

COLEGIO DE ABOGADOS DE PUERTO RICO

FUNDADO EN 1840

ILUSTRE COLEGIO DE ABOGADOS DE PUERTO RICO MIEMBROS JUNTA DE GOBIERNO 1984-1986

PRESIDENTE

Abrahán Díaz González

PRIMER VICE-PRESIDENTE

Antonio J. González González

SEGUNDO VICE-PRESIDENTE

Migdalia Torres Díaz

SECRETARIA

Elizabeth Blanc Acevedo

SUB-SECRETARIO

Wilfredo Picorelli Osorio

TESORERO

Jorge L. Cátala Monge

SUB-TESORERO

Raquel del Valle

VOCALES

Severo Colberg Toro	Carmen J. Díaz Padró
Myra Sonia Gaetán	Héctor Collazo Maldonado
Edgardo Hernández Vélez	Héctor Carballo Ortiz
Ayxa Rey Díaz	Ivonne Díaz de Carreras
Harold Irizarry López	Pablo Cabrera Rivera
Carlos M. Vargas Muñiz	Celedonio M. Lozada Gentile
Bernardo Muñiz Arocho	Víctor J. Estrella
César Cortés	William Marini Román
Adolfo Santiago Rivera	Gloriana Bonaparte Rosaly
Carlos Rodríguez Sierra	David Figueroa Morales
Roberto L. Varela Muñiz	Santos M. Rivera Estrella
Rita Molinelli Freytes	Alejandro Salgado Rivera

MIEMBRO EX-OFICIO

Arturo Negrón García

DIRECTOR EJECUTIVO

Antonio Bennazar Vicéns

R E V I S T A

DEL COLEGIO DE ABOGADOS DE PUERTO RICO

VOL. 46

Enero-Diciembre, 1985

NUMS. 1-4

SUMARIO

La inmoralidad del "No Ha Lugar"	7
<i>Francisco Castro Amy</i>	
El Mandamus en Puerto Rico	15
<i>David Rivé Rivera</i>	
El "Leasing" Inmobiliario en Puerto Rico	41
<i>Dr. Pedro F. Silva-Ruiz</i>	
Relations between Church and State in Puerto Rico	51
<i>Aníbal Colón Rosado</i>	
Los Orígenes de la Cláusula Territorial	63
<i>Carlos Rivera Lugo</i>	
Arrestos, Registros Incidentales al	
Arresto y Allanamientos	97
<i>Ismael Betancourt y Lebrón</i>	

RELATIONS BETWEEN CHURCH AND STATE IN PUERTO RICO

Aníbal Colón Rosado

After the discovery of Puerto Rico on November 19, 1493, the event which has perhaps had the most marked effect on the island has been the change of rule which occurred on October 18, 1898. The Diocesan Synod of 1917 underlined the singular importance of this political change in the religious life of the country. The Treaty of Paris nullified some aspects of the concordat between Spain and the Holy See which had regulated official relations between Church and State. The diocese was left under the immediate jurisdiction of the Holy See by the apostolic brief *Actum praeclare* on February 20, 1903.

The political crisis of 1898, as can be easily seen, brought a radical change in the status of the Church, especially in regard to its economic affairs. The Church could no longer count on the protection of the civil authorities, nor on subsidies, nor on confessional privilege. The invasion by the United States further opened the way to religious freedom and, therefore, to the establishment of Protestant sects.

It appears that the religious freedom proclaimed by the invading army was more far-reaching than just democratic ideals: it was a way of establishing a definite philosophy. Religious sects followed in the footsteps of the army

in order to occupy the island in the name of Christ. The arrival of the Protestant sects was carefully prepared, and the civil authorities looked upon them as an essential way of educating the Puerto Rican people in the process of americanization. George G. Groff, Commander of the Army and Commissioner of Educational, thus stated:

"For four centuries Spain has tried to Christianize this people. This duty is now transferred to the American people. Good men, who can see good in others, and understand even Latins, should be sent to spy the land and to establish pioneer churches, and especially schools. A teacher would probably now find support in more than 100 towns in the island, and every teacher should be a missionary. (...) Porto Rico is destined at an early day to become a State of the American Union. The kind of State it will make will in a measure, depend upon the work done by the religious societies of the United States".¹

