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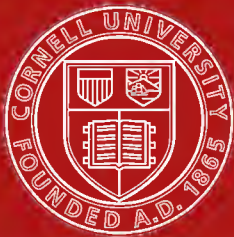
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THE DEAD HAND

A BRIEF SKETCH OF THE

RELATIONS BETWEEN CHURCH AND STATE

WITH REGARD TO

ECCLESIASTICAL PROPERTY AND THE
RELIGIOUS ORDERS

BY

HENRY CHARLES LEA, LL.D.

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PHILADELPHIA
WILLIAM J. DORNAN

1900

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THE DEAD HAND.

IMPORTANT questions will soon arise as to the destiny of the large bodies of ecclesiastical property in the Philippines and of the religious orders which form a disturbing element in the social organization of the islands. It, therefore, is not without interest to examine how similar problems have been dealt with by Catholic powers.

The control which the Church exercises over the hopes and fears of the sinner, especially on the death-bed, and the teaching, amply warranted by Scripture, that well-directed almsgiving is the best antidote for sin, has given it in all ages an unequalled opportunity for acquisition. Moreover, whatever it acquired it retained. It held in mortmain—in the Dead Hand—and its possessions were inalienable: Pope Symmachus declared that even the pope could not sell the property of the Church. The danger of this to the State was recognized at an early period, and laws of the Christian emperors in 370, 372, and 390 prohibited legacies to churches and clerics and pronounced them invalid—provisions which St. Ambrose and St. Jerome approved, while deploring their necessity and the artifices employed by clerics to nullify them. When Charlemagne endeavored to reconstruct society after the Barbarian invasions he too sought to diminish the evil, and, in 811, he asked his assembled bishops whether renunciation of the world is exhibited by those who were constantly seeking to augment their possessions by exploiting the hope of heaven and the fear of hell and inducing men to disinherit their heirs. His rebuke was unheeded, and in 816 his son, Louis the Pious, decreed that no cleric should receive donations from those whose children would thus be disinherited; anyone so doing should be punished and the property be restored to the heirs.

During the succeeding centuries the process continued with increasing momentum. The exemption from public burdens claimed for church lands stimulated their acquisition, for it enabled churchmen to lay up surplus revenues for fresh investments, and for these

they could afford to pay more—estimated at one-third—than lay purchasers, as land being untaxable in their hands brought them in larger returns. To the State this was a distinct disadvantage—if the lands were noble, it lost the military service ; if *roturier*, either its revenues were diminished or the burden on the remaining population was increased.

It was Spain which earliest sought a remedy for this. In the tenth and eleventh centuries it became customary to regard bequests to the Church as limited to three years, after which they were revendedicated by the heirs. Against this the councils of Leon, in 1020, and of Coyanza, in 1050, protested and decreed that such gifts were perpetual. In this they doubtless succeeded, but it only led to prohibitive legislation, in 1106, under Alfonso VI., forbidding, under pain of forfeiture, all gifts or bequests of lands to the Church, except to that of Toledo, then recently recovered from the Saracens, and this, we are told, remained in force in spite of the strenuous efforts of Gregory IX. with San Fernando III. to procure its abrogation in the thirteenth century. About 1125 the *córtes* of Najera extended the prohibition to purchases, so that no lands subject to royal jurisdiction should fall into mortmain, adding significantly that no tricks or devices should protect the purchaser from confiscation. It was one thing, however, to frame such laws and quite another to enforce them. Popular piety on the one hand and ecclesiastical greed on the other conspired to render them nugatory. From this time until the middle of the sixteenth century, with occasional intermissions, almost every assembly of the *córtes* of Castile petitioned the monarchs for their enforcement or adopted some plan to mitigate the evil, and every code of Spanish mediæval law has provisions on the subject. It would occupy too much space to present these in detail, their chief importance being to show by their perpetual iteration how impotent were the authorities to devise or enforce a remedy.

When, in the seventeenth century, the decadence of the monarchy became apparent, publicists had no hesitation in attributing it largely to the overgrown numbers and wealth of the clergy. Fray Angel Manrique, although himself a friar, in 1624, deploras their increase. There is not a town, he says, in which the convents had not trebled within fifty years while the population was decreasing in even greater ratio, for Burgos, which formerly had 7000 hearths now has but 900 ; Leon, which had 5000, now has but 500, while

the small towns are depopulated and the middle-sized ones are becoming so ; moreover, the wealth of the Church is correspondingly swollen to the great detriment of the Republic. Doctor Pedro de Salazar y Mendoza, a dignitary of the Cathedral of Toledo, about the same time expresses similar opinions ; the main cause of the depopulation of Spain is the excessive number of clerics and religious for which some remedy is necessary. In 1670 the attention of the court was called to the subject by a petition from the town of Camarma de Esteruelas representing that the purchase of lands by convents had reduced the population from 300 families to 70, of whom 30 were *labradores* or peasants compelled to endure the whole burden of taxation formerly divided among the 300, and the council of finance, to which the petition was referred, told the queen-regent that the condition of Camarma was shared by many other towns. There was some talk of a statute of mortmain, but it ended in nothing. The same fate attended an attempt of Carlos II. in 1677, who applied to the pope for the necessary preliminary powers. The churches and religious orders were too strong for the enfeebled and bigoted Hapsburgs ; action was postponed until there should seem to be a better prospect of success, and the increase of clerical wealth and numbers went on unchecked.

