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Edited by Cary J. Nederman
Excerpt
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Defensor minor

(translated by Cary J. Nederman)

The beginning of the book entitled *Defensor minor*, edited by Master Marsiglio of Padua after the *Defensor pacis major*.

Chapter 1

[1] We have previously read in earlier works, according to the claims of the Master of the ‘Sentences’ [Peter Lombard], that priests have a certain power of binding and also of loosing, namely, of excommunicating sinners and cutting them off from spiritual as well as civil or temporal association [*communicatio*] and from fellowship with others of the faithful – powers which they call ‘jurisdiction’. It seems at least appropriate to examine what this jurisdiction is and how many types of it may be identified, and whether, according to any sense of the term, the jurisdiction of the emperor is due to bishops or priests.

[2] Just as the word indicates, therefore, ‘jurisdiction’ is the pronouncement of right [*dictio iuris*]; moreover, right is the same as law. Indeed, law is two-fold: it is sometimes divine, sometimes human. And taking law in its ultimate and proper meaning, as is written in *Defensor pacis*, Discourse 1, chapter 10, divine law is the immediate precept of God without human deliberation regarding voluntary human acts committed or omitted in the present world towards the best end or condition in the future world which human beings are suited to pursue. These are coercive precepts, I say, for transgressors in this world, under

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punishment or torment to be carried out in the future rather than the present world. This law is called an immediate precept of God without human deliberation because, although divine law has been promulgated by man (that is, by the apostles and evangelists), still this was not done by them nor by their deliberation, as by an immediate efficient cause, but by them as instruments of God or Christ who is God, as though He were the immediate efficient cause of their movements in this regard. Hence, James 4[:12] says, 'There is a single legislator and judge, He who can condemn and deliver'; and II Peter 1[:21] says, 'No prophecy is asserted by the human spirit, but men who speak the holy words of God are inspired by the Holy Spirit'.

[3] In addition, a compatible and more thorough treatment of such a definition can and should be derived from *Defensor pacis*, Discourse 1, chapter 10 and Discourse II, chapters 4, 5, 8 and 9.

[4] By contrast, human law is a precept of the community of citizens [*universitas civium*], or of its greater part [*valentior pars*]; the laws themselves ought to be made by immediate deliberation about any voluntary human acts committed or omitted in the present world towards the best end or condition which any man is suited to pursue in this world. These are coercive precepts, I say, for transgressors in this world under threat of punishment or torment to be carried out against the very same transgressors, as is disclosed in *Defensor pacis*, Discourse 1, chapter 10.

[5] On the other hand, the pronouncement of right or law, in so far as it serves present purposes, may be approached in four ways: first, ascertaining the standards or rules for civil actions; second, pronouncing or explaining them to other people; third, promulgating them in the manner of coercive precepts, just as has been stated, which are without exception binding upon all who make and are subject to the laws; and fourth, pronouncing law may be approached by means of specific coercive sanctions against each and every transgressor himself. Now, the first way of pronouncing law pertains to the prudent men [*prudentes*] who devise them; the second way, to learned teachers [*doctores*] or those having authority to teach about them; the third and fourth ways, to those who have the primary and proper authority without qualification to coerce transgressors, which is identical with the authority of the legislator itself; the fourth way of pronouncing the right or law pertains more properly to the judge or ruler speaking with the authority of the legislator, since the power to coerce transgressors is not his own without qualification but is given to him by others and is potentially revocable by the same people.

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[6] Therefore, having now set out this preface, we may draw some conclusions from it. The first is that no human beings – communally or separately, cleric or layman – in so far as they are human can or ought to pronounce divine law in the first, third or fourth sense; and one can and ought to grasp the same point with the utmost certainty from *Defensor pacis*, Discourse II, chapters 4, 5, 8 and 9, and from the aforementioned authority of James and Peter. From this it also follows by necessity that no human being, regardless of the preeminence of the status or station which he occupies, has the power or authority to dispense, change, increase or diminish any of the precepts of divine law or to introduce precepts touching upon divine law (in a positive as well as a negative way) which one may detect to be contrary or contradictory to the Scriptures. From this it also follows by even greater necessity that if every or any vow is always to be in compliance with the precepts of divine law, and if, furthermore, marriage between certain degrees of blood relations is prohibited by the aforementioned law, then by no means can any bishop or priest, even the Roman bishop who is called pope, dispense an exemption contrary or contradictory to divine law.

