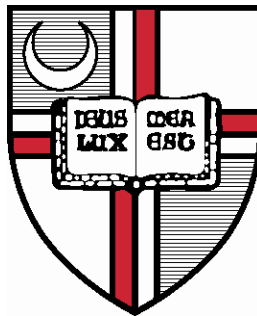


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**Separating State from Church: A Research Guide to the Law
of the Vatican City State**

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Separating State from Church: A Research Guide to the Law of the Vatican City State*

Stephen E. Young** and Alison Shea***

Mr. Young and Ms. Shea discuss the unique situation of the Vatican City State in legal research. They provide an overview of the founding documents and the constitutional structure of the world's smallest sovereign nation, a discussion of the complex nature of the Vatican's international status, and a bibliographic essay covering the materials most likely to be available in law libraries in the United States.

¶1 The Vatican City State (VCS), an enclave of Rome and a sovereign monarchical-sacerdotal state comprising slightly less than nine hundred individuals,¹ presents a difficult challenge for the legal researcher wishing to separate the affairs of the city state from those of the Catholic Church. The VCS is a distinct legal jurisdiction, but the inexorable intertwining of the Church—in the form of the Holy See²—with the VCS only serves to obfuscate the jurisdictional boundaries that

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1. U.S. CENTRAL INTELLIGENCE AGENCY, *Holy See (Vatican City)*, in THE WORLD FACT BOOK 2006, at 249 (2006), available at <https://www.cia.gov/cia/publications/factbook/geos/vt.html>.

2. The Holy See is the term used to designate Rome as the seat (“sedes” in Latin) of the Pope. B. Forshaw, *Holy See*, in 7 NEW CATHOLIC ENCYCLOPEDIA 44 (2d ed. 2003).

lie between church and city state.

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

The Lateran Treaty

¶3 The VCS came into existence as a sovereign nation in 1929 with the signing of the Lateran Treaty between the Holy See and the Kingdom of Italy.³ The signing effectively ended the “Roman Question,”⁴ the decades old tension between the Catholic Church and the nation of Italy. Prior to the treaty, the relationship between the Church and the country was governed by the Law

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3. Treaty of the Lateran, Feb. 11, 1929, Italy-Vatican City, O.V.T.S. 161, Europ. T.S. No. 590019, *reprinted in* 23 AM. J. INT’L L. SUP. 187 (1929), *in* 3 AMOS PEASLEE, CONSTITUTIONS OF NATIONS 668 (2d ed. 1956), *and in* *Vatican City: Commentary, Constitution and Basic Documents*, *in* 7 CONSTITUTIONS OF DEPENDENCIES AND TERRITORIES 13 (Philip Raworth ed., 2002) [hereinafter *Lateran Treaty*]. For a translated version that includes the various appendixes and maps that accompany the treaty, see HYGINUS EUGENE CARDINALE, THE HOLY SEE AND THE INTERNATIONAL ORDER 319 (1976). For the original Latin version, together with maps displaying the boundaries of the city state, see 21 ACTA APOSTOLICAE SEDIS 209 (1929).
 4. For discussions of the “Roman Question,” see CARDINALE, *supra* note 3, at 99–101; Carlo Lottieri, Vatican City as a Free Society: Legal Order and Political Theology 2 (Ludwig Von Mises Institute Working Paper, July 19, 2005), *available at* <http://www.mises.org/journals/scholar/lottieri2.pdf>.

of Papal Guarantees,⁵ an Italian law that allowed the Pope a certain amount of autonomy within the borders of Italy.

¶4 The Lateran Treaty consisted of three separate documents spread over twenty-seven articles and four annexes: an agreement acknowledging the Vatican as an independent state, also known as the Treaty of Conciliation; a concordat on church state relations between the city state and Italy;⁶ and a financial convention liquidating the financial claims of the Holy See against Italy.⁷ In signing the treaty, Italy ceded 108.7 acres of Rome to the Holy See, thus creating the world's smallest sovereign nation.⁸ At the signing, Pope Pius XI was represented by Cardinal Pietro Gasparri, papal secretary of state, while King Emanuel III was represented by Benito Mussolini, prime minister of Italy.⁹ The Lateran Treaty was incorporated into the Italian Constitution sixteen years later in 1947.¹⁰

¶5 Following a lengthy deliberative process,¹¹ the Lateran Treaty was substantially amended in 1984 with the signing of a concordat between the Holy See and the Republic of

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5. Law of Papal Guarantees, Law No. 214, May 13, 1871, 31 Racc. Uff. 1014 (1892), *reprinted in* 1 SHERSTON BAKER, HALLECK'S INTERNATIONAL LAW 142 (3d ed. 1893).
 6. *See* MARIA ELISABETTA DE FRANCISCIS, ITALY AND THE VATICAN: THE 1984 CONCORDAT BETWEEN CHURCH AND STATE 56 (1989).
 7. *Id.* at 55.
 8. 12 THE NEW ENCYCLOPÆDIA BRITANNICA 280 (15th ed. 2002). Under the terms of article 14, the Vatican also has extraterritorial jurisdiction over Castel Gandolfo, one of the Pope's residences located outside of Rome. In addition, Italy handed over the rights to numerous other buildings and parcels of land in and around Rome. The Vatican also controls the air space above the city state.
 9. Lateran Treaty, *supra* note 3, preamble.
 10. CARDINALE, *supra* note 3, at 103.
 11. *See* DE FRANCISCIS, *supra* note 6, *passim* (extensively discussing political development of the concordat).

Italy.¹² Although the status of the Vatican as a sovereign state was unaffected by the concordat, the document served to establish the independence of the Italian state from the Holy See, and thereby from the Catholic Church.¹³ The concordat was signed on February 18, 1984, and came into force on June 3, 1985.¹⁴

The Constitutional Laws

¶6 On the same day that the Lateran Treaty was signed, the VCS adopted a constitution in the form of six constitutional (or fundamental) laws:¹⁵ Fundamental Law of the City of the Vatican;¹⁶ Law of the Source of Laws;¹⁷ Law on the Rights of Citizenship and Sojourn;¹⁸ Law on Administrative Organization;¹⁹ Law on Economic, Commercial, and Professional Organization;²⁰

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12. A concordat is defined as “[a]n agreement between a government and a church, esp. the Roman Catholic Church.” BLACK’S LAW DICTIONARY 308 (8th ed. 2004). For the text of the 1984 Concordat, see RAWORTH, *supra* note 3, at 19.
 13. JORRI DUURSMAN, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES: SELF-DETERMINATION AND STATEHOOD 395 (1996).
 14. *Id.*
 15. Constitutional Laws of the City of the Vatican (June 7, 1929), *reprinted in* 3 PEASLEE, *supra* note 3, at 677. The Italian text of the Constitutional Laws is at 21 ACTA APOSTOLICAE SEDIS SUPPLEMENTO 1 (1929). Although the six fundamental Laws were signed on June 7, 1929, they were promulgated one day later, June 8, 1929. CARDINALE, *supra* note 3, at 103.
 16. Fundamental Law of the City of the Vatican (June 7, 1929), *reprinted in* 3 PEASLEE, *supra* note 3, at 677.
 17. Law of the Sources of the Law (June 7, 1929), *reprinted in id.* at 679.
 18. Law on the Rights of Citizenship and Sojourn (June 7, 1929), *reprinted in id.* at 687.
 19. Law on Administrative Organization (June 7, 1929), *reprinted in id.* at 691.
 20. Law on Economic, Commercial, and Professional Organization (June 7, 1929), *reprinted in id.* at 694.

