

THE FRIARS' CLAIMS CASE

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I



It has always been a generally accepted and respected principle in international law that the Church and her subsidiary corporations, the religious orders, possess the inalienable right to acquire property.¹ Sacred as well as profane history is replete with statements of the Church's position on this most delicate question; and any opinions contrary to her views have always occasioned their formal condemnation.² These formal pronouncements contain clearly defined declarations regarding the relation of the Church and State on the question of private ownership, with numerous citations made condemning the practice of civil authorities unjustly appropriating to themselves any legitimately acquired property of the Church or of her religious orders.

When a most unique problem of international relations arose after the Spanish-American War of 1898 between the United States and the Holy See, the Church had century-old precedents with which to weigh the issue involved and to effect an equitable solution. The problem—commonly referred to as *The Friars' Claims Case*—when finally taken up by the Vatican for solution, caused no appreciable difficulty in the Papal diplomatic corps as far as points of ecclesiastical or civil law were concerned. The astute Churchmen comprising the personnel of the Vatican corps of diplomatists were fully conversant with the records of Church history, regarding the legality of the Church's acquiring owner-

¹ Chandler P. Anderson, *Inviolability of Private Property against Confiscation*. (Washington, D. C.) Herein is cited a list of decisions of the United States Supreme Court and extracts from Constitutions and laws of thirty-one different governments all indicative of the universal recognition of this legal principle.

² John XXII, Decrees, "Cum inter nonnullos" (Nov. 13, 1323) and "Licet juxta Doctrinam." (Oct. 23, 1323). Condemnation of errors of Wycliff and Huss, (Denziger-Bannart, nn, 586, 598, 612, 684-6 etc.) Encyclical of Leo XIII, "Rerum Novarum," (May 15, 1891).

ship of land. Such records they knew dated back to the primitive days of both eastern and western monasticism. They knew, in particular, that the sagacious founder of western monasticism, Saint Benedict, presumed the right of his institute to possess private property and he inserted into his venerable rule a clause prescribing daily toil to be expended by his followers upon the landed possessions of his order.³

All subsequent founders of religious orders and congregations enjoyed, before their governments and peoples, this same right and also the advantages accruing from the corporate possession of private property. Constitutions of the various orders, following the experience of their predecessors, contain clauses which serve as directive norms for the administration of this highly staple and natural commodity. It was the ever present consciousness of the existence of the Church's right to acquire and maintain property that eventually was primarily instrumental in giving rise to the case whose history we are about to discuss.⁴

II

Shortly after the Spanish-American War of 1898, the United States assumed complete control over the Spanish insular possessions, which are known as the Archipelagoes or the Philippine Islands. These islands presented an unprecedented problem to the United States regarding the means it should adopt to quell the prevailing internal dissensions among the natives. The Schurman and Taft Commissions successively were appointed to investigate conditions on the island and to report their findings to the Government at Washington.⁵ It was in the report of the Taft Commission especially that an urgent request was made to the United States Government to settle amicably one of the most vexing and precarious problems confronting it at that time. This problem primarily concerned the landed interests of the religious orders established on the islands for centuries, and the

³ Cf. *Rule of Saint Benedict*. Chap. xlviii.

⁴ The life story of General Leonard Wood, now appearing serially in the daily press throughout the country, whose career was intimately connected with the places and personages involved in this Friars' claims lends a timeliness for a general rapprochement of the instance case. Cf. Herman Hagedorn, *Life's Story of General Leonard Wood*, Harper Company, (New York, 1931).

⁵ The Schurman Commission arrived in Manila after the Treaty of Paris signed on Feb. 10, 1899. The Taft Commission arrived on the islands, June 3, 1900. Cf. Reports of the Philippine Commissions, Government Printing Office, (Washington, D. C.)

allaying of discontent among the natives against their original benefactors, the Friars.

