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COERCIVE AUTHORITY AND POPULAR SOVEREIGNTY IN MARSIGLIO OF PADUA'S *DEFENSOR PACIS*

Marsiglio of Padua's *Defensor pacis* (1324) appeared in a wider context of debate on the nature of spiritual power and papal sovereignty as also evidenced in the work of John of Paris or William of Ockham and manifested concretely in the controversy between John XXII and Ludwig of Bavaria. This controversy raised the issues of the independence of the temporal authority from the spiritual authority and the constitutional monarchy against the absolute monarchy. Moreover, through its major themes (the state as a product of reason existing for the common benefit of the people, political authority defined as coercive power employed for the resolution of eventual conflicts, and the consent of the people as the only source of legitimate political power) *Defensor pacis* contained significant similarities both with the idealist tradition and the views of Machiavelli and Hobbes, and, finally, with the theories of Rousseau and the French Revolution. Despite being the work of a scholastic philosopher and the rector of the University of Paris in 1313, the book marks an important moment in the gradual secularization of political thought. Marsiglio's views apparently represent an even more radical departure from the medieval canon than those expressed much later in the works of the Florentine humanists, such as Poggio Bracciolini and Leonardo Bruni.

However, many of these assertions require a more thorough consideration in order that their validity be better established, and this will be the aim of this project. First, after a short review of the available scholarly works on Marsiglio, the influence on *Defensor pacis* of Marsiglio's own life and political experience, as well as that of social and political practice in the Italian city-states, will be taken into account. Thereafter,

the differences between Marsiglio's views and those of some of his contemporaries, such as John of Paris or William of Ockham, and the way these can be explained will be identified to an extent. It is only after this that some clarity can be obtained in terms of which views of *Defensor pacis* still place Marsiglio among the medieval authors and which hint at future developments during the Reformation. By way of example, all medieval Aristotelians shared the idea that the criterion for good and well-tempered government was its aim to achieve the common benefit. Marsiglio's really new idea was that government should act in accordance with the will or the consent of its subjects (*Defensor pacis* – henceforth *DP* – I.viii.3-4).¹ Moreover, Marsiglio declared that of the two criteria of common benefit and consent, the latter was even more important than the former (*DP* I.ix.5);² this emerged clearly in Marsiglio's arguments when presenting the people as the supreme legislative authority. Nevertheless, doctrines of popular control were not completely unusual to medieval political thought: the Roman tradition of law that saw the derivation of the emperor's power from the people, the Germanic tradition of the establishment of law in immemorial popular custom, and the development of medieval institutions themselves all pointed together in that direction. Yet, Marsiglio's theory of popular sovereignty seems to have been the most complete, explicit and extensive statement of such a doctrine. There were even scholars who asserted that the modern theory of sovereignty derived from Marsiglio, while the modern theory of separation of powers and limited political authority derived from Ockham and the natural law tradition of which he was the summarizer and organizer.³

The first comprehensive study and first complete translation into English of *Defensor pacis* can be found in Alan Gewirth's two-volume edition, *Marsilius of Padua: The Defender of the Peace*.⁴ Gewirth's contribution was considered "germinal".⁵ *Defensor pacis* received special attention in the decades following the publication of his book, as evidenced by the translation of Marsiglio's work into various Western languages and by editions of numerous monographs on the subject in German, French, and Italian.⁶ Scholarly articles on *Defensor pacis* and Marsiglio of Padua are published regularly in academic journals. The reputation of Marsiglio as a political theorist worthy of careful consideration by students of Western political seems now to be well established.⁷ Marsiglio is also mentioned in the works of many recent Anglo-American scholars presenting the development of Western political ideas. Quentin Skinner, Anthony Black,

James Blythe and others acknowledge that *Defensor pacis* constitutes a turning point in any reconstruction of medieval, as well as early modern European political thought.⁸

One of the first controversial issues concerning Marsiglio is the attempt of recent literature on his political thought to identify the appropriate historical context within which to place *Defensor pacis*.⁹ The political, regional, or national background ascribed to the author of the *Defensor pacis* has considerably influenced the theoretical positions attributed to the text itself. Some commentators, such as Alan Gewirth and Quentin Skinner, locate Marsiglio firmly within the context of Republican values of the Italian communes.¹⁰ J.K. Hyde has gone so far as to argue that the first discourse of *Defensor pacis* provides a virtual blueprint for the inner workings of Italian (or more specifically Paduan) communal government.¹¹ By contrast, other scholars, such as Georges de Lagarde and Jeannine Quillet, have emphasized Marsiglio's devotion to royal or imperial rule, originating in his attachment to the German king and imperial pretender Ludwig of Bavaria. This perspective takes *Defensor pacis* as a manual for the German pacification of the northern Italian cities (sometimes known as the *Regnum Italicum*) and for papal recognition of the German king's imperial rights.¹²

Available biographical evidence pertaining to Marsiglio can be considered consistent with any of these interpretations of Marsiglio's intentions in composing *Defensor pacis*.¹³ Born between 1275 and 1280, he was a member of the Mainardini family, the prominent jurists of Padua. His father held the position of notary of the University of Padua. As the professional guilds connected with the practice of law enjoyed great influence over the government of the commune of Padua, Marsiglio benefited from direct exposure to urban political affairs from a young age.¹⁴ Very little is known about Marsiglio's early life and education. He was trained as a physician, quite probably at Padua, the location of one of Europe's then leading medical schools. He was a friend of the Paduan civic leader and pre-humanist author Albertino Musato and later became an associate of the powerful della Scala family of Verona and of Matteo Visconti of Milan, in whose political enterprises he was to be engaged throughout his life. Of where and under what circumstances he was ordained into the priesthood we have no information. Similarly, there is no evidence that he was attached to any of the established orders.

The first date that may be firmly connected to Marsiglio is March 12, 1313, the date on which a charter of the University of Paris identifies him

as the Rector of that institution. He probably occupied this position between late 1312 and mid 1313. The date of his arrival in Paris is unknown, but it must have been several years before his selection as Rector. Paris, of course, was a major center of Aristotelian learning and the Arts Faculty at the University educated or was home to some of the most important political authors of the late thirteenth and early fourteenth centuries, including Thomas Aquinas, Giles of Rome, John of Paris and Pierre DuBois.¹⁵ These thinkers all made extensive use of the recently translated versions of Aristotle's political and moral writings (the *Nichomachean Ethics*, which appeared just before 1250, and the *Politics*, which appeared about a decade later), which had been integrated without much controversy into the Arts curriculum.

Our information on Marsiglio's activities improves after 1313, when his name begins to appear on many documents. In 1315 he witnessed a profession of faith by a fellow scholar. In 1316 and again in 1318 he was promised ecclesiastical preferment by Pope John XXII and in 1319 was mentioned (also in a letter of John XXII) as a member of a diplomatic mission in pursuit of della Scala and Visconti interests.¹⁶ We do not know when or where Marsiglio began to compose *Defensor pacis*. Reaching some 500 pages in modern critical editions and with extensive cross-references, the treatise seems to have been carefully constructed over a long period of time by an author with direct access to a considerable library.¹⁷ Moreover, the text of *Defensor pacis* speaks often enough of King Philip IV (the Fair) of France and his conflicts with Pope Boniface VIII and Pope Clement V as to suggest recent memory of these figures.¹⁸ Philip died in 1314 and it may be inferred that *Defensor pacis* was started soon thereafter on the strength of a reference therein denoting the French Baronial Leagues of 1314-1315, organized to oppose the taxation policies of Philip and his son, as "modern" (*DP* I.xi.8).¹⁹ However, we know for sure that Marsiglio completed *Defensor pacis* in Paris on the Feast Day of St. John the Baptist, June 24, 1324.²⁰

Defensor pacis initially circulated without any attribution of authorship, although clues to its source, such as self-identification by its author as "a son of Athenor" (the legendary founder of Padua) and a lengthy encomium of Matteo Visconti, can be found in the text (*DP* I.i.6, II.xxvi.17).²¹ It was only in 1326, under mysterious circumstances, that Marsiglio was publicly identified as the person responsible for its composition. At this he immediately left Paris, joined by his colleague John of Jandun (for centuries erroneously considered a co-author of *Defensor pacis*).²² They

found refuge in Nuremberg, at the court of the German king Ludwig, who was in the midst of a long lasting dispute with the papacy over rights to exercise royal and imperial powers within Germany and Northern Italy. Marsiglio's decision to flee to Ludwig was, no doubt, occasioned by several factors, including his prior connection to the royal cause through the patronage of della Scalla and Visconti and the king's established reputation for protecting enemies of the Pope.