and Law of Public Security.²¹ Under the second of these laws, the sources of VCS law were comprised of the *Codex Iuris Canonici* (Canon Law Code),²² and “[t]he laws promulgated for the City of the Vatican by the Sovereign Pontiff or by any other authority delegated by him, as well as the regulations lawfully issued by the competent authority.”²³ Article 3 of this law also allowed for the use of Italian law as well as provincial and municipal Roman law when they did not conflict with canon law, the rules of the Lateran Treaty (and, later, the 1984 Concordat), or divine law.²⁴

¶7 Much of the Law of the Sources of the Law is devoted to synthesizing these three sources into a unified set of laws for the city state. Certain parts of Italian law are specifically mentioned in various articles of this law. These include the Italian Penal Code, Code of Penal Procedure, Civil Code, Code of Civil Procedure, and various national and local laws relating to public works, transportation, telecommunications, and health and sanitation.²⁵

¶8 The constitutional laws were extensively revised in 2000 when an ad hoc legal commission was established by Pope John Paul II.²⁶ The commission was charged with updating the Fundamental Law of the City of the Vatican so as to reflect modifications that had been made

21. Law of Public Security (June 7, 1929), *reprinted in id.* at 697.

22. The canon law code at the time of the Constitutional Laws was *Codex Iuris Canonici*, 9 ACTA APOSTOLICAE SEDIS 3 (1917), which was effective from 1917 to 1983. This was replaced by *Codex Iuris Canonici*, 85 ACTA APOSTOLICAE SEDIS 1 (1983), effective Nov. 27, 1983.

23. Law of the Sources of the Law, *supra* note 17, at art. 1.

24. *Id.* at art. 3.

25. *Id.* at art. 4–20.

26. *New Fundamental Law Promulgated for Vatican City State*, L’OSSERVATORE ROMANO (English Language Weekly Edition), Feb. 14, 2001, at 5.

to the VCS's legal system since 1929.²⁷ The preamble to the new law describes the Pope as having "taken note of the need to give a systematic and organic form to the changes introduced by successive stages into the legal system of Vatican City State."²⁸ The new law, which took effect on February 22, 2001, is primarily devoted to prescribing the powers and duties of the VCS's branches of government.²⁹ From the perspective of the legal researcher, the new law more clearly delineates between the powers delegated to the legislative branch and those delegated to the executive branch.³⁰ The civil judicial system remained largely unaffected by the new Fundamental Law, due in large part to recent reforms.³¹ In addition to the articles outlining the responsibilities of the various branches of government, there are articles devoted to topics such as security,³² labor disputes,³³ amnesties and pardons,³⁴ and the state flag.³⁵

The Sources of Law

¶9 As previously described, the sources of law for the VCS were initially outlined in articles 1

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- 27. *See, e.g.,* Law on the Governance of the Vatican City State, 61 ACTA APOSTOLICAE SEDIS SUPPLEMENTO 1 (1969).
 - 28. *New Fundamental Law Promulgated for Vatican City State, supra* note 22.
 - 29. Fundamental Law of the State of the Vatican City (Feb. 22, 2001), *reprinted in Vatican City: Commentary, Constitution and Basic Documents, supra* note 3, at 3 [hereinafter 2001 Fundamental Law].
 - 30. *See id.* at art. 3–13.
 - 31. *See* Law on Judicial Organization, 79 ACTA APOSTOLICAE SEDIS 1353 (1987), *reprinted in* L'OSSERVATORE ROMANO, Nov. 29, 1987, at 4, *and in* 19 COMMUNICATIONES 174 (1987).
 - 32. 2001 Fundamental Law, *supra* note 29, at art. 14.
 - 33. *Id.* at art. 18.
 - 34. *Id.* at art. 19.
 - 35. *Id.* at art. 20.

and 3 of the Law of the Sources of Law of 1929, and over the years they have become solidified in the legal system.³⁶ These sources are laws promulgated by the Supreme Pontiff, the Pope; the Code of Canon Law; and laws of the Republic of Italy and the city and region of Rome.³⁷

Laws of the Supreme Pontiff

¶10 The VCS is a unique entity in that the state's monarch is also the spiritual leader of the Roman Catholic Church throughout the world.³⁸ As the elected absolute temporal monarch of the state, the Pope has full legislative, executive, and judicial authority over the jurisdiction.³⁹ The Pope delegates most of this authority to a variety of organs within the Vatican City, all of whose members may be appointed or removed at the discretion of the Pope.⁴⁰ The powers and duties of these various organs are described in detail later in this article.

¶11 In the absence of the Pope, as for instance following the death of Pope John Paul II on April 2, 2005, and the election of his successor, Pope Benedict XVI on April 19, 2005, the state is under the authority of the Sacred College of Cardinals.⁴¹ This body consists of all the cardinals in the Roman Catholic Church. Although it has the authority to administer and oversee the

36. DUURSMA, *supra* note 13, at 380–81.

37. Law of the Sources of the Law, *supra* note 17, at art. 1.

38. Robert B. Shelledy, *Vatican City*, in 4 LEGAL SYSTEMS OF THE WORLD 1734, 1736 (Herbert M. Kritzer ed., 2002).

39. 2001 Fundamental Law, *supra* note 29, at art. 1.

40. L. Barbarito, *Vatican City*, in 14 NEW CATHOLIC ENCYCLOPEDIA, *supra* note 2, at 401.

41. 2001 Fundamental Law, *supra* note 29, at art. 1, § 2. This provision was derived from § 23 of the Pope's 1996 apostolic constitution. APOSTOLIC CONSTITUTION, *Universi Dominici Gregis* Part 1, ch. 3, § 23 (Feb. 22, 1996) [hereinafter *Universi Dominici Gregis*], available at http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_22021996_universi-dominici-gregis_en.html.

operations of the VCS, its actions during this time are reviewable by the incoming Pope.⁴²

¶12 Laws of the Supreme Pontiff, either directly or through the delegated powers of one of the organs of the state, can take a variety of forms, including acts and regulations for the VCS, apostolic constitutions,⁴³ and conventions and agreements with other states.⁴⁴

The Code of Canon Law

¶13 Often referred to by its Latin name, *Codex Iuris Canonici*, the Code of Canon Law is the codified representation of church theology in legal language. According to Pope John Paul II, the Code of Canon Law is “an expression of pontifical authority and therefore is invested with a *primatial character*.”⁴⁵ He further stated that the Code is “the Church’s principal legislative document founded on the juridical-legislative heritage of revelation and tradition . . . an indispensable instrument to ensure order both in individual and social life, and also in the Church’s activity.”⁴⁶

¶14 The Code of Canon Law is incorporated into the legal system of the VCS by the 1929 Law of the Sources of the Law, one of the six constitutional laws of 1929.⁴⁷ Article 11 of the Second Law specifically outlines areas that are regulated solely by canon law. These include

42. CARDINALE, *supra* note 3, at 110.

43. These sometimes take the form of a *Motu Proprio* (translated as “of his own accord”), a legal instrument that can be used for both church and state matters.

44. CARDINALE, *supra* note 3, at 110.

45. Pope John Paul II, APOSTOLIC CONSTITUTION, *Sacrae Disciplinae Leges* (Jan. 25, 1983), in THE CODE OF CANON LAW, at xxvii (Canon Law Soc’y of Am. trans., Latin-English ed. 1999).

46. *Id.* at xxx.

47. Law of the Sources of the Law, *supra* note 17, at art. 1(a). The 2001 Fundamental Law, *supra* note 29, does not mention the Code of Canon Law.

marriage,⁴⁸ prescription of ecclesiastical property,⁴⁹ and gifts and legacies upon death.⁵⁰

Italian Law

¶15 Under article 3 of the Law of the Sources of the Law, provision is made for the supplementary application of the “laws promulgated by the Kingdom of Italy.”⁵¹ Article 3 also calls for the application of “the general regulations and local regulations of the province and government of Rome.”⁵² Although secondary to the laws of the Supreme Pontiff and the Code of Canon Law, much of the work conducted by the judicial organs of the VCS is done through the application of Italian law.⁵³ However, the constitutional laws take great care to ensure that Italian law is not applied in instances where it might conflict with pontifical or canon law.⁵⁴

¶16 Although a discussion of the Italian legal system is outside the scope of this article,⁵⁵ it is still necessary to understand the relationship between the two legal systems. Not only has VCS law incorporated Italian law and adopted the same legal structure,⁵⁶ it also permits Italian

48. Law of the Sources of the Law, *supra* note 17, at art. 11(c).

49. *Id.* at art. 11(e).

