
ARTICLES

UNRAVELING THE COMPLEXITIES OF A FINANCIAL FRAUD TRIAL IN VATICAN CITY

CATHERINE ARCABASCIO*

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* Catherine Arcabascio is a Professor of Law and former Associate Dean for International Programs at Nova Southeastern University, Shepard Broad College of Law. She is a former Brooklyn Assistant District Attorney and former Director of the Florida Innocence Project, which she co-founded. A heartfelt thanks to Research Assistants Diego Elias and Gabriela Gonzalez, and to Italian attorney and current J.D. student, Beatrice Aversano for their assistance with this article.

INTRODUCTION

In July 2021, a large and complex financial fraud trial commenced in the tiny papal monarchy, known as Vatican City, in a makeshift courtroom in the Vatican Museums.¹ In what has been coined the Vatican's "trial of the century," ten defendants, including Cardinal Angelo Becciu, were charged with financial fraud, embezzlement, and a myriad of other financial crimes.² Vatican prosecutors estimated losses of approximately 350 million euros related to a failed London real estate deal.³ Never before in modern history has a cardinal been tried and convicted of a crime by a court in Vatican City.⁴ In addition, it is both a factually and procedurally complex case, the likes of which have not been tried within the Vatican walls.⁵ On December 16, 2023, after twenty-nine

¹ The trial is being conducted in the meeting hall of the Vatican Museums. *See generally Biggest criminal trial in modern Vatican history set to start*, FRANCE 24 (July 27, 2021, 8:55 AM) <https://www.france24.com/en/europe/20210727-biggest-criminal-trial-in-modern-vatican-history-set-to-start>; *see also* Salvatore Cernuzio, *Trial in Vatican moves forward, requests of defense rejected*, VATICAN NEWS (Mar. 01, 2022, 16:11), <https://www.vaticannews.va/en/vatican-city/news/2022-03/trial-in-vatican-moves-forward-requests-of-defense-rejected.html> [hereinafter Cernuzio, *Trial in Vatican moves forward*].

² Nicole Winfield, *The Vatican's 'trial of the century,' a Pandora's box of unintended revelations, explained*, NAT'L CATH. REP. (Dec. 15, 2023), <https://www.ncronline.org/vatican/vatican-news/vaticans-trial-century-pandoras-box-unintended-revelations-explained> [hereinafter Winfield, *The Vatican's 'trial of the century'*].

³ Salvatore Cernuzio, *Vatican trial wraps-up after 2 and a half years and 85 hearings*, VATICAN NEWS (Dec. 15, 2023, 21:24), <https://www.vaticannews.va/en/vatican-city/news/2023-12/vatican-trial-sloane-avenue-sentences.html> [hereinafter Cernuzio, *Vatican trial wraps-up*]; *see also* The Associated Press, *The Vatican Indicts 10, Including a Former Cardinal, Over a London Real Estate Deal*, NPR (July 3, 2021, 10:15 AM), <http://www.npr.org/2021/07/03/1012857405/vatican-cardinal-indictment-london-real-estate-deal-embezzlement> [hereinafter The Associated Press, *The Vatican Indicts 10*].

⁴ Several weeks before the commencement of the trial, Pope Francis proactively made drastic changes to Vatican City law in order to make the trying of this case against former Cardinal Becciu possible there. *See* Agence France Presse, *Historic Vatican Fraud Trial To Deliver Its Verdict*, BARRON'S (Dec. 15, 2023), <https://www.barrons.com/news/historic-vatican-fraud-trial-to-deliver-its-verdict-8ca9af96>; *see generally* *All due process: What you need to know about the Vatican court ruling*, THE PILLAR (Mar. 3, 2022, 2:37 PM), <http://www.pillaratholic.com/p/all-due-process-what-you-need-to> [hereinafter, *All due process*]; *see also* Chico Harlan & Stefano Pitrelli, *Pope Francis accepts resignation of cardinal connected to a financial scandal*, THE WASH. POST (Sept. 24, 2020, 5:00 PM), https://www.washingtonpost.com/world/europe/cardinal-angelo-becciu-resign/2020/09/24/5e39cf72-fe9a-11ea-b0e4-350e4e60cc91_story.html (explaining Cardinal Becciu retains his title as cardinal, but has relinquished his rights as cardinal).

⁵ The Vatican has tried other high publicity and financial fraud related cases in the past. In January 2021, Angelo Caloia, a former head of the Vatican bank, was convicted of embezzlement and money laundering. *See* Philip Pullella, *Former head of Vatican bank guilty*

months, eighty-five hearings, sixty-nine witnesses, and documents too numerous to mention, the Vatican Tribunal Court delivered a verdict convicting nine of the ten defendants of numerous crimes related to the failed real estate deal.⁶

The complexities and challenges of trying this criminal case have ranged from a lack of clarity about the laws that govern the proceedings to a lack of physical space to conduct such a large trial.⁷ Throughout the trial, the defense relied upon Code of Canon Law (Canon Law), international law, and Italian Law to make numerous unsuccessful challenges to the proceedings on due process grounds, only to be told by the court that they misunderstood the operation of some of the laws in Vatican City.⁸ Also adding to the complexity is the relationship between the Holy See (the governing entity of the Catholic Church) and Vatican City, the governmental structure itself of Vatican City, and the role of the pope as both the monarch of the sovereign Papal State and the spiritual leader of the Holy See.⁹

Part I of this Article provides a background on the creation of Vatican City and an explanation of the structure of Vatican City's government and its relationship to the Holy See and its governing body, known as the Roman Curia. Part II provides an explanation of the facts and procedural history of the fraud trial. Part III discusses the complex and sometimes opaque interplay between Vatican City, Italian, Canon, and international law utilized in this trial. It also explains the trial processes utilized in criminal cases. Part IV highlights the issues raised about the fundamental

of embezzlement, money laundering, REUTERS (Jan. 21, 2021, 12:39 PM), <https://www.reuters.com/article/us-vatican-bank-trial/former-head-of-vatican-bank-guilty-of-embezzlement-money-laundering-idUSKBN29Q27S> [hereinafter Pullella, *Former head of Vatican*]. At the time, he was the highest-ranking Vatican official to be convicted of a financial crime. *Id.* The Vatican City also was the site of the Vatileaks trial, which dealt with leaking of confidential Vatican finance documents. *See* Philip Pullella, *'Vatileaks' trial due to end after nearly eight months*, REUTERS (July 6, 2016, 8:27 PM), <https://www.reuters.com/article/vatican-trial/vatileaks-trial-due-to-end-after-nearly-eight-months-idUSL8N19S57G> [hereinafter Pullella, *'Vatileaks' trial due to end*]. More recently, on January 23, 2024, a Vatican City court handed down its first ever sexual abuse verdict. *See* Cailey Gleeson, *Vatican Sentences Priest And Ex-Altar Server To Prison For Sexual Abuse In First-Of-Its-Kind Case*, FORBES, <https://www.forbes.com/sites/caileygleeson/2024/01/23/vatican-sentences-priest-and-ex-altar-server-to-prison-for-sexual-abuse-in-first-of-its-kind-case/?sh=966589718c59> (Jan. 24, 2024, 9:00 AM).

⁶ Cernuzio, *Vatican trial wraps-up*, *supra* note 3; *see also* Salvatore Cernuzio, *Vatican trial defendants sentenced to total of 37 years in prison*, VATICAN NEWS (Dec. 16, 2023, 17:09), <https://www.vaticannews.va/en/vatican-city/news/2023-12/vatican-trial-defendants-sentenced-total-37-years-prison.html> [hereinafter Cernuzio, *Vatican trial defendants sentenced*].

⁷ *All due process*, *supra* note 4.

⁸ *See id.*

⁹ *Id.*

fairness of this trial, and Part V concludes with commentary about the trial process in this case.

I. THE HISTORY AND STRUCTURE OF VATICAN CITY

Vatican City, also referred to as the Vatican City State, or “VCS,” is located in the heart of Rome, but is an independent city/state that belongs to the Holy See.¹⁰ The Holy See, or the *Sancta Sedes*, is the central government for the Catholic Church around the world and is housed in, and controls, Vatican City.¹¹ Less than one hundred years old, Vatican City is a relatively new creation in the long history of the Catholic Church. On February 11, 1929, the Kingdom of Italy and the Holy See signed The Lateran Treaty, recognizing Vatican City as a sovereign and independent papal state.¹² With fewer than 1,000 citizens living on approximately 110 acres, Vatican City is the smallest independent state in the world.¹³

Thus, the Holy See and Vatican City are not synonyms and are not the same entity.¹⁴ Despite that, the pope is the head of both.¹⁵ “[The] Holy See is not a geographic region or country, but a sovereign entity” and refers to the jurisdiction of the pope as head of the Roman Catholic Church.¹⁶ On the other hand, “Vatican City is used when referring to a country, while Holy See is used when referring to the area governed by the Bishop of Rome, which includes the Vatican and the entire Catholic

¹⁰ *U.S. Relations With the Holy See*, U.S. DEP’T OF STATE (Aug. 27, 2020), <https://www.state.gov/u-s-relations-with-the-holy-see/>.

¹¹ *Id.*; *Holy See*, U.S. CONF. OF CATH. BISHOPS, <https://www.usccb.org/offices/general-secretariat/holy-see> (last visited Sept. 1, 2024).

¹² The Lateran Treaty, Holy See-It., 130 Brit. & For. St. Papers 660. For a more detailed explanation of the history of the Lateran Treaty. See generally JUAN IGNACIA ARRIETA, VATICAN STATE LAW 15–33 (Midwest Theological Forum, 1st ed. 2022). The author of this text, a bishop, currently serves as Secretary of the Pontifical Council for Legislative Texts. He also was the Founding Dean of the Faculty of Canon Law at the Pontifical University of the Holy Cross in Rome where he is a Professor Emeritus in Canon Law. The book serves as a basic text for a Vatican Law course in Canon Law departments. see also John R. Morss, *The International Legal Status of the Vatican/Holy See Complex*, 26 THE EUR. J. OF INT’L L. 927 (2016), <https://academic.oup.com/ejil/article/26/4/927/2599610>.

¹³ *Is Vatican City A Country?*, WORLDATLAS, <https://www.worldatlas.com/articles/is-vatican-city-a-country.html> (last visited Aug. 26, 2024).

¹⁴ *Vatican City turns 91*, VATICAN NEWS (Feb. 11, 2020, 16:22), <http://www.vaticannews.va/en/vatican-city/news/2020-02/vatican-city-lateran-treaty-holy-see-pope.html>.

¹⁵ *Id.*

¹⁶ John Misachi, *What Is The Difference Between The Vatican City And The Holy See?*, WORLDATLAS (Jan. 5, 2021), <https://www.worldatlas.com/articles/what-is-the-difference-between-vatican-city-and-the-holy-see.html>.

Church.”¹⁷ The Holy See is also considered a sovereign state for international law purposes.¹⁸

Shortly after having signed the Lateran Treaty, Pope Pius XI created a Pontifical Commission that created six basic laws for the newly formed papal monarchy.¹⁹ Two of those laws are relevant to the current fraud trial. First, Law I, fundamental law, set out the governmental structure of Vatican City.²⁰ Fundamental Law I states that the Supreme Pontiff is sovereign in the legislative, executive, and judicial branches of Vatican City’s government.²¹ This remains true today.²² The Pope, as Supreme Pontiff of Vatican City, remains the ultimate decision-maker in all circumstances and has complete authority over each branch of government.²³ It is an absolute sacerdotal or ecclesiastical monarchy.²⁴ Power, however, is delegated to a variety of commissions and departments necessary to run the city.²⁵

Second, Law II identified and “harmonize[d]” the laws that would govern.²⁶ That law was later repealed and replaced in 2008 by Pope Benedict in Law LXXI.²⁷ At the time of the signing of The Lateran Treaty, there were three sources of law that combined to create the new legal structure: Canon Law, law created by the Vatican legislator, and Italian Law.²⁸ This fundamental concept also remains true today, although the laws themselves have been modified over the years.

