

Fausto Martin De Sanctis

Churches, Temples, and Financial Crimes

A Judicial Perspective of the Abuse of
Faith

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Contents

1 Introduction	1
Bibliography	3
2 Religious Freedom	5
2.1 Defining the Concept of Religion: Mega-Churches and Mega-Temples	5
2.2 Civil Religion	10
2.3 Religious Freedom in the U.S. Constitutional Order	11
2.4 U.S. Tax Immunity and Exemptions for Religious Organizations.....	15
2.5 Religious Freedom in the Brazilian Constitutional Order.....	20
2.6 Brazilian Tax Immunity and Exemptions for Religious Organizations	22
Bibliography	27
3 Government Regulation of Religious Organizations	29
3.1 Legal Nature of Religious Organizations.....	29
3.2 Charters (Licenses) Needed for Religious Institutions to Function...	30
3.2.1 Zoning Regulations in the United States	31
3.2.2 Zoning Regulations in Brazil	39
3.3 Church Property Disputes	40
3.4 The Place of Churches and Temples Within Bankruptcy Law.....	42
3.4.1 Churches and Temples Within Brazilian Bankruptcy Regulation	42
3.4.2 Churches and Temples Within U.S. Bankruptcy Regulation	43
Bibliography	44
4 Criminal Investigations and Cases Involving Financial Crimes Practiced by and Through Religious Institutions	45
4.1 Crimes Practiced Within Religious Organizations.....	46
4.1.1 “Among Brothers” Operation (“Entre irmãos”).....	46
4.1.2 “Backlands’ Moonlight” Operation (“Luar do Sertão”).....	47

4.1.3	“Trash” Operation	47
4.1.4	“Miracle” Operation.....	47
4.1.5	The Universal Church of the Kingdom of God (Igreja Universal do Reino de Deus – IURD).....	48
4.1.6	The Worldwide Church of God’s Power (Igreja Mundial do Poder de Deus).....	58
4.1.7	The Rebirth in Christ Church (Igreja Renascer em Cristo)	59
4.1.8	“Vatileaks”: The Institute for the Works of Religion (Vatican Bank)	71
4.1.9	Congregation Aish Kodesh (Woodmere, NY).....	77
4.1.10	Beth El Synagogue (Southbury, CT).....	78
4.1.11	Cordoba Initiative and American Society for Muslim Advancement (New York, NY).....	78
4.1.12	Islamic Center of Washington, D.C.	79
4.1.13	Thailand’s Buddhist Jet-Setting Monk.....	79
4.1.14	Tian Lai Temple (Hunan, China)	80
4.2	Churches and Temples as Front Organizations.....	80
4.2.1	“Car Wash” Operation (“Lava rápido”)	81
4.2.2	Religious Front Company for a “Doleiro” Network	81
4.2.3	First Church of Life (Orange County, CA)	82
4.3	Tax Fraud and Larceny by Fraud Using Churches and Temples	83
	Bibliography	84
5	International Religious Activities and Legal Cooperation for Repatriation of Assets	89
	Bibliography	108
6	Payments Through Illegal and Disguised Means, and the Misuse of Churches, Temples, NGOs, Trusts, Associations, and Foundations	111
6.1	Wire Transfers and Black Market Moneychangers.....	111
6.2	The Misuse of Churches, Temples, NGOs, Trusts, Associations, and Foundations for Illegal Ends	116
	Bibliography	121
7	Conclusions	125
	Bibliography	130
8	Proposals to Improve the War Against Financial Crimes Within Temples and Churches	133
8.1	An International Perspective	134
8.1.1	The Financial Action Task Force (FATF).....	134
8.1.2	Law Enforcement Agencies and Financial Intelligence Units (FIUs).....	134
8.1.3	Tax Havens, Offshore Accounts, and Trusts	136
8.1.4	International Legal Cooperation, Repatriation, and Extraterritoriality: Conflict of Laws	138

