Excommunications, Just and Unjust

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Reformed · Late Medieval · Treatise

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INTRODUCTION

Written in 1412 while Hus was under papal excommunication and preparing the defense that would end at the stake in Constance three years later, this treatise dismantles the argument that ecclesiastical censures must be obeyed simply because the clergy have received them. Hus turns the machinery of canon law back on his accusers by placing their reasoning alongside the reasoning of the Sanhedrin against Christ — a comparison that would echo through Luther a century later and shape Reformation thinking about the limits of institutional authority. The prose is that of a working theologian under siege: closely argued, scripturally saturated, and unwilling to concede the smallest premise. Expect a sustained polemical disputation, less a pastoral consolation than a courtroom brief written for the conscience.

Finally, the doctors lay down in their writing the following: "At length, because the processes [court proceedings before the curia and the archbishop of Prague] against Master John Huss have been received by the body of the clergy in Prague, and they have obeyed them, therefore these processes are to be obeyed, and especially since therein nothing absolutely good is prohibited nor is anything absolutely evil enjoined. But according to the method of the church customary with the Roman curia and observed before the fathers of our fathers, only things intermediate — things between what is purely good and purely evil — are there commanded, which in respect to time, place, or mode may be either good or bad— and obedience is to be rendered in these things intermediate in accordance with the teachings of the Gospel and in accordance with St. Bernard." And they add: "And it is not the business of the clergy in Prague to pronounce judgment on the question whether the excommunication of Master John Huss is just or unjust." etc.

I will proceed to the things in the processes [court proceedings] about which for the present I chiefly consider three matters, namely, excommunication, suspension and interdict. And about these I will speak briefly, discussing first of all this, that the conclusion which the doctors draw is exceedingly bad, namely, "because the processes against John Huss have been received by the body of the clergy in Prague, and they have obeyed them, therefore, they ought to be obeyed." It is as if we should argue in this way: because processes were received by the body of the clergy in Jerusalem against Christ, that he is a seducer, malefactor, and blasphemer excommunicate and guilty of death, therefore, those

processes are to be obeyed by the doctors themselves. The conclusion from the law of similarity holds by that middle term of cause, "because the processes were received by the clergy" — and the doctors of theology ought to be ashamed for that conclusion, and especially Stanislaus, for he is the ablest logician amongst them. Perhaps they learned that conclusion from the chief priests, scribes, and Pharisees who formulated a like conclusion. For when Pilate said unto them, "What accusation bring ye against this man?" they answered and said (formulating this conclusion): "If this man were not an evil-doer we would not have delivered him up to thee," John 18 : 29-30. And again they followed the same line of argument when Pilate said, "I find no case against him," when they replied, "We have a law and according to that law he ought to die, because he made himself the Son of God," John 19 : 7. In the first conclusion, formulated by the Jews, the doctors implied that they themselves did not err when they said: "If this one were not an evil-doer, we would not have delivered him up to thee" — that is, because he is an evil-doer, therefore have we delivered him up to thee. Similarly our doctors reply in the conclusion they formulate that the body of the clergy in Prague cannot err; otherwise, if they were able to err, their conclusion would not be valid. And because that body is able to err in accepting the processes, so also it does err in securing them and wickedly executing them. Therefore, the conclusion of the doctors is not a good one.

And I wonder how this enormous conclusion — cauda — of the doctors, by which they wish to cover up their shame by the statement: processes to the contrary import, if received, would have to be obeyed — does not contradict this, when the conclusion is added: "Nor is it the business of the clergy in Prague to pronounce sentence whether the excommunication of Master John Huss is just or unjust." For if those processes are to be obeyed with respect to excommunication, then they are to be obeyed by them as just and not as unjust. Because the clergy together with the doctors obeys them and received them, therefore it obeys them as just and received them as just, and consequently the doctors together with the clergy passed upon them sentence that they are just. Nevertheless, their conclusion says that it is not for the clergy in Prague to pass sentence whether the excommunication of Master John Huss is just or unjust. And an evident contradiction is established, namely, the clergy in Prague cries out, affirms and asserts that the excommunication of Master John Huss is just, therefore the clergy in Prague passes the sentence that that excommunication is just; yet the conclusion of the doctors says that it is not for the clergy in Prague to pass sentence whether that judgment of excommunication is just or unjust. It is most clear that this conclusion contradicts the facts and the sentence of the clergy of Prague.

Likewise, if it is not for the clergy in Prague to pass sentence whether that excommunication is just or unjust, and the clergy approves the processes and acts in accordance with the processes; therefore the clergy in Prague does not know whether it is acting justly or unjustly, nor does it hope that it is acting justly. For hope ought to go before the sentence.

