

**THE LEGAL SYSTEM
OF VATICAN CITY**

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CHAPTER TWELVE

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CHAPTER TWELVE

THE LEGAL SYSTEM OF VATICAN CITY

§ 1.1. Introduction.

§ 1.1(A). Size.

Vatican City is the smallest state in the world, measuring only 108 acres, and is located entirely within the city of Rome.¹ Vatican City serves as the governmental and spiritual center of the Roman Catholic Church.² High stone walls surround most of the state whose aerial view is dominated by Saint Peter's Basilica, the largest Christian Church in the world,³ and Saint Peter's Square, site of the assassination attempt on the life of Pope John Paul II on May 13, 1981.⁴ Vatican City also has extraterritorial jurisdiction over **Castel Gandolfo**, the papal summer residence near Rome, and many other churches and buildings in Rome, including the Basilica of Saint John Lateran and the palace of San Callisto.⁵ The population of Vatican City fluctuates around 1,000 people.⁶

§ 1.1(B). Economy.

Vatican City does not have an "economy" in the sense that one would use the term when speaking of larger nations; but, it does have a rudimentary economic infrastructure which includes a postal, telegraph, telephone and railroad system.⁷ The Vatican also has its own flag, seal, stamps and coinage.⁸ The Vatican communicates with the world through its powerful radio transmitter, which broadcasts news and papal messages in thirty languages, or through one of several publications produced at its printing plant.⁹ The Vatican publishes **L' Osservatore Romano**, an influential daily newspaper, **Osservatore della Domenica**, a weekly publication, and the **Acta Apostolicae Sedis**, a collection of official church documents.¹⁰

§ 1.1(C). International Relations.¹¹

Vatican City is an active member of the community of nations with observer status at the United Nations' offices in New York and Geneva, the United Nations Food and Agricultural Organization, the United Nations Educational, Scientific, and Cultural Organization, and the Organization of American States. Also, the Vatican maintains a member delegate at the International Atomic Energy Agency and the United Nations Industrial Development Organization, and it is a member of the Universal Postal Union and the International Telecommunications Union.

Beyond its affiliations with international organizations, Vatican City maintains diplomatic relations with the European Community and 106 nations, including every major power except the Soviet Union and China. In 1982, Britain established relations with the Vatican at the ambassadorial level for the first time in over 400 years.¹² On January 10, 1984, the United States and the Holy See¹³ announced the establishment of full diplomatic relations for the first time since 1867, when turmoil in Italy and rising anti-Catholicism in the U.S. led Congress to eliminate such relations.¹⁴ This recent action has raised the question of whether diplomatic relations with the Vatican violates the U.S.

Constitution's separation of church and state. The White House insists that the United States is recognizing Vatican City as a political entity and not as headquarters of the Roman Catholic Church.¹⁵ But, opponents are sure to argue that Vatican City, as a political entity, is inseparable from the Holy See.¹⁶

§ 1.2. History.¹⁷

§ 1.2(A). In General.

Prior to the mid-nineteenth century, the Popes controlled territory located in central Italy, including Rome, referred to as the Papal States. A dispute arose in 1861 between Italy, which had recently become politically unified, and the papacy, after the Italian Chamber of Deputies proclaimed Rome the capitol of the Italian state. The dispute culminated in an armed takeover of Rome by Italy's Giuseppe Garibaldi and his troops,¹⁸ marking the beginning of a sixty-year chill in the relations between the papacy and the Italian government that became known as the "Roman Question."¹⁹ In 1871, the Italian government sought to assure Catholics throughout the world that it did not intend to interfere with the free communication between the Holy See and the diplomatic corps, the hierarchy and Catholics in general.²⁰ This promise was set forth in the Law of Guarantees.²¹ Pope Pius IX (1846-78) and Pope Leo XIII (1878-1903) both maintained an intransigent position toward the Italian government's attempts at conciliation because they feared that any action might imply their acceptance of the spoliation of the papal states.²² Beginning with Pope Pius X (1903-14), a rapprochement period ensued which eventually led to the signing of the Treaty of the Lateran ("the Lateran Pacts") in 1929. The Lateran Pacts established Vatican City as an independent and sovereign state and concluded a concordat regulating church-state relations.²³ The Lateran Treaty went into effect on June 7, 1929, the same day that Vatican City published its constitution, the "Fundamental Laws of the City of the Vatican" (the "Fundamental Laws").²⁴

§ 1.2(B). Italian-Vatican Concordat of 1984.

