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CHURCH AND STATE IN MEXICO *

By DUDLEY G. WOOTEN, *A. M., LL. D.*

The author of the pamphlet here noticed has long been recognized as a leader of the American Bar, as well as head of the Bar of New York City, and he is well and gratefully remembered by American Catholics as the lawyer whose logical argument and sympathetic appeal in the Supreme Court of the United States, in the famous Oregon school law case, contributed so much to win the decisive victory for natural rights and constitutional freedom of education and religion in this country. He has now added to his claims upon the gratitude of the Church everywhere by this clear and convincing discussion of the Mexican situation from the view-point of an expert in international and constitutional law. Judge Guthrie's "Opinion" was prepared at the request of the Catholic authorities, in order to obtain an authoritative judgment of an impartial jurist (as he is not a Catholic himself), and it is a summation of the points involved in the present conflict in Mexico, in their strictly legal aspects as affecting the interests, institutions and representatives of that Faith in the southern republic. He discusses the subject under five heads, of international law, separation of church and state, confiscation of church property, education, and international relations; arriving at the demonstrated conclusions that the present Mexican government, in its conduct in each and all of these several fields of administration and legislative action, has constantly and flagrantly violated the well-established principles and traditions of constitutional law as recognized and practiced by the United States and England, as well as the immemorial usages,

* *Church and State in Mexico.* Professional Opinion of American Counsel as to the Provisions of the Mexican Constitution of 1917 and of the Decree of President Calles of June 14, 1926. By William D. Guthrie, A. M., LL. D., of the American Bar. N. Y. 1926. Pendick Press, Inc.

canons and obligations of international law in all civilized countries since the *jus gentium* of the Romans. It is shown that the oppressive and monstrous policy and practice of the present Mexican administration are ostensibly directed against all churches and religions, but that practically and purposely they affect and are being enforced against the Catholic Church in particular, since 95 per cent of all those who profess any religious faith belong to that communion; that, in order completely to outlaw that Church and deprive her of any relief, redress or protection against these abuses and proscriptions, Article 130 of the Constitution of 1917 declares: "This law recognizes no juridical (juristic) personality in the religious institutions known as churches", thereby barring every avenue of appeal or remedy in any tribunal known to the Mexican system of government; that this unparalleled and unprecedented denial of natural and inalienable rights, everywhere and in every age considered sacred, even among barbarous races, extends not merely to the Church in her corporate capacity and to the destruction of her property of every description, including her religious worship, but reaches her clergy and laity in their personal and private relations, so that every Catholic in Mexico is without legal personality, and is a prejudged outlaw, the moment he seeks to exercise any religious freedom or to criticize and resist the invasion of his personal liberties and the persecution of his spiritual beliefs; that the deliberate intent and actual effect of the Constitution of 1917 and of the laws promulgated thereunder are not separation of church and state, as pretended by the Mexican authorities, but the utter extinction of the Catholic Church in that country, with the destruction of every tangible evidence of her existence as a factor in the national life, including that vast and valuable structure of piety and benevolence represented by Catholic schools, colleges, asylums, hospitals and public charities—the product of four hundred years of unremitting zeal and labor—the only real achievement of civilization in Mexico—the admiration of every intelligent and fair-minded traveller and historian who has visited that republic and recorded his candid judgment; that education, public and private, has been completely secularized by eliminating every religious and moral motive from the course of instruction, abolishing the natural rights of parenthood, and

reducing it to the lowest level of an atheistic, materialistic mediocrity, under the compulsion of state monopoly and despotism. This, in brief, is the exact situation in Mexico today, and the combined and calculated consequences are that, to use Judge Guthrie's own words, "both civil and religious liberty have long since terminated in Mexico".

No amount of academic discussion and abstract reasoning, however, can accurately describe or adequately condemn the stupendous folly and wickedness of the military and political system that has cursed that country for the last century, with increasing violence and insane rapacity, until it has culminated in the infernal orgy of brutality, blasphemy, butchery and oppression under the rule of Plutarco Calles. The catastrophe can only be comprehended and its calamities appreciated by one familiar with the perspective of Mexican history, reaching back to that period when Catholicism was the dominant and directing force in the development of the country's resources, the foundation of its culture and aspirations, the parent and administrator of the civilizing agencies that promoted nationality and purified social and domestic institutions, and that finally led to the birth and triumph of the spirit of freedom and independence for liberated Mexico.