What, then, was the answer of the Catholic hierarchy? The Catholic prelates had begun to counter the effects of the Spanish American War even before the change of sovereignty. John Ireland, Archbishop of St. Paul, in the name of Leo XIII, tried to persuade the North American government not to declare war against Spain. Archbishop Ireland experienced on that occasion the deep anti-Catholicism of a large segment of the population. He succeeded in persuading Spain to promise an armistice in the colonies, but since this promise didn't include independence, war was inevitable. The American press severely criticized the Catholics, accusing them of treason. Archbishop Ireland, although he showed his sympathy toward Spain in his private correspondence, exhorted North American Catholics to accept the supreme authority of the nation. The archbishops of the United States proclaimed the Catholic loyalty to the nation and to the American flag. Finally, the Vatican issued a decree of neutrality.²

On the 8th of September of 1898, the Vicar Capitular, don Juan Perpiñá, wrote a pastoral letter about the responsibility of the State regarding the religious and moral tone of the people, regardless of the issue of separation of Church and State. The old regime aided the Church economically — a fact which fostered the view in the mind of the faithful that the priests were employees of the government. Thus, there grew much indifference toward them. Nevertheless, the deterioration of the Church would have negative repercussions in the Puerto Rican society of the 20th century, according to the Vicar Perpiñá.³

The Church seemed to be alone in her religious fight. She had against her segments of civil authority, the press, the Protestants and the free thinkers.

1 George C. Groff, "Porto Rico as a Mission Field", *Independent* 50 (December 22, 1898): 881.

2 Thomas E. Wangler, "American Catholics and the Spanish-American War", in *Catholics in America*, ed. Robert Trisco (Washington, D.C.: Publications Office, United States Catholic Conference, 1976), pp. 251-252.

3. *Boletín Eclesiástico*, September 8, 1898, pp. 153-171.

The latter saw the war as an evolutionary step against obscurantism. Since the Church refused to bury Catholics alongside Protestants, suicide victims and those excommunicated from the Church, the free-thinkers praised the pluralism of the United States and showed a great adherence toward the new nation. For that reason, it is not surprising that the ecclesiastical functionaries had to appeal some of its cases before the tribunals of the United States.

We can also understand the Vatican strategy of naming American clergy to the Episcopal sees of Puerto Rico. In fact, Bishop Placide La Chapelle, Apostolic delegate for Cuba and Puerto Rico, and who protected the religious interests before the new regime, recommended his friend, Bishop James H. Blenk, for the diocese of Puerto Rico. When Bishop Blenk took canonical possession of the diocese, December 20, 1899, it was in a poor state. Even though Puerto Rico was considered a territory of the United States, Bishop Blenk tried to find a solution beneficial to the Church like the one which had been negotiated in Cuba and in the Philippines. Bishop Blenk was presented to President Roosevelt as a sincere friend and collaborator of the government, faithful under any condition and as one who contributed "in a substantial and constant way toward the end for which we are all striving in Puerto Rico".⁴

Certainly, the attitude of Bishop Blenk was more diplomatic than that of the Vicar Capitular Perpiñá but it was questionable to identify the objectives of the civil authority with the religious mission of the Catholic prelate. Even though Bishop Blenk had worked under a political system in which there was a constitutional separation of Church and State, he knew the disadvantages of this for the Catholic faith. If it is true, from a theoretical viewpoint, that the principles which inspired the Declaration of Independence are the same as those of Christianity, it is also true that the practical thrust of these principles suffered the consequences of much ambivalence. American society is founded on the belief that all men are created equal, that their fundamental rights do not depend on human law, and that the government exists for the good of man who confers authority on it. However, the interpretation of the First Amendment of the Constitution of the United States, regarding religious liberty, has been prejudicial to the right of Catholics to receive an education which is in harmony with their conscience.

Contrary to some trends of European thought, American law includes all official religions under the title "religious societies", and not just the Catholic Church. The law covers every society organized for the purpose of maintaining public religious worship, usually meeting in some stated place for the worship of God and for religious instruction. As a result of the constitutional acknowledgment of religious freedom and separation of ecclesiastical and civil societies, the term "Church" acquires a general and abstract meaning.⁵

Since the United States Constitution does not recognize the Church as an institution of public law, she has no other alternative than to adjust herself to the juridical norms of private law in order to receive the protection of the

4. Senate Report No. 2977 of the 56th Congress, 2nd. Session, "Disposition of Church Lands in Porto Rico", (February 10, 1903), pp. 1-49.

