylaws.

In the case of each educational institution’s governance structure, a two-tiered Membership structure is in place with either the entire Provincial Team serving as the top-tier Member board or individuals from the Provincial Team serving as Members on one of the local top-tiers. Current differences within local-level Membership structures have been the result of both the consolidation of the Sisters’ provinces in the 1970s and 1980s, as well as of specific governance needs that arose in local situations.

The Sisters hold different roles within the governing structures of the secondary apostolates. On the level of trustees, the bylaws of each school stipulate that there must be two or three Sisters who serve in the role of trustee on each board of trustees. These Sisters are chosen by the local board within its yearly membership recruitment rotation, for the Province neither appoints nor approves the placement of trustees on each local board. On the level of Member, the Members must be all Sisters of Our Lady of the Star, and the Membership is appointed by the Province.

The discussion on Control was spurred by the topic of Ownership, for the participants quickly related the two topics as they shared perspectives. One particularly poignant response by a participant articulated a loss of Control as a result of differences between the views on Ownership held by the Sisters and by individual Trustees. The participant shared the following:

People get on our boards who are used to corporate boards and used to doing things and thinking of themselves as the owners. And they have little regard for the religious congregation, especially since we're women. In terms of Ownership, and we have such a different sensitivity about Ownership and stewardship than they do and, it's a battle. ...It feels like they could just walk away with what they want and pay us no regard, and that's... I feel a real vulnerability on that. (Congregation B, 2012, p. 15)

A number of the participants unhesitatingly agreed with this statement, and as noted within the section on Ownership, the experience of having had a board of trustees separate their school from the Sisters of Our Lady of the Star remains strong in recent memory. Another factor contributing to this feeling of vulnerability is the continual decline in the number of Sisters within the United States Province, and the Sisters are continuing to discern and implement strategies for shifting their structures given the continuance of the trend.

Despite the above being the general state of things, for the Sisters of Our Lady of the Star strict mechanisms of Control within their governance relationships are few and far between. The Province does not control the finances of the educational institutions nor does it directly control their bylaws. Appointment of the Head of School at each institution is also a function of the local governing board and not in the hands of the Province. Also, the Province neither appoints nor approves the placement of trustees on any of the local boards, yet the Provincial, alone, may remove individual trustees.

The existent reserved powers to Membership and, through it, to the Province of the Sisters of Our Lady of the Star are primarily financial in their scope. These limit the amount

of debt that may be incurred or how the assets may or may not be used as collateral for a loan. Also, the participants discussed the ownership of property and again mentioned the reversion clause of the bylaws as one of the reserved powers that gives them ultimate control and preserves their canonical responsibility over the assets of the individual schools as ecclesial goods.

The greatest reserved power that the Sisters hold is the definition and assessment of the efficacy of their mission at each of the local schools, for this reserved power determines the affiliation of each school with the Sisters. Each institution is a member of the Consortium of Our Lady of the Star Schools, a formal and civilly incorporated network of schools created for the purpose of enhancing and supporting the mission of the Sisters of Our Lady of the Star, and within this, a five-year review process holds the schools accountable to the mission itself. The standard, by which an individual school is assessed, is a document authored by the Sisters and, within most recent iterations, shaped with the input of their lay colleagues. The participants noted that this accountability process is truly central to maintaining the balance between all intended outcomes of the school institutions. Although it would be the extreme case, by means of this process, either party, the Sisters or the individual school, may revoke their association with the other, and in parting ways, the Control mechanisms, including the reversion clause regarding property and assets, would be put into motion.

*Congregation C: The “Brothers of the Holy Archangels”*

When discussing the division of Control between the Province and the individual schools in their governance relationships, the focus group participants from the Archangel Brothers focused primarily on how the bylaws determine the existent stasis. The conversation regarding Control centered around two topics: first, the use of a Membership

structure within the individual corporation boards of trustees, and second, the reserved powers held by the Members within each school corporation.

The North American Province of the Brothers of the Holy Archangels chose to adopt a two-tiered, Membership structure for each of their school corporation boards. The Membership exercises its function on the local level and not within the structure of a Membership Corporation or one Provincial Membership body. Prior to the consolidation of the Archangel Brothers into a single, continental province, this format for limited-jurisdiction governance had been in place in some, but not all places, and the experience of governance gained through the operation of their college had an influence on how structures evolved and currently exist. Each of the private secondary schools has a two-tiered structure on the local level comprised of an upper Board of Members and a lower Board of Trustees; in each school instance, three Members comprise the top-tier board. Two of the Members are concurrently serving on the Provincial Leadership Team of the North American Province of the Brothers of the Holy Archangels, positions that require Brother incumbents, and the third Member is appointed by the Provincial of the North American Province. The participants noted that the third Member, while appointed by the Provincial, is not required to be an Archangel Brother, yet it generally is the case that the third Member is a Brother. Experts in Canon law had been consulted regarding this, and their opinion affirmed that the structure was sound from a canonical perspective due to the stipulation that any Member could be replaced at the discretion of the Brother Provincial and that the voting block within the Membership would be two-thirds Archangel Brothers.

The focus group participants then described the role of the Members within the individual boards of trustees, outlining the eight powers reserved to the Membership of the corporation. It was apparent to the researcher that they knew their documents and structure

well, merely by their quick responses and listing of the Members' reserved powers. The participants identified the following reserved powers common to all Archangel Brothers private secondary schools:

- Establishment and amendment of the “philosophy, direction, nature, and mission of the Corporation” (Congregation C, 2012, p. 12);
- Alteration or amendment of the Corporation documents, including the bylaws;
- Appointment and removal of Trustees (the individuals comprising the lower-tier);
- Merger, consolidation, or affiliation of the Corporation with another corporation;
- Dissolution or termination of the Corporation, including the determination of the distribution of assets;
- Approval of expenditures over a specified amount;
- Approval of encumbrance or sale of the Corporation's assets; and
- Appointment and removal of the President of the Corporation.

Participants who currently serve as Members even went so far as to express which of the reserved powers they deemed the most important, listing the first and the last of the above powers. The first participant-Member felt that the establishment and amendment of the philosophy and mission of the school was most important because it “incorporates the whole thing” (p. 17), and the second participant-Member considered the appointment and removal of the President of the Corporation to be the most critical, due to the influence able to be exerted upon the determination of the mission and philosophy of the institution.

As a part of the discussion about the first reserved power of the above list, participants iterated the importance of a mission review process conducted by the Province, wherein the school, inclusive of the input of the trustees, every six years, undergoes an

assessment of the entire mission efforts of the school as well as how those are related to the specific mission of the Archangel Brothers. The review process includes a self-study and a site-visit by a visiting team, culminating in a strategic plan focused upon the mission of the individual school.

*Board A: "Eucharistia Academy"*

The discussion regarding the division of Control within the governance relationship of the Western Province of the Blessed Sacrament Fathers and the Trustees of Eucharistia Academy included the participants' perspectives upon a very difficult governance issue that arose between the two parties within the past several years. Without providing details about the cause of the discord, the participants of the focus group reported that the Provincial Leadership of the Blessed Sacrament Fathers had become dissatisfied with the direction of Eucharistia Academy in terms of the quality of its Catholic and Blessed Sacrament charisms. According to the focus group, the peaking tension only involved the governing bodies of the institution, for most of the day-to-day community members, in their estimation, were not even cognizant that such discord had arisen and been settled between the factions.

The focus group participants recounted the event they called "Revoking the Charter" (Board A, 2012, p. 25). Prior to the difficulty, the group members felt that the Blessed Sacrament Fathers did not pay much attention to Eucharistia. A participant shared, "For a long time, Eucharistia has been viewed by the Fathers as: this splendid asset that works kind of just fine, and we've got other things that we need to worry about" (p. 13). Another group member, reiterating, stated bluntly "They've been silent on point, relatively, other than when shit happened" (p. 13). However, in this instance, the situation became dire enough for the Provincial Leadership of the Blessed Sacrament Fathers to threaten to "pull the charter" (p. 13), asserting their power to control the direction of Eucharistia Academy when they

deemed such to be necessary. Given this experience of a potential rupture in the governance relationship through revoking the charter, the focus group perceived that Ownership and Control are closely related within governance, for they noted twice that the Eucharistia School Corporation is owned by the Trustees, and in one instance they stated that it is “ultimately controlled by the Province” (p. 21), as well as at another time repeated, “the Fathers retain ultimate reserve power” (p.21).

The reserved powers held by the Western Province of the Blessed Sacrament Fathers were a topic of conversation within this part of the focus group session. Participants enumerated specific reserved powers that included the following:

- the ability to revoke the Blessed Sacrament identity of the institution, thereby removing Blessed Sacrament religious personnel and the assets of the institution;
- changing the mission of the school;
- approval of bylaw amendments (This had been done at the time of the turmoil.);
- alienation of assets of the Corporation; and
- maintenance of a “super majority vote” (p. 21) within the Board of Trustees.

This led to a discussion of the structure of the Board itself as a means of Control exerted by the Province of the Fathers, for within the Eucharistia Academy Board of Trustees, Control is also expressed structurally. While originally the membership of the Board of Trustees of Eucharistia Academy had been entirely composed of Blessed Sacrament priests, currently, there are three Blessed Sacrament priests who serve as Trustees on the Board alongside the six lay Trustees. The focus group members reported that the Father Provincial of the Western Province appoints three Trustees to membership on the Board: one is a Provincial representative, another is the superior of the local community,



and the third is the President of Eucharistia. The Provincial Representative and the Superior are both Blessed Sacrament Fathers, and the President may also be such, as well.

To a person, lay people are in the numerical majority on the Board. However, in the case of Eucharistia Academy, the three Blessed Sacrament priests hold and share a mathematical voting majority on the Board. In describing this to the researcher, one focus group member articulated,

In other words, if there's nine people, six lay and three Blessed Sacrament Fathers, the power of the vote goes to the Fathers so that if they voted *en masse* one way and we [lay members] all voted another, it would be 5-4. (p. 22)

The participants were very clear with the researcher that the six lay Trustees are comfortable with this voting structure. Also, because the Priest-Trustees would “ultimately have to vote the way the Superior or the Provincial tells them to vote...they’re not voting ultimately their own opinion” (p. 22), the participants felt that this state of affairs preserves the reserved powers of the Province.

*Board B: “Ave Maria Convent School”*

The participants from the Board of Trustees of Ave Maria Convent School discussed the topic of the division of Control within their governance relationship with the Sisters of Our Lady of the Star, United States Province. The contributions of the focus group centered around two principal topics: first, the participants defined the Members and described the relationship that the Members have with the Trustees; second, this was followed by a discussion of reserved powers and the areas in which the Board of Trustees must seek permission to act.

On the local level, the governance structure of Ave Maria Convent School is a two-tiered structure with an upper board of Members comprised of three individuals, who, according to the bylaws, are appointed by the Provincial Team and are each Sisters of Our

Lady of the Star. The lower governing body, as previously described in the section on demographics, is a Board of Trustees numbering over 35 individuals, three of whom are Sisters of Our Lady of the Star who do not serve on the Membership Board.

In discussing the Members, focus group participants who were all Trustees, mentioned that the Members meet once per year separately from the Trustees. Candidly stated by one participant, “The running of the school is entrusted by the Members of the Corporation to the Board of Trustees, and the Board, frankly, doesn’t engage with them. Most of us, I think, aren’t even sure who the Members [are]” (Board B, 2012, p. 12). Another participant listed the Head of School as one of the Members, yet this was contradicted by the bylaws provided to the researcher, which listed the Head of School as an “*ex officio*” Trustee with vote” (p. 28). The Members have no role in oversight of the Trustees, for they do not have the authority to either place Trustees on the Board or remove them from it. According to the bylaws, only the Trustees may remove an individual from the Board.

During the focus group session, the participants also discussed the limits that have been placed on the powers of governance that are exercised by the Board of Trustees. The group felt that they did not necessarily focus on themselves as a board of “limited-jurisdiction”, for while they have always recognized that they do not have absolute freedom to do anything they wish, they take very seriously their role to govern and manage the corporation through the Head of School. In the recent past capital campaign, there had been questions among the Trustees about the amount of freedom that existed regarding the use of funds raised, as well as how funds were used to accomplish the campaign itself.

The reserved powers are reserved to the Members of the Corporation instead of to the Province of the Sisters. Without approval of the Members, the Trustees may not sell any

of the property or pledge it as security for a loan, and they may not take action that has “a significant effect on the overall educational and spiritual objectives” (p. 35) that have been established through the school’s membership in the Sisters’ Consortium of Our Lady of the Star Schools. Consensus among the focus group participants demonstrated their commitment to the mission and charism of the Sisters of Our Lady of the Star.

*Board C: “Saint Uriel College Preparatory”*

In describing the division of Control within their governance relationship, the focus group members from the Board of Trustees of Saint Uriel College Preparatory focused greatly on the strength of their relationship with and their appreciation for the Archangel Brothers. One phrase in particular can be said to characterize the perceptions of the focus group participants: “The Brothers really have the ultimate say” (Board C, 2012, p. 10). Participants discussed the role that the Province takes in terms of appointment of Trustees to both their Board and all other Archangel Brother School boards, and they reviewed the reserved powers held by the North American Province of the Brothers of the Holy Archangels by means of the employed governance structure.

Participants indicated that they perceived their relationship with the Archangel Brothers and the Province was very good. One individual shared,

And it really hasn’t been something where you feel like they’re watching over your shoulder. I think they give this Board, at least my experience so far, the autonomy to go through the process and to collaborate in making the right decisions for the school and that’s...a good manager does that. (p. 10)

Another person, augmenting this thought, offered, “The Province and the Board, everything is mutually beneficial. I think what they do is beneficial to us, and what we do benefits them as well” (p. 11). Focus group participants felt that the focus of the aspect of Control within their governance relationship did not greatly stress the fact that the Board is a board of

limited-jurisdiction. Playing a significant role within the connection that the Board perceives they have with the Archangel Brothers is the current President of the school, an Archangel Brother who has been in ministry at Saint Uriel's for over 20 years. He is considered by the Board to be the "moderator" (p. 16) of the Board, as well as their "mouthpiece" and "liaison" (p. 12) to the Province of the Brothers.

The governance structure of Saint Uriel's has two-tiers; the upper level is a Board of Members and the lower level is a Board of Trustees. The participants spoke very generally, reporting that the Members only get involved when there are higher-level decisions being made, yet that this structure does not make them feel as if they are any less in control of the governance of the school. Focus group participants were not clear with the researcher whether or not the Members were present with the Trustees during Trustee meetings, for some thought so while others thought not. However, both sides agreed that at the meetings there was someone from the Province who joined them. Also, when asked about whether there was a Membership Corporation, one participant mentioned that there was, connecting this corporation to the corporation that was said to own the property of Saint Uriel College Preparatory. The existence of the Members within the governance structure and the need to consult them and gain approval for certain actions is viewed positively by the Trustees as a "kind of preservation of identity" (p. 25).

As the discussion of Membership turned to an examination of the reserved powers, the participants articulated that these had to do with larger-scale financial decisions, but, when asked for more specificity, they altogether admitted that they did not have a great enough familiarity with the reserved powers. Further, one participant, who was not one of the newly appointed Trustees, replied, "I don't really...I couldn't tell you the other reserved powers off the top of my head" (p. 13). Another, when given a subsequent chance via

follow-up question, supposed, “When I started, I think there were three separate categories of reserved powers, and I can’t think of any...and maybe that speaks to our independence” (p. 15).

Focus group members explicitly identified the Trustee vetting process applied on the part of the Province to be central to the Control that the Province of the Brothers has over their Board, for in the view of the Trustees, the Province understandably controls the membership of the Saint Uriel Board, as well as the other school boards, by reserving the authority to appoint Trustees to the Board. Prior to appointment as a Trustee, members of the Provincial staff contact and hold discussions with potential trustees prior to the individual being finally approved and seated as a Trustee. Participants acknowledged that the Province can halt the nomination process of an individual, barring them from holding a role as a Trustee and, in this, the Province is the “final seal of approval” (p. 11).

### *Results of Research Sub-Question 3: Sponsorship*

Research Sub-Question 3: How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction?

#### *Congregation A: The “Blessed Sacrament Fathers”*

The topic of Sponsorship within governance relationships began with a discussion of the origins of the “Sponsorship movement” (Congregation A, 2012, p. 4). Participants then discussed different levels of institutional affiliation with the Province, which served to clarify items not only for the researcher, but also for the participants. The focus group then defined the term Sponsorship as used by the Western Province of the Blessed Sacrament Fathers and described their formal Sponsorship Agreement document common to all apostolates of the Province.

The interpretation of Sponsorship by the Provincial Leadership of the Western Province of the Blessed Sacrament Fathers has been formed by what they have perceived to be the evolution of the Sponsorship movement within Catholic ministries given the current trends of religious congregations. Originally, in the ministerial experience of the participants, the question of Sponsorship had been addressed through questions such as, “How many Blessed Sacrament Fathers do you have to have to make sure it is a Blessed Sacrament school?” (p. 4), but currently the tenor of Sponsorship has shifted to the preservation of both the mission and identity of the Blessed Sacrament charism, as well as the ecclesial-religious dimension from a Church point-of-view. The focus group participants agreed that the Sponsorship movement has moved away from a “numbers game” (p. 4) to a focus on qualities and characteristics intentionally made inherent within the institutional ministry.

After this portion of the group’s Sponsorship discussion, one of the participants raised a question about the different titles under which ministries within the Province were categorized, for the current designations include “Endorsed” and “Sponsored” (p. 17). One member explained that while an Endorsed school does not have Blessed Sacrament Fathers present as personnel within the school community, the board is operating the school with the charism and spiritual traditions of the Blessed Sacrament congregation. The endorsed school may also choose to belong to the Network of Blessed Sacrament Schools and benefit from programs, yet it is not required to do so, and may not, due to the financial commitment required to do so.

The focus group conversation moved very naturally toward the formal Sponsorship Agreement that the Western Province of the Blessed Sacrament Fathers has with each of its apostolates, which includes non-educational works, as well. This document is a formal

agreement between the corporation of the Province and the corporation of the apostolate; in this, it is an agreement between civil structures. The focus group members shared a copy of an individual school's Sponsorship agreement, which was not the one for Eucharistia Academy, the affiliated Blessed Sacrament school that participated in this research. At the head of the agreement is a definition of Sponsorship:

Sponsorship is the affirmation by the Blessed Sacrament Fathers granted by the Provincial of the Western Province that [name of apostolate] is a work of the Blessed Sacrament Fathers in the Western Province of the Blessed Sacrament Fathers and is a Catholic, Blessed Sacrament school. (Congregation A, 2012, p. 27)

For the Fathers, this operational definition serves as the formal “recognition of what already exists” (p. 17), with the purpose to “promote mission and identity” (p. 16), and outlines obligations of both parties within the relationship while “encourag[ing], in a very strong way, the board, primarily, to get on board and take responsibility. [They] can’t just leave it to the Blessed Sacrament Fathers” (p. 17). The focus group participants were resolute regarding the importance of the Sponsorship Agreement within their governance relationships with each of their individual apostolates.

*Congregation B: The “Sisters of Our Lady of the Star”*

The focus group of the Sisters of Our Lady of the Star differentiated between official and unofficial use of the term Sponsorship. Officially, the Provincial Leadership has not adopted the term of Sponsorship to describe the governance relationship of the congregation to its individual apostolates. Informally, there have been instances where it has been used by the individual members of Provincial Leadership because it was a concept familiar to the particular audience (including other religious congregations and their colleagues) by which to communicate a specific point about governance.

In addressing the exclusion of the term Sponsorship from official use by the Sisters, members of the focus group reported that past provincial leaders “shied away from it” (Congregation B, 2012, p. 14) and that current and recent past leaders have upheld this outlook on its use. Two major reasons were put forth very clearly as reasons for which Sponsorship both is not and has not been used. The first reason is that Sponsorship does not have root in canonical language, and second, that it is “subject to interpretation” (p. 14).

Unlike the other two religious congregations within this research, when discussing the topic of Sponsorship, the focus group of Sisters discussed a couple of situations where the congregation had been working within a specific apostolate with at least one other women’s religious congregation. In this portion of the focus group discussion, the connection that they saw was that Sponsorship, as a term, had been used informally within the context of the other religious congregation(s), and they further stated that Sponsorship has also been used by lay colleagues, who in their past professional experiences with other religious congregations, had used it as a means of describing the relationship of an institution to a religious congregation. About this, a participant reluctantly stated, “If it’s the best we can do to get them to realize that they don’t own [the school], then we’ll go with [Sponsorship]” (Congregation B, 2012, p. 17).

*Congregation C: The “Brothers of the Holy Archangels”*

The Archangel Brothers, as a congregation, do not use the term Sponsorship in their governance relationships with their private Catholic secondary schools in the United States. Sponsorship is seen to be a troublesome term from the perspective that it does not have a clear definition. Instead, provincial leadership has focused upon strengthening their Association of Archangel Brother Schools, which they have established as a means to ensure that the schools remain consistent within their charism.



When the focus group of Archangel Brothers Leadership was asked about their interpretation of Sponsorship as applied to their governance relationship with their apostolates, the immediate response of one participant was, “You will get at least five different responses on that one” (Congregation C, 2012, p. 14). This was followed by a bit of laughter, which the researcher took to understand as a sign that they had experienced the complexity of this term. Another participant quickly conveyed, “We don’t use that term because it has meant many different things from Coca-Cola sponsors, to the Olympics, to the school is related to this public juridic person” (Congregation C, 2012, p. 14). The focus group described the term’s historical use, however, in cases where there had been documented Sponsorship agreements with certain schools. It was stated that these specific schools have since discontinued their relationship, and it was not specified as to whether these schools originally had been private or diocesan schools.

After stating their reasons for not using the term Sponsorship, members of the focus group discussed how they had purposely decided to move away from Sponsorship language in favor of focusing on facilitating relationships among the schools and the Brothers in a different way than previously done. The Province had begun to gather its schools into a formal association, the Association of Archangel Brothers Schools, that was created to facilitate relationships between the schools centered upon the charism of the Brothers of the Holy Archangels. A guiding document, wherein the Archangel Brothers and their lay colleagues outlined the qualities and characteristics of their philosophy of education, serves as the major impetus for shaping relationships within the institutions and the orientation of each apostolate. The schools are seen as members within the Association of Archangel Brother Schools as opposed to being related to the public juridic person of the North American Province of the Brothers of the Holy Archangels.

*Board A: "Eucharistia Academy"*

For the focus group of Trustees of Eucharistia Academy, the topic of Sponsorship was also contextualized by the participants with their experiences during the conflict between the governing bodies of Eucharistia Academy and the Western Province of the Blessed Sacrament Fathers. Initially, questions regarding Sponsorship were answered with an admitted ignorance to the vocabulary of Sponsorship in the sense of the governing relationship. However, the group rounded out their response when they considered the fact that they do have a formal Sponsorship Agreement with the Province and, that they had heard the term used during a very tenuous period that, a few times during the focus group session, was sarcastically called by one participant, the "internecine war" (Board A, 2012, p. 7).

One member relayed that he had remembered Sponsorship used as a term by the then former Provincial of the Blessed Sacrament Fathers who had said, "I am concerned about the Blessed Sacrament Sponsorship of this school" (Board A, 2012, p. 25). At the time, the Trustees had not fully comprehended what the Provincial meant by using the term Sponsorship, but in a subsequent conversation with one of the Priest-Trustees of Eucharistia, it came to be understood that the Blessed Sacrament Fathers were threatening to "revoke the charter" and "take [the Blessed Sacrament] Sponsorship away" (p. 26).

Within the focus group conversation, the participants turned to processing what revoking the charter would have meant for them as a school community. They stated in very passionate tones that the removal of the charism would have been devastating to the school, and they were very adamant in ensuring that they, as the "keepers of that Sponsorship...the Blessed Sacrament character of the school" (p. 25), take this responsibility very seriously. Upon reflection, during the focus group session, after talking about this

difficult period, one Trustee articulated, “It’s easy to underestimate the significance of being fed Blessed Sacrament priests” (p. 29). Another added after further consideration, “At some level, it really helped when they threatened to pull the charter” (p. 32).

*Board B: “Ave Maria Convent School”*

When asked about their understanding and interpretation of the topic of Sponsorship as related to their relationship to the Sisters and their governing role at Ave Maria, the members of the focus group stated plainly that they had not even seen the word used. For them, the word has no place in their vocabulary surrounding governance and their relationship with the Sisters of Our Lady of the Star, United States Province.

*Board C: “Saint Uriel College Preparatory”*

Also, for the focus group of Trustees from Saint Uriel’s, upon being asked about their interpretation of Sponsorship in their role, one participant stated bluntly, “Never heard of it; never heard that term used” (Board C, 2012, p. 21). Two of the other participants nodded in agreement.

*Results of Research Sub-Question 4: Trusteeship*

Research Sub-Question 4: How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction?

*Congregation A: The “Blessed Sacrament Fathers”*

The focus group participants from the Provincial Leadership of the Blessed Sacrament Fathers described their understanding of Trusteeship from the perspective of their own experience, as well as what they expect and require of trustees serving in their Province’s private secondary schools. Responses made by the focus group members

demonstrated that considerable thought had gone into the development of a philosophy and culture surrounding Trusteeship, thereby recognizing the important role that they feel trustees currently have in maintaining and furthering the educational mission of the Blessed Sacrament Fathers.

Each of the individual Blessed Sacrament priests who participated in the focus group either was currently serving or had previously served on one of the Province's high school boards; some had experience as a trustee on one of the Congregation's university-level governing boards as well. They described their expectations for trustees within their private, Catholic secondary schools through the lens of what they, themselves, perceived to be expected of them during their own service as trustees. All trustees, including Blessed Sacrament Father-Trustees, are expected:

- first and foremost, to be faithful to and further the Blessed Sacrament mission, identity, and charism of the school;
- to promote the school, serve in a capacity, and concern themselves with the welfare of the school; and
- to evaluate the President/CEO of the school. (Congregation A, 2012, pp. 3-4)

The participants, in discussing the expectations of trustees, stated that there are no other demographical requirements, such as being a practicing Catholic or being previously connected to a Blessed Sacrament institution, before being nominated to service as a trustee.

Stemming from this, the participants naturally moved into noting that the participation of Blessed Sacrament Fathers is crucial to the good governance of the Province's apostolates. Further, they characterized the difference between a Father-Trustee and a Lay-Trustee as being "practical rather than formal" (p. 4), for other than particular voting responsibilities, which vary between different institutions, there is no distinction made

within the bylaws as to Trustee responsibilities. Participants noted, however, that the Father-Trustees have the unique capacity to round out the expertise of the board by providing an outside perspective through insight from personal experience of ministry, potentially including that of administration, in different educational apostolates within the Province.

Even within the frame of articulating the above views, the focus group participants identified a couple of specific distinctions between Father-Trustees and Lay-Trustees in terms of how they exercise their duty to support the school institution. Father-Trustees were said to “bear a heavier responsibility for keeping the school faithful to its mission” (p. 4) and the “non-religious trustees have a heavy expectation to further the fundraising and the advancement” (p. 4) of the institution. When the researcher summarized the discussion for the participants at the end of the session, one of the participants specifically chose to re-articulate this last statement, asserting,

Trustees are looked upon as a group, now, to raise an enormous amount of money; because the mission is kind of covered by the president and administration [of the school]. You raise a lot of money. They’re each expected to make a sacrificial gift themselves, which, at one place, I heard defined very well as, “I can’t write this check without checking with my spouse” [laughter among focus group members]. So, they’re each expected to make that kind of sacrificial gift and, then, find friends who will do the same.... You know, help round-up other benefactors. (p. 24)

Although, according to the bylaws, there has been no formal distinction made between the various types of trustees, practical differences exist within the expectations of the Father-Trustees and the Lay-Trustees.

The focus group participants turned their attention to the topic of trustee formation and, specifically, the role that they take as a Province in forming individuals for service as trustees. Twice per year, the Province has gathered Principals, Presidents, and Superiors of Blessed Sacrament communities from the local schools together at “PPS Meetings” (p. 8),

and these have been expanded during the second meeting of the year to include the chairperson of the local board of trustees, as well. Also, the Province has used resources to provide board retreats in the past, but attendance has not been as high as desired. One of the participants, who currently works as the Provincial Assistant for Secondary Education, mentioned that he is available for both advisory as well as formational work if such is desired by individual boards.