Marsiglio's public identification as the author of *Defensor pacis* and his subsequent flight from Paris were the start of a new phase in his career. Having left the formal academic environment, Marsiglio devoted himself to the active promotion of the interests of his protector. Ludwig, having taken the crown in 1322 after a prolonged struggle, was at the time engaged in confrontation with Pope John XXII, who was unwilling to acknowledge his royal and imperial rights and prerogatives. Ludwig's need for allies in the following two decades of fruitless conflict with the papacy explains his eagerness to act as patron to Marsiglio and John of Jandun. He also played host to other famous fourteenth century figures, such as that of philosopher William of Ockham, lawyer Bonagratia of Bergamo, theologian Ubertino de Casale, and Michael of Cesena, head of the Franciscan order and leader of its Spiritual wing.

That Marsiglio's work was immediately associated with Ludwig's cause by the Roman curia is suggested in the contents of the October 1327 bull *Licet iuxta*,²³ in which John XXII condemns the author of *Defensor pacis*. The specific propositions that *Licet iuxta* identifies as heretical indicate the motives behind the condemnation. Five claims are singled out:

- 1) Christ, in offering tribute to Roman authorities, did so because he was subject to the coercive power of the temporal ruler;
- 2) the apostle Peter enjoyed no special authority over the other apostles or the church as a whole;
- 3) the emperor could appoint, remove, and punish the Pope;
- 4) all priests, regardless of title or rank, were equal in spiritual authority, so that distinctions within the clergy were entirely a matter of imperial concession;
- 5) the Church could punish no person coercively without the permission of the emperor.

These assertions by Marsiglio relate directly to the terms of the conflict between Ludwig's court and the papacy, and also provided further justification for the Pope's declaration of the German king's heresy. The

expressly political nature of John XXII's motives for condemning *Defensor pacis* is also suggested by Marsiglio's public role at the time. In early 1327, Ludwig launched an expedition to the Italian peninsula designed to establish his rights over the *Regnum Italicum*, that is, the provinces of Northern Italy that were traditionally subject to the German Empire. Ludwig undertook this journey on the advice of his Italian supporters, who included the Visconti and della Scala families and who insisted that the Pope's absence from Rome (the papacy had been residing in Avignon under French protection since 1305) would enhance Ludwig's chances of promoting his ascendancy in Italy. He visited numerous sites in Lombardy during the spring and summer of 1327, was welcomed everywhere and, at the same time, continued to engage in diplomatic maneuvers with the papacy. During the autumn of the same year, Ludwig moved into central Italy, headed for Rome, where he arrived on January 7, 1328. Following a meeting of the commune of the city, he was formally invited to enter Rome and on January 17 was crowned Emperor in St. Peter's cathedral by Sciarra Colonna in the name of the Roman people. It remains unknown whether this was part of Ludwig's plan all along or whether it was, instead, the result of his frustration with John XXII's intransigence. Even after these events, he continued diplomatic efforts to resolve his differences with the papacy, though they were constantly rejected. Ultimately, he deposed his papal adversary and appointed an anti-Pope, who took the name of Nicholas V.

Some scholars have identified Marsiglio's helping to guide the course of events during 1327 and 1328.²⁴ Marsiglio entered Italy together with Ludwig's retinue, though he was not constantly at the side of the German king. For instance, Marsiglio's presence was established in Milan in November 1327 while Ludwig was in the proximity of Lucca. Marsiglio was appointed Ludwig's "spiritual vicar" in Rome and seems to have drafted a number of documents associated with his patron's residence in the city. Many of the formal and rhetorical features of Ludwig's Roman adventure bear the mark of Marsiglio. We can only speculate, however, on the true extent of Marsiglio's role in designing the events.

Ludwig's triumph was short-lived. In the spring of 1328, the papacy augmented its efforts to remove the German presence from Rome. Italian opponents of the king began to organize their forces and the Roman populace itself became disillusioned. Ludwig withdrew from the city on August 4, 1328, and moved back through Italy until reaching the city of

Trent the following December. There he again sought the counsel of his Italian supporters, reasserted the deposition of John XXII from his papal office and retired to Germany. Marsiglio was identified as one of the members of Ludwig's retreating procession.²⁵

Marsiglio's activities again became obscure after his return to Germany. His name is occasionally mentioned in correspondence related to negotiations between Ludwig and the papacy, but there is no evidence of any literary production in the following decade. Ludwig's cause was supported, however, in the writings of William of Ockham, Michael of Cesena and other exiled churchmen and intellectuals at the imperial court. It seems likely Marsiglio lost favor with Ludwig that in the 1330s and was banished from the circle of royal associates and advisors. Possibly he found it necessary to support himself by using his training as a physician. Whatever his situation in those years, Marsiglio was only to return briefly to polemical pursuits at the end of his life. From a short reference in a document by Pope Clement VI, we know that by April 1343 Marsiglio had already deceased and probably died in late 1342. His final period of activity produced *Defensor Minor*, a summary and extension of the political teachings of *Defensor pacis*.

The variety of Marsiglio's commitments and associations should not prevent us from noticing a consistent pattern in his career: opposition to the earthly pretensions of the priesthood and especially of the papacy. This theme – more than any dedication to a particular set of constitutional arrangements – shapes his secular political theory. However, the character of this opposition is not always evident due to the organization of *Defensor pacis* into three distinct discourses. The first discourse discusses the origins and nature of earthly political authority. The second discourse is nearly four times the length of the first and criticizes severely any claims made on behalf of the rights of the church and, particularly, of the papacy, to exercise temporal power. A substitute, conciliar ecclesiology is defended. A brief third discourse summarizes the conclusions derived from the preceding discussions that Marsiglio considers particularly useful or worthy of emphasis. The structural division between the substance of the first and the second discourses was unusual for the time insofar as it implied a distinction between the treatment of temporal government and that of ecclesiastical affairs. By contrast, the secular ideas of most of Marsiglio's contemporaries must be extracted from isolated passages contained in writings concerned primarily with ecclesiological matters. The disjunction

between the two main discourses of *Defensor pacis* was one of the main reasons that supported the traditional scholarly conviction that Marsiglio shared authorship of the text with John of Jandun.²⁶

However, *Defensor pacis* is not formed of two separate and coherent treatises. On the contrary, in spite of the different focuses that define the first and second discourses, it is possible to identify a single central theme that binds together the treatise as a whole. This theme may be the danger posed to human happiness (as experienced in a peaceful and self-sufficient community) by the interference of papal government in secular life. Marsiglio proclaims that the “purpose” of *Defensor pacis* is “to expose the singular cause of strife” that currently affects parts of Europe (specifically, the *Regnum Italicum*). This cause may “henceforth be readily excluded from all kingdoms and cities and informed rulers and subjects can live more securely and tranquilly”(DP I.i.7).²⁷ At the end of the first discourse, Marsiglio renews his claim that “the separation of citizens and, finally, the degeneration of the Italian cities or polities” were more and more damaging. He fears that “this pernicious pestilence, which is completely opposed to all human quietude and happiness, could readily infect other kingdoms of faithful Christians throughout the world with the same corrupt root of vice” (DP I.xix.12-13).²⁸ In the third discourse, he declares that “in the preceding, we have assigned the singular cause by means of which civil discord now exists in certain kingdoms and communities and will exist in all the remaining ones (unless prohibited) in the future” (DP III.i).²⁹ The whole force of the argument in *Defensor pacis* is directed toward demonstrating the disruptive effects of the papacy’s attempts to regulate temporal affairs. Approached from this perspective, the first discourse stipulates the arrangements necessary to reinforce the stability and unity of secular communities so as to drive back papal interference and the second discourse substitutes the principles of papal monarchy with those of a conciliar ecclesiology. Thus, *Defensor pacis* cannot be properly understood without acknowledging its primary polemical goal.

