Part I.
Scholastic Political Theory

1

Jean Gerson

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Introduction

Jean Gerson (1363–1429) was one of Europe's most influential churchmen of the early fifteenth century. The pupil of Pierre d'Ailly at Paris, he became chancellor of the university in 1395, a position he held until 1429. He wrote numerous pastoral and mystical works and was a preacher of renown, delivering sermons both to clerics (in Latin) and to the laity (in the vernacular). He is probably best known, however, for his efforts to end the Great Schism. The complex and difficult situation created by this schism led Gerson to produce a number of writings in which he strove to define the exact position and power of the papacy in the ecclesiastical hierarchy and its relationship to a general council. His views, in fact, shifted as the concrete situation changed, and it was by almost reluctant stages that he came to embrace a conciliarist position. In the period before and during the Council of Pisa (1409), one of his chief arguments in favour of the power of a general council was based on the principle of *epikeia* (or *aequitas*), according to which, he argued, the law, in cases of necessity, should be interpreted not according to the strict literal sense, but rather according to the underlying intention of the lawgiver. By the time of the Council of Constance (1414–18), Gerson had become a fully committed conciliarist – committed not only to the doctrine that if there was no true pope or if there were rival claimants (a case of necessity), the entire power of the Church could be exercised by a general council, but also ultimately to the doctrine that a council had a part to play even when there was a single true pope. His mature doctrine appears in both *Ambulate,*[1] the sermon he preached in March 1415 after John XXIII's flight from Constance, and in the treatise *Concerning Ecclesiastical Power,* read by Gerson to the council on 6 February 1417. By this time, John XXIII had been deposed by the council (May 1415), Gregory XII had abdicated (July 1415) and preparations were underway for the deposition of the sole remaining pontiff, Benedict XIII. It was with these controversial events in mind that Gerson wrote the treatise, which centres on the relationship of pope to council and of both to the Church.

The Latin text of *De potestate ecclesiastica* is published in Jean Gerson, *Oeuvres complètes,* ed. P. Glorieux, 10 vols. (Paris, 1960–73), VI, pp. 210–50; the passages translated here are at pp. 227–33, 247–8. Catherine Brown, who very sadly died on 17 August 1993, before the final editing of her translation was finished, wanted to express her gratitude to her colleagues A. J. Marshall, W. D. McCready and especially N. J. Brown for their help and advice.

Concerning Ecclesiastical Power: Selections

TENTH CONSIDERATION

Ecclesiastical power in its fullness resides formally and as to its subject in the Roman pontiff alone.[2] Therefore, we may take it for granted in the first place that, although

someone who is not a priest can be elected pope, just as such a person can be elected bishop, nevertheless he cannot and should not be called supreme pontiff unless he has been consecrated priest and bishop. And although he can have a certain jurisdiction as a result of election, he cannot enjoy the fullness of ecclesiastical power – whether the power of order or that of either kind of jurisdiction[3] – before consecration to the episcopacy. This is clear from the meaning of the terms employed.

But here a not inconsiderable ambiguity arises, thanks to the master jurists, who, when they speak of the plenitude of papal power, appear to be speaking only of the power of jurisdiction; and from this way of speaking the absurd consequence seems to follow that a mere layman – indeed, even a woman – could become pope and enjoy the plenitude of ecclesiastical power.

We may further take it for granted from what has already been said that, in accordance with the institution of Christ, no one in the Church ought to bestow, or receive, the grades of the hierarchy, which are to purge, illuminate and perfect, unless the authority of the supreme pontiff or sole ruler [*monarcha*] in the Holy Church of God plays a part either expressly or by implication. This is so that confusion may be avoided in the Church and that it may be ruled by the best form of government according to the model of the Church triumphant. For this reason John says in Revelation [21:2] that he had seen the new city of Jerusalem descend from heaven; and to Moses it was said: 'As it hath been shewed thee in the mount, so shall they make it.'[4] Again, we may take as true the doctrine of Aristotle that all actions are the actions of individuals.[5] And finally, from these and the preceding arguments, we can offer the following discursive definition: the fullness of ecclesiastical power is the power of order and of jurisdiction which was supernaturally conferred by Christ on Peter as his vicar and first monarch, to be used by him and his legitimate successors until the end of time for the building up [*aedificatio*] of the Church militant towards the goal of eternal happiness.