On February 17, 1984, the Vatican City signed a new agreement with Italy which continues to recognize Vatican City as an independent and sovereign state, run by the Pope, in the middle of Rome. But it represents a diminishing hold which the Roman Catholic Church has on civil life in Italy.

The document was signed by Italian Prime Minister Bettino Craxi and the Vatican secretary of state, Cardinal Agostino Casaroli, in a stately ceremony in the Villa Madama, a 16th-century palace that once belonged to Pope Clement VII and is not owned by the Italian government.

The new 14-article concordat was a result of negotiations that began formally in 1967, when the Italian Parliament authorized them. Revisions of the original concordat, concluded between Pope Pius XI and Mussolini, had been under almost continuous discussion since its signing in 1929. Mussolini had sought to gain the church's support for his Fascist regime by granting the Vatican many special privileges.

Among other things, the new concordat:

- (1) Eliminates Roman Catholicism as the state religion of Italy. More than 90% are baptized Catholics;
- (2) Makes church annulment of marriages subject to state confirmation and requires parents to choose each year whether they want their child to participate in religion

- classes that will continue to be offered in schools. In the past, attendance in the religion classes was compulsory unless an exemption had been requested;
- (3) Removes Rome's formal status of "sacred city" which had allowed the Vatican to object to such innovations as strip-tease shows and pornographic publications or performances. In implicit surrender to changing mores, the Vatican in recent years had not often acted on this privilege;
 - (4) Removes from Vatican control the Jewish catacombs of Rome and southern Italy. Vatican excavations in the burial places of the early Jewish communities, removals of artifacts and control over access had been a source of Jewish-Catholic friction. The Jewish catacombs will now come under Italian government control, and Jewish communities hope for free access to the sites. The Christian catacombs, on the Appian Way, will still be owned by the Vatican;
 - (5) Italy and the Vatican will continue to jointly maintain religious art and buildings in Italy; and
 - (6) Continues to grant exemption for priests from Italian military service, and Italy will continue to pay part of the priests' salaries.

Finally, the agreement set aside the thorny issue of the amount of taxation on church property by appointing a joint commission to report back in six months from February 17, 1984.

§ 1.3. The "Fundamental Laws."²⁵

The constitution is divided into six basic laws that describe in detail the structure and operation of Vatican City's government. The title of subsections 1.3(A)-(F) of this section corresponds to the name of each of the six basic laws. The constitution is amended by the "Supplement for Laws and Regulations of the Vatican City State" (the "Supplement") enacted on June 24, 1969.²⁶

§ 1.3(A). "Fundamental Law of the City of the Vatican" (the "first law").²⁷

The first law sets forth the distribution of governmental powers. Full legislative, executive and judicial power is vested in the Pope. Although the exercise of governmental power is delegated to a large extent to other officials, the first law reserves direct power for the Pope over the following: (1) the organs and tribunals of the Holy See; (2) the papal court, which includes the famous Swiss Guards who protect the Pope and serve as sentries;²⁸ (3) the representation of the State in foreign affairs through a Secretary of State; (4) the administration of certain special agencies, such as the printing office; and (5) the approval of administrative budgets and accounts.

§ 1.3(A) (1). Executive and Legislative Power.