According to the current Secretary of State of the Holy See, Cardinal Pietro Parolin, the structure of Vatican City has as its sole objective “to protect the independence and autonomy of the Supreme Pontiff, the Head of the Catholic Church, with respect to any temporal power, so that he can

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ ARRIETA, *supra* note 12, at 34.

²¹ *Id.* at 35.

²¹ Stephen E. Young & Alison Shea, *Separating State from Church: A Research Guide to the Law of the Vatican City State*, 99 L. LIBR. J., 589, 593 (2007).

²² *Id.*

²³ JOHN PAUL II, FUNDAMENTAL LAW OF THE STATE OF VATICAN CITY (2000), *reprinted in* VATICAN STATE LAW, app. II at 223 (2022).

²⁴ *Organi dello Stato [State Bodies]*, STATO DELLA CITTÀ DEL VATICANO, (June 28, 12:46 AM), <https://www.vaticanstate.va/it/stato-governo/organi-stato/organi-dello-stato.html>.

²⁵ Young & Shea, *supra* note 21.

²⁶ ARRIETA, *supra* note 12, at 36.

²⁷ *Id.*

²⁸ *Id.*

freely carry out his universal mission.”²⁹ All laws also require an adherence to “the principles and fundamental norms of the canonical order of the Church . . . with its foundations based on a spiritual nature, which had to be present in all texts.”³⁰

Vatican City operates through its three branches of government: executive, legislative, and judicial.³¹ That basic structure remains intact, although how those powers are executed has changed over time.³² The most recent changes to the Fundamental Law of the Vatican City State occurred in July 2023, when new laws, approved by Pope Francis on May 13, 2023, went into effect.³³

A. *The Executive Branch*

The Governate holds the executive power in Vatican City.³⁴ The President of the Governate is also President of the Pontifical Commission.³⁵ He implements the laws created for Vatican City by the Pontifical Commission.³⁶ The Governate is comprised of three main offices: the President of the Governate, the Secretary General, and the Deputy Secretary General.³⁷ It also contains the Secretariat General, which houses the special staff of the Governate.³⁸ The Secretary General is in charge of the overall management of the Governate, and both he and the

²⁹ Cardinal Pietro Parolin, *Foreword* to JUAN IGNACIO ARRIETA, VATICAN STATE LAW, at ix (2022).

³⁰ ARRIETA, *supra* note 12, at 35.

³¹ Young & Shea, *supra* note 21, at 593.

³² *Id.*

³³ See generally *LEGGE FONDAMENTALE DELLO STATO DELLA CITTÀ DEL VATICANO [FUNDAMENTAL LAW OF VATICAN CITY STATE]*, LA SANTA SEDE (May 13, 2023), https://www.vatican.va/content/francesco/it/motu_proprio/documents/20230513-legge-fond-scv.html; see also *Vatican City State: Pope Francis Issues New Constitution*, LIBR. OF CONG. (June 6, 2023), <https://www.loc.gov/item/global-legal-monitor/2023-06-05/vatican-city-state-pope-francis-issues-new-constitution/>.

³⁴ ARRIETA, *supra* note 12, at 87.

³⁵ *Organi funzione legislativa ed esecutiva [Legislative and executive bodies]*, STATO DELLA CITTÀ DEL VATICANO (July 3, 2018), <https://www.vaticanstate.va/it/stato-governo/organistato/organifunzionelegislativa-ed-esecutiva.html> [hereinafter *Legislative and executive bodies*].

³⁶ ARRIETA, *supra* note 12, at 88; see also *infra* Part I.b.

³⁷ ARRIETA, *supra* note 12, at 88–90; see also *ORGANIGRAMMA [ORGANIZATIONAL CHART]*, STATO DELLA CITTÀ DEL VATICANO (July 11, 2018), <https://www.vaticanstate.va/it/stato-governo/struttura-del-governatorato/organidi-governo.html> (containing a detailed list of the many offices within the Governate).

³⁸ ARRIETA, *supra* note 12, at 86.

Deputy Secretary General assist the President with exercising executive power.³⁹

B. *The Legislative Branch*

As far as legislative powers are concerned, the pope delegates those powers to the Pontifical Commission, comprised of cardinals appointed by the pope.⁴⁰ However, the pope also has the authority to implement laws *motu proprio*, independent of the Pontifical Commission.⁴¹ *motu proprio*, a Latin term meaning “on one’s own” or “by one’s initiative,” can take the form of an Apostolic Letter, decree, or rescript issued by the pope.⁴² Thus, the pope may issue a decree, change a law, or signal his interest, opinion, or concern *motu proprio* regarding any matter at any time.⁴³ Documents issued *motu proprio* may also include a statement by the pope, which can vary from a history lesson about the law in question to an explicit rationale for implementing a new one.⁴⁴ All changes to the law issued *motu proprio* ultimately become incorporated into the law of the Vatican City State.⁴⁵

All laws originating at the Pontifical Commission must be approved by the pope through the Secretariat of State, which is part of the Roman Curia.⁴⁶ In contrast to the Governate and the Pontifical Commission that control the government in Vatican City, the administrative body of the

³⁹ *Id.* at 89–90.

⁴⁰ *Legislature and executive bodies*, *supra* note 35; *see also* ARRIETA, *supra* note 12, at 82–84. Prior to 2000, the Commission held both the Executive and the Legislative power in Vatican City. *See* ARRIETA, *supra* note 12, at 82–84.

⁴¹ *See* Andrew MacErlean, *Motu Proprio*, in 10 THE CATHOLIC ENCYCLOPEDIA (N.Y.: Robert Appleton Co., 1911).

⁴² *Id.*

⁴³ Michael J. O’Loughlin, *When the pope releases a statement ‘motu proprio’ it’s important—but why?*, AM. MAG. (Sept. 21, 2017), <http://www.americamagazine.org/faith/2017/09/21/when-pope-releases-statement-motu-proprio-its-important-why> [hereinafter O’Loughlin, *When the pope releases a statement ‘motu proprio’*].

⁴⁴ *See, e.g.*, Legge 16 Mar. 2020, n.CCCLI (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-cccli-ordinamentogiudiziario.html.

⁴⁵ O’Loughlin, *When the pope releases a statement ‘motu proprio’*, *supra* note 43; *see also* *Legislative and executive bodies*, *supra* note 35.

⁴⁶ *See* ARRIETA, *supra* note 12, at 86.

Holy See is the Roman Curia.⁴⁷ It is through the Roman Curia that the pope conducts the affairs of the Catholic Church.⁴⁸

At the heart of the Vatican fraud trial are allegations that certain members within the Secretariat of State in the Roman Curia defrauded the Vatican of at least 350,000 euros with the assistance of others outside of the Holy See.⁴⁹ Thus, an understanding of the structure of the Roman Curia is necessary in order to understand the underlying facts in the trial.

The Roman Curia is currently comprised of the Office of the Secretariat of State and sixteen Dicasteries, or Curial Institutions/departments.⁵⁰ The Secretariat of State is controlled by the Secretary of State, who closely assists the Roman Pontiff “in the exercise of his supreme mission.”⁵¹ The Secretary of State is the “second in command” after the pope.⁵² The Secretariat of State currently is comprised of three sections.⁵³ One of those is the section for General Affairs of the Secretariat of State, headed by the Sostituto, or Substitute.⁵⁴ This is one of the most powerful and important positions both in Vatican City and the Holy See.⁵⁵ He is a deputy Secretary of State, but the position is better

⁴⁷ Francis, *APOSTOLIC CONSTITUTION PRAEDICATE EVANGELIUM ON THE ROMAN CURIA AND ITS SERVICE TO THE CHURCH IN THE WORLD*, THE HOLY SEE § III, Art. 1 (Mar. 19, 2022) https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html#Secretariat_of_State [hereinafter Francis, *APOSTOLIC CONSTITUTION*].

⁴⁸ Erika Fitzgerald, *Pope 101: The Holy See and The Vatican City*, MEDIUM: CATHOLICISM COFFEE (Feb. 21, 2021), <http://catholicismcoffee.org/pope-101-the-holy-see-and-the-vatican-city-catholicismcoffee-f1b1b0b44e49>.

⁴⁹ The Associated Press, *The Vatican Indicts 10*, *supra* note 3.

⁵⁰ In addition to the Secretariat of State and the 16 Dicasteries, other offices also fall under the Roman Curia. *See*

Costituzione Apostolica “Praedicate Evangelium” sulla Curia Romana e il suo servizio alla Chiesa e al Mondo [*Apostolic Constitution “Praedicate Evangelium” on the Roman Curia and its Service to the Church and the World*], 19.03.2022, THE HOLY SEE (Mar. 19, 2022), <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2022/03/19/0189/00404.html>.

⁵¹ *Id.*; Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47, § IV, Art. 44, 45.

⁵² Rosie Scammell, *Vatican court to call pope’s second-in-command to testify in leaks trial*, THE WASH. POST (Dec. 7, 2015, 4:41 PM), http://www.washingtonpost.com/national/religion/vatican-court-to-call-popes-second-in-command-to-testify-in-leaks-trial/2015/12/07/3c10dbdc-9d2b-11e5-9ad2-568d814bbf3b_story.html.

⁵³ Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47, § IV, Art. 45 § 2.

⁵⁴ *Id.* Cardinal Becciu served as Sostituto from 2011-2018 after which he was made a cardinal and Pope Francis appointed him as the head of the Congregation for the Causes of Saints. Elise Ann Allen, *Italian cardinal becomes first red hat to stand trial at Vatican*, CRUX (Oct. 1, 2021), <https://cruxnow.com/vatican/2021/10/italian-cardinal-becomes-first-red-hat-to-stand-trial-at-vatican> [hereinafter Allen, *Italian cardinal becomes first red hat*].

⁵⁵ *See* Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47, § IV, Arts. 45 § 2, 46-48.

described as the pope's chief of staff. In rank, he is the "third in command," but despite that, the job has been described as one of the toughest.⁵⁶ According to Section IV, Article 46 of the Praedicate Evangelium, under the leadership of the Sostituto, this office is responsible for "attending to the handling of affairs concerning the daily service of the Roman Pontiff; to examine those matters that need to be dealt with outside ordinary jurisdiction of the Curial Institutions and other Bodies of the Apostolic See."⁵⁷ The Sostituto is also responsible for drafting Apostolic Constitutions and Apostolic Letters entrusted to that office by the pope.⁵⁸ During at least a portion of the time when the alleged crimes by Cardinal Becciu occurred, he was acting in the capacity of Sostituto in the Secretariat of State.⁵⁹

Thus, while the Holy See and Vatican City are separate entities, the Secretariat of State of the Roman Curia, and the Sostituto in particular, are closely involved in all matters in which the pope plays a role or has an interest. Any alleged crimes undertaken while holding office in the Roman Curia, however, are punishable in Vatican City under Vatican City criminal laws and processes.⁶⁰

C. *The Judicial Branch*

"Judicial power is exercised, in the name of the Supreme Pontiff, by the bodies constituted according to the judicial system of the State."⁶¹ Like all other branches, there have been changes to the structure of the court system through the years. The most recent changes were initiated by Pope

⁵⁶ John L. Allen Jr., *Glimpses into the single toughest job in the Catholic Church*, CRUX (May 24, 2022), <https://cruxnow.com/news-analysis/2022/05/glimpses-into-the-single-toughest-job-in-the-catholic-church> [hereinafter Allen Jr., *Single toughest job in the Catholic Church*].