- 8.2 A National Perspective 140
 - 8.2.1 Institutional Measures (Executive, Legislative, and Judicial Branches) 140
 - 8.2.2 Money Laundering as a Crime 141
 - 8.2.3 The Role of Jurisprudence 142
 - 8.2.4 Freezing, Seizure, Confiscation, and Repatriation of Assets..... 143
 - 8.2.5 Payments in Cash, in Stored Value Cards, Through Remittance Companies, and via the Internet..... 144
 - 8.2.6 Offshore Accounts and Trusts 145
 - 8.2.7 NGOs, NPOs, and Foundations 146
 - 8.2.8 Regulatory Agencies, Financial Institutions, and the Internal Revenue Service..... 148
 - 8.2.9 Violation of Parishioners’ Rights (Consumers’ Rights) and Antitrust Laws..... 150
 - 8.2.10 Churches, Temples, Mega-Churches, and Mega-Temples 150
- Bibliography 151
- Index**..... 153

About the Author

Fausto Martin De Sanctis holds a Doctorate in Criminal Law from the University of São Paulo’s School of Law (USP) and an advanced degree in Civil Procedure from the Federal University of Brasília (UnB) in Brazil. He was a Public Defender in São Paulo from 1989 to 1990 and a State Court Judge, also in São Paulo, from 1990 to 1991, until he was appointed to the Federal Courts.

He is currently a Federal Appellate Judge in Brazil’s Federal Court for the Third Region, with jurisdiction over the states of São Paulo and Mato Grosso do Sul. He is also the Deputy Director of the Federal Judicial School and a member of the Portuguese Language Law Jurists Community (CJLP). Since 2013, he has been an Advisory Council Member for the Brazil–U.S. Legal and Judicial Studies Program at American University Washington College of Law.

Judge De Sanctis was selected to handle a specialized federal court created in Brazil to exclusively hear complex cases involving financial crimes and money laundering offenses. He is a world-renowned expert on this topic and has been invited to participate in programs and conferences both in Brazil and internationally.

From April 2 to September 28, 2012, Judge De Sanctis was a fellow at Federal Judicial Center in Washington, DC.

His publications include, among others:

Books:

- Football, Gambling, and Money Laundering: A Global Criminal Justice Perspective*. Cham, Heidelberg, New York, Dordrecht, London: Springer, 2014;
- Criminal Law – General Rules (Direito Penal – Parte Geral)*. São Paulo, Método, Rio de Janeiro: Forense, 2014;
- Money Laundering Through Art: A Criminal Justice Perspective*. Cham, Heidelberg, New York, Dordrecht, London: Springer, 2013;
- Money Laundering Through Gambling and Soccer: Analysis and Proposals (Lavagem de Dinheiro. Jogos de Azar e Futebol. Análise e Proposições)*. Curitiba: Editora Juruá, 2010;
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- Criminality in the National Financial System: Criminal Law and Protection of Brazil's National Financial System (Punibilidade no Sistema Financeiro Nacional: Tipos Penais que Tutelam o Sistema Financeiro Nacional)*. Campinas: Millennium, 2003;
- Criminal Liability of Corporations (Responsabilidade Penal da Pessoa Jurídica)*, São Paulo: Saraiva, 1999.

Articles and Book Chapters:

- “Criminal Liability of Corporations” (“Responsabilidade Penal das Corporações”). In *A Book in Honor of Miguel Reale Junior (Livro Homenagem a Miguel Reale Junior)*. Rio de Janeiro: GZ, 2014;
- “Popular Action. Using Habeas Corpus in the Context of Financial Crimes” (“Ação Popular: A Utilização do Habeas Corpus na Dinâmica dos Crimes Financeiros”). In *Popular Action (Ação Popular)*. São Paulo: Saraiva, 2013;
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“Crimes Against the National Financial System: A Precursor to Money Laundering” (“Crimes Contra o Sistema Financiero Nacional como Antecedentes de Lavagem de Valores”). In *Money Laundering - Commentary on the Law by Judges at Specialized Courts, In Honor of Gilson Dipp (Lavagem de Dinheiro – Comentários à Lei pelos Juízes das Varas Especializadas. Homenagem ao Ministro Gilson Dipp)*. Porto Alegre: Livraria do Advogado, 2007;

Judge De Sanctis has also written a number of articles published in newspapers and magazines specializing in law and economics.