50. *Id.* at art. 11(f).

51. *Id.* at art. 3.

52. *Id.*

53. Shelledy, *supra* note 38, at 1736.

54. See DUURSMA, *supra* note 13, at 393 (discussing how Italian law is used to “fill legal gaps” when canon law and pontifical law do not address an issue).

55. There are a number of English language publications that provide good overviews of the Italian legal system. See, e.g., JEFFREY S. LENA & UGO MATTEI, INTRODUCTION TO ITALIAN LAW (2002); THOMAS GLYN WATKIN, THE ITALIAN LEGAL TRADITION (1997).

56. Shelledy, *supra* note 38, at 1736.

courts to prosecute certain criminal acts committed in the city state.⁵⁷

¶17 The most notable example of a criminal act in the VCS being prosecuted by the Italian courts occurred on May 13, 1981. Turkish citizen Mehmet Agca attempted to assassinate Pope John Paul II in St. Peter's Square,⁵⁸ the one part of the city state patrolled by both the Italian Carabinieri (police force) and officers from the Vatican's own security force, the Gendarmeria of the VCS.⁵⁹ After firing two rounds, Agca was quickly subdued and held at a police station within the VCS. Shortly thereafter he was transferred to an undisclosed police station on Italian soil.⁶⁰ During his trial in Italian courts, Agca challenged the jurisdiction of the court based on the lack of extradition proceedings subsequent to his arrest. The court referred to the 1929 Lateran Treaty in deciding that extradition proceedings were not necessary.⁶¹

¶18 The interplay between Italian law and Vatican law has not always been without conflict. Shortly after the establishment of the VCS, two cases arose in which the jurisdiction of Vatican courts was called into question. The first involved a labor dispute,⁶² while the second

57. DUURSMA, *supra* note 13, at 393.

58. The jurisdictional significance of St. Peter's Square is outlined in Lateran Treaty, *supra* note 3, at art. 3.

59. *Besides Swiss Guard, New Force Now Protects Pope*, N.Y. TIMES, May 14, 1981, at A2. The Gendarmeria of the VCS were known as the Central Vigilance Office at the time of the attempted assassination of the Pope. The name was officially changed on January 2, 2002. The operations of the *Corpo di Vigilanza* are discussed in THOMAS J. REESE, *INSIDE THE VATICAN: THE POLITICS AND ORGANIZATION OF THE CATHOLIC CHURCH* 22–23 (1996).

60. Henry Tanner, *2 Bullets Hit Pontiff*, N.Y. TIMES, May 14, 1981, at A3.

61. Lateran Treaty, *supra* note 3, at art. 22 ("Italy will provide within her own territory for the punishment of crimes which are committed within the Vatican City. . . ."). *See also* Henry Tanner, *Turk Says He Tried to Kill the Pope*, N.Y. TIMES, July 21, 1981, at A1.

62. *See Vatican Court Plea Loses*, N.Y. TIMES, July 20, 1980, at 11.

concerned the jurisdiction of the Vatican courts over a Vatican employee residing in Italy.⁶³ More recently, the two legal systems conflicted over the handling of the Banco Ambrosiano collapse in 1982.⁶⁴ In this instance, Vatican authorities challenged the jurisdiction of Italian authorities who wished to arrest the head of the Vatican bank.

The Government and Legal System of the Vatican City State

¶19 The Holy See is a religious entity that does not occupy a temporal location; therefore, the VCS provides it with the territorial sovereignty necessary to guarantee the Holy See's ability to operate as the juridical equivalent of other states.⁶⁵ Consequently, the Holy See is the legal *personality* of the VCS which enters into treaties and sends and receives diplomatic representatives. While it is natural to assume that normal conventions of governmental structure apply to the structure of the VCS, it is important to note the differences and to isolate the activities of the VCS as a temporal body from the secular activities of the Holy See. This section examines the domestic legal system of the VCS and the branches of the city state's government. It should be noted that the structure of the VCS system is *not* based on separation of the legislative, executive, and judicial powers of the governmental body,⁶⁶ but for the purposes of this article it will be broken down into those components.

63. *See Vatican Jurisdiction Up In Italian Court*, N.Y. TIMES, July 23, 1930, at 10.

64. *See John Tagliabue, Vatican Denounces Attempt By Italy to Arrest Bank Chief*, N.Y. TIMES, Feb. 28, 1987, at 2.

65. For an excellent analysis of the elements of statehood as applied to the Vatican City, see DUURSMA, *supra* note 13, at 410–18.

66. *Id.* at 377.

Legislative Powers and Responsibilities

¶20 The legislative responsibilities granted to the Pope are delegated to the Pontifical Commission.⁶⁷ The Pontifical Commission is composed of seven cardinals appointed by the Pope for a five-year term.⁶⁸ The commission can seek the advice of the “Consulta,” a group of experts appointed by the Pope on any legislative matter, if further information on a topic is required.⁶⁹

¶21 The legislation of the VCS is comprised of the laws and regulations of the State of the Vatican City, the Code of Canon Law, the Code of Civil Procedure, the apostolic constitutions, the Lateran Treaty and the conventions with other foreign states.⁷⁰ As noted earlier, where these laws and regulations do not cover certain instances, the Vatican has recourse to Italian laws, to provincial regulations and to the municipal rules of the city of Rome.⁷¹

Executive Powers and Responsibilities

¶22 Although the VCS is the last remaining absolute monarchy in Europe,⁷² the Pope is officially elected by the College of Cardinals under section 33 of the Pope’s 1996 Apostolic Constitution, *Universi Dominici Gregis* (On the Vacancy of the Apostolic See and the Election of the Roman

67. 2001 Fundamental Law, *supra* note 29, at art. 3, § 1.

68. *Id.*

69. DUURSMA, *supra* note 13, at 377 (citing Motu Proprio of the Pope, Mar. 8, 1968, ACTA APOSTOLICAE SEDIS SUPPLEMENTO (1968 no. 2)).

70. CARDINALE, *supra* note 3, at 112.

71. *Id.*

72. Matthew N. Bathon, Note, *The Atypical Status of the Holy See*, 34 VAND. J. TRANSNAT’L L. 597, 600 (2001).

Pontiff).⁷³ However, the Pope generally delegates his powers as absolute monarch to a governing commission composed of a cardinal-president and other cardinals.⁷⁴ The executive power is exercised by the president of the Pontifical Commission with the assistance of a secretary-general and a deputy secretary-general.⁷⁵ The president of the commission can enact decrees for the implementation of legal provisions and regulations and, in times of urgent necessity, enact decrees that have the force of law if they are confirmed by the commission within ninety days.⁷⁶ Although the Pontifical Swiss Guard is not governed by the VCS, the president of the commission has recourse to the guard if needed, in addition to the security forces of the VCS.⁷⁷

¶23 The day-to-day functions of the Vatican City are attended to by the president of the Governatorate of the Vatican City, a position comparable in status to the mayor of an Italian city.⁷⁸ The president is responsible for the administration of the museums; the maintenance of the Apostolic Palace, the official residence of the Pope in the Vatican City, and other buildings, except St. Peter's Basilica; and the management of such facilities as the post office, the gardens and nurseries, and the grocery store.⁷⁹

73. *Universi Dominici Gregis*, *supra* note 41, at Part 2, ch. 1, § 33.

