

June 2016

Canonical Procedure; Philosophical-Juridic Study of Book IV of the Code of Canon Law

Bernard J. Ristuccia, C.M.

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



Part of the [Catholic Studies Commons](#)

Recommended Citation

Bernard J. Ristuccia, C.M. (2016) "Canonical Procedure; Philosophical-Juridic Study of Book IV of the Code of Canon Law," *The Catholic Lawyer*: Vol. 7: No. 2, Article 12.

Available at: <http://scholarship.law.stjohns.edu/tcl/vol7/iss2/12>

This Book Review 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 administrator of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

BOOK REVIEWS

CANONICAL PROCEDURE; PHILOSOPHICAL-JURIDIC
STUDY OF BOOK IV OF THE CODE OF CANON LAW,

by *Fernando Della Rocca*, trans. by *John D. Fitzgerald*

Bruce, Milwaukee, 1961. Pp. 384. \$10.00

Reviewed by

BERNARD J. RISTUCCIA, C.M.*

William Howard Taft, when Chief Justice of the Supreme Court of the United States, was presented with a copy of the procedural laws of the Catholic Church. After the Chief Justice had studied the book, he made the following remark: "I have read the procedural laws of many nations, but I have found none that can equal the procedural laws of the Catholic Church." Undoubtedly these same sentiments would be shared by many members of the legal profession after studying Doctor Fernando Della Rocca's latest book, *Canonical Procedure; Philosophical-Juridic Study of Book IV of the Code of Canon Law*. Though not every reader of this book might be as highly enthusiastic as Chief Justice Taft in his praise for the procedural law of the Church, still, it is quite certain that having read the work, one would be surprised at the discovery that such an advanced system of procedural law exists in the Catholic Church, and no doubt be impressed by its thoroughness. The average

layman, Catholic as well as non-Catholic, has very little knowledge or appreciation of the juridic element within the framework of the Catholic Church. At best he may have a vague idea that the Church has set up tribunals to consider marriage cases. But that there also exists a complete juridic system to try criminal cases, and cases involving property and damage rights would, more than likely, come as a complete surprise to him. To most people, the Catholic Church is a society concerned almost exclusively with spiritual and supernatural matters. If the average layman were told that the Catholic Church is a perfect society, he would not appreciate the full meaning of this expression. A perfect society is self-sufficing, containing within itself all the resources needed for attaining its end. The purpose of the Catholic Church is to direct and guide the lives of her members in the realization of their supernatural destiny. To achieve this goal, the Church must possess the authority to legislate, interpret and execute her laws, as well as to punish those who transgress them. Consequently, she must enjoy legislative, executive and juridi-

* Professor of Moral Theology, Mary Immaculate Seminary, Northampton, Pa.

cal power. To exercise her juridical power properly, a perfect society must embrace a system of procedural law whereby juridic guilt and innocence may be established and the rights of individuals and institutions defined and protected. It is this procedural law of the Catholic Church which is the subject matter of Doctor Della Rocca's latest book.

In this volume, the author presents a thorough and scholarly presentation of all the elements contained in ecclesiastical trials. His treatment of this subject follows the same general outline as that which is found in the fourth book of the Code of Canon Law, which is entitled *De Processibus*.

The book is divided into seven sections or titles, the first of which contains general notions affording a background knowledge of such topics as jurisdiction, the basic meaning of action or suit, and the place of procedural powers in a system of law. The second section, entitled "The Formation of the Process," considers the various institutions that are employed in the construction of a procedural system. In this section, the author considers the various types of actions that may be made the object of procedure, the personnel employed in an ecclesiastical trial, the manner of determining due competency, the various tribunals in the Church's legal system, and the parties of the process. The actual evolution of the trial is taken up in the third title. Here the author gives a most thorough treatment of the various types of proofs that are employed in ecclesiastical trials, explaining the procedure used in arriving at a joinder of issues. The manner of handling incidental cases which might arise during the course of a trial as well as the notion of contumacy and its

effect on the process are both discussed. The section closes with an explanation of the manner in which a trial is brought to a conclusion. Consideration is next given to the sentences of the judges and the method employed in their formation, pronouncement, publication and corrections. For the most part, the fifth title concerns itself with the rights of the parties to attack the sentence of the judge and to seek an appeal from the sentence pronounced. The following section takes up two points: the judicial expenses involved in the conducting of a canonical process and the manner in which the actual execution of the sentence takes place. The final title considers the possibility of extra judicial settlement of cases and provides an adequate treatment of the principal methods of transaction, arbitration and compromise.

