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From The Vatican With Cash: Prosecuting Money Laundering In London Real Estate

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**FROM THE VATICAN WITH CASH: PROSECUTING MONEY
LAUNDERING IN LONDON REAL ESTATE**

Jane Tien†

ABSTRACT

It is no news that donations from the Catholic faithful re-emerge from the dark underground of Church finances as lace vestments, embroidered mitres, velvet slippers, and posh mansions. A year after Pope Francis announced the overhaul of the Vatican's anti-money laundering (AML) laws, a makeshift courtroom in the Vatican Museum witnessed the largest criminal trial in the Vatican's modern history. At the center was Cardinal Angelo Becciu – the former No. 3 in the Vatican – for allegedly defrauding the Vatican's investment in London real estate. After the tumbrels, now comes the reckoning: How could the Vatican mend a broken system and effectively tackle money laundering in real estate?

This Article initiates an overdue conversation about the corruption crisis in St. Peter's. Studying the world's smallest sovereign state yields insights applicable to the obstacles confronting the AML community at large, such as the identification of beneficial ownership, the costs for training AML personnel, and the proliferation of multi-jurisdictional compliance requirements. Positing a strategy for repair and renewal, this Article argues that British prosecution could share the burden for monitoring, punishing, and deterring the fiscal sins Vatican officials commit through real properties. Such a transnational assertion of prosecutorial power benefits the Vatican in three ways. First, British prosecutors have access to a more expansive AML toolkit that targets both buyer- and seller-side money laundering. By contrast, the Vatican's infant AML framework is ill-equipped to handle that specialized task. Second, British prosecution, unburdened by the constraints of operating under an absolute monarchy, could obtain additional discovery, which in turn helps overcome the shroud of secrecy the Vatican purposefully maintains over its courtships of

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money. Third, the Vatican's AML apparatus suffers from chronic understaffing, brain drain, and high turnover. A helping hand from across the Channel provides a much-needed reprieve. This Article concludes by calling attention to the implications on immunity and foreign relations.

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INTRODUCTION

Secrecy, wrote Cardinal Richelieu, “is the first essential in affairs of state.”¹ The Red Eminence was commenting on seventeenth-century French statecraft, but his insights proved clairvoyant into how the modern Roman Catholic Church conducts its affairs. With a penchant for internal investigations² and the rehabilitative rather than the punitive,³ the Vatican⁴ operates as a capital-chasing corporation.⁵ Certain “unspeakable” crimes demand the inviolable observation of the “strictest confidentiality” among those with knowledge.⁶ In brief, transparency is the eighth capital sin. Those who tell of the Vatican’s malady risk being damned for life temporal and life eternal.

¹ DAVID H. FISCHER, *CHAMPLAIN’S DREAM* 703 n.9 (2008).

² The Holy See, the legal personality of the Vatican City State, reiterated on multiple occasions that it “reserves to itself the exclusive competence to interpret its internal fundamental norms . . . with specific reference to the exclusive power . . . [to] govern [its] internal affairs.” Secretariat of State, *Comments of the Holy See on the Concluding Observations of the Committee on the Rights of the Child*, LA SANTA SEDE, ¶ 8 (2014), https://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_concluding-observations-rights-child_en.html.

³ E.g., Kaleigh McManus, *The Holy See’s Compliance with the United Nations Convention on the Rights of the Child*, 12 DEPAUL J. FOR SOC. JUST. 1, 21 (2019); Gabriela Hidalgo, *Recurring Cardinal Sins: How the Holy See and Canon Law Have Perpetuated Child Sexual Abuse by Clergy Members*, 39 CHILD.’S LEGAL RTS. J. 145, 147 (2019).

⁴ The Vatican City State (“VCS”) refers to “an enclave of Rome and a sovereign monarchical-sacerdotal state.” The Holy See (“HS”) refers to “a religious entity that does not occupy a temporal location.” The VCS supplies the HS the requisite territorial sovereignty to become the juridical equivalent of other states. Stephen E. Young & Alison Shea, *Separating State from Church: A Research Guide to the Law of the Vatican City State*, 99 LAW LIBR. J. 589, 589-95 (2007). Borrowing from MONEYVAL’s designation, this Article uses “the Vatican,” “the Holy See,” and “the Church” interchangeably to denote the entity engaged with MONEYVAL— “[t]he Holy See (including the Vatican City State).” See *Members and observers*, COUNCIL OF EUR., <https://www.coe.int/en/web/moneyval/moneyval-brief/members> (last visited Aug. 27, 2022).

⁵ See GERALD POSNER, *GOD’S BANKERS: A HISTORY OF MONEY AND POWER AT THE VATICAN* 8 (2015).

⁶ The Supreme Sacred Congregation of the Holy Office, *On the Manner of Proceeding in Causes involving the Crime of Solicitation*, LA SANTA SEDE ¶¶ 2, 11 (1962), https://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html.

The Vatican's desire to keep its dealings subterranean is especially ardent regarding its courtships of money. True to the adage, the Lord enriches – until decades ago, when insiders revealed that the public imagination barely scratched the tip of the iceberg.⁷ For a city-state with such saintly connections, it frequently flirts with earthly offenses. As corruption scandals linked to men of the cloth made a splash around the front pages,⁸ bankers and financiers serving the Church met their untimely ends behind the bars, in ankle monitors,⁹ or swinging under a bridge.¹⁰ The onslaught of exposés sent the Vatican reeling, but breaking the mold of silence was no easy task. It was not until 2013 that the conclave elevated a reformer, who took the name of the patron saint of the poor and vowed to end the “[t]he worship of the golden calf of old.”¹¹

The upshot of that worship is a money laundering epidemic that brimmed over the Leonine Walls. Cashing in on “[a]n almost inextricable intertwining between physical and legal persons, investment funds, listed financial securities and non-banks and credit institutions of various types, breadths, and [levels of] transparency,” unprincipled lay and religious personnel engorged their private accounts on the papacy's real property holdings and disguised their tracks as patronage of charitable projects but “without any consideration of the aims and nature of the ecclesial reality.”¹² When

⁷ From the first-hand report of a priest: “In the vault of the IOR there are about 27.9 billion Italian government bonds, BTPs and CCTs. Not all the numbers are clean.” [“Nel caveau dello Ior giacciono circa 27,9 miliardi di titoli di Stato italiani, Btp e Cct. Non tutti i numeri sono puliti.”] GIANLUIGI NUZZI, VATICANO S.P.A. 6 (2009).

⁸ *E.g.*, Most recently, Italy seized a twenty-three million euro transfer from Vatican Bank accounts with an unspecified destination. Paul Vallely, *Can Pope Francis clean up God's bank?*, GUARDIAN (Aug. 13, 2015, 1:00 PM), <https://www.theguardian.com/world/2015/aug/13/can-pope-francis-clean-up-gods-bank>.

⁹ Davide Casati, *Of Virtue and Vice, and a Vatican Priest*, N.Y. TIMES (Oct. 18, 2014), <https://www.nytimes.com/2014/10/19/business/of-virtue-and-vice-and-a-vatican-priest.html>.

¹⁰ POSNER, *supra* note 5, at 5-7.

¹¹ Lizzy Davies, *Pope Francis attacks 'cult of money' in reform call*, GUARDIAN (May 16, 2013, 8:41 PM), <https://www.theguardian.com/world/2013/may/17/pope-francis-attacks-cult-money>.

¹² *E.g.*, *Vatican court rejects appeal in financial crime case*, PILLAR (July 22, 2022, 12:33 PM), <https://www.pillaratholic.com/vatican-court-rejects-appeal-in-financial> (reporting on the conviction of Angelo Caloia, the former director of the Vatican Bank, for embezzling the Vatican's real estate investments); *Caso Becciu. Parolin: "Bene*

wedded to limited oversight and the intentional cultivation of reticence, the superfluity of legal forms, operational structures, and investment portfolios held by the Vatican obscures and enables the connivance of actors intravenous and extraneous.

Ten years into Francis' pontificate, the Vatican has initiated three proceedings related to real estate money laundering schemes in domestic and foreign courts. In January 2021, a Vatican court convicted Angelo Caloia, a former president of the Vatican Bank, for embezzling and laundering the profits from the sale of twenty-nine Church-owned buildings in Italy.¹³ To date, Caloia is the highest-ranked official to be convicted of a financial crime.¹⁴

The latest in the saga is a London property deal gone awry. In December 2021, the Vatican accused the broker Gianluigi Torzi of scamming it millions of dollars in the sale of a Chelsea building.¹⁵ Torzi denied the charges. The quarrel escalated into a restraint order filed by the Vatican against Torzi's UK assets before the Crown Court in

processo, pronto a testimoniare" [Becciu case. Parolin: "Good process, ready to testify"], RAINews (July 4, 2021), <https://www.rainews.it/archivio-rainews/articoli/cardinal-becciu-a-processo-parolin-bene-processo-pronto-a-testimoniare-5afe3bab-edbb-48fa-96ff-4920638e1062.html> (a five-hundred-page summons written by the Office of the Vatican Promoter of Justice recounting the "incisive internal complicity" in the Vatican's "rotten predatory and lucrative system"); see also *infra* Conclusion (noting Cardinal Becciu allegedly deposited hundreds of thousands of euros into his brother's personal bank account to fund charitable endeavors). The exact extent of the involvement of the Church in these money laundering schemes are unclear. Aside from insider graft, another hypothesis is that the Church suffers from inadequate business skills. According to the former head of the Vatican's Financial Information Authority, "[the Vatican] negotiated a series of stunningly inept business deals, eyes wide open, which were fully endorsed and even applauded by the most senior figures in the system." John L. Allen Jr., *Vatican trial's 'Tale of Two Narratives' trundles on*, CRUX (Apr. 10, 2022), <https://cruxnow.com/news-analysis/2022/04/vatican-trials-tale-of-two-narratives-trundles-on>.

¹³ Holy See Press Office Communiqué, 21.01.2021, LA SANTA SEDE (Jan. 21, 2021), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/01/21/210121e.html>.

¹⁴ Nevertheless, extolling the conviction as a watershed may be idealistic. Whether Caloia, at the age of 81, would serve any of his eight-year sentences is arguable. Philip Püllella, *Former head of Vatican bank guilty of embezzlement, money laundering*, REUTERS (Jan. 21, 2021, 10:55 AM), <https://www.reuters.com/world/former-head-vatican-bank-guilty-embezzlement-money-laundering-court-2021-01-21>.

¹⁵ *Torzi v. Dir. Pub. Prosecutions*, No. R/O 104/20, 2021 WL 01600447, at *3 (NICC Mar. 10, 2021).

Southwark, London.¹⁶ Likewise, the proceeding skidded to an anticlimactic end. Condemning the poor quality of its filings, the judge handed the Vatican a crushing defeat.¹⁷

Torzi is small fry compared to what is searing in Vatican's own pan. In an ongoing trial nicknamed "Becciu +9,"¹⁸ the Vatican indicted Angelo Becciu – formerly the third-most-powerful in the holy ranks – and nine others for throwing away the London investment on "imprudent and unreasonable speculative transactions."¹⁹ As of August 2022, after almost two years of teetering on the edge of dismissal, the outcome of the case remains far from certain.²⁰

The Vatican prosecutors aspire to a multi-front war, but their battle strategy veers towards bad lawyering. Signs of strain pervade the Vatican's filings and manifest in the sluggish pace it brings suit. To relieve the Vatican's overextension, this Article posits a complementary third-party model of controlling Vatican funds laundered through London real properties.²¹ The London housing

¹⁶ *Id.* at *2-4.

¹⁷ *Id.*

¹⁸ *I Promotori di giustizia vaticani rispondono "no" alle richieste avanzate dagli avvocati degli imputati nel processo "Becciu + 9". Otto cartelle piene di indizi sul futuro del processo che riprende il 5 ottobre* [The Vatican Promoters of Justice answer "no" to the requests made by the lawyers of the defendants in the "Becciu + 9" trial. Eight folders full of clues about the future of the trial which resumes on October 5], IL SISMOGRAFO (Aug. 10, 2021), <http://ilsismografo.blogspot.com/2021/08/vaticano-i-promotori-di-giustizia.html>.

¹⁹ *Documents and testimony contained in request for indictments*, VATICAN NEWS (July 3, 2021, 2:09 PM), <https://www.vaticannews.va/en/vatican-city/news/2021-07/documents-and-testimony-contained-in-request-for-indictments.html>.

²⁰ For a comprehensive overview of the trial, see *All due process: What you need to know about the Vatican court ruling*, PILLAR (Mar. 3, 2022, 2:37 PM), <https://www.pillaratholic.com/all-due-process-what-you-need-to>; Salvatore Cernuzio, *Cardinal Becciu to participate in the next consistory*, VATICAN NEWS (Aug. 22, 2022, 5:57 PM), <https://www.vaticannews.va/en/vatican-city/news/2022-08/cardinal-becciu-to-participate-in-the-next-consistory.html>.

²¹ Since criminal actions against Vatican affiliates and officials are a recent development, there is a conspicuous silence in existing scholarship on the valuable insights that can be gained from a transnational assessment of prosecutorial power. Current discussions mostly focus on descriptive surveys, comparative studies, or critical readings of the financial regulations governing the Vatican. *E.g.*, David Durisotto, *Euro e Stato Città del Vaticano. I Rapporti di valutazione e di avanzamento MONEYVAL e la riforma della legge sulla prevenzione ed il contrasto del riciclaggio dei proventi di attività criminose e del finanziamento del terrorismo*. [Euro and

market warrants special interest for two reasons. First, London has long been one of the favorite laundromats of corrupt foreign elites,²² justifying interest from English prosecutors to clean up suspect funds. Second, considering that the Vatican has snatched multiple luxury homes in the prime zip codes,²³ London is a natural locale to look for hidden wealth.

