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MARSILIUS OF PADUA

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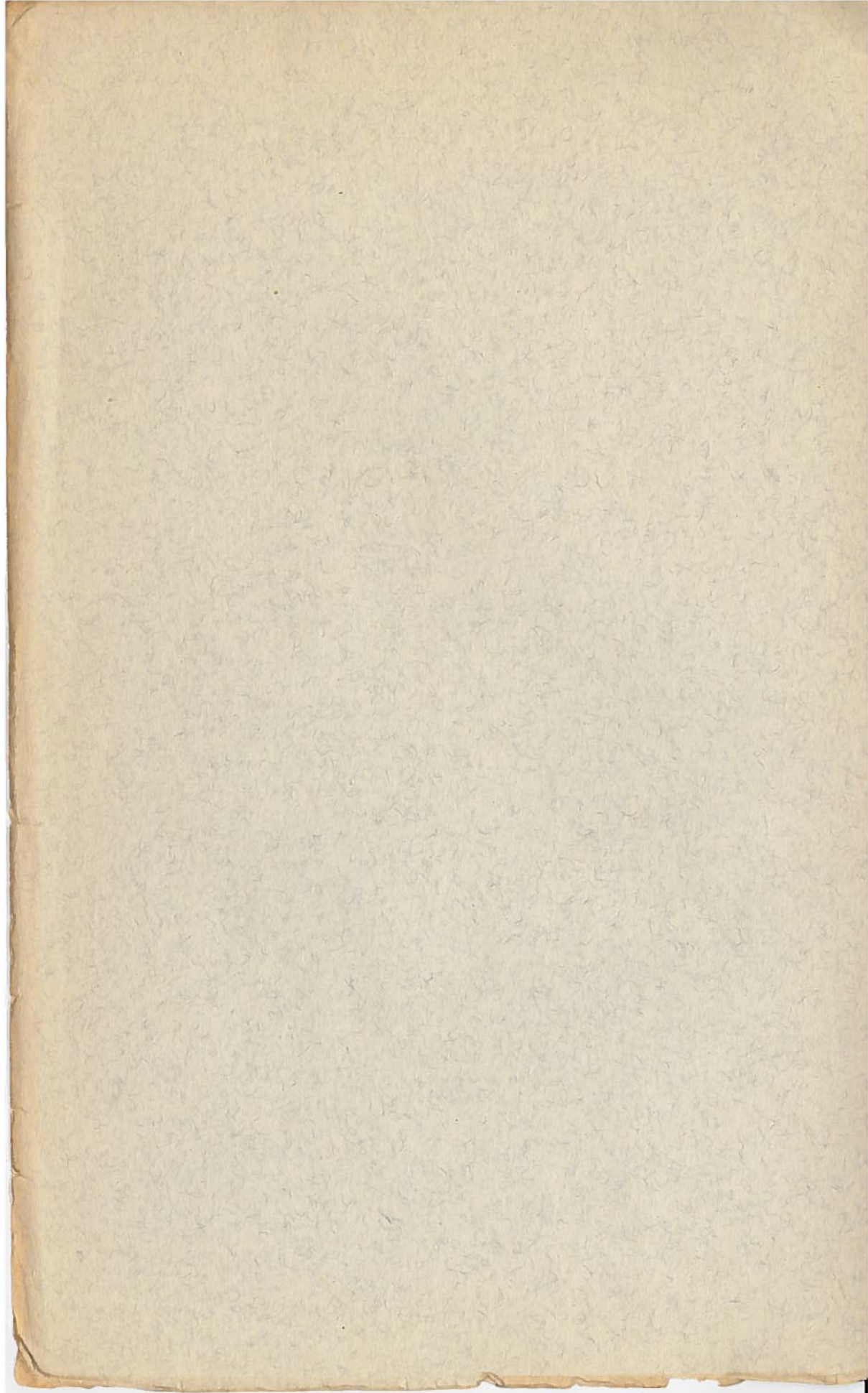
C. W. PREVITÉ-ORTON

Fellow of the Academy

ANNUAL ITALIAN LECTURE
of the
BRITISH ACADEMY
1935

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FROM THE PROCEEDINGS OF THE
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*Charles
William*
BY
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MARSILIUS OF PADUA

By C. W. PREVITÉ-ORTON

Fellow of the Academy

Read 29 May 1935

BESIDE the famous Italians of the trecento, whose names have become household words, Dante, Giotto, Petrarch, and Boccaccio, there stands another Italian who has enjoyed very little notoriety, and indeed till some sixty years ago was little more than a name to most students, Marsilius of Padua, the most radical of the theorists on Church and State in the Middle Ages. That he and his one great work, the *Defensor Pacis*, should have so long been allowed to vegetate in semi-oblivion was not unnatural. In his own time, although denounced as a heresiarch, he was, save for a year or two, an obscure, secondary personage among the adherents of the Emperor Lewis the Bavarian in his contest with the Papacy. His schemes were ineffectual, his life and his wanderings are hard to trace from the few and casual notices which have been ferreted out by the industry of modern scholars. His contemporary, Villani, could confuse him with his French ally, John of Jandun, and make him die years before his decease took place. The nature of his book, too, seems to restrict its interest to specialists. It is one of many tedious polemics in the last weary contest of the medieval Empire and the Papacy. The great days of that struggle were over. Gregory VII and Henry IV, Barbarossa and Alexander III, Frederick the Wonder of the World and his enemies, had filled the European stage with their rival claims. But now the strife of Lewis IV and Pope John XXII had become a localized and essentially petty squabble. The interests of the two potentates opposed one another in Italy. The Pope in his exile

at Avignon feared the entire loss of his territory and influence in the peninsula. Lewis, on his shaking throne, fresh from civil war with his rival, Frederick of Austria, allied himself with the Italian tyrants of Lombardy, who were useful for his imperial prestige and valuable neighbours to his hereditary duchy of Bavaria. But the tradition of the past moulded the policy of both. They were garbed in the tarnished robes of their predecessors and were impelled to imitate them. The Pope's best diplomatic weapon was to insist on the papal suzerainty over the Empire, and to claim that the election of Lewis to be King of the Romans was invalid without the Papal sanction. He fulminated excommunication and deposition against the recalcitrant usurper, the ally of his Lombard enemies. Lewis upheld the independence of the Empire, denied the papal claim of suzerainty, and adopted, as a piece of diplomatic strategy, the thesis of the revolted members of the Franciscan Order, that John was a heretic because he denied the doctrine of the complete poverty of Christ, and that therefore he was no Pope. But the rigid, grasping, lawyer Pope and the inconstant, shallow Emperor, were poor exponents of causes that had been great, and the two provided an unattractive background for the visions of Marsilius. The conclusion of the contest was as indecisive as its beginning was unnecessary. Content with the Emperor Charles IV's practical renunciation of any attempt at effective rule in Italy and his personal obsequiousness to the Apostolic See, the Popes in turn became perfunctory in their claims over Germany. The controversy between *Regnum* and *Sacerdotium* died so slowly and quietly that its end was almost unperceived.

The *Defensor Pacis*, too, has owed some of its neglect to its own deficiencies. Although it has occasional warmth of style and a continuous force of reasoning, it is no compact, trenchant pamphlet like Dante's *Monarchia*, which could seize and not overstrain the reader's attention. It is intolerably long, diffuse, and cumbrous, full of repetitions

which grow more frequent and more wearisome as it proceeds. Lengthy quotations from the Fathers and Glosses, apt enough perhaps, recur again and again, enforcing *ad nauseam* the same arguments. These are heavy burdens for a book to bear, if it is to appeal to a distant posterity, and especially heavy when we remember the gulf that separates the times when the *Defensor* was written and our own. The book deals with conditions which have passed away for centuries. It uses a mode of argumentation then in vogue but now abandoned, as obsolete as the medieval Latin in which it is written. Its most pregnant positions are founded on imperfect and superficial knowledge. It does not even give a lively picture of its own age; its visionary schemes were too unreal and too impossible.

Thus it has always been the fate of Marsilius to have few readers. Yet he has always had some, and among those few he is discussed to-day with something like the fervour usually reserved to living thinkers and burning questions.¹ The reason for this remarkable resurrection is, perhaps, mainly that he, in this obsolete controversy, approached problems that are still modern in a modern spirit, and that his solutions seem to belong more to modern times than to the Middle Ages. His modernism has indeed been refuted cogently and at length. He has been shown to have precursors and to wear the livery of his century. But that it should have been necessary to prove that he was no incredible anachronism is the best tribute to his anticipation of the future—no one needs to convince us that Dante is not modern.

Apart from his writings Marsilio dei Mainardini has left little trace of his existence and personality, but he himself emphasizes one chief fact which justifies his being taken as the subject of this lecture. 'Antenorides ego', he calls himself, 'I, a Paduan';² when he speaks of the sufferings of Italy, the intestine and foreign wars, the invasions and oppressions of his day, he bursts into a fiery eloquence; first and foremost he is an Italian seeking to redress the

evils his country was enduring, the miserable change from a happy past:

What son so rude of this mother, once so fair, now so deformed and rent, seeing these things, knowing them, and capable [of speech], could be silent and hold back the breath of his complaint to the Lord against those who thus unjustly hale her along and rend her.³

Or again,

Led into the maze of error by discord, the natives [of Italy] are deprived of the adequate life, undergoing more grievous labours instead of desired tranquillity, and the hard yoke of tyrants instead of liberty, and thus are rendered more unhappy than other civilized peoples, so that their national name, once accustomed to provide glory and security to those who invoked it, is cast in their teeth by other nations and made into a disgrace.⁴

It is an emotion that has not ceased to stir in Italy from the age of Dante to that of Garibaldi. The first impulse to, the *primum mobile* of, his theories, is a national patriotism of which he is one of the earliest exponents.

Marsilius was the son of Bonmatteo, notary to the university of Padua, and comes first to light as a wandering student, that typical character of the Middle Ages.⁵ He must have been of some note among his fellows, for we find him at the end of 1312 elected Rector of the university of Paris, that is, the temporary head of the centre of the learning of Christendom. His Parisian residence made a deep impression on his career, for there are unmistakable signs in the *Defensor Pacis* of the influence of the anticlerical group of lawyers and bureaucrats who surrounded Philip the Fair. Guillaume de Nogaret, the minister who captured Pope Boniface VIII and humiliated Pope Clement V, shows a hatred of priestly power not alien to Marsilius, if but little of his adventurous speculations.⁶ Then Marsilius appears again in Padua in 1315 as the friend of the noted Aristotelian master, Pietro d'Abano, whose Averroism rendered him suspect and who ended in prison as a heretic.⁷ It was now seemingly that Marsilius entered the path of politics. We hear of him at the court of Can Grande of Verona, and then with Matteo Visconti of Milan. In 1319 he was sent

by the two Ghibelline tyrants on a vain errand to the Count of La Marche, the future Charles IV of France, with the view of inducing the prince to accept the captainship of the Lombard Ghibelline league against the Pope and his legate. It was a mission which, apart from the ambitions of the two tyrants, had a less selfish side, the cause of Italy for the Italians against the efforts of the French Pope for an even greater French dominance in the peninsula. After this failure Marsilius resumed the study of medicine which he had already pursued, and settled once more at Paris in close association with an eminent teacher of philosophy, the canon of Senlis, John of Jandun. It was at Paris in the Sorbonne that the *Defensor Pacis* was completed on 24 June 1324.

Here the obscurity which envelops Marsilius thickens, and it is curious to see how radical are the doubts which have been raised over his chief title to fame. Do we really possess the *Defensor* of 1324 or only a later *rifacimento*? If we do, was that *Defensor* written wholly in 1324, or was it a reshaping of a proto-*Defensor* of earlier date? What was the share of John of Jandun in its composition, for we know that the Pope held him partly responsible for its heresies? Was John of Jandun the political philosopher of the pair and Marsilius the theologian? Some difference of opinion is still inevitable on these questions, which can hardly be debated in a lecture, but some definite results have emerged, I think, from the discussion. We may say with some confidence that Marsilius was, as he claims, the chief if not the only author of a work which is marked by its unity of conception. The style is his, equally apparent in the later *Defensor Minor*; the style of John of Jandun in his acknowledged works is distinct in manner and rhythm.⁸ John's earlier political inclinations, still shown by him in 1323, are diverse from those of the *Defensor Pacis*; the evidence of the Pope charges him with complicity in its theological arguments, and, while this does not rule out his collaboration in the politics of the *Defensor*, it prevents his influence being confined to them. Indeed, on analysis the politics of

the *Defensor* savour of Italy, but some traits of its theological doctrine suggest Paris and France.⁹ It may, I think, safely be claimed that John of Jandun was a valuable auxiliary to the real author, not an equal sharer in the composition of the work. On the other questions, while we may hesitate to say that there was not a primitive sketch written earlier than 1324, the manuscript evidence is greatly in favour of the opinion that the changes introduced subsequently to 1324 were trivial and scattered. The *Defensor Pacis* is one of the few medieval works of which we possess a copy corrected in the author's autograph, and those corrections, when they do not rectify mistakes of the scribe, are slight to a degree.¹⁰ In sum, we possess the work of 1324, without essential alteration at any rate, and its author is Marsilius of Padua.

