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## MARSILIUS OF PADUA: THE DEFENDER OF THE PEACE

*The Defender of the Peace* of Marsilius of Padua is a massively influential text in the history of western political thought. Marsilius offers a detailed analysis and explanation of human political communities, before going on to attack what he sees as the obstacles to peaceful human coexistence – principally the contemporary papacy. Annabel Brett's authoritative rendition of the *Defensor pacis* is the first new translation in English for fifty years, and a major contribution to the series of **Cambridge Texts**: all of the usual series features are provided, including chronology, notes for further reading, and up-to-date annotation aimed at the student reader encountering this classic of medieval thought for the first time. This new edition of *The Defender of the Peace* is a scholarly and a pedagogic event of great importance, of interest to historians, political theorists, theologians and philosophers at all levels from second-year undergraduate upwards.

The editor and translator ANNABEL BRETT is Senior Lecturer in History at the University of Cambridge and a Fellow of Gonville and Caius College. Her previous publications include *Liberty, Right and Nature: Individual Rights in Later Scholastic Thought* (Cambridge, 1997).

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# MARSILIUS OF PADUA THE DEFENDER OF THE PEACE

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EDITED AND TRANSLATED BY

ANNABEL BRETT

*University of Cambridge*



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medieval law and politics; to Sachiko Kusukawa, who set me on the right track in respect of Marsilius's debts to medieval medical literature; and to George Garnett, who allowed me to see the complete draft of his new study of history in Marsilius as I was putting the finishing touches to my own manuscript. I would like to thank the series editors, Quentin Skinner and Raymond Geuss, for their acute and encouraging comments on the preliminary material, and Richard Fisher as publishing editor for his invariably kind and helpful response to assorted authorial trials and tribulations. Conversations with Shelley Lockwood and Jim Tully helped me make sense of what I was doing when I could not see the wood for the trees. And I would also like to express my love and thanks to all my other friends and especially members of my family who have offered no less crucial support through their affection, interest and patience. I am afraid that they have heard more than they ever wanted to about a fourteenth-century Paduan troublemaker.

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## Introduction

... and we are bold to say that we have almost never read a worse heretic than that Marsilius. For we have extracted from the mandate of Benedict our predecessor on a certain book of his more than 240 heretical articles.<sup>1</sup>

So said the pope, Clement VI, in a *collatio* of 1343 which incidentally also informs us that ‘the heresiarch’ is dead. What had Marsilius written to shock the pope into putting him on a level with the most infamous heretics of the Western church? And why, nearly seven centuries later, has his *Defensor pacis* come to be seen as one of the canonical texts in Western political thought?

## Life and works

Marsilius was born about 1275–80 in the northern Italian city of Padua, in the region south of Venice known as the March of Treviso. He came from the Mainardini, a family of some prominence in the civic administration of Padua: his father was a notary and others of his relatives were also involved in the legal profession. Marsilius did not follow the family trend, however, choosing instead to study medicine. We know that at some point he developed a friendship with the famous Paduan poet and historian Albertino Mussato. But the details of his early life are obscure, and we first find Marsilius for certain in Paris in 1313. Here he is recorded as rector of the University of Paris, a position that was always chosen

<sup>1</sup> Quoted in Carlo Pincin, *Marsilio* (Turin: Giappichelli, 1967), p. 233.

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from among members of the Faculty of Arts. At Paris he formed a close association with another master of arts, John of Jandun.<sup>2</sup> Initial attempts to secure ecclesiastical patronage seem to have been quite successful, as in 1316 he was promised the first vacant benefice in Padua by the newly-appointed pope, John XXII. However, it appears that this prize never in fact materialised and Marsilius continued to make his living teaching in Paris. He was, moreover, beginning to be involved in the politics of the pro-imperial party in northern Italy: in 1319 he served as an emissary of Can Grande della Scala and Matteo Visconti, *signori* of Verona and Milan respectively, to offer the French count Charles de la Marche (the future Charles IV) the captaincy of the Ghibelline league.

The Italian ambitions of the German emperors constitute critical background to Marsilius's life and works. The area of Italy north of the papal states, stretching as far north as Milan and including Padua in the north-east, was known as the *regnum Italicum* and was formally a province of the German Roman empire. In the first decades of the fourteenth century, the emperors Henry VII and Ludwig IV engaged in a policy of renewing imperial authority in the *regnum*, which immediately brought them into conflict with the papacy over their right to exercise such jurisdiction independently of papal approval. Following the death of Henry VII in 1313, two rival candidates emerged, Frederick of Austria and Ludwig of Bavaria, and after a disputed election in 1314 both were crowned 'king of the Romans'. Ludwig defeated Frederick at the battle of Mühldorf in 1322 and, without waiting for papal confirmation of his title, began to intervene in the *regnum Italicum*. Since the pope claimed that, without papal approval, the empire was still 'vacant' and its jurisdiction devolved to the papacy, Ludwig's actions led ultimately to the pope's excommunicating him as an outlaw in March 1324. Ludwig responded by charging the pope with heresy, effectively declaring John XXII's papacy illegitimate.

Meanwhile, in Paris Marsilius was at work on a vast treatise that would change his academic life forever. He completed the *Defensor pacis* – *The Defender of the Peace* – in the summer of 1324. He also wrote a short work called *On the Transference of the Empire*, in which he subverted pro-papal

<sup>2</sup> There exists a series of *Questions on the Metaphysics* attributed both to John of Jandun and to Marsilius. R. Lambertini and A. Tabarroni, 'Le *Quaestiones super metaphysicam* attribuite a Giovanni di Jandun. Osservazioni e problemi', *Medioevo* 10 (1984), 41–64, is a helpful and clear discussion of the issue of authorship.