Due to three advantages of the legal system in England, this Article argues that concurrent British prosecution can partially reverse the exodus of Vatican capital. This Article aims not at diminishing the Vatican's efforts, but at advancing a burden-sharing scheme for English prosecutors that serves the interests of both England and the Vatican in eradicating money laundering. To formulate this proposal, this Article proceeds in four parts. Part I breaks down the Vatican's AML framework into four main components: the financial organ, the regulatory organ, the judicial organs, and the legislative organs, supplemented with a summary of the Vatican's AML legislations. Part II dissects the three barriers Vatican prosecutors have encountered when litigating at home and abroad: the lack of procedural guidance, the influence of the pope, and the shortage of staff. Part III examines the ways British prosecution could overcome those barriers via its expansive procedural and substantive laws, insulated judiciary, and large workforce. Part IV identifies the limitations of this model and addresses concerns in establishing jurisdiction, facilitating diplomacy, responding to the elasticity of London properties, and fostering learning.

Vatican City State. The MONEYVAL evaluation and progress reports and the reform of the law on preventing and combating money laundering and the financing of terrorism.], ASSOCIAZIONE ITALIANA DEI COSTITUZIONALISTI 1, 2-8 (2014); Francesco De Pascalis, *Financial Crime Prevention and Control: The Reforms of a 'Unique' Jurisdiction Under EU Law and International Standards*, 17 EUR. J.L. REFORM 528 (2015). While drawing from their insights, this Article fills a lacuna by turning to another body of law that provides a more powerful toolkit to eliminate corruption in real estate.

²² See HM TREASURY & HOME OFF., NATIONAL RISK ASSESSMENT OF MONEY LAUNDERING AND TERRORIST FINANCING 2020, 109 (2020).

²³ AFP, *Property: a blessing and a burden for the Vatican*, BANGKOK POST (Feb. 21, 2021, 1:45 PM) <https://www.bangkokpost.com/world/2071999/property-a-blessing-and-a-burden-for-the-vatican>.

I. OVERVIEW OF THE AML FRAMEWORK IN THE VATICAN

A. The Financial Organ: The Vatican Bank²⁴

The purpose of the Institute is to provide for the custody and administration of capital . . . and properties, both transferred or entrusted to the Institute by natural or legal persons and intended for works of religion and Christian piety.²⁵

So sprung into existence the Vatican Bank. In 1942, Pius XII founded the Bank to finance ecclesiastical activities during the Second World War.²⁶ The Bank dates back to the nineteenth-century *pie fondazioni*, or pious foundations, created by Leo XIII to keep funds out of the sight and reach of the Italian state.²⁷ Over the years, the Bank's forerunners assumed many forms, but they preserved the function of safekeeping offerings, bequests, and diocesan assets earmarked for religious or charitable ends.²⁸ Inheriting that essential feature, the Bank evolved into a chimera. The public brands it as a bank, but it lacks the hallmark attribute of a banking business, as there is no contractual relationship between the Bank and its customers. It purports to champion benefaction, but its history abounds with ignominy. On paper, it protects and administers the assets, pensions, and salaries for five categories of clients set out by its bylaws: Catholic institutions,

²⁴ This Article limits its discussions on financial organs to the Vatican Bank, as it is the “only institution authorised to carry out financial activities on a professional basis in the jurisdiction.” Supervisory & Fin. Info. Auth., ANNUAL REPORT 1 (2020) [hereinafter ANNUAL REPORT]. MONEYVAL previously classified the Administration of the Patrimony of the Apostolic See (APSA), the Church's sovereign-wealth fund, as a financial institution. However, “all non-institutional accounts held by the APSA had been transferred to the [Supervisory and Financial Information Authority (ASIF)] authorised institution or closed” by 2015. MONEYVAL, HOLY SEE (INCLUDING VATICAN CITY STATE): FIFTH ROUND MUTUAL EVALUATION REPORT 30 n.15 (2021) [hereinafter FIFTH ROUND REPORT]. The ASIF is discussed in Part (I)(B).

²⁵ Settimio C. Caridi, *Rapporti interordinamentali: Santa Sede, Stato della Città del Vaticano e Giudici ecclesiastici davanti al Giudice dello Stato* [Interordinal Relations: Holy See, Vatican City State and Ecclesiastical Judges Before the State Judge (1984-2012)], IL DIRITTO ECCLESIASTICO 465, 492 n.70 (2012).

²⁶ Riccardo Radi, *La giustizia vaticana* [Vatican Justice], FILODIRITTO 19 (2021).

²⁷ *Id.* at 20.

²⁸ *Id.*

clergy, employees, diplomats, and ambassadors.²⁹ In practice, it consorts with a far more all-embracing clientele, notably the *Cosa Nostra*.³⁰ It vows to adhere to client instructions when managing derived income, yet it has a reputation for taking liberties with directions and taking advantage of unwitting bankers.³¹ It swears independence from the Roman Curia – the offices assisting the pope in governing the Church³² – yet it often plays a central role in the Church’s vices when they come to the fore.

While reconstructing the Bank’s parade of scandals exceeds the scope of this Article, the Vatican-Ambrosiano affair most directly presages the challenges Vatican prosecutors later face in their AML crusade. On August 25, 1982, the Milan-based Banco Ambrosiano collapsed under over one billion dollars in bad debt.³³ Like a line of dominoes, Ambrosiano’s unraveling set in motion a high-stake parlor game of Vatican intrigue. Prior to Ambrosiano’s collapse, Roberto Calvi, who later became its president, erected a maze of offshore companies to launder money for the mafia in the 1970s.³⁴ By the end of 1981, the companies fell behind on repaying loans. Calvi secured two letters of comfort from Archbishop Paul Marcinkus, the then head of the Vatican Bank, ensuring debtors that the Vatican Bank was “aware[] of [the offshore companies’] indebtedness” and “directly or indirectly control[led]” the companies.³⁵ Although the letters did not contain any guarantee to honor the debts, Calvi claimed that “[b]ehind those loans is the Vatican, the Pope.”³⁶

Mounting arrears trapped Ambrosiano in a one-way path to destruction. Italy’s subsequent probe revealed that Ambrosiano’s dying days were fraught with “anomalous and reckless operations . . .

²⁹ *Services*, ISTITUTO PER LE OPERE DI RELIGIONE, <http://www.ior.va/content/ior/en/servizi.html> (last visited Apr. 23, 2022); De Pascalis, *supra* note 21, at 535.

³⁰ See Nick Mathiason, *Who killed Calvi?*, GUARDIAN (Dec. 6, 2003, 8:29 PM), <https://www.theguardian.com/business/2003/dec/07/italy.theobserver>.

³¹ See Peter Hebblethwaite, *Vatican Bank scandal reappears in Venezuela.*, NAT’L CATH. REP. (Dec. 24, 1993), <https://www.thefreelibrary.com/Vatican+Bank+scandal+reappears+in+Venezuela.-a014708056>.

³² Radi, *supra* note 26, at 19–20.

³³ JASON BERRY, *RENDER UNTO ROME* 104 (2011).

³⁴ POSNER, *supra* note 5, at 318.

³⁵ *Id.* at 319.

³⁶ *Id.* at 323.

customized beyond any banking logic,³⁷ where the Vatican's specter lurked at every turn. The Italian Minister of Treasury announced that Italy expects "a clear assumption of responsibility by the IOR" for its part in Ambrosiano's underworld transactions.³⁸ Overnight, headlines flew, Ambrosiano's shares tumbled, arrest warrants were issued, and Calvi's body dangled from the Blackfriars Bridge.³⁹ Marcinkus escaped judgment day under a technicality: The Italian Court of Cassation ruled that Italy did not have jurisdiction under Article 11 of the Lateran Pacts, which shields "central bodies of the Catholic Church . . . from any interference on the part of the Italian State."⁴⁰ To this date, the Vatican Bank maintains that it has "no responsibility" for Ambrosiano's demise and "found [itself] involved involuntarily" due to its "special position."⁴¹

Against the backdrop of its shadowy past, the Bank's veil of secrecy began to lift. Under Benedict XVI and Francis, the Bank's twenty-first century was laden with historical firsts. Of all the reforms, three altered the Vatican's AML landscape the most. First, the 2010 Monetary Agreement between the European Union and the Vatican City State mandates the adoption of "all appropriate measures . . . with a view to implementing the EU legal acts and rules . . . [related to the] . . . prevention of money laundering."⁴² The signing of the Agreement was not the earliest instance that the Vatican signaled a willingness to improve the Bank's transparency, but it was the first time it spurred into action.⁴³ The most noteworthy measure is the creation of an independent regulatory body, the Supervisory and Financial

³⁷ Radi, *supra* note 26, at 22 ("[S]i presenta aggrovigliata per un complesso di operazioni anomale e spericolate fortemente accentrate e personalizzate al di fuori di ogni logica bancaria.").

³⁸ *Id.*

³⁹ POSNER, *supra* note 5, at 327–28.

⁴⁰ Lateran Treaty, It.-Vatican, Feb. 11, 1929, O.V.T.S. 161.

⁴¹ *Istituto per le Opere di Religione Settlement Deed*, 2 (1984), https://www.invisible-dog.com/DOC%20CALVI/Accordo_IOR_84_ocr.pdf.

⁴² Monetary Agreement between the European Union and the Vatican City State, art. 8(1)(b), 2010 O.J. (C 28/13).

⁴³ See Giuseppe Rivetti, *Stato Città del Vaticano, Santa Sede e normativa anticiclaggio. Produzione legislativa tra specificità funzionali e complessità strutturali [Vatican City State, Holy See and anti-money laundering legislation. Legislative production between functional specificities and structural complexity]*, STATO, CHIESE E PLURALISMO CONFESIONALE (2013).

Information Authority (*Autorità di Supervisione e Informazione Finanziaria*, “ASIF”), which supervises the Bank by providing “regular written guidance and feedback” and conducts regular on-site inspections to ensure implementation.⁴⁴

Second, 2011 marks the first year that the Vatican, including the Bank, submitted to an external international auditor.⁴⁵ The Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“MONEYVAL”) reviews states’ “compliance with and the effectiveness of the implementation of . . . the financial and law enforcement measures in place to combat money laundering” against the “global standards of the Financial Action Task Force (FATF).”⁴⁶ In 2012, noting that the Bank’s internal procedures “have come a long way in a very short period of time,” MONEYVAL nonetheless identified a few gaps in the Bank’s compliance framework.⁴⁷ Within a year, the Bank responded by closing more than 1,000 accounts belonging to clients outside of the five eligible categories.⁴⁸ In 2021, MONEYVAL commended the Bank’s progress in implementing “rigorous risk-based transaction monitoring.”⁴⁹ The Vatican received grades of “Compliant” or “Largely Compliant” on 34 out of 39 technical compliance ratings and its revamped AML system was rated “Moderate” to “Substantial” for effectiveness.⁵⁰

Third, in 2019, Francis revised the Bank’s statutes, making the legal auditing of accounts by an external auditor mandatory for the first time.⁵¹ Replacing internal auditors with indefinitely renewable

⁴⁴ MONEYVAL, HOLY SEE: PROGRESS REPORT AND WRITTEN ANALYSIS BY THE SECRETARIAT 162 (2017), <https://rm.coe.int/third-3rd-round-progress-report-on-holy-see/168076f120>.

⁴⁵ MONEYVAL, MUTUAL EVALUATION REPORT – EXECUTIVE SUMMARY: THE HOLY SEE (INCLUDING VATICAN CITY STATE) 3 (2012), <https://rm.coe.int/mutual-evaluation-report-executive-summary-anti-money-laundering-and-c/16807160f8>.

⁴⁶ *Id.*

⁴⁷ *Id.* at 4-12.

⁴⁸ Fiona Ehlers & Fidelius Schmid, *Vatican Moves to Close Dirty Accounts*, SPIEGEL INT’L (Sept. 10, 2013, 4:47 PM), <https://www.spiegel.de/international/business/officials-order-clients-to-close-accounts-as-part-of-vatican-bank-cleanup-a926818.html>.

⁴⁹ FIFTH ROUND REPORT, *supra* note 24, at 7.

⁵⁰ *Id.* at 17.

⁵¹ Sergio Centofanti, *Pope Francis renews the Statutes of the Vatican Bank (IOR)*, VATICAN NEWS (Aug. 10, 2019, 12:44 PM),

posts, the external auditor now serves a three-year term renewable only once.⁵² Moreover, the auditor is granted sweeping power to not only “examine all the books and accounting documents,” but also “request any information useful for auditing activities.”⁵³ If sunshine is the best antiseptic, the watchful gaze of international and Vatican auditors heralded a new phase in the Bank’s AML campaign. Dirty funds now faced more barriers against the combined might of the auditors and the Vatican’s new regulatory watchdog. Yet, as argued below, if not disciplined by powerful laws and experienced institutions executing the laws, the Bank would inevitably revert to a lucrative saint-making machine.⁵⁴

B. The Regulatory Organ: The Supervisory and Financial Information Authority (“ASIF”)

The mission of the ASIF, formerly the Financial Information Authority, is threefold: gathering and analyzing financial intelligence, supervising the Vatican Bank, and imposing “regulation[s] pertaining to the prevention and countering money laundering.”⁵⁵ From a fledgling institution with few staff and even fewer matters crossing its desk when created by Benedict XVI,⁵⁶ the ASIF has grown to acquire expansive competences.⁵⁷ Today, with thirteen full-time staff members, the ASIF contains three units reflecting its tripartite functions: the Supervisory Unit, in charge of prudential supervision and AML-preventive supervision; the Regulation and Legal Affairs Unit, responsible for drafting and updating regulations and guidance; and the Financial Intelligence Unit, at the helm of operational analysis

<https://www.vaticannews.va/en/pope/news/2019-08/pope-francis-renews-statutes-vatican-bank-ior.html>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Jason Horowitz, *Pope Benedict’s Last Intriguing Piece of Business*, ATLANTIC (Feb. 15, 2013), <https://www.theatlantic.com/international/archive/2013/02/pope-benedicts-last-intriguing-piece-business/318301/> (“We shouldn’t have done it, because it’s like opening up Pandora’s box.”).