The Pope is to exercise his executive and legislative power through the Commission of Cardinals which is appointed by him to serve a five-year term.²⁹ The Commission consists of three cardinals and a secretary.³⁰ This delegation of power is different from the delegation contained in the original constitution which gave the Governor the executive and a special legislative power; the right to issue regulations and ordinances; and the responsibility for presenting the administrative budgets and accounts to the Pope. Today, a Special Delegate, appointed by the Pope, exercises the executive power; assists the Commission of Cardinals; and performs all functions which previously were assigned to the Governor, except the promulgating of regulations.³¹

The consultative organ of Vatican City is the General Counselor, who is appointed by and can be removed by the Pope. The General Counselor must give advice when required by the Pope or the Governor, or where prescribed by law. Petitions claiming damage to one's rights or interests, and requests for pardons, are addressed to the Pope through the General Counselor. Finally, the General Counselor, along with the Special Delegate, is required to participate at the meetings of the Commission of Cardinals, and they both are given an advisory vote.³²

Although the Pope's legislative and executive powers are extensively delegated to others, he retains ultimate power not only by express provision in the constitution but also indirectly through his power over the appointment and removal of the officials discussed in this section. Also, in the event of a papal vacancy, any legislative disposition by the College of Cardinals prior to the election of a new Pope is subject to later confirmation by the newly elected Pope.³³

§ 1.3(A) (2). Judicial Power.

The judicial power is delegated to six places: (1) administrative officers designated by the Governor; (2) a single judge of the tribunal of first instance; (3) the full tribunal of first instance; (4) the Sacred Roman Rota;³⁴ (5) the Supreme Tribunal of the Signature; and (6) the Pope himself. Cases are heard as civil or penal matters. Penal matters are classified as infractions or crimes, with most criminal cases being prosecuted by the Italian government.³⁵

The tribunal of first instance is composed of a president who also serves as a judge, two additional judges, and an alternate. The tribunal of first instance has original jurisdiction over civil matters that require action by the full tribunal and penal matters that involve crime which are not prosecuted by the Italian government. For penal matters that are classified as infractions, the Governor designates an administrative officer to hear the case.

Appeals from sentences for infractions are sent to the president of the tribunal of first instance with no further appeal possible. Appeals from judgments in civil matters and in penal matters that involve crime are sent to the Sacred Roman Rota. In extraordinary cases, further appeal is permitted to the Supreme Tribunal of the Signature. The Supreme Tribunal of the Signature also exercises disciplinary power over judicial personnel, although the Pope is responsible for the appointment and removal of judicial personnel. The Pope also retains the right to refer any civil or penal case to a special commission with the power to render a sentence conforming to equity and to exclude further recourse.

Other judicial offices are filled by the president of the tribunal of first instance, who appoints a fellow judge to function as examining magistrate, and the Dean of the Sacred Roman Rota, who appoints a consistorial advocate to the positions of state's attorney and solicitor.

§ 1.3(B). "Law of the Source of the Law" (the "second law").³⁶

Vatican City derives its laws from three sources: (1) the *Codex juris canonici* (canon law)³⁷ and the apostolic constitutions; (2) the laws and regulations promulgated by the Pope or other competent authority; and (3), in a supplementary manner, the laws of Italy and the regulations of Rome as modified by the Vatican City constitution and to the extent that they are not contrary to divine law, canon law, the Lateran treaty and the concordat governing church-state relations. Most of the provisions of the second law work to integrate these three sources of law. For example, article 7 of the second law

adopts the Italian code of penal procedure but makes exceptions to the code with respect to the competence of tribunals. Also, although the Italian civil code is adopted, marriage is exclusively regulated by canon law, adoption is authorized by the Pope himself, and a host of other modifications are set forth. Finally, for any gaps left in the sources of law discussed, the judge in civil cases is permitted to apply the principles he would follow if he was a legislator while relying on the precepts of divine and natural law and the principles of canon law; and, in penal cases, the judge may fine or imprison a person within the limits set forth for a violation of the principles of religion or morality, the public order, or the security of persons or things.