A study of this volume readily reveals the great amount of research and preparation that went into its production. The book is much more than a translation or general commentary on the various canons of the fourth book of the Code. It truly is, as the author states, a philosophical-juridic study of the fourth book of the Code of Canon Law, and is the first book of this type to appear in English. Translations of this particular section of the Code, as well as brief commentaries on these canons have often appeared in English before, but none of these translations, as such, have presented as thorough and scholarly a treatment of this matter as has this work of Doctor Della Rocca. One of the outstanding features of this work is the excellent source material used by the author in its compilation. Three particularly significant sources should be singled out for special consideration:

- (1) *The writings of so many of the out-*

standing canon lawyers of the Catholic Church, including such eminent scholars as: Maroto, Roberti, Ciprotti, Lega, Cappello, Coronata, Ottaviani, Wernz-Vidal, Berutti, Oesterle, and Regatillo, to mention but a few. The author used not only the standard manuals of these writers, but also their contributions to periodicals. It should be noted that the most recent as well as the earlier canon lawyers of note are also frequently referred to in the author's well-documented footnotes.

(2) *The decisions of the Sacred Roman Rota*. Anyone at all familiar with procedural law knows the tremendous value that is attached to previous decisions of the court. In the Catholic Church, the Sacred Rota is the court of last instance as well as the court of final decision. It is also the privileged forum of those persons in the Church who, because of their dignity, are entitled to use it rather than the local diocesan tribunals. Consequently, the decisions of this tribunal are of particular importance in interpreting the various prescriptions of the fourth book of the Code. The author makes repeated use of these decisions in his explanations of the various statutes which constitute the procedural laws of the Catholic Church. The very nature of the book, however, precludes the author from developing to any great extent the jurisprudence underlying many of the notions contained in this law. In particular instances, however, where the jurisprudence involved in certain canonical prescriptions is of special interest, the author lists in a footnote several decisions of the Rota which contain in the sentences of the judges the jurisprudence at issue.

(3) *The norms of procedural law proper to specific tribunals of the Church*. The various tribunals of the Catholic Church, in

carrying out their functions, make use of several particular sets of procedural laws in addition to the prescriptions contained in the fourth book of the Code. These unique bits of legislation originate within the various Sacred Congregations and Tribunals of the Church as norms to be observed in the exercise of their duties. There are, for example, the *Regulae Rotae* and the *Regulae Signaturae*. These are systems of procedural laws used by the Sacred Rota and the *Signatura Apostolica* respectively. The Sacred Congregation of the Sacraments has also issued several *Normae* and *Regulae* which are to be employed in various types of matrimonial processes. Very often, as the author so clearly indicates, such specific legislation throws greater light on the more general and hence less obvious prescriptions of the Code, thus clarifying and explaining the procedural canons.

The use of these three types of source material, while adding greatly to the value of this book, is by no means the sole reason for its valuable contribution to the study of the procedural process of the Catholic Church. Mention must also be made of the personal qualifications of the author himself. Doctor Della Rocca has a doctorate in jurisprudence granted him by the University of Rome and a doctorate in Canon Law gained at the Lateran Pontifical University. He is an advocate of the Sacred Roman Rota and has practiced law in Rome. In addition, he is a professor of Roman Law at the University of Rome, as well as a regular contributor to both civil and canon law journals in Europe. Accordingly, the author himself qualifies as an outstanding authority on the subject matter of this book. In light of this, his professional opinions and explanations of the

procedural laws as incorporated in his work are of the utmost importance. His personal experience in the Sacred Rota and his consequent familiarity with Rota Decisions have rendered him capable of making a most pertinent selection of the particular Rota Decisions which best illustrate and clarify the particular issues discussed in this book.

The very format of the book itself is both interesting and valuable. The author prefaces each chapter with a brief summary of the issues that are to be subsequently treated in greater detail. Corresponding numerals in the summary and the text identify the points at issue. As the treatment of each specific topic is concluded, the author has appended a short bibliography of texts and periodicals, well annotated, which he designates as *References*. If one were interested in further study of any particular item of canonical procedure, he could readily pursue this bent by referring to the sections of the books or periodicals listed in the *References*. It is obvious, that in a treatise of this nature, which is essentially only a summary handling of the entire field of procedural law, the author cannot give as complete a treatment as is possible to each of the myriad details constituting it. Consequently, the *References*, inserted at the end of almost every numbered section, supply a certain completeness which the author himself could not possibly offer the reader.

