

Researching the Law of the Vatican City State

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1. The Vatican City in a Nutshell

The Vatican City State (VCS), an enclave of Rome and a sovereign monarchical-sacerdotal state comprising slightly less than nine hundred individuals, presents a difficult challenge for the legal researcher wishing to separate the affairs of the city state from those of the Catholic Church. The VCS is a distinct legal jurisdiction, but the inextricable intertwining of the Church—in the form of the Holy See—with the VCS only serves to obfuscate the jurisdictional boundaries that lie between church and city state.

This article will explore the resources used in researching the laws of the VCS. The article begins by describing the founding of the city state in 1929 and analyzing the documents that comprise its constitution. This is followed by a description of the sources of law, the branches of government, and the treatment of the VCS in international law. The article concludes with a short bibliographic essay. Although the structure and governance of the Catholic Church is inevitably linked to the VCS through the Holy See, the focus of this article will be on the temporal aspects of the jurisdiction. As such, the Church laws embodied in canon law will only be discussed as they relate to the operations of the city state.

2. Sources of law

A. Lateran Treaty

The VCS came into existence as a sovereign nation in 1929 with the signing of the Lateran Treaty between the Holy See and the Kingdom of Italy. The signing effectively ended the "Roman Question," the decades old tension between the Catholic Church and the nation of Italy. Prior to the treaty, the relationship between the Church and the country was governed by the Law of Papal Guarantees, an Italian law that allowed the Pope a certain amount of autonomy within the borders of Italy.

The Lateran Treaty consisted of three separate documents spread over twenty-seven articles and four annexes: an agreement acknowledging the Vatican as an independent state, also known as the Treaty of Conciliation; a concordat on church state relations between the city state and Italy; and a financial convention liquidating the financial claims of the Holy See against Italy. In signing the treaty, Italy ceded 108.7 acres of Rome to the Holy See, thus creating the world's smallest sovereign nation. At the signing, Pope Pius XI was represented by Cardinal Pietro Gasparri, papal secretary of state, while King Emanuel III was represented by Benito Mussolini, prime minister of Italy. The Lateran Treaty was incorporated into the Italian Constitution sixteen years later in 1947.

Following a lengthy deliberative process, the Lateran Treaty was substantially amended in 1984 with the signing of a concordat between the Holy See and the Republic of Italy. Although the status of the Vatican as a sovereign state was unaffected by the concordat, the document served to establish the independence of the Italian state from the Holy See, and thereby from the Catholic Church. The concordat was signed on February 18, 1984, and came into force on June 3, 1985.

B. The Constitutional Laws

On the same day that the Lateran Treaty was signed, the VCS adopted a constitution in the form of six constitutional (or fundamental) laws: Fundamental Law of the City of the Vatican; Law of the Source of Laws; Law on the Rights of Citizenship and Sojourn; Law on Administrative Organization; Law on Economic, Commercial, and Professional Organization; and Law of Public Security. Under the second of these laws, the sources of VCS law were comprised of the *Codex Iuris Canonici* (Canon Law Code), and "[t]he laws promulgated for the City of the Vatican by the Sovereign Pontiff or by any other authority delegated by him, as well as the regulations lawfully issued by the competent authority." Article 3 of this law also allowed for the use of Italian law as well as provincial and municipal Roman law when they did not conflict with canon law, the rules of the Lateran Treaty (and, later, the 1984 Concordat), or divine law.

Much of the Law of the Sources of the Law is devoted to synthesizing these three sources into a unified set of laws for the city state. Certain parts of Italian law are specifically mentioned in various articles of this law. These include the Italian Penal Code, Code of Penal Procedure, Civil Code, Code of Civil Procedure, and various national and local laws relating to public works, transportation, telecommunications, and health and sanitation.

The constitutional laws were extensively revised in 2000 when an ad hoc legal commission was established by Pope John Paul II. The commission was charged with updating the Fundamental Law of the City of the Vatican so as to reflect modifications that had been made to the VCS's legal system since 1929. The preamble to the new law describes the Pope as having "taken note of the need to give a systematic and organic form to the changes introduced by successive stages into the legal system of Vatican City State." The new law, which took effect on February 22, 2001, is primarily devoted to prescribing the powers and duties of the VCS's branches of government. From the perspective of the legal researcher, the new law more clearly delineates between the powers delegated to the legislative branch and those delegated to the executive branch. The civil judicial system remained largely unaffected by the new Fundamental Law, due in large part to recent reforms. In addition to the articles outlining the responsibilities of the various branches of government, there are articles devoted to topics such as security, labor disputes, amnesties and pardons, and the state flag.