The term 'supernaturally' in this definition is used to distinguish this power from the power and jurisdiction which may well have accrued to Peter's successors in accordance with the civil and political laws of human society; or from that dictate of the natural law which decrees that the head of every society should enjoy many honours and privileges denied to others; or by special endowment or gift from princes and other laymen; or, finally, by favourable concessions from the Church itself or its general councils such as any perfect society[6] might naturally grant to its head. There was one reason for such a concession which had merit insofar as it arose from the need for interpretation of the laws and from day-to-day problems about Church government: recourse to the pope and his Curia is easier than to a general council. This was the motive for setting up kings in the first place and giving them the power to establish and interpret laws.

But some people have disregarded this distinction and have fancied that every privilege which is now accorded to supreme pontiffs belongs to them by virtue of Christ's original institution and is of immutable divine ordinance. But this is quite false, since it would remain the case that a man was a true and perfect pope even if he actually lacked many such privileges and honours; for it is not these which constitute the plenitude of ecclesiastical power, such as we have described as vested in Peter,

and which no human being except Christ – and hence not even the whole Church – could confer, or, by the same token, remove, as we noted already in the ninth consideration.[7]

There are some learned scholars who now maintain that, after rules about the holding of elections and the conferment of benefices by ordinaries were introduced by general councils, according to the intention of the founders (a principle observed in the case of the law of patronage among the laity), it was by no means legitimate for the pope to annul such rules, especially so generally and indiscriminately, by reservations and other means, as has been seen this past century and more. It was not legitimate, moreover, for him to issue the number and type of waivers about matters decreed by general councils as has been customary in papal bulls – to the point, indeed, where Alexander V was led in certain of his supposed bulls to allow waivers with respect to that very salutary and widely observed statute *Omnis utriusque sexus*. . . .[8]

But others reply to the above argument not by addressing the question of the origin of ecclesiastical power as it was established by divine law, but rather by confining their considerations to decretals with the glosses, arguments and countless concordances of doctors, one following the other like a flock of sheep. They answer, in point of fact, with this single argument: that general councils have always understood that an exception was made of the authority of the supreme pontiff in all their decrees of whatever sort because, doubtless, they held papal authority to be above the council, or at least not beneath it; and it is obvious to them that equals have no authority over equals or lower ranks over their superiors.

But blessed be God, who, by means of this sacred Council of Constance, enlightened by the light of divine law, which gave it understanding through the trial of the present schism, has freed his Church from this dangerous and most pernicious doctrine whose persistence would have perpetuated the schism which it had nurtured. Indeed, it has been declared and decreed that a general council can be convened without the pope and that in certain cases a pope can be judged by a council and, moreover, that a general council has the authority to prescribe laws or rules according to which the plenitude of papal power is to be restrained and regulated – not, to be sure, in itself, for in itself it remains always the same, but in its use. Furthermore, it should not be thought that general councils have exempted papal authority from their decrees in such a way as to permit the pope an unbridled liberty to destroy so lightly what has been established so weightily and with the seasoned maturity of the wise. The exception made for papal authority, then, is understood to have been provided to the extent that temporary necessity or evident utility demanded it, on occasions when recourse to a general council was not open; under any other circumstances it would constitute not a use of the plenitude of papal power but a gross abuse of it. Whether anything which resulted from such an abuse would be valid or lawful, I do not presume to determine under any single generalization. I do know that many things are wrongly done, many inexpediently and many to the disfigurement of the Church, which nevertheless, once done, retain their force. It seems, however, that some declaration should be added by this sacred general council through which it may become clear in what sense, and to what extent, papal authority is recognized as

exempt either from decrees already issued or, since (as they say) the law does not address itself to the past, from decrees to be issued in the future. And finally, the quashing or annulment of every ill-conceived act of past times would seem plainly to be difficult, of questionable validity and inexpedient.

The following rules should be noted as an aid to understanding what has been said here about the interpretation of laws and decrees.