It is evident from the *Defensor Pacis* that Marsilius was already in touch with partisans of Lewis IV, and to Bavaria he and John of Jandun took flight in 1326 when their connexion with the dangerous book was likely to be discovered. There they had a safe refuge when they were denounced by the Pope. The expedition of Lewis to Rome gave Marsilius, this physician turned statesman, an opportunity of putting his radical theories into practice. At Rome in 1328 Lewis seemed guided by the *Defensor Pacis*; he received the imperial crown, he declared Pope John deposed, he appointed an anti-pope, all by democratic decrees of the assembly of the sovereign Roman people. And Marsilius, whose theories thus obtained a ludicrous, unreal embodiment, acted as Lewis's persecuting vicar *in spiritualibus*. We wonder vainly whether any consciousness of the disheartening light which this hollow triumph, the transitory effect of local feuds, threw on his theories, assailed the mind of the doctrinaire. When the bubble collapsed Marsilius returned with his patron to Bavaria. Hardly anything transpires of his subsequent career. John of Jandun was safe in his grave. Lewis, although in hopes of peace with the Pope he disavowed belief in and even understanding of

Marsilius's doctrines, did at least refuse to give him up to his enemies. Marsilius meantime practised as a physician; he applied his theories once more in order to justify the Emperor pronouncing a political divorce. From his last tract, the *Defensor Minor*, we may guess perhaps that he lived excommunicate by the Emperor's partisans as well as by the Pope's.¹¹ Shortly before April 1343 he was dead. But his ideas remained to percolate among future generations.

Those ideas, however, were muffled, almost stifled, in a lengthy, tedious treatise, now dry, now turgid in expression. They involved the cloudy emergence of novel, or at least unaccustomed, conceptions for which a strict terminology had not yet been invented or revived. Marsilius had to manipulate phrases and struggle to express the notion of the State when he had no thoroughly appropriate or exclusive term for it. For a sovereign State independent of external powers he can only employ a periphrasis, 'legislator humanus superiore carens'. For the abstract idea of absolute sovereignty ('Austinian sovereignty') within a State, of which he has so clear a notion, he has really no word at all; he can only show what body possesses this absolute power. He urgently needs words, like Erastianism, presbyterianism, which he has not got. Under these difficulties, Marsilius strove to communicate his doctrines, political and ecclesiastical, to the shocked ears of his contemporaries. His thought is always clearer than his words. The lack of exact terms, defined and familiarized by habitual usage, is perhaps one of the surest signs of a thinker's originality.¹²

The structure of the *Defensor Pacis* is essentially simple. Its theme is the relation of the Church, or more precisely the ecclesiastical hierarchy and its chief, the Pope, to the State, or rather the lay authorities who supervised the several territories of Christendom. In order to lay down what those relations should be, Marsilius first necessarily defines the basis and sanction of secular government and the

powers of the executive, for which he adopts the happy term of the *pars principans* (the ruling part), derived from the Latin Aristotle, but given this new, precise meaning. His treatment of institutions in the first book is brief and selective, for he is not writing primarily to describe the State, but only to define the rightful position of the Church and to attack the existing government and powers of the Church. He then proceeds for the major portion of the work to argue for the complete subordination of the ecclesiastical hierarchy to the lay State and its *pars principans*. His conclusions were little less than revolutionary, but no less remarkable were the characteristic methods and first principles which he used and the ethos which inspires and colours his work.

The leading characteristic of Marsilius is an intense hatred of the Papacy and sacerdotal rule, a hatred which is nurtured in a strong Italian patriotism and the civic patriotism of an Italian bourgeois. This theme recurs again and again in passages where Marsilius rises from his usual laboured argument to a passionate eloquence.

Summing up the actions of almost all the priests or bishops and the other ministers of the churches, we bear witness before Christ, invoking his judgement if we lie, that almost all the aforesaid bishops and the rest in modern days perpetrate almost the opposite to all that they preach to others should be observed according to the gospel teaching. For they burn after pleasures, vanities, temporal possessions, and the governments of this world and pursue and seize on them with every effort, not by right but by hidden and open wrong.¹³

The same or a greater ardour of denunciation informs his picture of the papal court at Avignon—we might be listening to Petrarch:

For what else is there than the gathering of simoniacs from all sides? What else than the clamour of lawyers, the onrush of petitioners, and the attack on the just? There the right of the innocent is imperilled or so long deferred, if they cannot buy it, that at last drained and wearied by countless labours, they are compelled to give up their just and pitiable causes. For there human

laws loudly thunder, but godly teaching is silent or rarely heard. There are conferences and votings for invading Christian lands and with armed and violent force taking and seizing them from their lawful protectors. There is neither care nor counsel for the gaining of souls. And add that there 'is no order, but everlasting gloom'.¹⁴

It is not one man's passion that sounds in these fiery sentences. There is the long rancour of cities at odds with prelate and clergy; the resentment bred by interdict and excommunication used in disputes essentially political; the indignation of scholars who found themselves suspect under a mighty power for the trend of their speculations; the memory, though not the doctrines, of humbler heretics who revolted from the splendour and power no less than from the vices of the official Church.¹⁵

The driving force, the steam of the engine, in the *Defensor Pacis* is then supplied by this anti-clericalism and the civic zeal, the desire to restore peace to Italy, which accompanies it. But other characteristics of the book are due to the intellectual lucidity with which Marsilius envisaged his first principles and his primary assumptions on which the course of his argument and its results depend.

First, nothing is clearer than the way in which Marsilius discards then current allegorical argument from Scripture¹⁶ and the idea of a Christian world-organism under divinely appointed rulers. The favourite argument, dear to St. Bernard, of the 'Two Swords' of spiritual and ecclesiastical rule given by Christ; the analogy of the material universe, lit by sun and moon, with Christendom, guided by pope and emperor; the deductions from the principle of unity which dominated the thought of Dante, all these are set aside by him. Strange as it may seem in a champion of the Emperor against the Pope, the tradition of the Empire of Charlemagne and Barbarossa, the Empire which is the Church in its temporal aspect and embraces all mankind even the unbelievers, that tradition is nothing to Marsilius. It had too much kinship with the Church of Innocent III, the one fold, ruled by the successor of St. Peter.

Marsilius is the least allegoric, the least traditional of medieval thinkers. He is endeavouring to create a synthesis direct from the facts as he understands them. He is, to some extent consciously, an inductive thinker, hampered indeed by the reigning habit of *a priori* argument and the reliance on authority.

For Marsilius, then, the unity of mankind in the mystical body of Christ has only a mystical significance. It furnishes no model for, and gives no divine authorization to, visible institutions. It cannot be illustrated nor can those institutions be confirmed by allegories which derive their force from a pre-existing belief in what they set out to prove. This attitude is closely bound up with a second characteristic: Marsilius's insistence on the literal meaning of the words of Scripture or rather of the New Law, the New Testament. The words of Christ and the inspired Apostles are binding law, to be interpreted like other law. They are, so to say, scientific facts, from which he makes direct inductions as to the constitution of Church and State. 'The authoritative passages of Scripture', he says, 'which do not require a mystical interpretation, we shall follow altogether according to their obvious literal sense.' He treats the interpretations of the Fathers and the Glosses with a respectful independence, as a historian might treat the weighty opinions of a Gibbon or a Ranke.¹⁷ They create a valuable presumption in favour of their views, but in no way are they binding. Marsilius, in fact, goes, as far as in him lies, to the sources directly. In this argument from Scripture Marsilius markedly discards evidence from the Old Testament. He looks on it as obsolete legislation, in part expressly repealed by the New Law of Christ: 'The followers of Christ', he says, 'are not bound to observe all things which were advised or commanded to be kept by the Jewish people in the Old Testament; indeed the observation of some of them is forbidden to Christians.'¹⁸ He is sharply divided thereby from later innovators like the Hussites, who followed some of his teachings. Whenever we come on arguments drawn

from the Old Testament among them, we are meeting a non-Marsilian strain.

A third characteristic of the *Defensor Pacis* is by no means contradictory to this first-hand reasoning. For Marsilius, Aristotle is almost infallible, as he was indeed to most students of the day. A quotation from Aristotle serves as the strongest of arguments; he is the supereminent of the philosophers; Marsilius never thinks of contradicting him. The *Politics* especially forms the foundation of the first book of the *Defensor Pacis*. But it is to be remembered that the *Politics* is itself based on inductive reasoning; it is a store-house of historic facts and of inferences based on observed human nature and human conditions. Marsilius takes Aristotle as the 'master of those who know', as the most perspicacious and encyclopedic of observers and the surest of reasoners, not as an utterer of revelations from behind the veil. He sets out, indeed, to supplement him with regard to the Christian dispensation and its political consequences which had arisen since his time, 'produced by the supreme cause beyond the power of inferior nature and the usual action of causes in things'¹⁹. His adherence to Aristotle is, after all, an instance of his love of visible facts and the immediate inductions to be derived from them. The pupil is trying to tread the path taken by the master.

Nowhere is this affinity more clear or the prescient modernity of Marsilius more striking than in his treatment of history and his historic sense, in which more than anything else he is a precursor of the Renaissance. It is not that Marsilius was a full-blown historical critic, an anachronistic miracle of learning and method. He certainly did apply a simple but effective higher criticism to the apocryphal Epistle of St. Clement to St. James, but this is a rare instance. His historical equipment was scanty, a few letters of the Fathers, the partly forged collection of canons and decretals of the Pseudo-Isidore, and the brief and then recent Chronicle of Popes and Emperors by Martinus Polonus; and he takes them as they stand. The staple

authority is the Pseudo-Isidore, and it is to be remembered that the amount of genuine material in Pseudo-Isidore is very large.²⁰ But Marsilius shows an extraordinary *flair* for extracting a reasonable account of the progress of papal claims and authority from these materials. He turns documents into connected history, and in so doing shows a conception of historical development, which was not to be equalled till much later times. His ideal of State and Church was static—that is in the nature of ideals—but that he should recognize currents of movement in events, even if away from his ideal, is an achievement. The merit of the performance does not lie in the adequacy or validity of his materials or of his results, but in the historic instinct which led him to link fact with fact and induce a sequence of dynamic change with reasonable causes for reasonable effects.²¹

His ideal was static. In true medieval fashion, not unparalleled to-day, he conceived that there was but one form, in essentials, of the perfect State, and that divergence from that perfect form was wrong and against Nature, therefore, too, against the divine intention for the government of humanity. Institutions which so diverged were self-condemned; their divergence was an argument that they were harmful and illicit. There was a natural law for human political societies, whose breach brought decay and dissolution. Yet this existence of a necessary perfect State intended for man is consistent with a principle of growth, though it implies that growth ends when the full-fledged State is reached. Is this notion, after all, so alien to us to-day? Here his Aristotle helps Marsilius. 'From imperfect men progressed to perfect communities, constitutions, and modes of life in them. For from the less perfect to the more perfect is always the advance of Nature and of Art, her imitator.'²² 'Thus therefore by the reciprocal aid given by men to one another in turn and by the addition of later discoveries to discoveries made earlier, all arts and disciplines received their fulfilment.'²³ Thus a place was reserved for the development, based on Aristotle and the

Bible history, from the elementary patriarchal family of Abraham to the State as it should be, in which men could not only live, but live well, 'that is free to devote themselves to the liberal occupations which belong to the virtues both of the active and the speculative soul'.²⁴

Visionary and doctrinaire as is Marsilius's perfect State, it is not erected in the air without an actual pattern, of which it was the idealized representative, so idealized, indeed, as to become for his own time a fancy. That earthly prototype was Italian. Marsilius was born and bred in Padua, when the city was still a free commune, and the institutions of a free Italian commune are transfigured in his work, with its legal fictions become ideal realities, its procedure and the elements of its institutions made into the norm of civilized life.²⁵ It is no wonder that this citizen found Aristotle's city-State a source of inspiration. There was a fundamental kinship between the Italian commune and the city-State of antiquity of his own time. They were different genera of the same family. The greater States which Marsilius knew, like France, might influence his thought, but they do not provide its mould. He does indeed recognize the existence of kingdoms of wide extent containing many cities and provinces, and the suzerain rights of such a kingdom, as in the matter of excommunication, over the members of the subordinate communities within it;²⁶ but little or nothing of his sketch of institutions is drawn from the large country-State, which could hardly exercise the minute supervision which his ideal demands. Being a partisan of the Emperor makes it difficult for him to deny expressly the rightfulness of a world-State of Christendom. He does evade the problem, however, in terms which show his disbelief in the Empire of Dante's imagination, and show, too, its inconvenience to his theories in every way save one, the summoning of a General Council.