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histories of how the popes were responsible for the legitimacy of the current German empire. His colours were now nailed to the mast, and in 1326 he left Paris for the German city of Nuremberg, along with John of Jandun (whom contemporaries took as co-author of the work). The papal response was not long in coming, for in the bull *Licet iuxta doctrinam* of 1327, pope John XXII condemned the authors of the *Defensor pacis* for heresy. This did not stop Marsilius: in the same year he accompanied Ludwig of Bavaria on his Italian expedition, which took him to Rome in 1328. Here Ludwig was crowned emperor and Marsilius reportedly acted as his vicar in spiritual matters. But he withdrew north of the Alps together with Ludwig in 1329, and lived for the remainder of his life as an adviser at the imperial court in Munich. Between 1339 and 1341 he composed his remaining works, the *Defensor minor* – literally, *The Smaller Defender* – and two short tracts on the legitimacy of the proposed marriage between Margaret Maultasch, countess of Tyrol and Carinthia, and the emperor's son Ludwig of Brandenburg. Marsilius probably died late in 1342; only the mention by pope Clement VI in 1343 attests to the fact that he is dead.

## Intellectual and political milieu: Padua and Paris

The sparse details of Marsilius's biography need filling out with a closer look at the academic and political environments in which he lived and wrote. He was born and, so far as we know, lived his early life in Padua. During Marsilius's early years, the city maintained the system of communal self-government that it shared with the other city-states of northern Italy. It was governed by a complicated system of councils (the largest being the *consiglio maggiore* which had a membership of about 5,000 citizens) and other elected officials, including a *podestà* who was chosen from outside the city on an annual basis to administer the system of justice. Despite this *de facto* self-government, however, the politics of the city-states were constantly affected by the rival claims of empire and papacy to ultimate jurisdiction in the region.

In Padua, the complex structure of internal self-government had been vindicated in 1256 following the expulsion of the 'tyrant' Ezzelino da Romano. Ezzelino was the first of the *signori* whose personal dominance would ultimately replace that of the *commune* throughout most of northern Italy – including Padua itself, which ceded to Jacopo da Carrara in 1318 following defeat by Can Grande della Scala. Marsilius's friend

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Mussato made Ezzelino's rule the subject of a play called the *Ecerinis*, modelled on the tragedies of the Roman moralist Seneca. Mussato not only resurrected the classical figure of the tyrant but also followed the classical Roman tradition in locating the cause of tyranny in the vices and consequent faction among the citizens themselves. In this his play belonged to a political literature on the government of cities that had flourished in the thirteenth century, looking back to the virtues and political institutions of republican Rome. With the translation of Aristotle's *Politics*, however, a new vocabulary had become available to analyse 'the government of cities'. The Dominican friar Ptolemy of Lucca, in his continuation of Aquinas's *De regno*, characterised this form of civic rule as 'political dominion', by which he meant the mutual government of equals. Any form of personal rule, including the royal rule of a monarch, he characterised as a 'despotic dominion': for, however benevolent the rule, it shared with that of a master the fundamental characteristic of being the rule of a lord over a servant. Like Mussato, Ptolemy saw human virtue as making the difference between a political and a despotic regime.

In respect of academic culture, the universities of northern Italy were famous for two things: the revived study of Roman law and the study of medicine. Padua had a flourishing community of legal professionals for which the schools and the university catered, both in terms of a basic grammatical and rhetorical education and of more formal legal instruction. This generated a handbook literature for students and it is likely that Marsilius had his rhetorical and legal knowledge from such sources. His formal training was in medicine, a subject then dominated, at least in its theoretical dimension, by Arabic treatises newly-translated into Latin, although also known were the ancient medical writers Galen and Hippocrates. There was, however, a creative fusion at Padua between theoretical medicine and Aristotelian science or natural philosophy. The works of the ancient Greek philosopher Aristotle had likewise come to the Latin west principally through Arabic channels in the first instance, and were read together with commentaries by Arab scholars. Marsilius's Paduan contemporary and friend Pietro d'Abano combined both aspects, writing a work called the *Conciliator differentiarum* in which he reconciled the different positions found in philosophy and medicine.

The culture of the Faculty of Arts at Paris had many points of contact with the natural scientific culture at Padua. It was where all students began, learning the basics of grammar and logic but going on to study the

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full range of sciences, from details of plants and animals to general principles of physics, the study of the stars and ultimately metaphysics. Ethics was also included in this curriculum, and, even if politics formally was not, it is clear that Aristotle's work on the subject was energetically studied and commented as well. Although it was a commonplace that 'one should not grow old in the Arts', and most masters of arts did in fact move on to another faculty, especially Theology, a number of masters were beginning to vindicate the autonomous status and dignity of scientific inquiry. This is the nub of the issue traditionally signalled by the term 'Latin Averroism'. Abu al-Walid ibn Rushd (Latinised as 'Averroes') was a twelfth-century Arab philosopher whose vision of Aristotelian science, articulated in his numerous and massive commentaries, critically shaped the way in which Latin scholars at Paris and elsewhere came to grips with Aristotle when his works finally became available to them in the thirteenth century. 'Averroism' has traditionally been taken to imply a theory – an heretical theory – of 'double truth': that there are truths of philosophy or science, and truths of revelation, and that these are independent of each other. It has been associated with a number of masters of the Paris Arts faculty in the thirteenth and fourteenth centuries, including Marsilius's friends Pietro d'Abano and John of Jandun. This has led to some scholars seeing the *Defensor pacis* itself as work of 'political Averroism', propounding a secular or natural truth of reason in Discourse I and a divine truth of revelation in Discourse II. But tempting though this line of thought might seem at first glance, it needs revision. 'Averroist' appears to have been a term coined by theologians such as Thomas Aquinas in the controversy over the unity of the intellect. As a polemical coinage of contemporary theologians, it is hardly an apt term of historical analysis. But even if we substitute the terminology of 'radical' or 'heterodox Aristotelianism', we still need to revise our picture. 'Double truth' is a very crude way of characterising the intellectual stance of these philosophers, who did not in fact posit that there were two completely distinct truths, but that there were two different cognitive procedures. The possible dissonance between the results of these different procedures was undoubtedly a disturbing and challenging eventuality within a Christian philosophical horizon, but it did not necessarily imply that the ultimate unity of truth was irremediably fractured.