[7] The second conclusion is that the pronouncement of human law in accordance with the proper meaning of law (about which we spoke earlier) established by the third and fourth senses of law does not pertain to any bishop, priest or deacon, or cleric or ecclesiastical minister, regardless of the name by which he is called, either alone or in their single assembly, whether communally or separately; and this can and should be grasped from *Defensor pacis*, Discourse I, chapters 12 and 13 and Discourse II, chapters 4, 5, 8 and 9. For this reason, it follows by necessity that none of the aforementioned ecclesiastical ministers, as enumerated above, has the authority to give dispensation from or relax anything contrary to the precepts or prohibitions of human law. Rather, such dispensations or relaxations are to belong to the Roman ruler, in so far as he is the human legislator, and to his authority alone. From this it follows by necessity that no decretal or decretum of the Roman pontiff or any other priest or deacon whatsoever, or aforementioned minister, or their single assembly, acting on his or its own authority, and not from that given by others, may constitute or ordain law according to the proper and ultimate meaning of law, since it would be neither divine nor human law, as should and can be seen from the preceding chapter; and that no one who transgresses either can or ought to be constrained by punishment or torment of their property or persons from such ecclesiastical

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ministers. From this it also necessarily follows that neither does the Roman bishop or any aforementioned ecclesiastical minister have jurisdiction nor does he have coercive power in this world over either clerics or laymen, even manifest heretics, unless this jurisdiction should have been conceded by a human legislator, by whom it is potentially revocable whenever it seems to the aforementioned legislator to be expedient: and one can and should grasp this with certainty from the preceding chapter and the *Defensor pacis*, Discourse II, chapter 10. For this reason it also follows that neither Saint Peter nor any other apostle had coercive jurisdiction over the remaining apostles or other aforementioned ecclesiastical ministers. From this it additionally follows by necessity that the Roman bishop as well as all aforementioned ecclesiastical ministers are subject in property and person to the coercive jurisdiction of the judges and government under the authority of the human legislator; and one can and ought to grasp this with certainty from the preceding chapter and from *Defensor pacis*, Discourse I, chapters 15 and 17, and Discourse II, chapters 4, 5, 8 and 9.

Chapter 2

[1] Yet someone might object to the preceding by declaring that bishops or priests, or their single assembly, can establish coercive laws and for this reason restrain transgressors just like judges in the present world. For this seems to belong to the power and office of priests and also the single assembly of them, since it is useful and expedient for good morals and for the pursuit of happiness and the avoidance of misery in the future world, because such matters seem to be spiritual in nature.

[2] This allegedly occurs because the statutes of priests are coercive in the present world. For as a result of this, men are led towards good morals and turned away from bad morals, by means of which eternal happiness is achieved and damnation is avoided.

[3] Yet we say that by means of divine law and human coercion, these concerns are in fact sufficiently addressed and resolved for the state of the present as well as the future world. For this reason, anything established by priests or their single assembly is totally useless. This is both because the minor premise of the aforementioned syllogism is to be rejected pure and simple and because it is inexpedient and useless by reason of the inconvenience which follows from it.

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[4] First, such law results from an inadequate legislator, since it is neither human nor divine; that it is not human is demonstrated in *Defensor pacis*, Discourse 1, chapters 12 and 13; that it is not divine is demonstrated by James 4[:12] and I Peter 2 [II Peter 1:21] and by what is known to all those faithful to Christ.

[5] There also follows from this another inconvenience, since there come to be several coercive human legislators and governments ruling over the same multitude, none of which occupies a subordinate position in the present world, creating a situation which is particularly unbearable for the polity [*politia*]. Up until the present this has been a cause of perpetual dissension among those faithful to Christ, except when power or authority was snatched entirely away by the usurpation of one of the aforementioned clerics. This is also impossible and unbearable for the polity and citizens because of the inconveniences which follow from it, which are clearly demonstrated in *Defensor pacis*, Discourse 1, chapter 17.