§ 1.3(C). “Law on the Rights of Citizenship and Sojourn” (the “third law”).³⁸

The citizenry of Vatican City can be divided into four groups: (1) Cardinals residing in Vatican City or in Rome; (2) persons residing in Vatican City due to their rank, office, service or employment; (3) persons residing in Vatican City as authorized by the Pope for any reason he deems sufficient; and (4) the spouse, children, parents or siblings of a Vatican citizen subject to the restrictions set forth in the remainder of the third law.

The third law also governs entry to and exit from Vatican City. Non-citizens must obtain authorization to enter Vatican City and must keep the authorization on them at all times. Special provision is made for collective authorization for the entry of groups of persons.

§ 1.3(D). “Law on Administrative Organizations” (the “fourth law”).³⁹

The fourth law sets forth specific rules governing administrative acts which include: (1) the power of the Pope to annul administrative acts; (2) the rights of citizens to attack administrative acts; (3) the powers of the Governor to direct the administration of the state; (4) the punishment of officers or employees who fail to fulfill their responsibilities; (5) the oath of allegiance that must be taken by all dignitaries, officers, and employees; and (6) the signing of contracts with Vatican City.

§ 1.3(E). “Law on Economic, Commercial, and Professional Organization” (the “fifth law”).⁴⁰

Economic, commercial and professional organization is highly regulated in Vatican City. Authorization of the Governor is needed for the alienation of property, for leases and subleases, and for the transfer of real property by lawful succession or by testamentary disposition. The purchase for resale of merchandise or commodities is reserved as a monopoly to the state and individuals are permitted to bring products into Vatican City for personal consumption or use only. Exports are also forbidden unless the amount of property removed is the usual quantity needed for a journey or the individual is giving up residence in Vatican City. Individuals seeking to practice a profession also must obtain the authorization of the Governor. In all cases in which authorization of the Governor is required, penalties are explicitly set forth for noncompliance. Once authorization is received, the operation of the business bureau or the commercial or industrial enterprise must be in accord with the provisions of the legislation of the Kingdom of Italy subject to the modifications listed in the fifth law.

§ 1.3(F). “Law of Public Security” (the “sixth law”).⁴¹

The sixth law states that the “Governor watches over the maintenance of public order.

the security of citizens, the integrity of their persons, the protection of their property, the safeguarding of their possessions, and the public hygiene and morality." In his pursuit of this mandate, the Governor may take "measures he deems advisable." Any associations not related to religious orders or to congregations and associations provided for by the **Codex juris canonici**, any public meetings, or any private meetings that are public in nature are expressly forbidden unless previously authorized by the Governor. It is also forbidden to hold arms or weapons of war without the authorization of the Governor. Finally, the public exercise of all forms of printing is also forbidden unless authorized by the Governor. Violations of any of these provisions are subject to fine or imprisonment as set forth in the sixth law.

§ 1.4. Conclusion.

Vatican City is a unique entity among the nations of the world. Although it is the smallest state in the world, its leader, the Pope, speaks to one of the largest audiences in the world, the 790 million members of the Roman Catholic Church.⁴² Nevertheless, Vatican City is also quite similar to all nations in that it must deal with the problems of governing a populace through a proper distribution of the traditional executive, legislative, and judicial powers.

§ 1.5. Recent Developments.*

§ 1.5(A). Pope Gains EC Approval to Continue Minting Money.

In a declaration submitted with the EC's draft Economic and Monetary Union Treaty, the EC said that it would not disrupt monetary dealings between the Vatican and Italy until the introduction of the European Currency Unit as the single currency. In addition, the declaration states that similar monetary dealings with Italy and San Marino and between Monaco and France can continue for the present time.