This, then, was the scholarly environment with which Marsilius was most closely associated. But the intellectual battles of the wider university, especially the faculty of Theology, also directly impacted upon him.

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Marsilius was at Paris during the last years of the French king Philip IV. Philip's conflict between 1296 and 1302 with the then pope, Boniface VIII, concerning royal powers over the French church and clergy, had been a defining moment in the history of the late-medieval papacy and its relations with secular authorities. Several tracts were produced within the university arguing the French king's case, the most important of which was the work *On Royal and Papal Power* by the Dominican friar John of Paris. This work sought to vindicate the autonomy of royal power from the power of the pope in all but the most exceptional circumstances. The political arguments and language of Aristotle formed a central element of John's case concerning royal power. Less often stressed but equally important, however, was the role played in his understanding of papal power by another conflict that had racked the university since the middle of the thirteenth century. This was the so-called 'poverty controversy' between the mendicant religious orders and the secular clergy. The mendicants claimed to be 'perfect' in professing absolute poverty in imitation of Christ and the apostles. Their conflict with the secular clergy was not simply over this claim to spiritual perfection, however, but also over the pope's power to exempt the friars from the jurisdiction of local bishops and parish priests. Members of the mendicant orders put forward a theory of the church that emphasised the central position of the pope and his absolute power to override the established hierarchies of the regional church. By contrast, the secular clergy insisted on the independent dignity of the regional hierarchy of bishops and priests, established in their eyes by Christ himself, with the pope's role a stewardship rather than a 'dominion'. Unusually for a Dominican friar, John's theory of papal power drew heavily on the arguments of the seculars. The controversy over mendicant exemption continued at the university throughout Marsilius's Paris years.

These different political and academic milieus, Padua and Paris, have been invoked to explain the political theory of the *Defensor pacis*. Some have seen the first Discourse as closely tied to the northern Italian political and cultural milieu, perhaps even to the point of being a theoretical account of the civic government of Padua; while the second Discourse, with its exhaustive analysis of the conflict between spiritual and temporal powers and its increasing focus on the prince as the means of resolution, has been linked to Marsilius's Paris period. Those who suggest a contrast or even a contradiction between Discourse I and Discourse II have sometimes also invoked 'Averroism' by way of support. But these terms and distinctions are too crude. The Aristotelian political

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language and academic culture of northern Italy and Paris were not insulated from each other in this way. Again, to posit an opposition between ‘republicanism’ and ‘imperialism’, or monarchical principate more generally, is to presume, from within our own horizons, something that has not always historically been the case and certainly stands to be demonstrated from Marsilius’s text. The figure of the emperor as the catalyst of peace appears for the first time in Discourse I, not Discourse II. And whatever ghost of ‘Averroism’ remains, it does not stalk the *Defensor pacis*. Marsilius is explicit that the truths of scripture in Discourse II are in harmony with those of political science in Discourse I. He does say that Discourse II can stand alone, ‘needing no other proof’, and it is true that you do not need to read the first to get the point of the second. (It is probable that successive popes never read Discourse I at all, and yet they got the point of Discourse II very clearly indeed.) But that is not the same as saying that Discourse I makes no contribution to the theory of Discourse II. On the contrary, as we shall see, the understanding of human political life that we find in the former is at the very centre of Marsilius’s analysis of papal corruption and its remedy in the latter.

Finally, the very short third Discourse has sometimes been thought an odd and unsatisfactory conclusion to a great work, an idiosyncratic summary of its contents which does not properly reflect the achievement of the whole. We will understand it better, however, if we see that it is not in fact the ultimate intended conclusion to the work. Right at the start, Marsilius appeals to the emperor ‘as the minister of God who will give this work the ending it hopes for from outside’.<sup>3</sup> The *Defensor pacis* does not present itself as a purely theoretical text: it is itself an action, an intervention in history, and the contents of Discourse III do not summarise the work but equip its readers for their own act of intervention.

The *Defensor pacis*1. *Knowing and unknowing*

This treatise will be called *The Defender of the Peace*, because it discusses and explains the particular causes by which civil peace or tranquillity is preserved and exists, and also those through which its opposite, strife, arises, is prevented and is removed. For by it the

<sup>3</sup> I. 1, 6.