There is also a third inconvenience that follows from the preceding. Let us suppose that priests have an equal right [*ratio*] to establish coercive law, and to exercise judgement according to such law over all civil human acts in the present world, because all such acts, which human law enjoins or prohibits, touch upon good or bad morals. For this reason, the law is described by the human legislator in this way: the law is a holy sanction, enjoining just and honourable conduct and prohibiting dishonourable acts. It would also follow, therefore, that priests would be the human legislators and that the laws of the citizens would be superfluous. The opposite of this is demonstrated in *Defensor pacis*, Discourse 1, chapters 11, 12 and 13, and is confirmed by Holy Scripture cited in Discourse II, chapters 4, 5, 8 and 9.

[6] But some people say that although this power does not pertain regularly and without reservation to the office of the priest, still in special cases (*in casu*) it pertains to their office, for instance, should rulers on account of some defect be negligent regarding matters of legislation or in the discharge of their lesser obligations. These rhetorical statements are contrary to Scripture and human reason. For the Apostle says in II Timothy 2[:4]: 'No soldier of God involves himself in secular affairs', namely, in litigation or civil matters; and in I Corinthians 6[:4]: 'When therefore you have been permitted judgement in secular cases, those who were appointed to be judges were despised by the church'; and by 'judgement' he means over secular matters or contentions which arise from human action and additionally those uncertainties which arise

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concerning divine law. For this reason, the same Apostle says in I Corinthians 3[:3]: ‘Since jealousy and contention reign among you, are you not carnal’, that is, litigating over secular matters, ‘and travelling according to the ways of men?’ And once more, in II Corinthians 1[:24], he says, ‘We will not be lord over your faith’; he is speaking expressly about spiritual matters, as is likewise confirmed by the authority or exposition of Ambrose and Chrysostom regarding these texts, which may be found by whomever cares to check in *Defensor pacis*, Discourse II, chapters 4, 5 and 7.

[7] This position is also contrary to human reason. For the power and authority to correct rulers who are negligent or irresponsible in performing their duties by restraining them through punishment of their persons or property belongs solely to the human legislator, as is demonstrated in *Defensor pacis*, Discourse 1, chapters 15 and 18. And I say furthermore that if such correction pertains to some particular part or office of the civic body, then under no circumstances does it pertain to the priests, but instead to the men of prudence [*prudentes*] or learned teachers, indeed preferably to the workmen or craftsmen or the rest of the labourers [*mechanicis*]. For it is not forbidden by human reason or law, or by Holy Scripture, by counsel or by precept, for these men to involve themselves in civil or secular activities. This is forbidden to priests and bishops, however, as we have already indicated on the authority of the Apostle. And I say that while, according to the Apostle, it can pertain to the office of the priest to engage in ‘exhortation, submission, censure and reproof, with patience and instruction in all things’ [II Timothy 4:2], he can never engage in compulsion. For this reason, Ambrose in ‘On Surrendering the Basilica’ says this to the Emperor Constantine: ‘I shall suffer, I shall mourn, I shall cry; against armies, even the Goths, my weapons are my tears; for such are the defences of priests; for they neither can nor ought otherwise to resist.’¹

Chapter 3

[1] As to the question of whether, if the whole multitude of the faithful or its greater part or rulers wished to stray from the faith of Christ, or did in fact stray, they should or could be restrained to the contrary by the priests or their assembly, it must always be answered in the negative, as is apparent from the admonition of Christ in Matthew 10[:23], in so far as

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He says, 'If they have persecuted you in one city, take refuge in another'. For this reason, He willed for the apostle and their successors, the bishops or presbyters, to abstain not only from compelling others but even from the defence of their own bodies, which the Apostle also decreed in the already cited passage: 'We are not lord over your faith'. Yet certain people insist that something else was meant by the Apostle, in so far as he says in II Corinthians 1[:23]: 'It was to spare you that I did not come to Corinth'; and once again in I Corinthians 4[:21]: 'Is it for you to determine? Do I come to you with a cane or in gentleness?' This is stated more fully in II Corinthians 10[:6]: 'We are ready to avenge all disobedience once your obedience is complete'.