⁵⁷ Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47, § IV, Art. 46.

⁵⁸ *Id.* § IV, Art. 47.

⁵⁹ Ed Condon, *Becciu says \$200 Million London property deal was 'accepted practice'*, CATH. NEWS AGENCY (Oct. 30, 2019, 3:01 PM), [http://www.catholicnewsagency.com/news/42681/becciu-says-\\$200-million-london-property-deal-was-accepted-practice](http://www.catholicnewsagency.com/news/42681/becciu-says-$200-million-london-property-deal-was-accepted-practice) [hereinafter Condon, *London property deal was 'accepted practice'*].

⁶⁰ Francis, *AMENDING THE JURISDICTION OF THE JUDICIAL BODIES OF VATICAN CITY STATE* (Apr. 30, 2021), THE HOLY SEE, https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20210430_competenza-organigiudiziari.html [hereinafter Francis, *AMENDING THE JURISDICTION*].

⁶¹ Salvatore Cernuzio, *Pope revises Vatican penal legislation and judiciary system*, VATICAN NEWS (Apr. 12, 2023, 3:47 PM), <http://www.vaticannews.va/en/vatican-city/news/2023-04/pope-revises-vatican-penal-legislation-and-judiciary-system.html> [hereinafter Cernuzio, *Pope revises Vatican penal legislation and judiciary system*].

Francis, *motu proprio*, on March 16, 2020.⁶² The new law called for the permanent appointment of at least thirteen magistrates, appointed by the pope, who could work in various positions throughout the judicial system.⁶³ These magistrates may be attorneys that practice outside of Vatican City, although they are granted Vatican citizenship while employed as such.⁶⁴ The Vatican criminal justice system starts with an investigatory process that has an Investigating Judge presiding over it.⁶⁵ The court of first instance in a criminal trial is the Tribunal Court, comprised of three judges.⁶⁶ Additionally, the Vatican system includes a Court of Appeal and the Court of Cassation.⁶⁷ That structure has remained largely unchanged. The Vatican fraud trial currently is before the Tribunal Court, led by Chief Judge Giuseppe Pignatone.⁶⁸ The entire Tribunal Court is comprised of a President and four magistrates.⁶⁹ There is no jury involved in the trial.⁷⁰ These magistrates may be assigned by the President, for example, to serve as an Investigating Judge, a Single Judge, or on a panel of judges.⁷¹

On April 30, 2021, approximately three months prior to the commencement of the fraud trial, in an Apostolic Letter issued *motu proprio*, Pope Francis changed part of the law that governed which court had jurisdiction over bishops and cardinals charged in criminal matters.⁷² Prior to the change, it was only the highest appellate court, the Court of Cassation, that would have original jurisdiction over criminal matters involving cardinals and bishops.⁷³ Citing both previous constitutions and Canon Law, Pope Francis reiterated that all men are equal under the law.⁷⁴

⁶² ARRIETA, *supra* note 12, at 101.

⁶³ *Id.* at 103.

⁶⁴ *See generally id.* at 103.

⁶⁵ Nicole Winfield, *Vatican judges in fraud trial agree defense rights violated*, NAT'L CATH. REP. (Oct. 6, 2021), <http://www.ncronline.org/news/justice/vatican-judges-fraud-trial-agree-defense-rights-violated> [hereinafter Winfield, *Vatican judges agree defense rights violated*].

⁶⁶ ARRIETA, *supra* note 12, at 103.

⁶⁷ *Id.* at 101; *see also* Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47.

⁶⁸ Winfield, *Vatican judges agree defense rights violated*, *supra* note 65.

⁶⁹ Junno Arocho Esteves, *Pope updates Vatican City State judicial system*, CRUX (Mar. 16, 2020), <http://cruxnow.com/vatican/2020/03/pope-updates-vatican-city-state-judicial-system>.

⁷⁰ *Id.*

⁷¹ Francis, *APOSTOLIC CONSTITUTION*, *supra* note 47.

⁷² Francis, *AMENDING THE JURISDICTION*, *supra* note 60.

⁷³ ARRIETA, *supra* note 12, at 101–02. The Court of Cassation is inextricably linked to the Supreme Tribunal of the Apostolic Signatura, an organ of the Roman Curia of the Holy See. Thus, the president is the Prefect of the Apostolic Signatura, is a cardinal, and the other members of the Signatura are cardinals as well. *Id.* at 104.

⁷⁴ Francis, *AMENDING THE JURISDICTION*, *supra* note 60.

He then amended Law CCCLI and added the following language: “In cases involving the Most Eminent Cardinals and the Most Excellent Bishops, except for the cases provided for in canon 1405 § 1, the tribunal shall judge with the prior consent of the Supreme Pontiff.”⁷⁵ That 2021 amendment to Vatican Law paved the way, with permission of the pope, for the prosecution of Cardinal Becciu. Had that law not been amended, Cardinal Becciu alone would have gone before the Court of Cassation, while the other nine defendants would have been tried by the tribunal judge.⁷⁶

D. The Office of the Promoter of Justice and the Defense Attorneys

In the 2020 overhaul of the court process, the Pope strengthened the autonomy of the Office of the Promoter of Justice, which contains at least three magistrates from the pool of permanent magistrates.⁷⁷ The Promoter of Justice, like the Italian Pubblico Ministero or public prosecutor, acts as both investigator and prosecutor before the judge.⁷⁸ The other magistrates serve as Deputy Promoters of Justice and assist the Promoter of Justice in the investigations and trials.⁷⁹

Defense attorneys who represent clients before a Vatican City State court must be registered in the court clerk’s office.⁸⁰ In order to be eligible, they must be lawyers registered in the Roman Rota who are registered in the bar association in the state of residence or lawyers authorized to practice before the higher courts of their state of residence, subject to authorization from the Secretary of State.⁸¹ In exceptional cases, the president of the Court of Appeal may authorize non-registered individuals

⁷⁵ *Id.*

⁷⁶ See Ed. Condon, *Pope Francis stacks the Vatican ‘supreme court’ – but why?*, THE PILLAR (June 5, 2023, 5:12 PM), <http://www.pillaratholic.com/p/pope-francis-stacks-the-vatican-supreme> [hereinafter Condon, *Pope Francis stacks the Vatican ‘supreme court’*].

⁷⁷ Legge 16 Mar. 2020, n.CCCLI, tit. II, art. 12, secs. 1, 2 (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-ccli-ordinamentogiudiziario.html; ARRIETA, *supra* note 12, at 101–04.

⁷⁸ See L. n. CCCLI at arts. 12, 15/2020 (Vatican); ARRIETA, *supra* note 12, at 103.

⁷⁹ L. n. CCCLI at art. 12, sec. 2, 15/2020 (Vatican); ARRIETA, *supra* note 12, at 103.

⁸⁰ L. n. CCCLI at tit. VI, art. 26, secs. 2, 3/2020 (Vatican). Motu Proprio, Pope Francis. Defendants have a right to counsel at every stage of the trial proceeding. *Id.*

⁸¹ L. n. CCCLI at tit. VII, art. 26, sec. 3/2020 (Vatican). The Roman Rota is the highest appellate court of the Holy See. See *Tribunal of the Roman Rota*, THE HOLY SEE (Mar. 19, 2022), <https://www.vatican.va/content/romancuria/en/organismi-di-giustizia/tribunale-della-romana/profilo.html>.

to act as lawyers.⁸² All attorneys must have “proven knowledge of Canon law and Vatican law” in order to be enrolled in the register.⁸³

E. The Vatican City/State Criminal Process

The Vatican criminal justice system starts with an investigation that may lead to a formal charge, as it did in this case.⁸⁴ Once that occurs, an indictment is brought against the targets of the investigation.⁸⁵ Afterwards, an evidentiary phase of the trial commences before the Tribunal court.⁸⁶ The evidentiary hearings in this case commenced in July 2021 and ended in June 2023.⁸⁷ Once the evidentiary portion is complete, the attorneys present their closing arguments.⁸⁸ Thereafter, the Tribunal Court will render its decision.⁸⁹

⁸² L. n. CCCLI at tit. VI, art. 26, sec. 5/2020 (Vatican).

⁸³ *Id.* at tit. VI, art. 26, sec. 4.

⁸⁴ *Ten charged as Vatican ends London property investigation*, VATICAN NEWS (July 3, 2021, 12:10 PM) <https://www.vaticannews.va/en/vatican-city/news/2021-07/ten-charged-as-vatican-closes-investigation-into-london-property.html>. The Vatican City criminal justice system incorporates some, but not all, parts of the Canon Law trial system. For a description of the Canon Law system see Paul M. Matenaer, *But Instead Expose Them: Public Access to Criminal Trials in U.S. Law and Canon Law*, 21 WIS. L. REV. 891 (2021).

⁸⁵ See Edward Pentin, *The Full Text of Indictments Against Cardinal Becciu and Others (Italian)*, EDWARD PENTIN CONSULTANCY & EDUC. SERVS. ON THE PAPACY, THE VATICAN & THE CATH. CHURCH (July 3, 2021), <https://edwardpentin.co.uk/the-full-text-of-indictments-against-cardinal-becciu-and-others-italian/> (<https://edwardpentin.co.uk/wp-content/uploads/2021/07/20210630191449782.pdf>).

⁸⁶ *All due process*, *supra* note 4.

⁸⁷ Claire Giangravé, *After two years, Vatican financial trial closes preliminary stage*, RELIGION NEWS SERV. (June 13, 2023), <https://religionnews.com/2023/06/13/after-two-years-vatican-financial-trial-closes-preliminary-stage/>.

⁸⁸ Ed. Condon, *Is the Vatican financial trial really nearly over?*, THE PILLAR (Nov. 21, 2023, 1:54 PM), <http://www.pillaratholic.com/p/is-the-vatican-financial-trial-really> [hereinafter Condon, *Is the Vatican financial trial really nearly over?*]. On July 18, 2023, the Promoter of Justice started his closing arguments. Those arguments took several weeks to complete. See Carol Glatz, *Vatican prosecutor accuses cardinal of orchestrating failed investment*, DETROIT CATH. (July 20, 2023), <http://www.detroitcatholic.com/news/vatican-prosecutor-accuses-cardinal-of-orchestrating-failed-investment>.

⁸⁹ See e.g., Nicole Winfield, *Closing arguments in Vatican trial seek to expose problems in the city state's legal system*, ASSOCIATED PRESS, <https://apnews.com/article/vatican-trial-cardinal-becciu-5f46a66765d7dae945ddb6c743c2c84b> (Nov. 22, 2023, 2:43 PM) [hereinafter Winfield, *Closing arguments in Vatican trial expose problems*].