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authority, cause and harmony of divine and human laws and of coercive principate of any kind – which are the rules of human actions – can be *known* ...<sup>4</sup>

Here, at the very end of his book, Marsilius characterises the work as primarily an intervention within a certain state of *knowledge*. Only when this thing is known, can people act. In this it resumes a position already clearly indicated in the very first chapter of the work, the intimate and necessary connection between knowledge and action; and, conversely and equally, between ignorance and passivity. Marsilius's purpose is to clear up the cognitive situation so deeply implicated in the desperate political situation that he ultimately seeks to remedy. How Marsilius sees the dynamics of knowledge and ignorance is therefore key to understanding the book.

Central to Marsilius's analysis of knowledge is that it is *cumulative*. The founders of any discipline will have only a very partial grasp, which is then brought to completion by their successors (who, however, could not do without the work of the founder or inventor). This is true both in theoretical disciplines and in practical wisdom (the kind involved in making the right judgement and decision in moral and political matters): the law is 'an understanding forged from the understanding of many'.<sup>5</sup> Thus, knowledge requires a community of people exercising their intelligence and it requires a continuity and a communication of that intelligence from one generation to the next. In other words, it has a *history*. Marsilius has no theory of natural knowledge, just as he has no theory of natural law as the natural illumination of the mind in moral matters. Following Aristotle, Marsilius argues that what people call natural law means simply those political standards that are the same everywhere; the village elder regulates the primitive community not by natural but by 'quasi-natural' law. Knowledge is historical and *by the very same token* political: there is no wholly natural or immediate knowledge, no cognitive grasp that requires no community of understanding. (If there is any, it is a special divine gift; Marsilius claims this for himself in the opening and closing chapters of the first Discourse.) Similarly, access to the revelation contained in Scripture is equally the function of a community of understanding. As Marsilius was very well aware, Scripture does not read itself.

<sup>4</sup> III. 3; emphasis mine.

<sup>5</sup> I. 11, 3.



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It is read by human beings living in political communities – communities of knowledge – and the way they read it stems from their political and cognitive history.

If knowledge is a function of a common, political history, the same is true for the opposite of knowledge, ignorance or unknowing. Ignorance for Marsilius can be a result simply of being at an imperfect stage of development. His theory of progress in knowledge implies, however, that this is remedied by the passage of time. If unimpeded, humans will reach perfection in all the arts and sciences. But this process, the communication and transmission of knowledge, can be deliberately hindered by malignant agents for their own interests. And, if they are successful, this process is mutually reinforcing; for ignorance, like knowledge, is cumulative: the habit of hearing what is false prevents people from appreciating the truth. Here it is the necessarily verbal aspect of communication that concerns Marsilius most. Truth must be disseminated in words, but those words themselves provide the opening for sophistical mis-reasoning, for deliberate distortion of the signification of words, for ‘false, fictitious and foreign’ interpretations of Scripture. All of these processes work together: false understandings are sedimented in false significations and false significations facilitate and prop up false understandings. This ‘implication’ or ‘involution’ of words and reasoning needs to be ‘opened up’, ‘unfolded’, ‘unpicked’ – in a word, exposed. The way to do this is by showing the history of that involution and sedimentation of falsehood and by appealing to or recovering the ‘proper signification’: the undistorted usage of human communities, secular or faithful, and the literal rather than the metaphorical sense of the Bible. Finally, even if – as Marsilius has argued – knowledge is not immediately accessible to the individual, the experience of their senses is; and over and over again Marsilius will appeal to the sense perception of his readers as a crucial part of his cognitive remedy.

*2. The elements of politics*

It is important for Marsilius’s argument, then, that human beings’ understanding of their political situation, and the terms in which they think and speak about it, is at least in some respects undistorted. They may have been bamboozled into slavery by a malicious and power-hungry papacy but they still have some basic sense of what political life is about. Marsilius opens his book with a quotation from the late Roman writer

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Cassiodorus on the desirability of tranquillity, which ends ‘... if a man is perceived not to have sought her, he is marked for ignorant of such great concerns.’<sup>6</sup> Cassiodorus here appeals to basic human political perceptions; and when Marsilius comes to develop the theme of tranquillity as the goal of politics in the next chapter, we find the same dependence:

A city and its parts would therefore seem to be in the same relation to tranquillity as an animal and its parts is to health. We can place our trust in this inference on the basis of what everyone understands about both. For they think that health is an animal’s optimal condition according to nature, and likewise that tranquillity is the optimal condition of a city established according to reason.<sup>7</sup>

Nonetheless, Marsilius immediately goes on to supplement and refine people’s general appreciation with expert medical knowledge on the subject. For Marsilius, human beings are assailed by excesses of elements both external and internal, which are the result purely of natural causality. All the arts of living – making food, shelter, trade, defence etc. – are the result of efforts to live a recognisably civilised life, not at the mercy of unchecked elements and even with some degree of decoration or decorum as well. Marsilius calls this life the ‘sufficient’ life. ‘Sufficiency’ is, however, not a word from the medical tradition: it comes from the first book of Aristotle’s *Politics*, in which the dynamic of community-formation is said to stop at the city because the city is *autarkēs*, i.e. sufficient to itself. Marsilius runs together the medical and the Aristotelian perspectives, picking out of the Aristotelian picture that aspect which is human *need*. But what, then, happens to that famous element of the Aristotelian understanding, the good life, the ‘living well’ that goes beyond mere ‘living’? It is very important to stress that the final cause is not lost sight of in Marsilius. He puts it at the head of chapter 4 of Discourse I: ‘... those who live a civil life do not just live – which beasts or slaves do – but live well, sc. having leisure for the liberal activities that result from the virtues both of the practical and of the theoretical soul.’<sup>8</sup> We cannot talk of a city if we are not talking about a community of virtue. But as Cassiodorus had indicated at the start, the good life, the life of virtue, cannot be had without peace or tranquillity. The theoretical elucidation

<sup>6</sup> I. 1, 1.<sup>7</sup> I. 2, 3.<sup>8</sup> I. 4, 1.

