

## THE PIOUS FUND: MEXICO AND THE U.S. FOUGHT FOR A CENTURY OVER A 250-YEAR-OLD CALIFORNIA CHARITY

By John S. Caragozian

The dispute between Mexico and the U.S. over a charity established in the late 1600s arose out of the two countries' intertwined history in California.

Explorers sailing from the then-Spanish possession of Mexico "discovered" Baja California in 1535 and Alta California — the present-day U.S. state of California — in 1542. However, colonization of the Californias proved difficult, owing to Baja's inhospitable climate and to both Californias' isolation from the rest of Mexico.

The Roman Catholic Church's Jesuit order began colonization by founding the first Baja mission in 1697. For the next 70 years, Jesuits continued to found Baja California missions, 13 in all. In 1767, Spanish King Charles III expelled the Jesuits from Spain and Spain's possessions, and the Dominican order assumed control of these missions.

Two years later, in 1769, Franciscans under Junipero Serra founded the first of what would become 21 Alta California missions.

The Baja and Alta missions' primary function was to Christianize native peoples. The missionaries converted natives and then compelled religious service attendance, residency, and work. Punishments included flogging and other physical coercion.

To modern eyes, the missions appear, at best, controversial. Even in the early 1800s, political authorities questioned why missionaries were not promoting natives to religious leadership and ceding mission lands to natives.

One fact on which contemporaneous witnesses and modern historians agree is that the Baja and Alta missions were rarely if ever financially self-sufficient.

The Spanish crown resisted underwriting the missions, so it became critical to create alternative financial support. Beginning in 1697 with the first mission, missionaries solicited cash, real estate, and other assets from Mexicans for a California "Pious Fund." The missionaries administered the fund's resulting assets for "propagation of the faith." Later, assets were held in trust by the donors, and then, in 1717, the Jesuit order took direct control of the fund. See *generally* Garret McEnery, "The Pious Fund of the Californias," 12 *Catholic Encyclopedia* (1911).

The Spanish crown succeeded to the Fund's control after the Jesuits' 1767 expulsion. Upon independence in 1821, Mexico replaced Spain. In 1838, Mexico delivered the fund to the bishop of the newly created Diocese for the Californias, which was comprised of the Mexican territories of Baja and Alta California.

However, in 1842, Mexican President Antonio Lopez de Santa Anna took back the Pious Fund, selling its assets, ostensibly to save administrative overhead, and depositing the proceeds in Mexico's national treasury. In exchange, the treasury agreed to pay the Diocese annually 6% of the fund's \$1 million-plus value, though almost no actual payments were made. Indeed, one historian has referred to Santa Anna's actions as "confiscation." Francis Weber, "The Pious Fund of the Californias," 43 *Hispanic American Historical Review* 78, 82 (1963).

These matters stood until the 1846-47 Mexico-U.S. War. Under the 1848 Treaty of Guadalupe Hidalgo ending the War:

- Article V established a new international boundary, with Alta California becoming part of the U.S. and Baja remaining part of Mexico.
- Article XIV discharged claims against Mexico from claims "previously arisen," but not yet adjudicated.

The Vatican then divided the Diocese of the Californias, with the U.S. portion becoming a new Diocese under the jurisdiction of a U.S. bishop in Monterey, California.

In 1850, California was admitted as a U.S. state. In 1851 and 1852, the new California Legislature and new California Diocese, respectively, began to investigate the Pious Fund. California's bishop conferred with U.S. Supreme Court Chief Justice Roger Taney (later to become infamous for *Dred Scott*) and then travelled to Mexico City. However, Mexico's government refused any payment to the California Diocese. Likewise, Mexico refused payments to the Mexican Diocese.

In 1868, Mexico and the U.S. established a Mixed Commission for claims by one country's citizens against the other country arising between 1848 and 1869. In 1870, prominent California lawyer John Doyle and his brother-in-law U.S. Senator Eugene Casserly filed with the Commission a U.S. claim regarding the Pious Fund on behalf of the California Diocese. Mexico retained former U.S. Attorney General Caleb Cushing. *See id.* at 84-87.

The U.S. argued that the California Diocese, as a Pious Fund beneficiary, was entitled to half of 21 years of the promised 6% payments; the half was based on a somewhat arbitrary even split between the Mexican and U.S. Dioceses, and the 21 years was based on the Mixed Commission's 1848-1869 jurisdiction. The U.S. also noted that the Pious Fund's original purpose of Christianizing natives was still ongoing.

Mexico countered that (a) the California Diocese lacked legal rights to the fund or 6% payments and (b) in any event, Treaty of Guadalupe Hidalgo Article XIV had discharged the claim.

The commission deadlocked, so the claim was submitted to a neutral "umpire," Britain's ambassador to the U.S.

In 1875, the ambassador decided in favor of the U.S., awarding it \$904,700 (in gold), which was the California Diocese's half of the 21 years of payments. The ambassador awarded the same amount to the Baja churches. Mexico paid California's entire award in installments through 1890. *See id.* at 87-89.

The year following this last installment, the U.S., again on behalf of the California Diocese, filed a second fund-related claim against Mexico, for the 6% payments after 1869. Mexico rejected this second claim, and, in 1899, it was submitted to the Permanent Court of Arbitration at The Hague. The arbitration was conducted in French before five arbitrators, Mexico and the U.S. each having chosen two, with those arbitrators choosing the last of the five.

The U.S. argued that the British Ambassador's 1875 decision was *res judicata* as to the California Diocese's entitlement to half of the 6% annual payments. Mexico disputed *res judicata*'s application and added that Mexico's payment of the entire 1875 award was a final satisfaction of all related claims. *See id.* at 89-91.

In 1902, The Hague arbitrators decided unanimously in favor of the U.S., holding that the 1875 decision was *res judicata*. The U.S. was awarded \$1.4 million in back payments plus \$43,050 per year in future payments.

However, the future payments were awarded in Mexican currency, and its value plummeted. Mexico's government and economy suffered further during the revolution that began in 1910 and related civil war.

Coinciding with the civil war, Mexican and U.S. armies and navies repeatedly clashed in both countries. In this "Border War," over 1,000 civilians, soldiers, and sailors were killed between 1914 and 1919. Mexico and the U.S. also severed diplomatic relations. With these internal upheavals and external conflicts, Mexico stopped Hague payments altogether by 1915.

Mexico and U.S. restored diplomatic relations in 1923, but deep and numerous conflicts continued. In addition, relations between the post-civil war Mexican government and Roman Catholic Church were problematic.

Accordingly, it took until 1967 to finally settle the Pious Fund dispute: Mexico made a one-time payment of \$720,000 to the U.S. (which then distributed all proceeds to California and other U.S. dioceses and archdioceses) and was released from all further claims regarding the fund.

This settlement was due in part to the Roman Catholic Church's first western U.S. Cardinal, Archbishop James McIntyre of the Los Angeles Archdiocese. While his religious and political conservatism may be remembered today, McIntyre should be credited with downplaying the legal arguments and, instead, trying to facilitate better relations between the Church and Mexican government. *See generally*, Francis Weber, "The United States v. Mexico: The Final Settlement of the Pious Fund" (1969), 49-51. The settlement also ended the unfavorable optics of a wealthy U.S. repeatedly demanding charitable money from Mexico.

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