Although the Province has taken a certain role in board formation, opportunities for board members to become more attuned to the Blessed Sacrament mission are also found on the level of the local, individual school and, also, on the national level as well. The Blessed Sacrament Fathers in the United States have a national organization, the Blessed Sacrament Network, that includes within their national meetings specific segments for school trustees, and schools will generally send the chairperson along with two or three trustees. Further, the national region of the Blessed Sacrament Fathers, which comprises all of the provinces within the United States, has been most recently working toward an all-inclusive formation and orientation program that would include different levels of formation, from basic information, through goals, ideals, Blessed Sacrament spirituality, and into personal religious experience. One participant noted, “The deeper you move into leadership roles in any of our institutions, you need to appropriate [the correct spiritual formation] for yourself” (p. 10). Participants clarified that this model is in process and that it will also likely be impacted by provincial consolidations in the region. However, for the moment, each province is able to implement programs as they see fit and the Blessed Sacrament Fathers do not have a national formation program in place as yet.

Lastly, the participants conveyed to the researcher the importance of the local school’s responsibility for the formation of its trustees and administration. Individual

institutions have conducted formation in-servicing, yet it is considered to be a means that needs greater development. The recognition that trustees, outside of their commitments as trustees, are, generally, very busy professional individuals, is one of the great reasons why formation on the local level is “the *de facto* way it goes and that’s for better or worse” (p. 11). One of the focus group members relayed, “We pretty much trust the presidents and the board chairs are doing a good job with Mission” (p. 10).

The researcher, by means of a follow-up question, inquired about the degree to which Canon law has been included within the formation process for trustees, either on the local, Provincial, or national level. The focus group members chuckled initially, mentioning that in their seminary formation they had a required course on Canon law, and they joked that the topics were “hard enough for us to understand them” (p. 11). The consensus of the participants was that Canon law does not generally appear within board formation programs and canonical needs had generally been solved by seeking outside expertise when necessary.

*Congregation B: The “Sisters of Our Lady of the Star”*

The focus group members from the Provincial Team of the Sisters of Our Lady of the Star, United States Province, discussed their understanding of Trusteeship and their strong belief that formation of trustees is of greatest importance for their Province at this point in time. They described the elements of their Trusteeship formation programs that occur with the assistance of their national Consortium of Our Lady of the Star Schools. As previously described, the individual Sisters on the Provincial Team currently serve as Members at different educational institutions, and they have also each served in the role of Trustee for one of the Province schools.

The participants of the focus group shared that, within their relationship with their local trustees, the approach has been to give the trustees as much authority as possible, and

to express to the boards that the Sisters both trust and believe in the board's ability to govern each of the local institutions. "The Board of Trustees is ultimately responsible for how the school is living the Mission" (Congregation B, 2012, p. 6). As articulated within the section on the division of Control, the Sisters have not reserved many powers from the trustees, and the boards have full responsibility for the financial viability of their respective institutions, as well as the duty to appropriately fill their ranks.

The Province does not stipulate requirements for service as a trustee. Although the Catholicity of the institutions is not in question, trustees are not required to be Catholic, and the Sisters have found that there have been some non-Catholics whom they deem to truly understand their unique Mission. Also, prior or current connection to the institution is not a requirement, for, as seen in a number of their long-standing institutions, philanthropists within local communities have been stepping forward to serve, due to their having seen the results and contributions that these institutions make. The participants also expressed that it is "really dangerous to have too many present parents" (p. 22).

Unique within the school community, the role of Trustee lends itself to a great need for formation. Focus group participants noted that there is a "constant turnover of trustees, even more so sometimes than administrators and teachers" (p. 5). Also, because many trustees bring with them their experiences of other boards, both for-profit and non-profit, and oftentimes from a non-religiously oriented organization, being steeped in the Sisters' tradition and charism, which is rooted in the Roman Catholic faith, is crucial to them serving authentically as trustees with the duty of overseeing the Mission in the specific local school.

The formation of trustees is accomplished primarily through the programs provided by the Consortium of Our Lady of the Star Schools, the national association of schools affiliated with the Sisters of Our Lady of the Star. The Province has financially supported



the formation expenses for the trustees and, from the beginning of the Consortium in the early 1980s, biennial conferences specifically for the trustees have been provided both to imbue the trustees with the Mission and to bring the wider trustee community together to share commonalities and challenges. The committee within the Consortium that shapes the trustee conferences has Sisters who serve as members, and there is a greater desire, on the part of both the formation committee and the Sisters, to have more direct influence from the Sisters within this program.

The participants enumerated the major topics that are included within the formation opportunities for trustees serving within their schools. These comprised the following topics:

- Mission, history, and traditions of Our Lady of the Star Schools throughout the years;
- Biographies of the Foundress, and the other Sisters who shaped the thought, charism, and philosophy of the Congregation and Province;
- Priorities and emphases of general and local chapters (governing congresses) of the Sisters, and how the current vision and implementation is being applied; and
- Discussion of structures and relationships with both the Consortium of Our Lady of the Star Schools and the Sisters of Our Lady of the Star, United States Province.

Focus group participants noted that there has been a lack of clarity among the parties responsible for the governance of the schools as to the roles and responsibilities of each of the numerous bodies and constituencies. Some trustees have asked for the Sisters and the Consortium to give greater clarity to roles and responsibilities of the Provincial Team and the Consortium in their levels of relationship to the individual school apostolates.

When asked by the researcher as to the role that Canon law has been given within the formation program, the participants responded that it has been a topic in the past, but that they have questioned how it has been received by those being formed. A participant elucidated the point stating, “But we have too many lawyers on our boards of trustees. I think it’s a little bit uncomfortable when they’re hearing something that...they don’t have a clue about what that person up there is talking about” (p. 9). Another member noted that the Canon law portion of the program “seems very dry and irrelevant” (p. 9), yet its importance has come to the fore when individual boards have faced the “exigencies of our time” (p. 9) regarding the relationship of the assets of the school, the assets of the Sisters, and the assets of the wider Church. Participants mentioned that they had addressed issues of Canon law in the past in an *ad hoc* manner.

Formation has been uppermost in the minds of the Provincial Team, who candidly spoke about foreseeing the need to shift existing structures as the number of Sisters within the Province, according to the current trend, continues to diminish. One focus group member shared,

I also really believe that if we hadn’t taken this risk toward educating the laity that we wouldn’t have any schools now. We simply wouldn’t have enough people to do it, and the basic decision that the Mission could be lived by the laity, I think, is critical to the survival. (p. 24)

Partnership with the laity within the educational institutions is seen as necessary in order for the Mission of the Sisters of Our Lady of the Star to continue.

*Congregation C: The “Brothers of the Holy Archangels”*

Participants of the focus group from the provincial leadership of the Archangel Brothers discussed their understandings of Trusteeship within the governance relationship of their private secondary schools. This portion of the focus group session centered on the

major expectations that the Province holds for all people serving as trustees in their private apostolates, and they described the scope of their trustee formation program. This formation program, along with its nomination process, is considered to be the most important means of assisting trustees in Archangel Brother schools to fulfill the duties of their service on local school governing boards.

The focus group members first discussed the expectations that they have for trustees serving in their local school communities. They mentioned that the merger of the original provincial entities into one, country-wide province had a great effect on how the current province relates to the individual schools, for the cultures of the former provinces were disparate in terms of the expectations and level of structure that were placed upon the governing boards and schools. When asked about the expectations that they have for their trustees, the participants were quick to offer the following:

- Being willing to be formed in and understand the charism and educational mission of the Archangel Brothers, as well as that of the Catholic Church, in order to make decisions for the school based upon such;
- Being present at board meetings and participating in decisions and deliberations;
- Being strongly supportive of institutional advancement efforts, including fundraising and strategic planning;
- Hiring, monitoring, evaluating, and supporting the President or Head of School;
- Being aware of and understanding the uniqueness of the board as both a civil and a Catholic institution, by both
  - Exercising their appropriate civil authority; and
  - Abiding by the limitations of their authority in regard to the Archangel Brothers' reserved powers and the rights of the local (arch)bishop.

Although within the above the understanding of the mission of the Archangel Brothers was included once, in enumerating trustee expectations, the participants specifically mentioned several times this need for individual trustees to be mission-oriented in their perspective so that board decisions reflect the mission.

The participants of the focus group described the process that is followed wherein an individual nominated to be a trustee for a certain board is actually and finally appointed as such. Two of the participants, who then worked most directly with the boards, described the thorough vetting process that includes an extended interview between the nominee and one of the individuals of the Provincial staff. The interview was explained as “an engaging kind of conversation, and your gut knows” (Congregation C, 2012, p. 9). Further conversation outlined the major topics of the vetting interview: the interest of the candidate, the “time, treasure, and talent” (p. 9) the candidate will offer, the different and previous experiences of Trusteeship, and, while not looking specifically for Catholics, ascertaining whether the individual has a “sense of Mission” (p. 9). This vetting interview is considered to be not only informative for the Provincial staff in their decision of whether or not to place the person on a board, but also it is felt that the conversation is educational for the interviewee who, through this experience, comes to understand and experience the governance model of the Archangel Brothers.

Next, described for the researcher within the conversation, was the formation program designed to both educate trustees regarding necessary information and inculcate within them the values and spirit of the Archangel Brothers to shape their perspective regarding their ministry as trustees. The title of the current program is “Called and Gifted” (p. 8), a one-day, required program that is intended to take place within the first term of

Trusteeship. One participant intentionally used the word “indoctrinate” (p. 8) when describing the formation workshop. Topics included within this program are:

- The life and spirit of the Founder of the Archangel Brothers;
- The document “Prime Values of the Archangel Brothers”, by which each institution is evaluated in their Provincial accreditation process;
- The structures at play within the governance of Archangel Brothers schools: the Provincial offices, the geographical extent of the Province, the functioning of the local board of trustees, and the role of the local (arch)diocese;
- The existing reserved powers held by the Province through the Membership structure, and an explanation of the rationale and necessity of these reserved powers; and
- A section called “Safeguarding the Sacred Trust” (p. 11) wherein an introduction to Catholic school governance within Canon law is included, noting that the school “lives in two worlds, the civil and the Church realm” (p. 11).

The description given by the focus group participants was thorough, and the participants noted that its presence within their governance relationship has provided the Province with stronger governing boards and individuals who are more strongly committed to the mission of the Brothers.

Although the formation program provided by the Archangel Brothers was reported to be a requirement for Trusteeship within an Archangel Brothers school, the participants noted that not every trustee had attended the workshop. When asked for clarification by the researcher, one participant added,

So far, “It’s required” is a little strong. We do require it, but we have appointed people to a second and third term who have not done the workshop. It’s a cultural shift we have to be patient with. To say, “required” is one thing, but to shift the

culture is another. (p. 10)

The merging of the province was the impetus of the cultural shift to which the participant was referring. Recognizing that attendance of the formation workshop by trustees is a current issue, the Province is considering the localization of the workshop instead of offering sessions only in three geographical locations across the country, which is the current practice.

*Board A: "Eucharistia Academy"*

Focus group members from the Board of Trustees at Eucharistia Academy discussed the topic of how they understand Trusteeship within their governance relationship with the Blessed Sacrament Fathers of the Western Province. For this specific topic, the responses of the group were focused greatly on their role in both ensuring and defining the Blessed Sacrament mission within Eucharistia Academy. The responses were also evocative of the unique structure of the two-tiered governing boards, Trustees and Regents. The participants discussed the expectations that they perceive the Blessed Sacrament Fathers to have placed upon them, as well as the degree of involvement that the Province has in terms of Trustee formation and appointment.

As described on page 144 within the demographics section on Eucharistia Academy, the governing structure of Eucharistia Academy has an upper Board of Trustees and a lower Board of Regents. The focus group participants, who were solely from the ranks of Trustees, as the governing body most directly related to the Blessed Sacrament Fathers, discussed their understanding of Trusteeship from the perspective of their specific governing model. Each having served as a Regent of Eucharistia, the participants first described the role of the Regents as "the hands and feet of the mission...actually doing things like working on building[s] and grounds, putting together a budget, doing governance work, and that's

very practical and...very important too” (p. 9). They then distinguished the role of Trustees as:

- “Preserv[ing] the essential Blessed Sacrament character of the school as we understand and know it” (p. 5),
- Being “taken up with mission”, and
- Focusing on the “spiritual health and growth of the community” (p. 9), institutional image and perception.

Finally, they specified that Trusteeship is more “conceptual and philosophical, perhaps, than practical” (p. 9).

The focus group participants conveyed that existing distinctions between these two governing bodies were the result of the bylaws of the corporation. Participants mentioned that, as compared to the Regents collectively, there is generally a deeper spiritual commitment within the Trustees, and most of them have participated in personal, spiritual retreats wherein they have immersed themselves in the spirituality of the Blessed Sacrament Fathers. As alumni of Eucharistia, they were first exposed to the spirituality of the Fathers during their years as students, and they are all practicing Catholics. Participants reported that being a practicing Catholic is a requirement stipulated by the bylaws for Trustees of Eucharistia Academy. It was noted that the deep spiritual commitment of the individual is of great importance when selecting Trustees to serve on the Board.

Also found within the corporation bylaws of Eucharistia Academy are the powers reserved to the Trustees and not delegated to the Regents, for it is at the discretion of the Trustees to delegate authority to the Regents. According to the discussion of the focus group members, the reserved powers of the Trustees include the following:

- Evaluating, hiring, and firing the President/CEO;

- Approving financial commitments over \$1-million; and
- Approving the budget.

One participant shared that the existence and exercise of these powers reserved to the Trustees has become slightly more controversial, given both the aforementioned period of difficulty and the more tenuous state of the American economy.

When asked by the researcher to explain the involvement of the Western Province of the Blessed Sacrament Fathers, the participants relayed that there is a sense that the Trustees have a great amount of freedom and autonomy because the Province is not generally involved on the local governing level “unless we butcher it” (p. 19). They reported that the Province has not provided an orientation program, but that there have been other opportunities for “more generic board orientations” (p. 19) and that Trustees have attended such in the past. Upon follow-up questioning by the researcher, participants stated that there is varied familiarity with Canon law among the Trustees, for one member of the focus group had done some cursory study and another Father-Trustee was seen as a potential resource in time of necessity, yet that had not been an issue in recent memory.

Overall, the participants demonstrated great gratitude for the Blessed Sacrament Fathers and Eucharistia Academy in even being asked to serve in the role of Trustee. One shared, that Trusteeship means “the opportunity to give back and help however one can” (p. 6) while another specifically stated,

I consider still being a Trustee a great, humbling honor to the school, and cast it pretty much to fate that I landed here, but I never, or thought I never promoted myself for it. But, you know, it’s a great honor and it’s an opportunity to be of service to this community and hopefully I haven’t done too much damage. But it’s an opportunity to be of service and that’s what is part of our charism, if you will, to be of service to the greater community and be a service-leader, so to speak. So, it was circumstantial, and I felt that I was called. And, to some degree, I felt that it was even a calling from God, you know. Why did this happen to me? Well, maybe



God's trying to tell you something. (pp. 6-7)

The depth of conversation surrounding Trusteeship within the focus group of Eucharistia Academy witnessed compellingly to the esteem that the Lay-Trustees held for not only the Blessed Sacrament Fathers, but also the Blessed Sacrament spirituality that so formidably shapes the participants' outlook and service as Trustees of Eucharistia Academy.

*Board B: "Ave Maria Convent School"*

Focus group members from the board of Ave Maria Convent School discussed their understanding of Trusteeship as a part of their governance relationship with the Sisters of Our Lady of the Star, United States Province. In doing so, participants conferred about their experience of Trusteeship, as well as the expectations they felt that had been placed upon Trustees, both by the Sisters and also by the Board itself. The session also included the description of the program for formation of Trustees, again, both on the part of the Sisters and also on the part of the Board, which takes responsibility for forming its own members through its Committee on Trustees.

The beginning of the discussion of Trusteeship was framed by some very expressive comments made by one of the focus group participants. She first articulated the future-oriented view that they have of their role by replying,

We also have a requirement to build community and build continuity so that... 10 years from now, and 50 years from now, and 100 years from now, there is the existence of, in whatever form that will take, the existence of an Our Lady of the Star education that lives on. And that to me is one of the really important criteria that, or one of the important mission responsibilities that board members have, which is this kind of long view. (Board B, 2012, p. 4)

She then followed her comments promptly, addressing the deep respect that the Trustees hold for the Sisters and their educational mission, offering,

I think we see our mission as being given to us as a gift from the Our Lady of the Star Order, and that mission is defined through the standards given to us by the

Sisters, as they have over their many centuries of work as educators defined that. And we see ourselves as missionary in our commitment to follow that guidance...[and] from a mission point of view, we're not designing a new mission. We are under a very clear directive of how we execute, how we behave, and what we design as systems. (p. 6)

With these conceptual, yet clear, comments, the focus group moved into a discussion that more concretely outlined the expectations of Trusteeship held by the Sisters.

The focus group members outlined several expectations that they felt stemmed from the Sisters, who have encouraged the Trustees to be both careful and thoughtful in their actions as Trustees. However, these expectations are also included within the Trustee Agreement that the Board requires each Trustee to sign and submit every year of one's term as Trustee. The highest of these expectations included the matters of conflict of interest, fiduciary responsibility, and relationship with the Head of School. It is expected that Trustees are to exercise their responsibilities in a way that holds the best interest of the organization ahead of personal interest. Trustees act in conformity with their fiduciary responsibility to ensure that the school is financially stable, as well as act only within the limits of the division of property ownership between the school corporation and the Province of the Sisters. Also, maintaining the correct relationship between the Board of Trustees and the Head of School is expected, for the Board has one employee, the Head of School, and it is left to the Board to oversee and evaluate his actions without managing or administrating either the school or any other employees.

The focus group members also mentioned other expectations, which seemed to the researcher, by the cursory nature of their being addressed, to be of lesser importance. These included serving in an advisory capacity to the Head of School in the areas of individual Trustee expertise, helping to shape strategic planning for the school's future, and assisting in fundraising by both surfacing donors and personally making donations.

The conversation turned toward how candidates for service as Trustees are prepared for accomplishing their duties through formational opportunities provided on both the Provincial level by the Sisters through the Consortium of Our Lady of the Star Schools, and also on the local level by the Board's Committee on Trustees. The Consortium provides two meetings per year for all new Trustees within the Our Lady of the Star Schools, and it is hoped that every new Trustee will attend during the first or second year of the first term of service. As Ave Maria Convent School is a far distance from where these sessions are held, it has been difficult for Trustees to make the time commitment to attend, and the local board orientation has attempted to include as much of the elements of the Consortium formation program as possible. Comprehensively, these formation programs include an orientation towards the charism, history, and traditions of the Sisters of Our Lady of the Star, as well as outline the connections between the governing entities of Ave Maria. These include the Province of the Sisters, the Provincial Team, the Consortium, and the Board of Trustees of Ave Maria Convent School. The local formation specifically addresses the bylaws, functions, and procedures followed by the Board, and it also includes presentations from different departments within Ave Maria to give an illustration of administrative and day-to-day functions. One participant shared that the goal of the half-day program is to give a new Trustee upon attending his first meeting "enough information to be able to ask intelligent questions" (p. 11)

The researcher inquired as to the degree to which Canon law was included within either of the formation programs. Participants were unsure as to what the scope or definition of Canon law is and did not feel able to provide an informed response.

At the end of the focus group session, when asked by the researcher if there were any additional comments, the participant who then currently served as chairperson of the

Committee on Trustees described the Board's vetting process. Potential candidates for Trusteeship are generally vetted through the Board's extensive committee structure, where potential candidates are included as committee members. These committees are considered to be "where the real work of the Board" (p. 22) happens, and a potential candidate's abilities and talents are observed closely as a part of the vetting process.

*Board C: "Saint Uriel College Preparatory"*

The focus group participants from Saint Uriel College Preparatory discussed their understanding of Trusteeship within their governance relationship with the Archangel Brothers. Trusteeship is understood within the context of a very close affinity for the institution of Saint Uriel College Preparatory. Within this conversation, they considered their perceptions of what the Archangel Brothers expect and require of them as trustees, and they also described the process for becoming a trustee with a description of the formation program provided by the Province of the Brothers.

During the discussion of Trusteeship, the participants shared the expectations that they feel they have a duty to uphold. One member of the group asserted that there is an informal requirement that each Trustee should be "passionate about the school...who really feel strongly about the school" (Board C, 2012, p. 15); in this, he articulated that this was of greatest importance in his experience as a Trustee. Other participants shared that they feel expected to ensure that Saint Uriel is fiscally sound by maintaining stewardship over the assets of the institution, and that the strong academic reputation of the school should be sustained into the future. Further developing this statement, another participant offered that "sustainability is not a forgone conclusion" (p. 14), and he expressed that the sustainability and existence of the institution was contingent upon how well the school was able to both

maintain its identity as an Archangel Brothers school while evolving along with society.

“This board really has to help the school in that evolutionary process” (p. 14).

The participants moved on to describe the process for becoming a Trustee of Saint Uriel’s. A two-layered vetting process exists; the first is accomplished with current Trustees and the President/CEO of Saint Uriel’s. The second is a conversation with one of the individuals from the Provincial Offices of the Archangel Brothers, and the participants agreed that, therein, the Province gets to know the prospective trustee very well. Approval is formally granted by the Province if all goes well, and the individual is seated as a Trustee.

One of the participants shared that part of the process of being a Trustee at Saint Uriel College Preparatory includes a formation workshop, “Called and Gifted” (p. 17), and from his having attended, its scope included the following elements:

- A primer on the different specifics and values of the Brothers, the history and traditions of the Archangel Brothers and their Founder;
- Corporate governance in general;
- The scope of the Board, including the difference between the roles of the Board and Saint Uriel Administration; and
- The Prime Values of the Archangel Brothers, the foundational document for the Province’s educational ministries.

Upon question by the researcher as to the inclusion of Canon law within the formation program, the same participant responded, “[The facilitators] talk about it briefly, I mean, it’s definitely not that thorough, but they go over it briefly. Again, I think the focus is more on the history of the Brothers and Founder” (p. 18).

Of the four participants of the focus group, only one, who was currently in his second year as Trustee, had previously attended the formation workshop. The three others

expressed that they were intending to attend a future formation workshop session, yet one participant, who was in his third year as a Trustee, had been twice scheduled to attend, but had not been able to be present due to his personal schedule.

### *Ancillary Findings*

During the research process, and due to the discursive nature of focus group methodology, data emerged from the sessions providing the researcher with ancillary findings. While the surfacing of these findings were not within the original intentions of the researcher and, thus not reflected directly in the research design, the veracity of these findings provide greater legitimacy to both the study as a whole and also to the scope of governance relationships within private Catholic religious-sponsored secondary schools.

### *Provincial Mergers*

All three of the focus groups from the religious congregations mentioned the current reality of religious congregations in the United States facing the aging of their members. Two of the three participant congregations within this study (Sisters of Our Lady of the Star and the Archangel Brothers) had already merged existing provinces into one United States or North American province, while the third congregation (Blessed Sacrament Fathers) stated that there were plans within the near future to begin to consolidate provinces across the United States.

The Sisters, in focus group, stated that even though the provinces had been consolidated in the 1980s, the corporations of the old provinces still continue to exist out of necessity, and the Provincial Team serves as the governing board for several corporations of former provinces. The diversity of governing structures in use within the United States

Province had its origin in practices pre-existing the singular United States Province (Congregation B, 2012, pp. 13-14).

Having merged into a single province during the past decade, the Archangel Brothers focus group noted the need to respond to cultural differences among the former provinces. One province had attended to the development of governing boards more than the other provinces, and, after the merger, the focus was to bring all boards up to that higher level of board development (Congregation C, 2012, p. 10).

### *Ownership of the Mission*

Originally, in the development of this research study, the author, from his reading of the literature, had anticipated interpretations of Ownership surrounding ownership of assets or ownership of the institution. In focus group, one of the Sisters of Our Lady of the Star, in describing the inability of trustees to alienate property without permission, stated bluntly, “We own that mission” (Congregation B, 2012, p. 14). The same sense was reflected by one of the Trustees from Ave Maria Convent School who spoke of the Trustees feeling the duty of the school’s mission, but that they recognized that they were not empowered with the ability to redefine the school’s mission other than the way it has been articulated by the Sisters.

### *Practical Differences Between Religious and Lay Trustees*

Within each of the religious congregation focus groups, the participants shared with the researcher their belief of the importance of having members of the congregation serve as trustees on each of the governing boards of their ministries. In each instance, the researcher followed-up with a question regarding the formal differences between lay and religious trustees within their governance relationships. Each of the focus groups articulated that they

did not consider the religious trustees to be distinct from other trustees; however, it was communicated through their responses that there is certainly a higher level of expectation for religious trustees to articulate and assess the congregational identity and mission of the school. The Blessed Sacrament Fathers noted that the difference between religious and lay trustees was “practical but not formal” (Congregation A, 2012, p. 4), distinguishing the difference between being formally outlined in policy or bylaws from what happens in practice, yet then continued on to state that the Father-trustees were charged more with the school’s mission while the lay trustees were to be attuned to the financial needs. In focus group, one of the Sisters addressed this distinction in a round-about way, sharing,

We trained them in Trusteeship and avoided saying, “You have an unique role.” We said, “You are a Trustee just like every other Trustee, and the point is that you know the Mission from the inside, and the other Trustees will turn to you. (Congregation B, 2012, p. 11)

The Archangel Brothers also have Brothers who serve as trustees within their institutions, and the participants intimated many of the same notions by sharing what they felt to be their own role within their own experience as serving as Brother-trustees. Again, the focus of the Brother-trustee is centered on items of charism, identity, and mission. At one and the same time, religious trustees are expected to not be unique from their co-trustees, yet participate in a way that they are distinctive among the other trustees in areas of mission and charism.

#### *The Proper Role of the Religious President-CEO*

Each of the focus groups from the Blessed Sacrament Fathers and the Archangel Brothers described the stagnation of progress within their educational ministries when the lay teachers, administrators, and trustees have left questions of identity, mission, and charism completely up to the congregation. The focus groups advocated for lay formation in mission, identity, and charism to enable them to participate in such discussions. By their



specific role, trustees are formed to make decisions regarding the areas of identity, mission, and charism for their institution.

In the case of the three pairs of congregations and schools who participated in this study, each school had a unique situation in regards to having either a lay or religious President-CEO. Eucharistia Academy had just hired its first lay President-CEO, and, at the time of the focus group session with the Trustees, the President had been serving in that capacity for only a few weeks. While the Trustees, in focus group, articulated that there had been a desire for a Blessed Sacrament Father to serve as the President-CEO of Eucharistia, they were confident in the new person's abilities to lead the school. Both the Province and Trustee focus groups stated the need for providing great support as they moved through this transition of leadership.

Saint Uriel's College Preparatory had not yet had a lay person as chief administrator. As of this research, the incumbent had been the chief administrator for about 20 years. The Saint Uriel focus group spoke of how much they respected and revered their current Brother-President, and how he had often served as "liaison" (Congregation C, 2012, p. 12) between the Archangel Brothers and the Board of Trustees. Because the direct governance relationship was formally structured between the Province and the Board, the reliance upon a Brother-President to act as intermediary for the Trustees was an element of culture within the institution and may not have allowed the Board to exercise its appropriate authority.

#### *Current Parents Serving as Trustees*

While discussing Trusteeship and board composition, one of the members of the Sisters of Our Lady of the Star focus group casually remarked to the researcher, "And I'm sure you know very well how it can be really dangerous to have too many present parents

[on your board]” (Congregation B, 2012, p. 22). Neither of the other congregations addressed this tension, for they do not allow current parents to serve as trustees.

### *The Role of Mission Networks or Associations*

Each of the congregations that participated in this research had developed a nationwide network (consortium or association) that connects their affiliated apostolates in a way that supports and enhances the mission, identity, and charism of the founding religious congregation. These networks, depending upon the religious congregation’s focus in establishing each of them, vary in terms of the role that they play within their member institutions.

The Blessed Sacrament Fathers focus group relayed that the Fathers created their Network of Blessed Sacrament School in the early 1970s. Member schools are provided a variety of opportunities for formation, professional development, and, specifically related to governance, gatherings for trustees within the Blessed Sacrament Schools. As mentioned, the provinces of the Fathers across the United States are currently developing an extensive formation program for trustees in Blessed Sacrament educational apostolates.

