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By William of Ockham

[William of Ockham. *Dialogus de potestate papae et imperatoris*. In the Public Domain. Translated by Kevin Gallagher. Princeton, N.J.: The Witherspoon Institute. 2010. Part 3, Tractate 2, Book 3, Chapter 6. Citations from the *Decretum Gratiani* have been modified to correspond with modern editions.]

Student:

Tell me how to respond to an argument that I have heard: that it is neither by divine law nor by human law that the Romans have the right to elect the supreme pontiff.

Teacher:

The response to that argument is that the Romans have the right to elect the supreme pontiff by divine law, if we extend our understanding of divine law to include all natural law.

Student:

This response seems unclear to me, and so I'd like you to elaborate on it according to your account of the matter. First, explain why you said "if we extend our understanding of divine law to include all natural law"; second, explain why all natural law can be called divine law.

Teacher:

First, one must distinguish among three meanings of natural law. For in one sense, natural law means that which is in conformity with natural reason, which is never in error: such as "Thou shalt not commit adultery," "Do not lie," and so on.

In another sense, natural law is that which is observed by those who observe only natural justice [*aequitate naturali*], without any human customs or constitutions. This is called natural law, because it is not contrary to the state of nature as originally established [*statum nature institute*].^[1] And if all men lived according to natural reason or divine law, it would not be followed or observed.

It is in the second sense of natural law, not the first sense, that all possessions are held in common by natural law, because in the state of nature as originally established, everything would have been held in common. And if all men lived according to reason after the Fall, all things would need to be common, and there could be no property. For "property was introduced on account of iniquity" (*Decretum* C. 12 q. 1 c. 2).^[2] It is in this sense that Isidore speaks in the 5th book of the Etymologies, (quoted in *Decretum* D. 1 c. 7), where he says that "the common possession of all things and the liberty of all" are according to the natural law. For the common possession of all things and the liberty of all are not based on natural law in the first sense. For if they were, no one could legitimately make anything his property, nor could

anyone become a slave by the law of nations or the civil law, because natural law in the first sense is unchangeable and invariable and does not admit of exceptions (*Decretum* D. 5 *prima pars Gratiani* para. 2, and D. 6 *Gratianus post c. 3*). And so it is that some men are legitimately made slaves by the law of nations, as is suggested by the Blessed Gregory, who says (*Decretum* C. 12 q. 12 c. 68) “it is well done, if men who in the beginning were produced free by nature, and whom the law of nations subjected to the yoke of slavery, are returned to the nature in which they were born, by the good deed of the one who sets them free.” From these words it can be deduced that all men are free by the natural law, but some however are slaves by the law of nations. Hence we conclude that the natural law, in this second sense, is not unchangeable; indeed it would be correct to establish the contrary to this law.

In the third sense, natural law refers to that which may be deduced by evident reason from the law of nations or from some human action, unless the contrary should be ordained by those to whom the matter pertains. This is called natural law by supposition [*ius naturale ex suppositione*]. As Isidore says in the passage cited above, the natural law has to do with “the return of entrusted things or loans of money, and the resistance of violence by force.” Now these are not natural laws in the first or second senses, because they were not in the state of nature as originally established, and they are not among those laws that would be agreed upon by men living according to reason and judging by natural justice without any human custom or statute. For among such men, nothing would be entrusted or lent, and no one would attack anyone by force. These, then, are natural laws by supposition, because, on the supposition that things or money have been made private property by the law of nations or by some human law, it may be deduced by evident reason that the entrusted things or money ought to be returned, unless the contrary is commanded by him or them to whom the matter pertains. Likewise, supposing that someone in fact injures another by violence—which is not in accordance with natural law, but contrary to it—then it can be deduced by evident reason that it is permissible to repel violence with force.

And so, on account of these three senses of natural law, they say that by divine law the Romans have the right to elect the supreme pontiff, if we extend divine law to include all natural law. For if it were only extended to include natural law in the first sense (as is held in *Decretum* D. 5 *prima pars Gratiani* para. 2, and D. 6 *Gratianus post c. 3*), then by divine law alone, they would not have the right to elect the supreme pontiff.

Student:

Since I have not heard this distinction regarding natural law elsewhere, I’d like to object to it, so that from the solution to the objections to this account I might understand more, and grasp something of the truth.