Whether [he says] it befits all civilized men in the whole world to have one single government supreme over all, or whether [on the contrary] it befits men in the different regions of the world,

almost necessarily separated by situation, and especially those who have no common language and who are diverse in manners and custom, to have different supreme governments at any given time . . . deserves a rational inquiry; yet that inquiry is alien to my present purpose.²⁷

Is there a better summary of the arguments for separate nation-States?

Marsilius in this passage makes the curious suggestion that wars between separate States are, like plague, a provision of Nature to keep down the population so that the earth may be large enough for it. Elsewhere he contents himself with saying: 'Single governments for each province suffice for the quiet social intercourse of men . . . that there should be one judge of all men with coercive powers does not yet seem to be proved to be necessary for eternal salvation.'²⁸ This is, indeed, a tepid and cursory way, in a treatise that is only too prolix, of referring to an ideal which had just been passionately sung by Dante. It is only introduced in a refutation of the claims of the Pope to be such a judge as spiritual head of Christendom, and Marsilius adds grimly that a universal Emperor would at least be more efficient in keeping the peace among men than a universal Pope. But it does show the practical and realist spirit which lurks behind Marsilius's impossible plans. In an existing world of different faiths, civilizations, and languages, spread over immense distances and divided by arduous natural barriers, the world-State was not a feasible expedient, the local State was practicable. Marsilius is the interpreter of the almost instinctive effort which the men of his time were making: to give unity, complete self-determination, and independence to the local State. The Holy Roman Empire, we feel, was to him only one of these territorial States, however exalted in dignity. What the great kings of his time, no less than the petty republics, were aiming at, without the formulation of general principles, he took, and he gave to it a theory, a philosophic voice. He went much farther and deeper than they; being the clear-sighted exponent of what

in them was only a tendency, he forecast the future fact. He was a perspicacious radical who saw 'the invisible event'.

Marsilius has been blamed for not dwelling as deeply as Aristotle on the moral character of the State and its necessity to the highest requirements of human nature, and for the sketchiness of his account of its growth. You cannot find in him a pronouncement in favour of individualism or of the 'personality' of the State. Save for the incidental mention of an agreement to form a State, he mentions no solemn 'social contract'.²⁹ Yet, if he were a modern, he might reply that no precise evidence could be adduced for sovereign individuals entering into a formal social contract, or for a State, however closely organized, acquiring a full personality like an individual. It was enough for him and in his own time to see that men developed from elementary organizations to the 'perfected society', that only in co-operation and specialization could human needs be fully met and human capacity fully unrolled, and that this mature society, which enabled men to be at their best, was, therefore, the State ordained for man by Nature. This does not seem an unworthy or narrow view, in spite of its silences and its lack of precise information on what was rebellious to definition. In this respect, perhaps, he saw, what he did not always see, that life refuses to be contracted and confined, like an Arabian genii, in the neat and straitened receptacles we devise for it. He passes on from these problems to consider certain essential features of this 'perfect community called the State (*civitas*)'.³⁰

Of first importance in his mind among the State's characteristics is the unity of its supreme government, the *pars principans* (ruling part), the *principatus*, as he variously terms it. By the unity of the *pars principans* he does not mean that the supreme executive should be vested in a single person, that the *pars principans* must be the *princeps*. That may be, but Marsilius holds no brief for monarchy as such. A board of several may fill the post of supreme government in the perfect State:

These several persons are one *principatus* with regard to their office, because of the unity of every action proceeding from them, whether a judicial decision or a pronouncement, or a command; for none of those official acts can proceed from any one of them separately but [only] from their common decree and consent or from that of their most weighty part according to the laws established in these matters.³¹

This government, then, whether consisting of one man or several, is one and single in that it alone possesses the supreme executive power over all persons and offices, civil or ecclesiastical, in the State. All other officials are to be subordinate and obedient to it,

inasmuch as, if there were several governments (*principatus*) in city or realm, and they were not subordinated to a single supreme government, there would then be lacking both judgement, command, and the carrying out of what is expedient and just; and therefrom, as wrongdoing would be unpunished, [there would follow] fighting, faction, and ultimately the corruption of city or realm.³²

The supreme government, within its territory, is to be the ultimate court of judgement, the head of the executive, charged with the control and supervision of all subordinates. Otherwise the decree of one court might contradict that of another of equal authority; one set of officials might issue one command, and another an incompatible command; and amid these rival authorities order, justice, and peace would be lost.³³ Marsilius's demonstration of his thesis is pedantic—it is chiefly legal, for in his day the competing jurisdictions of secular and ecclesiastic courts were a serious problem—but his solution was that towards which the kings of his day were striving, and it anticipates in spirit, if not in form, the unified central government of most modern States.

This supreme government, however, the *pars principans* of Marsilius, is neither irresponsible nor unlimited nor self-sufficient nor the source of law. In fact, in modern language, it does not possess sovereignty. It is no more than the necessary instrument by which the State is governed, one

of the parts of the State, not the State itself. Where then does sovereignty reside? What is the source of law and authority in the State? In the fourteenth century the very idea of legal sovereignty was unfamiliar, save perhaps veiled in technical glosses among the civilians or in the *plenitudo potestatis* of the Pope. For most men the source of law lay in the nature of human society as created by God; it was only applied, explained, and expanded by human enactments. Marsilius admits that there is a moral law based on what is right and just, but that law is not the law enforceable in the courts, although enforceable law ought as a matter of morals to be in harmony with what is right and just.³⁴ The origin and right source of enforceable law is what Marsilius discusses, and here he may be said to discover sovereignty in the Austinian sense long before Jean Bodin; he gives the possessor, at least, of sovereignty a name: the legislator. From the decrees of the legislator all enforceable laws of the State arise, all institutions are formed, all State officials directly or indirectly hold their nomination and authority.³⁵ In deciding who the legislator of the State should be, he shows most clearly the influence of his Italian birthplace, for he declares the rightful legislator to be the general assembly of the people.³⁶ The legislator, in fact, corresponds to the *arengo* of the citizens which still in his time formed the basis of the Italian commune. By delegation from the *arengo* and by its decree all councils and authorities within the commune held their power. The assembly might be a mere formality, but its powers were undoubted, and, to give an instance, under the name of *parlamento* it continued to function at Florence until the fall of the republic in the sixteenth century.³⁷ It is characteristic of Marsilius that the reasons which he gives for this democratic institution are utilitarian—he is no inventor of the ‘rights of man’. But, he says, men obey more willingly laws which they themselves have made; thus the end of law is most perfectly attained by democracy. The argument from perfection is, of course, of weighty import when we are

forming an ideal. Law, again, and the State itself, are ordained for the benefit of all within it; 'therefore what can touch the well-being or the ill-being of all, ought to be known and heard by all, that they may be able to attain the good and prevent the ill'. Democracy, in short, is only fair. It is likely, he says, that an autocrat or an oligarchy will be misled by personal or class advantage. That most men are unable to devise laws he admits, but he urges, on the authority of Aristotle, that they can understand and judge of what they cannot invent. A democracy includes the wise; they have their vote and voice.³⁸

The whole attitude of Marsilius is practical and realistic, and based on something in the real life of his times. If he does not expatiate on the inalienable rights of man, neither is he an equalitarian. He knows that unanimity is an unlikely, indeed an impossible, event. So in his legislator laws are carried by the weightier part, the *pars valentior*, of the assembly, and this weightier part is to be estimated considering its number and its quality in the community—in fact, his voters have an unequal share in decisions; their class, position, and perhaps their personality are to count. And this fundamental inequality was a living fact in his time. 'A citizen', he quotes from the Latin Aristotle, 'is one who participates in the State and its functions according to his rank (*gradus*).' Marsilius's democracy consists in not being exclusive. All are citizens save boys, women, slaves, and foreigners. He did not, we must own, outrun six centuries and foresee women's suffrage.³⁹

The legislator, then, passes the laws and debates them. That it should draft them is not feasible; this should be done by elected committees of more expert citizens before they are submitted to the assembly.⁴⁰ Here, again, Marsilius is not merely guided by an inspired common sense, he is but reproducing the practice of an Italian commune, in which the statutes of the city were drawn up and emended by special boards elected for the purpose. His ideal State had its basis in contemporary and local fact.

Both the essential republicanism and the Italianate character of Marsilius's theory of the State are vividly shown by his discussion on the appointment of the supreme executive, the *pars principans*. He insists on its elective nature and its limitation by the law. Even hereditary monarchy should in a 'perfected community' be due to an original election by the legislator granting hereditary succession. He contemplates election with hereditary succession for two or three lives, a variant which actually occurred in Italy. But he definitely prefers the non-hereditary ruler, whether his term be for life or some shorter period. If this last variety would fit the Holy Roman Empire, it still more agrees with Italian practice, with the position of a doge of Venice or a *podestà*.⁴¹

The long discussion of the different tenures of office by a single ruler, and the merits of his hereditary succession or his election for a term, may show that Marsilius regarded him as a better form of government than a board or committee, but neither this, nor the wide and minute supervision and control of the citizens, their professions, and actions which Marsilius gives to the *pars principans*, provide any ground for autocracy.⁴² That minute control was marked in the contemporary Italian city-State, however republican, and the limitation of the *principatus* is clear from the stress laid in the *Defensor Pacis* on the law. By the law and enforcing the law the *principatus* should govern; and the law should prescribe as much as possible of its action. 'No judgement, as far as possible, should be left to the free choice of the judge, but should be determined by law and pronounced according to it.' Only where the law has not dealt with every possible contingency or is general in its terms, which of course must often be the case, is the equity or the choice of the ruler allowed free scope.⁴³

Still more redolent of Italian conditions is the anxiety Marsilius testifies that the armed force of the State should be only in the hands of the government in office, and that constitutionally:

This armed force of the ruler [he says] ought to be fixed by the legislator, like other State matters; at such a size that it exceeds the force of any citizen or of several citizens, not, however, of the force of all or of the majority, lest it might happen that the ruler should presume or be able to violate the laws, or apart from or contrary to them to rule despotically.

The ruler, he adds, does not need to have this armed force before his election, for then a zealous poor man could never be elected. Here we have the fear of the tyrant with his personal guard of troopers, like Ezzelin and many others; but nothing is more unlike the feudal contingents, each under its lord, which prevailed north of the Alps, than this State institution.⁴⁴

As if to make the ruler definitely a responsible State official, Marsilius devotes a chapter to his correction in case of abuse of his powers. This is significantly omitted in the Tudor translation of Marshall 'as nothing appertaining to this realm of England'. The correction of the ruler is necessary, Marsilius says, for otherwise every *principatus* would become despotic and the life of the citizens servile and inadequate. The legislator itself or nominees elected by it should conduct his trial, and, if necessary, punishment, while the *principans* is suspended from office during the proceedings. True it is that light and rare offences should be winked at for fear of diminishing the prestige of the ruler.⁴⁵ No doubt, this argument is imaginative and doctrinaire, yet, like the rest, it has its realistic side. The *podestà* in an Italian commune was actually held to account after his term of office was expired, and fined if wrongful acts were proved against him.⁴⁶ The flawless prince and people are not present to Marsilius's mind, but the real and fallible sort, and the same disillusioned attitude is manifest in his treatment of law.