With the advent of the Bourbons, at the commencement of the eighteenth century, there came a change in the subservience of the State to the Church, slight at first but destined in its development to give a new life to Spain. In 1713 Philip V. characterized with severity the frauds of confessors who persuade dying penitents to impoverish their heirs ; he wishes that he could without papal assent or a concordat give the needed relief to his subjects, but, while awaiting this, he annuls as invalid all legacies by penitents in mortal sickness to confessors, their kindred, convents or Orders, for in such cases the testator is not to be considered as possessed of free will—a law which Carlos III. reissued in 1770, saying that it had fallen into complete oblivion. It was not until 1737 that Philip succeeded in negotiating a concordat, and then he had to content himself with a trifling concession. Article 8 recites that, in view of the insupportable burden thrown upon the laity by the increase of lands held in mortmain, the king had asked that all such acquisitions made since the commencement of his reign should be subject to taxation. Clement XII., however, denied this moderate request and would concede only that lands acquired subsequently to the

date of the concordat should be taxable. Even this was largely evaded by frauds and devices to escape its operation. A royal *cedula* of 1745 says that the ecclesiastics had up to that time prevented the execution of the concordat, wherefore instructions are framed for its enforcement. To accomplish this seemed impossible. In 1756 Ferdinand VI. issued fresh commands; in 1760 Carlos III. complained that the concordat had never been obeyed, and he ordered a perquisition into all lands acquired since 1737, while in 1795 Carlos IV. was obliged to reissue the *cedula* of 1745. Carlos III. further endeavored to check the continued absorption of lands in mortmain. In 1763 he referred to the repeated instructions given not to issue licences for such transfers, and he ordered that they should not be granted even for objects of the greatest piety and necessity in view of the intolerable injury to the public occasioned by them. Yet it was impossible to dam the flood, and, in 1795, Carlos IV. endeavored to save something by imposing a tax of 15 per cent. on all such transactions.

I have dwelt thus at length on the example of Spain, because the preponderance of the Church there gave it fairer opportunity for the development of its acquisitiveness, but the same struggle was going on in almost every land of Europe. Frederic II., in 1232, when legislating for his kingdom of the Two Sicilies, revived a forgotten law forbidding the alienation of land to clerics or clerical corporations by gift or sale; if land is so devised by will the legatee must, within a year, under pain of confiscation, sell it to the heirs or to some other layman. In England, Edward I., in 1279, issued the Statute of Mortmain, which forfeited to the lord of the fee, or in default of action by him to the king, all lands conveyed to the Dead Hand, although the Church succeeded largely in evading it until the more comprehensive act of 1391. In Germany, the Saxon law, which ruled the northeastern provinces, allowed for thirty years and a day the heirs to reclaim a property sold to the Church. The *Schwabenspiegel*, which was in force in the southern and western regions, as might be expected in the land of the great prince-bishops, shows much greater trace of clerical influence. It imposes no restrictions on mortmain and stimulates liberality to the Church. The result of this was that at the outbreak of the Reformation one-half of the land in Germany is estimated to have belonged to the Church. The rulers, however, were beginning to recognize the impolicy of this, and Maximilian I., by an edict of January 6, 1518, forbade

alienations to religious bodies without the assent of the sovereign and the diet, in default of which the nearest relative or the sovereign or any layman could take the land at a reasonable price. This was repeated by Ferdinand I. in 1564, and Leopold I. in 1669 added that all such alienations were void. In 1716, at the request of the diet, Charles VI. issued a decree reciting that the evasions and devices of ecclesiastics neutralized these laws which he therefore reissued and confirmed. This he repeated in 1720, and instituted an investigation into all acquisitions since 1669, which he annulled, ordering the holders to sell them to laymen within three months. Bavaria adopted the same policy. In 1672 the Elector Ferdinand I. required a licence from the sovereign for the acquisition by the Church of all lands of nobles, which, in 1764, was extended to all real estate by Maximilian Joseph, who further ordered that the number of inmates in all convents should be reduced to what it had been at their foundation, so as to deprive them of excuse for acquisition, and no novices were to be admitted without the consent of the sovereign.