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of the good life, is, then, not dismissed but *deferred*, just as it is temporally or historically deferred in the dark times of and in which Marsilius sees himself as writing.

Returning to the process of city-formation, we have seen that the sufficient life consists in a life not at the mercy of the elements or the ‘non-naturals’. The most challenging of the non-naturals is human beings’ own passions, what Marsilius calls ‘affections’. These are in themselves internal, but they can issue in external or ‘transitive’ actions, actions that cross over from one subject to something or someone else. As Marsilius specifies in Discourse II, with transitive actions (and with the management of internal affections, to some extent) we enter the realm of the voluntary, things that people do at will. But in Discourse I Marsilius is not much interested in the subjective, volitional aspect. The political fact is that affections and transitive actions do occur, and are subject to excess as much as the action of the winds and the rain. Strictly talking politics, these things present a problem needing a political solution. Excesses of *external* or transitive actions present a problem because if they go unchecked they cause fighting and the dissolution of the polity. Unlike his contemporaries, then, Marsilius does not put faction down to the vices of the citizens; he seems to hold rather that human beings will always perform and react against such excesses, by force if necessary, just as they naturally desire to beat off the excesses of the wind and the rain. The solution to excesses of transitive actions is the restoration of the situation of balance or equality that existed prior to the excess committed: equalisation. Equalisation demands in its turn both a standard of what is equal, and an equaliser to bring acts back into line with that standard. These are the two key elements of any polity, without which it cannot survive.

But what about human beings’ *internal* passions and their excesses? These are not politically indifferent, for, as we have seen, the political community is a community of virtue. But here Marsilius holds, along with his contemporaries, that while human political measures can deal with external actions, they cannot affect the interior domain. This is the role of religion, which causes human beings, through fear of future torment and/or hope of future reward, to temper their own thoughts and feelings as well as actions. Religion, then, including the Christian religion, is a necessary part of the city and a function of the desire of human beings for a sufficient life. But – and this is both the glory and the problem – Christianity is actually true: its precepts really will bring

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reward or torment in a future life, and thus it transcends the civic role that was the sole function of pagan religious traditions. In consequence, a host of medieval political writers argued that, with Christianity, the relative roles are reversed: the city is ordered to religion rather than the other way round. Combating this ubiquitous and powerful argument is one of the key aims of Marsilius's book.

*3. The law*

We have seen that the equalisation of excess in human transitive acts requires of necessity a standard of what is equal in such human acts. One of Marsilius's primary tasks, then, is to establish what that standard is and how it comes to exist. The problem arises both from the multiple senses of the word 'law' and the multiple laws apparently competing to be the standard of human acts. Here Marsilius begins by rejecting as 'proper' senses of law any senses which do not involve a cognitive element, i.e. any knowable content. But law must not only have cognitive content, it must also be coercive. Law, then, necessarily implies a law-maker with a power to coerce. However, this still leaves two laws – divine law and human law – which could both claim to be the standard of human acts within the political community, and which could thus constitute a possible cause of conflict or strife. Marsilius's solution is to argue that divine law is indeed a law of human acts, but that its coercive force does not strike human beings in this world. This is not because God is impotent in this world, but because Christ in his mercy allowed human beings the possibility of repenting right up until the moment of their death. For this world, then, the divine law has purely cognitive content, and as such cannot be the necessarily coercive law of the human community.

This established, a residual but central problem remains: who is the human lawmaker or legislator? Marsilius's solution is the foundation-stone of his politics. It is that the only thing with the characteristics necessary to make law is the universal body or *universitas* of citizens within the political community, or its 'prevailing part' (I leave this qualification on one side for the present). One ground for this is reason or practical wisdom. It was a commonplace of political literature that whatever possessed better political wisdom should make the laws. But what element is that? We have already seen Marsilius's answer. All wisdom, and especially the civic wisdom required to see what is needed

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in a polity, is cumulative and the possession of a community of people with understanding. Marsilius does give a particular role to those of outstanding talent – the wise and the experienced should formulate the law. But this does not mean they are the sole judges of whether it is good or bad. It is the civic perceptions of the whole community that must be depended upon and consulted. A second and very closely connected reason is that the law is to be made to the common advantage of all. According to Marsilius, the common advantage is better discerned by the citizens universally than by a few. This is not just a question of cognitive ability, however. A few may have interests or affections that cause them to want what is divergent from the common advantage, and is only for their own advantage. A law made by a partial body of citizens is therefore not properly the law of the city. Even if that partial body happens to be in control and therefore has the coercive force to back it up, its laws are not properly laws because they lack the requisite cognitive content of being the science of what is good and just in the city. The same goes for a universal body which does not possess the civil science of what is good and just, i.e. a community of *uncivilised* barbarians. Their laws may have coercive force but are not properly laws.