In the case of the Sisters of Our Lady of the Star, their Consortium of Our Lady of the Star Schools, which had its origins in the 1970s, is composed of the educational ministries and the Province, which is also one of the members of the Consortium. The Consortium has two major objectives: first, to support mission activities through formation programs (for trustees, administrators, faculty, staff, and students) and centralizing professional resources, and, second, the facilitation of individual schools’ periodic mission-assessment evaluation. The ways in which the focus group spoke about the Province’s relationship to their educational ministries reflected the fact that the Consortium is the major means through which the Province is connected to the apostolates.

In development of their growing Association of Archangel Brother Schools, similar to the Sisters, the Archangel Brothers' Province had decidedly begun to shift the relational focus of the educational apostolates toward the Association rather than the Province. For instance, instead of talking about a ministry being sponsored by the Archangel Brothers, the relational connection is articulated in this manner: the ministry is a member of the Association of Archangel Brother Schools. By this, the Province has decided to focus less on canonical-relational language (public juridic person). Through the Association, the Province has provided professional development gatherings and formation opportunities for many different persons engaged within Archangel Brother schools and, as yet, the Brothers' formal evaluation program for mission effectiveness is still run by the Province as opposed to the Association. The focus group noted that the development of the Association is continuing toward its desired future.

#### *Higher Degree of Professionalism*

A member of the Blessed Sacrament Fathers, in focus group, shared his perspective that the Blessed Sacrament apostolates are more professional now than in the past when the schools were primarily staffed by Blessed Sacrament Fathers. One participant offered, "Every single school now is better than our best school in '73" (Congregation A, 2012, p. 20). The participants attributed the higher level of professionalism to the growing presence of lay colleagues, many of whom have desired deeper connection with the charism, along with an intentional effort on the part of the Fathers to develop partnership through the formation of lay people working within the schools.

### *Turnover as a Healthy Stimulus*

The Blessed Sacrament Fathers focus group session included a brief discussion of administrative turnover as related to the trustee's duty to hire and oversee the President-CEO of the institution. The participants noted that, in the days when all school administrators were Blessed Sacrament Fathers, personnel changed with greater frequency than in the current era; this was a function of the Provincial had the authority and sufficient numbers of religious personnel to reassign as he saw fit. In their discussion with the researcher, focus group participants asked the question as to whether or not it might be healthier for educational institutions to have changes in administrative leadership more frequently. The group also recognized the challenges associated with higher levels of turnover, enumerating the need for stability during capital campaigns and also the implausibility of school lay administrators uprooting their families in order to take a job in another location.

### *A Fourth Congregation's Perspective on Sponsorship*

As mentioned within the previous section on demographics, the Archangel Brothers have two sisters from two different congregations who work within the Brothers' provincial offices. During the discussion of interpreting Sponsorship, one of the sisters, who had previously served within her own congregation's provincial leadership, made a brief intervention wherein she shared her perspective upon her own congregation's use of Sponsorship. She reported that, while her congregation continues to use Sponsorship to describe their relationships with their apostolates, she has felt compelled to correct members of her own provincial leadership, pointing out to them their lack of a coherent definition.

### Comparison of Findings—Research Question

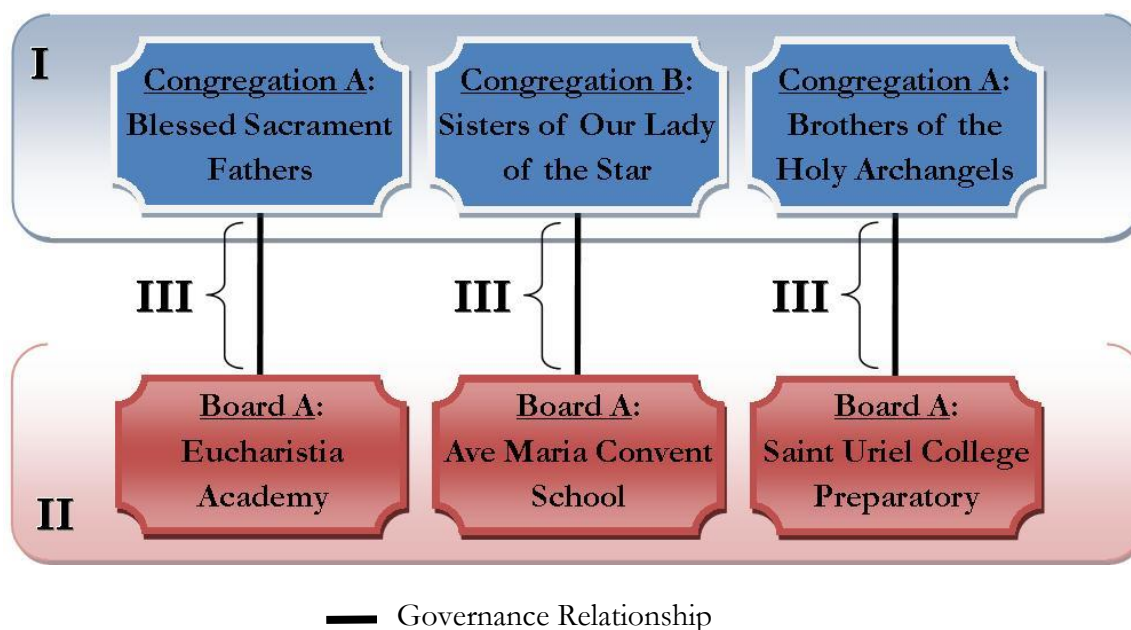
The raw data from the focus group interviews addressed the four research sub-questions, and the comparison of focus group data serves to address the overarching research question of this study:

What are the governance relationships between the religious congregations and the boards of limited-jurisdiction at the local institutions?

In order to address the research question of this study, the data from the focus groups will be compared threefold, by the data reporting topics of Ownership, Control, Sponsorship, and Trusteeship, along with an additional comparison section comparing pertinent ancillary data.

#### *Threefold Comparison*

As discussed within the Data Analysis section of Chapter III: Methodology, the double-layer format of Krueger and Casey (2008) was used to allow the researcher to “make comparisons across any layers in the design” (p. 26). The characteristics of the data segments resourced from the focus groups lend them to be compared in three different sets. This section reports the three comparisons made with the focus group data. The first comparison is made with the three segments of data from the Blessed Sacrament Fathers, the Sisters of Our Lady of the Star, and the Archangel Brothers. The second comparison is made with the three segments of data collected from the focus groups of the Trustees of Eucharistia Academy, Ave Maria Convent School, and Saint Uriel College Preparatory. A third and final comparison is made between the data segments from each of the pairs of the participant religious congregations and their affiliated board of trustees. Figure 9 illustrates the different comparisons that are reported herein.



*Figure 9.* Diagram of levels of comparison within focus group data segments by pseudonym. Level I—Comparison between the religious congregations as to their perceptions regarding their governance relationships with their respective institutions. Level II—Comparison between the trustees of private Catholic religious-sponsored secondary schools as to their perceptions regarding their governance relationships with their respective sponsoring religious congregations. Level III —Comparison for consistency between the perceptions of the governance relationships of the religious congregations with each of the board of trustees of their respective institutions.

#### *Level I: Comparison of Religious Congregations*

Through their individual governance relationships with their respective boards of limited-jurisdiction, the three participating religious congregations contribute to the governance of their private Catholic secondary schools by means of structures that they have created. Below is a comparison of the data gained from the focus group sessions with the provincial leadership of the Western Province of the Blessed Sacrament Fathers; the Sisters of Our Lady of the Star, United States Province; and the North American Province of the Brothers of the Holy Archangels. The comparison is made within the four topics of the Research Sub-Questions.

### *Ownership*

In discussing the areas that comprise the topic of Ownership, the three participating congregations discussed both the civil and canonical identities of their apostolates. The data evidenced very similar patterns between all three of the religious congregations, yet the Blessed Sacrament Fathers were unique in how they had originated their civil corporation structures. Further, the Sisters of Our Lady of the Star spoke of the delineation of Ownership that not only addressed property, but also went so far as to include mission as a part of what is owned by the Sisters. For the Archangel Brothers, the only distinctiveness within Ownership was their usage of a Membership structure within governance; this will be discussed within the subsequent comparison section on Control.

In each of the three instances, the description of the civil ownership of the school property was reported by the focus group participants as being owned by the school corporation separate from the religious order corporation. The school corporations were originated in the past by former members of congregational leadership, necessarily inclusive of Provincials. As they currently exist, the individual corporations of the schools have custodianship over their own assets, and have the power to determine their usage as well as their ends, with the exception of such actions that have been reserved by the religious congregation.

One major area differed between the three participating religious congregations. The Blessed Sacrament Fathers have a unique history of individual incorporation where the institutions had been separate under civil law from the Province at their origin. However, at the beginning, they were incorporated together with the local religious community of Blessed Sacrament Fathers who ministered at the school, and the whole institution had one Board of Trustees. Eventually, the schools and the local religious community corporations

were separated in each case, and changes in the composition of the Board of Trustees were also a result of this separation. Thus, in the case of the Blessed Sacrament Fathers, the separation from the Fathers was such from the local community, whereas with the other congregations, it was a separation from the Province.

The structures of the canonical realm were also found to be similar across the governance relationships of the three participating religious congregations. In each instance, although the civil identity had been separated from the province of the religious congregation, currently each of the provinces of the participating religious congregations continues to serve as the public juridic person for its individual apostolates. No alterations to the schools' identity under Canon law were made in any of the cases of the participating religious congregations and, because of this, no school has been erected as having an individual juridic personality under Canon law. As reported, policies remain in effect within the bylaws and articles of incorporation, where in the case of dissolution of an individual school civil corporation, the assets would revert to the congregation, by means of a Reversion Clause, thus preserving the ultimate canonical ownership of the assets as ecclesial goods.

Throughout the focus group session, the Sisters of Our Lady of the Star stressed greatly the ecclesial nature of the assets of their educational institutions, and that, by means of civil legal structures they have protected the canonical ownership rights of the Sisters over these goods. However, in discussing the difficulties that the Sisters have faced in the past over a tension between the civil and canonical realms, one focus group member asserted strongly, "We own that mission" (Congregation B, 2012, p. 14). In the minds of the Sisters, Ownership is exercised not only over property, but also such language is used to describe the philosophical orientation of the school and the ultimate definition of its identity. Related



sentiments were offered by the focus groups of the Brothers and the Fathers, yet they described such notions primarily within the topic of Control.

### *Control*

Throughout the data collection and analysis processes, the researcher discerned that the greatest difference between the congregations exists in the level of Control they exercise within their governance relationships with their individual private secondary schools.

Primarily demonstrated by both the structures that are in place that formally relate individual boards of trustees to the province and, also, the nature of the powers reserved by the individual religious congregations, a different degree and character of Control was reported by the participants to be held by each congregation.

Although the majority of ways in which Control is exercised differs among the congregations, common to all of the focus groups was the understanding that, within their governance relationships, they were still each ensuring that their canonical responsibilities are being upheld. Current trustees serving on local school governing boards include members of the institution's related religious congregation. Table 9 displays major means of Control exercised by the individual participating religion congregations.

Three major means serve as the ways in which the Blessed Sacrament Fathers exercise Control. The first, stemming from the Province, is the ability to designate or revoke the designation of an individual institution's membership within Blessed Sacrament ministries. Removal of such membership is coincident with dissolving the civil and canonical structures of the institution. Secondly, the Province also has the sole authority to formally appoint the President/CEO, as well as filling two trustee positions by a Provincial

Table 9

*Means of Control Exercised on the Provincial Level by Participating Religious Congregations Within Their Governance Relationships With Local School Boards of Trustees.*

Means of Control	Blessed Sacrament Fathers	Sisters of Our Lady of the Star	Brothers of the Holy Archangels
Congregation member(s) serving as Trustees	Y	Y	Y
Appointment of all Trustees	N	N	Y
Appointment of certain Trustees	Y	N	Y
Removal of Trustees	N	Y	Y
Employment of Membership structures	N	Y	Y
Congregation member(s) serving as Members	N	Y	Y
Local Voting Structures favoring Congregational Trustees	Y	N	N
Assessment of Mission by Province	N	N	Y
Appointment of President/CEO	Y	N	Y

Designate and the Superior of the local Blessed Sacrament Community. According to the focus group, these are the only control mechanisms that the Province itself exhibits.

Thirdly, on the local level, by means of the Blessed Sacrament Fathers who serve as trustees, as previously described, a “determining feature” (Congregation A, 2012, p. 11) exists so that amendments to the Mission or bylaws, specific financial arrangements, and the dissolution or other alteration of the corporation cannot be completed without Blessed Sacrament participation. The Blessed Sacrament Fathers rely heavily upon the Father-Trustees to ensure that the canonical responsibilities of the Province are fulfilled, for the

only full recourse measure held by the Province is that of revoking the Blessed Sacrament identity of a specific institution, which is an extreme course of action to take.

Although they maintain a division of Control that satisfies the fulfillment of canonical responsibilities, in comparison to the two other congregations within this study, the Sisters of Our Lady of the Star have the lowest level of Control exercised over their individual apostolates. Dependent upon the local governance structure, Sisters serve on the level of Trustee, as well as on the level of Member; this is inclusive of the Provincial Team's service in such roles. The focus group participants articulated that neither the Province through reserved powers, nor the Sister-Trustees, control the bylaws, appoint Trustees, or approve the President/CEO; the Provincial noted, however, that she has the power to remove Trustees. The focus of the Membership is instead on the protection of the property and mission of the school, and includes the Reversion Clause that would go into effect if the Membership or the Trustees rescinded the school's membership in the Consortium of Our Lady of the Star Schools. It is the Consortium itself that assesses the mission effectiveness of an individual school and not the Province. Even given these structures, the focus group of Sisters noted that there have been challenges in the past, for the Sisters have experienced individual Trustees expressing disregard for the Sisters' canonical role in the school ministries. The focus group of Sisters also uniquely noted that they are discussing how current structures may have to change given the diminishment of the congregation and aging of the Sisters; it is in question whether or not they will be able to sustain the current structure in the future.

Of the three participating congregations, the Archangel Brothers exercise the highest level of Control within the governance relationships of their school ministries. Two factors have assisted to create this situation: first, the implementation of a Membership structure

closely tied to current Provincial Leadership and, second, a thorough list of powers reserved to that Membership. Two of the Brothers, who are part of the current Provincial Team, serve as Members for each of the 10 private secondary school boards and, as the required number of Members is three, the Provincial Team also holds a voting majority within the Membership. Thus, because the personnel is the same and, thereby, holding a voting majority, the sense of Control within the governance relationship is all the more tightly held by the Province of Archangel Brothers.

The second factor, the specific and thorough list of reserved powers, also characterizes the governance relationship established by the Archangel Brothers as having a higher level of Control than the other two congregations. The reserved powers include the appointment and removal of all Trustees and the President/CEO, approval of financial expenditures over a certain level, and amendment of a school's corporation documents and bylaws. Although the mission effectiveness assessment is conducted by the Province in each of the local institutions and is not specified within the reserved powers of the Members, the existence of this assessment is aimed at assuring the continuance and deepening of the Archangel Brothers' mission in each of the schools, which is certainly part of purview of the Members' ability to establish or amend the mission of an individual school.

### *Sponsorship*

The data surrounding the topic of Sponsorship as relayed by the focus groups demonstrated sharp disagreement among the religious congregations over both use and definition. The Blessed Sacrament Fathers frequently use the term to describe their relationship with their many different apostolates, and they even go so far as to employ Sponsorship Agreements between the Province and its apostolates. However, both focus groups of the Sisters of Our Lady of the Star and the Archangel Brothers, respectively, were

adamant regarding their intentional non-usage of the term within their governance relationships, specifically because of the diverse interpretations that currently exist in common usage among religious congregations in the United States. Pragmatically, the Sisters recognized that they have informally made use of the term in situations where its use was the primary way that another party already understood the concept of a relationship between a religious congregation and an apostolate.

### *Trusteeship*

Discussions on Trusteeship within the religious congregation focus groups centered in great part on the expectations that the congregations have for their Trustees, both religious and lay, as well as the formation of Trustees and its components. Important to this discussion was the fact that all of the focus group participants for each of the congregations have served, either currently or previously, as Trustees, within their private secondary schools. Experience as a Trustee has helped the leadership teams of the participating congregations to better identify and articulate the expectations they have for Trustees serving within their private secondary education institutions.

The majority of expectations for Trustees were very similar across the congregational focus groups. Provincial leaders expressed the desire that their Trustees be concerned with the unique mission of both the religious congregation, as well as that of the specific school where they serve. Trustees must exercise their duties commensurate with the duties of loyalty and care, generally expected of all trustees within the American culture of Trusteeship. All three of the religious congregation groups expressed that they do not require Trustees to be Catholic or to specifically have a prior connection to the school, such as being an alumnus.

As articulated by the different focus groups, within the data there were also some instances in which two of three focus groups articulated the same point regarding the expectations of Trustees by congregational leaders. The Sisters and the Brothers each specifically emphasized that they hoped that their Trustees understood and respected the unique qualities of governance within a non-profit, Catholic, charism-inspired system, as opposed to experiences or assumptions that they might bring from other experiences of Trusteeship in other non-profit, or even for-profit, sectors. The Fathers bluntly stated that their lay Trustees are expected to raise a great deal of money, either by personal contribution or encouraging others to donate, as a part of their service, and the Brothers focus group stated that Trustees should be “leaders within their capital campaign[s]” (Congregation C, 2012, p. 7) without defining the specific nature of such leadership. Both the Sisters and the Fathers made a distinction between a Sister-Trustee or Father-Trustee and a Lay-Trustee, yet they were also very careful to state that it was a practical difference as opposed to a formal one. Religious Trustees within their own schools were said, by both focus groups, to be instrumental in articulating and defining the mission of the congregation, and that the Lay-Trustees both expected such, and deferred to them as well, within such areas. Within the data from the religious congregation focus groups on Trustee expectations, there were not instances in which one focus group disagreed with both other focus groups in a noteworthy way.

Each of the provincial leadership focus groups identified that the future success of private Catholic religious-sponsored secondary schools is contingent upon the formation of Trustees as stewards of the mission of private Catholic secondary education. In order to fulfill this role in its entirety, the participants believed that a Trustee must be formed in the history, traditions, charism, mission, and spirituality of the congregation, which together

serve as a framework for governance decisions. Recognition was given to the fact that it is not solely the Lay-Trustees who are in need of formation for service as Trustees, for both the Blessed Sacrament Fathers and the Sisters of Our Lady of the Star have, at different times, gathered their Father-Trustees and Sister-Trustees respectively, to discuss and form them in their unique role within their respective boards.

Without denying the importance of trustee formation, the focus group from the Blessed Sacrament Fathers admitted that province-level formation programs are a “route that need further development” (Congregation A, 2012, p. 10), for the Western Province of the Blessed Sacrament Fathers, aside from providing continuing formation opportunities for administrators, superiors, and board chairpersons annually, does not have a formation program that indoctrinates Trustees. While in the past there had been singular attempts to provide Trustee retreats, attendance on the part of the board members was poor, and seemingly due to this fact, the participants were lackluster in their enthusiasm about such retreats. Responsibility for the formation of Trustees has been consigned to the level of the local board with the understanding that they should take responsibility for their own formation, would know the formation needs of their individual members, and would avail themselves of resources available from the Provincial offices and those that exist within the local school community. The participants acknowledged that the national Network of Blessed Sacrament Schools also holds formation sessions during their periodic conferences for the Trustees, and that the provinces of the Fathers across the country are currently working on a comprehensive formation program, focused first on the college realm, but likely implementable, in part, within the secondary realm as well.

In focus group, the Provincial Leadership of the Sisters of Our Lady of the Star was clear about the importance of lay formation within their apostolates, even to the point of

ascribing the current existence and state of the schools to the Sisters' commitment to lay formation, having more deeply involved lay people within the Sisters' educational ministry. The Consortium of Our Lady of the Star Schools, on behalf of the Province of the Sisters, is responsible for providing the formation opportunities for all people engaged within the Sisters' education system, including Trustees, and has been gathering the Trustees at conferences since the early 1980s. Mentioned earlier, the Sisters, at times, have experienced great difficulties with individuals, who come to Trusteeship with prior experiences within for-profit or secular non-profit institutions, and they fully perceive the need for individuals to understand the uniqueness of the religiously based aspect of Catholic Trusteeship. Another specific challenge noticed by the focus group was the continuous turnover of Trustees who move through the system at a rate faster than administrators or teachers; this makes continuous formation all the more necessary. Other than financially supporting the Consortium's formation activities and providing Sister-personnel, the Province does not directly provide Trustee formation opportunities.

Of the three participating congregations, the only group which provides a formation program explicitly for Trustees on the level of the Province is the Archangel Brothers. As previously mentioned, the Province of the Brothers has been intentional about helping potential and current Trustees to understand the uniqueness of the Trustee role within a Catholic, non-profit setting. The formation staff realizes that previous experience as a trustee within other governance systems may, on the one hand, be supportive when necessary actions or perspectives are similar to previous experience, yet on the other hand, it may also be harmful when assumptions based on previous experience do not allow an individual to recognize the nuances of Catholic, non-profit governance. Thus, the formation program has been designed to introduce the distinction of the elements, style, and general



procedures used within the governing boards of Archangel Brothers schools. Like most other formation programs that relate to religious congregations, the scope of the program prominently includes the history, charism, and heritage of the Brothers, as well as the “Prime Values of the Archangel Brothers” and the Provincial mission assessment program. This day-long, required program is intended to take place generally within the first term of an individual Trustee’s service. However, getting all Trustees to attend during their first term has been problematic, even given the fact that the sessions are held in different locations of the Province, and Trustees have sometimes been reappointed without having participated.

In terms of the inclusion of topics pertaining to Canon law within the formation for Trustees, each focus group had a different response. The Blessed Sacrament Fathers directly stated that it had not been included within board training opportunities and it was addressed by resourcing experts when the need occurred. The Sisters shared that while they perceive a necessity to revisit and rework the inclusion of Canon law in a more formal way in the future, there had been times in the past when its inclusion had a negative impact, specifically for civil lawyers. The focus group of Archangel Brothers shared that, within their Trustee formation program, a portion of the schedule called “Safeguarding the Sacred Trust”(p. 11) is dedicated to giving the Trustees an introduction to the topics of Canon law that pertain to their role in governance. Specific attention is given to helping the Trustees understand that the “school lives in two worlds” (p. 10): civil and canonical.

### *Level II: Comparison of Boards*

The three participating boards of limited-jurisdiction are each the highest governing body for their respective private Catholic secondary schools. Their governance relationship with their associated religious congregation is the most direct connection between the school institution and the Province of the religious congregation. Within this section is a

comparison of the data gained from the focus group sessions with Trustees from boards of limited-jurisdiction from Eucharistia Academy, Ave Maria Convent School, and Saint Uriel College Preparatory. As in the section on Level I, the comparison is made within the four topics of the research sub-questions.

### *Ownership*

The discussions surrounding the topic of Ownership between the three different focus groups of boards of trustees yielded very similar data. While each of the focus groups expressed a deferential respect to the related religious congregations of their respective schools, by stating that the congregation is of great importance to their role as Trustees and as guides in defining the mission of their schools, they each reported that their institutions were separately incorporated from the related congregation and individually incorporated within their respective states. None of the focus groups were familiar with the canonical construct of either the public or private juridic person. Only one Trustee from Saint Uriel College Preparatory could say that he had heard the term, but that he was unfamiliar with any further details regarding it.

The focus group from the Trustees of Eucharistia Academy discussed the ownership of the school from the perspective of civil law. They stated that the assets and property of Eucharistia were owned by the school corporation and not by the Province of the Blessed Sacrament Fathers. Even though the participants were clear about their duty as Trustees as “owners of the Eucharistia Corporation” (Board A, 2012, p. 21), they also offered that they considered the Corporation to be “ultimately controlled” (p. 21) by the Province, which led each of the three Trustee-participants to conclude, within the session, that the Fathers own the school. Graciously, the chairman responded, “And I’m OK with that” (p. 22). The great respect that the Trustees professed for the Blessed Sacrament Fathers has allowed them to

balance the dissonance between the sense of the Fathers owning the institution and their specific role as owners of the civil Eucharistia Corporation.

Participants from the focus group of Trustees of Ave Maria Convent School articulated that although the school has been individually incorporated separately from the corporation of the Province, the relationship between the Sisters and Ave Maria is unique due to the presence of the Sisters' retirement facility and cemetery within the boundaries of the property. This special case, even within the Province of the Sisters, necessitates policies within the bylaws to govern the property's ownership, including the option, in the future, for the school to purchase buildings occupied by the Sisters. The participating trustees affirmed that they felt obliged as Trustees to ensure the advancement of Ave Maria even though they were not owners in the "strict legal sense" (Board B, 2012, p. 14).

Trustees of Saint Uriel College Preparatory who participated in the focus group relayed their sense of Ownership within their governance relationship with the Archangel Brothers and, in comparison to the other Trustee focus groups within the study, were similar to each of them in different ways. On the one hand, the responses of the Saint Uriel Trustees evoked the same sense of guardianship that had been expressed by the Trustees of Ave Maria, and on the other hand, they were also in agreement with the perspective of the Eucharistia Trustees who, by virtue of the presence of the Fathers, recognized their own civil ownership of the corporation, yet felt that the congregation ultimately held the ownership of the school. The participants reported one major difference from the other focus groups in terms of their corporate ownership. The property of the school is owned by yet another corporation separate from the school corporation and the corporation of the Province of the Archangel Brothers. (Even with the researcher's posing of clarifying questions regarding this corporate ownership structure, the focus group participants could

not articulate any further clarifying details.) Lastly, this group expressed a great admiration for the Archangel Brothers, both in general and specifically for the Brothers then currently present within Saint Uriel's serving on the faculty and within the administration. Because of this, the group felt that perpetuity of Saint Uriel's was the result of a partnership of all the community's constituencies, including the Brothers, the Trustees, and other groups and individuals related to the school over time who, together, own the school as a community.

### *Control*

Discussions surrounding the division of Control between the board and the congregation differed greatly both in the level of Control held by the province as well as in the type of Control itself. As with the congregations, throughout the data collection and analysis processes, the researcher also perceived this same difference among the focus groups of the boards. In all three instances, each of the board focus groups reported that they were boards of limited-jurisdiction, whether or not they focused upon that fact in governing, and that certain powers had been reserved from them, either by their related congregation's Province or by means of a Membership structure. Common reserved powers reported by the focus groups included the following:

- To define the mission of the school and to assess its implementation either formally or informally; and
- To close the school and to disperse the assets, and transfer them to the Province of the related religious congregation or another entity designated by the Province;

None of the other reserved powers discussed during the focus group sessions were common across all of the focus groups.

The perspective of the Trustee-participants from Eucharistia Academy on the division of Control regarding their relationship with the Blessed Sacrament Fathers is greatly influenced by their prior experience with the Province of the Fathers having threatened to terminate the congregation's relationship with the institution. For the Trustee-participants, this was a demonstration of not only the power held by the Blessed Sacrament Fathers, but also how far the school had gone "off the reservation" (Board A, 2012, p. 14). The Trustees expressed that, in hindsight, the entire experience was actually beneficial to resetting the current and future direction of Eucharistia Academy. Within the structure of the Board of Trustees, the participants also mentioned the existence of two major Control mechanisms. The first is the appointment of three Father-Trustees on the Board of Trustees, inclusive of the superior of the local Blessed Sacrament community; the other Trustees are appointed by the Board when necessary. The second major Control mechanism is the weighted voting structure of the Trustees wherein the Blessed Sacrament Father-Trustees hold a mathematical majority of the vote while not holding a numerical majority. The participants also noted that, at least within the last amendment of the corporate bylaws, the Province of the Blessed Sacrament Fathers granted final approval.

Participating Trustees from the Board at Ave Maria Convent School expressed a division of Control with the Sisters of Our Lady of the Star that left much of the Control for the institution in the hands of the local Board of Trustees; among the constituencies participating in this research, the Ave Maria Board has the greatest level of Control within their governance relationship. While there is a Membership structure composed solely of Sisters, the powers reserved by those Members are few in number, and primarily pertain to the physical property, debt accrual, and alteration of the mission of the school. The Board is free to act in all other areas in governing the school, including the appointment and removal

of Trustees. The participating Trustees shared honestly that they are not engaged with the Sister-Members, even to the degree of not being sure who comprises the Membership of Ave Maria.