First rule. Human laws are framed with a view to what happens in the majority of cases. It would be impossible for a human legislator to enumerate all particular cases or to offer the remedy of a special law for them, since they are infinitely variable. Indeed, it would not be desirable, for the outcome of such a multiplicity would be a disorder as distasteful as it would be confusing. On the other hand, according to Isidore, a law should be worthy of respect, just, capable of being observed and appropriate to the place and time in the light of the customs of the country; furthermore, it should be necessary, useful and clearly expressed, so that it contains nothing which misleads through obscurity; and it should be framed not for private advantage but for the common benefit of the citizens.[9]

Second rule. Human laws which are construed generally can and should admit of exceptions when the reason for the law does not apply in a particular case, when, that is, the legislator if present, or any prudent man if asked, would except from the general rule a particular case which might arise under such and such circumstances. This sort of exception is given a variety of names: sometimes it is called 'equity' [*epikeia*], as by Aristotle; sometimes 'interpretation of the law', as by jurists; sometimes 'dispensation', as by canonists; sometimes 'good faith', as by statesmen who say that it is good faith when one does not pretend to do one thing while in fact doing another; and sometimes it is called 'equity' [*aequitas*], as when the prophet says to the Lord: 'thy commandments are equity'[10] – that is, equity demands their performance.[11]

Third rule. We find three types of interpretation of or exception to a law. One belongs to the judicial power and is the province of the legislator and the judges, according to the well-known saying: 'The person who is responsible for establishing legislation is also the one responsible for interpreting it.' A second type belongs to doctrinal authority and is the province of those who, by authority of the supreme pontiff, have received a licence to give scholarly interpretations of the law. It is also the province of those who are well equipped, by skill or experience, with the knowledge of interpretation in these matters, on the principle: 'The expert in his field should be believed'; and again: 'Each person judges well in the area of his experience.' A third type of interpretation is based on unavoidable necessity. It can fall to anyone at all who sees with certainty an imminent danger to himself if he does not repel force with force and act in opposition to the general letter of the law. In this case a man is blameless before God, although he ought to regret that he has fallen into such a necessity. And provided he is able to make his case with legitimate witnesses before a human judge, he will be acquitted – though not otherwise; for what is not apparent before the judge in these matters is no different from what is not the case.

Fourth rule. The interpretation, dispensation or exception which belongs to judicial power operates in such a way that someone who disobeys the letter of the law is

not punished before men in the external forum. But before God, in the forum of conscience, both the person who dispenses and the person to whom the dispensation is given will sin, unless the one who dispenses fits the description given by Christ: 'faithful and wise'.[12] Faithful, so that he does not abandon the divine or the common good and seek personal advantage, favour or honour; and wise, so that he may consider from all angles the reasoning behind the law and the intention of the legislator; for a dispensation is a fair distribution of the common good – as indeed is the law itself – to individuals in accordance with the law's intention, taking into account the variety of circumstances which arise. A dispensation which is not faithfully and wisely made is said by Bernard to be a dissipation [*dissipatio*] of the common good rather than a dispensation [*dispensatio*][13] – that is, as far as God and conscience are concerned, if it is a case about which there is, or should be, general agreement. But very often, in the eyes of men who judge according to externals, such a dispensation holds, unless it contains a glaring error or is prohibited by a higher law. This latter point is added because of the statutes that can be made by a general council about the use of papal power.

Fifth rule. The interpretation of law, or exception to it, which belongs to doctrinal authority affords most relief to those not obeying the bare letter of the law, in that it applies both to external judgements, insofar as it frees [those who break the law] from penalties, and also to divine judgements in the forum of conscience. This is especially the case when the majority of doctors are men of repute, experienced in their craft and of proven integrity; otherwise iniquity will often betray a man under the influence of entreaty or reward, for 'a gift doth blind the eyes of the wise'.[14] And if we are to believe Aristotle, speaking the words of experience, malice can cause error not only in conclusions far removed from first principles but at the very threshold of moral principles themselves.[15] Thus, theft was formerly thought to be licit among the Germans, as Julius Caesar bears witness in his *Gallic War* [VI.23.6]; and foul and unnatural sins were thought to be licit among the Romans, as the apostle records in his epistle to them.[16] The same is true with many men given over to pernicious ideas on account of the variety of faults encompassed by their depravity.