As noted above, Marsilius always qualifies ‘universal body of citizens’ with ‘or its prevailing part (*valentior pars*)’. The qualification is introduced on the grounds that it would be unacceptable in the city to allow a few deformed natures to impede decisions for the common advantage. Hence, these must be excluded. Because what they want is by definition at odds with the common advantage, which is what the community of citizens wants, the universal body of the citizens and its prevailing part are in fact the same thing. Marsilius’s initial formulation suggests that the prevailing part, while qualitatively superior, will also be overwhelmingly quantitatively superior. But when he comes to specify how to identify the prevailing part, he argues either for a formula from Aristotle or ‘the honourable custom of polities’.<sup>9</sup> The ‘honourable custom of polities’ might go in a very different direction: the seven electoral princes of the Roman empire are described as ‘the prevailing part of those who have the duty to elect’.<sup>10</sup> It seems, then, that the prevailing part could be a tiny minority. But then where is Marsilius’s argument for the necessary participation of the universal body of the citizens in

<sup>9</sup> I. 12, 4.<sup>10</sup> II. 26, 5.

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law-making, an argument that definitely appeals to numbers? Similar questions arise over his willingness to delegate the legislative function, even if this is only ‘in accordance with the will of the primary legislator’. While these concessions are sometimes seen to imply a contradiction, however, in fact the mention of custom and the will of the primary legislator contain the solution: custom is something that the polity has built up collectively over many years, while the will of the primary legislator equally implies assent. So long as these are present, the universal body of the citizens is implicitly involved in the process and these practices do not contradict Marsilius’s understanding of legislation or of citizenship.

I have left until last one final argument that Marsilius employs to argue that the universal body of the citizens must make the law, which is an argument from freedom. This is not just the freedom of the political community as a whole (though political communities can certainly be reduced to servitude): it comes down to the freedom of the individuals within those communities – ‘any and every citizen should be free’.<sup>11</sup> Why should a citizen be free? Marsilius appeals simply to Aristotle’s dictum that ‘the city is a community of free men’. But this is purely definitional. What seems lacking is any explanation of the *value* of being free in this sense. There is some hint in the final cause of the city, quoted above: ‘those who live a civil life do not just live – which beasts or slaves do – but live well, sc. having leisure for the liberal activities that result from the virtues both of the practical and of the theoretical soul.’ The appeal to leisure is not enough by itself, however, for one very wise man could make the law and leave the citizens with more leisure for virtue, not less. Hence this would not be a domination which made slaves of the subjects, but which actually freed them (this would in fact be a popular argument of intellectuals in the Italy of the *signori*). Ultimately there is no answer in the *Defensor pacis* developed enough to meet these challenges. There is no theory of freedom, just a series of hints about what it might be in the different domains of nature, politics and religion. Why does Marsilius not say more about it? The answer is not that it is unimportant to him, but that, just like the good life of which it is a critical part, it is *deferred*. Paradoxically, to win our full human freedom in the future, we need to think of ourselves as political animals in the present.

<sup>11</sup> I. 12, 6.

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*4. The prince*

We saw that there were two necessities for regulating the transitive acts of human beings within a community: a standard of what is equal or just, and an equaliser or regulator to bring actions into line with that standard. However, while the standard expresses the collective knowledge and freedom of the citizens, the executor of that standard inevitably brings in coercion and subjection. Aristotle in the *Politics* had said that in any multitude there must be something that rules and something that is subject: summing up in Discourse III, Marsilius refers to ‘prince and subject, the primary elements of any civil order’. Thus, on top of the city as an animal with intercommunicating parts, all of which come together to establish the standard of actions within it, there is necessarily superimposed an order of rule and subjection. But both prince and subject must understand the broader civil context of their relationship and exercise their function accordingly:

For the first citizen or part of a civil regime, sc. the princely – be it one man or several – will understand from the human and divine truths written down in this book that they alone have the authority to command the subject multitude . . . They will also understand that they can do nothing more than this, particularly anything involving difficulty, without the consent of the subject multitude or the legislator . . . The subject multitude and each of its individuals can, for its part, learn from this book what kind of man or men it should institute to exercise the function of prince . . . Finally, it will learn to keep as close a watch as possible that the princely or any other part of the community does not presume to be its own arbiter, by judging or taking any other action in the city against or outside the laws.<sup>12</sup>

The need to be clear on this is all the more pressing because of the vital importance of the principate to the polity, an importance Marsilius underscores with a continuation of his medical metaphor. The principate is the last part of the city-animal to be mentioned in Marsilius’s original discussion of the parts. But it is the first of the parts to be generated, the only one that cannot be lost without the death of the city-animal, and it must keep functioning night and day if the polity is to survive. It regulates almost every aspect of the animal and it must have the physical

<sup>12</sup> III. 3.

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force and the financial wealth to do so. There must only ever be one principate (or at least one supreme principate: Marsilius allows for subordinate princes) in the polity, or else its ordering function is impeded and the animal will disintegrate.

How can this powerful part be prevented from lapsing into partiality and therefore despotism? Marsilius's answer again lies in the law. The first step is clear: the prince is not the legislator, at least not the primary legislator, but the executor of a law the legislator has made. Marsilius's scheme does allow for the prince to be the delegated or secondary legislator. But even in this case, he will still not be making the laws *as prince*, and he will only make them so long as this accords with the will of the universal body of citizens. Secondly, the laws themselves should lay down that the prince is limited insofar as possible to acting in accordance with the law. The law cannot prescribe for everything, but it should try to prescribe for as much as it can. This is because, however virtuous the prince, he cannot rival the political wisdom contained in the law, and neither can he lack all partiality and personal affection in the way that the law does. Finally, however, even the law will not do everything. As Discourse III makes clear, the citizens must themselves be active in regulating the prince.

