PATRONATO REAL AND
RECURSO DE FUERZA

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The historical relationship between the Roman Catholic Church and the Spanish colonial government of the Philippines is usually referred to as a union of church and state. Union ordinarily implies harmony; yet it is curious to note that during the three centuries of its existence this particular union was characterized by an almost continuous series of conflicts between the elements that composed it. Even if we limit ourselves to the period before 1700, a period of not much more than a century, we find that at least two prelates suffered banishment at the hands of the governor and audiencia, namely, Archbishop Guerrero in 1636 and Archbishop Pardo in 1683; that the very first bishop of Manila, Fray Domingo de Salazar, was forced by violent differences with Governor Dasmariñas to return to Spain in 1591; and that on at least three occasions—in 1611, 1634, and 1698—the religious orders in the Philippines resigned all their parishes and missions in protest against certain measures of the colonial government. These major crises lasted anywhere from two to ten years; nor were the periods of relative harmony that intervened entirely free from minor conflicts. It would seem, then, that union of church and state, at least in the Philippines for this particular period, led to anything but unity. Why this should be is a problem that presents many points of interest for the legal historian. It is hoped that this discussion may serve as an introduction to that problem.

One fact must be stressed at the very outset, and that is that the problem must be approached historically. It is usual to prejudge regimes to which the label "union of church and state" has been applied according to abstract a priori principles. This procedure is not, however, particularly relevant; for such unions are the result of concrete and sharply contrasted historical contexts, and hence cannot be properly understood without reference to these contexts. This is especially true of the unique arrangement between the Catholic Church and the Spanish Crown known as the patronato real de las Indias.

The extensive body of rights and privileges possessed or claimed by the Crown over the Church in the Spanish colonies was based on a number of extraordinary papal grants, which had been motivated by the anxiety of the Holy See to ensure the evangelization of the New World. Thus, the bull "Inter caetera" of Alexander VI (May 4, 1493) vested in the Spanish sovereigns the right and duty of sending missionaries to the lands newly discovered by Columbus; the bull "Eximiae devotionis" of the same pontiff (November 16, 1501) conceded the titles of the New World to the Spanish government provided it assumed responsibility for the material needs of the Church there; the bull "Universalis ecclesiae" of Julius II (July 28, 1508) granted to the Spanish crown the right of presentation to the more important ecclesiastical benefices in the Indies; and the bull "Exoni nobis" of Adrian VI (May 9, 1522) authorized the Spanish crown to regulate the number and qualifications of missionaries sent to the New World.1

Other papal pronouncements too numerous to mention extended these concessions and some of them expressly stated that the privileges granted were irrevocable.2 These two features—the unprecedented amplitude of the powers granted and their irrevocability—enabled and encouraged the Spanish crown and its jurists to infer from the original grants all sorts of derivative rights and pri-

1 The texts of these documents may be conveniently consulted in Colección de bulas, breves y otros documentos relativos a la Iglesia de América y Filipinas. F. J. Hernández, S.J., ed. (2 v., Brussels, 1879), I, 12-14, 20-21, 24-25, 382-384.
2 E.g., the bull of Paul V (July 20, 1609), renewing the erection of the Diocese of Arequipa, Hernández, Bulas, II, 178-180.
vileges, many of which went beyond the original intent of the grantor.

Ever since Ferdinand and Isabella adopted the policy of employing letrados, that is, graduates from the law faculties of the Spanish universities, in preference to the less pliable and more turbulent nobility, the bureaucracy of the Spanish empire was preponderantly a bureaucracy of lawyers. It was at the hands of these patient, industrious and thoroughly loyal functionaries that the original papal grants of the patronato slowly grew by interpretation and accretion into an all-embracing royal control over ecclesiastical affairs. This tendency on the part of jurists to attribute to the royal power an ever-increasing measure of ecclesiastical authority—technically known as regalism—found its most authoritative expression in the classic commentary on the Laws of the Indies, De Indiarum jure, of Juan de Solórzano Pereira.