II. THE LONDON DEAL: ALLEGATIONS OF FRAUD, EMBEZZLEMENT, EXTORTION AND ABUSE OF OFFICE.⁹⁰

The factual path that ultimately resulted in a 487-page indictment on July 2, 2021, of a Cardinal and nine others, including various real estate businessmen, a “security consultant,” an attorney, and multiple holding companies owned by some of these defendants, is a long and winding one.⁹¹

The crux of the indictment is that ten individuals defrauded the Vatican in a London real estate deal that cost the Vatican losses estimated at 350 million euros.⁹² In 2014, the Vatican’s Secretariat of State became interested in a real estate deal that involved purchasing a share of former Harrod’s warehouse on Sloane Street in London that ultimately would be partially developed into loft apartments.⁹³ The London deal had its roots in another deal that commenced in 2012.⁹⁴ At that time, Cardinal Becciu, then serving as the Sostituto or Chief of Staff in the Office of the Secretariat, had proposed that the Vatican should invest in Falcon Oil, a company in Angola.⁹⁵ That business proposal came from “a benefactor of the apostolic nunciature in Angola, where Cardinal Becciu had served for seven years.”⁹⁶ During that period, Credit Suisse, through its employee Enrico Crasso, a co-defendant in the current fraud trial, managed the Secretariat of State’s funds.⁹⁷ Because Crasso was not an expert in this type of deal, Credit Suisse London recommended that he bring in an Italian

⁹⁰ The facts in this section come from a variety of sources, including the indictment, a United Kingdom court opinion by Judge Baumgartner on the Vatican’s request to seize Gianluigi Torzi’s assets in the United Kingdom, and various news sources; see *infra* Part II.

⁹¹ The Associated Press, *The Vatican Indicts 10*, *supra* note 3; see also Pentin, *supra* note 85.

⁹² The Associated Press, *The Vatican Indicts 10*, *supra* note 3.

⁹³ Hannah Brockhaus, *Report: Vatican considering sale of London property at heart of financial scandal*, CATH. NEWS AGENCY (Apr. 20, 2021, 07:00 AM), <http://www.catholicnewsagency.com/news/247333/report-vatican-considering-sale-of-london-property-at-heart-of-financial-scandal>; Andrea Gagliarducci, *Here’s what the Vatican finance trial has revealed about the London deal*, THE CATH. WORLD REP. (June 8, 2022, 13:00 PM), <https://www.catholicworldreport.com/2022/06/08/heres-what-the-vatican-finance-trial-has-revealed-about-the-london-deal/> [hereinafter Gagliarducci, *Here’s what the Vatican finance trial has revealed*].

⁹⁴ Gagliarducci, *Here’s what the Vatican finance trial has revealed*, *supra* note 93.

⁹⁵ *Id.*; John L. Allen Jr., *Pope’s chief of staff could undercut star witness in Vatican’s ‘trial of the century’*, CRUX (Jan. 28, 2023), <https://cruxnow.com/news-analysis/2023/01/popes-chief-of-staff-could-undercut-star-witness-in-vaticans-trial-of-the-century> [hereinafter Allen Jr., *Pope’s chief of staff could undercut star witness*].

⁹⁶ Gagliarducci, *Here’s what the Vatican finance trial has revealed*, *supra* note 93.

⁹⁷ *Id.*; Torzi. v. Dir. of Pub. Prosecution, [2021] PC R/O 104/20, [23] (appeal taken from Eng.).

businessman working and living in London, Raffaele Mincione, also a co-defendant in the trial.⁹⁸

In 2013, after Pope Francis was elected, Mincione set up a fund called the Athena Fund for the Vatican with 200 million euros from the Secretariat of State.⁹⁹ The Angola deal started to unravel and it was around this time that conversations about the London property deal began between Mincione and the Secretariat of State.¹⁰⁰ After abandoning the Angola deal, the Secretariat of State moved forward with the London deal.¹⁰¹ The 200 million euros in the Athena Fund were to be used to fund a stake in the London property, which was owned by Mincione.¹⁰²

The Secretary of State at the time was Cardinal Pietro Parolin, who took office in October of 2013.¹⁰³ Monsignor Alberto Perlasca was the chief of the Secretariat of State's Administrative Office and from 2011–2018; Cardinal Becciu was the Sostituto (chief of staff) at the Secretariat.¹⁰⁴ The prosecution alleges that the real estate deal was Cardinal Becciu's responsibility.¹⁰⁵

At some point, the Secretariat of State became uncomfortable with the arrangement with Mincione.¹⁰⁶ The Holy See decided it would buy out the remaining shares of the London property, which were held by

⁹⁸ Gagliarducci, *Here's what the Vatican finance trial has revealed*, *supra* note 93; Salvatore Cernuzio, *Cardinal Becciu takes the stand: 'Accusations are unfounded'*, NEW OUTLOOK (May 6, 2022), <http://news.diocesetucson.org/news/cardinal-becciu-takes-the-stand-accusations-are-unfounded> [hereinafter Cernuzio, *Cardinal Becciu takes the stand*].

⁹⁹ Gagliarducci, *Here's what the Vatican finance trial has revealed*, *supra* note 93.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*; Ed Condon, *UK lawsuit gives details on Vatican's controversial London building*, CATH. NEWS AGENCY (Nov 6, 2020, 09:00 AM), <https://www.catholicnewsagency.com/news/46510/uk-lawsuit-gives-details-on-vaticans-controversial-london-building> [hereinafter Condon, *UK lawsuit gives details on Vatican's controversial London building*].

¹⁰³ Andrea Gagliarducci, *Vatican Secretary of State knew of investment now under investigation*, THE CATH. WORLD REP. (Jan. 12, 2021, 11:57 AM), <http://www.catholicworldreport.com/2021/01/12/vatican-secretary-of-state-knew-of-investment-now-under-investigation/> [hereinafter Gagliarducci, *Vatican Secretary of State knew of investment now under investigation*]; HIS EMINENCE CARDINAL PIETRO PAROLIN, VATICAN CONF. 2021, <https://vaticanconference2021.org/dignitaries-and-speakers/cardinal-pietro-parolin/> (last visited July 20, 2024).

¹⁰⁴ Allen Jr., *Pope's chief of staff could undercut star witness*, *supra* note 95; John L. Allen Jr., *Cardinal sentenced to five and a half years in jail in Vatican 'trial of the century'*, CRUX (Dec. 16, 2023), <https://cruxnow.com/vatican/2023/12/cardinal-sentenced-to-five-and-a-half-years-in-jail-in-vatican-trial-of-the-century> [hereinafter Allen Jr., *Cardinal sentenced to five and a half years*].

¹⁰⁵ Pentin, *supra* note 85.

¹⁰⁶ Gagliarducci, *Here's what the Vatican finance trial has revealed*, *supra* note 93.

Mincione, and give up the investment in the Athena Fund.¹⁰⁷ The Vatican hired co-defendant Gianluigi Torzi to assist in exiting the deal with Mincione's Athena Fund.¹⁰⁸ Torzi set up a new fund called Gutt, wherein he held all the voting shares and the Vatican held only non-voting shares.¹⁰⁹ The Vatican then wound up paying Torzi 15 million euros to get full control over the shares.¹¹⁰ According to the Promoter of Justice, "Mr Torzi 'dishonestly and secretly' decided to issue himself controlling shares in Gutt to prevent the Secretariat from acquiring the whole of the interest in the Chelsea Property until the Secretariat agreed to pay him [an additional 15 million euros.]"¹¹¹ Further, the Promoter of Justice alleged that "Mr. Torzi blackmailed the Secretariat into paying him EUR 15,000,000 to complete the transfer" and that after that payment, "Mr Torzi permitted the transfer of the shares . . . to a company controlled by the Secretariat."¹¹² Prosecutors alleged that Torzi extorted the Holy See into paying this additional money in order to get control over the shares in the fund.¹¹³ During this time, according to the testimony of Jean-Baptiste De Franssu, President of the Institute for Works and Religion ("IOR"), a Vatican bank, senior members of the Secretariat of State's Office submitted a loan application to the IOR to refinance the mortgage on the Sloane Avenue building.¹¹⁴ De Franssu testified that he was concerned about what he considered "suspicious businessmen involved in the London property deal" and the "irregularities in its legal structure" that could have been used for money laundering.¹¹⁵ As a result, he reported his suspicions to the Office of the Promoter of Justice and an investigation was launched into the London deal.¹¹⁶

The Secretariat of State, Cardinal Pietro Parolin was not one of those charged, nor was Monsignor Alberto Perlasca, originally a main suspect

¹⁰⁷ *Id.*

¹⁰⁸ Gagliarducci, *Here's what the Vatican finance trial has revealed*, *supra* note 93; see *Torzi & Vita Healthy Ltd. v. Dir. of Pub. Prosecutions*, [2021] PC R/O 104/20 5 (appeal taken from Eng.) (because the prosecution sought to freeze Torzi's assets in the United Kingdom, a detailed explanation of the real estate transaction can be found in a U.K. court opinion denying the motion to freeze Torzi's assets).

¹⁰⁹ *Torzi*, [2021] PC R/O 104/20 5.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *IOR president was offered 'protection' to approve London deal*, THE PILLAR (Feb. 20, 2023, 2:18 PM), <http://www.pillaratholic.com/p/ior-president-pressured-and-offered-protection-to-approve-london-deal>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

who became the prosecution's chief witness.¹¹⁷ The current Sostituto, Edgar Pena Parra, who was in office during the final stages of the real estate deal, also was not charged.¹¹⁸ In 2018, Cardinal Becciu left the Secretariat of State, became a Cardinal, and was promoted to the leader of the Congregation for the Cause of Saints.¹¹⁹

On October 1, 2019, the Holy See office issued a statement that the Office of General Affairs within the Secretariat of State had been raided, an action authorized by then Chief Promoter of Justice, Gian Piero Milano, and then Adjunct Promoter of Justice Alessandro Diddi.¹²⁰ The raid was conducted as a result of complaints by the IOR and the Office of the Auditor General about the financial transactions.¹²¹

In September 2020, Cardinal Becciu retained his title, but was forced to resign his position "and the rights and privileges of a cardinal" by Pope Francis.¹²² He was charged with embezzlement and abuse of office, in complicity with others, and subornation.¹²³ In addition to the charges related to the London property, Cardinal Becciu was charged in the same indictment with funneling money to a charity run by his brother in Sardinia.¹²⁴ He also was charged with fraudulently funneling funds to Cecilia Marogna, a purported "security consultant," to be used in securing

¹¹⁷ Cernuzio, *Vatican trial wraps-up*, *supra* note 3; *Déjà vu in Vatican as 'Vatileaks' defendant cited at trial*, THE ASSOCIATED PRESS (Nov. 30, 2022), <https://apnews.com/article/europe-religion-rome-cd4132f5af408a44abc92e7931f4e50a>.

¹¹⁸ Cernuzio, *Vatican trial wraps-up*, *supra* note 3; Elise Ann Allen, Top Vatican official testifies in UK court over London real estate deal, CRUX (Jul. 6, 2014), <https://cruxnow.com/vatican/2024/07/top-vatican-official-testifies-in-uk-court-over-london-real-estate-deal>.

¹¹⁹ *Id.*; Robin Gomes, *Archbishop Becciu - new Prefect of the Congregation for the Causes of Saints*, VATICAN NEWS (May 26, 2018, 3:51 PM), <https://www.vaticannews.va/en/pope/news/2018-05/pope-francis-becciu-new-prefect-congregation-saints.html>.

¹²⁰ CNA Daily News, *Vatican prosecutors conduct raid on Secretariat of State offices*, THE CATH. WORLD REP. (Oct. 1, 2019, 8:40 AM), <http://www.catholicworldreport.com/2019/10/01/vatican-prosecutors-conduct-raid-on-secretariat-of-state-offices/>.