* The editors wish to thank Liz Higginbotham, J.D. candidate, for her work on this update.
Revised 5/93

FOOTNOTES

1. 14 *New Catholic Encyclopedia* 555 (1981 edition).
2. 20 *World Book Encyclopedia* 228 (1980 edition).
3. *Id.*
4. *New York Times*, May 14, 1981, at 1, col. 6. For a discussion of the trial, see *infra* note 35.
5. 19 *Academic American Encyclopedia* 526 (1983 edition).
6. 14 *New Catholic Encyclopedia* at 527.
7. 20 *World Book Encyclopedia* at 229. The railroad "system" is in actuality only 300 yards of track that carries freight in from the Italian railroad. *Id.*
8. *Id.*
9. *Id.* at 230.
10. *Id.*
11. Unless otherwise noted, the information in § 1.1(C) was obtained from 2 *Countries of the World* 1175 (1983).
12. *U.S. News & World Rep.*, Jan. 23, 1984, at 11.
13. The Holy See is a separate entity in international law and is the supreme directive organ of the Roman Catholic Church. 14 *New Catholic Encyclopedia* at 555. William Wilson became the American Ambassador to the Holy See and Archbishop Pio Laghi was named the Vatican Ambassador (Papal Nuncio) to the United States.
14. *Supra* note 12.
15. *Id.*
16. "Vatican City and the Holy See are distinct entities, both recognized internationally as such, and subjects of international law; but they are indissolubly united in the person of the pope, who is at once ruler of the state and head of the Catholic Church. Although the former is temporal in its purpose and the latter is spiritual, this intimate union prevents Vatican City's being restricted to purely political purposes. The Holy See exercises sovereignty over Vatican City, not for the advantage of the state itself, but for the higher interest of the Church. This state was created with temporal sovereignty primarily to assure independence of spiritual action to the Holy See. Vatican City is thus a means to a higher end, an instrument of another preexisting juridical subject, from which it cannot be separated. The close union with the Holy See imports to this miniscule state its great importance; it also makes it juridically and politically unique in the world."
- 14 *New Catholic Encyclopedia* at 559. See also *Newsweek*, Jan. 23, 1984, at 64.
17. Unless otherwise noted, the information in § 1.2 was obtained from 12 *New Catholic Encyclopedia* 607, 608 (1981 edition).
18. *Washington Post*, Feb. 19, 1984, at A29, col. 6.
19. The Roman Question is discussed in greater length in 12 *New Catholic Encyclopedia* at 607.
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 608.
24. 14 *New Catholic Encyclopedia* at 555.
25. 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican," 1-25 (A. Blaustein & E. Blaustein eds. 1976).
26. 5 *Constitutions of Dependencies and Special Sovereignties*, "Acts of the Apostolic See, Supplement for Laws and Regulations of the Vatican City State," 28-31 (A. Blaustein & E. Blaustein eds. 1976).
27. Unless otherwise noted, the material in § 1.3(A) was obtained from 5 *Constitutions of Dependencies and Special Sovereignties* pp. 1-4.
28. 20 *World Book Encyclopedia* at 229.
29. *Supra* note 26, at 28.
30. 14 *New Catholic Encyclopedia* at 557.
31. *Supra* note 26, at 29.
32. *Id.*
33. 11 *New Catholic Encyclopedia* 573 (1981 edition). When there is a papal vacancy, the Dean of the Sacred College of Cardinals has a duty to notify all cardinals of the vacancy and to summon them to the election of a new Pope. *Id.* After a maximum period of 18 days following the vacancy, the cardinals that are present enter the conclave to begin the election. *Id.* The conclave is sealed to outsiders and the cardinals do not leave until a new Pope is elected. *Id.* The conclave system came about in 1274 A.D. as an attempt to secure a more rapid papal succession. *Id.* The ordinary manner of electing a Pope is by ballot and a candidate must receive two-thirds of the cardinals' votes. *Id.* The Pope-elect has the option to not accept his election if he so desires. *Id.* at 574. The

new Pope then selects a new name. *Id.* Pope John Paul II, formerly Cardinal Karol Wojtyla of Krakow, Poland, is the 263rd successor of St. Peter. U.S. News & World Rep., Oct. 17, 1983, at 51.