What, according to Solórzano, was the nature of the patronato granted by the Holy See to the Spanish crown? More than merely a patronage, it was, in effect if not in name, an apostolic delegation. By it the Successor of the Apostles invested the kings of Spain with the apostolic function par excellence, that of preaching and conversion. This is clear, he says, from the tenor of the papal grants, especially that of Alexander VI, which imposed on the Catholic Sovereigns and their successors the duty of sending missionaries to the New World. For, clearly, every obligation to perform anything necessarily carries with it the right to demand and to command whatever is necessary to its performance. Hence the apostolic duty imposed on the Spanish crown must imply some measure at least of apostolic authority. In other words, it is of the very essence of the patronato that it endows the Spanish king not only with duties but with rights, and that these rights constitute a certain amount of ecclesiastical and even spiritual jurisdiction.

"Some measure?; "a certain amount?; precisely what?

3 "Et respectu ecclesiarii vel conventuum Indiarum longe magis sine difficultate procedit dicta Regis nostri facultas, eam in Indios habeat universalem patronationem toti juris et praesentiales munitionem ut eum reddent in partibus veluti legatum aut extremum delegatum Summi Pontificis." (De Indiarum jure, II [Madrid, 1639], iii, 23, 39). Cf. II, iii, 27, 58.

4 Ibid., ii, iii, 2, 34-37.

5 Ibid., ii, iii, 20, 7-8; 5, 14-15; 4, 28 ff.

6 Ibid., ii, iii, 4, 31.

7 Ibid., ii, iii, 4, 51; 15, 17; 16, 13; 18, 27; 27, 58; 2, 42-44; 26, 8; 26-28, 50; 2, 50.

8 Ibid., i, 21, 27.
inherent in the patronato was, if not strictly universal, “universable,” that is, capable of being extended to any case regarding which the King or his representatives might choose to legislate. 9

This, then, is the nature and extent of the patronato real de las Indias as conceived by the foremost exponent of Spanish regalism. It was an apostolic delegation irrevocably vested in the Spanish Crown which, while it could not touch the strictly sacramental order and was not explicitly universal, was nevertheless capable of being indefinitely extended.

It would be difficult to imagine more ample powers; yet the regalists were able to formulate another principle on the basis of which the jurisdiction of the Crown over the Church could be further extended. This is a principle based, like that of apostolic delegation, on the necessary relation between an obligation and the corresponding right. The supreme duty of a ruler is to maintain the tranquility of the realm; to that supreme duty must therefore correspond a right equally sovereign: that of employing all the necessary means to fulfill it. Apply this principle to ecclesiastical affairs, and you have the juridical basis of the recurso de fuerza.

The recurso de fuerza was the right of the King, through his councils and tribunals, to intervene in the operation of ordinary ecclesiastical jurisdiction and even to suspend that operation whenever, upon the appeal (recurso) of a subject, lay or ecclesiastical, the Church authorities are deemed to do violence (hacer fuerza) to the rights of the said subject or to the peace of the realm. 10

Regalist writers specify three principal occasions when the recurso de fuerza may be legitimately invoked. The first is when papal bulls or other ordinances of the Holy See are found by the royal council to be derogatory to the patronato real or contrary to the laws and usages of the realm. In that case the royal government may retain such ordinances and forbid their promulgation in the Empire. The second is when an ecclesiastical judge attempts to take cognizance of a purely secular litigation between laymen. In this case a royal tribunal may, by the issuance of the so-called auto de legos, estop this usurpation of civil jurisdiction. The third is when the ecclesiastical authority disallows legitimate appeal to a higher ecclesiastical tribunal than its own. In this case the royal tribunal has the right to suspend the judicial process started by the ecclesiastical authority and to examine the documents of that process in order to determine whether or not the appeal should be allowed. A right must have a sanction to protect it; hence the sovereign or his tribunals may impose the proper penalties on ecclesiastics who contravene or resist the recurso de fuerza, the maximum penalty being banishment and sequestration of temporalities (extrañeza y temporalidades). 11