Human law in its truest sense is for Marsilius the law enforceable in the courts of the State, and its compulsive character is given it by the decree of the legislator. It is distinct on the one hand from the Divine Law, revealed in

the Bible, whose penalties and rewards are given in the future life, and on the other hand from the knowledge of what is just and unjust attained by reason.⁴⁷ 'Sometimes false conceptions of what is just and beneficial become laws, when a command to observe them is given . . . as appears in the lands of certain barbarians.'⁴⁸ Mostly, indeed, human law is in harmony, as far as it goes, with Divine Law, but it may not be.⁴⁹ In case human law contradicts Divine Law, Marsilius is clear that a man ought to obey Divine Law and not human law, for one contains infallible truth and the other not.⁵⁰ Whether this disobedience is to exceed a kind of passive resistance, he does not say, but each citizen is part of the legislator and presumably may strive to amend the law, which is one of the legislator's chief functions. 'By its authority the laws ought to undergo addition or subtraction, or total change, interpretation and suspension, according to the exigency of time and place.'⁵¹

That the law decreed by the legislator in its assembly should be the only law enforceable in the courts with coercive effects on all citizens is a cardinal feature of Marsilius's system. Both his democratic convictions and his anti-clericalism concur in this. In his day men lived under at least two enforceable laws and two independent series of courts, the lay and the ecclesiastical, and the ecclesiastical law was the great and growing structure of the Canon Law, derived partly from the canons of synods, but chiefly from the decretals of the Popes. Almost every contemporary controversialist appealed to the Canon Law to establish his theses. Marsilius rigidly denied its validity and refused to consider it.⁵² It did not proceed from the will of the legislator, but from a despot or from a separate and irresponsible gathering: it was, he says, 'oligarchic', i.e. a product of one of the evil forms of government described by Aristotle. It riveted on men the yoke of a class and its interests.

For in the laws of a few, they would seek more their own benefit, whether of persons or of a group, than the general benefit, which sufficiently appears in those who decreed the Decretals of the

clergy. . . . For from this a way of oligarchy is provided, just as when the power of legislation is conferred on one alone, room is given for tyranny.⁵³

It is the root of discord in the State, and especially in Italy. The Popes and clergy 'have broken out into the making of laws, apart from those of the citizen-body, decreeing all the clergy exempt from the latter, and bringing about division in the State and the plurality of the supreme executive government, which we have shown . . . to be incompatible with the peace of men. This is the root and origin of the plague of the Italian kingdom, from which all scandals have bred and proceed; while it lasts civil discords there will never cease.'⁵⁴ Even though the ecclesiastical laws contain good provisions, they should not, as such, be enforceable law:

Although Decretals and canons of this kind and the like may contain many valuable teachings and counsels, both for the life here and hereafter, yet so far as they proceed from the bishop of Rome, even with his college of clerics, without the licence of the Christian legislator or prince . . . statutes of this kind bind no one as to crime and punishment and more especially as to that of this world.⁵⁵

The Divine Law in Scripture is indeed binding on the conscience—it proceeds from Christ—yet conviction and punishment are on the day of judgement hereafter.⁵⁶ But this is not the Canon Law, and the Canon Law is no law at all.

There is thus in Marsilius's ideal State neither immobility nor servile subjection. His own summary is the best.

The . . . government, be it one man or several, will understand . . . that to it alone befits the authority to command the subject multitude . . ., and to restrain each man, if it be expedient, according to the established laws, and to do nothing, especially of moment, outside the laws without the consent of the subject multitude or legislator; nor to provoke the multitude or legislator by injustice, since in the legislator's express will the virtue and authority of the government consist.⁵⁷

This is the free State as Marsilius dreamed it ought to be,

a community ruled by the government it has chosen according to the laws itself has made.

Utopian as was Marsilius's ideal of the State, it was none the less composed from facts he saw around him, to which he supplied a theory. When he comes to his ideal of the Church, the element of thorough novelty is much stronger. He may have been influenced by contemporary disputes and speculations, but the synthesis appears to be his own. The fusion of his unitary theory of the State with his historical pleasure in the use and interpretation of documents and his almost fevered anti-clericalism produced a scheme which would have recast the Christian Church.

First of all, Marsilius took from his meagre knowledge of the classics and his intensive study of Aristotle the conviction that the care of religion and its control were one of the functions of the natural State. The only difference made by the acceptance of Christianity was that a true religion was substituted for a false. The State government assumed charge of the new organization as of the old.⁵⁸ The legislator, with its executive the *principatus*, should dominate ecclesiastical officials and their actions, as it did lay officials, within its boundaries. Their number, their duties, their powers and endowments, were the subject of State regulation.⁵⁹ If a man was to be punished by excommunication, which as a matter of course affected his civil rights, this was the legislator's business, not that of the clergy;⁶⁰ if heretics were to be persecuted, only a State law could authorize it.⁶¹ In short, Marsilius is an Erastian: the government of the Church is an affair of the State.

But we have seen that Marsilius accepts the simultaneous existence of many States, and the Christian Church is world-wide, transcending their limits. It has, too, an essential unity; it is the mystic body of Christ, composed of all faithful Christians; it is the shrine of infallible Truth, with a law and doctrine given to it by its Divine Author. How can this unity be maintained in faith and organization,

if the Church is split into fractions each under the control of its legislator?

Marsilius meets this difficulty in part by a firm adherence to Scripture, that is, the New Testament, as the source of Christian doctrine, and by his own confident inductions from the Bible text. To him the Church is a republic of believers, for whom certain institutions and officials have been created by Scriptural warrant. They are not many or elaborate, for he sticks closely to the literal meaning of the texts of the New Testament. Thus, he finds that the Christian hierarchy consists of two distinct ranks, priests and deacons, of whom priests possess miraculous powers in the ministration of the Eucharist, and Divine authorization to deal with sin by confession, absolution, and exhortation, i.e. the so-called power of the keys. Yet their power of the keys is declaratory; they are experts, not infallible or effective judges—that is an attribute of God.⁶² As for bishops, they really belong to the order of priests, and are authorized by Scripture to lead and supervise the clergy, but no more; and bishops are equal among themselves so far as the Bible prescribes.⁶³ Thus Marsilius is essentially a presbyterian, though he accepts bishops as a suitable human ordinance. Further, the clergy are bound to imitate Christ and the Apostles by personal and absolute poverty, content with mere sustenance. They are but the stewards of Church property, which should be used for charitable purposes under the control of the legislator.⁶⁴

This uniform organization and body of doctrine is, however, elementary. For its elaboration, for the development of doctrine, for the explanation of dubious passages of Scripture, for the maintenance of union and united action, Marsilius depends on a General Council of believers, which he finds practised by the Apostles.⁶⁵ As salvation depends on right belief, it must be believed, he says, that General Councils are inspired.⁶⁶ Only they must be really general. Clergy and laity must be there, elected by the legislators of all independent Christian States.⁶⁷ Then, and only then,

they are infallible in doctrine, and authorized to organize the whole Church in institutions, regulations, and rites.⁶⁸ They may and should appoint a chief bishop of all, preferably the Pope of Rome. This would facilitate the transaction of business and keep the churches in touch with one another in the intervals of General Councils. His functions should be advisory, not those of a ruler.⁶⁹ But save in the matter of doctrine, the decisions of a General Council are purely human and reversible at need.⁷⁰ Marsilius may be said to have invented a parliamentary government of the Universal Church, with the evident reservation that he considered no valid General Council to have been held for centuries.

This does not, however, exhaust his limitations. It is clear that to him the authority of the most valid General Council, however high, is, strictly speaking, a moral authority. The decrees of a General Council can only be enforced by the legislator. We are thus led back to the independent State. The legislators should be kept in line by the Council, but theirs is the coercive power.

It is the authority of the human Christian legislator, which is without a superior, to issue a coercive command for the observance of things defined, adjudged, and ordained by the General Council and to give decree affecting all indifferently, both priests and non-priests, and to restrain the transgressors of such command or decree by penalty in goods or person or both, to be inflicted in this life.⁷¹

Marsilius faintly suggests that there is one first legislator, doubtless of the Holy Roman Empire, which may take the initiative in summoning a General Council.⁷² He implies continually that the *principatus* may be empowered to act for the legislator. But, in spite of ambiguities, his conciliar theory is self-consistent and, we may add, both democratic and Erastian in essence. There were difficulties in the evidence for his theories. The only General Councils which he was willing to recognize as truly representative and therefore valid after the Apostolic age were those early

councils, like that of Nicaea, which were summoned by the Roman Emperors. These, however, he could describe as *principantes* by the authority of the Christian human legislator, the Roman people. The Lex Regia creating the *princeps* was well known to jurists. He was a doctrinaire, and may not have felt how much reality his ideal State lost by such a reliance on legal forms.

+ A polemic tractate on the constitutional relations of State and Church is not the place where you expect to find a man's views on his personal religion, and Marsilius was, perhaps, by nature lacking in devout unction. He was possessed, rather, with the *saeva indignatio* at triumphant abuses backed by prestige and power and intellectual inertia in the ordinary man. Against these he bursts out with a wrathful courage:

No less a war is prepared against this work by the ancient enemy of almost every truth, namely, the habit of hearing and believing falsehoods, falsehoods, I say, long sown and rooted in the souls of most simple Christians by priests or bishops and the rest of their supporters. . . . They have abolished the true opinions on these matters . . . and their true and simple beginnings from the minds of men, and little by little have suggested falsehoods in their stead, so that now discrimination between the two is hidden from most men. . . . But I will not desist from my intention for fear of the violent force of priests unduly burning for domination, whom I address in these writings, since as the Psalmist says: The Lord is on my side, I will not fear what man doeth unto me.⁷³

These are the words of a partisan who could see nothing good in his adversaries, but who also fervently believed in the truth as it seemed to him. He was convinced that the only just and final judgement on men comes from God alone. 'Only God has such power, who alone knows the inner will of sinners and the hearts of penitents and of those who make reparation and the number and nature of their merits and demerits.'⁷⁴ To him the office of the priest, to warn, exhort, and reprove, is salutary, but each soul is really subject only to the Creator.

So lonely and revolutionary and in his way so narrow

and pragmatic a thinker as Marsilius was not likely to have a wholesale influence on future thought. In his own generation he can have had but few followers. Yet he was read and his ideas percolated: there were translations made in French and Italian. When the champions of secular rule were in arms against clerical claims and privileges, we find that they had recourse to some parts of his work. Évrart de Trémaugon, in the *Somnium viridarii* which he addressed to Charles V of France in 1376, puts excerpts from the *Defensor Pacis* in the mouth of the knight who refutes the cleric.⁷⁵ Marsilius's conciliar theory attracted reformers, perhaps Gerson himself, in the days of the Great Schism of the West.⁷⁶ He was then copied and recopied. He was read by the Hussites and John Hus, their leader. If their fundamental doctrines owe more to Wyclif than to him, they are said by Professor Bartoš to have learnt from him the doctrine of the sovereignty of the people.⁷⁷ When the Reformation began to spread in Germany, the *Defensor Pacis* was printed in 1522 at Basel, and it is curious that in that princely age the perfervid final chapter, with its insistence on the rights of the legislator, was then dropped.⁷⁸ Finally, in the English Reformation, under the patronage of Thomas Cromwell, an English version by William Marshall was printed in 1535. The translation was badly done and severely edited in the interests of monarchy.⁷⁹ Probably its circulation was small. Still the book in its Latin form had some effect. 'Thou shalte fynde in it', said Marshall, 'the image of these our tymes most perfytyly and clerlye expressed and set out.'⁸⁰ There is some evidence of its being known among the henchmen of Henry VIII. Thomas Starkey, one of the king's chaplains, recommended its perusal to Reginald Pole, the future cardinal, in the hope of bringing him over to the belief in the royal supremacy.⁸¹ But, perhaps, it may be reasonably conjectured that its most eminent reader was Archbishop Cranmer, some of whose views show a surprising affinity to the *Defensor Pacis*. We have to argue from parallels, for avowed

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citation is absent, but the Roman Catholic controversialist Pighius, it may be noted, was at this time (1538) making an attack on Marsilius's book all along the line as the best exposition of reigning heresy.⁸² Marsilius was to some degree in the limelight.

In his contributions to the debate of English divines in 1540 Cranmer is the most radical and Marsilian.⁸³

1. 'All Christian princes have committed unto them immediately of God the whole cure of all their subjects, as well concerning the administration of God's Word, for the cure of souls, as concerning the ministration of things political and of civil government.'⁸⁴ This is the function of Marsilius's *pars principans* monarchized and become the royal supremacy. And Cranmer adds that the Apostles, when there were no Christian princes, 'but only the consent of Christian multitudes' (a Marsilian word), were 'constrained of necessity' to make ecclesiastical appointments. This is the view of Marsilius, when the Christians were an extra-State body in a heathen State.⁸⁵

2. Cranmer similarly accepts a Marsilian view of bishops, supported by St. Jerome. 'Bishops and priests . . . were not two things but both one office in the beginning of Christ's religion.'⁸⁶

3. Cranmer declares that the power of excommunication depends on the laws of the region. It may be given to or withheld from bishops and priests or given to laymen by such laws. Here again the fundamental position is that of Marsilius.⁸⁷

4. Reporting a sermon of his at Canterbury to Henry VIII in 1536 Cranmer adopts an attitude similar to that of Marsilius on the Canon Law. 'So many of [the Pope's] laws as were good . . . your Grace had received as laws of your realm, until such time as others should be made. And therefore as laws of your realm they must be observed, and not contemned.'⁸⁸

5. In a paper attributed to Cranmer we have a like resemblance in his view of General Councils. 'The power

of councils did not extend to princes' dominions or secular matters, but only to points of faith, which they were to declare, and to condemn heretics: nor were their decrees laws, till they were enacted by princes.'