Chapter 1

Introduction

To find out how easy it is to commit fraud in the name of God, a law firm in São Paulo, Brazil, adopted measures to create a fake church. They verified that there are no theological or doctrinal requirements to register a church with the state, nor is there a minimum number of followers. All that was required was filing one document in the National Register of Legal Entities. With this single registration, the “church” was allowed to open bank accounts, hold several financial investments, purchase and sell property, and engage in other economic transactions, all while benefitting from tax exempt status. The “church” could designate personal property for exemption from municipal taxes, and its leaders were even exempt from compulsory military service.¹

“Religious life manifests itself on two conceptually distinct levels: on an individual level, where individuals seek to shape their beliefs and actions with respect to their own conceptions of spiritual precepts, and on a communal level, where individuals holding shared beliefs develop and exercise those beliefs as a group. One of the key features distinguishing the two categories is the expansionist nature of the former: unlike individual religion, corporate religion seeks to recruit converts to its views of God and the world.”²

Churches and temples occupy a unique place in human culture. For a long time they have been one of the most hospitable institutions in a legally constituted society. Churches have such a strong influence on human behavior that, in the words of Jon Meacham, churches “give the best chance to keep violence down, discourage out-of-wedlock births, encourage the healthy upbringing of children, and imbue a sense of work and responsibility that would help end poverty.”³ Although churches and temples should have a protected right to govern and manage their own affairs

¹DALLARI, Dalmo. Fraudes em nome de Deus. Observatório da Imprensa, caderno da cidadania, http://observatoriodaimprensa.com.br/news/view/fraudes_em_nome_de_deus, Mar. 16, 2010.

²See SMITH, Michael E. The Special Place of Religion in the Constitution. 1983 Sup. Ct. Rev. 83, 90.

³MEACHAM, Jon. The Gospel Truth. Washington Monthly, Dec. 25, 1993, p. 8.

spreading religious doctrine, they must also keep their moral and legal obligations. Unfortunately, churches and temples are increasingly being used to commit crimes, notably fraud, embezzlement, tax evasion, and money laundering.⁴

The fact that religious institutions enjoy significant autonomy and constitutional protection from state interference makes it especially difficult for law enforcement to detect their illegal activities, particularly in the area of financial crimes. Churches and temples should be required to submit to the state's law enforcement interests, like verification of the destination of donations to and from churches and temples, in a way that does not impair the institutions' beliefs, operations, and development.

The purpose of this book is to provide an understanding of the weaknesses present in the management of churches and temples, as well as the deficiencies in the legal system. The book seeks to dispel the many mysteries surrounding financial crimes, especially money laundering, by inquiring into the scale of the problem and examining legislative and institutional loopholes that give power and mobility to organized crime. After sketching the landscape of this interesting topic, the book suggests effective proposals for improving the assessment, investigation, and prosecution of financial crimes. Considerations will be presented in an effort to further the study of methods likely to add transparency to business dealings and thereby inhibit or curtail unlawful activity.

This book is divided into eight chapters. The first and current chapter introduces the topic. Chap. 2 addresses the concept of religious freedom, with particular attention paid to constitutional protections and tax immunities for churches in the United States and Brazil. Chap. 3 discusses the legal nature and government regulation of religious organizations. Chap. 4 outlines several criminal cases and investigations that involve financial crimes carried out by and through religious institutions. International religious activities and legal cooperation for repatriation of assets are analyzed in Chap. 5. Payments using illegal and disguised instruments, and the misuse of churches, temples, NGOs, trusts, associations, and foundations are addressed in Chap. 6. Chap. 7 offers conclusions clarifying how the prevention of financial crimes applies to the religious organizations. The final chapter (Chap. 8) presents national and international proposals for improving the war against financial crimes within churches and temples.

This book will show the importance of guaranteeing religious freedom without allowing such freedom to be abused for illegal purposes. Although this work may, at a glance, appear to cover the entire subject, this is actually far from the case. The book does, however, aim at achieving a logical and practical "completeness" in describing a sensitive and virtually unknown world in which religion is used to commit serious crimes.

⁴See CANDELORO, Ana Paula P., MARTINS DE RIZZO, Maria Balbina, PINHO, Vinicius. *Compliance 360°: Riscos, Estratégias, Conflitos e Vaidades no Mundo Corporativo*. São Paulo: Trevisan Editora Universitária, 2012, pp. 388–99.

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