

The Catholic Lawyer

Volume 4
Number 3 *Volume 4, Summer 1958, Number 3*

Article 10

The Case of the Bishop of Prato

Pio Ciprotti

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE CASE OF THE BISHOP OF PRATO[†]

PIO CIPROTTI*

THE TRIAL OF THE BISHOP OF PRATO is the first criminal proceeding brought in Italy since 1870 against a bishop upon the basis of an act performed by him in exercise of his functions. Accusations of "abuse of electoral propaganda" have been made on several occasions, but in each case the instructing magistrate dismissed the information upon the grounds that it failed to charge a crime. The accused bishops, therefore, were not brought to trial.

It is for this reason that public opinion in Italy has been so disturbed by the trial of Bishop Fiordelli.

The Facts

The Bishop of Prato had been pursuing for some time a vigorous pastoral campaign to make his people mindful of the grave sin and the canonical sanctions incurred by Catholics who attempt civil marriage.¹ The first pastoral letter issued by Bishop Fiordelli as Ordinary of Prato, in Lent of 1955, set out the Catholic doctrine on marriage and the family

[†]Translation by Rev. William F. Cahill, Professor of Law, St. John's University School of Law.

*J.S.D. (1934), University of Rome; J.C.D. (1935), Pontifical Lateran University; admitted to practice before the Sacred Roman Rota, the Italian Courts and the Supreme Court of Cassation. Professor of Canon Law, University of Rome (1940-43, 1948-55); Professor of Comparative Law and of Italian Ecclesiastical Law, Pontifical Lateran University.

¹ In view of the fact that Italian law gives full civil effect to a religious marriage registered with the civil authorities, the Sacred Congregation of the Sacraments has, since 1929, forbidden Catholics in Italy to celebrate civil marriages. Where the civil law does not recognize the religious marriage, Catholics are permitted to have a civil ceremony in addition to the ecclesiastical one.

By applying for a "notification" of civil marriage instead of giving notification at the town hall that they would be married before a priest, these young people publicly declared that they considered the civil marriage a valid one. The "notification" in Italy is similar to the marriage license in America except that the former indicates whether the parties intend to have a civil or a religious ceremony.

as a countermeasure to a communist propaganda campaign directed to discourage church marriages.² In response to that pastoral, a communist periodical published at Prato offered an article entitled *The Bishop is the Enemy of Motherhood and Humanity*.



PIO CIPROTTI

A Catholic young woman of Prato, in spite of the repeated admonitions of the Bishop, publicly declared her intention to contract a civil marriage with a young communist. Thereupon the Bishop sent to the priest of the young woman's parish a pastoral letter to be read to the faithful in church on the 12th of August, 1956, the day on which the civil marriage was to take place. The civil ceremony was celebrated on that day with much publicity. Those who attended were invited to a restaurant on the Cathedral square, and the newlyweds stood before the Cathedral to receive the congratulations of their friends. The text of the Bishop's letter follows:

To the Very Reverend Provost of
St. Mary of Help, Prato:

Today, the 12th of August, two of your parishioners who have refused a religious marriage will marry at the Town Hall. The ecclesiastical authorities have made every

² Pope Pius XI, in his Encyclical Letter on Christian Marriage, *Casti Conubii*, Dec. 31, 1930, attributed to the "destroyers of society" this proposition: ". . . that the civil act (which they call *civil marriage*) is to be regarded as the true nuptial contract; while the religious act is something superfluous or, at most, an indulgence to superstitious people."

effort to prevent this most serious sin. This gesture of open and contemptuous repudiation of religion is an occasion of deep sorrow for the priests and for the faithful.

For two baptized persons "so-called civil marriage" is no marriage at all, but only the inception of a scandalous concubinage. Therefore, you the Provost shall characterize these two persons as public concubinaires, in the light of Christian morality and of the laws of the Church, and, in accordance with Canons 855 and 2357 of the Code of Canon Law, you shall consider for all purposes Mr. MB and Miss LN as public sinners.³

³ The pertinent sections of the Canons cited in the Bishop's letter are the following:

Can. 855, §1: Publicly unworthy persons are to be barred from the Eucharist; such are the excommunicated, the interdicted, and the notoriously infamous; unless their penitence and amendment be established, and until they have repaired any public scandal.