The focus group discussion with Trustees of Saint Uriel College Preparatory revealed that, of the three Trustee focus groups, Saint Uriel had the lowest level of Control in their relationship due to the high level of Control reserved by the Province of the Archangel Brothers. The participants described two major ways in which the Province holds reserved powers to a greater degree than the other two focus groups described. First, the Province of the Archangel Brothers is extensively involved within the nomination, appointment, and formation process for Trustees of Saint Uriel's. Each individual nominated for Trusteeship undergoes an interview with officials from the provincial offices as a part of vetting the individual in order to determine the suitability of his or her candidacy for governing within the system. While the Board may feel an individual is properly matched to the role, the Province, "having the final seal of approval" (Board C, 2012, p. 11), may disagree leading to that individual not being seated as a Trustee. Second, a Membership structure exists wherein three Archangel Brothers serve as Members, and they hold specific reserved powers that require their approval for matters that could potentially alter the direction of Saint Uriel College Preparatory. The participants were not able to enumerate the specific reserved powers, yet they did state financial expenditures over a certain amount, the alienation of property, and the example of embracing co-education, as likely instances in which the approval of the Membership would be necessary in order to proceed.

### *Sponsorship*

Similar to what has been mentioned within the comparison across the focus groups of the participating religious congregations, the trustee focus groups demonstrated the same

sharp disagreement. Neither the focus group of trustees from Ave Maria Convent School nor the group from Saint Uriel College Preparatory even recalled having heard the term Sponsorship used within any area or topic related to their governance relationship with the Sisters or the Brothers, respectively. Only one of the trustee focus groups, Eucharistia Academy, reported having heard the term used by the Blessed Sacrament Fathers, yet upon first being asked how they then currently understood it, one participant remarked, “I have no idea. It sounds like we’re a franchise” (Board A, 2012, p. 25). The participants continued to discuss and they recollected that it had been used by the Fathers and, further, specifically only during the aforementioned, tenuous period when the Fathers had threatened to revoke their Sponsorship of Eucharistia.

### *Trusteeship*

The topic of Trusteeship was addressed by each of the Trustee focus groups, and, as its discussion surrounded the definition and nuances of the role of Trustee, the focus groups not only spent the majority of their time on Trusteeship, but also they related most other topics to it as well. Within each focus group’s general discussion on Trusteeship, attention naturally moved toward the roles and responsibilities of Trustees, the reasons for which individuals serve as Trustees, the perceived expectations from the related religious congregation, and the formation of Trustees.

The similarities expressed between the focus groups were largely concentrated on four specific areas: first, being committed to the Mission of the school; second, expressing a deep honor to have been asked to serve as a Trustee; third, having had previous experiences elsewhere as a Trustee; and, fourth, having a very limited understanding of Canon law. Each of the individual participants within each of the focus groups directly expressed his or her personal commitment to the Mission of their respective school. Members of the focus

groups were unanimous in their beliefs surrounding both the importance of their school's Mission for the students who comprise its population, as well as for the wider community. Some members specifically mentioned the importance of the mission and charism of the religious congregation within their own personal lives. These comments were directly related to the expression of deep honor and respect for both the respectively related religious congregations and their charisms. Trustees mentioned that they were honored to have been asked to serve in this specific capacity, furthering the mission and charism by means of their custodianship of the school. Each of the focus groups also had individuals who had prior experience as trustees within other organizations. These experiences ranged from secular non-profit entities to for-profit corporations and also included experience on boards or commissions that were advisory instead of jurisdictional. Lastly, all of the Trustee focus groups reported having a very limited familiarity with the topics of Canon law as they pertain to their school institution and their related religious congregation; this was regardless of the degree to which Canon law had been included within their trustee-formation process.

Within this research, Eucharistia Academy has already been noted for being unique among the participating groups for employing a two-tier board governance structure on the local level: an upper Board of Trustees and a lower Board of Regents. The Trustee-Participants from Eucharistia, themselves, distinguished the role of the Trustees from that of the Regents by noting that the Regents were occupied with more of the details of Eucharistia's Mission, whereas the Trustees concern themselves more with the Mission's philosophical orientation and actualization. Although, in comparison to the Regents, the Trustee-Participants stated that there is a more spiritual commitment within their ranks, the participants' specific comments, in comparison to the other two trustee focus groups, demonstrated the Eucharistia Trustees as the most strongly spiritually focused Trustees



within the study. Interestingly, they were also the only board who reported that all of their Trustees are required to be practicing Catholics.

Specific differences were also reported by the Eucharistia focus group in terms of the formation that they have experienced, intending to orient them to their role as Trustees. Participants noted that there have not been opportunities for formation provided on the part of the Province of the Blessed Sacrament Fathers, but, instead, there have been board orientations available on the national level from the Network of Blessed Sacrament Schools. These sessions have focused more upon general board practice in contrast to being centered on the history, mission, or charism of the Blessed Sacrament Fathers.

Distinct from the other two Trustee focus groups, the group from Ave Maria Convent School nuanced their perception of their role in a way that made three areas stand out from those of the other two Trustee focus groups: their unique relationship with the Head of School, their role in fundraising, and their duty to maintain future continuity of the institution. The discussions surrounding Trusteeship included the balance between overseeing the Head of School as a board and advising him or her in order to support the direction and shaping of school initiatives. The participants were clear that they perceived the expectation to lend their expertise to the Head of School, yet that, as the only body to assess the Head of School's performance, their oversight was considered to be of great importance. Moving into further detail, the participants noted that their participation within the fundraising activities of the school were also expected of them as Trustees, for Trustees are not only expected to donate from their own personal resources, but also to support other fundraising efforts including the cultivation of other benefactors. The comments of the participants demonstrated to the researcher that these two Trusteeship areas were truly subsidiary to the overarching goal articulated by the Ave Maria Trustees: the ensuring the

continuance of an education founded upon the tradition and charisms of the Sisters of Our Lady of the Star. In comparison, the Ave Maria trustee focus group was unambiguous in specifying these areas, for the other trustee focus groups did not discuss such in a way that demonstrated them to be central to their conception of Trusteeship.

Within the discussion of Trusteeship, the Ave Maria Trustee-participants also addressed opportunities for formation of Trustees. As described by the participants, formational opportunities are available on both the national level from the Consortium of Our Lady of the Star Schools, as well as on the local level, provided by the board's Committee on Trustees. The participants noted that, because it has been challenging for new and current Trustees to set aside the necessary time to attend the Consortium's seminars, they have incorporated elements of that program into their own local board orientation. Participants noted that the purpose of this local program is to enable the new Trustee to ask an intelligent question when he or she attends the first meeting upon appointment to the board. Also noteworthy in comparison to the other two trustee focus groups is the thorough vetting process of potential Trustees by means of assessing their participation within the board committee structure at Ave Maria.

The participants of the focus group of Trustees from Saint Uriel College Preparatory shared a few differences with the researcher not gained from the other two trustee focus groups. The first of these differences was their focus upon the necessity of Trustees to hold a great affinity and passion for Saint Uriel's. This was a recurring theme throughout the focus group session, for it was mentioned in conjunction with the duty felt by many different groups and individuals to ensure the success and sustainability of the school. The perception of this attitude within the prospective individual by those considering him or her for service as a Trustee was seen to be a prerequisite for further consideration as a viable

candidate. Unique from the other two participating trustee focus groups, the Saint Uriel Trustees reported the existence of comprehensive participation by the Province of Archangel Brothers within the appointment of Trustees to not only their board but also those of the other Archangel Brothers schools. Officials from the Provincial Offices of the Brothers individually interview each candidate prior to appointment and the Province provides a formation workshop for them and other Trustees within the Brothers' schools. Of the focus group participants, only one of the four Trustees present had attended the workshop.

### *Overview of Level III Comparison*

The third level of comparison made within this research is that between the data sets gained from each religious congregation focus group and that of the focus group of trustees from the congregation's related private secondary school. Each of the six focus groups, both religious congregation and trustee, reported that their relationships with their respective counterparts were in good standing, characterized by collaboration and regular communication between both parties.

It is also necessary to reiterate that the context for the Religious Congregation focus groups was a full view of their governance relationships with each of their private secondary schools, and the context of the Trustee focus groups was of their individual relationship as a Board to the Congregation. While the researcher found a great amount of alignment between religious congregations and their respective boards, perfect congruity was not found to exist within any of the governance relationships. This may be related to the Trustee focus groups speaking to a more specific context than the Religious Congregations. This section, will report the Level III comparison for each related pair of focus groups by means of the

four major concepts of the conceptual framework: Ownership, Control, Sponsorship, and Trusteeship.

*Level III: Comparison of Congregation A and Board A*

*Ownership*

The resultant data from the focus group of the provincial leadership of the Western Province of the Blessed Sacrament Fathers and that of the Trustees of Eucharistia Academy show the current state of understanding of each of the two focus groups in terms of how the Ownership of Eucharistia Academy has been delineated between the Province and the Board within their governance relationship. As intended by the researcher, the data address both the civil and canonical positions of Ownership; the two groups were aligned in the civil sense of Ownership, but not in the canonical due to the Trustee group's general unfamiliarity with Canon law.

In the discussion on civil ownership within the focus group sessions, both groups clearly articulated that the civil owner of the school corporation, the Eucharistia Corporation, is the local board of trustees and not the Province of the Fathers. The civil ownership of Eucharistia Academy is inclusive of the institution as well as the assets of the Eucharistia Corporation. The focus group of Blessed Sacrament Fathers delved more deeply than that of the Eucharistia Trustees into the historical evolution of the delineation of civil ownership between the Province and each of its individual ministries, and the Eucharistia Trustees nuanced their corporate ownership by stating that the Province retains ultimate Control.

On the canonical side of Ownership, the Province focus group members stated that no changes had been made to the canonical identity of any of the Province ministries. In

this, the Western Province of the Blessed Sacrament Fathers has served and continues to serve as the public juridic person for each of them. The Eucharistia Trustees were generally unfamiliar with the canonical realm of Ownership and were not able to discuss the juridic person status of Eucharistia Academy. However, even given this unfamiliarity along with their knowledge of the civil ownership delineation, the Trustee focus group participants asserted that they truly consider the Blessed Sacrament Fathers to own Eucharistia Academy. At the time of the focus group session, it was understood by the researcher that this assertion was made as a declaration of loyalty and appreciation for the Blessed Sacrament Fathers, as opposed to being made out of either ignorance or merely simplistic thinking.

### *Control*

The division of Control between the Province of the Blessed Sacrament Fathers and the Trustees of Eucharistia Academy was discussed by both focus groups. Further, each group identified the same structures, such as weighted voting and Provincial-appointed Trustees, as examples of Control exercised by the Blessed Sacrament Fathers over Eucharistia Academy. In addition, although the Provincial-Leader participants had alluded to challenging governance situations within different secondary apostolates over the past few decades, the Trustees of Eucharistia Academy spoke very directly about their situation wherein the Fathers had threatened to end their relationship with Eucharistia. For the Trustees, this experience was central to their understanding of how Control is divided between themselves and the Blessed Sacrament Fathers.

In discussing the topic of Control, the Blessed Sacrament and Eucharistia focus groups were in agreement in their identification of specific structures and reserved powers that allow Control to be maintained by the Blessed Sacrament Fathers. Both the Fathers and the Trustees recognized that Canon law requires the Fathers to maintain ultimate Control

over their apostolates. When asked by the researcher, the focus groups each stated that the structure of a Membership corporation was not used by the Western Province; the Province focus group stated that it is common practice, however, in other Blessed Sacrament provinces in the United States. Instead, Blessed Sacrament Fathers serve on local Boards of Trustees, which would include that of Eucharistia Academy, and some of these Father-Trustees were appointed through the Father Provincial's authority. The focus groups also articulated that the votes of the Blessed Sacrament Father-Trustees, in at least instances surrounding alteration of the mission and identity or the alienation of property, are weighted to ensure that the Blessed Sacrament Congregation has Control on the local level, and potentially influenced, under canonical obedience, by the Provincial as Superior.

As the major means of preserving Control, the existence of reserved powers within the governance structures of the Blessed Sacrament Fathers, including Eucharistia Academy, was discussed within both focus group sessions. While the Province focus group outlined the appointment of specific Father-Trustees and the President by the Provincial and the role of Father-Trustees on individual boards along with their voting structures, the participants did not necessarily define these as powers reserved to the Province. Instead, they identified the potential of the Provincial to either designate or remove the designation of a ministry as a Blessed Sacrament Institution as the only truly reserved power. Within the Eucharistia Trustee focus group, the participants promptly emphasized this within the discussion of reserved powers, as they had experienced this having been specifically exercised by the Province within the past several years. Between the two focus groups, the only disagreement over itemized "reserved powers" was that of bylaw amendment, for the Provincial Leaders had stated that neither the Province nor the individual Father-Trustees have ultimate Control

over the bylaws, while the Eucharistia Trustees were clear in stating that their bylaws, when last amended, had to be finally approved by the Province of the Blessed Sacrament Fathers.

The only other misalignment evident between the two focus groups was seen by the researcher as the groups each raised the topic of Trustee loyalty to the Provincial and the Blessed Sacrament Fathers. In their focus group, the Blessed Sacrament Provincial Leaders had accentuated the loyalty that they felt the Provincial has from the Trustees of local institutions, especially when sending letters or making formal visits to the institutions. While the Eucharistia Trustees highlighted the loyalty they feel to the Blessed Sacrament Fathers, as the individuals who deeply affected them during their high school years, the focus group members did not articulate their communication with the Province to be truly influential. The Trustees expressed a desire, on their part, to be in greater communication with the Province, for they characterized their current experience as sparse, at best, it being more the initiative of the Trustees to seek connection, and that direct communication from the Province only happened when troubles surfaced.

### *Sponsorship*

Both focus groups from the Blessed Sacrament Fathers and Eucharistia Academy each discussed the interpretation of Sponsorship within their governance relationship. Although the Province stated their common usage of the term throughout the Province within the area of governance, their interpretation of it was not shared by the participants of the Eucharistia Academy focus group.

For the Western Province of the Blessed Sacrament Fathers and their ministries, Sponsorship, as a term, has been used as a means to describe the existence of a relationship between the Province and an individual institution. The Blessed Sacrament Fathers who participated recognized that they shared its common usage within the context of governance

with many religious congregations. While, originally, their Sponsorship focus was driven by numbers of Blessed Sacrament personnel active within each institution, the current focus has been more attentive to insuring the unique characteristics and identity of a Blessed Sacrament institution. As mentioned, the Province has formally instituted documented Sponsorship Agreements with each of their ministries for the specific purpose of identifying the duties of both the Province and the local institution in their relationship.

Although the Province focus group participants were clear about their use and definition of Sponsorship, the members of the Eucharistia Trustee focus group did not share, or immediately recognize, Sponsorship as common vocabulary between themselves and the Province. It was only upon subsequent consideration of the governance turmoil that had happened that one of the focus group members recalled the Provincial at the time having referred to the Blessed Sacrament Fathers' Sponsorship of Eucharistia Academy. To their recollection, this was the first time it had been introduced to them. Further, the Trustee-participants acknowledged the existence of a formal Sponsorship Agreement with the Province, but they did not specify its details. Neither the existence of a Sponsorship Agreement with the Province nor the understanding or frequent usage of Sponsorship had been so customary as to have been immediately familiar to the Eucharistia Trustee focus group participants.

### *Trusteeship*

The expectations of trustees, including specific requirements, along with the means by which trustees initially and continually receive formation for their role, were the major topics of comparison between the Blessed Sacrament Province focus group and the Eucharistia Academy focus group. While alignment was seen in most areas, there were



certain areas in which the Province and the Trustees differed in their perspectives on some of the details of their governance relationship.

In their focus group session, the Blessed Sacrament Provincial Leaders expressed their expectations of trustees in Blessed Sacrament institutions, and these aligned with the perspectives shared by the Trustees of Eucharistia Academy in their focus group of what they understand the Province to expect of them in their role. Both groups specifically articulated the importance for Trustees to be faithful to and to be vigilant of the Blessed Sacrament identity and mission of the institution; to hire, when necessary, and to evaluate the President-CEO; to ensure the financial viability of their institution; and to attend to the spiritual development of the faculty, staff, and students of Eucharistia Academy.

Further, within their discussions on Trusteeship, each of the focus groups stressed an area not addressed by the counterpart focus group. The Blessed Sacrament Province focus group discussed their perception of an informal difference between Father-Trustees and Lay-Trustees. In their perspective, Father-Trustees have the ability to most strongly advocate for the Blessed Sacrament charism and also bring an experienced, outside perspective of the charism and school administration from their previous ministerial experiences. Lay-Trustees are expected to attend to the fundraising needs of the institution through not only significant personal contributions, but also, by finding other benefactors to contribute the necessary financial resources.

The Eucharistia Trustee focus group, throughout their focus group session, compellingly articulated that they were both grateful and humbled by the opportunity to serve Eucharistia Academy as a Trustee. They perceived that the opportunity they currently had to serve in this capacity was a direct way they could reciprocate the many gifts they had been given by the Blessed Sacrament Fathers and Eucharistia Academy during their years as

students. The Trustees were not as clear as the Fathers on perceiving their role to be so heavily focused on personal benefaction and fundraising.

Only one area within the discussions of expectations of trustees was observed to be in actual disagreement between the Father focus group and that of the Eucharistia Trustees. The Provincial focus group stated that trustees within their respective institutions are not required to be Catholic, yet the Eucharistia Trustees indicated that each of their board members were required to be practicing Catholics. This disagreement, however, could have its source in the local requirements having been dictated by perceived local need, thereby rendering such requirements more restrictive than those expected by the Province.

On the topic of trustee formation, there was less agreement between the two focus groups, specifically surrounding the role that the Province has for the formation of new and current trustees. Both the Provincial and Trustee focus groups identified that most formation for trustees happens on the level of the local institution. The Province stated that they hold great trust for the local personnel to accomplish trustee formation, and the Trustees conveyed their perception that they have a high level of autonomy, sensing that they are trusted by the Province. With this as background, while the Province identified that, in the past, they had provided workshops and retreats for trustees and administrators, and that they currently provide provincial personnel to serve the needs of the boards, the Eucharistia Trustees, when asked by the researcher, did not identify any single item or program provided by the Province aimed at trustee orientation or formation.

Even given the above, the focus groups had some agreements within the area of trustee formation. Both groups identified opportunities for trustee formation that happen on a national level, from the Network of Blessed Sacrament Schools, but that these opportunities were, in greater part, focused more upon current board theory and practice

than the charism and mission of the Blessed Sacrament Fathers. The Fathers had shared the beginnings of a nationwide formation program aimed at trustees within their university system that they believed would enhance the formation of trustees within their secondary schools as well. The last item of agreement between the two groups was upon the absence of Canon law within the scope of trustee formation opportunities; however both groups noted that, at times when canonical issues arose within individual board situations, expertise of Canon lawyers was sought when deemed necessary.

### *Level III: Comparison of Congregation B and Board B*

#### *Ownership*

The data collected by the researcher from the focus groups of the Sisters of Our Lady of the Star, United States Province, and that of the Trustees of Ave Maria Convent School outlined the perspectives surrounding Ownership within their governance relationship. Each of the focus groups addressed the civil and canonical aspects of Ownership and described, for the researcher, how, as a group, they understand its delineation within their governance relationship. The Sisters and the Trustees were aligned in their understanding of Ownership within the civil realm, yet while the Sisters described the canonical facets of Ownership, the Ave Maria Trustees were not able to discuss canonical subjects due to their lack of familiarity with items of Canon law.

Each of the focus groups of this pair, the Provincial Leadership and the Trustees of Ave Maria Convent School agreed in their description of the delineation of civil ownership. Ave Maria Convent School is separately incorporated from the province of the Sisters, which is itself incorporated under civil law. The Sisters reported within their focus group that the exact corporation structure of the United States Province is complex, for after the

merging of the provinces of the United States into the singular United States Province, a number of the former-province corporations continue to exist. The primary reason for this was mentioned on page 150. Also within the focus group, the Sisters noted that, due to the original merger of former provinces, the corporate structures that related the Province Corporation to the individual school corporations are themselves diverse, for the different former provinces had various governance models implemented within their respective jurisdictions. There has not been a move to standardize the governance models of the Sisters' ministries across the United States, and individual ministries have shifted their structures to suit locally perceived needs. The Ave Maria Trustees described the uniqueness of their situation, for the Ownership relationship of the property has been shaped by the fact that there is a resident retirement community of Sisters, along with one of the Provincial cemeteries, within the school property. Because of this situation, the Trustees mentioned that the ownership of the buildings and the property were separated and outlined within the property agreement between the Sisters and Ave Maria Convent School; the Sisters, in focus group, had acknowledged the existence of such agreements in some cases. Finally, in terms of civil ownership, each of the groups shared that while a Membership structure exists within the Ave Maria Corporation, the Membership is not held by either the Provincial Corporation or by another corporation.

The discussion of the canonical sense of Ownership was addressed solely by the Provincial Leadership focus group, for the Trustees of Ave Maria were not able, due to unfamiliarity with Canon law, to discuss such topics. The Sisters reported that the Province of the Sisters has always served and currently serves as the public juridic person for each of the individual secondary school institutions of the Province. None of the schools have established themselves with juridic personhood. Although, in focus group, the Sisters

reported having experienced distinct challenges with individual Trustees and administrators misunderstanding canonical juridic personhood, the response of the Ave Maria Trustees as to their unfamiliarity led the researcher to conclude that there had not been such difficulties experienced from Ave Maria.

### *Control*

The Provincial Leadership focus group of the Sisters of Our Lady of the Star and the focus group of Trustees of Ave Maria Convent School each discussed how Control has been divided within their governance relationship. The Sisters discussed the important role that members of their congregation have, serving as trustees on different boards. The Ave Maria Trustees described their local Membership structure within their governance model. The groups each articulated a similarly aligned picture of limited-jurisdiction governance in comparison to one another.

The focus group of Sisters serving in Provincial Leadership stated that their ministries, including their educational apostolates, had various governance structures that differ according to the local situation. These variations have been the result of both the merging of Provinces of Our Lady of the Star Sisters over the past few decades, as well as modifications made to suit the needs of the local institution.

At the time of this research, the specific structure at Ave Maria Convent School, as described by the Trustee focus group, is a two-tiered structure comprised of an upper board of Members and a lower board of Trustees. This board of Trustees is a board of limited-jurisdiction due to specified powers reserved to the Members. The Members of the Ave Maria Corporation are each Sisters of Our Lady of the Star and are appointed by the Provincial Leadership of the Sisters. According to the Trustee focus group, the Members

and the Trustees have little to no interaction, and the Trustee-participants admitted to not knowing exactly who the current Members of the Corporation are.

As stated by the Sisters and reaffirmed by the Ave Maria Trustees, there are three Sisters of Our Lady of the Star, not necessarily Provincial Team members, currently serving as Trustees, not Members, for Ave Maria Convent School. In the focus group with the Sisters, the participants discussed the special, yet informal, role that the Sisters have in serving as a Trustee. They articulated the belief that the Sister-Trustees serve the board by bringing their expertise surrounding the mission and identity of the Sisters. The Trustees supported this assertion by speaking of the spiritual leadership demonstrated by the Sisters on their board, primarily accomplished in their facilitating prayer and reflection for the Trustees at board meetings.

Within the topic of the division of Control, the discussion of each focus group addressed the reserved powers of the Province, as well as the reserved powers withheld from the board of limited-jurisdiction. In the case of Ave Maria, the reserved powers are exercised by the Members of the Ave Maria Corporation on behalf of the Sisters of Our Lady of the Star, United States Province, and withheld from the Trustees. The Sisters were clear about the level of trust that they place within their trustees, and acknowledged that they actually hold few reserved powers within the governance relationship. The Trustees also stated that they do not focus on being a board of limited-jurisdiction, and they feel that their oversight is dutifully accomplished.

Each of the focus groups, in enumerating the reserved powers, either those held by the Province or those held by the Members, specified the power to alter the mission and the alienation of property, which includes the accrual of debt against the property as collateral and the inclusion of the aforementioned reversion clause as an ultimate Control mechanism.

Within this area of the relationship between Members and Trustees, an item of disagreement between the Sisters and the Trustee focus groups arose, that of who has the authority to remove Trustees. The Provincial Leadership focus group stated that the Provincial has such authority to remove a Trustee from a board, if deemed necessary, while neither the Ave Maria Trustees nor the institution's bylaws reflect that authority. Instead, the Trustees shared that only the Trustees have the authority to remove an individual from service as a Trustee; the bylaws of Ave Maria reflected this assertion.

Lastly, within the discussion surrounding the definition and assessment of the mission within any of the Our Lady of the Star institutions, each of the focus groups identified the Consortium of Our Lady of the Star Schools as the body that evaluates the Sisters' schools as opposed to it being the Province of the Sisters that acts in this capacity. The Consortium, with the approval of the Sisters, also maintains and directs the amendment process of the criteria for evaluation; the Province is not directly involved in the assessment process of the individual schools.

### *Sponsorship*

The discussion on the interpretation of Sponsorship by the Sisters and the Trustees showed strong alignment in practice. The Province of the Sisters has formally decided to eschew usage of the term "Sponsorship" to describe their relationship with their ministries, either individually or collectively. They also shared that they have also found the need to ameliorate this stance in informal situations in which usage of the term was the best way to communicate with groups or individuals who employed Sponsorship in a formal way. The Sisters felt that the term was troublesome because it has no root in Canon law and has diverse interpretations in common usage. The disuse of Sponsorship by the Sisters was reflected in the Trustee focus group's declaring both their ignorance of its meaning and that

they had never even heard it used within the context of governance and in relationship to the Sisters of Our Lady of the Star.

### *Trusteeship*

The discussion within the focus groups included how each of the parties understood Trusteeship within the context of private, Catholic secondary school governance. As previously mentioned, major areas under consideration were the expectations of trustees as well as trustee formation, enabling them to assume and perform their role within a specific institution.

In focus group, the Sisters articulated that framing their relationship with their trustees is to express their trust to the trustees and to give the trustees as much authority as possible to lead their respective institutions, for they recognized that the trustees are directly responsible for how the school lives the Mission of the Sisters of Our Lady of the Star. Indirectly referring to having perceived this attitude from the Sisters, the Ave Maria Trustees in their focus group shared that they were greatly humbled to be able to participate in the work of Ave Maria and the Sisters' mission by serving as Trustees. The Trustees directly acknowledged that they feel the responsibility to respect the property rights of the Sisters, as well as to preserve the continuity of Ave Maria through both their actions as a board and also through participation in the Consortium's formal assessment of their institution. The Trustees also listed formal expectations made by the board itself, which are oftentimes also addressed within the realm of general, non-profit Trusteeship, including exercising their fiduciary responsibility, monitoring the performance of the Head of School-CEO, and ensuring that each Trustee is free from conflict of interest. Even further, yet informally, the board also expects each of the Trustees to advise the Head of School-CEO according to their personal expertise and also to assist in the fundraising activities of the school, either by



surfacing donors or themselves making donations. Finally, both the Sisters and the Trustees noted that there is not a requirement for trustees to be Catholic in order to serve on the board.

While discussing the area of formation within the topic of Trusteeship, each of the focus groups noted the central role that the Consortium of Our Lady of the Star Schools takes in formation of trustees and other individuals serving in Our Lady of the Star schools. The focus group of Sisters shared their belief that formation for trustees is the greatest need they perceive, due to the continuous turnover of new trustees on boards and also the unique nature of boards in private Catholic schools. As a way of furthering this, the Sisters have provided financial support and personnel towards the formation efforts of the Consortium, facilitating the biennial gathering of individuals from their ministries at their Provincial offices. Although the formation workshops are highly encouraged, attendance is not a requirement for service as a trustee.

The Ave Maria Trustees expressed their gratitude for the formational opportunities, yet they noted the specific challenge it has been for Ave Maria Trustees to attend due to the time commitment required to travel the distance to the Provincial Offices of the Sisters. Instead, the Ave Maria board has delegated to its standing nominating committee the duty to provide a half-day formation workshop for all incoming trustees of Ave Maria Convent School. They have mirrored the contents of their local program on the formation seminars conducted by the Consortium and also included topics specific to local practices: bylaws, local governance structures, duties of trustees, and the organizational chart of offices.

Each of the focus groups was asked by the researcher about the topics covered within the formation opportunities for trustees. The Sisters and the Trustees both mentioned that the sessions covered the founding inspiration, the Foundress and other

significant Sisters, as well as the charism, history, and traditions of the Congregation of Our Lady of the Star. The researcher also inquired about the inclusion of Canon law within the formation program for Trustees, and the answers offered by the focus groups complemented one another. The Sisters admitted that, due to challenges faced in the past with the reception by formation seminar participants of the canonical aspects of governance, they had moved away from an in-depth coverage. The Trustees, in focus group, did not feel comfortable answering any questions stemming from Canon law due to their own unfamiliarity with canonical matters. This, having happened within the session of the focus group, only further supported the Trustees having stated that Canon law was not a topic within their formation opportunities, either national or local.