C. Laws of the Supreme Pontiff

The VCS is a unique entity in that the state's monarch is also the spiritual leader of the Roman Catholic Church throughout the world. As the elected absolute temporal monarch of the state, the Pope has full legislative, executive, and judicial authority over the jurisdiction. The Pope delegates most of this authority to a variety of organs within the Vatican City, all of whose members may be appointed or removed at the discretion of the Pope. The powers and duties of these various organs are described in detail later in this article.

In the absence of the Pope, as for instance following the death of Pope John Paul II on April 2, 2005, and the election of his successor, Pope Benedict XVI on April 19, 2005, the state is under the authority of the Sacred College of Cardinals. This body consists of all the cardinals in the Roman Catholic Church. Although it has the authority to administer and oversee the operations of the VCS, its actions during this time are reviewable by the incoming Pope.

Laws of the Supreme Pontiff, either directly or through the delegated powers of one of the organs of the state, can take a variety of forms, including acts and regulations for the VCS, apostolic constitutions, and conventions and agreements with other states.

D. The Code of Canon Law

Often referred to by its Latin name, *Codex Iuris Canonici*, the Code of Canon Law is the codified representation of church theology in legal language. According to Pope John Paul II, the Code of Canon Law is "an expression of pontifical authority and therefore is invested with a primatial character." He further stated that the Code is "the Church's principal legislative document founded on the juridical-legislative heritage of revelation and tradition . . . an indispensable instrument to ensure order both in individual and social life, and also in the Church's activity."

The Code of Canon Law is incorporated into the legal system of the VCS by the 1929 Law of the Sources of the Law, one of the six constitutional laws of 1929. Article 11 of the Second Law specifically outlines areas that are regulated solely by canon law. These include marriage, prescription of ecclesiastical property, and gifts and annuities upon death.

E. Italian Law

Under article 3 of the Law of the Sources of the Law, provision is made for the supplementary application of the "laws promulgated by the Kingdom of Italy." Article 3 also calls for the application of "the general regulations and local regulations of the province and government of Rome." Although secondary to the laws of the Supreme Pontiff and the Code of Canon Law, much of the work conducted by the judicial organs of the VCS is done through the application of Italian law. However, the constitutional laws take great care to ensure that Italian law is not applied in instances where it might conflict with pontifical or canon law.

Although a discussion of the Italian legal system is outside the scope of this article, it is still necessary to understand the relationship between the two legal systems. Not only has VCS law incorporated Italian law and adopted the same legal structure, it also permits Italian courts to prosecute certain criminal acts committed in the city state.

3. The Government and Legal System of the Vatican City State

The Holy See is a religious entity that does not occupy a temporal location; therefore, the VCS provides it with the territorial sovereignty necessary to guarantee its ability to operate as the juridical equivalent of other states. Consequently, the Holy See is the legal personality of the VCS which enters into treaties and sends and receives diplomatic representatives. While it is natural to assume that normal conventions of governmental structure apply to the structure of the VCS, it is important to note the differences and to isolate the activities of the VCS as a temporal body from the secular activities of the Holy See. This section examines the domestic legal system of the VCS and the branches of the city state's government. It should be noted that the structure of the VCS system is not based on separation of the legislative, executive, and judicial powers of the governmental body, but for the purposes of this article it will be broken down into those components.

A. Legislative Matters

The legislative responsibilities granted to the Pope are delegated to the Pontifical Commission. The Pontifical Commission is composed of seven cardinals appointed by the Pope for a five-year term. The commission can seek the advice of the "Consulta," a group of experts appointed by the Pope on any legislative matter, if further information on a topic is required.

The legislation of the VCS is comprised of the laws and regulations of the State of the Vatican City, the Code of Canon Law, the Code of Civil Procedure, the apostolic constitutions, the Lateran Treaty and the conventions with other foreign states. As noted earlier, where these laws and regulations do not cover certain instances, the Vatican has recourse to Italian laws, to provincial regulations and to the municipal rules of the city of Rome.

B. Executive Matters

Although the VCS is the last remaining absolute monarchy in Europe, the Pope is officially elected by the College of Cardinals under section 33 of the Pope's 1996 Apostolic Constitution, *Universi Dominici Gregis* (On the Vacancy of the Apostolic See and the Election of the Roman Pontiff). However, the Pope generally delegates his powers as absolute monarch to a governing commission composed of a cardinal-president and other cardinals. The executive power is exercised by the president of the Pontifical Commission with the assistance of a secretary-general and a deputy secretary-general. The president of the commission can enact decrees for the implementation of legal provisions and regulations and, in times of urgent necessity, enact decrees that have the force of law if they are confirmed by the commission within ninety days. Although the Pontifical Swiss Guard is not governed by the VCS, the president of the commission has recourse to the guard if needed, in addition to the security forces of the VCS.