[2] Yet to this and similar observations it may be responded that such correction is verbal, not coercive, namely, the censuring and reproving of offenders. For this reason, the Apostle said in a passage cited above: 'It was to spare you', etc., adding, 'We will not be lord over your faith'. About this Ambrose remarked: 'And lest he put to shame the Corinthians, as though out of lordship, the Apostle added, "We will not be lord over your faith", that is, your faith does not suffer under lordship or coercion, since it is voluntary, not necessary; for the condition of faith is formed by means of love, not lordship'.² These passages are also presented fully in *Defensor pacis*, Discourse II, chapters 5 and 9. In addition, the Apostle said in the passage from [II] Corinthians [10:4] cited above: 'The weapons of our soldiers are not carnal' but are spiritual or verbal. By contrast, those weapons by which men are constrained are carnal, that is, material or corporeal.

[3] Whether the restraint of heretics in this world by punishment of their persons or property and their exclusion from the company of others is a precept or only a counsel according to Holy Scripture, and also who has the authority to do so, are discussed adequately in *Defensor pacis*, Discourse II, chapter 10.

[4] And since neither priests nor their single assembly have such authority and right, we will move on from this topic to a third conclusion that may be asserted about interdiction and excommunication, and which follows by necessity from earlier premises. It is that, by virtue of the words of the Holy Scripture of the New Testament, no bishop or priest or whatever ecclesiastical minister one cares to name, whether communally or separately, can claim for himself any movable or immovable property which has been conceded to him in whole or in part and for which he is obliged to the faithful (excepting adequate food and clothing

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alone), especially in as much as such things are claimed by right of lordship [*dominium*]. For as Christ says in John 20[:21]: ‘Just as the Father sent me, so I send you also’, namely, for the sake of humility and the exercise of priestly office, a view which is also understood to apply to His successors in so far as He says in the twenty-eighth and final chapter of Matthew [28:20]: ‘I am with you to the end of the world’, which cannot be true of the first apostles unless by it is understood their successors also. Neither Christ nor any of His apostles had allocated to themselves any fixed portion of the goods of the temporal world, especially as regards lordship, but they had only elicited for themselves food and clothing from among the temporal goods offered to them by the faithful. For this reason, Christ says in Matthew 10[:10]: ‘The workman is deserving of his sustenance’; and the Apostle remarks in I Timothy 6[:8]: ‘As long as we are fed and clothed, let us be content with this’, just as the Apostle also says similar things in I Corinthians 9[:9–10] and Romans 15[:27] which are quoted above and have been omitted for the sake of brevity.

[5] Christ rejected all the rest of those temporal possessions that were clearly superfluous, whether held personally or communally, and His apostles were counselled and taught similar rejection, in so far as He says in Matthew 8[:20] and Luke 9[:58]: ‘Foxes have holes and the birds of the air have nests, but the son of Man does not have a place where He lays His head’. And moreover, in Luke 14[:33] He speaks to the apostles and through their persons admonishes their successors: ‘So therefore none among you can be my disciples who does not renounce everything which you possess’. And since what is not possible is equivalent to what is impossible, some learned holy theologians aim to teach that Christ forbade lordship over temporal goods to His apostles and their successors not only as a matter of counsel but as a precept. We have discussed carefully all such matters and many other issues concerning the poverty of Christ in *Defensor pacis*, Discourse II, chapters 12, 13 and 14. From this it also follows by necessity that neither the apostles of Christ nor their successors – whether priests or bishops or the remaining ministers of the temple – can allocate or claim a tenth or other fixed portion of movable or immovable temporal goods. For this reason, according to II Corinthians 9[:7], the Apostle requested alms or contributions for those Christian believers living in Jerusalem, because they had sold their farms and houses and had laid the proceeds at the feet of the apostles for distribution to the community of the faithful, as is written in Acts 4[:34–5], where it states: ‘Everyone gave according to what his heart had

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resolved, none out of necessity', that is, not by coercion. For this reason, the Apostle also adds [in II Corinthians 8:8, 10]: 'I do not speak like a commander . . . but I give counsel in this matter'. And if the Corinthians had nevertheless owed such tithes by obligation to the divine law, the Apostle would not have said: 'I do not speak like a commander', nor would it be said: 'Everyone gave according to what his heart had resolved', but the tithe would have been exacted from them just as though the divine law required this.