He, if it is Cranmer, there argues, too, as Marsilius did, that 'though St. Peter had been head of the Apostles, yet as it is not certain that he was ever in Rome, so it does not appear that he had his headship for Rome's sake, or that he left it there; but he was made head for his faith and not for the dignity of any see.'⁸⁹

Considering, therefore, the circumstances, the notoriety, and accessibility of the work, there is a strong probability that Cranmer read and was influenced by the *Defensor Pacis*. There is still stronger internal evidence in the *Laws of Ecclesiastical Polity* that the greatest Elizabethan political thinker, Richard Hooker, owed much to Marsilius,⁹⁰ though it must be admitted that this indebtedness is clearest in the rough drafts which remain of the concluding books. He makes a reference to him in the seventh book.⁹¹ In his fragmentary eighth book Hooker maintains views nearly identical with those of Marsilius, (1) that the body politic has the control of religion within its borders;⁹² (2) that the true Christian religion, when the body politic was converted, fell also into this natural position in the State under the control of the Christian ruler;⁹³ (3) that the law-making power in the body politic is by nature in the whole body politic, 'though haply some one part may have greater sway in that action than the rest';⁹⁴ (4) that 'the best limited power' of kings is that which is 'tied unto' the rule of laws, 'not only the law of nature and of God, but very national or municipal law consonant thereunto';⁹⁵ that the act of instituting kings, 'even inheritors', is due to the whole body politic or 'civil society', which is the people, in origin at any rate.⁹⁶ (5) When Hooker comes to the power of the supreme executive, the transcript from Marsilius becomes more definite. Division causes 'inevitable destruction'.⁹⁷

There must of necessity in all public societies be also a general

mover, directing unto the common good, and framing every man's particular to it. . . . Such as in one public state have agreed that the supreme charge of all things should be committed unto one, they, I say, considering what inconveniences may grow where states are subject unto sundry supreme authorities, were for fear of those inconveniences withdraw from liking to establish many. . . . surely two supreme masters would make any one man's service somewhat uneasy in such cases as might fall out. Suppose that to-morrow the power which hath dominion in justice require thee at the court; that which in war, at the field; that which in religion, at the temple: all have equal authority over thee, and impossible it is, that thou shouldest be in such case obedient to all: by choosing any one whom thou wilt obey, certain thou art for thy disobedience to incur the displeasure of the other two.⁹⁸

These are the very arguments of Marsilius.⁹⁹ Hooker would most easily find the dilemma in the *Defensor Pacis* rather than some intermediate adapter. (6) 'No canon,' he says later, 'no not of any council, had the force of a law in the Church, unless it were ratified and confirmed by the emperor being Christian.' And he claims the same power for Christian kings with less extent of territory.¹⁰⁰

In fact, the likeness of the Marsilian system, however filtered through, to that of the Anglican Church of the Tudors is remarkable enough. The Christian prince in his own territory exercises the powers of the *pars principans* authorized by the legislator. We need not exaggerate the connexion. Many tributaries of thought flowed into the Church of Henry VIII and Elizabeth. Only it may be said that among them the Marsilian element, both institutional and historic, may be distinguished, and that there is some presumption that it especially affected Archbishop Cranmer and Hooker. Part, though only a part, of the theory of the *Ecclesia Anglicana* is Marsilian.

The *Defensor Pacis* was accessible in several editions, and especially in the great collection of Goldast (1614),¹⁰¹ throughout the sixteenth and seventeenth centuries. To look for the traces of his influence would be an interesting problem for research. But apart from direct influence there is a kinship, if only of coincidence, between certain of his teachings

and some conceptions of the State and of history with which we are now familiar. One is his use of historical criticism and historic method. His argument against the genuineness of the pseudo-Clementine epistle has already been mentioned: it is based on internal evidence, deftly extracted—it was incredible that St. Clement should so write to St. James, the Lord's brother.¹⁰² Equally skilful is his argument, drawn from the Acts of the Apostles, that St. Peter, if he came to Rome, must have arrived there later than St. Paul.¹⁰³ Its validity must be left to specialists in Apostolic history, but its method is rational criticism, and is, too, more suggestive of our times than his.

Even more remarkable is Marsilius's attempt to reconstruct the constitution of the Apostolic Church from the statements in the New Testament. The argument is too legal in tone, it is true. He construes the New Testament like a law-book. In like manner he traces the government of the Church after Constantine, and the development of the papal primacy, from the documents in Pseudo-Isidore, some few works of the Fathers, and the scanty hints of Martinus Polonus. Superficial as was his knowledge and insufficiently supported as were his conclusions, the principles of historic induction on which he went were essentially the same as those used to-day in the study of history. He would still be refuted or confirmed by his own methods.

A second point of kinship between Marsilius and later thinkers is his doctrine of the sovereignty of the people, that legislator of which he loves to speak.¹⁰⁴ If others had maintained, in some sort, this democratic view before him, his thought on the subject has a definition and a clear dogmatism which are his own. It is the basis of his State, to which he constantly appeals. With him 'oligarchic' is almost a term of abuse. It needs no pleading to show how this democratic tenet pervades the political thought and the revolutions of the nineteenth century.

Again, his conviction that there ought to be one law-giving, ruling authority for the unitary State, absolute over

its citizens, the only source of enforceable law, is the modern legal doctrine of the State. This authority is for him his legislator, the assembly of the people. He couples it with the one supreme executive, the *pars principans*, his government to which all other officials and departments, whether lay or ecclesiastical, must bow. This unity of government he looks on as a necessity for peace and order and the well-being of the State. But its powers are not those of sovereignty. The *pars principans* is responsible to, elected by, and dependent on the legislator. It is to carry out the laws the legislator makes, which include taxation, and to act, especially in weighty matters, with the legislator's consent.¹⁰⁵ Marsilius certainly had not arrived at the modern refinement of a division of powers in the executive; he disliked it; yet he does divide the limited and derived functions of the supreme executive from the full and law-making powers of the assembly of citizens. Here again we come on the principles underlying the constitution of a free commune, ripened into a theory of the State under the guidance of Aristotle. No modern himself, the clear and narrow intellectual vision of Marsilius made him a forerunner. He saw afar, and gave an imaginary perfection to, a promised land.

By the time of the French Revolution, in which one could imagine him drawing up perfect constitutions, the direct influence of Marsilius, it is true, must have been long extinct. The *Defensor Pacis* was buried deep among the discarded lumber of obsolete theology and forgotten controversies. But in the sixteenth century I have endeavoured to show that he was still, directly or indirectly, a living source of ideas. We are impelled to ask why his name, apart from traces of his tenets and arguments, so little appears, and then chiefly in the indignant refutation of Pighius. But the theoreticians of the Tudor State, when they sought for support for their interpretations of Scripture and the natural order of society, preferred to quote universally recognized authorities from the days of Antiquity and the early Church. Jerome and Ambrose, Augustine and

Chrysostom, Aristotle, from whose writings Marsilius himself propped up his system, Thomas Aquinas, 'names which the world thinks always old', these and their like crowd their text and margins, and carried weight with their readers. Who would be convinced, on grounds of authority and tradition, by the writings of an obscure and recent Italian physician, engaged in a dreary and dying controversy, who led no religious party or obstinate revolt? For his own fame he came too soon and too late. To be forgotten while his thoughts survived was the destiny of Marsilius of Padua.

NOTES

[I desire to express my thanks to the British Academy for the permission to add these notes.]

1. Among the literature on Marsilius certain studies may be mentioned to which this lecture owes much: S. Riezler, *Die literarischen Widersacher der Päpste zur Zeit Ludwig des Baiers*, Leipzig, 1874 (the indispensable starting point of Marsilian studies); R. L. Poole, *Illustrations of the History of Medieval Thought and Learning*, [1883], 2nd ed., London, 1920; N. Valois, 'Jean de Jandun et Marsile de Padoue, auteurs du *Defensor Pacis*' (in *Histoire littéraire de la France*, xxxiii, pp. 528 ff.), Paris, 1906; J. Sullivan, 'Marsiglio of Padua and William of Ockham' (in *American Historical Review*, vol. ii, 1896-7); E. Ruffini Avondo, 'Il *Defensor Pacis* di Marsilio da Padova' (in *Rivista Storica Italiana*, vol. xli, 1924); F. Battaglia, *Marsilio da Padova e la filosofia politica del medio evo*, Firenze, 1928; A. Passerin d'Entrèves, 'Rileggendo il *Defensor Pacis*' (in *Rivista Storica Italiana*, vol. li, 1934); G. de Lagarde, 'Marsile de Padoue et Guillaume de Nogaret' (in *Revue historique de droit français et étranger*, 4th ser., vol. xi, 1932); G. de Lagarde, *La Naissance de l'esprit laïque au déclin du moyen âge*, Saint-Paul-Trois-Châteaux, 1934 (especially vol. ii). I may add the editions: *The Defensor Pacis of Marsilius of Padua*, ed. C. W. Previté-Orton, Cambridge, 1928; *Marsilius von Padua, Defensor Pacis*, ed. R. Scholz, in *Fontes Iuris Germanici Antiqui*, Hannover, 1932 (valuable introduction); *The Defensor Minor of Marsilius of Padua*, ed. C. K. Brampton, Birmingham, 1922.
2. Dict. i, cap. i, pt. 6 (ed. P.-O., p. 5).
3. Dict. ii, cap. xxvi, pt. 20 (ed. P.-O., p. 423): 'Quis igitur tam agrestis huius patriae sive matris, tam pulchrae olim et nunc adeo deformis et laceratae, filius haec cernens, sciens, et potens adversus

- sic ipsam trahentes et lacerantes iniuste silere poterit et clamoris spiritum ad Dominum continere?"
4. Dict. I, cap. i, pt. 2 (ed. P.-O., p. 3): 'Ob quam quidem in erroris seducti devium, vita sufficienti privantur indigenae, pro quiete quaesita labores graviores, pro libertate vero dura iuga tyrannidum continuo subeunt, sicque demum ceteris viventibus civiliter infeliciores effecti, ut ipsorum patronymicum nomen, gloriam et immunitatem invocantibus praebere solitum, in passionem ignominiae a reliquis nationibus exprobreteur eisdem.'
 5. For the life of Marsilius, see Valois, op. cit.; Scholz, *Def. Pac.*, Introduction, pp. liv ff.; de Lagarde, *La Naissance de l'esprit laïque*, ii, cap. i; Brampton, 'Marsiglio of Padua, Life', *English Historical Review*, xxxvii (1922), pp. 501 ff.; and the Introduction to my *Defensor Pacis*.
 6. See de Lagarde, op. cit., ii, cap. vii, and 'Marsile de Padoue et Guillaume de Nogaret', cited above.
 7. See de Lagarde, *La Naissance* etc., ii, pp. 20-1.
 8. See Scholz, *Def. Pac.*, Introduction, pp. li-liii.
 9. Cf. de Lagarde, 'Marsile de Padoue et Guillaume de Nogaret', and J. G. Sikes, 'John de Pouilli and Peter de la Palu', *English Historical Review*, xlix (1934), pp. 227-9.
 10. This copy is the MS. of Tortosa. See on the nature of the alterations my edition, pp. xxvii, xxviii, xxxv-xxxvii, xli, and Scholz's edition, pp. xxvi-xxxii, xlvi-xlvii.
 11. This may be inferred by the space devoted to the question of excommunication and the minimizing of the need for confession to a priest in the *Defensor Minor*.
 12. Since this lecture was delivered, Professor W. K. Hancock has printed in *History*, vol. xx, an admirable lecture, 'Machiavelli in modern dress', in which he makes, with justice, the same point with regard to Machiavelli (p. 98).
 13. Dict. II, cap. xi, pt. 6 (ed. P.-O., pp. 210-11): 'De presbyterorum seu episcoporum ceterorumque templi ministrorum quasi omnium actibus summam facientes, coram Christi testamur, eius si mentimur invocantes iudicium, praefatos episcopos et reliquos fere omnes modernis temporibus omnium quasi opposita perpetrare quae secundum doctrinam evangelicam aliis praedicant observanda. Voluptates namque, vanitates, temporalia, et saeculi principatus exardent, et omni conamine non iure sed iniuria occulta et manifesta prosequuntur et occupant.'
 14. Dict. II, cap. xxiv, pt. 16 (ed. P.-O. p. 378): 'Quid enim aliud ibi quam simoniacorum undecumque concursus? Quid aliud quam caudicorum strepitus et calumniatorum insultus et iustorum impulsus?