5. Juan Gelpí Barrios, "Personalidad jurídica de la Iglesia en Puerto Rico", *Revista Española de Derecho Canónico* 95-96 (1977): 396.

civil law. According to the thesis of Juan Gelpí Barrios in his article "Juridical personality of the Church in Puerto Rico", the Catholic ecclesiastical institution faced difficulties in adapting to this situation because the private law did not correspond with the public nature of Canon Law.⁶ The Anglo-Saxon juridical system recognizes the right of property only to physical persons per se and to moral persons or corporations established by law. Consequently, the ecclesiastical hierarchy had to choose between two solutions: to acquire juridical personality through the incorporation as Fee simple or through incorporation as a Trustee-Corporation.

Bishop John Carrol was accused by many of submitting the Catholic Church to the incorporation system of the Trustees. But Bishop Carrol just wanted to save the financial aspect of the religious community.⁷ The corporate solution, which established the collaboration of the layman in the administration of the temporal property of the Church, was eliminated by the Provincial Council of Baltimore in 1829. This Council adopted the Fee simple system, by which the Bishop, as a private person, was the Church's representative before the State. Nevertheless, the Third Plenary Council of 1884 prescribed that the individual bishops, legally constituted as moral persons in "corporation sole", should officially hold and administer all diocesan property. The Council allowed a second alternative: that the bishops should be legally authorized to hold all diocesan goods "in trust". If neither of these solutions were found to be workable in different circumstances, "the bishops were empowered to obtain legal recognition as owners and administrators of all Church goods in their own names personally, by the juridical institution known as fee simple".⁸

Until now, we have been talking about the juridical personality of the Church in the United States of America. This historical background is very important if we are to understand the fundamental juridical situation of the Catholic Church in Puerto Rico. The confusion at this level is so evident that the Most Reverend Fremiot Torres Oliver, Bishop of Ponce, Puerto Rico, saw the desirability of writing an official clarification on the legal status of the Catholic ecclesiastical institution in Puerto Rico.

Bishop Torres Oliver claims that government agencies have sometimes requested the local authorities of the Roman Catholic Church to show proof of the legal condition of the Church as a non-profit corporation or to produce evidence as to the power conferred by the board of directors thereof on said authorities to perform certain acts. "This is the result of assuming that the

6. Ibid., p. 398.

7. Ironically there was another Carroll (Henry Carroll), a prominent protestant clergyman, who was appointed head of a special investigatory commission for Puerto Rico in 1898. Despite his liberal recommendations, Commissioner Carrol did not take in account the religious needs of the Catholics. (United States-Puerto Rico Commission on the Status of Puerto Rico, *Status of Puerto Rico* [Washington, D.C.: U.S. Government Printing Office, 1966] p. 56; Henry K. Carrol, *Report of the Island of Porto Rico* (Washington, D.C.: Government Printing Office, 1899) pp. 27-31).

8. Rev. Edward L. Heston, "The Alienation of Church Property" (I.C.D. dissertation, Catholic University of America, 1941), p. 43. In the footnotes of this page, Rev. Edward L. Heston explains the main characteristic of each method: By a corporation sole "each individual bishop became a legally recognized juristic person with full rights of ownership and administration over all the property included in the establishment of the corporation and all other goods that might accrue to the corporation at a later day". The trustee-corporation "guaranteed to the church equitable title to the property, although the real legal title was vested in the bishop". In the "fee simple" system "the bishop, as an individual, not as juridical person, was the real legal owner of all church property in his diocese". This arrangement was really unsatisfactory and dangerous...

legal situation of the Roman Catholic Church in Puerto Rico is the same as in the continental United States. Such assumption is without foundation".⁹

As has been demonstrated by Juan Gelpí Barrios and others, the juridical status of the Roman Catholic Church in Puerto Rico does not depend on an act of the legislature of Puerto Rico.

Unlike the North American tradition, our local Church has a particular juridical personality, rooted deeply in the structure of the Spanish regime. Moreover, the Church kept its own juridical personality when the Island became a territory of the United States after the Spanish-American War.