A distinctive feature of the argument in *Defensor pacis* is the manner in which it addresses the specific conditions of the *Regnum Italicum* in relation to the rest of European society. On the one hand, Marsiglio concentrates clearly on the actual circumstances of Italian politics. On the other, he expresses his concern that the threat he identifies is, at least potentially, equally present for every Christian territory that recognizes the spiritual authority of the Pope (DP II.xxvi.19).³⁰ The reason Italy has

proven more susceptible to papal intervention, claims Marsiglio, is that its pre-existing condition was one of relative disorganization. While in Italy the machinations of the papacy are most overt and destructive, Marsiglio believes that a similar program of encroachment stands behind all papal policies towards temporal governments. *Defensor pacis* seeks to stem Rome's incursions into "all kingdoms" (*DP* I.xix.12)³¹ and to remedy "that singular cause of quarrels that threatens no small injury to all kingdoms and communities" (*DP* I.i.3-4).³² It represents a direct call to princes and their subjects throughout Latin Christendom to restore the Pope to his rightful – even if narrowly defined – place within the Church. Consequently, people have a dual responsibility to help their fellows by opposing the papal regime, the very source of conflict. As Marsiglio emphasizes:

We ought to wish for peace, to seek it if we do not already have it, to conserve it once it is attained and to repel with all our strength the strife opposed to it. To this end, individual brethren and, in even greater degree, groups and communities are obliged to help one another, both from the feeling of heavenly love and from the bond or right of human society. (*DP* I.i.4)³³

To support the religious aspect of this claim, Marsiglio appeals to Christian duty to bear witness to the divinely ordained truth. Not only is the faithful Christian expected to conform to God's law but also to teach others "that truth ... which leads the human race to eternal salvation". The papal government is considered a danger for all Christian believers for, in threatening the "civil life", which may be regarded as "the best object of desire available to mortal man", the Pope interferes with the divine design. The obligation to serve God by opposing the enemies of secular peace is assigned in particular to those in whom grace has inspired understanding: "Whoever has the knowledge and the ability" to recognize the threat posed by papal government, "but still ungratefully omits it, performs a grave sin" (*DP* I.i.5-8).³⁴ Thus, Christians have a special responsibility: to reject any disturbance of political tranquility. The virtue of charity when fellows are in need should be exercised in regard to the temporal wellbeing and comfort of other Christians as well.

Besides providing a purely theological foundation upon which to construct opposition to the papacy, Marsiglio also reinforces the idea of Christian duty to reject papal infringement upon earthly jurisdiction with

a parallel objection arising from the sociable nature of human beings. Here Marsiglio invokes the thoughts of Cicero (rather than the more fashionable Aristotle) to support his account of society. In the introductory remarks to the first discourse, he quotes at length from Cicero's *On Duties* in order to emphasize that human beings exist, according to their natures, in order to serve their fellows rather than merely to satisfy themselves (*DP* I, 22).³⁵ The duty to act for the public benefit is implanted by nature in all humanity: "Whoever desires to and is capable of discerning the common utility is obliged to give ... his vigilant care and diligent efforts" to whatever causes "harm to all states and communities" (*DP* I.i.4).³⁶ Human sociability forms a universal bond, not confined to one's own community but extending, beyond fixed political units, to all civilized peoples. The doctrine of natural duty is developed to a far greater degree in the conclusion to the first discourse. Marsiglio asserts again a broadly based, purely temporal responsibility to oppose interference with human "peace and happiness". The resistance advocated by *Defensor pacis* is of two sorts. First, one must repel enemies of earthly tranquility by revealing their identities to all those who will listen. Instruction can be a powerful tool in the war against those who seek to disturb the social order. Second, one must move beyond education to direct action: whoever takes up the banner of discord and temporal misery must be halted by any means available to knowledgeable antagonists. Marsiglio insists once more that the rationale for this position is to be found in the very essence of human nature: one is subject to the natural requirement to seek good for one's fellows and any other mode of conduct would be unjust. In defense of this position, he again quotes Cicero, who asserted in *On Duties*, book I, chapter V, that there are two kinds of injustice: the injustice of those who inflict it, and the injustice of those who do not drive away the injury from those upon whom it is inflicted if they can.

See, then – Marsiglio insists – according to this notable statement by Tully, that not only are those unjust who inflict injury on others, but also those who have the knowledge and ability to prevent injury being inflicted on others, yet do not prevent it. (*DP* I.xix.13)³⁷

Marsiglio comments that it is for fear of being accused of injustice himself that he took up the cause against the papacy. Failure to act when one might do so is not just a sin; it is simultaneously a vicious affront to one's social nature, to one's civility. While Cicero's assertion had been

articulated widely by other medieval political authors, Marsiglio assigned to it a unique meaning: those who live in polities untouched by civil strife are not absolved of regard for the occurrence of conflict in other places.

To the extent that he was able to create a framework equally relevant to the experiences of urban communities, national monarchies and more amorphous territorial units, such as the German Empire, Marsiglio was able to propose concerted and unified temporal opposition to papal interference in secular affairs. According to Conal Condren, the arguments of the first discourse were designed to maximize Marsiglio's audience:

The Church was a universal institution, defining the limits of Christendom; an attack on it that was anything less than universal started off at a disadvantage and was likely to founder in parochialism. Conversely, a universal appeal with potentially universal institutional backing was extremely difficult to achieve ... Any *regnum*, *provincia* or *patria* of Christendom, from Padua to Paris, from Flanders to Florence, is provided with an off-the-peg suit of armor in the battle against a corrupt Church.³⁸

Condren designates Marsiglio's method as "elliptical ambiguity", the careful construction of a theory that encourages and promotes a multiplicity of potentially incommensurable interpretations.³⁹ The doctrine of the first discourse is seen, in effect, as a "mirror" that reflects the features of whoever looks into it. The ambiguity that Condren detects in *Defensor pacis* stems from Marsiglio's allegedly equivocal or vague use of key terminology. Condren charges Marsiglio with constructing concepts such as *legislator humanus* (the supreme and final authority within the community) and *pars valentior* (the so-called "greater or weightier part" of the citizen body) in an internationally obscure and evasive fashion so as to permit the widest possible range of applications.⁴⁰

Consequently, *Defensor pacis* has borne a wide range of theoretical ascriptions over the years – from liberal-democracy to aristocracy, and even totalitarianism – and has been read to "anticipate" virtually every important thinker of the modern era. Though Condren's idea of elliptical ambiguity can clearly be challenged, the generic character of *Defensor pacis* is nevertheless explicitly and consciously present in Marsiglio's argument. This is evident from the start of the first discourse, where the very first substantive issue he addresses ("for the purpose of preventing ambiguity") is the nature of the *regnum* (DP I.ii.1).⁴¹ There are, Marsiglio

asserts, four ways in which *regnum* may be defined (*DP* I.ii.2).⁴² The first three are quite conventional. A *regnum* may be conceived geographically, as a collection of cities or provinces ruled by a single government. It may also be conceived constitutionally, as a form of government in which one virtuous man rules over the citizens (the concept that Marsiglio attributes to Aristotle) or it may be conceived in a compound sense, which combines the first two meanings and is, he says, “the most familiar sense of the term”. But “the sense in which we shall use this term in our determination of questions” is different from common definitions, for in the fourth, and distinctively Marsiglian sense, *regnum* denotes “something common to every species of temperate government, whether in a single city or in many”. In other words, *regnum* is used in a wholly generic fashion to indicate those properties that render a government well-ordered or “healthy”, regardless of either the size of the territory it rules or the details of its institutional arrangement. All properly organized communities have shared features; *regnum* (along with *civitas*, which he commonly uses as a rough equivalent) is the word Marsiglio employs when he wishes to speak in this encompassing way about political society in general. In line with his polemical aim of making available his argument to a broad audience, he professes indifference to geographic or constitutional distinctions so long as a community is governed in a “temperate” manner, that is, according to principles designating a *regnum*.

