

Miguel de Benavides: Advocate of Human Rights in the Spanish Regime

The juridical and political reflections of Miguel de Benavides on the conquest of the Philippines are contained in a document entitled "Ynstruccion para el gobierno de las Filipinas y de como los an de regir y gobernar aquella gente". This treatise was written in Madrid, probably either in the convent of Atocha or that of Sto. Domingo at the end of the XVI century. Whether his Majesty can exact tribute from non-Christians who were subjugated and conquered by force of arms without, in any way, having provoked the Spaniards is the central problem of Benavides' "memorial".

It will be observed that this manner of stating the "quaestio disputata" already suggests that inasfar as Benavides was concerned there was no legal title by which the rulers of Spain could establish a temporal and political government. It could not have been by a just war that they enjoyed the right by conquest. He granted a certain spiritual sovereignty on the basis of the Divine command to preach the Gospel to all nations, and consequently of the obligation of the Kings of Spain to accomplish such a mission entrusted to them by the Pope. He steadfastly maintained, however, that the only basis for government would be the *voluntary submission* of the natives, chieftains as well as subjects, expressed in a free referendum.

In a number of propositions, Benavides develops his theory.

On the Baptized

Proposition 1: On the question to tribute there is no parallelism between the Mexican situation and the Philippines.

Almost everywhere in Mexico the baptized intermingled with the unbaptized in such a way that the King of Spain could no longer leave the territory without exposing the faith to many dangers and leaving the Christians in unending strife with the non-Christians. For this reason if the King of Spain had established a government all those who desired to live within such a dominion, be they baptized or not, also had to submit themselves to the laws promulgated by the King, including the law exacting tribute. Vassals paid tribute to their lords not by reason of being believers or otherwise but to support the government that maintained the peace and defended the people against their enemies.

Although this was the case in Mexico it was not so in the Philippines. By what title did the King of Spain arrogate to himself the authority of a sovereign over the natives with the right to tax, a king whose soldiers had established themselves in the islands by force? Neither could it be argued that the faith had to be protected since in many regions it had not yet been preached.

Proposition 2: The King of Spain had no right to deprive baptized native chieftains of power which they had prior to baptism. He was, on the contrary, obliged to acknowledge their authority over their subjects.

This conclusion is in conformity with the Bull of Paul III which affirms that non-baptized chieftains are true rulers over what pertains to them. To establish this conclusion, Benavides argues in a Scholastic manner from a premise commonly accepted by theologians:

The law of grace does not destroy nature.

Ergo: By baptism, the chieftain does not lose the dominion and governance that were his prior to baptism.

In fact, Thomas Aquinas, his brother-Dominican, maintained that the unbaptized could legitimately rule over the baptized.

Furthermore, if what is desired is to attract natives to the faith, there can be nothing more counterproductive than for a na-

tive to be deprived of his landholding, his dominion and his honor because of becoming a Christian.

To deprive anyone of his estate is so great a penalty as to be comparable with the penalty of death. It would be most unjust for the Holy Father to inflict such a penalty on natives who have done the faith no wrong, but have rather accepted it. It would be equally unjust for the rulers of Spain to receive such a donation from the pope. There is, furthermore, a reason of convenience: for the preservation of the faith it is a better policy not only to allow the native chieftains who have converted to continue in their administration but even more to confirm them in their sovereignty.

Proposition 3: The kings of Spain exercise some authority over baptized natives even when such natives may not yet have rendered obedience; even when there is opposition, the king may collect some tribute.

The baptized, Benavides claims, may be compelled in justice to pay some tribute to the king in consideration of what is done for them, such as the sending of missionaries and attending to their defense. The tribute, however, must be moderate, considering the capacity of the natives to pay it. In all cases scandal must not be occasioned.

Ad primum: The Pope enjoys plenary and direct authority in spiritual affairs and indirect power in the temporal domain. What he orders in matters of faith and the conduct of the Christians does not depend on whether it is acceptable to Christians or not. Consequently when the Pope judges it necessary to place a nation under some king to sustain them in the faith and in the practice of the Christian religion the king is to accept such a responsibility and the Christian subjects are to submit. This is what the Pope did in favor of the kings of Spain in the case of natives converted to the faith.