The Italian States were similarly averse to mortmain. In 1432 Amadeo VIII., of Savoy and Piedmont, required all ecclesiastical bodies to surrender the feudal lands which they had acquired and prohibited future acquisitions, which was only enforced after considerable opposition. In 1584 Emmanuele I. subjected ecclesiastical property to taxation and resisted the repeated efforts of the Holy See to restore the exemption, and in 1863 Cavour suppressed all the monastic houses, applying their possessions to the improvement of the clergy. In Venice a law of 1329 restricted the bequest or donation of land for pious uses to the term of ten years, after which it had to be sold, and in 1536 this term was reduced to two years. In 1605 this law was extended over all the Venitian territories on the mainland, and no alienation by sale or otherwise to the Church was permitted without the assent of the council of Pregadi. This measure, together with a law of 1603 forbidding the erection of churches without licence from the Senate, was one of the leading causes of the bitter quarrel between Paul V. and the Republic in 1606 and 1607, but the Signoria was immovable in spite of interdicts, and the laws remained unaltered. In Tuscany the Florentine code of 1415 permitted the bequest of land but prohibited all sales and donations to the Church, and although Martin V., in 1427, procured the revocation of this regulation it was renewed in 1457.

It was disregarded, however, by the ecclesiastical bodies and a compromise was reached with Leo X., in the concordat of 1515, whereby all acquisitions of land during the past fifty years were subject to the public burdens. This again was disregarded, and when Duke Ferdinando I. endeavored to collect imposts the ecclesiastics cited him before the curia and carried their point. The House of Lorraine was more independent than the Medici. In 1751 the Grand-duke Francesco I. forbade the transfer to mortmain of all land and of more than a hundred sequins of personal property without licence from the prince, and this was enforced in spite of the protests of Benedict XIV. In 1769 the Grand-duke Leopold I. increased the rigidity of these limitations on the lines of a decree issued not long before for Lombardy by his mother Maria Theresa, and he further assumed the right to licence alienations of Church property. He had thoughts of abolishing all the monastic Orders, but felt himself not strong enough for this, and was forced to be content with suppressing some of the houses.

¹ In Portugal Affonso II. (died 1223) while permitting gifts and legacies forbade the purchase of land by the Church without royal permission. Early in the fifteenth century Joaõ I. added that gifts and legacies must be sold to laymen within a year and a day, and in 1500 King Manoel subjected to the public burdens lands purchased under royal licence. These laws continued in force, although, in 1635, the papal nuncio and collector, Alessandro Cavalcanti, had the audacity, on Palm Sunday, to publish an edict abrogating them. Despite his subservience to the Church, Philip IV. of Spain, then also King of Portugal, could not submit to this; June 4, 1636, he issued an *auto* declaring that Cavalcanti had no authority for his act; Urban VIII. yielded, and on April 5, 1637, the nuncio publicly withdrew his edict.

In Flanders, Count Guy de Dampierre, in 1293, forbade the alienation of land to the Dead Hand. In Brabant, in the fifteenth century, Philippe le Bon subjected such sales to the right of redemption by the vendor or his heirs. These laws were not observed, and in 1515 an edict of Charles V. pronounced invalid all gifts and legacies, while all sales to the Church required the assent of the prince and of the magistrates of the provincial capital—a law which was confirmed in 1520 in spite of the opposition of the Church. Clerical ingenuity, however, evaded it by various devices—frauds which Charles endeavored to suppress, in 1538, by a *pragmatica*

requiring all parties to every conveyance of land to swear that the transfer was not intended to make it fall into mortmain.

In France the earliest record of such rules is found in the collection known as the *Établissements* of St. Louis, which state the law to be that devises of land to the Church are subject to seizure by the seigneur, though it was customary before doing so to give the legatee a year and a day in which to sell it. This was based on the feudal rule that no vassal can diminish his fief, and as each one in the feudal hierarchy was responsible to the next lord above him, it carried the ultimate control to the king as the supreme lord. Thus grew up the *droit d'amortissement* under which all transfers of land to mortmain had to pay a tax to the crown. There was much and varying legislation under which this tax at different times was reckoned at from four to six years' fruits of the land or a sixth to a third of its value—in fact, Philip V., in 1320, put it, in cases of purchase, at the price paid for the land, but this was subsequently reduced. The clergy, as a rule, evaded these payments, and inquests were made from time throughout the kingdom to trace these transactions and collect the royal dues. How frequently this was done we have no means of knowing, but we happen to hear of it in 1326, 1370, 1388, 1470, 1547, 1680, 1695, and 1700.

It was impossible to check these acquisitions or to prevent the multiplication of religious houses. Louis XIV., in 1666, revived the old laws which forbade new establishments without special royal licence, and he subjected the granting of licences to rigorous preliminary investigation and obstructive formalities, for through neglect of these laws, he said, the religious communities had so increased that in many places they possessed the larger half of the lands and revenues. Even the autocracy of Louis, however, was powerless to secure obedience, and the evil continued to grow. Finally, in 1749, an elaborate edict, drawn up by Chancellor d'Aguesseau, declared the constant increase of these communities to be one of the matters most immediately requiring remedy, wherefore the prohibition to found new ones without royal letters-patent was renewed; all which had been established in disregard of this were declared illegal and all so founded since the edict of 1666 and for thirty years prior were suppressed. No real estate in any form could be acquired without special royal letters for each transaction, and all legacies of such property were declared invalid, even if made under condition of obtaining such letters, and the issuing of

these letters was surrounded with rigid precautions requiring the necessity or utility of the transaction to be clearly demonstrated.