It should be noted that this prerogative of the recurso is claimed for the secular ruler as such, that is, as supreme authority in the temporal order, and not in virtue of any apostolic delegation. The regalists are most insistent on this point; for on it they base their contention that the recurso does not in any way involve a usurpation of ecclesiastical jurisdiction. For an ecclesiastical judge who violates the rights of the king’s faithful subjects is no longer acting as a judge or even as a churchman but is purely and simply an oppressor. By his unjust act he renounces the immunities of his office and reduces himself to the condition of a private citizen, in which condition he falls under the full jurisdiction of the secular prince. 12 Similarly, in suspending the ecclesiastical process and calling in its records for examination, the royal tribunal does not intend to judge the case itself, but merely proposes to determine whether or not the ecclesiastical court is exceeding its jurisdiction or unreasonably denying to the appellant that recourse to a higher ecclesiastical tribunal which is provided for in canon law itself.

Upon these two principles, then, the one of positive law, namely, the apostolic delegation which was held to

10 De Indiarum jure, II, iii, 27, 42-44.
11 Cf. Francisco Salgado de Somoza, Tractatus de regi protecione (Lyons, 1759), p. 6; Pedro Frase, De regio patronatu (2 v., Madrid, 1677), I, 304; Diego de Covarrubias y Leiva, Opera omnia (2 v., Lyons, 1606), I, 116.
12 Covarrubias, Opera, I, 115; Salgado, De regi protecione, p. 33.
be implied in the papal grants, the other of natural law, namely, the right of the ruler to safeguard the rights of his subjects and the peace of the realm, the Spanish regalists raised the formidable structure of the patronato, from whose awful height the Most Catholic King governed with unique authority, and when the Audencia of Puerto Rico admitted a recurso to restrain an appeal in an ecclesiastical case to a superior ecclesiastical judge, the King reprimanded it in the following terms:

It has caused surprise that you should have permitted such a recurso. You should have in mind, as did that prelate (i.e., the ecclesiastical judge) what is decreed in the laws, and that he acted in this case by no means in his own right but with my delegated authority, in virtue of the exalted position which I occupy through the bull of Alexander VI as Vicar and Delegate of the Apostolic See; on the strength of which it belongs to My royal power to intervene in all that concerns the spiritual government of the Indies, to such an extent that the Holy See has empowered Me to act for it not only in the economic sphere with reference to the property and appurtenances of the Church, but also in the administrative and judicial sphere, with the sole exception of the power of orders, which seculars are incapable of receiving.  

What was the attitude of the Roman Curia towards these regalists claims? Five years after the appearance of the first volume of Solórzano's work, the Sacred Congregation of Propaganda held a session in which

the intent of the said bull of Alexander VI [i.e., "Inter caetera"] came up for discussion, and the opinion of the Fathers (i.e., the cardinals who composed the Congregation) was that by it only temporal favors were granted to the Catholic Sovereigns, for what is said in it about missions convey no authority to the said Sovereigns, as the word debeatis ("you ought") employed in the bull clearly proves. From this correct interpretation of the said bull it follows that

the aforementioned Sovereigns are not, in virtue of the said bull, patrons of [all] the churches in the Indies but only of those which they have actually endowed at their own expense; nor are they apostolic legates or delegates, as is erroneously inferred from the same bull...  

When the second volume of Solórzano's De Indiarum jure appeared in 1639, the Sacred Congregation of the Index caused it to be examined by one of its consultors, Antonio Lelio, who had spent some years in Spain in the papal service. His adverse report to the Congregation apparently met with approval, for it was published in 1641 and Solórzano's second volume was placed on the Index the following year. In Lelio's observationes, therefore, we have an official Roman opinion on the official Spanish concept of church-state relations as embodied in De Indiarum jure.  

Lelio begins by denying that the papal grants contained any communication to the Spanish Crown of an apostolic delegation, understood in the sense of spiritual or ecclesiastical jurisdiction, and he proves this by an examination of the documents themselves. He argues, for instance, that the tenor of the papal declaration whereby the tithes of the Indies were conceded to the Spanish Crown excludes the idea of an apostolic delegation. The tithes were granted on condition that the Crown provide sufficient endowments for the churches in the Indies, and the bishops are to be the judges of the sufficiency of the endowment. If ecclesiastical jurisdiction in any proper sense had been delegated to the Spanish sovereigns, why is the judgment as to the sufficiency of the endowments left not to them but to the bishops?  