⁵⁵ ANNUAL REPORT, *supra* note 24, at 5.

⁵⁶ See *id.* at 3-6. (showing that the ASIF made no reports to the Promoter of Justice—the Church’s prosecutor—and only made one suspicious activity report in 2011, the first year it was created).

⁵⁷ *Id.* at 5-6.

and strategic analysis.⁵⁸ In 2020, the ASIF received eighty-nine suspicious reports and exchanged information requests on 196 subjects with foreign financial intelligence units.⁵⁹ MONEYVAL concluded that the ASIF's AML activities are "not only informative and reliable but also ha[ve] elements of comprehensiveness."⁶⁰

However, the ASIF's growth breathes little optimism into the Vatican's quest for transparency; on the contrary, a decade of raids, arrests, and leadership exoduses may forebode that the watchdog's bark is worse than its bite. In 2019, the Vatican gendarmes searched the ASIF office for evidence in connection with the London property deal, resulting in the firing of its director, the resignation of its president and board members, and its expulsion from the Egmont Group—a global network of financial intelligence authorities—on grounds of data protection failures.⁶¹ One former board member described the ASIF as "an empty shell" stripped of information sharing and exchange capacities.⁶² Commentators have postulated two opposing theories to explain the disfavor. First, the raid aimed at torpedoing the ASIF's investigation into 60 Sloane Avenue. The ASIF dug too deep and unearthed evidence implicating high-ranking officials.⁶³ Second, the raid targeted the ASIF's ineptitude. According to Francis, the ASIF "did not control . . . the crimes of others [and failed] in its duty of controls."⁶⁴ Their differences notwithstanding, these two hypotheses unite to tell the same tale: The ASIF is powerless to halt the

⁵⁸ *Id.* at 4.

⁵⁹ *Id.* at 2.

⁶⁰ *Id.* at 12.

⁶¹ *Divine Speculation*, ECONOMIST, Oct. 12, 2019; *Schlechte Investments, noch schlechtere Kontrolle – der Vatikan erlebt einen Finanzskandal und einen Machtkampf* [Bad Investments, even worse control - the Vatican is experiencing a Financial Scandal and a Power Struggle], NEUE ZÜRCHER ZEITUNG (Nov. 25, 2019, 12:37 PM), <https://www.nzz.ch/wirtschaft/schlechte-investments-noch-schlechtere-kontrolle-der-vatikan-erlebt-einen-finanzskandal-und-einen-machtkampf-ld.1524205/>.

⁶² *Vatican financial watchdog hails 'rising trend' in reports to Promoter of Justice*, CATH. NEWS AGENCY (July 3, 2020, 3:30 AM), <https://www.catholicnewsagency.com/news/45065/vatican-financial-watchdog-hails-rising-trend-in-reports-to-promoter-of-justice/>.

⁶³ *Pope updates Vatican financial authority following scandals*, ASSOCIATED PRESS NEWS (Dec. 5, 2020), <https://apnews.com/article/statutes-pope-francis-vatican-city-07546fb87ebf89dc221439edd1462d6a/>.

⁶⁴ *Vatican financial watchdog hails 'rising trend' in reports to Promoter of Justice*, *supra* note 62.

engine of corruption, whether due to an inherent failing or bureaucratic constraints.⁶⁵

C. The Judicial Organs: The Courts

In 1929, under Pius XI, the judicial system in the Vatican began to split into two tracks, one for religious matters governed by the Holy See and the other presiding over secular cases under the aegis of the Vatican City State.⁶⁶ The former track, adjudicating questions pertaining to the management of the ecclesiastical side of the house, consists of the diocesan tribunals, the ecclesiastical tribunal, the Apostolic Tribunal of the Roman Rota, and the Supreme Tribunal of the Signatura.⁶⁷ When it comes to money laundering, the latter track is the competent forum. Since most parties that appear before the secular courts are Italian residents, the secular track comes to resemble the inverted pyramid structure of its Italian counterpart.⁶⁸ At the bottom of the pyramid is the Sole Judge, presiding over a court of limited jurisdiction. It has authority over traffic tickets, validation of marriages, and small claims.⁶⁹ Most cases involving money laundering enter through the second tier – the Court of First Instance, which has general jurisdiction in both civil and penal cases. The *Becciu +9* suit is currently pending before the Court of First Instance.⁷⁰ Comprising the third tier, the Court of Appeals reviews the decisions of the Court of First Instance.⁷¹ Lastly, the Supreme Court hears appeals from the

⁶⁵ See MONEYVAL, MUTUAL EVALUATION REPORT: THE HOLY SEE (INCLUDING VATICAN CITY STATE) 9-10 (2012), <https://rm.coe.int/mutual-evaluation-report-anti-money-laundering-and-combating-the-finan/16807160fa/> [hereinafter 2012 Report].

⁶⁶ Radi, *supra* note 26, at 11.

⁶⁷ *Id.*

⁶⁸ *Crime and punishment: Vatican City tackles vast array of crimes*, ARCHDIOCESE OF BALTIMORE (Jan. 19, 2012), <https://www.archbalt.org/crime-and-punishment-vatican-city-tackles-vast-array-of-crimes/>.

⁶⁹ Young & Shea, *supra* note 4, at 607.

⁷⁰ Hannah Brockhaus, *The Vatican's "Trial of the Century" began. Here's what you need to know*, CATH. NEWS AGENCY (July 27, 2021, 1:55 AM), <https://www.catholicnewsagency.com/news/248501/the-vatican-finance-trial-begins-today-heres-what-you-need-to-know/>.

⁷¹ Young & Shea, *supra* note 4, at 608.

Court of Appeals, in addition to criminal cases concerning cardinals and bishops that the pope chose not to hear.⁷²

D. The Legislative Organs: The Pope and the Commission of Cardinals

The Fundamental Law of Vatican City State promulgated by John Paul II in 2000 sets out the two major sources of legislative power in the Vatican: the pope and the Commission of Cardinals.⁷³ Article 1 bestows the Supreme Pontiff “the fullness of legislative . . . powers.”⁷⁴ When the pontiff chooses to relinquish that power, “a Commission composed of a Cardinal President and other Cardinals, all named by the Supreme Pontiff for a five-year term” may exercise it instead.⁷⁵ In other words, the Vatican legislature contains a two-tier hierarchy, with the pope reigning supreme and the Commission acting as the gap-filler.

E. The Vatican’s AML Laws

Championing a faith that died five times,⁷⁶ the Vatican unflinchingly rose from the grave with shrewder promotions of its appeal and an ever-more-byzantine maze of law. Injunctions on money laundering pose no exception. This Subpart proposes a division of the Vatican’s AML laws into four generations, adopted in response to FATF Recommendations, a series of non-binding guidance on AML best practices, and the EU Anti-Money Laundering Directive (“AMLD”), a periodically updated framework issued by the European Parliament for member states to implement domestically.⁷⁷ The first wave of legislations arose after the signing of the Monetary Agreement and established four objectives for future AML laws. Upon that groundwork, the second wave concentrates on bolstering customer

⁷² *Id.* at 609.

⁷³ Fundamental Law of Vatican City State, art. 1 (2000).

⁷⁴ *Id.*

⁷⁵ *Id.* at art. 3.

⁷⁶ G. K. CHESTERTON, *THE EVERLASTING MAN* 165 (1925) (naming the Arians, the Albigensians, the Humanist sceptic, Voltaire, and Darwin as the five deaths of the Christian faith).

⁷⁷ De Pascalis, *supra* note 21, at 549.

due diligence (“CDD”) measures. Receiving that baton, the third wave authorizes forfeiture, enhances due diligence for high-risk subjects, and lifts the immunity of public officials. Lastly, the fourth wave, aimed at clarifying the division of labor within the judiciary, has emerged as the Vatican transitions into a new regulatory chapter under Francis.

1. *The First Wave.*

Law No. CXXVII (“Original AML/CFT Law”), adopted on December 30, 2010, laid the foundation of the Vatican’s AML framework. The Original AML/CFT Law drew inspiration from FATF Recommendations and AMLD in four areas: (1) the criminalization of money laundering, (2) robust CDD, (3) adequate deterrence and punishment, and (4) effective cooperation.⁷⁸ For the first and fourth pillars, the Original AML/CFT Law defines “replac[ing] or transfer[ing] money . . . resulting from a serious offence . . . to hinder the identification of their criminal source, or uses, in . . . activities . . . resulting from a serious offence” as a crime for the first time.⁷⁹ Article 3 includes a list of such serious offenses.⁸⁰ Hence, the Original AML/CFT Law aligns with FATF Recommendation 3, which advises states to “criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances . . . and the United Nations Convention against Transnational Organized Crime” and apply money laundering to “the widest range of predicate offences.”⁸¹ Since criminalization is necessary for international cooperation, the Original AML/CFT Law grants the Vatican admission into the club of states combating money laundering through the “exchange of information and mutual judicial legal assistance.”⁸²

⁷⁸ *Id.* at 543.

⁷⁹ 2012 Report, *supra* note 65, at 53.

⁸⁰ *Id.*

⁸¹ FINANCIAL ACTION TASK FORCE, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION: THE FATF RECOMMENDATIONS 12 (2022), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [hereinafter FATF RECOMMENDATIONS].

⁸² De Pascalis, *supra* note 21, at 543-44 (footnote omitted).

For the second pillar, FATF Recommendation 10 and the third AMLD both urge financial institutions to identify and verify the identities of customers and beneficial owners “using reliable, independent source documents” before the establishment of a business relationship or the transaction.⁸³ When an institution could not comply with these CDD measures, it should refrain from transacting and “consider making a report to the financial intelligence unit (FIU).”⁸⁴ To fulfill that requirement, the Original AML/CFT Law created the ASIF, initially tasked with two main functions: performing financial analysis and receiving communications about suspicious activities.⁸⁵ For the third pillar, the AMLR instructs that “penalties must be effective, proportionate and dissuasive.”⁸⁶ The Original AML/CFT Law introduces a gradualist system authorizing “a detention of four to twelve years and a fine of one to fifteen thousand Euro” depending on the nature of the predicate crime.⁸⁷

2. *The Second Wave.*

The Vatican enriched its retributive repertoire again with Decree CLIX on January 25, 2012 (“Revised AML/CTF Law”). The Revised AML/CTF Law concentrates on the second pillar by enhancing CDD requirements for transactions involving politically exposed persons and non-face-to-face customers.⁸⁸ For the former, Article 31(5) requires the ongoing monitoring of the counterparts’ status and the source of the currency they used.⁸⁹ For the latter, Article 31(1) mandates the verification of the counterparts’ identity using

⁸³ FATF RECOMMENDATIONS, *supra* note 81, at 14.

⁸⁴ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, art. 9(5), 2005 O.J. (L 309/15).

⁸⁵ *Id.* at art. 21(2).

⁸⁶ *Id.* at art. 39(1).

⁸⁷ 2012 Report, *supra* note 65, at 53.

⁸⁸ N. CLIX – Decree of the President of the Governorate of the Vatican City State promulgating amendments and additions to Law n. CXXVII, On the Prevention and Countering of the Laundering of the Proceeds of Criminal Activities and the Financing of Terrorism, of 30 December 2010., Legge 30 dicembre 2010, N. CLIX, Jan. 25, 2012, art. 31(1), (5) (Vatican).

⁸⁹ *Id.*

“additional information, including documents [and] data . . . obtained from a trustworthy and independent source.”⁹⁰

3. *The Third Wave.*

Laying down the letter is only half the work. New legislation must receive MONEYVAL’s stamp of approval.⁹¹ After the publication of the first MONEYVAL report, 2013 ushered in a rapid expansion of the AML infrastructure at the Vatican. Two legislations stand out from the rest. The first is Law No. IX on Amendments to the Penal Code and the Criminal Procedure Code, passed on July 11, 2013.⁹² It amended the Vatican’s criminal code in two major ways. On the one hand, Law No. IX empowers the courts to disrupt and dismantle money laundering by seizing “the things that served or were destined to commit the crime,” including “things that belong or are owned or managed, directly or indirectly, by criminal associations . . . without prejudice to the rights of third parties in good faith.”⁹³ On the other hand, prosecutors may now charge public officials for offenses committed “in the service of the State, abusing their powers or violating the duties inherent in their functions” anywhere in the world.⁹⁴

On October 8, 2013, the Vatican’s extended authority to prosecute money laundering underwent a second renewal. Law No. XVIII on Transparency, Supervision and Financial Intelligence replaces the Revised AML/TF Law with a precision weapon.⁹⁵ The extra ammunition it supplies cleared the way for the Caloia conviction in 2021.⁹⁶ In particular, Law No. XVIII clarifies the scope of the ASIF’s

⁹⁰ *Id.*

⁹¹ De Pascalis, *supra* note 21, at 544.

⁹² N. IX: Legge Recante Modifiche al Codice Penale e al Codice di Procedura Penale [N. IX: Amendments to the Criminal Code and the Code of Criminal Procedure], legge 11 luglio 2013, N. IX, art. 8 (Vatican).

⁹³ *Id.*

⁹⁴ *Id.* at art. 2(d).

⁹⁵ N. XVIII: On Transparency, Supervision and Financial Intelligence, legge 8 ottobre 2013, N. XVIII, art. 2(d) (Vatican).