Marsiglio reinforces his generic approach at crucial moments throughout the first discourse. He makes the typical Aristotelian distinction between the three modes of healthy constitution (kingship, aristocracy, and polity) and the three types of diseased regime (tyranny, oligarchy, and democracy) (*DP* I.viii.2-3).⁴³ However, given the opportunity to express a preference for government by the one, the few, or the many, despite the medieval conventions,⁴⁴ Marsiglio declines the invitation entirely. He maintains that:

As to which of the temperate governments is best or which of the diseased governments is worst, and the relative goodness or badness of the other species, the discussion of these points is not part of our present concern.⁴⁵

Similar care to include diverse modes of political life is evident in the seventeenth chapter of the first discourse, where Marsiglio discusses the numerical unity of government. He argues that one characteristic of a well-ordered *regnum* is that all its divisions must be governed ultimately

by a single, supreme ruler; any other arrangement will produce chaos and confusion. While Marsiglio claims that “in a single city or kingdom there must be only a single government”, he does not make this statement in an unqualified or universal fashion. On the contrary, he is quite sensitive to the divergent political conditions typical of late medieval Europe:

If there is more than one government in number and species, as seems expedient in larger cities and especially in a kingdom taken in its first sense, then there must be among them one in number that is supreme, to which all the others are reduced, and which corrects any errors arising in them. (DPI.xvii.1)⁴⁶

Not even the imperial system of rule is accorded priority by Marsiglio, in spite of the fact that *Defensor pacis* is addressed to the aspiring Emperor, Ludwig of Bavaria (DP I.i.6).⁴⁷

Recognition of the generic quality of Marsiglio’s political theory helps us appreciate the course of his argument in the first discourse because what he seeks there is the specification of a set of general principles of good political order, irrespective of the type of government or the unit of rule. In this sense, the secular theory of *Defensor pacis* functions at a more general level of analysis than did the work of most of Marsiglio’s predecessors and contemporaries. The questions that animate his thinking pertain to the identification of those features that all well-ordered communities share. This approach has some superficial resemblance to early modern sovereignty theory, which primarily treats the problem of the nature of sovereign authority.⁴⁸ It must be noted, however, that Marsiglio’s substantive concern is not with sovereignty in any recognizably modern sense, rather the primary focus of the first discourse is directed to identification of the prerequisites for peaceful communal life. Marsiglio is not interested in establishing the ultimate source of supreme power for its own sake, as were modern theorists of sovereignty. He concentrates on the mechanisms by which the good order of the community (regardless of the organization of its ruling part) is most effectively achieved and most reliably maintained. This is consonant with his polemical goal of rejecting the papacy’s claims over temporal power.

The label applied most often to the secular political teaching of *Defensor pacis* is “popular sovereignty”.⁴⁹ Scholars have insisted almost unanimously that Marsiglio intended to uphold the doctrine that the corporate body of the people (constituted as the *legislator humanus*) is

supreme and autonomous in fixing the terms of its collective political life, in particular through its authorization of law and rulers.⁵⁰ However, this seeming unity of opinion disguises a fundamental breach in Marsiglian scholarship since the idea of “popular sovereignty” is by no means transparent or self-evident. A people may rule itself directly, actively and inalienably, or it may delegate its powers to rulers or institutions that govern on its behalf. In other words, popular sovereignty can be used to denote either a theory of participatory self-government or a theory of origination or authorization of political rule.⁵¹ The central issue at stake concerns the nature and extent of the powers that Marsiglio wishes to assign to the *universitas civium*. Two influential interpretations have emerged in this connection. The first ascribes to the legislator *humanus* only a weak authority, along the lines of traditional “corporate” conceptions of the *populus*. According to this view, the people take no central or direct role in political affairs, alienating their communal prerogatives to a government that rules on their behalf but not at their command. Likewise, the right to review and correct the deeds of rulers resides with the people as a whole, rather than with individuals or segments of the civic body. To speak of the Marsiglian legislator in this “corporate” sense is to deny a meaningful power of consent to individual citizens, as Michael Wilks has emphasized.⁵²

The popular sovereignty ascribed to the first discourse, therefore, had a qualitatively different character from that of the typically modern accounts of the rule of the people. As A.P. d’Entrèves long ago observed:

We would search in vain the whole *Defensor pacis* for a vindication of that principle of the original and natural equality of all the members of the community, and thus of the value of the individual as the ultimate source of power and a bearer of an equal fraction of the sovereign authority.⁵³

The corporate authority of the *populus* is formal and symbolic, investing the rulers and the institutions through which they govern with effective power.⁵⁴ The second interpretation of Marsiglio’s “populism” adopts the diametrically opposed perspective, according to which the first discourse advocates an active and essentially participatory notion of a legislator that exerts effective sovereignty over all public affairs. Many years ago, Walter Ullman proposed that, on Marsiglio’s account,

...the scope of the people's legislation is unrestricted. Whatever the omnipotent legislator discerns as leading to the *bene vivere* will come within the purview of legislation. The subject matter of the laws is therefore unlimited.⁵⁵

Marsiglio is consequently placed beyond the strict boundaries of medieval thought. Then, Quentin Skinner regards the first discourse as standing on the verge of the modern mind-set:

The theory of popular sovereignty developed by Marsiglio ... was destined to play a major role in shaping the most radical versions of early modern constitutionalism ... [He is] prepared to argue that sovereignty lies with the people, that they only delegate and never alienate it, and thus that no legitimate ruler can ever enjoy a higher status than that of an official appointed by, and capable of being dismissed by, his own subjects. It was only necessary for the same arguments to be applied in the case of a *regnum* as well as a *civitas* for a recognizably modern theory of popular sovereignty in a secular state to be fully articulated.⁵⁶

Following the same train of thought, Alan Gewirth considers that this principle of sovereignty places the "project" of *Defensor pacis* in the midst of "the modern world" and this world is characterized, in particular, by the absence of external moral constraints on the decisions of the community.⁵⁷ Marsiglian popular sovereignty is deemed "strong" in the sense that the *universitas civium* is the final and sole arbiter of all the standards of social life and hence not subject to any independent or higher judgments regarding the justice or rectitude of its determinations. Gewirth concludes that Marsiglio "is a legal positivist",⁵⁸ since the alleged elimination of extra-communal standards for the evaluation of legislation flows directly from the absolute sovereign power vested in the members of the community.

That Marsiglio subscribed to some normative doctrine that equates social peace and good order with the consent of the citizen body to its laws and rulers seems to be beyond doubt. But neither "strong" nor "weak" accounts of popular sovereignty offer an especially accurate image of the character of the teaching in the first discourse. Marsiglio is, in some regards, far more serious about his "populism" than he is credited with: he is not simply a proponent of election or consent but a theorist of virtual public consensus regarding matters of common concern.⁵⁹ He thus rejects in principle majoritarian and representative doctrines of

political decision making. Instead, *Defensor pacis* reveals a confidence in the competence and reasonableness of the citizen body – and hence in its ability to identify its own shared interests – that has seldom been demonstrated even in supposedly “democratic” times like our own. However, Marsiglio cannot be considered a legal positivist, exempting the community from following standards of conduct beyond those of its own devising. On the contrary, *Defensor pacis* sets clear boundaries on laws and rulers: valid law must conform to an external measure of justice, and legitimate rulers must be outstanding in those qualities of moral goodness and practical wisdom that enable them to undertake their appropriate functions. Marsiglio’s position is that citizen consent is the most effective means of ensuring that such laws and rulers will emerge within the community. In sum, the first discourse proposes a conception of popular rule that is simultaneously more rigorous and more traditional than a reading of current scholarship might lead us to believe.⁶⁰