Bañez confirms this position. "Et similiter concessit, et potuit concedere, ut si converterentur ad fidem barbari illi homines, Reges Hispaniae essent illorum tutores, et haberent ergo Cesaream quamdam potestatem, quam habet imperator modo circa quosdam principes et reges". (1a, 2ae, quaest. 10, a. 10, dubium 4, concl 5)

Ad secundum:

a) If the King of Spain has supreme dominion over the baptized natives it follows that the latter are obliged to recognize such a dominion by some form of tribute.

b) By accepting for himself and for his Catholic successors what the Bull of Alexander VI had conceded the king is bound to govern the baptized natives in matters that affect their faith, defending them from harrassment by infidel chieftains, protecting the missionaries and establishing tribunals to administer justice. The baptized natives then are also obliged to pay a corresponding tribute.

c) The ministers are to be maintained by those whom they serve. In 1 Cor 9:9, Paul the Apostle teaches this. Since it is the king who sends ministers and supports them, financing their trip and providing them with the necessities of their endeavours it is a demand of justice that the baptized bear their share of the costs of supporting the ministers of the Gospel.

On the non-baptized

Proposition 1: When, in a province, some are converted to the faith whose lord remains unbaptized the Church, and the king of Spain acting on her behalf, may withdraw the Christian subjects from the governance of such a pagan lord.

In Thomas of Aquinas, there is support for this doctrine. "Potest tamen juste per sententiam vel ordinationem Ecclesiae, auctoritatem Dei habentis, tale ius dominii vel praelationis tolli; quia infideles merito suae infidelitatis merentur potestatem amittere super fideles, qui transferentur in filiiis Dei. Sed hoc quidem Ecclesia quandoque facit, quandoque non facit." IIa-IIae, q. 10, a. 10)

The proof of this position lies in the power of the Church to govern the faithful to the point that when it becomes necessary the faithful are withdrawn from the dominion of the non-baptized. After all, did not St. Paul reprimand the Christians who pleaded their cases before pagans? Should pagan judges arbitrate between the faithful they would then come to know the sins and defects of the faithful, occasioning a diminution of regard for the Christian faith.

Arguing a fortiori, Benavides draws on an analogy. The bond of marriage may be dissolved in favor of the faith, and this bond is even more firm than that between a subject and his lord. Furthermore the Church can withdraw a son from the authority of his father, and yet this authority comes from nature. With greater reason then can the Church, when she judges it opportune, withdraw from non-baptized chieftains their authority over baptized subjects.

Proposition 2: It would not be legitimate, as a universal rule, to deprive a pagan ruler of his Christian subjects unless there is a preceding inquiry into the causes for such action.

Paul III had already made it clear that except when a ruler impedes the practice of the faith he may not be deprived of his power over his subjects. Then St. Thomas teaches: "In illis vero infidelibus qui temporaliter Ecclesiae vel ejus membris non sub-jacent predictus ius Ecclesia non statuit, licet posset instituire de iure. Et hoc facit ad scandalum vitandum."

It would occasion scandal were converts to the Christian religion to refuse obedience to their non-baptized lords under the pretext of liberty. Jesus himself, the Son of God, paid the temple tax to avoid occasioning scandal.

Proposition 3: It cannot be a universal rule for natives who convert to the faith to excuse themselves from obedience to their unbaptized chieftains. In cases where the king should judge it necessary to withdraw a baptized native from the obedience he owes his native lord the circumstances governing each case have to be studied.

There is no disputing the authority of the king of Spain to dispense a convert from obedience to his native sovereign; this power follows from the king's obligation to preach, to propagate and to defend the Christian religion. It cannot be a universal law, however, to proceed in this fashion for reasons discussed under the second conclusion. There is, furthermore, no reason to suppose that the Pope has granted to the king of Spain more power than he himself enjoys.

Proposition 4: In the Indies there has never been reason to dispense subjects converted to the faith from the obedience they owe their native chieftains.

The proofs are mainly historical. In the Indies, among the first to be converted have been the chieftains, the native rulers. Never have these impeded the conversion and the baptism of their subjects. If, for any reason, the rulers themselves would not receive baptism, they would allow their children to receive it.