¹²¹ *Id.*

¹²² *Raffaele Mincione sues Italian newspaper for libel over Vatican property deal*, THE PILLAR (Jan. 15, 2021, 4:00 PM), <http://www.pillaratholic.com/p/raffaele-mincione-sues-italian-newspaper> [hereinafter *Raffaele Mincione sues Italian newspaper*].

¹²³ The Associated Press, *The Vatican Indicts 10*, *supra* note 3; Pentin, *supra* note 85.

¹²⁴ *First cardinal prosecuted in Vatican's criminal court convicted of embezzlement*, CBS NEWS (Dec. 16, 2023, 9:49 PM), <https://www.cbsnews.com/news/first-cardinal-prosecuted-in-vaticans-criminal-court-convicted-of-embezzlement> [hereinafter *First cardinal prosecuted*]; Pentin, *supra* note 85.

the release of a Colombian nun being held hostage in Mali.¹²⁵ Some of the funds were alleged never to have been used for that purpose.¹²⁶

Torzi was charged with extortion, embezzlement, fraud, money laundering, and “self-laundering.”¹²⁷ Raffaele Mincione also was accused of embezzlement, fraud, abuse of office, and “self-laundering.”¹²⁸ In December 2020, “Pope Francis stripped the Secretariat of State of its financial portfolio, and ordered the department to turn over control of all bank accounts and investments to the Administration for the Patrimony of the Holy See.”¹²⁹ After the two year investigation, the Office of the Promoter of Justice issued a 487 page indictment that included charges of fraud, extortion, embezzlement, abuse of office, and money laundering.¹³⁰

The proceedings commenced on July 21, 2021.¹³¹ During the following two years, there would be eighty-six hearings conducted.¹³² In 2022, the Vatican sold the London property, estimating a loss of 140 million euros.¹³³ After almost two and one half years, on December 16, 2023, the Tribunal Court returned a verdict.¹³⁴ Of the ten defendants, only Cardinal Becciu’s former secretary, Monsignor Mauro Carlino, was acquitted.¹³⁵ However, the remaining defendants were acquitted of many of the charges brought by the Promoter of Justice.¹³⁶ Still, Cardinal Becciu

¹²⁵ *First cardinal prosecuted*, *supra* note 124; see also Elise Ann Allen, *Cecilia Marogna: Vatican trial of Becciu associate continues*, CATH. HERALD (Oct. 7, 2023, 10:26 AM), <https://catholicherald.co.uk/cecilia-marogna-vatican-trial-of-becciu-associate-continues/> [hereinafter Allen, *Cecilia Marogna*].

¹²⁶ Allen, *Cecilia Marogna*, *supra* note 125.

¹²⁷ *Raffaele Mincione sues Italian newspaper*, *supra* note 122; Pentin, *supra* note 85.

¹²⁸ *Mincione files UN human rights complaint against Holy See*, THE PILLAR (June 17, 2024, 9:15 PM), <https://www.pillaratholic.com/p/mincione-files-un-human-rights-complaint>.

¹²⁹ *A brief history of the Vatican’s London financial scandal*, THE PILLAR (Jan. 28, 2021, 4:31 PM), <https://www.pillaratholic.com/p/a-brief-history-of-the-vaticans-london>.

¹³⁰ Winfield, *The Vatican’s ‘trial of the century’*, *supra* note 2.

¹³¹ Cermuzio, *Vatican trial wraps-up*, *supra* note 3.

¹³² Press Release, Vatican City State Tribunal, Communiqué of the Vatican City State Tribunal (Dec. 16, 2023), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/12/16/231216g.html>.

¹³³ Philip Pullella, *Vatican takes big loss in sale of London building at heart of trial*, REUTERS (July 1, 2022, 10:53 AM), <https://www.reuters.com/world/uk/vatican-sells-london-building-heart-corruption-trial-bain-capital-2022-07-01/> [hereinafter Pullella, *Vatican takes big loss in sale*].

¹³⁴ Communiqué of the Vatican City State Tribunal, *supra* note 132.

¹³⁵ Philip Pullella, *Senior cardinal convicted in Vatican corruption trial*, REUTERS, (Dec. 16, 2023, 4:31 PM), <https://www.reuters.com/world/europe/cardinal-nine-other-defendants-await-verdicts-vatican-trial-2023-12-15/> [hereinafter Pullella, *Senior cardinal convicted*].

¹³⁶ The Associated Press, *A cardinal is convicted of embezzlement and sentenced to 5 1/2 years in Vatican trial*, NPR (Dec. 16, 2023, 11:55 AM), <https://www.npr.org/2023/12/16/1219839096/cardinal-vatican-embezzlement-trial-guilty> [hereinafter, The Associated Press, *A cardinal is convicted of embezzlement*]. The Promoter of

was convicted of embezzlement and was sentenced to five and a half years imprisonment.¹³⁷ Crasso and Fabrizio Tirabassi were found guilty of self-laundering and each was sentenced to seven years in prison.¹³⁸ Raffaele Mincione was found guilty of embezzlement along with Cardinal Becciu as it related to the underwriting of the Athena shares and was sentenced to five years in prison.¹³⁹ Cecilia Marogna also was found guilty and sentenced to three years and nine months in prison.¹⁴⁰ The Tribunal Court ordered the confiscation of 600 million euros and 200 million euros in damages to the Vatican.¹⁴¹

III. SOURCES OF LAW: VATICAN CITY STATE LAW, CANON LAW, ITALIAN LAW, AND INTERNATIONAL LAW

One of the biggest challenges in unraveling the complexities of this case is to weave together a cohesive narrative explaining the amalgam of laws that apply. Although all attorneys practicing in Vatican City must have a proven knowledge of Canon Law and Vatican City Law, there remains some confusion due to the multiple sources of law and the constant modifications to the Penal Code and Procedure laws the pope has made through the issuance of papal decrees issued *motu proprio*, all of which ultimately become adopted as law in Vatican City.¹⁴²

A. *The Role of Italian Law*

Grasping the full picture of Vatican City's processes requires an understanding of why and how the law continues to evolve. Article 22 of the Lateran Treaty first established the mechanisms for punishing crimes

Justice has filed an appeal of the verdict, permissible under Vatican law, asking that the appellate court convict each defendant on all the charges. See Nicole Winfield, *Vatican prosecutor appeals verdict that largely dismantled his fraud case but convicted cardinal*, ASSOCIATED PRESS (Dec. 22, 2023, 9:40 AM), <https://apnews.com/article/vatican-trial-fraud-becciu-pope-francis-money-laundering-d5b94fcbec053e4736f39257c2e6b173> [hereinafter Winfield, *Vatican prosecutor appeals verdict*].

¹³⁷ Communiqué of the Vatican City State Tribunal, *supra* note 132.

¹³⁸ *Id.*

¹³⁹ Ed Condon, *Unappealing prospects after the Vatican trial verdict*, THE PILLAR (Dec. 20, 2023, 5:50 PM), <https://www.pillaratholic.com/p/unappealing-prospects-after-the-vatican> [hereinafter Condon, *Unappealing prospects after the Vatican trial verdict*].

¹⁴⁰ The Associated Press, *A cardinal is convicted of embezzlement*, *supra* note 136.

¹⁴¹ *Id.*

¹⁴² Legge 16 Mar. 2020, n.CCCLI, Tit. VI, art. 26, sec. 4 (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-ccli-ordinamentogiudiziario.html.

committed in Vatican City.¹⁴³ It stated, “[a]t the request of the Holy See and by its delegation . . . Italy will take care of punishing crimes committed in Vatican City on its territory, except when the perpetrator of the crime has taken refuge in Italian territory, in which case it will certainly proceed against him in accordance with Italian law.”¹⁴⁴ In cases where the Kingdom of Italy would be executing a sentence imposed by the Vatican City courts, International Law norms were to apply.¹⁴⁵

In 1929, when the Pontifical Commission first began drafting Law no. 2 on Sources of Law, it had no criminal law of its own and thus, it looked to Canon Law and Italian Law.¹⁴⁶ The Commission had anticipated that Vatican City’s legislative branch would write its own laws but that in the meanwhile, it could borrow from the Italian code.¹⁴⁷ Thus, it relied upon the Italian Penal Code *as it existed at the time*. The code in effect in 1929 was the Zanardelli code, named after the Kingdom of Italy Minister of Justice Giuseppe Zanardelli.¹⁴⁸ Thus, unless amended by the Pontifical Commission or by the Pope *motu proprio*, the original Zanardelli code is in effect in Vatican City and no modern amendments made to it by Italy apply.

Today, jurisdiction for economic crimes and crimes committed against the fundamental interests of the Holy See remains with Vatican City.¹⁴⁹ However, perhaps because the tiny monarchy had been less equipped to handle criminal trials itself, the Vatican has on many occasions voluntarily relinquished jurisdiction to prosecute crimes to the Italian state.¹⁵⁰

On October 1, 2008, Pope Benedict XVI issued a supplement to the Law Governing Penal Matters, in which he stated that Vatican City would continue to supplement its own law with law and other normative acts from the Italian State as needed “until a new definition of the criminal system is made.”¹⁵¹ These laws are to be used provided that they are not contrary to divine law, the general principles of canon law, or the norms of the

¹⁴³ The Lateran Treaty, Holy See-It., art. 22, 130 Brit. & For. St. Papers 660

¹⁴⁴ *Id.*

¹⁴⁵ The Lateran Treaty, Holy See-It., art. 23, 130 Brit. & For. St. Papers 660

¹⁴⁶ ARRIETA, *supra* note 12, at 167.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Francis, *ON THE JURISDICTION OF JUDICIAL AUTHORITIES OF VATICAN CITY STATE IN CRIMINAL MATTERS*, Sec. 1–4 (July 11, 2013), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20130711_organigiudiziari.html [hereinafter Francis, *JURISDICTION OF JUDICIAL AUTHORITIES*].

¹⁵⁰ See generally ARRIETA, *supra* note 12, at 161.

¹⁵¹ *Id.* at 230.

Lateran Pacts and other agreements in place.¹⁵² Vatican City's "reception statute" only applies to the Zanardelli Penal Code as written in 1889.¹⁵³ Any laws outside of that Code, or any changes that have been made by the Italian government to the Italian Penal Code since 1929, simply do not apply in Vatican City.¹⁵⁴ Thus, this reception structure has led to a game of catch-up over the past decade and a half for the Vatican's Legislative Branch. This is particularly true in laws governing financial oversight and the laws criminalizing financial crimes.

B. *The Role of International Law*

The motivation for passing more modern laws for financial crimes is due in no small part to the Holy See's decision to adopt the euro as its currency, an agreement which went into effect on January 1, 2002, and has been updated since then.¹⁵⁵ Additionally, in the last decade both Popes Benedict and Francis have overhauled the oversight of the financial systems used at the Vatican both within the Roman Curia and independent of it through the creation of the Financial Information Authority, or AIF.¹⁵⁶ The impetus for these changes likely derives from continuing issues related to the need for greater transparency in Vatican transactions and also for combatting money laundering and terrorism.¹⁵⁷ Accordingly, some external controls in the financial arena now exist because the Holy See has voluntarily chosen to enter into these types of agreements. The Monetary Agreement requires the Holy See, and with it Vatican City, to implement European Union acts and rules on, among other things, prevention of money laundering and fraud with regard to euro banknotes and coins.¹⁵⁸ The Holy See also created an Anti-Corruption Authority in conformance

¹⁵² *Id.*

¹⁵³ *See id.* at 164, 167.

¹⁵⁴ *See id.* at 161, *passim*.