This various legislation to a common end throughout the lands of the Roman Obedience is of interest rather as showing the unanimous conviction of European statesmen during five or six centuries as to the evils of accumulation in mortmain than as exhibiting their power to curb the acquisitiveness of the Church. The constant iteration of legislation demonstrates its ineffectiveness. By one means or another the Church baffled the law-givers, heedless of the temptations which it was offering and of the risk which it might run whenever circumstances should weaken its awful authority over the minds of princes and peoples. It did not anticipate that the time would come when those who might shrink from spoliation would reconcile their consciences to the euphemism of "secularization."

Yet there was a wholesome warning in the Reformation when it narrowly escaped much greater losses than those which it suffered. The violent measures of Henry VIII. and his Court of Augmentations, and the progressive absorptions by the Protestant princes of Germany are foreign to our subject, for they were the work of schismatics and heretics. More to the purpose is the fact that some of the Catholic princes were scarcely more scrupulous than the Lutherans in seizing the property of the religious Orders, and that in the Reichstag of Augsburg, in 1524, it was seriously proposed by both parties to secularize the whole church property of Germany. The prelates were to receive a fitting income; the noble canons were to be paid as heretofore until they died off without successors; one or two nunneries were to be maintained in each circle of the empire as retreats for noble ladies; priests and preachers were to be decently supported, and the rest of the revenues was to be devoted to public uses, especially to the maintenance of a standing army for the defence of the empire.

This danger was eluded, and, reckless of the warning, the process of accumulation continued until the mocking philosophy of the eighteenth century had destroyed among the ruling classes all real respect for Latin Christianity. There was talk, in 1743, of arranging terms between Maria Theresa and Charles VIII. by secularizing for the benefit of the latter the great sees of Salzburg, Passau, Freisingen, Regensburg, Eichstätt, and Augsburg, but it was divulged prematurely, and its authors disowned it, while Bene-

dict XIV. declared that he would shed his blood to prevent such spoliation. A somewhat similar project, in 1758, brought forth letters of remonstrance from Clement XIII. to the Catholic powers. Secularization evidently was in the air, but the first blow was on a more moderate scale, although in principle it shattered the claims of the special sanctity of ecclesiastical ownership. The Society of Jesus had become a vast trading corporation with extensive colonial possessions which it exploited under the advantage of exemption from taxation. It invited attack in many ways, and Portugal took the initiative with a decree of expulsion, September 5, 1759, followed, after eighteen months' delay, by incorporating its property with the royal fisc. France suppressed the Society in 1762, and devoted its funds to the payment of its indebtedness, the support of its members, and the maintenance of its former colleges. In Spain, the *pragmatica* of Carlos III., April 2, 1767, expelling the Order, confiscated its property to pious uses and to pensioning the members, but in 1798 Carlos IV. incorporated in the royal treasury what remained. When, in 1773, Clement XIV. abolished the Society, he formed a congregation of five cardinals and two prelates to administer its property for pious uses; the congregation sent to the German bishops orders to take possession of the temporalities for such purposes, but Joseph II. refused to recognize the papal claims to control all church property, in consequence of which the princes confiscated all that lay within their dominions.

The next assault was made by the Emperor Joseph II., which has significance as showing the repugnance felt by enlightened rulers for the religious Orders, especially those subject to foreign domination. As early as 1772 he forbade admissions to the Franciscan Tertiaries, and in 1784 he abolished them altogether. In March, 1781, he almost wholly sundered the relations of the Orders with their superiors in Rome, and all exceptions to this were removed eighteen months later. More destructive was his decree of October 30, 1781, ordering the suppression of all the contemplative Orders, in the execution of which about seven hundred religious houses (nearly two-fifths of all in his dominions) were abolished and their possessions were converted into a so-called *religionsfond*, devoted mostly to education and the improvement of benefices with cure of souls. Finally, on November 30, 1784, the reception of novices was forbidden for twelve years, except by permission of the secular power, which was rarely given.

These were but the fitful gusts which heralded the tempest. It came inevitably with the outburst of the French Revolution, and its early date shows how ripe were men's minds for the secularization of ecclesiastical accumulations. Already, by November 2, 1789, the National Assembly voted the proposition of Talleyrand, then Bishop of Autun, that all church property was at the disposition of the nation, and that the clergy should be supported with competent salaries. This was followed by the decree of February 13, 1790, suppressing the religious Orders and absorbing their temporalities. It was natural that Pius VI. should protest against these acts, as he did, March 10, 1791, in the brief *Quod aliquantum*, asserting the inviolability of ecclesiastical possessions and threatening with the fate of Heliodorus all who laid unhallowed hands upon it, while he stigmatized as an insufferable indignity the allotment of salaries to bishops and priests. Yet his successor, Pius VII., was obliged, in the concordat of 1801, to accept accomplished facts and to promise, for himself and his successors, not to disturb the purchasers in the enjoyment of their acquisitions. The organic articles attached to the concordat confirmed the suppression of the religious Orders; an attempt to reintroduce them was defeated in 1804, and those which gradually crept in after the Restoration were still subject to the laws forbidding irrevocable vows. The objection to them still continues, and the government is understood to be now preparing a bill regulating associations which is to be directed primarily against the religious congregations.