Lelio then proceeds to confront Solórzano's arguments in favor of the recurso de fuerza with a host of canons and papal ordinances condemning the practice as a violation of the rights of the Church. Foremost among these

14 Acta of the Congregation, X, 22, no. 64, in Rafael Gómez Hoyos, Las leyes de Indias (Medellín, 1945), p. 56.  
15 Cullum, Lelio, p. 4.  
pronouncements was the bull "In coena Domini", which
placed under the ban of excommunication and anathema
all who "call to themselves and away from our judges and
commissioners suits regarding spiritual matters or related
to matters spiritual ... and presume as judges to take cogni-
zance of them"; and all magistrates, judges, notaries,
clerks, executors and sub-executors who intervene in any
manner whatever in capital cases against ecclesiastical
persons, prosecuting them, banishing them, arresting them,
or pronouncing sentence upon them without the special,
specific and express permission of this Holy Apostolic
See". 19

Since Solórzano and the regalists derived the juridical
basis of the recurso de fuerza from the natural law, Lelio
meets them on this ground also. He admits that it is
legitimate to meet violence with violence, and hence that
the royal tribunals are perfectly justified, in cases of ur-
gent necessity, to use physical force on churchmen who
by force are endangering the safety of the realm. But
such cases almost never happen. There is usually enough
time and opportunity to permit the Church itself to re-
cify, in accordance with its own laws and rules of proce-
dure, what its subordinate officials may determine unjust-
ly. Moreover, no matter how impartial, unselfish and re-
spectful the recurso de fuerza is made out to be by the
regalist writers, it turns out to be far different in actual
practice. Its ordinary effect is to immobilize the eccle-
siastical tribunals while extending royal protection not
to the poor and oppressed, but to the rich and powerful
who are able to pay for long court actions and "square" the
judges in charge of the case. 20

Thus Lelio finds two principal elements in Solórzana-
ño's work which merit condemnation by the Congregation
of the Index: first, the method by which the apostolic de-
legation is deduced from the papal documents, that is,
by interpreting them independently of the Holy See and
even against its express declarations; second, the doctrine of
the recurso de fuerza as proposed, whereby the Crown
is represented as possessing a sovereign right to interfere
in the exercise of ecclesiastical jurisdiction, the Crown
itself and its ministers being the only judges as to when
and how that right may be exercised. 21

There were, understandably, few critics of Spanish
regalism within the limits of the Spanish Empire; but
these few were outspoken and resolute. The distinguished
Franciscan canonist, Fray Manoel Rodrigues, took a firm
stand against the recurso de fuerza, although he held the
theory of apostolic delegation. Another Franciscan, Fray
Domingo Lossada, took issue with his colleague as to the
extent of that delegation, saying that precisely because
it was a delegation, it could not contain more than what
the one delegating meant it to contain or the one dele-
gated was able to receive. The Jesuit Father Diego de
Avendaño, after clearly stating the arguments for and
against the recurso de fuerza, concluded that the argu-
ments against it are well-nigh irresistible ("urgentissima"),
but that, because of the weight of extrinsic authority in
its favor, its practice could be approved—always, how-
ever, sparingly, moderately, with fear and trembling ("par-
ce, moderate, cum timore"). 22

Nor did the Philippines lack its anti-regalists. The
first bishop of Manila, Fray Domingo de Salazar, a Do-
minican, consistently and vigorously opposed all attempts
on the part of the civil authorities to impose limits on
his jurisdiction, and even sketched out a theory which
would reconcile the curialist principle of ecclesiastical
liberty with the regalist principle of apostolic delegation.23
But the most vigorous and versatile opponent of regalism in
this part of the world was undoubtedly that other Domi-
nican occupant of the See of Manila, Fray Felipe Pardo,
who for ten years, from 1680 to 1689, fought what he

