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The Legal Basis of Spanish Imperial Sovereignty

H. DE LA COSTA

THE MONOGRAPH OF Father Gayo Aragón on the theories of the early missionaries of the Philippines regarding Spanish imperial sovereignty, reviewed elsewhere in this issue, has encouraged the present writer, whose interests have for some time now lain in the same direction, to publish the following notes on certain related features of the same general problem.

It is well known that as soon as the first bishop of the Philippines, Fray Domingo de Salazar, took possession of his diocese, he came into conflict with the *encomenderos** of his jurisdiction. Such conflicts were of very frequent occurrence in the early history of Spanish colonization both here and in the New World. It is important, however, to determine the precise point at issue in the Philippines. Unlike his confrères in the West Indies earlier in the century, Bishop Salazar did not challenge the institution itself of the *encomienda*. Nor did he object, in principle, to the imposition of the tribute which it involved and which was in fact its reason for being. What he objected to was the *scale* of the tribute as levied on Christian and non-Christian, on "pacified" and "unpacified" natives.

* The *encomienda* in its mature form was the royal grant to a deserving colonist of the right to collect tribute and services from the natives of a specified territory on condition that he protect them in their persons and property, and see to it that they receive instruction in the Catholic religion.

Obviously, between the memorable sermon of Fray Antonio de Montesinos in 1510, which may be said to have started the controversy by attacking the *encomiendas* as slavery in disguise, and the equally memorable "Twenty-five Conclusions" of Bishop Salazar in 1591 which strove to regulate their imposition, a process of development had taken place from which the *encomienda* emerged as a colonial institution generally conceded to be just and necessary. Ernesto Schafer, in his admirable work on the Council of the Indies, brings out the fact that the *encomienda* as finally institutionalized was essentially a compromise, arrived at after long delays and much hesitation, between economic necessity and Christian justice.¹ It was necessary that the colonies established by Spain overseas should be profitable, at least to the actual colonizers; if not, why establish them? If they were to be profitable, it was necessary that the natives perform a sufficient amount of work beyond that which they needed to maintain themselves, as they had been doing until the Spaniards came, at the margin of existence. But this was precisely what they strenuously objected to, and to compel them against their will seemed to be contrary to Christian principles.

Hence, some way had to be found to make the native work for his new master without violating his rights as a man. It may be noted in passing that Spain seems to have been the only colonizing power that worried about this problem to any great extent in the sixteenth and seventeenth centuries. Her various attempts at a solution issued in the *encomienda*, which was essentially predicated on the exchange of services: the native was obliged to pay tribute to the *encomendero*, who was in turn obliged to protect him in his person and property, and to instruct him in the Christian faith. So far, so good; but suppose the native refused to be protected and instructed in the faith; or suppose the *encomendero* failed to provide such protection and instruction; could any tribute in justice be imposed? And if so, how much? It is at this stage—what we may term the Philippine stage—of the develop-

ment of the *encomienda* as a political and social institution that the Salazar controversy must be placed.

Of course, there would scarcely have been any problem if the primitive societies within the orbit of the Spanish conquests were accustomed, like the high civilizations of Mexico and Peru, to producing a taxable surplus; or if they had a sufficient supply of free labor which could be gainfully employed in revenue-producing enterprises. But such was not the case; and the Dutch economist, J. H. Boeke, suggests that the fundamental reason lies in the structure itself of these primitive societies.² The primitive clan community, such as that which the Spaniards found in the Philippines, was a self-contained economic unit which produced just enough for its own needs. Within its framework the whole rhythm of life—religion, custom, law, technology—was poised on a delicate and precise balance between land and family. To destroy that balance by imposing an added burden on the land or by replacing the family system with a system of contract labor would be to make life difficult and often impossible.