Now this distinction seems to contradict the words of Isidore from the chapter cited above. Isidore says “the natural law is common to all nations, because it prevails everywhere in the state of nature, and not by any ordinance.”^[3] This cannot agree with the second sense that you distinguished, because those things whose contraries can be permitted according to the law of nations are not common to all nations, nor are they accepted everywhere in the state of nature, because they are not accepted where the contrary is observed according to the law of nations.

Again, when Isidore says “this, or whatever is similar to this, is never unjust, but is recognized as natural and fair,” this can be true of neither the second nor the third sense that you distinguished. For all that is called natural law in the second sense can be unjust, because its contrary can be according to the law of nations, and what is contrary to the law of nations is to be condemned as unjust. And that which is called natural law in the third sense can be unjust, because its contrary can be according to the natural law in the second sense. According to that second sense of natural law, no money is lent and no goods are entrusted to another. For if we take natural law in that second sense, all things are held in common, and no money or goods can be lent or entrusted to another. These are the reasons why I challenge the above distinction; now tell me how to respond to them.

Teacher:

To these two objections, one response is that certain words in [Isidore's] way of speaking about natural law ought to be understood only of natural law in the first sense, and some in other senses. The words you object to, then, ought to be understood of natural law in the first sense, and so they do not seem to conclude against what was said earlier.

It can also be responded that those words to which you object are understood of all natural law. And so they ought to be understood. Therefore when Isidore says "The natural law is common to all nations," because all nations are bound by it without exception, this is a law of reason, which is never in error, in the state of nature. Now this law is held to be natural law in the second sense because it is "common to all nations," since all nations are held to it unless the contrary is ordained on some reasonable cause, and therefore it is of the state of nature—that is, of natural reason—before the contrary is established by human legislation. For in this sense was it said that all things are common, before they are made private property by the consent of men. And natural law in the third sense was said to be "common to all nations" on the supposition that all nations have established or done that from which the law, in that sense, may be deduced by evident reason. And so in the state of nature this is accepted as a matter of natural reason, supposing that it is understood in that sense.

Likewise, it can be responded about the quotation you mentioned second ("this, or whatever is similar to this, is never unjust, but is recognized as natural and fair"), that it is to be understood that natural law in the second sense is "never unjust," because it "is recognized as natural and fair" unless the contrary should be enacted by a human law on some reasonable cause. Furthermore, natural law in the third sense is, in a certain sense, "never unjust," but is always "recognized as natural and fair," because the supposition from which it is deduced by evident reason is "never unjust, but is recognized as natural and fair," unless the contrary should be ordained by him or them to whom the matter pertains.

Student:

It seems that this explanation is misleading, since if we accept it, this word mentioned only once in the above quotation from Isidore must be taken equivocally [i.e. in several senses at once].

Teacher:

This should not be thought of as misleading, because the gloss on *Decretum* D. 63 c. 12 makes a note of this, saying "note how a word mentioned only once is here used equivocally." So also *Decretum* D. 28 c. 16.

Student:

You have stated that according to the account laid out previously, it is said that the Romans to have the right to elect the supreme pontiff by divine law, if we extend divine law to include all natural law. Now tell me, according to the same account, why it is said that all natural law can be called divine law.

Teacher:

They say this because all law that is from God, who is the author of nature, can be called divine law. Now all natural law is from God, who is the author of nature, therefore natural law can be called divine law. Now all law which explicitly or implicitly is contained in the holy scriptures can be called divine law, because divine law is contained in the scriptures, as is held at *Decretum* D. 8 c. 1. Now all natural law is explicitly or implicitly contained in the holy scriptures, because there are certain general rules in the holy scriptures from which, by themselves or in combination with other rules, the natural law can be derived. For all natural law in the first, second, or third sense, even if it cannot be found in the scriptures, is explicitly divine law.

Student:

You have explained, according to the original account, two things which seemed unclear. Now tell me how, according to the same account, they have, by divine law, the right to elect the supreme pontiff.

Teacher:

To this, the response is that the Romans have the right to elect the supreme pontiff by natural law in the third sense. For supposing that some prelate or prince or ruler is to be placed over some other people, it can be deduced by evident reason that, if it is not arranged by him or them to whom it pertains to do so, they have the right to elect the one who is to be placed over them. And therefore no one ought to be given to them against their will. This can be proved by many examples and reasons; I will adduce a few.

The first is that no one ought to be placed over all mortals unless by their choice and consent. Furthermore, what affects everyone ought to be dealt with by everyone. Now it affects everyone that one should be set over others; therefore it ought to be dealt with by everyone. Again, those who have the right to make laws for themselves have the right, if they wish, to elect a chief. But every people and city can make its own law for itself, which is called civil law (*Decretum* D. 1 c.8). Therefore both peoples and cities can make their own law for themselves and elect a chief.