Native insurgents, ably led by such men as Doctor Burgos together with Jaena and Rizal,⁶ had founded "La Liga Filipina," the avowed purpose of which was to incite animosity against the Friars. A closer knit branch of this league (demanding the blood compact of its members), known as the mysterious *Katipunán*, had for its program: "to redeem the Philippines of its tyrants, the Friars, and to found a communistic republic." It is beyond doubt that the *Katipunán* was the instrumental cause for the uprisings on the islands in 1886.⁷

When the members of the Taft Commission granted a public hearing of the charges about the conditions of the islands, the leaders of the *Katipunán* voiced their sentiments in no mincing terms. Lending an unprejudiced ear to the charges made against the Friars, the members of the Commission displayed their intuitive regard for logic and law and graciously conceded that there are always two sides to every story. Accordingly, Judge William Howard Taft, acting as chairman of the Commission, carefully and impartially weighed the conflicting data presented by the Friars and the natives. But the data, in the reports of the Commission sent to the Government at Washington regards, for the most part, only the proximate history of the Friars' claims on the islands.

III

It is from the remote history of the Friars' claims case that one may obtain a proper perspective and thus more fully realize the justice of the demands of the religious orders on the islands. The history of these claims dates back to November 21, 1564, when a few Augustinian Friars accompanied an expedition of colonizers that set sail from Navidad, Mexico, to find the re-

⁶ All these rebel leaders owed their scholastic training to the Friars and were charity students at the primary and secondary schools conducted by the religious. Dr. Jose Rizal, popularly called the savior of his people in their fight for liberty, was the son of the wealthiest land owner on the Dominicans' estate at Calamba. His father, a Chinese mestizo, that is, the son of a Filipino mother and a Chinese father, was but a poor boatsman at the time he gratuitously received from the Dominicans the initial capital upon which the fortune of the family accumulated. Cf. Ambrose Coleman, O.P., "The Friars' Estates in the Philippines." *American Catholic Quarterly Review*, Vol. XXX, no. 117 (Jan. 1905). Austin Craig, *Lineage, Life and Labors of Jose Rizal* (Manila, 1913).

⁷ Fred W. Atkinson, *The Philippine Islands*, p. 98 (New York, 1905).

ported Eastern *El Dorado* now known as the Philippine Islands.⁸ The other religious orders in Spain, such as the Franciscans, Dominicans, Jesuits, and barefooted or discalced branch of the Augustinians, called the Recollects, followed the pioneer Augustinian evangelizers a short time later. Spain, fully realizing the incalculable civilizing influence the missionaries exercised wherever they journeyed, granted to the various orders huge tracts of land for the purpose of cultivation and habitation on the part of the religious and the natives. All such grants were legally protected from confiscation by royal titles from the Spanish sovereign.

The Jesuits, the most powerful land owners on the islands, prior to their expulsion in 1768,⁹ were forced to release their claims at that time and their titles reverted into the hands of the Spanish crown.¹⁰

The extent of the Dominican estates on the islands was estimated to be approximately 50,000 *hectares*.¹¹ Some of the land estates had been possessed by the Dominicans for centuries and were legally protected from confiscation by either an acquired original title or a derivative title.¹²

The Augustinians held about 60,000 *hectares* of land, 20,000 of which were situated in a desolate and barren valley of the Cagayan River. These latter estates were forced upon the order (as some were upon the other orders) in 1880 by Moriones, then Governor-General of the islands. He commanded the Friars to accept the supervision of the cultivation and habitation of these waste lands and they obeyed but with reluctance. When the succeeding Governor-General, Primo de Rivero, requested the

⁸ *ibid.*, p. 55.

⁹ The Council of the Royal Chamber (*Consejo de la Real Camara*) attributed the Squillace riots of 1766 in Spain to the machinations of the Jesuits and in January, 1767 proposed the expulsion of the members of this Society from Spain. Using this pretext, the members of the Council induced King Charles III to expel all Jesuits from Spain and the Spanish possessions overseas. This decree, signed on Feb. 27, 1767, took effect in the Philippines most probably in 1768, and especially charged the Jesuits there with having treasonable relations with the English and aspirations for a dominate power within the islands. Cf. Chapman, *History of Spain*, Pp. 448-57. (New York, 1918).