This was principally what caused the social crisis in the West Indies so eloquently deplored by Las Casas, and it was the fear of such a catastrophe being repeated in the Philippines that urged Bishop Salazar to take up arms against the *encomenderos*. I have outlined the course and outcome of this controversy in another article, in which I suggest that as a matter of fact what saved the Philippines from the fate of Hispaniola was not so much the resolute action of Bishop Salazar and his fellow missionaries, admirable though it was, but something more prosaic: the China trade.³ For the increasing profits of that trade bound the Spanish colonists to Manila and its harbor with threads of silk—China silk—and by so doing eased the pressure on the native population, thus giving the missionaries more or less of a free hand in organizing it along Christian lines. At the same time, as W. L. Schurz well brings out, the trade retarded the development of the country's natural resources, until in the nineteenth century the

Penelope's web woven by the shuttling galleons was unmade for good.⁴

It is easy to see how the controversy on the tribute would lead to a great deal of soul-searching on the subject of the moral and legal basis of Spanish imperial sovereignty. Was the conquest of the New World justified? Did the Spanish Crown have any legitimate title to the Indies? To historians without sufficient knowledge of, or sympathy with, the Spanish character, the prolonged debates and conferences among *letrados* and bureaucrats on these questions seem peculiarly profitless, since the *conquista* was an accomplished fact which no one had the slightest intention of undoing, even if it should turn out to have been an act of injustice. It is a highly complex problem of national psychology which we gladly transmit as not pertinent to our present discussion. However, it should be pointed out that in the Philippines these questions were by no means purely academic. North and south of the Spanish city of Manila lay extensive tracts of unconquered territory, including whole islands. Was it lawful to conquer them? Or, to use the less objectionable term preferred by Philip II, was it lawful to "pacify" them? And beyond the islands lay China and Japan. Even a small expedition, if that expedition consisted of the peerless Spanish infantry, would be sufficient to reduce them to subjection. That was hardly the problem; the problem was, would such an expedition be justified? This is what lends such piquancy and point to the "juridico-theological" speculations of Bishop Salazar, Governor Dasmariñas, Father Sánchez and the Oidor, Dávalos.⁵

The researches of the distinguished Mexican historian, Dr. Silvio Zavala, into the political philosophy of the *conquista* have made the task of interpreting and evaluating these documents considerably lighter, by pointing the way to an integration of the theories elaborated by the Spanish jurists and theologians of the sixteenth century with the general development of Western political thought.⁶

He rightly sees in the famous Bull of Alexander VI and

in the *requerimiento* * drawn up by Palacios Rubios the influence of the Augustinist tradition; and, on the other hand, in what he calls the "revisionist" school headed by the great Dominicans Vitoria and Las Casas, the influence of the Thomist tradition. It is difficult to formulate the basic difference between these two medieval syntheses. We may do so perhaps in a very rough sort of fashion by saying that the Augustinist system placed so strong an emphasis on the reality of the supernatural order as to deny validity to a natural order independently of the supernatural. The Thomist system, on the other hand, while holding firmly both to the reality and the primacy of the supernatural order, maintained that precisely because that order is supernatural—by reason, that is, of its very transcendence—it is perfectly distinguishable from the natural order; it completes, but does not destroy, nature; and hence, the natural order has an autonomous validity independently of the supernatural.

It will be seen from this why the followers of the Augustinist tradition were led logically to affirm that political sovereignty, which belongs to the natural order, is implicit in the fullness of supernatural authority invested in the Pope as the Vicar of Christ; whereas the Thomists saw in that supernatural authority nothing which could invalidate the political sovereignty by nature resident in the peoples conquered by Spanish arms.

Sepúlveda is somewhat special; I don't think he quite fits among the Augustinists. In holding the Aristotelian doctrine of natural slavery—if he did hold it, an interpretation challenged by Bell⁷—he approached closer to the Renaissance version of a third medieval tradition, that technically known as Latin Averroism. At any rate the Philip-

* The *requerimiento* was a formal "requirement" or summons which a conquistador was supposed to read or cause to be read to the Indian chiefs of the New World, demanding their voluntary submission to Spanish rule under pain of being compelled to do so by force of arms. This document, issued by the central government at Madrid, was composed by the royal official mentioned in the text. It offered as the principal motive for the acceptance of Spanish sovereignty the fact that that sovereignty was granted by the Pope in his capacity as ruler of the whole world.

pine tracts mentioned above show a clear shift of opinion in favor of the "revisionist" school, and the ingenuity of Father Sánchez, for instance, is exercised in discovering principles to justify a war of conquest other than those of the markedly Augustinist *requerimiento*.