It has already been mentioned in this review that frequent references are made to the opinions of canonists, Rota Decisions and particular sets of laws to illuminate the author's treatment of the various prescriptions of procedural law. He also, though not as repeatedly, quotes codes of

civil law, the works of the early pre-Code canonists, civil law authors, and legal dictionaries. The specific source whence each of these references was taken is carefully noted in critically documented footnotes. In addition, constant footnote reference is made to various prescriptions in the other sections of the Code that deal with ecclesiastical legislation. Thus, one is able to get a better understanding of the institutions and terminology of the more general legislative procedure of the Church. Brief commentaries and explanations of relevant points are included. Such clarifications, while very helpful in the understanding of the text, were still not called for within the text itself. Finally, the well detailed index makes the book very helpful for occasional citation purposes.

The advance notices of Doctor Della Rocca's book stated that it was written for priests engaged in the works of the various ecclesiastical tribunals, for professors teaching Canon Law in seminaries, and for schools where special courses in Canon Law are offered. There can be no doubt that this volume will be warmly received and appreciated by those for whom it was specifically intended. A few observations, however, should be made for the benefit of those potential readers not designated in the aforesaid categories. We have especially in mind here those members of the legal profession interested in the procedural law of the Catholic Church and desirous of studying it so as to contrast procedural systems in church and civil law.

What must be first pointed out is the extensive use of the Latin language in both the writing and the translating of this book. Monsignor John D. Fitzgerald, J.C.D. must, in general, be commended for his excellent

work of translation. A book of this nature, permeated throughout with endless technical phraseology, presents a real challenge to the translator whose task it is to preserve intact the precision and exactness of expression that is demanded. Monsignor Fitzgerald has, on the whole, realized this responsibility admirably. In many instances, however, both in the text and the footnotes, he has preserved the Latin which undoubtedly must have appeared in the original Italian writing. Consequently, any reader not fully conversant with the finer points of the Latin language, particularly the more subtle nuances of technical idioms employed in the Code and by canon lawyers, will have difficulty understanding many parts of this work. Furthermore, the average civil lawyer will not have at his ready disposal the texts and periodicals as well as the volumes of Rota Decisions mentioned in both the footnotes and *References*. It should be mentioned here, too, that the greater majority of these works are also written in Latin. Thus, even if available, their use will be restricted to a select few.

Since Doctor Della Rocca's purpose was to provide a deeper study of procedural law to those persons already familiar with basic Canon Law and steeped in a thorough appreciation of the theory and practice of canonical procedure, he does not attempt to present any fundamental academic outline of the actual functioning of a canonical trial. Thus, one who is lacking a sharp in-

sight as to how these processes are conducted will find some difficulty in grasping the full meaning of the various points discussed.

Despite these handicaps, a civil lawyer should still find much in this book to both enlighten and assist him towards a better realization of his own profession. In regard to a thorough understanding of judicial processes, any obstacle which the frequent use of latinisms presents may be greatly reduced if, previous to a study of this work, the civil lawyer familiarizes himself, at least remotely, with the actual functioning of a canonical trial, as well as with the personnel and general terminology involved. Such an acquaintance could be easily made either by discussion with a canon lawyer or the perusal of a more basic text treating of canonical procedure. Any treatise containing a translation and a minimum commentary on the canons of the fourth book of the Code of Canon Law should supply the fundamental background needed to fully appreciate this more advanced and scholarly treatment of canonical procedures.

The basic concepts treated in this work are, in themselves, familiar to the civil lawyer: actions, exceptions, jurisdiction, competency, parties, sentence, appeal, proofs, and many others. When, then, he is able to fully appreciate their relationship to an ecclesiastical trial, he will at the same time penetrate the vast treasury of canonical information that Doctor Della Rocca offers us in his outstanding study.



THE CATHOLIC LAWYER

A national magazine for and about lawyers, containing articles by prominent people in the field of Law, with particular reference to matters relating to the Roman Catholic Church.

ARTICLES • QUESTION BOX • NEWS NOTES
RECENT DECISIONS • EDITORIALS • BOOK REVIEWS

Published Winter, Spring, Summer and Autumn by
*The St. Thomas More Institute for Legal Research
of St. John's University School of Law.*

THE CATHOLIC LAWYER
96 SCHERMERHORN STREET BROOKLYN 1, NEW YORK

Please send a subscription to **THE CATHOLIC LAWYER** @ \$5 a year, beginning with the Summer 1961 Issue, to each of the following:

1. _____
(Name)

(Address)

2. _____
(Name)

(Address)

Make checks payable to THE CATHOLIC LAWYER.

I enclose my check (money order) in the amount of \$_____.

Bill Me

(Name of Sender)

(Street, City, Zone, State)