### *Level III: Comparison of Congregation C and Board C*

#### *Ownership*

The Provincial Leadership of the Archangel Brothers and the Trustees of Saint Uriel College Preparatory each discussed the delineation of Ownership within their governance relationship. The focus group from the Provincial Offices of the Archangel Brothers provided a more thorough and clear description of each of the different aspects of governance within their apostolates than that which was provided for the researcher by the Saint Uriel Trustees regarding their governance relationship with the Province of the Brothers. While the discussion in each focus group addressed both the civil and canonical aspects of Ownership, the comparison of the focus group data showed some misalignment between the perspectives of the two focus groups. Agreement between the two focus groups was limited to the description of the civil corporation status of the educational institution(s) and the existence of corporate Members within the governance structure as the

primary owners of the corporation. The two groups provided dissimilar responses in addressing the related corporate structures of Saint Uriel's and, subordinately, in the Trustees' inability to discuss the canonical aspect of the governance relationship.

Each of the focus groups, the Provincial Leadership of the Archangel Brothers and the Trustees of Saint Uriel's, were asked about the civil corporation existence of the Brothers' apostolates. The Brothers stated that each of their private secondary schools had been incorporated at its founding and that there currently existed within each of the ministries a Membership structure wherein a panel of corporate Members, who are all Archangel Brothers, and a board of Trustees are the civil owners of each school corporation. Although both groups, Members and Trustees, were identified as the owners, in areas that pertain to property ownership, the Trustees cannot act apart from the Members; the Members, themselves, must either act or approve the actions of the Trustees.

The understandings of the Saint Uriel Trustee focus group on civil ownership of Saint Uriel's College Preparatory was not as clearly defined as that which was advocated by the Provincial Leadership focus group, nor was it greatly aligned with how the Province described the delineation of Ownership. After expressing a general sense of ownership felt by the entire community of Saint Uriel for the school, the Saint Uriel Trustees shared that, from their perspective, the Archangel Brothers ultimately own Saint Uriel's College Preparatory. They then further specified their comments, yet also altered them, stating that the property of Saint Uriel's College Preparatory was owned by a parent corporation that is itself separate from both the non-profit corporation of Saint Uriel's as well as the civil corporation of the North American Province of the Brothers of the Holy Archangels. The focus group from the Province had clearly stated to the researcher that the use of a Membership corporation was not employed within their ministries.

Each of the focus groups also was asked about the canonical aspects of Ownership as they pertained to the delineation of Ownership within their governance relationships. The Trustee focus group, noting that there had been a basic overview of Canon law within the trustee-formation program required by the Province of Archangel Brothers, did not feel knowledgeable enough to discuss the canonical side of Ownership. The Province focus group identified that the Archangel Brothers currently serve and have served as the public juridic person for each of their ministries since their beginnings. Further, no alienation of property was completed at the time of any of the schools being incorporated, and none of the schools have been erected as individual juridic persons under Canon law.

### *Control*

For the focus groups from the Archangel Brothers Provincial Leadership and the Saint Uriel Trustees, the discussion surrounding the division of Control followed the same pattern as the discussion on Ownership. The data stemming from the focus group comprised of the Provincial Leadership of the Archangel Brothers better identified the division of Control between the Province of the Archangel Brothers and their individual boards of trustees, inclusive of Saint Uriel's College Preparatory, than the responses made by the Saint Uriel Trustees. Although there were ways in which the focus groups' perspectives aligned, there were important areas concerning Control upon which the focus groups did not agree.

Each of the focus groups was able to describe, in some fashion, the Membership structure of governance required by the Province and employed within each of the private schools. The Brothers stated that, for each of the private schools with a board of trustees, a three member Membership panel, composed of three Archangel Brothers and two of whom are members of the Provincial Leadership Team, is in place. The Saint Uriel Trustee focus

group identified that there is a group of Members, who are not only involved in higher-level decisions, but also whose focus is the preservation of institutional identity. Also, the Trustees noted that in attendance at each board meeting are individuals who represent the Province, yet the focus group members did not agree among themselves as to whether these individuals were Members or merely Provincial representatives.

As the primary means of exercising Control within a governance relationship, the existence of reserved powers delineates areas under Control between the parties of the governance relationship. Thus, the researcher specifically addressed reserved powers in each of the focus groups. The Brothers' focus group was very familiar with the reserved powers held by the Province by means of the Membership structures, going so far as to both enumerate them and discuss which reserved power was of greatest importance. In contrast, admitting that they were deficient in their familiarity with the reserved powers, the Saint Uriel Trustee focus group could only list financial oversight as a reserved power. They specified their independence as being a possible reason for their unfamiliarity with the powers reserved from them by the Members.

The Saint Uriel Trustees maintained that their relationship with the Archangel Brothers has been marked by a sense of both collaboration and autonomy, for they consider the Brothers to have the ultimate voice on matters while the Trustees are given independence appropriately to govern Saint Uriel's. In the perspective of the focus group members, the Brother who currently serves as President-CEO has assumed a role as liaison between the Trustees and the Province of the Archangel Brothers, which helps to facilitate the appropriate balance.

Lastly, both focus groups commonly articulated the important role that the Province has in helping to assure that the Trustees are attuned to the preservation of mission and

identity within the individual school. The groups noted that the Province of the Archangel Brothers exercises oversight by means of holding a vetting interview with a candidate and having final approval over appointment of individuals to serve on a board of Trustees.

### *Sponsorship*

In the cases of both focus groups, Trustees and Province Leadership, the discussions surrounding the interpretation of Sponsorship were brief. The Brothers shared that they had purposefully ceased using the term “Sponsorship” as a means of describing their relationship with their apostolates due to their belief that the term lacks a common definition across Catholic religious-order ministerial governance. They instead have chosen to focus upon further developing their national Association of Archangel Brother Schools as a means of connecting the educational apostolates not only with the Province, but also with one another. The responses of the Saint Uriel Trustees reflected this Provincial perspective, for, when asked, they relayed that the term has not been used within their experience and they were unfamiliar with it within the context of governance. Other responses made by the Trustees specifically witnessed to the emerging role of the Association of Archangel Brother Schools.

### *Trusteeship*

The focus groups of the Archangel Brothers Provincial Leadership and the Trustees of Saint Uriel each discussed their understanding of Trusteeship. The members of the focus groups explored the expectations of Trustees, including the process of nomination and appointment, as well as the trustee formation program.

The focus group from the Province of the Archangel Brothers mentioned that their current practices and understanding of Trusteeship had been shaped by the recent merger of

the North American provinces into one. Prior to that event, different provinces had engaged individuals as trustees in diverse ways and giving them different levels of authority. The Trustees of Saint Uriel, in focus group, did not share this perspective, understandably, and saw their work as being contiguous without changing the scope or focus on Saint Uriel's.

Within this portion of the session, each of the focus groups discussed the Province's expectation for trustees. Both focus groups were in agreement and clear about the desire to engage individuals as trustees who are deeply interested in furthering the advancement of an individual institution. While both groups noted that there is not a requirement for individual trustees to be Catholic, the Province focus group stressed aspects of Trusteeship more related to mission and charism as opposed to the emphasis articulated by the Saint Uriel Trustees who highlighted the fiscal viability of the institution. The focus group from the Province mentioned their intention that all trustees be formed in, embrace, and continue to deepen within their mindset the charism and traditions of the Archangel Brothers. They also noted the necessity for trustees to understand the uniqueness of their governing board with both civil and canonical aspects to their role; these expectations included, but were not limited to, presence at meetings, support of institutional advancement efforts, and oversight of the President-CEO. Conversely, the Saint Uriel Trustee focus group emphasized, first, the expectation that they fulfill their civil duty to ensure that Saint Uriel is financially viable and, secondly, that their role is to uphold the charism and tradition of the Archangel Brothers. While for the congregation greater emphasis is on the preservation of the charism and traditions of the Archangel Brothers within their educational apostolates, the Trustees articulated the primacy of the financial viability of the institution, for they believed that the sustainability of the institution hinged upon both the financial viability, as well as ensuring

that the school remained constant in its commitment to the mission and charism of the Archangel Brothers.

The process by which an individual trustee is nominated and appointed to a particular governing board was also a topic of conversation within each of the focus group sessions with the researcher. The Trustees shared that their journeys in the role of trustee began with initial conversations, both on the local level and with the Provincial staff. Both the Archangel Brothers and the Saint Uriel Trustees identified the Province's role in vetting and forming trustees to be central to their governance relationship, for the Province feels that they come to better know the candidates for trusteeship, as well as initiate the process of formation even prior to appointment to a governing board in a local apostolate.

As with the previous pairs of focus groups, the discussion of Trusteeship included an exploration of the formation opportunities provided for trustees by the Province. Both the Provincial focus group and the Saint Uriel focus group mentioned that there was a formation workshop required by the province that covered the Founder, charism, and traditions of the Archangel Brothers, as well as some of the topics of Canon law. The Province focus group noted that while there was an expectation for all trustees of Archangel Brother schools to attend the workshop during their first term, there have actually been challenges in getting all new trustees to attend the conferences. The Saint Uriel Trustees reinforced this datum, stating that only one of the four of them had actually attended the required formation workshop. The Saint Uriel Trustees expanded upon the Province's contribution by outlining for the researcher the fact that general corporate governance and the scope of the board's oversight was also included within the formation workshop.



## Summary

The focus of this study was an exploration of governance relationships within private Catholic religious-sponsored secondary education according to the areas outlined within the Conceptual Framework: Ownership, Control, Sponsorship, and Trusteeship. Data were collected by means of focus group discussions with the three religious congregations and three groups of school trustees. The data that surfaced allowed the researcher to describe the current state of the governance relationships between these three pairs of schools and religious congregations: the Blessed Sacrament Fathers and Eucharistia Academy, the Sisters of Our Lady of the Star and Ave Maria Convent School, and the Brothers of the Holy Archangels and Saint Uriel's College Preparatory.

Ownership within governance relationships was discussed by the congregation and trustee focus groups under both civil and canonical aspects. Canonically, groups identified that the congregations have maintained canonical ownership over their related institutions, having never altered or seeking to alter the established canonical structure with the congregation as the public juridic person. Civilly, focus group data showed that the school institutions were individually incorporated separate from the religious congregation corporation, having been instituted either at their individual origins or within recent decades. Depending upon the current and/or historical local situations, of not only the schools but also the congregations, the formal structures between the civil corporations of each congregation and their respective apostolates are varied. Further, in some situations, intracongregational provincial mergers have complicated congregational corporate structures and their civil relationship to their individual apostolates. While it was clear to the researcher that the focus groups described the civil ownership of property as held by local boards of limited-jurisdiction, in each situation, canonical ownership has been preserved through

“reversion clauses” within corporate bylaws, where property ownership reverts to the corporate entity of the religious congregation in the case of the closure of the school institution.

Such reversion clauses are indicative of how Control has been divided within the governance relationships between these religious congregations and their related boards of limited-jurisdiction. Both the congregation and trustee focus groups identified the local boards to have limited-jurisdiction in regard to the governance of the local school. Individual reserved powers that are held by the related religious congregation differ between the congregations, but are aimed at preserving specific canonical responsibilities as outlined by Canon law; they generally pertain to oversight of institutional mission, closure of the institution, and stewardship of assets, inclusive of property. Direct control by the congregation is exercised through either reserved powers enumerated in the corporate bylaws or in specific structures related to members of the congregation serving as trustees or Members and also weighted voting procedures. When asked directly about the identification of the school’s board or the congregation’s related boards about being boards of limited-jurisdiction, members of congregational leadership were clear that these boards are such boards while trustees stated that such designation was generally not stressed by the board itself.

Among the focus group data, the reported experiences with the realm of Sponsorship within governance relationships were greatly disparate. One congregation reported usage of the term to define a formal relationship between the civil entities of the province and an apostolate, even going so far as to make use of a documented Sponsorship agreement with the individual institutions. The other two congregations specifically eschewed usage of the term within their governance structures, on the grounds that the term

does not have a commonly agreed-upon definition within current usage. Given this difference between the three participant congregations, the two focus groups of trustees whose congregations decidedly made no use of Sponsorship had no knowledge or experience with it. However, the third group of trustees, whose related congregation uses the term and has a Sponsorship agreement, could only speak of their experience with the congregation threatening to “revoke Sponsorship”, as opposed to its specific role within their governance relationship with the congregation.

Within governance relationship, the area of Trusteeship includes not only the role of the trustee, but also, within limited-jurisdiction governance, the expectations of trustees by the fully jurisdictional body, whether this is the leadership of the religious congregation itself or a subset thereof. Within this study, each of the participant religious congregational leaders had previously served as a trustee within a private Catholic religious-sponsored secondary school, whether on behalf of his or her own congregation or that of another. This led each of these groups to discuss the role of the religious trustee, which in their experience is of great importance to the endeavor of governance, yet has not been extended to the religious holding a specific role as a trustee within an individual board. The distinction has been informal in its influence rather than formalized in a position of authority. The participants of the congregational leadership focus groups asserted their belief in their current trustees, noting for the researcher the need to empower the boards as much as possible. The trustee participants, unprompted by the researcher, articulated the perception of being authentically trusted with the school institution. Each of the focus groups, from their perspective addressed the opportunities for role-formation offered to or required of them by the related religious congregation; the forum for this formation has taken the shape of workshops, conferences, or retreats at a local, provincial, or national level.

Lastly, this study found that the participant trustees were generally unfamiliar with topics pertaining to Canon law, or areas relating to the canonical aspects of their institution's governance.

The self-reporting of the focus groups regarding their governance relationships with each other yielded the perspective that their relationships with their respective parties were in good-standing. Focus group participants described them as collegial, respectful, characterized by open communication, and even expressing fondness, at times. In completing the methodology, on the one hand, the researcher found great alignment between the perspectives of the participating religious congregations and their related boards of trustees, and on the other hand, perfect alignment was not found to be the case in any of the three related pairs.

## CHAPTER V

## CONCLUSIONS, IMPLICATIONS, AND RECOMMENDATIONS

## Summary of the Study

While every educational institution has a means by which it is governed, as identified by this research, the state of private Catholic religious-sponsored secondary education in the United States is wholly unique, for private schools, including Catholic institutions, exercise their internal governance in almost complete independence from civil government. For the Roman Catholic Church and its institutions, the developments of the Post-Vatican II era have greatly affected governance practices traditional within the Pre-Vatican II era (Buetow, 1970; Eden, 2002; Heft, 2011; Walch, 2003). Institutes of Religious Life, whose members had been the major work force, saw a sharp decline in the number of brothers, sisters, and priests available for ministry (Nygren, 1993; Steinfels, 2004). In the face of this reality and uncertain future, in fulfilling their Canonical role, many religious congregations have intentionally shifted focus towards maintaining and deepening the congregational charisms as expressed within an individual institution's mission (Burns, 2006; Catholic Health Association, 2007; M. K. Grant & Vandenberg, 1998; Heft, 2011; Mueller, 2000; Tavis, 2010). This is because the continuance of these charisms is not only seen to be of great importance to the individual religious congregation, but also to the American Catholic population as well, many of whom, in past decades, were educated by religious brothers, sisters, and priests. This renewed focus upon mission and charism is an endeavor in which governance plays an important role.

The means by which religious congregations exercise governance within their respective apostolates vary greatly between different religious congregations. With the changes ushered in by Vatican II, the experiences of governance within the realm of healthcare and university ministries, the requirements of civil and Canon law, and the diminishment of religious brothers, sisters, and priests available to minister within their respective apostolates, many different factors have had and continue to have effects on the existing governance relationships between religious congregations and boards of limited-jurisdiction. These boards have the chief role in directing the progress of individual private Catholic religious-sponsored secondary institutions. These boards of limited-jurisdiction developed from the governance structures of the Catholic universities, where they first were constituted in the 1960s.

The board of limited-jurisdiction has become a central means of oversight for religious congregations engaged in private Catholic secondary education as well as the major way of facilitating the governance relationship between the religious congregation and the local institution (Currie, 2003; Gallin, 2003; Gray, 1996; Maida & Cafardi, 1984; Moots & Gaffney, 1980; Stamm, 1981, 1993). Within this construct, the Canonical responsibilities of a religious congregation are protected by means of board powers reserved to a Member or upper board from a local board of trustees. The lower board that acts on behalf of a specific, separately incorporated apostolate can act only within their jurisdictional areas, or through the approval of the Member (Maida & Cafardi, 1984; Morey & Holtschneider, 2000, 2003; Morrissey, 2006; Stamm, 1981) .

Private Catholic Religious-Sponsored governance has come to have many overlapping realities, which have highly varied definitions and understandings among different groups engaged within Catholic governance, including secondary education. The

fact that authors and practitioners disagree among themselves on the key concepts of Catholic governance has created numerous opportunities for miscommunication, misinterpretation, and misunderstanding (Conlin, 2001; DiPietro, 1991; Morey & Holtschneider, 2000; Morey, 1995; Mueller, 2000; Savage, 1991; Tavis, 2010).

As a descriptive study, this research explored existing governance relationships between religious congregations and boards of limited-jurisdiction within private Catholic religious-sponsored secondary schools. Four major facets of a governance relationship were the major areas of exploration: Ownership, Control, Sponsorship, and Trusteeship.

These four concepts, based in available and related literature on the governance of Catholic institutions, including those dedicated to education, became the foundation for the following overarching research question and four subsidiary questions:

What are the governance relationships between the religious congregations and the boards of limited-jurisdiction at the local institutions?

1. How is Ownership delineated between the religious congregation and the board of limited-jurisdiction?
2. How is Control divided between the religious congregation and the board of limited-jurisdiction?
3. How is Sponsorship interpreted by the religious congregation and the board of limited-jurisdiction?
4. How is Trusteeship understood by the religious congregation and the board of limited-jurisdiction?

Due to the two-sided nature of governance relationships, this study necessitated a sample population composed of two different sets, each a side of the relationship. The first set of the population was identified as members of religious congregational leadership, and

the second set was identified as trustees of limited-jurisdiction boards at schools related to the participating religious congregations. Three religious congregations participated within the study. The first was a men's congregation composed of both ordained and lay members; their province, one of five within the United States, was within the Western region of the country inclusive of five secondary schools. The second congregation, with over 20 institutions, comprised of both primary and secondary departments, was a group of religious women whose single province extended across the entire United States. The third congregation, one solely composed of lay brothers, also was a single province across the United States and other parts of North America; of their 20 secondary schools, only 10 were private.

As a major dynamic within current leadership practice, the collaborative nature of both religious congregational leadership and board governance necessitated attention within the methodology of this research. For this reason, focus group methodology was chosen to allow focus group members to conversationally surface pertinent data. Anywhere from three to eight individuals participated per focus group, each facilitated by the researcher, himself. The guiding questions for the focus group session were based upon the research question and sub-questions, ensuring proper coverage of all themes from the conceptual framework. The resultant audio recording from each focus group session was transcribed by the researcher, and the transcripts were coded by theme and analyzed, surfacing data pertinent to the areas being explored: Ownership, Control, Sponsorship, and Trusteeship.

The findings regarding Ownership addressed both civil and canonical ownership. For the participating religious congregations of this research, individual secondary schools canonically have remained part of the public juridic person of the related religious congregation; this has been the case since each of the schools' origins without alteration.



Within the civil realm, the individual incorporation of these same schools had been accomplished at different times, for some of the congregations had separately incorporated their apostolates at the time of their founding. While these school corporations have not been altered since their incorporation, the structures which link the school civil corporations to the corporation of the province have changed, in some cases, based upon alterations of the provincial corporation. Provincial mergers resulting from congregational restructuring due to dwindling numbers of religious have affected the civil organization of these religious congregations, and in turn, have affected the connections between the corporate governing bodies on both sides of the governance relationship. Civil ownership of an individual apostolate's property was specified by both trustees and religious congregational leaders to be held by the local board of limited-jurisdiction, yet Canonical ownership of the institution's goods, as the property of the Roman Catholic Church, was described by religious congregational leaders as belonging to the public juridic person of the congregation. Trustees were not able to address the Canonical aspects of property ownership other than some who mentioned the existence of reversion clauses on property.

The presence of reversion clauses and reserved powers within the civil corporate bylaws is evidence of the division of Control between the religious congregation and the board of limited-jurisdiction of an individual school. These items address responsibilities of Canon law which cannot be abdicated by the religious congregation and must remain within the authority of the religious congregation: oversight of institutional mission as an expression of the mission of the congregation, closure of the institution, and divestiture and stewardship of assets, both fixed and liquid. All focus groups classified their related boards as boards of limited-jurisdiction and identified these above reserved powers. Other reserved powers, however, differ depending upon the congregation, and the participant congregations

were noted as having varying degrees of reserved powers within the governance of their private secondary schools. The participating religious congregational leaders more quickly stressed their related boards as having only limited-jurisdiction, while the trustee focus groups mentioned that such definition was not uppermost within their perspective upon their role as a board.

Sponsorship discussions with the research participants surfaced the perception that there is not a common usage or definition for Sponsorship within Catholic governance. Only one congregation formally utilizes the term within their own congregational documents and, for them, it has an operationalized definition actualized within a formal Sponsorship agreement between the province and the apostolate. The other two congregations, however, intentionally avoid the use of Sponsorship to describe any aspects of their governance relationship with their congregational apostolates. These focus groups stated for the researcher that no actual, unified definition exists in Catholic governance activities. Responses from the two trustee focus groups, whose related congregations shun usage of Sponsorship, stated that they had no knowledge or experience with its use in terms of governance. Finally, the third focus group of trustees were initially unaware of the Sponsorship agreement, as well as the term, until they discussed the experience of turmoil where the Blessed Sacrament Fathers had threatened to “revoke Sponsorship” of the school.

The area of Trusteeship includes both the role of the trustee and also the given expectations of trustees of a board of limited-jurisdiction. All religious congregational leaders who participated within this research had previous experience as a trustee on one of their secondary school boards of limited-jurisdiction, and they advocated that the religious trustee has an important, yet informal, role within the board as advocate for the congregation’s mission and charism, by virtue of their religious formation and lived

experience as a member of the congregation. Congregational leaders, in their respective focus groups, stressed the need to empower the boards of limited-jurisdiction within their role, and trustees, within their own focus groups emphasized their feeling vested with the authority to govern their particular school. The expectation of trustees participating in board formation was addressed by each focus group. While this was deemed to be of prime importance, the participating congregations had not gone so far as to make attendance at formation workshops mandatory. Trustees did not have a general familiarity with the Canonical aspects of governance or even, at times, the reserved powers held by their respective congregation.

Participants of the study, whether religious congregational leaders or trustees, expressed the perspective that the governance relationships in which they were engaged were in good-standing. Religious congregational leaders stated their appreciation for trustees who give of themselves to serve a specific community, and trustees indicated reciprocating sentiments.

### Conclusions and Implications

The findings of this study, as resourced by means of the employed focus group methodology, have given rise to the conclusions and implications contained within the following section. As the four major areas of this study, Ownership, Control, Sponsorship, and Trusteeship, were each distinctly addressed within the research design, these conclusions and their integrated implications have been organized according to these same four themes of the research. A fifth group of overarching conclusions and implications that pertain to the research question, also follows.

## *Ownership*

### *Conclusion*

While it is common for educational apostolates to have been separately incorporated under civil law, under Canon law it is uncommon for those same apostolates to be erected as autonomous juridic persons apart from their founding religious congregations.

Each of the religious congregation focus groups reported that, under civil law, their related secondary school apostolates, along with most of the other apostolates, have been separately incorporated from the province, other congregational corporations, or even other school corporations. When asked about the status of these same works under Canon law, however, the congregation focus groups shared that the works do not have individual juridic person status and that Canonical identity of these works has never been altered. The secondary school apostolates each remain part of the public juridic person of the province of the religious congregation. The trustee focus groups clearly articulated the separate incorporation of the school apart from their respective religious congregations, yet they were unable to specify whether or not the school had been erected as either a public or private juridic person. This was likely due to their unfamiliarity with items of Canon law.

As stated within the literature review of this study, Walsh (2010) advocated the continual evaluation of governance structures so as to enhance and improve them to better suit the current context of the institution. Current literature pertaining to governance and the civil and canonical identity of Catholic ministries advocates the separate civil incorporation of Catholic institutions (Asdorian, 2006; Harrington, 1999; Maida & Cafardi, 1984; Manny, 2000; Moots & Gaffney, 1980; Stanford, 1965; Wilson, 2003) especially given the increasingly litigious climate of the past few decades. However, experts disagree on the value of separating institutions from their related congregations within the canonical realm

(Gonsorcik, 2001; M. K. Grant & Vandenberg, 1998; Maida & Cafardi, 1984; Modde, 1992; Morrissey, 2001, 2011). There is no consensus among governance experts as to how separate canonical status, either as a public or private juridic person, might be of use within private Catholic religious-sponsored secondary school governance, and the private juridic person construct is particularly questioned (Gonsorcik, 2001; Maida & Cafardi, 1984).

This conclusion implies that, in the face of current and, potentially, future demographics of American religious congregations in decline, as well as in view of a more civilly litigious society, civil structures have been altered to suit or address current situations. Structures pertaining to the Canonical identity of private Catholic religious-sponsored secondary schools, however, have not been altered, even in the face of the same demographic trend of American religious congregations, which themselves presently serve as the public juridic person for these schools. Unfortunately, regardless of the positions within the existing literature, non-usage of the private juridic person status cannot prove whether or not the Canonical construct is useful or not useful.

### *Conclusion*

Ownership is understood in three ways: ownership of property, of institution, and of mission or charism.

Focus group discussions surfaced data pertaining to a more expansive perspective upon Ownership than previously outlined within the conceptual framework of this study. The most general definitions of Ownership within use stress ownership of assets, either liquid or fixed. While the focus groups acknowledged and discussed this type of Ownership, they also spoke of the concept of Ownership in a more expansive way noting two other particular connotations: ownership of the institution and ownership of the mission or

charism of an institution. The trustee focus groups did not directly describe their understanding of Ownership in the same way as the congregations, yet trustee discussions did provide indication of a more expansive notion of Ownership. The trustee focus groups stated that, although the assets of their respective schools belonged to the civil corporation of the school, they viewed themselves as custodians of the assets, believing that true ownership of assets, institution, and mission or charism remained in the hands of their respective congregations.

Although existing literature that describes the notion of Ownership never defines these two wider perspectives as Ownership, it presents concepts that support the legitimacy of such perspectives. In terms of ownership of institution, Gray (1996) defined Ownership within Catholic educational governance as belonging to whomever had the ability to close the school, distinct from merely being able to disperse the assets of a certain institution. In the area of ownership of mission or charism, authors have addressed the right of religious congregations to evaluate the mission of their institutions (Currie, 2003; Gonsorcik, 2001; Morey & Holtschneider, 2003). Gonsorcik (2001) advocated the necessity of mission assessment, under the religious congregation or even the Holy See, as appropriate, aimed at both identifying successes and failures, and rectifying problems. Currie (2003) reminded boards to be sensitive to related religious congregations who, as the founders of their institutions, are ensuring the continuation of their charism. These are only a few of the voices from the literature who have described perspectives that resonate with a wider concept of Ownership.

The major implication of this conclusion is that the general understanding of Ownership within Catholic governance practice needs to be broadened so as to include the understandings of ownership of the institution and ownership of the mission and charism.

With this broadening of the concept, Ownership becomes more closely related to the area of Control, for canonical ownership cannot be exercised outside of Control. Thus, this conclusion not only implies the fact that a more expansive notion of Ownership exists within the community of Catholic governance, but also demonstrates the appropriateness of mission assessment by the religious congregation.

### *Control*

#### *Conclusion*

Reserved powers are the means by which religious congregations uphold their canonical responsibilities and participate in the governance of their apostolates, yet retaining different levels of Control.

To best frame this conclusion, it is important to note that the purpose of this study was neither to ascertain nor evaluate to what degree the participating religious congregations were fulfilling the duties required of them by Canon law. Instead, within the focus group sessions with religious congregational leaders and trustees, this research found that, by means of reserved powers and the implementation of limited-jurisdiction governance, the religious congregations and trustees perceived themselves to be fulfilling the duties required of them by Canon law, especially the stewardship of assets as Church property. Further, the responses from each of the religious congregation and trustee focus groups evidenced that there were different governance structures as well as variance in the amount of Control held by each congregation over its governing boards of ministries or apostolates. Religious congregational leadership participants shared that they had structured their governance based upon the consultation of civil and Canon law experts and according to the requirements of their appropriate geographical jurisdictions. This accounts for the variance in governance structures, including those pertaining to Control, in use among the

participating religious congregations and boards of trustees. The responses of the religious congregations also demonstrated that they were cognizant that, depending upon the future of their province, as members age and whether new members enter, current structures have been under continual review to ensure that present and future governance needs are able to be addressed by the congregation.