74. 2001 Fundamental Law, *supra* note 29, at art. 5, § 1.

75. *Id.* at art. 5, § 2.

76. *Id.* at art. 7, § 2.

77. *Id.* at art. 14. The Pontifical Swiss Guards report to the Vatican Committee on Security. The Corpo della Gendarmeria dello Stato di Città del Vaticano, or Gendarmeria of the Vatican City State, has 120 members and is similar to most modern police forces. For further discussion of the Gendarmeria, see REESE, *supra* note 59, at 22; Shelledy, *supra* note 38, at 1736.

78. Gabriel Kahn, *Church and State: In Vatican City, A Cardinal Works to Balance*, WALL ST. J. (Eastern ed.), Apr. 7, 2005, at A1.

79. ROBERT NEVILLE, *THE WORLD OF THE VATICAN* 32–33 (1962).

*Financial Power and Responsibilities*⁸⁰

¶24 The financial aspects of the VCS have been described as mysterious.⁸¹ Despite the notoriety that has on occasions defined the finances of the Vatican, there is still little known about exactly how much wealth the Vatican possesses and what form this wealth takes.⁸²

¶25 The VCS's budget is maintained by the Prefecture for Economic Affairs of the Holy See, which also manages the fiscal affairs of the Roman Curia.⁸³ Vatican citizens are not subject to Italian taxes on their income, and the Vatican State pays neither taxes nor assessments to the Italian or Roman governments.⁸⁴ Most of the daily functions are paid with a budget that consists of profits from the museum and post office,⁸⁵ as well as *Peter's Pence*.⁸⁶

¶26 The customs rules of the VCS are based on article 20 of the Lateran Treaty which

80. For an excellent, albeit dated, discussion of the Vatican finances, see Ernst A. Lewin, *The Finances of the Vatican*, 18 J. CONTEMP. HIST. 185 (1983).

81. NEVILLE, *supra* note 79, at 32 (“mystery surrounds the question of Vatican finances”).

82. In his 1983 article, Ernst Lewin provided the following estimates of investments and bank deposits, along with the sources from which the data came, none of which have ever been confirmed, but also have rarely been contradicted by Vatican officials: \$5.6 billion in 1965 (*Economist*); \$10–15 billion in 1969 (*Time*); \$12.8 billion in 1970 (*International Herald Tribune*); \$7–12 billion in capital productive investment (*La Stampa*). Lewin, *supra* note 80, at 194. Additional data on the Vatican's finances is published in 2 THE EUROPA WORLD YEAR BOOK 4740 (46th ed. 2005).

83. Kahn, *supra* note 78.

84. NEVILLE, *supra* note 79, at 31.

85. The Vatican's retail operations account for 53% of the annual budget, revenue from the museums makes up 19%, and the rest is comes from post office sales and other odds and ends. Kahn, *supra* note 78.

86. “Peter's Pence” is the annual offering of the faithful at church collections all over the world, and is made available only to the Pope. LEWIN, *supra* note 80, at 193 (“Amounts ranging from a few pence to hundreds of dollars all go into a special secret fund on which the Pope alone can, and which is disbursable at his sole discretion.”).

exempts it from all European Community duties and taxes.⁸⁷ The small amount of goods originating in the VCS and exported to Italy is exempt from duty and subject to a preferential arrangement.⁸⁸ The VCS has a special position with relation to imports and exports that allows goods to be carried into the Vatican from Italy free of payment of any customs charges.⁸⁹ This has been a common source of contention between the Vatican and Italian officials.⁹⁰

¶27 The VCS is entitled to use the Euro as its official currency.⁹¹ The VCS had relied on the Italian lira as its form of currency until Italy signed onto the Maastricht Treaty establishing a plan for a single European currency.⁹² In recognition of the Vatican's reliance on the currency of Italy, and despite its nonmember status, the European Union agreed to let the VCS use the new currency provided arrangements were made with Italy.⁹³ The new arrangement with Italy,⁹⁴ amended by the European Commission in 2003, entitles the VCS to issue Euro coins for a

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87. Lateran Treaty, *supra* note 3, at art. 20. See DUURSMA, *supra* note 13, at 391 (discussing how this treaty was supplemented by a customs convention between Italy and the Vatican City, concluded June 30, 1930).
88. European Comm'n, The EU's Relations with the Vatican, http://ec.europa.eu/comm/external_relations/vatican/intro/index_en.htm (last visited Apr. 27, 2007) [hereinafter EU's Relations with the Vatican].
89. Lateran Treaty, *supra* note 3, at art. 20.
90. In the past it was quite common for visitors to buy American cigarettes in the Vatican and then resell them at twice the price in Italy. NEVILLE, *supra* note 80, at 32. Recent reports indicate that it is still attractive for visitors to the VCS to buy cigarettes for 30% less than they are sold for outside the walls. Kahn, *supra* note 78.
91. Monetary Agreement No. CCCLVII of 26 July 2001, 93 ACTA APOSTOLICAE SEDIS SUPPLEMENTO 12 (July 26, 2001). This agreement is in accordance with EC Regulations No. 1103/97 and No. 974/98.
92. Convenzione Monetaria tra la Repubblica Italiana e lo Stato della Città del Vaticano, Dec. 3, 1991, 43 GAZZ. UFF. 1 (Feb. 22, 1994).
93. Council Decision 1999/98, 1998 O.J. (L 030) 35–36 (EC).
94. Monetary Agreement between the Vatican City State and, on its behalf, the Holy See and the Italian Republic, on behalf of the European Community, 92 ACTA APOSTOLICAE SEDIS SUPPLEMENTO No. 11 (Nov. 5, 2000), adopted by the European Union, 2001 O.J. (C 299) 1 (EC).

maximum annual face value of EUR 1,000,000.⁹⁵

¶28 There is only one bank operating in the VCS, the Istituto per le Opere di Religione, which also exists as the Central Bank of the VCS.⁹⁶ It should be noted, however, that despite the existence of a central bank, the VCS is not a member of the International Monetary Fund,⁹⁷ and there have been no examinations by international organizations of the VCS's banking, economic, and financial systems.⁹⁸ Nor does the VCS have direct access to the major payment clearing systems of the Euro area.⁹⁹ There does appear to be some concern regarding money laundering in the VCS, since the VCS has no commercial financial sector to which normal anti-money laundering rules apply.¹⁰⁰

Judicial Powers and Responsibilities

¶29 Following the creation of the VCS in 1929, the court system of the Vatican very closely resembled that of the canon law system, and many of the judges from the canon law courts

95. Council Decision 03/738, 2003 O.J. (L 267) 27 (EC).

96. For an exhaustive discussion of the Bank and its troubled history, see Lewin, *supra* note 80, at 199–203. The Istituto per le Opere di Religione, or IOR, is perhaps most famous for the Banco Ambrosiano scandal in the early 1980s. It is also the subject of a recent case brought by Holocaust survivors. *Alperin v. Vatican Bank*, 410 F.3d 532 (9th Cir., 2005), *cert. denied*, 126 S. Ct. 1160 (2006).

97. Int'l Monetary Fund, IMF Members' Quotas and Voting Power, and IMF Board of Governors, <http://www.imf.org/external/np/sec/memdir/members.htm> (last visited Apr. 28, 2007) (listing neither the "Vatican City" nor the "Holy See" as a member).

98. Written Question E-1914/02, 2003 O.J. (C 092 E) 117, 118 (E.C.) (response by Mr. Bolkestein on behalf of Commission to questions by Maurizio Turco). No Article IV consultation has ever been undertaken on the VCS by the IMF and there are no statistics or data listed for the VCS on the IMF Web site.