¹⁵⁵ *See* MONETARY AGREEMENT, E.U.-Vatican City State, May 28, 2010, 60-65 AAS 2002 (2010), 60-65 (2010/C 28/05), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22010A0204\(01\)&from=LT](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22010A0204(01)&from=LT).

¹⁵⁶ *See generally* ARRIETA, *supra* note 12, at 195–210.

¹⁵⁷ *See generally* Report by Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL) on the Holy See (including Vatican City State) (Apr. 2021), <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/Moneyval-Mutual-Evaluation-Holy-See-2021.pdf.coredownload.inline.pdf>.

¹⁵⁸ *See* MONETARY AGREEMENT, *supra* note 155; *see also* ARRIETA, *supra* note 12, at 194.

with the United Nations Convention against Corruption, otherwise known as the Mérida Convention.¹⁵⁹

In addition to the more specific treaties and agreements entered into by the Holy See, Vatican Law also expressly states that it conforms to general principles of International Law.¹⁶⁰ Article 1, section 4 of Law LXXI on the Sources of Law states, “[t]he Vatican legal system complies with the rules of general international law *and* those deriving from the treaties and other agreements in which the Holy See is part . . .” (emphasis added).¹⁶¹ In one of its many decisions denying defendants’ motions in this case, the Tribunal Court specifically stated that “the Vatican system fully respects the indications found in article 6 of the European Convention on Human Rights regarding due process.”¹⁶²

C. Recent Changes to Vatican Law

There also has been an overall flurry of changes to the penal code and procedure at Vatican City. Keeping track of those changes is challenging due to the Pope’s consistent use of the *motu proprio* of late as a vehicle for instituting such changes.¹⁶³ As stated in Section I.c., just prior

¹⁵⁹ *Holy See strengthens Anti-Corruption Authority*, VATICAN NEWS (Feb. 09, 2019, 13:07), <https://www.vaticannews.va/en/vatican-city/news/2019-02/holy-see-strengthens-anti-corruption-authority.html>.

¹⁶⁰ See ARRIETA, *supra* note 12, at app. III 229.

¹⁶¹ *Id.* at app. III 167, 229.

¹⁶² Cernuzio, *Trial in Vatican moves forward*, *supra* note 1; European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11, 14 and 15, art. 6, Nov. 4, 1950, 213 U.N.T.S. 221. (“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b. to have adequate time and facilities for the preparation of his defence; c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”).

¹⁶³ Researching Vatican Law online can be a challenge. Most decrees and Apostolic Letters issued *Motu Proprio* may be found on the Holy See website. Some are provided in multiple languages, including English; others are not. See HOLY SEE,

to the fraud trial, Pope Francis laid the procedural groundwork for Cardinal Becciu to be tried in Vatican City by the Tribunal Court.¹⁶⁴ Then, in February 2021, Pope Francis issued a *Motu Proprio* allowing persons who refused to attend hearings and proceedings to be tried *in absentia*.¹⁶⁵ On April 30, 2021, Pope Francis issued another *Motu Proprio* amending the Law on the Judiciary (LAW N. CCCLI), which went into effect on March 16, 2020.¹⁶⁶ The motivation for the changes was clearly articulated by Pope Francis. He wanted to make the judiciary more efficient given the impact of regulatory reforms in economic-financial and criminal matters and the adherence to international conventions during the past decade.¹⁶⁷ That amendment provided that Vatican City's Tribunal Court would have jurisdiction over certain cases involving cardinals and bishops with the prior approval of the Pope.¹⁶⁸ On April 26, 2021, he also made changes to fraud laws that applied to the Roman Curia and to the Vatican City State.¹⁶⁹ The changes were, according to the Pope, "adhering to the United Nations Convention against Corruption (Merida Convention)" and in conformance with international best practices.¹⁷⁰

Most recently, on September 15, 2022, after the commencement of the fraud trial, more new Criminal Procedure Rules and new Penal Code

<https://www.vatican.va/content/vatican/en.html> (last visited July 21, 2024). Once a law goes into effect, it also will appear on the Vatican State website, although this too proves challenging because each new law is published as a separate .pdf file. See VATICAN STATE, <https://www.vaticanstate.va/it/stato-governo/legislazione-e-normativa/norm-penale-amministrativa.html> (last visited July 21, 2024) (printed texts are not always up to date given the many recent changes made *motu proprio*, and are not widely available outside of Vatican City and Italy).

¹⁶⁴ See Francis, *AMENDING THE JURISDICTION*, *supra* note 60.

¹⁶⁵ Francis, *ON AMENDMENTS IN MATTERS OF JUSTICE*, Art. 2, § 1, HOLY SEE PRESS OFFICE (Feb. 8, 2021), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20210208_giustiziapenale.html [hereinafter Francis, *IN MATTERS OF JUSTICE*].

¹⁶⁶ Francis, *AMENDING THE JURISDICTION*, *supra* note 60.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Francis, *REGARDING PROVISIONS ON TRANSPARENCY IN THE MANAGEMENT OF PUBLIC FINANCES*, HOLY SEE PRESS OFFICE (Apr. 26, 2021), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20210426_trasparenza-finanzapubblica.html [hereinafter Francis, *MANAGEMENT OF PUBLIC FINANCES*].

¹⁷⁰ *Id.*; Francis, *APOSTOLIC LETTER ISSUED "MOTU PROPRIO" BY THE SUPREME PONTIFF*, VATICAN (June 1, 2020), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20200519_procedure-aggiudicazione-contrattipubblici.html.

Provisions went into effect.¹⁷¹ These rules had been approved by Pope Francis on August 22, 2022.¹⁷² Additionally, the new laws permit defense attorneys, among other things, to be present at interrogations, confrontations, and house searches.¹⁷³ Wiretapping and the interception of electronic communications is now permissible by the authorities in cases where punishment is greater than four years.¹⁷⁴ However, wiretapping of private homes is only permissible if there is reason to believe that a crime is being carried out at the home.¹⁷⁵ The Promoter of Justice must request the wiretapping or interception order from the judge, who may grant the order only if there are serious indications that there is a crime occurring and that such interception is absolutely indispensable to the prosecution.¹⁷⁶ However, conversations of the pope and of various others whose communications are deemed secret may never be intercepted.¹⁷⁷

It is important to note that during the investigation phase of this trial, the Pope is alleged to have issued four secret decrees *motu proprio* that, among other things, permitted wiretapping outside of Vatican City and gave Prosecutors authority to do so without judicial approval.¹⁷⁸

D. *The Role of Canon Law*

Perhaps the most difficult question to answer is about the role Canon Law plays in trials conducted in Vatican City. Canon Law, the ecclesiastical law for the universal Latin Church, does not govern civil or criminal trials in Vatican City state, which has its own criminal and

¹⁷¹ See Legge 6 Sept. 2022, n.DXXXI (Vatican), <https://www.vaticanstate.va/phocadownload/leggi-decreti/normativa-penale/Legge%20DXXXI.pdf>.

¹⁷² *Id.* at Art. 31.

¹⁷³ L. n. DXXXI, art. 15/2022 (Vatican).

¹⁷⁴ *Id.* at art. 18.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Nicole Winfield, *Swiss court insists Vatican suspects can get a fair trial*, NAT'L CATH. REP. (Jan. 10, 2022), <https://www.ncronline.org/news/accountability/swiss-court-insists-vatican-suspects-can-get-fair-trial> [hereinafter Winfield, *Swiss court insists*]. As of February 18th, 2022, the Associated Press reported that the four decrees issued *motu proprio* had not been published. Nicole Winfield, *Lawyers: papal decrees violated fraud suspects' human rights*, ASSOCIATED PRESS (Feb. 18, 2022), <https://apnews.com/article/pope-francis-business-europe-religion-vatican-city-c93a8193908d92946c3636aa4134fd87> [hereinafter Winfield, *Papal decrees violated fraud suspects' human rights*]. The author also has made numerous attempts to locate the four decrees with no success. These four decrees are discussed in Section IV of this article, *infra*.

procedural codes.¹⁷⁹ However, Canon Law *is* the primary source for both norms and interpretation of Vatican Law.¹⁸⁰ This has been emphasized repeatedly by both Popes Benedict and Francis. Article 1, no. 1 of Law LXXI on the Sources of Law states that the “Vatican legal system recognizes the canon order as its first normative order and first criterion of interpretative reference.”¹⁸¹ Pope Francis has explicitly stated in a series of decrees issued *motu proprio* starting in 2020, that the reforms in Pope Benedict’s *motu proprio* continue to assure the specific Vatican directive that the juridical laws of the Vatican recognize that Canon Law is the primary normative font and the first criteria of interpretive reference.¹⁸²

There has been some confusion about the application of Canon Law to the Vatican trial proceedings. Chief Judge Pignatone, in ruling against one of the many motions to dismiss alleging violations of due process, stated that while Canon Law is in fact the primary normative and interpretive source, the Vatican has its own rules governing process.¹⁸³ Indeed, when lawyers for Gianluigi Torzi attempted to argue that Vatican prosecutors had not conducted their investigation according to the norms of canon 1717, the judge dismissed their argument as “an obvious misunderstanding,” because canon 1717 governs ecclesiastical Church processes, not civil cases in Vatican City.¹⁸⁴ Still, it is undeniable that Canon Law plays some role in Vatican City judicial proceedings. But how the interplay between Canon Law and Vatican City law actually operates remains rather opaque to outsiders, apparently even to those who have been cleared to practice law in the jurisdiction. The Tribunal’s conclusory remarks do little to shed any light on the matter.

On the face of these types of statements made by the Tribunal Court and the summary denial of any defense motion grounded in a particular and specific canon, there is no “direct application” of the canons to a trial under the jurisdiction of Vatican City. Prior to Pope Benedict’s statement, Canon Law was described as the *primary source for objective law* in the Vatican City State.¹⁸⁵ In 2008, a newer, more expanded version of the

¹⁷⁹ See CANON 1–2, 6 § 1, https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib1-cann1-6_en.html (last visited Sept. 4, 2024); CANON 1402, https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib7-cann1400-1500_en.html#BOOK_VII (last visited Sept. 4, 2024).

¹⁸⁰ ARRIETA, *supra* note 12, app. III at 229.

¹⁸¹ *Id.*

¹⁸² *LEGGE FONDAMENTALE DELLO STATO DELLA CITTA DEL VATICANO*, *supra* note 33.

¹⁸³ *All due process*, *supra* note 4.

¹⁸⁴ *Id.*

¹⁸⁵ See José Landete, *Comentario Legislativo de la Nueva Ley Lxxi de Fuentes del Derecho [Legislative Commentary of the New Law LXXI on Sources of Law]*, LAS FUENTES DEL

language appeared in the *Motu Proprio* issued by Pope Benedict.¹⁸⁶ Canon Law is now described as the first *normative and first interpretive source* for Vatican Law.¹⁸⁷

One explanation, consistent with Judge Pignatone's statements, is that Canon Law serves as the first normative and interpretive source in the *creation* of Vatican law and informs that process by the Pontifical Commission and the pope. Thus, Canon Law's spirit and intent, and perhaps even the language of the Canons themselves, serve as the guiding light in the creation of Vatican laws by the pope and the Pontifical Commission. For example, when Pope Francis amended the jurisdiction of the tribunal court so that cardinals and bishops could be tried before them, he cited the Constitution *Gaudium et Spes*, stating that "all men have the same nature and origin, have been redeemed by Christ and enjoy the same divine calling and destiny."¹⁸⁸ He then cited to the 1983 Code of Canon Law, Canon 208, stating that "there exists among all the Christian faithful a true equality in dignity and in action."¹⁸⁹ "The awareness of these values and principles, which has progressively matured in the ecclesial community, today calls for an ever more adequate conformity to them also in the Vatican system."¹⁹⁰ After those canonical references, Pope Francis paved the way for Cardinal Becciu to be tried before the Vatican Tribunal Court like the rest of the defendants.¹⁹¹

Interpreted in this manner, Vatican City's legislative process must respect the general principles of Canon Law and promulgated laws must be consistent with them.¹⁹² However, as one Canon Law expert suggests, the language "should not be viewed rigidly in a hierarchical rule of active

DERECHO VATICANO [THE SOURCES OF VATICAN LAW], (October 1, 2008), 49 IUS CANONICUM 623, 627 (2009).