Likewise, these doctors themselves pass the sentence that the excommunication of Master John Huss is just, and this is clear because they pass the sentence that the processes are to be obeyed, and not as though they were unjust; hence, as though they were just. Consequently, the doctors pronounce the sentence that the excommunication enjoined in the processes is just.

Likewise, the doctors say that the processes [court proceedings] are to be obeyed, especially because in them nothing that is an absolute good is forbidden, nor is anything enjoined which is an absolute evil, but only things which are intermediate, in which obedience must be rendered in accordance with the teaching of the Gospel and in accordance with St. Bernard. Therefore the doctors pass sentence that the commands in the processes are just, among which is the excommunication of Master John Huss. Therefore, these doctors pass the sentence that the excommunication of Master John Huss is just. And they themselves are part of the clergy in Prague. Therefore, this very conclusion of theirs confutes these doctors.

Likewise, these doctors pronounce judgment that the excommunication which is enjoined in the processes is a thing intermediate, a thing between that which is absolutely good and that which is absolutely evil, and when it is enjoined in respect to the mode, time, place and person, then it passes over into a thing absolutely good, because it passes into an injunction of the pope and prelates. Therefore, the doctors, in pronouncing such a judgment about the excommunication, declare that it is just. Nevertheless, in view of their conclusion, they ought not to pronounce the judgment that it is just. And this they do, a thing they ought not to do; yea, they do not know what they are doing, for they say that it is not for the clergy in Prague to pronounce judgment that the excommunication of John Huss is unjust, and yet they pronounce judgment that it is just. It is certainly worthy of laughter how doctors of the law agree to this conclusion, doctors who pronounce judgment on the decrees, decretals and processes [court proceedings] whether they are just or justly given or by just men, when they ought by reasonable methods to expound the decrees and the decretals and examine the proceedings, whether they are just or unjust, and to advise others, when the emergency arises, whether processes ought to be admitted and held or whether they ought not be admitted and held; or whether it is lawful to take appeal from them. This is clear, because the doctors have irrationally shut themselves off on both sides from a reasonable judgment.

But how the processes fulminated against me are null and erroneous, the Venerable Master John de Jesenicz, doctor of canon law, showed most clearly by a public discussion and in a decision in the university of Bologna. And because, as I have said, processes of this kind chiefly enjoin excommunication, suspension and interdict, for that reason I will say something about them briefly.

Let it be first noted that excommunication means placing outside of communication, 11 : 3, Nihil. and cap. Canonica [Friedberg, 1 : 653, 674]; 29 : 1, Viduas [Friedberg, 1 : 1091]; 24 : 3 [Friedberg, 1 : 988]; 11:3, Omnis Christianus [Friedberg, 1 : 653], and the chapter following. And, because excommunication is better understood through its opposite, namely, communication or communion — inasmuch as by the opposite of what is good everything good is understood, so also of evil and its opposite — therefore it is to be noted that communication or good communion is threefold. The first is the participation of divine grace, which makes gracious. This the apostle wishes for the Corinthians, when he says: "The grace of our Lord Jesus Christ and the love of God and the communication of the Holy Spirit be with you all," II Cor. 13 : 13. This communication is the communion of the saints, who are Christ's mystical body, the body of which Christ is the head, and this communion we believe when we say: "I believe the communion of saints." The second communication or communion is the participation in the sacraments. "There is one Lord, one faith, one baptism," Eph. 4:5. It is especially taken, however, for the

participation in the body and blood of our Lord Jesus Christ. "The cup of blessing which we bless, is it not the communication of the blood of Christ? And the bread which we break, is it not the participation of the body of the Lord?" I Cor. 10 : 16. Because we, being many, are one bread and one body, seeing we partake of one bread and one cup. The third communication or communion is the participation in suffrages. In this participation the good Lord is glorified: "I am a companion of all them that fear thee and that keep thy commandments," Ps. 119 163. And besides this threefold communication is the communication which is the intercourse between all Christians, good and bad. The first three are only participated in by good men, but of this fourth men of the world think more.

Secondly, it is to be noted that in this statement I speak of excommunication, as it corresponds to the fourfold excommunication just spoken of, namely, separation (1) from participation in divine grace which makes gracious, (2) from a worthy participation in the sacraments, (3) from participation in the suffrages which prepare for the life eternal — these three being opposed to the corresponding threefold communion — and (4) from intercourse with Christians, either by the censure of the spiritual or public exclusion by the secular judge.