The discussion of that phase of the Mexican problem was entirely outside of Judge Guthrie's object in preparing and publishing his "Opinion". He was called upon for his legal counsel upon the constitutional and international questions involved, and his conclusions are clear, convincing and eminently wise. He supports his argument by copious citations of the decisions of our Supreme Court and quotations from standard text-writers, and his views are well documented and fully sustained. He is particularly happy in his selections of notable passages from the writings of non-Catholic historians and essayists, attesting the vitality, the virtue, and the beneficence of Catholicism, as the most potent, permanent and pervasive factor in civilization during the Christian era. The concluding paragraphs of his "Opinion" are devoted to the discussion of the propriety of intervention by the United State, in order to compel the Mexican government to moderate or to cease its outrages upon the Catholic Church in the respects complained of, and he earnestly counsels against

any such movement in this country, indorsing the position taken by the Papacy and the Mexican Hierarchy, in favor of abstention from violence and force as the means of ameliorating the distressing situation, and in disavowing the desire of the Church to induce intervention that might easily lead to war. No part of his "Opinion" is more convincing in its wisdom and soundness of reason. He fully appreciates and forcibly presents the peculiar delicacy and difficulty of any action by our Government in the premises, growing out of the past relations between the two countries, the just causes of resentment towards us on account of historical provocations on our part, and the intense spirit of racial and national pride among the Mexicans, that would at once flame into rage against the United States at the least effort towards compulsion in their domestic affairs. He sees what all intelligent and impartial non-Catholics perceive, but which some Catholics do not seem to realize, that the worst possible thing that can happen for the Church both in Mexico and in this country would be the intervention of our Government in this controversy. It would at once array the masses of the Mexican people against the Church by solidifying their racial and national prejudices on the side of the Calles administration; in this country it would arouse all of the vile and rancorous passions of anti-Catholic hatred, resulting in religious war, with the inveterate and implacable antagonisms that inevitably characterize such conflicts, disastrous to church and state in both countries. However, he indicates that there are precedents in the history of international relations that would sustain intervention if deemed wise and desirable, citing as authorities Grotius' *De Jure et Pacis* and Stowell's *Intervention in International Law*. No doubt such instances may be found in cases very similar to that of Mexico in the matter of anti-Catholic outrages; but we take leave to assert that such intervention by the United States for the purpose of coercing the Calles government in its dealings with the Church, it not being contended that the lives, safety or property of American citizens are endangered, would be contrary to the specific policy adopted and established upon the threshold of our national existence. The principle involved was raised, discussed, and definitely determined by President Washington and his Cabinet during the consideration of our relations with the

revolutionary government of France, succeeding the violent scenes that plunged that country into the horrors of the "reign of terror", drove the Bourbons from the throne, and brought the ruling sovereigns to the guillotine. The question was presented as to whether the United States would treat with and recognize the legitimacy of the revolutionary government, and thereby tacitly if not impliedly sanction and approve the bloody and blasphemous occurrences that were enacted by the revolutionists of 1790-92. The same question was several times ably and bitterly debated in the British Parliament at that era and later. When it came up for decision in Washington's first administration, he submitted it for discussion by his Cabinet. Mr. Hamilton, the secretary of the treasury, ardently and vigorously opposed any action by the United States that should directly or indirectly recognize the legitimacy of the French government and thus express sympathy with the violence and lawlessness of the French Revolution. He argued that to do so would be to deny to the exiled monarchy and the proscribed Church the support that one civilized nation owes another whose institutions have been overturned and whose long-established government and religion have been destroyed by blaspheming regicides; that we could not afford to accord to any foreign government the recognition of its title as a member of the family of nations, when that title was written in blood by traitors to both law and religion; that to do so would align our government with the enemies of orderly and peaceful authority everywhere, and make us companions in guilt with revolutionary radicalism. That was the gist of his contention, and General Knox, the secretary of war, as usual, coincided with Hamilton. Edmund Randolph, the attorney-general, was more guarded but evidently leaned to the same views. Mr. Jefferson, the secretary of state, boldly controverted all of these arguments. He contended that the American republic was estopped by its own history and principles from questioning the title of any other government founded upon a successful revolution; that the American colonists and their leaders in the late war for independence were just as much traitors and potential regicides as the radical leaders of the French revolution; that it was not competent nor possible to measure the degree and character of violence necessary to achieve a suc-