The day-to-day functions of the Vatican City are attended to by the president of the Governorate of the Vatican City, a position comparable in status to the mayor of an Italian city. The president is responsible for the administration of the museums; the maintenance of the Apostolic Palace, the official residence of the Pope in the Vatican City, and other buildings, except St. Peter's Basilica; and the management of such facilities as the post office, the gardens and nurseries, and the grocery store.

C. Judicial Matters

Following the creation of the VCS in 1929, the court system of the Vatican very closely resembled that of the canon law system, and many of the judges from the canon law courts served a dual function as jurists on the Vatican courts. As with many aspects of the VCS, there was little separation between the Holy See and the temporal government during the early years of the city state. The VCS's court system has been reorganized three times since its inception, the last time in response to the *motu proprio*, *Quo Certe Lura* ("How the Rights of Citizens"), issued by Pope John Paul II on November 21, 1987. This apostolic letter preceded, by a few days, the law that created a more temporally independent structure based primarily on the Italian judicial system.

The judicial system of the VCS is organized as follows: a sole judge (Giudice Unico) presiding over a court of limited jurisdiction; a three-judge Tribunal (Tribunale); a four-member Court of Appeals (Corte d'Appello); and, finally, the Supreme Court of Appeals (Corte di Cassazione). It is important to distinguish these judicial organs from those of the Roman Curia, which is the administrative arm of the Holy See. Cases from temporal VCS courts are not generally reported, but a listing of the types of cases tried before each of the courts is published in *L'Attività della Santa Sede*, the annual yearbook.

Beginning at the lowest level, the Giudice Unico is responsible for such matters as small claims, traffic tickets, and validation of marriages. The judge, in accordance with city state law, must be a citizen of the VCS, and must also serve simultaneously as a judge on the other courts.

Although technically a court of general jurisdiction, it should be noted that the Tribunal does not handle as many cases as the Giudice Unico. The three judges that comprise this second level court are appointed by the Pope, and they are able to hear both civil and penal matters; however, most criminal cases are transferred to Italy and prosecuted by the Italian government, as authorized by the Lateran Treaty.

The composition of the third level of the VCS's judiciary again showcases the dependence of the VCS on the Holy See: most of the judges on the Corte d'Appello are also judges on the Roman Rota which is responsible for governing the ecclesiastical side of the house. Both the president and the three other judges nominated by the pope serve a five-year term; they are responsible for only a few cases per year. The main focus of their duty is threefold: providing discipline for the VCS's small group of lawyers, hearing appeals from the VCS's Disciplinary Commission, and handling employment issues from the Office of Work of the Apostolic See.

From the perspective of a common law jurisdiction that strongly adheres to the doctrine of the separation of church and state, it is interesting to examine a modern day state in which a high ranking church official serves on its supreme court. This is the case in the Corte di Cassazione, where the president is also the prefect of the Apostolic Signatura, the highest canon law court in the Catholic Church. The two other judges who serve on the VCS's highest court are also cardinals and members of the Apostolic Signatura. The Corte di Cassazione is primarily responsible for hearing appeals from the Corte d'Appellano and has original jurisdiction over those penal matters against cardinals and bishops which the Pope does not handle personally.

The VCS does not have its own dedicated body of lawyers designated to the temporal courts; instead, it relies on canon lawyers. To practice before the temporal courts, lawyers must meet three requirements: first, they must appear on an official list which the tribunal maintains; second, they must be members of the Order of Rotal Lawyers; and third, they must have a degree in civil law.

D. Financial Matters

The financial aspects of the VCS have been described as mysterious. Despite the notoriety that has on occasions defined the finances of the Vatican, there is still little known about exactly how much wealth the Vatican possesses and what form this wealth takes.

The VCS's budget is maintained by the Prefecture for Economic Affairs of the Holy See, which also manages the fiscal affairs of the Roman Curia. Vatican citizens are not subject to Italian taxes on their income, and the Vatican State pays neither taxes nor assessments to the Italian or Roman governments. Most of the daily functions are paid with a budget that consists of profits from the museum and post office, as well as Peter's Pence.

The customs rules of the VCS are based on article 20 of the Lateran Treaty which exempts it from all European Community duties and taxes. The small amount of goods originating in the VCS and exported to Italy is exempt from duty and subject to a preferential arrangement. The VCS has a special position with relation to imports and exports that allows goods to be carried into the Vatican from Italy free of payment of any customs charges. This has been a common source of contention between the Vatican and Italian officials.