99. Written Question E-1913/02, 2003 O.J. (C 092 E) 116, 117 (E.C.) (response by Mr. Solbes Mira in to questions by Maurizio Turco). The VCS does have access to Target, the Euro area's high value payment system, through "a major German bank and a major Italian bank." *Id.*

100. Written Question E-1914/02, *supra* note 98.

served a dual function as jurists on the Vatican courts. As with many aspects of the VCS, there was little separation between the Holy See and the temporal government during the early years of the city state. The VCS's court system has been reorganized three times since its inception,¹⁰¹ the last time in response to the motu proprio, *Quo Civium Iura* ("How the Rights of Citizens"), issued by Pope John Paul II on November 21, 1987. This apostolic letter preceded, by a few days, the law that created a more temporally independent structure based primarily on the Italian judicial system.¹⁰²

¶30 The judicial system of the VCS is organized as follows: a sole judge (*Giudice Unico*) presiding over a court of limited jurisdiction; a three-judge Tribunal (*Tribunale*); a four-member Court of Appeals (*Corte d'Appello*); and, finally, the Supreme Court of Appeals (*Corte di Cassazione*).¹⁰³ It is important to distinguish these judicial organs from those of the Roman Curia, which is the administrative arm of the Holy See. Cases from temporal VCS courts are not generally reported, but a listing of the types of cases tried before each of the courts is published in *L'Attività della Santa Sede*, the annual yearbook.¹⁰⁴

¶31 The following insight into the operations of the city state's judicial system is derived from material in the 2004 yearbook that has been translated and adapted for purposes of this

101. Originally it was reorganized in 1932, and then by Motu Proprio of Pius XII on May 1, 1946, 38 ACTA APOSTOLICAE SEDIS 170. Most recently it was changed in 1987 by the Law on Judicial Organization, *supra* note 31.

102. Law on Judicial Organization, *supra* note 31.

103. *Id.* at art. 1.

104. *L'Attività della Santa Sede* is published annually (although somewhat belatedly) by the Tipografia Vaticana. This Italian language publication is the unofficial report of the Holy See. It presents a general picture of the activities accomplished by the Holy Father throughout the year, the different organizations of the Holy See, and those related to it.

article.¹⁰⁵ Beginning at the lowest level, the *Giudice Unico* is responsible for such matters as small claims, traffic tickets, and validation of marriages. The judge, in accordance with city state law, must be a citizen of the VCS,¹⁰⁶ and must also serve simultaneously as a judge on the other courts.¹⁰⁷ For the year October 2003 through September 2004, the *Giudice Unico* initiated one procedure for authentication and withdrawal of documents, and on two occasions initiated procedures for the transfer of deeds, contracts, and other legal documents. After receiving a petition for ratification of a permit for a lease of realty, he issued a notice, held a hearing, and published a judgment. He also declared an arbitration award to be executed; issued a judgment in a voluntary jurisdiction proceeding; and validated 220 registrations of marriage, eighty-four registrations of naturalization, eight registrations of residence, and twelve death certificates. In criminal matters, he issued procedural guidelines for the removal of a cadaver; examined thirty-four reports of accidents on Vatican territory, one of which was forwarded to the *Promotore di Giustizia* to determine eventual compensation; and addressed three reports of accidents in papal buildings. He also received twenty-one crime reports from the Vatican police, ten of which he filed in the archives and ten of which were forwarded to the *Promotore di Giustizia*. Five of these resulted in decrees of temporary suspension of administrative authorizations and bans from entering Vatican territory. Additionally, he examined 173 reports relating to traffic and parking violations.

105. *Organi Giudiziari Dello Stato*, in L'ATTIVITA DELLA SANTA SEDE 1393–95 (2004). Translation from Italian provided by William Amatruda, Evening Reference Librarian, Catholic University of America, Judge Kathryn J. DuFour Law Library.

106. Law on Judicial Organization, *supra* note 31, at art. 3.

107. *Id.* at art. 4.

¶32 Although technically a court of general jurisdiction, it should be noted that the *Tribunale* does not handle as many cases as the *Giudice Unico*. The three judges that comprise this second level court are appointed by the Pope,¹⁰⁸ and they are able to hear both civil and penal matters; however, most criminal cases are transferred to Italy and prosecuted by the Italian government, as authorized by the Lateran Treaty.¹⁰⁹ In the year 2003–04, the *Tribunale*, in seven pending civil cases, held eight hearings and issued five judgments and one ordinance. The president of the *Tribunale* issued eleven decrees in eight civil proceedings. In addition, he issued 104 certifications requested through diplomatic channels and four requested by private parties and, in turn, requested one certification of a decision in a civil matter. He also issued two decisions in criminal actions and five writs of execution regarding foreign requests. The examining judge of the *Tribunale* received eighty-two requests from the minister of justice, issuing ninety filing orders, sixty-five of which related to requests from the prior year. Additionally, he conducted a judicial inquiry followed by the issuance of a verdict.¹¹⁰

¶33 The composition of the third level of the VCS's judiciary again showcases the dependence of the VCS on the Holy See: most of the judges on the *Corte d'Appello* are also judges on the Roman Rota which is responsible for governing the ecclesiastical side of the house. Both the president and the three other judges nominated by the pope serve a five-year term;¹¹¹ they are responsible for only a few cases per year. The main focus of their duty is threefold:

108. Law on Judicial Organization, *supra* note 31, at art. 7.

109. Lateran Treaty, *supra* note 3, at art. 22.

110. *Organi Giudiziari Dello Stato*, *supra* note 105, at 1393.

111. Law on Judicial Organization, *supra* note 31, at art. 12.

providing discipline for the Vatican's small group of lawyers, hearing appeals from the VCS's Disciplinary Commission, and handling employment issues from the Office of Work of the Apostolic See.¹¹² In the year 2003–04, the court received an appeal relating to an adverse decision on a petition of legitimacy of the College of Conciliation and Arbitration of the Labor Relations Office of the Apostolic See, held an adversary hearing, and issued a decision. It also received an appeal from an adverse decision of the Disciplinary Commission of the State of Vatican City. In civil matters, it received an appeal from an adverse decision of the Tribunal. The president of the Court of Appeal issued seven decrees in the above-noted matters. The Equity Office of the Court of Appeal issued two advisory opinions in matters referred to the court and participated in a hearing.¹¹³

¶34 From the perspective of a common law jurisdiction that strongly adheres to the doctrine of the separation of church and state, it is interesting to examine a modern day state in which a high ranking church official serves on its supreme court. This is the case in the *Corte di Cassazione*, where the president is also the prefect of the Apostolic Signatura, the highest canon law court in the Catholic Church.¹¹⁴ The two other judges who serve on the VCS's highest court are also cardinals and members of the Apostolic Signatura. The *Corte di Cassazione* is primarily responsible for hearing appeals from the *Corte d'Appellano* and has original jurisdiction over those penal matters against cardinals and bishops which the Pope does not handle personally.¹¹⁵

112. Shelledy, *supra* note 38, at 1737.

113. *Organi Giudiziari Dello Stato*, *supra* note 105, at 1394.

114. Law on Judicial Organization, *supra* note 31, at art. 18.

115. *Id.* at art. 23.

There were no reported cases in the last period for which data was available.

Legal Personnel

¶35 In civil matters in 2004, the *Promotore di Giustizia del Tribunale*, the attorney general for the city state, prepared 179 certifications requested by Italian procurators, while returning three requests due to lack of jurisdiction. In turn, he requested certification of twelve official documents relating to civil matters pending before Italian tribunals. Regarding matters under VCS jurisdiction, he intervened in three civil actions pending before the tribunal and in one pending before the single judge, participating in three hearings and issuing an advisory letter.¹¹⁶

¶36 In criminal proceedings, the *Promotore* received 136 reports from the Vatican police and ten for questions of jurisdiction from the *Giudice Unico*, requesting in one matter a formal judicial inquiry from the examining judge. He forwarded eighty-two reports (sixty-five submitted in prior years), with their requests, to the examining judge and filed another thirty-four, forwarding eight of these to the *Giudice Unico* as being within his jurisdiction.¹¹⁷

¶37 The VCS does not have its own dedicated body of lawyers designated to the temporal courts; instead, it relies on canon lawyers. To practice before the temporal courts, lawyers must meet three requirements: first, they must appear on an official list which the tribunal maintains; second, they must be members of the Order of Rotal Lawyers; and third, they must have a degree in civil law.¹¹⁸

116. *Organi Giudiziari Dello Stato*, *supra* note 105, at 1394.