It is interesting to note in passing that what the medieval and Renaissance Augustinists held regarding the relations between Church and State was not necessarily what St. Augustine himself taught. The Abbé Arquilliere has shown that what he calls political Augustinism was an interpretation rather than a mere explication of Augustine's more balanced views; a deviationist interpretation, as it seems, elaborated amid the dissolution of the fabric and even the very idea of the State which was the characteristic feature of the Dark Ages.⁸

It is well known that the Augustinist tradition was preponderant in the papal curia at the time the Bull of Alexander VI was drafted, and hence it is in the light of that tradition that the grant of imperial sovereignty to the Crown of Castile must be interpreted. Nevertheless, Dr. Zavala's treatment of the subject in his *New Viewpoints*, while most informative in matters of detail, is somewhat inconclusive. Perhaps it is impossible, in the present state of our knowledge, to tell exactly what the Pope—or the papal curia—thought the Holy See could grant or was actually granting to the Crown of Castile.

We are on surer ground with regard to the juridical basis of the grant of the *patronato*, that is, the privileged position as lay patrons of the colonial Church, granted by the Holy See to the Spanish sovereigns on condition that the latter provide for its material support. It is clear that the grant of the *patronato* imposed certain obligations while conceding certain privileges; but Father Bayle's thesis that it was therefore a bilateral contract seems to be an oversimplification of a complicated and not fully explicit agreement.⁹ But if there remains some uncertainty as to what precisely the Holy See meant by the *patronato*, there

can at any rate be no doubt as to what the Spanish Crown meant to derive from it. The section of Dr. Schafer's second volume in which he describes the exercise of this royal prerogative by the Council of the Indies is one of the most competent in the whole work.

Ample documentation is given for the successive turns of the screw by which that college of lawyers strained and stretched the papal grant to mean an ever increasing royal control of the colonial Church. High points in the process are indicated: the refusal of the *exequatur* * to an episcopal ceremonial approved by the Holy See but which did not conform to Spanish usages; the wild pursuit by royal agents of a Dominican friar who preferred to consult his religious superiors in Italy rather than his royal master in Madrid regarding the affairs of his Order in Mexico.

The decline of the colonial clergy in zeal and discipline towards the end of the sixteenth century sufficiently aroused the slow-footed Council of the Indies to undertake measures of reform, notably the proposal that the religious orders appoint commissary generals resident at the royal court with full authority to negotiate with the Council regarding the selection of personnel and other missionary affairs. The measure failed due to the stubborn opposition of the orders. Dr. Schafer regards this as highly reprehensible; I would like to suggest that there is something to be said for this singular lack of cooperation. The office of commissary general, while it would doubtless have expedited the transaction of missionary affairs, would just as certainly have lent itself to an even more absolute control of the colonial Church by the Council. Whether this was a consummation devoutly to be wished depends on one's conception of the objectives and methods of missionary activity. My own impression is that missions directly subject to Rome have fared better as missions, though not perhaps as instruments of imperialism, than those under some form or another of State patronage.

*This was the term used for royal permission to promulgate papal decrees in Spain and the colonies. Without it, of course, such decrees could not be considered binding.

¹ *El Consejo real y supremo de las Indias*, 2 v., Seville, 1935-1947.

² In his essay, *The Interests of the Voiceless Far East*, Leyden, 1948.

³ "Church and State in the Philippines During the Administration of Bishop Salazar, 1581-1594," *Hispanic American Historical Review*, XXX (1950), 314-335.

⁴ W. L. Schurz, *The Manila Galleon* (New York, 1939), pp. 39-44.

⁵ Some of these treatises have been published by Pablo Pastells, S.J., in his edition of Francisco Colín's *Labor evangélica* (3 v., Barcelona, 1900-1901), and by Lewis Hanke and Agustín Millares Carlo in *Cuerpo de documentos del siglo XVI*, Mexico, 1943. They are summarized and studied in Father Gayo Aragón's monograph, reviewed elsewhere in this issue.

⁶ Chiefly in the following works: *New Viewpoints of the Spanish Colonization of America*, Philadelphia, 1943; *La filosofía política en la conquista de America*, Mexico, 1947; and *Estudios indianos*, Mexico, 1948.

⁷ Aubrey FitzGerald Bell, *Juan Ginés de Sepúlveda*, London, 1925.

⁸ Cf. *L'Augustinisme politique*, Paris, 1934.

⁹ Cf. Constantino Bayle, *La expansión misional de España*, Barcelona, 1936.

