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The Catholic Church
and Vatican City State:
Due Process on Trial

Translated by BRIAN T. AUSTIN

This volume brings together two works previously published in Italian in 2025 by Geraldina Boni, Manuel Ganarin and Alberto Tomer: one entitled *La lesione dei principi di legalità penale e del giusto processo nell'ordinamento canonico. Quali ripercussioni giuridiche nel diritto italiano?* (Bologna University Press), and the other entitled *Il «processo Becciu». Un'analisi critica* (Marietti1820). The contents, which have been faithfully retained, differ from the original texts only in the reduction of footnotes for editorial reasons, and in the adjustments made necessary by translation, as well as the addition of some essential, minimal updates. Finally, in order to ensure full comprehensibility of the text, quotations from passages originally in different languages are also provided here in English. Unless a different source is indicated, the translation is always to be considered the work of Brian T. Austin, whom we would like to take this opportunity to thank wholeheartedly for generously offering his work, of extraordinary linguistic and legal expertise, free of charge.

PART I

The Violation of the Principles of Penal Legality and Due Process in Canon Law. What Are the Legal Ramifications in Italian Law?

Introduction

The content of this work originates from a *votum* that was commissioned, in view of an ongoing penal process, from Geraldina Boni, who availed herself of the collaboration of her students, now professors, Manuel Ganarin and Alberto Tomer. In particular, the three questions on which an opinion was to be given—the responses to which constitute the corresponding parts/chapters of this work—were formulated as follows:

1) *Is it possible, within the Church's legal system, to judge a penal cause—and thus to formulate the doubt regarding a delict contra sextum cum minore—according to the penal law currently in force, in a case where a priest committed the alleged delict before the current, stricter norms entered into force, when the penal norms of the 1983 Code of Canon Law were still valid? On the other hand, is it possible, for the sake of maintaining the competence of the Dicastery for the Doctrine of the Faith, to apply the penal norm in force at the time of the act together with the norms currently in force?*

2) *What consequences might arise for the Church's juridic order on account of admitting the possibility of derogating from the non-retroactivity of penal law and from the principle that a case must be adjudicated according to the law more favourable to the accused in a penal proceeding? Further, what might the consequences be for the relationship between and interaction with other juridic orders, particularly the Italian one?*

3) *What consequences might arise regarding the civil liability of the diocese that allowed such a serious violation of the accused's rights in a penal process?*

Beyond the specific case that occasioned the commissioning of the opinion, the very terms of the questions to which a reasoned and considered answer had to be given—including the intersections between the canonical order and Italian law in particular—clearly and sharply highlight legal issues which today, unfortunately and in an extremely alarming manner, are increasingly frequent in ecclesiastical tribunals. For this reason, it was deemed useful to publish the following reflections, which, taking on a general scope that abstracts from and goes beyond the original concrete case, seem capable of revealing how penal jurisdiction is often exercised in the Church. This state of affairs is due in part to “emergency” legislation issued in a convoluted manner over the last quarter-century which overturned inviolable, foundational principles of due process, thus irreparably compromising the fundamental rights of the Christian faithful—rights which are also constitutionally protected for [Italian] citizens. These rights are being undermined by the retroactive application of penal law, the avoidance of the principle *favor rei*, and the now habitual and constant derogation from prescription. Everywhere there is ignorance and, consequently, general indifference. It seems, therefore, important to announce to the public—but above all to tell the entire community of jurists—just what is happening within the canonical order, since it is, for the most part, completely unknown, if not misrepresented and misunderstood. This primarily concerns, as can be imagined, accusations against clerics for sexual abuse of minors. This issue has been obsessively discussed for decades—to the point of becoming

an infamous and indelible stain upon the entire ecclesiastical community—in the cauldron of a shouted, unreflective, and indiscriminate “punitivism.”

Conversely, the image that the *media* continues to portray of the response of the Church to the aforementioned abuses—depicted as always and invariably inadequate—is today often false, dramatically false. While this tragedy in the past did indeed harm victims—who were unheard, abandoned, even mocked and vilified by a hierarchy that, to save its reputation and for other less than noble purposes, concealed the grave and abominable crimes of some of its ministers in a culture of silence and cover-ups—the situation now appears to be completely reversed. In an effort to atone for past silences and omissions and to exorcize the fear of being violently attacked again for intolerable failures and cover-ups, there is a rapid shift, under the banner of the slogan “zero tolerance,” towards a regime that not infrequently takes on the characteristics of a truly summary¹ form of justice. Such a regime, in which the pillars of penal legality and due process—which canon law itself, in its centuries-long evolution, has helped to establish—seem to be progressively and resoundingly collapsing one by one, leaves canonists stunned and dismayed. And yet, they are prevented from reacting due to the fear of being accused in turn of resisting the new path—finally one of rigor and cleansing, they say—indicated by the Church. Nevertheless, the fury of this new Inquisition cannot redeem the mistakes of the past or heal the wounds of the afflicted; on the contrary and unfortunately, it only tarnishes the present and irreparably clouds the future—not so much of *ius canonicum*, but of the people it ought to protect, who instead find themselves crushed and slaughtered by a positive law [*diritto*] now devoid of justice.

1. [Trans. “Summary” here is a technical term describing legal proceedings conducted rapidly and without the usual formalities.]