117. *Id.*

118. Shelledy, *supra* note 38, at 1738.

The Vatican City State in International Relations

¶38 To be considered a “state” under international law, the Montevideo Convention requires that an international personality have a defined territory, a permanent population, a government, and the capacity to enter into relations with other States.¹¹⁹ Many of the leading commentators in the field have often questioned whether the VCS really does qualify as a state, since its constituent elements are highly abnormal or reduced to a bare minimum.¹²⁰ Further controversy exists over whether the VCS and the Holy See are actually two separate international personalities.¹²¹

International Relations

¶39 The Holy See participates actively in international organizations and has membership or observer status in organizations such as the United Nations,¹²² Organization for Security and Co-operation in Europe,¹²³ International Atomic Energy Agency,¹²⁴ Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Commission,¹²⁵ United Nations High Commissioner

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119. Convention on Rights and Duties of States, Dec. 26, 1933, art. 1, 49 Stat. 3097, 3100, 165 L.N.T.S. 19, 25.
120. 1 LASA OPPENHEIM, OPPENHEIM’S INTERNATIONAL LAW § 102, at 327 (Robert Jennings & Arthur Watts eds., 1992).
121. JAMES CRAWFORD, THE CONCEPT OF STATEHOOD IN INTERNATIONAL LAW 152 (1979). This work, together with OPPENHEIM, *supra* note 120, at 327, are excellent sources of further discussion regarding the VCS’s legal personality.
122. Welcome to the Permanent Observer Mission of the Holy See to the United Nations, <http://www.holyseemission.org/index2.html> (last visited Apr. 28, 2007).
123. Org. for Sec. & Co-Operation in Eur., Participating States, <http://www.osce.org/about/13131.html#H> (last visited Apr. 28, 2007) (indicating admission of Holy See to OSCE on June 25, 1973).
124. Int’l Atomic Energy Agency, List of IAEA States, <http://www.iaea.org/About/Policy/MemberStates/index.html> (last visited Apr. 28, 2007).
125. Comprehensive Nuclear-Test-Ban Treaty Comm’n, Country Profile: Holy See, http://www.ctbto.org/s_r/country_profile.dhtml?state_id=75 (last visited Apr. 28, 2007).

for Refugees,¹²⁶ World Intellectual Property Organization,¹²⁷ and World Trade Organization.¹²⁸ It is interesting to note that the Vatican City State is the official member of those organizations in which the Holy See cannot maintain membership for reasons of its existence solely as a legal personality and not a temporal body.¹²⁹ On its Web site, the Press Office of the Holy See delineates such organizations as those in which the Holy See maintains the membership “in the name and on behalf of the Vatican City State.”¹³⁰

¶40 The Holy See has one of the largest and oldest diplomatic representations in the world, maintaining diplomatic relations with 175 countries.¹³¹ Seventy-one countries have

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- 126. United Nations High Comm’r for Refugees, Holy See—UNHCR Donor Profile and Donor History, <http://www.unhcr.org/partners/PARTNERS/40fd14114.html> (last visited Apr. 28, 2007).
 - 127. World Intellectual Prop. Org., Holy See, <http://wipo.int/about-ip/en/ipworldwide/pdf/va.pdf> (last visited Apr. 28, 2007) (indicating membership in WIPO Convention since Apr. 1975). This source provides an excellent reference to the administration and legislation of the Vatican City.
 - 128. World Trade Org., Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Apr. 28, 2007) (listing Holy See as an observer government, and noting that “[w]ith the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.”).
 - 129. The organizations that list the membership as “Vatican City State” are primarily those that require a physical territory, such as International Telecommunications Satellite Organization, International Telecommunications Union, Universal Postal Union, and UNIDROIT.
 - 130. *See* Holy See Press Office, Bilateral and Multilateral Relations of the Holy See (Feb. 1, 2001), http://www.vatican.va/news_services/press/documentazione/documents/corpo-diplomatico/corpo-diplomatico_internazionali_elenco_en.html (providing list of international intergovernmental organizations and bodies in which the Holy See participates).
 - 131. Holy See Press Office, Bilateral and Multilateral Relations of the Holy See (Dec. 23, 2006), http://www.vatican.va/news_services/press/documentazione/documents/corpo-diplomatico/corpo-diplomatico_stati_elenco_en.html (providing list of countries with whom the Holy See has diplomatic relations).

resident embassies to the Holy See, including the European Union¹³² and the United States.¹³³

Relations with the United States

¶41 The United States has maintained diplomatic relations with the Holy See since 1797, when George Washington sent the first consul to represent the newly formed government of the United States.¹³⁴ Appointing a consul to the Papal States was appropriate at the time; relations with the Holy See were justified because the Papal States' large civil and commercial interests made it a natural entity with which to establish relations.¹³⁵ Consular relations were maintained until 1848 when relations were raised to the level of a legation.¹³⁶ During the Civil War, the Confederacy even sent a special delegation to the Papal States to try and gain sympathy for its cause.¹³⁷

¶42 In 1867, relations between the Holy See and the United States soured. Although no official explanation for this change in relations was provided, dispatches from Rufus King, the U.S. minister to Rome, to Secretary of State William H Seward, implied that the reason for

132. The EC officially appointed a representative to the Holy See on June 24, 2006, and the official mission is housed within the preexisting EC mission to the UN agencies in Rome. EU's Relations with the Vatican, *supra* note 88.

133. The embassy's Web site (<http://vatican.usembassy.gov/english>) is a good source for information on the activities and functions of the United States Embassy to the Holy See.

134. *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations for 1984, Part 10: Reprogramming Funds for United States Mission to the Vatican: Hearing Before the Subcomm. on Commerce, Justice, State, and the Judiciary Appropriations of the H. Comm. on Appropriations*, 98th Cong. 11. (1984) (testimony of Kenneth W. Dam, Deputy Secretary of State) [hereinafter Testimony of Kenneth W. Dam].

135. Nat'l Council of Churches of Christ in the United States, A Brief on Diplomatic Representation at the Vatican: A Pronouncement by the National Council of Churches of Christ in the United States (Jan. 17, 1951), *in id.* at 49.

136. *Id.*

137. ROBERT GRAHAM, VATICAN DIPLOMACY: A STUDY OF CHURCH AND STATE ON THE INTERNATIONAL PLANE 84 (1959).

discontinuing the mission to the Papal States was the perceived closing by Roman officials of the “Protestant Church, meeting at the American Embassy in Rome.”¹³⁸ This claim was reported as having “no truth” by the minister; however, in a later despatch, King goes on to defend a Mission to Rome, stating that he believed “the Papal Court is more than ever disposed to cultivate friendly and intimate relations with the United States,” at a time when the “present aspect of European affairs is especially threatening.”¹³⁹

¶⁴³ Despite this protest, numerous congressional representatives condemned this perceived move, thereby evoking a very anti-Catholic sentiment.¹⁴⁰ To that end, a rider was attached to the appropriations bill for that year, declaring that “no money . . . shall be paid for support of an American legation at Rome” from that time forward.¹⁴¹ The official language was approved on February 28, 1867, and Rufus King tendered his resignation on January 1, 1868, thereby bringing to a close the United States Roman mission.¹⁴²

¶⁴⁴ Following the unification of Italy in 1860, the Holy See ceased to possess any territory until the Lateran Treaty of 1929,¹⁴³ making diplomatic relations with the legal personality

138. Despatch from Rufus King to William H. Seward, No. 83 (Feb. 18, 1867), *in* UNITED STATES MINISTERS TO THE PAPAL STATES: INSTRUCTIONS AND DESPATCHES 1848–1868, at 419 (Leo Stock ed., 1933).