cessful revolt against an old and established government, but our own Declaration of Independence had announced the absolute and inalienable right of every people to alter or abolish its form of government when deemed requisite for its safety and happiness, and the manner and extent of asserting that right belonged exclusively to the people involved; that it was not a question of sympathy or of abstract right and wrong one way or the other, but a question of the sovereign right of a people to determine its own destiny and vindicate its own conceptions of freedom and justice, without having its conduct judged and its legitimacy tested by the standards of any other people, and least of all by one so recently in open rebellion against its ancient and constitutional sovereign; that the revolutionary French government was unquestionably a *de facto* one, and by analogy with our own case also a *de jure* government. Washington was so impressed by these formidable considerations, that he requested Hamilton and Jefferson to submit their opinions in writing, and upon their doing so he promptly and unequivocally decided in favor of Jefferson's view of the problem, being one of the very few occasions in which he upheld that statesman's contentions against those of Hamilton, in a matter of such vital concern to our national integrity and international relations. That decision thus became thereafter the fixed rule of the United States in dealing with the legitimacy of foreign governments, the regularity and humaneness of foreign revolutions, and sympathetic appeals for assistance to the victims of violence or injustice in a foreign land; and it has continued to be the constant, consistent attitude of our Government ever since, until very recently broken in the case of Mexico itself. Mr. Monroe, in announcing the "Doctrine" that bears his name, but which really originated with and was proclaimed by Jefferson from the foundation of the Union, was careful to distinguish between the rule of that "Doctrine" and the rule established by Washington in the case of France, as just described. He said in his famous Message of 1823: "It is still the true policy of the United States to leave the parties to themselves (i. e. the other countries in the Western Hemisphere), in the hope that other powers will pursue the same course".

This phase of the Mexican situation deserves particular consideration, because it bears a vital relation to the question of in-

tervention by the United States. The traditional policy of refusing to sit in judgment upon the acts of a foreign nation in its own affairs, still less to intervene in its domestic laws and administration, from motives of sympathy or the condemnation of the injustice and illegality of its conduct, was never departed from or violated until the Wilson administration undertook to pass upon the legitimacy of the Huerta government in Mexico in 1913, which was a palpable interference in the internal affairs of that country, sought to be justified because the President of the United States believed that Huerta had come into the Presidency of Mexico by the assassination of Madéro. It was a futile attempt to regulate the morals and methods of Mexican revolutionaries, achieved no practical result, cost many American lives, led directly to the long and bloody warfare between Carranza and Villa, and has ensued in the present turbulent and vicious reign of Calles and his group of miscreants. Moreover, that mistake served to aggravate the long-standing prejudice in Mexico against the American government and Americans generally. Surely, it would be the triumph of folly to repeat that fatal error in the present crisis.

Judge Guthrie's conclusion on the whole case is rather discouraging and without finality, as was inevitable from the very nature of the situation. The Church is without legal remedy for her woes and wrongs by any process provided by Mexican institutions, and the United States is powerless to render aid by actual intervention, which would easily and probably result in war, not to be contemplated by any sane and rational mind. Time and that Divine guidance which is assured the Church in all circumstances "to the consummation of the world" will eventually solve the problem which human sagacity fails to meet. It is but another of those historic examples of which the past holds so many records, in which the Mystic Body of her Founder and Head is suffering the wounds and miseries He endured on earth and which He foretold as her destined portion among men.