We are well aware that by making statements of this kind, we expose ourselves to the usual criticism of those who exploit the persistent malaise—completely understandable and well-founded, as nobody would deny—caused by the scandal of the Church’s widespread and terrible failure to defend the weakest and most vulnerable; and of those who continue (perhaps deliberately) to fuel a generalised and invincible presumption of guilt for all clerics and consecrated persons, who, in the opinion of many, have been transformed by religiously imposed sexual repression (*sic*) into a dangerous pack of child predators. But resorting to polemics of this kind, even if fought with the weapons of scientific reason, leads nowhere.

For this reason, we do not intend here to analyze the penal law or judicial system of the Church in order to criticize recent normative reforms or to expound doctrinal opinions on “ecclesiastical criminal policy,” so to speak, or even to venture suggestions *de iure condendo* (as we have already done elsewhere). We believe that at this point it is more fruitful to turn not so much—as is customary for canonists—*ad intra Ecclesiae*, but deliberately and intentionally to turn *ad extra*, to legal experts who do not frequent ecclesiastical tribunals. Neither are we concerned here with purely theoretical discussions, but rather with precise, juridically substantiated considerations that are based on a concrete case (as indicated above) but detached from it in order to follow in the footsteps of other previous or concurrent cases, and thus to arrive at the delineation of a framework that can embrace all of them. Nothing more needs to be added, because in this heated climate it would be branded as partial and prejudiced.

We are also aware that many jurists, including some of our highly respected colleagues in Bologna, have strongly denounced the distortions triggered by trials held in the forum of the media and their harmful and often irreparable repercussions on the actual trial and, therefore, on the guarantees and rights of those involved. This aberrant and distorted *justice without a trial* is a sad phenomenon that is repeated daily before our eyes. But media pressure has led to other deviations and

the sacrifice of other scapegoats, in a subtle and hidden but no less tragic way. This time, the aforementioned injuries are being inflicted, away from prying eyes, within the canonical system, which is still accused of not punishing the guilty adequately and which, because of those same nefarious interferences, can strike blindly in a *trial without justice*. And so, if the Church cannot escape this terrible, vicious circle that is squandering two millennia of authentic legal experience, it is perhaps up to secular authorities to issue severe and salutary warnings. That is to say, perhaps it is time to resort to State courts in the manner permitted by law and with the appropriate claims, so that the ecclesiastical authorities may be encouraged to conduct canonical proceedings in an appropriate manner. Crimes must be condemned and the guilty punished: but, even in the canonical order, the accused must be guaranteed the right to a full defence and a fair trial, that great and irreversible achievement of civilisation, which even the devil himself must be guaranteed, as medieval canonists insisted without hesitation.²

2. Cf. *inter alios* Cardinal Hostiensis (born in Susa ca. 1200; died in Lyon 25 October 1271; *alias* Henricus de Segusio, Cardinalis Hostiensis, *Summa*, Liber 2, De exceptionibus, § 3, Lugduni, 1537; reprinted Aalen, 1962, 111r), as well as the French Dominican bishop William Durand (ca. 1230–1296; *alias* Guilielmus Durantis, *Speculum iudiciale. Illustratum et repurgatum a Giovanni Andrea et Baldo degli Ubaldi*, 2 vols., Basileae, 1574; reprinted Aalen, 1975: lib. III, particula I, rub. *de inquisitione*, § 5 *Ultimo nota*, n. 6, vol. 2, 42).

PART II

The “Becciu Trial.” A Critical Analysis

Preliminary note by Geraldina Boni

This work was written as a pro veritate opinion in support of an appeal prepared by the advocates representing Cardinal Giovanni Angelo Becciu against a sentence of the Tribunal of Vatican City State dated 16 December 2023. His Eminence contacted me personally and urged me to take on this task. Having read the procedural acts, however, it was neither reverence for the cardinal (whom I have never met) nor my growing conviction of his total innocence that prompted me to take on this task, but rather my concern for justice—the same concern that prompts me to publish this work. I therefore dedicate this work—in the drafting of which I was ably assisted by Manuel Ganarin and Alberto Tomer, who are also signatories—to my mentor, Professor Giuseppe Dalla Torre, long-time president of the Tribunal of Vatican City State, and to my dear Professor Piero Antonio Bonnet, judge of the same Tribunal, both of whom were struck down by a premature death, which at least spared them from witnessing proceedings that would have embittered them.

We will not go into any questions regarding the merits of the accusations: the excellent defence prepared by the advocates contests in detail all the charges brought against Cardinal Becciu. The legal

arguments we will make presuppose and are based on the procedural acts, as is to be expected, arriving at conclusions that radically undermine the validity of this trial. These conclusions remain sound despite the fact that our opinion was drafted before the filing, on 29 October 2024, of the motivation for the first instance sentence of the Vatican Tribunal. The college of judges, in fact, mostly reproduced verbatim the most significant passages of their decision of 1 March 2022, which rejected relevant and decisive preliminary procedural objections raised by the defence concerning violations of the principles of a fair trial. These passages were analytically and extensively contested in our original opinion; having examined these passages again in the version now published, they do not seem to us to undermine our critical analysis in any way.

The four parts into which the opinion is divided (and, therefore, the four chapters of this work), although closely linked and interconnected, relate to distinct legal areas and thus retain a certain independence. For this reason, it was considered appropriate to organise the presentation in such a way that each chapter could be read relatively independently. Each chapter repeats, where necessary, the main information or references to the proceedings, with a view to an investigation that is conducted from a different perspective each time, albeit coordinated with the others. It should be noted that, given the main purpose of this study, references to legal doctrine are kept to a minimum.