Pius VII. soon had a bitterer experience when orthodox and heretic Germany united together in a yet more gigantic seizure of temporalities. A *Reichsrecess* of February 25, 1803, secularized the four great princely archbishoprics of Mayence, Trèves, Cologne, and Salzburg, and eighteen bishoprics, from Brixen to Lubeck, including the religious houses and involving possessions, reckoned at 420,000,000 Rhenish gulden. It is estimated that by this measure the Church was stripped of territories containing 3,161,776 inhabitants, and of revenues amounting to 21,000,000 florins. The whole was declared to be at the free disposition of the secular rulers, to be employed for the relief of their finances as well as for the maintenance of divine service and education, subject to the condition that the cathedrals were to be supported and the ejected clerics pensioned. It was in vain that Pius VII. exhaled his indignation in a brief of February 12, 1803, to the Elector Maximilian of

Bavaria, expatiating on the injustice and sacrilege of the measure. No attention was paid to this, nor was the Nuncio Consalvi more successful when, at the Congress of Vienna, he demanded the return of all church property, and on this being refused, he presented, June 14, 1815, in the name of the pope, a solemn protest against all that had been done in Germany since 1803 without the papal assent. Pius VII., in his allocution *Mirati*, September 4, 1815, confirmed this protest but expressed the hope that another assembly shortly to be held would be more regardful of the rights of the Church—a hope which remained unfulfilled.

Equally regardless of the claims of the Church has been the action of Italy. The laws of June 28 and July 7, 1866, and August 15, 1867, suppressed the religious houses and secularized their property, 5 per cent. interest on the proceeds being devoted to the *fondo di culto*, with small pensions to those ejected. The process was unceremoniously rapid, for, in 1866, the number of houses suppressed was already 1986, with 31,024 inmates and a revenue of 13,722,995 lire. Pius IX. of course denounced, in the Allocution *Universus Catholicus*, September 20, 1867, this legislation as in violation of all divine, human, and natural law, declared it invalid, and that its authors and supporters were involved in the excommunication provided for all who despoil the Church. His protests exercised no deterrent influence, and the occupation of Rome, in 1870, was followed by the law of June 19, 1873, disposing of the property of the houses suppressed there. When this was in preparation Pius declared that it would be invalid and that its supporters would incur *ipso facto* excommunication, and after its adoption, in his Allocution *Prenunciavimus*, July 15, 1873, he asserted that all concerned were under major excommunication, especially purchasers of the property, and that all sales were void. Equally fruitless was the protest to foreign powers when, January 29, 1884, a decision of the Court of Cassation brought under the confiscating laws the property of the Congregation *de Propaganda Fide*.

In Spain the inevitable process was more prolonged and underwent several vicissitudes. The first attack was a feature of the Napoleonic invasion. Scarcely had Joseph been seated on his transitory throne when, by successive decrees of December 4, 1808, and April 27 and August 18, 1809, all the religious Orders were declared to be suppressed and their property confiscated. Joseph's authority extended only as far as the swords of the French marshals reached,

but these decrees served as an excuse for pillage, and, in the devastating war which ravaged nearly every corner of the Peninsula, few convents were left intact. The *córtes* of Cadiz, in June, 1812, decreed that the property of those destroyed or of which the inmates were dispersed, should enure to the State, subject to return in case the communities were reorganized. The restoration of the bigoted Fernando VII., in 1814, of course rendered this legislation nugatory, but the violence of the reaction provoked the revolution of 1820, when the *córtes*, by decree of October 1st, suppressed the convents of nearly all the Orders and consolidated those permitted to remain, prohibiting moreover the foundation of new houses and the admission of novices. The property of those suppressed was applied to the public debt, and a considerable amount was sold, but in the reaction of 1823, under the ægis of the French invasion, by decrees of June 11th and 21st, the monks and friars were reinstated, and the purchasers of the secularized property were ejected without compensation and with as little ceremony as the former holders had been.

The death of Fernando VII., in 1833, and the succession of the infant Isabella under the regency of her mother Maria Cristina, wrought a change. There were two pretenders—Don Carlos, who was supported by the irreconcilable clergy, secular and regular, and Ferdinando II., of Naples. The claims of the latter were countenanced by Austria and Gregory XVI., in his capacity of temporal prince, did not dare to offend the dominant power of northern Italy. He, therefore, refused to recognize Isabella, and even declined to confirm the nominations to Spanish bishoprics in the ordinary form because it implied her recognition. The relations between Madrid and the Quirinal thus became strained until they were broken off in 1836, not to be formally resumed until 1848, by which time more than half the Spanish sees were vacant.