⁹⁶ Elisabetta Povoledo, *Former Vatican Banker Convicted of Money Laundering and Embezzlement*, N.Y. TIMES, (Jan. 21, 2021), <https://www.nytimes.com/2021/01/21/world/europe/vatican-bank-embezzlement.html>.

financial intelligence, supervisory, and regulatory function. Furthermore, it tasked the ASIF⁹⁷ with publishing and updating a list of high-risk persons, including real estate agents transacting “as intermediaries in the purchase, sale or letting of immovable property.”⁹⁸ In turn, these subjects must observe disclosure obligations “when they suspect or have reasonable grounds to suspect” money laundering and other compliance procedures, including the implementation of internal controls and know-your-client processes depending on the “category and country or geographical area of the customer.”⁹⁹ When the regulated subjects fail to comply with these regulations, the ASIF is in charge of administering warnings, civil fines, or criminal penalties.¹⁰⁰

4. *The Fourth Wave.*

In 2018, Francis introduced another generation of laws into the Vatican’s AML arsenal. Law No. CCXLVII amends Law No. XVIII by broadening the designated list of regulated parties to include officers and employees “sufficiently informed about exposure to risk of money laundering . . . [and are] in a hierarchical position that allows them . . . to take decisions that affect exposure to risk.”¹⁰¹ It also imposes additional disclosure obligations on designated individuals if they process data or are a parent company.¹⁰²

The designated persons list was not the only subject that underwent transformation. On April 30, 2021, Francis took a foray into judicial affairs via an Apostolic Letter in the form of a *motu proprio*, a document “personally signed by the pope to signify his special interest in the subject”;¹⁰³ common crimes concerning cardinals and bishops

⁹⁷ N. XVIII, *supra* note 95, art. 2.

⁹⁸ *Id.* at art. 2(d).

⁹⁹ *Id.* at art. 25(1).

¹⁰⁰ *Id.* at art. 47(2).

¹⁰¹ Kelly Buchanan, *Vatican Criminal Law and Recent Money Laundering Cases*, LIBR. OF CONG. (May 18, 2021), <https://blogs.loc.gov/law/2021/05/vatican-criminal-law-and-recent-money-laundering-cases/> (citation omitted).

¹⁰² *Id.*

¹⁰³ *motu proprio*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/motu-proprio> (last visited Apr. 23, 2022).

are no longer the competence of the Supreme Court.¹⁰⁴ The Court of First Instance now has jurisdiction over offenses unrelated to the violation of ecclesiastical laws committed by prelates and laypersons alike.¹⁰⁵ In his letter, Francis cited concerns of procedural equality among “all members of the Church and their equal dignity,” regardless of their station.¹⁰⁶ One substantial carve-out remains: The Vicar of Christ must sign off on cases “involving the Most Eminent Cardinals and the Most Excellent Bishops” – the highest ranked clergy members – before any judge could initiate the proceeding.¹⁰⁷ On the books, it seems a new springtime has arrived in Rome for keen prosecutors. But in reality, the Vatican’s dirty-money problem is far from being resolved. The prosecutors find themselves struggling to forge a path within an incomplete legal labyrinth, besieged by inexperience, hemmed in by bureaucracy, and wrecked by scarce resources.¹⁰⁸

II. PROBLEMS WITH THE VATICAN AML FRAMEWORK

For the Church, 2021 was the year of house-cleaning and bared altars. Before we eulogize the legislative renovations, the improved MONEYVAL ratings, and the more precise division of labor among the agencies, 2021 was also the year that the Vatican’s long-simmering corruption crisis came to a boil in the three proceedings: the Caloia conviction, the *Becciu +9* suit, and the request to seize Torzi’s accounts. In all three, the promise of the Vatican’s AML infrastructure loses impetus when subjected to scrutiny. Hailed as an opening salvo, the Caloia conviction almost claimed the scalp of a senior official, but Caloia’s advanced age meant that the servants of heaven may still be above the law. The *Becciu +9* suit will likely “go on for a very long time,” mired down by disagreements between the prosecution and

¹⁰⁴ *Pope allows Cardinals, Bishops to be tried by Vatican tribunals*, VATICAN NEWS (Apr. 30, 2021, 1:19 PM), <https://www.vaticannews.va/en/pope/news/2021-04/pope-allows-cardinals-bishops-to-be-tried-by-vatican-tribunals.html>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See infra* Part II.

defense over fundamental procedural doctrine.¹⁰⁹ The Vatican's performance before the Southwark Crown Court turned out to be the most revealing. Commented Judge Baumgartner on the Vatican's seizure request: "I do not consider the material non-disclosures and misrepresentations that I have found to be minor. They are, in some instances, egregious . . . 'so appalling.'"¹¹⁰

A similar comment could have sprouted from the pen tips of anyone monitoring the Vatican's money laundering scandal. The prosecutors' inability to curate a cogent argument left judges aghast and observers questioning the Vatican's ability to declare war in multiple theaters. As those who swore to shed light on the dark chapters of Vatican history find themselves casting the longest shadow, the Vatican's setbacks at home and abroad warrant a look-within. This Subpart argues that three flaws in the Vatican's AML apparatus were responsible for eliciting Baumgartner's dismay. First, the Vatican's procedural laws lack instructions on their implementation; second, the Vatican's AML campaign disproportionately rests on the direction the smoke blows over the Sistine Chapel; third, the Vatican's regulatory and judicial organs face a staffing shortage.

The first bomb that cratered the Vatican's AML landscape was the confusion over how to deploy its newly minted laws before the merits stage. As the Vatican's money troubles fizz and bubble, a glut of questions that the Church's two millennia in existence do not elucidate begin to surface. Above all, the prosecutors are trying to wrench out two procedural bottlenecks that could augur their case's death if left unresolved. First, there is no established protocol for

¹⁰⁹ Sylvia Poggioli, *The Vatican Is Holding Its Biggest Criminal Trial In Modern History*, NAT'L PUB. RADIO (July 27, 2021, 4:44 PM), <https://www.npr.org/2021/07/27/1021373111/the-vatican-is-holding-its-biggest-criminal-trial-in-modern-history> (describing the squabble over whether Italian precedents have any place in Vatican legal system and questioning whether "an acquittal [is] likely after the pope himself has pretty much handed down a guilty verdict"); accord Junno Arocho Esteves, *Vatican court orders prosecution to hand over video deposition*, CATH. REV. (Oct. 6, 2021), <https://catholicreview.org/vatican-court-orders-prosecution-to-hand-over-video-deposition> (noting that the Vatican deputy prosecutor admitted that they "made a mistake" when they "included evidence that they were incapable of providing to defense lawyers").

¹¹⁰ *Torzi v. Dir. Pub. Prosecutions*, No. R/O 104/20, 2021 WL 01600447, at *27 (NICC Mar. 10, 2021).

discovery. In the *Becciu +9* case, the prosecution repeatedly tested the limits of due process by refusing to share evidence, including the deposition of a conspirator-turned-star witness, Monsignor Perlasca.¹¹¹ Yet, so central were Perlasca's testimonies that the prosecutors rewarded him with a golden ticket out of indictment.¹¹² The prosecutors' withholding provoked protests of fair trial rights from the defense and a court order for the prosecution to redo its investigations of four defendants.¹¹³ The standoff is far from over. In January 2022, the defense again moved for dismissal, complaining that "out of 255 computer files seized by prosecutors, only 16 have been released for examination by defense lawyers," and "none would qualify as 'forensic copies.'"¹¹⁴

In the same vein, the lawyers are locking horns over a second procedural problem: the precarious role of Italian law. At the threshold, there is little consensus over whether to use the Vatican canon law, a body of ecclesiastical legal principles, or the Italian code of criminal procedure. Before Francis introduced revisions in 2013, the Vatican's criminal procedure was based on the Italian Finocchiaro Aprile Code of 1913.¹¹⁵ When the defense hammered away at the

¹¹¹ Esteves, *supra* note 109.

¹¹² Nicole Winfield, *At Vatican trial, defense questions the legal system itself*, ABC NEWS (Oct. 4, 2021, 3:03 AM), <https://abcnews.go.com/International/wireStory/vatican-trial-defense-questions-legal-system-80389413>.

¹¹³ See Junno Arocho Esteves, *Despite setbacks, Vatican editorial defends trial procedures*, CRUX (Dec. 21, 2021), <https://cruxnow.com/vatican/2021/12/despite-setbacks-vatican-editorial-defends-trial-procedures>; *Defense team cannot be trusted with video recordings, Vatican prosecutors argue*, PILLAR (Aug. 11, 2021, 3:42 PM), <https://www.pillaratholic.com/defense-team-cannot-be-trusted-with> (Still refusing to share a copy, the prosecution eventually conceded to allow the defense to view the recording within the premise of the Court, "a measure which has recently been adopted by Italian courts for handling sensitive evidence.").

¹¹⁴ Hannah Brockhaus, *Vatican finance trial: Prosecutors again charge Cardinal Becciu with subornation of perjury*, CATH. NEWS AGENCY (Jan. 25, 2022, 12:45 PM), <https://www.catholicnewsagency.com/news/250211/vatican-finance-trial-prosecutors-again-charge-cardinal-becciu-with-subornation-of-perjury>.

¹¹⁵ See Claudio Gentile, *Le novità normative nella lotta agli abusi sessuali a un anno dall'incontro in Vaticano del 2019* [*The regulatory changes in the fight against sexual abuse one year after the meeting in the Vatican in 2019*], STATO, CHIESE E PLURALISMO CONFESIONALE 88, 93 n.29 (2020) ("[N]ello Stato della Città del Vaticano sono recepiti, per quanto attiene alla materia penale, i codici italiani penale del 1889 (così detto Codice Zanardelli) e di procedura penale del 1913 (così

prosecution's excessive discretion, it offered decisions of the Italian Constitutional Court as proof. In their rebuttal, the prosecutors invoked the Church's spiritual riches. They proclaimed that their authority derived from the Pope, "the basis of [whose power] is ultimately divine law."¹¹⁶ Since Italian law does not have the same heavenly prestige, it has no place in the pope's backyard.¹¹⁷ Unexpectedly, during the evidence skirmish, the prosecution wavered from its initial position and defended its refusal to share evidence using the Finocchiaro Aprile Code, which forbids the recording and dissemination of "those who do not expressly consent" "when photographic or audiovisual recording of the activities is authorized."¹¹⁸

This procedural dispute conceals a larger second flaw in the Vatican legal system. Given the prerogatives of the pope, it is dubious that the Vatican judiciary could be truly independent. Another squabble between the *Becciu* prosecution and defense illustrates this issue. Prior to the trial, the Pontiff empowered the prosecution to conduct precautionary measures without a judge's scrutiny and lifted Becciu's immunity so he could stand trial.¹¹⁹ The defense admonished that the Pope's intervention "suspend[ed] legal certainty," constituted "ad hoc criminal procedure," and transformed the Court into a

detto Codice Finocchiaro Aprile.)" ["[T]he Italian penal codes of 1889 (so-called Zanardelli Code) and of criminal procedure of 1913 (so-called Finocchiaro Aprile Code) are implemented in the Vatican City State."].

¹¹⁶ *Maxiprocesso in Vaticano, le difese protestano: «Si è allestito un tribunale speciale»* [Maxi trial in the Vatican, the defenses protest: "A special tribunal has been set up"], *IL DUBBIO* (July 27, 2021), <https://www.ildubbio.news/2021/07/27/maxiprocesso-vaticano-le-difese-protestano-si-e-allestito-un-tribunale-speciale>.

¹¹⁷ Maria Antonietta Calabrò, *Becciu in Aula: «Il Papa mi ha voluto a processo, sempre stato obbediente a lui»* [Becciu in the Hall: "The Pope wanted me on trial, I was always obedient to him"], *HUFFPOST* (July 27, 2021), https://www.huffingtonpost.it/entry/becciu-si-presenta-al-processo-sullo-scandalo-vaticano-con-due-querele_it_6100236ae4b0048f3616f4b0 ("Diddi then explained that . . . the current Italian code does not apply in the Vatican . . ." ["Diddi ha poi spiegato che . . . in Vaticano non vige l'attuale codice italiano . . ."]).

¹¹⁸ Junno Arocho Esteves, *Vatican prosecutors refuse handing over video, audio deposition*, *NAT'L CATH. REP.* (Aug. 12, 2021), <https://www.ncronline.org/news/justice/vatican-prosecutors-refuse-handing-over-video-audio-deposition>.

¹¹⁹ See *Maxiprocesso in Vaticano, le difese protestano: «Si è allestito un tribunale speciale»*, *supra* note 116.

“special tribunal” customary of authoritarian regimes.¹²⁰ The prosecutors responded that the Pope is the judge, the legislature, and the executive.¹²¹ The troubling implications of this declaration aside, the all-powerfulness of the pope introduces volatility in the direction of the judiciary. Because the pope appoints all magistrates, who the conclave summons to the throne essentially determines the administration and the integrity of the courts.¹²² When Francis steps down, the conservative old guard at the top of the power structure, as well as the inertia that pervades it, could portend AML’s twilight.¹²³ Even if the next pope is aligned, an exercise of authority could shred the veneer of judicial independence. The Vatican courts exist in a paradox of legitimacy: They are expected to check reckless messengers of the Church, but they cannot bite the hand of the monarch that feeds them.

Armed with blunt swords and chained to the pope, the Vatican prosecutors also labor under handicaps due to understaffing and undertraining. For instance, in its filings before the Southwark Crown Court, the Vatican insisted that it overpaid for property, but did not adduce any evidence;¹²⁴ it alleged that the defendant’s company engaged in “secretive and dishonest” transactions without ever substantiating its claim;¹²⁵ brushing aside court rules, it failed to provide translations for foreign language documents.¹²⁶ The list of missteps drags on, but they converge on the same fact: The London appearance was an opportunity to debut Francis’ reformist agenda. Not only was the opportunity squandered, but how the Vatican’s lips condemned its own cause harpoons the heart of the human resource deficit prevalent among the Vatican’s AML workforce.¹²⁷

¹²⁰ *Id.*

¹²¹ *See* Calabrò, *supra* note 117.