Sixth rule. The interpretation of law, and exceptions and dispensations, when they occur in either of the previously mentioned modes, judicial or doctrinal, demand that we adopt a double point of view: one which looks to the divine and public good, the other to the particular advantage of the person on whose behalf the interpretation or dispensation is granted. Therefore, it quite often happens that when the rigour of the law is indiscriminately relaxed, out of a certain compassion (so it is imagined) and merciful condescension towards particular individuals subject to the law, the stability and strength of discipline decays correspondingly – strength which should especially be preserved in all law. The Romans taught us this lesson when they put even their own sons to death and turned the rigour of the law against themselves in order that military discipline and obedience to the law should remain inviolate. The Carthusian brethren teach us the same lesson. They never, or very rarely, receive a dispensation for the eating of meat, and accordingly monastic discipline flourishes among them;[17] whereas one would be amazed and saddened to see how much it has deteriorated among certain other orders which make indiscriminate use of dispensations. It was

about this very thing, happening even in his own time, that Bernard's complaint arose.[18] What then are we to say about the dispensations, as they call them, so easily granted by pope and prelates, from lawful oaths and reasonable vows? What shall we say about the unlimited plurality of benefices, about the modifications of the decrees of general councils or about the granting of privileges and exemptions which weaken the common law? Could anyone count up all the acts by which at present the strength of ecclesiastical – and, indeed, evangelical – discipline has almost universally weakened, withered and disappeared? May this holy Council of Constance give attention to all these things.

The stability of the laws is based upon this root principle: that custom is the best interpreter of positive law – provided that it is contrary neither to divine nor to natural law. The same principle is the basis of Aristotle's view, presented in his political treatise, that no reward should be given to those who introduce new laws, even though these may in themselves be improvements, since frequent change to the laws causes instability and does not allow them to grow strong upon the firm root of custom.[19] Note should be taken of this by those who, when any notion comes into their heads, or when they imagine that anything might be worth doing, busy themselves with the making of new laws, piling penalties on penalties, as if it would be good and expedient to enforce by a penal law anything at all which, if it were done, would be a good thing. But this is no way to govern a state.

Based on the same principle is the reasonableness of quashing or repealing certain positive laws where they conflict with those customs of the subjects which depend on nature. The reasonableness of permitting certain evils, not for the sake of approving them, but so that their punishment does not make matters worse, is based on a similar foundation. The same applies to the law of prescription, which, in order to prevent titles becoming uncertain, punishes those who neglect their own property by rightly – even in the sight of God and conscience – transferring such titles to possessors who are in good faith and have a legitimate prescriptive claim.

Eleventh Consideration

Ecclesiastical power in its fullness resides in the Church as its end, and also as the body which regulates the application and use of this sort of plenitude of ecclesiastical power, either through its own agency or through a general council adequately and legitimately representing it. And so it is established that the plenitude of ecclesiastical power was given by Christ to Peter for the building up of his Church, just as the definition, in conformity with the apostle,[20] lays down. Moreover, Augustine, with certain others, says that the keys of the Church were given not to one man but to the community, and in fact to the Church itself.[21] And this can be appropriately understood in the ways that this consideration explains, since the keys were given for the sake of the Church and its unity. And so this plenitude of ecclesiastical power may be said to reside in the Church or a council, not so much merely formally and of itself, as in two other ways: namely, with regard to its application to this or that person and with regard to the regulation of its use, in case there was an attempt to abuse it.

It is agreed that in these three ways the plenitude of ecclesiastical power resides in the Church and in a general council acting in its stead. There is to be sure no difficulty about the first and second ways, and likewise not about the third either, if we consider the definition of the plenitude of ecclesiastical power at the point where it lays down that it is given for the building up of the Church. Since therefore the supreme pontiff, who possesses this power as its proper subject, is capable of sin and could want to use it for the destruction of the Church, and if similarly the sacred college, which was given to him so that it could work together with him as an aristocratic body, is not strong in grace and faith, the only alternative is that there should be some other standard [*regula*], incapable of deviation or error, set up by Christ, the best of all legislators, by which abuses of this sort of power can be restrained, directed and controlled. But this standard is precisely the Church or the general council. And so, since the mean of virtue can only be found in the judgement of the wise, the final appeal will be to this wisdom, to the Church, where there is wisdom incapable of error, or to a general council. This is the basis of the many decrees and resolutions of this holy council, as for example that the pope may be judged and deposed by the council, that he is subject to the council for the regulation of his power as far as its use is concerned and that he is open to question about the motive for his actions. And so on with regard to the many matters that are discussed in the sermon 'Prosperum iter'.[22] . . .