Marsiglio’s choice of the term *legislator* (maker of law or law-giver) as a description of the public character of the *universitas civium* suggests that he regarded legislative activity to be the typical form taken by popular decision making. The difficulties posed by the attempt to give concrete definition to Marsiglian “populism” are implicit in the nature of law itself as conceived in *Defensor pacis*. Marsiglio contends that government in accordance with law enjoys a significant advantage over any other form of rule, since law is “perfect” or “virtually so” (*DP* I.x.5; I.xi.1; I.xi.3).⁶¹ The basis of this near perfection and what distinguishes lawful government from rulership in the absence of law is the relative objectivity and universality of which law partakes. If a ruler governs without the guidance of law, he may readily slip into partiality when exercising authority, favoring those whom he prefers or persecuting his enemies. Even the best ruler is not free from sin (*DP* I.xi.6)⁶² and, in the absence of law to direct his commands, he will have to rely on his own discretionary judgment that may become faulty or tainted (*DP* I.xi.2).⁶³ In doing so, he will begin to treat the public domain as if it were his private preserve, subject to his personal will rather than to the needs of public justice and interest. Government in strict accordance with law, however, is not susceptible to the same influence by partial interests because valid statute is the creation and expression of the needs of the community. Law commands (with the backing of coercive force) the acts that members may not perform or must perform in order to achieve and maintain a just and mutually beneficial communal association (*DP* I.x.4-5).⁶⁴

Thus Marsiglio explicitly formulates his treatment of the valid authorization of law in order to exclude from the outset any statute that captures a merely partial set of interests, which are inherently private and against the principles of the Aristotelian “mixed constitution”. In particular, he objects to the claim that the best people within the community, the wise and the learned, are more highly qualified to proclaim the law than their fellow citizens (*DPI*.xiii.1).⁶⁵ On the contrary, whenever one or a few individuals legislate, there remains the opportunity for partiality to intrude:

One person could make a bad law, looking more to his own private benefit than to that of the community, so the law would be tyrannical. For the same reason, the authority to make laws cannot belong to a few, for they could, like the above, also sin in making the law for the benefit of a few and not for the common benefit. (*DPI*.xii.8)⁶⁶

To place legislative affairs totally in the hands of a narrow group is to invite laws whose application damages the common good while law should be properly suited to the realization of “civil justice and the common benefit” (*DP* I.xi.1).⁶⁷ Marsiglio insists that valid law indicates the true joint interests of the communal body because its enactment depends upon the actual approval of the entire community. This doctrine forms the basis for Marsiglio’s emphasis upon consent as the touchstone of good law and legitimate government. In the absence of consent, the governance of the *regnum* would be reduced to despotic rule as dictated by the desires of some partial segment of the community; the *regnum* would be ruled like a family (*DP* I.ix.4).⁶⁸

Hence consent is the key to the procedural enforcement of the law and, as a result, to the tranquility and harmony of the whole political body. Marsiglio does not neglect the practical difficulties implied by his scheme of the universal consent of citizens to legislation. In particular, he acknowledges two objections: first, it is totally inconvenient to involve the entire community in the legislative process and second, most members of the community lack the time and necessary talents to formulate additions, changes, deletions and so on to the legal code (*DP* I.xii.2; I.xiii.4; I.xii.2).⁶⁹ *Defensor pacis* circumvents both of these apparent practical impediments to the realization of its theory of consent while formulating a careful distinction between the “discovery” and the “authorization” of law. Marsiglio conceived the process of legislation as

a two-stage procedure. Legal precepts must first be discovered and given formal articulation and only thereafter can approval be granted or withheld. While consent pertains inalienably to each and every citizen,

it is appropriate and extremely useful that the corporation of citizens entrust to those who are prudent and experienced the investigation, discovery and examination of the rules, future laws or statutes regarding civil justice and benefit, common difficulties and like affairs (*DPI*.xiii.8).⁷⁰

Marsiglio presumes that these *prudentes* will be drawn from among the leisured class whose members, by their inclination, training and conditions of life are best qualified to identify and frame legislative proposals (*DP* I.xii.2, I.xiii.4).⁷¹ On the other hand, the vast mass of the population is not to be considered utterly vicious and without the capacity to differentiate between good and evil legislation. On the contrary, the people are rational and they are able to attend to some universal standard of justice.

Defensor pacis explicitly establishes the independence and preeminence of a universal standard of justice by making reference to “true cognition of matters of civil justice and benefit”. In particular, Marsiglio asserts that, while such cognition should not be regarded as law until they have been given coercive authorization, “true cognition is necessarily required for a perfect law”. What legislative approval adds to “true cognition” is civil enforceability; conversely, no statute is enforceable that lacks a basis in the knowledge of what is just (*DPI*.x.5).⁷² At this point, Marsiglio neither identifies the source of the absolute justice, to which he expects law to conform, nor explains where “true cognition of justice” may come from. However, he described elsewhere the standard of justice to which the village elder appealed as “*lege quasi naturale*”, (*DP* I.iii.4)⁷³ and he spoke in the conclusion to the first discourse of the same natural law as the basis for the obligation to do justice (*DPI*.xix.13).⁷⁴ Thus we may turn to the articulation of natural law in *Defensor pacis* in order to clarify the origins of justice and our knowledge of it.

Marsiglio distinguishes between two meanings of natural law. The first closely resembles the Ciceronian account of the law of nations (*ius gentium*) and is regarded by Marsiglio as purely figurative: such law is deemed to be “natural” because it has been enacted widely in the civilized world and therefore seems to be common to all peoples. At the same time, Marsiglio insists that this law is not natural at all since it

depends on human promulgation for its efficacy (*DP II.xii.7*).⁷⁵ The second sense of natural law is

the dictate of right reason in practical matters, classified under divine law: thus, every act according with divine law is intrinsically licit, as is not the case with every act that accords with human laws, since in some way they fall short of right reason. (*DP II.xii.8*)⁷⁶

The source of “true cognition” of justice can be regarded as the application of the right reason to the discovery of the requirements posed by natural law. On this account, natural law is a sort of ultimate standard against which may be measured and judged all human legislation by means of rational inquiry. Marsiglio thereby concludes that, when confronted with divergences between positive law and the knowledge of justice, “what is intrinsically licit and illicit should be considered with reference to divine law rather than human law, in those instances in which their commands, prohibitions and permissions differ” (*DP II.xii.9*).⁷⁷ Valid human statute is not arbitrary in the sense that anything willed by the legislator automatically qualify as law. Instead, the dictates of justice, founded on natural law as a subcategory of divine law, supply an insurmountable criterion for distinguishing what is genuine from what is simply counterfeit, and thus binding from noncompulsory decrees. “Natural law constitutes an independently accessible and universally applicable source for the principles of absolute justice.”⁷⁸

In this context we might wonder why the theme of coerciveness was so important for Marsiglio that some scholars ended up by interpreting his views as “legal positivism”. Thus of particular explanatory value for *Defensor pacis* here is the very manner in which Marsiglio conceived of reason and law and their political relevance. Marsiglio stated, for example, that, far from performing their functions in accordance with reason and law, men would incessantly quarrel with one another and tend to separate into warring factions, the inevitable outcome being the destruction of the state. Such quarrelling was the characteristic social activity of men and the fundamental function of governments was, consequently, the imposition of coercive controls to enforce men’s adherence to peace and hence the preservation of the state. This conception of the governmental task as growing out of the general human tendency towards strife and the need to curb it was in no way a new tendency in medieval political

thought. In fact, the same idea was clearly stated by both Thomas Aquinas in his *De regimine principum* (I.i, I.xv) and by John of Paris in his *De potestate regia* (cap. I). Throughout the Middle Ages, centuries before Hobbes wrote his *Leviathan* and Machiavelli *The Prince*, political thought had been pervaded by the standard Augustinian doctrine of the state as *remedium peccati* (DP I.i.6),⁷⁹ government having been made necessary by man's sinfulness and corrupted nature after the Fall. The major difference, however, between Marsiglio and other medieval writers was that he did not try to turn from this precarious condition of fallen man to the rational and divine ends by which human beings were to be evaluated and to which they could be ultimately led, according to medieval tradition, but he remained at this temporal level and tried to adjust his concepts and counsels accordingly. These ideas were to become central in the work of Machiavelli himself and also in that of Hobbes, when referring to the state of nature and the social contract.