139. Despatch from Rufus King to William H. Seward, No. 86 (Mar. 1, 1867), *in* UNITED STATES MINISTERS TO THE PAPAL STATES: INSTRUCTIONS AND DESPATCHES 1848–1868, *supra* note 138, at 420–21.

140. CONG. GLOBE, 39th Cong., 2d Sess. 850–51, 882–85 (1867).

141. Act of Making Appropriation for the Consular and Diplomatic Expenses of the Government for the Year Ending Thirtieth June, Eighteen Hundred and Sixty Eight, ch. 99, 14 Stat. 412, 413 (1867).

142. Letter from Rufus King, Minister of the United States to Rome, to the President of the United States (Jan. 1, 1868), *in* UNITED STATES MINISTERS TO THE PAPAL STATES: INSTRUCTIONS AND DESPATCHES 1848–1868, *supra* note 138, at 434.

143. CARDINALE, *supra* note 3, at 100.

impossible. Following the treaty, a number of nations reestablished diplomatic relations with the Holy See, now embodied as a recognized state through the VCS. Although the United States only formally recognized the Holy See in 1984,¹⁴⁴ a number of envoys to the Vatican were appointed by the U.S. between 1939 and 1984.¹⁴⁵

Relations with the European Union

¶45 Regarding its relations with the European Union, the VCS is in a far different position than the other European Micro-States.¹⁴⁶ The VCS is not a member of the European Union, nor is it a member of the European Community or its customs territory.¹⁴⁷ The VCS, by virtue of its customs agreement with Italy, cannot constitute a part of the EC customs territory,¹⁴⁸ and the European Parliament has declared that the chances of the VCS ever accessing to the EC is highly unlikely.¹⁴⁹

¶46 Aside from the previously discussed issue of monetary policy, the EU has had very little interaction with the VCS. The majority of questions found regarding the EU's position on

144. An Act to Authorize Appropriations for Fiscal Years 1984 and 1985 for the Department of State, Pub. L. No. 98-164, § 134, 97 Stat. 1017, 1029 (1983).

145. Testimony of Kenneth W. Dam, *supra* note 134, at 8. The first envoy was Myron Taylor, appointed by President Roosevelt in 1939. *See* GRAHAM, *supra* note 137, at 326 (providing detailed discussion of this period in relations between the Vatican and the United States).

146. The other European microstates are Liechtenstein, San Marino, Monaco, and Andorra. *See* DUURSMA, *supra* note 13, at 147, 207, 261, and 316 for further discussion on the status of these micro-states. For a discussion of whether the VCS is even considered a micro-state, international city state, or European small state, see Daniel Orlow, *Of Nations Small: The Small State in International Law*, 9 TEMP. INT'L & COMP. L.J. 115, 119 (1995).

147. EU's Relations with the Vatican, *supra* note 88.

148. DUURSMA, *supra* note 13, at 410.

149. Written Question No. 900/86, 1987 O.J. (C 54) 31 (E.C.) (response by Mr. Delors in name of Commission).

the legal status of the VCS concern refunds on exports, but there are a few other questions that address such issues as the nonapplicability of EU regulations on awarding public works contracts¹⁵⁰ and the nonapplicability of EU money laundering rules to the VCS.¹⁵¹

¶47 Interestingly, there does not appear to be any literature describing how EU regulations might indirectly affect the VCS through its adoption of Italian national law which in turn has implemented EU supranational law. However, the European Commission has definitively stated that Community legislation is not applicable in the VCS.¹⁵² Whether this covers the supranational application of EU law to Italian law remains unclear.

Conclusion

¶48 Researching the civil and temporal laws of the VCS can be both frustrating and challenging. The frustration lies in the intertwining of the State's laws with the laws that govern the Roman Catholic Church in the identity of the Holy See, while the challenge is to separate the two. Inevitably, given the constitutional makeup of the nation and the sovereign powers accorded the Supreme Pontiff, there is a limit to the extent to which one can identify and separate the two legal systems.

150. Written Question No. 729/98, 1998 O.J. (C402) 24 (EC) (response by Mr. Monti on behalf of Commission to question by Carlo Ripa Di Meana).

151. Written Question E-1914/02, *supra* note 98.

152. *Id.* at 117 (“The Vatican City State (VCS) is an independent State and is not a member of the European Union. Community legislation is not applicable in the VCS.”).

Appendix

A Guide to the Literature of the Vatican City State¹⁵³

¶49 This bibliographic essay is by no means an exhaustive description of all the resources available to the researcher of the VCS; instead, its purpose is to provide a useful guide to the literature most likely to be encountered in law libraries in the United States.¹⁵⁴

Constitutional Sources

¶50 From the researcher's perspective, the legal system of the VCS is best approached by examining the documents that established the nation and formed the constitutional basis for the world's smallest nation state. The most useful work for this purpose is Amos Peaslee's *Constitutions of Nations*, which provides a short summary of the nation's legal composition, the text of the Lateran Treaty, extracts from the accompanying 1929 Concordat, the complete text of the six constitutional laws of 1929, and a short bibliography.¹⁵⁵ Additionally, Hyginus Cardinale's *The Holy See and the International Order* provides annexes to both the 1929 Concordat and the 1929 Fundamental Laws.¹⁵⁶ Cardinale's text should be considered an essential source for anyone researching the law of the VCS. The "Vatican City" section in *Constitutions of*

153. With the exception of certain key resources, this essay primarily considers readily available English-language sources. There are a number of additional primary and secondary sources in Italian which can be used in researching this jurisdiction. *See, e.g.*, WINFRIED SCHULZ, LEGGI E DISPOSIZIONI USUALI DELLO STATO DELLA CITTÀ DEL VATICANO (1981); ANGELO SODANO, ORDINAMENTO GIURIDICO DELLO STATO DELLA CITTÀ DEL VATICANO (2005).

154. *See* MICHAEL J. WALSH, VATICAN CITY STATE 34 (World Bibliographical Series, vol. 41, 1983) for a more exhaustive, although slightly dated, bibliography on the city state.

155. PEASLEE, *supra* note 3, at 666–99.

156. CARDINALE, *supra* note 3, at 319, 341.

Dependencies and Territories should be consulted for English-language versions of the 2001 Fundamental Law¹⁵⁷ and the 1984 Concordat between the Holy See and the Italian Republic.¹⁵⁸ It should be noted that since this the VCS is treated as a “special sovereignty” in this source, there is no entry for it or the Holy See in Blaustein and Flanz’s *Constitutions of the Countries of the World*.¹⁵⁹

Survey Articles

¶51 A number of short survey articles exist that can provide the researcher with a basic overview of the city state’s legal system. The most useful of these is Jorri Duursma’s forty-five page chapter on “The State of the Vatican City” in *Fragmentation and the International Relations of Micro-States*.¹⁶⁰ It provides an excellent overview of the history and status of the VCS. Particular attention is paid to the international status of the city state and the extent to which it has achieved independence from Italy. Also recommended, albeit far more concise, is Robert Shelledy’s “Vatican ” in *Legal Systems of the World*.¹⁶¹ This succinct entry provides an historical account of the development of the legal system, together with a description of the legal concepts that govern the nation and an accurate depiction of the current structure of the legal system. Less useful, due to its incomplete and often confusing description of the VCS, is the entry in *Modern Legal*

157. *Vatican City: Commentary, Constitution and Basic Documents*, *supra* note 3, at 3.