Within this research, two specific cases, the governance relationships between the Sisters of Our Lady of the Star and the Board of Trustees of Ave Maria Convent School and between the Blessed Sacrament Fathers and the Board of Trustees of Eucharistia Academy, directly support the veracity of this conclusion. A comparison of the religious congregational data revealed that the Sisters had the lowest level of Control within their apostolates; they also retained the fewest reserved powers, not retaining Control over appointment of trustees, institutional finances, or approval of the school's President-CEO. Of the three participating congregations, the Sisters exhibited a defeatist attitude, sharing the perception that, at times, they have felt disregarded or ignored by their trustees. They recognized that their limited actions within governance were due to the declining number of Sisters within the province. Although it was noted that a Membership structure exists in certain apostolates, with the Membership being reserved to the Sisters, the Ave Maria Trustees, in focus group, reported that they had never interacted with the Members, and do not even know the Members' identities.

The case of the Blessed Sacrament Fathers and the Eucharistia Academy Trustees is also pertinent evidence for this conclusion. As mentioned within Chapter IV, the Fathers had become dissatisfied about the direction of Eucharistia Academy and had threatened to terminate the relationship between the school and the congregation. This forceful reminder to the Eucharistia Trustees by the province of the Blessed Sacrament Fathers of their



reserved powers would have effectively closed the school with the assets of the institution reverting to the Province. Within the focus group of the Eucharistia Trustees, the participants shared their belief that this interaction, while contentious, was truly seminal to shaping the future course of Eucharistia Academy.

Huger (2001) warned that, within governance of an apostolate, the religious congregation must have sufficient Control as to exercise canonical responsibilities. The preservation of such duties is the sole responsibility of the congregation and cannot be delegated either to the local board of trustees or another body (Rigali, 1998). Also, Catholic governance experts (Beal, 2006; Maida & Cafardi, 1984; Stamm, 1981, 1993) have provided lists of reserved powers that, in their estimation, need to be preserved in order to uphold all canonical responsibilities of the congregation. Authors (Asdorian, 2006; Manny, 2000) within the literature also recognized that governance structures will likely vary between congregations, for civil law constructs are themselves different between different jurisdictions. Asdorian (2006) and Manny (2000) further noted that the level of Control exercised by an individual congregation is likely affected by its own concerns about plaintiffs being able to pierce the corporate veil. As with all governance structures, there are many experts, both secular (BoardSource, 2010; Carver, 2006; Chait et al., 2005; DeKuyper, 2003) and Catholic (Catholic Health Association, 2007; Haney et al., 2009; Morey & Holtschneider, 2000; J. S. O'Brien, 1987; Sheehan, 1981, 1990; Tavis, 2010), who advocate the continual review of these structures in view of changing needs and demographics.

This conclusion implies that, within limited-jurisdiction governance, the exercise of reserved powers is the formal way that religious congregations participate within the governance of their institutions. On the one hand, if congregations lessen their level of Control within their governance relationships, Canon law constrains congregations from

relinquishing Control so as to render them unable to fulfill all canonical duties. On the other hand, the case of the Sisters offers the example that, even while preserving canonical duties, it is possible for a congregation to either hold so low a level of Control or not exercise reserved powers, rendering them functionally obsolete within the practice of governance.

### *Sponsorship*

#### *Conclusion*

Usage of the term “Sponsorship” varies among religious congregations due to the lack of a common definition.

The data obtained from the focus group sessions clearly relayed the troublesome nature of the term “Sponsorship”. Among the participant religious congregations, the researcher noticed a divergence in usage, for, of the three participant focus groups of religious congregational leaders, Congregations B and C stated that their congregation intentionally does not refer to Sponsorship when discussing matters of governance. When asked by the researcher, the focus group participants stated that their non-usage was intentional specifically due to the term lacking a common definition within Catholic governance. Only Congregation A reported usage of Sponsorship as a term, describing their governance agreement with an individual apostolate as a “Sponsorship Agreement” (Congregation A, 2012, p. 7). Within the trustee focus groups, all three of the focus groups reported a general unfamiliarity with the term Sponsorship, even Board A whose school has a formal Sponsorship agreement with Congregation A.

This conclusion implies that the experience of religious congregations within governance relationships is congruent with the perspectives of Catholic governance experts from related literature who both identified the troublesome nature of the term not having a

cohesive definition within practice as well as displayed examples of the term's diffuse usage. Catholic governance literature admits that multiple definitions of Sponsorship exist (Morrisey, 2006), ranging from the term being used to describe the situation of a religious congregation merely sharing its charism with extra-congregational individuals to the circumstance of a specific institution being part of the public juridic person of the religious congregation (P. Smith, 2006). In this case, a Canonical relationship is formalized within a civil law structure (DiPietro, 2006; Maida & Cafardi, 1984). The literature and the findings from the focus groups demonstrate that governance relationships can be defined without use of the term Sponsorship.

### *Trusteeship*

#### *Conclusion*

Trustee Formation in charism and role is of great importance and, frequently, does not include Canon law.

Each of the focus groups, religious congregation leaders and trustees, discussed the importance of trustee formation as the major means of assisting trustees to attend to the responsibilities of their position. Although such formation opportunities were described as providing both charism formation and role formation, the responses of trustee focus groups indicated that, even with their provided formation, they were not familiar with the roles of the different parties comprising their particular governance relationship. The trustees of Ave Maria stated bluntly that they did not even know who comprised the Corporate Membership, and, instead of providing verbal responses, they provided the corporation bylaws for the researcher to address his questions regarding the reserved powers of the Corporate Members. The responses of the focus group at Saint Uriel's College Preparatory revealed that their relationship as a Board with the Province of the Archangel Brothers is

mediated by the President-CEO, who is an Archangel Brother. Formation of trustees necessarily includes an orientation to the congregation's charism and mission so that the trustees can better discern the needs of their institution. This being a common outlook among the participant congregations, each of the focus groups reported that formation opportunities were made available for trustees within their province, some being programs run by the congregation itself, others being sessions for trustees at conventions of their national network of schools, and still others being accomplished at local institutions.

Existing literature advocates that boards have a great need for formation (Association of Jesuit Colleges and Universities, 2003; Catholic Health Association, 2007; Heft, 2011; McKinney, 2002; Sheehan, 1990; P. Smith, 2006; Zielenski, G.L., 1989), and they also identify that not only should there be efforts on the local level for the board to form themselves (Heft, 2011), but also, the related religious congregation should take a direct role in providing formation programs (Catholic Health Association, 2007). A contrary thread also exists within the literature, for questions exist as to whether lay formation will be effective beyond the first generation of laity who, themselves, had personal experience of working with religious brothers, sisters, or priests (Morey & Holtschneider, 2000). This is a possible future yet to be realized.

This conclusion implies that formation is one of the most important relational points between the trustees and the congregation, for it is where the trustees are brought into the core spirit of the congregation, that which distinguishes it within the Church and also from other religious congregations. However, even given this situation and the shared outlook of the participating congregations, the researcher found that participation within trustee formation programs is, at best, sporadic. Many of the participating trustees had not either availed themselves of the formation sessions on the national level or they had not been held

accountable by the congregation to attend sessions when they were mandatory. While it is important that formation of trustees happens across multiple levels, this requires coordination so as to ensure complementarity and prevent repetitiveness.

Secondly, this conclusion also determines that current trustee formation programs and opportunities do not sufficiently cover pertinent topics of Canon law as related to private Catholic religious-sponsored secondary school governance. Throughout the trustee focus group sessions, the researcher found that trustees were not able to answer questions or hold discussions that pertained to Canon law. Because canonical vocabulary was generally unfamiliar to the participating trustees, some data could not be resourced from them. Two of the three religious congregations shared that they do not cover Canon law with their trustees.

Existing literature supports the notion that trustees should be knowledgeable about topics of Canon law that pertain to governance of their institutions (King, 2006). Canon law is what connects the members of the Church to itself. The literature states that Canon law is the guide to how the Church works together as a community (Griffin, 1984; John Paul II, 1983). By this, Canon law is the bridge between governance of Catholic institutions and Catholic Identity. Further, if civil bylaws are supposed to be written to incorporate Canon law into civil law structures (Hite, 2000; Maida & Cafardi, 1984), and because, under civil law, trustees are charged with amendment of bylaws (BoardSource, 2010; DeKuyper, 2003), trustees, as leaders of educational institutions, need to have a basic understanding of Canon law (Ingram, 2000, 2003), especially in areas where civil and Canon law interact (Russo, 2009).

This conclusion further implies that trustees' lack of understanding or even base familiarity with Canon law as it pertains to the governance of Catholic institutions is directly

related to the attention given to Canon law within their formation experiences. If trustees are ignorant about the topics of Canon law, which does affect their role as trustees, they may cause harm to the good functioning of governance by overstepping the bounds of their duties. Attention to Canon law by all individuals engaged in Catholic governance serves as a reminder that the governed institution is part of the Church and does not exist solely for its humanist mission.

### *Conclusion*

Turnover of lay and religious trustees is a particular challenge to the functioning of governance within private Catholic religious-sponsored secondary schools.

The data gained from the focus groups of this research showed that both religious congregations and trustees are concerned about turnover as related to governance, for during discussions on the topic of Trusteeship, each of the focus groups broached the topic with regard to trustees and also, within a few groups, to top-line administrators of secondary schools. Religious congregational leaders expressed some hesitancy with requiring turnover within lay trustees due to such reasons as the expertise of a specific member, the financial support of a specific member, or the amount invested by the congregation in the formation of an individual trustee. The congregations were clear that, because they spend financial resources to provide formation for potential and current trustees, they consider themselves to have invested in these individuals. Thus, once these individuals are formed, and they prove themselves capable or especially apt at the role of trustee, there is a reluctance to lose these individuals to trustee term limits. Further, with the expectation that the role of trustee is to support the fundraising arm of the institution, there are individuals who either

themselves contribute in a significant way or are able to encourage others towards benefaction.

The focus groups, both religious congregation and trustee, also expressed the challenge of turnover within the religious trustees, that is, where bylaws stipulate a certain number of trustees from the related religious congregation. In the estimation of the focus groups, due to declining demographics, there are fewer congregation members who either are willing to serve as trustees or possess the skills to do so effectively. Trustee focus groups also described that it has become difficult for the boards to fill religious trustee spots, due to not being familiar with the pool of available and qualified religious, and there are situations where the board is reluctant to lose a particular brother, sister, or priest who, in the board's estimation, contributes so well to the work of the board. One focus group noted that they wanted to have greater assistance from the Provincial Leadership on filling religious trustee positions.

This sub-topic has a uniqueness, among focus group discussions for, while the focus groups identified turnover as a distinct challenge for Catholic governance, current practice along with board governance literature presume that there will be formal turnover within board membership, by means of term limits outlined within bylaws or other board policies (BoardSource, 2010; Cerullo, 2012; Haney et al., 2009; J. S. O'Brien, 1987). Such policies ensure the rotation of the membership of all trustees, which within Catholic governance systems would include lay and religious trustees.

This conclusion implies that, within governance relationships of private Catholic religious-sponsored secondary institutions, the challenge of trustee turnover has created a tension between that which is advised by board governance literature, and the perceived and experienced difficulties and needs of Catholic congregations and their related boards in

governing their institutions. On the one hand, scrupulous adherence to secular board literature would be grossly imprudent given the unique situation of each individual institution's needs, yet on the other hand, the need for turnover provides another opportunity for the religious congregation and local board to work together to ensure that governance is not stagnated by individual trustees holding office for too long. Lastly, inasmuch as governance structures are created to support the needs of the local institution, their design cannot be so inflexible as to hinder the progress of the institution itself.

### *Conclusion*

Religious congregation members who serve as trustees within their congregation's apostolates are considered to have a unique role that, generally, is not formalized through policies or procedures.

Each of the focus groups of religious congregational leaders stated that their apostolate boards, inclusive of those governing secondary school ministries, are required to include members of the congregation who serve as trustees. Some of the participating religious congregations, particularly those who employ Membership structures within limited-jurisdiction governance, identified that members of the congregation serve as Members within their secondary school governance models. For each of the congregations, the bylaws of individual boards include policies that require some of the trustees to be members of the related religious congregation, so in some instances, there are individuals from the congregation serving on the level of trustee and on the level of Member.

It was clear from focus group data that religious congregational leaders urge their congregational members to serve actively as trustees on boards, for they stated that religious trustees, by virtue of their extensive formation and lived experience as religious within their



congregation, are more able than lay trustees to attend to the nuances of the congregational charism, having the ability to define or interpret the charism when governing their respective institutions. Lay trustees, within each focus group, also shared this perspective. Religious congregational leaders further shared that, because religious trustees have the ability mentioned above, as well as by means of their religious vow of obedience, they believe and expect religious trustees to have a special role on a board. However, when the researcher inquired as to how this special role is formalized within the activities of governance, the congregations were quick to clarify their words, maintaining that, in almost all circumstances, the distinction remains in practice rather than being formalized in bylaws.

The literature on Catholic board governance frequently makes a general assumption that members of a religious congregation do serve as trustees within the boards of their congregational apostolates (Catholic Health Association, 2007; Gray, 1996; Magnetti, 1996; Maida & Cafardi, 1984; Morey & Holtschneider, 2000; Morrissey, 2001). However, Heft (2011) addressed the unique role that religious trustees hold on boards having written, “Too often the religious who serve on these boards become intimidated by highly accomplished lay persons with their professional secular competencies and forget their own special competencies related to the moral and religious mission of the school” (p. 127). Religious are reminded that their service as trustees must be as witness to the congregational charism as related to the mission of the institution for which they serve.

This conclusion implies that religious trustees are looked upon as fulfilling a special role within the board, yet this special role is not formalized so as to provide space within board policy or procedure to allow religious to actualize their position as experts on the congregational charism and mission. Allowing the religious trustee role to persist in informality, and not formalizing it within board policy, only reinforces and allows the

religious trustee to withhold his or her expertise, as Heft (2011) noted. This conclusion further implies that if religious are to assume a Trusteeship role distinct from lay trustees, then religious congregations will necessarily need to provide formation for their religious trustees oriented at their being able to act within this special role.

### *Overarching Conclusions and Implications*

#### *Conclusion*

Private Catholic religious-sponsored governance is unique from other forms of board governance.

Focus groups, both religious congregation and trustee, shared the perspective that Catholic board governance, particularly that which occurs in private religious-sponsored institutions, is unique from other forms of secular non-profit or for-profit board governance. Of the religious groups, the Sisters and Brothers spoke most directly about their understanding of this uniqueness and offered perspectives from their own experience, those of personal experience as trustees, as well as those shared with them by lay trustees. The Sisters expressed a particular frustration with individual trustees who have come from corporate situations and have failed to recognize the role of the congregation as the canonical owners of the school. Furthermore, trustee participants, who either had prior trusteeship experiences in for-profit or secular non-profit realms, or who had an expertise in civil law, offered similar and supporting perspectives.

Literature on Catholic governance has demonstrated that the major way in which Catholic governance is unique from other forms of institutional governance is that Catholic institutions exist and act within two systems of law: Canon and civil (Cerullo, 2012; Haney et al., 2009; Maida & Cafardi, 1984; Maida, 1975, 1980; J. S. O'Brien, 1987; Shaughnessey,

1988; Sheehan, 1990; Wilson, 2003). Beholden to the stipulations of both Canon and civil law, Catholic institutions have developed creative ways of addressing governance needs, allowing governing authority to be shared while the ultimate responsibility required by Canon law is not compromised. Limited-jurisdiction governance evolved as the principal means of governance practice within private Catholic religious-sponsored secondary schools in order to respect the requirements of both civil and Canon law (Maida & Cafardi, 1984). Within this specific structure, trustees are given different latitude than in other secular non-profit or for-profit trustee situations. Lastly, the actual presence of members of religious life is another uniqueness in board governance of private Catholic religious-sponsored secondary schools, for religious are a different type of professional than the other individuals serving on the board (Heft, 2011). This cultural context distinguishes Catholic religious-sponsored governance from other forms of board governance.

This conclusion has great implications for trustee formation, not only for the laity, but also for religious trustees. The participant religious congregations were adamant about their belief that the governance of private Catholic religious-sponsored secondary schools requires trustees to have or embrace qualities different from those required within other general non-profit boards or for-profit boards. Trustee formation programs are already designed to address a very particular uniqueness, that of congregational charism, thus appropriately, they can be oriented to address the specific character or culture that an individual religious congregation perceives its governance to possess. Not only are religious congregations able to define that which makes their governance unique, but also their current trustees, especially those who have had experiences of trusteeship elsewhere, can articulate the distinctiveness of private Catholic religious-sponsored governance.

### *Conclusion*

Within private Catholic religious-sponsored secondary school governance, civil Law is given precedence over Canon Law.

Focus group conversations evidenced that, in many situations, the two equal systems of law to which Catholic institutions are beholden are not given equal attention within the practice of Catholic governance. Without a doubt, this research found that religious congregations are cognizant about their canonical duties and that they have intentionally structured the governance relationships based upon civil and canonical requirements. However, within this situation, matters pertaining to civil law are addressed more assiduously, and Canon law, while acknowledged as being essential within Catholic governance, is of little concern within trustee formation or governance practice. Two of the three religious congregation focus groups shared that their trustee formation programs lack Canon law components, and, collectively, all three of the trustee focus groups displayed a general ignorance about fundamental topics of Canon law and were not able to discuss or identify issues related to Canon law with any acumen. Comments from the religious congregation focus groups demonstrated perspectives on Canon law characterized by frustration and even antipathy. It could have been inferred by means of their comments that board formation on Canon law was unnecessary, as any necessary assistance on canonical issues was easily accomplished by the hiring of experts to advise direction.

Literature identifying the appropriate relationship between civil and Canon law veritably exists, yet is not heeded. Maida and Cafardi (1984) articulated the position of many Canon law and civil law experts within Catholic governance, stating,

In relating civil to canon law, one must first realize that he or she is dealing with two separate but equally important legal systems. Too often the canon law is the victim of a regrettable reluctance on the part of Church people in its study and its application. They are content to concentrate on civil law structures and hope that

the canon law will somehow tag along. This perspective is unfortunate and incorrect. (p. 103)

Other experts who echo the same caution include Stamp (1993) who wrote, “Too often it seems that Canon law is the victim of ignorance on the part of many church people, who, anxious to do all that civil law demands, fail to study the church legislation and apply it appropriately” (p. 123). The literature’s position is clear; Canon law and civil law have the same standing within Catholic governance, and Canon law requires all Catholic institutions to abide by the civil statutes of their jurisdiction (c. 1284 §2, 3°, 1290, CIC).

The implications of this conclusion are also related to the direction advocated by the literature. Board governance experts in both Catholic (Catholic Health Association, 2007; Haney et al., 2009; Mueller, 2000; J. S. O’Brien, 1987; Sheehan, 1981, 1990; Tavis, 2010) and secular (BoardSource, 2010; Carver, 2006; Chait et al., 2005; DeKuyper, 2003) governance circles have stressed that all aspects of governance require continual discernment. Just as much as bylaws and other civilly required structures must be periodically examined, canonical elements of governance relationships must also be subject to scrutiny as to whether or not they adequately address the current situation, as well as perceived future needs. Also, as much as Catholic Identity is of continual focus in the post-*Ex Corde Ecclesiae* climate, adherence to Canon law is a particular task related to an institution’s identity as a Catholic institution. The fulfillment of duties required by Canon law is a means by which the institution exercises its commitment to the Church.

### Recommendations

The recommendations stemming from this study have been divided into two categories: recommendations for future practice and recommendations for future research.

The first category on future practice is based upon the implications surfaced by the conclusions of the study and offered to Catholic religious congregations and trustees engaged in governance on behalf of private Catholic religious-sponsored secondary schools within the United States. Networks of religious congregational schools which oftentimes participate within governance processes and formation of trustees, might also find this research useful to their ministries. Other groups engaged in governance on behalf of Catholic institutions may also find value within this research; these include the National Catholic Educational Association (NCEA), the Catholic Health Association (CHA), the Association of Catholic Colleges and Universities (ACCU), and the United States Conference of Catholic Bishops (USCCB). The second category, outlining recommendations for future research, is intended to both extend the topics of this study beyond its limitations, as well as explore in greater detail, topics that surfaced within focus groups, yet were not central to accomplishing the purpose of this study.

### *Recommendations for Future Practice*

Governance of Catholic institutions is a function of vigilance, which many unfortunately perceive to be a passive enterprise. However, good practice of board governance requires observation, ongoing discernment, and strategic thinking, centered upon the advancement of the institution. The following recommendations for the future practice of Catholic governance were informed by the implications from each of the conclusions of the study. They have been divided into three categories: Conceptual Recommendations, Recommendations for Trustee Formation, and Recommendations for Religious Congregations.

### *Conceptual Recommendations*

- That, within Catholic governance, understandings of the concept of Ownership be widened beyond the ownership of property and assets to include ownership of institution and ownership of charism.
- That, due to its lack of a common definition or scope within Catholic governance, use of the term, “Sponsorship” be abandoned. Further, encouraging religious congregations to operationalize a definition would only serve to proliferate the number of definitions within use.
- That, in consort with trustees serving within congregational apostolates, a philosophy of Trusteeship be developed by each religious congregation engaged in limited-jurisdiction governance. Further, this philosophy of Trusteeship should formally address the distinction between religious and lay trustees

### *Recommendations for Trustee Formation*

- That each religious congregation engaged within limited-jurisdiction governance in Catholic secondary schools implement governance formation programs that address the following areas:
  - The charism(s) and tradition of the related religious congregation;
  - Catholic Identity of secondary educational institutions;
  - Canon Law, as related to governance of Catholic institutions;
  - The role of the trustee within limited-jurisdiction governance;
  - The relationship between the board and the congregation as expressed within the policies describing the limited-jurisdiction structures.

- That trustee formation programs be required for service as a trustee by all prospective candidates prior to the beginning of their term of service.
- That religious congregations provide specific formation programs for members of their order who serve either on the level of Member or trustee within their governance models, so as to define the unique role of the religious trustee and to support such individuals in their ministry of trusteeship.

#### *Recommendations for Religious Congregations*

- That in the face of shifting demographics, religious congregations continue to seek the counsel of outside experts and practitioners. This would include experts in civil law, Canon law, and board governance, as well as seeking the collaboration of other religious congregations in designing and re-designing current governance models.
- That each religious congregation formalize the role of the religious trustee within its governance structures to suit the specific role religious congregations are expected to fulfill within governing boards.
- That religious congregations, on the province level, take a direct role in the formation of trustees, in collaboration with other existing programs on the regional or local level.

#### *Recommendations for Future Research*

Focus group methodology is designed to elicit information from a group of people who share a common demographic or experience, in a way that participants are not coerced by the researcher to come to agreement or prescribe a course of action (Krueger & Casey, 2008). By its discursive nature, some matters within a focus group become major topics of conversation while others are merely mentioned without gaining attention. The following



recommendations for future research had their origins as ancillary topics surfaced by individual focus group participants, yet their exploration in research could become significant to the dialogue on private Catholic religious-sponsored secondary school governance relationships:

- As this research employed a qualitative methodology of focus groups, and only three congregations with three related boards were included, replication of this study with more religious congregations involved in high school ministry would further the understanding of governance relationships within private Catholic religious-sponsored secondary schools. The study could also be conducted by changing the population to religious congregations and boards of trustees engaged in Catholic universities or non-parochial private Catholic religious-sponsored primary schools. The exploration of a quantitative instrument to explore perceptions of religious congregational leaders and trustees would also be another means to gain data on the topic of this research.
- In situations in which the President-CEO is a member of the related religious congregation, it may be beneficial to explore how the relationship between the Religious CEO and the congregation affects the governance relationship between the board and the congregation. In addition, in these situations, the effectiveness of the governing board could be explored. With the diminishing number of religious President-CEOs within Catholic education, this research will need to be accomplished in a timely manner.
- At the time of this research, one school had a long-serving religious serving as President-CEO, a second school had a long-serving layman in that same office, and the third school, at the time of the focus group with the trustees, had just made the

transition from religious to layman within the two weeks prior. Future research could explore governance relationships between religious congregations and local governing boards, determining whether or not there are noteworthy differences depending upon who holds the office of President-CEO.

- Within each focus group, when discussing the role of religious congregation members on the board, at least one reference was made to the religious vow of obedience by the focus group members, and the assumption was that religious trustees mechanically observe their vows of obedience. Research could investigate the perceptions of religious trustees in view of their vow of obedience and, how they perceive it to affect their role as religious trustees. Legal research may also discover court cases and rulings that were argued, at least in part, on the basis of the religious vow of obedience.
- Another area for potential research within Catholic secondary school governance is the inclusion of alumni within the board. Two of the trustee focus groups of this research were composed almost exclusively of alumni. Future research could find out the unique ways in which alumni contribute to an institution's board, being persons who directly experienced the heritage and tradition of a specific school, or discover the ways in which alumni-trustees possibly can hinder the progress of an educational institution.
- The potential need for private Catholic religious-sponsored secondary schools to be erected as individual juridic entities may become a greater reality in the future. Studies could explore governance relationships between secondary school institutions that are either public or private juridic persons and other Church institutions most closely related to them, for instance, the local (arch)diocese or the

religious congregation that served as its public juridic person until its having been granted individual canonical status.

### Closing Remarks

The governance of Catholic institutions is a continually evolving landscape, especially given that the future of Catholic religious congregations in the United States is greatly uncertain. As one of the younger members of the Brothers of the Christian Schools, a religious congregation deeply committed to the education of young people by means of educational institutions, the researcher has a vested interest in discovering and defining the most appropriate relationship between religious congregations and local governing boards given the circumstances within which either of these parties find themselves.

This study surfaced several important dynamics that contribute to the current state of affairs of governance relationships within private Catholic religious-sponsored secondary schools in the United States. Of these, the researcher would like to highlight two aspects. First, Canon law, unfortunately, has been subordinated to civil law within governance practice. Second, within governance pursuits, religious congregations need to remain active and participate at a level that demonstrates their relevancy within the governance of their apostolates.

First, while the prevailing attitudes regarding Canon law within Catholic governance as evidenced within practice are undeniably regrettable, they become understandable when provided with the perspective of historical context. As mentioned, the 1917 Code of Canon Law was rendered obsolete by John XXIII when, in 1959, he shared the intention to publish a new Code as one of the ways in which he was opening the Church to reform by calling the

Second Vatican Council. The reforms of the council, which began to appear within the mid-1960s, did not immediately include the revised Code. Instead, 34 years elapsed between the announcement of the new Code and its promulgation in 1983 and, while the Pio-Benedictine Code (1917) had not yet been replaced, Catholic institutions were adjusting governance structures to suit newly perceived needs which surfaced during this gap. Further, many of the religious who currently serve within congregational leadership, likely, were in formation or seminary either around the time of Vatican II or during this exact interregnum period of Canon law. Simply put, the officials of the Church who created the 1983 Code took too long to do so and, for Catholic institutions, attention to matters of civil law filled the void left by the absence of a truly functional Code of Canon Law.

This situation allowed for the views of Msgr. John J. McGrath (1968) to take prominence and be adopted within Catholic governance. McGrath claimed the primacy of civil law over Canon law upon the incorporation of a Church institution, and Maida (Maida & Cafardi, 1984; 1973a, 1973b, 1975, 1980) argued against him stating that civil law and Canon law co-exist and are both binding. Subsequent literature has supported Maida using metaphors such as dual-citizenship, but governance practices seem to carry on as if McGrath were correct and Canon law is obsolete, unnecessary, or unimportant. There is no guessing as to when the next renewal of the Code will happen or, when it does happen, how long such revisions will take.