¹²² Elisa Chiari, *Non Solo “Sacra Rota”, Che Cos’è E Come Funziona Il Tribunale Dello Stato Città Del Vaticano* [Not Only “Sacra Rota”, What The Vatican City Court Is And How It Works], FAMIGLIA CRISTIANA (Feb. 15, 2020), <https://www.famigliacristiana.it/articolo/non-solo-sacra-rotta-che-cos-e-e-come-funziona-la-giustizia-vaticana.aspx>.

¹²³ *See* BERRY, *supra* note 33, at 351 (contemplating the pervasive “rot and inertia” in the Vatican power structure).

¹²⁴ *Id.* at 15.

¹²⁵ *Id.* at 16.

¹²⁶ *Id.* at 42.

¹²⁷ FIFTH ROUND REPORT, *supra* note 24, at 5, 51.

The problem contains three aspects. First, a chronic shortage inflicts the prosecutor's office and the FIU. Rapid turnover and memory loss result in disrupted operations, multiple part-time commitments, and potentially untenable conflicts of interests.¹²⁸ The subdued institutional culture adds fuel. Prosecutors are more reactive than proactive, preferring to freeride on the momentum of convictions in other countries.¹²⁹ Even if the Vatican seeks to improve,¹³⁰ its wherewithal does not support a conducive learning environment; ramping up prosecution would further strain its limited resources.

Second, many judges and staff are trained in the Italian legal tradition. Despite their "proven experience,"¹³¹ due to the "complex and peculiar institutional and juridical reality" of Vatican law, experience acquired from the other side of Tiber may confer little value on a tenure in the Vatican.¹³² One example stands out: In 2019, Francis appointed Giuseppe Pignatone, Italy's leading anti-mafia prosecutor, as the president of the Tribunal of the Vatican City State. Commentators are divided on his qualifications. On the one hand, one could argue that Pignatone's "unique professional skills" gained through a career of prosecuting complex antimafia cases "compensate for his inexperience with Vatican law."¹³³ On the other hand, the

¹²⁸ *Id.*; see also Cincinnato, *Le porte scorrevoli della giustizia vaticana* [*The sliding doors of Vatican justice*], IL FOGLIO (Feb. 3, 2021), <https://www.ilmfoglio.it/chiesa/2021/02/03/news/le-porte-scorrevoli-della-giustizia-vaticana-1788652> (describing the state of freelancers maintaining their posts in Italy).

¹²⁹ See FIFTH ROUND REPORT, *supra* note 24, at 80. ("Some investigations were suspended pending the outcome of foreign proceedings, including - in some cases - waiting for a conviction abroad for the predicate offence before proceeding with ML in HS/VCS.")

¹³⁰ See *id.* at 51.

¹³¹ Legge N. CCCLI sull'ordinamento giudiziario dello Stato della Città del Vaticano, 16.03.2020 [Law N. CCCLI on the judicial system of the Vatican City State, 16.03.2020], legge 16 marzo 2020, N. CCCLI, art. 8(2) (Vatican).

¹³² Cincinnato, *supra* note 128; see Giuseppe Dalla Torre, *Considerazioni sul nuovo ordinamento giudiziario dello Stato della Città del Vaticano* [*Considerations on the new judicial system of the Vatican City State*], STATO, CHIESE E PLURALISMO CONFESSIONALE 89, 98–99 (2020).

¹³³ Maura Cremin, *Is the Vatican Finally Getting Serious About Cleaning Up Its Finances? The Appointment of an Antimafia Magistrate Is A Promising Sign*, GLOB. ANTICORRUPTION BLOG (May 4, 2020), <https://globalanticorruptionblog.com/2020/05/04/is-the-vatican-finally-getting-serious-about-cleaning-up-its-finances-the-appointment-of-an-antimafia-magistrate-is-a-promising-sign/>.

overlapping workforce implies that the Vatican legal system is derivative of and dependent on the Italian one.¹³⁴ At any rate, the current trajectory of the Vatican courts represents a radical departure from the “autonom[ous] and independen[t]” judiciary that Francis envisioned.¹³⁵

III. OVERVIEW OF REAL ESTATE AML IN ENGLAND

“Can Pope Francis clean up God’s bank?” queried onlookers across the Channel, as crooked property deals put priests, cardinals, and archbishops in the spotlight.¹³⁶ As readers in England marveled at the Church’s infiltration of their housing market, the paralysis of Vatican prosecutions prompted a moment of soul-searching: What can England do to assist the Vatican’s fight against real estate corruption? They do not have to look beyond their own Crown Prosecution Service (“CPS”) and National Crime Agency (“NCA”) for an answer.¹³⁷ The CPS, the principal prosecution authority in England, acts as a legal advisor to law enforcement during criminal investigations, makes charging decisions post-investigation, and conducts prosecutions before courts.¹³⁸ The NCA is tasked with gathering intelligence and “lead[ing], coordinat[ing] and support[ing] [the UK’s] operational response.”¹³⁹ Revealing as its performance in the three proceedings is, the Vatican’s war on dark money is due for a strategy overhaul. This Part argues that allying with the CPS and NCA gives the Vatican a

¹³⁴ Cincinnato, *supra* note 128.

¹³⁵ Supreme Pontiff Francis, *Apostolic Letter Issued “Motu Proprio” by the Supreme Pontiff Francis on Amendments in Matters of Justice*, LA SANTA SEDE (Feb. 26, 2021), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20210208_giustiziapenale.html.

¹³⁶ Vallely, *supra* note 8.

¹³⁷ A number of other departments are also responsible for tackling financial crimes, including HM Revenue and Customs (“HMRC”), “the UK’s tax and customs authority, responsible for tackling fiscal fraud,” and the Serious Fraud Office (“SFO”), “responsible for reducing the threat from fraud and corruption.” HM GOVERNMENT, *SERIOUS AND ORGANISED CRIME STRATEGY 74–75* (2013), <https://bit.ly/2ztBh2a>. This Subsection limits itself to discussing the two agencies most active and directly involved in pursuing money laundering.

¹³⁸ *The Code for Crown Prosecutors*, CROWN PROSECUTION SERV. (Oct. 26, 2018), <https://www.cps.gov.uk/publication/code-crown-prosecutors>.

¹³⁹ HM GOVERNMENT, *supra* note 139, at 9.

better shot at tracking its mysterious millions. Three reasons provide support. First, English prosecutors have a more expansive kit of substantive laws, in addition to tried-and-true procedures for bringing economic crime charges. Second, courts in England are further removed from the executive. Third, the CPS and the NCA have a wider pool of legal and investigative talents.

A. A More Expansive Toolkit

At the CPS and NCA's disposal is a repository of laws setting out grounds for instigating prosecutions and supplying tools to freeze and recover assets, as well as a bevy of procedural guidance that illuminates the steps to apply the laws. In the UK, there are three cardinal AML legislations, respectively revolving around establishing the criminal offenses of money laundering and a reporting regime, instituting broader enabler-side compliance requirements, and buttressing the investigative power of law enforcement. In 2002, the Proceeds of Crime Act ("POCA") came into force. POCA defines money laundering as "the process by which the proceeds of crime are converted into assets . . . so that they can be retained permanently or recycled into further criminal enterprises."¹⁴⁰ Under this definition, both the conversion of proceeds resulting from predicate offenses and furnishing assistance constitute money laundering.¹⁴¹ To avoid the commission of these offenses, banks, attorneys, and estate agents must report "knowledge or suspicion" of money laundering to internal officers or law enforcement if they can or have information that could identify the whereabouts of the laundered property.¹⁴² Violations are punishable by a maximum of five years of imprisonment.¹⁴³ In June 2021, the CPS updated its guidance on money laundering. The revised guidance strengthens the suspicion limb by requiring the disclosure of suspicions of money laundering without a conclusive showing that it actually transpired.¹⁴⁴

¹⁴⁰ Proceeds of Crime Act 2002, c. 29, Explanatory Notes ¶ 6 (UK).

¹⁴¹ *Id.* at §§ 327–28 (UK).

¹⁴² *Id.* at § 330.

¹⁴³ *Id.* at § 330 (1)-(3A).

¹⁴⁴ *Money Laundering Offences*, CROWN PROSECUTION SERV. (June 11, 2021), <https://www.cps.gov.uk/legal-guidance/money-laundering-offences>.

Upon POCA's groundwork, the second legislation, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payers) Regulations ("The MLRs"), was passed in 2007 and revised in 2019 and 2020. Like the Vatican's AML laws, the MLRs transpose the EU's Fourth and Fifth Money Laundering Directives.¹⁴⁵ The MLR 2017 imposes compliance regulations comprising CDD, monitoring, reporting, and record-keeping duties on high-risk transaction facilitators, including estate agents. In particular, relevant persons must perform risk assessment taking into account their customer base, geographic areas of operation, products and services, transactions, and the means of delivery.¹⁴⁶ Since 2017, the new MLRs expanded the obliged entities in the property sector to include letting agents manage properties rented at €10,000 or more per month, in addition to requiring actors to gain a more comprehensive understanding of their customers' beneficial ownership.¹⁴⁷ Despite these changes, the later iterations preserved the original MLR's preventative character. Targeting the financial institutions and the enablers, the MLRs seek to strike down the fruits of criminal activities before they ripen.

To complete the picture, the third legislation, the Criminal Finances Act ("CFA"), amended POCA to debut several powerful tools for investigating ill-gotten gains.¹⁴⁸ The first tool is Unexplained

¹⁴⁵ HM TREASURY, AMENDMENTS TO THE MONEY LAUNDERING, TERRORIST FINANCING AND TRANSFER OF FUNDS (INFORMATION ON THE PAYER) REGULATIONS 2017 STATUTORY INSTRUMENT 2022: CONSULTATION 2 (2021).

¹⁴⁶ *Id.* at 52.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ Lamentably, the UWOs remain underutilized. Transparency International projected that UWOs could be used to explain the source of billions of pounds of suspicious wealth. Press Release, Transparency International UK, UWO Settlement Should Embolden Law Enforcement to Expand Use of Powers (Oct. 6, 2020), <https://www.transparency.org.uk/unexplained-wealth-order-uwo-latest-settlement-mcmafia-dirty-money>. However, as of spring 2021, only four cases deployed UWOs, one of which led to asset recovery. The CPS had not applied for a UWO before 2020. *Freedom of Information Act 2000 Request: The amount of UWOs that have been applied for by the CPS*, CROWN PROSECUTION SERV. (Mar. 30, 2020), <https://www.cps.gov.uk/sites/default/files/documents/publications/2020-foi-disclosure-18.pdf>. A House of Commons report notes that "[t]he relatively low number [sic] of UWOs issued so far, and their 'patchy' success, has caused concern that the measure is not enough to counter money laundering in the UK." ALI SHALCHI, UNEXPLAINED WEALTH ORDERS, HOUSE OF COMMONS LIBR. 1, 19 (2022) (footnote

Wealth Orders (“UWOs”), which enable enforcement agencies like the CPS or the NCA to elicit information about properties on reasonable suspicion that respondents obtained them using proceeds of criminal conduct. The agency must prepare an application to the High Court that passes a three-part test: the respondent must be a politically exposed person, directly involved or connected to persons involved in serious crimes; the respondent must hold a property valued greater than £50,000; and the respondent’s lawful income is insufficient to obtain that property.¹⁴⁹ If all criteria are met, the court may grant a UWO, and the respondents must clarify their interest in the property. Failure to comply allows the authorities to initiate a civil recovery proceeding or apply a freezing order to confiscate the property. By way of opening new channels to information on the provenance and legitimacy of suspicious properties, UWOs confer additional investigative capacity upon the enforcement agencies.¹⁵⁰

Further Information Orders (“FIOs”) are the second tool to compel disclosure that the CFA inserted into POCA. If the NCA receives a disclosure and desires further information, it may apply for an FIO to the magistrates’ court from the person who made the disclosure or works in the regulated sector.¹⁵¹ At the threshold, the application must specify the information sought and the identity of the respondent.¹⁵² Additionally, the application must meet one of the two

omitted). Acknowledging these practical difficulties, this Article seeks to chart a path forward, the key to which is the identification of the regulatory and legal frameworks most germane to that cause.

¹⁴⁹ Nat’l Crime Agency v. Baker, No. CO/1540/2019, 2020 WL 01740242, at *4 (EWHC (Admin) 2020).

¹⁵⁰ The scope of UWOs has come under sustained legal challenge, but the regime remains potent. In *National Crime Agency v. Baker*, the NCA applied for UWOs for a few London properties on the basis that respondents purchased them to launder the criminal proceeds of a Kazakh politician. The respondents disclosed that the properties’ ultimate beneficial owners are the official’s estranged wife and son and sought the UWOs’ discharge. Striking down the NCA’s UWO application and underscoring the nature of UWOs as an investigative tool, the High Court criticizes the NCA for failing to consider that the ex-wife and the son purchased the properties independently. Rather than an emasculation of the regime, the *Baker* ruling emphasizes that authorities must carefully circumscribe how they use UWOs to rein in the UWOs’ potentially invasive side. *Id.* at *20-34, 55-61.

¹⁵¹ HOME OFF., HOME OFFICE CIRCULAR: CRIMINAL FINANCES ACT 2017: MONEY LAUNDERING: FURTHER INFORMATION ORDERS (2018).