158. *Id.* at 19.

159. CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: A SERIES OF UPDATED TEXTS, CONSTITUTIONAL CHRONOLOGIES, AND ANNOTATED BIBLIOGRAPHIES (Albert P. Blaustein & Gisbert H. Flanz eds., 1971).

160. DUURSMAN, *supra* note 13, at 395.

161. Shelledy, *supra* note 38, at 1734.

Systems Cyclopedia.¹⁶² A very recent addition to the list of survey articles on the VCS is “Vatican” in the *Encyclopedia of World Constitutions*. This six-page entry provides a good overview of the legal structure of the VCS, together with a short list of primary and secondary sources consulted.¹⁶³

¶52 A short and now dated entry titled “Vatican” in *The International Encyclopedia of Comparative Law*¹⁶⁴ provides a very brief overview of the constitutional system of the city state, together with the sources and contents of law and a selective bibliography of Italian language resources. A less obvious source that provides a modest amount of background information is L. Barbarito’s entry for the “Vatican City” in *New Catholic Encyclopedia*.¹⁶⁵ There is less focus on the legal system than in the other items mentioned, but the information concerning the rise of the modern state and the operation of the city state’s government is still very serviceable. Legal researchers who traditionally rely on *Foreign Law* by Reynolds and Flores for an overview of a foreign jurisdiction and an accompanying legal bibliography will be disappointed.¹⁶⁶ Regrettably, they cover neither the VCS nor the Holy See, and there is also no mention of the city state in the section describing the legal system of the Republic of Italy.

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- 162. David Aaron Miller, *The Legal System of Vatican City*, in 4 MODERN LEGAL SYSTEMS CYCLOPEDIA 4.240 (Kenneth R. Redden ed., 1993 revision).
 - 163. Vincenzo Buonomo, *Vatican*, in 3 ENCYCLOPEDIA OF WORLD CONSTITUTIONS (Gerhard Robbers ed., 2007).
 - 164. Guido Astuti, *Vatican*, in 1 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW: NATIONAL REPORTS (Victor Knapp ed., 1997). The entry was actually completed in December 1972 by Judge Astuti.
 - 165. Barbarito, *supra* note 40, at 401.
 - 166. THOMAS H. REYNOLDS & ARTURO A. FLORES, FOREIGN LAW: CURRENT SOURCES OF CODES AND BASIC LEGISLATION IN JURISDICTIONS OF THE WORLD (1989).

Official Vatican Publications

¶53 Since 1908, the Vatican Publishing House (*Libreria Editrice Vaticana*) has been responsible for publishing *Acta Apostolicae Sedis* (AAS), together with its supplements, on a periodic basis.¹⁶⁷ AAS constitutes the official bulletin or gazette for the Holy See; it contains papal encyclicals, apostolic constitutions, and other forms of pontifical acts.¹⁶⁸ Since this is a publication of the Holy See much of what is published in AAS is not directly related to the governing of the VCS; however it is the official, Latin language source for pontifical acts and canon laws. Legislation pertaining just to the governance of the VCS is usually published in the supplement to the AAS.¹⁶⁹

¶54 The Vatican Publishing House is also responsible for publishing the daily newspaper of the VCS, *L'Osservatore Romano* (The Roman Observer). The daily edition is published in Italian; however since 1968 a weekly, English language compendium edition has also been published.¹⁷⁰ Although the foci of the newspaper are the daily activities of the Pope and news from within the Church, the newspaper also reports items of interest regarding the governing of the VCS.¹⁷¹

167. WALSH, *supra* note 154, at 34.

168. JEROLD M. PACKARD, *PETER'S KINGDOM: INSIDE THE PAPAL CITY* 120 (1985).

169. Usually this is referred to as *Acta Apostolicae Sedis Supplemento per le Legge e Disposizione per lo Stato della Città del Vaticano*.

170. PACKARD, *supra* note 168, at 119. Selections from the various editions of *L'Osservatore Romano* are available on the Web site of the Vatican News Service (www.vatican.va/news_services/or/home_eng.html).

171. Vatican News Services, The Origins of "L'Osservatore Romano," http://www.vatican.va/news_services/or/history/hi_eng.html (last visited Apr. 29, 2007).

Additional Resources

¶55 The focus of the overwhelming majority of legal commentary on the VCS has revolved around the jurisdiction's status in international law. The most complete treatment of this area of law is Hyginus Cardinale's *The Holy See and the International Order*.¹⁷² This 557-page work provides an extensive discussion of how the Holy See, the Church, and the VCS are united in international representation under the agency of the Holy See.¹⁷³

¶56 Researchers who turn to the Internet for resources on the VCS's legal system are likely to be disappointed. The Vatican's Web site (www.vatican.va/index.htm) is primarily devoted to disseminating information from and about the Holy See, rather than the VCS. The few pages that are devoted to the city state include one with an Italian, German, and Portuguese translation of the 2001 fundamental law;¹⁷⁴ and a page with general information on the VCS (map, state structure, citizenship, flag, transportation, phone numbers, etc.).¹⁷⁵ The Vatican Web site does contain the text (in HTML, not PDF format) of selected papal documents dating back to Pope Leo XIII (1878), and it should therefore be considered a potential source for the text of apostolic constitutions and motu proprios that apply to the VCS.

172. CARDINALE, *supra* note 3. See also Noel Dias, *Roman Catholic Church and International Law*, 13 SRI LANKA L.J. 107 (2001); Robert John Araujo, *The International Personality and Sovereignty of the Holy See*, 50 CATH. U. L. REV. 291 (2001); Bathon, *supra* note 72; Yasmin Abdullah, Note, *The Holy See at United Nations Conferences: State or Church?* 96 COLUM. L. REV. 1835 (1996); Pio Ciprotti, *The Holy See: Its Function, Form, and Status in International Law*, 8 CONCILIUM 63 (1970); GRAHAM, *supra* note 137; Josef L. Kunz, *The Status of the Holy See in International Law*, 46 AM. J. INT'L L. 308 (1952); Horace F. Cumbo, *The Holy See and International Law*, 2 INT'L L. Q. 603 (1949); Herbert Wright, *The Status of the Vatican City*, 38 AM. J. INT'L L. 452 (1944); Gordon Ireland, *The State of the City of the Vatican*, 27 AM. J. INT'L L. 271 (1933).

173. CARDINALE, *supra* note 3, at 115–17.

174. Legislation, http://www.vatican.va/vatican_city_state/legislation/index.htm (last visited Apr. 29, 2007).

175. Holy See Press Office, Holy See: State of Vatican City, General Information, http://www.vatican.va/news_services/press/documentazione/documents/sp_ss_scv/informazione_generale/sp_ss_scv_info-generale_en.html (last visited Apr. 29, 2007).

¶57 Many of the traditional Internet sites consulted by researchers looking for information on foreign jurisdictions provide little information on the nation state,¹⁷⁶ and most do a very poor job of distinguishing between the legal system of the Holy See and the legal system of the VCS.¹⁷⁷ Due to the incomplete or inconsistent quality of the information in most of the Internet guides, it is difficult at this time to recommend the Internet as a resource for researching the VCS.

176. *See, e.g.*, Andrew Grossman, Finding the Law: The Micro-States and Small Jurisdictions of Europe, (Oct. 1, 2001), http://www.llrx.com/features/microstates.htm#Vatican_State (offering an incomplete, although largely accurate, description of the city state's legal system).

177. *See, e.g.*, Jurist, Vatican City, <http://jurist.law.pitt.edu/world/vatican.htm> (last visited Apr. 29, 2007). This guide, which appears to gather its information from the State Department, briefly describes the tribunals pertaining to the Holy See, but makes no mention of the judicial system of the city state.