Correlatively, though accepting the entire medieval tradition which insisted that a law that was not just was not law at all, Marsiglio also made the "positivist" aspect of coerciveness fundamental. It was not only the possession of expert knowledge of the "science of justice and benefit" that made the legislator, but also the authority to enforce the coercive commands (DP I.xii.2).⁸⁰ The ruler himself was then to be defined not only by his prudence, justice, equity, and benevolence but also by his coercive authority. Prudence and justice made a ruler merely "in potentiality" and only coercive authority made a ruler "in actuality" (DP I.xv.1).⁸¹ The peace, order and unity of the state were all defined in similar terms of coerciveness. Exercising control over all parts of the state in order that each of them would perform its proper function in accordance with reason and its establishment, the government was the efficient cause of peace (DP I.xix.3).⁸² The order of the state did not consist, as in the medieval tradition, only in men's relation to their supreme moral and theological end, but also in the subordination of the other parts of the state to the coercive authority of the government (DP I.xv.14).⁸³ And the unity of the state required that all coercive authority be centered in the government and the law it enforced, so that no other part of the state and no other law be coercive. In case of a multiplicity of centers of coercion, the resulting confusion could lead to strife among the coercive authorities themselves. Political authority was justified because it maintained peace and order, viewed simply, in Augustinian fashion, as barriers against worse evils, not as means to higher goods. The state was

not to be considered a community dedicated to a life of virtue, but was to be seen, on the one hand, as a group of people pursuing their particular interests and engaging in various conflicts and, on the other, as a legal-judicial order of coercive authority emanating from a single source. Marsiglio's aim here was not to depict the ideal state, but to indicate the means whereby the community might be preserved against the conflicting claims of individuals and groups. In relation to the church-state controversy, this theme had the consequence that the papalists' claim to hegemony on the basis of the higher end envisaged by the priesthood was turned aside completely. Politics became sharply distinguished from morals and religion in respect of the criteria of authority.

The application of the coercive power theme took many interrelated forms in the second discourse of *Defensor pacis*, which referred to the priesthood and its spiritual power. Just as Marsiglio had distinguished, within the meanings of "law", between justice and coerciveness, the latter being considered the essence of political power, likewise he distinguished, within the meanings of "judgment", between the intellectual discernment of cognitive experts and the coercive commands of rulers (*DP* II.ii.8).⁸⁴ Thus the argument of priestly expertise in "judgments" in religious affairs would not validly entitle the priests to coercive authority. Moreover, in contrast to Aquinas' tendency to harmonize reason and faith, Marsiglio adopted a different position under the influence exercised by the naturalism and rationalism of the Latin Averroism. He accepted the doctrine of a twofold truth and separated reason and revelation. Consequently, theology could not contribute to rational knowledge and whatever social consequence religion might have it would be separate from its truth and would have to be regulated by the self-sufficient society. The very function of the clergy, as a social class, thus became rather difficult to explain, notwithstanding the fact that Marsiglio still preferred to consider religious practice as different from any other social activity. He considered that the function of the clergy was to teach, according to Scripture, those things that people were to "believe, do, or avoid in order to obtain eternal salvation and avoid misery" (*DP* I.vi.8).⁸⁵ The truth of this teaching was beyond reason, referring only to the afterlife, and the doctrine of eternal salvation, and despite having granted ecclesiastical authority for centuries, did not suffice anymore, being thus separated from the temporal existence of humans. In temporal concerns, according to Marsiglio, the state was to control the clergy as it controlled any other social class or activity. The spiritual

teaching of the clergy had no coercive force in the actual life. The logical consequence was that canon law could no longer exist as a separate jurisdiction. Apart from their duty to perform religious service, priests could only advise and instruct on the future punishment for sin and they could not impose penance. The existence of the priesthood in the city was justified only in terms of its task to minister to man's desire to seek salvation and find celestial bliss in the other world. This conclusion was thus supported by the clear-cut difference between political obligation, which was subject to coercion, and religious obligation, which was voluntary, and the parallel distinctions between human law and divine law, political authority and priestly authority, the sufficient life of this world and eternal salvation in the next.

Moreover, Marsiglio emphasized that Christ and his apostles, despite the superiority of their ends, wielded no coercive authority and urged submission to secular rulers. Any ecclesiastical official could be deposed by civil action and even the doctrine of the papal plenitude of power and the ecclesiastical hierarchy in general were questioned, Marsiglio pointing out that any authority in the temporal realm came from human law. He seems to have gone further than any other medieval writer in separating the religious and spiritual from the legal. The Bible provided the only source of revelation and the only divine law; papal decrees were not laws at all unless the community sanctioned them and they then became part of human law. Ecclesiastical property, as a mere subsidy made by the community in support of worship and ecclesiastical office, was itself granted by the community. The church did not comprise of the hierarchy or the priesthood alone. The church was the whole body of Christian believers, both clerical and lay, and the Pope was reduced to spiritual equality with other bishops. The authority of the Church in questions of Christian belief was passed to the General Council.

These and similar arguments emphasized the need for a monopoly of coercive power in the hands of the secular rulers in order to ensure the unimpeded functioning of law and government. In addition, they invoked the religious consideration that spiritual values were voluntary and the use of coercion to enforce them would deny their very essence. Removing coercive authority even more from the priesthood, this idea reintroduced, however, the issue of ultimate ends. To deal with this, Marsiglio appealed to the theme of the people's will as the sole proper custodian of religious as well as secular values. The people or the whole body of citizens (*universitas civium*), which controlled secular politics as the maker of

the laws and elector of governments, was numerically identical to that of the church or the whole body of believers (*universitas fidelium*), which controlled all the institutional aspects of religion. The same community manifested itself in two different ways according to its two different ends: peace and preservation of the state in the actual life, and salvation in the afterlife. And the grounds of the supreme ecclesiastic authority of the people were the same as those employed by Marsiglio in general politics: the people's freedom and its volitional and intellectual superiority "as a whole" over all its "parts", including the priesthood. Moreover, we notice here the rather "proto-Protestant" idea that bridged the two discourses in Marsiglio's "apostolic" definition of the church as "the whole body of the faithful who believe in and invoke the name of Christ" (*DP* II.ii.3).⁸⁶

The complete doctrine of *Defensor pacis* thus set up a unified church-state, with a single identical supreme authority in both state and church. The structural similitude to the doctrine of the upholders of the papal plenitude of power was obvious. We may ask, then, whether, apart from the substitution of the people for the Pope as possessor of the supreme power, there was any difference in principle between the two doctrines. They were both monistic and absolutistic in so far as the possession and the extent of power were concerned. Moreover, this monism and absolutism was defended each time by appealing to the same values. Far from denying the value of future life, Marsiglio insisted that this value could be achieved with far greater certainty through control by the whole people than if the Pope or the priesthood alone obtained control. Similarly, Marsiglio accepted the same theological cosmogony as the papalists: political power derived ultimately from God and served a divine function. Just as with the papalists, it was the Pope who was the divinely appointed holder of supreme authority over both spiritual and temporal matters, so for Marsiglio it was the people and its elected government which were the objects of such ultimate appointment by God as their "remote cause".

In what sense, then, can we maintain the usual interpretations of Marsiglio as an upholder of secularism and as having made the temporal power supreme over the spiritual, the state over the church? He did insist on sharp distinctions between the "spiritual" and the "temporal", but his sovereign people, *fidelis* as well as *civilis*, held supreme authority over both spiritual and temporal matters for spiritual as well as temporal reasons. Far from having subjected the spiritual power to the temporal, Marsiglio unified them in a manner even more obvious than was the case with the

papalists, since the Pope, after all, was directly only a “spiritual” and not a “temporal” power. Nevertheless, this change in the locus of authority involved crucial differences with respect to issues of basic principle in political philosophy. First, it must be noted that, despite the supreme authority of the “faithful people” in both state and church, there was a point at which this supremacy stopped since Marsiglio admitted that the priesthood as such was peculiarly divine in origin. It was the priests alone who had the authority to teach the Gospel and administer the sacraments. In this respect, there was no confusion of laity and clergy. The priests did not derive their priestly character from laymen and the ruler of the state was not, according to Marsiglio, the “head bishop” or “chief pastor” of the church, as was later the case in the views of King Henry VIII or Thomas Hobbes. Moreover, if human law contradicted divine law, as expressed in the Gospel, the former was not to be obeyed. These aspects of the priestly function were properly “spiritual”, not “temporal”. The “faithful people” did not come to exercise supreme authority over both “spiritual” and “temporal” matters because Marsiglio held temporal values to be superior to the spiritual values. On the contrary, the people, being “faithful”, were as much concerned with spiritual values as with temporal ones.