¹⁵² *Id.*

conditions. The first condition is met if the information sought relates to issues arising from a disclosure and “would assist in investigating whether a person is engaged in money laundering or in determining whether an investigation . . . should be started.”¹⁵³ The second condition is satisfied when the information sought relates to a disclosure made under a disclosure requirement, the NCA has received an external request for the provision of that information, and the information likely has “substantial value to the authority.”¹⁵⁴ Under both prongs, it must be reasonable to seek that information.¹⁵⁵ If the court grants the order after deeming the requirements met, the respondent may comply or appeal the decision to the Crown Court. Incompliance could result in fines not exceeding £5,000.¹⁵⁶ With greater power to penetrate a property’s history and ownership, the NCA could now more efficiently ferret out the unclean hands that the property has passed through.

Looking back, since the UK began to engage with money laundering in 2014, the Sceptred Isle has glimpsed a housing sector with greater transparency. In 2018, the FATF Evaluation Report found that the UK has achieved reasonable success at “routinely and aggressively identif[ying], pursu[ing] and prioritis[ing] ML investigations and prosecutions,” with an annual record of 7,900 investigations, 2,000 prosecutions, and 1,400 convictions for money laundering crimes.¹⁵⁷ The UK’s playbook ratifies three crucial tenets – a preventive orientation, emphasis on regulating the enablers, and prioritizing the gathering of information – all of which are transferable for closing the AML loopholes in the Vatican. The pre-emptive

¹⁵³ Criminal Finances Act 2017, c. 22, § 12(4)(c) (UK).

¹⁵⁴ *Id.* at §12(5)(d).

¹⁵⁵ The Act does not specify what is considered “reasonable,” which raises questions about its meaning. *UK Criminal Finances Act 2017: A Dechert “Dirty Money” Trilogy - Part Two: “For a Few Days More” - Reform of the Suspicious Activity Reporting Regime*, DECHERT LLP (Jun. 15, 2017), <https://www.dechert.com/knowledge/onpoint/2017/6/uk-criminal-finances-act-2017-a-dechert-dirty-money-trilogy.html>. However, as argued below, the FIO remains a powerful weapon for investigating the Church’s property holdings, because of the dearth of information surrounding the Church’s transactions and the deterrence FIOs could produce on enablers working in the regulated sector.

¹⁵⁶ HOME OFF., *supra* note 151.

¹⁵⁷ FATF, ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING MEASURES: UNITED KINGDOM MUTUAL EVALUATION REPORT 3 (2018).

measures intercept illicit fortunes before they puncture the London property market; regulations targeting middle persons shut down the carousels of real estate agents, law firms, and accountants that service corrupt clients; the investigative tools strip anonymity away from the largess and ultimately, banish the code of silence that has long eroded the Vatican.¹⁵⁸

B. A More Insulated Judiciary

At all stages of a money laundering case, English judges are expected to discharge their duties impartially.¹⁵⁹ First emerging with the guarantee of secure judicial tenure in the 1701 Act of Settlement,¹⁶⁰ judicial independence becomes statutorily recognized in the 2005 Constitutional Reform Act (“CRA”).¹⁶¹ Judges must apply the law

¹⁵⁸ A long-awaited economic crime bill in the UK promises to deliver a tool with even grander potential: a registry of beneficial ownership for properties owned by overseas individuals and companies. Currently, the land registries in England only display direct owners. After repeated delays, following the Russian invasion of Ukraine in March 2022, the bill was rushed through the House of Commons. ALI SHALCHI & FEDERICO MOR, HOUSE OF COMMONS LIBR., REGISTERS OF BENEFICIAL OWNERSHIP 4, 12–15 (2022); Peter Walker, *What is the economic crime bill and how effective will it be?*, GUARDIAN (Mar. 7, 2022, 2:47 PM), <https://www.theguardian.com/business/2022/mar/07/what-is-the-economic-bill-and-how-effective-will-it-be>.

¹⁵⁹ In England, the venue of a criminal proceeding turns on the seriousness of the offense. Designated as the “summary” offenses, the least serious crimes are tried in magistrates’ courts; trial for “either way” offenses that vary greatly in seriousness can take place in magistrates’ courts or the Crown Court at the magistrate’s discretion; for hearing indictable-only offenses of the most serious nature, the Crown Court is the only appropriate venue. Money laundering could fall anywhere in the spectrum. For instance, entering into arrangements involving criminal property are triable either way, while a conspiracy to defraud public revenue elevates the offense to indictable-only. *Money laundering*, SENT’G COUNCIL, <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/money-laundering> (last visited Apr. 23, 2022); *Corporate offenders: fraud, bribery and money laundering*, SENT’G COUNCIL, <https://www.sentencingcouncil.org.uk/offences/crown-court/item/corporate-offenders-fraud-bribery-and-money-laundering> (last visited Apr. 23, 2022).

¹⁶⁰ *The Act of Settlement*, ROYAL HOUSEHOLD, <https://www.royal.uk/act-settlement-0> (last visited Apr. 23, 2022).

¹⁶¹ Professor Woodhouse has explained the delay in the legal codification of judicial independence: “[I]n the absence of a written constitution in which judicial independence . . . is enshrined; in the limited role played by the judges in a Constitution in which Parliament is supreme; and in the mystique surrounding the

“without fear or favour, affection or ill-will.”¹⁶² This Subsection discusses the two characteristics in the selection and retention of English judges that insulate the administration of equal justice from outside forces.

First, judges are examined in a rigorous appointment process that “select[s] on merit, through fair and open competition, from the widest range of eligible candidates.”¹⁶³ Prior to the CRA’s passage, the Lord Chancellor—concomitantly a cabinet member, a member of the House of Lords, and the head of the judiciary—made judicial appointments for all but the two highest courts, the House of Lords and the Court of Appeal.¹⁶⁴ Functionally extinguishing the Lord Chancellor’s power to appoint judges, the CRA establishes the fifteen-member Judicial Appointments Commission (“JAC”), comprised of lay people, judges, and lawyers selected by open competition to oversee appointments for judicial candidates “solely on merit,” who have “good character,” and “the need to encourage diversity.”¹⁶⁵ After the JAC issues its recommendation, the Lord Chancellor must accept or in rare instances, veto or request reconsideration.¹⁶⁶ In short, designed to prioritize talent and experience over political sway, the

concept itself” Diana Woodhouse, *United Kingdom: The Constitutional Reform Act 2005—Defending Judicial Independence the English Way*, 5 INT’L J. CONST L. 153, 154 (2007).

¹⁶² Lord Phillips of Worth Matravers & Lord Chief Justice of England and Wales, *Judicial Independence*, Speech at the Commonwealth Law Conference Nairobi, Kenya (Sept. 12, 2007).

¹⁶³ *Judicial Independence*, POLITICS.CO.UK, <https://www.politics.co.uk/reference/judicial-independence> (last visited Apr. 23, 2022).

¹⁶⁴ William Goodhart, *The Last Lord Chancellor?*, LEGAL AFFS., https://www.legalaffairs.org/issues/January-February-2005/feature_goodhart_janfeb05.msp (last visited Apr. 23, 2022). The House of Lords had a judicial function until the Supreme Court replaced it as the highest court in the UK. *The Supreme Court and the United Kingdom’s Legal System*, THE SUPREME COURT, <https://www.supremecourt.uk/about/the-supreme-court.html> (last visited Apr. 23, 2022).

¹⁶⁵ *History of the Judicial Appointments Commission*, JUD. APPOINTMENTS COMM’N, <https://judicialappointments.gov.uk/history-of-the-judicial-appointments-commission> (last visited Apr. 23, 2022).

¹⁶⁶ RICHARD EKINS & GRAHAM GEE, REFORMING THE LORD CHANCELLOR’S ROLE IN SENIOR JUDICIAL APPOINTMENTS 14 (2021) (“In practice, Lord Chancellors almost always accept the recommendations.”).

English system for judicial appointments paves the way to a robustly insulated judiciary.¹⁶⁷

Second, career security grants English judges more autonomy.¹⁶⁸ Above all, judges are largely impervious to the threat of removal. To remove a judge of the Supreme Court or the Court of Appeal, both Houses must petition the King.¹⁶⁹ To remove a circuit or district judge, the Lord Chancellor must obtain the approval of the head of the judiciary, the Lord Chief Justice.¹⁷⁰ Stable salaries and immunity further screen judges from the pressure to rule in a certain direction. Despite earning less than private attorneys, judges make a comfortable yearly wage of up to £200,000.¹⁷¹ With immunity from prosecution “for any acts they carry out in performance of their judicial function” and “for the things they say about parties or witnesses in the course of hearing cases,” judges are free to decide matters “without interference from litigants, the State, the media or powerful individuals or entities.”¹⁷² Compared to their Vatican peers who have to be receptive to an entity with absolute power, English judges wield more leverage without extraneous dictates.

C. A Larger AML Workforce

Lastly, British enforcement agencies command formidable teams, by virtue of greater resources devoted to recruitment and management. To secure the delivery of their strategic objectives, the agencies appear to be committed to hiring a diverse and talented

¹⁶⁷ To be sure, observers reasonably decried the tenuous position of the Lord Chancellor and the diminished ministerial input. *E.g.*, *id.* at 9. Nevertheless, in comparison to the Vatican, the judiciary in England performs with fewer constraints because of the more competitive and transparent selection process.

¹⁶⁸ Lord Phillips of Worth Matravers & Lord Chief Justice of England and Wales, *supra* note 162, at 5.

¹⁶⁹ This principle is now contained in section 11(3) of the Supreme Court Act 1981. It has never had to be exercised in England. Supreme Court Act 1981, c.54, §11(3) (UK).

¹⁷⁰ *Judges and Parliament*, CTS. & TRIBUNALS JUDICIARY, <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/judges-and-parliament> (last visited Apr. 23, 2022).

¹⁷¹ *E.g.*, MINISTRY OF JUSTICE, MINISTRY OF JUSTICE JUDICIAL SALARIES FROM 1 APRIL 2018 1 (2018).

¹⁷² *Independence*, CTS. & TRIBUNALS JUDICIARY, <https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence> (last visited Apr. 23, 2022).

workforce at scale.¹⁷³ Using the NCA and the CPS as examples, this Subsection showcases how the sheer magnitude of their operations could lend itself to a productive hunt for shadowy riches.¹⁷⁴

In 2020–2021, the CPS permanently employed 5,707 staff and experienced a 5.1% staff turnover.¹⁷⁵ It prosecuted 370,415 cases before the magistrates' courts and Crown Courts, 292,744 of which led to guilty pleas and 12,845 led to convictions after trial.¹⁷⁶ It spent £278 million on staff wages and salaries and £112 million on prosecution costs.¹⁷⁷ It achieved a record 70% in the Employee Engagement Index (“EEI”) in the Civil Service People Survey, which measures civil servant engagement and wellbeing “on a scale of very disengaged (0%) to very engaged (100%).”¹⁷⁸ On average, the CPS saw a 5% increase in learning, inclusion, workload, and benefits metrics.¹⁷⁹ For the same year, the NCA employed 3,921 full-time equivalent officers at a turnover ratio of 7.15%.¹⁸⁰ It incurred £222 million in wages and £4.89 million in training and recruitment. In its People Survey, the NCA achieved 81% satisfaction on team satisfaction and 78% on work satisfaction.¹⁸¹ In the area of money laundering, the NCA “delivered four major disruptions against international controller networks and professional enablers” and inaugurated two initiatives targeting criminal cash deposits and the smuggling of cash on air passenger

¹⁷³ E.g., NAT'L CRIME AGENCY, ANNUAL SUBMISSION TO THE NATIONAL CRIME AGENCY REMUNERATION REVIEW BODY JOINT SUBMISSION WITH THE HOME OFFICE 13-14 (2021) (“[D]uring 2020, the [National Crime] Agency ran two large scale recruitment campaigns . . . attract[ing] in the region of 15,000 applications.”).

¹⁷⁴ See, e.g., *Tito Ibn-Sheikh admits money laundering after being caught with bag full of bank cards, passports and ID cards*, CROWN PROSECUTION SERV. (Jan. 11, 2022), <https://www.cps.gov.uk/cps/news/tito-ibn-sheikh-admits-money-laundering-after-being-caught-bag-full-bank-cards-passports> (the conviction of the son of the Egyptian cleric Abu Hamza al-Masri on money laundering charges); *Fraudster duo jailed for their part in defrauding millions of pounds from over 100 victims*, CROWN PROSECUTION SERV. (Jan. 20, 2022), <https://www.cps.gov.uk/cps/news/fraudster-duo-jailed-their-part-defrauding-millions-pounds-over-100-victims> (the conviction of a duo on money laundering charges related to the fraudulent selling of diamonds).

¹⁷⁵ CROWN PROSECUTION SERV., ANNUAL REPORT AND ACCOUNTS 2020–21 82 (2021).

¹⁷⁶ *Id.* at 39–43.

¹⁷⁷ *Id.* at 116.

¹⁷⁸ *Id.* at 87.

¹⁷⁹ *Id.* at 11.

¹⁸⁰ NAT'L CRIME AGENCY, ANNUAL REPORT AND ACCOUNTS 2020-21 61 (2021).

¹⁸¹ *Id.* at 34.

flights.¹⁸² In contrast to the Vatican ASIF's "staff complement of only two employees,"¹⁸³ the stability and dimension of the English labor market offer its prosecutors more wherewithal to combat money laundering.

IV. THE JOINT MODEL: LEGAL IMPLICATIONS AND ANTICIPATED OBJECTIONS

A. Jurisdiction, Extradition, and Immunity

This Subsection analyzes the jurisdiction, extradition, and immunity implications of the three routes English prosecutors could take to initiate suits: suing the pope or the Holy See,¹⁸⁴ suing the perpetrating clergy or official,¹⁸⁵ or suing the enablers. Due to the paucity of AML legal actions against the Vatican, this Subsection draws from a more horrific symptom of Church dysfunction: the abuse of children, women, and men in religious orders. The proliferating sexual abuse allegations against Roman Catholic Dioceses call attention to the wrongdoings of top leaders and the Church's failure to implement reform. The subsequent litigations initiated by survivors present a frame of reference for establishing responsibility when taking the Church to court.