34. The Sacred Roman Rota is a tribunal of the Holy See and, as such, has no territorial limits to its competence in ecclesiastical cases. 12 *New Catholic Encyclopedia* at 684. In 1964, the Rota had 17 auditors (judges) from nine countries. *Id.* The Rota serves as a collegiate court of appeals from judgments rendered by diocesan or metropolitan tribunals, 4 *New Catholic Encyclopedia* at 539, and hears primarily ecclesiastical cases, most of which deal with matrimonial matters. 12 *New Catholic Encyclopedia* at 684. The diocesan and metropolitan tribunals are the judicial organs of a diocese and archdiocese, respectively. 4 *New Catholic Encyclopedia* at 536. As an example of how a case might come before the Rota, one might trace the path of a plaintiff seeking to have a marriage declared null and void. A formal trial would be held before a diocesan tribunal and, if plaintiff is successful, a sentence declaring the marriage null and void is handed down. *Id.* at 537. The defender of the marriage bond is then required to appeal the decision to the metropolitan tribunal. *Id.* If the metropolitan tribunal also declares the marriage null and void, the defender of the marriage bond cannot appeal to the next level, which is the Rota, unless they can offer "new and cogent arguments or documents." 12 *New Catholic Encyclopedia* at 684. If the metropolitan tribunal fails to declare the marriage a nullity, plaintiff may appeal to the Rota because two concordant sentences have not been rendered. *Id.* At least two tribunals must declare the marriage a nullity before plaintiff may remarry. 4 *New Catholic Encyclopedia* at 537. However, "in both the United States and Australia the bishops' conference has the right to waive a second trial of the marriage's validity . . ." *Time*, Feb. 7, 1983, at 52.

35. For example, the trial of Mehmet Ali Agca, the man who attempted to assassinate Pope John Paul II, took place in an Italian court. Agca challenged Italian jurisdiction over his case and wanted his trial to take place in Vatican City, but Italian judge Severino Pantiapichi ruled that Italian jurisdiction was authorized by the 1929 Lateran treaty. *N.Y. Times*, July 26, 1981, at IV-2, col. 1. Agca eventually boycotted the trial. *N.Y. Times*, July 23, 1981, at A-1, col. 5. The defense had argued that the court had jurisdiction only if the Vatican had either extradited the accused or had formally delegated to Italy the right to prosecute him. *N.Y. Times*, July 26, 1981, at IV-2, col. 1. However, it was reported that Italy may punish persons for crimes committed within Vatican City upon a simple request by the Vatican. *N.Y. Times*, July 22, 1981, at A-6, col. 1. Two judges and six jurors conferred together for six hours before handing down the guilty verdict. *Id.* The presiding judge clarifies questions of law while the second judge sums up the prosecution's and the defense's case, and answers the lay jurors' questions by referring to the transcripts of the proceeding, the testimony of witnesses, and the pretrial investigations and depositions. *Id.* Agca was sentenced to life imprisonment, which is mandatory under Italian law for an attempt to kill the president or a foreign head of state. *Id.* However, Agca may be eligible to be freed under police surveillance after 28 years. *N.Y. Times*, July 23, 1981, at A-1, col. 5.

36. Unless otherwise noted, the information in § 1.3(B) was obtained from 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican," Blaustein and Flanz, at 4-12.

37. The canon law code was recently revised substantially in 1983 for the first time since 1917. For a report on some of the changes made by the new code, see *Time*, February 7, 1983, at 52.

38. Unless otherwise noted, the information in § 1.3(C) was derived from 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican" at 12-17.

39. Unless otherwise noted, the information in § 1.3(D) was derived from 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican" at 17-20.

40. Unless otherwise noted, the information in § 1.3(E) was derived from 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican" at 20-23.

41. Unless otherwise noted, the information in § 1.3(F) was derived from 5 *Constitutions of Dependencies and Special Sovereignties*, "Fundamental Laws of the City of the Vatican" at 23-25.

42. U.S. News & World Rept., Jan. 23, 1984, at 11.