All this necessarily threw the Regency into the hands of the Liberals and indisposed it to the clericals. It was imperative to weaken the latter; their temporalities offered a welcome resource to an exhausted treasury and secularization became only a question of time. The process, however, was more gradual than in other lands. It commenced, in 1834, by seizing the property of the Carlist clergy, regular and secular, who were aiding the insurrection; then the admission of novices was forbidden, and a *junta eclesiastica* was appointed to report on the condition of the Church so as to bring

about a thorough reform. The result of this was the presentation to the *córtes*, February 19, 1835, of a project of a law applying to the public credit all the property of religious corporations which drew from Pope Gregory, April 10th, a vigorous protest asserting the inviolability of the temporalities. The only reply of the Spanish government to this was suppression in July, first of the Jesuits and then of some nine hundred convents containing each less than twelve professed inmates. On this the revolutionary *juntas* in the provinces rose against the religious houses, which in many places were sacked and their inmates dispersed, some of the latter, it is said, being slain. Against this Pope Gregory again protested, deploring the atrocities perpetrated on so many peaceful religious, but to no purpose, for in October there was further anticlerical legislation in which nearly all the remaining convents were suppressed. It is no wonder that Gregory pronounced, February 1, 1836, the Allocution *Sextus*, in which he complained that his repeated expostulations had been fruitless; there was no cessation in these most wicked attacks on the Church nor in the contempt for the papal authority; as all reclamations had been unavailing he now declares the whole series of legislation to be null and void. The reply to this was an edict of March 8, 1836, suppressing the remaining convents, except those of three minor charitable congregations. Then in September were confiscated the temporalities of all prelates not living in residence, and sundry measures were adopted to reduce the excessive numbers of the clergy, followed in July, 1837, by others suppressing the tithes and first fruits while the property of the secular ecclesiastics was declared to belong to the nation.

In 1838 the *progresistas* were replaced by the *moderados*. The Carlist insurrection was nearing its end, and in 1840 peace was restored. By a law of July 16, 1840, the moderados assured the secular clergy in the enjoyment of their property, but, in twenty-four hours after this was proclaimed in Barcelona the populace rose in rebellion, the movement spread throughout Spain, the reactionaries were driven from power, and in December the *progresistas* issued sundry decrees secularizing the convents in the recovered Carlist territories and putting up at auction the conventual churches not actually required for divine service. Against all this Pope Gregory protested, calling heaven and earth a thousand times to witness against the Spanish violations of the rights of the Church, which he annulled and declared to be invalid. Printed copies of

this were secretly introduced into Spain, and were publicly read from the pulpits. To this, of course, no government could submit, and the laws of the old monarchy were revived subjecting to prosecution all who circulated papal letters that had not received the royal exequatur. A law followed, September 2d, revoking that of July 16, 1840, and providing for the sale of the temporalities which it declared to belong to the nation.

The ministry then presented to the *córtes* the project of a law virtually cutting the Spanish Church loose from the papacy which it described as actuated wholly by greed and ambition. This was a somewhat clumsy attempt at intimidation; it was privately sent to an agent in Rome with instructions to say that if the Spanish bishops were confirmed it would be dropped, otherwise the Spanish Church must provide for itself. Pope Gregory met this assault with consummate shrewdness in an encyclical address, February 22, 1842, to all the churches, repeating his annulment of all the anticlerical laws, including this one if it should pass. He deplored the afflictions of the pious Spanish nation for whose relief he had vainly prayed day and night. All the faithful were instructed to join with their bishops in public prayer to shorten for Spain these days of trial, and to stimulate their ardor he granted a jubilee indulgence to all who would thrice assist at these solemnities. These were weapons against which the government was powerless, and the threatened law was quietly dropped.

Early in 1844 the moderados returned to power under Narvaez. Anxious to resume relations with the papacy, they ventured to suspend the sale of church property as an indisputable preliminary, but they instructed Castillo y Ayensa, the agent whom they sent to Rome, that the restoration of unsold property must be accompanied with a recognition of the validity of previous sales, as in the French concordat. Castillo negotiated a convention and signed it, April 27, 1845, but the government refused to ratify it; it was the object of general denunciation, and he was driven from public life, although on April 3d the *córtes* had adopted a law restoring the unsold lands to the clergy.