Rights and Obligations of the Non-baptized

Having discussed what the Pope and the king of Spain may do with respect to pagan chieftains, Benavides proceeds to treat on what pagan subjects may or may not do.

Proposition 1: Neither the Pope nor the king of Spain may levy taxes on the non-baptized by ecclesiastical title for the purpose of sending them preachers and ministers unless these are freely desired or accepted by them.

It is clear that a stipend for the support of the clergy and the maintenance of the church is a purely ecclesiastical title, and therefore can be exacted only from a subject of the Church or from one preparing to be a subject of the church, such as a catechumen. Therefore those who are not members of the Church nor desire to be so are under no obligation to pay a stipend.

Benavides argues by analogy. A stranger is not taxed until he has crossed the boundary into a kingdom, residing therein, bringing merchandise or taking up residence for some other reason. Since it is by baptism that one becomes a subject of the Pope it follows that he who is not baptized is not bound by the decrees of the Pope.

Proposition 2: When the non-baptized desire that there be preachers sent to them they are bound to support them correspondingly.

Benavides adduces texts from Scriptures (Lk 10, 7; 1 Cor 9, 7) to prove his point. Jesus himself urged his disciples whom he had sent to live by what the people had to offer them.

Proposition 3: The king of Spain cannot collect tribute from the non-baptized to defray the expenses of missionaries sent to the Indies unless the latter freely, knowingly, and without fear submit themselves.

Under no human law can pagans be compelled to convert to the faith or to acknowledge Jesus Christ. Neither can they be punished for not accepting the faith. This being so, neither the Pope, as Vicar of Christ, nor the king of Spain who is his delegate, may forcibly claim their submission.

Francisco de Vitoria already taught that by refusing to accept the faith, non-believers may sin, but there is no justification in that for punishment, or for depriving them of what is theirs. If they cannot be compelled to recognize Jesus Christ, nor his Vicar, nor his Viceroy, for what reason can they be taxed to cover the expenses of messengers sent to them to secure their conversion?

Benavides adds that if natives could be compelled even only to pay the costs of missionary work the door would be open to a declaration of war on all non-believing peoples under the pretext of converting them; this would however be making only enemies of the Gospel. Apropos to all this Benavides recalls the words with which Jesus Christ reprimanded the Pharisees for traversing land and sea in search of a convert while really motivated by vain glory and the greed for temporal power.

So as to leave no doubt on the injustice of collecting tribute from the natives who had no desire of converting to the faith, in order to cover the expenses of missionaries sent, Benavides suggests that whatever has been given to the King in form of donation, alms or pious dispositions is more than sufficient to meet the expenses of the king.

Filipinos — Not Subjects of the King

Proposition 1: The natives of the Philippines could not have become subjects to the king of Spain from a just war, neither can any tribute be collected from them.

Against a fact, there can be no argument, and the fact is, Benavides insists, that natives of the Philippines have never given cause for a just war. They peacefully lived in their own lands, in no way provoking the Spaniards, nor persecuting the missionaries, nor impeding those who desired to convert. If at times they took up arms against the Spaniards it was only to defend what was theirs.

Proposition 2: A title of voluntary obedience or free submission does not exist to justify taxing natives of the islands.

A distinction is needed for clarity. A place can be inhabited either by Christians alone, or by Christians and unbelievers together. In the first case it is unjust to collect tribute because non-believers are not subject to the king. Not even when unbaptized and baptized live together may tribute be collected unless the unbaptized and their leaders freely elect, tacitly or expressly, the king of Spain as their sovereign. In the Philippines, in contrast to the situation in Mexico, the Christians are in the minority; it cannot even be presumed that they have subjected themselves to the king of Spain considering that they continually protested and complained against the Spanish occupation.

Benavides squarely rejects the claim that the natives voluntarily subjected themselves to the king of Spain. If there was a semblance of a submission, it could not be anything more than that — a semblance. To disprove any claims at submission Benavides calls attention to the fact that the natives of the islands, who were Christians, attempted to collaborate with the Japanese for an invasion that would allow a combination of Filipino and Japanese forces to repel the Spaniards. (From Magat Salamat, Agustin Manuguit, Felipe Salalila and others, this plot had been discovered.)