Before reaching the immunity phase, the first option would likely succumb to a breakdown in attribution. Scholars and attorneys representing sexual abuse victims have sought to impute the wrongful acts of the offending clergy to the Holy See or a former pope.¹⁸⁶ They found basis in the International Law Commission Articles on State

¹⁸² *Id.* at 24.

¹⁸³ FIFTH ROUND REPORT, *supra* note 24, at 70.

¹⁸⁴ *ECHR rejects case seeking to blame Vatican for abuse*, AL JAZEERA (Oct. 12, 2021), <https://www.aljazeera.com/news/2021/10/12/echr-rejects-case-seeking-to-blame-vatican-for-abuse>. See COUNCIL OF EUR., *supra* note 4 for disambiguation between the Vatican City State and the Holy See.

¹⁸⁵ Harriet Sherwood, *Vatican lifts diplomatic immunity for envoy facing assault claims*, GUARDIAN (July 9, 2019, 4:51 PM), <https://www.theguardian.com/world/2019/jul/09/vatican-lifts-diplomatic-immunity-for-envoy-facing-assault-claims-luigi-ventura>.

¹⁸⁶ *E.g.*, Sophie Clavier, *Delictum Gravius; Assessing the Vatican and the Former Pope's Responsibility for Priests' Sex Crimes under International Law*, 1 *INDON. J. INT'L. & COMPAR. L.* 608 (2014).

Responsibility, which provides that an act of State includes “the conduct of any State organ” and “person[s] acting either on the instructions of or under the direct control of that state.”¹⁸⁷ Can clerics be considered employees of the Vatican, such that the Vatican must answer for its failure to prevent money laundering? Those who answer in the affirmative face an uphill battle. The Vatican’s UN Ambassador in Geneva maintains that clerics are not “functionaries of the Vatican” but “citizens of their own states [falling] under the jurisdiction of their own country.”¹⁸⁸ US courts share that appraisal: *O’Bryan v. Holy See* likens treating the priests as employees of the Church to treating attorneys as employees of the state bar association.¹⁸⁹ Recently, the European Court of Human Rights dismissed a case brought by Belgian victims of sexual abuse due to the lack of jurisdiction. There the Court affirmed that “the Pope was not the principal in relation to the bishops” because “neither the Pope nor the Holy See had been present on Belgian territory” at the time of the abuse.¹⁹⁰ Although American and Strasbourg decisions do not pre-empt how an English court would rule, a prudent judge may find the repercussions of classifying clergy as Vatican agents tricky to manage.

Even if the prosecutors overcome the jurisdictional hurdle, their case may crumble before the Herculean labor of dismantling immunity. In spite of the controversy surrounding Vatican statehood, etched into international practice is the consensus that the Vatican could avail itself of attributes of statehood, including immunity.¹⁹¹ As for prosecuting a current pope, chipping a chink in the armor of head of state immunity is legally challenging and politically daunting. In 2010, a growing clamor in the UK attempted to hold Benedict XVI responsible for sex crimes under universal jurisdiction.¹⁹² Suing a pope

¹⁸⁷ *Id.* at 616-17.

¹⁸⁸ *UN Grills Vatican over Priest Sex-Abuse ‘Cover Up’*, NBC NEWS (Jan. 16, 2014, 6:51 PM), <https://www.nbcnews.com/news/world/un-grills-vatican-over-priest-sex-abuse-cover-n10571>; this is not an entirely truthful admission. See *supra* part IV(A).

¹⁸⁹ *O’Bryan v. Holy See*, 556 F.3d 361, 374 (6th Cir. 2009).

¹⁹⁰ Press Release, Registrar of the Court, Dismissal of Civil Action on Grounds of Holy See’s Jurisdictional Immunity Did Not Violate Convention (Oct. 12, 2021).

¹⁹¹ John R. Morss, *The International Legal Status of the Vatican/Holy See Complex*, 26 EUR. J. INT’L L. 927, 928 (2015).

¹⁹² Dennis Coday, *Online petition protesting pope’s visit removed*, NAT’L CATH. REP. (July 19, 2010), <https://www.ncronline.org/blogs/ncr-today/online-petitionprotesting-popes-visit-removed>; *Pope’s Immunity Could Be Challenged in U.K.*, CBS NEWS

is less applicable for money laundering: Not only is it unlikely that the Church or the popes' potential knowledge of or involvement in corruption could trigger responsibility, money laundering also does not rise to a crime against humanity.

Contingent upon the endurance of the Vatican's will to clean house, the viability of prosecuting the offending cleric is less predictable. Several outcomes are possible. The Vatican may refuse the UK's request to extradite a Vatican citizen. Law n. CXXXI of February 22, 2011, grants Vatican citizenship on two grounds, by law or by administrative decision. Only resident cardinals, diplomats, or persons residing in the Vatican by reason of office could acquire citizenship by law, and only persons residing in the Vatican by reason of office, papal authorization, and marriage or parentage could acquire citizenship by administrative decision.

The case of the Polish Archbishop Jozef Wesolowski, the former Apostolic Nuncio, or an ecclesiastical diplomat to the Dominican Republic, illustrates this outcome. In 2013, following allegations of child abuse, the Vatican recalled Wesolowski before Dominican prosecutors could initiate investigations.¹⁹³ In response to the extradition request from the Warsaw Office of the Prosecutor, the Vatican offered a terse refusal: "Archbishop Wesolowski is a citizen of the Vatican, and Vatican law does not allow for his extradition."¹⁹⁴ In 2015, the Vatican tried Wesolowski at home, but the trial did not proceed beyond a ten-minute hearing, cut short by "his death . . . from natural causes."¹⁹⁵ The outcome was unfulfilling, but the lesson is clear: When the Vatican decides to extend its mantle of immunity, the transnational prosecutorial machinery is hamstrung.

There are ways for that mantle to retract. First, because money laundering is often multi-jurisdictional, prosecutors enjoy latitude in

(Apr. 5, 2010, 7:46 AM), <https://www.cbsnews.com/news/popes-immunity-could-be-challenged-in-uk>. Albeit more politically daunting, another possibility is for the state of which the pope is a national to initiate prosecution.

¹⁹³ Clavier, *supra* note 186, at 617.

¹⁹⁴ *Vatican declines extradition for papal nuncio accused of abuse*, CATH. CULTURE (Jan. 10, 2014), <https://www.catholicculture.org/news/headlines/index.cfm?storyid=20161>.

¹⁹⁵ Elisabetta Povoledo, *Jozef Wesolowski, Ex-Archbishop Accused of Sexual Abuse, Dies at 67*, N.Y. TIMES (Aug. 28, 2015), <https://www.nytimes.com/2015/08/29/world/europe/jozef-wesolowski-polish-ex-archbishop-accused-of-child-sexual-abuse-is-found-dead.html>.

deciding the best forum. Courts in England could exercise jurisdiction when supported by statute and criminal codes, or the principles of territory, personality, and universal jurisdiction.¹⁹⁶ If the laundering act occurred in England, offenses that generated the proceeds constitute predicate offenses for money laundering in England even if they took place abroad.¹⁹⁷ If the case involves jurisdictions other than the UK, the offense must have a “substantial connection with this jurisdiction” – characterized as a substantial number of activities constituting the crime – for courts in England to exercise jurisdiction.¹⁹⁸ Real estate purchases and sales can plausibly fit in the activities category.

Second, the accused could voluntarily surrender immunity, which is not without precedent. When charged with sexual assault by the Australian police, the Australian Cardinal George Pell chose to face trial.¹⁹⁹ The accused’s readiness to cooperate leaves the feasibility of this option in a precarious position. Had Pell appealed to his diplomatic immunity, Australia would have no recourse to force him back, as the Vatican has not signed any extradition treaties.²⁰⁰ In that case, the odds that the offenders would answer for their malfeasance hinge on the destination country’s willingness to hand them over.

Third, the Vatican could lift the perpetrator’s immunity. In 2019, Archbishop Luigi Ventura, the Vatican’s nuncio to France, was

¹⁹⁶ *Jurisdiction*, CROWN PROSECUTION SERV., <https://www.cps.gov.uk/legal-guidance/jurisdiction> (last visited Apr. 23, 2022) (“There are several ways by which a state can exercise jurisdiction: Statute and Criminal Codes (i.e. explicit reference in statute to the jurisdictional reach of the offences created in the statute); Territory; Active personality (i.e. the accused may be prosecuted in the country of the nationality of the offender); Passive personality (i.e. the accused may be prosecuted in the country of the nationality of the victim); and Universal jurisdiction (i.e. the state will be able to prosecute regardless of the nationality of the offender, the victim, and where the offence was committed, e.g. torture).”).

¹⁹⁷ Proceeds of Crime Act 2002, c. 29, § 340 (UK).

¹⁹⁸ *R v. Smith* [2004] EWCA (Crim) 631, ¶ 58 (Eng. & Wales).

¹⁹⁹ Philip Pullella, *Explainer: What does Cardinal Pell’s conviction mean for the Catholic Church?*, REUTERS (Feb. 28, 2019, 8:47 AM), <https://www.reuters.com/article/us-australia-abuse-pell-vatican-explaine/explainer-what-does-cardinal-pells-conviction-mean-for-the-catholic-church-idUSKCN1QH1U3>.

²⁰⁰ Noel Debien, *George Pell: We’re in uncharted territory now police have charged the Cardinal*, ABC NEWS (June 23, 2020, 8:24 PM), <https://www.abc.net.au/news/2017-05-31/george-pell-were-in-new-territory-now-the-cardinals-been-charged/8565204>.

accused of molesting two men.²⁰¹ Ensuing the allegation, the Holy See waived jurisdictional immunity in “an extraordinary gesture . . . to collaborate fully and spontaneously with the French judicial authorities.”²⁰² Francis invoked the same procedure in the money laundering context when he fired Becciu to enable him to stand trial. Looking ahead, the Vatican’s keenness to revisit this exceptional measure is a matter of political forecast. The crystal ball is cloudy, but Francis’ alacrity to search the elites’ pockets allows a peek into a future where the Vatican lowers the shield of immunity more frequently.

If the first two options prove ineffective, prosecuting the enablers may be the best bet. This last option generates fewer preliminary impasses: Either British citizens or licensed to practice in England, the enablers are less likely to challenge jurisdiction due to their territorial presence or nationality. They also present less flight risk since their professional activities are usually tied to certain locations. Striking at complicit professionals sounds like a decoy tactic, but it could lead to an evidentiary holy grail. As the gatekeepers to the financial underworld, the enablers hold information that helps to incriminate the real culprits. Furthermore, cracking down on the enablers is increasingly occupying a greater role in England’s policing agenda, spearheaded by both the NCA and the CPS.²⁰³

B. Foreign Relations

This proposal would be remiss without an addendum on its foreign relations implications. This Subsection considers two groups of concerns: England’s readiness to prosecute, and the potential reception at the Vatican. From England’s perspective, the recent ramp-up of its AML offense against banks may signal an embrace of its full prosecutorial capacities in other sectors. In 2021, the UK’s Financial Conduct Authority, a financial regulatory body with extensive criminal jurisdiction under the MLRs, meted out a record AML fines

²⁰¹ Sherwood, *supra* note 185.

²⁰² *Id.*

²⁰³ The NCA adopted a “pursue”-oriented strategy that prioritizes the identification of enablers and the education of honest enterprises. NAT’L CRIME AGENCY, HIGH END MONEY LAUNDERING STRATEGY AND ACTION PLAN ¶ 25 (2014). The CPS renewed its focus on enablers through updated guidance on money laundering. *See supra* part III(A).

of \$672 million to the NatWest Group, Credit Suisse, and HSBC, tripling the 2020 fines.²⁰⁴ Whether the Church would fall in England's crosshairs is another question. Since the appointment of a British ambassador to the Holy See in 1982, the Whitehall has maintained amicable foreign relations with St. Peter's.²⁰⁵ The Holy See maintains an Apostolic Nunciature in London established in the same year.²⁰⁶ Judging from the slow but steady current of exchanges between the two Excellencies in London and Rome, prosecuting a pope, the Church, or clergy risks disturbing the sediments of diplomacy, which may be too radical for the UK executive to brook.

Nonetheless, the English judiciary is known to contest Whitehall's inhibitions. "[T]he British courts don't accept [what the executive says] at face value," proclaimed the eminent King's Counsel Geoffrey Robertson in his outline for England to dispute the supreme pontiff's immunity.²⁰⁷ Robertson may represent the minority view, but England has a legitimate interest to sever the fruits of Vatican corruption from its housing market. In a 2020 report, HM Treasury and Home Office concluded that "UK property purchases remain an attractive method to launder illicit funds due to the large amounts that can be moved and the low levels of transparency of ownership or source of funds."²⁰⁸ The trends converge on one fact: The prosecuting bodies are gearing up to treat AML in real estate as the main course, instead of just an appealing appetizer.

²⁰⁴ Sanne Wass, *UK anti-money laundering fines hit record as watchdog seeks criminal convictions*, S&P GLOB. MKT. INTEL. (Feb. 8, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/uk-anti-money-laundering-fines-hit-record-as-watchdog-seeks-criminal-convictions-68630335>.

²⁰⁵ Linda Bordoni, *Celebrating 40 years of Full Diplomatic Relations between UK and Holy See*, VATICAN NEWS (Mar. 28, 2022, 5:29 PM), <https://www.vaticannews.va/en/vatican-city/news/2022-03/interview-british-ambassador-chris-trott-holy-see-anniversary-40.html>.

²⁰⁶ *Apostolic Nuncio to Great Britain*, CATH. CHURCH BISHOPS' CONF. ENG. & WALES, <https://www.cbcew.org.uk/home/the-church/apostolic-nuncio-to-great-britain> (last visited Apr. 23, 2022).