The VCS is entitled to use the Euro as its official currency. The VCS had relied on the Italian lira as its form of currency until Italy signed onto the Maastricht Treaty establishing a plan for a single European currency. In recognition of the Vatican's reliance on the currency of Italy, and despite its nonmember status, the European Union agreed to let the VCS use the new currency provided arrangements were made with Italy. The new arrangement in EUR, amended by the European Commission in 2003, entitles the VCS to issue Euro coins for a maximum annual face value of EUR 1,000,000.

There is only one bank operating in the VCS, the *Istituto per le Opere di Religione*, which also exists as the Central Bank of the VCS. It should be noted, however, that despite the existence of a central bank, the VCS is not a member of the International Monetary Fund, and there have been no examinations by international organizations of the VCS's banking, economic, and financial systems. Nor does the VCS have direct access to the major payment clearing systems of the Euro area. There does appear to be some concern regarding money laundering in the VCS, since the VCS has no commercial financial sector to which normal anti-money laundering rules apply.

4. The Vatican in International Relations

To be considered a "state" under international law, the Montevideo Convention requires that an international personality have a defined territory, a permanent population, a government, and the capacity to enter into relations with other States. Many of the leading commentators in the field have often questioned whether the VCS really does qualify as a state, since its constituent elements are highly abnormal or reduced to a bare minimum. Further controversy exists over whether the VCS and the Holy See are actually two separate international personalities.

The Holy See participates actively in international organizations and has membership or observer status in organizations such as the United Nations, Organization for Security and Co-operation in Europe, International Atomic Energy Agency, Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Commission, United Nations High Commissioner for Refugees, World Intellectual Property Organization, and World Trade Organization. It is interesting to note that the Vatican City State is the official member of those organizations in which the Holy See cannot maintain membership for reasons of its existence solely as a legal personality and not a temporal body. On its Web site, the Press Office of the Holy See delineates such organizations as those in which the Holy See maintains the membership "in the name and on behalf of the Vatican City State."

The Holy See has one of the largest and oldest diplomatic representations in the world, maintaining diplomatic relations with 175 countries. Seventy-one countries have resident embassies to the Holy See, including the European Union and the United States.

5. Survey Articles, Official Publications, & Additional Resources

A. Constitutional Sources

From the researcher's perspective, the legal system of the VCS is best approached by examining the documents that established the nation and formed the constitutional basis for the world's smallest nation state. The most useful work for this purpose is Amos Peaslee's *Constitutions of Nations* (2d ed. 1956), which provides a short summary of the nation's legal composition, the text of the Lateran Treaty, extracts from the accompanying 1929 Concordat, the complete text of the six constitutional laws of 1929, and a short bibliography.

The "Vatican City" section in *Constitutions of Dependencies and Territories* (Philip Raworth ed., 2002) should be consulted for English-language versions of the 2001 Fundamental Law and the 1984 Concordat between the Holy See and the Italian Republic. It should be noted that since this the VCS is treated as a "special sovereignty" in this source, there is no entry for it or the Holy See in *Constitutions of the Countries of the World: A Series of Updated Texts, Constitutional Chronologies, and Annotated Bibliographies* (Albert P. Blaustein & Gisbert H. Franz eds., 1971).

B. Survey Articles

A number of short survey articles exist that can provide the researcher with a basic overview of the city state's legal system. The most useful of these is Jorri Duursma's forty-five page chapter on "The State of the Vatican City" in *Fragmentation and the International Relations of Micro-States* (1996). It provides an excellent overview of the history and status of the VCS. Particular attention is paid to the international status of the city state and the extent to which it has achieved independence from Italy.

Also recommended, albeit far more concise, is Robert Shelledy's "Vatican" in *Legal Systems of the World*. This succinct entry provides an historical account of the development of the legal system, together with a description of the legal concepts that govern the nation and an accurate depiction of the current structure of the legal system. Less useful, due to its incomplete and often confusing description of the VCS, is the entry in *Modern Legal Systems Cyclopedic* (Kenneth R. Redden ed., 1993 revision).

A very recent addition to the list of survey articles on the VCS is "Vatican" in *Vincenzo Buonomo's* *Encyclopedia of Vatican Law* (Gerhard Robbers ed., 2007). This six-page entry provides a good overview of the legal structure of the VCS, together with a short list of primary and secondary sources consulted.

A short and now dated entry entitled "Vatican" is included in *International Encyclopedia of Comparative Law: National Reports* (Victor Knapp ed., 1997). The entry, actually completed in December 1972 by Judge Astuti, provides a very brief overview of the constitutional system of the city state, together with the sources and contents of law and a selective bibliography of Italian language resources.