This juridical status which goes back to the early Middle Ages, was recognized by the Treaty of Paris on December 10, 1898. The document in question acknowledged the validity of peaceful possession of property by ecclesiastical bodies in the new territory:

"And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatever nationality such individuals may be".¹⁰

During the first decade of American sovereignty, there were various claims against the Church's properties. In the case *Municipality of Ponce v. Roman Catholic Church in Puerto Rico*, the Supreme Court of the United States, explained the purpose of the Treaty of Paris:

"The clause is manifestly intended to guard the property of the church against interference with, or spoliation by, the new master, either directly or through his local government agents. There can be no question that the ecclesiastical body referred to, so far as Porto Rico was concerned, could only be the Roman Catholic Church in that island, for no other ecclesiastical body there existed".¹¹

9. Most Rev. Fremiot Torres Oliver, "Juridical Personality of the Church in Puerto Rico", May 28, 1976 (Mimeographed document, p. 1, Archives, Bishopric of Ponce, Puerto Rico). See also Juan Hernández López, *Pleito Núm. 1: Alegato o argumentación de la parte demandante en apoyo a la acción ejercida y de las pruebas que la justifican* (San Juan: Tipografía La República, 1906); José G. Vivas, "La defensa de los bienes temporales de la Iglesia durante los años 1904-1908", *Alcance de la Revista de Derecho Puertorriqueño*, 1977, Universidad Católica de Puerto Rico; Aníbal Colón Rosado, *Crisis de identidad de la educación católica en Puerto Rico* (San Juan: Cultural Puertorriqueña, 1981) pp. 133-148.

10. Treaty of Paris, Art. 8, par. 2 (December 10, 1898).

11. *Municipality of Ponce v. Roman Catholic Church in Porto Rico*, 210 U.S. 296 (1908), p. 311.

The Supreme Court also analyzed the international nature and the historical roots of this juristic dignity:

The Roman Catholic Church has been recognized as possessing legal personality by the Treaty of Paris, and its property rights solemnly safeguarded. In so doing the treaty has merely followed the recognized rule of international law which would have protected the property of the church in Porto Rico subsequent to the cession. This juristic personality and the church's ownership of property had been recognized in the most formal way by the concordats between Spain and the Papacy, and by the Spanish laws from the beginning of settlements in the Indies. Such recognition has also been accorded the church by all systems of European law from the fourth century of the Christian era.¹²

This means that the Concordat of 1851 is still in force through the Treaty of Paris. Bishop Torres Oliver explains the practical consequences of the ecclesiastical juridical definition in modern times:

"At the time of the cession only one diocese existed in Puerto Rico. At present there are five: the archdiocese of San Juan and the diocese of Ponce, Arecibo, Caguas and Mayagüez. Each diocese is a fragmentation of one entity possessing juristic personality, and each enjoys the same legal status as the original Diocese of Puerto Rico, referred to in the above quoted opinion as "The Roman Catholic Church in Puerto Rico".

None of them has come into existence by act of incorporation, but by action of the Holy See, which has civil legal effects from the moment the document of erection of the new territorial jurisdiction is duly executed by the competent authority.

As head of each ecclesiastical territorial jurisdiction erected by the Holy See there is an Ordinary who can have the title of Archbishop, Bishop, Prelate or Abbot nullius, Vicar or Prefect Apostolic, according as the territory is established as an Archdiocese, a Diocese, a Prelature or Abbey nullius, a Vicariate or a Prefecture Apostolic. At present only the first two types of ecclesiastical territorial jurisdiction have been established in Puerto Rico.

The ordinary, (be he an archbishop, bishop, prelate or abbot nullius, vicar or prefect apostolic) becomes the sole administrator of all the properties of his territory, subject to the law of the Church, from the moment he takes canonical possession thereof either personally or by proxy. The act of taking canonical possession, commonly called installation, is a public act. No further formality is required.¹³

¹² Ibid, p. 324.

¹³ Most Rev. Fremiot Torres Oliver, op. cit., pp. 2-3.

We can see, after Bishop Torres' clarification, that there is no doubt about the organic communion which exists between canonical and international law in the Catholic Church in Puerto Rico. However, Catholic authorities had and have to cope with many conflicts between the political leaders and the ecclesiastical demands.