¹⁰ Coleman, *op. cit.* p. 64. This entire article is an authoritative Catholic account of the Friars' estates, containing minute statistics in facts and figures in defense of the claims of the religious.

¹¹ An hectare is a French unit of metric measure equivalent to 2.471 acres.

¹² The term "title" is commonly used by legal writers to describe rights or claims to territory. Cf. Fenwick, *International Law*, p. 221. (New York, 1924). Moore, *Digest*, I. Secs. 80-81. Government Printing Office, (Washington, 1906.)

return of the cultivated lands to the government, the Friars vehemently protested their claims and defended their rights. They had spent enormous sums of money on the installation of irrigation systems for the proper cultivation of the land, converting what before seemed uninhabitable into estates of bounty and beauty.

The Recollects had acquired about 35,000 *hectares*, 23,000 of which were situated in the sparsely settled island of Mindaro. More than a million dollars were expended on their estate in Imus, in the Province of Cavite, which they acquired in 1686. The title deeds of this expensive estate were totally destroyed by the revolutionists at the time of the blockade of Manila by the United States forces during the Spanish-American War.

Upon all these various estates there existed an extensively devised system of land distribution to the natives. This system was founded upon a rental basis and the natives could in due time acquire an outright derivative title of ownership to land, if they showed their willingness to comply with certain strict regulations as laid down by their benefactors, the Friars. That the rental fees were ever made exorbitant by the Friars is contrary to facts,¹³ and if abuses existed in this regard they are to be wholly attributed to the secret practice of sub-letting, carried on by groups of wealthy natives.¹⁴ Anent this point it is worthy, in the interest of truth, to note an utterance of the once Governor-General of the Islands, William Howard Taft: "It is probable that the *encomiendas* frequently violated the restrictions which were put upon them in dealing with the natives; but *there is nothing* to show that the Friars winked at this or that they did not continue to act sincerely as the protectors of the natives down to the beginning of the last century."¹⁵ Again: "So great and complete became the control the Friars exercised over the

¹³ Coleman, *op. cit.* p. 75. A table stating exact statistics of 1896 regarding the Dominican estate at Calamba is shown. Like the other orders the Dominicans charged about ten per cent. of the total produce of rice and merely one and one-half per cent. of sugar, the latter product being involved in more labor and expense on the part of the natives.

¹⁴ The publication of the famous volume of Dr. Jose Rizal, "Noli Me Tangere" in Europe and its adaptation by William Dean Howells in America, called "An Eagle Flight," caused a furore of resentment against the Friars. It was instrumental in causing the natives on the islands to refuse to pay to the Friars their rental fees and they did so only after the Supreme Court of Madrid upheld the rights of the Friars to exact such fees for the loans of their lands.

¹⁵ *Address*, delivered before the Chautauqua Society, August, 11, 1904, by the then Secretary of War, William Howard Taft. p. 7, (italics ours).

natives by reason of their life-long attention to the work of Christianizing and teaching the natives, that Spain had not the slightest difficulty in policing the islands for nearly three centuries."¹⁶

IV

The remote and proximate history of the case thus presented in brief survey, one may consider the points of law involved in the case and also the negotiations between the Holy See and the United States Government in an effort to effect its solution.

A case in American law, previous to but analogous with the Friars' case, is presented in the proceedings of *United States v. Percheman* (1833).¹⁷ This case, settled in the United States Supreme Court, presents points of law identical to those in the Friars' Case. The only appreciable differences between the two cases are the following facts: (1) the plaintiff in the Friars' case was the Church, in the Percheman case an individual layman, (2) the Percheman case was settled by the usual court procedure, while the Friars' case gave rise to a most unusual process of negotiations which is considered to have constituted "an anabolous case" in the history of international law.¹⁸

In the Percheman case the plaintiff claimed about 2,000 acres of land in Florida under a grant ceded by the Spanish Government in 1815, while such territory was under Spanish dominion. The plaintiff, about to lose all his land interests, appealed from court to court, until his case finally appeared before the United States Supreme Court. Chief Justice Marshall, in rendering the decision in favor of the plaintiff, stated a law regarding such claims that has become a classic passage in the annals of American judicial proceedings.¹⁹ So pointedly pertinent to the Friars' Claims Case is this passage that one excerpt in particular is worthy of quoting: "It is very unusual even in cases of conquest for the conqueror to do more than to displace the sovereign and

¹⁶ *ibid.*, p. 8.