Second, the conclusions of this study confirm that it is of prime importance that religious congregations participate within the governance of their apostolates at a level of relevancy. This means that they cannot be solely concerned with the bare preservation of their canonical responsibilities but, instead, should be determining the means by which they can most fully participate within the governance of their apostolates without breeching civil

corporate boundaries. This study has concluded that the reserved powers<sup>11</sup> held by the related religious congregation, as the canonical owner, are the major means by which these groups, even given their current challenges, actually participate within the governance of their educational institutions. Direct participation by the province, as well as by sisters, brothers, or priests of the congregation, in facilitating and leading formation programs designed for trustees and other individuals involved within related apostolates, is also another important way for the congregation to contribute meaningfully, enhancing the charism and mission of their apostolic institutions. If religious congregations fail to participate at a level of relevancy within the governance of their apostolates, they may be rendered obsolete, left behind by the activity of local governing boards.

This potential obsolescence is one of the greatest dangers facing Catholic secondary education in the United States, for the role of related religious congregations within governance relationships on behalf of institutions for which they hold canonical responsibility, is in question by many experts and practitioners of Catholic governance. Giving up is not an option, for by means of consolidation, canonical oversight by the congregation only passes to either a higher level or a larger group within the religious congregation. Religious congregations are not able to abdicate their canonical responsibilities given to them by the Church. For this reason, instead of seeking permission to be relieved of such responsibilities, some religious congregations gladly share the exercise of their mission with lay colleagues, even to the point of creating governance relationships or deepening those already in existence. Governance is, by all means, a ministry of the Church, and the involvement of diverse constituencies, with communication to preserve the identity,

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<sup>11</sup> It is important to note that, syntactically, they are “reserved” powers and specifically not “reserve” powers. Thus, reserved powers are actually reserved to the higher authority, for them to use. They are not “reserve” powers, that is, those held in reserve and only used in case of emergency.

integrity, and role of each party, is of great necessity for the prosperous future of private Catholic secondary education in the United States.

## REFERENCES

- Asdorian, K. (2006). *Piercing the corporate veil in a religious institution: The search for assets*. The Catholic University of America, Washington, D.C.
- Association of Catholic Colleges and Universities. (2011, August 17). Statement of Purpose. *About ACCU*. Retrieved August 17, 2011, from <http://www.accunet.org/i4a/pages/index.cfm?pageid=3435>
- Association of Jesuit Colleges and Universities. (2003). *Mission and identity-A handbook for trustees of Catholic colleges and universities*. AGB Publications.
- Bassett, W. W. (1984). Relating Canon and civil law. *Jurist*, 44, 3.
- Bassett, W. W. (1999). The American civil corporation, the “incorporation movement,” and the Canon law of the Catholic church. *Journal of College and University Law*, 25(4), 721–50.
- Beal, J. P. (2006). From the heart of the church to the heart of the world: Ownership, control and Catholic identity of the institutional apostolates in the United States. In *Sponsorship in the United States context: Theory and praxis* (pp. 31–48). Alexandria, VA: Canon Law Society of America.
- Beal, J. P., Coriden, J. A., & Green, T. J. (Eds.). (2002). *New commentary on the Code of Canon law: Study edition*. New York, N.Y: Paulist Press.
- Becker, C. L. (2009). *The Declaration of Independence: A study in the history of political ideas [1922]*. Cornell University Library.
- Biondi, L. (1998). A context of wrenching changes in health care. *Origins*, 27(30), 502–505.
- BoardSource. (2010). *The handbook of nonprofit governance* (1st ed.). Jossey-Bass.
- Borden, T. G. (2003). Americorps. *Dictionary of American History*. New York, N.Y: Charles Scribner’s Sons.
- Boudinhon, A. (1910). Canon Law. In *The Catholic Encyclopedia*. New York: Robert Appleton Company.

- Bradley, G. V. (2007). The Blaine Amendment of 1876: Harbinger of Secularism. *Notre Dame Law School Legal Studies Research Paper*, 07(02), 1–21.
- Brown, P. J. (2010). Structuring Catholic schools: Creative imagination meets Canon law. *Catholic Education: A Journal of Inquiry and Practice*, 13(4), 467–508.
- Buetow, H. A. (1970). *Of singular benefit: The story of Catholic education in the United States*. Macmillan.
- Burke, R. (2006). Consultative boards versus boards of limited jurisdiction: Pros and cons. *Catholic school management Letter*, 27(4), 1–4.
- Burns, H. M. (2006). Reflections on sponsorship: One Congregation's perspective. In *Sponsorship in the United States context: Theory and praxis* (pp. 1–16). Alexandria, VA: Canon Law Society of America.
- Burtchaell, J. T. (1998). *The dying of the light: The disengagement of colleges and universities from their Christian churches* (1ST ed.). Grand Rapids, MI: Eerdmans Pub Co.
- Burton, V. L. (Ed.). (2011). Nonprofit organizations, and taxes. In *Encyclopedia of Small Business*. Detroit, MI: Gale.
- Carver, J. (2006). *Boards that make a difference: A new design for leadership in nonprofit and public organizations*. Jossey-Bass.
- Catholic Health Association. (2007). *One vine, different branches: Sponsorship and governance in Catholic ministries*. Catholic Health Association of the United States.
- Cerullo, D. M. (2012). *Catholic schools in two worlds: Understanding governance and bylaws in church and civil law*. [S.l.]: National Catholic Educational Association (NCEA).
- Chait, R. P., Holland, T. P., & Taylor, B. E. (1991). *The effective board of trustees*. Phoenix, AZ: The Oryx Press.
- Chait, R. P., Holland, T. P., & Taylor, B. E. (1996). *Improving the performance of governing boards* (1st Edition.). Phoenix, AZ: The Oryx Press.
- Chait, R. P., Ryan, W. P., & Taylor, B. E. (2005). *Governance as leadership: Reframing the work of nonprofit boards* (1st ed.). Hoboken, NJ: Wiley.



- Chioncel, N. E., Van Der Veen, R. G. W., Wildemeersch, D., & Jarvis, P. (2003). The validity and reliability of focus groups as a research method in adult education. *International Journal of Lifelong Education*, 22(5), 495–517.
- Cody, F. J. (1980). *Policy boards in Jesuit secondary schools, 1976*. The Ohio State University, United States -- Ohio.
- Congress of the United States. United States Constitution, Amendment 1 (1791).
- Conlin, D. (2000). *Canonical and civil legal issues surrounding the alienation of Catholic health care facilities in the United States*. Pontificiam Universitatem S. Thomae in Urbe, Rome.
- Conlin, D. (2001). Sponsorship at the crossroads: Religious institutes must consider the direction in which they will go. *Health Progress*, 82(4), 20–23.
- Conlin, D. (2002). The McGrath thesis and its impact on canonical understanding of the ownership of ecclesiastical goods. *Canon Law Society of America, Proceedings*, 64, 73–96.
- Conn, J. J. (1991). *Catholic universities in the United States and ecclesiastical authority* (Vol. 259). Rome: Editrice Pontificia Universita Gregoriana.
- Connell, J. (1990). *Will changing conditions affect the ownership and governance of Catholic secondary schools in Northern California? Issues and trends*. Golden Gate University, United States -- California.
- Convey, J. J. (1995, April 18). *A profile of Catholic school boards: Results from the NABE survey*. Presented at the Annual Meeting of the Catholic Educational Association, Cincinnati, Ohio.
- Convey, J. J., Haney, R. M., National Catholic Educational Association, W., & National Association of Boards of Catholic Education, W. (1997). *Benchmarks of excellence: Effective boards of Catholic education*. Washington, DC: National Catholic Educational Association.
- Coriden, J. A. (2000). Book III: Introduction, Introductory Canons, Titles I & II [cc. 747–792]. In *New commentary on the Code of Canon Law: Study edition* (p. 911). Washington, D.C.: Paulist Press.
- Coriden, J. A. (2004). *Introduction to Canon law* (Revised.). London, United Kingdom: Burns & Oates.

- Coriden, J. A., & McManus, F. R. (1980). The present state of Roman Catholic Canon Law regarding colleges and sponsoring religious bodies. In *Church and campus* (pp. 141–153). South Bend, Indiana: University of Notre Dame Press.
- Coughlin, J. J. (2007a). Canon law and Constitutional law: The First Amendment, anthropology, separation, and neutrality. *Notre Dame Law School Legal Studies Research Paper*, 07(24), 1–52.
- Coughlin, J. J. (2007b). Church property: The unity of law and theology. *Notre Dame Law School Legal Studies Research Paper*, 07(11), 1–48.
- Coughlin, J. J. (2011). Antinomianism and legalism in Canon law. *Notre Dame Law School Legal Studies Research Paper*, 11(15), 1–29.
- Creswell, J. W. (2008). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research* (3rd ed.). Upper Saddle River, NJ: Pearson Education, Inc.
- Currie, C. L. (2003). Trustees and mission: The ideal and the real. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 95–103). Washington, D.C.: AGB Publications.
- DeForrest, M. E. (2003). An overview and evaluation of state Blaine Amendments: Origins, scope, and first amendment concerns. *Harvard Journal of Law and Public Policy*, 26(2), 551–626.
- DeKuyper, M. H. (2003). *Trustee handbook: A guide to effective governance for independent school boards*. Washington, DC: National Association of Independent Schools.
- Del Rio-Roberts, M. (2011). How I learned to conduct focus groups. *The Qualitative Report*, 16(1), 312–315.
- Denig, S. J., & Dosen, A. J. (2009). The mission of the Catholic school in the Pre-Vatican II era (1810-1962) and the Post-Vatican II era (1965-1995): Insights and observations for the new millennium. *Catholic Education: A Journal of Inquiry and Practice*, 13(2), 135–56.
- Dignan, P. J. (1935). *A history of the legal incorporation of Catholic Church property in the United States (1784-1932)*. New York: P. J. Kenedy & Sons.
- DiPietro, M. (1991). Changes in governance of Catholic colleges and universities: Some practical observations. *Current Issues in Catholic Higher Education*, 11(2), 8–13.

- DiPietro, M. (2006). A juridic meaning of sponsorship in the formal relationship between a public juridic person and a healthcare corporation in the United States. In *Sponsorship in the United States context: Theory and praxis* (pp. 101–122). Alexandria, VA: Canon Law Society of America.
- Dosen, A. J. (2009). *Catholic higher education in the 1960s: Issues of identity, issues of governance*. Information Age Publishing.
- Drahmann, T. (1991). Sponsorship. *Current Issues in Catholic Higher Education*, 11(2), 26–27.
- Dugan, P. M. (2006). The sponsorship relationship: Incorporation and dissolution civil and Canon law perspectives. In *Sponsorship in the United States context: Theory and praxis* (pp. 73–83). Alexandria, VA: Canon Law Society of America.
- Dunn, B. K. (1995). *Sponsorship of Catholic institutions, particularly healthcare institutions, by the Sisters of Providence in the western United States*. University of Ottawa (Canada), Canada.
- Dwyer, T. W. (2003). *Glossary of Catholic education governance terms*. Washington, DC: National Catholic Educational Association.
- Eden, T. E. (2002). *Seasons of change: Catholic higher education from the end of the Second World War to the decade following the Second Vatican Council*. University of San Francisco.
- Ellis, P. (2001). Relationships revisited, again. *Current Issues in Catholic Higher Education*, 21(2), 107–109.
- Euart, S. A. (2000). Book III, Title III: Catholic Education [cc. 793–814]. In *New commentary on the Code of Canon Law: Study edition* (pp. 953–971). Washington, D.C.: Paulist Press.
- Fall, L. T. (2004). Demographics. In *Encyclopedia of Public Relations*. Thousand Oaks, CA: Sage Publications.
- Fitzgerald, J. M. (1985). The official Catholic directory civil and Canon law requirements. *Catholic Lawyer*, 30, 107.
- Ford, C. E. (1968). *The renewal of Catholic higher education*. Washington, DC: National Catholic Educational Association.
- Gale. (2009). Nonprofit organizations. In *Encyclopedia of management*. Detroit, MI: Gale.

- Gallin, A. (1984). Sponsorship as partnership. In *Sponsorship/Partnership. 1984 Annual meeting papers* (pp. 7–10).
- Gallin, A. (1991). Introduction. *Current Issues in Catholic Higher Education*, 11(2), 3–4.
- Gallin, A. (1992). *American Catholic higher education: Essential documents, 1967-1990*. South Bend, Indiana: University of Notre Dame Press.
- Gallin, A. (1996). *Independence and a new partnership in Catholic higher education*. South Bend, Indiana: University of Notre Dame Press.
- Gallin, A. (2001). *Negotiating Identity: Catholic Higher Education Since 1960*. South Bend, Indiana: University of Notre Dame Press.
- Gallin, A. (2003). A brief history of trusteeship in Catholic colleges and universities. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 37–43). Washington, D.C.: AGB Publications.
- Geiger, J. (2003). Governance of Catholic higher education. In *Handbook of research on Catholic higher education* (p. 117136). Information Age Publishing.
- Goebel, E. J. (1936, January 1). *A study of Catholic secondary education during the colonial period up to the First Plenary Council of Baltimore, 1852*. Catholic University of America.
- Golden, P. L. (2006). Sponsorship in higher education. In *Sponsorship in the United States context: Theory and praxis* (pp. 85–99). Alexandria, VA: Canon Law Society of America.
- Gonsorcik, P. J. (2001). *The canonical status of separately incorporated healthcare apostolates in the United States: Current status and future possibilities for the public and private juridic person*. University of Ottawa, Ottawa, Canada.
- Grant, M. K. (2001a). “Reframing” sponsorship. *Health Progress*, 82(4), 38–40, 51.
- Grant, M. K. (2001b). Toward a theology of the community. *Health Progress*, 82(4), 10, 56.
- Grant, M. K. (2003). Exercising sponsorship: Five essential tasks. *Current Issues in Catholic Higher Education*, 23(2), 61–66.
- Grant, M. K., & Kopish, M. M. (2001a). Sponsor leadership formation: Qualifications for the next generation of sponsors. *Health Progress*, 82(4), 24–26.

- Grant, M. K., & Kopish, M. M. (2001b). Sponsorship: Current challenges and future directions. *Health Progress*, 82(4), 19.
- Grant, M. K., & Vandenberg, S. P. (1998). *After we're gone: Creating sustainable sponsorships*. Mishawaka, IN: Ministry Development Resources.
- Grant, U. S. (1875, December 7). *State of the Union Address*. Washington, D.C.
- Gray, H. (1996). Religious communities and secondary education: Opportunities in sponsorship and governance. In *Sponsorship, collegueship, and service: A conversation about the future of religious communities and American Catholic high schools: Proceedings of a Symposium* (pp. 19–24). Washington, DC: National Catholic Educational Association.
- Greeley, A. M. (1977). *An ugly little secret: Anti-Catholicism in North America*. Kansas City: Sheed Andrews and McMeel.
- Grennan, J. (1969). Freeing the Catholic college from juridical control by the church. *The Journal of Higher Education*, 40(2), 101–107.
- Griffin, B. F. (1984). Introduction to the jargon of Canon law. *Jurist*, 44(1), 19–27.
- Grochowski, Z. (2008). The Catholic school according to the Code of Canon Law. *Catholic Education: A Journal of Inquiry and Practice*, 12(2), 148–159.
- Guba, E. G., & Lincoln, Y. S. (1989). *Fourth generation evaluation* (1st ed.). Sage Publications.
- Haney, R. M., O'Brien, S., & Sheehan, L. (2009). *A primer on education governance in the Catholic church, second edition* (2nd ed.). Washington, DC: National Catholic Educational Association.
- Hanlon, M. M. (1997). *The governance relationship between the Sisters of Mercy and College Misericordia*. Lehigh University, United States -- Pennsylvania.
- Harrington, P. J. (1999). Civil and Canon law issues affecting American Catholic higher education 1948-1998: An overview and the ACCU perspective. *Journal of College and University Law*, 26(1), 67–105.
- Harris, J. C. (1996). *The cost of Catholic parishes and schools*. Kansas City, MO: Sheed & Ward.
- Healy, M. M. (1991). Reflections of a lay trustee. *Current Issues in Catholic Higher Education*, 11(2), 17–18.

- Heft, J. L. (2001). *Ex corde ecclesiae and the Catholic high school*. Washington, DC: National Catholic Educational Association.
- Heft, J. L. (2011). *Catholic high schools: Facing the new realities*. New York, NY: Oxford University Press, USA.
- Hellwig, M. K. (2003). What makes our colleges Catholic? In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 45–52). Washington, D.C.: AGB Publications.
- Hellwig, M. K. (2005). Catholic identity: The twenty-first century challenge. *Current Issues in Catholic Higher Education*, 24(2), 3–9.
- Hesburgh, T. M. (1945). *The relation of the sacramental characters of baptism and confirmation to the lay apostolate*. The Catholic University of America, Washington, DC.
- Hesburgh, T. M. (2000). *God, country, Notre Dame: The autobiography of Theodore M. Hesburgh* (1st ed.). South Bend, Indiana: University of Notre Dame Press.
- Hite, J. (2000). *A primer on public and private juridic persons: Applications to the Catholic health care ministry*. Catholic Health Association. St. Louis.
- Ho, D. (2006). The focus group interview: Rising to the challenge in qualitative research methodology. *Australian Review of Applied Linguistics*, 29(1), 05.1–05.19.
- Hocevar, R., Sheehan, L., & National Catholic Educational Association, W. (1991). *Catholic school governance and finance. [volume v.] Catholic schools for the 21st Century*. Washington, DC: National Catholic Educational Association.
- Hopkins, B. R. (2010). *The law of tax-exempt organizations* (9th Edition 2010 Cumulative Supplement.). Somerset, NJ: Wiley.
- Horrigan, D. C. (1978). *The shaping of NCEA*. Washington, DC: National Catholic Educational Association.
- Huger, B. C. (2001). Canon law issues of sponsorship, governance control and alienation as they relate to Catholic Church entities in the United States: A diocesan attorney's perspective. *Catholic Lawyer*, 41(1), 19–26.

- Ingram, R. T. (2000). The challenges of mission and identity: to the trustees of Jesuit universities, colleges, and schools. *Current Issues in Catholic Higher Education*, 20(2), 95–104.
- Ingram, R. T. (2003). The challenges of mission and identity. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 15–21). Washington, D.C.: AGB Publications.
- Isetti, R. E. (1979). *Called to the Pacific: A history of the Christian Brothers of the San Francisco District, 1868-1944* (First Edition.). St. Mary's College of California.
- Jenkins, P. (2003). *The new anti-Catholicism: The last acceptable prejudice*. Oxford: Oxford University Press.
- John Paul II. (1983, January 25). *Sacrae disciplinae leges: Apostolic constitution of the Supreme Pontiff for the publication of the new Code of Canon Law*. St. Paul Editions.
- Johnson, & Johnson. (2000). *Joining together: Group theory and group skills* (Seventh Edition.). Allyn & Bacon, Incorporated.
- Kaslyn, R. J. (2000). Book II: Introduction, Part I: Introductory Canons, and Title I [cc. 204-223]. In *New commentary on the Code of Canon Law: Study edition* (pp. 241–290). Washington, D.C.: Paulist Press.
- Kauper, P. G., & Ellis, S. C. (1973). Religious corporations and the law. *Michigan Law Review*, 71(7), 1499–1574.
- Kennedy, R. T. (1990). McGrath, Maida, Michiels: Introduction to a study of the canonical and civil-law status of church-related institutions in the United States. *Jurist*, 50(2), 351–401.
- Kennedy, R. T. (2000a). Book V: The temporal goods of the Church [cc.1254-1310]. In *New commentary on the Code of Canon Law: Study edition* (pp. 1449–1525). New York, N.Y.: Paulist Press.
- Kennedy, R. T. (2000b). Chapter II: Juridic Persons [cc.113-123]. In *New commentary on the Code of Canon Law: Study edition* (pp. 154–176). Washington, D.C.: Paulist Press.
- King, W. J. (2006). Sponsorship by juridic persons. In *Sponsorship in the United States context: Theory and praxis* (pp. 49–72). Alexandria, VA: Canon Law Society of America.

- Klinkhamer, M. C. (2003). Blaine Amendment. In *New Catholic Encyclopedia*. Detroit, MI: Gale.
- Krueger, R. A., & Casey, M. A. (2008). *Focus groups: A practical guide for applied research* (4th ed.). Thousand Oaks, CA: Sage Publications.
- Kvale, S., & Brinkmann, S. (2008). *InterViews: Learning the craft of qualitative research interviewing* (2nd ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Lee, M., & Schuele, C. M. (2010). Demographics. In *Encyclopedia of Research Design*. Thousand Oaks, CA: Sage Publications.
- Lee, R. (2000). When a king speaks of God; when God speaks to a king: Faith, politics, tax exempt status, and the Constitution in the Clinton Administration. *Law and Contemporary Problems*, 63(1 & 2), 391–437.
- Magnetti, H. (1996). Collegueship and leadership: Not mine, ours; not they, we. In *Sponsorship, colleagueship, and service: A conversation about the future of religious communities and American Catholic high schools: Proceedings of a Symposium* (pp. 33–37). Washington, DC: National Catholic Educational Association.
- Maida, A. J. (1973a). Canon law/civil law status of Catholic hospitals. *Hospital Progress*, 54(8), 54–61, 80.
- Maida, A. J. (1973b). Canonical and legal fallacies of the McGrath thesis on reorganization of church entities. *Catholic Lawyer*, 19, 275.
- Maida, A. J. (1975). *Ownership, control, and sponsorship of Catholic institutions: A practical guide*. Harrisburg: Pennsylvania Catholic Conference.
- Maida, A. J. (1980). Sponsoring congregations' answer to McGrath thesis: Corporate control. *Hospital Progress*, 61(4), 66–68, 80, 84.
- Maida, A. J., & Cafardi, N. P. (1984). *Church property, church finances, and church-related corporations: A Canon law handbook*. St. Louis, MO: Catholic Health Association of the United States.
- Manny, J. S. (2000). Governance Issues for Non-Profit Religious Organizations. *Catholic Lawyer*, 40, 1.



- Massa, M. S. (2003). *Anti-Catholicism in America: The last acceptable prejudice*. New York: Crossroad.
- Mawdsley, R. D. (2006). *Legal problems of religious and private schools* (5th ed.). Education Law Assn.
- Maxwell, G. W. (2001). Corporations. In *Encyclopedia of Business and Finance*. New York: Macmillan Reference USA.
- McBrien, R. P. (1994). *Catholicism: New study edition* (Revised.). San Francisco, CA: Harper Collins Publishers.
- McDevitt, M. (1963). *The first century of St. Mary's College (1863-1963)*. unpublished, Moraga, California.
- McDonald, D., & Schultz, M. M. (2009). *United States Catholic elementary and secondary schools 2008-2009: The annual statistical report on schools, enrollment and staffing*. Washington, DC: National Catholic Educational Association.
- McDonald, D., & Schultz, M. M. (2010). *United States Catholic elementary and secondary schools 2009-2010: The annual statistical report on schools, enrollment and staffing*. Washington, DC: National Catholic Educational Association.
- McDonald, D., & Schultz, M. M. (2013). *United states Catholic elementary and secondary schools 2012-2013: The annual statistical report on schools, enrollment and staffing*. Arlington: National Catholic Educational Association.
- McGrath, J. J. (1968). *Catholic institutions in the United States: Canonical and civil law status*. Washington, DC: Catholic University of America Press.
- McKenna, K. E. (2000). *A concise guide to Canon law: A practical handbook for pastoral ministers*. South Bend, Indiana: Ave Maria Press.
- McKinney, M. B. (2002). *Learners and leaders: A spirituality for board members*. Washington, DC: National Catholic Educational Association (NCEA).
- McLaughlin, T. (1985). *Catholic school finance and church-state relations*. Washington, DC: National Catholic Educational Association.
- McManus, F. R. (2002). Canonical overview: 1983-1999. In *New commentary on the Code of Canon Law: Study edition* (pp. 11–26). New York, N.Y: Paulist Press.

- Miller, A. (2010). Winery sale roundtable oral history session. Archives of the District of San Francisco - unpublished transcript.
- Modde, M. M. (1992). Lay governance in Catholic institutions. *Canon Law Society of America, Proceedings*, 54(1), 185–194.
- Moots, P. R., & Gaffney, E. M. (1980). *Church and campus: Legal issues in religiously-affiliated higher education*. South Bend, Indiana: University of Notre Dame Press.
- Morey, M. M. (1995). *Leadership and legacy: Is there a future for the past?* Harvard University, United States -- Massachusetts.
- Morey, M. M., & Holtschneider, D. (2000). Relationship revisited: Changing relationships between US Catholic colleges and universities and founding religious congregations. *Current Issues in Catholic Higher Education*, 21, 3–39.
- Morey, M. M., & Holtschneider, D. (2003). The meaning and patterns of Catholic sponsorship today. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 53–60). Washington, D.C.: AGB Publications.
- Morey, M. M., & Piderit, J. (2006). *Catholic higher education: A culture in crisis*. New York, NY: Oxford University Press, USA.
- Morgan, D. L. (1996a). Focus Groups. *Annual Review of Sociology*, 22, 129–152.
- Morgan, D. L. (1996b). *Focus groups as qualitative research* (2nd ed.). Thousand Oaks, CA: Sage Publications.
- Morrissey, F. G. (1986). Juridic status: canonical provisions, possible applications. *Health Progress (Saint Louis, Mo.)*, 67(7), 41–45.
- Morrissey, F. G. (2001). Toward juridic personality. *Health Progress*, 82(4), 27–31, 51.
- Morrissey, F. G. (2002). Trustees and Canon law. *Health Progress*, 83(6), 11–18.
- Morrissey, F. G. (2006). Various types of sponsorship. In *Sponsorship in the United States context: Theory and praxis* (pp. 17–30). Alexandria, VA: Canon Law Society of America.
- Morrissey, F. G. (2007). Does Canon law speak of sponsorship of Catholic works? *Health Progress*, 88(1), 29–30.

- Morrissey, F. G. (2008). Twenty-five years of the 1983 Code : reflections on the past; thoughts on the future. *Canon Law Society of America, Proceedings*, 70, 1–27.
- Morrissey, F. G. (2011). New PJP model “A leap of faith.” *Health Progress*, 92(2), 68–70.
- Mueller, F. (2000). Sponsorship of Catholic schools: Preserving the tradition. In *The Catholic character of Catholic schools* (pp. 38–61). South Bend, Indiana: University of Notre Dame Press.
- Murray, V. (2007). Dr. Carver’s odyssey. *Nonprofit Management & Leadership*, 18(1), 101–107.
- National Catholic Educational Association. (1996). *Sponsorship, collegueship, and service: A conversation about the future of religious communities and American Catholic high schools: Proceedings of a symposium*. Washington, DC: National Catholic Educational Association.
- National Catholic Educational Association. (2011, August 17). National Catholic Educational Association. *About NCEA*. Retrieved August 17, 2011, from <http://www.ncea.org/about/index.asp>
- Noonan, J.-C. (1996). *The church visible: The ceremonial life and protocol of the Roman Catholic Church* (First Edition.). New York, NY: Viking Adult.
- Nygren, D. J. (1993). *The future of religious orders in the United States: Transformation and commitment*. Westport, Conn: Praeger.
- O’Brien, D. J. (2003). A Catholic academic revolution. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 23–35). Washington, D.C.: AGB Publications.
- O’Brien, J. S. (1987). *A primer on educational governance in the Catholic church*. Washington, DC: National Catholic Educational Association.
- O’Connor, J. I. (1983). *The Canon Law digest: Officially published documents affecting the Code of Canon Law, 1978-1981, Volume IX* (Vol. 9). Alexandria, VA: Canon Law Society of America.
- O’Grady, J. P. (1969). Control of church-related institutions of higher learning. *The Journal of Higher Education*, 40(2), 108–121.