A less obvious source that provides a modest amount of background information is L. Barbarito's entry for the "Vatican City" in *New Catholic Encyclopedia* (2d ed. 2003). There is less focus on the legal system than in the other items mentioned, but the information concerning the rise of the modern state and the operation of the city state's government is still very serviceable.

Legal researchers who traditionally rely on Foreign Law by Reynolds and Flores or the *Overview of a Foreign Jurisdiction* and an accompanying legal bibliography will be disappointed. Regrettably, they cover neither the VCS nor the Holy See, and there is also no mention of the city state in the section describing the legal system of the Republic of Italy.

C. Official Vatican Publications

Since 1908, the *Vatican Publishing House* (Libreria Editrice Vaticana) has been responsible for publishing *Acta Apostolicae Sedis* (AAS), together with its supplements, on a periodic basis. AAS constitutes the official bulletin or gazette for the Holy See; it contains papal encyclicals, apostolic constitutions, and other forms of pontifical acts. Since this is a publication of the Holy See much of what is published in AAS is not directly related to the governing of the VCS; however it is the official, Latin language source for pontifical acts and canon laws. Legislation pertaining just to the governance of the VCS is usually published in the supplement to the AAS.

The Vatican Publishing House is also responsible for publishing the daily newspaper of the VCS, *L'Osservatore Romano* (*The Roman Observer*). The daily edition is published in Italian; however since 1968 a weekly, English language compendium edition has also been published. Although the foci of the newspaper are the daily activities of the Pope and news from within the Church, the newspaper also reports items of interest regarding the governing of the VCS.

D. Monographs and Articles

The focus of the overwhelming majority of legal commentary on the VCS has revolved around the jurisdiction's status in international law. The most complete treatment of this area of law is Hyginus Cardinale's *The Holy See and the International Order* (1976). This 557-page work provides an extensive discussion of how the Holy See, the Church, and the VCS are united in international representation under the agency of the Holy See. Additionally, Cardinale's text provides annexes to both the 1929 Concordat and the 1929 Fundamental Laws.

Other articles include:

- Kurt Martens, *The Position of the Holy See and Vatican City State in International Relations*, 83 U. Det. Mercy L. Rev. 729 (2006)
- Noel Dias, *Roman Catholic Church and International Law*, 13 Sri Lanka L.J. 107 (2001)
- Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 Cath. U. L. Rev. 291 (2001)
- Matthew N. Balthon, *Note, The Atypical Status of the Holy See*, 34 Vand. J. Transnat'l L. 597 (2001)
- Yasmin Abdullah, *Note, The Holy See at United Nations Conferences: State or Church?*, 96 Colum. L. Rev. 1835 (1996)
- Pio Ciprotti, *The Holy See: Its Function, Form, and Status in International Law*, 8 Concilium 63 (1970)
- Robert Graham, *Vatican Diplomacy: A Study of Church and State on the International Plane* (1959)
- Josef L. Kunz, *The Status of the Holy See in International Law*, 46 Am. J. Int'l L. 308 (1952)
- Horace F. Cumbo, *The Holy See and International Law*, 2 Int'l L. Q. 603 (1949)
- Herbert Wright, *The Status of the Vatican City*, 37 Am. J. Int'l L. 452 (1944)
- Gordon Ireland, *The State of the City of the Vatican*, 27 Am. J. Int'l L. 271 (1933).

E. Internet Resources

Researchers who turn to the Internet for resources on the VCS's legal system are likely to be disappointed. The *Vatican's Web site* is primarily devoted to disseminating information from and about the Holy See, rather than the VCS. The few pages that are devoted to the city state include one with an Italian, German, and Portuguese translation of the [2001 fundamental law](#); and a page with general information on the VCS (map, state structure, citizenship, flag, transportation, phone numbers, etc.). The Vatican Web site does contain the text (in HTML, not PDF format) of selected papal documents dating back to Pope Leo XIII (1878), and it should therefore be considered a potential source for the text of apostolic constitutions and *motu proprio*s that apply to the VCS.

Many of the traditional Internet sites consulted by the researchers looking for information on foreign jurisdictions provide little information on the nation state (see e.g., Andrew Grossman, [Finding the Law: The Micro-States and Small Jurisdictions of Europe](#)) and most do a very poor job of distinguishing between the legal system of the Holy See and the legal system of the VCS (see e.g., [Jurist, Vatican City](#)). Due to the incomplete or inconsistent quality of the information in most of the Internet guides, it is difficult at this time to recommend the Internet as a resource for researching the VCS.