The Most Reverend Rafael Grovas, former Bishop of Caguas, affirmed that the Church did not feel totally free during the incumbency of the American Prelates in Puerto Rico because the prevailing opinion was that everything which affected the government — especially the Federal government — was anti-American.¹⁴ Bishop Grovas and a group of Catholic leaders organized the "Asociación para la Defensa de la Moral Natural" in order to defend marriage, family, life of the unborn, native language, and religious instruction. Luis Muñoz Marín, founder of the Commonwealth, made the commitment to back legislation allowing voluntary religious instruction in public schools. But the proposal was not approved because Muñoz Marín and Samuel R. Quiñones were absent during the voting in the Senate.

The Christian Action Party (PAC) tried to use political means as a solution to the social and moral problems of Puerto Rico in the light of Catholic principles. However, the experiment was a failure. Bishop Grovas concluded that some local issues, such as abortion and religious instruction in public schools, depend directly on the way they have been previously solved in the United States.

This is the stand of the Catholic hierarchy in Puerto Rico. But we should ask now an ineludible question: What is the position of the civil authorities and non-Catholic religious entities on this issue?

It is very interesting to follow the development of the legal relations between the Church and the State in Puerto Rico from 1917 to 1952. In 1917, the Congress of the United States of America approved the Jones-Shafroth Act, or what we call in Puerto Rico "Ley Orgánica". Paragraph nineteen of the second article of the Jones-Shafroth Act goes beyond the First Amendment in establishing, in great detail, a strict separation between Church and State. This clause absolutely forbids the use of public funds and property for religious purposes.

Protestant groups agreed with this position, since they wanted to clearly define the separation between religious and governmental institutions: "The end to which the Church responds has nothing to do with political power".¹⁵

Naturally, behind the Protestant argument we can perceive a fear that any change in the strict law would give an advantage to the Catholic Church, which has traditionally been the major church in Puerto Rico. The religious minority could suspect that the Catholic majority would manipulate government policies in favor of ecclesiastical aims.

During the debate held before the referendum of the new Constitution of Puerto Rico, Catholics declared that the Bill of Rights should avoid the

¹⁴ "Monseñor Grovas", *El Visitante*, (November 30, 1980) pp. 8-9.

¹⁵ Angel Mergal, *Puerto Rico Evangélico*, April 25, 1951, p. 16. The complete Spanish text reads as follows: "Los evangélicos creemos en la separación de las iglesias y el poder político que vulgarmente se llama estado, porque la iglesia cristiana, según los evangélicos, obedece a una finalidad que nada tiene que ver con el poder político".

style of the Jones-Shafroth Act, and use the First Amendment as a model for its religious freedom clause instead of the Organic Law. "The clause which forbids the State's support should not nullify or vitiate the religious freedom clause".¹⁶ Therefore, the government should back positively all educational and charitable institutions — public or private, lay or religious — on the Island.

Actually, the First Amendment is more liberal than the "Ley Orgánica" (Jones-Shafroth Act). Nevertheless, there exists a secular controversy about the interpretation of the phrase "an establishment of religion". According to a decision issued in 1947 (*Emerson v. Board of Education*), the phrase means that neither the states nor the federal government can establish a church. That is, there is a wall of separation between Church and State.

Given the fact that Congress included a restrictive measure against the use of public funds for religious activities in the Jones-Shafroth Act, decisions such as *McCullum v. Board of Education*, 1948 (a law allowing voluntary religious instruction on public school grounds during school hours was ruled unconstitutional) are valid in Puerto Rico, but other cases, like *Emerson v. Board of Education*, 1947 (New Jersey law permitting reimbursement to non-public — as well as public — school parents for busing expenses) was ruled constitutional because busing was ruled an aid to parents, not institutions; and, therefore, no aid to religion was involved.

We should remember that, although religious freedom is a fundamental right, Congress has the prerogative of governing a non-incorporated territory with considerable leeway. With the creation of the Commonwealth of Puerto Rico in 1952, through Public Law 600, the Island achieved a certain degree of autonomy. The new Constitution adopted a restrictive version of the establishment clause of the First Amendment, establishing freedom of worship and complete separation between Church and State (Article III, Section 3). Besides the clear statement on Church-State affairs, the Constitution supports a non-sectarian public education system and prohibits the allotment of public funds to private schools.

As a matter of fact, the problem is not just the refund of state money to private education, but also the imposition of a political ideology on Catholic schools.