- OED Online. (2011a, June). Sectarian, adj. and n. *The Oxford English Dictionary*. Oxford University Press. Retrieved from <http://0-www.oed.com.ignacio.usfca.edu/view/Entry/174583?redirectedFrom=sectarian>
- OED Online. (2011b, September). Eleemosynary, adj. and n. *The Oxford English Dictionary*. Oxford University Press. Retrieved from <http://0-www.oed.com.ignacio.usfca.edu/view/Entry/60329?redirectedFrom+eleemosynary>
- P.J. Kenedy & Sons. (2005). *The official Catholic directory 2005*. New Providence, NJ: National Register Publishing.
- P.J. Kenedy & Sons. (2010). *The official Catholic directory 2010*. New Providence, NJ: National Register Publishing.
- Phelps, S., & Lehman, J. (Eds.). (2004a). Corporations. In *West's Encyclopedia of American Law*. Detroit, MI: Gale.
- Phelps, S., & Lehman, J. (Eds.). (2004b). Federal Deposit Insurance Corporation. In *West's Encyclopedia of American Law*. Detroit, MI: Gale.
- Phelps, S., & Lehman, J. (Eds.). (2004c). Membership corporation. In *West's Encyclopedia of American Law*. Detroit, MI: Gale.
- Phelps, S., & Lehman, J. (Eds.). (2004d). Nonprofit. In *West's Encyclopedia of American Law*. Detroit, MI: Gale.
- Phelps, S., & Lehman, J. (Eds.). (2005). Subsidiary. In *West's Encyclopedia of American Law*. Detroit, MI: Gale.
- Pomeroy, D. A., & Peters, P. B. S. (1932). *Commercial law* (Third Edition.). Cincinnati, Ohio: Southwestern Publishing.
- Power, E. J. (1958). *A history of Catholic higher education in the United States*. Milwaukee, WI: Bruce Publishing Company.
- Preville, J. R. (1989). Catholic colleges, the courts, and the Constitution: A tale of two cases. *Church History*, 58(2), 197–210.
- Renken, J. A. (2009). *Church property: A commentary on Canon law governing temporal goods in the United States and Canada*. Ottawa, Canada: Alba House Society of St. Paul.

- Rigali, J. (1997). Proposed sale of two Catholic hospitals to for-profit chain. *Origins*, 27(21), 362–364.
- Rigali, J. (1998). St. Louis University Hospital sold to for-profit corporation. *Origins*, 27(38), 629, 631–633.
- Robison, J. B. (1966). Summary and analysis of the Maryland Court of Appeals' decision on state aid to church colleges: Horace Mann League v. Board of Public Works of Maryland. *Journal of Church and State*, 8(2), 401–414.
- Rothenberg, A. (1961). Recent decisions. *Michigan Law Review*, 60(5), 664–668.
- Russo, C. J. (2009). Canon law, American law, and governance of Catholic schools: A healthy partnership. *Catholic Education: A Journal of Inquiry and Practice*, 13(2), 185–204.
- Sammon, S. D. (2002). *Religious life in America: A new day dawning*. Ottawa, Canada: Alba House Society of St. Paul.
- Savage, T. (1991). Trustees and sponsors of Catholic higher education: What should they be talking about together? *Current Issues in Catholic Higher Education*, 11(2), 5–7.
- Schumacher, M. (1909). The affiliation and accrediting of Catholic high schools and academies to colleges. *The Catholic Educational Association Bulletin*, 7(1), 132–140.
- Shaughnessey, M. A. (1988). *A primer on school law: A guide for board members in Catholic schools*. Washington, DC: National Catholic Educational Association.
- Shea, P. (2003). Religious, Canon law of. In *New Catholic Encyclopedia*. Washington, D.C.: Catholic University of America Press.
- Sheehan, L. (1981). *A study of the functions of school boards in the educational system of the Roman Catholic Church in the United States*. Virginia Polytechnic Institute and State University, United States -- Virginia.
- Sheehan, L. (1990). *Building better boards: A handbook for board members in Catholic education*. Washington, DC: National Catholic Educational Association.
- Sheehan, L. (1997). Emerging governance models for Catholic schools. *Catholic Education: A Journal of Inquiry and Practice*, 1(2), 130–143.

- Smith, P. (2006). Sponsors and sponsored ministries: Mutual expectations. In *Sponsorship in the United States context: Theory and praxis* (pp. 123–135). Alexandria, VA: Canon Law Society of America.
- Smith, R., Brown, W., & Reynolds, N. (Eds.). (2006). *Sponsorship in the United States context: Theory and praxis*. Alexandria, VA: Canon Law Society of America.
- Stamm, M. (1981). Emerging corporate models of governance in contemporary American Catholic higher education. *Current Issues in Catholic Higher Education*, 2(1), 38–45.
- Stamm, M. (1993). Report on the governance of American Catholic higher education institutions in 1992. *Current Issues in Catholic Higher Education*, 14(1), 10–19.
- Stamp, D. P. (1993). *The alienation of temporal goods in clerical religious institutes*. Saint Paul University, Ottawa, Canada.
- Stanford, E. V. (1965). *A guide to Catholic college administration*. Newman Press.
- Steinfels, P. (2004). *A people adrift: The crisis of the Roman Catholic Church in America*. New York, NY: Simon & Schuster.
- Tavis, P. (2010). *The discernment process of the Sisters of Saint Dominic regarding the continued sponsorship of its secondary schools*. Seton Hall University, South Orange, New Jersey.
- Taymans, M. F., & Connors, C. (2009). *Dollars and sense: Catholic high schools and their finances - 2009*. Washington, DC: National Catholic Educational Association.
- Toner, J. (2009). Small is not too small: Reflections concerning the validity of Very Small Focus Groups (VSFGs). *Qualitative Social Work*, 8(2), 179–192.
- Total, P. (2005). *Spiritus magis: 150 years of St. Ignatius College Preparatory*. San Francisco, CA: Saint Ignatius College Preparatory.
- Tracy, M. E. (2001). *Mission and money: A CHS 2000 report on finance, advancement, and governance*. Washington, DC: National Catholic Educational Association.
- Traviss, M. P. (2001). Research on administration, leadership, and governance. In *Handbook of Research on Catholic Education* (pp. 99–124). Westport, CT: Greenwood Publishing Group.

- Truhlar, K. V. (2003). Obedience. In *New Catholic Encyclopedia*. Washington, D.C.: Catholic University of America Press.
- United States Conference of Catholic Bishops. (2000). *Catechism of the Catholic Church* (2nd Revised & Enlarged.). Washington, DC: United States Conference of Catholic Bishops, Inc. - Libreria Editrice Vaticana.
- Vere, P., Trueman, M., & Madrid, P. (2005). *Surprised By Canon Law: 150 questions laypeople ask about Canon Law*. Cincinnati, OH: Servant Books.
- Vitello, P. (2012, January 24). Jacqueline G. Wexler, Ex-Nun Who Took On Church, Dies at 85. *The New York Times*. Retrieved from <http://www.nytimes.com/2012/01/25/nyregion/jacqueline-g-wexler-ex-nun-who-took-on-church-dies-at-85.html>
- Walch, T. (2003). *Parish School: American Catholic parochial education from colonial times to the present*. Washington, DC: National Catholic Educational Association.
- Walsh, M. G. (2010). *Private Catholic elementary schools established by religious congregations in the United States: Emerging governance models*. Fordham University, New York, N.Y.
- West (Ed.). (2005). *West's Revised Code of Washington: Annotated Titles 24 to 25*. Eagan, MN: Thomson West.
- West. (2010). *California Corporations Code, 2011 Ed*. Eagan, MN: Thomson West.
- Whitehead, K. D. (1988). *Catholic colleges and federal funding* (First Paper.). San Francisco, CA: Ignatius Press.
- Wilson, C. H. (2003). Catholic campus trustees and American Civil Law. In *Mission and identity: A handbook for trustees of Catholic colleges and universities* (pp. 83–94). Washington, D.C.: AGB Publications.
- Wittberg, P. (2003). Religious orders and higher education. In *Handbook of research on Catholic higher education* (pp. 263–289). Greenwich, CT: Information Age Publishing.
- Witte, J. (1991). Tax exemption of church property: Historical anomaly or valid constitutional practice? *Southern California Law Review*, 64(2), 363–416.
- Xaverian Brothers Sponsored Schools. (2009). Board handbook. unpublished.

Ziajka, A. (2005). *Legacy & promise: 150 years of Jesuit education at the University of San Francisco*. San Francisco, CA: University of San Francisco.

Zielenski, G.L. (1989). *The attitudes of religious superiors toward laity in governance, administration, and teaching in private Catholic high schools*. Saint Louis University, St. Louis, MO.

Zorzi, D. J. (1995). *Towards altering canonical status: A case for Catholic universities and colleges in Canada*. University of Ottawa, Canada.



## APPENDICES

APPENDIX A  
FOCUS GROUP INTERVIEW STRUCTURE  
(RELIGIOUS CONGREGATION)

## INTERVIEW STRUCTURE (CONGREGATION)

### Briefing - Outline of Script (5 minutes)

- Thank the participants for gathering together for the purpose of the focus group.
- The purpose of this focus group is to share experiences and understandings in a discussion about the governance relationship of your congregation to the boards of trustees at your individual apostolates.
  - Major topics include: Ownership, Control, Sponsorship, and Trusteeship.
  - Questions will address how you understand, define, and currently experience these four areas.
- A focus group is not merely a group interview. Instead it is a chance to have a conversation about a topic or experience that is shared among the members of the group.
  - **Please know that each of your individual perspectives is important.**
  - Please feel free to respond to one another during our conversation, asking one another for clarification.
  - There is not a goal to come to consensus. Both divergent opinions and agreements are welcome and appreciated.
- All discussion within this focus group will be kept confidential by the researcher. Actual names will not be used within the written study.
  - Each of you also has a role in maintaining confidentiality of this group after this session is concluded.
- I will serve as a moderator of the discussion, posing discussion questions, keeping us on time, and asking clarifying questions.
- This focus-group will be recorded on a voice recorder for the purpose of transcription and analysis.
- Any one of you may choose to leave the conversation at any time.
- Are there any questions that you have before we begin?
  - Questions are welcome at any time during the conversation.

### Introductory Questions (10 minutes)

- For the purpose of recording, please say your full name, your title, and describe your role with [this religious congregation and province].
- How long have you been engaged in your current position? What other roles of leadership within this congregation have you held prior to this current role?

### **Transition Questions (15 minutes)**

- How would you describe the mission and charism of your congregation?
- Have you served as a trustee or on the board of directors of one of your congregation's secondary schools, or on that of another congregational apostolate? If so, what did you understand your role to be as a trustee?

### **Key Questions (50 minutes)**

- What are the expectations for persons who serve as trustees in your secondary educational institutions? What do you require of your trustees?
- Describe the structure that connects [the congregation] to the secondary educational institutions and local boards of trustees. From your knowledge, what are the reasons for which your structure was created?
- Within your system of schools, how would you define the Ownership relationship of your institutions? Who is the "owner"?
- As a congregation, do you ever use the term "Sponsorship" to describe your relationship with your educational institutions? What is your understanding of the term "Sponsorship"?

### **Ending Questions (10 minutes)**

- As moderator, I will give a summary of the discussion, highlighting major topics and points that have been raised by the members of the focus group discussion.
  - Please feel free to clarify anything that I bring up,
  - or remind me of anything else that you felt were part of the most significant points of the discussion.
- Is there anything that you would like to add to your comments?
- Would you like to revisit any question again?
- Is there anything that we should have talked about but didn't?
- In regards to the study itself, are there any questions that you have for me?

APPENDIX B  
FOCUS GROUP INTERVIEW PROTOCOL  
(BOARD OF TRUSTEES)

## INTERVIEW STRUCTURE (LOCAL BOARD)

### Briefing - Outline of Script (5 minutes)

- Thank the participants for gathering together for the purpose of the focus group.
- The purpose of this focus group is to share experiences and understandings in a focus-group discussion about the governance relationship of your board of trustees to [the religious congregation] related to this school.
  - Major topics include: Ownership, Control, Sponsorship, and Trusteeship.
  - Questions will address how you understand, define, and currently experience these four areas.
- A focus group is not merely a group interview. Instead it is a chance to have a conversation about a topic or experience that is shared among the members of the group.
  - **Please know that each of your individual perspectives is important.**
  - Please feel free to respond to one another during our conversation, asking one another for clarification.
  - Unlike your experience on the board itself, there is not a goal to come to consensus. Both divergent opinions and agreements are welcome and appreciated.
- All discussion within this focus group will be kept confidential by the researcher. Actual names will not be used within the written study.
  - Each of you also has a role in maintaining confidentiality of this group after this session is concluded.
- I will serve as a moderator of the discussion, posing discussion questions, keeping us on time, and asking clarifying questions.
- This focus-group will be recorded on a voice recorder for the purpose of transcription and analysis.
- Any one of you may choose to leave the conversation at any time.
- Are there any questions that you have before we begin?
  - Questions are welcome at any time during the conversation.

### Introductory Questions (10 minutes)

- For the purpose of recording, please say your full name, your occupation, and how long you have been a trustee of [the school].
- Other than as a trustee, are you, or have you been connected to this institution in another way?

### **Transition Questions (15 minutes)**

- How would you describe the mission and purpose of [this school]?
- What motivated you to say “yes” to being a trustee at [this school]?
- Have you ever served as a trustee on another board?
  - In comparison to this current experience, how have these other trusteeship experiences been similar, and how have they been different?
- How would you describe the mission and charism of [the congregation that sponsors this institution]?

### **Key Questions (50 minutes)**

- Describe the structure that connects this institution and its trustees to the religious congregation.
  - From your perspective, what is the purpose of this structure?
- What are the expectations of being a trustee of [this school]?
  - What are the requirements for becoming a trustee of [this school]?
- How would you describe the Ownership relationship of your institution? Who is the “owner”?
- Have you ever heard or used the term “Sponsorship” to describe the relationship of [the school] to [the congregation]? What is your understanding of the term “Sponsorship”?

### **Ending Questions (10 minutes)**

- As moderator, I will give a summary of the discussion, highlighting major topics and points that have been raised by the members of the focus group discussion.
  - Please feel free to clarify anything that I bring up,
  - Or remind me of anything else that you felt were part of the most significant points of the discussion.
- Is there anything that you would like to add to your comments?
- Would you like to revisit any question again?
- Is there anything that we should have talked about but didn’t?
- In regards to the study itself, are there any questions that you have for me?

## APPENDIX C

## VALIDITY PANEL MEMBERSHIP



## VALIDITY PANEL MEMBERS &amp; QUALIFICATIONS

Expert	Experience as a Trustee	Experience as a Religious Superior	Experience Within Religious Congregational Leadership
1	x	—	x
2	x	x	x
3	x	—	—
4	x	—	x
5	x	—	x
6	x	—	—
7	x	—	—

1 – Mr. Gery Short, Director of Education for the District of San Francisco, Brothers of the Christian Schools, Napa, California

2 – Brother Stanislaus Campbell, FSC, Former Visitor and Auxiliary Visitor of the District of San Francisco, Brothers of the Christian Schools, Napa, California

3 – Mr. Lawrence Puck, Director of Admissions, Director of Alumni, and Director of Communications, Saint Mary's College High School, Berkeley, California

4 – Brother Edmond Larouche, FSC, President, Saint Mary's College High School, Berkeley, California

5 – Sister Christina Maggi, DC, Provincial Councillor for Education for the Province of the West, Daughters of Charity of Saint Vincent de Paul, Los Altos, California

6 – Mrs. Laura Bennett, Trustee, Saint Mary's College High School, Berkeley, California

7 – Dr. Peter Imperial, Principal, Saint Mary's College High School, Berkeley, California; Regent, Saint Ignatius College Preparatory, San Francisco, California

## APPENDIX D

### INITIAL CONTACT LETTER

(RELIGIOUS CONGREGATION)

## BROTHER DAVID L. CARETTI, FSC

SAINT MARY'S COLLEGE HIGH SCHOOL BROTHERS COMMUNITY—1294 ALBINA AVENUE—BERKELEY, CA—94706  
CELLPHONE—415.370.0544—E-MAIL ADDRESS—dlcaretti@usfca.edu

[Date]

[Name]

[Street Address]

[City], [State] [Zip Code]

Dear [Name],

My name is Bro. David Caretti, FSC and I am a doctoral student within the Catholic Educational Leadership Program at the University of San Francisco. My dissertation research study centers upon the governance relationships between religious congregations and boards of trustees at private Catholic religious-sponsored secondary schools in the United States. Being myself a trustee as well as a member of a religious congregation engaged in secondary school ministry, I am greatly interested in hearing the perspectives of congregations and trustees who collaborate within their respective roles and learning from them about the qualities of this ministry and the challenges that are perceived.

I am inviting you to participate in this research study because you, as a provincial within the [name of congregation], are engaged in the ministry of private Catholic religious-sponsored secondary education. I believe that as a provincial of a congregation engaged in governance of secondary school ministries, you are a source of insight into the relationships between institutes of religious life and their secondary school apostolates; your unique perspective and expertise are not only essential, but also truly critical to the future of Catholic education in the United States. I would greatly appreciate your assistance in furthering the knowledge surrounding private Catholic secondary school governance.

With your permission, I would like to gather a small focus group of individuals from within your provincial offices who are charged with the oversight of the boards of trustees at your individual secondary institutions. I would anticipate that this would include you, as provincial, your auxiliary or vice-provincial, your director of educational ministries, and any other individual who works closely with board governance. I would convene this focus group at a time and place amenable to you and your colleagues, and hopefully within the Spring or early Summer of 2012.

Confidentiality is an important element within this research study. No individual identities will be used in any reports or publications resulting from the study. As researcher, I will

only share research information as necessary with the members of my dissertation committee, prior to the completion of my dissertation.

If you are willing to participate in this study or would like to seek more information, I ask that you either complete and return, in the enclosed pre-addressed envelope, the enclosed information form or e-mail me at [dlcaretti@usfca.edu](mailto:dlcaretti@usfca.edu); a formal consent form will be provided to all participants at the beginning of the focus group session. I would greatly appreciate your answer by [Date]. Thank you for your consideration of this request. Your contribution within this study will make a substantial impact on the way governance is both conceptualized and accomplished.

Sincerely,

Brother David L. Caretti, FSC  
Doctoral Student  
Department of Catholic Educational Leadership  
School of Education  
University of San Francisco

APPENDIX E

INITIAL CONTACT LETTER

(BOARD OF TRUSTEES)

## BROTHER DAVID L. CARETTI, FSC

SAINT MARY'S COLLEGE HIGH SCHOOL BROTHERS COMMUNITY—1294 ALBINA AVENUE—BERKELEY, CA—94706  
CELLPHONE—415.370.0544—E-MAIL ADDRESS—dlcaretti@usfca.edu

[Date]

[Name]

[Street Address]

[City], [State] [Zip Code]

Dear [Name],

My name is Bro. David Caretti, FSC and I am a doctoral student within the Catholic Educational Leadership Program at the University of San Francisco. My dissertation research study centers upon the governance relationships between religious congregations and boards of trustees at private Catholic religious-sponsored secondary schools in the United States. Being myself a trustee as well as a member of a religious congregation engaged in secondary school ministry, I am greatly interested in hearing the perspectives of congregations and trustees who collaborate within their respective roles and learning from them about the qualities of this ministry and the challenges that are perceived.

I am asking you to participate in this research study because you, as board chairperson at [institution name], a [congregational descriptor] secondary, are engaged in the ministry of private Catholic religious-sponsored secondary education. I believe that as a trustee engaged in governance of a secondary school institution, you are a source of insight into the relationships between institutes of religious life and their secondary school apostolates; your unique perspective and expertise are not only essential, but also truly critical to the future of Catholic education in the United States. I would greatly appreciate your assistance in furthering the knowledge surrounding private Catholic secondary school governance.

With your permission, I would like to gather a small focus group of people from within your respective board of trustees; this focus group could have anywhere from 4 to 10 members. I would convene this focus group at a time and place amenable to you and your colleagues, and hopefully within the Spring, Summer, or early Fall of 2012.

Confidentiality is an important element within this research study. No individual identities will be used in any reports or publications resulting from the study. As researcher, I will only share research information as necessary with the members of my dissertation committee, prior to the completion of my dissertation.

If you are willing to participate in this study or would like to seek more information, I ask that you either complete and return, in the enclosed pre-addressed envelope, the enclosed information form or e-mail me at [dlcaretti@usfca.edu](mailto:dlcaretti@usfca.edu); a formal consent form will be provided to all participants at the beginning of the focus group session. I would greatly appreciate your answer by [Date]. Thank you for your consideration of this request. Your contribution within this study will make a substantial impact on the way governance is both conceptualized and accomplished.

Sincerely,

Brother David L. Caretti, FSC  
Doctoral Student  
Department of Catholic Educational Leadership  
School of Education  
University of San Francisco

APPENDIX F

CONTACT INFORMATION FORM

(RELIGIOUS CONGREGATION)



## BROTHER DAVID L. CARETTI, FSC

SAINT MARY'S COLLEGE HIGH SCHOOL BROTHERS COMMUNITY—1294 ALBINA AVENUE—BERKELEY, CA—94706  
CELLPHONE—415.370.0544—E-MAIL ADDRESS—dlcaretti@usfca.edu

### CONTACT INFORMATION FORM

Catholic Governance Research Study – Bro. David L. Caretti, FSC

Please return this form in the accompanying self-addressed envelope by [Date]. **This form does not serve in any way as a Consent Form for your participation.**

**Name –**

**Institution –**

(Name of Congregation and  
Province, or School Name)

**Official Title –**

**E-mail –**

**Phone –**

**Preferred Mailing  
Address –**

Please mark your preference:

\_\_\_\_\_ Please contact me for inclusion within the study.

\_\_\_\_\_ I am willing to be contacted, so that I may have  
some additional information on participation  
within the study.

**Signature –**

**Date –**

APPENDIX G  
CONTACT INFORMATION FORM  
(BOARD OF TRUSTEES)

## BROTHER DAVID L. CARETTI, FSC

SAINT MARY'S COLLEGE HIGH SCHOOL BROTHERS COMMUNITY—1294 ALBINA AVENUE—BERKELEY, CA—94706  
CELLPHONE—415.370.0544—E-MAIL ADDRESS—dlcaretti@usfca.edu

### CONTACT INFORMATION FORM

Catholic Governance Research Study – Bro. David L. Caretti, FSC

Please return this form in the accompanying self-addressed envelope by [Date]. **This form does not serve in any way as a Consent Form for your participation.**

**Name –**

**Institution –**

(Name of Congregation and  
Province, or School Name)

**Official Title –**

**E-mail –**

**Phone –**

**Preferred Mailing  
Address –**

Please mark your preference:

\_\_\_\_\_ Please contact me for inclusion within the study.

\_\_\_\_\_ I am willing to be contacted, so that I may have  
some additional information on participation  
within the study.

**Signature –**

**Date –**

APPENDIX H  
INFORMED CONSENT FORM

# INFORMED CONSENT FORM

## UNIVERSITY OF SAN FRANCISCO

### CONSENT TO BE A RESEARCH SUBJECT

#### **Purpose and Background**

David L. Caretti, a doctoral student in the School of Education at the University of San Francisco, is conducting a study on the governance relationships between religious congregations and boards of trustees within private Catholic secondary education. The research is being conducted in partial fulfillment of the requirements for the degree of Doctor of Education at the University of San Francisco.

Catholic education is a rapidly changing landscape, and the shifting involvement of religious congregations has effects on the governance relationships that currently exist. The researcher is interested in the perspectives of the individuals engaged in governance in private Catholic religious-sponsored secondary schools. The expertise of experience evidenced such perspectives is critical to the success of Catholic education and the millions of students whose lives are changed by their Catholic education.

I am being asked to participate because I serve within the governance of private Catholic secondary education either as a member of a board of trustees of a high school or as a person in leadership representing a religious congregation who oversees private Catholic secondary schools.

#### **Procedures**

If I agree to be a participant in this study, the following will occur: I will participate in a focus group session with around 5 other individuals, lasting approximately 1-2 hours in length, recorded and conducted by the researcher at a time and place amenable to both of us. During this focus group discussion, I will be asked questions by the researcher that allow me to share my expertise and perspective upon my participation in private Catholic religious-sponsored secondary school governance.

#### **Risks and/or Discomforts**

It is possible that some of the questions asked during the focus group may make me feel uncomfortable, but I am free to decline to answer any questions I do not wish to answer or to stop participation at any time. The researcher will do what he can to minimize such as a possibility.

#### **Benefits**

There will be no direct benefit to me from participating in this study. An anticipated benefit of this research study is a clearer and more general understanding of the elements of private Catholic religious-sponsored secondary school governance. My participation in this study allows me to know that I have made an important contribution to the both the research on private Catholic religious-sponsored Catholic education, as well as to the research on the

current situation of religious congregations in the United States dedicated to the mission of Catholic education.

### **Confidentiality**

Participation in research may mean a loss of confidentiality. All records of the study will be kept as confidential as possible. No individual identities will be used in any reports or publications resulting from the study. Only the researcher will have direct access to the files. The researcher may be required to share research information only with his dissertation committee prior to the completion of his dissertation. Audio recordings and digital files, including transcripts and contact information, will be secured in a password-protected computer hard-drive; all paper documents, including the researcher's copy of this informed consent form, will be kept in a secure file cabinet.

### **Voluntary Participation**

Participation in this study is voluntary. I am free to decide to participate in this study, or even to withdraw from it up to the conclusion of the focus group session.

### **Costs/Financial Considerations**

There will be no financial costs to me as a result of taking part in this study.

### **Payment/Reimbursement**

I understand that there will be no formal reimbursement for participation in this study.

### **Questions**

I have talked to David Caretti about this study and have had my questions answered. If I have further questions about the study, I may call him at (415) 370-0544. If I have any further questions or comments about participation in this study, I should first talk with the researcher. If for some reason I do not wish to do this, I may contact the IRBPHS, which is concerned with protection of volunteers in research projects. I may reach the IRBPHS office by calling (415) 422-6091 and leaving a voicemail message, by e-mailing [IRBPHS@usfca.edu](mailto:IRBPHS@usfca.edu), or by writing to the IRBPHS, Counseling Psychology Department, Education Building, University of San Francisco, 2130 Fulton Street, San Francisco, CA 94117-1071.

### **Consent**

I have read the above information, and I have been given a copy of this consent form to keep.

My signature below indicates that I agree to participate in this study.

---

Subject's Signature

---

Date of Signature

---

Signature of Person Obtaining Consent

---

Date of Signature

## APPENDIX I

## CONSENT FORM MAILING COVER LETTER

BROTHER DAVID L. CARETTI, FSC

SAINT MARY'S COLLEGE HIGH SCHOOL BROTHERS COMMUNITY—1294 ALBINA AVENUE—BERKELEY, CA—94706  
CELLPHONE—415.370.0544—E-MAIL ADDRESS—[dlcaretti@usfca.edu](mailto:dlcaretti@usfca.edu)

June 12, 2012

[Name]  
[Congregation]  
[Street Address]  
[City, State, Zip]

Dear [Name],

I am greatly looking forward to meeting with you, [Provincial Name], and the other members of your provincial leadership team next week. This will not only be an important opportunity for me to fulfill some of the requirements of my dissertation research, but will also be a chance for me to learn more about the ministries and heritage of the [Religious Congregation Name].

Enclosed with this letter are copies of the Informed Consent Form that, as I have mentioned, are required by the University of San Francisco IRBPHS. If it is possible for the participants to take a moment to read over and even sign these forms prior to our meeting on [Date], it would save us a small bit of time during the focus group session. If this is not possible, I will have extra copies and will open by answering any questions about the consent process at the beginning of the focus group.

If you have questions prior to [Date], please let me know at your convenience. I am available by phone at 415.370.0544 and via e-mail at [dlcaretti@usfca.edu](mailto:dlcaretti@usfca.edu).

Sincerely,

Brother David L. Caretti, FSC  
Doctoral Candidate  
Department of Catholic Educational Leadership  
School of Education  
University of San Francisco



## APPENDIX J

### IRBPHS APPROVAL DOCUMENTATION

**Subject:** IRB Application #11-118 – Approved  
**From:** USF IRBPHS (irbphs@usfca.edu)  
**To:** dlcaretti@usfca.edu;  
**Cc:** shimabukurog@usfca.edu;  
**Date:** Thursday, December 15, 2011 10:35 AM

December 15, 2011

Dear Mr. Caretti:

The Institutional Review Board for the Protection of Human Subjects (IRBPHS) at the University of San Francisco (USF) has reviewed your request for human subjects approval regarding your study.

Your application has been approved by the committee (IRBPHS #11-118). Please note the following:

1. Approval expires twelve (12) months from the dated noted above. At that time, if you are still in collecting data from human subjects, you must file a renewal application.
2. Any modifications to the research protocol or changes in instrumentation (including wording of items) must be communicated to the IRBPHS. Re-submission of an application may be required at that time.
3. Any adverse reactions or complications on the part of participants must be reported (in writing) to the IRBPHS within ten (10) working days.

If you have any questions, please contact the IRBPHS at (415) 422-6091.

On behalf of the IRBPHS committee, I wish you much success in your research.

Sincerely,

Terence Patterson, EdD, ABPP  
Chair, Institutional Review Board for the Protection of Human Subjects

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IRBPHS – University of San Francisco  
Counseling Psychology Department  
Education Building – Room 017  
2130 Fulton Street  
San Francisco, CA 94117-1080  
(415) 422-6091 (Message)