Can. 2357, §2: Persons who have committed a public crime of adultery, or who have been living publicly in concubinage, or who have been lawfully convicted of other crimes against the sixth commandment of the decalogue are to be barred from legitimate ecclesiastical acts, until they shall have given signs of true repentance.

The following portions of other Canons have reference to the penalties set out in the letter:

Can. 2195, §1: The term crime, in ecclesiastical law, signifies an external and morally imputable violation of law to which is attached a canonical sanction, at least an indeterminate one.

Can. 2197: A crime is: 1°. *Public*, if it is already a matter of common knowledge, or if the circumstances in which it was committed or those which now bear upon it are such that prudence warrants and urges the judgment that the crime will easily become commonly known; 2°. *Notorious in law*, after the sentence of a competent judge has become *res judicata*, or after the offender's judicial confession made in accordance with Can. 1750; 3°. *Notorious in fact*, if the crime is publicly known and was committed in such circumstances that guilt can neither be concealed nor legally excused; 4°. *Occult*, when it is not public; *materially occult*, if the crime itself is not known; *formally occult*, if the legal responsibility is not known.

Can. 1240, §1: The following persons are to be

All the sacraments shall be denied them, their house shall not be blessed, they shall not be accepted as sponsors in Baptism or Confirmation, religious funeral services shall be denied them. But prayers shall be offered for them, that they may repair this most grievous scandal.

Finally, since the ecclesiastical authorities find that the parents of these persons have failed gravely in their duty as Christian parents, by permitting this enormously sinful and scandalous proceeding, at Easter you shall deny the Holy Water to the B family and to the parents of LN. This letter is to be read to the faithful.

(Signed) Peter
Bishop of Prato

As by the letter itself he was directed to do, the pastor read the letter to the faithful during the Masses on the 12th of August, and later he published it in the parish bulletin.

Upon the basis of these facts the parties to the civil marriage, the groom's mother, and the bride's father lodged a complaint of defamation. Later, the bride's father withdrew from the case.

The instructing magistrate bound over the Bishop and the pastor for trial, although the Public Prosecutor had requested dismissal "... because the facts alleged do not constitute a crime."

The Tribunal of Florence, after a six-day trial (February 24-March 1, 1958), gave sentence. The court fined the Bishop 40,000 lire, finding him guilty of defamation with the extenuation of having acted from motives of particular moral and social significance, and with general extenuating circumstances. The court discharged the pastor, finding that he acted in the belief that he was performing his duty. Again at

denied ecclesiastical burial, unless before death they gave some sign of penitence:

.....

6°. Other public and manifest sinners.

the trial, the submissions of the Public Prosecutor were not accepted by the judges. Arguing that the Bishop and the pastor had acted in fulfillment of a duty, though in excess of the limits thereof, he had asked that both be discharged, for want of malice.

The complaining parties were represented by three lawyers, none of whom are practicing Catholics. The Public Prosecutor and three of the four defense attorneys practice the Catholic religion.

Before the trial began, the Bishop and the pastor had sent to the President of the Tribunal letters in which they explained the reasons which prevented their attendance at the trial. The following is the text of the Bishop's letter to the President:

With all respect, I wish to explain to you the reasons why I believe I cannot attend the hearings in the action brought against me.

Although I am so determined, let me say immediately that nothing could be farther from my intention than to be lacking in my regard for the Tribunal over which you preside. Having myself a place in the Magistracy of the Church, I am well aware of the dignity and the high office of a judge. I beg you, therefore, to credit my profound esteem and appreciation.

My conscience as Bishop, however, obliges me not to present myself, for the fact upon which I am to be tried is nothing else than an act done in exercise of my spiritual power; a determination made by me in exercise of my episcopal jurisdiction, for the purpose of fulfilling a duty imposed upon me by the pastoral ministry.

You, Mr. President, are aware of the facts. Being advised that two persons, baptized in the Catholic Church and belonging to my diocese and for whose souls, therefore, I am answerable to God, intended to become joined to each other by a civil ceremony only, I was obliged as Bishop to call in one of them, who was still a practicing Catholic, and to put before her, with the

anguished affection of a father, what a grave sin it is for a Catholic to repudiate religious marriage; a sin so much more inexcusable in view of the fact that in Italy all the civil effects are secured by religious marriage. I exhorted and entreated her to abandon her intention, and not to reject wilfully the blessing of God for herself and the home she thought to found.

To my profound sorrow I was not listened to.