From these it follows: (1) that there is not and can never be an excommunication of the three first kinds except for mortal sins. This is clear, because never is any one separated from the communion of the saints, which is the participation in God's grace, and the sacraments and the suffrages, preparing for the life eternal, except for mortal sin. For mortal sin alone divides or separates from communion of this kind, just as it separates from God himself. Nor can this happen except through mortal sins, because, so long as a man is in grace, so long does he remain a partaker of the aforementioned threefold communion, in respect to the law of present righteousness. And as God is the most righteous judge, He cannot damn a man except for his demerit in nonparticipation of this kind. Therefore, the corollary is true. (2) It follows that no judge may ever excommunicate in this way unless the man himself shall before excommunicate himself by his oflences. (3) It follows that no judge ought to excommunicate any one except for a criminal oflence or on account of mortal sin, and this is clear from 11 : 3 [41, Friedberg, 1 : 655], where it is said: "No bishop except for the certain and evident cause of sin shall deprive any one whomsoever from ecclesiastical communion by the anathema, because the anathema is the eternal damnation of death, and only for mortal sin ought it to be imposed and only on him who may not be otherwise corrected." And it is also said, 24 : 3, His ita respondetur [Friedberg, 1 : 988]: "With God not the sentence of priests is sought but the life of the guilty, for no one is to be known by the sentence to whom the stain of sin does not adhere." Likewise, Lyra, Com. on Hosea, 4, at the end, says: "0 Judah, send Israel away, on account of his wickedness, for their company is separated, that is, excommunicated." And also it is said by Augustine, 2:1, Multi, 5 [Friedberg, 1 : 446]: "No one ought to be excommunicated except for a criminal offence."

All, however, agree in saying that excommunication is of two kinds, major and minor, as is apparent from de Sent. Excom. si quem de cleri excommunicat. fieri, de except. cap. 2 [Friedberg, 2 : 912] 2 where it is stated that a minor excommunication removes from the participation of the sacraments but the major separates from the communion of the faithful.

Minor excommunication is separation on account of mortal sin from participation in spiritual benefits by which a man makes himself unworthy through criminal offence to continue to participate in grace, and this excommunication no one may impose upon a man who persists in God's grace. Major excommunication is the separation which the prelates of the church announce against a man as an open sinner, and by which they set him off from intercourse with Christians and from participation in the sacraments.

By this excommunication they now designate me in processes and denunciations, shutting me out from all human communion. But blessed be God, who did not give such force to this [kind of] excommunication as to make it possible for it to take away from a good man virtue or righteousness, when he endures in humility, nor is it able to impose upon him sin [when he refuses to obey it]. Nay, rather when he has patiently continued to endure it helps to purify him as tools iron, and fire gold, and it helps to increase his reward of beatitude, as the Lord said: "Blessed are ye when men shall persecute you, and separate you from their company, and reproach you and cast out your name as evil for the Son of man's sake. Rejoice in that day and leap for joy, for behold, great is your reward in heaven, for in the same manner did their fathers do unto the prophets," Luke 6 : 22, 23.

But this [major] excommunication ought to be medicinal, that is, a remedy to heal a man in his soul and to lead him back to Christ's fold and to life eternal as a measure ordained for a final end. Therefore, St. Augustine, Homilia, de penitentia, also 2:1, Mulli, says: " Excommunication ought not to be mortal but medicinal." Again, Cum medicinalis. de Sent. Excom., liber 6 : 7.1 A notorious sinner after the third warning or public citation, when he refuses to be corrected, ought on account of his criminal oflence to be kept from communication according to the Saviour's command, where he said to Peter: "If thy brother sin against thee, go show him his fault between thee and him alone. If he hear thee, thou hast gained thy brother. But if he will not hear thee, take with thee one or two more that at the mouth of two or three witnesses every word may be established. And if he refuses to hear them, tell it to the church. And if he refuses to hear the church also, let him be unto thee as the Gentile and the publican," Matt. 18 : 15-17. This exposition is given above at the beginning of Chapter XXI of this treatise, in which the conditions of a true prelate are indicated. Nevertheless, this is yet to be noted, that Christ said: "If he sin," that is, commit the sin of a criminal offence, for on that account he is deserving of correction and he is not to be excommunicated for anything whatsoever. But if he show himself incorrigible, after the third reproof, then he ought to be carefully avoided as a heathen Gentile and a publican; otherwise not. Let, therefore, prelates see to it that they act cautiously, lest they excommunicate so easily subjects for temporal gain.