Ibi periclitatur innocentum iustitia vel in tantum differtur, si eam pretio redimere nequeant, ut tandem exhausti et innumeris fatigati laboribus iustas et miserabiles ipsorum causas cogantur deserere. Ibi namque alte intonant leges humanae, silent autem vel rarius resonant divinae doctrinae. Ibi tractatus et scrutinia invadendi provincias Christianorum et per armatam et violentam potentiam obtinendi et eripiendi ab hiis quorum custodiae licite sunt commissae. Acquirendarum animarum nulla sollicitudo neque consilia. Et adde quod ibi nullus ordo, sed sempiternus horror inhabitat (Job x. 22).⁷

15. See de Lagarde, *La naissance* etc., vols. i and ii, pp. 78 ff., and Previté-Orton, 'Marsiglio of Padua, Doctrines', in *English Historical Review*, xxxviii (1923), pp. 1 ff. I think M. de Lagarde somewhat exaggerates the influence of the Vaudois on Marsilius's thought. The passages he quotes from the Fathers seem well known in orthodox circles. His conception of the priesthood and the Church is utterly different from that of the Vaudois; e.g. the priest's functions depend on his ordination, not his virtues, and the Church is Erastian; Marsilius does not regard the Old Testament as binding law, but does not consider it uninspired, and indeed shows an increasing interest in it in the *Defensor Minor*. *Perfectus*, too, was a term used in Franciscan circles; cf. Ubertino da Casale, 'perfecti, mundi contemptores' (*Analecta Franciscana*, p. 50)—the word comes from St. Matthew xix. The compulsory poverty of all the clergy is the Vaudois trait in Marsilius, and even that is modified by his curiously legal and Erastian treatment of it.
16. Cf. Dict. II, cap. xxviii, pt. 1, cited below. On the Two Swords, Marsilius hesitates between the allegoric interpretation of St. Ambrose—they are the Old and New Testaments—and the literal meaning; he calls the interpretation of St. Bernard and certain Popes 'peregrinas expositiones'; Dict. II, cap. xxviii, pt. 24 (ed. P.-O., pp. 462-3). On Unity, cf. Dict. II, cap. xxviii, pts. 13 to 16 (pp. 444-7).
17. Dict. II, cap. xxviii, pt. 1 (ed. P.-O., p. 432): 'Propter quod auctoritates Canonis Sacri sive Scripturae, quae mystica expositione non egent, secundum ipsarum sensum literalem manifestum sequemur omnino; in quibus vero mystica expositione indigent, sanctorum probabiliiori adhaerebo sententiae. Quas vero ipsorum auctoritate propria praeter Scripturam protulerunt sententias Scripturae sive Canonis consonas recipiam; quas vero dissonas reverenter abiciam; non tamen aliter quam auctoritate Scripturae, cui semper innitar.'
18. Dict. II, cap. ix, pt. 10 (ed. P.-O., p. 193): 'non omnia, quae in Lege seu Testamento Veteri Iudaico populo consulta vel custodiri praecepta fuerunt, observare tenentur Christi fideles; quinimo quorundam est ipsis observatio interdicta, ut quae ceremoniarum

- sub poena perditionis aeternae.' Cf. Dict. I, cap. vi, pts. 3, 4, and 5 (pp. 22-4). It is noticeable that in the *Defensor Pacis* Marsilius quotes the Old Testament in emotional passages. His religious emotions had a natural affinity to the religion of the prophets.
19. Dict. I, cap. i, pt. 3 (ed. P.-O., p. 3): 'Hanc siquidem eiusque ortum et speciem nec Aristoteles, aut philosophorum alter sui temporis vel prioris, conspicere potuit. Est enim haec et fuit opinio perversa quaedam . . . ex effectu mirabili post Aristotelis tempora dudum a suprema causa producta praeter inferioris naturae possibilitatem et causarum solitam actionem in rebus.' This is, perhaps, Averroistic in colour; it seems a curious way of describing Providence.
20. See my 'The authors cited in the *Defensor Pacis*', in *Essays in History presented to R. L. Poole*, Oxford, 1927.
21. Cf. especially Dict. II, caps. xviii, xxiv, xxv.
22. Dict. I, cap. iii, pt. 2 (ed. P.-O., p. 9): 'Ex quibus tamquam imperfectis processerunt homines ad perfectas communitates, regimina, et modos vivendi in eis. Nam ex minus perfectis ad perfectiora semper est naturae atque artis suae imitatrix incessus.'
23. Dict. I, cap. xi, pt. 3 (ed. P.-O., p. 43): 'Sic ergo per auxilium hominum invicem et additionem posterius inventorum ad inventa prius, receperunt omnes artes et disciplinae complementum.'
24. For the use of Old Testament history as an illustration of development see Dict. I, cap. iii, pt. 4, with the revealing sentence on Abraham (ed. P.-O., p. 11): 'Fuit enim quandoque idem homo princeps et agricola seu pastor ovium, veluti Abraham et alii posteriorum quamplures; quod tamen in communitatibus perfectis nec expedit, nec liceret.' We are here far from the belief that Melchizedek is the ideal model, a priest-king. For the ideal of the perfect State see Dict. I, cap. iv, pt. 1 (p. 12): 'quoniam viventes civiliter non solum vivunt, quod faciunt bestiae aut servi, sed bene vivunt, vacantes scilicet operibus liberalibus qualia sunt virtutum tam practicae quam speculativae animae.' This is, of course, derived from Aristotle.
25. See my 'Marsiglio of Padua, Doctrines', in *English Hist. Rev.*, xxviii, pp. 16-17, and the notes to my edition.
26. See e.g. Dict. I, cap. ii, pt. 2 (p. 7); Dict. II, cap. vi, pt. 12 (p. 169), where the power of excommunication is reserved to the community of citizens, whether the local or the suzerain State; Dict. II, cap. xxviii, pt. 15 (p. 446): 'unitates numerales principatuum secundum provincias.'
27. Dict. I, cap. xvii, pt. 10 (p. 94): 'Utrum autem universitati civiliter viventium et in orbe totali unicum numero supremum omnium principatum habere conveniat, aut in diversis mundi plagis locorum

situ quasi necessario separatis, et praecipue in non communicantibus sermone, ac moribus et consuetudine distantibus plurimum, diversos tales principatus habere conveniat tempore quodam, ad hoc etiam forte movente causa caelesti, ne hominum superflua propagatio fiat, rationabilem habet perscrutationem, aliam tamen ab intentione praesenti. Videretur enim fortasse alicui naturam per pugnas et epidimas hominum et reliquorum animalium moderasse propagationem, ut ad ipsorum educationem arida sufficiat, in quo maxime sustentarentur dicentes generationem aeternam.' Besides the Averroistic opinion of the 'eternal generation', there will be noticed here the astrological implication of the 'heavenly cause', quite appropriate to Marsilius's time.

28. Dict. II, cap. xxviii, pt. 15 (p. 446): 'Sufficiunt enim ad convictum humanum quietum unitates numerales principatuum secundum provincias, quemadmodum diximus xvii^o Primae. Unum autem esse iudicem coactivum omnium, nondum demonstratum videtur esse de necessitate salutis aeternae; cum tamen huius amplior videatur necessitas inter fideles quam unius universalis episcopi, eo quod universalis princeps magis in unitate potest conservare fideles quam universalis episcopus.'
29. Yet in Dict. II, cap. xxii, pt. 15 (p. 353), Marsilius does suggest a meeting of men to form the elements of a State later perfected, and this act is the gist of the 'Social Contract': 'Sicut enim ad civilem communitatem et legem ordinandam convenerunt homines a principio, ipsorum valentiore parte concordante in hiis quae sunt ad vitae sufficientiam, non quidem vocati per singularem hominem aut per plures aliquos habentes auctoritatem coactivam in reliquos, sed suasionem seu exhortationem prudentum et facundorum virorum, quos natura inter alios produxit inclinatos ad hoc, ex se postmodum proficientes suis exercitiis et alios dirigentes successive vel simul ad formam communitatis perfectae, ad quam etiam homines naturaliter inclinati obtemperaverunt suadentibus facile.' No passage could show more clearly Marsilius's doctrine of development.
30. Dict. I, cap. iii, pt. 5 (p. 11): 'perfecta communitas vocata civitas'; cf. cap. iv, pt. 5 (p. 14).
31. Dict. I, cap. xvii, pt. 2 (p. 90): 'Verum hii plures sunt unus principatus numero quantum ad officium, propter numeralem unitatem cuiuscumque actionis provenientis ab eis, iudicii, seu sententiae, vel praecepti; nulla enim talium actionum provenire potest ab ipsorum aliquo seorsum, sed ex communi decreto atque consensu eorum aut valentioris partis secundum statutas leges in hiis.'
32. Dict. I, cap. xvii, pt. 3 (p. 90): 'quoniam si principatus essent plures in civitate vel regno, et non reducti seu ordinati sub aliquo

- uno supremo, deficerent iudicium, praeceptum, et executio conferentium et iustorum; et ex hiis propter invindicatas iniurias hominum pugna, separatio, et corruptio demum civitatis aut regni.'
33. See the quotation below, n. 99.
 34. See above, pp. 22-4 and notes, and Dict. 1, cap. xi.
 35. Dict. 1, caps. xii-xv. Legislation includes taxation, 'onerum communium' (cap. xiii, pt. 8, p. 59).
 36. Dict. 1, cap. xii.
 37. See my 'Marsiglio of Padua, Doctrines', *Engl. Hist. Rev.*, xxxviii, pp. 16-17, and the notes to my edition. For the Parlamento at Florence, cf. e.g. P. Villari. *Life and Times of Savonarola*, Engl. trsl., pp. 246 ff.
 38. For these reasons see Dict. 1, caps. xii, xiii, especially xii, pt. 6 (p. 52), pt. 7 (p. 53): 'Quae igitur omnium tangere possunt commodum et incommodum, ab omnibus sciri debent et audiri, ut commodum assequi et oppositum repellere possint,' pt. 8 (p. 53), xiii, pt. 3 (p. 56), pt. 6 (p. 58).
 39. Dict. 1, cap. xii, pts. 3, 4 (pp. 49-50). For the 'weightier part', p. 49: 'valentiolem inquam partem considerata quantitate personarum et qualitate in communitate illa super quam lex fertur.'
 40. Dict. 1, cap. xiii, pts. 7-8 (pp. 59-60). Italian city statutes, or permanent laws, were drawn up and revised by commissions of *arbitri* or *emendatores*, and then submitted to the Councils or Assembly. The Councils debated and passed ordinances, which might be inserted in the statutes later on revision.
 41. Dict. 1, caps. xiv-xviii. The elective character of an hereditary monarchy is dealt with in caps. xvi and ix. Election for two or three lives is mentioned in cap. ix, pts. 5 and 9 (pp. 34, 35), as well as election for a term: 'vel instituitur pro tota unius vita tantummodo, vel pro unius et alicuius sui successoris unius aut plurium; vel . . . solummodo pro aliqua parte temporis terminata, ut annali aut biennali' (p. 34). The grant of power for more than one life, yet not of perpetual hereditary succession, may be seen in Salzer, *Ueber die Anfänge der Signorie in Oberitalien*, Berlin, pp. 226-9. The preference for non-hereditary election is given in cap. xvi, pts. 11 ff. (pp. 79 ff.).
 42. For the control of the citizens by the *pars principans*, including their profession, see Dict. 1, cap. xv, pts. 8-10 (pp. 71-3).
 43. On the necessity of law, see Dict. 1, cap. xi, especially pt. 1 (pp. 40-1): 'nullum iudicium, quantum possibile est, debet committi arbitrio iudicantis, sed lege determinari et secundum ipsam pronunciari.' Cf. pt. 5 (p. 45). In Italy at that time the grant of an *arbitrium generale*, which enabled the ruler to set aside or change the