Confronted with the wide publicity which had been thrown purposefully around the deplorable fact; considering the grave scandal which this publicity had provoked among the Christian people of my diocese, and not having been able to overcome the obstinacy of the persons to be married, I saw myself constrained to explain publicly the lamentable conditions in which their deed would place them before the Church, and the canonical sanctions which would be thus incurred. And yet, not even then was I prepared to abandon hope that those to whom my exhortation had given no pause might turn back when confronted with the grievous consequences of their offense.

Permit me, Mr. President, to explain with what bitterness I have been obliged to observe how the children of darkness busy themselves, by any and every means, to take away from my diocesans the light of the Faith and the comfort of religious practice. While these persons try to urge my people into merely civil unions, I, as Bishop, have esteemed and do still esteem it my duty to defend the dignity of the Sacrament, the sanctity of the domestic hearth, being persuaded that in the Christian holiness and integrity of the family lies the foundation of the true weal of the Church and of the Nation.

For all these reasons, you will understand why I must prevent my position from appearing or being construed as an admission that an act having to do with "the spiritual government of the faithful" may be subjected to the adjudication of a civil magistrate, for the liberty of that government is guaranteed by the Lateran Pacts and solemnly proclaimed by Article VII of the

Italian Constitution: "The State and the Catholic Church are, each in its own order, independent and sovereign."

For my conduct in the "spiritual government of the faithful" I must answer to my conscience as Bishop, to the Supreme Pontiff, and to God. I would not wish ever to bear the grave responsibility of not having so comported myself as to prevent, as far as in me, that the liberty of the Church should be prejudiced or that the Concordat should suffer a breach.

I am confident that you, Mr. President, in the evenness and clarity of your mind, will evaluate justly my anxieties and my resolve.

The Tribunal did not embrace the thesis set forth by the Bishop in his letter and therefore held that they had jurisdiction to adjudicate the Bishop's action.

Now that the Tribunal has given its judgment one sees that the magistrates have explored various lines of argument which pointed to different conclusions in each stage of the proceeding.

Indeed, in the first inquiry the Public Prosecutor maintained that the letter was not defamatory, because it contained purely religious evaluations of the conduct of the complainants — comments which could not have injured anyone's reputation, and because the letter was written by the Bishop in exercise of his functions of Church government.

At the trial, the Public Prosecutor argued that the letter was defamatory, yet that in view of Article I of the Concordat⁴ the Bishop had committed no crime provided he acted in accordance with Canon Law, but that he was guilty of defamation if his conduct did not conform to Canon Law; therefore the Public Prosecutor argued that the Tribunal was competent to adjudicate upon the Bishop's act, to determine whether

⁴ See text, *infra*, p. 250.

it was or was not done in accordance with the laws of the Church, and he concluded that the act was done according to those laws in as much as the two persons who contracted civil marriage were denominated public sinners, but that the act did not accord with church law in denominating those persons as concubinaries. In spite of this latter conclusion, the Public Prosecutor asked that both the Bishop and the pastor be discharged, because they had acted in good faith, that is, in the belief that their conduct was within the limits of their right and their duty.

The Tribunal, on the contrary, was of opinion that they need not determine whether or not the Bishop's act conformed to Canon Law, that being an internal question of the government of the Church, whose sovereignty is unquestioned; but the Tribunal held that they must adjudge whether the Bishop's act, though it issued within a juridical order distinct from that of the State, may or may not have overstepped the limits between the two juridical orders, and particularly whether or not the act may have breached any right guaranteed to citizens by Articles II and III⁵ of the Constitution. Passing then to a consideration of the episcopal document, the Tribunal found there a violation of such rights, holding that it was injurious to reputation.

Now the case is to be adjudicated by the Court of Appeals of Florence, where appeal

⁵The Italian Constitution of December 27, 1947:

Art. II The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social groups in which he develops his personality, and it requires the fulfillment of the irrevocable duties of political, economic and social solidarity.

Art. III All citizens have the same social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.

has been taken by the attorneys for the Bishop and the pastor. From the determination of the Court of Appeals, recourse may be had to the Supreme Court of Cassation.

The Penal Code

Article 595 of the Penal Code punishes with imprisonment of from fifteen days to a year, or a fine of from 400 to 80,000 lire, "anyone who, communicating with a number of persons, harms the reputation of another."

Article 51 of the same code excludes punishment of one who acts in exercise of a right or in fulfillment of a duty imposed by law or by a lawful direction of the public authorities; and, by Article 59, punishment is excluded in respect of one who erroneously believed that his act was in exercise of a right or in fulfillment of a duty.