Who (singular or plural) holds the principate defines the form the civil order takes in different places, or what we might call the 'constitution'. Following Aristotle, Marsilius identifies three good or 'well-tempered' forms of constitution: monarchy, aristocracy, and 'polity', and three contrasting bad or 'flawed' forms: tyranny, oligarchy and democracy – depending on whether one, few or many rule, and whether they rule over willing or unwilling subjects and with laws made to the common advantage or for personal interest. The principate does or should not make the laws itself, it only judges and acts in accordance with them. But in the distorted forms, it is clear that the principate has usurped the legislative function (if it had not, the laws would be to the common advantage and the polity would be 'well-tempered') and has therefore deprived the universal body of the citizens of its primary civic role. They are also deprived of a role in electing the prince, as Marsilius says that distorted forms are normally instituted by force or fraud. These principates are therefore forms of despotism. As for the good forms of constitution, Marsilius explicitly says that which of them is best is not his concern here, although he hints that monarchy is the best. In every case, however, he holds that it is better for the principate to be elected rather than



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hereditary, because election not only produces a more virtuous prince but involves more willing subjects. This criterion, far from suggesting an opposition in principle between republic and empire, can in fact be seen to validate both forms of government and to prefer them to hereditary monarchy, for the ‘princes’ of both the Italian communes and the Roman empire are elected rulers depending directly on the express will of their citizen-body or its prevailing part. Nonetheless, hereditary monarchy is not thereby disqualified from counting as a political arrangement, as it was for Ptolemy of Lucca. It *is* political; but the arrangements of elected governments are *more* political.

5. *Strife*

If all of the processes Marsilius has prescribed are put in place, the animal that is the city should function properly, which is to be in a condition of tranquillity. If something starts to malfunction, fighting inevitably breaks out, and if this goes unchecked the polity will ultimately disintegrate. In such a complex organism, the possible causes of strife are many. Marsilius refers the reader to book V of the *Politics* for all but one, the ‘singular and well-hidden cause’<sup>13</sup> afflicting the *regnum Italicum* (and indeed all Christendom) in his day. Notwithstanding the reference to Aristotle, however, Marsilius does give some indication himself of how he understands the generic causes of strife. One is the absence of something to regulate the excesses of human transitive acts. Another is the unnatural excrescence of one part, e.g. the military or the priesthood, to the necessary detriment of other parts and other functions. Another is confusion or multiplicity of principates. If there are two or more regulators, then regulation will not happen and again, fighting will break out. It is into this generic category that the ‘singular cause of strife’ ultimately fits.

The ‘singular cause of strife’ was unknown to Aristotle because it had its root in ‘a certain miraculous event’ by which God intervened in the course of nature and sent his son, Jesus Christ, to redeem the human race. That the source of human salvation was also the source of political damnation is a thesis Marsilius is not afraid to put in front of his readers. What he needs to show is that that source was not *necessarily* the source of all political evils; on the contrary, it should be a support for the

<sup>13</sup> I. 1, 3.

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well-functioning polity. The cause of breakdown is ultimately something much more banal and familiar: the avarice, desire for power and deceitfulness of the human interpreters of Christ's religion. This finds its ultimate expression in the claim of the contemporary papacy to 'plenitude of power', by which is meant full and absolute power over everyone on earth and their property: not only within the church, not only within the Roman empire, but within every civic structure in Christendom and indeed on earth. By stressing the title of 'plenitude of power', with its universal pretensions, Marsilius hopes to show that it is not just a local quarrel with the empire over the *regnum Italicum*. It is political life or death for everyone.

Why did the Christian religion, in particular, provide this opening for strife? After all, as we saw, all polities have always had religion and a 'priestly part' to take care of it. The reason lies in the miraculous intervention, as Marsilius stresses. In the beginning, when God created human nature, human beings lived an apolitical life in a garden that provided all their wants without the need for any arts and sciences, in direct obedience to God. However, through disobedience to God, man lost this life in proximity to the divine and was left to his own devices to make a 'sufficient' life. In this gap between the human and divine, the natural human desires for the sufficient life meant that human cities developed and the arts and sciences were brought to perfection. Religion or divine law was a part of the city, serving the needs of the city rather than setting itself up as a rival to it. However, God did not will that this separation of man from God should continue forever: a series of commands culminated in a direct intervention, sending his son, Jesus Christ, who was both God and man, to teach man the way to ultimate salvation with God. Christ closed the gap between human and divine and therefore opened up a way for priests of the Christian religion to claim the polity for themselves.

*6. Resolution*

In Marsilius's view, the development of the papacy has been one long and exploitative process of illicit encroachment upon the civic sphere, both in the form of owning property and in the form of exercising coercive jurisdiction. The first half of Discourse II is devoted to combating both these developments. Taking jurisdiction first, Marsilius argues that the pope simply is not a judge, and neither is any priest. He is not a judge

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according to human law: that judge is the ‘prince’ (and any other appointed civic judges). But he is not a judge according to divine law either; the divine judge is Christ, who will judge all human beings, but *only* after this life is over. The ‘power of the keys’ claimed by the pope and other priests is not a power of judgement, but a power of demonstrating in human terms the act of divine judgement. No priest, then, rightly exercises this or any other of the functions of principate. Secondly, he does not rightly own any property either. Marsilius combats church ownership of property by appropriating the thesis of apostolic poverty, defended in his day only by the Franciscan Order, but extending it to *all* clergy. All clergy should live in imitation of Christ and his apostles, who owned nothing and went from place to place, teaching and relying on their converts for their material support. But while Marsilius borrows mendicant arguments for perfection he rejects another part of their ideal entirely, for he insists that the priesthood is not mendicant but localised, like the secular clergy, within the communities of the faithful to which they minister and to which they should be subject. The ‘perfect’ individual is compelled to live off and to administer temporal goods within a specific locality even if this is not ‘of his own intention’.<sup>14</sup>