- law, was the decisive step in the creation of a tyranny (see Salzer, op. cit. pp. 83, 169-72). For the unavoidable use of discretion in applying or interpreting the law by the ruler, see Dict. I, cap. xiv, pts. 4, 5, 7 (pp. 62-4).
44. Dict. I, cap. xiv, pt. 8 (pp. 64-5): 'Debet autem haec armata potentia principantis determinari per legislatorem, veluti civilia reliqua: tanta siquidem ut uniuscuiusque civis seorsum aut aliquorum simul excedat potentiam, non tamen eam quae simul omnium aut maioris partis, ne principantem praesumere aut posse contingat violare leges, et praeter aut contra ipsas despotice principari. . . . Hanc vero coactivam potestatem futurum principari, ante ipsius ad principatum electionem, non necessarium est habere. . . . Sic enim ad principatum numquam assumerentur studiosi pauperes.'
45. On the correction of the *principans* see Dict. I, cap. xviii. 'Alioquin despoticus fieret quilibet principatus, et civium vita servilis et insufficiens' (pt. 3, p. 97).
46. This examination of the acts of a *podestà* was called at Florence the syndicate; see G. Masi, 'Il sindacato delle magistrature comunali nel sec. xiv', in *Rivista italiana per le scienze giuridiche*, n.s., vol. v.
47. For the nature of Law, see Dict. I, cap. x, pts. 3 and 4 (pp. 37-9). It is divided by Marsilius into (i) Divine Law (in the Bible), (ii) *Iuris scientia* (or Jurisprudence), the science of just and unjust, (iii) coercive law decreed by the legislator and enforceable in the courts: 'et hoc modo considerata propriissime lex vocatur et est' (p. 38). The object of human law is 'huius saeculi tranquillitas et beatitudo finita'; its 'materia' is men 'affecti ad huius saeculi tranquillitatem et potestatem et alia plura', *Defensor Minor*, cap. xv, pt. 5 (pp. 49-50).
48. Dict. I, cap. x, pt. 5 (p. 39): 'Quinimo quandoque falsae cognitiones iustorum et conferentium leges fiunt, cum de ipsis datur observationis praeceptum, seu feruntur per modum praecepti, sicut apparet in regionibus barbarorum quorundam, qui tamquam iustum observari faciunt homicidam absolvi a culpa et poena civili, reale aliquod pretium exhibentem pro tali delicto, cum tamen hoc simpliciter sit iniustum, et per consequens ipsorum leges non perfectae simpliciter.' Marsilius by the present tense shows he is not referring to the ancient Lombard law, but to peoples who retained the practice of payment for homicide outside Italy.
49. Dict. II, cap. ix, pt. 11 (p. 194): 'Unde transgressor humanae legis quasi ut in pluribus peccat in Legem Divinam, licet e converso non sic. Quoniam multi sunt actus in quibus committens aut omit-tens peccat contra Legem Divinam, quae de hiis praecipit de quibus humana lex frustra praeciperet.' Such, he goes on to say, are sinful thoughts, which God alone can know. Cf. cap. x, pt. 7 (pp. 201-2).

50. Dict. II, cap. v, pt. 5 (p. 151): 'omnes homines . . . subesse debere iurisdictioni principum saeculi, et eisdem obedire in hiis omnibus, quae non contradicunt legi salutis aeternae, secundum humanas leges maxime aut consuetudines honestas et approbatas.' Marsilius is more precise in the *Defensor Minor*, cap. xiii, pt. 6 (p. 41): 'si praecipit lex divina fiendum vel omittendum aliquid, quod fieri vel omitti non praecipiat lex humana, sed potius oppositum praecipiat, vel permittat, debet servari legis divinae praeceptum, humana lege seu eius opposito praecepto vel permissio contempto seu dimisso, quoniam praeceptum legis divinae infallibilem continet veritatem, humanae vero legis non sic.'
51. Dict. I, cap. xii, pt. 3 (p. 50): 'ab eadem auctoritate [*sc.* legislatoris] debent leges, et alia quae per electionem statuuntur, suscipere additionem aut diminutionem vel totalem mutationem, interpretationem, et suspensionem, secundum exigentiam temporum vel locorum, et reliquarum circumstantiarum.'
52. See Dict. II, caps. xxiii, pt. 13 (pp. 367-8), xxviii, pts. 28, 29 (pp. 467-9).
53. Dict. I, cap. xiii, pt. 5 (p. 58): 'Respicerent enim in ea fortasse magis conferens proprium, ut personarum vel alicuius collegii, quam commune, quod in hiis qui *Decretales* clericorum tulerunt, satis apparet. . . . Ex hoc enim praeberetur oligarchiae via quaedam, veluti dum uni soli legum lationis potestas tribuitur, tyrannidi locus datur.' The concluding clause shows Marsilius's objection to the *arbitrium generale* of contemporary Italian despots.
54. Dict. II, cap. xxiii, pt. 11 (p. 366): 'Quibus etiam non contenti, sed saecularium (contra Christi et apostolorum praeceptum aut consilium) petentes fastigia, in legum lationes, seorsum ab hiis quae civium universitatis, proruperunt, omnem clerum ab hiis decernentes exemptum, civile schisma et principatum supremorum pluralitatem inducentes ex ipsis, quam velut impossibilem humanae quieti, certam huius experientiam inducentes, demonstravimus xvii^o Primae. Haec enim pestilentiae Italici regni radix est et origo, ex qua cuncta scandala germinaverunt et prodeunt, et qua stante numquam civiles ibidem cessabunt discordiae.'
55. Dict. II, cap. xxviii, pt. 29 (p. 468): 'dicendum quod, quamvis huiusmodi *Decretales* sive *Decreta* et quaecumque aliae scripturae sive sermones consimiles . . . possint continere plurima documenta et consilia etiam utilia, tam pro statu praesentis saeculi quam venturi, inquantum tamen ab episcopo Romano, etiam cum suo collegio clericorum, praeter licentiam fidelis legislatoris aut principis . . . statuta huiusmodi neminem obligare ad culpam vel poenam et praecipue temporalem. . . . Non enim sunt *Decretales* inquantum

huiusmodi leges divinae aut humanae, sed narrationes aut documenta et in pluribus oligarchica quaedam statuta.'

56. Dict. II, cap. ix, pt. 7 (pp. 191-2), pt. 12 (p. 195), cap. x, pt. 2 (pp. 198-9).
57. Dict. III, cap. iii (pp. 500-1): 'Primus namque civis vel civilis regiminis pars, principans scilicet, sit unicus homo vel plures, comprehendet . . . soli sibi convenire auctoritatem praecipiendi subiectae multitudini communiter aut divisim; et unumquemque arcere, si expediat, secundum positas leges, et nil praeter has, arduum praesertim, agere absque multitudinis subiectae seu legislatoris consensu; nec iniuria provocandam esse multitudinem seu legislatorem, quoniam in ipsius expressa voluntate consistit virtus et auctoritas principatus . . . et quantum possibile fuerit observare, ne principans aut altera quaevis communitatis particula contra vel praeter leges iudicandi aut aliud quid civile sibi sumat arbitrium.'
58. Dict. I, cap. v, pts. 10-14 (pp. 19-21), cap. vi (pp. 21-5); Dict. II, cap. xv, pts. 1-2 (pp. 263-5), cap. xvi, pt. 1 (p. 273), cap. xvii, pts. 9-18 (pp. 294-303), cap. xxii, pts. 12-15 (pp. 350-4), pt. 19 (p. 356).
59. Dict. II, cap. xvii, pts. 9-18 (pp. 294-303), cap. xxi, pts. 3-15 (pp. 329-42). Cf. on endowments Dict. II, cap. xiv, pt. 8 (pp. 248-9), cap. xxi, pt. 14 (pp. 339-40).
60. Dict. II, cap. vi, pt. 12 (pp. 168-9). The whole subject of excommunication is dealt with fully in the *Defensor Minor*, cap. x (pp. 26-30), especially pt. 3 (pp. 28-9), where the civil consequences of excommunication are dwelt on, and cap. xv, pt. 6 (p. 50).
61. Dict. II, cap. x (pp. 197 ff.). Marsilius argues first that heresy as a breach of Divine Law is punished in the future life. It can only be made punishable by human law by a decree of the legislator, to whom belongs its punishment. Though Marsilius does not directly deny the expediency of heresy being made a crime by the legislator, he evidently dislikes the policy. He points out that no one can be compelled to believe, and compulsory acquiescence will not profit for salvation; and illustrates the question by saying that if getting drunk or shoemaking are not prohibited by human law, they are not punishable (pt. 3, p. 199). The same dislike of persecution of heretics, save in the milder form of social avoidance, appears in the *Def. Minor*, cap. x, pt. 5 (p. 30), in a slightly corrupt passage, and cap. xv, pt. 8 (p. 51).
62. Dict. II, caps. vi, vii. On confession and absolution Marsilius goes a little farther in the *Defensor Minor*, cap. v: whereas in the *Defensor Pacis* he considers the firm intention of confession when feasible necessary to an unconfessed penitent's absolution by God (cap. vi, pts. 5, 6, 7, pp. 162-5), in the *Def. Minor* he says that

- confession to the priest is merely 'utilem et fortasse expedientem, sicut sacrae scripturae consilium, non praeceptum', and not 'de necessitate salutis aeternae' (cap. v, pt. 8, p. 11). In any case real absolution is effectively given by God alone; the priest may be mistaken (Dict. II, cap. vi, pt. 9, p. 166, cap. vii, pt. 3, pp. 175-6).
63. Dict. II, cap. xv, pt. 5-8 (pp. 266-71), cap. xvi (pp. 273 ff.).
64. Dict. II, caps. xiii, xiv (esp. pt. 8, pp. 248-9), xvii, pts. 16-18 (pp. 301-3), xxi, pt. 14 (pp. 339-40).
65. Dict. II, cap. xvi, pts. 5-6 (pp. 276-7), cap. xviii, pt. 8 (pp. 310 ff.), cap. xix, pts. 1-3 (pp. 312-14).
66. Dict. II, cap. xix, pts. 1-3 (pp. 312-14).
67. Dict. II, cap. xx (pp. 318 ff.). Marsilius speaks with some ambiguity of the legislator or its executive, who is to summon the General Council. Usually he merely says 'humani legislatoris fidelis superiore carentis, aut eius vel eorum cui vel quibus per iam dictum legislatorem potestas haec commissa fuerit' (cap. xxi, pt. 1, p. 327), which might apply to several sovereign States. But he does speak occasionally of the 'legislator supremus' (cap. xviii, pt. 8, p. 310), 'primus' (cap. xxi, pt. 8, p. 334), 'universalis' (cap. xxi, pt. 11, p. 337), 'Romani Imperii legislator humanus supremus' (cap. xxx, pt. 8, p. 490). As he hardly believed in the universal claims of the Holy Roman Empire, and did not like to suggest a joint summons of several legislators in view of his writing in defence of the Emperor Lewis IV, he was in a difficulty. In the *Defensor Minor* (cap. xii, pt. 1, p. 35) he definitely accepts the 'Romanus populus' as 'supremus legislator humanus' and the conferment of its power on 'eius princeps', but he expressly adds that these powers of the Roman people may be revoked by the 'universitas provinciarum' in a general assembly of plenipotentiaries, and those of the 'princeps' may be revoked by the Roman people. This is a theoretic compromise founded on imaginary history, save for the *Lex Regia*, which gave power to the earlier Emperors.
68. Dict. II, cap. xxi, especially pts. 8-15 (pp. 334-42).
69. Dict. II, cap. xxii, especially pts. 6-9 (pp. 346-9).
70. Dict. II, cap. xxi, pt. 10 (p. 336).
71. Dict. II, cap. xxi, pt. 4 (p. 329): 'Quod vero diffinitorum seu iudicatorum et reliquorum ordinatorum . . . per generale concilium observationis coactivum ferre praeceptum seu dare decretum super omnes indifferenter, tam sacerdotes quam non-sacerdotes, eiusque praecepti sive decreti transgressores arcere poena reali aut personali vel utraque, in hoc etiam saeculo transgressoribus infligenda, sit auctoritas humani legislatoris fidelis superiore carentis, suadere volumus.' Cf. *ibid.*, pts. 7-9 (pp. 334-5). In pt. 9, Marsilius makes

the distinction between the 'dubiorum Legis Divinae sensuum determinationem' which belongs to a General Council and the 'reliquos humanos actus circa ritum ecclesiasticum per coactiva decreta ordinare' which belongs to the Christian human legislator.