As has been noted, there are certain aspects of the Mexican situation which lay outside the scope and purpose of the Guthrie "Opinion", but an understanding of which is essential to any adequate and accurate judgment upon the present controversy between the government and the Catholic Church in that coun-

try. Notwithstanding the fact that since the adoption of the Constitution of 1917, and especially since the Calles Decree of June, 1926, our own country has been deluged with a flood of written and spoken discussion of Mexican affairs, the general public still has but a vague and often mistaken notion of what the real issues are, and little or no conception of the fundamental causes that lie behind the pending struggle. This is due primarily to the radical difference between American and Mexican ways of thinking and of dealing with governmental and religious problems, which difference is inherent in the very constitution and characters of the two peoples, formed under totally different historical influences, and so at variance in all the antecedent circumstances of national origin and development as to be incompatible, if not actually antagonistic. This vital consideration enters very slightly into the current discussions in the United States, either from sheer ignorance of the subject, or from the partisan spirit of the controversialists, who ignore past events and preceding environment in the heat and haste of hostile debate. It is always a difficult and delicate task for a foreigner to essay the analysis and solution of problems peculiar to a strange land and people, and it is impossible without a full knowledge of all the elements entering into the questions involved, including the historical perspective, the inherited temper and traditions of the population, the language, laws, and institutions of the country, and previous affiliations and alignments of both the masses and the classes. In the case of Mexico, owing to the dissimilar ideas and methods just mentioned, such a task becomes doubly difficult for the American seeking to acquaint himself with Mexican conditions as at present exhibited. Most of those who write and speak with assurance about the situation south of the Rio Grande possess few if any of the qualifications above enumerated. Many of them no doubt are honest, capable, and desirous of being fair and reasonable, but others of them, and some of the most vociferous, are propagandists, pure and simple, swayed by prejudice, blind to manifest truths, partisan and passionate to the last degree of unreason. Special "investigators" have visited or been invited into Mexico during the tumult and terror of the existing conflict, and in the very nature of such missions the "investigation" proceeded along predetermined lines

and with predigested views on the part of the visitors. For the most part these "observers" have had small if any previous acquaintance with the country and its history, the origin of the controversy, or the motives of the struggle. Necessarily they were compelled to make their observations and gather their impressions in great haste, in the midst of the discordant factions, and from sources more or less tainted by the prevailing bias of a bitter resentment towards one side or the other. Under such disadvantages the fairest man in the world is at the mercy of influences beyond his control, and often beyond his powers of discernment. Yet, it is through these channels that the American public has acquired most of its information and arrived at most of its conclusions in these matters, with the result that a great deal of the prevalent opinion has been predicted upon a superficial, unintelligent, misconceived estimate of the real facts, and frequently upon wholly false and malicious misrepresentations.

The writer of this article makes no claim to extraordinary acuteness of observation and judgment, or to infallibility of opinion, but he does believe that he has enjoyed somewhat unusual opportunities for knowing Mexico and the Mexicans, a more extended and deliberate survey of the causes that have led to present conditions, and a less distorted view of the pending controversy, than most of those who recently have been contributing to the discussion. The results of his studies of Mexican problems have heretofore been embodied in published books and articles, composed without partisan purpose and written under circumstances of literary and professional responsibility.* He became personally acquainted with Mexico in early life, having first visited the country in the opening years of the long rule of Porfirio Diaz, and returning a number of times during the thirty years in which that remarkable man dominated and directed the destinies of modern Mexico. These visits were not made for pleasure alone, but on professional business and for historical research at the capital and in the chief cities of the republic. During that period the writer travelled in every part of the country,

* *Comprehensive History of Texas, 1685-1895*. 2 vols. (1898); *The Land System of Mexico and Texas* (1899); *Mexico for the Mexicans*, "The Catholic World", March, 1915; *The Catholic Church in Mexico*, 4 articles in "The Queen's Work", July, Aug., Sept., Oct., 1922. It should be remembered that until 1836 Texas was a Mexican province.