Hence, St. Augustine, Sermo de Quadragesima : "We cannot deprive of the communion, because this prohibition is not yet mortal or medicinal, except in the case of one who has of his own accord confessed or has been named or convicted in some secular or ecclesiastical tribunal." And he also says on these words, "If any man that is named a brother be a fornicator or covetous or an idolater or a reviler or a drunkard or an extortioner, with such an one no not to eat," I Cor. 5 : 11: "Likewise it must be known that every one sinning mortally is excommunicated of God, in accordance with that Psalm, 'Cursed are those who depart from thy commandments,' and I Cor. 16 : 22, 'If any man love not our Lord Jesus Christ, let him be anathema.' " And although this excommunication is called minor because it is not pronounced solemnly in public by a prelate, nevertheless I fear it more than the major excommunication, with which the prelates now assail me. But, besides, I fear the greatest excommunication more still with which the high priest, sitting in the sight of all the angels and men, will excommunicate the damned from participation in eternal blessedness, as he said: "Go,1 ye cursed into the eternal fire which is prepared for the devil and his angels," Matt. 25 : 41. Of this excommunication the judge ought to think and he ought to beware lest he excommunicate unjustly. For whoever excommunicates another for temporal gain or chiefly for his own honor or to revenge an injury against himself or without any known cause of criminal offence this man excommunicates himself. For he ought to excommunicate him whom God excommunicates, for criminal offence which he knows [the possible offender] has committed and after the third warning and out of love, for the honor of God and for the salvation of the man whom he excommunicates and also for the advantage of others that they may fear and that he [the offender] do not infect them. So Paul did when, writing to the Corinthians, he charged them to cast out the public fornicator lest he should infect others and also that his soul might be saved, I Cor. 5 : 5.

Now, these things being considered, the faithful should know how many prelates, clergy and laity are excommunicated of God; for all who depart from the Lord's commandments are excommunicated, and

also how many excommunicate themselves when they put excommunication on others, or publish it, and especially the clerics who, as it were, every day at prime sing: "Cursed are they who depart from thy commandments."

This much, in brief, with respect to excommunication, in regard to which that good Christian of holy memory and that great zealot of Christ's law, Master Frederick Epinge, bachelor of canon law, treating of the first article, said: "No prelate ought to excommunicate anybody unless he first knows that the person has been excommunicated by God." Of this I have written in another place. And, if thou wilt not believe it, learn it on the wall in Bethlehem,1 and there thou wilt find how excommunication does not injure the righteous but profits and why even the righteous ought to fear unjust prelatic or Pilatic excommunication, and for these reasons, (1) that he may not be guilty at some other place or time. (2) The danger to him who unjustly excommunicates. (3) The injury to the brethren which may follow from a foolish appHcation of censures; (4) that they may not become an occasion of stumbling by going back from the truth; (5) that they may not suffer an injury by an excommunicated person's curses; (6) that he by impatience may not fall from merit or depart from righteousness — and also for other reasons explained more fully and pertinently in another place.

Then, in regard to the excommunication, by which the wicked separate the good from themselves, this should be said, that the wicked excommunicated Christ and the man born blind, as appears in John 9 : 22, 34. This kind of excommunication may be distinguished also from its opposite, which is communion in evil, of which it is said: "Have no communion with the unfruitful works of darkness," Eph. 5 : n; and, "He that giveth him greeting communes in his evil works," II John n; and, "What communication has a saint with a dog?" Ecclesiasticus 13, as if he had said, None! Therefore, every one being in grace in respect to present righteousness is excommunicated [out of communion with] from the wicked. And this is that holy excommunication by which the righteous is said to be excommunicate, that is, placed outside of communication or participation with wickedness. Hence, John says: "And I heard another voice from heaven saying, Come forth, my people, out of her, that ye have no participation with her sins and that ye receive not of her plagues, for her sins have reached even unto heaven," Rev. 18 : 4, 5. Let us ask the Lord that He may vouchsafe to preserve us in His communion and guard us against unlawful communion.

there more clearly, for example, 3, which there reads: "The injury to neighbors which might easily arise as a result of the excommunication as, for example, the deprivation of wholesome teaching and sacraments, for he who wrongly excommunicates sometimes is the cause of the perdition of many through the withholding from the excommunicate teaching by which he would be instructed most profitably in the law of Christ." And the fifth there reads: " That the neighbors may not sin by avoiding him, cursing him, and withholding from him the works of charity." Huss's treatment of the subject of excommunication in the de sex Erroribus is more clear and practical than his treatment in this chapter. There he introduces many pcrtinent quotations from the Fathers and especially from the Scriptures which are not given here, as, for example, Num. 23 : 8: "How shall I curse whom God hath not cursed? " On the other hand, he leaves out there the distinction between the major and minor excommunications and the prolonged explanations of communication and excommunication. The cascs of Balaam and Ananias Huss uses often, e. g., Mon., 1 : 362, 401.

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