Who is it, then, who requires priests to function as the priests of specific localities? At chapter 15 of Discourse II, Marsilius turns to consider the ‘efficient cause’ of the priesthood, explicitly referring back to his argument in chapter 5 of the first Discourse, in which he had said that the human legislator, either by itself or through its prince, is the efficient cause of all the parts of the city including the priesthood. But the cause of the local institution of the clergy in Discourse II – including the pope at Rome – is not said to be the human legislator but the *faithful* human legislator. What or who is this faithful human legislator? It is history that yields the answer. Arguing from the Acts of the Apostles, Marsilius holds that after the time of Christ the apostles mutually appointed each other to teach in certain places in the world. After the time of apostles, the growing ‘multitudes of the faithful’ appointed their own priests and bishops. The Roman church had no jurisdictional primacy over the faithful but simply a willingly-conceded position of helper and adviser on the faith. These multitudes within the early church therefore operated on the same principles as correctly-functioning civil multitudes. But they were still apolitical multitudes, without, as faithful,

<sup>14</sup> II. 14, 9.

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any function in the civil order of the time. That order was, of course, ancient Rome: the Roman empire with its prince, the Roman emperor, who was also the human legislator by delegation of authority. (The *Defensor minor* explicitly describes the process whereby legislative authority was transferred from the provinces of the empire to the Roman people and from the Roman people to their prince.)

The historic event that mapped the universal body of the faithful onto the universal body of citizens to create the faithful human legislator was the conversion of Constantine the Great and the consequent Christianisation of the Roman empire. The Roman emperor was the human legislator: when he became faithful, he became the faithful human legislator with the authority to command all Christians, clergy and laity alike. Marsilius quotes from the preface to the Nicene Council: “He” (viz. Constantine) “orders Arius to come before 318 bishops seated and them” sc. the bishops “to judge of his propositions.” See here that the bishops and priests gathered together in the above-mentioned council at the order of the legislator.<sup>15</sup> Again, ‘it is the faithful human legislator who lacks a superior who has the authority to pass a coercive command or issue a decree to all indifferently (priests as much as non-priests), to observe what has been defined or judged (in the first signification of judgement) or ordered by a general council’.<sup>16</sup> The Roman emperor, then, is the ‘faithful human legislator who lacks a superior’, the supreme coercive authority over all Christians; the Roman empire is the universal body of faithful citizens, the historically and essentially *Christian* city of which the emperor is the elected prince and from which he holds his legislative authority. This authority does not cancel out the regional and local realms of inferior legislators and princes, but it unifies them within a single order of jurisdiction. Although this unification was originally ‘from the top down’ – from the conversion of the emperor – Christendom is ultimately unified ‘from the bottom up’, that is, from the very nature of its constitutive citizens who are not just human beings but faithful human beings, and whose collective cognitive understanding is therefore qualitatively different from that of pagans.

Marsilius’s argument up until the middle of Discourse II is only that, in whatsoever city whose priests are the priests of the true God, those priests have rightfully no power over temporals. From then on, however,

<sup>15</sup> II. 21, 2.<sup>16</sup> II. 21, 4.

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he begins to build an argument for one overarching Christian city in which the supreme civic legislator rightfully has all power over spirituals. For the emperor to restore this rightful position is the only means of restoring the tranquillity that every realm must desire. As we have seen, Marsilius opens his work with a direct appeal to Ludwig of Bavaria to fulfil this calling and so to write the ultimate ending of the *Defensor pacis*. But its interim conclusion, Discourse III, is addressed not to the emperor but to all citizens, princes and subjects, handing them a series of distilled theses for them to make their own. Their brevity and apparent lack of exact correspondence with the two main Discourses are precisely the point. Discourse III is text detextualised, text stripped for action, the moment of transition between the work and the world. Marsilius is saying to all his readers, now *you* do something: for you too are called to be a defender of the peace.

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## Suggestions for further reading

### General studies and collections

The best general study integrating Marsilius's life and works remains C. Pincin, *Marsilio* (Turin: Giappichelli, 1967). There also exists an excellent shorter introduction by C. Dolcini, *Introduzione a Marsilio da Padova* (Rome-Bari: Laterza, 1995), which contains a very extensive and helpful bibliography of scholarship in European languages since 1960. Good overviews of Marsilius's political thought include the classic studies of A. Gewirth, *Marsilius of Padua: The Defender of Peace*, Vol. I: *Marsilius of Padua and Medieval Political Philosophy* (New York-London: Columbia University Press, 1951), and J. Quillet, *La philosophie politique de Marsile de Padoue* (Paris: Vrin, 1970). Two further Italian studies, M. Damiata, *Plenitudo potestatis e universitas civium in Marsilio da Padova* (Florence: Edizioni «Studi Francescani», 1988) and P. di Vona, *I principi del Defensor pacis* (Naples: Morano Editore, 1974), should also be mentioned. Numbers 5 and 6 (1979 and 1980) of the journal *Medioevo* are devoted to Marsilius and contain many helpful and stimulating articles in several European languages on all aspects of his work. Marsilius's minor works, the *Defensor minor* and *De translatione imperii*, have been translated into English in C. J. Nederman, ed., *Marsiglio of Padua: Defensor minor and De translatione imperii* (Cambridge: Cambridge University Press, 1993).

### Political and intellectual milieu

Good background on the political organisation of the medieval Italian city-states can be found in D. Waley, *The Italian City-Republics* (3rd