Arguing that any alleged submission was null, Benavides, following Vitoria, cites the necessary conditions for the validity and legitimacy of any act of submission: first, those who submit themselves should in no way be moved by force or by fear since this would render the act involuntary; second, the matter of the agreement is known and understood, since ignorance renders any contract null; third, the act of submission should involve not chief alone or subjects alone, but chiefs and subjects together. The reason for this last requirement lies in the fact that in a body politic authority can be conferred on anyone; the moment it has been conferred, however, it cannot be arbitrarily taken away from the conferee. A ruler himself is not entitled to transfer his authority to anyone aside from his legitimate successors; the reason he was elected was to maintain peace and order among his subjects, and not to abdicate his authority in favor of whomever he chose.

Finally, Benavides alludes to cases of violence to which Filipinos were subjected from the beginning of the Spanish regime to prove that submission could not have been free and voluntary.

Proposition 3: The concession granted by Pope Alexander VI to the predecessors of the king does not entitle him nor does it entitle anyone acting in the king's name to collect tribute from unbaptized Filipinos.

The Pope is not a political authority; he therefore does not enjoy the power to install or to depose princes, to promulgate laws or to levy taxes. Since he does not possess this authority, it is absurd to suggest that he delegated it to the king of Spain. The imposition of taxes is an act of jurisdiction, but the Pope lacks jurisdiction over the unbaptized. It stands to reason then that he could not have delegated this jurisdiction to anyone else.

Proposition 4: Premises considered, it is a mortal sin of scandal to collect tribute from the unbaptized; even assuming that the king of Spain is sovereign over them, it would nevertheless be a very grave sin against charity to one's neighbor to collect tribute from them without having proposed the matter to them and explaining the reasons sufficiently.

St. Thomas provides Benavides with the clue: charity obliges one to prefer the spiritual welfare of one's neighbor over one's material goods; one's life may even be sacrificed for the spiritual welfare of one's neighbor. If at times the sacrifice of one's life may be the matter of an obligation in charity more so can this be so with regard to one's estate and possessions.

We have, in such a case as the collection of tribute from the unbaptized, what theologians call "scandalum pusillorum". It is preferable to reproduce the text of Benavides' memorial on this point.

Que mayor y mas evidente ocasion de escandalo se puede imaginar que entrar una compaña de soldados españoles armados por tierras de gente flaca, desarmada y aun desnuda y pobre, y luego pedirles que se rindan a un rey extraño, aportado de su tierra cuatro o cinco mill leguas y a unos ministros deste rey que entran matando y robando a quien no se les subjeta, y a los que se les subjetan tratanlos como a esclavos, y peores?

It is necessary to avoid occasions of scandal; in fact, to avoid scandal prescriptions of positive law may be abandoned. Bañez supports this contention: "Praecepta iuris positivi aliquando sunt dimittenda propter scandalum..." (1a, 2a, 2ae, q. 43, a. 7) It is a greater sin of scandal for Spaniards to collect tribute from the unbaptized in the manner of the Chinese, Japanese or other pagans.

In the case of the Spaniards there is an aggravating circumstance: they are Christians, and they know the precepts of the Lord. This being the case, neither the King, nor the Council of the Indies, nor those who support the collection of taxes can have any excuse before God should they not desist.

Translator's Concluding Note

It will not be easy to find works in Philippine History that present Spaniards as advocates of human rights. There were certainly differences between theory and praxis, between the decrees issuing from the Spanish throne and the actions of certain Spanish officials in the islands. It would, however, be necessary for the historian sensitive to the demands of intellectual honesty to call attention to Spaniards who championed the cause of the natives.

One such influential thinker and religious leader was Miguel de Benavides, O.P., first Bishop of Nueva Segovia (in Lallo, Cagayan) and original benefactor of the University of Sto. Tomas. Monsignor Mallo's brilliant study of Benavides' political theory should give us reason to be more critical of commonly held biases and prejudices relating to the Spanish regime. Vatican II's document on Religious Freedom would not have been too strange to Benavides.

This translation does not carry with it the force of the rhetoric and powerful exposition of the original Spanish in which Monsignor Mallo wrote. But a wider readership may be some compensation for whatever has been lost in the translation.

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