However, the most relevant distinction Marsiglio made was that between the “internal” and “external” aspects of religious values, between the conditions of the soul or of divine ordainment and the institutional conditions of their determination and control. This distinction was favored by two other distinctions. The first was that between the two aspects of the functional parts of the state, the mental quality or “habit of the soul” which rendered its possessor fit to perform the function and the officially “established” part of the state. The second distinction was between the “material” and “formal” aspects of law, between its content and its coercive command, already mentioned above. The essence of Marsiglio’s point of view concentrated primarily on the latter term of each of these distinctions, on official political authority rather than ideal mental qualities, and the sanctions which emanate from and constitute such authority rather than on their ethical contents or ends. Terms like “prudence” and “justice” did figure in *Defensor pacis*, but Marsiglio insisted they were not sufficient to guarantee political authority (DP I.xv.1, II.ii.8, II.xv.6-10, and II.xvii.1, 8). Thus, while Marsiglio maintained the distinction between the divine and the human, the spiritual and the temporal, the priests and the laity, he continuously elicited those aspects

of each of the former which were amenable to external control. From this point of view, and with good reason, Marsiglio's work can be seen as clearly different from the medieval canons of political thought, with the themes of coercive authority and popular sovereignty providing valuable opportunities for its thorough analysis.

In summary, we may concede that Marsiglio followed the route of "voluntarist corporatism" in his rational construction of the state as setting up the common will of the people as the original and perpetual source of political authority and law (*DP* I.xv.2).⁸⁷ It was not, however, an irrational source, with Marsiglio insisting that the people established the best laws being the best judge of the common good (*DP* I.xii.5).⁸⁸ In all of his political acts, the ruler was the secondary, not the primary efficient cause. He acted as "instrumental" or "executive" cause by virtue of authority granted by the primary "legislator", which was the whole body of citizens (*DP* I.xv.3-4),⁸⁹ as could be noticed from the institution of corporate election, of the ruler's correction, and of corporate consent to laws. Legislation, formerly a cognitive process of discovering what was just and beneficial to the community, also became the assigning of coercive command and had to be legitimated by the fact that the command concerned the people alone (*DP* I.xii.3).⁹⁰

Viewed abstractly, this theme of "popular sovereignty" ran along quite different lines from the theme of coerciveness. According to the latter, coerciveness as such was the essence of political authority, but according to the former, coerciveness had no political authority unless derived from the will of the people. It was obvious that political authority was not to be found simply wherever coerciveness was exercised, either potentially or actually, for, unless coerciveness emanated from the people's will, it was neither political nor authoritative, rather usurped, as often argued by Marsiglio against the papalists' claims. In view of the theme of "popular sovereignty", what then could become the status of his conception of political authority as essentially consisting in coercive power? Marsiglio's answer was that the power to cause laws to be observed belonged only to those that had coercive force over the transgressors of the laws, i.e., to the whole body of citizens (*DP* I.xii.6).⁹¹ Therefore, the authority to make laws belonged to them alone. Thus, Marsiglio's theme of coerciveness was not only a matter of who was "the most powerful", but also a matter of legitimacy, of who had the right to coerce. He emphasized that it was not merely a *de facto* imposition of force but a matter of impartiality and of consent of the people.

The theme of “popular sovereignty” might also raise some problems since it opposed the idea of the state as a product of reason, also employed by Marsiglio. The rationalist theme appealed to objective ends as the grounds of political obligation and authority, as against the seeming relativism and positivism whereby political authority and obligation depended solely on what the people willed. This opposition was nevertheless removed by Marsiglio’s emphatic argument that the people’s will, far from being subject to shifting appetites and partisan advantage, was inevitably directed to the common benefit. Any individual or group smaller than the whole people, if entrusted with supreme political authority, would almost inevitably pervert such authority to its own selfish interest (*DP* I, xii-xiii *passim*). This aspect of the theme of “popular sovereignty” also threw further light on Marsiglio’s theme of coercive power for it was the will of individuals or groups, directed to their private advantage, that generated conflicts, while the will of the whole people was directed to common benefit and peace. However, the justice and common benefit referred to here were more “legal” than they were “moral”. They did not consist primarily of moral development and inculcation of virtue, which in medieval tradition, following Aristotle, was the essential function of political authority. Rather, they consisted of the general equilibrium and adjustment of disputes which assured peace and order. Thus, just as we must resist the temptation to assign to *Defensor pacis* doctrines to which Marsiglio could not plausibly have subscribed, we should also refrain from reducing the whole of its teaching to the polemical intentions that gave it life. We may more fruitfully judge *Defensor pacis* according to Marsiglio’s own standards, namely, whether its theoretical framework indeed successfully generated principles necessary to any well-ordered, peaceful and just community.

NOTES

- 1 Marsiglio of Padua, *Defensor Pacis*, ed. C.W. Previt -Orton, Cambridge: Cambridge University Press, 1928. All references will be to this edition and henceforth given in parenthesis within the body of the text. The English quotations are from Marsilius of Padua, *Defensor Pacis*, translated and introduced by Alan Gewirth, Toronto: University of Toronto Press, 1980, a reprint of the first edition published by New York: Columbia University Press, 1956, vol. 2. The fragment quoted above can be found at pp. 27-28.
- 2 *Defensor Pacis*, transl. Gewirth, pp. 31-32.
- 3 *Ibid*, Introduction, pp. lix-lx.
- 4 Alan Gewirth, *Marsilius of Padua: The Defender of the Peace*, vol. 1, *Marsilius of Padua and Medieval Political Philosophy*, New York: Columbia University Press, 1951; *The Defensor Pacis*, vol. 2, New York: Columbia University Press, 1956.
- 5 Cary J. Nederman, *Community and Consent: The Secular Political Theory of Marsiglio of Padua's Defensor Pacis*, Lanham, Maryland: Rowman & Littlefield, 1995, p. 11.
- 6 Among the most prominent studies are: Herman Segall, *Der Defensor Pacis des Marsilius von Padua: Gundfragen der Interpretation*, Wiesbaden: Franz Steiner Verlag, 1959; Carlo Pincin, *Marsilio*, Turin: Edizioni Giappichelli, 1967; Georges de Lagarde, *Marsile de Padoue*, Louvain: Nauwelaerts, 1970; Jeannine Quillet, *La Philosophie Politique de Marsile de Padoue*, Paris: J. Vrin, 1970; Piero di Vona, *I Principi del Defensor Pacis*, Naples: Morano Editore, 1974; Guido de Rossi, *Marsilio de Padova, Profeta de la Politica Moderna*, Lima: Mosca Azul Editores, 1976 and Marino Damiani, *Plenitudo Potestatis e Universitas Civium in Marsilio da Padova*, Florence: Edizioni "Studi Francescani", 1983.
- 7 For a sample of the current state of Marsiglian scholarship, see Volumes 5 (1979) and 6 (1980) of *Medioevo*, which contain the proceedings of a conference on the thought of Marsiglio held in Padua to commemorate the 700th anniversary of his birth.
- 8 See Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols., Cambridge: Cambridge University Press, 1978, I, pp. 49-65; Anthony Black, *Guilds and Society in European Political Thought from the Twelfth Century to the Present*, Ithaca: Cornell University Press, 1984, pp. 86-95, and *Political Thought in Europe: 1250-1450*, Cambridge: Cambridge University Press, 1992, pp. 56-71, 123-26 and *passim*, and James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages*, Princeton: Princeton University Press, 1992, pp. 193-202.
- 9 Helpful surveys of the current state of scholarship can be found in Conal Condren, "Democracy and the *Defensor Pacis*: On the English Language Tradition of Marsilian Interpretation", in *Il Pensiero Politico* 13 (1980),