¹⁷ 7 Peters 51, 86.

¹⁸ Cf. Simeon E. Baldwin, "The Mission of Governor Taft to the Vatican," *Yale Law Journal*, November, 1902.

¹⁹ The following treaties, all containing provisions based on the same principle relative to the instance, case show the declaratory tenor the case held in subsequent international law: *Treaty of Guadalupe Hidalgo with Mexico*, (1848), Art. viii; *Gadsden Treaty with Mexico*, (1848), Arts. v, and vi. *Treaty with Russia for the cession of Alaska*, (1867), Art. iii; *Treaty of Paris, with Spain*, (1898), Art. ix. The last named treaty is especially applicable to the Friars' Claims Case.

assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relations to the ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. . . . A cession of territorys, never understood to be a cession of the property belonging to the inhabitants. . . . The cession of a territory by its name from one sovereign to another . . . would be necessarily understood to pass the sovereignty only, and not to interfere with private property."²⁰

V

As a final treatment of the Friars' case here, the method of settling the difficulty is of paramount importance. The proceedings for the settlement of the problem commenced after the Taft Commission had sent in the reports of conditions on the islands. A complete *impasse* had been reached, and President Roosevelt was veritably in a quandary as to the next move he should make to effect an amicable settlement of this disconcerting situation. He finally hit upon the idea of conferring with his personal friend, that most able Churchman, Cardinal Gibbons. Inviting the Cardinal to the White House, Roosevelt reviewed the situation with him, and the portion of that memorable conversation especially applicable to the Friars' claims is most worthy of quoting:

Cardinal Gibbons: I observe, Mr. President, that you are desirous of obtaining an agreement for the settlement of the Friar land question in the Philippines.

Pres. Roosevelt: Your Eminence, that is the greatest difficulty I am having. It is one problem which at present completely baffles me. I know that there must be a settlement in order to bring about

²⁰ Francis B. Sayre, "Change of Sovereignty and Private Ownership of Land," *American Journal of International Law*, Vol. 12, 1918, pp. 475-497. A copious list of cases following the Percheman case appears on page 481. For the question of expropriated religious properties, cf. *Pamphlet 37*. Carnegie Endowment for International Peace, Awards rendered by the Hague Tribunal, September, 1920, in the matter of Expropriated Religious Properties in Portugal.

permanent peace in the Islands and I have tried my best to bring about a settlement. Mr. Taft also has done his utmost, and we are both powerless.

Cardinal Gibbons: On what terms do you wish to make a settlement, Mr. President?

Pres. Roosevelt: The main question is, of course, the price to be paid. If we can arrange that I believe that the other things can be adjusted.

Cardinal Gibbons: Would you be disposed to tell me of your terms, both as to price and other general conditions?

Pres. Roosevelt: Oh, yes. The utmost which it seems possible to obtain the consent of Congress to paying for these lands is about \$7,000,000. We wish to recall the lands to other purchasers in comparatively small holdings, so that the Friars will no longer be a factor in the economic situation in the Philippines.

Cardinal Gibbons: I will undertake, Mr. President, to obtain a settlement for you on the terms which you state. I have no suggestion of my own to make on the subject.²¹

In the meantime, Cardinal Rampolla, on the advice of Pope Leo XIII wrote to Archbishop Ireland, of St. Paul, asking him to try to effect peace and order in the Philippines. This letter was crossing the sea at the same time a letter was sent by the United States Government to the Vatican. President Roosevelt entrusted the entire negotiations to his Secretary of War, Elihu Root, in order that the proceedings between the Holy See and the United States would assume a military rather than a direct diplomatic character.²² Archbishop Ireland and Bishop O'Gorman, of Sioux Falls, conferred with the Secretary of State, John Hay, and the Secretary of War, Elihu Root. All in turn conferred with the President and negotiations were thus opened between the United States and the Holy See.