¹⁸⁶ See *id.* at 625–27.

¹⁸⁷ *LEGGE FONDAMENTALE DELLO STATO DELLA CITTA DEL VATICANO*, *supra* note 33.

¹⁸⁸ Francis, *RECANTE MODIFICHE IN TEMA DI COMPETENZA DEGLI ORGANI GIUDIZIARI DELLO STATO DELLA CITTA DEL VATICANO* [CONTAINING CHANGES REGARDING THE COMPETENCE OF THE BODIES VATICAN CITY STATE JUDICIALS], LA SANTA SEDE [THE HOLY SEE] (Apr. 30, 2021), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20210430_competenza-organigiudiziari.html.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Geraldina Boni, *The 'Canonical Legal System' as 'The First Principle of Interpretation' of Vatican City State Law: A Growing Relevance*, RIVISTA DI SCIENZE GIURDICHE [J. OF LEGAL SCI.] (A CURA DELLA FACOLTÀ DI GIURISPRUDENZA DELL'UNIVERSITÀ CATTOLICA DI MILANO) [EDITED BY THE FACULTY OF LAW OF THE CATHOLIC UNIVERSITY OF MILAN], June 2022, at 106 n.23 (citing J.I. Arrieta, *Corso di Diritto Vaticano* [Vatican Law Course], at 172).

and passive force in the way that secular jurists may analyze them.”¹⁹³ Rather, the identification of Canon Law as the primary source should be viewed as a “qualitative designation.”¹⁹⁴ That interpretation of the relationship makes contextual sense given the Vatican’s early decision to adopt certain portions of the Italian code—as part of the Lateran Pact. Reiterating its commitment to Canon Law serves to put Italian law, and for that matter all other external laws, in their proper place in what forever remains a papal monarchy.

However, the relationship between Canon Law and Vatican City law goes beyond this. In one *Motu Proprio*, Pope Francis reiterated that the Vatican judicial system recognizes the canonical system as the first normative source and the first criterion of reference for interpretation.¹⁹⁵ He expanded on that relationship and stated that this is a fundamental and valuable link, which he hoped would be increasingly explored by the judiciary, to which the interpretive function is entrusted.¹⁹⁶ A good example of this may be how the Tribunal Court approaches punishment. Canon Law’s restorative justice approach, which also has made its way into Vatican Law, could be used as an interpretive source in a Vatican City trial.¹⁹⁷

In the end, while there is no doubt that there is a jurisdictional wall between Canonical proceedings and Vatican proceedings, they remain inextricably connected. There is an inevitable link with this “duality” in which Vatican City is “strictly bound” to Canon Law.¹⁹⁸ The two parallel systems also remain interconnected by the pope’s perspective and authority. Thus, while arguments about direct applicability of Canon Law may not have a place in Vatican proceedings, defense arguments that utilize Canon Law norms for interpretation ought to be welcome.

¹⁹³ *Id.* at 105 n.18 (citing G. Boni, *Il Diritto Penale Vaticano della Città del Vaticano [Vatican Criminal Law of the Vatican City]*. Evoluzioni Giurisprudenziali [Juris. Dev.], at 92).

¹⁹⁴ *Id.*; see ARRIETA, *supra* note 12, at 110.

¹⁹⁵ Legge 16 Mar. 2020, n.CCCLI (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-cccli-ordinamentogiudiziario.html.

¹⁹⁶ *Id.*

¹⁹⁷ Punishment in Vatican law takes into account restorative conduct, rehabilitation and reintegration, much like the modern concept of restorative justice. See Francis, *IN MATTERS OF JUSTICE*, *supra* note 165. In a *motu proprio*, Pope Francis modified the criminal procedure code so that a person sentenced to imprisonment could reduce his sentence if the person has behaved in a way that leads to a presumption of reform and has participated in a treatment and reintegration program. That would earn a reduction in time anywhere from 45-120 days for each year of the sentence being served. *Id.*

¹⁹⁸ ARRIETA, *supra* note 12, at 162.

IV. FUNDAMENTAL FAIRNESS AND TRANSPARENCY

Any trial system will be judged on the fundamental fairness of its processes and the consequences upon those processes on an accused. Fundamental fairness, in general, requires that basic rights to defendants be provided such as timely notice of the charges, an independent and impartial judiciary, clearly set forth procedural rules, and an opportunity to present a full defense through the receipt of evidence and the examination of witnesses.

There were several challenges raised by the defense about the fundamental fairness of this trial. Defense attorneys argued time and again that their clients' due process and human rights were violated.¹⁹⁹ Most, if not all, of those challenges failed.²⁰⁰ The question of whether there have been due process violations during the trial in Vatican City even reached a court outside of the Vatican.²⁰¹

In January of 2022, a Swiss court rejected defendant Raffaele Mincione's attempt to unfreeze 50 million euros that were being held in a Swiss bank.²⁰² Mincione's attorneys argued that he was not able to have a fair trial in Vatican City claiming that, among other things, his due process rights were being violated.²⁰³ Mincione specifically contended that the Vatican City criminal justice system was flawed because there was no separation of powers and that the pope had issued four secret decrees *motu proprio*, including one that allowed prosecutors to wiretap outside Vatican City.²⁰⁴ The Federal Swiss Court rejected all of these claims upholding the lower court's decision, which stated that "the impartiality of criminal justice in the Vatican is assured."²⁰⁵

The issue of the pope's issuance of these four decrees also was one of the main points made by the defense attorneys in their due process arguments.²⁰⁶ These decrees designated the investigation and the trial a

¹⁹⁹ Nicole Winfield, *At Vatican fraud trial, lawyers argue pope violated defendants' rights*, NAT'L CATH. REP. (Feb. 18, 2022), <https://www.ncronline.org/news/vatican/vatican-fraud-trial-lawyers-argue-pope-violated-defendants-rights> [hereinafter Winfield, *At Vatican fraud trial*].

²⁰⁰ *All due process*, *supra* note 4.

²⁰¹ *See id.*; *see also* Winfield, *Swiss court insists*, *supra* note 178.

²⁰² Winfield, *Swiss court insists*, *supra* note 178; *All due process*, *supra* note 4.

²⁰³ Winfield, *Swiss court insists*, *supra* note 178; *All due process*, *supra* note 4.

²⁰⁴ Winfield, *Swiss court insists*, *supra* note 178. As of February 18, 2022, the Associated Press reported that the four decrees issued *motu proprio* had not been published. Winfield, *Papal decrees violated fraud suspects' human rights*, *supra* note 178. The author also has made numerous attempts to locate the four decrees with no success.

²⁰⁵ Winfield, *Swiss court insists*, *supra* note 178.

²⁰⁶ *All due process*, *supra* note 4.

“summary rite,” with no independent judicial oversight.²⁰⁷ Thus, that allowed the prosecutor to conduct wiretapping, conduct searches and seizures, arrest and detain suspects, and allowed the prosecutor to divulge the evidence, which would otherwise be secret, that he discovered as a result.²⁰⁸ These were done during the investigation without the need for judicial approval or oversight, or notice to the defendants.²⁰⁹ Additionally, the Pope’s decrees gave “prosecutors sweeping powers to investigate even ‘where necessary to derogate from’ existing laws.”²¹⁰ Moreover, the defense claimed that the decrees also were not made public in any Vatican publication, thus creating a method for gathering evidence that was not previously used without any notice to the defendants.²¹¹ “Those rights, they argued, are guaranteed under the church’s own canon law, which is the basic source of law for the Vatican’s criminal code.”²¹² The arguments failed to persuade the court.²¹³

During the past several years, the pope has exercised his authority to create new laws and procedures and to amend already existing laws through the use of decrees issued *motu proprio*. The pope’s recent and increasing use of the *Motu Proprio*, which at times appears reactionary, can wreak havoc on a system that requires timely notice, adequate preparation, and thorough understanding of Vatican City laws.

The defense also argued that due process violations occurred because the Promoter of Justice failed to turn over all relevant evidence that it obtained during the investigation despite a court order to do so.²¹⁴ While the Promoter of Justice did ultimately turn over some evidence and conceded it had made mistakes, it refused to turn over what the defense

²⁰⁷ John L. Allen Jr., *Pope’s use of authority becomes new front in Vatican ‘trial of the century’*, CRUX (Feb. 20, 2022), <https://cruxnow.com/news-analysis/2022/02/popes-use-of-authority-becomes-new-front-in-vatican-trial-of-the-century> [hereinafter Allen Jr., *Pope’s use of authority*]; see also Winfield, *At Vatican fraud trial*, *supra* note 199.

²⁰⁸ Winfield, *At Vatican fraud trial*, *supra* note 199; see also *All due process*, *supra* note 4.

²⁰⁹ Winfield, *At Vatican fraud trial*, *supra* note 199.

²¹⁰ Nicole Winfield, *At Vatican trial, defense questions the legal system itself*, ASSOCIATED PRESS (Oct. 3, 2021, 11:24 PM), <https://apnews.com/article/europe-religion-trials-london-vatican-city-2213fff3d492899a15254ad911d1d0a4> [hereinafter Winfield, *Defense questions the legal system itself*].

²¹¹ Winfield, *At Vatican fraud trial*, *supra* note 199.

²¹² *Id.*

²¹³ See Nicole Winfield, *Vatican judge tosses defense motions as fraud trial advances*, NAT’L CATH. REP. (Mar. 1, 2022), <https://apnews.com/article/business-europe-lifestyle-religion-vatican-city-ba444eee4b5b04ef44407b1812906bbb> [hereinafter Winfield, *Vatican judge tosses defense motions as fraud trial advances*].

²¹⁴ Winfield, *Defense questions the legal system itself*, *supra* note 210.

considered key evidence that was necessary for a fair trial.²¹⁵ At other points, the prosecution actually defied the court's order to turn all the evidence over.²¹⁶ Without even debating the validity of the defendant's claim regarding the key nature of the withheld evidence, the greater issue is that the court did not have the authority to compel the prosecution to act.²¹⁷ Indeed, it was the Promoter of Justice's Office that had the power to determine what it wished to turn over.²¹⁸

While the Promoter of Justice's Office did hold enormous power to determine what evidence to divulge, the attempt to use that power did not translate well outside Vatican City. In 2020, an English court had the opportunity to address issues regarding the prosecution of defendant Torzi when it reviewed the Promoter of Justice's request to freeze funds belonging to Torzi in England.²¹⁹ The Promoter of Justice applied for a Restraint Order to freeze funds linked to one of Torzi's companies that were held in several accounts at an HSBC Bank in London.²²⁰ A lower court granted that motion, but Torzi appealed that decision and filed an application to discharge the order.²²¹ Two main issues were before the Crown Court. The first was whether the Crown Court's decision ought to be sealed as the Promoter of Justice had requested.²²² The second part of the court's inquiry was whether the Restraint Order should be discharged due to material misrepresentations or non-disclosures by the Office of the Promoter of Justice and whether, based upon all the information some serious concerns about the factual basis provided by the prosecutors would impact the decision to freeze assets.²²³ Despite an attempt by the Office of the Promoter of Justice to keep the decision of that case sealed, the English court denied it and published the decision, which contained a very

²¹⁵ Nicole Winfield, *Prosecutor concedes mistakes, makes offer in Vatican trial*, ASSOCIATED PRESS (Oct. 5, 2021, 10:15 AM), <https://apnews.com/article/business-europe-vatican-city-indictments-trials-8b56e06f2216ad0e50c21338c89d2dfe> [hereinafter Winfield, *Prosecutor concedes mistakes*].