[6] Moreover, if Christ had reserved for Himself and His apostles such tithes and lordship to be owed by the faithful, He would have provided not only for the immediate future but also for times in the more distant future, and consequently He would not have been poor nor would He have experienced great poverty along with the apostles. Yet the opposite is made clearly apparent by Holy Scripture, as is carefully presented in *Defensor pacis*, Discourse II, chapters 12, 13 and 14.

[7] From this, one can also infer that because certain laymen as well as certain clerics had obtained such tithes from the earliest times of antiquity by means of the documents or privileges of the Roman ruler, and had possessed such tithes in good faith without any civil or ecclesiastical censure as regards tribute and taxes and concessions and very many other arrangements pertaining to the authority of the Roman ruler, therefore these were transferred and conceded to them by the supreme human legislator.

[8] Nor may one object that the Old Law mentions tenths and first fruits, since the observance of Mosaic legal and ceremonial practices is not obligatory for those faithful to Christ, because as the Apostle Paul says [Romans 7:6]: 'Freed from the Old Law, we serve law in a new way', and that [Hebrews 7:12] 'with a changed priesthood, it is also necessary that a change be made in the law'. Moreover, such tithes are not, according to the Old Law, owed to the priests but also to all laymen and secular persons who have been assigned to the Tribe of Levi.

Chapter 4

[1] The fourth principal conclusion is that the pronouncement of divine right or law in the second sense pertains to bishops or priests. We read of this sense in Scripture, when in John 20[:21] Christ conceded it to His apostles, saying: 'Just as the Father sent me, so I send you also', and

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in the twenty-eighth and final chapter of Matthew [28:19, 20]: ‘Go, therefore, teach all nations, baptising them in the name of the Father’, etc., ‘teaching them to perform all your directives’. Along with the aforementioned power to pronounce or to teach divine right or law, it may be read that Christ had conferred on these same apostles certain other authority to do or perform certain acts on their own, such as baptising, which is already mentioned in the chapter from Matthew, and performing the Eucharist or creation of His body out of bread, in so far as He says in Matthew 26[:26] and Luke 22[:19]: ‘For this is my body which is given up for you; do this in memory of me’.

[2] Another of these powers is the appointment of successors in priestly office and of other ministers who are called deacons. Regarding this the Apostle speaks in I Timothy 4[:14]: ‘Do not neglect that gift which is within you, which was given to you by the prophets and by the laying of hands by the presbyters’; and in Titus 1[:5]: ‘I left you behind in Crete in order that arrangements might be undertaken and presbyters be constituted for each city’, etc.; and once again, in Acts 4 [6:6] it says: ‘These’, namely, deacons, ‘were at the feet of the apostles, and they laid their hands upon them while praying’. And yet again, it may be read that Christ had conceded certain other forms of authority to the apostles of whom we now speak such as that of binding and loosing human beings from sin the present world, in order that happiness and also misery are achieved or avoided in the future world. And perhaps Christ conceded to them other forms of authority, according to divine law, about which there is no pressing need to debate for the present.

[3] None of the preceding powers or forms of authority is coercive; but all are instructional or managerial [*oeconomica*], whether speculative or practical, just like those which a physician exercises in counselling and treating healthy and ill persons. One may discover the clear similarity of this comparison in *Defensor pacis*, Discourse II, chapters 6, 7 and 9, and more certainly yet in chapters 4 and 5 of the same Discourse. And consequently, when power is called spiritual, such power should not be understood as jurisdiction or authority in the sense of the coercive punishment of persons or their property in the present world, but as that kind of instruction or practice, exhortation and censure which we already ascribed to the power of the physician or steward [*oekonomi*]. Yet disregarding all the powers mentioned, it is necessary to discuss at present the single greatest power, which is the binding and loosing of human beings from sin, and which is commonly called ‘the power of the