spending considerable time and studying the native laws, institutions, habits and temperament of the people of all classes, meeting the lawyers, judges and chief political and military leaders, by exceptional privilege practicing in the courts, and generally collecting material for an impartial and accurate estimate and history of Mexican life in all of its phases. His latest immediate contact with affairs in that region was after the Madero revolution and during the turbulent times of the struggle between Carranza and Villa. It is worth mentioning that the impressions gained and the opinions formed by this experience, the gist of which is here given, were acquired long before the writer became a Catholic, were entirely uninfluenced by any religious preference or prejudice, and have not been altered or affected by his conversion to the Church. That is one of the things that should be clearly stated and understood at the outset of any correct discussion of this subject: in all the essential and fundamental factors that enter into and control social, religious and political questions, Mexico has not changed in the last hundred years; indeed, the genesis of the struggle between church and state, government and religion, ante-dates the separation from Spain in 1821. There is nothing substantially or materially new or unprecedented in the attitude of the Mexican government towards the Catholic Church under Calles, differing from that established by Comonfort in the Constitution of 1857, and emphasized by the "Reform Laws" of Juarez and Lerdo, during the period from 1861 to 1876. The difference in the situation as it now exists is one of degree and not of kind. Comonfort, Juarez, Lerdo de Tejada, and Porfirio Diaz were all committed by the Constitution of 1857, and by the Decrees issued thereunder, which became laws as effectually as if embodied in that Constitution, to the same policy of confiscation, proscription and persecution of Church property, privileges and rights that was later strengthened, extended and made more cruel by Carranza in 1917. Calles, by his Decree of 1926 and the executive proclamations since then, has simply gone to the limit of a malevolent and indiscriminating enforcement of the previously adopted policies of the Mexican government, in dealing with Catholicism. All of the other Presidents of Mexico, since the divorcement of church and state and the confiscation of religious properties in 1857, al-

though animated by a spirit of hostility and frequently guilty of odious and oppressive acts against Catholic interests and institutions, were professedly adherents of the Catholic faith, and they were prudently mindful of the fact that the almost unanimous sentiment of the people was one of loyalty and devotion to the Church. They therefore tacitly ignored many of the restrictions and proscriptions that the letter of the laws would have authorized them to enforce: the Church was permitted to occupy and use the properties which were confiscated to the state by the constitutional, legislative and executive system of secular monopoly. This was done in pursuance of the fiction that these properties were *loaned* to the Church, but there always existed the authority to cancel the loan and seize the property. Many other rights and privileges of the Church in her corporate capacity, of her various religious orders, and of her clergy and hierarchy, which had been abolished or seriously abridged since 1857, were allowed to be enjoyed and exercised by a sort of "gentleman's agreement" between the government and the ecclesiastics. But all of this was abruptly ended by the Carranza regime in 1917, and the present administration has still further extended a despotic and malignant policy towards Catholicism, which has for its object and will achieve by its operation the absolute extinction of all Catholic rights and activities, since it denies any legal personality or juristic capacity to the Church and her representatives, thereby destroying her very existence as an entity to be recognized or reckoned with by the secular authorities. Calles is a rabid, unreasoning, vindictive enemy of religion in general and of Catholicism in particular, realizing that all other forms of religious belief are negligible factors in Mexico, and that the Church is the chief and most formidable obstacle to the forces of military autocracy, unscrupulous greed, and barbarous atheism which he embodies and is using to crush out Christian civilization in that disordered land. He is repeating the anti-religious, anti-Catholic methods of the Russian Soviets, without the intelligence, the ingenuity, or the calculated cunning of the Soviet leaders. His chief advisers and chosen lieutenants are such men as the brutal, ignorant, vicious vulgarian, Obregon, whose ruling motive is hatred of foreigners and of Americans especially. Calles and Obregon are both of them Indians, of the fierce, untamed stock of Northern Mexico. Juarez was a pure