72. See above, n. 67.

73. Dict. II, cap. I, pt. I (pp. 111-12): 'Secundo vero veritatis quasi cuiuslibet hoste antiquo paratur huic operi bellum non minus, consuetudine scilicet audiendi falsa illaque credendi, falsa inquam per presbyteros seu episcopos aliquos reliquosque ad haec ipsorum suffraganeos dudum seminata et radicata in animabus plurimorum simplicium Christi fidelium. . . . Harum etenim rerum . . . suorumque verorum atque simplicium initiorum, de mentibus hominum abolitis veris sentiis horumque vice falsis paulative suggestis, nunc latet plurimos utrorumque discretio.' Pt. 2 (p. 112): 'Verum a propositis nec principatus ardentium minus debite sacerdotum, quos hiis scripturis alloquor, violentae potentiae terrore desistam, quoniam dicente Psalmista: *Dominus mihi adiutor, et non timebo quid faciat mihi homo.*'

74. *Defensor Minor*, cap. vii, pt. 4 (p. 19): 'nam episcopi aut sacerdotes nullam potestatem habent in tales indulgentias dando vel revocando peccatoribus, sed solus Deus, qui affectionem peccantium et corda poenitentium et satisfactionem exhibentium quantitatem qualitatemve merentium et demerentium solus novit.'

75. See e.g. the passage (cap. lvii) in the *Somnium Viridarii* on confession and the priest, in Goldast, *Monarchia S. Romani Imperii* (1613), vol. II, p. 76, and Scholz, *Defensor Pacis*, Introduction, p. xlviii.

76. See Sullivan, 'Marsiglio of Padua and William of Ockham', *Amer. Hist. Rev.*, vol. II. I do not feel sure of Marsilius's influence on Gerson. The confusion of him with Jean de Guignicourt, his predecessor as chancellor of Paris University, invalidates the ascription to him of a reference to Marsilius in the Turin MS. of the *Defensor Pacis* (N); see my edition, p. xxxiv. Gerson's *Libellus de Auferibilitate Papae ab Ecclesia* (Goldast, vol. II, p. 1411) seems untouched by distinctive Marsilian tenets. Passages, however, from Dictio II appear in *De Modis uniendi et reformandi ecclesiam in concilio universali* (1410), now shown to be by Dietrich of Niem. Cf. Sullivan, op. cit., and Professor E. F. Jacob in *Bulletin of the John Rylands Library*, vol. xix (July, 1935).

77. See Scholz, ed. cit., p. xlix, n. 2. I have been unable to consult F. M. Bartoš, *Husitství a Cizina* (Prague, 1931), but see the review by Professor A. Bruce Boswell in *English Hist. Rev.*, I. 521. The reliance on Old Testament texts marks off the main Hussite tradition from the pure Marsilian.

78. The final chapter is in the Weimar MS. (Z), from which the *Ed. Princeps* of Basel was taken (Scholz, ed. cit., p. xliii). The excision of the chapter is, therefore, the work of the first editor.
79. See the main excisions in my edition. Marshall omits, for instance, the preference for an elected *princeps* and the correction of the *pars principans*.
80. In the 'Peroracyon'.
81. *Letters and Papers . . . Henry VIII*, vol. viii, no. 1156 (1535).
82. Albertus Pighius, *Hierarchiae ecclesiasticae assertio* (Cologne, 1538). The refutation of Marsilius is in book v. Cf. bk. v, cap. i, fo. clv: 'unum ex omnibus delegimus Marsilium Patavinum, quo nemo diligentius, vehementius, aut etiam copiosius causam secularis potestatis adversus ecclesiasticam egisse legitur.'
83. See Burnet, *History of the Reformation*, ed. 1681, vol. i, pp. 286, 289. The questions and the answers of the Divines are printed in *The Collection of Records* (ibid., new pagination, pp. 201 ff.).
84. loc. cit., p. 220 (Question 9).
85. Dict. II, cap. xvii, pt. 15 (p. 300), and more fully cap. xxii, pts. 12-16 (pp. 350-5). Cf. pt. 15 (p. 353): 'rationabiliter opinandum, multitudinem apostolorum atque fidelium convenisse, suadente fortasse apostolorum aliquo vel aliquibus charitate ferventioribus, reliqua quoque multitudine Spiritus Sancti gratia et inclinatione obtemperante faciliter.'
86. Burnet, loc. cit., p. 223, reading 'not' for 'no' (MS. correction in the copy in St. John's College Library, Cambridge) (Question 10).
87. Burnet, loc. cit., p. 239 (Question 16). Marsilius, *Def. Pac.*, Dict. II, cap. vi, pt. 12 (pp. 168-9); see above, p. 25, and n. 60.
88. *Letters and Papers . . . Henry VIII*, vol. xi, no. 361; the letter is printed, e.g. in *The Remains of Thomas Cranmer*, ed. H. Jenkyns (Oxford, 1833), vol. i, pp. 167-72, Letter clxxi.
89. For this paper, which I am editing, see *Letters and Papers . . . Henry VIII*, vii, no. 691, and Burnet's abstract, *Hist. Ref.* (ed. 1681), i. 174 ff. Burnet's abstract, though a little rearranged, is faithful.
90. Hooker's affinity to Marsilius has been noted in general terms by Professor A. Passerin d'Entrèves, *Riccardo Hooker* (Turin, 1932), pp. 57 ff. See also Scholz, 'Marsilius von Padova und die Idee der Demokratie', in *Zeitschrift für Politik*, i, p. 91.
91. *The works of . . . Hooker*, ed. Keble, 6th edn. (Oxford, 1874), vol. iii, p. 209, n. 81 (bk. viii, chap. xi, pt. 8). Doubtless Hooker was also influenced by Erastus, *De excommunicatione*, but the verbal similarities and the 'political' atmosphere, which connect him with Marsilius, do not appear in Erastus.
92. Hooker, ed. cit., iii. 329 (bk. viii, chap. i, pt. 2): 'We say that

the care of religion being common unto all societies politic, such societies as do embrace the true religion have the name of the Church given unto every of them for distinction from the rest; so that every body politic hath some religion, but the Church that religion which is only true. . . . As a politic society it doth maintain religion; as a church, that religion which God hath revealed by Jesus Christ.' See also viii. i. 4 (p. 332), viii. iii. 2 (p. 363, cf. *Def. Pacis*, Dict. 1, cap. v, pts. 10-14, pp. 19-21), and passages in the next note.

93. Hooker, ed. cit., iii. 402 (bk. viii, chap. vi, pt. 6): 'When we speak of the right which naturally belongeth to a commonwealth, we speak of that which needs must belong to the Church of God. For if the commonwealth be Christian, if the people which are of it do publicly embrace the true religion, this very thing doth make it the Church'; and p. 415 (chap. vi, pt. 13): 'That which as kings they might do in matter of religion, and did in matter of false religion, being idolators or superstitious kings, the same they are now even in every respect as fully authorized to do in all affairs pertinent unto the state of true Christian religion.' See, too, bk. viii, chap. iii, pt. 4, p. 365.
94. Hooker, ed. cit., iii. 401-2 (bk. viii, chap. vi, pt. 6): 'It is undoubtedly a thing even natural, that all free and independent societies should themselves make their own laws, and that this power should belong to the whole, not to any certain part of a politic body, though haply some one part may have greater sway in that action than the rest: which thing being generally fit and expedient in the making of all laws, we see no cause why to think otherwise in laws concerning the service of God; which in all well-ordered states and commonwealths is the first thing that law hath care to provide for.' This section is the very essence of Marsilius. Cf. vol. i, pp. 245-6 (bk. i, chap. x, pt. 8).
95. Hooker, ed. cit., iii. 352 (bk. viii, chap. ii, pt. 12).
96. Ibid., p. 349 (viii. ii. 9), pp. 397-8 (viii. vi. 3): 'Nature hath appointed that there should be in a civil society power to make laws; but the consent of the people (which are that society) hath instituted the prince's person to be the subject wherein supremacy of that power shall reside. The act of instituting such power may and sometimes doth go in time before the act of conferring or bestowing it.' The appointment may be of 'some certain person, one or many', a variation drawn from fact, but akin to Marsilius.
97. Ibid., p. 341 (bk. viii, chap. ii, pt. 2): 'Without order there is no living in public society, because the want thereof is the mother of confusion, whereupon division of necessity followeth, and out of

division, inevitable destruction'. Cf. *Def. Pac.*, Dict. I, cap. iv, pt. 4 (p. 13): 'Verum quia inter homines sic congregatos eveniunt contentiones et rixae, quae per normam iustitiae non regulatae causarent pugnas et hominum separationem et sic demum civitatis corruptionem, oportuit in hac communicatione statuere iustorum regulam et custodem sive factorem.' Cf. also Dict. I, cap. v, pt. 7, p. 17, and cap. xvii, pt. 7, p. 93.

98. Hooker, ed. cit., iii. 360 (bk. viii, chap. ii, pt. 18).

99. *Def. Pac.*, Dict. I, cap. xvii, esp. pt. 3 (pp. 90-1), pt. 4 (p. 92), and pt. 8 (pp. 93-4): (Pt. 3, p. 91) 'Esto namque . . . quod propter legis transgressionem aliquam vocetur aliquis respondere a pluribus principatibus, non subinvicem ordinatis, et pro eodem tempore. . . . Amplius esto, quamvis impossibile, vocatum coram pluribus principatibus comparere, simulque diversa tacere vel respondere; ab uno tamen fortasse principatum de eodem crimine damnabitur, ab alio fortasse absolvetur, vel si ab utroque damnetur, non aequaliter ab utroque. . . . Unde vel simul contradictoria faciet aut nihil emendabit. Eadem enim ratione unius principatum et alterius debet observare praeceptum. . . . Relinquitur ergo, ut coram nullo principatu vocatus seu citatus debeat comparere; non igitur iustificari potuit. Est igitur impossibilis civitati vel regno pluralitas talium principatum non subordinatorum invicem, si debeat conservari civile iustum et conferens. (Pt. 4, p. 92) Amplius, talium principatum pluralitate supposita, omnis communis utilitas turbaretur. Cum enim principantes frequenter praecipere debeant civium, praecipue vacantium, congregationem propter communia conferentia inquirenda et determinanda, vel propter incommoda et emergentia pericula declinanda, ut volentium intrinsecus aut extrinsecus opprimere libertatem communem; qua quidem enim ratione convenire tenentur cives seu subditi vocati ad mandatum, locum, et horam unius talium principatum, eadem propter mandatum ad locum et horam alterius; cumque hora eadem, loca vero possint esse diversa; et rursum, quod volet unus principatum proponere, diversum forte ab hoc vellet alter; cum tamen in locis diversis esse simul, nec simul diversa intendere, possibile videatur.' (Pt. 8, p. 93): 'Adhuc, sicut in composito animali primum praecipiens et movens ipsum, motu eo qui secundum locum, est unum, . . . quoniam pluribus existentibus hiis principiis et contraria vel diversa simul praecipientibus, necesse foret animal aut in contraria ferri vel omnimodo quiescere . . .; sicque in civitate convenienter ordinata, quam animali bene formato secundum naturam proportionaliter habere diximus xv^o huius.'

100. Hooker, ed. cit., iii. 418-19 (bk. viii, chap. vi, pt. 14). Cf. the instance of the Emperor Marcian confirming the decrees of

- the Council of Chalcedon, given by Marsilius, *Def. Pac.*, Dict. II, cap. xxi, pts. 4, 6, and 7, pp. 329-31, 332-4. It is noticeable that Hooker here proceeds to maintain that the Emperor's consent and that of the king was necessary to the appointment of bishops, and that Marsilius, too (pt. 5, p. 332, and pt. 11, pp. 336-8), claims this right for the Emperor and legislator, although his main treatment of the question occurs earlier, Dict. II, cap. xvii, pts. 9 ff., pp. 294 ff.
101. Goldast, *Monarchia Sacri Romani Imperii*, vol. II (Frankfort, 1614).
102. Dict. II, cap. xxviii, pt. 4 (pp. 434-5).
103. Dict. II, cap. xvi, pts. 15-18 (pp. 284-7).
104. Cf. R. Scholz, 'Marsilius von Padua und die Idee der Demokratie', in *Zeitschrift für Politik*, I (1908).
105. Dict. III, cap. iii (pp. 500-1), quoted above p. 24, n. 57, and Dict. I, cap. xi, pt. 5 (p. 45), cap. xv, pt. 3 (p. 68).

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