Thirteenth Consideration

. . . Finally, now that we have discussed justice, right, law, jurisdiction and authority, let us say something about the polity. It may be defined as a community organized with a view to some perfect end. Organization or order, however, is an arrangement of like and unlike elements which accords to each his due. And so order is thoroughly in accord with justice, which gives to each his own; hence the divinely inspired utterance of the prophet that the work of justice is peace.[23] Why is this so? Clearly because peace is nothing other than the tranquillity which comes from order. But justice creates this tranquillity of order by according to each his due; on which subject it is said: 'Justice and peace have kissed each other'.[24]

One sort of polity is celestial, about which we shall say nothing at present, while the other is human, the polity of wayfarers upon earth. And this latter is of two types, one of which, to use the usual and proper term, is called 'ecclesiastical', the other 'secular'. Now, the secular polity is divided by Aristotle in his political treatise into three. The first he calls 'kingship', the second 'aristocracy', and for the third he uses in a specific sense the general term 'polity',[25] which we may refer to as 'timocracy'. Kingship is defined as a community under one good man, or more explicitly, as the gathering of a perfect community under one man, in accordance with his laws which are for the good of the commonwealth. This one good man is called 'king' or 'emperor' or 'monarch', and in his dominion he strives principally not for his own but for the common good. Aristocracy is defined as a polity under a few good men, or more explicitly as the gathering of a perfect community under a few men, whose principal aim through their laws is the good of the commonwealth; a senate would be

an example. What is called in a specific sense a polity, or a timocracy, is defined as a polity under many good men, or more explicitly as the gathering of a perfect community under many good men, whose principal aim through their laws is the benefit of the commonwealth.

The community here is called 'perfect' to distinguish it from the domestic way of life, which is not perfectly self-sufficient. We say 'in accordance with his laws' since the sovereignty of the ruler is seen to consist in this: that he is found to rule the polity on his own initiative under his own laws, without the constraint of foreign laws.

Every ecclesiastical polity, therefore, whether the ruler is one good man or a few or many, is properly called 'divine', because, whichever type it is, it is bound to accept regulation according to supernatural law. And so it is clear that the three types of polity we have spoken of are united in the Church, as they are not in a civil polity, by the unity of divine law. It is quite clear also, as a consequence, that the question of whether in the ecclesiastical realm theology ought to be preferred to another science, natural or human, smacks of blasphemy and the Pelagian heresy.[26] The Church is not to be taken as a material temple, which a stonemason would better know how to build than a theologian or jurist; nor should discussion about the Church be only for the sake of revenues and rents and ecclesiastical jurisdictions oriented to temporal rights and the secular life. This would be to think just like the heathen.

But this is just the way in which brutish people generally conceive of the Church, at least as far as their words and deeds imply. They praise to the skies any bishop or abbot who labours to see walls and estates well established along with his jurisdictions, while letting his subjects go to perdition down the byways of error with regard to the Catholic faith and good morals. This is why, moreover, one expert secular manager might frequently be judged of more use in the government of the Church than a theologian or jurist. Therefore, we should reflect on the Church as it was instituted by Christ on the firm rock of faith to pursue its supernatural end, according to the law of the Gospel and of the divinely revealed Holy Scriptures. It is by this law that judgement about the faith and morals of subjects should be regulated, since what is upright is the judge both of itself and of what is awry. And if, for the preservation of this faith, judges who are highly skilled in theology and free of moral corruption ought to be appointed in the Roman Curia to hear those cases concerning the faith which everyone says should be referred to the Apostolic See (though this is usually interpreted too widely), we should see if this could be done in as reasonable a way as judges in secular cases are appointed, in an orderly and collegial fashion.

Corresponding to Aristotle's threefold distinction of types of polity in the natural order which we mentioned earlier,[27] we may also divide the ecclesiastical polity into three types: the papal, the collegial and the synodal or conciliar. The papal constitution is modelled on the kingly; the collegial, embodied in the college of cardinals, on the aristocratic; and the general council is modelled on the polity or timocracy. But the perfect constitution is instead that which involves a combination of all three. By contrast, we have those polities, if they deserve special names, which, unlike the foregoing, are not led by a free and, so to speak, fatherly regime but are instead dragged along under a despotic and servile yoke, either because, through their own fault, it is permitted by God, who makes 'the godless man reign', according to Job