At last, in 1851, a concordat was agreed upon which, as in France, recognized accomplished facts. It re-established the religious Orders devoted to education and works of charity; it specified the salaries to be paid to prelates and clergy and the provision for divine service; it ordered the sale by auction of the remaining con-

ventual property, the proceeds to be invested in government bonds and the interest to be applied to the restored convents ; it secured to the Church the right to hold property and the inviolability of what it still possessed, never to be disturbed without the authority of the Holy See, which on its side guaranteed that the holders of what had been sold should not be interfered with. The promises, however, were worthless of a state in so unstable an equilibrium as Spain. In four years the law of May 1, 1855, placed on sale all the remaining ecclesiastical property and prohibited all acquisitions in mortmain. It was natural that Pius IX., in his Allocution *Nemo vestrum*, of July 26th, should complain bitterly of this breach of faith ; it released him and his successors from the pledge not to interfere with purchasers, and he endeavored to make this public in Spain so as to prevent further sales. In spite of this they continued until the convention of April 4, 1860, under which the government repealed the law of May 1, 1855, and promised that in future there should be no alienations of any kind without the authority of the Holy See, and that freedom of acquisition should be permitted, in return for which the pope confirmed the recent sales. This convention was as fragile as the concordat. The revolutionary government of 1868 proceeded to sell the remaining church property, which had twice been guaranteed, and Pius could only deplore this action in his Allocution *Novam*, June 25, 1869. A further infraction involving the stipends of the clergy was made in 1872, against which Pius protested, December 22d, in his Allocution *Justus et misericors*. Under Alfonso XII., however, in 1876, decrees were issued restoring the scanty remains of the property and ordering the observance of the compacts with the Holy See.

Portugal was somewhat more prompt than Spain in this matter. By a decree of August 15, 1833, the Emperor Pedro I., as regent for his daughter Maria da Gloria, suppressed the convents and the military Orders and incorporated their property with the fisc. The government neglected to pay the promised pensions and the ejected inmates suffered extreme misery. There have been efforts within the last few years to reintroduce the regular Orders, but they have failed.

The former colonies of Spain form too important a portion of the Catholic world to be omitted from consideration. Early in their organization it was determined to protect them from the evils of accumulations in mortmain, and a law of Charles V., October 27,

1535, in ordering the distribution of land among discoverers and settlers, positively prohibited its sale to any church or ecclesiastic under pain of forfeiture, and the inclusion of this law in the *Recopilacion de las Indias*, compiled in 1661, shows that it was considered to be still in force. Ample provision, in fact, for the building and maintenance of churches was made from other sources. The procuring, by the mission priests, of bequests to the Church from their dying Indian converts was prohibited by repeated decrees from 1580 to 1800, the iteration of which shows how ineradicable was the abuse. The religious Orders, moreover, were a source of constant anxiety as manifested by the numerous provisions to restrict their number and restrain their disorders, and their acquisition of land was positively prohibited by Philip II., October 24, 1570. This was renewed by Philip IV., in 1631 ; in 1705 its observance was vainly demanded by the Council of Indies, and under Fernando VI. an attempt was again ineffectually made to enforce it.

Thus, as far as legislation could effect it, the colonies were protected against the curse of the Dead Hand ; no land could legally be held by churches or convents, and yet, in defiance of law, ecclesiastical acquisitions were constantly on the increase. In 1644 the authorities of Mexico appealed to Philip IV. to check this unwholesome growth ; the greater portion of the land, they said, was already held by the Church, which, if not arrested, would soon own it all ; there were too many convents of both sexes and too many clerics who multiplied faster than their means of support. Although something was gained, in 1767, by the expulsion of the Jesuits, yet in that same year the royal fiscal, or prosecuting officer in Mexico, in a legal argument, declared that if the accumulations of the Inquisition were not checked the King would soon have little territory left to his jurisdiction, and Bancroft estimates that, before the revolution, fully one-half the real estate in Mexico was held in mortmain.

Yet after the war of independence Mexico was tardy in following the example of the mother country. It was not until 1856 that some laws curtailing ecclesiastical privilege led to disturbances which caused the government to declare that it would not submit its acts to the authority of the Holy See, and it followed this by a decree secularizing all church property and permitting the regulars to abandon the monastic life, leading Pius IX. in his Allocution *Nunquam fore*, December 15, 1856, to protest against these measures and declare them to be null and void. The clergy were naturally

embittered and joined the disaffected army, leading to a sanguinary civil war, during which President Juarez, from his retreat in Vera Cruz, issued July 12 and 13, 1859, decrees confiscating all church property and suppressing all male convents ; and, though nunneries were allowed to remain, women quitting them were to have their dowers returned or were to be paid \$500. When the defeat of Miramon, January, 1861, and the triumph of the constitutionalists promised to render these measures effective, Pius IX. interposed another protest in his Allocution *Meminit unusquisque*, September 30th, of the same year.

With the French intervention, in 1862, the clergy confidently expected to regain their possessions, but when Bazaine was installed in the capital and an attempt was made to interfere with the circulation of the securities issued by Juarez on the basis of the confiscated property, and also to prevent purchasers from building, it was found that such large interests in these holdings had already been created among foreigners, especially Frenchmen (Bazaine himself was said to be concerned), that the provisional government was forced to recognize their validity and to postpone final decision until the arrival of Maximilian. He is said to have promised at Miramar the restoration of the religious Orders, but when, in 1864, a papal nuncio arrived with instructions to re-establish them, to reclaim church property, and to procure the revocation of all anti-clerical legislation, Maximilian declared his policy to be that the Church should abandon all claim to the secularizations, whereupon the nuncio returned to Rome. Decrees were soon issued confirming all sales legally made and providing for the execution of the laws of 1856 and 1859, whereupon Pius IX., in his Allocution *Omnium ecclesiarum*, March 27, 1865, bitterly deplored this betrayal of his pledges by Maximilian, but expressed the hope that on maturer consideration he would restore the Mexican Church from its ruins. A few days later there arrived in Rome a commission empowered to arrange matters, but the papal demands were so extravagant that negotiations were broken off. At the last moment, when Bazaine was preparing to depart, Maximilian was misled into remaining by false hopes held out of a concordat and a promise of clerical support in return for a restoration of church property.