And so it always pertains to those over whom someone is to be placed to elect the one who is to be placed over them, unless it be arranged otherwise by him or them to whom it pertains to do so. This is said because they can, at least in many cases, relinquish their right and transfer it to another or to others. Therefore even though, by natural law in the third or second sense, the people have the right to establish laws, nevertheless they transferred that power to an emperor, and so it was in the emperor's power to transfer the right of election to another or to others. Likewise, if those over whom someone is to be placed are in such matters subject to some superior, that superior can decree that they not have the right of election; though by the natural law in the second sense they indeed have the right of election—that is, unless the contrary should be ordained by them themselves or by their superior. And so it seems that the proposition mentioned above is clearly sound.

But the supreme pontiff is placed over the Romans in a special way, because they do not have any other bishop. Therefore, according to the natural law in the third sense (that is, according to the natural law by supposition: namely, the supposition that they ought to have a bishop), they themselves have the right to choose that bishop, unless the Romans themselves, or someone set over the Romans who has power in such matters, enact or command the contrary. For the Romans themselves could to cede or transfer the right of electing the supreme pontiff to another or others; they could also transfer the right of appointing the electors of the supreme pontiff. A superior over the Romans who had authority in such matters could even concede the right of election to other people than the Romans. But this superior was Christ, and not the pope. And therefore Christ, and not the pope, was able to deprive the Romans of the right of electing the supreme pontiff. But Christ did not deprive the Romans of that right. For when Christ set St. Peter over all Christians, he gave him the power to choose a seat wherever he wished, and to be in a certain way the proper bishop of the people there, he did not deprive them of that right that is common to all over whom there is a presiding authority, whether secular or ecclesiastical, unless they or their superior, should ordain the contrary. Therefore since St. Peter chose the See of Rome, it follows that the Romans have the right of electing St. Peter's successor, who is to be placed over them in spiritual matters. And so the Romans, by the divine law (if we extend it to include every natural law), have the right of electing the supreme pontiff.

Student:

It seems, according to this view, that it would be better to say that the Romans have the right to elect their bishop by the law of nations. For it is by the law of nations that all over whom someone is to be placed have the right to choose the one who will be placed over them unless they cede that right or

unless their superior ordains the contrary.

Teacher:

Although many things that have to do with the law of nations are natural laws in the third sense of speaking about natural law, nevertheless, according to this view it is more appropriate to say that the Romans have the right to elect their bishop by the divine law, or by the natural law in the third sense, than to say that it is by the law of nations. This is because it is not the law of nations that specifies that there should be a Catholic bishop, but this is rather a matter of divine law. Now indeed, to be preside others and to elect the one who is to preside have to do with the law of nations, but it is nonetheless also a matter of divine law, because it can be concluded by taking together what is written in the holy scriptures. And so these two considerations, from which we conclude that the Romans have the right to elect their bishop, both have to do with the divine law, although in different ways. Now only one of them has to do with the law of nations, and because of this it is more appropriate to say that the Romans have the right to elect their bishop by the divine law, or by natural law in the third sense, than to say that it is by the law of nations. Now those who do not care to wrangle over words say that it is enough for them that the Romans have the right to elect their bishop by divine law, simply because they ought to have a bishop, and those over whom someone is to preside ought to choose the one to preside over them, unless they cede their right, or unless their superior ordains the contrary. But whether one ought to say, properly speaking, that the Romans have the right of election by the divine law, or from natural law in the third sense, or rather from both the divine law and the law of nations, does not really matter to them. However, it seems to many people that it is more appropriate to say that they have the right of election both from the divine law and from the law of nations. And therefore when it is asked whether they have the right of election from divine or from human law, they say that it is neither from divine law alone, nor from human law alone, but from both, by the extension of the human law to the law of nations, and not only to the civil or canon law.

[1] The Latin reads “because it is contrary to the state of nature as originally established,” but the sense of the argument here strongly suggests that a negative word has dropped out of the text.

[2] The Decretum of Gratian is the authoritative collection of legal judgments that was the main source of canon law until 1917.

[3] This is a misquotation. In the Etymologies, Isidore writes that the natural law is accepted “by an instinct of nature” (*instinctu naturae*), not “in the state of nature” (*in statu naturae*).

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