²⁰⁷ Paisley Dodds, *Can the Pope be charged as a criminal?*, TORONTO STAR (Apr. 5, 2010), https://www.thestar.com/news/world/2010/04/05/can_the_pope_be_charged_as_a_criminal.html; Geoffrey Robertson, *Put the pope in the dock*, GUARDIAN (Apr. 2, 2010, 3:30 PM), <https://www.theguardian.com/commentisfree/libertycentral/2010/apr/02/pope-legal-immunity-international-law>.

²⁰⁸ HM TREASURY & HOME OFF., *supra* note 22, at 108.

On the other hand, the Vatican may not greet this proposal with open arms. It may argue that foreign prosecution would suffocate local efforts and endanger the legitimacy of Vatican law, precisely due to the infancy of its AML scheme. This argument ignores the alignment underlying both states' interests. The CPS and the NCA would enforce the Vatican's AML laws as much as English laws. Prosecuting the laundering of Vatican money in English courts could unearth troves of evidence for the Vatican prosecutors to inherit, bringing to light the corruption within the Church and ensuring responsible parties receive due punishment. Since English prosecutors may request the assistance of their Vatican peers during the trial, the relevant Vatican organs could build experience collaborating with foreign entities and acquaint themselves with established procedures. Most importantly, implementing this proposal would substantiate Francis' resolve to shatter the Vatican's acquiescence to impunity. Rather than deposing Vatican's laws, the proposal burgeons a symbiosis that benefits both states.

Another question arises: What if England engages in selective prosecution to further its policy preferences? Since double jeopardy rules apply to money laundering cases,²⁰⁹ English and Vatican authorities would be inclined to coordinate their legal strategies. During that process, the Vatican could initiate discussions on various safeguards to protect against bias. One example could be a requirement for bilateral consent or the exhaustion of local remedies in the Vatican before England prosecutes clergy in select ranks.²¹⁰ Thus, even if the pope withholds authorization, English prosecutors could still move against enablers to effectively curb money laundering. The successful prosecution of any case is a vindication of the transnational model, as it carries weight for the prosperity and national security of both the Vatican and England.

C. The Elasticity of the London Market

Still, English prosecutors may mount a futile fight if money launderers simply purchase properties elsewhere. Released for the first time in 2020, the public budget for the Holy See's account office,

²⁰⁹ Extradition Act 2003, c. 41, § 12 (UK).

²¹⁰ Matthew J. Spence, *American Prosecutors as Democracy Promoters: Prosecuting Corrupt Foreign Officials in U.S. Courts*, 114 YALE L.J. 1185, 1188 (2005).

the Administration of the Patrimony of the Apostolic See (“APSA”), shows that it alone manages 1,200 properties abroad and 4,051 in Italy, eighty-six percent of which are rented at cut rates.²¹¹ The geographically diversified portfolio means corrupt clerics can skirt national AML laws by sending their assets to a low-regulation jurisdiction.

Yet, there is no reason to indulge in pessimism. This proposal is meant to be a piece of the puzzle, not the entire picture. To forge a global coalition fit to combat a cross-border crisis, countries must plug the governance gap within their own borders before kickstarting that concerted effort. Chatham House offers a three-point roadmap to set this vision in motion: greater transparency in respect of beneficial ownership, robust regulation of intermediaries, and an expanded budget for implementing AML laws.²¹² As a magnet for dirty money, the UK is well-situated to be the vanguard of this initiative. A two-pronged strategy could ensure a thorough sweep: Whereas FIOs and the regulations on intermediaries could dissuade middlepersons from participating in money laundering schemes at the outset, UWOs and the regulations on transacting with politically exposed persons are critical tools for detecting money laundering among individual officials of the Church, since financial crimes committed through real estate in high-end markets like London are usually characterized by the perpetrators spending beyond their means.²¹³

²¹¹ AMMINISTRAZIONE DEL PATRIMONIO DELLA SEDE APOSTOLICA [APSA], *BILANCIO 2020 SINTESI* [2020 BUDGET SUMMARY] 13 (2020) (Vatican).

²¹² IDEAS FOR MODERNIZING THE RULES-BASED INTERNATIONAL ORDER: DRIVE GLOBAL ACTION ON MONEY-LAUNDERING, CHATHAM HOUSE 32 (2019), <https://www.chathamhouse.org/sites/default/files/publications/research/2019-06-10-Expert-Perspectives.pdf>.

²¹³ Even in less expensive housing markets, this feature of real estate money laundering holds true. *E.g.*, *Ex-Pastor Admits to Stealing \$30K From Parish, Using It to Buy Shore House*, NBC PHILA. (Oct. 1, 2021, 2:49 PM) <https://www.nbcphiladelphia.com/news/local/ex-pastor-admits-to-stealing-30k-from-parish-using-it-to-buy-shore-house> (“[The priest] used the money to pad his salary and for a beach house in Ocean City . . .”). Lay employees of the Catholic church and high-ranking clerics alike earn modest wages. Elisabetta Povoledo, *As Coronavirus Hits Vatican Revenue, Pope Cuts Pay for High-Ranking Clerics*, N.Y. TIMES (May 10, 2021), <https://www.nytimes.com/2021/03/25/world/europe/vatican-pope-pay-cuts.html> (“[C]ardinals have the highest monthly salaries, varying from 4,000 to 5,000 euros, or about \$4,700 to \$5,900 . . .”).

At the same time, other countries with Vatican holdings are awakening to the call for international cooperation to preserve their financial integrity. France and Italy in particular are making strides. In 2015, both countries received an “Average” rating in Transparency International’s Review on G20 promises on Ending Anonymous Companies.²¹⁴ Since then, both created central beneficial ownership registers of registered entities and achieved “Strong” ratings in the 2017 Review.²¹⁵ Furthermore, both states promulgated laws requiring lawyers and real estate agents to identify the beneficial owner of clients and conduct CDD measures based on assessed risk.²¹⁶ The IMF’s Assessment Report on AML describes Italy’s Financial Intelligence Unit (*Unità di Informazione Finanziaria*) as “well-functioning,” capable of “produc[ing] good operational [and] high-quality strategic analyses,” and “adequate[ly]” funded after the “allocation of additional staff to the analysis division.”²¹⁷ The IMF notes similar advances in France, such as the creation of “a new dedicated agency within the judicial police—a Central Office on Corruption and Financial and Tax Offenses (OCLCIFF) in 2013,” and “a national financial prosecutor (PNF) with national jurisdiction for [money laundering].”²¹⁸ Although their overall responses are still wanting, EU countries like France and Italy are well-disposed to help the Vatican stanch its wound. If England acts as the bellwether in a worldwide policy paradigm tightening real estate AML, it may animate other countries to assist in the restoration of financial integrity and public confidence in the Church.

²¹⁴ MAÍRA MARTINI & MAGGIE MURPHY, G20 LEADERS OR LAGGARDS? REVIEWING G20 PROMISES ON ENDING ANONYMOUS COMPANIES, TRANSPARENCY INT’L 10 (2018), https://transparency.org.au/wp-content/uploads/2019/10/2018_G20-Leaders-or-Laggards_EN.pdf.

²¹⁵ *Id.* at 11. Restrictions still persist in both countries. In Italy, the public can pay a fee to access the register. In France, public authorities must obtain permission to access the data. *Id.* at 44.

²¹⁶ *Id.* at 46.

²¹⁷ INT’L MONETARY FUND, ITALY: DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM 51 (2016).

²¹⁸ INT’L MONETARY FUND, FINANCIAL SECTOR ASSESSMENT PROGRAM-TECHNICAL NOTE-ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM REGIME IN FRANCE 29–30 (2019).

D. The Diffusion of Learning

England's successful execution of this proposal may trigger a top-down diffusion of learning, emanating from the EU AMLDs. At the regulatory and legislative level, Francis is eager to turn the page on recent scandals. After incorporating EU's fourth and fifth AML/CFT Directives into its national laws with diligent zeal, the Church has signaled its "commitment to continue working towards full compliance with the best international parameters."²¹⁹ In 2021, the European Commission released "an ambitious package of legislative proposals" comprising four components:²²⁰ a regulation creating a central European AML/CTF authority ("AMLA"), a "single EU rulebook" directly applicable to each country, new rules for the crypto sector, and a sixth AMLD with additional regulations for national supervisors and FIUs.²²¹ If this overhaul package passes through the European Parliament and Council, whether the Vatican responds or departs from the EU regime would be the litmus test of its readiness to adopt modern AML norms.

On the enforcement front, the Vatican lags in investigating and taking suspects to court. The success of English prosecutors would incentivize the Vatican to join the fray to improve its reputation, restore trust in the institution, and recover the cache of papal riches scattered among swanky manors. In the process, the Vatican agencies would acclimatize to international best practices in investigation, charging, conducting hearings and trials, discovery, and plea bargaining.

However, when it comes to reforming the prosecutorial culture and governance structure of a microstate ruled by a king in a white cassock, England's hands are tied. When England presents its overtures, the pope has an almost divine right to simply say no. When the pope permits stagnancy to spread beneath his sandals, foreign prosecutors are stuck with containing the outpour. Thus, a regional or international body may be the more appropriate forum to institute

²¹⁹ Press Release, Holy See, Press Release of the Holy See, 09.06.2021 (June 9, 2021).

²²⁰ Press Release, European Commission, Beating financial crime: Commission overhauls anti-money laundering and countering the financing of terrorism rules (July 20, 2021).

²²¹ COMMISSION STAFF WORKING DOCUMENT: IMPACT ASSESSMENT ACCOMPANYING THE ANTI-MONEY LAUNDERING PACKAGE, EUR. COMM'N 2, (2021).

reform. If the Vatican signs on to the EU's new AML/CTF package, its submission to the supervision of the AMLA augurs well for its integration into the EU AML framework. Armed with more expansive powers to monitor and take "immediate action to address imminent risks" than MONEYVAL, the AMLA could require the Vatican to adopt "specific procedural or governance changes or impos[e] appropriate sanctions."²²² Under the AMLA's watchful eyes, the Vatican could adopt a more regimented approach to updating its standards and mitigating AML vulnerabilities. After the AMLA joins forces with English prosecutors, the combined strength of transnational and international persuasion may finally give the Vatican the push it needs to rein in corruption.

CONCLUSION

In January 2020, a year and a half before his trial began, Cardinal Angelo Becciu sent a curious text message to the then Vatican investment manager Enrico Crasso, entreating Crasso to "do a good press campaign" and "[a]sk [his] lawyer if it is appropriate to haggle our magistrates right away."²²³ Later that year, a scandalous portrait of the London property deal emerged, which Becciu denounced as a "dark plot[]" and "an unparalleled media pillory."²²⁴ In the coming months, Becciu may deliver the most high-stake insider revelation in

²²² *The EU is Overhauling its AML/CTF Framework and May Be Looking to Leverage or Facilitate the Work of PPPs*, ROPES & GRAY (Sept. 9, 2021), <https://www.ropesgray.com/en/newsroom/alerts/2021/September/The-EU-is-Overhauling-its-AML-CTF-Framework-and-May-Be-Looking-to-Leverage>.

²²³ *Scandalo Vaticano, i pm: "Soggetti improbabili attori di un marcio sistema predatorio e lucrativo, con incisive complicità interne"* [Vatican scandal, prosecutors: "Unlikely actors of a rotten predatory and lucrative system, with incisive internal complicity"], IL FATTO QUOTIDIANO (July 3, 2021), <https://www.ilfattoquotidiano.it/2021/07/03/scandalo-vaticano-i-pm-soggetti-improbabili-attori-di-un-marcio-sistema-predatorio-e-lucrativo-con-incisive-complicita-interne/6249991> ("Al momento giusto . . . bisognerà fare una bella campagna stampa!! Anzi lei potrebbe farla subito. Chieda al suo avvocato se è il caso di sburgiardare [sic] subito i nostri magistrati!").

²²⁴ *Vaticano, cardinale Becciu a processo per il palazzo di Londra. Tutti i nomi e le accuse* [Vatican, Cardinal Becciu on trial for the palace in London. All names and allegations], QUOTIDIANO NAZIONALE (July 3, 2021), <https://www.quotidiano.net/cronaca/becciu-processo-palazzo-londra-1.6551561>.

the infinite saga of Vatican corruption to extricate himself from a long fall from favor.²²⁵

Breaking the curial omertà is only a starting point. Addressing the underlying cause that allowed officials to fabricate corruption as “a standard Vatican practice for dealing with charitable endeavors” requires a coordinated effort to identify and eradicate the criminal networks.²²⁶ Because of the scant procedural instructions in Vatican law, the omnipresence of the pope, and a shortage of labor in the AML sector, the Vatican is underprepared to face that undertaking alone. A partnership with prosecutors in England allows the Vatican to take advantage of the English framework’s broadened toolkit, the separation of the judiciary from external influences, and the large AML workforce. While these factors contribute to a strong response to money laundering in real estate, sustaining that alliance poses practical difficulties, particularly in relation to surmounting immunity, containing the political repercussions, tackling the infiltration of illicit finance in other housing markets, and overcoming the resistance to learning. Nonetheless, one remains hopeful that the peer pressure and external scrutiny that succeeds the joint model would inspire a self-examination of the corrupting dynamics that permit Vatican wealth to flow to elite London real estate. In time, the Vatican would master the finesse to dismantle the towers of secrecy from within.

²²⁵ Ed. Condon, *Business ‘outside the family’: What if Becciu blames Pope Francis?*, PILLAR (Apr. 19, 2022, 4:59 PM), <https://www.pillaratholic.com/p/business-outside-the-family-what?triedSigningIn=true> (“Perhaps the most interesting consideration is whether Becciu will attempt to implicate Pope Francis in order to save himself.”).

²²⁶ *Id.*