In 1873 the additions to the constitution declared the Church and the State to be independent of each other, promised free toleration, prohibited religious institutions from holding real estate or mort-

gages, and forbade the establishment of monastic Orders of any kind. All public officials were required to make formal declaration to enforce these provisions, whereupon Pius IX. fulminated excommunication on all who should do so, causing in some places violent riots, almost amounting to insurrection, but they were suppressed. The bishops continued to struggle, and March 6, 1876, Pius came to their assistance with his Epistle *Nunquam hactenus*, granting a monthly plenary indulgence to all who should aid them, but it was in vain.

The details which the research of Mr. Bancroft has thus furnished us for Mexico are not easy to obtain for the multitudinous republics of Latin America, but a series of fiery invectives by Pius IX. enables us to trace the course of affairs in New Granada. The Allocution *Acerbissimum*, September 27, 1852, declares null and void various laws recently adopted, prohibiting religious Orders which professed passive obedience, putting parish priests on a stipend to be fixed by parochial assemblies, and practically secularizing half the ecclesiastical revenues. This did not deter New Granada from further aggressions, deplored in the Allocution *Meminit unusquisque*, September 30, 1861, whereby the Church was prohibited from using its power without consent of the State, the Jesuits were banished, and the papal nuncio was given three days in which to leave the country. The climax seems to have been reached in 1863, as described, September 17th, in the Allocution *Incredibili*, in which Pius says that he can scarce find words to express the enormity of the anticlerical legislation which he revokes and declares to be absolutely invalid. All the property of the Church, he says, has been seized and sold, and it is deprived of the power to acquire and possess; all the religious Orders of both sexes have been totally suppressed, and the clergy are forced, under pain of exile, to swear to support these measures and all others that may be adopted. New Granada evidently was resolved that the State should be supreme.

Ecuador was more dilatory. Papal utterances in 1877, 1889, and 1893 seem to manifest a perfect understanding between the Republic and the Holy See, and its devotion was manifested until lately by sending a tithe of its revenues to Rome. Revolutions since then have wrought a change, and the journals inform us that a few months since, on the recommendation of President Alfaro, a law was adopted secularizing all ecclesiastical property and applying it to the schools. The religious Orders, it is said, were endeavor-

ing to elude this by fictitious conveyances to laymen which the government does not propose to recognize. As for other Latin American States some scattered notices show that, in 1824, Paraguay suppressed all monasteries, in 1829 Brazil prohibited the reception of novices so as to provide for the gradual extinction of the religious Orders, and, in 1874, Venezuela summarily abolished them. The next movement will probably be in Nicaragua, where half the church revenues have been claimed by the State, and the clerical party is said to be preparing to resist by the customary method of a revolution.

It may perhaps be asked why the Spanish secularization decrees, from 1835 to 1868, were not enforced in the Philippines, where the large accumulations of the religious Orders were especially vulnerable as being illegally acquired under the repeated prohibitions of Charles V. and his successors, and where their exactions have been one of the prolific causes of popular discontent. The explanation is simple. The Spanish power in that distant colony was too weak to risk a struggle with the friars who had long virtually controlled the islands, and had of old an awkward way of assassinating or imprisoning a governor whom they could not drive away. This preponderance has continued up to the Tagal insurrection. In 1850 they boasted that the conquest had really been effected by them and that no local laws could be executed in the villages without the confirmation of the parish priest.

In the long struggle between Church and State which we have thus followed the impressive fact is the unanimous conviction of Catholic statesmen that the Dead Hand is an evil to be strenuously repressed, and that the religious Orders are an undesirable factor in the body politic. Not less noteworthy is their contemptuous disregard in modern times of the protests and fulminations of the Holy See.

PHILADELPHIA,

2000 WALNUT ST.

April 27th 900

My dear Mr Beers -

I have your note of yesterday & with this mail to you a couple of copies of my little essay. I shall be very glad to have it brought to the attention of President Sherman & to think of any one else who you think would like to see it, for of course I would like to circulate it as widely as I can. A copy was sent to Ambassador White. -

I was a little surprised myself at the results of investigation into the subject & it seemed to me that information respecting it was badly needed just now. -

Very Truly

George Lincoln Burr

The original of this letter has been transferred to the Dept. of Mss. and University Archives, collection #14/17/22, George Lincoln Burr Papers.

