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In Vatican lawsuits, who's really the little guy?

by John L. Allen Jr.

All Things Catholic

Over the last decade, the Vatican has been hit with at least ten lawsuits in American courts, on matters ranging from an insurance scam to the sexual abuse crisis. Off and on I've written about these cases, and I've always been curious about one odd feature of the story: How is it that the Vatican's legal brain trust in the States ended up concentrated in the notoriously left-leaning, anti-establishment haven of Berkeley, California?

In the abstract, Berkeley hardly seems the most obvious place to seek advocates for one of the world's last remaining monarchies.

In search of an answer, I spent Tuesday of this week with Berkeley native son Jeffrey Lena, the principal architect of the Vatican's legal strategy, and here's what I discovered: Understanding the Berkeley connection depends in part on answering the question, "Who's really the little guy?"

As fate would have it, Tuesday was the day Lena and his colleagues filed a brief with the United States Supreme Court asking it to take up an Oregon case, *Doe v. Holy See*, in which a federal appeals court ruled last year that a lawsuit against the Vatican could proceed.

Lawyers for the victim in the Oregon case filed their own brief the same day, urging the Supreme Court to stay out of it. Both sides were reacting to a recent opinion from the Obama administration, signed by the Solicitor General's Office, the Justice Department and the State Department, essentially endorsing the Vatican's view that the Foreign Sovereign Immunities Act of 1976 shields it from liability in the Oregon case.

The competing briefs are the latest development in the long-running saga of efforts to sue the Vatican in American courts. Of the ten suits brought to date, six have been resolved in the Vatican's favor and four

are still open. It's not yet clear whether American courts will ultimately decide that they have jurisdiction over the remaining claims, three of which feature sex abuse victims seeking to hold the Vatican accountable.

For most Americans, these cases probably seem analogous to legal fights against Big Tobacco: The victims represent the "little guy," struggling for justice against the institutional behemoth of the Holy See. The natural temptation is to cheer for the victims, and to see the Vatican's assertion of immunity as yet another index of its arrogance.

Lena, however, says there's another way to look at things.

What if we cast the Holy See, by consensus the smallest sovereign state on earth, as the "little guy" in these cases, defending the rights of all small states not to be pushed around by the court system of the world's biggest superpower? In other words, what if we shift the context from the sex abuse crisis to equality in international relations?

For Lena, who did graduate work in history at UC-Berkeley, a framework based on concerns over the modern projection of American power around the world -- which, he says, can at times border on hegemony -- seems right on the money.

Understandably, Lena is reluctant to talk much about his own vision of these cases -- his job, after all, is to represent his client. Moreover, Lena insists that he is determined to fight these claims because of the Vatican's "factual innocence." He says it's just not true that decisions about transferring abuser priests or concealing their crimes were made in Rome, as these lawsuits generally allege. Lena insists that Vatican officials often never even knew these priests existed until they were being dismissed from the clerical state (usually long after the abuse had occurred), or their names popped up in the press.

But Lena also sees a bigger picture: Preserving a level playing field on the international scene. Respect for sovereign immunity (and international law generally), he argues, is a bulwark against strong states imposing their will on weaker ones.

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Though Lena wouldn't use this language, what's really at stake in the Vatican lawsuits, from this point of view, is what diplomats often call a choice between the "force of law" and the "law of force" in relations among states. In other words, should nations which lack significant military and economic muscle be subject to the dictates of superpowers?

For the record, Lena says he can understand why it's hard for victims to see things that way. He's often said that he admires the courage of victims in coming forward, and he's surprisingly gracious about the lawyers who represent them -- noting that their actions offer a classic example of the power of civil litigation in America to engender social reform.

Yet Lena also wants people to perceive a deeper drama to these cases, as American courts grapple with what is perhaps the most important legal question any court can ask: "What's the extent of our power to hear a case?" An aggressively expansionist view of jurisdiction, he argues, can unwittingly produce a shift in the global balance of power.

That way of framing the issue is undoubtedly closer to the way many Vatican officials see things, and it

also dovetails with the Holy See's longstanding diplomatic efforts in favor of "multilateralism," meaning a more equitable international system. A large part of the reason popes have repeatedly called for a stronger system of global governance -- as Benedict XVI put it in *Caritas in Veritate*, a global system with "real teeth" -- is to ensure that smaller states have a meaningful voice in global affairs, as opposed to being subject to superpower dictates. (That was also an important reason the Vatican opposed the U.S.-led invasion of Iraq in 2003, insisting that any decision on a use of force should have come from the United Nations.)

Of course, Lena knows that "American Exceptionalism" is hardwired into our cultural DNA, and this can foster in our courts -- or our politicians, or our military -- some sense of moral duty to right wrongs around the world. Yet experience teaches that when America is perceived as unilaterally imposing its values, the consequences for its global reputation and the success of its diplomatic efforts can be toxic. There's also a more pragmatic argument for restraint, which is that how American courts treat other nations today may be the way foreign courts treat the United States in the future.

Interestingly, Lena says that American reporters have essentially ignored this aspect of the story, whereas foreign reporters grasp it immediately. What this suggests, perhaps, is that understanding these cases in terms of weak states and superpowers, rather than just victims and the Vatican, comes more naturally outside American airspace.

Maybe it took a Berkeley guy whose orientation is internationalist and historical, rather than merely legal, to see defending the Vatican as a way of addressing concerns about unwarranted expansion of U.S. power. Nonetheless, Lena raises a question that's at least worth pondering: Ultimately, what are these cases about? Are they about seeking justice for the victims, or are they about ensuring that American courts do not become the arbiters of all the world's ills?

Even if the most convincing answer may be "both," that alone suggests there's more at stake in the business of suing the Vatican than meets the eye.

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Last week I wrote about the growing pressure facing the Greek Catholic Church in Ukraine from the country's new government, and in particular the worrying interest of the state security service, the successor to the KGB, in the Ukrainian Catholic University in Lviv.

On Wednesday, the U.S. State Department spoke out on behalf of the university. Philip J. Crowley, Assistant Secretary of State for Public Affairs, issued the following statement:

"Today, the State Department raised with the Charge d'Affaires of the Ukrainian Embassy issues related to freedom of speech and association in Ukraine, including reports of recent contact between security service officials and the rector of Ukrainian Catholic University in Lviv. We expressed concern about actions that could be interpreted as restricting basic freedoms. We welcome the public offer by the Ukrainian Security Service Chief to meet with the university rector. Ukrainians should be proud of their democratic progress, and we hope that progress will continue."

In another sign of American interest, Fr. Borys Gudziak, rector of the Ukrainian Catholic University, said that the United States Ambassador to Ukraine, John Tefft, is expected to visit the campus with his wife next week.

Gudziak said he welcomes any indication that the rest of the world is paying attention. The university's web site can be found here: <http://www.ucu.edu.ua/eng/>

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