²¹⁶ Winfield, *Defense questions the legal system itself*, *supra* note 210.

²¹⁷ See Legge 16 Mar. 2020, n.CCCLI, tit. II, art. 12, sec. 1 (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-ccli-ordinamentogiudiziario.html.

²¹⁸ The dichotomy here of course, is that while Pope Francis has provided independence for the Promoter of Justice's office it is still he who greenlighted the case and is the ultimate decision-maker and lawmaker.

²¹⁹ See *generally* Torzi v. Dir. of Pub. Prosecutions [2021] 3 WLUK 680 (appeal taken from Eng.).

²²⁰ *Id.* at 678, ¶ 4–5.

²²¹ *Id.* at ¶ 1.

²²² *Id.* at 680, ¶ 1.

²²³ *Id.* at 678, ¶ 1.

detailed description of the facts in the case.²²⁴ The Court found that some of the material misrepresentations and non-disclosures in the documents provided to the court were “egregious” and “appalling.”²²⁵

Attempts by the defense attorneys to rely upon international law in making these failure of due process arguments also were not successful. The defense argued that there had been numerous violations of the European Convention on Human Rights and the Italian Constitution.²²⁶ In a forty page order issued on March 1, 2022, Chief Judge Giuseppe Pignatone dismissed these arguments and held that the Vatican is not a signatory to the convention, and is sovereign and entirely independent of Italy.²²⁷ The Court’s order also stated that in any event “the Vatican system fully respects the indications found in Article 6 of the European Convention on Human Rights regarding due process.”²²⁸ Additionally, Article 1, no. 4 of Law XXI on the Sources of Law states that the judicial system also conforms to the norms of general international law *and* other treaties and accords that the Holy See has entered into unless proscribed by Canon Law.²²⁹

Yet another challenge was raised by the defense about the pope’s involvement in the underlying case itself and the inability of the defense to question or call him as a witness. First, it was the pope who gave the prosecutor’s office *carte blanche* to investigate.²³⁰ Second, after a videotaped deposition of Monsignor Alberto Perlasca (former Secretariat of State, former suspect in the case, and cooperating witness) was leaked to the press, his statements indicated that Pope Francis had authorized Perlasca to strike a deal with defendant Gianluigi Torzi.²³¹ Whether the pope had any information that could have exculpated, or at the very least called into question, the strength of the prosecutor’s case against any of the

²²⁴ *Id.* at 680, ¶ 29.

²²⁵ *Id.* at 678, ¶ 105; see Associated Press, *Closing Arguments in Vatican Trial Seek to Expose Problems in the City State’s Legal System*, U.S. NEWS (Nov. 22, 2023, 2:43 PM), <https://www.usnews.com/news/world/articles/2023-11-22/closing-arguments-in-vatican-trial-see-to-expose-problems-in-the-city-states-legal-system> [hereinafter, Associated Press, *Closing Arguments in Vatican*] (providing a detailed explanation of both the facts presented to Judge Baumgartner and his findings of material misrepresentations and non-disclosures).

²²⁶ See Winfield, *Vatican judge tosses defense motions as fraud trial advances*, *supra* note 213.

²²⁷ *Id.*

²²⁸ Cernuzio, *Trial in Vatican moves forward*, *supra* note 1; accord Winfield, *Vatican judges agree defense rights violated*, *supra* note 65.

²²⁹ ARRIETA, *supra* note 12, app. III. at 229.

²³⁰ Winfield, *Vatican judges agree defense rights violated*, *supra* note 65.

²³¹ Hannah Brockhaus, *Interrogation Tapes in Vatican Finance Trial Leaked to Media*, CATH. NEWS AGENCY (Dec. 3, 2021), <https://www.catholicnewsagency.com/news/249771/interrogation-tapes-in-vatican-finance-trial-leaked-to-media>.

defendants will never be known. The pope is protected by privilege and cannot be called to testify.²³²

Given that the pope seems to have played a part in at least some of the decision-making, coupled with the completely hierarchical nature of the Roman Curia, there is an argument to be made that any evidence of the pope's role in the deal would have been very relevant and necessary to the defense in accordance with section (d) of Article 6.

Article 6 also requires that “everyone is entitled to a fair and public hearing within a reasonable time by an *independent and impartial tribunal* established by law.”²³³ In Vatican trials generally, there also is a concern about the true independence of tribunal judges themselves. Other than the defense attorneys, everyone else involved in this case works for Vatican City and, more importantly, has been appointed or approved by the pope himself.²³⁴ Indeed, pursuant to Article 5 of Law CCCLI, passed in 2020, all judges must swear an oath which states, “*Giuro di essere fedele e obbediente al Sommo Pontefice, di adempiere con fedeltà e diligenza i doveri della mia carica e di conservare il segreto d’ufficio.*”²³⁵ Translated, this states, “I swear to be loyal and obedient to the Supreme Pontiff, to fulfill with loyalty and diligence the duties of my office and to maintain official secrecy.” In comparison, a federal court judge in the United States swears to “administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me . . . under the Constitution and laws of the United States.”²³⁶ Similarly, the oath of office for an Italian judge becoming a member of the Italian Constitutional Court requires an oath to observe the constitution and laws of Italy and to do what is in the best interests of the nation.²³⁷

Until April 2023, when the law was amended by a *Motu Proprio* issued by Pope Francis, Article 2 of Law n. CCCLI stated that the “magistrates depend hierarchically on the Supreme Pontiff” and that in the exercise of their functions they are subject only to the law.²³⁸ Article 2 also

²³² Allen Jr., *Pope’s chief of staff could undercut star witness*, *supra* note 95.

²³³ Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11, 14, and 15, art. 6, Nov. 11, 1950, 213 U.N.T.S. 221 (emphasis added).

²³⁴ See ARRIETA, *supra* note 12, at 102–03.

²³⁵ Legge 16 Mar. 2020, n. CCCLI (Vatican), https://www.vatican.va/content/francesco/it/motu_proprio/documents/papa-francesco-motu-proprio-20200313_legge-cccli-ordinamentogiudiziario.html.

²³⁶ See 28 U.S.C. § 453.

²³⁷ Presidenza della Repubblica Italiana Quirinale [Presidency of the Italian Republic], *Swearing in Ceremony for the New Justices of the Italian Constitutional Court*, YOUTUBE (Nov. 13, 2023), <https://www.youtube.com/watch?v=kl9-JhUobKU>.

²³⁸ L. n. CCCLI/2020 (Vatican).

stated that magistrates exercised their powers impartially on the basis and within the limits of the law.²³⁹ New language replaced the language in Article 4 by removing the reference to the magistrates' "hierarchical dependence on the Supreme Pontiff" and instead now states that Magistrates are *appointed* by the Supreme Pontiff and in the exercise of their function are subject only to the law.²⁴⁰ Thus while the Vatican tribunal judges are now more expressly defined as being impartial, there still remains a question about whether the judiciary can ever truly be independent in a papal monarchy.

CONCLUSION

Since its birth in 1929, Vatican City has undergone significant and positive changes in the regulation and prosecution of financial crimes. Those changes have caused growing pains as the Vatican plays a legislative and judicial game of catch-up. However, in the end, Vatican City does remain a papal monarchy. In the pope's dual role, he is faced with the difficult task of preserving the sanctity and authority of the Holy See while at the same time, attaining his goal of modernizing its offspring, Vatican City. Even assuming the pope's best intentions in trying to create a more modern transparent, fair, and independent criminal justice system for Vatican City, one wonders whether that is all truly attainable in the unique environment of a papal monarchy.

The role of the pope and the part he played in this trial cannot be ignored. Here, the pope exercised his lawful authority to approve the investigation against ten individuals, allegedly changed the law in secret decrees issued *motu proprio* to allow new investigatory methods to be used to intercept conversations, granted the Promoter of Justice the authority to use any necessary measures to obtain the evidence, and decided that, for the first time, a Cardinal should be tried before a Vatican City court. No one will ever know what was in the mind of the pope, but it seems rather evident that he wanted this case prosecuted. Everyone in his employ, including the Promoter of Justice and the Tribunal Judges must have known that too. Despite efforts to create independence between

²³⁹ *Id.*

²⁴⁰ VATICAN, *Lettera Apostolica In Forma Di "Motu Proprio" Revante Modifiche Alla Normative Penale e All'Ordinamento Giudiziario Dello Stato Della Citta Del Vaticano* [Apostolic Letter issued "Motu Proprio" of the Supreme Pontiff Francis amending the penal law and judicial system of the Vatican City State], (Apr. 12, 2023), https://www.vatican.va/content/francesco/it/motu_proprio/documents/20230412-motu-proprio-leesigenze.html.

the Holy See and the Vatican City/State, it seems impossible to do that completely given the pope's dual roles.

In looking at this trial holistically, the defense raised many issues about whether the due process rights of the defendants were violated. When the chief judge of the Tribunal Court refers to the trial as a "construction zone," and one of the leading canon law experts within the Vatican is on the record as stating that the Vatican "is learning how to deal with prosecuting crimes," one is left to wonder whether the learning curve itself had an impact on the defendants' rights to a fair trial.²⁴¹ From the start of the preliminary investigation to the trial, there were procedural errors by the prosecution, confusion about the applicable law, refusal by the prosecution to turn over evidence to the defense, inability of the tribunal judge to enforce rulings against the prosecution, inability of the defense to gain access to evidence, and an overall question about the independence of a court in a papal monarchy. The Office of the Promoter of Justice has wielded enormous powers during this trial and has not been subject to judicial oversight. The Tribunal Court should have the authority to compel the Promoter of Justice to turn over evidence. The Court should also have the authority to preserve an accused's fundamental rights. However, the Tribunal Court does not have the authority to do either. There is no question that Pope Francis has ushered in an era of substantial changes to Vatican City's criminal investigations and the prosecution of financial crimes. There also appears to be an effort by the pope to be more transparent and to follow more international norms in the financial crimes arena. However, this recent trial suggests that there is more work to be done if Vatican City is going to take on the challenge of trying more cases internally and if the pope's goal is to truly modernize Vatican City's criminal justice system.

²⁴¹ Claire Giangravé, *Vatican Legal Expert Says the Vatican 'Is Learning' When it Comes to Penal Trials*, RELIGIOUS NEWS SERV. (May 24, 2022), <https://religionnews.com/2022/05/24/vatican-legal-expert-says-the-vatican-is-learning-when-it-comes-to-penal-trials/>. Bishop Arrieta, cited in the *Religion News Service* article, has served as Secretary of the Pontifical Council of Legislative Texts since 2007 and is the author of *Vatican State Law*, which is cited throughout this Article. *Juan Ignacio Arrieta*, Midwest Theological F., <https://www.theologicalforum.org/authors/juan-ignacio-arrieta/> (last visited Sept. 6, 2024).