- pp. 301-16 and Jeannine Quillet, "Nouvelles Études Marsiliennes", in *History of Political Thought* 1 (Autumn 1980), pp. 391-409.
- 10 See Alan Gewirth, "Republicanism and Absolutism in the Thought of Marsilius of Padua", in *Marsilio da Padova: Convegno Internazionale* (Padova, 18-20 settembre, 1980), Padova: Editrice Antenore, 1980, pp. 23-47 and Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols., Cambridge: Cambridge University Press, 1978, I, pp. 61-5.
- 11 J.K.Hyde, *Padua in the Age of Dante*, Manchester: Manchester University Press, 1966, pp. 210-11, 307-9 and *Society and Politics in Medieval Italy*, London: Macmillan, 1973, pp. 189-93. Similar cases are also made by Nicolai Rubinstein, "Marsilius of Padua and Italian Political Thought of His Time", in J.R. Hale, J.R.L. Highfield and B. Smalley, eds., *Europe in the Later Middle Ages*, Evanston: Northwestern University Press, 1965, pp. 44-75 and Carlo Curcio, "L'italienità di Marsilio", in A. Checchini and N. Bobbio, eds., *Marsilio da Padova*, Padua: CEDAM, 1942, pp. 143-66.
- 12 See the work by Jeannine Quillet, *La Philosophie Politique*, cited above, and Georges de Lagarde, *Le Defensor Pacis (La naissance de l'esprit laïque au déclin du Moyen Age)*, vol. 3, Louvain: Nauwelaerts, 1970. This thesis was also supported in Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages*, Cambridge: Cambridge University Press, 1963 and "Corporation and Representation in the *Defensor Pacis*", in *Studia Gratiana* 15 (1972), pp. 251-92.
- 13 The best and most thorough biographical account is contained in Carlo Pincin, *Marsilio*, Turin: Edizioni Giappichelli, 1967. The presentation of the facts in this paper follows that of Pincin.
- 14 An excellent account of Padua and of the Mainardini family may be found in Hyde, *Padua in the Age of Dante*, pp. 163-65. Pincin, *Marsilio*, pp. 241-44 traces the Mainardini line.
- 15 A general description of the University's intellectual life is offered by Gordon Leff, *Paris and Oxford Universities in the Thirteenth and Fourteenth Centuries*, New York: Leonard Krieger, Huntington, 1975.
- 16 Pincin, *Marsilio*, pp. 33-35 cites the documentation.
- 17 Nederman, *Community and Consent*, p. 11.
- 18 The possible connections between Marsiglio and the French crown were examined long ago by Georges de Lagarde, "Marsile de Padoue et Guillaume de Nogaret", *Revue historique de droit français et étranger*, 4th series, 10 (1932), pp. 463-90.
- 19 *Defensor pacis*, transl. Gewirth, pp. 47-8. See also Nederman, *Community and Consent*, p. 11.
- 20 Nederman, *Community and Consent*, p. 11.
- 21 *Defensor pacis*, transl. Gewirth, pp. 6, 359-60.
- 22 The thesis of dual authorship was refuted by Alan Gewirth, "John of Jandun and the Defensor Pacis", *Speculum* 23 (1948), pp. 267-72.

- 23 Pincin, *Marsilio*, pp. 156-7 contains the text of the *Licet iuxta*.
 24 See H.S. Offler, "Empire and Papacy: The Last Struggle", *Transactions of the Royal Historical Society*, Series 6, No. 5 (1956), p. 39.
 25 Nederman, *Community and Consent*, p. 13.
 26 *Ibid*, p. 14.
 27 *Defensor pacis*, transl. Gewirth, p. 7.
 28 *Ibid*, pp. 95-7.
 29 *Ibid*, pp. 425-6.
 30 *Ibid*, p. 362.
 31 *Ibid*, pp. 95-7.
 32 *Ibid*, pp. 4-5.
 33 *Ibid*, p. 5.
 34 *Ibid*, pp. 5-8.
 35 Cicero, *On Duties*, Cambridge: Cambridge University Press, 1991, pp. 9-10.
 36 *Defensor Pacis*, transl. Gewirth, pp. 12-15.
 37 *Ibid*, transl. Gewirth, pp. 96-7.
 38 Conal Condren, *The Status and Appraisal of Classic Texts*, Princeton: Princeton University Press, 1985, p. 196.
 39 Condren, *The Status and Appraisal*, p. 189.
 40 See the analysis in Condren, "Democracy and the *Defensor Pacis*", pp. 304-9.
 41 *Defensor Pacis*, transl. Gewirth, p. 8.
 42 *Ibid*, p. 8.
 43 *Ibid*, pp. 27-8.
 44 For example, John of Paris, in his *De potestate regia et papali*, ed. F. Bleienstein, Stuttgart: Klet Verlag, 1969, chapter 3, asserts that differences of climate, language, human condition and virtue may warrant constitutional differences. He insists, nevertheless, in chapter 1, that kingship is without doubt the best form of government.
 45 *Defensor pacis*, transl. Gewirth, p. 28.
 46 *Ibid*, transl. Gewirth, p. 80.
 47 *Ibid*, transl. Gewirth, pp. 6-7.
 48 One may think here of Hobbes, for whom the sovereign could be one, a few, or a multitude without changing in any way the specification of the basic features and principles of sovereignty. See *Leviathan*, ed. C.B. Macpherson, Harmondsworth: Penguin, 1968, pp. 227, 239-47.
 49 For a brief history of Marsiglian scholarship in this connection, see James M. Blythe, *Ideal Government and the Mixed Constitution*, pp. 194-5.
 50 In recent literature, perhaps the only scholars to challenge entirely this thesis have been Hermann Segall, in *Des Defensor Pacis der Marsilius von Padua*, and Conal Condren, in "Democracy and the *Defensor Pacis*", both quoted above.
 51 Nederman, *Community and Consent*, p. 73.

- 52 Wilks, *The Problem of Sovereignty*, p. 188.
- 53 d'Entrèves, *The Medieval Contribution to Political Thought*, Oxford: Oxford
University Press, 1939, p. 57.
- 54 Jeannine Quillet, *La Philosophie Politique*, pp. 85-91, offers a concurring
view on the quality of Marsiglio's 'popular sovereignty'.
- 55 Walter Ullman, *Principles of Government and Politics in the Middle Ages*,
London: Methuen, 1960, p. 271.
- 56 Skinner, *The Foundations*, vol. 1, p. 65.
- 57 Gewirth, *Marsilus of Padua: The Defender of the Peace*, vol. 1, *Marsilius of
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- 58 *Ibid*, p. 134.
- 59 Nederman, *Community and Consent*, p. 75.
- 60 *Ibid*, p. 75.
- 61 *Defensor pacis*, transl. Gewirth, pp. 36, 37-41.
- 62 *Ibid*, p. 42.
- 63 *Ibid*, p. 38.
- 64 *Ibid*, p. 36.
- 65 *Ibid*, pp. 49-50.
- 66 *Ibid*, pp. 48-49.
- 67 *Ibid*, pp. 37-8.
- 68 *Ibid*, pp. 30-31.
- 69 *Ibid*, pp. 44-5; 52-55.
- 70 *Ibid*, pp. 54-55.
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- 75 *Ibid*, pp. 190-91.
- 76 *Ibid*, p. 191.
- 77 *Ibid*, p. 191.
- 78 Nederman, *Community and Consent*, p. 82.
- 79 *Defensor pacis*, transl. Gewirth, pp. 6-7.
- 80 *Ibid*, pp. 44-45.
- 81 *Ibid*, pp. 44-45.
- 82 *Ibid*, pp. 87-88.
- 83 *Ibid*, p. 67.
- 84 *Ibid*, pp. 107-8.
- 85 *Ibid*, p. 27.
- 86 *Ibid*, pp. 103-104. Cf. I Cor. 1:2; Acts 20:28).
- 87 *Ibid*, pp. 61-2.
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