A commission was appointed, the personnel of which comprised: Chairman, William Howard Taft, Judge Smith of the

²¹ Allen Sinclair Will, *Life of Cardinal Gibbons*, Vol. II. Chap. XXXIV. (New York, 1922).

²² *cf.* Baldwin, *op. cit.* p. 5.

Supreme Court of Manila (a Catholic), Bishop O'Gorman, acting as ecclesiastical adviser, and Major Porter, of the Judge Advocate's Bureau of the United States Army, acting as the official bearer of dispatches. Early in May, 1902, this commission sailed for Rome and on June 5, they had their first audience with His Holiness Leo XIII.

The proceedings opened when Mr. Taft presented to His Holiness a letter from President Roosevelt. In this letter was stated congratulations to His Holiness on his jubilee year and the fervent hope that the question about to be discussed be settled in a way satisfactory to all concerned. A visit was then made by the members of the Commission to Cardinal Rampolla and the members of the Vatican Commission, formed to settle the affair.²³ A joint meeting of the two conference committees took place on June 17, resulting in the discussion and agreement of all points of ecclesiastical and civil law involved in the case. A printed pamphlet, containing the elucidations of the case, was presented to the members of both Commissions. On July 9, 1902, the Vatican issued a reply to Secretary of War Root.²⁴ In this reply of the Vatican were contained twelve articles upon which the Church was willing to agree to settle the Friars' Claims. The purchase of the lands of the various orders in the Philippines by the United States Government, and an establishment of a tribunal of arbitration to settle internal conditions on the islands between the Church and State, were two of the most salient points expressed in the reply. The twelfth and last article of the reply stated that the Holy See, "in the sphere of action which is in its competence, shall use all its influence for pacification of the Philippine Islands in favor of their adhesion to the established government, and it shall prevent all political opposition on the part of the clergy, both regular and secular."

The United States Commission finally agreed to the terms as stated by the Vatican Commission and they in turn informed the Holy See that the sum of \$7,000,000 would be paid the religious orders for their land claims. On July 18, the United States Commission ended its most amicable mission to the Vatican. The entire proceedings were carried out in a most admirable spirit of good will for a final settlement of the perplexing situa-

²³ The personnel of the Vatican Commission comprised: Cardinals Serafino Vannutelli, Rampolla, Gotti, Steinhuber, and Vives y Tuto.

²⁴ cf; Francis T. Fury. *Life of Leo XIII*. Pp. 537-544. An excellent account of the entire proceedings between the two Commissions is here presented.

tion. On July 21, His Holiness Pope Leo XIII graciously granted another audience to the members of the United States Commission and expressed his congratulations to them for their display of professional skill and tactfulness in rendering their decision. To each member he presented an appropriate gift and forwarded through Bishop O'Gorman an exquisite mosaic and a letter of friendship and esteem for President Roosevelt.

Thus came to a most memorable close the anomalous case in international law . . . the Friars' Claims Case.

THE THIRD SORROWFUL MYSTERY

JOHN McLARNEY, O.P.

The Lord of glory sits in mockery:
A trembling reed bespeaks His sceptral rule;
A thorny crown is wrought by artistry
That leers and spits at Wisdom made a Fool.
A scarlet mantle shames His Innocence,
His Face befouled in tributary rheum,
While blows pay homage to Omnipotence:
"The King of Jews!"—the King of tears and doom.

Lord Jesus, let this laggard soul be whipped
And drilled in scorn and disciplined in dole
To run the coorse; of prides gross vesture stripped,
To press on to the guerdon at the goal:
The crown of life, the joy of one who mourns,
The everlasting diadem of thorns.