The Tribunal evidently held that the Bishop's decree was within the contemplation of Article 595, and that Articles 51 and 59 had application to the case of the pastor, but not to the case of the Bishop.

Under Article 596 of the Penal Code, one guilty of defamation is punished even though the facts which he has attributed to the person offended be true and notorious. Yet, when the offense consists in the attribution of a determined fact, there are some cases in which the defamation is not punished if it can be shown that the fact is true.

In the case of the Bishop of Prato, the question of the truth of the fact was not an issue; he was not accused of having attributed to the complainants a determined fact, but of having called them "public sinners" and "concubinaries."

Let us see whether the Bishop's letter can be considered *defamatory*, and whether or not its issuance was for him the exercise of a *right* or the fulfillment of a *duty*.

The Bishop of Prato, in his letter, brought to the attention of the faithful — in order that they should understand well the gravity of the offense and be deterred from similar conduct — the classifications “public sinners,” “concubinaries,” etc. and the canonical sanctions incurred automatically under the law of the Church by the two persons who had attempted to marry by a civil ceremony.

Clearly, now, this can be said of any of the persons affected by the Bishop’s letter. If such a one professes Catholic doctrine, he cannot view as a legal offense a document whose issuance the principles he professes made obligatory upon the Bishop, nor can he so view an act which is merely an application of the same principles. If, on the contrary, a person affected by the letter dissents from the Church, he surely cannot take it as offensive to his reputation — rather he may congratulate himself — if the Church declares him a transgressor of the laws of God and of the Church, which laws he boasts he will not observe.

And, on the other hand, Articles III, VIII and XIX⁶ of the Italian Constitution

⁶ Art. III All citizens have the same social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. Art. VIII All religious professions (confessioni) are equally free before the law.

All religious professions, which are not Catholic, have the right to organize themselves according to their own principles, insofar as these are not in conflict with the juristic order of Italy. Their relations with the State are regulated by laws based upon agreements with the respective representatives.

Art. XIX All have the right to profess freely the religious faith to which they adhere, in any form, individually or in association, to spread their faith and to worship publicly or privately, provided that the ritual involved is not contrary to good morals.

indicate that it is a matter of indifference to the State that a citizen profess one religion or another, or that he fulfills or neglects his religious duties. If this be so, then the State cannot logically consider injurious to reputation the act of saying — as the Bishop of Prato said in substance — that Titius and Caia have transgressed the precepts, even the grave precepts, of God and of the Church. Further, it is beyond question that the expressions employed in the Bishop’s letter, “public sinners,” “public concubinaries,” “inception of a scandalous concubinage,” are directed to characterize the deed and its doers in a purely religious scope, that is, before God and the Church, and to characterize them within the juridical order of the Church, before the Canon Law, and not in the scope of the State or of social relations. This conclusion follows from two conceded propositions. It is conceded that the author of the letter was the Bishop writing as head of the diocese, acting in exercise of his power of ecclesiastical government and of his pastoral ministry. And the letter itself indicates that the characterizations employed therein are drawn from texts of church law, specifically, from Canons of the Code of Canon Law which are accurately cited in the letter. Finally, one reads in the letter complained of this phrase, “in the light of Christian morality and of the laws of the Church.”

Furthermore, if the Bishop had said simply that Titius and Caia are to be considered public sinners and concubinaries, without explaining why, perhaps it might be said that these expressions were injurious to the reputations of Titius and Caia. But the Bishop has said that these characterizations apply to Titius and Caia because they have contracted civil marriage, and so, if it does not harm their reputation to say that they

have contracted a civil marriage, the Bishop's letter is not injurious to them. Indeed, all Prato already knew that those two persons had contracted civil marriage, and some citizens of Prato had judged the celebration of this civil ceremony a wrongful thing, while others had judged it not wrongful. The contempt in which the former held the two young persons, and the esteem in which the latter held them, certainly could not be increased or diminished by the Bishop's letter. This letter, therefore, cannot be considered defamatory, for it has not harmed the reputation of the two persons to any degree beyond what their reputations had already suffered by their own act of celebrating a civil marriage.

The Bishop — as everyone knows — is, in the legal system of the Church, at the same time a lawmaker, a governor, and a judge. No one ever dreamed of accusing of defamation a judge who in giving sentence characterized, for example, as a thief, one who had stolen: there is no question of defamation here, but simply a necessary justification of what the sentence directs.

