

The State of the Vatican: Past Its Use-By Date?

Written by John R Morss

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JOHN R MORSS, MAY 2 2015

David Kertzer's *The Pope and Mussolini: The Secret History of Pius XI and the Rise of Fascism in Europe* [1] describes in meticulous and at times shocking detail the history of collaboration between the Pope and the *de facto* head of the Italian state in the 1920s and 1930s. Kertzer's analysis sheds light on the circumstances in which a formal agreement was reached in 1929 between the papacy and the Kingdom of Italy which purported to establish 'the Vatican City' as a sovereign, independent international entity [2]. It becomes even clearer that the agreement was a brilliant, 'win-win' solution to the problems faced by the leaders of Italy's Catholic faithful and of Italy's fascist coup.

The re-establishment of a temporal jurisdiction for the papacy, lost in 1870 as a result of Italian unification, was in many ways a side-effect of the larger achievements of both sides. It is a consequence that continues to haunt us, as scandal after scandal reveals the kind of abusive conduct perpetrated, facilitated and concealed by the Roman Catholic Church worldwide. And the incumbency of a Pope who is socially progressive, at least in relative terms, is no reason to relax the scrutiny of the institution that he leads (and he has already talked of retiring in the foreseeable future).

Mussolini, of course, wanted to rein in the otherwise unpredictable Vatican which from time to time opposed his political and social program. Despite the Vatican's loss of territory (the rump of the Papal States of previous centuries) in 1870 — and due in part to the generosity or timidity of successive Italian governments in allowing the Popes to continue to run the Church and to act like an international sovereign of a kind, from the Vatican buildings — Mussolini (Prime Minister from 1922 – 1945) found the independence of the Pope inconvenient. Youth groups as well as Church personnel throughout Italy had their loyalty divided. Mussolini's anti-clerical instincts were tempered by pragmatism but a long term resolution to the Roman Problem was clearly to be desired.

Paradoxically the answer to a troublesome independence of the papacy was to create an independent papal entity: the Vatican City State. Mussolini acquired a fairly reliable ally in Pope Pius XI (Pope between 1922 – 1939) whose agenda converged on important points sufficiently with that of Il Duce. For Pius (Achille Ratti) was above all concerned with his Italian flock, not a worldwide mission, and his fears were great. He feared Communism of course and Socialism; but he also feared the inroads of Protestantism with its dangerous practice of private devotion. For Ratti, the agreements with the Italian Kingdom which his predecessors in the Vatican had refused to recognise promised to achieve a level of control over the spiritual, educational and family lives of the Italian population unknown for centuries [3]. For Mussolini the cost was a backflip over the recognition of Roman Catholicism as state religion and the acceptance of exceptions and immunities to his one-party rule that this implied. It also cost some money, and the definition of the immediate environs of the Vatican as politically independent of the Kingdom of Italy.

Pius XI did not want a population to be governed [4]. Populations are bothersome: they have welfare needs and work needs. In 1829 there had been 'over 400,000 beggars, vagrants and unemployed in the Papal States out of a population of some 2.5 million'[5]. They are potentially rebellious. Previous popes had called upon foreign military force to put down revolting citizenry [6] but the Lateran solution was much better. The denizens of the newly defined Vatican City-State would all (or very nearly all) be volunteers, 'recruits.' Their right to reside within this City-State would depend on ongoing papal approval. Pius may well have wished for more green space in the City-State[7] but he wisely decided, or was wisely advised, that the minimum 'footprint' on the geography of Italy was what was

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wanted. With this modest territorial claim went immense power throughout the Kingdom, power facilitated by the strength and determination of the state's fascist leadership.

Since 1929 the Holy See as quasi-executive of Vatican City and of the Roman Catholic Church has placed considerable weight on the international legal independence supposedly thus recognised. In any case the absence of territory between 1870 and 1929 even if thought of by the Church as temporary did not in that period undermine its understanding and its assertion of its global spiritual mission. But since 1929 international influence has been sought and consolidated in a variety of ways that would probably not have been available without the Lateran agreements, including membership of many international agreements and of course a significant role within the United Nations both formally and informally. No other world religion has been recognised in this way by the world's most internationally representative secular institution. And political influence over the nations of the world is sought in other ways too. Representation of world sovereign states to and from the Vatican/Holy See, a practice whose undoubted continuity over the centuries does not in itself constitute sovereignty in the Roman entity, continues to generate controversy.[8]

Representatives of states to Rome are not like other diplomats and the diplomatic corps based in Rome is like so many other entities connected with the Holy See, *sui generis* [9]. Papal diplomats are 'priests first and diplomats second' [10]. The reciprocity intrinsic to the time-honoured diplomatic profession is simply lacking [11].