According to the rules established by the local Department of Instructions, the objectives of the private school should be in basic harmony with the principles and ideals expressed in the Preamble of the Constitution of the Commonwealth of Puerto Rico.¹⁷ Even though the rules do not mention these principles, we consider it necessary to enumerate them, since they place the Catholic school in an embarrassing position. Some of the constitutional ideals offer no difficulty. Rather, they are a challenge and a contradiction for civil authority. The Constitution speaks of democracy, of the general good, of human rights, confidence in God. The democratic system is considered a fundamental factor for Puerto Rican life; the will of the

¹⁶ Universidad de Puerto Rico, Facultad de Ciencias Sociales, Escuela de Administración Pública, *La nueva Constitución de Puerto Rico* (Río Piedras: Ediciones de la Universidad de Puerto Rico, 1954) p. 196. See "Mons. Rafael Grovas", *El Visitante* (Nov. 30, 1980), p. 8.

¹⁷ Departamento de Instrucción Pública, Reglamento para la acreditación de las escuelas privadas de Puerto Rico, 4 de mayo de 1972.

people is the source of public power; the political order is subordinated to the rights of man and the freedom to assemble and participate in collective decisions is guaranteed. Other positive elements are the desire for education, faith in the system of justice, devotion to a practical and work-filled life, faithfulness to human values above those of social prestige, social and economic interests, and the hope for a better world.

Nevertheless, we do not understand how the Puerto Rican society has permitted the mix of such sublime ideals with the objects of a particular political ideology. The Preamble of the Constitution presents the creation of the Commonwealth as a result of the exercise of a natural right, with the United States. The Constitutional Convention considered as determining factors in Puerto Rican life: the grant of citizenship of the United States, faithfulness to the postulates of the Federal Constitution and the merger of the two cultures in Puerto Rico. If Catholic schools base its principles on this framework, it contradicts its own philosophy.

The incongruities of the Commonwealth Constitution are very deep. It copies article 26 of the Universal Declaration of the Rights of Man (Art. II, sec. 5) but omits the parts related to the understanding, tolerance and friendship between nations and between all ethnic and religious groups; and also omits the right of the parents to choose the type of education which is to be given to their children. It speaks of democracy and rights, but forgets the thesis of Franklin D. Roosevelt, according to which true freedom cannot exist without security and economic independence.¹⁸ The Constitution establishes religious freedom and equality among its citizens, and at the same time denies public funds to educational institutions which are not of the State (Art. II, sec. 3-5). For that reason, not even students who are educated in public schools enjoy freedom of conscience since a lay ideology or the ideal of the State of political parties and other professional associations dominate there.

The Department of Instruction Regulation of 1972 forbids discrimination based on race, religion, social, economic or political reasons. This democratic ideal should not limit the freedom of private schools to charge tuition fees or to require other necessary payments for its survival. In our judgment, here lies hidden a defect in elementary logic. It is inconceivable that an institution whose end is preeminently religious can not establish certain religious criteria for the admission of its students. It is also illogical that a school that is obliged to finance itself not discriminate for economic reasons. The same system is responsible for the conflict between the rights of the student and the freedom of the school.

In spite of the flux of political affairs, the leaders of Catholic education had to express their opposition to Law Number 31 and to the proposed Regulations that were supposed to be a faithful application of this law. And they did so at the public hearing sponsored by the Department of Education

¹⁸ Following this thought the Rev. Father John F. Mueller criticized the rulings of the Organic Act because he found that they were drawn up "after the Protestant way of thinking in the States and imposed on the people of Puerto Rico". (Fr. John F. Mueller, to the Administrators and Faculties of Catholic Schools, November 9, 1951. Archives, Archdiocese of San Juan, Puerto Rico).

on September 8, 1977.¹⁹ According to the position of the Superintendent of Catholic Schools in the Archdiocese of San Juan, the State rules with respect to private teaching institutions constitute a threat to one of the basic freedoms guaranteed by the First Amendment of the Constitution of the United States. Law Number 31 is no more than an attempt on the part of the State to abrogate these basic freedoms and to usurp the right of parents to educate their children as they see fit. The State is on its way to become a totalitarian parent taking over all the responsibility and rights regarding children.