In the current year, on January 18th, a decision of the Second Session of the Court of Cassation called concubinaries those who cohabit after celebrating a religious marriage in such circumstances that it is deprived of civil effects. No one has laid an information against the judges who signed that sentence.

Right and Duty According to the Law of the State

If one grants that the Bishop acted in conformity with the law of the Church, then from that very fact it must follow, in the view of the State's law, that he acted in the exercise of a right.

It is a fact, as Article VII of the Con-

stitution⁷ declares, that in Italy relations between the Church and the State are regulated by the Lateran Pacts (the Treaty and the Concordat), and these Pacts are also the law of the State. By Article I of the Treaty, the Catholic, Apostolic, Roman religion is the only religion of the State; that this Article remains in effect has been reaffirmed by the Constitutional Court in its Sentence numbered 125, dated November 28-30, 1957.

Through Article I of the Concordat, the Italian State “. . . assures to the Catholic Church the free exercise of spiritual power, the free and public exercise . . . of its jurisdiction in ecclesiastical matters”; and further, “where it is necessary, [the State] accords to ecclesiastical persons, for the acts of their spiritual ministry, the protection of its authorities.”

From this it follows that whatever scope is given by the laws of the Church to the jurisdictional power of the Church is consented to by the State, and acts done in exercise of that jurisdictional power cannot, therefore, be viewed from the standpoint of State law as wrongful or, much less, criminal. Consequently, Article 51 of the Penal Code, quoted above, is applicable to ecclesiastical authorities who exercise the Church's jurisdictional power.

Article II of the Concordat is nothing other than an application of these principles to a particular hypothesis. The Article declares:

“Both the Holy See and the Bishops may publish freely, and they may post within

⁷ Art. VII The state and the Catholic Church are, each in its own order, independent and sovereign. Their relations are regulated by the Lateran Pacts. Modifications of the Pacts, accepted by both parties, do not require proceedings for revision of the Constitution.

buildings dedicated to public worship and to the works of their ministry, and on the outside doors of the same buildings, instructions, ordinances, pastoral letters, diocesan bulletins and other papers having to do with the spiritual government of the faithful, which they see fit to issue within the scope of their competence."

From this disposition also, it follows that a State tribunal cannot adjudge whether or not a determination made by ecclesiastical authority conforms to the laws of the Church, and decide that the determination is lawful in the former case and unlawful in the latter. This has been decided by the Tribunal of Bologna, in a sentence of April 21, 1955, which reads in part: "Recognition

must be given to the full and undisputed right of the Catholic Church to provide, within the limits of its activity, for the attainment of its objectives. The State judge has no authority to adjudicate for any purpose, characterizing as unjust, the conduct of a person clothed with ecclesiastical jurisdiction, who acts for a religious objective, interpreting the standards prescribed by ecclesiastical superiors."

These principles, which were taught by notable jurists even before the Concordat, have even greater weight today, since the Lateran Pacts, and since Article VII of the Constitution has recognized that the Church, on a par with the State, is sovereign and independent.

THE RIGHT TO EDUCATE

(Continued)

cation of their children. Religious schools are flourishing. The graduates of such schools are eligible for any public or private employment for which their education has prepared them.

On the federal level and in many of the States, students of church-related schools receive the benefits of bus transportation, textbooks, free lunches and other measures, grants-in-aid which are manifestly designed for the health, safety and welfare of American youth, irrespective of the school attended.

The place of the private and church-related schools in America is one dictated by nothing more than justice and equity. In the words of the Catholic Bishops of the United States such schools have the full right to be considered and dealt with as

components of the American educational system.

They protest against the kind of thinking that would reduce them to a secondary level, and against unfair and discriminatory treatment which would, in effect, write them off as less wholly dedicated to the public welfare than the state-supported schools. The students of these schools have the right to benefit from those measures, grants, or aids, which are manifestly designed for the health, safety and welfare of American youth, irrespective of the school attended.

This statement is submitted in quiet confidence that the national sense of justice will stand firm, and that a cordial appreciation of private and church-related schools, both for what they are and for what they have done for America, will see to it that they are preserved and upheld so long as this is a nation of free men.⁴³

⁴³ *The Bishops' Message on American Principles in Education*, 56 CATHOLIC SCHOOL J. 1,3 (1956).