International lawyers disagree over the best way to describe the international status of the Vatican/Holy See entity [12]. Those traditionalists who defer to a poorly-defined set of criteria in the (inter-American) *Montevideo Convention* of 1933 on reciprocal respect for sovereign borders – a Convention more honoured in the breach than in the observance, especially by the USA – agree that the entity is a challenge for that scheme (not quite 'The Full Monty' so to speak). 'Cherry-picking' of privileges and immunities granted to states, such as the protection of officials from the jurisdiction of 'foreign' states, while disavowing the obligations of states, is widely recognised as unacceptable in international affairs. Yet this is the characteristic strategy of the Vatican/Holy See. As Geoffrey Robertson points out, wrongdoers 'abroad' are offered protection by Rome and in some cases a sanctuary there, and immunity asserted for Church officials on the basis of sovereignty, while at the same time a 'state'-based responsibility towards 'foreign' victims is resisted [13]. Recent issues relating to the obligations arising from the *United Nations Convention on the Rights of the Child* exemplify this.[14]

Some scholars of international law have recently argued that whatever the uncertainty of claims to statehood, responsibilities of the worldwide Church in relation to child protection and other human rights matters would be best operationalised by an insistence on the fulfilling of the obligations shared by all states [15]. In other words, a de facto sovereignty would be acknowledged by the world community in the course of the acceptance and concrete implementation of duties owed by all states. An alternative view, favoured by the present author, is that 'cherry-picking' will continue in this remarkable entity and that instead of trying to insist on acceptance of the full 'package' of the rights and the duties of sovereign states, the Holy See should be challenged to accept that those duties will never be honoured and that pretensions to the rights (privileges, immunities and so on) incident on statehood must also be relinquished.

The Papacy took a giant step forward with Pope Benedict's courageous decision to resign his position, setting the precedent for shorter terms in that role. The Pope is no longer a medieval monarch. The trappings of statehood need also to be put aside. When Catholic 'religious' worldwide are transparently and unambiguously subject to local, national jurisdiction, including police, then there may be hope that crimes of the past will not be repeated. There have been too many tears in rain.

References

[1] David Kertzer, *The Pope and Mussolini: The Secret History of Pius XI and the Rise of Fascism in Europe* (Random, 2014)

[2] Geoffrey Robertson, *The Case of the Pope* (Penguin, 2010)

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[3] Kertzer, *The Pope and Mussolini* 358

[4] Robertson, *The Case of the Pope* 74

[5] Christopher Duggan, *The Force of Destiny: A History of Italy Since 1796* (Houghton Mifflin, 2008) 76

[6] Similarly, in 1870 immediately after the fall of Rome to the unification forces, those Italian troops were called in by Pius IX to police the Leonine City: David Kertzer, *Prisoner of the Vatican: The Pope's Secret Plot to Capture Rome from the New Italian State* (Houghton Mifflin, 2004) 60

[7] Having desired to include 'the vast gardens of the Villa Doria Pamphili' on the Janiculum Hill: Kertzer, *The Pope and Mussolini* 104

[8] France gay envoy issue: <http://www.reuters.com/article/2015/04/22/us-pope-france-idUSKBN0ND1I620150422> accessed 29 April 2015

[9] Australia's representative to the Holy See 2009–12 Tim Fischer has helpfully suggested that '[t]he Australian Ambassador to the Holy See could at a future date take up extra roles easily, such as Ambassador to San Marino (four hours' drive northeast of Rome) and Ambassador to the Sovereign Order of Malta': Tim Fischer, *Holy See, Unholy Me: 1,000 Days in Rome. Tales from my time as Australian Ambassador to the Vatican* (ABC Books, 2013) 49, 269. Public service can indeed be onerous.

[10] Hyginus Cardinale, *The Holy See and the International Order* (Colin Smythe, 1976) 175; and Canon 364 provides that '[t]he principal duty of a pontifical legate' relates to unity of the universal church: J Coriden, T Green and D Heintschel (eds) *The Code of Canon Law: A Text and Commentary* (Paulist Press, 1985) 302

[11] Similarly asymmetrical is the relationship between heads of state: in his role as a head of state visiting the UK a Pope may expect a female head of state of the UK to wear black as a non-Catholic queen: Robertson, *The Case of the Pope* 10

[12] Gillian Triggs, *International Law: Contemporary Principles and Practices* (2nd ed LexisNexis Butterworths, 2011) 249

[13] Robertson, *The Case of the Pope* 8

[14] Ntina Tzouvala, 'The Holy See and Children's Rights: International Human Rights Law and its Ghosts' 84 *Nordic Journal of International Law* (2015) 59-88

[15] Ioana Cismas, *Religious Actors and International Law* (OUP, 2014)

About the author:

John R Morss was born in London and educated at the Universities of Sheffield (BSc), Edinburgh (PhD) and Otago (LLB). He has lectured in Psychology/Education/Law at the Universities of Ulster and Otago and at Deakin University, Victoria (Australia). He is a member of the Executive Committee of the Legal Theory Interest Group of the American Society for International Law. He has been Visiting Fellow at the European University Institute, Florence, and at the Lauterpacht Centre for International Law, University of Cambridge. His most recent book is *International Law as the Law of Collectives: Toward a Law of People* (Ashgate, 2013).

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