According to the testimony of the Superintendent of Catholic Schools of San Juan, Francis M. Ouellette, the new Department of Education personnel are not knowledgeable about the situation and tend to follow the letter of the law slavishly:

We acknowledge the right of the State to establish minimum standards for all schools, especially those associated with health and safety of students, and possibly even minimum competency exams for all children in all schools in Puerto Rico. However, it is our opinion that the Department of Public Instruction has two sets of standards, one for public schools, another more exacting and demanding for private schools. Such discriminatory actions should be challenged in court to abort the continued encroachment of the State upon the rights of private-Catholic schools.²⁰

The dissatisfaction of private institutions with the law was expressed in government forums. In fact, on April 22, 1980, the Superintendent of Catholic Schools in San Juan received a copy of Bill No. 1202, intended to amend Article 1 of Law Number 31.²¹ This legislative proposal purported to exclude from current regulation all religious academic institutions operated by a bona fide religious organization not receiving state or federal funds for its functioning. Recognizing the great responsibility which the State has of assuring a better education for its citizens, the bill permitted the State to impose reasonable regulations in the educational field.

The Superintendent of Catholic Schools in San Juan submitted his recommendations on the aforementioned proposal.²² He was scarcely given

19 Superintendencia de las Escuelas Católicas de la Arquidiócesis de San Juan, "Deposición ante las vistas públicas auspiciadas por el Departamento de Instrucción Pública del Estado Libre Asociado de Puerto Rico referentes a la aprobación del Reglamento para la autorización de las escuelas privadas en Puerto Rico, a tenor con la Ley Núm. 31", September 8, 1977 (Mimeographed document, Archives, Superintendent of Catholic Schools, Archdiocese of San Juan, Puerto Rico).

20 Francis M. Ouellette, S.M. San Juan, to S.E.R. Luis Cardinal Aponte Martínez, San Juan, May 14, 1980. Vid. Francis M. Ouellette, S.M., San Juan, to Mr. Hipólito Ortiz, Director de la División de Programas Relacionados con la Docencia, Departamento de Instrucción Pública, April 23, 1980; Peter A. Pontolillo, S.M., Principal, Colegio San José, Río Piedras to Mr. Hipólito Ortiz, April 22, 1980 (copies of these letters in Archives, Superintendent of Catholic Schools, San Juan); Departamento de Instrucción Pública, Propuesta Reglamento sobre certificación de maestros, November 7, 1978, May 1983.

21 Mayra González, Secretaria Ejecutiva de la Comisión de Instrucción y Cultura, San Juan, to Francis M. Ouellette, S.M., April 22, 1980; Cámara de Representantes, Proyecto de la Cámara 1202, August 1, 1979.

22 Francis M. Ouellette, S.M. to Hon. Víctor Rivera Morales, Presidente de la Comisión de Instrucción y Cultura de la Cámara de Representantes, April 23, 1980.

two days to respond. After summarizing the objections of Catholic schools to Law 31 and to the corresponding regulations, he praised the objectives of the House of Representatives proposal 1202. However, Francis M. Ouellette considered that the legislative initiative suffered a primary defect since it deprived students of religious institutions of the benefits, which had been given to them by federal laws. Law Number 31 was, possibly, a threat to the First, Fourth, Fifth and Fourteenth Amendments of the Federal Constitution, and Bill 1202 did not improve the legislation dealing with education in Puerto Rico. When courts have interpreted laws related to educational aid, they have insisted that grants be given to students and not to institutions. It is in the interest of the State to promote the welfare and equal opportunity for students, regardless of the religious affiliation of the academic institution.

Unfortunately, other agencies of the State have presumed to intervene illegally against the autonomy of Catholic schools. On July 25, 1979, the First Circuit Court of Appeals of the United States decided against the Department of Consumer Affairs of the Commonwealth of Puerto Rico.²³ The Department of Consumer Affairs had launched an investigation into the costs of private schools in Puerto Rico. Catholic schools had to submit information regarding its budgets, income, transportation costs, tuition costs, salaries, cost of textbooks, scholarships and other data. Catholic schools refused to comply with the orders of the State alleging that such demands were against the freedom of religion clause of the First Amendment of the Constitution of the United States. It is ironic that once more the Catholic Church of Puerto Rico was obliged to go to the courts of the United States to defend its autonomy before local law.

Summing up, under the Spanish regime, Church and State were united and both exercised their authority over the schools. With the change of government, a separation between the two powers was established. The Church organizes its schools, with its own funds, but cannot interfere in public education. The State, on the other hand, controls public education and issues norms for Catholic schools.