18 Ibid., pp. 36 ff.
19 Urban VIII, "Pastorals Romani pontificiae" (April 1, 1627),
Bullarum diplomatum et privilegiorum...taurinensis editio (25 v.
Turin, 1857-1867), XIII, 533-535. The bull derives its name, "In coena Domini,"
from the custom of publishing it every year on Holy Thursday. It was
revised from time to time, the recension closest to our particular period
being that of Urban VIII quoted above.
20 Lelio, Observationes, pp. 42, 52.
21 Ibid., pp. 78, 52.
22 Manoel Rodrigues, O.F.M., Explanación de la bulle de la santa
Cruzada (2 v., Salamanca, 1593), I, 119; cf. Gómez Hoyos, Leyes de
Indias, pp. 36-37. Domingo Lossada, O.F.M., Compendio cronolégico de
los privilegios reales de Indias (Madrid, 1737), p. 29. Diego de Avendaño,
23 Cf. H. de la Costa, S.J., "Church and State in the Philippines
During the Administration of Bishop Salazar," Hispanic American Historical
considered to be a usurpation of ecclesiastical jurisdiction by the Audiencia step by step, yielding in nothing though it cost him imprisonment and exile.

The details of this controversy are full of interest for the legal no less than the ecclesiastical historian, but it would take too long to rehearse them here.24 Enough has been said, however, to suggest that one of the main causes of friction between Church and State in the Philippines, as elsewhere in the Spanish Empire, was the control over ecclesiastical affairs which the Crown and its jurists gradually built up on the papal grant of the patronato. It is permissible to doubt whether the theory of apostolic delegation allowed a clear delimitation between the spiritual and the temporal orders. Had the Philippines been closer to Madrid, it is possible that the acute legal minds in the Council of the Indies could have resolved the Pardo controversy in such a way as to safeguard the essential rights of prelate and patron, of Church and State. As it was, the distance of the colony from the center of government served to emphasize the fact that the distinction between these two jurisdictions in the regalist theory of apostolic delegation was too delicate to survive the often rough and ready practice of colonial administrators.

The regalists, on the other hand, could claim that theirs was the more realistic approach to a concrete situation. It is quite clear that under normal conditions the ecclesiastical hierarchy should have full control of all religious affairs within their territorial jurisdiction. But was it equally clear that missionary work in the Indies in the XVII century was being carried on under normal conditions? Only one thing seemed to be obvious, namely, that the Church was absolutely dependent upon the State for protection and financial support. This being the case, could it not be argued that the Crown’s essential contribution to missionary activity gave it some say in the conduct of that activity?

The curialist reply to this was to grant the contention, but to deny that it justified the farge—in their opinion excessive—measure of control claimed and actually exercised by the Crown and its officials. So the debate went on, almost continuously throughout the XVII century and intermittently thereafter. The recurrent crises in the debate were undoubtedly harmful to the work of both Church and State, often dislocating and sometimes paralyzing both religious effort and civil rule. But the concentration of our attention on these crises should not blind us to the magnificent results which the cooperation between Church and State under the regime of the patronato achieved. These results endure to this day, both in Latin America and the Philippines.

Three general reflections are suggested by this discussion. The first is that it is in the highest degree misleading to give to the term “union of church and state” a constant and universal significance. There is, properly speaking, no union of church and state but only unions, that is, widely different arrangements between these two societies which are the result of unique historical situations and which cannot be understood apart from them. Hence, any constructive criticism of a regime of union of church and state must begin by specifying which type of union is meant. The second is that the particular type of union which has come within the range of our national experience was not, as we are sometimes led to believe, planned, executed and maintained by the Catholic Church, but was largely the creation of the Spanish monarchy, acting beyond, often against, the intentions of the Holy See, and in the face of resolute opposition from intelligent and saintly churchmen. The third is that the resulting juridical arrangement exercised a continuous and decisive influence on our legal history for over three hundred years, and hence deserves to be studied more extensively than hitherto by those learned in the law.

24 The present writer deals with this controversy in an unpublished doctoral dissertation, Jurisdictional Conflicts in the Philippines During the XVI and XVII Centuries (Cambridge, Harvard University, 1951), ch. iv-viii.