blooded Zapotec Indian, the most warlike and unconquerable of all the tribes that withstood both Aztec and Spanish domination; and in later years several of the military adventures who have succeeded in gaining control of the government have been either full blooded Indians, or half-breeds with few of the virtues and all of the vices of their white ancestors, mingled with the brutal passions of their savage origin. It has been characteristic of these native chiefs to break away from all traditions and inherited loyalties, to defy authority and discipline, and to teach and practice an indiscriminating hatred of aliens and alien influences, among which they almost invariably include the Catholic Church and her constitutional conservatism. With the advent of such men to power and the gradual decay of the old Spanish element there is developing a menacing conflict in the racial composition of Mexican nationality, the full meaning and ultimate effects of which have not been sufficiently studied nor properly appreciated, and which, in the final analysis, bears an important relation to the politico-religious struggle now going on. The population of the country consists of three classes, distinct in their natural and inherited characteristics and in their several participation in social and political affairs. First of these are the white inhabitants, almost exclusively of Spanish origin, divided into the native Spaniards (now practically extinct) and the *creoles* or persons of Spanish blood born in Mexico. This class has always been a small minority numerically, but intellectually and by inherent superiority the ruling class, although under Spanish dominion the creoles were disfranchised politically and suffered socially from a degree of ostracism and discredit. This white element, whether native to Spain or born in the New World, though often cruel and tyrannous towards the indigenous population, and occasionally rebellious against ecclesiastical authority, was of gentle lineage, sprung from the most chivalrous race in Europe, inheriting the culture and pride of their Spanish descent, and imbued with sincere reverence and loyalty to the Faith that had glorified Castile and Aragon and made the title of "His Catholic Majesty" the noblest to be conferred upon an earthly sovereign. From it came the oligarchs and viceroys of Spanish Mexico, some of the most distinguished of whom were prelates of the Church, and at every crisis it furnished the

natural leaders in peace and war. The revolution of 1810 was a movement of the common people, the native Indian element, but it was sympathized with and aided by the white clergy and led by the Spanish priest Hidalgo. The subsequent stages of that struggle for independence were guided by Morélos, Negréte, Matamoros, Bravo—all Catholic priests, but it was not until the revolutionary forces were organized and commanded by the military chiefs of white blood that success crowned the revolt in 1821, and republican Mexico superseded the Spanish viceroyalty. In every era since then the real leadership of each efficient and stable administration of public affairs has come from the pure white stock, and it has always revered religion and respected the rights of the Church, even when the laws framed by the radical representatives of other racial elements had proscribed and outlawed those rights. Diaz, the ablest man produced by modern Mexico, belonged to that class, as did Victoriano Huerta whose career was cut short by the ill-advised and futile intervention of the United States, defeating what might have been an orderly and beneficial settlement of existing disorders. So, too, did Venustiano Carranza, but he stultified his racial and traditional allegiance in order to pander to the inferior faction led by Pancho Villa, who was half negro and half Indian. The supremacy of the white leadership endured into the administration of Madéro, who gained power by the combined forces of socialism and savagery and soon yielded the reins of his revolution into the hands of such low and vulgar proletarians as Orozco and Obregon, who sprung from an entirely different class of Mexican citizenship.

Next to the whites come the *mestizos* or those of mixed white and Indian blood, inheriting the worst features of both stocks, long smarting under the sinister burden of social discrimination, denied all recognition under Spanish rule, viewed with distrust by the dominant spirits of white supremacy under republican institutions, and ready always to appeal to the basest passions of the populace in an indiscriminate war against all alien interests and influences, but especially against the Catholic Church, which has her intellectual sway among the white element and her moral and spiritual stronghold in the hearts and souls of the common people. It is from the *mestizos* mainly

that the most vicious and violent leaders of revolutionary, anti-religious and anti-Catholic radicalism have emerged into evil prominence and power. They are in the minority as to numbers, but sufficiently numerous, able, ambitious and active to organize and engineer successful policies in a country like Mexico. The third class of the population is that of the real Mexicans, the native Indians, who outnumber both of the other classes by an overwhelming majority, but otherwise are almost negligible in any social or political movement. They constitute a vast, inert, helpless mass, for the most part docile, industrious, peaceable, courteous, and faithful in their appointed sphere of life. They were serfs and inferiors for the ruling class in that dynasty, and they remained in that status after the Spanish Conquest,—they changed masters but did not acquire many benefits except those of religious faith and spiritual consolation in their lowly station of servitude and silence. The most marvellous thing in all history was the conversion of these people to Catholic Christianity in the incredible space of thirty years after the Europeans entered the land, for it is a fact that by the middle of the sixteenth century the Spaniards had implanted their religion in the minds and hearts of practically every Mexican tribe from Yucatan to California, while the tongue of Castile became the universal language from the Isthmus of Panama to the mountains of Arizona; and that achievement remains unimpaired to this day. What other race or religion can exhibit so stupendous a miracle?

(To be concluded in the March issue.)