In both cases, there are advantages and disadvantages. However, none of the alternatives has succeeded in defining clearly the place of the Catholic school in the midst of political, economical and social coordinates. The Catholic schools appears yet to be a UFO in the orbit of general education.

In order to survive, on many occasions it has had to act contrary to its own essence. For this reason, the crisis of identity of Catholic education on a universal level, is critical in Puerto Rico. Here the Catholic school navigates on a sea of juridical, political, cultural and social contradictions. To top it all, is the fact that the State can influence catholic education but the

23 *His Excellency Bishop Ricardo Suriñach v. Carmen T. Pesquera de Busquets*, 78-1527 (1st. Cir. 1979).

Church cannot do the same to public education. The Church still depends in a certain sense on civil authority but it does not have the means to democratize Catholic primary and secondary education.

There are more documents and controversies which can shed some light on this topic. We should point out, in conclusion, that relations between Church and State in Puerto Rico are *sui generis*. In some way, the political flux has influenced the Church structure and action, but the ecclesiastical juridical personality keeps its originality and independence. From this point of view, the Catholic Church is perhaps the only autonomous institution in Puerto Rico.

Therefore, we are not surprised at the Puerto Rican Bishops' attitude when they recognize the cultural and religious implications of the status question.²⁴ They claimed that we should conserve and enrich our cultural values, our historical heritage. Furthermore, a political option presupposes, in some sense, a cultural and religious decision. The solution of the status problem can influence — *nolens, volens*— on the juridical identity and constitution of the local ecclesiastical institutions.

24 Conferencia Episcopal Puertorriqueña, "Declaración sobre la situación política en Puerto Rico", *El Visitante* (April 30, 1983) pp. 8-9.

LOS ORIGENES DE LA CLAUSULA TERRITORIAL*

Por Carlos Rivera Lugo**

INTRODUCCION

No existe, quizás, un concepto que sea más fundamental al esquema constitucional inaugurado hace más de dos siglos en Estados Unidos que el principio de que los pueblos coloniales poseen un derecho inalienable a la autodeterminación e independencia. Las trece colonias británicas, al rebelarse, proclamaron este principio en la Declaración de Independencia cuando expresaron que "estas colonias unidas son, y en Derecho deben ser, Libres e Independientes". Plantearon, en la Declaración, que los pueblos coloniales poseen el derecho a "asumir entre los poderes de la tierra, la estación separada e igual a la cual las Leyes de la Naturaleza y el Dios de la Naturaleza le dan derecho".¹

El origen del principio moderno de la autodeterminación generalmente se ubica en la doctrina de la soberanía popular, proclamada por la Revolución Francesa: el gobierno debe estar basado en la voluntad del pueblo, el cual, además, posee el derecho a la secesión y a su organización como estado independiente si no está de acuerdo con el gobierno bajo el cual se encuentra.² Pero en el contexto de la Revolución Francesa, por "voluntad del pueblo" se

* El presente artículo es una versión editada y ampliada de una monografía sometida por el autor, en abril de 1983, como requisito de un seminario graduado sobre los orígenes de la Constitución y la Carta de Derechos de Estados Unidos, con el profesor Eric Schnapper, en la Escuela de Derecho de la Universidad de Columbia, Nueva York. Este trabajo está dirigido, esencialmente, a analizar los orígenes de la Cláusula Territorial mediante el análisis de documentos, declaraciones y escritos de la época, o en torno a la época y el tema que nos ocupa. De ahí que básicamente nos circunscribamos a un período histórico limitado y no seguimos el desarrollo y aplicación de la Cláusula Territorial más allá del período inmediatamente posterior a la adopción, en 1789, de la Constitución federal. Esperamos que este esfuerzo resulte útil e iluminador para la comprensión de una disposición que permea, decisivamente, las relaciones constitucionales entre Puerto Rico y Estados Unidos.

** J.D., Universidad de Puerto Rico; LL. M., Universidad de Columbia; Profesor Adjunto, Facultad de Derecho, Universidad Católica de Puerto Rico.

1. Vea la Declaración de Independencia de Estados Unidos en Henry Steele Commager, *Documents of American History*, Vol. I, Prentice-Hall, Inc., New Jersey, pp. 100-103.

2. Vea, por ejemplo, A. Rigo Sureda, *The Evolution of the Right of Self-Determination*, A.W. Sijthoff, Leiden, 1978, pp. 17-18.